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The International Criminal Court: History and Role

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Laura Barnett

Legal and Social Affairs Division
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The International Criminal Court: History and Role
(Background Paper)

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THE INTERNATIONAL CRIMINAL COURT: HISTORY AND ROLE

1 INTRODUCTION

On 11 April 2002, 10 countries ratified the *Rome Statute of the International Criminal Court*, the United Nations (UN) treaty that established the International Criminal Court (ICC) – an international court of last resort. This brought the total number of ratifications to more than 60, triggering the entry into force of the statute on 1 July 2002. Canada was an early advocate of this historic international tribunal.

In recent years, a number of reservations have been expressed by members of the international community with respect to the Court. One prominent early critic has been the United States, which, despite having signed the statute in 2000, officially renounced its legal obligations to the ICC in May 2002.

This paper will provide an overview of the development of international criminal law by tracing the historical path to the 1998 United Nations conference in Rome. It then reviews the Rome Statute and the role and functioning of the ICC itself, while providing some discussion of the criticisms facing the court today.

2 THE ROAD TO ROME

Perhaps more than any other period in history, the last 25 years have seen momentous progress in creating the means to bring to justice those responsible for humankind's most egregious crimes. Following the lead of the ad hoc tribunals for Rwanda and the former Yugoslavia, a permanent international criminal court has now become an established entity in the international institutional framework.

Having progressed 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 justice on a par with the national systems of the democratic world.

2.1 PRE-WORLD WAR II

The concept of an international criminal court can be seen as early as the 15th century, but it was not until the late 19th century that what we currently understand as international criminal law began to emerge in the form of rules governing military conflict. The Brussels Protocol of 1874 was one of the earliest attempts at drafting a code regulating the conduct of armies in the field. While it made no reference to enforcement or any potential consequences of violations of the agreement, it resulted in a group known as the Institute of International Law drafting the "Manual on the Laws of War on Land" in 1880. This document was to become the model for the conventions adopted at the Hague Peace Conferences of 1899 and 1907.¹ These conventions represented major advances in international law. Most importantly, the Hague Convention IV,² adopted in 1907, for the first time referred to liability for

breaches of international law. While the Convention simply established state obligations, not personal criminal liability,³ it provided the first hint of the enforcement of these international norms. Before this, international obligations had always been trumped by the doctrine of state sovereignty, going back at least to the *Treaty of Westphalia* of 1648.⁴

During and following World War I, all combatant nations put members of enemy forces on trial for offences against the laws and customs of war. Of special note in the development of international criminal law was Article 227 of the *Treaty of Versailles*,⁵ which authorized the creation of a special tribunal to try Kaiser Wilhelm II. While no trial ever took place, this represented a significant departure from the traditional view, still held by many today, that a head of state should be immune from prosecution by any state other than his or her own. All that occurred following World War I were some token national prosecutions in Germany, with the consent of the Allies, suggesting that the political will of the world's major powers is essential for the enforcement of international humanitarian norms.⁶

2.2 POST-WORLD WAR II MILITARY TRIBUNALS

The next great impetus in the development of international criminal law was World War II. The Nazi government of Germany, in launching an offensive military campaign and committing startling atrocities, led the Allied powers to “place among their principal war aims the punishment, through the channel of organized justice, of those guilty for these crimes, whether they have ordered them, perpetrated them, or participated in them.”⁷ In the aftermath of World War II, the International Military Tribunal sitting at Nuremberg and the International Military Tribunal for the Far East sitting at Tokyo were established.

At Nuremberg, each of the major Allied powers (the United States, the United Kingdom, the U.S.S.R. and France) appointed a judge and a chief prosecutor.⁸ As a team, the chief prosecutors were responsible for investigating and prosecuting major war criminals responsible for “crimes against peace,” “war crimes” and “crimes against humanity.”⁹ After a 10-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.¹⁰

Trials of Japanese ministers and military leaders began in Tokyo while the Nuremberg Court was still sitting. General Douglas MacArthur, as Supreme Commander in the Far East, appointed a tribunal of a similarly international character; that is, it was composed of representatives of nations – 11 in all – that had been at war with Japan. The Tokyo Charter was almost identical to that of Nuremberg, with a few variations.¹¹ The Tokyo Tribunal trials lasted more than two years and all accused were found guilty and sentenced to imprisonment or death.

Common to Nuremberg and Tokyo were the following: there was no code of conduct for the lawyers involved; there were no specific rules of evidence; and the prosecutors were directly appointed by the victorious powers, whose political goals were hardly obscure. While the defendants were usually treated fairly, the malleability of the rules left open the possibility of abuse.¹²

Both the Nuremberg and Tokyo trials advanced the international rule of law¹³ and are commonly regarded as the archetypes of modern international criminal law. While they have established a “moral legacy,” one must recognize that, especially in respect of the “international” facet, they are imperfect examples.¹⁴ Although the judges and prosecutors were drawn from more than one country and the tribunals invoked the notion of universal jurisdiction, they were in essence military courts created by the victors whose jurisdiction was founded on unconditional surrender.¹⁵

The rules of procedure and evidence were even less representative of the diversity of the world’s legal systems. They were essentially devised by Americans and based on American law.¹⁶ Despite the immense significance of the tribunals – many argue that they have stood the test of time as a fair articulation of evolving international law¹⁷ – they were not ideal representations of what one would expect from an indifferent or unbiased tribunal.

2.3 THE COLD WAR STALL

In 1948, the UN *Convention on the Prevention and Punishment of the Crime of Genocide*¹⁸ was adopted in response to Nazi atrocities and was among the first UN conventions to address humanitarian issues. This Convention marks the first international recognition that “genocide, whether committed in time of peace or in time of war, is a crime under international law.”¹⁹ The following year, the Geneva Conventions of 1949 were adopted.²⁰ These four treaties called on states to criminalize grave breaches of international humanitarian law. These significant achievements, unfortunately, did not foreshadow further advances towards an international criminal court over the next four decades.

Following Nuremberg and Tokyo, the UN General Assembly tasked the International Law Commission (ILC) – a committee of legal experts working towards the development and codification of international law – with examining the possibility of establishing a permanent international criminal court. Draft international criminal codes were produced in the 1950s, but the Cold War made any significant progress impossible.²¹ There were some trials by national courts in the post-World War II period,²² but a permanent international criminal court was considered a pipe dream by most.

The ILC’s post-Nuremberg project was revived in 1990 when the UN General Assembly held a special session on drugs, with particular focus on international drug trafficking prosecutions, and the ILC submitted a well-received report that went beyond this limited issue. Forging ahead with such encouragement from the international community, the ILC returned to the task of preparing a draft statute for a comprehensive international criminal court.²³

By 1992, it was clear that international criminal justice was on the international community’s agenda when the UN Security Council passed Resolution 780,²⁴ establishing a Commission of Experts to investigate international humanitarian law violations in the former Yugoslavia. The breakdown of the bipolar world and the increased expectations of peace with the end of the Cold War sparked a strong international response to the humanitarian crisis in the Balkans, and allowed the

major powers to find common ground.²⁵ In the early 1990s, two ad hoc tribunals were created as subsidiary organs of the UN Security Council: the International Criminal Tribunal for Yugoslavia (ICTY),²⁶ formed in 1993, and the International Criminal Tribunal for Rwanda (ICTR),²⁷ founded in 1994. These tribunals followed the work of the Commission of Experts and garnered worldwide recognition and credibility that gave support to the process for establishing a permanent international criminal court.

2.4 THE INTERNATIONAL CRIMINAL TRIBUNALS FOR YUGOSLAVIA AND RWANDA

It has been suggested that the ICTY was born of the frustration of having exhausted all other measures to stop a brutal war, except the measures that took too much courage, and that the ICTR was born of the guilt of having stood by while 800,000 were slaughtered in one hundred days.²⁸ The cynicism surrounding the establishment of the ad hoc tribunals was exacerbated by the fact that Rwanda voted against UN Security Council Resolution 955, which created the ICTR, although it subsequently agreed to cooperate with tribunal prosecutions.²⁹

The ICTY is located in The Hague, Netherlands, and was granted jurisdiction over grave breaches of the Geneva Conventions of 1949, violations of the law or customs of war, genocide and crimes against humanity.³⁰ As the Rwandan crisis involved an internal conflict, the ICTR's jurisdiction was established as including genocide, crimes against humanity and violations of Article 3 common to the 1949 Geneva Conventions and *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts*,³¹ which outlines protections due to individuals in the case of non-international armed conflict. That tribunal is located in Arusha, Tanzania.

