



The International Criminal Court

*History, Structure,
and the United States*



Overview

- What is the ICC?
- ICC Predecessors
- Rome Statute
- Structure
- Jurisdiction
- State Parties
- Situations and Cases
- US-ICC Relationship



What is the ICC?

- The ICC is a true criminal court at the international level.
- It functions like any domestic criminal court within a national system.





ICC Predecessors

- Post WWII
 - Nuremberg
 - Tokyo
- UN Ad Hoc Tribunals
 - Yugoslavia
 - Rwanda
- Hybrids
 - Sierra Leone
 - Cambodia
 - East Timor





The Rome Statute

- Adopted on July 17, 1998 at a UN-sponsored conference in Rome.
- Entered into force on July 1, 2002.
- Over 100 countries are party to the ICC.
- The US has not joined the ICC.





Structure of the ICC

- The Presidency
- Judicial Divisions
- Office of the Prosecutor (OTP)
- The Registry
- The Assembly of States Parties (ASP)
- Other Offices





The Presidency

- The President is the most senior official of the Court.
- The President is responsible for the overall administration of the Court.
- The Presidency is composed of 3 judges
 - Elected by plenary of all 18 judges.
 - Terms of 3 years.

Judicial Divisions

- 18 judges, nationals of ICC States Parties.
- Elected by the Assembly of States Parties.
- Elected to non-renewable nine-year terms.
- Judges are assigned to one of three divisions:
 - Pre-Trial Division
 - Trial Division
 - Appeals Division





Office of the Prosecutor (OTP)

- Composed of the Prosecutor and one or more Deputy Prosecutors.
 - Elected by the Assembly of States Parties.
 - Elected to non-renewable nine-year terms.
 - Independent of other ICC organs except ASP.
- Functions
 - The office receives and analyzes referrals.
 - Conducts investigations and prosecutions.



The Registry

- Headed by the Registrar, the principal administrative officer of the Court.
- Reports to the President.
- Functions:
 - Non-judicial administration of the Court.
 - Administration of legal aid to defendants, victims and witnesses.



Assembly of States Parties (ASP)

- The legislative body of the Court.
- Composed of representatives of the States that have ratified the Rome Statute.
- Functions:
 - Elects and dismisses prosecutors and judges.
 - Approves the ICC budget.
 - Oversees the work and administering of the Court.



Other Offices

- Office of the Public Counsel for the Defense (OPCD)
- Office of Public Counsel for Victims (OPCV)
 - Both function independently.
 - Both report to the Registry for administrative purposes only.
- Trust Fund for Victims (TFV)
 - A body of the ASP.



Jurisdiction of the ICC

- ICC
 - Independent of the UN.
 - Jurisdiction over individuals.
 - Serious criminal atrocity crime cases.
- ICJ
 - Primary judicial organ of the UN.
 - Jurisdiction over states.
 - Civil cases.



International Court of Justice



Jurisdiction over Crimes

- Over only the most serious atrocity crimes:
 - Genocide
 - Crimes Against Humanity
 - War Crimes
 - Crime of Aggression (once defined and jurisdictional conditions are amended into the Rome Statute by the ASP).
- Committed by *individuals* only.
- After July 1, 2002.



Jurisdiction over Individuals

- The ICC is the first permanent international court that prosecutes individuals for atrocity crimes.
- It has jurisdiction over individuals if:
 - A crime is committed on the territory of a state party; or
 - The accused is a national of a state party; or
 - A state accepts jurisdiction of the ICC.



Complementarity

- Complementarity requires the Court to defer to states claiming jurisdiction over investigations and prosecutions.
- The Court will not prosecute an individual if the state is willing and able to offer a fair and adequate trial.
- The Court may proceed with a case if the state is unwilling or unable to prosecute.

Situations and Cases

- Initiation of an Investigation
- Cases before the Court
- Cases under Investigation





Initiation of an Investigation

- Referral by a State Party; or
- Referral by UN Security Council; or
- Prosecutor may initiate an investigation on his or her own initiative (*proprio motu*)
 - Prosecutor may only proceed on his or her own initiative if approved by a panel of three judges.



