

INTERNATIONAL CRIMINAL COURT

OVERVIEW

It has been 50 years since the United Nations first recognized the need to establish an international criminal court, to prosecute crimes such as genocide. In resolution 260 of 9 December 1948, the General Assembly, “Recognizing that at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required”, adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Article I of that convention characterizes genocide as “a crime under international law”, and article VI provides that persons charged with genocide “shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction . . .” In the same resolution, the General Assembly also invited the International Law Commission “to study the desirability and possibility of establishing an international judicial organ for the trial of persons charged with genocide . . .”

Following the Commission’s conclusion that the establishment of an international court to try persons charged with genocide or other crimes of similar gravity was both desirable and possible, the General Assembly established a committee to prepare proposals relating to the establishment of such a court. The committee prepared a draft statute in 1951 and a revised draft statute in 1953. The General Assembly, however, decided to postpone consideration of the draft statute pending the adoption of a definition of aggression.

Since that time, the question of the establishment of an international criminal court has been considered periodically. In December 1989, in response to a request by Trinidad and Tobago, the General Assembly asked the International Law Commission to resume work on an international criminal court with jurisdiction to include drug trafficking. Then, in 1993, the conflict in the former Yugoslavia erupted, and war crimes, crimes against humanity and genocide — in the guise of “ethnic cleansing” — once again commanded international attention. In an effort to bring an end to this widespread human suffering, the UN Security Council established the ad hoc International Criminal Tribunal for the Former Yugoslavia, to hold individuals accountable for those atrocities and, by so doing, deter similar crimes in the future.

Shortly thereafter, the International Law Commission successfully completed its work on the draft statute for an international criminal court and in 1994 submitted the draft statute to the General Assembly. To consider major substantive issues arising from that draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. After the General Assembly had considered the Committee’s report, it created the Preparatory Committee on the Establishment of an International Criminal Court to prepare a widely acceptable consolidated draft text for submission to a diplomatic conference. The Preparatory Committee, which met from 1996 to 1998, held its final session in March and April of 1998 and completed the drafting of the text.

At its fifty-second session, the General Assembly decided to convene the [United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court](#), subsequently held in Rome, Italy, from 15 June to 17 July 1998, “to finalize and adopt a convention on the establishment of an international criminal court”.

“In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished.” — Kofi Annan, United Nations Secretary-General

PEACE AND JUSTICE

One of the primary objectives of the United Nations is securing universal respect for human rights and fundamental freedoms of individuals throughout the world. In this connection, few topics are of greater importance than the fight against impunity and the struggle for peace and justice and human rights in conflict situations in today’s world. The establishment of a permanent international criminal court (ICC) is seen as a decisive step forward. The international community met in Rome, Italy, from 15 June to 17 July 1998 to finalize a draft statute which, when ratified, will establish such a court.

Why Do we Need an International Criminal Court?

... To achieve justice for all

“For nearly half a century — almost as long as the United Nations has been in existence — the General Assembly has recognized the need to establish such a court to prosecute and punish persons responsible for crimes such as genocide. Many thought . . . that the horrors of the Second World War — the camps, the cruelty, the exterminations, the Holocaust — could never happen again. And yet they have. In Cambodia, in Bosnia and Herzegovina, in Rwanda. Our time — this decade even — has shown us that man’s capacity for evil knows no limits. Genocide . . . is now a word of our time, too, a heinous reality that calls for a historic response.” — Kofi Annan, United Nations Secretary-General

An international criminal court has been called the missing link in the international legal system. The International Court of Justice at The Hague handles only cases between States, not individuals. Without an international criminal court for dealing with individual responsibility as an enforcement mechanism, acts of genocide and egregious violations of human rights often go unpunished. In the last 50 years, there have been many instances of crimes against humanity and war crimes for which no individuals have been held

accountable. In Cambodia in the 1970s, an estimated 2 million people were killed by the Khmer Rouge. In armed conflicts in Mozambique, Liberia, El Salvador and other countries, there has been tremendous loss of civilian life, including horrifying numbers of unarmed women and children. Massacres of civilians continue in Algeria and the Great Lakes region of Africa.

... To end impunity

"A person stands a better chance of being tried and judged for killing one human being than for killing 100,000."
— José Ayala Lasso, former United Nations High Commissioner for Human Rights

The Judgment of the Nürnberg Tribunal stated that "crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced" — establishing the principle of individual criminal accountability for all who commit such acts as a cornerstone of international criminal law. According to the [Draft Code of Crimes against the Peace and Security of Mankind](#), completed in 1996 by the International Law Commission at the request of the General Assembly, this principle applies equally and without exception to any individual throughout the governmental hierarchy or military chain of command. And the Convention on the Prevention and Punishment of the Crime of Genocide adopted by the United Nations in 1948 recognizes that the crime of genocide may be committed by constitutionally responsible rulers, public officials or private individuals.

