ANALYSIS OF INTERNATIONAL CRIMINAL COURTS AND THEIR PROCEEDINGS

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ABSTRACT

The research paper covers the system of International Criminal Court and its proceedings in which the authors will provide the evolution of International Criminal Courts in which several attempts were made and many tribunals were established. In this research paper, the authors will comprehensively deal with all the attempts in the evolution of International Criminal Court. The research paper also conveys the jurisdictional issue and its obstacles which are majorly related to immunity and amnesty laws. The paper will also cover the principles involved in the determination of jurisdiction in international crimes and the composition of the international court which will initiate the case. The paper is also going to cover the proceedings of the International Criminal Courts elaborately in which mention will be made of bail system, appeal system and protection of victims and witnesses as well. The paper will also cover the controversies related to the International Criminal Courts which majorly arise in Asian and African regions, and the recent development related to the International Criminal Court will also be dealt with.

Keywords: Evolution of ICC, Jurisdiction, Impediments, Proceedings, Controversies, Criticisms.

INTRODUCTION

The initiation of International Criminal Court system lies in the post-events of World War I. It was set up for ensuring that the worst international crimes, such as genocide, crimes against humanity, war crimes and aggression do not go unpunished, and to deter potential perpetrators. It does not replace the work of national courts, but complements them. After World War I, it is very important to adopt the International Criminal Court, and in that reference, many attempts were made. The process towards the eventual adoption of a statute for a permanent International Criminal Court and the adoption of statutes of various *ad-hoc* International Criminal Courts can be conceptualized in different phases, first attempt was made in which the perpetrators of World War I were about to be prosecuted, but it failed and only six cases got till the stage of judgement, out of eight hundred and ninety five. The second was made in the form of the Nuremberg and Tokyo Tribunals which were made for Nazi genocide and Japanese perpetration, respectively. Yugoslavia and Rwanda have also made their *ad-hoc* tribunals for tackling their criminal issues at the closing stage of World War II to maintain or restore international peace and security. In all the above-mentioned tribunals, which are very specific to their nation state, so, after this, the international community on the advice of the International Law Commission has adopted International Criminal Court, but it is also full of controversies between like-minded states and third states (non-aligned states). The jurisdictions of International Criminal Courts depend on different principles like universality, territoriality, and nationality, and there are also specific crime-based jurisdictions, but the jurisdictions of International Criminal Courts are also subject to many obstacles such as amnesty laws, immunities and law of limitations. The proceedings of International Criminal Courts are very comprehensive and depend upon the ratification of the states and the gravity of the crime. International Criminal Courts are also subject to many demerits and criticisms regarding its Euro-centric approach due to which many Asian and African countries keep on withdrawing their membership from the International Criminal Courts.

EVOLUTION OF INTERNATIONAL CRIMINAL COURTS

The International Criminal Court was established through the Rome Statute[1] in order to prosecute the war crimes, crimes against humanity, and genocide. It has the long term goal of perpetually avoiding the persistence of such atrocities during the war times as well as to preserve the harmony of the relationships through the nations. This court, indeed, is a very powerful one, with the signatories of the Rome Statute submitting to the jurisdiction to the court and subordinating them to its powers to execute judgment. It stands on the principle that it is a benevolent institution which is acting for the greater good of the entire world.

The scope of the prosecutorial jurisdiction of the ICC expands gradually with the favorable treatment among those which ratified the Rome Statute. As evidence, there are 121 state parties, 32 signatories, and 41 non-signatory UN member states as of July 2012. It is important therefore, to highlight the differences between these three classifications of states which may be considered as stakeholders of the ICC. The state parties are those who have both signed and ratified the Rome Statute thereby subjecting it to ICC's jurisdiction including majority of the South American, European, and approximately half of the entire Africa. Meanwhile, the signatory states are those which have signed the Rome Statute but have not yet taken any action to ratify the said statute. As a result of which, it is not yet subject to the jurisdiction of the ICC. Finally, the non-signatories are those which neither signed nor ratified the statute and are exempted from its jurisdiction. While the signatory states does not yet fall within the jurisdiction of the ICC, it is compelled by the Vienna Convention on the Law of Treaties to not commit acts "which would defeat the object and purpose" of the treaty until they definitively decide not to become states parties".

The Headquarters of the ICC is located in The Hague, South Holland, Netherlands. It was funded majorly by Britain, Italy, Germany, and France. Incidentally, it has been funded by the entire European Union with its intention to put an end on the atrocities during war time which occurred within its continents. It was first headed by Argentine Lawyer, Luis Gabriel Moreno-Ocampo as the first chief prosecutor but he was eventually replaced by Gambian lawyer named

[1] The Rome Statute of the International Criminal Court is the treaty that established the International Criminal Court. It was adopted at a diplomatic conference in Rome on 17 July 1998 and it entered into force on 1 July 2002. As of March 2019, 124 states are party to the statute.

Fatou Bensouda upon the expiration of his term. Magazines and media outlets around the world consider these leaders as few of the most influential personalities in the Civil Society category.

ABORTIVE EARLY ATTEMPTS

Between 1919 to 1945, After the First World War there are various attempts to establish tribunals and criminal institution at international level one of them is "High tribunal composed of judges drawn from many nation[2]" in 1919 and other effort was done for the prosecution of the leading figures of war crimes committed during the war time for which a peace treaty[3] was also signed with Germany in which a "special tribunal" was established which composed of five judges belongs to U.S.A., Great Britain, France, Italy and Japan who were the victors of the war and the erstwhile opponent of the people who are under subjection of prosecution which have thrown doubt on the fairness and impartiality of the Tribunals proceeding and finally this plan failed. The German Emperor and other Accused in total 895 accused, but only 45 cases were selected for the prosecution in which 12 minor cases were brought before the German Court i.e. "Imperial Court of Justice" for trial in which 6 indictees was acquitted. Thus, the attempt to establish sort of international criminal justice ended in failure.

In 1920 there was a attempt made by the advisory committee of jurist to establish "High Court of International Justice" who is competent to try the crimes constituting a breach of International public order or against the Universal law of nations. However it was rejected by League of Nations rejected the proposal out of hand as being "pre-matured". Such Early attempts were laudable for their Far-sighted recognition of the need for an international organ of Criminal jurisdiction. Nevertheless, these initiatives could not bear fruit in a period which placed an exceptionally high premium upon consideration of national sovereignty.

