

Universitat Rovira i Virgili

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The International Criminal Court

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THE INTERNATIONAL CRIMINAL COURT

- I. Historical background
- II. General characteristics of the Court
- III. The Court's scope of competence
- IV. Cooperation of States with the Court
- V. The Court's initial working phase
- VI. Complementary jurisdiction between the Court and national jurisdictions



The Treaty of Versailles

JUNE 28, 1919 (Articles 227-229)

- Attempt to try the former Emperor of Germany, Wilhelm II, by means of an international court, for the “infringement of international moral law and the sanctity of treaties”.
- It was established that cases involving such offences against citizens of more than one allied nation would be tried by military Courts comprised of representatives of the nations concerned.



International Law Association

34th Conference, Vienna, 1926: Project of the Statute for an International Criminal Court

International Association of Criminal Law

Drafting of a statute for an international criminal law court, 1928

The ILA, the Inter-Parliamentary Union and the IACL

Drafting of a penal code, 1935

UN International Law Commission

Drafting of the Statute for an International Criminal Court, 1994

Drafting of the Code of Crimes against the Peace and Security of Mankind, 1996



INTERNATIONAL CRIMINAL COURTS AT THE END OF THE 2ND WORLD WAR

- Agreement for the trial and punishment of the foremost war criminals from the European Axis powers; signed in London on August 8th, 1945: An International Military Tribunal
- Law N° 10 of the Allied Control Council for Germany
- The Supreme Commander of the Allied Forces announces the establishment of an International Military Tribunal for the Far East, January 19th, 1946



Nuremberg International Military Tribunal

The Main Process

4 judges, 4 substitute judges and 4 prosecutors, appointed by the four powers: UK, USA, France and USSR

Trial of 22 individuals (during the trial one of these committed suicide and another was diagnosed as mentally ill and interned) October 1st, 1946: twelve death penalties; seven prison sentences; three absolutions.

In Nuremberg:

A further 12 trials (of doctors, judges, Flick, IG Farben, the Einsatzgruppen, Krupp, the ministries, the military high command ...)



Tokyo International Military Tribunal

Comprising eleven judges (United States, Soviet Union, United Kingdom, France, Low Countries, China, Australia, New Zealand, Canada, India and Philippines).

The Tribunal tried 28 people (19 military staff and 9 civilians). On November 12th, 1948 sentences were dictated for 25 of the accused (2 died during the trial and another was interned due to mental illness): seven death penalties and eighteen prison sentences.



THE INTERNATIONAL CRIMINAL RESPONSIBILITY OF THE INDIVIDUAL

Principles of International Law recognised by the Statute and by the sentences of the Nuremberg Trials
(Approved by the International Law Commission in 1950 and put Forward at the General Assembly)

PRINCIPLE I

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

THE INTERNATIONAL CRIMINAL RESPONSIBILITY OF THE INDIVIDUAL

Principles of International Law recognised by the Statute and by the sentences of the Nuremberg Trials

(Approved by the International Law Commission in 1950 and put Forward at the General Assembly)

PRINCIPLE II

The fact that internal law does not impose a penalty for an act which constitutes a crime under International law does not relieve the person who committed the act from responsibility under international law.



- Slavery (Geneva, 1926);
- Crimes against peace, war crimes and crimes against humanity (London, 1945);
- Genocide (UN, 1948);
- War crimes again
- (Geneva, 1949);
- Trade in human beings and prostitution of others (UN, 1949);
- Piracy on the high seas (Geneva, 1958);
- High-jacking of aircraft (The Hague, 1970);
- Acts of terrorism with international implications (Washington, 1971);
- Unlawful acts against the safety of civil aviation (Montreal, 1971);
- Apartheid (UN, 1973);
- Crimes against people with international protection, including diplomats (UN, 1973);
- The use of environmental modification techniques for military purposes (UN, 1976);
- Terrorism (Strasbourg, 1977);
- The taking of hostages (UN, 1979);
- Unlawful trafficking in nuclear materials (IAEA, Vienna, 1980)
- Torture and other practices deemed to be cruel, inhuman or degrading (UN, 1984);
- Unlawful trafficking in drugs and psychotropic substances (New York, 1988);
- Unlawful acts of violence at airports (ICAO, Montreal, 1988)
- Unlawful acts against the safety of maritime navigation (IMO, Rome, 1988)
- Unlawful acts against the safety of fixed platforms located on the continental shelf (IMO, Rome, 1988)
- Mercenaries (UN, 1989);
- Unlawful trafficking in dangerous residual products in Africa (Bamako, 1991)
- Acts against the safety of United Nations personnel and associated staff (ONU, 1994)
- Funding of terrorism (UN, 1999);
- Terrorist attacks involving bombs (UN, 1997);
- The detained-disappeared (UN, 2006)

