



# Prosecuting Mass Atrocities: Defining a New U.S. Role within the International Criminal Court

## Introduction

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The International Criminal Court (ICC) was formed during one of the bloodiest decades in human history, after the Rwandan and Bosnian genocides. Today, the ICC is the only permanent international court capable of trying individuals accused of genocide, war crimes and crimes against humanity when there is no other recourse for justice.

In January 2009, the International Criminal Court (ICC) began its first trial. Thomas Lubanga, former rebel leader of the Democratic Republic of the Congo is accused of recruiting and training child soldiers for combat. In March, 2009, the Court issued an arrest warrant for the current president of Sudan, Omar Al-Bashir. The warrant accuses al-Bashir of committing war crimes and crimes against humanity in Darfur, by ordering armed troops as well as Janjaweed militia to engage in a systematic campaign of killing, rape and starvation against members of the Fur, Masalit and Zaghawa groups. At this point, the Court is conducting four prosecutions, one investigation, and six preliminary investigations. No doubts remain that the Court, though still young, is fully functioning.

The ICC was created by a treaty called the Rome Statute, which entered into force on July 1, 2002. The ICC only has jurisdiction in the most grave cases; specifically, when crimes are committed as part of a "plan or policy" of such crimes or of a "widespread commission." Isolated war crimes and accidents are not part of the ICC's mandate. Cases can be referred to the Court by the United Nations Security Council or an ICC State Party, or on the Prosecutor's initiative with the approval of the ICC judges. The ICC only takes cases when national systems are unwilling or unable to handle them – the ICC Prosecutor cannot take up a matter that has been investigated in good faith by national authorities, even if the national authorities ultimately decide not to prosecute. After allied troops liberated the concentration camps, the U.S. led the Nuremberg trials to provide justice for Hitler's victims. The ICC helps spread democracy, rule of law, human rights, and justice by helping member nations reform their laws and strengthen their judicial systems to meet these standards.

## Background- The Relationship between the U.S. and the ICC

In December 2000, President Clinton signed the Rome Statute treaty and expressed the importance of continued engagement with the ICC. He believed that cooperation with the Court was essential. President George W. Bush adopted a stringent policy of isolation and opposition against the Court during his first term. In 2002, President Bush authorized then-Under Secretary of State John Bolton to "unsign" the treaty by informing the United Nations that the U.S. did not intend to ratify the Rome Statute, relieving the U.S. of its obligations to undermine the treaty.

In her first address to the United Nations Security Council, U.S. Ambassador Susan E. Rice underscored the importance of a vibrant relationship between the U.S. and the ICC, signaling a shift in U.S. policy:

*"President Obama is committed to building strong international partnerships to tackle global*

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*challenges...The International Criminal Court, which has started its first trial this week, looks to become an important and credible instrument for trying to hold accountable the senior leadership responsible for atrocities committed in the Congo, Uganda, and Darfur."*

In November 2009 and March of 2010, for the first time in 8 years, the U.S. attended the 8<sup>th</sup> meeting of the Assembly of States Parties of the ICC. U.S. Ambassador-at-Large for War Crimes Issues Stephen Rapp led the U.S. delegation. The U.S. will also be present at the ICC Review Conference this May in Kampala, Uganda.

## U.S. Cooperation with the ICC- Goals for 2010

The United States now has an opportunity to further develop a cooperative relationship with the Court that is both pragmatic and constructive. In 2010, the U.S. should:

### 1. Reinstatement of the U.S. signature of the Rome Statute.

Reinstating the signature and participation in the Review Conference process in particular would have a strong symbolic impact in distinguishing the new administration from its predecessor. The reinstatement would also help reestablish the United States as a positive presence within international institutions. The United States can reinstate its signature of the Rome Statute by a note to the United Nations Secretary-General so requesting. The Secretary-General would report this note as a footnote to the name of the United States on the list of signatories for which he is responsible.

### 2. Responsibly participate in the ICC's governing body, the Assembly of State Parties and the 2010 ICC Review Conference.

Israel, Russia, and China have not signed the Rome Statute either, yet they consistently send observers to the Courts governing body, the Assembly of State Parties. It is in the best interest of the United States to also send an observer to the Court to weigh in and voice U.S. interests on issues. The U.S. will be able to influence the continuing work on the crime of aggression, an important issue for the United States. During the Review Conference, the Court will also consider its stance on terrorism and drug crimes. The U.S. has a stake in all of these issues and should participate in a responsible manner to define aggression and address the other issues.

### 3. Expand, deepen and further the official channel of U.S. cooperation with the Court.

U.S. national interests are already engaged to varying degrees in the Court's current cases and will increase further if the prosecutor's current preliminary examinations of Colombia and Afghanistan become formal investigations. During the second Bush administration, the U.S. offered to cooperate with the Court on Darfur and established a formal channel of communication with the ICC's Office of the Prosecutor. Since it is so important to bring justice to these heinous criminals, support for the ICC should be expanded and normalized. Cooperation with the Court can both clarify and help protect those interests. The governments of Uganda, the DRC and Central African Republic asked for the ICC's help in investigating atrocities in their countries. In Uganda, more than 20,000 children have been abducted by rebels to serve as child soldiers and sex slaves. In the Democratic Republic of Congo, militias are raping and massacring thousands of civilians. In Central African Republic, from October 2002 till March 2003, numerous killings, looting, massive rapes and large-scale sexual crimes occurred. The U.S. should bring to bear its unparalleled diplomatic and intelligence resources, like unclassified reports, satellite images and soft power, to help build cases against mass murderers and encourage other countries to cooperate with these important investigations.

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