

Rome Statute of the International Criminal Court

Canada signed the Rome Statute of the International Criminal Court (Rome Statute) on 18 December 1998. On 29 June 2000, Canada enacted the Crimes Against Humanity and War Crimes Act becoming the first country in the world to adopt comprehensive legislation implementing the Rome Statute. On 7 July 2000, Canada ratified the Rome Statute.

Adoption: On 17 July 1998, 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court.

Entry into force: The [Rome Statute](#) entered into force on 1 July 2002 after ratification by 60 countries.

Number of signatories and ratifications/accessions: According to the Coalition for the International Criminal Court, currently the Rome Statute has 139 signatories and 123 ratifications.

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Summary information

On 17 July 1998, a conference of 160 States established the first treaty-based permanent international criminal court to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression, when national courts are unwilling or unable to do so. Regarding the crime of aggression, parties to the Rome Statute agreed that the Court's jurisdiction would be subject to certain conditions, including agreement on a definition of aggression. Not all of these conditions have been met. Therefore the Court presently has effective jurisdiction over genocide, war crimes and crimes against humanity.

The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court (Rome Statute). It entered into force on 1 July 2002 after ratification by 60 countries. Among other things it sets out the crimes falling within the jurisdiction of the International Criminal Court (ICC), the rules of procedure, and the

mechanisms for States to cooperate with the ICC. The Court is located in The Hague in The Netherlands.

A large coalition of civil society organizations played a prominent role in the negotiation and early entry into force of the Rome Statute.

There are currently 123 parties to the Rome Statute. The Assembly of States Parties, which meets at least once a year, sets the general policies for the administration of the ICC and reviews its activities.

History

According to the Coalition for the International Criminal Court, the history of the idea of establishing an international criminal court spans more than a century. The “road to Rome” was a long and often contentious one. While efforts to create a global criminal court can be traced back to the early 19th century, the story began in earnest in 1872 with Gustav Moynier – one of the founders of the International Committee of the Red Cross – who proposed a permanent court in response to the crimes of the Franco-Prussian War. The next serious call for an internationalized system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an *ad hoc* international court to try the Kaiser and German war criminals of World War I.

Following World War II, the Allies set up the Nuremberg and Tokyo tribunals to try war criminals from Nazi Germany and Japan. Efforts to create a permanent court were pursued at the United Nations, without success.

In 1948, the United Nations General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried “by such international penal tribunals as may have jurisdiction” and invited the International Law Commission (ILC) “to study the desirability and possibility of establishing an international judicial organ for the trials of persons charged with genocide.” While the ILC drafted such a statute in the early 1950s, the Cold War stymied these efforts and the UN GA effectively abandoned the effort pending agreement on a definition for the crime of aggression and an international Code of Crimes.

In June 1989, motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrected a pre-existing proposal for the establishment of an ICC and the UN GA asked that the ILC resume its work on drafting a statute.

The conflicts in Bosnia-Herzegovina and Croatia as well as in Rwanda in the early 1990s and the attendant mass commission of crimes against humanity, war crimes, and genocide led the UN Security Council to establish two temporary *ad hoc* tribunals to hold individuals accountable for these atrocities. These *ad hoc* tribunals once again highlighted the need for a permanent international criminal court. They also helped

codify and demonstrate the applicability of much of the relevant international law and practice that would eventually be incorporated in the Rome Statute.

In 1994, the ILC presented its final version of a draft statute for an ICC to the UN GA and recommended that a conference of plenipotentiaries be convened to negotiate a treaty. Although there was not initially sufficient support for the commencement of intergovernmental negotiations, the UN GA established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.

A year later, after considering the Committee's report, the UN GA created the Preparatory Committee on the Establishment of the ICC to prepare a consolidated draft text. From 1996 to 1998, six sessions of the UN Preparatory Committee were held at United Nations headquarters in New York, during which NGOs provided input into the discussions and attended meetings under the umbrella of the NGO Coalition for an ICC (CICC). In January 1998, the Bureau and coordinators of the Preparatory Committee convened for an Inter-Sessional meeting in Zutphen, The Netherlands to technically consolidate and restructure the draft articles into a draft.

Based on the Preparatory Committee's draft, the UN GA decided to convene the United Nations Conference of Plenipotentiaries on the Establishment of an ICC to "finalize and adopt a convention on the establishment" of an ICC. The "Rome Conference" took place from 15 June to 17 July 1998 in Rome, Italy, with 160 countries participating in the negotiations and the NGO Coalition closely monitoring these discussions, distributing information worldwide on developments, and facilitating the participation and parallel activities of more than 200 NGOs. At the end of five weeks of intense negotiations, 120 nations voted in favor of the adoption of the Rome Statute of the ICC, with seven nations voting against the treaty (including the United States, Israel, China, Iraq and Qatar) and 21 states abstaining.

