



## The World Today

### The International Criminal Court And The Caribbean

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The International Criminal Court (ICC or Court) has been established. Today, over 100 countries have ratified the Rome Statute establishing the Court, and the main institutional arrangements for the Court have been in place for at least three years. The Court has actually started to work, and is currently dealing mainly with a number of referrals from the United Nations Security Council.

#### No Impunity

The primary objective of the ICC, therefore, is to prevent impunity. In cases too numerous to mention political leaders have committed – or permitted – atrocities that cry out for justice; and yet, although these atrocities have been publicized, the political leaders have enjoyed immunity from the law. Similarly, in the context of war, soldiers and their leaders have historically been inclined to invoke Cicero: *inter arma silent leges*, amidst the clash of arms, the law is silent. The ICC challenges this situation. Those who violate international criminal law must face the courts, either in their home countries or at the ICC in the Hague.

The desire to prevent impunity for crimes is consistent with liberal ideals, and so, it may be argued that the Court represents the triumph of liberalism in international affairs. Other features of the Court support this idea. So, for example, the Rome Statute setting up the Court contains various safeguards to prevent arbitrary treatment of the accused in individual cases. In addition to the presumption of innocence, accused persons are afforded all the rights to a fair trial associated with the English common law: among other things, the Court shall not apply laws retrospectively, only persons over the age of 18 may be held criminally responsible by the Court, and the Court in its operations will take into account the usual defenses pertaining to mental capacity intoxication and self-defense.

The liberalism inherent in the arrangements for the Court is not confined to principles of the criminal law. More generally, the Court's overall structure reflects the desire to ensure fairness and impartiality. Thus, it is a permanent court, and all States Parties to the Rome Statute will be subject to the jurisdiction of the Court on a permanent basis. In other words, the Court will not be vulnerable to the charge that it is a court established to implement "victor's justice", an accusation that has diminished, for instance, the place of the post-World War II Nuremberg Tribunal in the judgment of historians.

Similarly, the Court structure seeks to ensure the independence of judges, and creates an independent Office of the Prosecutor, with the Prosecutor being elected by secret ballot. Other notable – liberal – initiatives include the establishment of a fund for victims of the crimes that fall within the Court’s jurisdiction, and an express reference in the statute establishing the Court to the fact that there should be a fair representation of both female and male judges on the bench.

### **Caribbean Reluctance**

Why have other Caribbean countries not joined Trinidad and Tobago in the forefront of this important development in International Relations?

To begin with, their answer may turn simply on the question of priorities. Although the 1983 Grenada precedent may suggest otherwise, policy-makers in the Caribbean tend to perceive the Region as immune – and above – the possibility of armed conflict amounting to military confrontation, hence we expect no war crimes. Similarly, we do not expect to have the types of atrocities that amount to crimes against humanity; and, even moreso, we hardly contemplate the prospect of genocide on Caribbean soil. So, perhaps CARICOM countries have not embraced the ICC largely because we feel no urgent need to do so. This perspective may be somewhat short-sighted, but, given competing social demands of a more pressing nature, it is at least understandable.

Secondly, Caribbean reluctance to join the regime of the Court has probably been influenced, directly or indirectly, by the prevailing American policy in respect of the Court. The posture of the Bush Administration is well-known: in its work, the ICC could discriminate against American military forces, and the arrangements from the Court do not provide adequate safeguards to prevent this from happening. So, the Bush Administration has opted firmly to stay out of the Court scheme. But, in addition, the American Government has sought actively to discourage other countries from participating in the scheme, and has contemplated sanctions against countries that become parties to the Rome Statute.

The real prospect of American sanctions may well have deterred some CARICOM countries. Some political pronouncements from Caribbean leaders have been critical of the American posture, but not many leaders would willingly accept the Court, knowing that the price of this acceptance will be economic sanctions.

There may, however, be a way out of the sanctions maze. If the Caribbean countries individually enter into a bilateral immunity agreement with the American Government, the prospect of sanctions will be removed. And, at the same time, the Caribbean countries would then be in a position to ratify the Rome Statute and to become full members in the important scheme for the ICC. To be sure, this is a compromise position – and there will be political resistance to it – but sometimes compromise is necessary to ensure progress.