



## International Criminal Court 101- Holding the World's Worst Criminals Accountable

### Introduction

---

The International Criminal Court (ICC) was formed during one of the bloodiest decades in human history, after the Rwandan and Bosnian genocides. Participation in the ICC is essential to American leadership and credibility. The Court embodies fundamental American values of accountability, equality and justice. It abides by the highest standards of fairness and judicial process. The ICC is the only permanent international court capable of trying individuals accused of genocide, war crimes and crimes against humanity when national courts are destroyed or unable to handle the case, or are deliberately shielding the accused from justice.

Currently, the Court is conducting [four prosecutions](#), one investigation, and six preliminary investigations. 111 countries, including England, France, and Australia, belong to the Court and the number continues to grow. No doubts remain that the Court, though still young, is fully functioning.

### Background- The Relationship between the U.S. and the ICC

The United States delegation actively participated during the preparatory meetings of the International Criminal Court at the Rome Conference in 1998. At the end of the Conference, the U.S. decided not to sign the Statute but did sign the Final Act, enabling the U.S. to permanently participate as an observer in the Court. Later, in December 2000, President Clinton officially signed the Rome Statute. His successor, President George W. Bush adopted a stringent policy of opposition against the Court during his first term. In 2002 when the Rome Statute entered into force, President Bush authorized then Under Secretary of State John Bolton to "unsign" the treaty by informing the United Nations that the U.S. did not intend to ratify the Rome Statute, relieving the U.S. of its obligations to the treaty. However, during the second Bush term, U.S. policy towards the ICC evolved into one of limited cooperation. Although the United States has remained outside of the Rome Statute system, [many of its legal and policy principles run parallel to the ICC.](#)

Obama Administration officials have expressed the importance of American engagement with the Court. In addition, U.S. State Department Legal Adviser Harold Koh discussed the need for American involvement with the Court, "the United States believes that it can be a valuable partner and ally in the cause of advancing international justice. The Obama Administration has been actively looking at ways that the U.S. can, consistent with U.S. law, assist the ICC in fulfilling its historic charge of providing justice to those who have endured crimes of epic savagery and scope."

In November 2009 and March 2010, for the first time in 8 years, the U.S. attended the 8<sup>th</sup> meeting of the Assembly of States Parties of the ICC. U.S. Ambassador-at-Large for War Crimes Issues Stephen Rapp led the U.S. delegation. The U.S. will also be present at the ICC Review Conference this May and June in Kampala, Uganda, where including aggression as a crime will be discussed. It's in the interest of U.S. national security to participate in these negotiations.

## Safeguards Built into the Statute

The Rome Statute was built with safeguards to ensure that it remains an unbiased and nonpolitical court of last resort. The safeguards included in the Statute are as following:

- The mandate of the Prosecutor limits him from prosecuting more than a few cases each year. Each case must be part of a planned and systematic government carried out by national militaries and/or armed groups and must be the gravest situations in the international community under the jurisdiction of the Court (Articles 1, 5-8).
- The Court is only able to exercise jurisdiction when the person accused of committing a crime is a national of a state party, when the crime was committed on the territory of a state party, or when a situation is referred by the United Nations Security Council (Article 13).
- If the Prosecutor decides to investigate a situation *proprio motu*, he must submit in advance a request to the Pre-Trial Chamber with any supporting material collected. The Pre-Trial chamber makes the ultimate decision as to whether or not the Prosecutor is able to proceed with an investigation (Article 15).
- Under the principle of complementarity, the Court is not able to investigate or prosecute a case unless the state is unwilling or unable to genuinely carry out an investigation. If the State has conducted an investigation in good faith and decides not to prosecute, the ICC will still be unable to open a case (Article 17).
- Any State or person has the right to challenge the jurisdiction or admissibility of a case prior to or at the commencement of the trial (Article 19).
- The Court may not proceed with a request for surrender or assistance which would require the requested State “to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity” (Article 98).
- The Assembly of States Parties of the ICC provides oversight of the Prosecutor, Presidency, and the Registrar (Article 112).

## **The Shadow of the Court**

Political leaders throughout the world are slowly distancing themselves from the President of Sudan, Omar Al-Bashir. Originally defiant after the arrest warrant had been issued, President Al-Bashir has had to deal with severely limited freedoms, especially his ability to travel for State visits. South Africa, Nigeria, Venezuela, Turkey, and France have all gone out of their way to ensure that Al-Bashir is unable to travel to their country or that they will not encounter Al-Bashir in any setting.

Since 1998, the Democratic Republic of the Congo (DRC) had been at war and, according to estimates, suffered 3.9 million casualties. Thomas Lubanga Dyilo of the DRC is being tried by the Court for conscription of child soldiers. As a result of this trial Nepal has decided to release child soldiers even though the country not being a member of the ICC.

*For more information contact Ariela Blatter, Director of Policy and Programs at 202.546.3950 x108 [ablatter@globalsolutions.org](mailto:ablatter@globalsolutions.org) or Don Kraus, Chief Executive Officer at 202.330.4103 [dkraus@globalsolutions.org](mailto:dkraus@globalsolutions.org)*