Creation of *ad hoc* international criminal courts

United Nations Security Council:

- Resolution 827 (1993), February 22nd, 1993: creation of the International Criminal Tribunal for the former Yugoslavia.

<http://www.un.org/icty/>

- Resolution 955 (1994), November 8th, 1994: creation of the International Criminal Tribunal for Rwanda.

<http://www.icttr.org>





Resolution 827, May 25th, 1993, UN Security Council:
Establishment of an International Tribunal for the former
Yugoslavia

Objective: "to prosecute persons responsible for serious
violations of international humanitarian law committed in the
territory of the former Yugoslavia between January 1st, 1991
and a date to be determined by the Security Council upon the
restoration of peace."

Application:

- serious violations of the Geneva Convention of 1949
- violations against the laws and customs of war on land
- genocide
- crimes against humanity

Work to be completed by 2010.





International Criminal Tribunal for Rwanda
Tribunal pénal international pour le Rwanda

Resolution 955, November 8th, 1994, UN Security Council:
Establishment of an International Tribunal for Ruanda

Objective: the prosecution of "persons responsible for genocide and other serious violations of international humanitarian law Committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States, between 1 January 1994 and 31 December 1994"

Application:

- genocide
- crimes against humanity
- violations of Article 3 common to the Geneva Conventions and of Additional Protocol II

Work to be completed by 2010.

**International criminal
jurisdictions:
Kosovo, East Timor, Sierra
Leone, Cambodia, Bosnia-
Herzegovina**



THE INTERNATIONAL CRIMINAL COURT

- I. Historical background
- II. General characteristics of the Court
- III. The Court's scope of competence
- IV. Cooperation between States and the Court
- V. Initial phase of the Court's operation
- VI. Complementary jurisdiction between the Court and national jurisdictions

Statute of the International Criminal Court (Rome, 1998)

Article 1

The Court

An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.



Statute of the International Criminal Court (Rome, 1998)

Article 2

Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.



Statute of the International Criminal Court (Rome, 1998)

Article 13

Exercise of jurisdiction

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) A situation in which one or more of such crimes appears to have been committed **is referred to the Prosecutor by a State Party** in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed **is referred to the Prosecutor by the Security Council** acting under Chapter VII of the Charter of the United Nations; or
- (c) **The Prosecutor has initiated an investigation** in respect of such a crime in accordance with article 15.



Statute of the International Criminal Court (Rome, 1998)

Article 12

Preconditions to the exercise of jurisdiction

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) **The State on the territory of which the conduct in question occurred** or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) **The State of which the person accused of the crime is a national.**



Statute of the International Criminal Court (Rome, 1998)

Article 16

Deferral of investigation or prosecution

No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions.



Statute of the International Criminal Court (Rome, 1998)

Article 17

Issues of admissibility

1. Having regard to paragraph 10 of the Preamble and article 1, the Court shall determine that a case is inadmissible where:
- (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.



Statute of the International Criminal Court (Rome, 1998)

Article 17

2. In order to determine unwillingness in a particular case, the Court shall consider, having regard to the principles of due process recognized by international law, whether one or more of the following exist, as applicable:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court referred to in article 5;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.



Statute of the International Criminal Court (Rome, 1998)

Article 17

3. In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.

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Statute of the International Criminal Court (Rome, 1998)

Article 25

Individual criminal responsibility

1. The Court shall have jurisdiction over natural persons pursuant to this Statute.
2. A person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment in accordance with this Statute.



