

Institutional Framework of the ICC

1 Introduction

The creation of the International Criminal Court (ICC) reflects the conviction of States that more consistent and effective enforcement of criminal justice is an essential component in deterring crimes and building stability. The creation of *ad hoc* international tribunals (the International Criminal Tribunals for the former Yugoslavia and Rwanda – ICTY and ICTR) and hybrid tribunals (in Sierra Leone, East Timor and Cambodia) were regarded as valuable steps. However, the *ad hoc* approach entails several disadvantages. Creating a new institution for each situation involves extensive delays, redundancies, inconsistencies and inefficiencies. A permanent institution should overcome these difficulties since it is already up and running, is ready to respond to future situations, accumulates expertise and experience, and ultimately should serve as a more consistent deterrent.

The ICC has a subject matter jurisdiction limited to the most serious crimes of concern to the international community as a whole, namely, genocide, crimes against humanity and war crimes. The crimes are very carefully defined in the Rome Statute of the ICC (Articles 6 to 8) and are discussed in detail in Chapter 3. For even greater precision, the definitions are further elaborated on in the 'Elements of Crimes', a set of guidelines adopted by the States Parties.

The ICC Statute rests on the principle of 'complementarity', which means that the Court shall not substitute the primary responsibility of States to deal with crimes of the kind that also fall under its jurisdiction. Hence, a case is inadmissible before the ICC if a State is genuinely investigating or prosecuting it, or has done so.¹ The principle of complementarity is discussed further in Chapter 2 of this Guide.

The temporal jurisdiction of the Court is limited to crimes occurring after the date of entry into force of the Statute, namely 1 July 2002.² Thus the Court is not a remedy for crimes of the past, which must be addressed by national, other international or hybrid initiatives.

Because the crimes within the jurisdiction of the ICC are those generally recognised as giving rise to universal jurisdiction, it would have been legally feasible to vest the Court with universal jurisdiction over such crimes, since the Court reflects a collective exercise of jurisdiction by the States Parties. Nonetheless, in recognition of the position of some cautious States, the Rome Conference for the creation of the ICC limited the jurisdiction of the Court to those bases most clearly established in criminal law: (1) the territorial principle and (2) the active nationality principle. Thus, the Court may act only where its

1 Article 17, Rome Statute of the ICC. Articles cited in the footnotes in this chapter are from the Statute unless otherwise indicated.

2 Article 11.

jurisdiction has been accepted by the State on whose territory the crime occurred or the State of nationality of the person accused. Acceptance of jurisdiction may be provided automatically, by virtue of being a State Party, or may be provided by a non-State Party making a declaration of acceptance of jurisdiction.³ In addition to these two bases, the Court may also act with respect to any situation referred to it by the United Nations (UN) Security Council, acting pursuant to Chapter VII of the UN Charter.⁴ These and other principles of jurisdiction are discussed in the next chapter.

The judges of the Court are elected by the Assembly of States Parties. The 18 judges elect three of their number to serve as the Presidency (composed of the President and the First and Second Vice-President). The Presidency is responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor.⁵

The judges are divided into an Appeals Division, a Trial Division and a Pre-Trial Chamber Division.⁶ They are responsible for the judicial functions of the Court, namely, ensuring the conduct of fair, effective and open proceedings in accordance with the Statute and other relevant legal instruments and, in so doing, safeguarding the rights of all parties.

The Office of the Prosecutor (OTP) is responsible for receiving and examining referrals and substantiated information on alleged crimes, conducting investigations and conducting prosecutions before the Court.⁷ The OTP is headed by the Prosecutor, who has full authority over its management and administration.⁸ However, in the interests of efficiency and consistency, the Prosecutor relies extensively on the Registry for administrative services.

The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor. The Registry is headed by the Registrar, who is elected by the judges and who exercises his or her functions under the authority of the President of the Court.⁹

An Assembly of States Parties oversees the work of the Court. This provides management oversight, considers and decides the budget for the Court, conducts elections and performs other functions. The Assembly meets at least once per year.¹⁰

Although it is distinct from the UN, the ICC was created under its auspices and is designed to have a close and constructive relationship with it.¹¹ This is reflected *inter alia* in the provisions for Security Council referrals of situations to the Court, Security Council requests for deferral of proceedings¹² and the UN's role in the enforcement of ICC judgements.

