

# Q&A FOR VICTIMS IN UKRAINE ON THE ICC PROCEEDINGS AND THEIR RIGHTS BEFORE THE COURT

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## What is the International Criminal Court?

The International Criminal Court (ICC) is an independent international court that investigates, prosecutes, and tries individuals accused with the gravest crimes of concern to the international community: war crimes, crimes against humanity, genocide, and the crime of aggression. However, the crime of aggression cannot be tried unless the situation in question is referred to it by the United Nations Security Council (UNSC). As of September 2024, 124 countries are members (“State parties”) of the ICC. These countries have agreed that the ICC can try crimes that either happened on their territory or were committed by their nationals.

## Is Ukraine a State Party of the ICC?

At the time of the drafting of this Q&A, Ukraine was not a State Party of the ICC. However, Ukraine has agreed to the ICC’s jurisdiction over crimes falling within the ICC jurisdiction that have been committed on its territory. On 21st August 2024, the Ukrainian Parliament also voted to ratify the Rome Statute, paving the way for Ukraine to become a full member of the ICC.

## What are the different organs of the ICC?

The ICC is composed of four organs: **the Presidency, the Office of the Prosecutor, the Chambers, and the Registry**:

**The Presidency** is responsible for the administration of the Court, including the administration of the Chambers and the Registry. It is composed of three judges and is also responsible for tasks such as ensuring the enforcement of the Court’s sentences.

**The Office of the Prosecutor** is responsible for receiving and investigating information related to alleged crimes within the ICC’s jurisdiction, as well as acting as prosecution in the proceedings. Even though it is part of the Court, it investigates and prosecutes independently.

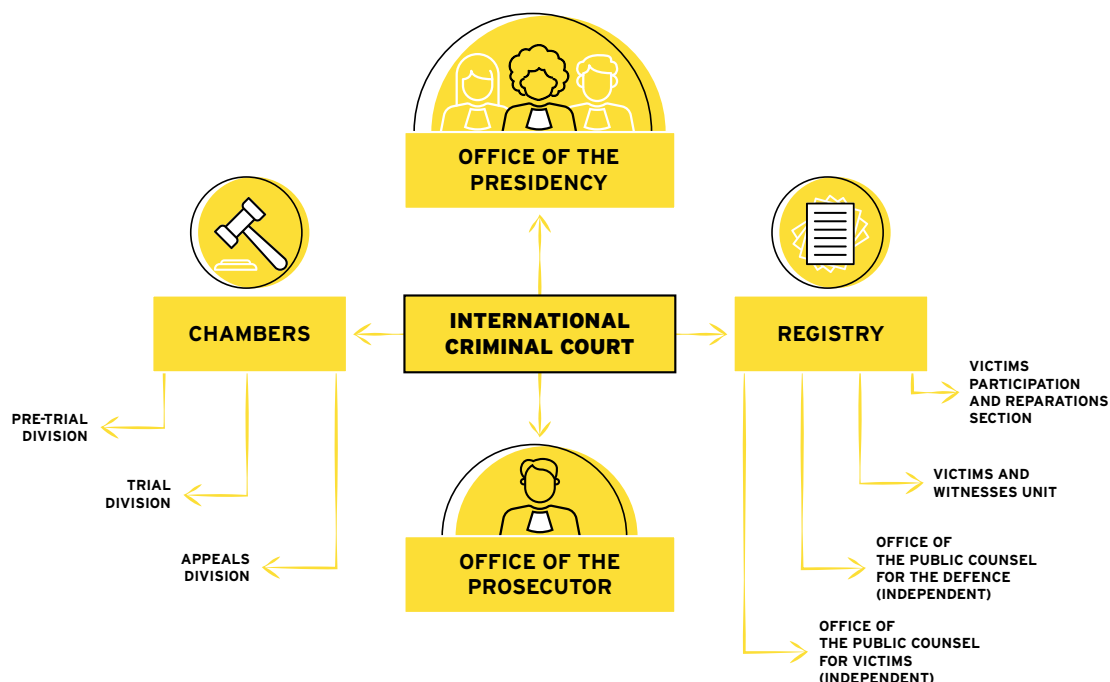
**The Chambers** consist of 18 judges, organised in three separate divisions:

- **The Pre-Trial Division** is responsible for the early stage of proceedings, including deciding whether or not to issue arrest warrants requested by the Office of the Prosecutor. If a Pre-trial Chamber confirms all or some of the charges, the next stage of proceedings is overseen by the Trial Division.
- **The Trial Division** is responsible for overseeing the trial and ensuring that it is conducted fairly, and efficiently, with respect for the rights of accused persons, and with due protection of victims and witnesses. If an accused is found guilty of any charge, the Trial Chamber will impose a sentence, and can also order reparations for victims of those crimes.
- **The Appeals Division:** The Office of the Prosecutor, a suspect or accused persons, and in some cases victims, can appeal decisions made by the Pre-Trial or Trial-Chambers to the Appeals Chamber, which is made up of all five judges. This right to appeal is, however, limited to decisions of high importance. A decision becomes final if the Appeals Chamber upholds a decision issued by the Pre-Trial or Trial Chambers, or if no party appeals it.

**The Registry** provides services to all the other organs so the ICC can function and conduct fair and effective public proceedings. It provides support to all parties to the proceedings, including the Office of the Prosecutor, the Defence, and the legal representatives of the victims, as well as to the Trust Fund for Victims, the Chambers, and The Assembly of States Parties.

Other offices that are part of the Registry are:

- The **Victims Participation and Reparations Sections (VPRS)** provides information to victims regarding their right to participation in proceedings, their right to obtain reparations in case of a conviction, their right to legal representation and their right to be protected. It ensures that victims are able to submit their applications for participation in proceedings or for reparations to the Court. It also assists with assigning lawyers to provide legal advice and representation. The VPRS protects victims by redacting (anonymising) their application forms if needed.
- **The Victims and Witnesses Unit (VWU)** offers assistance and protection to witnesses, as well as to their families, and advises on the protection of participating victims.
- **The Office of Public Counsel for the Defence (OPCD)** safeguards the rights of the defence: it provides support and legal assistance to defence counsel and individuals entitled to legal aid, in particular to suspects. While the OPCD may be appointed by the judges to act as ad hoc counsel, the individuals charged with crimes before the ICC are free to choose their counsel.
- **The Office of the Public Counsel for Victims (OPCV)** supports and assists the legal representatives of victims and can be appointed to represent victims in proceedings.



## What are the phases of ICC proceedings?

### Preliminary examination

The Office of the Prosecutor first conducts a preliminary examination into a **situation** to determine if an investigation should be opened or not. A preliminary examination is initiated on the basis a referral by the UNSC or a State party; following information sent to the Office of the Prosecutor by NGOs, individuals or other groups; or after a declaration by a State that is not a member of the Court, accepting the jurisdiction of the Court. However, in the last two cases, the Prosecutor will need to seek authorisation from ICC judges to open an investigation.

### Investigation

Following the preliminary examination, the ICC Prosecutor evaluates whether the Court has jurisdiction over the crimes alleged in a situation, taking into consideration the time and place where the alleged crimes occurred. The Prosecutor then decides whether opening an investigation would be in the interests of justice (i.e. providing accountability for serious crimes committed). During this phase, the Prosecutor gathers evidence and may conduct trips to the territory where the crimes occurred and other locations, to find and speak to witnesses, access the locations of the crimes, and obtain documents or other types of evidence. The ICC depends on the cooperation of States (and other entities when relevant) to conduct these investigations.

### Pre-trial stage

If after investigating the Prosecutor finds that sufficient evidence has been collected to initiate a **case** against one or more individuals suspected of crimes, he will request that the judges of the Pre-Trial Chamber assigned to the specific situation issue arrest warrants or summonses for the suspects he has identified to appear before the Court. If the suspect surrenders or is arrested, the case will go into the pre-trial stage.

During the pre-trial stage there will be a “confirmation of charges” hearing to decide whether there is enough evidence for the case to go to trial. This process can take around a year because it needs a lot of preparation, including prosecution disclosure of evidence to the defence, time for the defence to prepare, and to allow the victims to apply to participate and their legal representation to be arranged.

Once the judges confirm charges, the charges form part of a case before the Court. If the judges do not confirm the charges, the proceedings end and do not proceed to trial.