Despite some significant cynicism with respect to time and money spent and the ability of these tribunals to achieve true peace and reconciliation, as well as difficulties in arresting those indicted by the ICTY,³² both tribunals have made historic progress in international criminal law. At the ICTY, for example, rape and enslavement have been recognized as crimes against humanity³³ and a head of state was indicted while still in office.³⁴ Some indictees have voluntarily surrendered to the ICTY, something that has shocked many observers.³⁵ In Rwanda, the former prime minister pleaded guilty to genocide and admitted his role in the murder of 800,000 people.³⁶ The 1998 Akayesu decision of the ICTR was the first conviction by an international tribunal for the crime of genocide. The decision also expanded the definition of that crime to include rape and other forms of sexual violence.³⁷

The ICTY and ICTR statutes set out the functions and duties of the prosecutor in much greater detail than any previous similar body. Unlike the prosecution team at Nuremberg, the prosecutors at the ICTY and the ICTR are not separate national teams of organized military lawyers with shared assumptions about legal and procedural matters. The prosecution teams come from diverse legal backgrounds and justice systems.

The chief prosecutor of the ICTY is appointed by the UN Security Council for a term of four years as an independent entity and cannot seek or receive directions from

national governments.³⁸ The prosecutor's office is distinct from the tribunal itself, but any proposed indictment must be submitted for approval by a judge of the ICTY.³⁹ Thus, the prosecutor's discretion as to whom the tribunal prosecutes is tempered by judicial oversight. The ICTR prosecutor is similarly an independent organ that does not "seek or receive instructions from government or from any other source."⁴⁰ The difference between the two tribunals relates to subject-matter jurisdiction, as Rwanda was essentially an internal conflict. The role of the prosecutor, however, is the same, and in each case, a chief prosecutor is responsible for the tribunal.

The ad hoc tribunals are significantly different from the Nuremberg Tribunal, which was a multilateral, not truly international, military court. The Nuremberg Tribunal was composed of victorious allies as part of a political settlement, whereas the ICTY started functioning while conflict in the Balkans continued to rage. In Nuremberg, most defendants were in custody, and trial in absentia was permitted for those who were not. The Allies had a staff of prosecutors 100 strong and only 11 simple rules of evidence.⁴¹ There was no right of appeal at the Nuremberg Tribunal.

The creation of the ICTY and ICTR demonstrates an evolution of the concept of an independent prosecutor. Although having greater political autonomy than their Nuremberg counterparts, the tribunals are still a creation of the UN Security Council and are beholden to it for funding and enforcement assistance.⁴² And there is, as mentioned, judicial oversight, because prosecutions require authorization. Nevertheless, the ICTY and ICTR took two years of negotiation and preparation to establish, leading many observers to point to the necessity of a permanent court that would avoid the time-consuming establishment process, and could also address smaller-scale incidents that might not garner the political will to establish another ad hoc tribunal.⁴³

In 1994, the ILC submitted a draft statute for an international criminal court to the UN General Assembly;⁴⁴ and in 1996, the Preparatory Committee on the Establishment of an International Criminal Court was founded. An amended draft statute was submitted in April 1998, setting the stage for the five-week conference in Rome in June of the same year.

3 THE ROME STATUTE AND THE INTERNATIONAL CRIMINAL COURT

3.1 THE ROME CONFERENCE

As the conference to establish the ICC got under way in Rome in June 1998, three basic groupings of states emerged.⁴⁵ Led by Canada and Norway, the "like-minded group" advocated a potent and robust international criminal court. This group consisted mostly of the middle powers and developing countries, which generally supported a *proprio motu* prosecutorial model (a prosecutor who has the power to initiate proceedings himself or herself).

The second group consisted of the permanent members of the UN Security Council, or the "P-5," with the exception of Britain, which had joined the like-minded states just

before the conference began. Not surprisingly, this group sought a more important role for the Security Council in the establishment and operation of the Court. The United States, in particular, expressed grave concerns about the possibility of a *proprio motu* prosecutor and argued for the limiting of the ICC's jurisdiction to Security Council referrals.

A third, non-aligned group was formed in opposition to the P-5's insistence on the exclusion of nuclear weapons from the statute. This group included such states as India, Mexico and Egypt. However, this group's position in respect of the independence and powers of the ICC was similar to that of the P-5.

Jurisdictional issues were the most complex and most sensitive, but the *proprio motu* prosecutor model did receive significant, although not general, support.⁴⁶ As the conference was nearing its conclusion and no agreement was evident, the Bureau of the Committee of the Whole⁴⁷ decided to prepare a final package for possible adoption. The alternative of reporting that an agreement could not be reached and scheduling another conference was not attractive. Many feared that a second conference stood no better chance of success and would likely result in either a weakened ICC or no court at all for years to come. By a final vote of 120 in favour, 21 abstaining and 7 against, the Bureau's package was adopted.

The United States voted against the Rome Statute⁴⁸ – along with China, Iraq, Israel, Libya, Qatar and Yemen – then signed on 31 December 2000, the last day the treaty was open for signature. The United States then “unsigned” in May 2002, when John Bolton, 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 renounced any obligations under the treaty.⁴⁹ The expressed concerns of the U.S. related to jurisdictional issues and, in particular, to what the American delegation saw as a lack of accountability in granting *proprio motu* power to an independent prosecutor who could potentially decide to pursue American personnel.⁵⁰ As the U.S. is one of the most influential actors in the international community and a key member of the P-5, its government's rejection of the statute was a blow to the nascent court.

Canada ratified the Rome Statute in July 2000 after enacting domestic legislation to implement its obligations under the statute and to enhance the ability to prosecute war crimes and crimes against humanity using the *Criminal Code*.⁵¹

3.2 THE ICC JUDGES AND THE COURT'S ADMINISTRATION

The ICC is presided over by three judges – a president and two vice-presidents – elected by a pool of ICC judges for a three-year renewable term. These three judges are responsible for the general administration of the court, except for the Office of the Prosecutor. The ICC's first president was Philippe Kirsch of Canada, and its current president is Sang-Hyun Song of the Republic of Korea. Beyond the presidency, the ICC is composed of 18 judges at the Pre-Trial, Trial and Appeals divisions.

The ICC's other primary administrative body is the Registry, which is responsible for the non-judicial aspects of the administration of court.

3.3 JURISDICTION AND THE OFFICE OF THE PROSECUTOR

Crimes within the jurisdiction of the ICC are limited by the Rome Statute to genocide, war crimes and crimes against humanity.⁵² The Court will also have jurisdiction over the crime of “aggression” at a future date. While inclusion of the crime of aggression was initially deferred in what has generally been recognized as a concession to entice broader (i.e., American) support for the Rome Statute,⁵³ in June 2010 at the Review Conference of the Rome Statute, held in Kampala, Uganda, amendments to the statute were finally adopted by consensus. These amendments included a definition of the crime of aggression,⁵⁴ as well as a framework setting out future jurisdiction over this new crime (the ICC will not have jurisdiction over the crime of aggression until at least 30 States Parties have ratified the amendments and two thirds of States Parties decide to activate that jurisdiction *after* 1 January 2017).⁵⁵

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 or other superiors. The Court’s temporal jurisdiction is limited to offences committed after the entry into force of the Rome Statute.⁵⁶ 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. Noticeably absent is jurisdiction over an accused simply in the custody of a State Party.⁵⁷ Finally, with respect to war crimes, the ICC is limited by the wording of the Rome Statute to “grave breaches” of the Geneva Conventions, “serious violations” of the listed laws and customs of international armed conflict, and a more limited list of offences for armed conflicts not of an international nature.⁵⁸ Moreover, Article 8 states that the Court has jurisdiction over war crimes when “committed as part of a plan or policy or as part of a large-scale commission of such crimes.”⁵⁹

An ICC investigation may be initiated either by the UN Security Council pursuant to Chapter VII of the UN Charter,⁶⁰ by a State Party or by the prosecutor acting under the *proprio motu* power.⁶¹ The prosecutor’s ability to initiate an investigation is set out in Article 15, but there are significant restrictions and oversight relating to the exercise of this purview. To begin with, like any situation referred to the ICC, the *proprio motu* jurisdiction is limited by the principle of complementarity. The ICC is a court of last resort, and the prosecutor must defer to a state with national jurisdiction over an offence unless that state is unwilling or unable to investigate and prosecute.⁶² The question of complementarity is a real one that has been raised numerous times in practice. Most recently, this has been within the framework of the *proprio motu* power in the context of the ICC’s investigations in Kenya.

Moreover, if desirous of initiating an investigation without a Security Council or State Party referral, the prosecutor must first apply to the Pre-Trial Chamber for a ruling on admissibility (see next section for a discussion of the Pre-Trial Chamber).⁶³ Notification is required for any states that might normally have jurisdiction over the offence, regardless of whether they are a party to the Statute.⁶⁴ This provision was originally proposed by the United States and was accepted by many signatory states with great reluctance as a compromise necessary to ensure the existence of the independent prosecutor.⁶⁵ Thus, the prosecutor must defer unless the Pre-Trial Chamber agrees that the state or states with national jurisdiction are not genuinely

able or willing to carry out their own proceedings. The state or states concerned also have the right to appeal the Pre-Trial Chamber's decision.⁶⁶

Article 16 of the Rome Statute provides for the deferral of investigations or prosecutions for a period of one year at the direction of the Security Council. This deferral power was originally included in the Rome Statute to address concerns of the P-5 and to allow the Security Council to postpone ICC activities where they might obstruct a peace process.⁶⁷ The deferral power is renewable and, theoretically, could result in an indefinite postponement of ICC proceedings. With the passage of time, this could lessen the likelihood of conviction. Some observers have expressed fears that the deferral power could eviscerate the independence of the prosecutor and allow P-5 states to prevent investigation of their nationals.⁶⁸ However, despite this oversight power lying in the hands of a small minority of the world's nations, others have suggested that Article 16 does not go far enough and in fact undercuts the role of the P-5 by requiring an affirmative vote to stop the prosecutor.⁶⁹ To date, the deferral power has never been used.

