

AMICC

THE ACCEPTANCE OF INTERNATIONAL CRIMINAL COURT JURISDICTION BY CÔTE D'IVOIRE

SUMMARY

Côte d'Ivoire (also known as the Ivory Coast) signed the Rome Statute of the International Criminal Court (ICC or Court) on November 30, 1998, but has not yet ratified the instrument. Therefore, it is not a State Party to the ICC and crimes committed on its territory would not ordinarily be within the jurisdiction of the Court. However, in February 2005, the government of Côte d'Ivoire accepted the exercise of jurisdiction by the Court over crimes committed there since September 19, 2002. In accordance with Article 12(3) of the Rome Statute the government lodged a declaration of this acceptance with the Registrar of the Court.¹ Consequently the State is now obligated, under the Statute, to cooperate fully with the Court regarding any investigation or prosecution which may arise from this situation.

This acceptance of jurisdiction closely followed significant pressure at the end of 2004 and beginning of 2005 from international human rights groups such as Human Rights Watch² and the International Crisis Group³ to ratify the Rome Statute or accept the Court's jurisdiction, as well as the possibility of a referral of the situation to the Court by the United Nations Security Council. As ratification would require an amendment of the Constitution, and in light of the many other complications in the country's legal system and current legal reforms, it was decided that it would be more effective to choose the latter.⁴

BACKGROUND

After Côte d'Ivoire gained independence from France in 1960, the country enjoyed economic prosperity and stability under the leadership of President Felix Houphouët-Boigny until his death in 1993. During this time, the country was effectively a one-party state as politics were monopolized by Houphouët-Boigny's *Parti Démocratique de la Côte d'Ivoire* (PDCI). Economic success grew from coffee and cocoa exports and resulted in high levels of immigration from neighboring countries, attracting foreign workers and investors. These immigrants gradually increased to make up one quarter of Côte d'Ivoire's population.⁵

¹ International Criminal Court (ICC) website, *Registrar confirms that the Republic of Côte d'Ivoire has accepted the jurisdiction of the Court*, February 15, 2005, <http://www.icc-cpi.int/press/pressreleases/93.html>.

² Human Rights Watch Briefing Paper, *Accountability for Serious Human Rights Crimes Key to Resolving Crisis*, October 2004, <http://hrw.org/backgrounder/africa/cote1004/index.htm>, p15. Hereafter, Human Rights Watch Briefing Paper, October 2004.

³ International Crisis Group Report, *Côte d'Ivoire: No Peace in Sight*, Africa Report No 82, July 12, 2004.

⁴ In February 2005, the government renewed its commitment to ratify the Rome Statute and Human Rights Minister Victorine Wodie confirmed the approval of ICC jurisdiction. The Council of Ministers adopted a bill in May 2001, authorizing the President to ratify the Rome Statute. The bill must now be submitted to Parliament and approved. The ratification bill has been pending adoption. Coalition for the ICC, <http://iccnw.org/countryinfo/africa/cotedivoire.html>.

⁵ International Crisis Group, *Conflict history: Côte d'Ivoire*, http://www.crisisgroup.org/home/index.cfm?action=conflict_search&l=1&t=1&c_country=32.

After 1993, the economic and political situation in the country deteriorated as ethnic and political tensions rose. In the late 1980s and early 1990s, the first militia groups were formed.⁶ Xenophobia increased as the new President, Henri Konan Bédié, exploited the concept of “Ivoirité” (Ivorianess - to separate “true” Ivorians from outsiders) for his own political gain and economic problems were blamed on foreigners. Using the same principle, Bédié banned former Prime Minister Alassane Ouattara, a northern Muslim of Burkina Faso descent, from running in the Presidential elections. Ouattara, the leader of the Rally of Republicans party (*Rassemblement de Republicains*, RDR), which has strong support from northern ethnic groups and Muslims, was a strong contender for the election.⁷ Bédié ruled for six years, increasingly relying on ethnicity as a political tool to survive the allegations of corruption and mismanagement brought against him. In 1999, following a mutiny by soldiers, Bédié’s chief of staff, General Robert Guei, took power in a coup.⁸

General Guei’s government was characterized by violence and impunity of the security forces, as well as continuing exploitation of ethnic tensions and perpetration of grave human rights crimes.⁹ Religious, economic and ethnic tensions were running very high during the 2000 election year. Over 200 people were killed and hundreds wounded in violence that surrounded the 2000 presidential and parliamentary elections.¹⁰ An extremely controversial Supreme Court decision had resulted in the exclusion of fourteen of the nineteen presidential candidates, including former Prime Minister Ouattara and former President Bédié.¹¹ When Laurent Gbagbo, the candidate for the Ivorian Popular Front (*Front Populaire Ivoirien*, FPI) was shown to be leading in the polls, Guei attempted to disregard the election results and seize power. This resulted in massive popular protests and the loss of military support, which forced Guei to flee the country. Gbagbo was installed as president the following day, while Ouattara’s supporters continued to protest and called for new inclusive elections which were never held. When President Gbagbo took over, violence, incitement of xenophobia, and horrific crimes continued, as did the ongoing impunity for perpetrators.¹²

