

# **Confidential**

## ***Ex Parte***

# **Annex 1**

**Cour  
Pénale  
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**International  
Criminal  
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## Translation of Evidence

### Original Document

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RBC Group (RosBiznesConsulting)

Politics, 16 November 2016, 22:09

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## The Hague is not for Moscow: why Russia has rejected the Rome Statute

Russia has withdrawn from the International Criminal Court. The court is biased, is the explanation from the Kremlin. This, however, will not stop cases involving Russia from proceeding, say experts



Headquarters of the Russian Ministry of Foreign Affairs (Photo: Yevgeniy Biyatov/RIA Novosti)

On Wednesday, Vladimir Putin instructed the Ministry of Foreign Affairs to send notification to the United Nations Secretary-General of Russia's intention not to become a party to the Rome Statute of the International Criminal Court. The Presidential order states that this proposal had been made by the Russian Ministry of Justice, and the proposal had been co-ordinated with the Ministry of Foreign Affairs, the Supreme Court, and other agencies.

The order was published the following day, after the ICC chief prosecutor, Fatou Bensouda, in her annual report, had described the fact of Crimea's incorporation into Russia in 2014 as a situation that "amounts to an international armed conflict" between Ukraine and Russia. The conflict, as stated in the report, had begun "at the latest on 26 February", when "the Russian Federation deployed members of its armed forces to gain control over parts of the Ukrainian territory".

### **The court “has not lived up to expectations”**

The Rome Statute (the Statute of the International Criminal Court) was drafted with the participation of Russia; Moscow was one of the first signatories to the instrument in September 2000. The Statute entered into force on 1 July 2002 and started to operate in 2003. The Court was created to administer justice on behalf of the international community as a whole against perpetrators of the most serious crimes: genocide, aggression, crimes against humanity and war crimes. Each of these terms is interpreted differently by the jurisprudence of different countries, but, as observed by Interfax, the States that have acceded to the ICC Statute affirm that they understand them in the same way.

In addition to examining, at Kiev’s request, the circumstances of the annexation of Crimea and the events in the east of Ukraine, in January of this year, the ICC granted Bensouda’s request and launched an investigation into crimes committed during the hostilities in South Ossetia in August 2008. As announced by Bensouda, she had analysed reports from international human rights organisations and considered complaints from victims, after which she had concluded that there was “a reasonable basis to believe that crimes within the jurisdiction of the Court have been committed in Georgia in the context of the armed conflict of August 2008”, according to a statement posted on the ICC website.

Russia was among the originators of the creation of the ICC. Initially, as explained by the lawyer Grigor Avetisyan, co-operation seemed possible, including on the case of Georgia, but after the Georgian reports came out, Russia started to reconsider its attitude to the work of the court. In his view, the preliminary report on events in Ukraine was the last straw.

Moscow disagrees with the wording on Crimea. As Russian Presidential spokesman Dmitry Peskov told reporters (quoted by Interfax), it is “totally at odds with the facts, contradicts our position, and, most important, contradicts the position stated by the citizens of Crimea in the referendum”. According to Peskov, the decision to withdraw from the International Criminal Court at The Hague is “a position taken by the country itself, guided precisely by national interests”.

Equating the “Crimean Spring” with an armed intervention is a gross violation of the UN Charter, which enshrines the right of nations to self-determination. The activities by the court have demonstrated its inefficiency and partiality; over the course of 14 years, it has handed down only four judgements and squandered a vast amount of money — over \$1 billion, riposted Leonid Slutskiy, chair of the International Committee of the State Duma.

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The International Criminal Court "has failed to meet the expectations placed on it and to become a truly independent, authoritative organ of international justice", declared the Russian Ministry of Foreign Affairs in a statement. As the Ministry points out, Russia "cannot but be concerned about the ICC's attitude to the events of August 2008".

As explained to RBC by Bakhtiyar Tuzmukhamedov, professor of international law at the Diplomatic Academy of the Russian Ministry of Foreign Affairs, even before this, Russia had not been a fully-fledged member of the ICC: "We don't have a single judge on its bench; we haven't participated in its trial proceedings." "This [order] means only one thing: we're withdrawing our signature from this treaty," he said.

