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THE INTERNATIONAL CRIMINAL COURT: HISTORY AND ROLE

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The International Criminal Court: History and Role
(HillStudies)

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CONTENTS

EXECUTIVE SUMMARY	
1	INTRODUCTION.....1
2	THE ROAD TO ROME.....1
2.1	Post-war Advances in International Criminal Law.....2
2.2	International Criminal Tribunals for the Former Yugoslavia and Rwanda.....3
2.3	Rome Conference.....3
3	THE ROME STATUTE AND THE INTERNATIONAL CRIMINAL COURT.....4
3.1	Jurisdiction of the International Criminal Court.....4
3.2	Crimes Under the International Criminal Court's Jurisdiction.....5
3.2.1	Genocide.....6
3.2.2	Crimes Against Humanity.....6
3.2.3	War Crimes.....7
3.2.4	Crime of Aggression.....8
3.3	International Criminal Court Judges and Court Administration.....8
3.4	Office of the Prosecutor.....8
3.5	Chambers.....10
3.5.1	Pre-Trial Chamber.....10
3.5.2	Trial and Appeals Chambers.....10
3.6	Victim Assistance and Participation.....11
4	INTERNATIONAL CRIMINAL COURT AT WORK.....11
4.1	States Parties to the Rome Statute.....12
4.2	International Criminal Court Investigations and Preliminary Examinations.....12
4.3	International Criminal Court Cases and Trials.....14
4.4	Selected Recent Cases.....14
4.4.1	<i>Bemba, Bemba et al.</i>14
4.4.2	<i>Gbagbo and Blé Goudé</i>15
4.4.3	<i>Ntaganda</i>16
5	CRITICISMS OF THE INTERNATIONAL CRIMINAL COURT.....16

5.1	Chambers	17
5.2	Office of the Prosecutor	18
5.3	States Parties	19
5.4	Focus on Africa	19
5.5	International Criminal Court and the United States	20
6	CONCLUSION	21

APPENDIX – OVERVIEW OF ALL INTERNATIONAL CRIMINAL COURT CASES

EXECUTIVE SUMMARY

On 1 July 2002, a group of countries around the world established the International Criminal Court (ICC or the Court) as a forum to investigate and prosecute those responsible for the world's most serious crimes. The *Rome Statute of the International Criminal Court* (Rome Statute), which governs the ICC and today has 123 states parties, builds on the legacy of the ad hoc international tribunals that preceded it, marking a milestone in the advancement of international criminal law.

With jurisdiction over the crimes of genocide, crimes against humanity, war crimes and the crime of aggression, the ICC is a court of last resort for serious offences that national governments are unable or unwilling to investigate and prosecute. The ICC's Office of the Prosecutor (OTP) is an independent organ of the Court with the power to initiate investigations, subject to certain limitations. ICC investigations may also be initiated at the request of ICC states parties or the United Nations Security Council. The ICC's 18 judges are elected by states parties to the Rome Statute, and the Court is divided into pre-trial, trial and appeals chambers. The ICC also recognizes the right of victims to participate in proceedings and provides support to assist them.

As of November 2022, the OTP had opened 17 investigations regarding situations in 16 countries. These investigations led to charges in 33 cases involving 49 defendants. Many of these cases are either ongoing – in a number of instances, because the accused are not in custody – or have ended prior to a verdict being reached. In total, the ICC has convicted five individuals for crimes under its jurisdiction and five others for crimes related to ICC proceedings, such as witness tampering.

Now more than 20 years old, the ICC has become an established, if controversial, part of the international landscape. The Court has demonstrated the viability of a permanent institution that can successfully investigate and prosecute international crimes, but its record of securing convictions has proven underwhelming. Recognizing the need for reform, the ICC states parties commissioned an independent review of the Rome Statute system in December 2019. In their final report, the experts made hundreds of recommendations for improvement, targeting all branches of the institution and the ICC states parties themselves.

The ICC faces challenges from other corners as well. Criticism of the ICC's record from Africa has been particularly pointed; it includes accusations of racism and calls for the mass withdrawal of African countries from the ICC. The United States, among other powerful nations, continues to operate outside the Rome Statute system and is at times hostile to its operations.

Despite these challenges, the ICC's mandate to end impunity for atrocities committed around the world remains as relevant today as it was the day the institution was founded, and the Court continues to move international criminal law forward to that end.

THE INTERNATIONAL CRIMINAL COURT: HISTORY AND ROLE

1 INTRODUCTION

In 1998, a group of countries signed a treaty with the goal of ending impunity for the world's most serious crimes by establishing a permanent international criminal tribunal, the International Criminal Court (ICC or the Court). The *Rome Statute of the International Criminal Court*¹ (Rome Statute) marked a milestone in the development of international criminal law as states recognized the need to reach beyond the ad hoc solutions that preceded the ICC and build a court with broad jurisdiction to investigate, try and punish perpetrators of atrocities around the world. Officially created in 2002, the ICC has now become an established, if controversial, feature of the international landscape.

After two decades, the ICC has seemingly proven both its harshest critics and its most enthusiastic supporters wrong. The Court's record demonstrates that prosecuting people responsible for international crimes is possible, but it is a complex, time-consuming endeavour. Although its successful conviction of even a small number of perpetrators may assuage doubts about the ICC's viability, its lofty goals of ending impunity and deterring atrocities remain unattained.

This paper provides an overview of the historical development of international criminal law and a summary of the Rome Statute. It discusses the role and functioning of the ICC before proceeding to a review of the Court's record to date and a discussion of the criticisms the ICC faces today.

2 THE ROAD TO ROME

Having transitioned from a system of impunity to one of justice administered by victors over the vanquished, the international community is now witnessing the development of what many suggest is an impartial system of international criminal justice. Building on the legacy of the post-World War II period, the ad hoc tribunals established in the early 1990s catalyzed a push for a permanent international court and for the negotiation of the Rome Statute later in the same decade.

2.1 POST-WAR ADVANCES IN INTERNATIONAL CRIMINAL LAW

The concept of an international criminal court was identified as early as the 15th century, and by the late 19th century, international criminal law began to emerge in the form of violations of rules governing military conflict.² However, it was not until the end of World War II that the modern concept of international criminal law began to take shape. Nazi Germany launching an offensive military campaign and committing startling atrocities prompted the Allied powers to place “among their principal war aims the punishment, through the channel of organized justice, of those guilty of or responsible for these crimes, regardless of whether they have ordered them, perpetrated them or participated in them.”³

In pursuit of that goal following the war, the International Military Tribunal, sitting at Nuremberg, and the International Military Tribunal for the Far East, sitting at Tokyo, were established.

At Nuremberg, prosecutors from the major allied powers were responsible for investigating and prosecuting major war criminals responsible for the commission of “crimes against peace,” “war crimes” and “crimes against humanity.”⁴ After a ten-month trial, the Tribunal issued its final judgment in 1946, acquitting three defendants and sentencing 19 others to imprisonment or death.

Three organizations were also acquitted, while another three were found to be criminal organizations.⁵

In Tokyo, a tribunal of a similarly international character and almost identical charter was established. The Tokyo Tribunal trials lasted more than two years and all of the accused were found guilty and sentenced to imprisonment or death.

The tribunals were part of a larger post-war initiative to advance international criminal law. In 1948, the *Convention on the Prevention and Punishment of the Crime of Genocide*⁶ (Genocide Convention) was adopted, marking the first international recognition that “genocide, whether committed in time of peace or in time of war, is a crime under international law.”⁷ The following year, the Geneva Conventions of 1949, comprising four treaties, were adopted.⁸ These four treaties called on the states to criminalize grave breaches of international humanitarian law. When the United Nations (UN) General Assembly adopted the Genocide Convention, it also invited the International Law Commission (ILC) – a committee of legal experts working to develop and codify international law – to examine the possibility of establishing a permanent international criminal court.⁹

With the onset of the Cold War, post-war cooperation to advance international criminal law slowed dramatically. However, in 1990, the ILC's post-Nuremberg project was revived following a special session of the UN General Assembly focused on international drug trafficking prosecutions and a well-received ILC report that went beyond this limited issue. Building on this success, the ILC resumed the task of preparing a draft statute for a comprehensive international criminal court.¹⁰ The move proved timely as it coincided with the return of international criminal justice to the agenda of the international community in response to atrocities in Yugoslavia and Rwanda.

2.2 INTERNATIONAL CRIMINAL TRIBUNALS FOR THE FORMER YUGOSLAVIA AND RWANDA

In the early 1990s, two ad hoc tribunals were created as subsidiary organs of the UN Security Council: the International Criminal Tribunal for the former Yugoslavia (ICTY),¹¹ formed in 1993, and the International Criminal Tribunal for Rwanda (ICTR),¹² founded in 1994. The ICTY and ICTR both operated for more than 20 years, and more than 150 individuals were convicted for international crimes committed in the two countries.¹³

Despite some significant cynicism about the time and money spent, the ability of these tribunals to achieve true peace and reconciliation, and difficulties arresting those indicted by the ICTY,¹⁴ both tribunals have contributed to historic progress in international criminal law. Louise Arbour, a former justice of the Supreme Court of Canada and a chief prosecutor of the tribunals, described the tribunals as “a procedural and a practical laboratory for the enforcement of the laws of war.”¹⁵ Later commentators credited the tribunals’ jurisprudence as “fundamental in shaping the statutes and jurisprudence”¹⁶ of the ICC and enhancing “the quality of its reasoning and the legitimacy of its judgments” in the early years of its existence.¹⁷

Despite these achievements, it took two years of negotiations and preparation to establish the ICTY and ICTR, leading many observers to point to the necessity of a permanent court that would avoid the time-consuming establishment process and that could also address smaller-scale incidents that might not garner the political will to establish another ad hoc tribunal.¹⁸

2.3 ROME CONFERENCE

In 1994, the ILC submitted a draft statute for an international criminal court to the UN General Assembly,¹⁹ and the Preparatory Commission for the Establishment of an International Criminal Court was founded in 1996. An amended draft statute was submitted in April 1998, setting the stage for the five-week conference held in Rome starting in June of that year.