THE CURRENT SITUATION

Some progress was made toward reconciliation and stabilization of the country until September 2002, when the current conflict began.¹³ On September 19, 2002, the *Mouvement Patriotique de la Côte d’Ivoire* (Patriotic Movement of Côte d’Ivoire, MPC) attempted to overthrow Gbagbo’s government, sparking months of civil war and intense fighting. Though the coup failed and the rebels did not succeed in taking Abidjan, the commercial capital, they seized much of the north as well as key western towns, constituting about fifty percent of the country.¹⁴ The rebellion was planned by the leaders of the MPC, which later joined with other rebel groups to form the *Forces Nouvelles*, from

⁶ *Id.*

⁷ Human Rights Watch Report, *Country on a Precipice: The Precarious State of Human Rights and Civilian Protection in Côte d’Ivoire*, May 2005, Vol. 17, No. 6 (A), <http://hrw.org/reports/2005/cdi0505/>, p. 8. Hereafter, Human Rights Watch Report, May 2005.

⁸ *Id.*

⁹ Human Rights Watch Briefing Paper, October 2004, *supra* note 2.

¹⁰ *Id.*

¹¹ Human Rights Watch Report, May 2005, *supra* note 7. Ouattara, on citizenship grounds, and Bédié, for not submitting a proper medical certificate.

¹² *Id.*

¹³ UNOCI Website, *Côte d’Ivoire - MINUCI - Background*, <http://www.un.org/Depts/dpko/missions/unoci/index.html>.

¹⁴ Human Rights Watch Report, May 2005, *supra* note 7.

exile in Burkina Faso. The core members of this rebel movement were soldiers who had brought Guei to power in 1999 but later fled after being detained and tortured by that regime.¹⁵ General Guei and several members of his family, as well as the Minister of the Interior, were killed on the first day of the uprising.

While there has been no return to full-scale war since the conflict officially ended with the French-brokered Linas-Marcoussis¹⁶ peace agreement in 2003, atrocities continue¹⁷ and the country remains divided, unstable and insecure. The current run-up to elections has been described as a time of great danger for the country, with warnings that the situation may deteriorate further.¹⁸ Calls for a coup, which would greatly endanger the shaky peace process have been denounced by United Nations Operation in Côte d'Ivoire.¹⁹ The arms embargo²⁰ has not been successful and the expert panel recommending ways of improving the sanctions has asked the Security Council to define the weapons ban more clearly after the panel met "widespread confusion" among neighboring countries, civil society and UN officials.²¹ Despite the country's economic downturn and humanitarian problems, the International Crisis Group has suggested that the current crisis is "exceptionally lucrative for almost everyone except ordinary citizens,"²² thus creating further problems for the effective resolution of the conflict.

Horrific crimes have been perpetrated by all parties to the conflict. The report of the UN mission of inquiry outlined examples of death squads, mass executions, torture, and rape.²³ Human Rights Watch has reported summary executions, political assassinations, rape and other sexual violence, the wanton destruction of civilian property, and the use of child soldiers.²⁴ Many of these crimes would fall within the jurisdiction of the Court in the case of an investigation.

Key Actors

While there are essentially two sides to the conflict; the Government and the *Forces Nouvelles* (New Forces Rebels, FN), there are several actors within these alignments, overtly or covertly linked in leadership and action to these two main groups. Côte d'Ivoire has effectively been split in two, with the *Forces Nouvelles* holding the land-locked north and Gbagbo's government controlling the south, where most of the country's 16 million people live.²⁵

¹⁵ Human Rights Watch Report, May 2005, *supra* note 7, p. 8.

¹⁶ Discussed *infra*.

¹⁷ These include attacks by government-backed militia on the town of Logoualé in February 2005, and the massacre of civilians by unidentified attackers in the western town of Duékoué, in June 2005. Human Rights Watch, *Côte d'Ivoire: As Killings Surge, U.N. Must Boost Troops, Ivorian Government must hold accountable those responsible for killings*, June 3, 2005, <http://hrw.org/english/docs/2005/06/03/cotedi11070.htm>, UN News service, *Security Council condemns massacres of civilians in western Côte d'Ivoire*, June 7, 2005, www.un.org.

¹⁸ International Crisis Group, *Côte d'Ivoire: Le pire est peut-être à venir*, Africa Report, No 90, March 24, 2005.

¹⁹ UN News service, *UN mission in Côte d'Ivoire condemns declarations calling for a coup*, August 23, 2005.

²⁰ SC Resolution 1572, November 15, 2004.

²¹ UN News Service, *Expert Panel calls on Security Council to clarify sanctions regime in Côte d'Ivoire*, July 29, 2005, www.un.org.

²² International Crisis Group Report, *Côte d'Ivoire: No Peace in Sight*, Africa Report No 82, July 12, 2004.