### Situation versus a case

The difference between the situation and the case is that the situation refers to all crimes committed within a determined period on a certain territory, while a case relates more narrowly to specific crimes alleged to have been committed by a particular individual in a particular location at a particular time.

### Trial stage

If one or more charges are confirmed, the case moves to the trial stage, where the prosecution and the defence present their case. The Office of the Prosecutor must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. If found guilty by the judges, the accused will be sentenced.

The judges may impose a prison sentence. The maximum sentence is 30 years, or in case of extreme gravity a term of life imprisonment. The Court may also order reparations be provided to victims, such as rehabilitation, compensation, and other forms of reparation. If so, the judges will issue a reparations order, outlining what reparations victims are entitled to, and how they should be implemented.

Trials themselves can last for many months or sometimes more than a year, as numerous witnesses are usually heard.

### Appeal stage

The trial may move on to an appeal stage. The Prosecutor and the Defence (lawyer or lawyers representing the accused) have the right to appeal the trial judgement and/or the sentence, challenging the strength or validity of the Trial Chamber's judgment. This means that they can ask the Appeals Chamber (a higher Court Chamber) to reverse the decision issued by the judges of the Trial Chamber.

Victims cannot appeal against judgements issued by the Trial Chamber regarding the guilt (or otherwise) of the accused or sentencing, but they have the right to appeal reparations orders. The reparations orders can also be appealed by the person convicted or the owner of the property affected by the order. If the verdict is confirmed on appeal, the conviction becomes final.

### Reparations stage

Following the judgement, the Chamber usually issues a reparations order against the convicted person. The Court directly orders the convicted person to pay reparations to victims for the harm suffered because of the crimes the convicted person has been found guilty of. Types of reparation may include compensation, rehabilitation or formal apologies, among others. The **Trust Fund for Victims** is empowered to implement the reparations order if the convicted person does not have funds to pay it.

## Which crimes are considered in the situation in Ukraine?

Ukraine first accepted the ICC's jurisdiction over crimes alleged on its territory in respect to crimes allegedly committed in Ukraine between 21 November 2013 and 22 February 2014. Subsequently, it also accepted the Court's jurisdiction in respect to crimes allegedly committed throughout the territory of Ukraine from 20 February 2014 onwards. This means that the ICC can prosecute any crimes committed by any party since 21 November 2013 on the territory of Ukraine, including on the Russia-occupied territories.

Crimes falling under the ICC's mandate are the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. But the ICC can only try the crime of aggression if the situation in question was referred to it by the UNSC (where Russia's veto power would block any such initiative) or if the States involved expressed their consent. This is not the case in the Ukraine Situation. Hence, the ICC can only try the first three categories of crimes.

The Office of the Prosecutor opened a preliminary examination into the Ukraine situation on 24 April 2014. The Ukrainian authorities cooperated with the ICC during the preliminary examination stage, providing information on domestic investigations and judicial proceedings concerning relevant crimes. The examination was completed in December 2020.