Situations before the Court

- Democratic Republic of the Congo (DRC)
- Central African Republic (CAR)
- Uganda
- Darfur, Sudan



Democratic Republic of the Congo

- 4 arrest warrants
 - Thomas Lubanga Dyilo: on trial
 - Germain Katanga: awaiting trial
 - Mathieu Ngudjolo Chui: awaiting trial
 - Bosco Ntaganda: remains at large
- War crimes include:
 - Child soldiers
 - Sexual slavery
 - Attacks on civilian populations



Central African Republic

- 1 arrest warrant issued: Jean-Pierre Bemba is in custody and awaiting trial.
- War crimes
- Crimes against humanity
 - Rape
 - Murder
 - Torture



Jean-Pierre Bemba

Uganda

- 5 warrants issued/suspects at large
 - Joseph Kony
 - Vincett Otti (may be deceased)
 - Okot Odhiambo
 - Dominic Ongwen
 - Raska Lukwiya (deceased)
- War crimes: child soldiers
- Crimes against humanity: murder, inhumane acts and enslavement



Joseph Kony

Darfur, Sudan

- 3 warrants issued/suspects at large:
 - Ahmad Harun, former Interior Minister
 - Ali Kushayb, Janjaweed militia leader
 - Omar Al Bashir, president of Sudan
- Crimes
 - War crimes: rape, murder, torture
 - Crimes against humanity: pillaging and attacks on civilians



Darfur, Sudan

- Summons to appear
 - Bahir Idriss Abu Garda, rebel leader
- War Crimes:
 - Murder
 - Pillaging
 - Attacking peacekeepers





Preliminary Investigations

- Afghanistan
- Colombia
- Cote d'Ivoire
- Georgia
- Kenya





US-ICC Relationship: Clinton

- The US supported the establishment of the ICC and made many important contributions to the Rome Statute, including fair trial rights.
- President Clinton signed the Rome Statute, but did not submit it to the Senate for advice and consent to ratification.



US-ICC Relationship: Bush

- In 2002 the US announced a policy of disengagement and deactivated the US signature to the Rome Statute.
- It implemented anti-ICC legislation:
 - The American Servicemembers' Protection Act of 2002 (ASPA)
 - The Nethercutt Amendment (Fiscal Years 2005, 2006 and 2008)



Bilateral Immunity Agreements

- The US entered into Bilateral Immunity Agreements (BIAs) with over 100 countries to ensure that US nationals would not be brought before the ICC.
- The EU believes these agreements are illegal under the Rome Statute.
- The BIAs are in effect but there are no sanctions to compel adherence to them.



American Servicemembers' Protection Act of 2002 (ASPA)

- Authorizes the US President to take action to free Americans or others held by ICC.
- Limits US cooperation with the ICC and conditions US assistance to UN peacekeeping missions on protection from the ICC.
- Ended international military education and training (IMET) and foreign military funds (FMF) for states unwilling to enter into BIAs.
 - These were repealed in 2006 and 2008, respectively.



The Nethercutt Amendment

- Cut economic aid to countries unwilling to enter into BIAs with the US.
- Was subject to presidential waiver.
- Ended by not being included in the Fiscal Year 2009 Omnibus Appropriations Bill.



US-ICC Relationship: Obama

- The Obama Administration is reviewing US policy toward the ICC
- It will not engage formally with the ICC until a current review of policy is complete.
- Both Secretary of State Hillary Clinton and US Ambassador to the UN Susan Rice have spoken in favor of the Court itself and cooperating with it.
- Ratification is unlikely in the short term.



Why Join the ICC?

- It promotes American values of accountability, the rule of law and the dignity of all human life. These are the foundations of the ICC.
- The US early supported the Court and contributed to the Rome Statute.
- The Court has proven itself and the US should support and participate in it.



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