²³ Agence France Presse, *UN report cites Ivory Coast leaders for atrocities*, January 28, 2005, http://www.expatica.com/source/site_article.asp?subchannel_id=58&story_id=16327&name=UN+report+cites+Ivory+Coast+leaders+for+atrocities.

²⁴ Human Rights Watch Briefing Paper, October 2004, *supra* note 2, p. 7 and 8.

²⁵ Human Rights Watch Report, May 2005, *supra* note 7, p. 10.

Government: The state security forces include the gendarmerie, police, and military. The Government's official military is the national armed forces of Côte d'Ivoire (*Forces Armées Nationales de Côte d'Ivoire*, FANCI). President Gbagbo's government has also increasingly relied on pro-government militias for both law enforcement and to combat the rebellion. Seven main militia groups operate in the south and west of Côte d'Ivoire:²⁶ these include the Young Patriots (*Congrès Panafricain des Jeunes Patriotes*, COJEP) led by Charles Ble Goude, the Patriotic Group for Peace (*Groupe Patriotique pour la Paix*, GPP), headed by Moussa "Zeguen" Toure, the Union for the Total Liberation of Côte d'Ivoire (*Union pour la Liberation Totale de la Côte d'Ivoire*, UPLTCI), with Eugene Djue as their leader, the Liberation Forces of the Far West (*Forces de Liberation du Grand Ouest*, FLGO), founded by Denis Glofiei Maho, and the Lima Suppletive which works with the FLGO and FANCI.

Forces Nouvelles: The FN was formed as a military-political alliance between three rebel groups: the *Mouvement Patriotique de la Côte d'Ivoire*, (Patriotic Movement of Côte d'Ivoire, MPC), the *Mouvement pour la justice et la paix* (Movement for Justice and Peace, MJP), and the *Mouvement Populaire Ivoirien du Grand Ouest* (Ivorian Popular Movement for the Far West, MPIGO). The MPC was made up mainly of "Dioula" or northerners of Malinké, Senaphou and other ethnicities, some Burkinabe and Malian recruits, and the "dozos", or traditional hunters.²⁷ Guillaume Soro, a former student leader, as the head of the MPC stated the key demands of the group: resignation of President Gbagbo, the holding of inclusive national elections, a review of the Constitution and an end to the domination of southerners in the affairs of the country.²⁸ The MJP and MPIGO claimed to be Ivorian but were comprised largely of Liberian and Sierra Leonean fighters, including some former members of the Sierra Leonean rebel groups, the Revolutionary United Front (RUF).²⁹ These groups declared that their main aim was to avenge the death of General Guei and also demanded the resignation of President Gbagbo.³⁰

Regarding both governmental cooperation with the ICC and implementation of the peace process, there are serious problems concerning the lack of command control in both the rebel and government sides of the conflict. The *Forces Nouvelles* has grave problems regarding its chain of command and management of its composite groups. Political and military leaders are increasingly losing control over local commanders, who are distinguishing themselves by growing indiscipline, warlordism and violence.³¹ The pro-government militias are not legally constituted and the government has failed to hold them accountable for their actions.³² Some of the more militant members of the state security

²⁶ Information from, Human Rights Watch Report, May 2005, *supra* note 7, p. 14.

²⁷ Human Rights Watch Report, May 2005, *supra* note 7, p. 9.

²⁸ UNOCI Website, <http://www.un.org/Depts/dpko/missions/unoci/index.html>.

²⁹ Human Rights Watch Briefing Paper, October 2004, *supra* note 2, p. 5.

³⁰ UNOCI Website, <http://www.un.org/Depts/dpko/missions/unoci/index.html>.

³¹ International Crisis Group, *Côte d'Ivoire: "The War is not yet over"*, Africa Report No 72, November 28, 2003, <http://www.crisisgroup.org/home/index.cfm?id=2389&l=1>.

³² Human Rights Watch Report, May 2005, *supra* note 7, p. 13.

forces simply refuse to obey orders from their superiors.³³ “There is a fear that these groups on both the government and rebel sides will escape control.”³⁴

The Economic Community of West African States (ECOWAS) took immediate action to end the crisis. As a result, in October 2002, MPCCI signed a ceasefire agreement, which was accepted by President Gbagbo. Unfortunately, this agreement and subsequent talks did not lead to peace and the ECOWAS Peace Force for Côte d’Ivoire (ECOFORCE) was deployed in December 2002.³⁵ The armed conflict officially ended in January 2003 with the French-brokered Linas-Marcoussis peace accord.³⁶ However, violence and instability continue to plague the country. While major fighting has ended, the security situation remains precarious, and little progress has been made towards reunification and peace in the stalled and unsuccessful peace process.

THE PEACE PROCESS

Largely due to a lack of good faith and political will on all sides, the peace and reunification process in Côte d’Ivoire has been fraught with difficulties. Following French-brokered negotiations, all parties to the conflict signed the comprehensive Linas-Marcoussis peace agreement on January 24, 2003.³⁷ This provided for the establishment of a Government of National Reconciliation, which included all parties to the conflict, and where many powers would be devolved to the Prime Minister and important ministries would be held by members of the *Forces Nouvelles* (FN). The Agreement also established a program of work for the Government covering the areas of contention between the parties.³⁸ Unfortunately little progress has been made towards the implementation of this agreement, resulting in continued instability and insecurity in the country.