[2] See the Report of the Commission , in 14 AJIL (1920), at 116.
[3] Treaty of Versailles, Art-227-230, A. Merignhac and E.Lemonon, Le Droit des gens et la guerre de 1914-1918, II (Paris : Pedone, 1921), 580 ff.

THE NUREMBERG AND TOKYO TRIBUNALS

Between the time period of 1945- 1947 , these tribunals were established in response to tackle the Nazi genocide in Europe and the Japanese crimes perpetrated during the wartime occupation of large part of many South East Asian Nations. It took extent of all the atrocities committed during the war, these tribunals will take care of all the issue of human dignity and it will not let any case be unpunished and unchecked. Due to the effort of Churchill an International Military Tribunal was set up in Nuremberg to try the "great Nazi Criminals", and other allied tribunals in four occupied zones of Germany to deal with minor criminals.[4]

HISTORICAL BACKGROUND OF NUREMBERG TRIBUNAL

Shortly after Adolf Hitler came to power as chancellor of Germany in 1933, he and his Nazi government began implementing policies designed to persecute German- Jewish people and other perceived enemies of the Nazi state. Over the next decade, these policies grew increasingly repressive and violent and resulted, by the end of Second World War (1939-1945), in the systematic, state-sponsored murder of some 6 million European Jews (along with an estimated 4 million to 6 million non- Jews).

REASON BEHIND SETTING UP OF NUREMBERG TRIBUNAL[5]

1) - To punish the Nazi criminals without trial is like doing away with one of the mainstay of democracy and due process of law.

2) - To make a deep impression on the world community opinion.

3) - The act committed by the Nazi officials were so heinous that some detailed record had to be left. A trial on grand scale will allow the tribunal to assemble massive records of the Act which is useful not only in court, but also to the historians and to the generations to come.

[4] David Luban, The Legacies of Nuremberg, Social Research 779, 779-8 05, (Winter 1987).
[5] Christian Tomuschat, The Legacy of Nuremberg, Journal of International Criminal Justice 830, 830-844, (Sep, 2006), https://academic.oup.com/jicj/article/4/4/830/802420

FUNDAMENTAL PRINCIPLES OF NUREMBERG TRIBUNAL[6]

Individuals can and should be held accountable for the most serious international crimes. The judgment of the Nuremberg Tribunal famously declared, "Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced."

i. Ensuring accountability is important in itself, but it is also important because allowing impunity for widespread or systematic atrocities can have serious consequences for international peace.

ii. That the initiation and waging of aggressive war is a crime as is a conspiracy to wage aggressive war.

iii. That the violation of the laws and customs of war is a crime.

iv. That the inhumane acts committed upon civilians in execution of, or in connection with, aggressive war constitutes a crime.

v. That individuals may be held liable for crimes committed by them as heads of state.

vi. That individuals may be held liable for crimes committed by them pursuant to superior orders.

vii. That an individual charged with a crime under international law is entitled to a fair trial.

INDICTEMENT OF NUREMBERG TRIBUNAL

The best-known of the Nuremberg trials was the Trial of Major War Criminals, held from 20 November 1945, to 1 October 1946. The format of the trial was a mix of legal traditions: There were prosecutors and defense attorneys according to British and American law, but the decisions and sentences were imposed by a tribunal (panel of judges) rather than a single judge and a jury. The chief American prosecutor was Robert H. Jackson (1892-1954), an associate justice of the U.S. Supreme Court. Each of the four Allied powers supplied two judges- a main

[6] Christoph Burchard, The Nuremberg Trial and its Impact on Germany, Journal of International Criminal Justice 800, 800-812 (Sep. 2006), https://academic.oup.com/jicj/article-abstract/4/4/800/802423

judge and an alternate. Twenty four individuals were indicted. One of the indicted men was deemed medically unfit to stand trial, while a second man killed himself before the trial began. Hitler and two of his top associates had each committed suicide in the spring of 1945 before they could be brought to trial.

The defendants were allowed to choose their own lawyers, and the most common defense strategy was that the crimes defined in the London Charter were examples of ex post facto law; that is, they were laws that criminalized actions committed before the laws were drafted. Another defense was that the trial was a form of victor's justice- the Allies were applying a harsh standard to crimes committed by Germans and leniency to crimes committed by their own soldiers. Although the legal justifications for the trials and their procedural innovations were controversial at the time, the Nuremberg trials are now regarded as a milestone toward the establishment of a permanent international court, and an important precedent for dealing with later instances of genocide and other crimes against humanity.

TOKYO TRIBUNAL

Tokyo Tribunal was specifically established to try key military and government leaders of Japan on charges of individual responsibility for planning, initiating, and carrying on wars of aggression. It is very important to access the real contribution of Tokyo Tribunal toward the development of international law and the safeguarding of world peace.

The origins of the Tokyo Tribunal go back to 1 December 1943 and to the Cairo Conference during which the three Allies namely, China, United States and Great Britain decided that it was time to bring the war to an end and to punish Japanese Aggression[7]. Article 10[8] of the Potsdam Declaration[9] of 26 July 1945, required that justice be done with respect to all war

[7] Arnold C. Brackman, The Other Nuremberg: The Untold Story of the Tokyo War Crimes Trials, William Morrow, New York, 1987, at p. 178.

[8] We do not intend that the Japanese shall be enslaved as a race or destroyed as a nation, but stern justice shall be meted out to all war criminals, including those who have visited cruelties upon our prisoners. The Japanese Government shall remove all obstacles to the revival and strengthening of democratic tendencies among the Japanese people. Freedom of speech, of religion, and of thought, as well as respect for the fundamental human rights shall be established.

[9] The Potsdam Declaration or the Proclamation Defining Terms for Japanese Surrender is a statement calling for the Surrender of Japan in Second World War. On July 26, 1945, United States President Harry S. Truman, United Kingdom Prime Minister Winston Churchill, and Chairman of the Nationalist Government of China Chiang Kai-shek issued the document, which outlines the terms of surrender for the Empire of Japan as agreed upon at the

criminals and especially with respect to those who had inflicted inhumane treatment on prisoners.[10] The contents of the Potsdam Declaration were notably included in the Japanese Surrender Treaty of 2 September 1945, and the Supreme Commander of the Allied Forces made a firm commitment to apply the conditions which were listed therein. It was the Moscow Conference that the headquarters for the Tribunal was assigned to Tokyo and subsequently General Douglas MacArthur, Supreme Commander for the Allied Powers issued proclamation for establishment of the International Military Tribunal for Far East on 19 January 1946.