3 Article 12.

4 Article 13(b).

5 Article 38(3)(a).

6 Articles 34 and 39.

7 Article 42(1).

8 Article 42(2).

9 Article 43.

10 Article 112.

11 A relationship agreement between the Court and the UN has been concluded. See Article 2.

12 Article 16.

2. Key Aspects of ICC Procedures

2.1 Pre-investigation: triggering mechanisms, analysis and collection of information

An ICC investigation may be triggered in three different ways: (1) by a referral from a State Party, (2) by a referral from the Security Council or (3) by the Prosecutor, acting on his or her own initiative (*proprio motu*) on the basis of information from any source.¹³ In each of these situations, the OTP is required to carry out certain steps before an investigation can be initiated.

The alternative of *proprio motu* initiation of an investigation by the Prosecutor is an extremely important mechanism under the ICC Statute. Any individual or organisation may submit information on alleged crimes to the Prosecutor. The Prosecutor is obliged to protect the confidentiality of the information provided, to analyse all such communications and to provide a response once a determination is reached. The OTP may seek additional information where this is needed in order to reach a determination as to whether or not there is a reasonable basis on which to proceed.

Where the Prosecutor decides to proceed, he or she may seek authorisation from the Pre-Trial Chamber to commence an investigation. In order to grant the request, the Chamber must also be satisfied that there is a reasonable basis to proceed with an investigation and determine that the case appears to fall within the jurisdiction of the Court.¹⁴

Where a referral of a situation is received from the Security Council or a State Party, the OTP must analyse the information, and the Prosecutor shall initiate an investigation, unless he or she determines that there is not a reasonable basis to do so. This decision does not require an authorisation by the Pre-Trial Chamber, but the Chamber may review the Prosecutor's decision in certain circumstances.¹⁵

Regardless of the trigger mechanism, the basic test is the same: whether there is a reasonable basis to proceed.¹⁶ In making this determination, the Prosecutor (and, where engaged, the Pre-Trial Chamber) is required to consider not only whether: (1) there is a reasonable basis to believe that a crime under the Statute has been or is being committed and (2) the case is or would be admissible in accordance with the complementarity criteria, but also whether (3) taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve "the interests of justice".¹⁷

The first criterion requires that the OTP have sufficient information regarding the possible crime(s). The second criterion requires a consideration both of the gravity of the situation

13 Article 15.

14 Quite detailed information will also have to be submitted to the Chamber together with the request, see Regulation 49 of the Court Regulations.

15 The Statute provides scope for the Pre-Trial Chamber to review a decision by the Prosecutor not to proceed. See Article 53(3).

16 Rule 48 of the Rules of Procedure and Evidence (RPE), referring back to the criteria set forth in Article 53(1).

17 Article 53(1).

as well as any ongoing or previous national investigations or prosecutions.¹⁸ The third criterion contains an important aspect of prosecutorial discretion, and includes an assessment of the gravity of the crime, the interests of victims and various other considerations, such as the age or infirmity of the alleged perpetrator.¹⁹

In order to assess these rather complex factors and determine whether an investigation should be commenced upon the referral, the Prosecutor will in general need to collect additional information. This is an arduous task, requiring:

- information on the alleged crimes;
- knowledge of the legal and other circumstances in the State in question;
- national proceedings taking place;
- the security context;
- any relevant local or international initiatives; and
- the views and concerns of local and international actors.

Thus, even before a determination can be reached on whether to start a formal investigation, it is necessary that the OTP carry out considerable analysis and obtain access to relevant information. Assistance and co-operation by States, international and non-governmental organisations (NGOs) and others is therefore essential.

2.2 Investigations

2.2.1 General obligations of the OTP

The OTP must carry out both investigations and prosecutions. This role differs from that of prosecutors in common law criminal justice systems, but coincides with that of the prosecutor in the ICTY and ICTR and indeed a good number of civil law criminal justice systems. Lawyers, analysts and investigators, as well as other professionals, will work in close co-operation during the investigation. Special teams will be established for each investigation. In addition, the investigation should be targeted, and considerations of what is needed for prosecution and trial will guide the work throughout. Hence, trial attorneys will also take part in order to lay the basis for a smooth transition from investigation to prosecution.

Unlike the ICTY, ICTR and many domestic legal systems, however, the role of the ICC Prosecutor is not solely to seek sufficient evidence for a prosecution and conviction. Instead, the mandate of the OTP is to “extend the investigation to cover all facts” and “investigate incriminating and exonerating circumstances equally” in order to “establish the truth”.²⁰ This is a much broader task, based on a principle of objectivity. While appearing almost overwhelming, it could, properly applied, save time and effort, *inter alia* by reducing and avoiding late amendments or withdrawals of charges and even discontinued trials.