In July 2004, the UN, the African Union (AU) and ECOWAS organized a summit in Accra, Ghana to prevent the renewal of hostilities and reinvigorate the Linas-Marcoussis agreement. This resulted in the Accra III Agreement which reiterated several of the provisions of Linas-Marcoussis including, legal reforms of laws on land ownership, eligibility of presidential candidates and a new code of nationality. Political stalemate resulted when these reforms were not affected because disarmament of the FN was conditioned on their implementation. In November 2004, government warplanes broke an 18-month ceasefire and bombed the FN town of Bouaké, killing civilians and French soldiers. French-forces retaliated with extreme force, leading to a surge in anti-French sentiment.³⁹ Following pressure from the AU and UN, some progress was made at the end of 2004 regarding legal reforms.

³³ Human Rights Watch Briefing Paper, October 2004, *supra* note 2, p. 7.

³⁴ Human Rights Watch interview with UN official, Abidjan, February 26, 2005, Human Rights Watch Report, May 2005, *supra* note 7, p. 16.

³⁵ UNOCI Website, <http://www.un.org/Depts/dpko/missions/unoci/index.html>.

³⁶ The Linas-Marcoussis Agreement, S/2003/99.

³⁷ *Id.*

³⁸ *Id.* These include: a) citizenship, identity, status of foreign nationals, b) electoral system, c) eligibility of the Presidency of the Republic, d) land tenure regime, e) media, f) rights and freedoms of the individual, g) regrouping, disarming and demobilizing, h) economic recovery and the need for social cohesion, and i) implementation.

³⁹ Amnesty International, Annual Report 2005, *Regional Overview, Africa: Côte d’Ivoire*, <http://web.amnesty.org/report2005/civ-summary-eng>.

In April 2005, President Thabo Mbeki of South Africa, the AU appointed mediator, intensified his efforts. The parties met to negotiate in Pretoria, resulting in the Pretoria Agreement.⁴⁰ The extremely contentious issue of the eligibility to stand for the presidency, which was a major obstacle in the previous agreements, was left to President Mbeki to decide. This issue was finally resolved by President Gbagbo's declaration on April 26th, following a determination by President Mbeki on April 11th, that all candidates nominated by the political parties signatory to the Linas-Marcoussis Agreement would be eligible for the Presidency.⁴¹ This signaled an extremely significant step forward in the peace process; Ouattara would now be allowed to run. Limited progress was also made regarding implementation of the agreement in other areas.⁴²

On June 29, 2005, the parties reaffirmed their commitment to the Pretoria Agreement in the Pretoria II declaration.⁴³ This declaration focused on disarmament and preparations for the October elections, including legislative reforms, as well as setting out a new timeline to be followed and acknowledging the important progress that had been made on candidate eligibility. The Security Council demanded that all parties fulfill their commitments under the agreement, threatening to impose sanctions on those individuals who create obstacles to the implementation of peace.⁴⁴ On July 15th, six legal texts were passed by President Gbagbo by presidential decree. These legislative reforms relate to nationality and naturalization; the law defining the powers and composition of the Independent Electoral Commission (IEC); identity cards for foreigners; the National Human Rights Commission; and the law on financing of political parties and presidential candidates, issues that have been significant in all the peace agreements.⁴⁵ Though the FN and the opposition parties do not consider the reforms adequate and feel that they should have been passed by parliament and not presidential decree, diplomats⁴⁶ and South African mediators⁴⁷ have determined that the laws comply with the peace agreements. This disagreement has once again led to a stalemate and broken deadlines, proving to be a major problem in the move toward elections.⁴⁸ Though there have been some suggestions for hope⁴⁹ disarmament is not taking place.⁵⁰

⁴⁰ The Pretoria Agreement, S/2005/270, April 6, 2005. The agreement reaffirmed the parties commitment to the Linas-Marcoussis and Accra agreements; included a joint declaration of the end of the war announcing "the immediate and final cessation of all hostilities and the end of the war"; obligated the FN and the government to disarm all combatants, including militias; established security for ministers representing the FN and provided for their return to the government of national reconciliation; provided for the delegation of powers to the Prime Minister; and obligated all groups to take the necessary steps for the October 2005 presidential elections.

⁴¹ UN Security Council Press Release SC/8404, *Security Council extends Côte d'Ivoire mission until 24 June, with intention to renew for further 7 months*, June 3, 2005.

⁴² Fifth progress report of the Secretary-General on the United Nations Operation in Côte d'Ivoire, June 17, 2005, S/2005/398. Hereafter Fifth progress report.

⁴³ South African Government Information, <http://www.info.gov.za/speeches/2005/05070510151004.htm>.