Although jurisdictional issues were the most complex and most sensitive, the *proprio motu* prosecutor model (a prosecutor who has the power to initiate proceedings) did receive “considerable, but not general, support.”²⁰ As the conference was nearing its conclusion and no agreement was evident, the Bureau of the Committee of the Whole²¹ decided to prepare a final package for possible adoption, as many feared that a second conference stood no better chance of success. The Bureau’s package was adopted in a final vote of 120 in favour, 21 abstaining and seven against.

The United States (U.S.) voted against the Rome Statute – along with China, Iraq, Israel, Libya, Qatar and Yemen – then signed it on 31 December 2000, the last day the treaty was open for signature. In a blow to the nascent court, the U.S. then retracted its signature in May 2002, when John Bolton, then Under Secretary of State for Arms Control and International Security, sent a letter to the UN stating that the U.S. did not intend to become a party to the Rome Statute and formally renouncing any obligations under the treaty.²²

Canada ratified the Rome Statute in July 2000, after enacting the *Crimes Against Humanity and War Crimes Act*²³ to carry out its obligations under the Rome Statute and to enhance its ability to prosecute war crimes and crimes against humanity.

3 THE ROME STATUTE AND THE INTERNATIONAL CRIMINAL COURT

The ICC came into being on 1 July 2002 with the entry into force of the Rome Statute. The Rome Statute is accompanied by the primary legal texts of the ICC – the Regulations of the Court, the Rules of Procedure and Evidence, and the Elements of Crimes – which explain the structure, functions and jurisdiction of the Court.²⁴

3.1 JURISDICTION OF THE INTERNATIONAL CRIMINAL COURT

Broadly speaking, the Court has jurisdiction over those individuals directly responsible for committing crimes listed in the Rome Statute, as well as others who may be indirectly responsible, such as military commanders, political leaders or other superiors.²⁵ The Court’s jurisdiction is limited to offences committed after the entry into force of the Rome Statute.²⁶

An ICC investigation may be initiated based on a referral from either the UN Security Council pursuant to Chapter VII of the UN Charter²⁷ or a state party to the Rome Statute. The Office of the Prosecutor (OTP) may also initiate investigations independently, or *proprio motu*, subject to court authorization.²⁸ For state- or prosecutor-initiated investigations, article 12 restricts the ICC’s jurisdiction to crimes committed on the territory of a state party or those committed by a national of a state party, except where the relevant non-state party accepts the jurisdiction of the Court.

The ICC is a court of last resort, and based on the principle of complementarity, it may not pursue cases which are or were the subjects of credible investigations or prosecutions by a state with jurisdiction over the offences. Under article 17 of the Rome Statute, cases that are or have been the subject of a national investigation and/or prosecution are inadmissible in the ICC, unless the state in question is “unwilling or unable genuinely to carry out the investigation or prosecution.”²⁹ This deference to national courts extends to cases where states exercise extraterritorial jurisdiction over crimes within the ICC’s jurisdiction, for example, as allowed for in Canada’s *Crimes Against Humanity and War Crimes Act*.³⁰

3.2 CRIMES UNDER THE INTERNATIONAL CRIMINAL COURT’S JURISDICTION

The ICC has jurisdiction over the “most serious crimes of concern to the international community,” namely four core crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression.³¹ As a last-minute compromise during the Rome conference, the crime of aggression was listed as a crime under the Court’s jurisdiction, but exercise of the jurisdiction was deferred until amendments to the Rome Statute were made to define the crime and set conditions on the Court’s jurisdiction. In June 2010, the ICC’s Assembly of States Parties (ASP) adopted these amendments.³² The amendments came into force on 17 July 2018 following their ratification by more than 30 states parties to the Rome Statute.³³ Canada has not ratified the amendments, limiting the ICC’s jurisdiction over crimes of aggression committed on Canadian territory or by Canadian nationals.³⁴

The Rome Statute sets out each crime under its jurisdiction and establishes the conditions for individual criminal responsibility of accused persons. Article 9 of the Rome Statute authorizes the ASP to adopt and subsequently amend the ICC’s Elements of Crimes³⁵ (EOC) to assist in the interpretation and application of the statute. Under article 21, EOC has equal status to the Rome Statute as a primary legal source for the Court.³⁶ EOC elaborates on the provisions of the Rome Statute and establishes the specific elements required for each specific type of crime, for example genocide by killing members of a group under article 6(a), or the crime against humanity of torture under article 7(1)(f).

3.2.1 Genocide

Often referred to as the “crime of crimes” after the Nuremberg Trials,³⁷ genocide was first defined in international law in the 1948 Genocide Convention. Article 6 of the Rome Statute adopts the definition of genocide as originally set out in article 2 of the Genocide Convention:

In the present Convention, 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.³⁸

The definition of genocide creates a dual intent requirement: the general criminal intent to commit the act in question (e.g., killing, serious bodily harm) and a specific intent of committing the act in pursuit of the goal of destroying a defined group, in whole or in part.³⁹ EOC adds a contextual element to the definition, requiring that the act take place within “a manifest pattern of similar conduct directed against that group or was conduct that could itself effect such destruction.”⁴⁰ The ICC Pre-Trial Chamber has interpreted this contextual requirement as meaning the threat to the group in question must be “concrete and real.”⁴¹

3.2.2 Crimes Against Humanity

The concept of crimes against humanity has existed in international law for at least a century, and its articulation in article 7 of the Rome Statute has been described as both a codification and advancement of the concept under customary international law.⁴² Article 7(1) enumerates 11 underlying crimes, including murder, enslavement, and torture, which may constitute crimes against humanity. Under this article, like genocide, crimes against humanity require that the crimes be committed within a specific context, namely, “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.”

Article 7(2) defines such an attack as “a course of conduct involving the multiple commission” of the underlying crimes listed in article 7(1), committed “pursuant to or in furtherance of a State or organizational policy.” The EOC further stipulates that the attack need not be a military attack and that under exceptional circumstances, the policy requirement may be fulfilled by a “deliberate failure to take action,” rather than actively encouraging or promoting the attack.⁴³

Unlike genocide, there is no discrimination requirement, meaning the targeted population need not be members of a defined group. Also, in contrast to war crimes, there is no requirement that the crime take place in the context of an armed conflict.

3.2.3 War Crimes

War crimes under article 8 of the Rome Statute incorporate international crimes found in other international instruments, most notably the Geneva Conventions, as well as crimes which had not been previously codified in international law.⁴⁴ Article 8(2)(a) of the Rome Statute criminalizes acts committed against persons and property protected by the Geneva Conventions – including the sick and wounded, prisoners of war and civilians – while article 8(2)(b) criminalizes “[o]ther serious violations of the laws and customs applicable in international armed conflict.”⁴⁵

Similarly, for conflicts not of an international character, article 8(2)(c) criminalizes serious violations of article 3 common to all four of the Geneva Conventions, while article 8(2)(e) criminalizes other serious violations of laws and customs applicable in that context.⁴⁶ Crimes relating to non-international conflicts are subject to an intensity threshold⁴⁷ under articles 8(2)(d) and 8(2)(f), which excludes situations of “internal disturbances and tensions” from the Court’s jurisdiction.

Through articles 8(2)(b)(xxii) and 8(2)(e)(vi), the Rome Statute became the first instrument to list forms of sexual violence, such as rape, sexual slavery, enforced prostitution, forced pregnancy and enforced sterilization, as distinct types of war crimes.⁴⁸ The Rome Statute was also the first to establish an ecological war crime under article 8(2)(b)(iv) for attacks that result in “long-term and severe damage to the natural environment.”

As part of a nexus requirement for war crimes, the crimes must be committed “in the context of” and be “associated with an armed conflict.”⁴⁹ Additional knowledge requirements apply to some war crimes, such as being aware of the circumstances that would lead to a person being considered a protected person under the Geneva Conventions.

The ASP passed amendments to article 8 in 2010, 2017 and 2019, adding crimes for non-international conflicts that already existed for international conflicts and establishing new crimes for the use of certain types of weapons. Like the crime of aggression, discussed below, these amendments are in force for parties that have ratified them,⁵⁰ currently a minority of the states parties. Canada has not ratified any of the amendments to article 8.

3.2.4 Crime of Aggression

In 2018, the ICC became the first international tribunal since the Nuremburg Tribunal – where the lead charge was crimes against peace – to have jurisdiction over the crime of aggression.⁵¹ Article 8*bis*(1) of the Rome Statute limits the application of the crime of aggression to persons “in a position effectively to exercise control over” a state or to persons in a position to direct the political or military action of the state. The provision criminalizes any use of force against another state which would constitute “a manifest violation of the Charter of the United Nations,” including those acts enumerated in article 8*bis*(2). As of November 2022, the OTP has not undertaken any investigation relating to a crime of aggression.

3.3 INTERNATIONAL CRIMINAL COURT JUDGES AND COURT ADMINISTRATION

The administration of the ICC is ensured by three judges – a president and two vice-presidents – elected by and from a pool of 18 sitting ICC judges for a three-year renewable term. These three judges are responsible for the general administration of the Court, except for the OTP. A judge is elected by the ASP to a non-renewable nine-year term. The ICC’s first president was Philippe Kirsch of Canada.

The ICC’s other primary administrative body is the Registry, which is responsible for the non-judicial aspects of the Court’s administration. Funding for the ICC’s operations is raised through contributions assessed to its members, based on the scale of assessment used by the UN. Additional funds may also be raised through voluntary contributions by members and the UN.⁵²

3.4 OFFICE OF THE PROSECUTOR

Article 42 of the Rome Statute establishes the Office of the Prosecutor (OTP) as a separate and independent organ of the ICC. The ICC prosecutor and deputy prosecutor are elected by the ICC’s ASP for a non-renewable nine-year term.