18 Article 17.

19 Article 53(2)(c).

20 Article 54(1)(a).

Collecting and examining evidence is the main exercise performed by the OTP during the investigation. The Prosecutor is also entitled to request the presence of and to question persons being investigated, victims and witnesses.²¹ Primarily, this is to be done with the assistance of States through means similar to inter-State co-operation. However, the Prosecutor also has the right to take certain non-coercive measures on the territory of a State.²² Under very limited circumstances, the OTP may also take specific investigative steps on site with the authorisation of the Pre-Trial Chamber.²³ In addition, special arrangements can and will be made with States to allow further OTP presence and work in territories where this is necessary.

2.2.2 Role of the Pre-Trial Chamber

The world's legal systems take different approaches as to the involvement of judges in investigations. The ICC Statute represents a compromise in this respect, providing a certain defined role for the Pre-Trial Chamber.

The Pre-Trial Chamber considers challenges concerning jurisdiction and admissibility, and it can consider such issues on its own motion.²⁴ At the request of the Prosecutor, it may issue arrest warrants, summons to appear and other orders and warrants as may be required for an investigation.²⁵ The Chamber may also, upon request, take steps and seek co-operation to assist the defence.²⁶ It may provide for protection and privacy of victims and witnesses, protection of arrested persons and protection of national security information. It may also seek forfeiture orders for the benefit of victims.²⁷

The Pre-Trial Chamber has an important role to play concerning so-called 'unique investigative opportunities'.²⁸ The Prosecutor must alert the Chamber to such opportunities. It has powers to intervene to ensure the efficiency and integrity of the proceedings and in particular to protect the rights of the defence. Such measures can include making recommendations or orders regarding procedures, the appointment of experts, authorising counsel to represent a suspect and taking steps to collect or preserve evidence.

2.2.3 The principle of complementarity

As noted above, the prospect of national proceedings must be considered by the OTP in the decision as to whether to initiate an investigation. In addition, once an investigation is initiated, the State of territoriality or nationality shall be alerted and afforded a chance

21 Article 54(3).

22 Article 99(4).

23 Articles 54(2)(b) and 57(3)(d).

24 Articles 18 and 19.

25 Article 57(3)(a).

26 Article 57(3)(b) and Rule 116.

27 Article 57(3)(c).

28 Article 56.

29 Article 18. This does not apply, however, in the case of a Security Council referral.

30 Article 19.

to claim the right to investigate and prosecute.²⁹ In accordance with the ICC Statute,³⁰ States and suspects may also, at any stage, challenge the admissibility of the case. Admissibility will be an issue throughout any proceedings up until the initial appearance before the Court.

2.2.4 *Co-operation with States and others*

Lacking a police force – and often lacking access to crime scenes, archives and witnesses – the Prosecutor will have to rely extensively on the co-operation of States and other entities. This topic is dealt with extensively in Chapter 4 of this Guide.

In brief, the Prosecutor has independent powers to make requests, which must be adhered to in accordance with Part 9 of the Statute, but may also approach the Pre-Trial Chamber on such matters.³¹ The co-operation may relate to a very wide range of measures. Special provisions apply with respect to arrest and surrender of suspects. Co-operation concerning arrest and surrender will be of utmost importance, particularly since the presence of the accused is a precondition for trial.³²

The Prosecutor may also enter into arrangements or agreements that may be necessary to facilitate the co-operation of a State, intergovernmental organisation or person.³³ Such arrangements and agreements are now being negotiated and concluded by the OTP.

In practice, co-operation will require extensive contact between the OTP and national authorities. In order to ensure that evidence is admissible, certain procedures or requirements will have to be met, for example, when a statement is taken or other evidence obtained.³⁴ OTP presence may be necessary during this process. Different legal and practical obstacles may arise and, in some States, national authorities may not have much experience of international legal assistance. Both informal and formal consultations will need to take place. Of particular importance is that States Parties meet their obligation to ensure that there are domestic procedures available for all forms of co-operation under the Statute.³⁵ In most States, this will require special legislation.³⁶

The most important co-operation partners will be States, but other partners are also essential. International organisations may provide invaluable information and material, as may other organisations and groups. For example, extensive co-operation between the ICTY and the armed forces – drawn from across the international community – that were present in the Former Yugoslavia has taken place. In addition, facilitation of co-operation may take other forms, such as providing the OTP with special expertise.

