

HISTORY OF THE ICC

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The history of the establishment of the International Criminal Court (ICC) 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 Axis war criminals.

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 General Assembly 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 mass commission of crimes against humanity, war crimes, and genocide led the UN Security Council to establish two separate temporary ad hoc tribunals to hold individuals accountable for these atrocities, further highlighting the need for a permanent international criminal court.

In 1994, the ILC presented its final draft statute for an ICC to the UN GA and recommended that a conference of plenipotentiaries be convened to negotiate a treaty and enact the Statute. To consider major substantive issues in the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.

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 the United Nations headquarters in New York, in 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 UNGA decided to convene the United Nations Conference of Plenipotentiaries on the Establishment of an ICC at its fifty-second session 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.

The Preparatory Commission (PrepCom) was charged with completing the establishment and smooth functioning of the Court by negotiating 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, the Agreement on the Privileges and Immunities of the Court.

On 11 April 2002, the 60th ratification necessary to trigger the entry into force of the Rome Statute was deposited by several states in conjunction. 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.