3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:

(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;

(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;

(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;

(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:



(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or

(ii) Be made in the knowledge of the intention of the group to commit the crime;

(e) In respect of the crime of genocide, directly and publicly incites others to commit genocide;

(f) Attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions.

However, a person who abandons the effort to commit the crime or otherwise prevents the completion of the crime shall not be liable for punishment under this Statute for the attempt to commit that crime if that person completely and voluntarily gave up the criminal purpose.



Statute of the International Criminal Court (Rome, 1998)

Article 24

Non-retroactivity ratione personae

1. No person shall be criminally responsible under this Statute for conduct prior to the entry into force of the Statute.
2. In the event of a change in the law applicable to a given case prior to a final judgement, the law more favourable to the person being investigated, prosecuted or convicted shall apply.



Statute of the International Criminal Court (Rome, 1998)

Article 26

Exclusion of jurisdiction over persons under eighteen

The Court shall have no jurisdiction over any person who was under the age of 18 at the time of the alleged commission of a crime.



Statute of the International Criminal Court (Rome, 1998)

Article 5

Crimes within the jurisdiction of the Court

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.



Genocide

Article 6

Genocide

For the purpose of this Statute, 'genocide' means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (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.



Crimes against humanity

Article 7

Crimes against humanity

Any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder
- (b) Extermination
- (c) Enslavement
- (d) Deportation or forcible transfer of population
- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
- (f) Torture
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court
- (i) Enforced disappearance of persons
- (j) The crime of apartheid
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health



War crimes

- (a) Grave breaches of the Geneva Conventions of 12 August 1949
- (b) Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law
- (c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949
- (d) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law

Geneva Convention of August 12th, 1949

(Articles 50, 51, 130 and 147) (188 Party States)

- Wilful killing
- Torture or inhuman treatment, including biological experiments
- Wilfully cause great suffering or serious injury to body or health
- Destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly
- Compel a prisoner of war or a protected person to serve in the armed forces of the enemy power (C.III and IV)
- Wilfully deprive a protected person of the rights of fair and regular trial (C. III y IV)
- Unlawful deportation or transfer or unlawful confinement of a protected person under Convention IV



Additional Protocol I, 1977, to the Geneva Conventions of August 12th, 1949 (Articles 11 and 85) (150 Party States)

Adds:

- Launching an indiscriminate attack affecting the civilian population or civilian objects in the knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects (in relation to the specific and direct military advantage intended)
- Launching an attack against works or installations containing dangerous forces
- Making defended localities and demilitarised zones the object of attack
- Making a person the object of attack in the knowledge that he is hors de combat
- The perfidious use [...] of the distinctive emblem of the red cross, red crescent or red lion and sun or of other protective signs recognized by the Conventions or this Protocol
- The transfer by the Occupying Power of parts of its own civilian population into the territory it occupies ...
- Unjustifiable delay in the repatriation of prisoners of war or civilians
- Practices of apartheid and other inhuman and degrading practices involving outrages upon personal dignity, based on racial discrimination
- Making clearly-recognized historic monuments, works of art or places of Worship the object of attack [in certain circumstances]



Rome Statute (Article 8)

Contains further conditions:

- Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission
- Declaring that no quarter will be given
- Employing bullets which expand or flatten easily in the human body
- Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate, provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute



Statute of Rome (Article 8)

- Committing rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence also constituting a grave breach of the Geneva Conventions
- Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations
- Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law



Statute of the International Criminal Court (Rome, 1998)

Article 11

Jurisdiction ratione temporis

1. The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute.
2. If a State becomes a Party to this Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a declaration under article 12, paragraph 3.



Statute of the International Criminal Court (Rome, 1998)

Article 29

Non-applicability of statute of limitations

The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.



Applicable penalties

The Court may impose one of the following penalties on a person convicted of a crime referred to in article 5 of this Statute:

- (a) Imprisonment for a specified number of years, which may not exceed a maximum of 30 years; or
- (b) A term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.