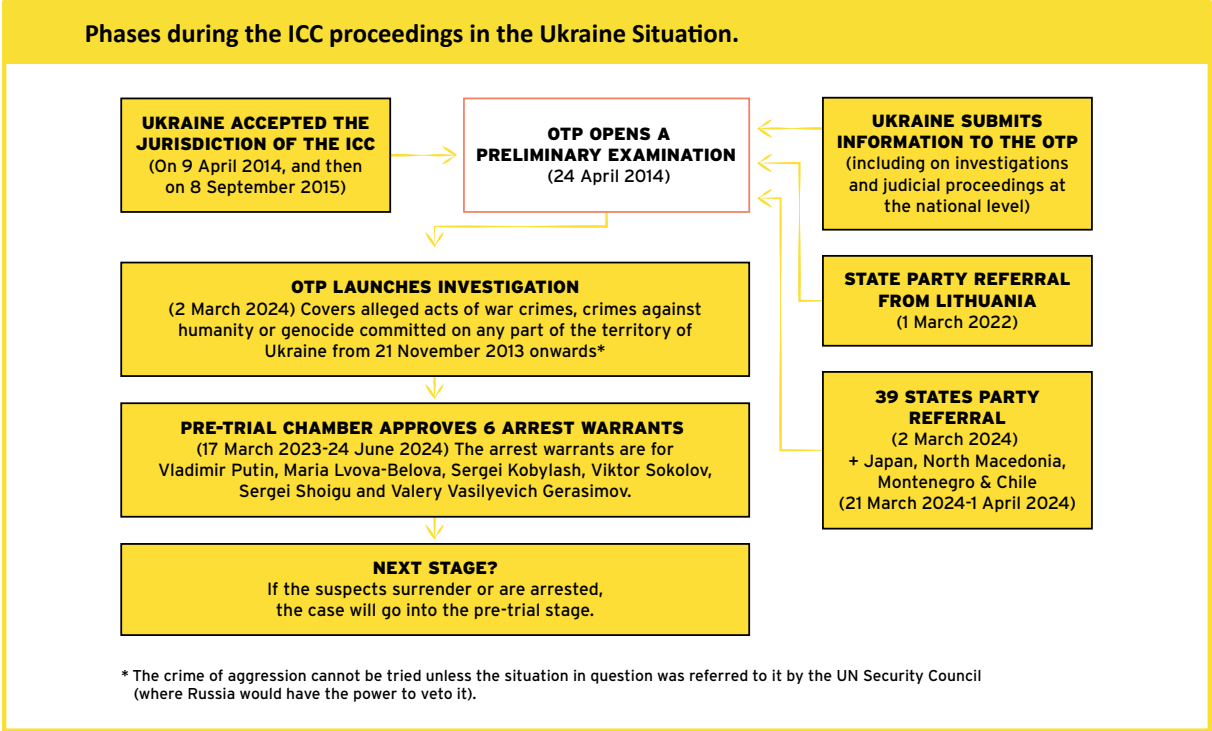
The ICC Prosecutor received referrals from several member States in March 2022. On 1 March 2022, Lithuania asked the Office of the Prosecutor to open an investigation. On 2 March 2022, the Office of the Prosecutor received a joint referral from a group of 39 States. Additional States joined this group referral later.

The referrals included “any acts of war crimes, crimes against humanity and genocide alleged to have occurred on the territory of Ukraine from 21 November 2013 onwards, including any allegations of current and ongoing crimes occurring throughout the territory of Ukraine.”

On 2 March 2022, the Prosecutor announced he had opened an investigation based on these referrals. It also requested arrest warrants against six individuals: Vladimir Putin, Maria Lvova-Belova, Sergei Kobylash, Viktor Sokolov, Sergei Shoigu and Valery Vasilyevich Gerasimov. All of them have been granted (approved) by the Pre-Trial Chamber.

The case will move to the pre-trial stage if any of the suspects surrenders or are arrested.