While the OTP was created as an independent entity, the Rome Statute limits this independence in practice by providing a number of means to the states (including non-parties), the UN Security Council and the ICC’s other organs by which they can check the prosecutor’s powers.⁵³ This balance between independence and accountability

in the powers given to the prosecutor is most evident in the exercise of its *proprio motu* investigative authority.

Article 15 allows the prosecutor to initiate an investigation, but with significant limitations. To initiate an investigation without a UN Security Council or state party referral, the prosecutor must first apply for authorization from the Pre-Trial Chamber by demonstrating “that there is a reasonable basis to proceed ... and that the case appears to fall within the jurisdiction of the Court.”⁵⁴ Once an investigation is authorized, notification must be sent to all states parties and to any other state that might normally have jurisdiction over the offence. States may then request that the prosecutor defer the investigation on the basis of complementarity, due to a pre-existing national investigation. The prosecutor must abide by this request unless the Pre-Trial Chamber agrees that the investigation may continue.⁵⁵

Under article 16 of the Rome Statute, investigations or prosecutions can also be deferred for a period of one year at the direction of the UN Security Council. The deferral power is renewable and, theoretically, could result in an indefinite postponement of ICC proceedings. To date the deferral power has never been used.⁵⁶

Prior to the opening of an investigation, the OTP conducts preliminary examinations of situations referred to it or on which it has received information suggesting that crimes within the ICC’s jurisdiction have been committed. The opening of preliminary examinations is generally made public, with the OTP providing periodic updates during what can be a years-long process.

Given their public nature, preliminary examinations encourage states to investigate and prosecute offences (referred to as positive complementarity) and potentially sound an early warning to prevent situations from escalating where the commission of crimes may be ongoing.⁵⁷ Preliminary examinations also promote transparency and facilitate information gathering.

A prosecutor may refuse to pursue a state or Security Council referral if they determine that there is no reasonable basis to proceed. In such cases, the referring party may ask the Pre-Trial Chamber to review the decision, and the Court may ask the prosecutor to reconsider.⁵⁸ In most situations, the Court has no statutory authority to force an investigation if, after reconsideration, the prosecutor does not proceed. However, a different process exists when the prosecutor decides not to proceed, where “taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice.”⁵⁹ In such a case, the matter must be referred to the Pre-Trial Chamber and a majority must confirm the decision not to proceed. If the decision is rejected, the prosecutor must continue the investigation or prosecution.⁶⁰

3.5 CHAMBERS

3.5.1 Pre-Trial Chamber

Considered one of the ICC's "most innovative structural developments,"⁶¹ the Pre-Trial Chamber, which usually consists of three judges, has been described as the Court's gatekeeper, with significant power to influence which cases are investigated, how those investigations are conducted and which investigations result in trials. As previously mentioned, the Pre-Trial Chamber authorizes prosecutor-initiated investigations,⁶² decides challenges to the jurisdiction of the Court or the admissibility of a case during the investigative stage⁶³ and reviews the prosecutor's decision not to pursue a case referred to the OTP.⁶⁴

The Pre-Trial Chamber also has a number of responsibilities during investigations. It has the authority to issue orders and warrants as part of the investigative process, including to protect victims and witnesses, preserve evidence, ensure the rights of the defence and facilitate investigations.⁶⁵ The Pre-Trial Chamber can issue arrest warrants and summonses for suspects based on applications from the prosecutor, where it finds that there are "reasonable grounds to believe" that a crime has been committed.⁶⁶ Once an accused is in custody, the Pre-Trial Chamber is also responsible for ensuring the rights of the accused, including determining whether they will be released or detained pending trial.⁶⁷

Before a case goes to trial, the Pre-Trial Chamber must confirm the charges brought by the OTP. At confirmation hearings, the prosecutor must establish "substantial grounds" to believe that the accused committed the crime(s) in question. The accused is generally present at the hearing and may both challenge the evidence presented by the prosecutor and present their own evidence. Based on the evidence presented, the chamber may confirm or decline to confirm any of the charges presented and may also adjourn proceedings to request that the prosecutor provide further evidence or amend the charges.⁶⁸

3.5.2 Trial and Appeals Chambers

Once the charges have been confirmed, cases are heard by the Trial Chamber comprising three judges. For conviction, the prosecutor must convince the judges that the accused is guilty beyond a reasonable doubt.⁶⁹ If found guilty, the accused may be sentenced to up to 30 years' imprisonment; in extreme circumstances, this punishment may be extended to life imprisonment. Sentencing can also include a reparations order for victims.

Finally, the Appeals Chamber can hear appeals from both the Pre-Trial and Trial Chambers. Made up of five judges, the Appeals Chamber has the power to reverse or amend various kinds of lower-level decisions, including reparations and sentencing orders, or order a new trial. Decisions of the Trial Chamber may be appealed on the grounds of procedural error, error of fact or law, or for a convicted person, any other ground that affects the fairness or reliability of the proceedings or decision. A sentencing decision, meanwhile, may be appealed on grounds of disproportion between the crime and the sentence.⁷⁰ To reverse or alter an outcome of another chamber, the Appeals Chamber must find that proceedings “were unfair in a way that affected the reliability of the decision or sentence, or that the decision or sentence ... was materially affected by error of fact or law or procedural error.”⁷¹

3.6 VICTIM ASSISTANCE AND PARTICIPATION

The mechanisms within the ICC and under the Rome Statute that support victims of crime and grant them the right to participate in proceedings and claim reparations mark a first in international criminal law.⁷²

Under article 68(3) of the Rome Statute, victims are allowed to participate in ICC proceedings in which their personal interests are affected. While it does not give victims the same rights as the prosecutor or defence has, this provision has been interpreted by the Court to allow victims or their representatives to make statements, present evidence and question witnesses, where doing so is consistent with the rights of the accused and with a fair and impartial trial.⁷³ In cases where hundreds or thousands of victims may be registered to participate, the Court may order that a single common legal representative be appointed. In 2021–2022 alone, approximately 13,000 victims participated in ICC proceedings.⁷⁴

In addition, the Trust Fund for Victims was established separately from the ICC under the Rome Statute for the benefit of victims of crimes within the ICC’s jurisdiction.⁷⁵ The trust fund advocates for victims, funds and implements projects that support victims, and provides tools, assistance and expertise to victims. Funding for the trust fund comes from state party contributions and from reparations orders.⁷⁶

4 INTERNATIONAL CRIMINAL COURT AT WORK

Now more than two decades old, the ICC has become an established feature of the international landscape. Despite shortcomings in its record, the Court has demonstrated the ability to investigate and try perpetrators of international crimes, and it continues to both consolidate and expand jurisprudence in international criminal law through the decisions of all three chambers. This section provides a summary of the ICC’s work to date.

4.1 STATES PARTIES TO THE ROME STATUTE

There are 123 states parties to the Rome Statute. Two former states parties have withdrawn from the treaty pursuant to article 127(1): Burundi (in October 2017) and the Philippines (in March 2019).⁷⁷ South Africa and the Gambia submitted notice of their intention to withdraw from the treaty, but revoked the notice prior to it taking effect. Only two of the five permanent members of the UN Security Council are currently states parties: France and the United Kingdom.⁷⁸

In several instances, non-states parties have also accepted the jurisdiction of the ICC pursuant to article 12(3) of the Rome Statute without having ratified it. Currently, the ICC prosecutor is conducting an investigation of possible crimes committed in Ukraine, based on a declaration under article 12(3) by Ukraine accepting the Court's jurisdiction.⁷⁹ Côte d'Ivoire and the State of Palestine have previously been the subject of preliminary examinations based on a declaration under article 12(3), but they subsequently became parties to the Rome Statute.⁸⁰

In 2021, the ICC's operating expenses totalled €154 million. Its revenue totalled €144 million, of which €142 million was derived from contributions assessed to its members. The ICC's highest assessed contributions for the year were made by Japan (€24 million), Germany (€16 million) and France (€13 million); countries that qualified for the lowest assessed rate paid €2,747.⁸¹

4.2 INTERNATIONAL CRIMINAL COURT INVESTIGATIONS AND PRELIMINARY EXAMINATIONS

As of November 2022, the ICC prosecutor had opened 17 investigations into possible crimes committed in 16 countries.⁸² Investigations were initiated based on all three mechanisms – UN Security Council, state party referral and the ICC prosecutor's *proprio motu* authority. Prior to 2018, all state party referrals had been self-referrals, where states request an investigation of the situation within their territory. Since then, two investigations have been opened based on a referral from a group of states parties regarding the situation in another state: six states parties referred the situation in Venezuela in September 2018, and 39 states parties referred the situation in Ukraine in March 2022 to the ICC prosecutor.⁸³ Both situations were already the subject of a preliminary examination initiated by the prosecutor. Canada was one of the states parties making the referral in both cases.

In addition, two preliminary examinations are underway to determine whether conditions exist to initiate an investigation. Since its inception, the ICC's OTP has undertaken eight preliminary examinations which have not led to an investigation.

Table 1 – International Criminal Court Investigations and Preliminary Examinations

Country	Opening Date	Referral Mechanism
Investigations		
Democratic Republic of the Congo	June 2004	State party (self)
Uganda	July 2004	State party (self)
Sudan (Darfur)	June 2005	UN Security Council
Central African Republic (I)	May 2007	State party (self)
Kenya	March 2010	Prosecutor
Libya	March 2011	UN Security Council
Côte d'Ivoire	October 2011	Prosecutor
Mali	January 2013	State party (self)
Central African Republic (II)	September 2014	State party (self)
Georgia	January 2016	Prosecutor
Burundi	October 2017	Prosecutor
Bangladesh/Myanmar	November 2019	Prosecutor
Afghanistan	March 2020	Prosecutor
State of Palestine	March 2021	State party (self)
Philippines	September 2021	Prosecutor
Venezuela (I)	November 2021	State party
Ukraine	March 2022	State party
Ongoing Preliminary Examinations		
Nigeria	November 2010	Prosecutor
Venezuela (II)	February 2020	State party (self)
Preliminary Examinations Closed Without Investigation		
Colombia	June 2004	Prosecutor
Guinea	October 2009	Prosecutor
Honduras	November 2010	Prosecutor
South Korea	December 2010	Prosecutor
Registered Vessels of Comoros, Greece and Cambodia	May 2013	State party (self)
Iraq/United Kingdom	May 2014	Prosecutor
Gabon	September 2016	State party (self)
Bolivia	September 2020	State party (self)

Sources: Table prepared by the Library of Parliament using information obtained from International Criminal Court, [Situations under investigations](#); and International Criminal Court, [Preliminary examinations](#).

