

CONTEMPORARY ISSUES REGARDING CASES OF CRIMES AGAINST HUMANITY AS TRIED IN THE INTERNATIONAL CRIMINAL COURT

By:

Abu Daud Bin Abu Samah (2007294336)
Amalina Basirah Binti Md. Top (2007294198)
Mohd Khaidhir Khan Bin Quaj Mamandh (2007266998)
Anis Nabila Binti Abd. Rabim (2007294218)

**Submitted in Partial Fulfilment of the Requirements
for the Bachelor of Legal Studies (Hons)**

MARA UNIVERSITY OF TECHNOLOGY

Faculty of Law

October 2009

The students/authors confirm that the work submitted is their own work and that appropriate credit has been given where reference has been made to the work of others.

ABSTRACT

This study concerns the contemporary issues regarding cases of crimes against humanity as tried in the International Criminal Court (ICC). There are a lot of questions regarding the complexity of the jurisdictional matters of the states and the ICC. In addition, there is a question of the application universal jurisdiction in the ICC Statute. When a state becomes a party to ICC, the state must surrender to the jurisdiction of the Court particularly in respect to the crimes listed in the ICC Statute. Based on the doctrine of State Sovereignty, most states are reluctant to surrender its official to be tried at the ICC. The argument of state immunity arises because states or its officials are immune from foreign states' prosecution. Therefore, the cooperation and legal assistance of the contracting parties to the ICC Statute are important. Whenever, a state refuses to surrender its official, it'll create problem and ineffectiveness of measures taken by the ICC.

ACKNOWLEDGEMENT

This research paper has been carried out by a team which consisted of Abu Daud Bin Abu Samah, Amalina Basirah Bte Md Top, Anis Nabila Bte Abd Rahim and Mohd Khaidhir Khan Bin Quaj Mamandh from Faculty of Law, UiTM. This research paper could not be completed without the support and encouragement of many people whom we are truly grateful.

All praise to Allah s.w.t whose bless and inspiration has sustained us to bring this research paper to completion within the stipulated time.

We would like to express our gratitude to Puan Azlena Khalid, who supervised this research paper, for the guidance, advice and exceedingly helpful cooperation.

We would also like to thank our families and friends for their kind assistance and moral support throughout the process of completing this research paper.

Thank you.

TABLE OF CONTENTS

Acknowledgement	i
Abstract	ii
Table of Contents	iii
List of Cases	vi

CHAPTER ONE: INTRODUCTION

1.0	Introduction	1
1.1	Background	4
1.1.1	Rome Statue of The International Criminal Court	4
1.2	Background of the International Criminal Court	6
1.2.1	Structure of the ICC	8
1.2.2	Crimes within the Jurisdiction of the Court	10
1.2.3	The International Criminal Tribunal for Yugoslavia	12
1.2.4	The International Criminal Tribunal for Rwanda	13
1.2.5	The Nuremberg Trials	14
1.2.6	International Military Tribunal far East	15
1.3	Problem Identification	16
1.4	Objectives	18
1.5	Research Methodology	18
1.6	Scope and Limitation	19
1.7	Significance of the Study	19

CHAPTER TWO: LITERATURE REVIEW

2.0	Literature Review	20
-----	-------------------	----

CHAPTER THREE: JURISDICTIONAL CONFLICT OF INTERNATIONAL CONFLICT OF THE ICC OVER THE CRIME AGAINST HUMANITY CASES

3.0	Introduction	25
3.1	The Application of Universal Jurisdiction in ICC Statute	26
3.1.1	The Principle of Universal Jurisdiction versus State Sovereignty	27
3.1.2	Expressed Consent by the Contracting Parties	29
3.2	The Jurisdiction of the ICC over the Nationals of Non-Parties	30
3.3	Acceptance of Jurisdiction by non-state Party	31

CHAPTER FOUR: COOPERATION AND LEGAL ASSISTANCE TO THE ICC FROM CONTRACTING PARTIES

4.0	Introduction	33
4.1	The Surrender of the criminals to the ICC	33
4.2	Issuing requests for arrest and surrender	35
4.3	Refusal of states to cooperate	36
4.4	Duty to surrender the requested person	38

CHAPTER FIVE: IMMUNITY IN THE ICC

5.0	Introduction	40
5.1	State Immunity	40
5.1.1	Immunity rationae material	41