

Stanford Law School: Law & Policy Lab

Go Fund Justice!

A Report on Crowd Funding for the Trust Fund for Victims

International Criminal Court

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Introduction

In the past two decades, the international community has seen a proliferation of international and hybrid courts as a method of addressing situations of mass atrocities. However, there has not been a consensus on how these courts should be funded, and many courts often face budgetary shortfalls which restrict their ability to do critical work. This memo explores how different international courts have been funded in the past and considers possible funding models for the future.

Types of International Courts

United Nations Ad-Hoc Tribunals

The International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were both created by the United Nations and therefore have been funded from the United Nations general budget. The UN budget is made up of assessed funds from the United Nations members, with each nation's dues calculated by a formula which takes GDP into account. The US pays about 22% of the UN budget, and therefore 22% of the ICTY and ICTR's budgets, followed by Japan and Germany which each pay about 10%.¹

The ICTY and the ICTR, when it was still conducting trials, both submit budget proposals to the United Nations about every three years. This budget is then reviewed by various UN offices and a recommendation by the United Nations Secretary General to fund the tribunals is submitted to the UN's fifth committee. The fifth committee members then negotiate amongst

¹ See the Assessment of Member States' advances to the Working Capital Fund for the biennium 2016-2017 and contributions to the United Nations regular budget for 2016. 28 December 2015. ST/ADM/SER.B/932. Available at <http://www.un.org/ga/search/view_doc.asp?symbol=ST/ADM/SER.B/932>

themselves about the budget, and ultimately come to a consensus on funding for the next few years.²

Several years after the ICTY and the ICTR were established, the UN expanded their mandates to include Outreach programs in the former Yugoslavia and Rwanda. Unfortunately, Outreach is not included in the ICTY or the ICTR's annual budget and therefore is not funded by the United Nations. Instead, these offices had to fundraise money and contact donors on their own, which often takes a good portion of the staff's time. ICTY Outreach programs have been funded mostly by the European Union; by individual countries like Finland, Switzerland, Luxembourg, The Netherlands, and the Republic of Korea; and organizations like the Open Society Foundation.³

Hybrid Tribunals: The Case of the ECCC

The Extraordinary Chambers in the Courts of Cambodia (ECCC) is the first of several hybrid courts. Established by agreement between the United Nations Secretary General and the government of Cambodia, the ECCC is a special chamber within the Cambodian legal system that applies both international and domestic law and is staffed by Cambodian and international staff. The agreement between the UN and Cambodia stipulated that Cambodia would pay for their national staffers and prosecutor's emoluments; the international staff, who are considered UN personnel and managed by the UN Secretariat and United Nations Assistance to the Khmer Rouge Trials (UNAKRT), would be paid by voluntary donations from various countries around

² For example, see statement by the Assistant Secretary-General to the United Nations Fifth Committee on 13 December 2011 discussing the Financing of the International Criminal Tribunal for Rwanda and Financing the International Tribunal for the former Yugoslavia. Available at <<http://goo.gl/MdWYq4>>

³ Outreach Report for the International Criminal Tribunal for the former Yugoslavia 2013. ICTY Outreach Office. Available at <<http://www.icty.org/en/outreach/outreach-annual-reports>>

the world. In reality, Cambodia is often not able to afford to pay Cambodian staffers, and its portion has been augmented by Japan and the United States.⁴

The ad-hoc nature of the financing of the international side of the ECCC has led to various funding crises at the ECCC throughout the years. The court must ask for contributions from states each year and it is never sure who will commit and what the budget for each year will be. Over the years, the Principal Donors Group, a “group of states which have made a significant monetary contribution and have expressed a clear political commitment to support the UN in its role in providing technical assistance to the Court,” has made various donations to the ECCC and has become a fairly formal organization.⁵ However, “donor-fatigue” has begun to set in among many countries, especially as the first two cases at the ECCC come to a close. It is unlikely that there will be much excitement among donors about funding the next two cases, particularly if the trials run for another decade or so. The primary contributors to the ECCC, and members of the Principal Donors Group, have been the United States, Japan, Germany, the UK, Sweden, France and Australia.⁶ Following several budget shortfalls, in the past two or three years the United Nations has provided the ECCC with “commitment authority.” This subvention authority from the United Nations enable the UN to provide the ECCC with a line of credit up to a certain limit if the court ever does experience a funding shortfall.⁷