At least one further protection exists. A prosecutor can be removed from office or subjected to disciplinary measures if guilty of misconduct or a serious breach of duty.⁷⁰ Complaints may be made to the Presidency of the Court, which can also initiate proceedings on its own motion,⁷¹ and punishable conduct will include anything that occurs within the course of official duties and is either incompatible with official functions or "is likely to cause serious harm to the proper administration of justice before the Court."⁷² At least theoretically, a prosecutor who initiates politically motivated investigations that are consistently rejected by the Pre-Trial Chamber could be reined in by such a process.

It is worth noting as well, in respect of the independence of the office, that the prosecutor may refuse to pursue a state or Security Council referral if it is determined that there is no reasonable basis to proceed.⁷³ In such a case, the referring party may ask the Pre-Trial Chamber to review the decision and the Court may request the prosecutor to reconsider the decision.⁷⁴ In most situations, there is no statutory authority for the Court to force an investigation if, after reconsideration, the prosecutor does not proceed. However, a different process exists if the prosecutor decides not to proceed on the basis that, "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."⁷⁵ In such a case, the matter must be referred to the Pre-Trial Chamber and a majority must confirm the decision. If the decision not to proceed is rejected, the prosecutor must continue the investigation or prosecution.⁷⁶

Finally, it must be mentioned that Regulations of the Court,⁷⁷ the Rules of Procedure and Evidence, and the Elements of Crime accompany the Rome Statute as constituting the primary legal texts of the ICC, explaining the structure, functions and jurisdiction of the Court.

3.4 THE PRE-TRIAL CHAMBER

The Pre-Trial Chamber in large part determines the effectiveness and independence of the ICC prosecutor. Authorization to initiate an investigation *proprio motu* must be sought from the Pre-Trial Chamber. Next, victims must be informed that an investigation will take place, unless doing so would endanger them or threaten the integrity of the investigation, and notified victims may make representations in writing to the Pre-Trial Chamber.⁷⁸ The state with jurisdiction must also be notified, and such notification must contain specific information about the acts that may constitute crimes within ICC jurisdiction.⁷⁹ If the state requests that the prosecutor defer on the basis that it is conducting its own proceedings, the prosecutor can still request authorization to investigate if he or she is of the opinion that the state's actions are not genuinely intended to bring criminals to justice.⁸⁰ The prosecutor must give notice to the state and provide a summary of the basis of the application.⁸¹ The Court may consider whether any of the following factors are applicable in deciding to authorize an investigation over the objections of a state and its request for deferral:

- (a) The proceedings were or are being undertaken or the national decision was made for the purpose of shielding the person concerned from criminal responsibility for crimes within the jurisdiction of the Court;
- (b) There has been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice;
- (c) The proceedings were not or are not being conducted independently or impartially, and they were or are being conducted in a manner which, in the circumstances, is inconsistent with an intent to bring the person concerned to justice.⁸²

So that the Pre-Trial Chamber process itself does not become a tool for a state seeking to delay or deny justice, Article 18(6) permits the prosecutor to apply for permission to take investigative steps to preserve evidence, either pending a decision on the admissibility of a case by the Pre-Trial Chamber or during a period of official deferral to the state's national judicial system.

In terms of the standard of review in the Pre-Trial Chamber, if there is a "reasonable basis to proceed with an investigation" and the case "appears to fall within the jurisdiction of the Court,"⁸³ a case is considered admissible.

In the event that a state claims to be investigating or prosecuting and on that basis asks for an Article 18(2) deferral, however, it is not entirely clear what the standard of review is. According to the Draft Rules of Procedure and Evidence, the state requesting a deferral must begin by providing information concerning its investigation to the Court.⁸⁴ The state may provide evidence that its courts meet internationally recognized norms and standards for the independent and impartial prosecution of similar conduct,⁸⁵ and the Pre-Trial Chamber will then, using whatever procedure it deems appropriate,⁸⁶ consider the admissibility factors set out in Article 17 of the Rome Statute.⁸⁷

Once a case is found to be admissible and a suspect appears voluntarily, or is surrendered to, the Court, the Pre-Trial Chamber holds a confirmation of charges

hearing in accordance with Article 61 of the Rome Statute to determine whether there is sufficient evidence to establish substantial grounds to believe that an individual committed the crimes alleged.

3.5 THE TRIAL AND APPEALS CHAMBERS

Once the charges have been confirmed, cases are heard by the Trial Chamber, made up of three judges. At this stage the accused is presumed innocent and has the right to defend himself or herself or to choose counsel. Victims are also invited to participate in the proceedings as witnesses, and other third parties may be permitted to provide written or oral submissions.

For conviction, the prosecutor must convince the judges of the accused's guilt beyond a reasonable doubt.⁸⁸ 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 reparations orders 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 overturn various kinds of lower level decisions, including reparations and sentencing orders. Decisions of the Trial Chamber may be appealed on the grounds of procedural error, error of fact or law or, for a convicted individual, any other grounds that affected the fairness or reliability of the decision. A sentencing decision, meanwhile, may be appealed on the grounds of disproportionality.⁸⁹

3.6 VICTIM ASSISTANCE

Marking a first for victim assistance in international criminal law⁹⁰ are the mechanisms that exist within the ICC and under the Rome Statute to provide support for victims of war crimes, genocide and crimes against humanity – in particular, granting the right to participate in proceedings and to claim reparations.

The ICC Registry administers three bodies that provide such assistance. The Victims' Participation and Reparation Section receives applications from victims to participate in proceedings and to receive reparations, assists victims in organizing legal representation, notifies victims of case developments, and publicizes Court proceedings to further victim awareness.⁹¹ The Victims and Witnesses Unit provides logistical, protective and security measures, as well as psychological support, to witnesses, victims appearing before the Court and others at risk because of their testimony. It is also responsible for witness protection.⁹² The Office of Public Counsel for Victims supports victims' legal representatives and victims themselves, providing such services as research and advice. Members of the office can also be appointed as *pro bono* legal representatives for victims.⁹³

In addition, a trust fund called the Trust Fund for Victims was established separately from the ICC under the Rome Statute.⁹⁴ The Trust Fund can act only in situations where the ICC has jurisdiction. Essentially, the Trust Fund advocates for victims; funds and implements projects supporting victims; and provides tools, assistance and expertise for victims of war crimes, genocide and crimes against humanity. In concrete terms, this means that the Trust Fund implements reparations awards ordered by the ICC; provides for physical and psychological rehabilitation, and

material support for victims of crimes; and supports other projects with a focus on rehabilitation, and transitional and restorative justice, even in areas where there is no ongoing prosecution. Funding for the Trust Fund comes from State Party contributions to the Court and from reparations orders.⁹⁵

3.7 THE ICC TODAY

Since the ICC first came into existence in 2002, it has become an integral part of the international political relations and human rights systems. As of May 2013, 122 States Parties had ratified the Rome Statute, and the ICC prosecutor had taken up eight country situations: four upon the request of the country in question, two upon referral from the UN Security Council, and two using the prosecutor's *proprio motu* power. The following sequence of country situation descriptions is based on those groupings. In 2012, the Court concluded its first trials, entering one conviction (now being appealed) and one acquittal.

3.7.1 THE DEMOCRATIC REPUBLIC OF THE CONGO⁹⁶

One of the first country situations referred to the Court was that of the Democratic Republic of the Congo (DRC), with respect to the civil war that first began in 1998. In April 2004, the DRC government requested that the prosecutor open an investigation, which eventually led to six arrest warrants being issued and to the first conviction and acquittal by the Court in 2012.

That first conviction stems from the case of Thomas Lubanga Dyilo, leader of the Union of Congolese Patriots.⁹⁷ An arrest warrant for Lubanga was issued in March 2006 and charges were confirmed in January 2007 alleging war crimes, including the enlistment, conscription and use of children under the age of 15 as soldiers. Lubanga's trial was postponed multiple times because of concerns that the prosecutor was unable to make potentially exculpatory evidence available to the defence,⁹⁸ but it finally got under way in January 2009. In March 2012, Trial Chamber I convicted Lubanga of those charges,⁹⁹ sentencing him to 14 years in prison¹⁰⁰ and setting out a reparations regime that calls on victims to submit proposals for the Trust Fund for Victims, which will be presented to a Trial Chamber for approval.¹⁰¹ Lubanga's conviction is currently being appealed.