31 Articles 54(3)(c) and 57(3)(a).

32 Article 63.

33 Article 54(3)(d). In addition, the Court Regulations empower the President to conclude arrangements and agreements that relate to the whole Court (see Regulation 107).

34 See also Article 99(1).

35 Article 88.

36 The OTP is also developing clear and user-friendly routines and templates for co-operation requests, which should simplify and clarify many practical matters.

The ICC Statute lays down a scheme for the issue of arrest warrants by the Court,³⁷ which will thereafter be enforced by domestic law enforcement officers or local courts at the request of the ICC. Alternatively, a summons to appear may be issued for suspects. There are no other explicit provisions regarding warrants issued by the Court that provide for coercive measures. Instead, the States Parties are required to assist with such measures at the Court's request.³⁸ In addition, a Chamber (primarily the Pre-Trial Chamber) may, at the Prosecutor's request, issue such orders and warrants as may be required for the purposes of an investigation. It is unclear whether coercive measures could flow from such orders and warrants and it is likely that this will be determined through practice.³⁹

2.2.5 Confidentiality

Confidentiality is a difficult question in criminal proceedings. On the one hand, providers of sensitive information, for example, military intelligence or information that may put people at risk, will require confidentiality as a prerequisite for the provision of any such material. On the other hand, the rights of the suspect or accused must be protected and judicial functions concerning supervision and control must be allowed. The question is particularly pronounced in international proceedings, and requests for confidentiality are often put to the OTP. The co-operation regime of the Rome Statute allows States to withhold national security information and permits transmission on condition that sensitive material is used by the OTP solely for generating new evidence.⁴⁰ The Prosecutor may agree not to disclose, at any stage, material obtained with conditions attached and to take measures to ensure confidentiality.⁴¹

2.2.6 From investigation to prosecution

The decision whether to prosecute requires a determination of the strength of the evidence, as well as a new review of admissibility questions and considerations of "the interests of justice", including the personal circumstances of the accused.⁴²

The drafting of charges poses a particular challenge with respect to international crimes and international criminal proceedings, as the case law of the ICTY and ICTR makes clear. Moreover, important provisions relating to the legal effect of the charges and amendments thereto are not entirely unambiguous and will have to be resolved by the Court in due course.

Once charges have been confirmed by the Pre-Trial Chamber and the case is transmitted to the Trial Chamber,⁴³ further preparations will be needed before the case is trial ready.⁴⁴

37 Article 58.

38 Article 93.

39 The legal basis being Article 57(3)(a).

40 Articles 72, 73 and 93(4) (national security information) and 93(8)(b) (conditions).

41 Article 54(3)(e) and (f).

42 Article 53(2).

43 Article 61.

44 Article 64.

2.3 Trials and appeals

2.3.1 General

Trials take place before the Trial Chamber, which is mandated to ensure that the trial is fair, expeditious and conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses. Trials are held in public and in the presence of the accused, other than in certain exceptional cases.⁴⁵

The Prosecutor, as well as the Court as an institution, has a clear interest in short proceedings. The length and complexity of the ICTY and ICTR proceedings have affected the reputation of these tribunals and indeed international criminal justice as a whole. The procedural scheme of the ICC provides opportunities to do things differently, which may mean a reduction in the length of the proceedings.⁴⁶

In international criminal trials, many decisions are appealed, not least by way of interlocutory appeals. One reason for this is that, given that international criminal law is in its infancy, many unresolved legal issues remain that may need authoritative resolution. The ICC Statute makes an effort to limit the scope for such appeals.⁴⁷ Regarding judgments, both the Prosecutor and the convicted person are entitled to appeal.⁴⁸ The appeals work is, in the experience of the ICTY and the ICTR, very demanding for the Office of the Prosecutor and the ICC will be no exception.

2.3.2 Disclosure

Different legal traditions take very different views as to how the disclosure of evidence should be conducted. In civil law systems all evidence is collected in a 'dossier', which is available to the judge. Common law systems operate more complex schemes for disclosure between the parties. The conduct of the trial is also different. Initially, the procedures of the ICTY and the ICTR were rather civil law-oriented, but over time the judges felt the need for tighter control over the proceedings and a more common law-influenced approach is now discernable.

