

## **The International Criminal Court (ICC)**

### **What do we want to do?**

1. Ensure that the International Criminal Court (ICC) retains its independence, delivers justice, increases its membership, builds more support for its decisions from States and the UNSC, gains wider regional support and completes its work more efficiently.

### **Why do we want to do this?**

2. As the Foreign Secretary made clear in his speech ["International Law and Justice in a Networked world"](#), the UK's continued commitment to international justice is central to our values-based foreign policy. We contribute to the Courts and Tribunals annually through assessed contributions (circa £20m) and voluntary contributions (circa £6m in 2012/13). We also offer additional support by protecting witnesses and have agreed to enforce sentences by holding prisoners in the UK.

3. Following the celebration of the Court's tenth anniversary it is notable that it is now seen as a cornerstone of international justice, attracting considerable public and political support especially from key partners in the EU. We must focus now on building and supporting the Court both where it enjoys support, and where it faces greater challenges, as it develops its key role in entrenching the rule of law; acting as a deterrent to atrocities, placing a spotlight on individual responsibility, supporting victims and helping to establish an historical narrative of accountability.

4. The existence of a permanent Court is an important step on the path to universal accountability. It builds on the work of the *ad hoc* Tribunals and Courts, ultimately replacing the need for them and providing more consistent and cost-efficient justice. As its reach widens it should bring more perpetrators of atrocities into its ambit giving despotic leaders pause for thought. Although hard to measure, some academics and practitioners have argued that since the ICC came into being more prosecutions have been conducted at the national level by States Parties wishing to avoid having the Prosecutor examining the situation within their country.

5. In its first ten years the Court has had some notable successes – the trial of Thomas Lubanga, a warlord from the DRC, has created jurisprudence on child soldiers; the unanimous UNSC referral of the situation in Libya reflected the will of the international community to ensure those accused of the most serious of international crimes are held accountable; self referrals by a number of African States, most recently Mali, demonstrate its role as a Court of last resort and action against Heads of State underscores the view that no one is above the law. The

actions of the Court and our support for it, provide clear evidence of accountability in action.

6. But a number of challenges remain: The admissibility challenge over the situation in Libya remains unresolved; President Bashir remains at large in Sudan along with other indictees; there are tensions within Africa with some taking the view that Africa is being unfairly singled out; and meanwhile the role of the UNSC (particularly the reach of Permanent Members who are not ICC States Parties) remains disputed. Referral of a situation by the UNSC to the ICC Prosecutor is always going to be seen as an inherently political act, and the Court's detractors will continue to accuse the Court of being a tool used by the West to punish those of whom it does not approve. We are clear that it is not, but, until the Court is universal, it will be hard to convince the its detractors of this. The lack of a mechanism to enforce cooperation with the ICC by non-State Parties and to censure those who disregard their legal and political obligations to the Court means that many of those indicted have yet to be brought before the Court. The inability of the UNSC to agree to refer the situation in Syria to the ICC Prosecutor has made it appear impotent in the face of serious crimes, exactly what the ICC was set up to address. We have also seen from the successful Libya and Sudan referrals that action by the UNSC is only the beginning of a process which, once started, is driven by the Court.

**Extract from speech by William Hague, July 2012**

*"...the path to justice can be long and difficult. It will always be a struggle to define and enforce rules of international conduct that promote the security, prosperity and just treatment of all nations and all people. But the maximum safety for the greatest number lies in the rule of international law. Having achieved so much over the last twenty years, we cannot say we have got this far but will go no further. We must continue to expand the frontiers of freedom and protection against human rights abuses. We have to maintain momentum and increase it if we can. We must show political will and commitment and demonstrate greater international resolve to prevent conflict. It is a sad truth that the biggest advances in international justice came about because of our revulsion at atrocities: the horror of the World Wars, the killing fields of Cambodia, the premeditated barbarity in Bosnia and Kosovo, the slaughter in Rwanda, and the mass rapes in the Democratic Republic of Congo, all of which were an unbearable affront to the conscience of humanity. Today, how much better it would be to look ahead and summon the political will to act to prevent conflict and expand human rights without needing to be shamed into doing so by the deaths and suffering of innocent people".*

## **Key messages**

- Our support for international criminal justice and accountability is a fundamental element of our foreign policy.
- Our support for the ICC as a court of last resort and the importance of its role when national courts have been unwilling or unable to deliver justice is unswerving.
- It is our clear hope that through universality of the Rome Statute and the development of national jurisdictions that the ICC's role will eventually become increasingly limited.
- Until then, the ICC will continue to play a vital role in achieving justice for the victims of the worst crimes.