Arrest warrants were also issued for Germain Katanga (alleged commander of the Force de résistance patriotique en Ituri) in October 2007, and Mathieu Ngudjolo Chui (alleged leader of the Front des nationalistes et intégrationnistes) in February 2008. The arrest warrants alleged crimes against humanity based on murder, sexual slavery and rape, as well as war crimes based on the use of child soldiers, attacks on civilian populations, willful killings, destruction of property, pillaging, sexual slavery and rape.¹⁰² Charges against the two accused were joined, as they related to the same attack on a village, and the trial began in November 2009. After hearing closing arguments, Trial Chamber II severed the charges against the two accused and acquitted Ngudjolo Chui in December 2012, ordering his release, as the prosecutor had not proven beyond a reasonable doubt that Ngudjolo was the commander during the attack.¹⁰³ The Office of the Prosecutor is appealing that verdict.

Charges have also been sought against three others involved in the DRC conflict.

- An arrest warrant for Callixte Mbarushimana was issued in October 2010, but Pre-Trial Chamber I¹⁰⁴ declined to confirm the charges of war crimes and crimes against humanity. He was released in December 2011.¹⁰⁵
- An arrest warrant for Bosco Ntaganda was issued in April 2008 on charges of crimes against humanity and war crimes. Ntaganda surrendered himself to the U.S. Embassy in Rwanda in March 2013 and was transferred to The Hague. A confirmation of charges hearing is planned for February 2014.
- An arrest warrant for Sylvestre Mudacumura was issued in July 2012 on charges of war crimes. Mudacumura remains at large.¹⁰⁶

3.7.2 UGANDA¹⁰⁷

In December 2003, the government of Uganda requested that the prosecutor open an investigation into the situation with respect to the Lord's Resistance Army in northern Uganda. In July 2005, five arrest warrants alleging crimes against humanity and war crimes were issued against senior leaders of the Lord's Resistance Army, including Joseph Kony. The accused are not in custody, and at least one (Raska Lukwiya) has been confirmed killed since the warrants were issued.¹⁰⁸

Peace negotiations are ongoing between the government of Uganda and Kony. While the accused have requested immunity from the Court, the Ugandan government is also considering the establishment of a domestic tribunal to try the accused according to international standards.

3.7.3 CENTRAL AFRICAN REPUBLIC¹⁰⁹

In December 2004, the government of the Central African Republic requested that the prosecutor open an investigation into the 2002–2003 armed conflict within its borders. An arrest warrant for Jean-Pierre Bemba Gombo, alleged Commander-in-Chief of the mouvement de libération du Congo, was issued in May 2008 on charges of crimes against humanity based on murder and rape, and war crimes based on murder, rape and pillaging. These charges are founded on the doctrine of command responsibility (i.e., the responsibility of a military commander for crimes committed by forces under their control)¹¹⁰ rather than individual criminal responsibility, and are the only such charges brought so far by the prosecutor. The trial began in November 2010.

3.7.4 MALI¹¹¹

Mali is the most recent country to request the ICC prosecutor to open an investigation into war crimes perpetrated during the internal conflict that has been ongoing since early 2012. The prosecutor opened an investigation into the situation in January 2013 after receiving a request from the government in July 2012.

3.7.5 SUDAN (DARFUR)¹¹²

The first time the UN Security Council used its power to refer a country situation to the ICC was in March 2005, when the Security Council adopted Resolution 1593,¹¹³ referring the situation with respect to internal conflict in Darfur, Sudan to the Court. Since then, charges have been brought against the following:

- Omar Hassan Ahmad Al Bashir, former and current President of Sudan, who faces charges of war crimes, crimes against humanity and genocide (arrest warrants were issued in March 2009 and July 2010);¹¹⁴
- Ahmad Harun, former Sudanese minister of state for the interior and present Governor of South Kordofan, and Ali Kushayb, a former militia/Janjaweed leader, who are charged with multiple counts of war crimes and crimes against humanity (arrest warrants were issued in April 2007);
- Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, Darfuri rebel leaders, who face charges of war crimes (a summons to appear was issued under seal for Banda and for Jerbo on 27 August 2009); and
- Abdel Raheem Muhammad Hussein, former minister of the interior and president's special representative in Darfur, and present Minister of National Defence, who faces charges of war crimes and crimes against humanity (the arrest warrant was issued in March 2012).¹¹⁵

Pre-Trial Chamber I rejected war crimes charges against another suspect, Darfuri rebel leader Bahar Idriss Abu Garda, who had been issued a summons to appear under seal on 7 May 2009. Pre-Trial Chamber I cited insufficient evidence in rejecting the war crimes charges.¹¹⁶

Abu Garda, Banda and Jerbo appeared voluntarily before the Court (following Jerbo's appearance, reports circulated in April 2013 that he may have been killed). However, four suspects remain at large – three of them in positions of government authority. Sudan is not a State Party to the Rome Statute and rejects the ICC's jurisdiction. Omar Al Bashir is the first sitting head of state to be indicted by the Court and there has been much discussion about immunity and the validity of the charges against him, both among academics and in decisions of the Court itself.¹¹⁷ The case against him is also the only case at the ICC so far that has been brought on charges of genocide.

3.7.6 LIBYA¹¹⁸

In February 2011, the UN Security Council passed another resolution, this time unanimously referring to the ICC the situation in Libya with respect to its 2011 civil war.¹¹⁹ The ICC prosecutor accordingly issued arrest warrants in June 2011 for Muammar Mohammed Abu Minyar Gaddafi (head of state), Saif Al-Islam Gaddafi (former de facto prime minister) and Abdullah Al-Senussi (former head of military intelligence) on charges of crimes against humanity based on murder and persecution. The case against Muammar Gaddafi was terminated following his death in November 2011; the other two suspects, meanwhile, remain in the custody of Libyan authorities who wish to try them in a domestic court rather than the ICC.¹²⁰ Libya is not

a State Party to the Rome Statute. However, in May 2013, Pre-Trial Chamber I rejected Libya's challenge to ICC jurisdiction over the case of Al-Islam Gaddafi.

3.7.7 KENYA¹²¹

In March 2010, Pre-Trial Chamber II gave its approval to start proceedings with respect to the 2007–2008 post-election violence in Kenya. This marked the first time that an ICC prosecutor had initiated proceedings *proprio motu*. The following developments have occurred since then.

- Charges of crimes against humanity based on murder, deportation/forcible transfer and persecution have been confirmed against William Samoei Ruto (former minister of higher education, science and technology and current Deputy President) and Joshua Arap Sang (radio broadcaster).¹²²
- Charges of crimes against humanity based on murder, deportation/forcible transfer, rape, persecution and other inhumane acts have been confirmed against Uhuru Muigai Kenyatta (former deputy prime minister and minister of finance, and current President).¹²³ Similar charges against Francis Kirimi Muthaura (former head of the public service and secretary to the cabinet) were withdrawn in March 2013 due to difficulties with evidence and witness testimony.
- Pre-Trial Chamber II has declined to confirm charges against Henry Kiprono Kosgey (Member of Parliament) and Mohammed Hussein Ali (former commissioner of police and current Chief Executive of the Postal Corporation).

None of the suspects is in custody, although they have appeared voluntarily before the Court. Trials for Ruto and Sang are set to commence in 2013; however, in March 2013, Kenyatta was elected President of Kenya, with Ruto as his Deputy. Kenya has challenged the jurisdiction of the ICC, but an ICC Appeals Chamber rejected this challenge in May 2012. Although Kenyatta initially promised to respect the Court's jurisdiction, in May 2013, the government asked the UN Security Council to "terminate" the case,¹²⁴ and the African Union, a supranational organization representing African states, has expressed support for transferring the case to the Kenyan legal system.¹²⁵ Like with President Al Bashir of Sudan, it remains to be seen how the Court will be able to proceed with a trial against a sitting head of state.

3.7.8 CÔTE D'IVOIRE¹²⁶

The ICC prosecutor again initiated proceedings *proprio motu* with respect to the situation in Côte d'Ivoire, as approved by Pre-Trial Chamber III in October 2011. In November 2011, an arrest warrant was issued for former president Laurent Gbagbo on charges of crimes against humanity based on murder, rape and other sexual violence, persecution and other inhuman acts during 2010 post-electoral violence in Côte d'Ivoire.¹²⁷ Gbagbo was delivered into the custody of the Court by Ivorian authorities who accepted the ICC's jurisdiction in the case, even though Côte d'Ivoire was not yet a State Party. In November 2012, a further arrest warrant was issued for Gbagbo's wife, Simone Gbagbo, on similar charges of crimes against humanity.¹²⁸ She remains in the custody of Ivorian authorities. Côte d'Ivoire became a State Party to the Rome Statute in February 2013.

3.7.9 OTHER SITUATIONS

Although investigations have not begun, the ICC prosecutor is also conducting preliminary examinations in a series of other countries: Colombia, Afghanistan, Georgia, Guinea, Honduras, Israel, Nigeria and the Republic of Korea (for crimes perpetrated against it).¹²⁹

4 CRITICISMS OF THE INTERNATIONAL CRIMINAL COURT

4.1 THE POLITICALLY MOTIVATED PROSECUTOR

Clearly, what many ICC opponents fear most is a prosecutor who initiates proceedings *proprio motu* for purely political reasons.¹³⁰ However, safeguards have been built into the Rome Statute precisely to guard against politically motivated prosecutions. International crime is inherently political.