4.3 INTERNATIONAL CRIMINAL COURT CASES AND TRIALS

As of November 2022, 10 of 17 ICC investigations had resulted in charges being laid for war crimes, crimes against humanity, and in one instance, genocide.

The prosecutor has also pursued charges against individuals under article 70 of the Rome Statute for offences against the administration of justice related to court proceedings. Overall, 33 cases involving 49 defendants have been presented by the ICC prosecutor.⁸⁴ Cases against 18 defendants are ongoing; 12 of these cases are ongoing because the accused is not in ICC custody. In the cases of 31 defendants considered closed, 10 defendants were found guilty and four were acquitted. In the remaining 14 closed cases, the accused either died or proceedings were otherwise terminated at the pre-trial or trial stage before a verdict was rendered (see Appendix A). To date, the 30-year sentence handed down to Bosco Ntaganda, a Congolese militia leader, for war crimes and crimes against humanity committed in the Democratic Republic of the Congo is the longest ever handed down by the Court.

See Appendix A for an overview of all ICC court cases.

4.4 SELECTED RECENT CASES

4.4.1 *Bemba, Bemba et al.*

In 2007, the ICC prosecutor opened an investigation into possible crimes committed in the Central African Republic (CAR) between 2002 and 2003 based on a referral from the government of the CAR. In May 2008, on application from the prosecutor, the Pre-Trial Chamber issued a warrant for the arrest of the Jean-Pierre Bemba Gombo, commander in chief of the Mouvement de libération du Congo (MLC), for the war crimes of murder, rape and pillaging and the crimes against humanity of murder and rape allegedly committed by MLC troops in the CAR.⁸⁵

The trial of Mr. Bemba Gombo began in November 2010 and took four years to complete, during which time the Court heard from 77 witnesses and considered over 5,700 pages of documents. In total, 5,229 persons were recognized by the Court as victims in the case. In March 2016, the Trial Chamber rendered a unanimous guilty verdict for two counts of crimes against humanity and three counts of war crimes. The conviction marked the first ICC conviction for sexual violence pursuant to criminal liability for military commanders under article 28(1)(a) of the Rome Statute. Mr. Bemba Gombo was sentenced to 18 years of imprisonment.

In June 2018, Mr. Bemba Gombo's conviction was reversed on appeal and he was acquitted of all charges. In a 3–2 decision, the Appeals Chamber found that the Trial Chamber had erred in a number of its findings, including the conclusion that Mr. Bemba Gombo had failed to take all necessary and reasonable measures to prevent the crimes committed by his troops.⁸⁶ The appeal decision has been strongly criticized for its reasoning and its practical implications for future cases by the dissenting appeals judges and the ICC prosecutor,⁸⁷ among others.

In a separate decision in October 2016, Mr. Bemba Gombo and four other individuals were found guilty of offences against the administration of justice relating to the false testimony of defence witnesses in the first *Bemba*. The five defendants were sentenced to prison terms ranging from six months to two years and six months, and fined from €30,000 to €300,000.⁸⁸

4.4.2 *Gbagbo and Blé Goudé*

In October 2011, the ICC prosecutor received authorization to open an investigation into the situation in Côte d'Ivoire under the prosecutor's *proprio motu* power. The decision came after the Côte d'Ivoire government reconfirmed its acceptance of ICC jurisdiction under article 12(3) of the Rome Statute earlier in the year.⁸⁹ The investigation focused on possible crimes against humanity committed during violence in 2010 and 2011, following disputed presidential elections. Three weeks after opening the investigation, the prosecutor applied to the Pre-Trial Chamber for an arrest warrant against former Ivorian President Laurent Gbagbo. Mr. Gbagbo was transferred to the ICC by Ivorian authorities a month later, marking the first time a former head of state was taken into ICC custody.⁹⁰ Shortly afterwards, an arrest warrant was issued for Charles Blé Goudé, former minister of youth under Mr. Gbagbo. Ivorian authorities surrendered Mr. Blé Goudé to the ICC in March 2014.

The cases of the two defendants were joined following the confirmation of charges for both on four counts of crimes against humanity (murder, rape, other inhumane acts, or in the alternative attempted murder and persecution). The trial began in January 2016. Shortly after the prosecutor finished presenting her case in June 2018, both defendants filed no-case-to-answer motions, claiming the prosecutor had not presented sufficient evidence to justify a conviction.⁹¹ In January 2019, the Trial Chamber granted the defendants' motion by a two-to-one majority and acquitted both of all charges.⁹² Both acquittals were upheld on appeal in March 2021, at which time all conditions imposed in 2019 on the defendants' release following their acquittal were removed.

4.4.3 *Ntaganda*

Opened in June 2004 pursuant to a self-referral, the investigation into the situation in the Democratic Republic of the Congo (DRC) was the ICC's first investigation and to date has led to six cases being brought to trial. In 2006, an arrest warrant was issued by the ICC for Bosco Ntaganda, deputy chief of staff of the *Forces patriotiques pour la libération du Congo* (FPLC), for 18 counts of war crimes and crimes against humanity – including murder, rape, sexual slavery and the conscription of child soldiers – committed by FPLC forces in the Ituri region of the DRC in 2002 and 2003. A warrant was also issued for the FPLC commander in chief, Thomas Lubanga Dyilo. While Lubanga was surrendered to the ICC by DRC authorities in 2006 and eventually convicted of war crimes by the Court in 2012, Ntaganda lived openly in the DRC for years before voluntarily surrendering to the U.S. Embassy in Rwanda in 2013 and requesting a transfer to ICC custody.⁹³

Charges against Mr. Ntaganda were confirmed in February 2014 and his trial ran from September 2015 to August 2018. In total, 2,129 victims participated in the trial, during which the Trial Chambers rendered 347 written decisions and 257 oral decisions. In July 2019, Mr. Ntaganda was found guilty of all 18 counts and sentenced to 30 years in prison. Both the conviction and sentence were upheld on appeal in March 2021. In the same month, the Trial Chamber issued a reparations order, finding Mr. Ntaganda liable for US\$30 million in reparations to direct and indirect victims of his crimes. As the Court found him to be indigent, it encouraged the Trust Fund for Victims to complement the award to the extent its resources would allow.⁹⁴

Ntaganda has been recognized as a milestone case for the ICC's handling of sexual violence crimes. The case marks the first time a conviction for sexual violence is upheld on appeal. The Court also confirmed that crimes of sexual violence committed against members of an accused's own forces – in this case, both female and male child soldiers – constituted a crime within the Court's jurisdiction.⁹⁵

5 CRITICISMS OF THE INTERNATIONAL CRIMINAL COURT

The Rome Statute and the ICC have faced criticism since their inception. From the start, ICC sceptics have pointed to perceived flaws in the statute and the Court as potentially leading to undesirable outcomes, including the potential abuse of prosecutorial discretion or the possibility of ICC cases undermining efforts to achieve peace and reconciliation in post-conflict countries.⁹⁶

However, after more than two decades of practice, ICC supporters have also become critical of a court that has managed only five convictions for core crimes and seen many high-profile cases end in acquittal or be terminated without verdict. The process of moving from investigation through arrest, trial and likely appeal has proven an enormously complex undertaking that has often taken a decade or more

to complete. Defendants can spend much of this time in custody – some for crimes for which they are ultimately acquitted, as seen in *Bemba* and *Gbagbo and Blé Goudé*, while victims may be forced to continue waiting for promised reparations even after this process is complete.

No organ of the ICC has been immune to criticism, as chambers at all levels, the OTP and states parties have all been blamed in part for the Court’s lacklustre record to date. In December 2019, the ASP expressed grave concern over the “multifaceted challenges” the ICC faced, and it commissioned an independent expert review of the entire Rome Statute system.⁹⁷ A group of nine experts was divided into three thematic working groups – governance, judiciary, and preliminary examinations, investigations and prosecutions – and tasked with delivering “concrete, achievable and actionable recommendations aimed at enhancing the performance, efficiency and effectiveness of the Court.”⁹⁸ The experts published their final report in September 2020; in it, they concurred with many of the criticisms levelled against the Court and made 384 recommendations to improve the functioning of the Rome Statute system.⁹⁹

5.1 CHAMBERS

ICC judges have been criticized for the inconsistent manner in which they have applied and developed international criminal jurisprudence and the procedures of the Court. In their final report, the ASP’s experts highlighted a lack of collegiality among judges as an important factor in the inconsistent practice of the Court. The experts found that poor working relationships between judges at times undermined a deliberative environment, fostered a proliferation of dissenting and concurring opinions, and encouraged some judges to be overly reliant on jurisprudence and procedure from their home jurisdiction.¹⁰⁰

The report also pointed to contradictory procedural practices at times – particularly at the pre-trial stage – which by now should be well established. Issues such as whether evidence must be positively admitted by judges or simply submitted by parties, and whether the practice of preparing witnesses to testify is acceptable or potentially taints evidence, are cited as examples of inconsistent practices that add to the complexity and length of proceedings.¹⁰¹

The ASP’s experts, among other commentators, have singled out the appeals decision in *Bemba* as an example of the difficulty of promoting “coherent and accessible jurisprudence.”¹⁰² The decision deviates from jurisprudence on the role of pre-trial confirmation hearings and the standard of review for appeal decisions, and it was described by one commentator as “upend[ing] the procedures at the ICC and turn[ing] the Court on its head.”¹⁰³ Another commentator called the inability of trial and appeal judges to agree on a “fundamental and simple point” regarding the charges in question “a complete failure of the Court’s judicial process.”¹⁰⁴