⁴ Speech by Ambassador David Scheffer. “What Has Been ‘Extraordinary’ About International Justice in Cambodia?” 25 February 2015. Williamsburg, Virginia. Available at <<http://www.cambodiatribunal.org/2015/02/25/speech-by-un-special-expert-david-scheffer-what-has-been-extraordinary-about-international-justice-in-cambodia/>>

⁵ Statement by the Principal Donors Group for the Extraordinary Chambers in the Courts of Cambodia. 27 June 2014. Available at <<http://www.eccc.gov.kh/en/articles/statement-principal-donors-group-extraordinary-chambers-courts-cambodia/>>.

⁶ Statement by the Principal Donors Group for the Extraordinary Chambers in the Courts of Cambodia. 27 June 2014. Available at <<http://www.eccc.gov.kh/en/articles/statement-principal-donors-group-extraordinary-chambers-courts-cambodia/>>.

⁷ See “Request for a subvention to the Extraordinary Chambers in the Courts of Cambodia” in the United Nations Fifth Committee. A/69/536. 15 December 2014. Available at <<http://goo.gl/Vtl3AF>>.

The ECCC, unlike the ICTR and ICTY, also has the power to issue reparations to victims. The ECCC's Rules and Regulations stipulates that cost of reparations should fall on the convicted person or, if the project has "secured sufficient external funding," the reparations project can be implemented by external donors or organizations in cooperation with the Victims Support Section.⁸ In Case 001, the only reparations ordered were the publication of the names of the Civil Parties and their connection to the crimes committed at S-21.⁹ Those ordered in Case 002 were more robust, and included, *inter alia*, a National Remembrance Day project and the construction of a memorial in Phnom Penh to honor victims of forced evacuations.¹⁰ These projects were made possible by funding and coordination from external donors and non-governmental organizations.

Outreach activities are also not included in the ECCC's general budget. However, the Court has worked with multiple non-governmental organizations in order to facilitate outreach projects, such as a program with the Documentation Center of Cambodia to transport Cambodians from rural villages to the court or the online Cambodia Tribunal Monitor. The latter is funded by the Robert Bosch Stiftung funds and run by the Northwestern University School of Law, to publish commentary about the court.¹¹ The major problem with all of the ECCC's funding is that it is provided on an ad-hoc basis by external donors, and therefore it is dependent on the continued backing of the international community and NGOs.

⁸ Extraordinary Chambers in the Courts of Cambodia Internal Rules (Rev.9), 16 January 2015. Article 23 Civil Party Claim. Article was adopted on 9 February 2009 and amended on 17 September 2010.

⁹ See Chapter 4 on Civil Party Reparations in Case 001 Judgement. Extraordinary Chambers in the Courts of Cambodia. 26 July 2010. 001/18-07-2007/ECCC/TC. Available online at <http://www.eccc.gov.kh/sites/default/files/documents/courtdoc/20100726_Judgement_Case_001_ENG_PUBLIC.pdf>

¹⁰ See Chapter 19 on Civil Party Reparations in Case 002/01 Judgement. Extraordinary Chambers in the Courts of Cambodia. 7 August 2014. 002/19-09-2007/ECCC/TC. Available online at <<http://goo.gl/E0NoQ1>>

¹¹ Speech by Ambassador David Scheffer. "What Has Been 'Extraordinary' About International Justice in Cambodia?" 25 February 2015. Williamsburg, Virginia. Available at <<http://www.cambodiatribunal.org/2015/02/25/speech-by-un-special-expert-david-scheffer-what-has-been-extraordinary-about-international-justice-in-cambodia/>>

The International Criminal Court

The International Criminal Court (ICC) is the first permanent international court established to try genocide, crimes against humanity, war crimes and other grave breaches of international law. Established by the Rome Treaty, the ICC is an independent body primarily funded by its member states. Each state's contribution is assessed by a formula similar to the one used for the UN assessed budget, but adapted for the absence of nations who have not ratified the Rome Treaty (notably the United States). Additional funding can be provided by voluntary government contributions, international organizations, individuals, corporations and other entities.¹²