Anyone who assumes the prosecutorial role at the ICC will, of course, come with his or her political perspective on the world and its conflicts, and external political pressure may be exerted in an effort to bring a complaint when it might not be justified or helpful in a particular political context.¹³¹ However, several factors – notably, a process of vigorous internal indictment review, the requirement of confirmation by a judge, and the inevitable acquittal that would result from an unfounded prosecution – act as safeguards to prevent any abuse of power by a politically driven prosecutor.¹³² The fact that only two prosecutions have moved forward *proprio motu* is perhaps an indication that these safeguards are working.

In fact, one of the ICC's goals is to alleviate political pressures in the realm of international justice. States have historically been reluctant to exercise universal jurisdiction in respect of grave crimes, due to political pressures from other states. The ICC serves to shift some of this risk from individual states and thereby overcome political obstacles to prosecution.¹³³

Some states also opposed the *proprio motu* power of the prosecutor on the grounds that the office would be overwhelmed with frivolous complaints and would have to waste precious resources addressing them.¹³⁴ As of December 2012, the Court had received close to 10,000 “communications” under Article 15 of the Rome Statute from a wide variety of sources.¹³⁵ Nevertheless, the prosecutor's four-phase process for filtering complaints has proven able to dispose quickly of large quantities of unsubstantiated allegations, as a large percentage do not meet the jurisdictional requirements.

4.2 A BARRIER TO PEACE AND RECONCILIATION

Many commentators have expressed their concern that the ICC may stand as an obstacle to reconciliation and the resolution of conflicts.¹³⁶ In the past, many countries have granted amnesties in order to end conflicts. The fear is that as the ICC becomes involved in ongoing or recent conflicts, wars will be fought longer, peace processes will be disrupted and leaders will be reluctant to relinquish power if

facing indictment. The argument is that removing the possibility for amnesty removes incentives for settlement, and may even encourage leaders to remain in power.

Conversely, others suggest that amnesty is not the reason that dictators relinquish power. They argue that instead, dictators leave only when they are weak and vulnerable and desperate to get whatever they can, not whatever they want.¹³⁷ In this context, attempting to draw lines between the pursuit of justice as an obstacle to peace is often tenuous. In some cases a move towards peace may be best served by effective justice. In other cases, peace processes may remain shallow and incomplete if not accompanied by promises of responsible justice.¹³⁸

During the ICC preparatory phase and in Rome in 1998, the issue of how to address amnesties was never discussed, in part due to pressure from human rights groups.¹³⁹ Significantly, Article 53 of the Statute does allow for the prosecutor to refuse to proceed with an investigation or prosecution if it would not serve the interests of justice. As discussed earlier, this decision is subject to review by the Pre-Trial Chamber.

Whether or not there is a clear-cut answer to this dilemma, the amnesty versus prosecution debate is an important one for the ICC and certainly lies at the heart of the situation in Uganda, where ICC arrest warrants were initially critical in bringing Joseph Kony and others to the negotiating table. The Lord's Resistance Army leaders now demand to be shielded from prosecution in exchange for their further participation in the peace process. A similar debate swirls over the effect of the indictment of President Al Bashir on the peace process in Sudan, as well as President Kenyatta's indictment on recent elections in Kenya. While the ICC prosecutor hopes that "the shadow of the ICC" may have contributed to peaceful 2013 elections in Kenya,¹⁴⁰ others suggest that the ICC charges against Kenyatta helped him to win votes by appearing to be "victim of a mostly Western-funded court."¹⁴¹

4.3 COST AND DELAY

As the ICC matures, critical voices are mounting with respect to the expense and delay involved in ICC proceedings.¹⁴² By early 2012, the ICC had cost the international community over \$900 million¹⁴³ but had only handed down one conviction and one acquittal – more than 10 years after the Court's establishment. Even proponents of the ICC have begun to ask whether the ICC is losing credibility.

However, although major prosecutions are proceeding slowly, things are not at a standstill. Procedural issues at the pre-trial and trial stage are handled and decided regularly. The problem is that success at the procedural level inevitably slows progress in the actual trials, bogging down the larger issues at play.¹⁴⁴ The main question is whether the ICC can retain its preventative power in the face of such delays. The ICC will remain credible only as long as it can remain a powerful symbol for deterrence.

4.4 THE FOCUS ON AFRICA

Finally, one concern of some significance is the ICC prosecutor's apparent exclusive focus on Africa. A number of critics have expressed serious reservations about this reality, and voice fear about bias and the perception that the ICC is yet another

instrument of foreign intervention in a long history of Western/Northern interference in African affairs. Although African nations were early supporters of the Court, at a May 2013 meeting of the African Union, the Chairman went so far as to say that some African leaders now believe that the ICC prosecutions “have degenerated into some kind of race hunt.”¹⁴⁵ Some commentators point out that even if various geopolitical pressures have simply made it easier for the prosecutor to begin investigations in Africa rather than elsewhere, this sends a negative signal about how the ICC works. They insist that the ICC cannot investigate African crises alone.¹⁴⁶

Proponents of the ICC raise a number of explanations for the Court’s concentration on Africa. First, almost all of the situations under investigation have been initiated upon referral by African governments themselves or the UN Security Council. Commentators also note that Africa is home to some of the world’s weakest states that are plagued with conflict. The Court’s first prosecutor, Luis Moreno-Ocampo, has noted that it is in Africa that the breaches of international criminal law are particularly severe. Sexual assault, forced displacement and massacre are issues that are present on a massive scale in the countries under investigation. He said that it was only natural that they should come under investigation first. National legal systems are also weak in Africa, so the complementarity principle has led to ICC jurisdiction faster than in some other states.¹⁴⁷ Geopolitical pressures are clearly also at play. African nations were initially very supportive of the ICC and some important players in the international community can effectively block controversial prosecutions in more politically sensitive regions. Finally, it is important to note that although the prosecutor has initiated official investigations in Africa only thus far, the Office of the Prosecutor is also monitoring the situation in other countries around the world, including Afghanistan, Georgia and Colombia.

5 WHERE THE UNITED STATES STANDS TODAY

The American position with respect to the ICC has evolved since the Court first came into being. The U.S. government had been a staunch opponent of the ICC, particularly since President George W. Bush formally renounced any U.S. obligations under the Rome Statute in May 2002. As a direct result of this opposition, the president signed the *American Service-Members’ Protection Act* (ASPA) into law in August 2002, restricting any U.S. agency, court or government cooperation with the ICC, except when the ICC deals with U.S. enemies; making U.S. support of peacekeeping missions in large part contingent on the guaranteed impunity of U.S. personnel; and granting the president permission to free U.S. citizens and allies from ICC custody by “any means necessary,” thus earning the legislation the nickname of “The Hague Invasion Act.”¹⁴⁸

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.¹⁴⁹ States that signed these agreements promised not to surrender Americans on their territory to the ICC. Subject to a national interest waiver, the ASPA denied U.S. military assistance (education and training, and financing) to states that had not signed such agreements (except NATO members, major non-NATO allies and Taiwan). In December 2004, the U.S. government added the Nethercutt Amendment to this arrangement, denying a broad range of aid to

states that refused to sign the immunity agreements.¹⁵⁰ By late 2006, over 100 immunity agreements had been signed. However, many countries did not sign the agreements, and 24 States Parties lost U.S. aid in the 2005 fiscal year.¹⁵¹

However, the U.S. position on the bilateral immunity agreements began to soften in 2006. Amendments were made to the ASPA in 2006 and 2008, lifting restrictions on foreign military assistance to countries that had not signed such agreements, and a number of waivers were issued. The U.S. government also generally stopped requesting immunity agreements of States Parties, and the Nethercutt Amendment has also been allowed to expire without renewal.¹⁵²

U.S. personnel are also no longer immune from the ICC when involved in UN missions. In 2002, the U.S. government secured a UN Security Council Resolution (1422)¹⁵³ that effectively gave immunity to personnel from non-Rome Statute States Parties involved in UN missions. However, that Resolution expired in 2004 and has not been renewed since.¹⁵⁴

Ultimately, the U.S. government's position with respect to, and argument against, the ICC has been weakened since 2002. Contrary to early concerns, there has been no evidence of a politically motivated prosecutor attempting to pursue U.S. personnel or interests. As well, U.S. opposition to the ICC strained relationships between the U.S. and other countries.