Following the Rome negotiations, a Preparatory Commission (PrepCom) was charged with completing the negotiation of subsidiary and complementary documents, including the Rules of Procedure and Evidence, the Elements of Crimes, the Relationship Agreement between the Court and the United Nations, the Financial Regulations, and the Agreement on the Privileges and Immunities of the ICC.

On 11 April 2002, the 60th ratification necessary to trigger the entry into force of the Rome Statute was deposited by several states in unison. The treaty entered into force on 1 July 2002. Following the completion of the PrepCom's mandate and the entry into force, the Assembly of States Parties (ASP) met for the first time in September 2002.

Key Provisions

According to the ICC's web site, the ICC does not replace national criminal justice systems; rather, it complements them. It is a court of last resort. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not,

cannot or is unwilling genuinely to do so. This is known as the principle of complementarity, under which states retain primary responsibility for trying the perpetrators of the most serious of crimes.

In all of its activities, the ICC is intended to observe the highest standards of fairness and due process. Judges are elected from the world's main regions and legal systems. The seat of the ICC is in The Hague in the Netherlands. The Rome Statute provides that the ICC may sit elsewhere whenever the judges consider it desirable. The ICC has also set up offices in the areas where it is conducting investigations.

The International Criminal Court is to be distinguished from the International Court of Justice, also located in The Hague, which adjudicates disputes between states.

The mandate of the ICC is to try individuals, and to hold such persons accountable for the most serious crimes of concern to the international community as a whole, namely the crime of genocide, war crimes, crimes against humanity, and also the crime of aggression, when the conditions for the exercise of the Court's jurisdiction over the latter are fulfilled. The Court has jurisdiction over these crimes when committed in the course of internal armed conflict, as well as conflicts between states. The Rome Statute defines these crimes as follows:

“Genocide” (see Article six of the Rome Statute) means any of the following acts committed with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group:

- killing members of the group;
- causing serious bodily or mental harm to members of the group;
- deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- imposing measures intended to prevent births within the group;
- forcibly transferring children of the group to another group.

“Crimes against humanity” (see Article seven of the Rome Statute) include any of the following acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- murder;
- extermination;
- enslavement;
- deportation or forcible transfer of population;
- imprisonment;
- torture;
- rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- persecution against an identifiable group on political, racial, national, ethnic, cultural, religious or gender grounds;
- enforced disappearance of persons;
- the crime of apartheid;

- other inhumane acts of a similar character intentionally causing great suffering or serious bodily or mental injury.

“War crimes” (see Article eight of the Rome Statute) include grave breaches of the Geneva Conventions and other serious violations of the laws and customs applicable in international armed conflict and in conflicts "not of an international character" listed in the Rome Statute, when they are committed as part of a plan or policy or on a large scale. These prohibited acts include:

- murder;
- mutilation, cruel treatment and torture;
- taking of hostages;
- intentionally directing attacks against the civilian population;
- intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historical monuments or hospitals;
- pillaging;
- rape, sexual slavery, forced pregnancy or any other form of sexual violence;
- conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities (Article 8); and,

The definition of the “Crime of aggression,” as adopted by the Assembly of States Parties during the Review Conference of the Rome Statute held in Kampala Uganda 31 June to 11 May 2010, means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State. The act of aggression includes, among other things, invasion, military occupation, and annexation by the use of force, blockade of the ports or coasts, if it is considered being, by its character, gravity and scale, a manifest violation of the Charter of the United Nations. The perpetrator of the act of aggression is a person who is in a position effectively to exercise control over or to direct the political or military action of a State.

The ICC may exercise jurisdiction over the crime of aggression, subject to a decision to be taken after 1 January 2017 by a two-thirds majority of States Parties and subject to the ratification of the amendment concerning this crime by at least 30 States Parties (see Article 8 *bis* of the Rome Statute).

The ICC may exercise jurisdiction over these crimes only if they were committed on the territory of a State Party to the Rome Statute, or a state that has accepted the ICC’s jurisdiction, or by one of its nationals. These conditions, however, do not apply if a situation is referred to the Prosecutor by the United Nations Security Council, whose resolutions are binding on all United Nations member states.

The Rome Statute addresses Establishment of the Court (Part 1); Jurisdiction, Admissibility and Applicable Law (Part 2); General Principles of Criminal Law (Part 3); Composition and Administration of the Court (Part 4); Investigation and Prosecution (Part 5); The Trial (Part 6); Penalties (Part 7); Appeal and Revision (Part 8);

International Cooperation and Judicial Assistance (Part 9); Enforcement (Part 10); Assembly of States Parties (Part 11); Financing (Part 12); and Final Clauses (Part 13).

The ICC is comprised of The Presidency (Article 38), Chambers (Article 39), The Office of the Prosecutor (Article 42), and The Registry (Article 43).