... To help end conflicts

"There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance." — Benjamin B. Ferencz, a former Nürnberg prosecutor

In situations such as those involving ethnic conflict, violence begets further violence; one slaughter is the parent of the next. The guarantee that at least some perpetrators of war crimes or genocide may be brought to justice acts as a deterrent and enhances the possibility of bringing a conflict to an end. Two ad hoc international criminal tribunals, one for the former Yugoslavia and another for Rwanda, were created in this decade with the hope of hastening the end of the violence and preventing its recurrence.

... To remedy the deficiencies of ad hoc tribunals

The establishment of an ad hoc tribunal immediately raises the question of "selective justice". Why has there been no war crimes tribunal for the "killing fields" in Cambodia? A permanent court could operate in a more consistent way.

Reference has been made to "tribunal fatigue". The delays inherent in setting up an ad hoc tribunal can have several consequences: crucial evidence can deteriorate or be destroyed; perpetrators can escape or disappear; and witnesses can relocate or be intimidated. Investigation becomes increasingly expensive, and the tremendous expense of ad hoc tribunals may soften the political will required to mandate them.

Ad hoc tribunals are subject to limits of time or place. In the last year, thousands of refugees from the ethnic conflict in Rwanda have been murdered, but the mandate of that Tribunal is limited to events that occurred in 1994. Crimes committed since that time are not covered.

... To take over when national criminal justice institutions are unwilling or unable to act

"Crimes under international law by their very nature often require the direct or indirect participation of a number of individuals at least some of whom are in positions of governmental authority or military command."
— Report of the International Law Commission, 1996

Nations agree that criminals should normally be brought to justice by national institutions. But in times of conflict, whether internal or international, such national institutions are often either unwilling or unable to act, usually for one of two reasons. Governments often lack the political will to prosecute their own citizens, or even high-level officials, as was the case in the former Yugoslavia. Or national institutions may have collapsed, as in the case of Rwanda.

... To deter future war criminals

"From now on, all potential warlords must know that, depending on how a conflict develops, there might be established an international tribunal before which those will be brought who violate the laws of war and humanitarian law. . . . Everyone must now be presumed to know the contents of the most basic provisions of international criminal law; the defence that the suspects were not aware of the law will not be permissible." — Hans Corell, United Nations Under-Secretary-General for Legal Affairs

Most perpetrators of war crimes and crimes against humanity throughout history have gone unpunished. In spite of the military tribunals following the Second World War and the two recent ad hoc international criminal tribunals for the former Yugoslavia and for Rwanda, the same holds true for the twentieth century. That being said, it is reasonable to conclude that most perpetrators of such atrocities have believed that their crimes would go unpunished. Effective deterrence is a primary objective of those working to establish the international criminal court. Once it is clear that the international community will no longer tolerate such monstrous acts without assigning responsibility and meting out appropriate punishment — to heads of State and commanding officers as well as to the lowliest soldiers in the field or militia recruits — it is hoped that those who would incite a genocide; embark on a campaign of ethnic cleansing; murder, rape and brutalize civilians caught in an armed conflict; or use children for barbarous medical experiments will no longer find willing helpers.

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Signatories/ Ratification of International Criminal Court [mid- June 2002]

Participant	Signature	Ratification
Albania	18 Jul 1998	
Algeria	28 Dec 2000	
Andorra	18 Jul 1998	30 Apr 2001
Angola	7 Oct 1998	
Antigua/ Barbuda	23 Oct 1998	18 Jun 2001
Argentina	8 Jan 1999	8 Feb 2001
Armenia	1 Oct 1999	
Australia	9 Dec 1998	
Austria	7 Oct 1998	28 Dec 2000
Bahamas	29 Dec 2000	
Bahrain	11 Dec 2000	
Bangladesh	16 Sep 1999	
Barbados	8 Sep 2000	
Belgium	10 Sep 1998	28 Jun 2000
Belize	5 Apr 2000	5 Apr 2000
Benin	24 Sep 1999	22 Jan 2002
Bolivia	17 Jul 1998	
Bosnia/ Herzegovina	17 Jul 2000	11 Apr 2002
Botswana	8 Sep 2000	8 Sep 2000
Brazil	7 Feb 2000	
Bulgaria	11 Feb 1999	11 Apr 2002
Burkina Faso	30 Nov 1998	
Burundi	13 Jan 1999	
Cambodia	23 Oct 2000	11 Apr 2002
Cameroon	17 Jul 1998	
Canada	18 Dec 1998	7 Jul 2000
Cape Verde	28 Dec 2000	
Central African Rep	7 Dec 1999	3 Oct 2001
Chad	20 Oct 1999	
Chile	11 Sep 1998	
Colombia	10 Dec 1998	
Comoros	22 Sep 2000	
Congo	17 Jul 1998	
Costa Rica	7 Oct 1998	7 Jun 2001
Côte d'Ivoire	30 Nov 1998	
Croatia	12 Oct 1998	21 May 2001
Cyprus	15 Oct 1998	7 Mar 2002
Czech Republic	13 Apr 1999	
Dem Rep Congo	8 Sep 2000	11 Apr 2002
Denmark	25 Sep 1998	21 Jun 2001
Djibouti	7 Oct 1998	
Dominica		12 Feb 2001 a
Dominican Republic	8 Sep 2000	
Ecuador	7 Oct 1998	5 Feb 2002
Egypt	26 Dec 2000	
Eritrea	7 Oct 1998	
Estonia	27 Dec 1999	30 Jan 2002
Fiji	29 Nov 1999	29 Nov 1999
Finland	7 Oct 1998	29 Dec 2000
France	18 Jul 1998 9	Jun 2000
Gabon	22 Dec 1998	20 Sep 2000
Gambia	4 Dec 1998	
Georgia	18 Jul 1998	
Germany	10 Dec 1998	11 Dec 2000
Ghana	18 Jul 1998	20 Dec 1999
Greece	18 Jul 1998	15 May 2002
Guinea	7 Sep 2000	
Guinea-Bissau	12 Sep 2000	
Guyana	28 Dec 2000	
Haiti	26 Feb 1999	
Honduras	7 Oct 1998	
Hungary	15 Jan 1999	30 Nov 2001
Iceland	26 Aug 1998	25 May 2000
Iran	31 Dec 2000	
Ireland	7 Oct 1998	11 Apr 2002
Israel	31 Dec 2000	
Italy	18 Jul 1998	26 Jul 1999
Jamaica	8 Sep 2000	
Jordan	7 Oct 1998	11 Apr 2002
Kenya	11 Aug 1999	
Kuwait	8 Sep 2000	