Under President Barack Obama's administration, the U.S. government's position with respect to the ICC has softened even more.¹⁵⁵ Upon assuming power, the president instigated a review of U.S. policy towards the Court, and in January 2009, then secretary of state Hillary Clinton stated that "we will end our 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."¹⁵⁶ By late 2009, the U.S. had begun to participate in the ICC Assembly of States Parties as an observer, and over time the government has stopped resisting reference to the ICC in UN resolutions. The UN Security Council's unanimous resolution referring the situation in Libya to the ICC in 2011 was an important step. Another recent example of enhanced cooperation is the U.S. government's expansion of its Rewards for Justice program, which offers up to \$5 million for information leading to the arrest of ICC fugitives.¹⁵⁷

6 CONCLUSION

Amidst criticism of the ICC, it is important to remember that the Court is still a "baby" institution – essentially the first of its kind. Building upon the history of Nuremberg and the ICTY and ICTR, the ICC is dealing with complex international criminal law issues in a way that could not even have been contemplated 50 years ago. International criminal law has grown in leaps and bounds in the last 15 years. New hybrid tribunals implementing a mix of domestic and international law are popping up around the world to deal with domestic and historical instances of crimes against humanity.¹⁵⁸

ICC trials may be slow and costly, but the mere fact that they are occurring is nevertheless a milestone and an inspiration for the international community. The ICC is a body that is slowly but surely showing that it can work, together with national and regional courts, truth and reconciliation commissions and other peace and justice processes, to create a powerful role for international criminal law.¹⁵⁹

NOTES

1. Leslie Green, "War Crimes, Crimes against Humanity, and Command Responsibility," *Naval War College Review*, Vol. L, No. 2, Spring 1997, p. 68.
2. Second Peace Conference of The Hague, 1907, [*Convention \(IV\) respecting the Laws and Customs of War on Land*](#), 18 October 1907.
3. Green (1997). Green notes that Article 3 of the 1907 Convention seems to exclude any personal liability: "A belligerent party which violates the provisions of the said Regulations [annexed to the Convention] shall, if the case demands, be liable to pay compensation. It shall be responsible for all acts committed by persons forming part of its armed forces."
4. The *Treaty of Westphalia* marked the end of the Thirty Years' War and saw the central authority of the Holy Roman Empire replaced almost entirely by the sovereignty of about 300 princes.
5. The League of Nations, [*Treaty of Versailles*](#), 28 June 1919.
6. M. Cherif Bassiouni, "Historical Survey: 1919–1998," in *The Statute of the International Criminal Court: A Documentary History*, ed. M. Cherif Bassiouni, Transnational Publishers, Ardsley, N.Y., 1998, p. 7.
7. *Declaration of St. James*, 13 January 1942, issued in London.
8. *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal*, 82 U.N.T.S. 280, entered into force 8 August 1945 [London Agreement], Article 14.
9. London Agreement, Article 6. Genocide was not yet a recognized offence.
10. International Military Tribunal (Nuremberg), "Judgment and Sentences," *American Journal of International Law*, Vol. 41, 1947, p. 172.
11. For example, the definition of "crimes against peace" was altered to make it applicable to "declared or undeclared" war, as Japan had not made any formal declaration and the defendants could have argued that, technically, Japan was not at war.
12. The London Charter for Nuremberg stated that the tribunal would not be bound by technical rules of evidence. President Webb of the Tokyo Tribunal stated in respect of judicial decisions on the admissibility of evidence: "The decision of the Court will vary with its constitution from day to day." For a detailed review of the rules of procedure and evidence, see Evan J. Wallach, "The Procedural and Evidentiary Rules of the Post-World War II War Crimes Trials: Did They Provide an Outline for International Legal Procedure?," *Columbia Journal of Transnational Law*, Vol. 37, 1999, pp. 851, 868–870.
13. For example, the elimination of the defence of "obedience to superior orders" and the accountability of heads of state (see Bassiouni (1998), p. 9).
14. Lyal S. Sunga, *The Emerging System of International Criminal Law: Developments in Codification and Implementation*, Kluwer Law International, The Hague and Boston, 1997, p. 281; Robert J. Currie, *International and Transnational Criminal Law*, Irwin Law, Toronto, March 2010, p. 164.
15. For example, with respect to the Nuremberg Court, the four occupying powers were granted "supreme authority with respect to Germany, including all the powers possessed by the German Government, the High Command, and any state, municipal, or local government or authority" (see "Declaration concerning the defeat of Germany," *Department of State Bulletin*, Vol. 12, 10 June 1945, pp. 1051–1055). See also Sunga (1997), p. 282; and Currie (2010), p. 164.
16. Wallach (1999), p. 853.

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17. Benjamin B. Ferencz, "[International Criminal Courts: The Legacy of Nuremberg](#)," *Pace International Law Review*, Vol. 10, Issue 1, 1998, p. 207.
18. United Nations, "[Convention on the Prevention and Punishment of the Crime of Genocide](#)," *United Nations Treaty Series*, Vol. 78, 9 December 1948, p. 277.
19. *Ibid.*, Article 1.
20. Copies of the Geneva Conventions of 1949 are found in United Nations, [Treaty Series](#), Vol. 75, 1950: *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949*, p. 31; *Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of August 12, 1949*, p. 85; *Geneva Convention Relative to the Treatment of Prisoners of War of August 12, 1949*, p. 135; and *Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949*, p. 287.
21. See Bassiouni (1998), pp. 10–15, for a review of this period.
22. This includes the Canadian war crimes trial of Brigadeführer Kurt Meyer in 1945 in Aurich, Germany. Also see Green (1997).
23. Bassiouni (1998), p. 17.
24. United Nations Security Council, [Resolution 780 \(1992\)](#), 6 October 1992.
25. James O'Brien, "The International Tribunal for Violations of International Humanitarian Law in the Former Yugoslavia," *American Journal of International Law*, Vol. 87, 1993, pp. 639–640.
26. United Nations Security Council, [Resolution 827 \(1993\)](#), 25 May 1993. The International Criminal Tribunal for the former Yugoslavia [ICTY] was created pursuant to Resolution 827, the "ICTY Statute."
27. United Nations Security Council, [Resolution 955 \(1994\)](#), 8 November 1994. The International Criminal Tribunal for Rwanda [ICTR] was created pursuant to Resolution 955, the "ICTR Statute."
28. Louise Arbour, "The Prosecution of International Crimes: Prospects and Pitfalls," *Washington University Journal of Law and Policy*, Vol. 1, 1999, p. 16.
29. Rwanda's vote against the ICTR was based on, among other things, the limitation of the tribunal's temporal jurisdiction to acts committed in 1994, the fact that countries that had supported the genocidal regime would participate in the nomination of judges, and the exclusion of capital punishment from the penalties available: for a detailed review, see Olivier Dubois, "Rwanda's National Criminal Courts and the International Tribunal," *International Review of the Red Cross*, No. 321, 1997, p. 717.
30. United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, [Updated Statute of the International Criminal Tribunal for the Former Yugoslavia](#), September 2009.
31. United Nations, [Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts \(Protocol II\)](#), 8 June 1977. Protocol II outlines protections due to individuals in the case of armed conflict not of an international character.
32. Helena Cobban, "International Courts," *Foreign Policy*, March–April 2006; and George S. Yacoubian Jr., "Evaluating the Efficiency of the International Tribunals for Rwanda and Yugoslavia," *World Affairs*, Vol. 165, No. 3, Winter 2003.
33. ICTY, [Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic \(Trial Judgment\)](#), Case no. IT-96-23, 22 February 2001.

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34. ICTY, *The Prosecutor of the Tribunal against Slobodan Milosevic, Milan Milutinovic, Nikola Sainovic, Dragoljub Ojdanic, Vlatko Stojiljkovic; Second Amended Indictment*, Case no. IT-99-37-PT. Slobodan Milosovic was indicted for crimes against humanity and violations of the laws or customs of war in respect of the Kosovo conflict while president of Serbia (24 May 1999). He died in March 2006, before a verdict was reached.
35. For example, former Bosnian Serb president Biljana Plavsic voluntarily surrendered to the ICTY in January 2001; others have since followed.
36. ICTR, [The Prosecutor versus Jean Kambanda](#), Case no. ICTR-97-23-S, 4 September 1998.
37. ICTR, [The Prosecutor versus Jean-Paul Akayesu](#), Case no. ICTR-96-4-T, 2 September 1998.
38. United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (2009), Article 16.
39. United Nations International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, "Rule 47: Submission of Indictment by the Prosecutor," [Rules of Procedure and Evidence](#), 19 November 2012, p. 39.
40. Article 15(2) of the ICTR Statute.
41. The [Nuremberg Trial Proceedings, Vol. 1, Rules of Procedure](#) was adopted by the tribunal in accordance with Article 13 of the Tribunal Charter on 29 October 1945.
42. In the context of this close relationship with the United Nations Security Council, it should be noted that, as the ICTY and ICTR wrap up their casework, the Security Council has established a Mechanism for International Criminal Tribunals to assist them in finalizing their mandates. The branch covering the functions of the ICTR began operations in July 2012 and the branch covering the operations of the ICTY was to begin in July 2013.
43. Melissa K. Marler, "The International Criminal Court: Assessing the Jurisdictional Loopholes in the Rome Statute," *Duke Law Journal*, Vol. 49, No. 3, 1999, p. 829.
44. International Law Commission, [Draft Statute for an International Criminal Court, 1994](#), 2005.
45. Philippe Kirsch and John T. Holmes, members of the Canadian delegation, describe the process in "The Rome Conference on an International Criminal Court: The Negotiating Process," *American Journal of International Law*, Vol. 93, No. 2, 1999, p. 3.
46. See Kirsch and Holmes (1999), pp. 8–9.
47. Chaired by Canadian delegate Kirsch.
48. International Criminal Court, [Rome Statute of the International Criminal Court](#) [Rome Statute], The Hague, 2011.
49. In that letter, U.S. Under Secretary of State for Arms Control and International Security John Bolton told UN Secretary-General 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.