In addition to imprisonment, the Court may order:

- (a) A fine under the criteria provided for in the Rules of Procedure and Evidence;
- (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties.

Statute of the International Criminal Court (Rome, 1998)

Article 20

Ne bis in idem

1. Except as provided in this Statute, no person shall be tried before the Court with respect to conduct which formed the basis of crimes for which the person has been convicted or acquitted by the Court.
2. No person shall be tried by another court for a crime referred to in article 5 for which that person has already been convicted or acquitted by the Court.
3. No person who has been tried by another court for conduct also proscribed under article 6, 7 or 8 shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:
 - (a) Were for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court; or
 - (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.



Statute of the International Criminal Court (Rome, 1998)

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international



Statute of the International Criminal Court (Rome, 1998)

Article 33

Superior orders and prescription of law

1. The fact that a crime within the jurisdiction of the Court has been committed by a person pursuant to an order of a Government or of a superior, whether military or civilian, shall not relieve that person of criminal responsibility unless:
 - (a) The person was under a legal obligation to obey orders of the Government or the superior in question;
 - (b) The person did not know that the order was unlawful; and
 - (c) The order was not manifestly unlawful.
2. For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful



Statute of the International Criminal Court (Rome, 1998)

Article 28

Responsibility of commanders and other superiors

In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:

(a) A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:

(i) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and

(ii) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.



THE INTERNATIONAL CRIMINAL COURT

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- II. General characteristics of the Court
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Cooperation of States with the Court

States Parties have an obligation to cooperate with the Court

Article 86

General obligation to cooperate

States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.



Cooperation of States with the Court

Article 88

Availability of procedures under national law

States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part.



Cooperation of Spain with the ICC

The Spanish Government ratified the Statute for the International Criminal Court on October 9th, 2000, following the passing of Act of Parliament 6/2000 on October 4th (published in *BOE* 27.5.2002)

Spain made the following declaration under Article 103, paragraph 1(b):

" Spain declares its willingness to accept at the appropriate time, persons sentenced by the International Criminal Court, provided that the duration of the sentence does not exceed the maximum stipulated for any crime under Spanish law".



- Organic Law 15/2003 of the Penal Code, November 25th, 2003

BOE November 26th, 2003, N^o. 283

This law modifies Law 10/1995 (November 23rd, 1995) of the Penal

- Organic Law 18/2003 (December 10th) concerning cooperation with the International Criminal Court

BOE December 1th, 2003, N^o. 296



Spain: Organic Law 15/2003 (November 25th) of the Penal Code

- Prescription of crimes
- Definition of torture (Art.174.1)
- Crimes against the administration of justice by the ICC (Art. 471 bis)
- Crimes against humanity (Art. 607 bis)
- Certain war crimes (Arts. 608 to 614 bis)
- Responsibility of superiors and necessary obedience (615 bis and 616 bis)



