



The International Criminal Court

The Making of the Rome Statute

Issues • Negotiations • Results

Edited by Roy S. Lee

KLUWER LAW INTERNATIONAL

UNITAR

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Edited by:
ROY S. LEE

In cooperation with
THE PROJECT ON
INTERNATIONAL COURTS AND TRIBUNALS



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THE INTERNATIONAL CRIMINAL COURT
THE MAKING OF THE ROME STATUTE
ISSUES, NEGOTIATIONS, RESULTS

FOREWORD

Negotiations on the Rome Statute were conducted mostly in informal meetings throughout the whole process from the preparatory stage to the Conference itself. No official records were kept at those meetings. The desire to make available an authoritative, objective account of the complex negotiations on the key provisions of the Statute prompted the idea for this negotiating history of the Rome Statute. Those who actually negotiated or closely participated in such negotiations are obviously best suited for creating such a reportage.

Indeed, twenty-eight authors from seventeen countries have contributed to this collective work. Most of them actually conducted the negotiation on the subject matters concerned since the preparatory stage and are continuing their work at the Preparatory Commission. It has therefore been a distinct privilege to assemble this work from such an eminent group on such an important topic and gratifying to bring this publication into existence.

This collective work is intended to facilitate a better understanding of the key provisions of the Statute and to serve as a guide for future application of the Statute.

During its preparation, papers dealing with related subjects were circulated and commented upon amongst the authors concerned in an attempt to avoid overlapping and to gather second opinions. Where necessary, modifications were made. Because of the constraints of the publication schedule, it was not possible to send the edited version of a few chapters to the authors concerned. Consequently, any errors are the editor's.

The views presented in this volume are those of the authors in their personal capacity and do not represent the institutions with which the authors are associated.

Although all the key players were invited to participate in this reportage, some were unable to do so due to time constraints or other pressing engagements. Special regrets are extended to Mr. Hans Corell, Special Representative of the Secretary-General to the Conference; to Professor Cherif Bassiouni, Chairman of the Drafting Committee; and to Amba-

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sador Erkki Kourula of Finland, who coordinated consultations on the Court's jurisdiction.

John Berger and Annebeth Rosenboom of Kluwer Law International are great publishers in bringing this volume to a wide audience within an extremely short time frame. Special thanks must also be given to Terence Hegarty for his meticulous work and to Rocco Callari and Laslo Cheffolway for their distinctive designs.

Roy S. Lee, Editor

PREFACE

I am very pleased to introduce this unique publication in celebration of the first anniversary of the adoption of the Rome Statute for the International Criminal Court.

This century the horrors of wars have occurred so often and in so many places that it is all too easy to believe that man's capacity for evil knows no limits. We have proclaimed numerous laws and prohibitions against such horrors. But there can be no meaningful compliance without an effective means of enforcing these interdictions with respect to those crimes that harm the international community as a whole — aggression, genocide, war crimes and crimes against humanity. For almost a half century, the United Nations has recognized the need to establish a permanent court to prosecute and punish persons responsible for such crimes. Until recently, however, attempts to create such a mechanism were unsuccessful, although continuing atrocities only emphasized the need.

It was, therefore, an historic moment and certainly one of the finest moments in the history of the United Nations, when, finally, the Rome Statute creating such a permanent International Criminal Court was adopted on 17 July 1998 at the United Nations Conference in Rome, Italy. As I have stated before, this Court will be a gift of hope to future generations. Its creation represents a giant step forward in the march towards universal human rights and the rule of law. It is therefore a fitting way to inaugurate the new millennium.

This publication is a collective work by a group of persons closely associated with the actual making of the Rome Statute. It covers the substantive and procedural issues raised during the preparatory stages as well as at the Conference. These active participants in the Conference provide an account of the main contentions on each of the key issues, the divergent approaches put forward by the principal proponents, how differences were resolved, how groups of articles were prepared, and how the final text as a whole was assembled. All the authors served certain key functions during the Conference. Most of them chaired or co-ordinated the work of a com-

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mittee, a working group or a negotiating body, all of which together produced the Statute. Their professional account of the work of the Conference makes this publication a unique resource for States contemplating ratification and preparing national implementation legislation. This book gives the insiders' reportage of the negotiations that culminated in this momentous Statute.

Kofi A. Annan
Secretary-General of the United Nations

ACKNOWLEDGEMENTS

In 1996, on the occasion of the 50th Anniversary of the International Court of Justice, the United Nations Institute for Training and Research had the honor of organizing jointly with the World Court a Colloquium to celebrate the Anniversary. This event led to a unique publication, *Increasing the Effectiveness of the International Court of Justice*, composed of papers by and summaries of discussions between the Judges of the World Court and many of the most eminent scholars and practitioners in the field.

In a continuation of its efforts to promote the use of international courts and tribunals, UNITAR in collaboration with *PICT*, the Project on International Courts and Tribunals, now has the pleasure of presenting this collective work on the legislative history of the Rome Statute of the International Criminal Court. This is also a fitting tribute to the centennial of the first attempt at the Hague in 1899 to maintain international peace through the proclamation of law. One hundred years later, the international community has finally embarked upon the enforcement of law through the creation of a permanent International Criminal Court. A major gap in developing an effective international legal system has thus been filled. This is a landmark achievement. UNITAR is honored to sponsor the publication of the valuable *travaux préparatoires* of this historic instrument.

UNITAR wishes to express its profound appreciation to all the authors who, having contributed significantly to the actual making of the Rome Statute, then took time from their busy schedules to painstakingly relate their experience of the complex negotiations on specific topics in which they had participated. Their writings help us to comprehend how daunting was the task with which they were confronted, the complexity of the issues and the remarkable achievement in creating a true and complete international criminal justice system. Their effort is greatly appreciated and I thank them for their contribution. I have no doubt that this volume will prove extremely useful for the future work of the International Criminal Court.

Dr. Roy S. Lee, Senior Special Fellow of UNITAR, initiated, organized and executed the work of this publication. I thank him for his dedication.

ACKNOWLEDGEMENTS

In his former capacity as the Executive Secretary of the Rome Conference, this publication was, I understand, his "second dream" following the legendary conclusion of the Rome Conference. I am glad that UNITAR has been able to help bring this book into existence.

This work is published in cooperation with *PICT, the Project on International Courts and Tribunals*. I thank Mr. Shepard Forman, Director of the Center on International Cooperation, New York University; Dr. Philippe Sands, University of London, School of Oriental and African Studies, Co-Director of *PICT*; and Mr. Cesare P.R. Romano, Associate and Research Scientist of the Center on International Cooperation, New York University, for their enthusiastic support and for providing technical and financial assistance from *PICT*, which have greatly facilitated this publication. I hope this collaboration marks only the beginning of a concerted effort of the like-minded institutions in this field.

On behalf of UNITAR, I would also like to thank Kristen Boon, Jonathan Huston, Tatjana Keselj, Anne Rübesame, and Tanja Southerland of New York University Law School, and Afra Afsharipour, Stephanie Hart and Justine Z. Lee of Columbia Law School for their legal research and services; Barbara Masciangelo for her editorial assistance; and Mercedes Fajardo for her secretarial and technical assistance.

It is the fervent hope of UNITAR that the efforts of all those who so generously contributed to this publication will advance its ultimate objective: to promote the enforcement of international law through the judicial functioning of courts and tribunals. The achievement of the Rome Statute reflects the determination of the international community that perpetrators must now bear their individual criminal responsibility. Let us hope that this *opinio communis* will also enable the International Criminal Court to serve as an effective instrument for the maintenance of international peace and security.

Marcel A. Boissard, Executive
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