Taking these experiences into account, the ICC will apply a more mixed regime, and some important questions will have to be resolved in case law.⁴⁹ One clear intention, however, is that much of the disclosure is intended to take place before the charges are confirmed and the case remitted for trial.

A related issue is the enormous volume of material that cases of the type prosecuted before the ICC may generate. This difficulty can be reduced through the pursuit of focused investigations (bearing in mind the principle of objectivity) as well as the use of electronic databases in effecting disclosure.

45 Articles 63 and 64(7).

46 See the Report of the informal working group of experts on length of proceedings, available at http://www.icc-cpi.int/otp/otp_proceedings.html.

47 Article 82.

48 Article 81.

49 Rules 76-84 of the RPE.

2.3.3 *The role of the defence*

The ICC Statute contains explicit provisions on the rights of the suspect and the accused – inspired by international human rights instruments such as the International Covenant on Civil and Political Rights. These provide for the right, *inter alia*, to legal assistance.⁵⁰ The right to counsel of the suspect's or accused's choosing applies during the process of questioning in the investigation (by the OTP or by national authorities on behalf of the Court) and in proceedings from the first appearance before the Pre-Trial Chamber to any final appeal.⁵¹ A defence counsel may also be appointed in relation to a so-called 'unique investigative opportunity'⁵² and at any time after arrest to assist in proceedings before the Court concerning the arrest.⁵³

Additional provisions on the assignment of legal assistance, including the required qualifications of counsel, are laid down in the Rules of Procedure and Evidence (RPE)⁵⁴ and the Regulations of the Court.⁵⁵ Counsel shall be selected from a list established by the Registrar. The Registrar's decision to refuse a request for assignment of counsel may be reviewed by the Presidency. Free legal assistance shall be provided to a person who has insufficient means to pay for it. The Regulations also establish an Office of Public Counsel for the defence to take on specified tasks.⁵⁶ Moreover, the Registrar has a duty to organise the Registry in a manner that promotes the rights of the defence and to provide assistance, advice and other facilities.⁵⁷

A Code of Professional Conduct is currently being drafted by the Presidency and will be adopted by the Assembly of States Parties.⁵⁸ This task is being performed in close consultation with representative bodies of counsel, legal associations and others.

The prosecution and the defence are in general adversarial parties in criminal matters, but their practical interaction may take quite different forms. As already mentioned, the Prosecutor's obligation to investigate objectively provides a possibility for early interaction and intervention by the defence. The defence may request the OTP to take specific measures and also turn to the Pre-Trial Chamber for assistance. The defence is entitled to assert its right to remain silent throughout any investigation or prosecution before the ICC.

Another important feature is that the defence may have an influence on the trial procedures through agreement with the OTP. For example, while the presiding Judge retains a decisive role concerning the conduct of the trial, it is possible for the parties to

50 Articles 55(2)(c) and 67(1)(d).

51 Rule 121(1) of the RPE.

52 Article 56(2)(d).

53 Rule 117(2) of the RPE.

54 Rules 20 to 22.

55 Regulations 67 to 85.

56 Regulation 77.

57 Rule 20.

58 Rule 8.

agree on the order and manner in which the evidence is to be submitted.⁵⁹ They may also conclude a statement of agreed facts, which the Chamber may treat as proved.⁶⁰

2.3.4 *The role of victims*

A key feature of the Rome Statute is the extensive consideration given to victim protection, representation and reparations.

The Statute requires all organs of the Court to protect victims and witnesses, and the Rules of Procedure and Evidence set out more detailed schemes for protective and special measures.⁶¹ Additionally, the Prosecutor has a duty to respect the interests and personal circumstances of victims (and witnesses) when conducting the investigations and prosecutions.⁶²

In fact, the safety and security of victims and witnesses is a major concern in investigations of this kind. The hostilities that have given rise to the commission of the crime(s) may be ongoing and, since it does not have its own police force, the ICC will have to rely on external assistance. Criminal courts in general – and the ICTY and the ICTR are no exceptions – tend to rely heavily on live evidence from witnesses. With a large number of interviews during the investigation and many witnesses called to appear before the Court, the issue of protection may become a serious problem. One strategy that is being developed is to find ways and means to minimise the number of interviews and live appearances at the Court, thereby avoiding the exposure of large numbers of victims and witnesses to threats and intimidation.

