

INTERNATIONAL CRIMINAL COURT

Canada is at the forefront of the efforts to establish an International Criminal Court ("ICC"), which would try those accused of the most serious international crimes. As currently conceived, the ICC would have jurisdiction over the most serious international crimes, such as genocide, war crimes and crimes against humanity. The ICC would be complementary to national courts and would have jurisdiction where national courts are unable or unwilling to bring transgressors to justice. It is hoped that a permanent ICC will promote stability by ending the cycle of violence and impunity for the most serious crimes and acting as a deterrent to future violators.

A Preparatory Committee ("PrepCom") has held meetings in 1996 and in February and August 1997. The PrepCom will meet again in December 1997 and in March 1998. A Diplomatic Conference is scheduled for June 1998.

Many controversial issues remain to be resolved, including:

- which crimes to include in the Statute (the definitions of war crimes, genocide and crimes against humanity are being negotiated, but it is undecided whether to include the crime of aggression or particular treaty crimes);
- whether ICC jurisdiction over the core crimes should be automatically recognized upon ratification ("inherent jurisdiction") or whether consent on a case-by-case basis is required ("opt-in");
- the appropriate role of the Security Council (whether it should be able to refer cases to the ICC or to prevent the ICC from acting); and
- which procedures and principles to adopt (hybridization of common law and civil law).

Canada chairs the "Group of Like-Minded States" who are friendly to the ICC. This group was instrumental in achieving agreement on a 1998 diplomatic conference, and has evolved into a forum for developing strategy on substantive issues.

In the August PrepCom, Canada was the Coordinator on the difficult issue of "complementarity", which governs the ability of the ICC to take jurisdiction where national courts are unable or unwilling to prosecute. A tenuous consensus was achieved on a draft Article, making it the first contentious issue where a wide measure of agreement has been achieved.