⁴⁴ UN Security Council Press Release SC/8436, *Security Council demands Ivorian Parties comply scrupulously with Peace Process timetable agreed to in Pretoria 29 June*.

⁴⁵ UN Office for the Coordination of Humanitarian Affairs, *Côte d'Ivoire: Diplomats say Gbagbo laws comply with peace deal*, August 16, 2005, www.irinnews.org.

⁴⁶ *Id.*

⁴⁷ UN Office for the Coordination of Humanitarian Affairs, *Côte d'Ivoire: South African mediators say laws comply with peace plan, rebels upset*, August 16, 2005, www.irinnews.org.

⁴⁸ UN Office for the Coordination of Humanitarian Affairs, *Côte d'Ivoire: Peace Process deadlocked with time running out before planned elections*, August 18, 2005, www.irinnews.org.

⁴⁹ UN News service, *Côte d'Ivoire: western militias reportedly ready to disarm*, August 25, 2005, www.un.org.

⁵⁰ UN Office for the Coordination of Humanitarian Affairs, *Côte d'Ivoire: Ceremony to mark dismantling of militias falls flat*, August 24, 2005, www.irinnews.org.

Despite the failures of the past, there is hope that peace will be achieved through these most recent negotiations. Progress is being made in the run-up to elections scheduled on October 30, 2005. The above-mentioned electoral reforms are a major advancement which will be aided by the increased UN involvement called for in the Pretoria Agreement. The Secretary-General has appointed former Portuguese Foreign Minister, Antonio Monteiro, as UN High Representative - autonomous from UNOCI - for the upcoming elections, particularly to work with the IEC and the Constitutional Council to ensure that the elections will be credible and meet international standards.⁵¹ Following his first mission to Côte d'Ivoire, Monteiro stated that despite ongoing problems, the current momentum in the country is positive in preparation for the elections.⁵² However, Guillaume Soro, the leader of the FN, has stated that he does not believe that the elections will take place on October 30 and has threatened that “[a]t mid-night of 30 October, the New Forces will do what they have to do.”⁵³

United Nations involvement in Côte d'Ivoire

The United Nations Security Council has been actively engaged in this situation, and has passed several resolutions implementing measures in an attempt to secure peace. After the end of the ceasefire in November 2004, the Security Council unanimously adopted a resolution imposing an arms embargo on the country and sanctions on selected individuals, including those threatening peace and national reconciliation or determined responsible for serious violations of human rights and international humanitarian law.⁵⁴ In 2004, the UN Office of the High Commissioner for Human Rights (OHCHR) set up two missions of inquiry in Côte d'Ivoire. Security Council resolutions and statements have also condemned human rights abuses and hate media, authorized monitoring of the media⁵⁵ and set up a UN radio station.

In May 2003, the Security Council set up a political mission, the United Nations Mission in Côte d'Ivoire (MINUCI),⁵⁶ to facilitate the implementation of the Linas-Marcoussis Agreement and complement the ECOFORCE and French troops. Following requests from the President of Côte d'Ivoire and ECOWAS for a peacekeeping operation, the United Nations Operation in Côte d'Ivoire (UNOCI) was established by the Security Council in February 2004.⁵⁷ UNOCI was mandated to oversee the disarmament and reconciliation process, including monitoring the ceasefire, in conjunction with the French forces.

The need for more peacekeepers in Côte d'Ivoire has been emphasized by the Secretary-General, the UN forces and human rights organizations. If more peacekeepers are not put on the ground, UN forces will continue to be spread too thin throughout the country. If violence breaks out on a large scale, rather than in isolated areas as it has done so far, the UN force will not have the capacity to

⁵¹ Fifth progress report, *supra* note 42.

⁵² UN News service, *In Côte d'Ivoire, UN representative for elections is pleased with first mission*, August 22, 2005, <http://www.un.org/apps/news/story.asp?NewsID=15509&Cr=Ivoire&Cr1=>.

⁵³ UN Office for the Coordination of Humanitarian Affairs, *Côte d'Ivoire: "Elections won't take place," rebel leader*, August 25, 2005, www.irinnews.org.

⁵⁴ SC Resolution 1572, November 15, 2004.

⁵⁵ *Id.*

⁵⁶ SC Resolution 1479, May 13, 2003.

⁵⁷ SC Resolution 1528, February 27, 2004.

contain it.⁵⁸ The danger is that due to the tensions and smoldering instability, which continues to gather in Côte d'Ivoire, combined with the ongoing threat of the use of the media to ignite and spur violence and ethnic hatred, a situation like previously in Rwanda could form.⁵⁹

In June 2005, the Security Council extended UNOCI's mandate and increased its troop strength.⁶⁰ While the mandate of the troops has changed to recognize the need for reinforcements "to prevent and deter further tragedies"⁶¹ the increase was only half of what the head of the mission had called for. Furthermore, though authorization has been given for up to 7,090 military personnel and up to 725 civilian police officers, as of June 30, 2005, the mission only had 6,259 total uniformed personnel in Côte d'Ivoire.⁶² The mission has encountered significant hostility from both the military and civilians in government-controlled areas and has been prevented from carrying out its work on the ground.⁶³

