



International Criminal Court

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International Criminal Court

- Rome Statute of the International Criminal Court
- Adopted July 17, 1998
- Entered into force July 1, 2002



Description of the Court

- The Court sits in The Hague
- 18 Judges: in three chambers



Composition of the Court

Three Chambers:

- Pre-trial Chamber
- Trial Chamber
- Appeal Chamber

President of the Court:
Sang-hyun Song,
South Korea





Composition of Court

- Kenya, Bolivia, France, Mali, Argentina, UK, Germany, Finland, Ghana, Botswana, Uganda, Costa Rica, Japan, South Korea, Brazil, Italy, Bulgaria, Latvia, Belgium
- 11 women, 8 men

Composition of the Court

- Judge Christine van den Wyngaert, Belgium, Judge Fumiko Saiga, Japan, Judge Cuno Tarfusse, Italy, Judge Joyce Aluoch, Kenya, Judge Sanji Mmasenono Monageng, Botswana, were sworn in on 3 March 2009



Prosecutor

- Prosecutor: Luis Moreno Ocampo
- 1984-92: Prosecutor in Argentina, in precedent-setting prosecutions of generals
- Term expires 2012





Jurisdiction of the ICC

- Permanent institution
- Power to exercise jurisdiction over persons for the most serious crimes of international concern
- Complementary to national criminal jurisdiction.

Jurisdiction

- Limited to the most serious crimes of concern to the international community as a whole, including
 - Genocide (article 6)
 - Crimes against humanity (article 7)
 - War crimes (article 8)
 - Aggression (article 8 bis)





Definition of Crimes

- Article 6: Genocide

- Same as Article 2 of the Genocide Convention:

“Acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such.”

- Requires proof of specific intent (*actus reus*) and genocidal intent



Acts of Genocide

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group



Definition of Crimes

- Article 7: Crimes against Humanity
- **"...committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack."**



Definitions of Crimes

- Crimes against Humanity:
 - Murder
 - Extermination
 - Enslavement
 - Deportation/forcible transfer
 - Imprisonment or detention in violation of fundamental rules of international law
 - Torture
 - Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any form of sexual violence of comparable gravity
 - Enforced disappearance
 - The crime of apartheid
 - Other inhumane acts of a similar character

Definition of Crimes

- Article 8: War Crimes

“in particular when committed as part of a plan or policy or as part of a large-scale commission of such crimes.”





Definition of Crimes

- “War Crimes” means
 - Article 8(a) Grave breaches of the Geneva Conventions of 1949:
 - Willful killing
 - Torture or inhuman treatment including biological experiments
 - Extensive destruction not justified by military necessity
 - POW violations including forced military service, depriving of fair trial,
 - Unlawful deportation or transfer
 - Taking hostages



Definition of Crimes

○ War Crimes

- Other serious violations of laws or customs applicable in international armed conflict, Article 8(b)(26 enumerated criminal acts, including enlisting children under 15 into armed forces or using them in active hostilities)
- When not of an international character, serious violations of article 3 common to GC, Article 8(c) (not internal disturbances or isolated acts)



Definition of Crimes

- War Crimes

- Article 8(e) Other serious violations of laws and customs applicable in armed conflict not of an international character (12 enumerated criminal acts) (applies when there is a protracted armed conflict between governmental authorities and organized armed groups or between such groups)



Definition of Crimes

- Aggression

- Defined in June 2010
- Will go into force January 2017

- **Definition of the crime of aggression:**

Article 8 bis adopted in Kampala defines the individual crime of aggression as the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression

An act of aggression is defined as the use of armed force by one State against another State without the justification of self-defense or authorization by the Security Council.



Definition of Crimes

○ Acts of Aggression

- The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;
- Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;
- The blockade of the ports of coasts of a State by the armed forces of another State;
- An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;



Definition of Crimes

- Acts of Aggression (continued)
 - The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;
 - The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;
 - The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.