5.2 OFFICE OF THE PROSECUTOR

Considering the responsibility and discretion the Rome Statute gives the OTP, it is understandable that ICC prosecutors have faced significant criticism over their inability to secure convictions at trial. After being sworn in as the third ICC prosecutor in June 2021, Karim Khan alluded to the criticism his office has faced: “We cannot invest so much, we cannot raise expectations so high, and achieve so little so often in the court room. He further stated that he would prioritize “building stronger cases and getting better results” as part of an effort to “revive” the institution and “repair what is broken.”¹⁰⁵

In their report, the ASP’s experts note that the principle of complementarity at the heart of the Rome Statute means that the OTP should not and cannot be expected to investigate all crimes that fall within its jurisdiction. As such, the proper selection and prioritization of preliminary examinations and investigations, given the resources available, is critical to the OTP’s effectiveness. The ASP’s experts found that some stakeholders believed the OTP was spreading its resources too thinly and not properly allocating resources to the preliminary examinations and investigations of the gravest crimes and which had the greatest likelihood of success.¹⁰⁶

The OTP has itself recognized that a lack of resources affects its ability to fulfill its mandate. For example, in a December 2020 report, the OTP stated it would not immediately seek to open investigations in Ukraine and Nigeria despite finding that the legal conditions had been met because of the OTP’s operational capacity and the need to prioritize its workload.¹⁰⁷

In terms of bringing cases to trial, the experts’ report acknowledges that the OTP faces a challenge balancing its obligation to investigate those “most responsible” for crimes with the practical consideration of pursuing cases that have a high likelihood of success. The report notes that the OTP’s strategy of bringing a small number of cases against high-level officials has not achieved the desired results. The ASP’s experts welcomed the OTP’s shift to including lower-level suspects who are more directly involved in the crimes perpetrated in the definition of those “most responsible.”¹⁰⁸ Others have pointed out that such an approach could provide “economies of scale” whereby the successful prosecution of lower-level perpetrators could assist in building cases against senior officials.¹⁰⁹

5.3 STATES PARTIES

Under the Rome Statute, states parties have a binding obligation to “cooperate fully” with the Court in its investigation and prosecution of crimes.¹¹⁰ Experience has shown that this cooperation is crucial to the successful prosecution of criminals, and states have been criticized for either their limited cooperation or their outright non-cooperation with the Court in its investigations. As noted earlier, two states have withdrawn from the ICC following the announcement of preliminary examinations on their territory. The ICC also ruled that states parties failed to comply with their obligation to cooperate in several cases, most notably in the case of Omar Al Bashir, subject of an ICC arrest warrant and former head of state of Sudan, whom at least eight states failed to arrest when he was present on their territory.¹¹¹

Short of non-cooperation, commentators have noted how states can be more or less cooperative with the ICC, depending on their own political calculations.¹¹² States may cooperate fully in investigations of their political rivals, while limiting cooperation for investigations of their allies. Such uneven support risks undermining the credibility of the Court where it is seen as punishing only one side of a conflict. The ICC investigation in Côte d’Ivoire demonstrates this concern in practice. Laurent Gbagbo and his ally, Charles Blé Goudé, were handed over to the ICC and tried with the support of the Ivorian government, while the OTP investigation into crimes committed by pro-government forces – which may have been of equal gravity – has yet to result in an arrest warrant being issued.¹¹³

While not included among the topics for their review, the ASP’s experts also felt obliged to call out states parties for the practice of trading votes in the election of ICC judges. The experts noted the view among some that certain ICC judges owe their position more to political negotiations between states than to their qualifications or competence.¹¹⁴

5.4 FOCUS ON AFRICA

To date, ICC investigations and trials have focused disproportionately on Africa. All ICC trials have been against Africans, and a large majority of preliminary examinations and investigations have related to situations in Africa. This has led to criticism of the ICC, including suggestions that the Court is racist or acting as an imperialist tool of African subjugation.¹¹⁵ This perceived bias against Africa has motivated calls for the mass withdrawal of African countries from the Rome Statute and for African governments to not cooperate in the Court’s investigations and trials. The African Union has also taken steps to establish a regional criminal court to try cases that would otherwise be within the ICC’s jurisdiction.¹¹⁶ In the face of this criticism, supporters of the Court have pointed out that the ICC largely does not choose its cases and that most of the investigations that the ICC has carried out in Africa were the result of either referrals by the UN Security Council or self-referrals by the African states.

One of the sources of the dispute between African states – often engaging collectively through the African Union – and the ICC has been the question of immunity for heads of state and other senior government officials. The African Union maintains that customary international law provides immunity to such individuals and that article 27 of the Rome Statute removes that immunity only from states parties. Proponents of this interpretation point to article 98 of the Rome Statute, which prevents the Court from requiring state cooperation that is inconsistent with a state’s other international legal obligations.¹¹⁷ In a recent decision regarding Jordan’s failure to arrest Omar Al-Bashir who, at the time, was head of state of Sudan, the ICC Appeals Chamber rejected this argument, stating that such individuals do not have immunity in international courts and therefore states parties are required to cooperate with the ICC.¹¹⁸

5.5 INTERNATIONAL CRIMINAL COURT AND THE UNITED STATES

The U.S. position concerning the ICC has varied with each administration. The U.S. government signed the Rome Statute in December 2000 under President Bill Clinton, only to renounce any obligations under that treaty in May 2002 under President George W. Bush. The possibility of U.S. military personnel being the subject of an ICC investigation or trial was a significant concern for the Bush administration. In August 2002, the U.S. government passed the *American Servicemembers’ Protection Act* (ASPA) which restricted U.S. cooperation with the ICC and sought to prevent U.S. military personnel from being taken into ICC custody.

Once the ASPA was enacted, the U.S. government began negotiating bilateral immunity agreements with nations around the world in apparent accordance with article 98(2) of the Rome Statute.¹¹⁹ States that signed these agreements promised not to surrender U.S. citizens on their territory to the ICC. Subject to a national interest waiver, the ASPA denied U.S. military assistance (education, training and financing) to states that had not signed such agreements (except members of the North Atlantic Treaty Organization [NATO], major non-NATO allies and Taiwan).

Under President Barack Obama’s administration, the U.S. government’s position toward the ICC softened.¹²⁰ Then Secretary of State Hillary Clinton stated that “we will end hostility toward the ICC and look for opportunities to encourage effective ICC action in ways that promote U.S. interests by bringing war criminals to justice.”¹²¹ By late 2009, the U.S. began to participate in the ASP as an observer, and over time, the government stopped resisting references to the ICC in UN resolutions. U.S. support for the UN Security Council’s unanimous resolution to refer the situation in Libya to the ICC in 2011 was an important step.¹²² Another example of increased cooperation was the expansion of the U.S. government’s Rewards for Justice program, which offers up to US\$5 million for information leading to the arrest of ICC fugitives.¹²³

Cooperation between the U.S. and the ICC regressed significantly under President Donald Trump. Increasing U.S. hostility toward the ICC was fuelled by the ICC prosecutor’s decision to open investigations into the situations in Afghanistan and the State of Palestine.¹²⁴ The U.S. objected to the ICC investigation of U.S. personnel’s actions in Afghanistan and to the Court’s recognition of Palestinian statehood for the purposes of the Rome Statute and its investigation into the actions of Israel – a close U.S. ally which is not a state party to the Rome Statute – in the Palestinian territories.¹²⁵

In April 2019, the U.S. revoked the travel visa of ICC prosecutor Fatou Bensouda.¹²⁶ In June 2020, President Trump issued an executive order authorizing economic sanctions against ICC staff based on a finding that any attempt by the ICC to investigate, arrest or prosecute U.S. or allied personnel without the consent of the U.S. or its allies “constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.”¹²⁷ In September 2020, the U.S. imposed economic sanctions on Fatou Bensouda and Phakiso Mochochoko, Head of the Jurisdiction, Complementarity and Cooperation Division of the OTP.¹²⁸

Under President Joe Biden, the U.S. government terminated the authority for sanctions against ICC staff and removed sanctions against Ms. Bensouda and Mr. Mochochoko in April 2021.¹²⁹ In announcing the removal of sanctions and visa restrictions, however, the Biden administration reconfirmed U.S. opposition to the ICC investigations in Afghanistan and the Palestinian territories and the Court’s assertion of jurisdiction over U.S. and Israeli personnel.¹³⁰

6 CONCLUSION

With more than 20 years of experience, the ICC has become an established, if still controversial, part of the international system. Despite its shortcomings, the Court has proven a worthy successor to the international tribunals which preceded it and has demonstrated the viability of a permanent international criminal justice system.

However, as the ICC enters its third decade, it faces significant challenges. The most pressing of which is the continuation of the unimaginable atrocities which motivated its creation. As Judge Chile Eboe-Osuji, ICC President at the time, remarked on the occasion of the 20th anniversary of the Rome Statute, “[H]umanity’s need of the Rome Statute and the ICC is as critical today as was the case 20 years ago – indeed more so.”¹³¹ As the Court’s development continues and it looks to reform, the purpose for which it was created remains unfulfilled.

NOTES

1. International Criminal Court (ICC), [Rome Statute of the International Criminal Court](#).
2. "The idea of an international criminal court traces back to 1474, when Peter Von Hagenbush was tried and convicted by Austrians for crimes against 'God and man,' following his rule over the people of Breisach." Sandra L. Jamison, "[A Permanent International Criminal Court: A Proposal That Overcomes Past Objections](#)," *Denver Journal of International Law and Policy*, Vol. 23, No. 2, 1995, p. 421.
3. United States (U.S.), Department of State, Office of the Historian, "[The Nuremberg Trial and the Tokyo War Crimes Trials \(1945–1948\)](#)," *Milestones: 1945–1952*.
4. United Nations (UN), "[Agreement for the prosecution and punishment of the major war criminals of the European Axis. Signed at London, on 8 August 1945](#)," (Nuremberg Charter), *Treaty Series*, vol. 82, 1951, p. 280; and UN, "[Charter of the International Military Tribunal](#)," *Treaty Series*, vol. 82, 1951, p. 286 and 288, art. 6.