CÔTE D'IVOIRE'S ACCEPTANCE OF ICC JURISDICTION

In January 2005, Côte d'Ivoire became the first non-state party to accept the jurisdiction of the ICC for a particular situation⁶⁴ after the Prosecutor sent letters in December 2004 seeking information from the Ivorian government.⁶⁵ This acceptance of jurisdiction followed strong international pressure and reports of a recommendation for a Security Council referral of the situation to the Court.⁶⁶ As a result of this action, if the Prosecutor decides to open a formal investigation, Côte d'Ivoire is now bound to "cooperate with the Court without delay or exception."⁶⁷ Due to the temporal restrictions on the Court's jurisdiction - limited to crimes after July 1, 2002, when the Rome Statute came into force, and further constrained in the declaration accepting jurisdiction - the Court can only investigate crimes committed after September 19, 2002 in this case.

⁵⁸ Human Rights Watch Report, May 2005, *supra* note 7, p. 29.

⁵⁹ "The potential for a Rwanda situation is there, some of the things that need to happen have happened. Sustained, virulent propaganda against a particular group is a precursor to violence. The big difference between now and then is that we are aware of the danger." Human Rights Watch interview with a senior diplomat, Abidjan, February 25, 2005. Human Rights Watch Report, May 2005, *supra* note 7, p. 35.

⁶⁰ SC Resolution 1609, June 24, 2005.

⁶¹ UN News service, *Côte d'Ivoire: Security Council plans to expand mission*, June 23, 2005, www.un.org.

⁶² UNOCI website, <http://www.un.org/Depts/dpko/missions/unoci/facts.html>. These are also aided by 4,000 French peacekeepers.

⁶³ UN News service, *UN peacekeeping mission in Côte d'Ivoire deplores efforts to obstruct its work*, August 5, 2005, www.un.org.

⁶⁴ ICC website, *Registrar confirms that the Republic of Côte d'Ivoire has accepted the jurisdiction of the Court*, February 15, 2005, <http://www.icc-cpi.int/press/pressreleases/93.html>.

⁶⁵ John Chiahemen, Reuters, *ICC could probe Ivory Coast abuses - prosecutor*, January 28, 2005, <http://www.reuters.com/newsArticle.jhtml?type=worldNews&storyID=7467592>.

⁶⁶ The Security Council, in statements and resolutions, has frequently reiterated its condemnation of violations of human rights and international humanitarian law in Côte d'Ivoire, and its determination to ensure that those responsible are identified and brought to justice. For example, Statement by the President of the Security Council, S/PRST/2004/17, May 25, 2004. and SC Resolutions 1464 and 1479.

⁶⁷ Rome Statute, Article 12.

The ICC's Role in Côte d'Ivoire

The Prosecutor, Luis Moreno Ocampo, must determine whether or not to undertake a formal investigation of crimes committed in Côte d'Ivoire. The Government's declaration only referred to atrocities the Government alleges rebels committed, however, in accordance with Article 54 of the Rome Statute the Prosecutor cannot limit an investigation to specific parties. The Prosecutor must "extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under the Statute," and cannot limit his investigation of atrocities to rebel forces. The nature of crimes committed by forces under the direct control of President Gbagbo may mean that the current government could also be implicated in the event of an investigation. In January 2005, it was reported that Simone Gbagbo, the President's wife, Charles Ble Goude, the leader of the Young Patriots pro-government militia, and Guillaume Soro, the leader of the *Forces Nouvelles*, were among 95 individuals accused of violations of human rights and crimes against humanity in a secret annex to the report of the UN mission of inquiry.⁶⁸

On January 28, 2005, the Prosecutor announced that the ICC was sending a team to Côte d'Ivoire to prepare for a possible investigation of crimes committed during the conflict.⁶⁹ The mission will be to determine whether there is enough evidence to open a formal investigation into the situation. The Prosecutor will evaluate evidence against all parties to the conflict. This move indicates that the Court is seriously considering opening a formal investigation into the situation and moving forward.

In his investigation, the Prosecutor may take into account reports and information gathered by non governmental organizations (NGOs),⁷⁰ relief agencies, and the UN, through their ongoing work on the ground in Côte d'Ivoire. Information may also be provided by the French forces, as a State Party and part of the UN authorized force.⁷¹ These reports and information will not be conclusive.