Kyrgyzstan	8 Dec 1998	
Latvia	22 Apr 1999	
Lesotho	30 Nov 1998	6 Sep 2000
Liberia	17 Jul 1998	
Liechtenstein	18 Jul 1998	2 Oct 2001
Lithuania	10 Dec 1998	
Luxembourg	13 Oct 1998	8 Sep 2000
Madagascar	18 Jul 1998	
Malawi	2 Mar 1999	
Mali 1	7 Jul 1998	16 Aug 2000
Malta	17 Jul 1998	
Marshall Islands	6 Sep 2000	7 Dec 2000
Mauritius	11 Nov 1998	5 Mar 2002
Mexico	7 Sep 2000	
Monaco	18 Jul 1998	
Mongolia	29 Dec 2000	11 Apr 2002
Morocco	8 Sep 2000	
Mozambique	28 Dec 2000	
Namibia	27 Oct 1998	
Nauru	13 Dec 2000	12 Nov 2001
Netherlands	18 Jul 1998	17 Jul 2001 A
New Zealand	7 Oct 1998	7 Sep 2000
Niger	17 Jul 1998	11 Apr 2002
Nigeria	1 Jun 2000	27 Sep 2001
Norway	28 Aug 1998	16 Feb 2000
Oman	20 Dec 2000	
Panama	18 Jul 1998	21 Mar 2002
Paraguay	7 Oct 1998	14 May 2001
Peru	7 Dec 2000	10 Nov 2001
Philippines	28 Dec 2000	
Poland	9 Apr 1999	12 Nov 2001
Portugal	7 Oct 1998	5 Feb 2002
Republic of Korea	8 Mar 2000	
Rep. of Moldova	8 Sep 2000	
Romania	7 Jul 1999	11 Apr 2002
Russian Federation	13 Sep 2000	
Saint Lucia	27 Aug 1999	
Samoa	17 Jul 1998	
San Marino	18 Jul 1998	13 May 1999
Sao Tome/Principe	28 Dec 2000	
Senegal	18 Jul 1998	2 Feb 1999
Seychelles	28 Dec 2000	
Sierra Leone	17 Oct 1998	15 Sep 2000
Slovakia	23 Dec 1998	11 Apr 2002
Slovenia	7 Oct 1998	31 Dec 2001
Solomon Islands	3 Dec 1998	
South Africa	17 Jul 1998	27 Nov 2000
Spain	18 Jul 1998	24 Oct 2000
Sudan	8 Sep 2000	
Sweden	7 Oct 1998	28 Jun 2001
Switzerland	18 Jul 1998	12 Oct 2001
Syrian Arab Rep	29 Nov 2000	
Tajikistan	30 Nov 1998	5 May 2000
Thailand	2 Oct 2000	
Former Macedonia	7 Oct 1998	6 Mar 2002
Trinidad and Tobago	23 Mar 1999	6 Apr 1999
Uganda	17 Mar 1999	14 Jun 2002
Ukraine	20 Jan 2000	
Un. Arab Emirates	27 Nov 2000	
UK/ N. Ireland	30 Nov 1998	4 Oct 2001
Republic Tanzania	29 Dec 2000	
USA	31 Dec 2000	
Uruguay	19 Dec 2000	
Uzbekistan	29 Dec 2000	
Venezuela	14 Oct 1998	7 Jun 2000
Yemen	28 Dec 2000	
Yugoslavia	19 Dec 2000	6 Sep 2001
Zambia	17 Jul 1998	
Zimbabwe	17 Jul 1998	