HISTORICAL BACKGROUND OF TOKYO TRIBUNAL

The Japanese invasion of China immediately before and during Second World War lasted from the early 1930"s to 1945. In 1928, the Chinese Nationalist Government moved the capital of China from Peking to Nanking. The city normally held about 250,000 people, but by the mid-1930 its population had swollen to more than 1 million. Many of them were refugees, fleeing from the Japanese armies which had invaded China since 1931. On 11 November 1937, after securing control of Shanghai, the Japanese army advanced towards Nanking from different directions. In early December, the Japanese troops were already in the proximity of Nanking. On 9 December, after unsuccessfully demanding the defending Chinese troops in Nanking to surrender, the Japanese troops launched a massive attack upon the city. In the next six weeks, the Japanese committed the **infamous Nanking Massacre**, or the Rape of Nanking, during which an estimated 300,000 Chinese soldiers and civilians were killed, and 20,000 women were raped. During the Nanking Massacre, the Japanese committed a litany of atrocities against innocent civilians, including mass execution, raping, looting, and burning

During this dark period in modern Asian history, the Japanese military machine was motivated by an uncontrollable desire for aggression, expansion and imperialism. The brutalities and atrocities committed by the Japanese military in China and elsewhere in Asia finally ended

Potsdam Conference. This ultimatum stated that, if Japan did not surrender, it would face "prompt and utter destruction".

[10] Kelly Dawn Askin, War Crimes against Women: Prosecution in International War Crimes Tribunals, Martinus Nijhoff Publishers, The Hague, 1997, at p. 164.

with destruction on Japanese soil including the atomic bombing of Hiroshima and Nagasaki[11] in August, 1945.

INDICTMENT OF TOKYO TRIBUNAL

Eleven Japanese Class A war criminals were tried by the International Military Tribunal for the Far East (IMTFE) in Tokyo. The prosecution team was made up of Judges from eleven Allied Nations namely, Australia, Canada, China, France, Great Britain, India, the Netherlands, New Zealand, the Philippines, the Soviet Union and the United States of America.

At the Tokyo trials, 11 States sat in judgment of 25 individuals. Twenty eight had been indicted, but two died and one became seriously ill before the trial. All 25 were found guilty (7 were given death sentences, 16 life, one 20 years, and one 71/2 years in prison).

ESTABLISHMENT OF INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA [ICTY]

On Feb.22, 1993 the Security Council of the UN adopted a resolution envisaging the creation of an ICTY (International Criminal Tribunal for the Former Yugoslavia) shortly afterwards, on May 25, 1993, the tribunal was established by Security Council Resolution 827[12]. Whatever the practical achievements of the ICTY may prove to be, the UN Security Council has recognized the first truly international criminal for the prosecution of persons responsible for serious violations of international humanitarian law[13].

[11] On August 6, 1945, during World War II (1939-45), an American B-29 bomber dropped the world's first deployed atomic bomb named „Little Boy" over the Japanese city of Hiroshima. The explosion wiped out 90 percent of the city and immediately killed 80,000 people; tens of thousands more would later die of radiation exposure. Three days later, a second B-29 dropped another A-bomb named „Fat Man" on Nagasaki, killing an estimated 40,000 people. Japans Emperor Hirohito announced his country's unconditional surrender in World War II in a radio address on August 15, citing the devastating power of "a new and most cruel bomb." retrieved on 12/September/2014.

[12] Neussl P (2006) Introductory Note, International Criminal Tribunal for the Former Yugoslavia (ICTY). The Hague, Human Rights Law Journal.

[13] Meron T (1994) Editorial Comment, War Crimes in Yugoslavia and the Development of International Law. American Journal of International Law.

" The Tribunal" means the International Tribunal for the Prosecution of persons Responsible for serious violation of International humanitarian law committed in the territory of the Former Yugoslavia since 1991, established by the SC (Security Council) pursuant to its resolutions 808(1993) and 827(1993) [14]. The establishment of the ICTY under Chapter VII was a measure not concerning the use of force and, thus, fell squarely within the influence of Art. 41 of the 1945 UN Charter[15], even though the fact that the indicative list of measures envisaged in that article make reference to judicial bodies. Its relation to the Security Council is that of a subsidiary organ under Art.29 of the UN Charter[16].

The Tribunal was established, and which are comprehensive in Article 2 to 5 ('grave breaches' of the Geneva Conventions, genocide and crimes against humanity ,violations of the laws or customs of war,) are of relatively recent origin going back to the immediate aftermath of the Second World war[17]. The UN War Crimes Commission shares the view the conflicts in Yugoslavia be international along with thus the intention of all the laws of war, including, of course, the rules governing war crimes, are applicable. According to the UN Secretary General report on the ICTY Statute, crimes against humanity were primary acknowledged in the Nuremberg Charter and in the trials of war criminal following World War II [18]. The ICTY Statute, in Art.5 defines "crimes against humanity" subject to the Jurisdiction of the Tribunal as certain crimes "committed in armed conflict, wherever charter of Internal or International." The definition of 'crimes against humanity' in Art.6(c) of the Charter of the IMT (International Military Tribunal) exception that such crimes not to linked near the war or to the commission of other crimes[19].

[14] Virginia Morris, Michael P. Scharf, An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia. Transnational Publishers, Inc. (1995).
[15] "The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations."
[16] Bantekas I, Nash S (2003) International Criminal Law. Cavendish Publishing Ltd, London.
[17] Kirsten Campbell, The Trauma of Justice: Sexual Violence, Crimes Against Humanity and The International Criminal Tribunal for the Former Yugoslavia**,** (Sep. 2004), https://doi.org/10.1177/0964663904044998
[18] Meron T (2000) The Humanization of Humanitarian Law. American Journal of International Law 94: 239-278.
[19] Naftali OB, Tuval Y (2006) Punishing International Crimes Committed by the Persecuted: The Kapo Trials in Israel (1950s-1960s). Journal of International Criminal Justice.

