

THE INTERNATIONAL CRIMINAL COURT AND THE UNITED STATES

HAS THE U.S. JOINED THE ICC?

- The Rome Statute is the founding treaty of the ICC and was adopted in 1998. The U.S. signed the Statute in 2000, but the treaty was not submitted to the Senate for ratification.
- In 2002, the Statute reached 60 signatures, bringing the treaty into effect and establishing the ICC.
- On May 6, 2002, the U.S. notified the UN Secretary-General, the designated depository of the Rome Statute, that the U.S. would suspend its signature and did not recognize any obligations arising from the treaty.

WHAT IS THE U.S. RELATIONSHIP WITH THE ICC?

- Although the U.S. has not joined the ICC, it played a pivotal role in drafting the Rome Statute and other core ICC documents.
- The U.S. relationship with the ICC has strengthened considerably over the years; while ad hoc in nature, it has been cooperative, and the U.S. has engaged productively with the Court in numerous ways.
- In 2005, the U.S. abstained from the UN Security Council vote to refer the situation in Darfur, Sudan to the ICC, which allowed the referral to go forward.
- The U.S. has sent an observer delegation to the meeting of the ICC's Assembly of States Parties every year since 2009.
- In 2011, the U.S. strongly supported the Security Council referral of the situation in Libya to the ICC.
- The U.S. has also supported a Security Council referral of the situation in Syria to the ICC, but these efforts have been blocked by Russia and China.
- The U.S. government has thus far found that all of the ICC's cases are in the national interest of the U.S.
- While there are statutory bars to direct U.S. monetary assistance to the Court, the U.S. assists the ICC and ICC states parties indirectly, to the extent it is legally able to do so, through the sharing of intelligence on fugitives and other forms of in-kind support on individual cases.
- The 2013 bipartisan legislative expansion of the Rewards for Justice Program allows U.S. monies to go to third parties for information that results in the arrest or conviction of an ICC fugitive.

HOW DOES THE ICC BENEFIT THE US?

- The goals and activities of the ICC are consistent with core U.S. values of promoting the rule of law and human rights. The U.S. has played a leadership role in several ad hoc international criminal tribunals. The ICC, as the world's first and only permanent criminal tribunal, is now continuing this vital work to end impunity, promote accountability, and bring justice to the countless victims of mass atrocities.
- A permanent tribunal can be far more efficient than ad hoc tribunals established in post-conflict situations, in that it does not require the reinvention of the wheel after each conflict, it minimizes expenditure of additional funds, and it can utilize existing staffing, experience, and expertise.
- By working to prosecute and deter atrocities, the ICC can help prevent the consequences of conflict situations, including loss of life and human suffering, regional destabilization, the flourishing of terrorism, and the potential need for international military involvement – including from the U.S.

CAN U.S. NATIONALS BE PROSECUTED BY THE ICC?

- The ICC can prosecute U.S. nationals, just as it can prosecute nationals of any country, so long as it has jurisdiction. However, a number of jurisdictional conditions would need to be satisfied.
 - First, the international crimes that fall under the Court’s jurisdiction are mass atrocities that amount to the gravest violations of international law. As such, the Court is concerned with serious, planned, and large-scale violations, rather than isolated incidents.
 - Second, the ICC prosecutor’s policy is to pursue cases against individuals considered to be most responsible for crimes within the court’s jurisdiction. Although this policy needs to be applied flexibly, and may require bringing a broader set of cases to build up, the overall aim is to focus on individuals at the highest levels of responsibility.
 - Third, the Court operates on a principle of complementarity, which means that it will only take jurisdiction over a situation if the domestic system in question will not genuinely investigate or prosecute the case.
- A U.S. national may only be brought before the court in limited circumstances:
 - If the crime were committed in the territory of a state party, and neither the state party nor the U.S. was willing or able to conduct an investigation, the ICC Prosecutor could launch an investigation on his or her prosecutorial discretion.
 - If the crime were committed in the territory of a state and that state – whether a party to the ICC or not – decided to refer itself to the ICC, the ICC Prosecutor could launch an investigation. (Just as any state could choose to investigate and prosecute a crime committed on its territory in its own domestic justice system, it can also choose to refer such a crime to the ICC.)
 - If the UN Security Council refers a situation to the Court, the ICC Prosecutor could launch an investigation.
- In each of the above scenarios, after the conclusion of a thorough investigation, an independent international panel of judges would have to review and approve the Prosecutor’s decision to bring charges, before a case against any individual could proceed.
- Given the sophistication and functionality of the U.S. legal system, as well as the ICC’s complementarity principle, the ICC would not have jurisdiction over a U.S. national so long as the U.S. conducts its own genuine investigation of any atrocity crimes alleged to have been committed by its nationals.
- The ICC’s independent and nonpolitical nature, as well as its track record, which shows it to be a cautious and judicious body, demonstrate that Americans need not fear politicized prosecutions.

HOW DO AMERICANS VIEW THE ICC?

- A 2016 poll by the Chicago Council on Global Affairs indicated that 72% of Americans believe that the U.S. should participate in the ICC. This showing is consistent with the results of several other polls that have been conducted since 1999.
- A 2017 poll by the American Bar Association and Ipsos Public Affairs found that, among Americans who are aware of the ICC, 79% feel that it is important for the U.S. to participate in international organizations that support human rights and that hold individuals accountable for mass atrocities.

MORE INFORMATION ON THE ICC

International Criminal Court: www.icc-cpi.int

American NGO Coalition for the ICC (AMICC): www.amicc.org

Coalition for the ICC (CICC): www.iccnw.org

American Bar Association ICC Project: www.aba-icc.org

Washington Working Group on the ICC (WICC): www.washingtonicc.org