At the time the Nuremberg Charter was established, genocide was not yet recognized as an independent crime under international law.
5. International Military Tribunal (Nuremberg), "[Judicial Decisions: International Military Tribunal \(Nuremberg\) – Judgment and Sentences, October 1, 1946](#)," *American Journal of International Law*, Vol. 41, No. 1, 1947, pp. 172–333 [SUBSCRIPTION REQUIRED].
6. UN, Office of the High Commissioner for Human Rights, "[Convention on the Prevention and Punishment of the Crime of Genocide](#)," 9 December 1948.
7. *Ibid.*, art. 1.
8. International Committee of the Red Cross (ICRC), "[Convention \(I\) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949](#)," *Treaties and States Parties, International Humanitarian Law Databases*, accessed 29 November 2022; ICRC, "[Convention \(II\) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea. Geneva, 12 August 1949](#)," *Treaties and States Parties, International Humanitarian Law Databases*, accessed 29 November 2022; ICRC, "[Convention \(III\) Relative to the Treatment of Prisoners of War. Geneva, 12 August 1949](#)," *Treaties and States Parties, International Humanitarian Law Databases*, accessed 29 November 2022; and ICRC, "[Convention \(IV\) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949](#)," *Treaties and States Parties, International Humanitarian Law Databases*, accessed 29 November 2022.
9. UN, General Assembly, [260 \(III\). Prevention and punishment of the crime of genocide](#), 9 December 1948, p. 177.
10. M. Cherif Bassiouni, "Historical Survey: 1919–1998," in M. Cherif Bassiouni, ed., *International and Comparative Criminal Law Series – The Statute of the International Criminal Court: A Documentary History*, Vol. 2, 1 February 1999, p. 17.
11. The International Criminal Tribunal for the former Yugoslavia (ICTY) was created pursuant to Resolution 827, the ICTY Statute. See UN Security Council, [Resolution 827 \(1993\)](#), 25 May 1993.
12. The International Criminal Tribunal for Rwanda (ICTR) was created pursuant to Resolution 955, the ICTR Statute. See UN Security Council, [Resolution 955 \(1994\)](#), 8 November 1994.
13. In 2010, the UN Security Council created the International Residual Mechanism for Criminal Tribunals (IRMCT) to allow for the closure of the ICTY and ICTR by providing a shared institution responsible for concluding any lingering judicial matters, including the possible trial of remaining fugitives and the hearing of appeals against tribunal decisions. The IRMCT's work was ongoing at the time of writing. See UN IRMCT, "[The ICTR in Brief](#)," *About the ICTR*; and IRMCT, ICTY, [Key Figures of the Cases](#).
14. Helena Cobban, "[International Courts](#)," *Foreign Policy*, No. 153, March–April 2006, pp. 22–28 [SUBSCRIPTION REQUIRED]; and George S. Yacoubian, Jr., "[Evaluating the Efficacy of the International Criminal Tribunals for Rwanda and the Former Yugoslavia: Implications for Criminology and International Criminal Law](#)," *World Affairs*, Vol. 165, No. 3, Winter 2003, pp. 133–141 [SUBSCRIPTION REQUIRED].
15. Louise Arbour, "[The Prosecution of International Crimes: Prospects and Pitfalls](#)," *Washington University Journal of Law and Policy*, Vol. 1, 1999, p. 18.

16. Michael J. Matheson and David Scheffer, "[The Creation of the Tribunals](#)," *American Journal of International Law*, Vol. 110, No. 2, April 2016, p. 190 [SUBSCRIPTION REQUIRED].
17. Christopher Greenwood, "[What the ICC Can Learn from the Jurisprudence of Other Tribunals](#)," *Harvard International Law Journal*, Vol. 58, Spring 2017, p. 71.
18. Melissa K. Marler, "[The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute](#)," *Duke Law Journal*, Vol. 49, No. 3, December 1999, p. 829.
19. UN, International Law Commission, [Draft Statute for an International Criminal Court, 1994](#), 2005.
20. Philippe Kirsch and John T. Holmes, "[The Rome Conference on an International Criminal Court: The Negotiating Process](#)," *American Journal of International Law*, Vol. 93, No. 1, January 1999, p. 8 [SUBSCRIPTION REQUIRED].
21. The Bureau of the Committee of the Whole was chaired by Canadian delegate Philippe Kirsch.
22. In that letter, John Bolton, then U.S. Under Secretary of State for Arms Control and International Security, told the UN Secretary General at the time, Kofi Annan:

This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depositary's status lists relating to this treaty.

U.S., Department of State, [International Criminal Court: Letter to UN Secretary General Kofi Annan](#), News release, 6 May 2002.
23. [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24.
24. ICC, [Regulations of the Court](#), 2018; ICC, [Rules of Procedure and Evidence](#), 2019; and ICC, [Elements of Crimes](#), 2013.
25. ICC, [Rome Statute of the International Criminal Court](#), arts. 25 and 27–28.
26. *Ibid.*, art. 11.
27. An ICC investigation may be initiated when the UN Security Council determines that there has been a breach of international peace and security. See UN, [Charter of the United Nations and Statute of the International Court of Justice](#), 1945, art. 39, p. 9.
28. ICC, [Rome Statute of the International Criminal Court](#), art. 15.
29. *Ibid.*, art. 17(1)(a).
30. [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24.
31. ICC, [Rome Statute of the International Criminal Court](#), 17 July 1998, art. 5.
32. *Ibid.*, footnote 1; and Claus Kreß, "[Editorial Comment: On the Activation of ICC Jurisdiction over the Crime of Aggression](#)," *Journal of International Criminal Justice*, Vol. 16, March 2018.
33. UN, [Amendments on the crime of aggression to the Rome Statute of the International Criminal Court](#), 8 May 2013; ICC, Assembly of States Parties to the Rome Statute (ASP), "[Crime of Aggression – Amendments Ratification](#)," *Treaty Series*; and ICC, ASP, [Resolution ICC-ASP/16/Res.5: Activation of the jurisdiction of the Court over the crime of aggression](#), 14 December 2017.
34. ICC jurisdiction for crimes of aggression involving states which have not ratified the 2010 amendments is limited to cases referred to the Court by the UN Security Council. See Claus Kreß, "[Editorial Comment: On the Activation of ICC Jurisdiction over the Crime of Aggression](#)," *Journal of International Criminal Justice*, Vol. 16, March 2018; and Donald M. Ferencz, [Aggression Is No Longer a Crime in Limbo](#), FICHL Policy Brief Series No. 88, 2018.
35. ICC, [Elements of Crimes](#), 2013.
36. Article 21 of the Rome Statute lists three tiers of law which the ICC shall apply. Primary sources: the Rome Statute, Elements of Crimes, and Rules of Procedure and Evidence. Secondary sources: applicable treaties and rules and principles of international law. Tertiary sources: legal principles derived from national legal systems. See ICC, [Rome Statute of the International Criminal Court](#), art. 21(1).
37. Cornell Law School, "[genocide](#)," *Wex*, Legal Information Institute.

38. ICC, [Rome Statute of the International Criminal Court](#), art. 6.
39. For a discussion of the elements of the crime of genocide, including the specific intent requirement, see ICC, [Situation in Darfur, Sudan: In the Case of The Prosecutor v. Omar Hassan Ahmad Al Bashir \("Omar Al Bashir"\) – Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir](#), Pre-Trial Chamber I, No. ICC-02/05-01/09, 4 March 2009.
40. See, for example, ICC, "Genocide by killing," [Elements of Crimes](#), 2013, art. 6(a)(4).
41. ICC, [Situation in Darfur, Sudan: In the Case of The Prosecutor v. Omar Hassan Ahmad Al Bashir \("Omar Al Bashir"\) – Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir](#), Pre-Trial Chamber I, No. ICC-02/05-01/09, 4 March 2009, para. 124.
42. Kai Ambos, "[Crimes Against Humanity and the International Criminal Court](#)," in Leila N. Sadat, ed., *Forging a Convention for Crimes Against Humanity*, 1st ed., 2011.
43. ICC, [Elements of Crimes](#), 2013, p. 3, footnote 6.
44. ICRC, Advisory Service on International Humanitarian Law, [War Crimes under the Rome Statute of the International Criminal Court and their source in International Humanitarian Law – Comparative Table](#), October 2008.
45. ICC, [Rome Statute of the International Criminal Court](#), art. 8(2)(b); and ICRC, [Persons protected under IHL](#), 29 October 2010.
46. ICRC, "[Convention \(I\) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. Geneva, 12 August 1949: Commentary of 2016 – Article 3: Conflicts Not of an International Character](#)," Treaties and States Parties, International Humanitarian Law Databases, accessed 29 November 2022.
47. For an example of factors considered when determining whether the threshold is met, see ICC, [Situation in the Central African Republic: In the Case of The Prosecutor v. Jean-Pierre Bemba Gombo – Judgment pursuant to Article 74 of the Statute](#), Trial Chamber III, No. ICC-01/05-01/08, 21 March 2016, para. 137.
48. ICC, Office of the Prosecutor (OTP), [Policy Paper on Sexual and Gender-Based Crimes](#), June 2014, p. 15.
49. ICC, [Situation in the Central African Republic: In the Case of The Prosecutor v. Jean-Pierre Bemba Gombo – Judgment pursuant to Article 74 of the Statute](#), Trial Chamber III, No. ICC-01/05-01/08, 21 March 2016, para. 142; and ICC, [Elements of Crimes](#), 2013, art. 8.
50. ICC, [Rome Statute of the International Criminal Court](#), art. 121(5); and ICC, ASP, "Rome Statute – Amendments," [Rome Statute and other agreements](#).
51. Alex Whiting, "[Crime of Aggression Activated at the ICC: Does it Matter?](#)," *Just Security*, 19 December 2017, p. 9.
52. ICC, [Rome Statute of the International Criminal Court](#), arts. 115–117.
53. Jan Wouters, Sten Verhoeven and Bruno Demeyere, [The international criminal court's office of the Prosecutor: navigating between independence and accountability?](#), Working paper, Institute for International Law, K.U. Leuven Faculty of Law, University of Leuven, July 2006.
54. ICC, [Rome Statute of the International Criminal Court](#), arts. 15(3) and 15(4).
55. *Ibid.*, art. 18.
56. A 2013 draft resolution to defer proceedings against the president and deputy president of Kenya failed to win the necessary support of the UN Security Council. See Security Council Report, "[In Hindsight: The Security Council and the International Criminal Court](#)," *August 2018 Monthly Forecast*, 31 July 2018.
57. ICC, OTP, [Policy Paper on Preliminary Examinations](#), November 2013, para. 104.
58. ICC, [Rome Statute of the International Criminal Court](#), art. 53.
59. *Ibid.*, art. 53(1)(c).
60. ICC, [Rules of Procedure and Evidence](#), 2019, Rule 110.
61. Jocelyn Courtney and Christodoulos Kaoutzanis, "[Proactive Gatekeepers: The Jurisprudence of the ICC's Pre-Trial Chambers](#)," *Chicago Journal of International Law*, Vol. 15, No. 2, Winter 2015, p. 520.
62. ICC, [Rome Statute of the International Criminal Court](#), art. 15(4).