INTERNATIONAL CRIMINAL TRIBUNAL FOR RWANDA [ICTR]

The International Criminal Tribunal for Rwanda (ICTR) was set up by UN Security Council Res. 955 of Nov.8, 1994, in response to genocide along with other systematic, widespread, and blatant violations of international humanitarian law which had been committed in Rwanda[20]. For the period of time approximately 800,000 people were killed in the genocide of Rwanda. The methodical massacre of men, women and children that took over the course of about 100 days since April and July 1994 will be remembered as one of the most distasteful measures of the twentieth century[21]. In the first week of the genocide, it is estimated that 10,000 people a day were killed[22]. Contained by two weeks after the genocide started some 250,000 Tutsis were massacred. As Tutsi refugees in Uganda reported the atrocities, the RPF (The Rwanda Patriotic Front) launched a northern offensive; however, the RPF'S offensive "simply could not match the pace at which the militiamen and soldiers were massacring civilians[23]. The violence in Rwanda was distinctive of many brightly and euphemistically titled "post –conflict" operations that were overseeing transitions from civil war to civil peace[24]. The organizers of the massacres wanted to create a new Rwanda a community of murders, who shared a collective sense of accomplishment or guilt. The new Rwanda's would undergo an initiation rite by killing their neighbor[25]. The ICTR shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighboring states, among Jan 1, 1994 and Dec.31, 1994, in agreement among the provisions of the present statute[26].

[20] Kriangsak Kittichaisaree, International Criminal Law, https://global.oup.com/academic/product/international-criminal-law-9780198765776?cc=in&lang=en&
[21] Ingvar Carlsson, The UN Inadequacies, Journal of International Criminal Justice 837, 837-841, https://academic.oup.com/jicj/article-abstract/3/4/837/2883158
[22] Linda Melvern, The Security Council in the Face of Genocide, Journal of International Criminal Justice 847, 847-853, (Sep. 2005), https://academic.oup.com/jicj/article-abstract/3/4/847/2883166
[23] Roper SD, Barria LA, Designing Criminal Tribunals: Sovereignty and International Concerns in the Protection of Human Rights, (2006).
[24] Barnett M (2002) Eyewitness to Genocide: The United Nations and Rwanda. Cornell University Press, London.
[25] Paul J. Magnarella, The Background and Causes of the Genocide in Rwanda, Journal of International Criminal Justice 801, 801-804, (Sep. 2005), https://academic.oup.com/jicj/article-abstract/3/4/801/2883160
[26] Morris V, Scharf MP (1998) The International Criminal Tribunal for Rwanda. Transnational Publishers, Inc .New York.

ADOPTION OF THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT

It was only in 1989, once the Cold war had drawn to a close, that the UN General Assembly once again requested the International Law Commission to address the question of establishing an international Criminal Court and it is also suggested in the general assembly by Trinidad and Tobago to establish such court for tackling drug abuse issue.

In 1990 ILC has completed his report on the Drug issues and other crime issues and submitted it to the 45th session of the General Assembly and it was approved but it was requested to the ILC to make a comprehensive draft which they submitted in 1993 which was modified in 1994.

The Salient features of the Draft should be emphasized as follows:-

1)- The court has Automatic Jurisdiction[27] solely over genocide ; for other crimes such as war crimes and crimes against humanity the court could exercise its jurisdiction only if such jurisdiction has been accepted by the custodial state, the territorial state, as well as any other state seeking jurisdiction over the Accused.

2)- Only State parties or the security Council could initiate proceeding.

3)- The Security Council had extensive powers with regard to prosecution of cases relating to situations falling under chapter VII of the UN Charter(threat to the peace, breach of the peace, or act of aggression); under article 23(3), in these cases a prosecution could not be commenced except in accordance with a decision of the security council[28].

ICC, an organ of global jurisdiction who has potential to respond to violation occurring anywhere, this system is permanent, effective and politically uncompromised system of International Criminal Justice. The General Assembly established in 1996 a preparatory Committee on the establishment of an International Criminal Court (PrepCom). This Committee submitted to the diplomatic conference at Rome (15 July – 17 July 1998) a draft statute and Draft Final Act consisting of 116 Articles contained in 173 pages of text with some

[27] Jurisdiction following from the mere fact of ratifying the statute.
[28] Report of the international law commission , 46th session., 2 May- 22 July 1994, UN GAOR, 49th Session ., Supp.No. 10 , UN Doc. A/49/10(1994).

1300 words in square brackets, representing multiple options either to adopt entire provision or to some words contained in certain provisions[29].

CONTROVERSY IN THE ADOPTION OF STATUTE OF ICC

Both in the works of the PrepCom and in the Rome Negotiations, three major grouping of states emerged. The First was the group of so-called **like-minded States**, which included countries from all religions of the world and was to a large extent led by Canada and Australia. This group favored a fairly Strong Court with Broad and "Automatic Jurisdiction", the establishment of an independent prosecutor empowered to initiate proceeding, and a sweeping definition of war crimes embracing crimes committed in internal armed conflicts.

A second group comprised the permanent members of the Security Council, however UK and France joined the First group but rest of the members of the Security Council are in opposition of Automatic jurisdiction and to granting the power to the prosecutor to initiate the proceeding. By the same time they were in the favor of the power of Security Council which is responsible for referring the case and to prevent cases from being brought to the Court.

The Third group embraced members of the Non-aligned movement (NAM). They insisted on envisaging aggression among the crimes for in the statute; some of them pressed for the inclusion of drug trafficking, whereas some of them including India supported the provision for terrorism but strongly opposed the role of security Council and also opposed any jurisdiction over war crimes committed in internal armed conflicts. In Contrast, they insisted on the inclusion of the death sentence among the possible penalties[30].

[29] The 1994 ILC report on the draft Statute for an International Criminal Court was submitted to the 49th session of the General Assembly, which resolved to consider it at its 50th session , but first it set up an ad hoc committee to discuss the proposal. This committee, referred to as the 1995 Ad Hoc Committee for the establishment of an international Criminal Court, met inter-sessionally for two sessions of two weeks each from April to August 1995.
[30] See Indian Ministry of External Affairs, "Indian Nuclear Doctrine", available at http://mea.gov.in/in-focus-article.htm?18916/Draft+Report+of+National+Security+Advisory+Board+on+Indian+Nuclear+Doctrine (last accessed on 21 March; 2019).

ESTABLISHMENT OF INTERNATIONALIZED OR MIXED COURTS

In the late 1990's and early 2000's the UN Security Council considers the situations in, among other places, Sierra Leone, Cambodia, and East Timor as being suitable for the establishment of ad-hoc International Courts. At the request of Sierra Leone, UN Secretary General drafted the statute of a special tribunal, which became part of the agreement of 16 January 2002 between the UN and Sierra Leone[31]. **SPECIAL COURT FOR SIERRA LEONE (SCSL**) has a mixed composition[32] and has jurisdiction over crimes against humanity, violations of Common Article-3 to the Geneva Conventions and the second Additional Protocol, as well as other serious violation of IHL, and some criminal offences under Sierra Leonean Law.