"For us, it won't have any significant legal implications because we haven't ratified the associated agreement. This is more of a political move," Interfax was informed by Mikhail Yemelyanov, first deputy chair of the State Duma Committee for Nation Building and Law. According to the lawyer [Grigor] Avetisyan, however, if the cases relating to the military conflict with Georgia or the events in Ukraine are brought to a conclusion and any of the Russians is convicted, an international arrest warrant will be issued, which could lead to that person being detained on the territory of a country that has ratified the Rome Statute or on the territory of another country if the authorities of that country establish relations with the ICC. In any event, a judgement against one of its citizens would be detrimental to the country's image, he says.

As explained by Kirill Koroteyev, a lawyer with the Memorial Human Rights Centre, the investigation relating to Georgia is based on the fact that Georgia has ratified the Statute, which means that citizens of any States who have committed a crime on its territory fall under the court's jurisdiction. According to him, the President's decision is a symbolic act demonstrating Russia's current attitude towards the document. Koroteyev points out that Russia's signature remains at the bottom of the Statute, and there is no procedure for revoking it.

*OTP/LSU Translation of UKR-OTP-00053376*

**Pipe dream about universal justice**

The Court's website states that 124 countries have ratified the Rome Statute. China, Israel, Saudi Arabia and India have not signed the Statute at all, while Russia and the United States, although signatories, have elected not to ratify it. The court has handed down four verdicts over its history. The first was in 2012: the former Congolese rebel leader Thomas Lubanga Dyilo was sentenced to 14 years in prison after being found guilty of human rights abuses and ethnic cleansing in the Congo. Lubanga's associate, Germain Katanga, was sentenced to 12 years in prison in May 2014. The latest and harshest sentence was handed down by the ICC in June 2016: the commander-in-chief of the armed Movement for the Liberation of the Congo, Jean-Pierre Bemba, was sentenced to 18 years in prison for the Movement's brutal actions in the Central African Republic. Also in 2016, the court sentenced a Malian man, Ahmad al-Faqi al-Mahdi, to nine years' imprisonment for deliberately destroying monuments in Timbuktu.

The court now has ten investigations under way, with 12 more cases under preliminary examination. On 21 July 2008, the International Criminal Court issued an arrest warrant for the President of the Sudan, Omar al-Bashir, on charges of genocide in connection with the Darfur conflict. Al-Bashir thus became the first sitting head of State to be indicted by an international judicial body.

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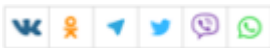


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## Expert explains why Russia will not be a party to the Rome Statute of the ICC

Order signed after ICC makes statements on the events in Crimea

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On Wednesday, President Putin signed an order entitled “On the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court”. It comes after the announcement in The Hague on Tuesday that Russia’s actions in Crimea in 2014 had led to a situation amounting to an armed conflict.



PHOTO: GENADIY CHERKASOV

The International Criminal Court (ICC) has yet to make a final decision on whether to recognise the Crimean conflict as an international one. And such a decision will have an impact on the verdicts in criminal cases involving offences that have occurred against the backdrop of the conflict.

According to the order signed by the President of the Russian Federation, the proposal that Russia should declare its intention not to participate in the Rome Statute of the ICC comes from the Ministry of Justice, and has been co-ordinated with other agencies and the Supreme Court.

Formally, Russia was not a State Party to the International Criminal Court anyway, but it co-operated with the ICC as an observer State.

Russia signed the Rome Statute (an international instrument adopted at a diplomatic conference in Rome in July 1998 establishing the ICC) on 13 September 2000, but never ratified it.

The International Criminal Court, which officially began its work on 1 July 2002, has jurisdiction to prosecute individuals responsible for genocide, war crimes and crimes against humanity (committed after the Rome Statute entered into force). It is an independent organisation that is not part of the UN structure.

The official seat of the ICC (not to be confused with the UN International Court of Justice, which also sits there) is The Hague, but it may sit elsewhere whenever it considers it desirable. The ICC should not be confused with country-specific international tribunals (for the Former Yugoslavia and Rwanda).

Although most modern countries have joined the ICC, there are States which are categorically against the very idea of such a court, because it violates their sovereignty. These countries include the United States (the Rome Statute was signed under Clinton, but the signature was withdrawn two years later; moreover, the Americans have signed bilateral treaties with a number of countries obliging them not to extradite US citizens to the ICC), China, India, Israel and Iran.