Complementarity

- The ICC is intended to complement the actions of domestic courts (Article 1)
- A case is inadmissible if it is being investigated or prosecuted by a State with jurisdiction; or it has been investigated in good faith and no prosecution (Article 17)



Preconditions to Jurisdiction

1. The accused is a national of a State Party (and the crimes occurred after the treaty entered into force in that State);
2. The alleged crime took place in territory of State Party;
3. The Security Council refers case under Chapter VII of the UN Charter; or
4. The country accepts ICC jurisdiction over the whole case



Prosecutor may initiate investigation in the following situations:

- Referral by State Party (Uganda, Central African Republic, DRC)
- Referral by Security Council (Sudan, Darfur, Libya)
- “Propio Motu” on basis of information on crimes within jurisdiction of court



Jurisdiction over the Crime of Aggression

- Article 15 bis, the Prosecutor may only proceed with an independent (“proprio motu”) investigation or an investigation based on a State referral of a situation into the crime of aggression:
 - After first ascertaining the Security Council has made a determination of the existence of an act of aggression (under Article 39 of the UN Charter) and waiting for a period of 6 months;
 - If that situation concerns an act of aggression committed between States Parties; and
 - After the Pre-Trial Division of the Court has authorized the commencement of the investigation.



Jurisdiction over the Crime of Aggression

- Article 15 bis also provides that States Parties may opt out of the Court's jurisdiction under the articles by lodging a declaration of non-acceptance of jurisdiction with the Court's Registrar. Such a declaration can be made at any time (including before the amendments enter into force) and shall be reviewed by the State Party within three years.
- Non-State Parties have been explicitly excluded from the Court's jurisdiction over aggression when committed by that State's national or on its territory.



Safeguards to Prosecution

- Pre-trial Chamber must approve the investigation, indictment and arrest warrant (Article 15)
- Security Council may defer investigation or prosecution for 12 months, renewable (Article 16)

Assembly of States Parties

- 114 States Parties; 139 Signatories
- Independent, not part of UN





State Parties to the ICC

Africa:

- Benin, Botswana, Burkina Faso, Burundi, Central African Republic, Chad, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritius, Namibia, Niger, Nigeria, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Uganda, Zambia.
- (31 states)



State Parties to the ICC

Asia and Oceania:

- Afghanistan, Australia, Bangladesh, Cambodia, Cook Islands, East Timor, Fiji, Japan, Marshall Islands, Mongolia, Nauru, South Korea, Samoa
- (14 States)



State Parties to the ICC

Europe:

- Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, United Kingdom
- (42 States)



State Parties to the ICC

Caribbean and the Americas:

- Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominica, Dominican Republic, Ecuador, Guyana, Honduras, Mexico, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela
- (26 States)



