



## Questions and Answers Series with the ICC

The MILLA Project invited students at the University of New Haven to participate in a questions and answers series with the International Criminal Court (ICC).

The International Criminal Court (ICC) is an independent, permanent court that tries persons accused of the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The ICC is based on a treaty, joined by [122 countries](#): the Rome Statute (effective as of 1 May 2013).

The jurisdiction and functioning of the ICC are governed by the [Rome Statute](#). The ICC has jurisdiction over genocide, crimes against humanity and war crimes, when committed after 1 July 2002. The Court may exercise jurisdiction over such crimes only if they were committed on the territory of a State Party 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 UN member states, or if a State makes a declaration accepting the jurisdiction of the Court.

The Prosecutor can initiate an investigation or prosecution in three different ways: States Parties to the Statute of the ICC can refer situations to the Prosecutor; the United Nations Security Council can request the Prosecutor to launch an investigation; the Office of the Prosecutor may initiate investigations proprio motu (on its own initiative) on the basis of information received from reliable sources. In this case, the Prosecutor must seek prior authorization from a Pre-Trial Chamber composed of three independent judges.

The ICC is a court of last resort. It will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. In addition, the ICC only tries those accused of the gravest crimes.

In all of its activities, the ICC observes the highest standards of fairness and due process.

Note that the ICC is a permanent autonomous court, whereas the *ad hoc* tribunals for the former Yugoslavia and Rwanda, as well as other similar courts established within the



framework of the United Nations to deal with specific situations only have a limited mandate and jurisdiction. The ICC, which tries individuals, is also different from the International Court of Justice, which is the principal judicial organ of the United Nations for the settlement of disputes between States.

**TMP: Why does it take years for a trial to be completed?**

**ICC:** The crimes prosecuted by the ICC – war crimes, crimes against humanity and genocide - are of a specific nature. They are often mass crimes requiring important amounts of evidence. The proceedings are complex and there are many matters that need to be resolved behind the scenes over the course of a case. While streamlining the proceedings is a goal shared by all, it is important to view the expediting of the proceedings through the prism of the rights of the Defence, as making the trial faster is only successful if it preserves the fairness of the proceeding. While the first ICC trial saw some delays, including due to two successive suspensions of proceedings, the subsequent trials are advancing at a faster pace.

**TMP: Why can the leader of Darfur travel freely if charges are pending?**

**ICC:** The Court does not have its own police force. Accordingly, it relies on State cooperation, which is essential to the arrest and surrender of suspects. States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When the Court'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 Statute. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties or to the United Nations.

**TMP: Has anyone been punished for the genocide in Rwanda?**

**ICC:** I am referring you to the work of the International Criminal Tribunal for Rwanda (ICTR) created by UN resolution 955 on 8 November 1994.

See: <http://www.unicttr.org/Home/tabid/36/Default.aspx>

**TMP: Does the ICC have an opinion on the UN?**



**ICC:** The ICC is independent from the United Nations. On 4 October 2004, the ICC and the United Nations signed an agreement governing their institutional relationship.

**TMP: What is the process for apprehending and prosecuting individuals?**

**ICC:** After the initiation of an investigation, only a Pre-Trial Chamber may at the request of the Prosecutor, issue a warrant of arrest or summons to appear if there are reasonable grounds to believe that the person concerned has committed a crime within the jurisdiction of the ICC. The Registrar transmits requests for co-operation seeking the arrest and surrender of the suspect to the relevant State or to other States, depending on the decision of the judges in each case.

The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of Court's orders.

When the Court'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 Statute. The crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

An arrested person is brought promptly before the competent judicial authority in the custodial State, which determines whether the warrant is indeed for the arrested person, whether the person was arrested consistently with due process and whether the person's rights have been respected. Once an order for surrender is issued, the person is delivered to the Court, and held at the Detention Centre in The Hague, The Netherlands.

Within a reasonable time after the suspect's surrender a Pre-Trial Chamber holds a hearing to confirm the charges, the date of which is set at the suspect's first appearance hearing, which takes place immediately after his or her arrival in The Hague.

After the confirmation of charges, the Pre-Trial Chamber decides whether or not the case should be sent to trial. If so, a Trial Chamber will conduct the subsequent phase of the proceedings: the trial.



At trial, the Prosecutor and Counsel for the Defence have the opportunity to present their case. The Prosecutor must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. This evidence may be in the form of documents, other tangible objects, or witness statements. The Prosecutor must also disclose to the accused any evidence which may show that he or she is innocent.

After hearing the victims and the witnesses called to testify by the Prosecutor and the Defence and considering the evidence, the judges decide whether the accused person is guilty or not guilty.

The sentence is pronounced in public and, wherever possible, in the presence of the accused, and victims or their legal representatives, if they have taken part in the proceedings.