A much-hailed feature of the ICC is the role afforded to victims as direct participants in the proceedings. Unlike the situation with the ICTY and the ICTR, victims are entitled to standing in their own right and in their own interests, to participate in the criminal proceedings and even to claim reparations. An unresolved issue is whether and how the OTP and the Registry will take measures during the investigation that would assist victims with respect to claims for reparations. Another matter that will have to be resolved in practice is how the potentially quite far-reaching provisions on the participation of victims in the proceedings⁶³ will be implemented.

For the purpose of victims' participation in the proceedings, the Court may assign legal representatives to them. The qualifications required to act as a legal representative for a victim are the same as those for defence counsel, and a victim's legal counsel is allowed to participate more extensively in the proceedings than an unrepresented victim.⁶⁴ An Office of Public Counsel for victims is in the process of being established.⁶⁵

59 Article 64(8)(b) and Rule 140.

60 Rule 69.

61 Article 68 and Rules 87 and 88.

62 Article 54(1)(b).

63 Article 68(3) and Rules 89-93.

64 Rules 90 and 92. See also Regulations 77 to 82.

65 Regulation 81.

3. Major Developments

3.1 Election and recruitment

The Judges of the Court were elected by the Assembly of States Parties in 2003. They include eleven men and seven women and represent all regions of the world. From among their numbers, the Judges elected Mr Philippe Kirsch of Canada to serve as President, Ms Akua Kueyehia of Ghana as First Vice-President and Ms Elizabeth Odio Benito of Costa Rica as Second Vice-President.

Mr Luis Moreno Ocampo of Argentina was elected to serve as the Prosecutor, and he took office in June 2003. The Deputy Prosecutors are Mr Serge Brammertz of Belgium, who will be responsible for investigations, and Ms Fatou Bensouda of The Gambia, who will be responsible for prosecutions. Mr Bruno Cathala of France was selected by the Judges to serve as the first Registrar of the Court.

Pending the construction of a permanent, dedicated headquarters for the ICC, the Court has been established in interim premises in The Hague, in a building formerly belonging to a telecommunications company. The building has undergone modifications to provide for the necessary security requirements and courtroom facilities. Recruitment is continuing at a rapid pace. The number of staff is expected to grow to 489 as of the end of 2005. The infrastructure is in place to bring the Court from theory to reality, including courtrooms, security and the information technology framework for an 'electronic Court'.

3.2 Policies and regulations

The OTP has carried out an extensive and open consultation process in order to develop and articulate its major policies and strategies. This included public hearings and the circulation of a draft policy paper for discussion there and at the Assembly of States Parties. It also included rounds of expert consultations with over 125 criminal justice experts on issues such as length of proceedings, investigation and State co-operation, and complementarity in practice.⁶⁶ Other consultative processes have included meetings with NGOs and posting information on the ICC website for comment. In addition to the basic policy paper,⁶⁷ the OTP has prepared an annex explaining how it analyses referrals and communications.⁶⁸

Some of the key elements of this policy include:

- A positive approach to complementarity. Rather than competing with national systems for jurisdiction, the OTP will seek to encourage and facilitate genuine national proceedings wherever possible.
- A proactive approach to co-operation, forging links and working in tandem with the international community, including States Parties and other supportive States, international organisations and civil society.

66 The informal expert reports are available at http://www.icc-cpi.int/otp/otp_expconsult.html.

67 *Paper on some policy issues before the Office of the Prosecutor*, available at http://www.icc-cpi.int/library/organs/otp/030905_Policy_Paper.pdf.

68 *Annex to the "Paper on some policy issues before the Office of the Prosecutor": Referrals and Communications*, available at http://www.icc-cpi.int/library/organs/otp/policy_annex_final_210404.pdf.

- A policy of targeted prosecution, focusing on those who bear the greatest responsibility for the commission of international crimes.
- A strategy to produce short investigations, focused indictments and expeditious trials.
- A small and flexible office, relying on extensive networks of support involving States, civil society, multilateral institutions, academics and the private sector.
- An interdisciplinary investigative approach, bringing together diverse profiles.

The OTP has recruited professionals from a wide range of fields, including investigators, analysts, trial attorneys, lawyers experienced in criminal law and in international law, and experts in co-operation and international relations. The joint team structure brings these diverse experiences to bear on the complex problems of carrying out investigations in the most challenging environments.

Investigation teams are assembled for each case, with a composition and specific investigation plan designed to respond to its unique circumstances. In addition to close co-operation between investigators, analysts and experts, trial attorneys are also closely involved in order to lay the groundwork for a smooth transition from investigation to prosecution. The desired result is focused and efficient investigations, sensitive to the local situation.