The Office of the Prosecutor of the ICC has opened investigations into ten situations — and the vast majority of them are related to Africa (the Central African Republic (two investigations), Côte d'Ivoire, Darfur (Sudan), the Democratic Republic of the Congo,

Kenya, Libya, Mali, Uganda, and Georgia). This kind of focus on the Dark Continent has provoked the withdrawal of several African countries from the ICC. On Tuesday, 15 November, following the withdrawal of South Africa and Burundi, The Gambia announced its withdrawal. And this despite the fact that the chief prosecutor of the ICC, Fatou Bensouda, is from that country. As the reason for their withdrawal from the ICC, the Gambians cited the fact that the court was used to persecute Africans, while the crimes committed by the West remained unaddressed.

“For the last 10-12 years, the issue of ratification of the Rome Statute by Russia has been discussed in academic and practical circles,” **Aleksandr Volevodz, Professor of Criminal Law, Criminal Procedure and Criminalistics at Moscow State Institute of International Relations**, told MK. “The complexities related to its ratification were due to the fact that this Statute is a rigid international treaty: that is, no reservations can be made to it. Either we ratify it fully or we don’t accept it at all. This constitutes a difficulty in contrast to other international treaties, where it’s possible to make reservations to certain provisions. And there are also problems which are difficult to solve from the point of view of States’ rights. For example, France has amended its constitution in order to ratify the Statute. Initially, it was said that the Russian Federation would ratify the Statute only when the definition of the concept of ‘aggression’ was provided in the Statute. Was the Russian Federation’s intention not to become a party to the Rome Statute to be expected? For me, as a specialist, this order didn’t come as a surprise. Recently, the ICC has become very politicised in its activities (it wasn’t us, but African countries who noticed this first). In February, the Pre-Trial Chamber authorised the Prosecutor to investigate the 2008 events in Georgia. The Chamber’s decision itself is biased and directed against Russia. However, the Russian side has a huge case in progress on those events proving the guilt of Georgian officials. And the Georgian side is also investigating this case. The ICC had no right to interfere in a situation where countries are investigating criminal cases. And the second, ultimate point was the recent statements about the events that unfolded in Crimea in 2014. This isn’t a matter for the International Criminal Court. I think this was the final straw that made it clear that at this stage, the ICC isn’t the body that’s capable of dispensing comprehensive, full and objective international justice.”

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# ORDER

## OF THE PRESIDENT OF THE RUSSIAN FEDERATION

### **On the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court**

1. The proposal of the Russian Ministry of Justice, co-ordinated with the Ministry of Foreign Affairs of Russia and other concerned federal executive authorities, the Supreme Court of the Russian Federation, the Office of the Prosecutor-General of the Russian Federation, and the Investigative Committee of the Russian Federation, that notification shall be given to the United Nations Secretary-General of the intention of the Russian Federation not to become a party to the Rome Statute of the International Criminal Court, adopted by the Diplomatic Conference of Plenipotentiaries under the auspices of the United Nations in Rome on 17 July 1998, and signed on behalf of the Russian Federation on 13 September 1998, shall be accepted.

2. The Ministry of Foreign Affairs of Russia shall transmit the corresponding notification to the Secretary-General of the United Nations.

3. The present Order shall enter into force on the date of its signature.

[Seal: Office of the President  
President of the Russian Federation \* 5]

President of the Russian Federation

V. Putin

16 November 2016  
№ 361-rp

[Bar-code]

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## Events

### Vladimir Putin instructs the Ministry of Foreign Affairs to sign the Rome Statute of the International Criminal Court on behalf of Russia

11 September 2000 00:00

In accordance with the text of the order, the Ministry of Foreign Affairs of Russia approached the President with the proposal to sign the Statute, having co-ordinated [the matter] with the Prosecutor-General's Office, the Supreme Court, the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Justice, the FSB, and the SVR [Foreign Intelligence Service].

The International Criminal Court is a permanent judicial institution called upon to administer justice on behalf of the international community as a whole in relation to individuals guilty of the commission of the most serious international crimes. As the Statute stipulates, the Court is established not in order to replace national judicial systems but to complement them in those instances where the latter become ineffective or cease to exist altogether. The Statute of the Court was developed with the participation of the Russian Federation and was adopted at the UN Diplomatic Conference of Plenipotentiaries in Rome on 17 July 1998. In practice, the International Criminal Court shall be established after the Statute enters into force, something that requires 60 ratifications. At the Millennium Summit held in New York, the Statute was signed by 97 States and ratified by 13.

## Additionally

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Decree № 394-rp

8 September 2000

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