The notion encompasses judicial bodies that have a mixed composition. There may be two versions of these courts and tribunals. First, they may be organs of the relevant state, being part of its judiciary. This applies to the Cambodian Extraordinary Chambers as well as the courts in Kosovo and the "Special Panels for serious Crimes" in East Timor. Alternatively, the courts may be international in nature: they may be set up under an international agreement and not be a part of the national judiciary. This is a multitude of historical and practical reasons combine to warrant the establishment of courts that are neither national nor international, but mixed.

JURISDICTION OF THE INTERNATIONAL CRIMINAL COURTS

When a State becomes a party to the Rome Statute, it agrees to submit itself to the jurisdiction of the ICC with respect to the crimes enumerated in the Statute. The Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State Party or where the crime was committed in the territory of a State Party. Also, a State not party to the Statute may decide to accept the jurisdiction of the ICC. These conditions do not apply when the Security Council, acting under Chapter VII of the United Nations Charter, refers a situation to the Office of the Prosecutor[33].

[31] See UN Doc. S/2000/915. See also SC Res. 1315 (2000). For an overview, see M.Frulli, 'The Special Court for Sierra Leone; Some preliminary Comments' , 11 EJIL (2000), 857-69.
[32] The court made up of nationals of Sierra Leone and international Judges and staff.
[33] Adriaan Bos, "The International Criminal Court: A Perspective," in Roy S. Lee (ed.), The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results (The Hague: Kluwer Law International, 1999), p. 465 and Yves Beigbeder, Judging War Criminals: The Politics of International Justice (New York: St.

The ICC has jurisdiction only with respect to events which occurred after the entry into force of its Statute on 1 July 2002. If a State becomes a party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State has made a declaration accepting the jurisdiction of the ICC retroactively. However, the Court cannot exercise jurisdiction with respect to events which occurred before 1 July 2002. For a new State Party, the Statute enters into force on the first day of the month after the 60th day following the date of the deposit of its instrument of ratification, acceptance, approval or accession[34].

The ICC prosecutes individuals, not groups or States. Any individual who is alleged to have committed crimes within the jurisdiction of the ICC may be brought before the ICC. In fact, the Office of the Prosecutor's prosecutorial policy is to focus on those who, having regard to the evidence gathered, bear the greatest responsibility for the crimes, and does not take into account any official position that may be held by the alleged perpetrators.

PRINCIPLES OF CRIMINAL JURISDICTION

- Principle of Territoriality
    1. In this principle the jurisdiction is mainly related to the territorial character of criminal law. Usually the place where the crime has been committed (Locus delicti Commissi)[35] and the place where it is easy to collect the evidence.
    2. It is normally the place where the rights of the accused are safe guarded at the best and his rights as defended in a criminal trial must be given.
    3. This applies to a particular to international crime whose gravity may have some serious repercussion on the society within which the crime has been committed.
- Principle of active nationality
    1. This principle generally applies over certain acts by one national in the other state this is so whether or not those are criminal under the territorial state

Martin's, 1999), pp. 4-5, cited in Paul Bowers, The International Criminal Court Bill (HL), Bill 70 of 2000-2001, Research Paper 01/39, 28 March 200, through House of Commons Library, United Kingdom, accessed via: http://www.parliament.uk/commons/lib/research/rp2001/rp01-039.pdf .

[34] Schabas WA (2011) An Introduction to the International Criminal Court. Cambridge University Press.

[35] Sadat LN (2002) The International Criminal Court and the Transformation of International Law: Justice for the New Millennium. Transnational Publishers, Inc. New York.

2. The underline motive of this principle is will of the state that its nationals comply with its law, whether at home or abroad, regardless of what is provided for in the foreign state when the crime is committed.
3. In this principle the essential rational behind is constitutional prohibition or desire of the state not to extradite its national to the state where the crime has been perpetrated[36]

- Principle of passive nationality
    1. In this principle the state possesses jurisdiction over the crime committed abroad against its own nationals.
    2. This principle is invoked to fulfil the need to protect nationals living or residing abroad.
    3. This principle came into force when substantial mistrust in exercise of jurisdiction by the foreign territorial state.
- Principle of Universality
    1. Under this principle any state can apply its criminal law with respect to crime committed abroad, by and against foreigners.
    2. A conditional universal jurisdiction which is the narrower version of the universality jurisdiction[37] which states that only the state where the accused in custody may acquire jurisdiction over him or her.
    3. The other version of the universality principle is that a state may posses jurisdiction over persons accused of international crimes regardless of their nationality,, the place of commission of crime, the nationality of the victim, and even of whether or not the accused in custody or at any rate present in the foreign state.
- Treaty-based Jurisdiction
    1. Some multilateral treaties or international crimes require contacting states to pass legislation to establish criminal jurisdiction (i.e to provide for the applicability of the relevant criminal prohibition) on certain specific grounds.

[36] Kaul HP (2005) Construction Site for More Justice: The International Criminal Court After Two Years. American Journal of International Law 99: 370-384.
[37] Brooms B (1996) The Establishment of an International Criminal Court. In: Dinstein Y, Tabory M (eds.), War Crimes in International Law. Martinus Nijhoff Publishers, London .

2. In some cases the state is internationally duty bound to prosecute and punish the alleged authors of international crime where it is not necessary to enact national laws or conclude international agreements. Several multilateral treaties addressing international crimes impose an obligation to exercise criminal jurisdiction. Some of the examples are Genocide Convention of UN, UN Torture Convention, 1949 Geneva Convention, Convention on Terrorism, 1963.

- Principle of Complementarity[38]

The ICC does not replace national criminal justice systems; rather, it complements them. It can investigate and, where warranted, prosecute and try individuals only if the State concerned does not, cannot or is unwilling genuinely to do so. This might occur where proceedings are unduly delayed or are intended to shield individuals from their criminal responsibility. This is known as the principle of complementarity, under which priority is given to national systems. States retain primary responsibility for trying the perpetrators of the most serious of crimes.

SPECIFIC CRIME BASED JURISDICTION

The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole (Article 5) The court shall have jurisdiction with respect to the following crimes (a) the crime of Genocide; (b) Crimes against humanity; (c) War crimes and (d)The crimes of aggression.

