STUDY NOTES · BASIC CONCEPT

Who can refer a case to ICC? Know all about the International Criminal Court (ICC)

International Relations

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What?

The International Criminal Court (ICC) is an independent, permanent international judicial institution that investigates and prosecutes individuals accused of the most serious crimes of international concern: genocide, crimes against humanity, war crimes and the crime of aggression. Some facts about the ICC are as follows

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1. Established: 17 July 1998, through the adoption of the Rome Statute.
2. Became operational: 1 July 2002, when the Rome Statute entered into force.
3. Headquarters: The Hague, Netherlands.
4. Nature: Permanent international criminal court.
5. Governing treaty: Rome Statute of the International Criminal Court.
6. Relationship with the UN: Independent institution with a formal relationship agreement with the United Nations.
7. Primary objective: To end impunity for perpetrators of the gravest international crimes and strengthen accountability.
8. Jurisdiction: Over individuals, not States as such.
9. The ICC complements national judicial systems rather than replacing them.

Objectives and significance of the ICC

1. End impunity for perpetrators of the gravest international crimes.
2. Ensure individual accountability under international criminal law.
3. Provide justice and reparations to victims.
4. Strengthen the rule of law at the international level.

5. Deter future atrocities and mass violence.
6. Complement national criminal justice systems where they fail to act genuinely.
7. Contribute to reconciliation and sustainable peace by addressing serious international crimes.

What are the four crimes under ICC jurisdiction?

The ICC has jurisdiction over four categories of crimes under Article 5 of the Rome Statute.

A. Genocide

1. Meaning: Certain acts committed with the specific intent to destroy, in whole or in part, a national, ethnic, racial or religious group as such.
2. Examples of prohibited acts include:
3. Killing members of the group.
4. Causing serious bodily or mental harm.
5. Deliberately inflicting conditions of life calculated to bring about the group's physical destruction.
6. Imposing measures intended to prevent births within the group.
7. Forcibly transferring children of the group to another group.

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B. Crimes against humanity

1. Meaning: Specified serious acts committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack.
2. Examples include:
3. Murder and extermination.
4. Enslavement.
5. Deportation or forcible transfer.
6. Imprisonment in violation of fundamental rules of international law.
7. Torture.
8. Rape and other specified forms of sexual violence.
9. Persecution against identifiable groups.
10. Enforced disappearance.
11. Apartheid.

12. Other inhumane acts of similar character.

C. War crimes

1. Meaning: Serious violations of international humanitarian law that fall within the Rome Statute's definition of war crimes.
2. Examples include:
3. Wilful killing of protected persons.
4. Torture or inhuman treatment.
5. Intentionally attacking civilians or civilian objects, where the legal elements are met.
6. Taking hostages.
7. Unlawful deportation or transfer.
8. Certain prohibited methods or means of warfare.
9. Using child soldiers below the applicable age threshold under the Statute.

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D. Crime of aggression

1. Meaning: The planning, preparation, initiation or execution, by a person effectively able to control or direct a State's political or military action, of an act of aggression that, by its character, gravity and scale, constitutes a manifest violation of the UN Charter.
2. Examples of acts of aggression at the State level may include invasion, military occupation resulting from invasion, bombardment, or blockade, subject to the applicable international law.

Difference between genocide, crimes against humanity and war crimes

Basis	Genocide	Crimes against humanity	War crimes
Core element	Specific intent to destroy a protected group	Widespread or systematic attack against a civilian population	Serious violation of international humanitarian law

Basis	Genocide	Crimes against humanity	War crimes
Armed conflict required?	No	No	Yes, an armed conflict is required
Target/context	Protected national, ethnic, racial or religious group	Civilian population	Protected persons, civilians, combatants hors de combat and other protected interests, as relevant
Scale	No general widespread-or-systematic requirement, but specific intent is essential	Widespread or systematic attack is required	Depends on the particular offence; no universal widespread-or-systematic requirement
Example	Intentional destruction of a protected group	Systematic enslavement of a civilian population	Intentionally attacking civilians during an armed conflict

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How can an ICC investigation begin?

Article 13 of the Rome Statute provides three principal mechanisms.

Mechanism	Legal basis	Explanation
State referral	Article 13(a)	A State Party refers a situation to the Prosecutor.
UN Security Council referral	Article 13(b)	The Security Council refers a situation acting under Chapter VII of the UN Charter.

Mechanism	Legal basis	Explanation
Prosecutor's own initiative	Article 13(c)	The Prosecutor initiates an investigation on the basis of information received, subject to the required judicial authorisation.