**Where is Ukraine at the ICC Proceedings?**



**How can I contact the Office of the Prosecutor if I have information that is relevant to the Ukraine situation?**

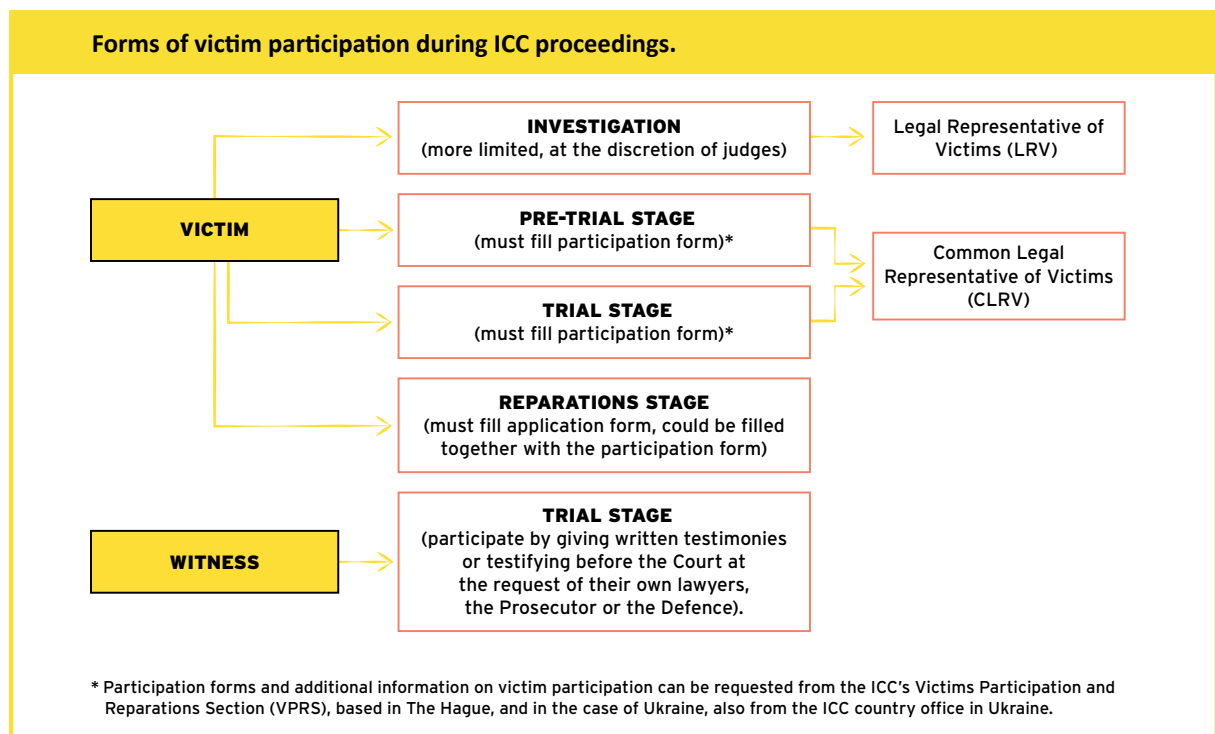
Any person who has information related to the crimes that fall within the scope of the ICC investigation can send it to the Office of the Prosecutor. The Prosecutor opened a dedicated online portal through which anyone who may have information relevant to the Ukraine situation can contact ICC investigators. Before submitting information to the Office of the Prosecutor, victims and other individuals may find it useful to speak with civil society organisations or lawyers that work on matters related to the ICC investigation in Ukraine.

**How can victims participate in the ICC proceedings?**

Participation looks different depending on whether the person participates as a **victim** or as a **witness**:

**Participating as a victim:** When participating as a victim, victims voluntarily communicate their views and concerns to the Court. Their involvement can occur at any stage of the proceedings as deemed appropriate by the judges. They are always represented by a legal representative, without the need to appear in person. The legal representatives will communicate their views either in writing (by filing submissions) or by appearing in person before the judges.

**Participating as a witness:** Witnesses are called to testify by the prosecution, defence, victims’ legal representative, or the Chamber. A witness is a person who has personally observed or has knowledge of the crimes or the context of the crimes being investigated, but has not necessarily suffered harm because of the crimes. They provide evidence through testimony and answering related questions, typically in person and without the benefit of a legal representative. The Court takes steps to protect witnesses who participate in court proceedings through the Victims and Witnesses Section support team, which also offers psychological and medical support if needed.



## Who are direct and indirect victims?

To qualify as a victim before the ICC, a person must meet several criteria:

- The applicant must have suffered direct or indirect personal harm as a result of the crimes in question;
- The alleged crimes which caused the victim's harm must be crime that are part of the proceedings before the Court; and
- victims need to provide a copy of their identity document. If they are a close family member of the direct victim, they also need to provide proof of kinship.

Harm can take many different forms. It can be physical, but also psychological, or emotional. The most common example of indirect harm is the psychological or material harm caused to the relatives of those killed or seriously harmed by the crimes.

A **direct victim** is someone who has personally suffered harm as an immediate result of the crimes of the convicted person. On the other hand, an **indirect victim** is an individual who has suffered personal harm due to the crimes committed against a direct victim.

For example, a direct victim may suffer physical harm due to crimes committed against them. An indirect victim may be a family member of the direct victim who has suffered psychological and emotional harm due to the crimes committed against their close relative.

Victims can be represented by a lawyer at the ICC at all stages of the proceedings. The basic rule at the ICC is that victims

## Who can represent victims before the ICC?

can choose their own lawyer but as proceedings progress, the judges may arrange 'common legal representation'.

In practice, legal representation can operate differently at different stages of ICC proceedings.

During the investigation phase, victims are able to use of legal representation and are free to choose their own lawyers (**Legal Representatives of Victims, or LRVs**) so that they can communicate their views to the judges. During this stage, legal representatives of victims do not have their fees paid by the Court, other than in exceptional circumstances in line with the Court's Legal Aid Policy.