Genocide, for the purpose of the statute means any of the following acts committed with intent to destroy, in whole or in part, a national, ethical, racial or religious group, as such (a) killing members of a group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group and (e) forcibly transferring children of the group to another group (Article6). The above definition in similar to the definition laid down under Article 2of the Genocide Convention of 1948.

[38] The Kenyan Section of the International Commission of Jurists (ICJ Kenya), ISBN No. 9966-958-70-3, available at http://www.iccnow.org/documents/complementarity_journal.pdf

Crimes against humanity means any of the following acts when committed as a part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder
(b) Extermination
(c) Enslavement
(d) Deportation or forcibly transfer of population
(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law
(f) Torture
(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity
(h) Persecution against any identifiable group or collectively on political, racial, national, ethnic, cultural, religious, gender or other grounds that are universally recognized as impermissible under international law
(i) enforced disappearance of person
(j) the crime of apartheid
(k) other inhuman acts of a similar character intentionally causing great suffering or serious injury to body or to mental or physical health.(Article 7)

War Crimes means (a) grave breaches of the Geneva Conventions of August 12, 1949 committed against persons or property protected by the Convention. For instance, wilful killing, torture or inhuman treatment, including biological experiments; wilfully causing great suffering, or serious injury to body or health; extensive destruction or appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; compelling a prisoner of war and other protected person to serve in the forces of a hostile power; wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; unlawful deportation or transfer or unlawful confinement and taking of hostages (Article 8)[39]. Other serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law shall also be deemed as war crimes.

[39] Bantekas I, Nash S (2003) International Criminal Law. Cavendish Publishing Ltd, London.

As to the crime of aggression, the Court shall exercise jurisdiction only after it has been defined by the Review Conference which shall be convened by the Secretary-General of the United Nations, seven years after the entry into force of the Statute and if amendment is made. Accordingly, a Review Conference was held in the year 2010 at Kampala (Uganda) wherein so-called Kampala Declaration was adopted. Participating States agreed to amend the Rome Statute to include the definition of crime of aggression as the planning, preparation, inflation or execution, by a person in a position effectively to exercise control over it to direct the political or military action of a state, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations. Further, blockades of ports or coasts of a state by armed forces of another state, as well as an invasion or attack by troops of one state on the territory of another, are considered as acts of aggression under the Statute. It was agreed that the ICC can exercise the jurisdiction over the crime of aggression one year after the ratification of the amendment by 30 states. This will however, not happen until at least 2017 when States meet again to review the amendment[40].

A State which becomes a Party to the Statute thereby accepts the jurisdiction of the Court with respect to the above crimes. The Court shall have jurisdiction over the crimes which are committed on the territory of the State Party or committed on board a vessel or aircraft, the State of registration of that vessel or aircraft (Article 12). The Court shall also have jurisdiction over a person if the accused of a crime is a national of the State Party [Article 12 Para 2(b)][41]. The above provisions imply that States by becoming parties to the Statute *ipso facto*, grant consent a *priori* to the ICC o exercise jurisdiction over the above crimes stipulated in Article 5 of the Statutes. Those States which are not parties to the Statute, the Court has to obtain consent from the States concerned in order to exercise jurisdiction. The Court will have jurisdiction only over crimes committed after July 1, 2002, when the statute entered into force.

The Court may exercise its jurisdiction with respect to the above crimes (a) if the crime is referred to the Prosecutor by the State Party for investigation; or (b) if the crime is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United

[40]Lee, Roy S. and Hakan Friman, et.al. The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence. Ardsley, NY : Transnational Publishers, 2001. (http://www.worldcat.org/title/international-criminal-court-elements-of-crimes-and-rules-ofprocedure-and-evidence/oclc/47444007&referer=brief_results)

[41] Bassiouni, M C. The Statute of the International Criminal Court: A Documentary History. Ardsley, N.Y: Transnational Publishers, 1998. (http://www.worldcat.org/title/statute-of-theinternational-criminal-court-a-documentary-history/oclc/474526616?referer=di&ht=edition)

Nations for investigation or (c) if the Prosecutor himself has initiated the investigation in respect of such a crime (Article 13)[42] The Court shall have jurisdiction only with respect to those crimes which have been committed after the entry into force of this Statute. If a State becomes a party to the Statute after its entry into force, the Court may exercise its jurisdiction only with respect to crimes committed after the entry into force of this Statute for that State, unless that State has made a Declaration, lodged with the Registrar, accepting the exercise of jurisdiction by the Court with respect to the crime in question.

The Statute under Article 26 states that the Court shall have no jurisdiction over any person who is under the age of 18 at the time of the alleged commission of a crime. Further, a person shall not be criminally responsible if, at the time of that person's conduct the person suffers from a mental disease or defect that destroys that person's capacity to appreciate the unlawfulness or nature of his conduct, or capacity to control his conduct to conform to the requirements of law [Article 31 Para 1(a)]. A person shall also not be criminally responsible if he is in a state of intoxication that destroys that person's capacity to appreciate the unlawfulness or nature of his conduct or capacity to control his conduct to conform to the requirements of law, unless the person has become voluntarily intoxicated under such circumstances that the person knew, or disregarded the risk, that, as a result of intoxication, he is likely to engage in conduct constituting a crime within the jurisdiction of the Court [Article 31 Para 1(b)][43].

The above implies that the Court shall have jurisdiction over individuals who shall be responsible for their crime. Article 25 expressly lays down that that the Court shall have jurisdiction over natural persons. A person who commits a crime shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person (a)commits such a crime, whether as an individual, jointly with another or through another person; (b) orders, solicits or induces the commission of such a crime which in fact occurs or is attempted; (c) provides aids, abets or otherwise assists in the commission of crime or in an attempted commission, including providing the means for its commission; (d) contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose; (e) directly and publicly incites other to commit genocide; (f)

[42] The American Non-Governmental Organizations Coalition for the International Criminal Court (AMICC) (http://www.amicc.org)

[43] Lee, Roy S., et.al. The International Criminal Court : the Making of the Rome Statute-Issues, Negotiations, Results. The Hague: Kluwer Law International, 1999. (http://www.worldcat.org/title/international-criminal-court-the-making-of-the-rome-statuteissues-negotiations-results/oclc/41991408&referer=brief_results)

attempts to commit such a crime by taking action that commences its execution by means of a substantial step, but the crime does not occur because of circumstances independent of the person's intentions.(Article 25)

LEGAL OBSTACLES TO THE EXERCISE OF CRIMINAL JURISDICTION

There are many obstacles which hamper the criminal proceedings some of them are:-

1. Rule of Granting Amnesty for broad categories of crimes.
2. Statutes of Limitation.
3. Prohibition of Double Jeopardy.
4. International rules on personal immunities.