The absence of the United States creates a major funding gap for the ICC.¹³ Not only is the US not a member of the ICC, but the US Congress has passed several provisions preventing the United States from funding the ICC. The Foreign Relations Authorization Act (FRAA), passed in 1999, prohibits any US funds to be used by or in support of the International Criminal Court.¹⁴ In 2002, the US Congress passed the American Service Members Protection Act (ASPA), which prohibits cooperation with the International Criminal Court. While the two acts are similar in their intent, ASPA, unlike the FRAA, includes some exceptions; the Dodd

¹² See Article 116 on "Voluntary Contributions" in the Rome Statute of the International Criminal Court. Available at <https://www.icc-cpi.int/nr/rdonlyres/ea9aef7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>

¹³ Ford, Stuart, How Leadership in International Criminal Law is Shifting from the U.S. To Europe and Asia: An Analysis of Spending on and Contributions to International Criminal Courts (September 8, 2010). Saint Louis University Law Journal, Vol. 55, p. 953, 2011. Available at SSRN: <http://ssrn.com/abstract=1674063>

¹⁴ See Public Law No. 106-113, §§ 705-706. States that "None of the funds authorized to be appropriated by this or any other Act may be obligated for use by, or for support of, the International Criminal Court unless the United States has become a party to the Court pursuant to a treaty made under Article II, section 2, clause 2 of the Constitution." Available at <<https://www.gpo.gov/fdsys/pkg/PLAW-106publ113/pdf/PLAW-106publ113.pdf>>.

amendment allows the US to support the ICC as long as it relates to a specific case.¹⁵ Therefore, if FRAA was appealed, the US would be able to provide limited support to the ICC.

The US has historically been a major donor to other international and hybrid courts, so the absence of US funds has been significant. It has also impacted the ability of the United Nations to provide funding to the ICC. Although Article 115 of the Rome Statute cites United Nations General Assembly funds as the second major funding source for the ICC, especially for those cases referred by the UN Security Council, the UN has not provided any funds to the ICC to date.¹⁶ This is because any resolution which would commit UN funding to the ICC is likely to be vetoed by the United States. The UN assessed funds includes United States government money, and therefore a resolution committing UN funds to the ICC would be in violation of US law. While the ICC has been able to operate on its current budget, it would greatly benefit from the support of the United States.

The Rome Statute also envisions the creation of a Trust Fund for Victims (TFV), a separate entity responsible for providing reparations and assistance to victims of crimes within the ICC's jurisdiction. The TFV is governed by its own board of directors made up of experts in international criminal law, transitional justice, and reparations for victims. The TFV has two mandates: an assistance mandate that applies in ICC situation countries and a reparations mandate that involves administering reparations ordered by the Court. The latter mandate comes into play when the ICC orders perpetrators who have been convicted to pay reparations to

¹⁵ American Servicemembers Protection Act. HR 4775, Public Law 107-206.

The Dodd Amendment states "Nothing in this title shall prohibit the United States from rendering assistance to international efforts to bring to justice Saddam Hussein, Slobodan Milosevic, Osama bin Laden, other members of Al Queda, leaders of Islamic Jihad, and other foreign nationals accused of genocide, war crimes or crimes against humanity."

¹⁶ See Article 115 on "Funds of the Court and of the Assembly of States Parties" in the Rome Statute of the International Criminal Court. Available at <https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf>

individuals whom they have harmed. If the perpetrator has the funds necessary to fund these reparations, then the TFV will administer them. In the likely event that they do not have the funds, or their assets have all been transferred or depleted, the Trust Fund for Victims will finance and administer reparations. The TFV also provides assistance and support to victims of crimes under the ICC's jurisdiction. Currently they fund programs in Northern Uganda and the Eastern Democratic Republic of the Congo that provide physical, psychological and material assistance to victims.¹⁷

The TFV is funded by public and private donors, as well as court-ordered fines and forfeitures. Since 2004, the largest donors have been Sweden, the UK, Germany, The Netherlands, Finland and Norway.¹⁸

Funding Models

The snapshots below demonstrate several models for funding international justice.