THE INTERNATIONAL CRIMINAL COURT

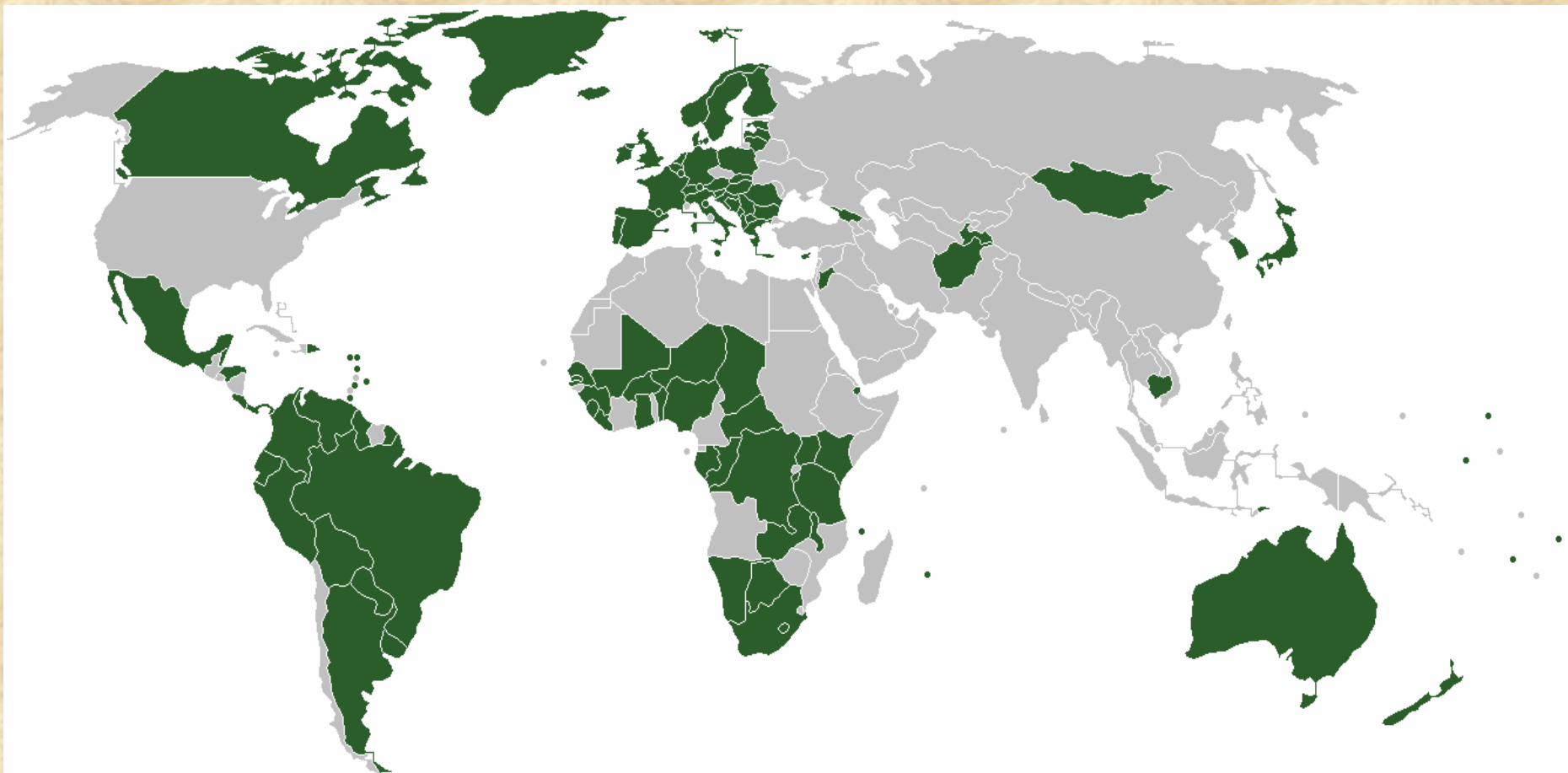
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The International Criminal Court Statute came into being on July 1st, 2002 after having been adopted by the Diplomatic Conference in Rome (June/July, 1998) with 120 votes in favour, 7 against (among these the USA, China, India and Israel) and 21 abstentions.

- 139 States have signed it
- 108 States have ratified it



Map of ratifications



Assembly of States Parties

Article 112

Assembly of States Parties

1. An Assembly of States Parties to this Statute is hereby established. [...].
2. The Assembly shall:
 - (a) Consider and adopt, as appropriate, recommendations of the Preparatory Commission;
 - (b) Provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;
 - (c) Consider the reports and activities of the Bureau established under paragraph 3 and take appropriate action in regard thereto;
 - (d) Consider and decide the budget for the Court;
 - (e) Decide whether to alter, in accordance with article 36, the number of judges;
 - (f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;
 - (g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence. [...]



Review of the Statute

Article 123

Review of the Statute

1. Seven years after the entry into force of this Statute the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to this Statute. Such review may include, but is not limited to, the list of crimes contained in article 5. [...]

2. At any time thereafter, at the request of a State Party and for the purposes set out in paragraph 1, the Secretary-General of the United Nations shall, upon approval by a majority of States Parties, convene a Review Conference.[...]