The ICC is not an institution of the United Nations but an independent institution. On 4 October 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

Any State Party to the Rome Statute can request the Prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed on its territory or by one of its nationals, and request the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the Court. Additionally, if the Office of the Prosecutor receives reliable information about crimes involving nationals of a State Party or of a State which has accepted the jurisdiction of the ICC, or about crimes committed in the territory of such a State, and concludes that there is a reasonable basis to proceed with an investigation, the Prosecutor may do so. Such information can be provided by individuals, intergovernmental or non-governmental organizations, or any other reliable sources. The Prosecutor must, however, obtain the permission of the judges of the Pre-Trial Chamber before initiating an investigation under such circumstances.

The ICC does not bring to justice every person suspected of committing crimes of concern to the international community. The policy of the Office of the Prosecutor is to focus its investigations and prosecutions on those who, having regard to the evidence gathered, bear the greatest responsibility for such crimes.

The crimes within the jurisdiction of the ICC are the gravest crimes known to humanity and as provided by Article 29 of the Rome Statute, they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large can expect, sooner or later, to face the ICC.

Information on current cases and situations before the Court can be found at the Court's [website](#).

Individuals awaiting trial and being tried before the ICC are held at the ICC Detention Centre at The Hague. The ICC Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules.

The ICC Trial Judges may impose a prison sentence, to which may be added a fine or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The ICC cannot impose a death sentence. The maximum sentence is 30 years. However, in extreme cases, the ICC may impose a term of life imprisonment. Persons convicted of crimes under the jurisdiction of the ICC do not serve their

sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are transferred to a prison outside The Netherlands, in a State designated by the ICC from a list of States which have indicated their willingness to allow convicted persons to serve their sentences there.

The Rome Statute created two independently funded institutions: the ICC itself and the Trust Fund for Victims. While it is impossible to fully undo the harm caused by genocide, war crimes, crimes against humanity and the crime of aggression, it is possible to help survivors, in particular, the most vulnerable among them, rebuild their lives and regain their dignity and status as fully-functioning members of their societies. The Trust Fund for Victims advocates for victims and mobilizes individuals, institutions with resources, and the goodwill of those in power for the benefit of victims and their communities. It funds or sets up innovative projects to meet victims' physical, material, or psychological needs. It may also directly undertake activities as and when requested by the ICC. The Trust Fund for Victims can act for the benefit of victims of crimes, regardless of whether there is a conviction by the ICC. It cooperates with the ICC to avoid any interference with ongoing legal proceedings.

Canada's Commitments and Responsibilities

On 18 December 1998, Canada was the 14th country to sign the Rome Statute of the ICC. On 29 June 2000, Canada enacted the Crimes Against Humanity and War Crimes Act (CAHWCA), becoming the first country in the world to adopt comprehensive legislation implementing the Rome Statute. The Crimes Against Humanity and War Crimes Act updated Canadian law to conform with the Rome Statute. To ensure that Canada can fully cooperate with ICC proceedings, the CAHWCA also amended existing Canadian laws like the Criminal Code, Extradition Act and Mutual Legal Assistance in Criminal Matters Act. On 7 July 2000, Canada ratified the Rome Statute.

International Monitoring and Implementation

Each state that has ratified or acceded to the Rome Statute is a member of the Assembly of States Parties (ASP). The Assembly of States Parties is the management oversight and legislative body of the ICC. It meets at least once each year. In addition to member states, civil society observers, organized through the Coalition for the ICC, play a prominent role.

The Assembly of States Parties has a Bureau, consisting of a President, two Vice Presidents and 18 members elected by the Assembly for a three-year term, taking into consideration principles of equitable geographic distribution and adequate representation of the principal legal systems of the world.

At its second session in September 2003 the Assembly of States Parties decided to establish the Permanent Secretariat .

The Assembly of States Parties decides on various items, such as the adoption of the budget, the election of the judges and of the Prosecutor and the Deputy Prosecutor(s), and the adoption of normative texts. Each State Party has one vote; however every effort is made to reach decisions by consensus both in the Assembly and the Bureau. If consensus cannot be reached, decisions are taken by vote. The Assembly of States Parties also considers any issues of non-cooperation by a State Party.

The ICC does not have its own police force. Accordingly, it relies on State cooperation, which is essential to the arrest and surrender of suspects. According to the Rome Statute, States Parties shall cooperate fully with the ICC in its investigation and prosecution of crimes within the court's jurisdiction.

The responsibility to enforce warrants of arrest remains with States. In establishing the ICC, negotiators set up a system based on two pillars. The ICC itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of the ICC's orders. States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the ICC may make a finding to that effect and refer the matter for further action to the Assembly of States Parties. When the ICC's jurisdiction is triggered by the Security Council, the duty to cooperate extends to all UN Member States, regardless of whether or not they are a Party to the Rome Statute.

References

[Rome Statute of the International Criminal Court](#)

[International Criminal Court \(ICC\) official web site](#)

[Basic Legal Texts of the ICC](#)

[Coalition for the International Criminal Court](#)

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[Government of Canada, Global Affairs Canada web site on Canada and the International Criminal Court](#)

[Canada's Crimes Against Humanity and War Crimes Act](#)