

THE INTERNATIONAL CRIMINAL COURT'S JURISDICTION OVER WAR CRIMES COMMITTED AS PART OF A NON-INTERNATIONAL ARMED CONFLICT: AN OBSTACLE TO TURKEY'S ACCESSION?

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Abstract

Although the Turkish delegation to the Rome Diplomatic Conference of Plenipotentiaries (Rome Conference) agreed that inclusion of war crimes in the Rome Statute of the International Criminal Court (Rome Statute or "the Statute") was essential,^{*} it drew attention to the necessity of a very high threshold for the prosecution of those crimes.[†] The delegation opposed the inclusion of Article 8(2)(c) and (d),[‡] which deals with the crimes committed within the context of an internal armed conflict, stating that "[t]he future Court should have nothing to do with internal troubles, including measures designed to maintain national security or root out terrorism."[§]

Predictably, representatives of Turkey at the Rome Conference were concerned that high-level decision-makers of the Turkish Armed Forces could be tried before the International Criminal Court (hereinafter ICC or "the Court") because of their involvement in the crimes allegedly committed as part of Turkey's prolonged fight against the Kurdistan Workers Party (PKK), the deadliest terrorist organization in Europe.^{**} In this regard, Turkey is concerned that ICC accession could "undermine" its internal fight against terrorism.^{††}

Despite Turkey's serious reservations, however, the war crimes committed during the course of an internal armed conflict were included in the Rome Statute. This inclusion has been one of the most compelling arguments for the opponents of the ICC in Turkey. This paper explains that the ICC's jurisdiction over internal armed conflicts should not hinder Turkey's consideration of accession to the Rome Statute because joining the ICC would not weaken Turkey's fight against the PKK. First of all, Turkey could, as a State Party to the Court, continue its lawful fight against terrorism in compliance with the humanitarian law principles reiterated in the Rome Statute. Strict compliance with the established international law standards is, in fact, conducive to the effectiveness of the counter-terrorism measures.

Second, most of the allegations against the Turkish security forces concern the incidents that occurred prior to entry into force of the Rome Statute, and thus they are outside the temporal jurisdiction of the Court. Third, even if the temporal jurisdiction requirement was satisfied, allegations against Turkish nationals would most likely be inadmissible before the ICC because of the efficiency and operability of the Turkish criminal justice or due to gravity threshold of the Rome Statute. Lastly, most of the allegations against the Turkish Armed Forces do not satisfy *actus reus* of war crimes enumerated in the Rome Statute. Therefore, the ICC's jurisdiction over internal armed conflicts should not hinder Turkey's consideration of acceding to the Rome Statute.

Keywords: ICC, International Criminal Court, International Criminal Law, Non-international Armed Conflict, War Crimes, Turkey, PKK

^{*} Official Records of the U.N. Diplomatic Conference of Plenipotentiaries on the Establishment of an Int'l Criminal Court, A/CONF.183/13 (VOL. II), (Rome, 15 June-17 July 1998), at 276,35, [hereinafter Official Records of the Rome Conference].

[†] *Id.* at 330, 48.

[‡] *Id.* at 169, 107.

[§] *Id.* at 124, 43.

^{**} The PKK is denounced as a terrorist organization by the European Union, NATO, and various countries; including the United States, Canada, Australia, and New Zealand. See Jonathan R. White, *Terrorism and Homeland Security* 241 (Wadsworth 2012). See also Today's Zaman, *US Says PKK Deadliest Terrorist Organization in Europe*, http://www.todayszaman.com/latest-news_us-says-pkk-deadliest-terrorist-organization-in-europe_316992.html (May 31, 2013).

^{††} Sunday's Zaman, *Turkey's Planned Ratification of Rome Statute Stirs Debate*, <http://www.todayszaman.com/news-150927-turkeys-planned-ratification-of-rome-statute-stirs-debate.html> (Aug. 22, 2008).