Preparatory Commission for the International Criminal Court

- Rules of procedure and evidence
- Elements of Crimes
- A relationship agreement between the Court and the United Nations
- Principles governing a Headquarters, to be negotiated with the Netherlands
- Financial rules
- An agreement on the privileges and immunities
- on privileges and immunities
- Budget for the first financial period
- Procedural rules for the Assembly of States Parties

Assembly of States Parties (September, 2002)

Approval of all texts and of the procedures for the nomination and election of judges and the prosecutor



Implementation of the International Criminal Court

- 1st election of judges (February, 2003)
- Constitution of the Court (March 11th, 2003)
- Election of the prosecutor (April 21st, 2003):
Luís Moreno Ocampo (Argentina)
- Election of the Court Registrar (June 24th, 2003): Bruno Cathala (France).
- Election of the deputy-prosecutor (September 9th, 2003): Serge Brammertz (Belgium)



Headquarters of the International Criminal Court: The Hague



President of the International Criminal Court



Philippe Kirsch
(Canada)

Prosecutor of the International Criminal Court



**Luís Moreno
Ocampo
(Argentina)**

Registrars of the International Criminal Court

**Bruno Cathala (France)
(2003-2008)**



Silvana Arbia (Italy)





Implementation of the International Criminal Court

- Election of the Board of Directors of the Trust Fund for Victims, created in 2002 (September 2003)
- Agreement on privileges and immunities (July 22nd, 2004)
- Agreement between the ICC and the UN (October, 2004)



The Court's first investigations

1. ***Situation in Democratic Republic of the Congo*** from July 1st, 2002. Prosecutor's announcement (September 2003). An initiative of the DRC (April 19th, 2004). Prosecutor's decision (June, 2004)
2. ***Situation in Uganda***. An initiative of Uganda (January 29th, 2004). Prosecutor's decision (July, 2004)
3. ***Situation in Darfur, Sudan***. An initiative of the Security Council, via Resolution 1593 (2005), March 31st. Prosecutor's decision (June, 2005)
4. ***Situation in Central African Republic*** from July 1st, 2002. An initiative of the Government (January 6th, 2005). Prosecutor's decision (May, 2007)



The Court's first investigations

Democratic Republic of the Congo from July, 2002

Thomas Lubanga Dyilo, founder of the "Union des Patriotes Congolais" (UPC) and of the "Forces Patriotiques pour la Libération du Congo" (FPLC). Former commander-in-chief of the FPLC and current President of the UPC.

Charges:

Conscripting and enlisting children under the age of 15 years and using them to participate actively in hostilities

(Article 8 (2) (b) (xxvi) or Article 8 (2) (e) (vii)



The Court's first investigations

Situation in the Democratic Republic of the Congo

First arrest by the ICC, March 17th, 2006:
Thomas Lubanga Dyilo



The Court's first investigations

Situation in the Democratic Republic of the Congo

Germain Katanga, former commander-in-chief of the Front for Patriotic Resistance in Ituri (FRPI)

Three charges of crimes against humanity (murder, inhumane acts and sexual slavery) and six charges of war crimes (in addition to those already cited, forcing children to participate in hostilities, directing attacks against the civilian population and pillaging).



The Court's first investigations

Situation in the Democratic Republic of the Congo

Second arrest by the ICC, October 17th, 2007:
Germain Katanga



The Court's first investigations

Situation in the Democratic Republic of the Congo

Mathieu Ngudjolo Chui, army colonel and former leader of the militia of the «Front des nationalistes et des intégrationnistes » (FNI) and of the Front for Patriotic Resistance in Ituri (FRPI), during the war of 1998-2003.

Three charges of crimes against humanity (200 murders, inhumane acts and sexual slavery) and six charges of war crimes (in addition to those cited, forcing children to participate in hostilities, directing attacks against the civilian population and pillaging).