Any party may appeal the decisions of a Pre-Trial or Trial Chamber. The Prosecutor may appeal against a conviction or acquittal on any of the following grounds: procedural error, error of fact or error of law.

**TMP: Who decides what people are tried and the charges?**

**ICC:** It is the Office of the Prosecutor's mandate to receive and analyse information on situations or alleged crimes within the jurisdiction of the ICC, to analyse situations referred to it in order to determine whether there is a reasonable basis to initiate an investigation into a crime of genocide, crimes against humanity, war crimes or the crime of aggression, and to bring the perpetrators of these crimes before the Court.

The prosecutorial 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.

**TMP: How are the judges chosen, nationality? Experience?**

**ICC:** The International Criminal Court is composed of 18 judges, who are elected for terms of office of nine years by the Assembly of States Parties to the Rome Statute. They are not eligible for re-election.



The judges are persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices. All have extensive experience relevant to the Court's judicial activity.

The judges are elected by the Assembly of States Parties on the basis of their established competence in criminal law and procedure and in relevant areas of international law such as international humanitarian law and the law of human rights. They have extensive expertise on specific issues, such as violence against women or children.

The election of the judges takes into account the need for the representation of the principal legal systems of the world, a fair representation of men and women, and equitable geographical distribution.

**TMP: Why so long to intervene in Cambodia?**

**ICC:** The ICC is not “intervening” in Cambodia. You may be referring to a different institution, distinct from the ICC, which was set up in Cambodia: the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea (Extraordinary Chambers or ECCC). More information on this Court is available at: <http://www.eccc.gov.kh/en>

**TMP: In court proceedings, do the victims have a say in sentencing?**

**ICC:** Victims have the possibility to present their views and observations before the ICC. Participation before the Court may occur at various stages of the proceedings and may take different forms. Participation in the Court's proceedings will in most cases take place through a legal representative (i.e. a lawyer) and is conducted in a manner which is not prejudicial or inconsistent with the rights of the accused and a fair and impartial trial. While victims can present views and concerns in the Courtroom, the verdict and sentence is pronounced by ICC judges.

**TMP: How do the prosecutors pick the appropriate and best evidence to show in the trial?**

**ICC:** The Prosecutor must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. This evidence may be in the form of documents, other



tangible objects, or witness statements. The Prosecutor must also disclose to the accused any evidence which may show that he or she is innocent.

The Office of the Prosecutor has developed policies on investigations and prosecutions which guide its work; I will refer you to those policies on the ICC website: [http://www.icc-cpi.int/en\\_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/Pages/office%20of%20the%20prosecutor.aspx](http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/Pages/office%20of%20the%20prosecutor.aspx)

**TMP: Do you feel the ICC was effective in dealing with the war crimes committed during the civil war in Sierra Leone?**

**ICC:** The ICC has not dealt with crimes in Sierra Leone, You must be referring to the work of the Special Court for Sierra Leone. More information on this Court can be found at: <http://www.sc-sl.org/>

**TMP: Describe your security levels after arrestees are taken. What goes on during transport? How do you secure the court? More/less secure than a local, state, federal court?**

**ICC:** The Court's substantial and challenging mandate to investigate and bring to trial persons allegedly responsible for the most serious of crimes logically brings with it equally substantial challenges to its safety and security. The ICC has developed its own guidelines to manage and mitigate safety and security risks affecting the institution.

**TMP: Do you feel that your job is effective? Do you believe it actually punishes the perpetrator?**

**ICC:** Since the entry into force of the Rome Statute in 2002 and the establishment of the ICC, support for international justice has continued to grow around the world; in 10 years, nearly two-thirds of the world -122 states - have ratified the Rome Statute. The ICC has become an active international judicial institution conducting investigations in eight situations (Uganda, DRC, CAR, Darfur (Sudan), Kenya, Libya, Côte d'Ivoire, and Mali). 23 arrest warrants and nine summonses to appear have been issued in connection with 18 cases. Last year, the ICC issued its first two judgments and other important developments are expected in 2013, including a judgment regarding the situation in Congo and the opening of two trials regarding the situation in Kenya. Moreover, the office of the Prosecutor is conducting preliminary examinations to



determine whether or not to open an investigation into seven countries: Afghanistan, Colombia, Georgia, Honduras, Nigeria, the Republic of Korea and Guinea. The Court has received more than 12,000 applications from victims to participate in its proceedings and more than 5000 victims were allowed to participate and are represented by a lawyer. The Trust Fund for Victims is helping more than 80,000 victims through its projects in various ICC situations. In all its proceedings, the Court seeks to respect the rights of the defense and principles of fair trial. Of course the ICC is also facing challenges. In particular the ICC needs greater universal support and increased cooperation, including in the arrest of the 12 ICC suspects who remain at large.