63. Ibid., arts. 18(2) and 19(6).
64. Ibid., art. 53(3).
65. Ibid., art. 57.
66. Ibid., art. 58.
67. Ibid., art. 60.
68. Ibid., art. 61.
69. Ibid., art. 66.
70. Ibid., arts. 81 and 82.
71. Ibid., art. 83(2).
72. The Trust Fund for Victims, "[Our goals](#)," *About us*.
73. See also Christine Van den Wyngaert, "[Victims Before International Criminal Courts: Some Views and Concerns of an ICC Trial Judge](#)," *Case Western Reserve Journal of International Law*, Vol. 44, No. 1, 2011, p. 488.
74. UN, General Assembly, [Report of the International Criminal Court](#), 19 August 2022, p. 4.
75. ICC, [Rome Statute of the International Criminal Court](#), art. 79.
76. The Trust Fund for Victims, [What we do](#); and The Trust Fund for Victims, "[Our goals](#)," *About us*.
77. In both cases, the notice of withdrawal was filed following the announcement by the OTP of preliminary examinations in the respective countries. Both preliminary examinations led to the opening of formal investigations. See ICC, [Burundi](#); and ICC, [Republic of the Philippines](#).
78. UN, Treaty Collection, [Rome Statute of the International Criminal Court](#), 17 July 1998, endnote 2.
79. ICC, [Ukraine](#).
80. The State of Palestine became a state party to the Rome Statute in 2015. Reference to the State of Palestine in this document refers uniquely to its status pursuant to the Rome Statute as recognized by the ICC and the ASP and should not be construed as expressing an opinion regarding Palestinian statehood on the part of the author or the Library of Parliament. See ICC, [ICC welcomes Palestine as a new State Party](#), News release, 1 April 2015.
81. ICC, ASP, [Financial statements of the International Criminal Court for the year ended 31 December 2021](#), 22 August 2022.
82. The ICC prosecutor initiated two investigations related to the situation in the Central African Republic: one opened in 2007 related to a conflict in 2002–2003, and one opened in 2014 related to possible crimes committed since 2012. In both cases, the situation was referred to the prosecutor by the Central African Republic. See ICC, [Central African Republic](#); and ICC, [Central African Republic II](#).
83. ICC, [Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on the referral by a group of six States Parties regarding the situation in Venezuela](#), 27 September 2018; and ICC, [Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation](#), 2 March 2022.
84. Cases include arrest warrants issued by the ICC for Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, as announced by the court in March 2023. At the time of writing, it is unknown whether the two accused will be tried together as a single case or separately. See ICC, [Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova](#), News release, 17 March 2023.
85. ICC, [Situation in the Central African Republic: The Prosecutor v. Jean-Pierre Bemba Gombo](#), Case information sheet.
86. ICC, [Summary of the Appeal Judgment in the case The Prosecutor vs Jean-Pierre Bemba Gombo](#), 8 June 2018.

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88. ICC, [Situation in the Central African Republic: The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido](#), Case information sheet.
89. ICC, [Côte d’Ivoire](#).
90. Human Rights Watch, [Côte d’Ivoire: Gbagbo’s ICC Transfer Advances Justice](#), 29 November 2011.
91. ICC, [Situation in Côte d’Ivoire: The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé](#), Case information sheet.
92. ICC, [Situation in the Republic of Côte d’Ivoire: In the Case of The Prosecutor v. Laurent Gbagbo and Charles Blé Goudé – Reasons for oral decision of 15 January 2019 on the Requête de la Défense de Laurent Gbagbo afin qu’un jugement d’acquittement portant sur toutes les charges soit prononcé en faveur de Laurent Gbagbo et que sa mise en liberté immédiate soit ordonnée, and on the Blé Goudé Defence no case to answer motion](#), Trial Chamber I, No. ICC-02/11-01/15, 16 July 2019.
93. ICC, [Situation in the Democratic Republic of the Congo: The Prosecutor v. Thomas Lubanga Dyilo](#), Case information sheet; and Wairagala Wakabi, [“Appeals Judges Confirm Ntaganda’s ICC Conviction and 30-Year Sentence,” International Justice Monitor](#), 31 March 2021.
94. ICC, [Ntaganda case: ICC Trial Chamber VI orders reparations for victims](#), News release, 8 March 2021.
95. Jennifer Tridgell, [“Casenote: Prosecutor v. Ntaganda: the end of impunity for sexual violence against child soldiers?” Australian International Law Journal](#), Vol. 23, 2017 [SUBSCRIPTION REQUIRED]; and Rosemary Grey, [“Gender-based crimes: A monumental day for the ICC,” IntLawGrrls blog](#), 8 July 2019.
96. Concerns over ICC investigations impeding peace and reconciliation efforts have been raised in Côte d’Ivoire, Sudan and Uganda, among others. See Nick Grono and Adam O’Brien, [“Justice in Conflict: The ICC and Peace Processes,” International Crisis Group](#), 12 March 2008; and Jessica Moody, [“Does the ICC Obstruct Peace?” Foreign Policy](#), 22 October 2021.
97. ICC, ASP, [Resolution ICC-ASP/18/Res.7: Review of the International Criminal Court and the Rome Statute system](#), 6 December 2019, p. 1.
98. Ibid., p. 2.
99. ICC, ASP, [Independent Expert Review of the International Criminal Court and the Rome Statute System](#), Final report, 30 September 2020.
100. Ibid., p. 147.
101. Ibid., pp. 177–179.
102. Ibid., p. 148.
103. Alex Whiting, [“Appeals Judges Turn the ICC on its Head with Bemba Decision,” Just Security](#), 14 June 2018.
104. Leila N. Sadat, [“Fiddling While Rome Burns? The Appeals Chamber’s Curious Decision in Prosecutor v. Jean-Pierre Bemba Gombo,” EJIL:Talk!](#), Blog of the European Journal of International Law, 12 June 2018.
105. Susan Kendi, [“Karim Khan’s first speech as ICC Prosecutor,” Journalists for Justice](#), 28 December 2021.
106. ICC, ASP, [Independent Expert Review of the International Criminal Court and the Rome Statute System](#), Final report, 30 September 2020, pp. 206–212.
107. ICC, OTP, [Report on Preliminary Examination Activities 2020](#), 14 December 2020. An investigation into the situation in Ukraine was opened in March 2022.
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111. ICC, ASP, [Non-cooperation](#).
112. Courtney Hillebrecht and Scott Straus, "[Who Pursues the Perpetrators? State Cooperation with the ICC](#)," *Human Rights Quarterly*, Vol. 39, No. 1, February 2017, pp. 162–188 [SUBSCRIPTION REQUIRED].
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114. ICC, ASP, [Independent Expert Review of the International Criminal Court and the Rome Statute System](#), Final report, 30 September 2020, p. 317.
115. Oumar Ba, "[International Justice and the Postcolonial Condition](#)," *Africa Today*, Vol. 63, No. 4, Summer 2017 [SUBSCRIPTION REQUIRED].
116. Sascha-Dominik Dov Bachmann and Naa A. Sowatey-Adjei, "[The African Union–ICC Controversy Before the ICJ: A Way Forward to Strengthen International Criminal Justice?](#)," *Washington International Law Journal*, Vol. 29, No. 2, 7 April 2020, pp. 247–301.
117. ICC, [Situation in Darfur, Sudan: In the Case of The Prosecutor v. Omar Hassan Ahmad Al Bashir – The African Union’s Submission in the ‘Hashemite Kingdom of Jordan’s Appeal Against the ‘Decision under Article 87\(7\) of the Rome Statute on the Non-Compliance by Jordan with the Request by the Court for the Arrest and Surrender \[of\] Omar Al-Bashir’](#), Appeals Chamber, No. ICC-02/05-01/09 OA2, 13 July 2018.
118. ICC, [Situation in Darfur, Sudan: In the Case of The Prosecutor v. Omar Hassan Ahmad Al-Bashir – Judgment in the Jordan Referral re Al-Bashir Appeal](#), No. ICC-02/05-01/09 OA2, 6 May 2019.
119. Article 98(2) of the Rome Statute, Cooperation with respect to waiver of immunity and consent to surrender, states:
2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.
- See ICC, [Rome Statute of the International Criminal Court](#), art. 98(2).
120. Megan A. Fairlie, "[The United States and the International Criminal Court Post-Bush: A Beautiful Courtship but an Unlikely Marriage](#)," *Berkeley Journal of International Law*, Vol. 29, No. 2, 2011, p. 529; and Vijay Padmanabhan, Council on Foreign Relations "[From Rome to Kampala: The U.S. Approach to the 2010 International Criminal Court Review Conference](#)," *Council Special Report No. 55*, April 2010.
121. U.S., Alexis Arief et al., [International Criminal Court Cases in Africa: Status and Policy Issues](#), Report, Congressional Research Service, 22 July 2011, p. 4; and International Bar Association, [Balancing Rights: The International Criminal Court at a Procedural Crossroads](#), May 2008.
122. When the UN Security Council referred the situation in Darfur to the ICC in 2005, Alegria, Brazil, China and the U.S. abstained from voting. See UN Security Council, [Security Council refers situation in Darfur, Sudan, to Prosecutor of International Criminal Court](#), News release, 31 March 2005.
123. U.S., Department of State, Office of Global Criminal Justice, [War Crimes Rewards Program](#).
124. ICC, [State of Palestine](#); and ICC, [Afghanistan](#).
125. Jennifer Hansler, "[Pompeo slams International Criminal Court decision to authorize Afghanistan war crimes investigation](#)," *CNN*, 5 March 2020; and Elizabeth Evenson, "[US Official Threatens International Criminal Court – Again](#)," *Human Rights Watch*, 22 May 2020.
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127. U.S., Federal Register, "[Executive Order 13928 of June 11, 2020: Blocking Property of Certain Persons Associated With the International Criminal Court](#)," *Presidential Document*, 15 June 2020.
128. U.S., Department of the Treasury, [Blocking Property of Certain Persons Associated with the International Criminal Court Designations](#), 2 September 2020.
129. U.S., Department of the Treasury, [Termination of Emergency With Respect to the International Criminal Court](#), 5 April 2021.