The Court's first investigations

Situation in the Democratic Republic of the Congo

Third arrest by the ICC, February 6th, 2008:
Mathieu Ngudjolo Chui



The Court's first investigations

Situation in the Democratic Republic of the Congo

Bosco Ntaganda, Military chief-of-staff of the "Forces patriotiques pour la libération du Congo" (FPLC)

Cargos:

Conscripting and enlisting children under the age of 15 years and using them to participate actively in hostilities

(Article 8 (2) (b) (xxvi) or Article 8 (2) (e) (vii))



The Court's first investigations

Situation in Uganda

Five international warrants of arrest were issued against five commanders of the Lord's Resistance Army (LRA)

Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen y Raska Lukwiya, for ordering the commission of crimes falling under the competence of the Court



Wanted

KONY, Joseph



2006/26320 KONY JOSEPH



2006/26320 KONY JOSEPH



2006/26320 KONY JOSEPH



**ODHI AMBO,
OKOT**

Born _____ on _____
Nationality Uganda



**ONGWEN,
DOMINIC**

Born _____ on _____
Nationality Uganda

Legal Status	
Present family name:	KONY
Forename:	JOSEPH
Sex:	MALE
Date of birth:	(unknown)
Place of birth:	ODEK / OMORO / GULU, Uganda
Language spoken:	Acoli , Arabic , English , SWAHILI
Nationality:	Uganda

Physical description	
Height:	1.80 meter <-> 71 inches
Colour of eyes:	DARK BROWN
Colour of hair:	BLACK

Offences	
Categories of Offences:	CRIMES AGAINST HUMANITY , WAR CRIMES
Arrest Warrant Issued by:	THE HAGUE / ICC/INTERNATIONAL CRIMINAL COURT

IF YOU HAVE ANY INFORMATION CONTACT

YOUR NATIONAL OR LOCAL POLICE

[GENERAL SECRETARIAT OF INTERPOL](#)



**LUKWIYA,
RASKA**

Born _____ on _____
Nationality Uganda



OTTI, VINCENT

Born _____ on _____
Nationality Uganda

The Court's first investigations

Situation in Darfur, Sudan

International warrants of arrest issued for war crimes and crimes against humanity against:

AHMAD MUHAMMAD HARUN (« AHMAD HARUN ») former Minister of State for the Interior of the Government of Sudan (2003-2005) and currently Minister of State for Humanitarian Affairs, since 2006

MUHAMMAD ALI ABD-AL-RAHMAN (« ALI KUSHAYB »), one of the military leaders of the *Janjaouid* militia.



Other cases brought before the Court

- As of 10.2.2006: 1732 reports received from individuals or groups in 103 countries (60% from the USA, UK, France and Germany) and referring to 139 countries.
- 10 situations have been subjected to detailed analysis; three have led to investigations; two have been rejected and five are under study (among them Columbia and Ivory Coast).
Rejected: Venezuela and Iraq



International Criminal Court (www.icc-cpi.int)



The Coalition for the International Criminal Court
(www.iccnw.org)



UNIVERSITAT
ROVIRA I VIRGILI

THE INTERNATIONAL CRIMINAL COURT

- I. Historical background
- II. General characteristics of the Court
- III. The Court's scope of competence
- IV. Cooperation of States with the Court
- V. The Court's initial working phase
- VI. Complementary jurisdiction between the Court and national jurisdictions

SPAIN

Organic Law 6/1985, July 1st, on the Judiciary

Book 1: Referring to the extent and limits of the jurisdiction and to the staffing and organization of the Courts and Tribunals;

Title I: The extent and limits of the jurisdiction

Art. 23

Where criminal law is concerned, it shall be the responsibility of the Spanish courts to try cases for crimes and misdemeanours committed on Spanish territory or on board Spanish shipping vessels or aircraft, without prejudice to the provisions of international treaties to which Spain is a party.



2. They shall also be responsible for trying acts deemed to be offences under Spanish criminal law, even if they have been committed outside of Spanish territory, as long as those responsible for the offence in question are Spaniards or foreigners who have acquired Spanish nationality after the act was committed and as long as the following requirements are met:

- a) The act is punishable in the place where it was committed.
- b) The injured party or the public prosecutor reports it or presents a complaint to the Spanish courts.
- c) The offender has not been acquitted, pardoned or punished abroad, or, in the case of the latter has not completed the sentence. If the sentence has only partially been served, this shall be taken into account in order to reduce any sentence that might be applicable by the relevant proportion.