50. United States Senate, Committee on Foreign Relations, Subcommittee on International Operations, [Is a U.N. International Criminal Court in the U.S. National Interest?](#), Hearing 105-724 (Hearing on the International Criminal Court), 2nd Session, 105th Congress, 23 July 1998, pp. 4 and 9 (Rod Grams, Senator from Minnesota, and John Ashcroft, Senator from Missouri). In American Senate hearings that coincided with the conference, Senator Grams called the ICC a “monster that we need to slay” and Senator Ashcroft similarly denounced the International Criminal Court as “a clear and continuing threat to the national interest of the United States.”
51. Government of Canada, [Crimes Against Humanity and War Crimes Act](#), S.C. 2000, c. 24.
52. Rome Statute, Article 5(1). See International Criminal Court, [Elements of Crimes](#), The Hague, 2011 for further details on these crimes.
53. Kirsch and Holmes (1999), p. 10.
54. Rome Statute, Article 8 *bis*. The crime of aggression is defined as:
- the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression. Importantly, it contains the threshold requirement that the act of aggression must constitute a manifest violation of the Charter of the United Nations. An act of aggression is defined as the use of armed force by one State against another State without the justification of self-defense or authorization by the Security Council.
- (Coalition for the International Criminal Court, [“The Crime of Aggression,”](#) *Delivering on the promise of a fair, effective and independent Court.*)
- For more information about the Kampala Review Conference and the crime of aggression, see Matthew Gillett, “The Anatomy of an International Crime: Aggression at the International Criminal Court,” *International Criminal Law Review* (forthcoming); also see Surendran Koran, [“The International Criminal Court and Crimes of Aggression: Beyond the Kampala Convention,”](#) *Houston Journal of International Law*, Vol. 34, No. 2, 2012, p. 231.
55. Rome Statute, Articles 15 *bis* and *ter*. See also Coalition for the International Criminal Court, “The Crime of Aggression:
- [A]rticle 15 *ter* of the Statute provides that the Court’s jurisdiction is triggered in the same manner as with the other crimes in the Statute, meaning the Prosecutor may proceed with an investigation into the crime of aggression.
- In contrast to Security Council referrals, under article 15 *bis*, the Prosecutor may only proceed with an own motion (*proprio motu*) investigation or an investigation based on a State referral of a situation into the crime of aggression:
- after first ascertaining whether the Security Council has made a determination of the existence of an act of aggression (under article 39 of the UN Charter) and waiting for a period of 6 months;
 - where that situation concerns an act of aggression committed between States Parties; and
 - after the Pre-Trial Division of the Court has authorized the commencement of the investigation.
56. Rome Statute, Article 11.
57. Edward M. Wise, “The International Criminal Court: A Budget of Paradoxes,” *Tulane Journal of International and Comparative Law*, Vol. 8, 2000, p. 270.
58. Rome Statute, Article 8(2).

59. Ibid., Article 8(1).
60. An International Criminal Court investigation may be initiated when the United Nations Security Council determines that there has been a breach of international peace and security. Note that the usual personal and territorial jurisdictional restrictions do not apply when the International Criminal Court takes jurisdiction based on a referral from the United Nations Security Council.
61. Rome Statute, Article 13.
62. Ibid., Article 17. In addition to the preamble of the Rome Statute and Article 1, Article 17 provides that a case will be inadmissible when
 - (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;
 - (b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;
 - (c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;
 - (d) The case is not of sufficient gravity to justify further action by the Court.
63. Ibid., Article 15(3).
64. Ibid., Article 18.
65. Mahnoush H. Arsanjani, "Developments in International Criminal Law: The Rome Statute of the International Criminal Court," *American Journal of International Law*, Vol. 93, 1999, p. 27.
66. Rome Statute, Article 18(4).
67. Currie (2010), pp. 195–196.
68. United Nations, *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court; Rome, 15 June–17 July 1998: Official Records*, Volume II, A/CONF. 183/13 (Vol. II), New York, 2002, p. 104, paras. 119–123 (Iris Almeida, Observer, International Centre for Human Rights and Democratic Development).
69. United States Senate (1998), p. 55 (John R. Bolton, American Permanent Representative to the United Nations).
70. Rome Statute, Article 46.
71. International Criminal Court, "[Rules of Procedure and Evidence](#)," *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3–10 September 2002* (ICC-ASP/1/3 and Corr. 1), part II.A, The Hague, 2013, Rule 26(2).
72. Ibid., Rule 24(1)(a).
73. Rome Statute, Article 53.
74. Ibid., Article 53(3).
75. Ibid., Article 53, subparagraphs 1(c) and 2(c).
76. International Criminal Court (2013), Rule 110.

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77. International Criminal Court, [Regulations of the Court](#), 26 May 2004 (as amended to November 2011).
78. International Criminal Court (2013), Rule 50.
79. *Ibid.*, Rule 52.
80. Rome Statute, Article 18(2).
81. International Criminal Court (2013), Rule 54(2).
82. Rome Statute, Article 17(2).
83. *Ibid.*, Article 15(4).
84. International Criminal Court (2013), Rule 53.
85. *Ibid.*, Rule 51.
86. *Ibid.*, Rule 55(1).
87. *Ibid.*, Rule 55(2).
88. Rome Statute, Article 66.
89. *Ibid.*, Article 81.
90. Trust Fund for Victims, "[The Two Roles of the TFV](#)," *About Us*.
91. International Criminal Court, "[Participation of victims in proceedings](#)"; and International Criminal Court, "[Reparation for victims](#)."
92. International Criminal Court, "[Victims and witnesses protection and support](#)"; and International Criminal Court, "[Victims and Witnesses Unit](#)."
93. International Criminal Court, "[Office of Public Counsel for Victims](#)"; and International Criminal Court, Office of Public Counsel for Victims, [Helping victims make their voice heard: The Office of Public Counsel for Victims – 5 years of activities](#), The Hague, 2010.
94. Rome Statute, Article 79.
95. Trust Fund for Victims, "[What We Do](#)," *About Us*; and Trust Fund for Victims, "[The Two Roles of the TFV](#)," *About Us*.
96. International Criminal Court, [ICC-01/04 – Situation in Democratic Republic of the Congo](#).
97. International Criminal Court, [Situation in Democratic Republic of the Congo: The Prosecutor v. Thomas Lubanga Dyilo](#), Case no. ICC-01/04-01/06, Fact sheet; and International Bar Association's Human Rights Institute, *Case watch: Prosecutor v. Thomas Lubanga Dyilo* [Consulted on 26 June 2013, but no longer active].
98. The prosecutor obtained the evidence on the condition of confidentiality from the United Nations, which refused to consent to disclosure to the defence.
99. International Criminal Court, [The Prosecutor v. Thomas Lubanga Dyilo](#), ICC-01/04-01/06 (Trial Chamber I), 14 March 2012.
100. International Criminal Court, [Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo](#), No. ICC-01/04-01/06, 10 July 2012.
101. International Criminal Court, [Situation in the Democratic Republic of the Congo in the case of the Prosecutor v. Thomas Lubanga Dyilo](#), No. ICC-01/04-01/06, 7 August 2012.
102. International Criminal Court, [Situation in the Democratic Republic of the Congo: The Prosecutor v. Germain Katanga](#), Case no. ICC-01/04-01/07, Fact sheet; and International Bar Association's Human Rights Institute, *Case watch: Prosecutor v. Germain Katanga; Prosecutor v. Mathieu Ngudjolo Chui* [Consulted on 26 June 2013, but no longer active].