The Judges have issued further directions for criminal procedures and the ICC's internal work in the Regulations of the Court.⁶⁹ In addition, the Judges are considering general topics such as approaches to the complementarity principle, victims' participation in the proceedings and principles to apply with respect to reparations to victims. Pre-Trial Chambers with fixed composition have been constituted.⁷⁰

The Registry has developed the policies and procedures pertaining to essential issues such as defence, detention, victims, witnesses, counsel, court management and information technology. It has also commenced work towards agreements with States on issues such as witness protection and the enforcement of sentences.

3.3 Analysis and investigations

The OTP has adopted procedures and standards for the analysis of information and has put in place the personnel and technology to carry this out. As at October 2004 the OTP had already received over 1,000 communications concerning alleged ICC crimes. The great majority of these communications were manifestly outside the jurisdiction of the Court, and therefore received a response with reasons for the decision not to proceed. Other communications warranted further attention, and acknowledgements have been sent explaining that additional analysis will be carried out. Analysis can take some time, given the need to gather sufficient information on the three criteria as explained above in section 2.1. The OTP has announced that, in addition to the two situations for which investigations were initiated (see Box 1.1), it is analysing six other situations of interest.

69 Article 52.

70 Decision by the Presidency of 23 June 2004 (ICC-Pres-01/04).

Box 1.1: Investigations Being Undertaken by the ICC

The Office of the Prosecutor (OTP) has received its first two referrals from two States Parties, namely Uganda and the Democratic Republic of the Congo (DRC). Both have referred situations within their own territory. The possibility of 'self-referral' was certainly not at the forefront of the minds of delegates when the Statute was adopted, but it is a promising indication of the value of and need for the Court. Even with self-referrals, the Prosecutor must still consider the formal requirements of Article 53, as discussed above. However, such referrals do carry with them strong expectations of support and co-operation.⁷¹

The first referral was received from the Government of Uganda. Although the referral mentioned the situation concerning crimes alleged to have been committed by the Lord's Resistance Army, the scope of the referral was interpreted in accordance with the principles of the Rome Statute as covering any crimes (including those alleged to have been committed by government forces in northern Uganda) within the jurisdiction of the Court.

The second referral was received in March 2004 from the Government of the DRC. The OTP has been closely analysing the grave crimes being committed in that country, particularly in the Ituri region, since July 2003.

In both situations the OTP collected the necessary additional information and completed the analysis required under Article 53, and the Prosecutor determined that there was a reasonable basis to initiate an investigation. In June 2004 the Prosecutor announced the opening of the investigation into crimes committed in the DRC, and in July 2004 he announced the opening of the investigation into crimes committed in northern Uganda. The Presidency has assigned the two investigations to be dealt with by different Pre-Trial Chambers.⁷²

The OTP has carried out several missions to the field in order to build co-operation and to collect information and evidence in these cases. Co-operation agreements have been signed with both Uganda and the DRC and investigations are underway.

3.4 Challenges

The ICC will continue to develop its policies and procedures as it encounters unique and unprecedented obligations and challenges. For example, the Court includes prosecutorial and judicial organs with distinct roles that must remain independent from one another, out of respect for both the Statute and the rule of law. At the same time, it is a single institution and must ensure co-ordination on issues of general strategy, external relations, public information and outreach, administration and victims policies.

71 See also *Remarks by ICC Prosecutor Luis Moreno Ocampo at the 27th Meeting of the Committee of Legal Advisers on Public International Law (CADHI)*, Strasbourg, 18-19 March 2004 (available at <http://www.icc.now/documents/statements/others/ICCProsecutorCADHI18Mar04.pdf>).

72 Decisions by the Presidency of 5 July 2004 (ICC-01/04 and ICC-02/04).

The Court will also need to build concrete co-operation with States, including not only prompt compliance with obligations but also support going beyond legal obligations. Without this, it cannot succeed.

The ICC will be operating in situations that pose unprecedented difficulties – situations of ongoing conflict, extreme violence and fragile or even a complete lack of stability. In such contexts it is difficult to collect even basic reliable information, let alone to acquire admissible evidence, to obtain custody of suspects, to provide victim protection and to achieve all of this while complying with the stringent requirements of the Statute in a cost effective, rapid manner. Success will require innovation and steadfast political support.