130. U.S., Department of State, [*Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court*](#), News release, 2 April 2021.
131. ICC, Judge Chile Eboe-Osuji, President of the ICC, [*Remarks at Solemn Hearing in Commemoration of the 20th Anniversary of the Adoption of the Rome Statute of the International Criminal Court*](#), 17 July 2018.

APPENDIX – OVERVIEW OF ALL INTERNATIONAL CRIMINAL COURT CASES

Situation	Case Name	Defendant	Charges	Current State	Status
Sudan (Darfur)	<i>Abd-Al-Rahman</i>	Ali Muhammad Ali Abd-Al-Rahman	War crimes and crimes against humanity	Trial ongoing	Ongoing
Sudan (Darfur)	<i>Abu Garda</i>	Bahar Idriss Abu Garda	War crimes	Pre-Trial Chamber declined to confirm charges	Closed
Sudan (Darfur)	<i>Al Bashir</i>	Omar Hassan Ahmad Al Bashir	War crimes, crimes against humanity, genocide	Accused not in custody	Ongoing
Mali	<i>Al Hassan</i>	Al-Hassan Ag Abdoul Aziz	War crimes and crimes against humanity	Trial ongoing	Ongoing
Mali	<i>Al Mahdi</i>	Ahmad Al Faqi Al Mahdi	War crimes	Found guilty, sentenced to nine years	Closed
Libya	<i>Al-Werfalli</i>	Mahmoud Mustafa Busyf Al-Werfalli	War crimes	Accused deceased	Closed
Sudan (Darfur)	<i>Banda</i>	Saleh Mohammed Jerbo Jamus	War crimes	Accused deceased	Closed
Sudan (Darfur)	<i>Banda</i>	Abdallah Banda Abakaer Nourain	War crimes	Accused not in custody	Ongoing
Kenya	<i>Barasa</i>	Walter Barasa	Witness tampering	Accused not in custody	Ongoing
Central African Republic (CAR) I	<i>Bemba</i>	Jean-Pierre Bemba Gombo	War crimes and crimes against humanity	Acquitted on appeal	Closed
CAR I	<i>Bemba et al.</i>	Jean-Pierre Bemba Gombo	Obstruction of justice	Found guilty, sentenced to one year	Closed
CAR I	<i>Bemba et al.</i>	Narcisse Arido	Obstruction of justice	Found guilty, sentenced to 11 months	Closed
CAR I	<i>Bemba et al.</i>	Jean-Jacques Mangenda Kabongo	Obstruction of justice	Found guilty, sentenced to two years	Closed
CAR I	<i>Bemba et al.</i>	Aimé Kilolo Musamba	Obstruction of justice	Found guilty, sentenced to two years and six months	Closed
CAR I	<i>Bemba et al.</i>	Fidèle Babala Wandu	Obstruction of justice	Found guilty, sentenced to six months	Closed
Kenya	<i>Bett</i>	Philip Kipkoech Bett	Obstruction of justice	Accused not in custody	Ongoing
Libya	<i>Gaddafi</i>	Muammar Mohammed Abu Minyar Gaddafi	Crimes against humanity	Accused deceased	Closed

THE INTERNATIONAL CRIMINAL COURT: HISTORY AND ROLE

Situation	Case Name	Defendant	Charges	Current State	Status
Libya	<i>Gaddafi</i>	Saif Al-Islam Gaddafi	Crimes against humanity	Accused not in custody	Ongoing
Libya	<i>Gaddafi</i>	Abdullah Al-Senussi	Crimes against humanity	Pre-Trial Chamber ruled case inadmissible	Closed
Côte d'Ivoire	<i>Gbagbo and Blé Goudé</i>	Laurent Gbagbo	Crimes against humanity	Acquitted	Closed
Côte d'Ivoire	<i>Gbagbo and Blé Goudé</i>	Charles Blé Goudé	Crimes against humanity	Acquitted	Closed
Kenya	<i>Gicheru</i>	Paul Gicheru	Obstruction of justice	Accused deceased	Closed
Sudan (Darfur)	<i>Harun</i>	Ahmad Muhammad Harun	War crimes and crimes against humanity	Accused not in custody	Ongoing
Sudan (Darfur)	<i>Hussein</i>	Abdel Raheem Muhammad Hussein	War crimes and crimes against humanity	Accused not in custody	Ongoing
Democratic Republic of the Congo (DRC)	<i>Katanga</i>	Germain Katanga	War crimes and crimes against humanity	Found guilty, sentenced to 12 years	Closed
Kenya	<i>Kenyatta</i>	Uhuru Muigai Kenyatta	Crimes against humanity	Charges withdrawn	Closed
Kenya	<i>Kenyatta</i>	Francis Kirimi Muthaura	Crimes against humanity	Charges withdrawn	Closed
Kenya	<i>Kenyatta</i>	Mohammed Hussein Ali	Crimes against humanity	Pre-Trial Chamber declined to confirm charges	Closed
Libya	<i>Khaled</i>	Al-Tuhamy Mohamed Khaled	War crimes and crimes against humanity	Accused deceased	Closed
Uganda	<i>Kony et al.</i>	Raska Lukwiya	War crimes and crimes against humanity	Accused deceased	Closed
Uganda	<i>Kony et al.</i>	Okot Odhiambo	War crimes and crimes against humanity	Accused deceased	Closed
Uganda	<i>Kony et al.</i>	Joseph Kony	War crimes and crimes against humanity	Accused not in custody	Ongoing
Uganda	<i>Kony et al.</i>	Vincent Otti	War crimes and crimes against humanity	Accused not in custody	Ongoing
DRC	<i>Lubanga</i>	Thomas Lubanga Dyilo	War crimes	Found guilty, sentenced to 14 years	Closed
Ukraine*	<i>Lvova-Belova</i>	Maria Alekseyevna Lvova-Belova	War crimes	Accused not in custody	Ongoing
DRC	<i>Mbarushimana</i>	Callixte Mbarushimana	War crimes and crimes against humanity	Pre-Trial Chamber declined to confirm charges	Closed
CAR II	<i>Mokom</i>	Maxime Jeoffroy Eli Mokom Gawaka	War crimes and crimes against humanity	Awaiting confirmation of charges hearing	Ongoing
DRC	<i>Mudacumura</i>	Sylvestre Mudacumura	War crimes	Accused not in custody	Ongoing

Situation	Case Name	Defendant	Charges	Current State	Status
DRC	<i>Ngudjolo Chui</i>	Mathieu Ngudjolo Chui	War crimes and crimes against humanity	Acquitted	Closed
DRC	<i>Ntaganda</i>	Bosco Ntaganda	War crimes and crimes against humanity	Found guilty, sentenced to 30 years	Closed
Uganda	<i>Ongwen</i>	Dominic Ongwen	War crimes and crimes against humanity	Found guilty, sentenced to 25 years.	Closed
Ukraine*	<i>Putin</i>	Vladimir Vladimirovich Putin	War crimes	Accused not in custody	Ongoing
Kenya	<i>Ruto and Sang</i>	Henry Kiprono Kosgey	Crimes against humanity	Pre-Trial Chamber declined to confirm charges	Closed
Kenya	<i>Ruto and Sang</i>	William Samoei Ruto	Crimes against humanity	Trial Chamber terminated case for lack of evidence	Closed
Kenya	<i>Ruto and Sang</i>	Joshua Arap Sang	Crimes against humanity	Trial Chamber terminated case for lack of evidence	Closed
CAR II	<i>Said</i>	Mahamat Said Abdel Kani	War crimes and crimes against humanity	Trial ongoing	Ongoing
Côte d'Ivoire	<i>Simone Gbagbo</i>	Simone Gbagbo	Crimes against humanity	Charges vacated	Closed
CAR II	<i>Yekatom and Ngaïssona</i>	Alfred Yekatom	War crimes and crimes against humanity	Trial ongoing	Ongoing
CAR II	<i>Yekatom and Ngaïssona</i>	Patrice-Edouard Ngaïssona	War crimes and crimes against humanity	Trial ongoing	Ongoing

Source: Table prepared by the Library of Parliament using information obtained from International Criminal Court (ICC), [31 Cases](#); and ICC, [Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova](#), News release, 17 March 2023.

* Case involves arrest warrants issued by the ICC against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, as announced by the court in March 2023. At the time of writing, it is unknown whether the two accused will be tried together as a single case or separately.