4. Spanish territory which are likely to be deemed to constitute the following offences punishable under Spanish law:

- a) Genocide.
- b) Terrorism.
- c) Piracy and the unlawful capture of aircraft.
- d) Falsification of foreign currency.
- e) Offences related to prostitution and the corruption of minors or the mentally disabled.
- f) Unlawful trafficking of psychotropic, toxic and narcotic drugs.
- g) Unlawful trafficking in human beings or clandestine immigration, whether of workers or otherwise. (OL 13/2007)
- h) Offences relating to the mutilation of female genitals, provided that those responsible are in Spanish territory (OL 3/2005).

- i) And any other offence which Spain has a duty to prosecute under international treaties and conventions.

Proceedings undertaken in international crime

- **Chile - Argentina**

- Adolfo F. Scilingo (sentence: 19.4.2005; sentence: 4.7.2007)
- Ricardo M. Cavallo, Fotea y Taddei, extradited
- other extraditions requested of Argentina

- **Guatemala**

- 7.7.06: 7 extraditions requested: (three ex-presidents: José Efraín Ríos Montt, Oscar Humberto Mejía Victores, Fernando Romeo Lucas, deceased en Venezuela). Renewed request, December, 2006.
- 8.11.06: Arrest of generals Aníbal Guevara, Minister of defence and Germán Chupina, Director General of Police (1978-1982) in Guatemala.
- 4.12.07: Decision of the Guatemala Constitutional Court



Proceedings undertaken in international crime (2)

- **Caso Couso**, action against 3 American soldiers
(admitted 5.12.06)
- **Great African Lakes** (admitted 6.4.2005)
- **China – Tibet** (admitted 10.1.2006)
- **Secret CIA Flights** (admitted 12.6.06)
- **China - *Falun Gong*** (admitted 20.6.06)
- **Western Sahara** (admitted 29.10.07)
- ***Columbia*** (not admitted 22.5.2006); Appeal CT.
- **El Salvador**, action October, 2008



Organic Law 18/2003, December 10th: Cooperation with the International Criminal Court

Article 7. Application to begin an investigation by the Court Prosecutor

1. In accordance with articles 13, paragraph a) and article 14 of the Statute, decisions about whether to present complaints to the Court Prosecutor or, in accordance with article 53.3 a) of the Statute, to request that the Pre-Trial Division ask the Prosecutor to reconsider his decision not to commence proceedings, will be taken exclusively by the Government via decision of the Council of Ministers. Where appropriate, the Government shall require of the Court of First Hearing that the Prosecutor reconsider his decision not to proceed, Article 53.3 a).



Project of the Organic Law of Cooperation with The International Criminal Court

Article 7. Application to the Court Prosecutor to begin an investigation [...]

2. When an accusation or complaint is presented before a judicial body or before the Prosecutor's Office, or an application is presented before a ministerial department, in relation to crimes committed in another country allegedly by non-Spanish nationals, for whose trial the Court may be the competent body, the above bodies will abstain from the proceedings and limit themselves to informing the accuser, plaintiff or applicant about the possibility of going directly to the Court Prosecutor, who may begin an investigation. This is without prejudice to the above bodies, whenever necessary, taking the first procedural steps for which they have jurisdiction. Also in these circumstances, the judicial bodies and the Prosecutor's Office will refrain from opening proceedings at their own initiative.



Organic Law 18/2003, December 10th: Cooperation with the International Criminal Court

*Article 7. Application to begin an investigation by the
Court Prosecutor.[...]*

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Organic Law 18/2003, December 10th: Cooperation with the International Criminal Court

*Article 7. Application to begin an investigation by the Court
Prosecutor. [...]*

3. However, if the Court Prosecutor decides not to open the investigation, or the Court decides that the case is inadmissible, the complaint, action or application may be re-presented before the appropriate bodies.