103. International Criminal Court, "[The Prosecutor v. Mathieu Ngudjolo Chui](#)," ICC-01/04-02/12 (Trial Chamber II), 18 December 2012.
104. The Pre-Trial Chamber is divided into Pre-Trial Chambers I, II and III in order to divide the work on various cases.
105. International Criminal Court, [Situation in Democratic Republic of the Congo: The Prosecutor v. Callixte Mbarushimana](#), Case no. ICC-01/04-01/10, Fact sheet.
106. International Criminal Court, [Situation in Democratic Republic of the Congo: The Prosecutor v. Sylvestre Mudacumura](#), Case no. ICC-01/04-01/12, Fact sheet.
107. International Criminal Court, [ICC 02/04 – Situation in Uganda](#).
108. International Criminal Court, [Situation in Uganda: The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen](#), Case no. ICC-02/04-01/05, Fact sheet.
109. International Criminal Court, [ICC-01/05 – Situation in the Central African Republic](#); International Criminal Court, [Situation in the Central African Republic: The Prosecutor v. Jean-Pierre Bemba Gombo](#), Case no. ICC-01/05-01/08, Fact sheet; and International Bar Association's Human Rights Institute, *Case watch: Prosecutor v. Jean-Pierre Bemba Gombo* [Consulted on 26 June 2013, but no longer active].
110. Rome Statute, Article 28. For some discussion of the concept, see the following: Asser Institute, Centre for European and International Law, "[Superior or Command Responsibility](#)," *IHL/ICL Basics*; William Schabas, *The International Criminal Court: A Commentary on the Rome Statute*, Oxford University Press, Oxford, United Kingdom, 2010, pp. 454–465; M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Application*, Cambridge University Press, Cambridge, United Kingdom, 2011, pp. 526–559; and Yoram Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2nd ed., Cambridge University Press, Cambridge, United Kingdom, 2012, pp. 271–279.
111. International Criminal Court, [ICC-01/12 – Situation in the Republic of Mali](#).
112. International Criminal Court, [ICC-02/05 – Situation in Darfur, Sudan](#).
113. United Nations Security Council, [Resolution 1593 \(2005\)](#), 31 March 2005. The resolution was adopted by a vote of 11 to zero, with four abstentions (Algeria, Brazil, China and the United States).
114. International Criminal Court, [Situation in Darfur, Sudan: The Prosecutor v. Omar Hassan Ahmad Al Bashir](#), Case no. ICC-02/05-01/09, Fact sheet.
115. International Criminal Court, [Situation in Darfur, Sudan: The Prosecutor v. Abdel Raheem Muhammad Hussein](#), Case no. ICC-02/05-01/12, Fact sheet.
116. International Criminal Court, [Situation in Darfur, Sudan: The Prosecutor v. Bahar Idriss Abu Garda](#), Case no. ICC-02/05-02/09, Fact sheet.
117. Dapo Akande, "[ICC Issues Detailed Decision on Bashir's Immunity \(... At Long Last ...\) But Gets the Law Wrong](#)," *EJIL: Talk! (Blog of the European Journal of International Law)*, 15 December 2011; and Lisa-Marie Rudi, "[Omar al Bashir – War Criminal at Large](#)," *Travaux – Berkeley's International Law Blog*, 16 April 2013. These sources provide examples of discussion.
118. International Criminal Court, [ICC-01/11 – Situation in Libya](#).
119. United Nations Security Council, [Resolution 1970 \(2011\)](#), 26 February 2011.
120. International Bar Association's Human Rights Institute, *Case watch: Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Sensussi* [Consulted on 26 June 2013, but no longer active].

121. International Criminal Court, [ICC-01/09 – Situation in the Republic of Kenya](#).
122. International Bar Association’s Human Rights Institute, *Case watch: Prosecutor v. William Samoei Ruto and Joshua Arap Sang* [Consulted on 26 June 2013, but no longer active].
123. International Bar Association’s Human Rights Institute, *Case watch: Prosecutor v. Uhuru Muigai Kenyatta* [Consulted on 26 June 2013, but no longer active].
124. Peter James Spielmann, “Kenya asks UN to ‘terminate’ ICC crimes against humanity cases against president and VP,” *The Associated Press*, 23 May 2013.
125. Kirubel Tadesse, “African leaders urge International Criminal Court to transfer charges against Kenyan president,” *The Associated Press*, 27 May 2013.
126. International Criminal Court, [ICC-02/11 – Situation in the Republic of Côte d’Ivoire](#).
127. International Bar Association’s Human Rights Institute, *Case watch: Prosecutor v. Laurent Gbagbo* [Consulted on 26 June 2013, but no longer active].
128. International Bar Association, [Case of the Prosecutor v. Simone Gbagbo](#).
129. International Criminal Court, “[Preliminary Examinations](#),” *Office of the Prosecutor*, International Criminal Court, “[ICC Prosecutor receives referral by the authorities of the Union of the Comoros in relation to the events of May 2010 on the vessel ‘MAVI MARMARA’](#),” *Statement*, 14 May 2013.
130. Brian A. Hoyt, “Rethinking the U.S. Policy on the International Criminal Court,” *Joint Force Quarterly*, Issue 48, 2008, p. 33; and United States Senate (23 July 1998), p. 48 (John Bolton, American Permanent Representative to the United Nations). Bolton has suggested that the United States should be mainly concerned:

for the President, the Cabinet officers who comprise the National Security Council, and other senior civilian and military leaders responsible for our defense and foreign policy. They are the real potential targets of the politically unaccountable prosecutor.
131. Arsanjani (1999), p. 27.
132. Louise Arbour, “The Need for an Independent and Effective Prosecutor in the Permanent International Criminal Court,” *Windsor Yearbook of Access to Justice*, Vol. 17, 1999, p. 212.
133. Jonathan I. Charney, “Editorial Comment: Progress in International Criminal Law?,” *American Journal of International Law*, Vol. 93, 1999, p. 456.
134. Arsanjani (1999), p. 27; and United States Senate (23 July 1998), p. 14 (David Scheffer, United States Ambassador-at-Large for War Crimes Issues). Scheffer suggests in his testimony that the *proprio motu* power “will encourage overwhelming the court with complaints and risk diversion of its resources, as well as embroil the court in controversy, political decision-making, and confusion.”
135. International Criminal Court, “[Preliminary Examinations](#),” *Office of the Prosecutor*.
136. Alexis Arieff et al., [International Criminal Court Cases in Africa: Status and Policy Issues \(CRS Report for Congress\)](#), Congressional Research Service, 22 July 2011.
137. Vesselin Popovski, “International Criminal Court: Necessary Steps Towards Global Justice,” *Security Dialogue*, Vol. 31, No. 4, 2000, p. 405.
138. Arieff et al. (2011). For a concise illustration of the peace versus justice debate, see Fatou Bensouda, “International Justice and Diplomacy,” *The New York Times*, 20 March 2013.
139. Arsanjani (1999), p. 38.

140. Bensouda (2013).
141. David Bosco, "Why is the International Criminal Court Picking only on Africa?," *Washington Post*, 29 March 2013; and Clar Ni Chonghaile, "[A Kenyan dilemma, with global drivers](#)," *Inside Story: Current affairs and culture from Australia and beyond*, 6 June 2013.
142. Arieff et al. (2011); International Bar Association, [Balancing Rights: The International Criminal Court at a Procedural Crossroads](#), The Hague, May 2008.
143. Jon Silverman, "[Ten years, \\$900m, one verdict: Does the ICC cost too much?](#)," *BBC News Magazine*, 14 March 2012.
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145. Tadesse (2013).
146. Arieff et al. (2011).
147. Gosnell (2008). Also, information received from former International Criminal Court president Kirsch, Cecilia Nilsson Kleffner, legal advisor at the Coalition for the International Criminal Court, and Deborah Ruiz, programme officer with Parliamentarians for Global Action, during meetings in The Hague with Canada's Standing Senate Committee on Human Rights, 31 March 2008.
148. Hoyt (2008); Arieff et al. (2011); Matthew C. Weed, [International Criminal Court and the Rome Statute: 2010 Review Conference \(CRS Report for Congress\)](#), Congressional Research Service, 10 March 2011; 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, Issue No. 2, 2011, p. 528; and Antonia Chayes, "How American Treaty Behavior Threatens National Security," *International Security*, Vol. 33, No. 1, Summer 2008.
149. Rome Statute, Article 98 "Cooperation with respect to waiver of immunity and consent to surrender," para. 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.
150. Hoyt (2008); Arieff et al. (2011); Weed (2011); Chayes (2008); Adrian L. Jones, "Continental Divide and the Politics of Complex Sovereignty: Canada, The United States and the International Criminal Court," *Canadian Journal of Political Science*, Vol. 39, June 2006.
151. Coalition for the International Criminal Court, "[Status of US Bilateral Immunity Agreements \(BIAs\)](#)," Fact sheet, 11 December 2006.
152. Arieff et al. (2011); Chayes (2008); Vijay Padmanabhan, [From Rome to Kampala: The U.S. Approach to the 2010 International Criminal Court Review Conference](#), Council on Foreign Relations, Council Special Report No. 55, April 2010.
153. United Nations Security Council, [Resolution 1422 \(2002\)](#), 12 July 2002.
154. Chayes (2008).
155. Fairlie (2011); Padmanabhan (2010).
156. Arieff et al. (2011), p. 4.
157. U.S. Department of State, [War Crimes Rewards Program](#).

158. Examples of hybrid tribunals that implement both domestic and international law include the [Special Court for Sierra Leone](#), the [Special Tribunal for Lebanon](#), the [Extraordinary Chambers in the Courts of Cambodia](#), the Indonesian Ad Hoc Court for East Timor and the International Crimes Tribunal in Bangladesh.
159. Information received from Deborah Ruiz in The Hague, 31 March 2008, and David Crane, Syracuse University College of Law at the American Society of International Law Conference in Washington D.C., 10 April 2008.