United Nations Funding

Although UN funding for the ICTY and ICTR was beneficial for the functioning of those courts, the tribunals proved to be significantly more expensive than the international community expected. After the massive UN expenditures for the ICTY and ICTR, it is very unlikely that there will be a future commitment on the part of the UN to fully fund international courts out of the UN general budget without options for containing costs.

¹⁷ The Trust Fund for Victims. Website. Available at <<http://www.trustfundforvictims.org/>>.

¹⁸ Financial Information. The Trust Fund for Victims. Website. Available at <<http://www.trustfundforvictims.org/financial-information>>

Voluntary State Funding

The most common model for funding international and hybrid courts have been voluntary donations from states. The state funding model has the advantage of having relatively formal structures through which courts can request and advocate for funding each year. Governments do not require court officials to spend a significant amount of time during the year “courting” them or generally expect in-kind benefits in return for their support. On the other hand, governments are liable to donor fatigue if the trials drag on for longer than expected. Additionally, if supporting a court becomes unpopular domestically, governments may withdraw funding. In general, for voluntary state funding to be successful there needs to be a core group of governments that is committed to funding the particular court.

Corporate Funding

Corporate entities have funded international courts in the past, but generally through single donations or in-kind gifts and not on a continuous basis. There is a deep preference among governments and the United Nations for governments, not private entities, to bear the brunt of responsibility for funding international justice to avoid the perception of bias or of “privatized” justice in cases of corporate sponsorship. Additionally, corporate funding generally takes much more time and capital than government funding, as corporations sometimes expect to be “wooed” or to receive certain benefits, like preferential trade legislation, if they do fund international courts. Although it does not seem as though it would be a feasible alternative to government funding, corporate sponsorship could conceivably be used to augment court funds or to assist with outreach or reparation activities.

Defendant Funding

Some courts, like the ICC, stipulate that defendants should be financially responsible for certain costs of the judicial process. While defendants certainly cannot bear the entire operating costs of international courts, they can pay for the cost of their defense or for court-ordered reparations. They may also be subject to civil forfeiture. However, it is often difficult for courts to track the assets of defendants on trial. Although many of these individuals are certainly very wealthy, they have often hidden or transferred their assets to relatives, and the courts do not have the capacity to track these assets down. In the future, international courts could look into hiring private investigators or other financial experts who could locate the finances of many of these convicted persons.

Crowd-Funding

Crowd-funding is a relatively new idea that has funded a whole range of activities and projects, from start-up ideas, to refugee resettlement, to one man who raised \$50,000 to make a potato salad.¹⁹ Although international courts have not yet used crowd-funding platforms to raise money for their work, it is possible that the model could be used to finance certain judicial activities, especially reparations, outreach, or specific assistance projects. Considering the massive public interest in Kony 2012, it is possible that there is widespread untapped support for the type of work international courts do.

Our Initiative

¹⁹ The nine weirdest things people have ever used crowdfunding for. *The Metro*. 6 May 2015. <<http://metro.co.uk/2015/05/06/the-nine-weirdest-things-people-have-ever-used-crowdfunding-for-5183831/>>

Go Fund Justice

Our initiative, Go Fund Justice, is an attempt to gauge support for crowd-funding platforms to support international justice efforts. Currently, we are in the process of creating a website that would host a crowd-funding campaign for the ICC's Trust Fund for Victims, the entity responsible for reparations and assistance for the International Criminal Court. We hope that Go Fund Justice will include an informational website, promotional videos, and a crowd-funding platform that will be able to raise money for the work of the TFV.

In the future, crowd-funding may offer an alternative model for international courts' outreach or reparation programs, but likely not their general budgets. Most courts need a stable and continuous source of funding, which does not consume large amounts of time or capacity to maintain. While crowd-funding can provide a significant sum of money for one salient project, it is probably not a good option for generating a continuous funding stream. However, the incorporation of individual donations may help to raise awareness and support about the work international courts are doing around the world, which would lend political support for more governmental funding.