At the pre-trial stage, once there is an arrest warrant and a suspect has appeared before the Court, the Pre-Trial Chamber might order that **common legal representatives of victims (CLRVs)** be appointed. This is to avoid having many separate legal teams representing different groups of victims, especially when there are larger number of victims, which may not be practical. In principle, victims may agree among themselves on the lawyer who will be their common **legal representative**.

Another body that can provide legal representation to victims is the **Office of Public Counsel for the Victims (OPCV)**, which provides assistance and support to external lawyers representing victims, as well as uphold the general rights of victims during the proceedings. In some cases, counsel from within the staff of the OPCV maybe appointed by the judges to represent victims directly.

## How can I receive protection if I am at risk of retaliation?

Before deciding on whether they want to participate in the proceedings before the ICC, victims should consider the potential safety implications of such a decision.

There may be a risk that the fact a victim is participating in proceedings becomes known to the accused or sometimes the broader public, despite efforts of the Court and the victims themselves to keep this information confidential.

This can lead to attempts by perpetrators or their allies to harm, intimidate, or dissuade the victim from participating or providing information to the Court.

In Ukraine, such risks may be particularly urgent for victims and their family members who live in the temporarily occupied territories and could be subjected to reprisals from the de facto authorities of these regions or the Russian authorities.

There are steps that victims themselves may be able to take to mitigate the risks of participating in ICC proceedings:

- Before applying, think about any risks that may arise. Inform their legal representative or the organisation assisting them to fill out an application about any concerns.
- Carefully consider all factors before telling anyone other than the Court about the fact they have submitted an application to participate in proceedings. It is usually safer for the participant if the information about their application is confidential.

In principle, victims and witnesses and others who are at risk because of their interaction with the Court have the right to protection. This right is implemented differently depending on whether the victim is also a witness. However, for both victims and witnesses, protection mechanisms rarely involve active physical protection but rather involve different measures to protect the confidentiality of the person's involvement with the Court.

Witnesses may face heightened risks. **The Victims and Witnesses Section (VWS)**, a specialised unit at the Court, is responsible for offering support and protection to witnesses and participating victims. Contact with the VWS is usually done through the victims' counsel.

The Court has a duty to take all appropriate measures to protect the safety, well-being, and privacy of victims and well-being throughout proceedings. However, in reality, depending on the context, the Court may not be able to guarantee full protection, especially in situations of ongoing armed conflicts. It is also important for victims to be aware that the Court may assess protection risks and needs differently than how the victims themselves may perceive them.



## What forms of reparations can be ordered by the ICC?

If a Trial Chamber finds a person guilty of crimes after a trial, the Chamber may make an order of reparations against the convicted person for the benefit of victims. Reparations aims to repair, to the extent possible, the harm suffered by the victim.

A variety of reparations measures can be ordered by the Court. They can include compensation, restitution, rehabilitation, and/or satisfaction measures:

- **Compensation** means that the convicted person must make payments to victims to repair the harm for which they are liable.
- **Restitution** is the return of property that was stolen or seized from a victim.
- **Rehabilitation** can include psychological, medical, or economic rehabilitation to repair the harm suffered by the victims.
- The Court can order **satisfaction measures** (or symbolic reparations). Examples of symbolic reparations measures include formal apologies and memorials for the crimes committed.

The Court may award **individual or collective reparation measures** or a mix of both types. Collective measures are those that benefit a community or group of victims.

Both direct and indirect victims can receive reparations. But the type and amount may differ. Additionally, when applying for reparations, indirect and direct victims might have to provide different types of proof as to their harm suffered.

## Who is responsible for the implementation of reparation orders?

The convicted person is in principle responsible for paying for reparation measures ordered by the Court. In practice, since in most cases this person has insufficient funds or resources to pay for the measures, the Trust Fund for Victims (TFV) is empowered to implement the reparations orders using funds it receives from contributions, mostly from States.

The Trust Fund for Victims may also set up an assistance programme to benefit victims of crimes under the ICC's jurisdiction in a situation country. Unlike reparation, this mandate is not linked to the conviction of an individual. Nor is it limited to victims who have applied to participate, or whose harm is linked to a specific case.

Read our guide:  
**How can victims in Ukraine be heard before the International Criminal Court**

