

THE INTERNATIONAL CRIMINAL COURT: A NEW TOOL FOR JUSTICE

What is it, and why do we need it?

The International Criminal Court (ICC) will be a permanent institution with jurisdiction to try individuals accused of the most serious crimes abhorred by all nations: crimes against humanity, genocide, and war crimes. Unlike the two ad hoc International Tribunals for Yugoslavia and Rwanda, which were created by the UN Security Council to deal with egregious crimes in those regions during specific periods of time, this will be a permanent, independent court. It will not be an organ of the UN, but a freestanding institution made up of those states that have chosen to ratify the ICC Statute. It will be headquartered at The Hague in the Netherlands.

The Nuremberg trials of Nazi criminals after World War II made clear the need for an international criminal court to try atrocious crimes when states are unable or unwilling to do so. One such situation is when a “left-over” dictator creates instability for a new and institutionally weak democratic government after a period of widespread lawlessness. For example, the ability of the Former Republic of Yugoslavia (FRY) to send former President Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia (ICTY) and to avoid the distraction of a domestic trial has calmed the country and assisted peaceful reconciliation and economic development.

The ICC will strengthen international efforts to create justice through law, establish individual criminal responsibility, create an accurate historical record of crimes and the situations surrounding them, provide a way for victims and survivors to have the crimes against them internationally acknowledged and condemned, and send a strong deterrence message. Furthermore, these objectives will be advanced in domestic legal systems by the mere existence of the Court. States will be encouraged to investigate and prosecute egregious crimes committed in their territories or by their nationals, because if they do not, the ICC will be there to exercise its jurisdiction in their stead.

When will the Court come into existence?

The sixtieth ratification occurred on April 11, 2002. Under the terms of the Statute, the Court therefore came into existence on July 1, 2002. Currently, there are 139 signatory states and 76 ratifying countries, including all members of the European Union.

Could the Court try terrorists like Bin Laden?

As systematic attempts to murder thousands of civilians, the September 11 attacks are unquestionably a crime against humanity squarely within the jurisdiction of the ICC. Because they are serious crimes of concern to the international community as a whole, they are, as defined in ICC Statute itself, the type of situation for which the ICC has been created.

Governments reluctant to surrender a suspect, such as Bin Laden, to a foreign nation may be willing to turn him over to an independent international body. Similarly, many governments would allow international investigators but not those from another country to enter their territory to obtain evidence. Thus, if the ICC were in existence today, it could greatly support and promote US efforts to capture and try those it suspects of participating in the attacks on the United States. However, under the terms of the ICC Statute, the Court will have jurisdiction only with respect to crimes committed after its entry into force. Therefore, while the ICC could not try the perpetrators of the September 11 attacks, it will soon be able to prosecute and try those who commit these acts in the future.

Why hasn't the United States ratified the ICC Statute?

The US is unwilling to ratify the Statute because it does not provide a full exemption from the Court's jurisdiction for US officials and servicemembers for as long as the US has not

ratified the Statute. However, as numerous states have emphasized, this demand violates the Nuremberg principle of individual accountability and shelters precisely the criminal regimes and leaders the Court is intended to prosecute. It would therefore seriously undermine the Court and the international community. The Court will begin operation without this exemption for the United States.

Senator Jesse Helms and others have also vehemently declared the Court an affront to American sovereignty, a danger to our military personnel abroad, an impediment to the US military's freedom of action, and even unconstitutional. Many of these objections are based on flawed knowledge or understanding of the facts, such as the repeated assertion that Americans tried by the Court will be denied their constitutional rights. In fact, the ICC Statute contains all due process protections with the exception of the right to jury trial. This was excluded from the Statute with US consent because it was obviously impractical for defendants accused of such horrific crimes. Moreover, jury trials are not available in the US military justice system and the US regularly extradites US citizens to foreign courts that lack the right to jury trial and other due process rights.

The US participated fully in the Statute's negotiations and made critical contributions to ensure the fair and effective operation of the Court. Strong US involvement in drafting the ICC Statute and its subsequent supporting documents resulted in solutions for all the other main objections to US participation in the Court. Continued US involvement in the Assembly of States Parties as a ratifying country or observer would ensure that further objections will be addressed with the same careful consideration as the Court begins operations.

What can you do to encourage the US to support the Court and ratify the Statute?

AMICC, the American Non-governmental Organizations Coalition for the International Criminal Court, is made up of diverse organizations united in their support for strong leadership by the US in the ICC, including the soonest possible US ratification of the Statute. AMICC members, including legal, women, student, human rights and religious organizations, believe that the best way to achieve these goals is to work together as a coalition to pool their diverse membership, resources, and experience in a nationwide campaign, while continuing to conduct their own independent ICC activities.

AMICC is helping to create, coordinate, and serve as a campaign by its members to use public events, the media, and local representatives to arouse a public constituency that redefines the ICC issue for Congress and the Bush Administration. To this end, AMICC is facilitating and supporting the formation of local alliances led by local chapters of our members and other interested individuals to combine their diverse constituencies and create overwhelming grassroots pressure for US participation in the ICC.

You or an organization you belong to can organize and host an alliance in your area and sponsor activities to educate the public and local government members about the ICC. These locally based activities could include the organization of public discussions; the distribution of fliers; efforts to counter misunderstandings or disinformation through media statements, information campaigns, and polling; and work with state legislatures and local congressional offices.

For more information about AMICC, the ICC, or the US position, please contact:

Anne Heindel, Deputy Convenor, AMICC, a program of the United Nations Association, USA
801 Second Ave., 2nd Fl., New York, NY 10017-4706
(212) 907-1358; aheindel@unausa.org