States Parties to ICC

North Africa and Middle East

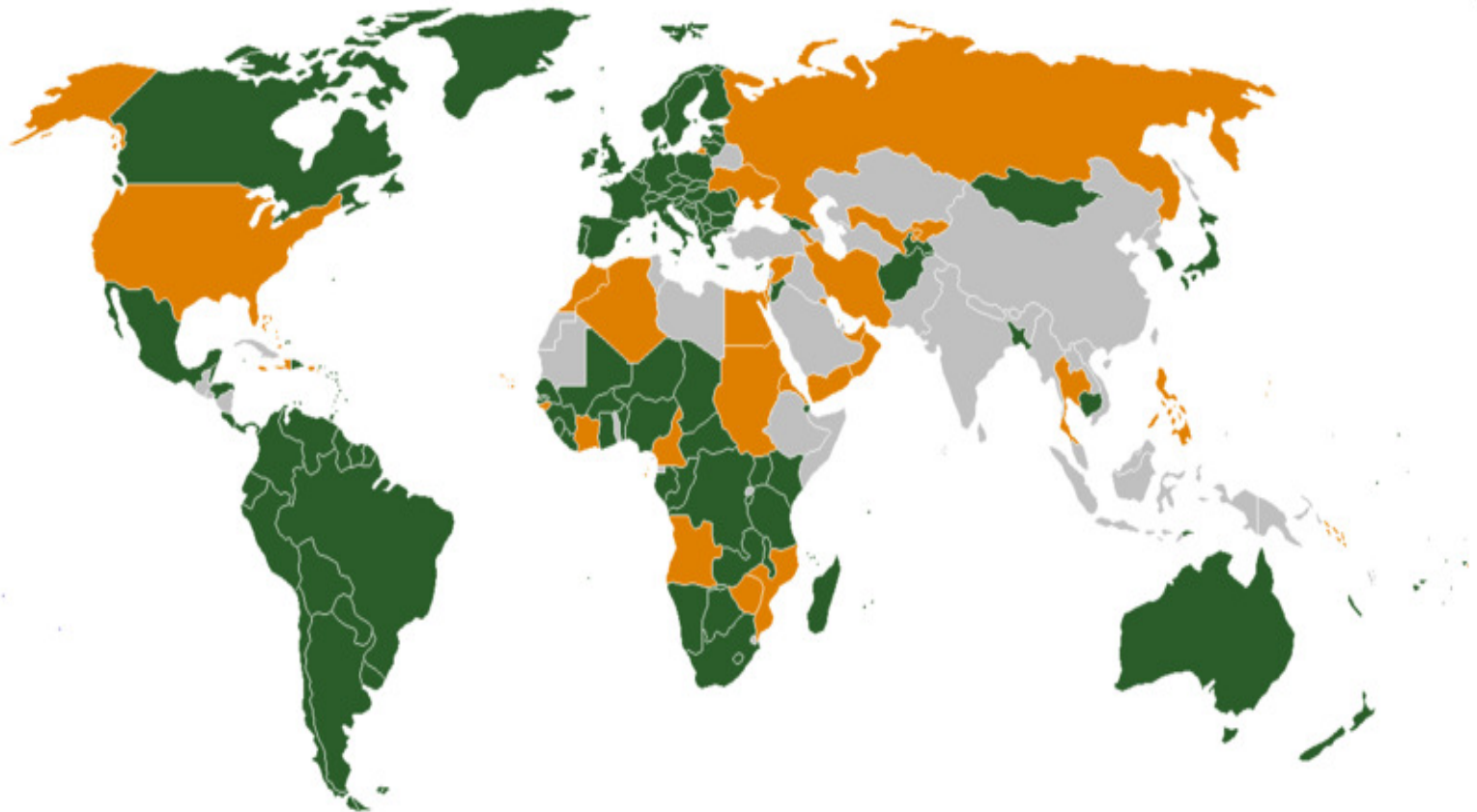
- Jordan



Notable Holdout States

- North Africa: Algeria, Egypt, Libya, Tunisia
- Asia: China, India, Indonesia, Laos, North Korea, Pakistan, Thailand
- Americas: Cuba, El Salvador, Guatemala, United States
- Europe: Belarus, Russia, Turkey, Turkmenistan, Ukraine, Uzbekistan

States Parties to the ICC





Assembly of State Parties

- Elects judges, sets budget, debates substantive amendments
- Financed by mandatory dues of States Parties (2009: € 101.2 million)



Case situations

- Central African Republic
- Democratic Republic of Congo
- Northern Uganda
- Sudan (Darfur)
- Kenya
- Libya

New Case Situations

- In a Resolution adopted on February 26, 2011, the United Nations Security Council decided unanimously to refer the situation in Libya to the International Criminal Court (ICC).





Preliminary examinations

Afghanistan, Colombia, Côte d'Ivoire,
Georgia, Guinea, and Palestine.

The OTP has also received communications in relation to several other countries, including Chad, Iraq and Venezuela.



Debates about the Court

- What impact on evolving situations?
- Does the Court favor justice over peace?
- On what basis does the Court have jurisdiction over nationals of non-party states?
- Is the Court a neo-colonialist institution?