LAW OF AMNESTY[44]

In this category the state cancelled the crimes by enactment of amnesty laws, in which the previously obligatory criminals is no longer, search with the consequence that:

1. Prosecutor forfeits the right of power to initiate investigation or criminal proceedings.
2. Any sentence passed about the crime is obliterated.

After the Second World War we have seen many examples of amnesty laws to curve the proceedings against the perpetrators. The rationale behind amnesty is that in the aftermath of period of turmoil and deep such as those following armed conflict, civil strife, or revolution, it is best to heal social wounds by forgetting past misdeeds, hence by obliterating all the criminal offences that have been perpetrated by any side. Some of the examples are France and Italy grated amnesty to those national who has fought against the Germans and other examples is that Algerian war was over, the French parliament pass a law granting amnesty for all crimes committed in that conflict as well as in Indo- China[45].

[44] Cassese A, Gaeta P, Jones JRWD (2002) The Rome Stature of The International Criminal Court: A Commentary. Oxford University Press.
[45] Strawson J (2004) Book Review: Universalizing International Law by Christopher Weeramantry. Melbourne Journal of International Law.

STATUTE OF LIMITATION

Many States lay down the rule of limitation in their national laws, which is providing a lapse of the cases after a longer time has been taken for the prosecution (normally 10 or 20 years). In some states, they also have the provision that if the final sentence pronounced for a crime has not been served after a certain number of years, it is no longer applicable. The rational is very clear that from the passage of time it is very tough to collect the evidences and to conduct other criminal proceedings. But in many states in their provisions of statute of limitation, they apply to some classes of international crimes[46]. The best example is Italy in this concern, where 20 years of limitation period was applicable for international crimes such as war crimes, crimes against humanity, and genocides with only exception of death sentence cases. There are other examples as well, who have this limitation such as Columbia, France, and Spain, they had put a limitation of 20-30 years on terrorism related issues. These are the biggest obstacles because as far as international criminal law is concerned they have a different approach and it takes time, so this type of statutory limitation always creates problems for the investigation and other related proceedings by the international community.

THE PRINCIPLE OF DOUBLE JEOPARDY

The principle of double jeopardy is a constitutional provision in many states, but for international crimes this is certainly an issue for the proper functioning of the international criminal justice. Under the principle of double jeopardy, a court may not institute proceedings against a person for a crime that has already been an object of a criminal proceeding in the same state (internal ne bis im idem) or in another state, or in an international court, and for which the person has already been convicted or acquitted[47]. The internal principle may be held to be prescribed by the customary rule of international law grounded in an elementary principle of justice. In contrast the legal status of the international equivalent principle is still controversial that whether this principle has turned into an international customary law or not? Although this principle might vary depending on the different meaning on the circumstance that how the trial in the different proceedings are held. Whether the principle of fair trial was taken care of or not or whether there is an independent impartial jury or not, whether the laws

[46] Kittichaisaree K (2001) International Criminal Law. Oxford University Press.
[47] Dinstein Y (1996) The Distinctions between War Crimes and Crimes Against Peace. In: Dinsteim Y, Tabory M (eds.), War Crimes in International Law. Martimus Nijhoff Publishers, London.

are applied with proper due-diligence or not? If these are the aforementioned circumstance are answered in a positive manner, then the prohibition of double jeopardy is allowed under article 20 of the ICC statute.

INTERNATIONAL LAWS ON IMMUNITIES[48]

This is one of the major obstacles for the prosecution of international crimes. There are 2 categories that are provided by the states, one of them being the functional immunity and the other being personal immunity. In functional immunity, the state agent works under the official capacity and he is performing a public function of the other sovereign state so they are immune from the accountability of violations of international crimes. Personal immunities are given to protect the high official both in their public and private life. They enjoy these immunities so as to be able to discharge their official mission free from any impairment or interference. Such individuals involved include head of the state, prime ministers, or foreign ministers, diplomatic agents etc. Sometimes these immunities overlap with each other, one person enjoying both the immunities at different times.

Functional immunities related to the substantive law and provide a substantive defense if he or she breaches national or international law. But the personal immunities are related to the procedural law which provide the state officials the immunity from the civil or the criminal jurisdictions which are procedural in nature.

The idea of the immunities is more clear in the **ARREST WARRANT CASE[49]:**

Whether the fact that the incumbent Congolese Foreign Minister, who was issued an international arrest warrant by domestic Belgian authorities for war crimes and crimes against humanity, no longer held office put an end to the Congo's dispute regarding Belgium's breach of diplomatic immunity and inviolability, thereby depriving the Application of its object (mootness).Whether a Minister of Foreign Affairs, when abroad, enjoys full immunity and inviolability from criminal jurisdiction for war crimes or crimes against humanity, and whether the mere issuing of such an arrest warrant fails to respect such immunity and inviolability.

[48] Kaufman ZD (2007) Designing Criminal Tribunals: Sovereignty and International Concerns in the Protection of Human Rights by Steven D.Roper and Lilian A. Barria. Yale Human Rights and Development Law Journal 10: 209-214.

[49] Arrest Warrant of 11 April 2000, Congo, The Democratic Republic of the v Belgium, Judgment, Merits, Preliminary Objections, ICJ GL No 121, [2002] ICJ Rep 3, [2002] ICJ Rep 75, ICGJ 22 (ICJ 2002), 14th February 2002, International Court of Justice [ICJ]

The judgment of this case has given a clear idea about the immunities that are applicable in personal capacity. The summary of the judgments are as follows:

I. The arrest warrant case takes the view that customary international rule on personal immunities does not apply with regard to international criminal courts and to the arrest warrants they eventually issue.

II. The rational for the foreign state official being entitled to urge personal immunities before national courts does not apply to international criminal courts.

II. The current thrust of international law is to broaden as much as possible the protection of human rights and by the same token to make those who engage in heinous breaches of such rights criminally accountable.

