



Inside the International Criminal Court

Part 2

Narrator:

The International Criminal Court is different from other international courts in that it was established by an international treaty and not by the United Nations.

The ICC has jurisdiction over 121 states which have signed up to the Rome Treaty, and the United Nations Security Council can also oblige a state to co-operate with the court.

The ICC is made up of four organs: the Presidency, the Judiciary, the Office of the Prosecutor and the Registry, which provides logistical support to the other three parts of the court.

Matias Hellman:

The Presidency of the ICC is responsible for the proper administration of the court. The Presidency administers the judiciary of the court.

When you have an actual case you need to select judges to sit on a bench to hear the case before the court.

Geoffrey Bindman:

The judges are elected by the member states.

There are two routes to getting a case before the court. One is for the individual state which is a party to it to invite the court to prosecute. The other is where the Security Council of the United Nations initiates a case.

Narrator:

In some instances the Office of the Prosecutor can also initiate an investigation.

Matias Hellman:

The judiciary of the ICC consists of 18 judges that are all elected for a nine-year mandate which cannot be renewed, and the judiciary is really the core of the ICC.

They are the ones who ultimately decide on anyone's guilt or innocence.

You have a prosecutor of the ICC who conducts investigations, collects information and then presents this information or evidence to the judges.

They are the ones who decide whether there are actually grounds to issue an arrest warrant, are there actually reasonable grounds to believe that this person may be responsible.

Again it is the judges who, having heard what the prosecutor has to say, what the defendant has to say, ...whether there are then grounds to proceed to a trial.

Shamiso Mbizvo:

The Office of the Prosecutor in particular has to determine whether there is a reasonable basis to proceed with an investigation. So what that means is that we do an analysis of information received at the very preliminary stage to determine three things: one, have crimes occurred which fall within the jurisdiction of the ICC, so we have to determine, do we think that crimes against humanity, genocide, war crimes have occurred.

We also have to determine whether those crimes have been committed by an individual who belongs to a country that is party to the Rome Statute, or whether those crimes have been committed on the territory of a state that is party to the Rome Statute.

We do this assessment in a division of the Office of the Prosecutor called the co-operation division.

Narrator:

The other two divisions of the Office of the Prosecutor are the investigation division and the prosecution division.

Shamiso Mbizvo:

The last prong of our preliminary investigation/examination(?) is we have to assess whether they be national proceedings, because the court will only step in if there has been a failure by national jurisdictions to genuinely prosecute international crimes.

Narrator:

The Registry deals with all of the logistical matters which make the court run smoothly. They recruit and train all the translators, as well as arranging victim protection and transport to The Hague. As the ICC does not have a police force or an army it has to rely on the co-operation of states who have signed up to the Rome Treaty to enforce its decisions.

Shamiso Mbizvo:

In some instances even if a state party has joined the Rome Statute they may have reasons why they are reluctant to fully co-operate.

Robert Cryer:

I think the biggest flaw in the court is the absence of any enforcement powers. Unless states want to co-operate with it there's very little that the court can actually do to require them to do so.

Matias Hellman:

There are 12 individuals who are suspects against whom there are allegations of genocide or crimes against humanity or war crimes. 12 persons are currently still either at large or have not yet been transferred to the ICC to actually face these allegations before the ICC's judges.

Robert Cryer:

A very famous international judge Antonio Cassese once described the ICC as being giants without arms and legs and the arms and legs were state co-operation. What we haven't had is much state co-operation in relation to many of the investigations.

Matias Hellman:

This system of international criminal justice holds the potential to help prevent crimes that are so destructive, crimes against humanity, war crimes, genocide. These are crimes that can destroy communities. They can tear societies apart and it will take decades, generations to try to repair the wounds. So anything you can do to prevent that is really worth the effort.