⁶⁸ Philippe Boloipon, Radio France International, *Soro et Simone Gbagbo sur la liste de l'ONU*, January 28, 2005, http://www.rfi.fr/actufr/articles/061/article_33588.asp, Agence France Presse, *UN report cites Ivory Coast leaders for atrocities*, January 28, 2005, http://www.expatica.com/source/site_article.asp?subchannel_id=58&story_id=16327&name=UN+report+cites+Ivory+Coast+leaders+for+atrocities. The Secretary-General stated that "there is a list, but it will not be published" in order not to jeopardize any future legal action. Reuters, Tom Ashby and Dino Mahtani, *Ivory Coast war crimes list to stay secret, says UN*, January 31, 2005, http://www.reuters.co.za/locales/c_newsArticle.jsp;41fdd2ac:al3edcad20e3cbdc?type=topNews&localeKey=en_ZA&storyID=7479290. The report has not been released; therefore this information has not been verified. Furthermore, the Secretary-General stated that the report leaked to the Press in December 2004 was a draft version of the report submitted to the Security Council (Fourth progress report of the Secretary-General on the United Nations Operations in Côte d'Ivoire, March 18, 2005, S/2005/186, p. 11). The Secretary-General stated that "we are not going to publish the list but give it to a prosecutor" indicating the possibility of future cooperation between the UN and the ICC if the Prosecutor opens an investigation (IRIN, *Côte d'Ivoire: UN confirms existence of blacklist of human rights abusers*, January 31, 2005, <http://www.alertnet.org/thenews/newsdesk/IRIN/f32ab91a54d4cb5868a47058815072f4.htm>).

⁶⁹ Irwin Arieff, Reuters, *UN Delays Vote to Tighten Ivory Coast Arms Ban*, January 28, 2005, <http://www.reuters.com/newsArticle.jhtml?type=worldNews&storyID=7470788>.

⁷⁰ For example the Ivorian Movement for Human Rights (Mouvement Ivorien des Droits Humains, MIDH), Human Rights Watch and Amnesty International.

⁷¹ Rome Statute, Article 15(2). "The Prosecutor shall analyse the seriousness of the information received. For this purpose, he or she may seek additional information from States, organs of the United Nations, intergovernmental or non-governmental organizations, or other reliable sources that he or she deems appropriate, and may receive written or oral testimony at the seat of the Court." Article 87(6). "The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate." Representatives of the

However, they may aid the Prosecutor in identifying specific cases or perpetrators which he will then investigate further, should he decide to open a formal investigation.

In particular, reports from the UN Office of the High Commissioner for Human Rights, the UNOCI, as well as from the Secretary-General, would provide important information about the serious crimes that have been committed since 2002.⁷² In 2004, the OHCHR set up two missions of inquiry in Côte d'Ivoire. The first, following the excessive use of force to break up a banned demonstration in March 2004, concluded that security forces and pro-government militia were responsible for killing at least 120 people in the incident. The second inquiry, following a request for an inquiry by the parties to the Linas-Marcoussis agreement, investigated crimes and human rights abuses committed since the conflict began in 2002. Though this commission's report was delivered to the UN Secretary-General and the High Commissioner for Human Rights in October 2004, it has not yet been made public.⁷³

If an investigation were opened, the Court may cooperate with UNOCI regarding issues such as sharing of evidence, security and logistical support. If the ICC works closely with the UN force, the case could move forward quickly. The Negotiated Relationship Agreement between the ICC and the UN will cover much of this cooperation.⁷⁴ However, the lack of UN troops would also be a problem concerning cooperation with the ICC. If UNOCI does not have adequate troops to fulfill their peacekeeping mandate they will certainly not have the capacity to be of significant help to the Court in an investigation or operation on the ground.

Unfortunately, the hostility towards UNOCI in government-controlled areas⁷⁵ may adversely affect any relationship between the government, the ICC and the peacekeeping mission. In addition, similar hostility may be directed towards the Court and its officials if an investigation were opened.

Jurisdiction over crimes involving non-Ivorian victims or perpetrators

Many of the crimes committed in this conflict have targeted foreigners and thus many of the victims are not Ivorian citizens. Further, many of the perpetrators are from neighboring countries such as Liberia and Sierra Leone. In accordance with Articles 12 and 13 of the Rome Statute, the Court's jurisdiction covers both of these situations. If the crimes were committed on Ivorian territory, regardless of the nationality of the victim or the perpetrator, the Court has jurisdiction to investigate and prosecute those responsible. Thus, even if the victim or the perpetrator has left the country since the crime, the Court can investigate and if there is sufficient evidence, issue an indictment.

French force have stated that they have proof of planning behind several attacks, and thus may provide valuable information. (Human Rights Watch Report, May 2005, *supra* note 7).

⁷² Human Rights Watch Report, May 2005, *supra* note 7, p. 36).

⁷³ Amnesty International, Annual Report 2005, *Regional Overview, Africa, Côte d'Ivoire*, <http://web.amnesty.org/report2005/civ-summary-eng>.

⁷⁴ Negotiated Relationship Agreement between the International Criminal Court and the United Nations, ICC/ASP/3/Res.1, Adopted 04/10/2004, http://www.icc-cpi.int/library/asp/ICC-ASP-3-Res1_English.pdf.

⁷⁵ UN News service, *Annan regrets that peacekeepers are being blocked in Côte d'Ivoire*, August 12, 2005, www.un.org.

