



Inside the International Criminal Court

Part 1

Narrator:

The idea of creating an international criminal court to prosecute the most serious crimes known to man was first mooted more than a century before it finally became a reality in 2002.

Robert Cryer:

There were some suggestions at the end of the First World War to prosecute the Kaiser for starting the war in an international tribunal, but that didn't really get off the ground.

The major impetus obviously occurred after the setting up of the Nuremberg and Tokyo international military tribunals at the end of the 2nd world war. The UN did study the possibility of creating an international criminal court until the early 1950s, but essentially the Cold War meant that they didn't really move on that until really the end of the Cold War.

The Yugoslavia and Rwanda tribunals were created by the UN in response to the Yugoslav wars of dissolution and the Rwandan genocide, and that really gave impetus to the project to create an international criminal court.

Narrator:

Robert Cryer is Professor of professor of international and criminal law at the University of Birmingham and co-author of the book "An Introduction to International Criminal Law and Procedure".

He was at the forum in Rome, where 120 countries finally signed a treaty agreeing to set up a permanent international criminal court.

Robert Cryer:

Probably the most vehemently anti-ICC state, or at least the most vocal, was the United States

Narrator:

The main difference between the ICC and the international criminal tribunals for Yugoslavia and Rwanda is that the ICC isn't itself a United Nations body.

Robert Cryer:

The reason why it wasn't part of the UN structure was it was thought that states would have to be free to opt in or opt out of the regime itself and there wasn't consensus that there should be a permanent international criminal court that would have jurisdiction over everyone and everywhere.

Matias Hellman:

The whole ICC system I think is ultimately is designed to make sure that the world puts in place legal norms to say clearly that war crimes, genocide, crimes against humanity are not acceptable and if anyone tries to commit such crimes or commits such crimes then they will be held accountable for those actions.

Robert Cryer:

If a state is willing and able genuinely to prosecute the offence domestically then the International Criminal Court actually isn't allowed to get involved.

Narrator:

So far, 10 years after it was set up, the court has only secured one conviction, that of Congolese warlord Thomas Lubanga on a charge of recruiting child soldiers and using them to participate in hostilities. He is now appealing against the verdict.

The court also acquitted Mathieu Ngudjolo Chui who was tried on charges of crimes against humanity and war crimes.

Fadi Al Abdallah:

Looking at the ICC first 10 years, first we have seven investigations that are ongoing, we have issued 23 warrants of arrest and nine summonses to appear that have been implemented. For the warrants of arrest there are still 12 suspects that are not in the detention of the court but the others have been arrested and there are proceedings ongoing against them... There are one case before the appeal chamber, but there are 5 other cases at the trial stage and 10 others at pre-trial stage, so you can see that there are a lot of things ongoing.

Narrator:

For human rights lawyer Geoffrey Bindman the time it has taken for cases to come to trial at the ICC is no surprise.

Geoffrey Bindman:

The processes of such a court necessarily involve detailed examination of complex issues, and I'm afraid very long delays in organising trials and actually bringing cases to a conclusion,

and it's not a thing that you can deal with in a way that you can deal with a traffic case in a local magistrates' court.

Narrator:

The ICC's first chief prosecutor was the colourful Argentinian Luis Moreno Ocampo. He first rose to prominence during the trial for human rights abuses of former members of Argentina's military government in the 1980s.

Despite his many achievements at The Hague, Ocampo was the subject of fierce criticism, particularly when the court's trial of Thomas Lubanga almost collapsed.

Geoffrey Bindman:

I think one has to be somewhat respectful of somebody who has taken on a job that is of such complexity and such difficulty. And therefore one has to be somewhat tolerant of mistakes that are made.

The complexities of evidence in these international cases is such that things are bound to go wrong.

Robert Cryer:

There isn't a manual to be the first prosecutor of an international criminal court and he did have to learn a very, very complex political and legal environment essentially on the job. Lessons have been learned from the Lubanga trial and the court now is up and running and functioning as an institution.

When the Rome Statute of the International Criminal Court came into force in 2002 they had to create an entire court structure from nothing.

Narrator:

The court's new chief prosecutor is Ocampo's former deputy Fatou Bensouda.

Shamiso Mbizvo:

The new prosecutor has made it clear that she is very concerned with victims and that she would like to focus in particular on victims and the prosecution, the effective prosecution of sexual violence.

Narrator:

The International Criminal Court has often been criticised for focusing all its attention on offences committed in Africa and for its failure to prosecute any western powers.

Robert Cryer:

The problem with the arguments about prosecuting for example Tony Blair for starting the war in Iraq is that at the time the International Criminal Court couldn't exercise jurisdiction over the crime of aggression, and initiating a war is a crime against peace or a crime of aggression... only offences committed during a war are war crimes over which the criminal court has jurisdiction.

Had the International Criminal Court had jurisdiction over the crime of aggression in 2003 (EDIT)

there would be a remote possibility of Tony Blair having been investigated at the very least by the international criminal court.

Narrator:

Palestine's new upgraded status as a "non-member observer state" at the United Nations which it gained in November 2012 means that it is now eligible to apply to become a state party to the ICC. This could have big implications for the conflict in the Middle East.

Geoffrey Bindman:

There are anxieties on the part of Israel particularly as to how Palestine can use the International Criminal Court to challenge the conduct of the Israeli government. If they do sign up if Palestine signs up to the court then what happens in Palestine then comes within that jurisdiction of the court.

Matias Hellman:

You kind of bolster your national court with this international court of last resort. It's a bit like an insurance policy. Under normal circumstances you aren't going to need it because you can prosecute any such cases of war crimes in your own courts and you can put people on trial, but if something goes wrong then there is this international court to ensure that these crimes don't go unnoticed or unpunished.