

Status of the ICC and U.S. Policy

Winter and Spring 2004 Update

First Potential Cases

Both Uganda's President Yoweri Museveni and the President of the Democratic Republic of Congo (DRC), Joseph Kabila, have requested ICC investigations of the internal conflicts in their countries. Uganda and the DRC are both ICC member states. Prosecutor Luis Moreno Ocampo is expected to announce this summer whether he will launch formal investigations into either of these situations. Investigations by the ICC only consider crimes that occurred after July 1, 2002, when the Rome Statute came into effect.

Uganda

In December of 2003, Uganda became the first ICC member state to refer a situation to the Court (the referral was made public in January 2004). In Uganda, the rebel Lord's Resistance Army (LRA) has been accused of abducting more than 20,000 children and forcing them to serve as combatants, hard laborers or sex slaves. The LRA targets primarily civilian villages and has been accused of murder, pillaging and mutilation. The Ugandan army has also been accused of crimes including rape and torture. With 80% of the northern population displaced to camps, the limited industry and agriculture in the region has led to massive poverty and malnutrition. Prosecutor Moreno Ocampo has determined that there is sufficient basis to start planning for the first investigation of the International Criminal Court, though a full, formal investigation has yet to be launched. President Museveni met with Moreno Ocampo in London to establish the basis for future co-operation between Uganda and the ICC. Former U.S. Federal Prosecutor Christine Chung has been appointed to lead the investigation into these human rights violations.

Democratic Republic of the Congo

On April 19, 2004, DRC President Joseph Kabila referred atrocities allegedly committed anywhere within the DRC to the International Criminal Court. The UN Special Rapporteur for Human Rights in the DRC has classified the crimes committed in the DRC as genocide, crimes against humanity and war crimes, which all fall under the jurisdiction of the ICC. Civilians have been the primary victims of the widespread and systematic massacres, rapes, mutilations, and use of child soldiers; there are also reports of cannibalism. Since June 2003, Prosecutor Moreno Ocampo has been closely following the conflict in the DRC, indicating that the situation would be a priority for his office. In September 2003, the Prosecutor informed the Assembly of States Parties that he would be preparing to seek authorization from the Pre-Trial Chamber to start an investigation under his *proprio motu* powers, but that he would prefer a referral and active support from the DRC, which would facilitate the work of the Office of the Prosecutor. Now that the DRC has referred the situation, Moreno Ocampo must determine, in accordance with the Rome Statute, whether there is enough preliminary evidence to initiate a full investigation.

Court Update

With the ratification of Congo (Brazzaville) on May 3, 2004, the ICC currently has 94 state parties and 137 signatories.

FACT SHEET

Board of Directors of the Victims' Trust Fund

The Board of Directors for the Trust Fund for Victims met for the first time in The Hague on April 20-22, 2004, to start establishing regulations for the management of the Trust Fund and to begin planning a global fundraising campaign. Established by the ICC's Rome Statute, the Trust Fund will provide restitution and reparation to victims of ICC crimes and their families. It can accept donations from individuals, organizations and governments and will also collect the fines and forfeitures imposed on those found guilty by the ICC. The Board will consist of five volunteer members who are elected by the Assembly of States Parties. Members of the board include:

- Former Costa Rican President and Nobel Peace Prize recipient **Dr. Oscar Arias Sanchez**
- Nobel Peace Prize recipient **Archbishop Emeritus Desmond Tutu**, the chairman of South Africa's Truth and Reconciliation Commission
- Former Polish Prime Minister **Tadeusz Mazowiecki**
- Her Majesty **Queen Rania of Jordan**, a human rights and development advocate
- **Simone Veil**, a Holocaust survivor and the first President of the European Parliament

Information about the Victims' Trust Fund can be found at www.victimstrustfund.org.

UN Security Council

In May 2004, the U.S. requested the renewal of Resolution 1487, which shields UN peacekeepers who are citizens of non-ICC countries from prosecution by the Court. In past years, many states objected to the resolution because it undermined both the authority of the Court and the legitimacy of UN peacekeeping. The U.S. achieved the passage of the first such resolution (1422) in the summer of 2002 by threatening to veto all peacekeeping missions until immunity was guaranteed. During the vote last year on Resolution 1487 (which renewed Resolution 1422) there were three abstentions (France, Germany and Syria). This year, the recent Iraq prison scandal has increased the objections by Security Council members to the renewal of Resolution 1487. In order for the resolution to pass, nine of the 15 Security Council members would have to vote in favor. Currently the United States does not seem to have sufficient votes to secure passage. Six Security Council members (Spain, Brazil, France, Germany, Benin and Chile) have made clear their intention to abstain, with a seventh member (Romania) on the fence. China has requested a delay in voting and is said to be considering vetoing the resolution. As of early June, the vote has been postponed indefinitely.

Bilateral Immunity Agreements

As of May 28, 2004, 89 countries had signed a Bilateral Immunity Agreement (BIA) with the United States. Of the ICC member countries, 58 out of 94 have refused to sign a BIA with the United States. Many of those who have refused to meet the U.S. demands have lost their U.S. military aid as a result. To date, this leaves more than 20 U.S. allies without military assistance.