Ethnic Conflict and Tensions: the Media's role

Ethnic tensions have simmered in Côte d'Ivoire since the early 1990's when politicians began to exploit cultural differences for their own political gain. These tensions have been spurred through abuse of the media to incite violence and ethnic hatred and directly result in attacks. As was pointed out by the UN special adviser on the prevention of genocide,⁷⁶ this type of incitement is within the Court's jurisdiction and is a crucial element to be investigated.⁷⁷ The grave dangers of the situation and this use of the media are clear, especially when one looks at the comparisons which can be made to the Radio Mille Collines broadcasts which stoked the genocide in Rwanda in 1994.⁷⁸ Those who incite violence through the media, which then results in atrocious crimes, must know that they will be brought to justice for these actions.

WHY CÔTE D'IVOIRE CANNOT PROSECUTE THE CRIMES ALONE

In Côte d'Ivoire, a climate of impunity for human rights violations exists nationwide and allows perpetrators, including military and law enforcement officials, rebels, militias and unidentified armed groups, to operate without fear of prosecution.⁷⁹ In June 2005, the Secretary-General stated that "[t]he administration of justice continues to be an issue of deep concern."⁸⁰ The Ivorian government has demonstrated very little political will to hold those who commit serious crimes accountable. In addition, the Ivorian judiciary has succumbed to pressure from the Government and other influences, most predominantly, corruption.⁸¹ In the rebel-controlled north, there are no legally constituted courts and the *Forces Nouvelles* leadership has failed to establish a legitimate judicial authority. The FN has shown no political will to try serious crimes where their commanders or combatants have been implicated.⁸² All of this leads to greater instability and further human rights violations.

POSSIBLE THREATS TO THE PEACE PROCESS POSED BY AN ICC INVESTIGATION

While diplomats working to resolve the crisis have indicated their concerns that pursuing justice could endanger the tentative peace process, the Secretary-General has pointed out that "[j]ustice and peace are not contradictory forces. Rather, properly pursued, they promote and sustain one another."⁸³ The situation remains unstable and the main progress that has been made is regarding the eligibility of candidates for the elections and a promise of disarmament which has not yet been carried out. Difficulties may arise because government officials, militia leaders and rebel leaders have reportedly been implicated in the report of the UN commission of inquiry.⁸⁴ Opening a formal

⁷⁶ UN News service, *Special UN adviser on genocide warns of ethnic hate messages in Côte d'Ivoire*, November 15, 2004, www.un.org.

⁷⁷ Rome Statute, Article 25(3). "In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person: ... (b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted."

⁷⁸ Human Rights Watch Report, May 2005, *supra* note 7, p. 33-34.

⁷⁹ Fourth progress report of the Secretary-General on the United Nations Operations in Côte d'Ivoire, March 18, 2005, S/2005/186, p10.

⁸⁰ Fifth progress report, *supra* note 42, p. 10.

⁸¹ In this area the UNOCI's Rule of Law Unit is attempting to aid in reforms and improvements. *Id.*, p. 9.

⁸² Human Rights Watch Briefing Paper, October 2004, *supra* note 2, p. 14.

⁸³ *Id.*, p. 11.

⁸⁴ Philippe Boloipon, Radio France International, *Soro et Simone Gbagbo sur la liste de l'ONU*, January 28, 2005, http://www.rfi.fr/actufr/articles/061/article_33588.asp.

investigation after the October elections would allow the Court to determine whether the situation is more stable and if a new government will be more willing to cooperate.

It has been pointed out that the current lack of accountability and absolute impunity of all parties has emboldened the perpetrators to commit further, more severe human rights violations. The continuation of such impunity can complicate progress towards peace. An ICC investigation may lead to the stabilization in the security situation as the parties realize that they will be held accountable for their actions and that the current impunity will end.⁸⁵

Most significantly, in the Linas-Marcoussis agreement (which is referred to in the subsequent agreements), the parties to the conflict requested an international board of inquiry to investigate all serious violations of human rights and international humanitarian law since September 19, 2002. Based on the inquiry's report the Government would determine cases to be brought to justice to end impunity. The parties to the agreement considered "that those guilty of and those aiding and abetting [death squads and carrying out summary executions] must be brought to justice before an international criminal jurisdiction."⁸⁶ Further, if it became clear that an ICC investigation or prosecution might worsen the conflict or hinder peace, the Prosecutor has the power to suspend investigations if he concludes that this would serve the interest of justice.⁸⁷ Such a decision could be reviewed by the Pre-Trial Chamber, on its own motion or at the request of the Security Council. If the circumstances changed, the Prosecutor could then resume the investigation.

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⁸⁵ Human Rights Watch Report, May 2005, *supra* note 7, p. 38. Amnesty International went so far as to state that this cycle of impunity is "the prime cause of the present Côte d'Ivoire crisis." Amnesty International Press Release, *Côte d'Ivoire: one year after Marcoussis, the victims are still waiting for justice*, January 26, 2004, AI Index AFR 31/001/2004 (Public), News Service No: 018.

⁸⁶ The Linas-Marcoussis Agreement, S/2003/99.

⁸⁷ Rome Statute, Article 53.