## **What can we achieve and how might we achieve this?:**

### **i) A stronger, universal Court, complementary to domestic jurisdictions**

Work with other States Parties to encourage more states to ratify and accede to the Rome Statute and to fully implement its provisions in domestic law. Widening the reach of the Court beyond the current 122 States Parties will increase accountability and help challenge impunity. We will encourage States Party to provide the necessary political, strategic, practical and financial support the Court needs.

#### **How we will do this:**

Be a powerful advocate of the ICC in all our diplomatic relations.

Urge States not party to the Rome Statute to consider ratifying or acceding to the Treaty, by raising regularly in meetings including in briefings for Ministerial and other high level meetings.

Encourage non-States Parties to offer their cooperation and support for the Court.

Support NGO campaigns and work with EU partners through demarches and events to raise awareness and encourage ratification.

Work with ICC States Parties to encourage them to undertake more advocacy.

Continue our series of public articles in non-ICC States to raise the profile of the Court and the issues.

Be clear that the ICC is a Court of last resort and assist in developing national capacity, supporting and promoting national justice mechanisms, including through the Preventing Sexual Violence Initiative, to tackle the most serious international crimes while working towards the situation where the ICC does not have to exercise jurisdiction.

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Support other methods of justice and reconciliation at a regional and national level to help tackle impunity domestically.

Work with the ICC to help refine its procedures and continue its efforts to become more efficient.

Offer the best possible candidates for positions within the Court and encourage other States Party to do the same.

ii) Addressing issues of non-cooperation and non-essential contact

Accept that the issue of non-cooperation is the biggest challenge which the Court faces. Be clear on what we mean by “essential contact”. Ensure that we follow our own guidelines.

How we will do this:

Work through our network of Embassies and High Commissions in States and situations where non-cooperation is an issue.

Maintain our policy on non-essential contact to ensure that it is robust.

Work with others, particularly EU partners, to publically raise concerns about acts of non-cooperation.

Promote determined efforts to apprehend fugitives from international justice.

In support of the decision taken by ICC States Parties in November 2012 through ASP Resolution 11/Res 5, consider possible mechanisms to enforce cooperation and to take effective action against those who fail to cooperate.

Encourage greater understanding of the Court and its work, particularly in situation countries and greater cooperation between the Court and the African Union.

Ensure that our, and the EU’s policies on essential contact with ICC indictees who are fugitive are regularly reviewed and upheld.

iii) Using our voice in the UN Security Council

Ensure our commitment to the ICC is reflected in the approach we take on all UNSC statements and resolutions related to situations where the ICC either has or should have a role.

How we will do this:

Be proactive in securing discussion on and offering support in the cases the UNSC has referred (Sudan and Libya).

Continue to press for a referral of the situation in Syria.

Develop guidelines for geographical desk officers and posts on when ICC referral might be appropriate.

iv) Promote the role of international justice in UK policy

Ensure that UK's legal obligations as a party to the Rome Statute and support for international criminal justice forms a key part of all bilateral relationships, reinforcing the ICC by helping to build a wider commitment to accountability.

How we will do this:

Work with Posts and country desks to ensure that international justice issues and obligations play a full part in bilateral strategies.

Work with other Whitehall partners and practitioners (Department for International Development, Ministry of Justice, Home Office, Crown Prosecution Service, Police, UKBA) to develop a more joined up and strategic approach.

Recommit to the importance of fighting impunity for grave international crimes and serious human rights violations and abuses wherever they occur.

Encourage member states to consider accepting the compulsory jurisdiction of the ICJ as the principal judicial organ of the United Nations.

Work to build greater consensus with emerging powers on how to translate shared commitments on human rights into action.

Use our international role and diplomatic network to pursue initiatives that support peace, security and human rights worldwide, from our efforts to support stability in Somalia to the Foreign Secretary's Initiative on Preventing Sexual Violence in Conflict.

Ensure that our international development assistance continues to support human rights and international law across the world.

Help refocus the debate on the needs of victims. Urge voluntary contributions to the ICC's groundbreaking mechanism, the Trust Fund for Victims, to help victims rebuild their lives.

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