The Prosecutor does not simply prosecute every allegation received. The Court must have jurisdiction, and the legal requirements concerning admissibility and gravity must be met.

Structure and organs of the ICC

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The Court has four principal organs. The Assembly of States Parties is a separate governing and oversight body within the Rome Statute system.

Organ	Major functions
Presidency	Handles external relations, coordinates judicial work and oversees the Registry's administrative functions.
Judicial Divisions	Conduct pre-trial proceedings, trials and appeals.
Office of the Prosecutor (OTP)	Examines situations, investigates crimes and prosecutes individuals where warranted.
Registry	Provides non-judicial administrative support, interpretation, security, outreach and assistance to victims' and defence lawyers.

Important facts

1. The ICC has 18 judges.
2. Judges are elected by the Assembly of States Parties.
3. Judges serve nine-year, non-renewable terms.
4. Judicial work is organised into Pre-Trial, Trial and Appeals divisions.

5. The Office of the Prosecutor is an independent organ.
6. The Assembly of States Parties oversees administration, adopts relevant normative texts, approves the budget and elects judges and the Prosecutor.
7. Each State Party has one vote in the Assembly, subject to the Rome Statute's voting provisions.

Punishments and victim reparations

The ICC can impose imprisonment and financial penalties under the Rome Statute.

- Imprisonment may be for a specified term of up to 30 years.
- Life imprisonment may be imposed when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
- The Court may order fines and forfeiture of proceeds, property and assets derived directly or indirectly from the crime, subject to the Statute.
- The Court may order reparations to victims, including restitution, compensation and rehabilitation.
- The Trust Fund for Victims supports reparative measures for victims and their families.

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The ICC does not impose the death penalty.

ICC and the United Nations

The ICC is not a principal organ of the United Nations and is not simply a UN court.

International Criminal Court	United Nations
Created by the Rome Statute, a multilateral treaty.	Established under the UN Charter.
An independent international judicial institution.	An international organisation with several principal organs.
Prosecutes individuals for specified international crimes.	Works on international peace and security, development, human rights and other global issues.

International Criminal Court	United Nations
Can receive Security Council referrals under the Rome Statute.	The Security Council has a central role in maintaining international peace and security.
Has no independent police force.	Relies on Member States for many enforcement and implementation functions.

The ICC and UN have a formal relationship agreement. The Security Council can refer situations to the Court under Article 13(b), and under Article 16 it can request a 12-month deferral of an investigation or prosecution, renewable under the conditions laid down in the Statute.

ICC versus ICJ versus ad hoc tribunals

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This comparison is particularly important for UPSC Prelims.

Basis	ICC	ICJ	ICTY / ICTR
Full name	International Criminal Court	International Court of Justice	International Criminal Tribunal for the former Yugoslavia / Rwanda
Established	Rome Statute, 1998; operational from 2002	1945 under the UN Charter	ICTY in 1993; ICTR in 1994
Location	The Hague, Netherlands	The Hague, Netherlands	ICTY and ICTR were separate tribunals with mandates for specific conflicts
Nature	Independent permanent international criminal court	Principal judicial organ of the UN	Ad hoc international criminal tribunals

Basis	ICC	ICJ	ICTY / ICTR
Cases against	Individuals	States in contentious cases; also advisory opinions at the request of authorised bodies	Individuals
Main purpose	Prosecution of specified international crimes	Settlement of legal disputes between States and advisory opinions	Prosecution of crimes linked to specific conflicts
Governing legal framework	Rome Statute	UN Charter and ICJ Statute	Relevant Security Council resolutions and tribunal statutes
India	Not a party to the Rome Statute	A UN Member State and party to the ICJ Statute	Not a member of either tribunal

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India's position on the ICC

India is not a signatory to the Rome Statute and is not a State Party to the ICC. Consequently, India is not a member of the Assembly of States Parties.

India has expressed concerns regarding the Court's jurisdiction, its relationship with the UN Security Council and the possibility of political selectivity in referrals. India's stated position includes concerns about the Security Council's role in referring situations involving non-party States and deferring investigations.

Major concerns raised by India

1. State sovereignty: Concerns about the exercise of jurisdiction over nationals of States that have not consented to the Rome Statute.
2. Security Council's role: Concerns that the permanent members' political power could influence which situations are referred.
3. Selective justice: Risk of inconsistent or politically influenced application of international criminal justice.
4. Treaty consent: The principle that treaty obligations ordinarily depend on a State's consent.
5. Institutional balance: Concerns regarding the relationship between judicial independence and the Security Council's powers.

These concerns should be presented as India's policy position rather than as universally accepted conclusions about the ICC.

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