IV. Finally, we can conclude that international criminal law has no bar with the respect to the personal immunities to the state officials. They are free to prosecute and try the person, suspected or accused of having committed international crimes.

COMPOSITION OF THE COURT

The statute of the court under article 34 lays down that the court shall be composed of the following organs:

(a) The Presidency;
(b) An Appeals Division, a Trial Division and a Pre-Trial Division;
(c) The Ofiice of the Prosecuter, and
(d) The Registry.

PRESIDENCY

One of the organs of the court is the Presidency consisting of the President and the First and Second Vice-President.[50] They shall be elected by an absolute majority of the judges. They shall serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once. The First Vice-President shall act in place of the President in the event that the president is unavailable or disqualified.

[50] Article 38

The Second Vice-President shall act in place of the President, the event that both the President and Vice-President are unavailable or disqualified.

The Presidency shall be responsible for (a) the proper administration of the court, with the exception of the office of the Prosecutor; and (b) the other functions conferred upon it in accordance with the Statute.[51] In discharging its responsibility as to the administration of the Court, the Presidency shall coordinate with ad seek the concurrence of the Prosecutor on all matters of mutual concern.

CHAMBERS

After the election of the judges, the Court shall organize itself into three Divisions which are: (a) the appeals which shall be composed of the President and four other judges; (b) Trial Division of not less than six judges and (c) the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the function to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in International Law. The Trial and the Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience. (Article 39)

The judicial functions of the Court shall be carried out in each division by chambers. [Article 39 Para 2(a)] The Appeals Chamber shall be composed of all the judges of the Appeals Divisions. The functions of the Trial chamber shall be carried out by three judges of the Trial Division, and the functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial division or by a single judge of that Division in accordance with the Statute and the Rules of Procedure and Evidence.

PRE-TRIAL CHAMBER

The Pre-Trial Chambers, each of which is composed of either one or three judges, resolve all issues which arise before the trial phase begins. Their role is essentially to supervise how the Office of the Prosecutor carries out its investigatory and prosecutorial activities, to guarantee the rights of suspects, victims and witnesses during the investigatory phase, and to ensure the

[51] Article 38 Para (3)

integrity of the proceedings[52]. The Pre-Trial Chambers then decide whether or not to issue warrants of arrest or summons to appear at the Office of the Prosecutor's request and whether or not to confirm the charges against a person suspected of a crime. They may also decide on the admissibility of situations and cases and on the participation of victims at the pre-trial stage.

TRIAL CHAMBER

Once an arrest warrant is issued, the alleged perpetrator arrested and the charges confirmed by a Pre- Trial Chamber, the Presidency constitutes a Trial Chamber composed of three judges to try the case. A Trial Chamber's primary function is to ensure that trials are fair and expeditious and are conducted with full respect for the rights of the accused and due regard for the protection of the victims and the witnesses. It also rules on the participation of victims at the trial stage.

The Trial Chamber determines whether an accused is innocent or guilty of the charges and, if he or she is found guilty, may impose a sentence of imprisonment for a specified number of years not exceeding a maximum of thirty years or life imprisonment[53]. Financial penalties may also be imposed. A Trial Chamber may thus order a convicted person to make reparations for the harm suffered by the victims, including compensation, restitution or rehabilitation.

APPEAL CHAMBER

The Appeals Chamber is composed of the President of the Court and four other judges. All parties to the trial may appeal or seek leave to appeal decisions of the Pre-Trial and Trial Chambers. The Appeals Chamber may uphold, reverse or amend the decision appealed from, including judgments and sentencing decisions, and may even order a new trial before a different Trial Chamber. It may also revise a final judgment of conviction or sentence[54].

THE OFFICE OF THE PROSECUTOR

The Office of the Prosecutor shall act independently as a separate organ of the Court. (Article 42) The Office shall be headed by the Prosecutor who shall be assisted by one or more Deputy

[52] Assembly of States Parties to the Rome Statute of the International Criminal Court (ASP) (http://www.icc-cpi.int/en_menus/asp/assembly/Pages/assembly.aspx) .
[53] Website of the Rome Statute of the International Criminal Court (http://www.un.org/law/icc/index.html) .
[54] Rome Statute (http://www.un.org/law/icc/index.html)

Prosecutors. The Prosecutor and the deputy Prosecutors shall be of different nationalities. (Article 42 Para 2) They shall be persons of high moral character, be highly competent and have extensive practical experience in the prosecution or trial of criminal cases. They shall be elected by secret ballot by and absolute majority of the members of the assembly of State Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the Prosecutor. The Prosecutor shall appoint advisors with legal expertise on specific issues, including, but not limited to sexual and gender violence against children. (Article 42 Para 9)

The Office of the Prosecutor shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. (Article 42)

The Prosecutor has been given a number of functions to perform under the Statute which includes (1) the Prosecutor shall receive a situation from a State Party in which one or more crimes within the jurisdiction of the Court appear to have been committed in order to investigate the situation for the purpose of determining whether one or more specific persons, should be charged with the commission of such crimes (Article 14 Para 1). (2) The Prosecutor may initiate investigation *proprio motu* on the basis of information on crimes within the jurisdiction of the Court (Article 15 Para 1), (3) the Prosecutor shall analyze the seriousness of the information received. For these purpose, he may seek additional information from States, Organs of the United Nations, Inter-governmental or Non-governmental organizations or other reliable sources that he deems appropriate and may receive written or oral testimony at the seat of the Court (Article 15 Para 2)[55], (4) if the prosecutor concludes that there is a reasonable basis to proceed with an investigation, he shall submit to the Pre-Trial chamber a request for authorization of an investigation, together with any supported material collected(Article 15 Para 3), (5) if the Prosecutor concludes that the information provides does not constitute a reasonable basis for an investigation, he shall inform to those who provided the information(Article 15 Para 6), (6) the Prosecutor shall take appropriate measures to ensure the effective investigation of prosecution of Crimes within the jurisdiction of the crime, (7) the

[55] The Chief Prosecutor on December 15, 2010 requested to the Tribunal to issue summon against six Kenyan citizens for alleged crimes committed during the violence that erupted following the country's general election in December 2007. The Prosecutor said that more than 1100 people were killed, 3500 injured and upto 6,00,000 forcibly displayed during 30 days of violence.

Prosecutor may collect and examine evidence, he may request the presence of and question persons being investigated, victims and witnesses, (8) he may seek the cooperation of any State of Inter-governmental organization or arrangements in accordance with the respective competent.

THE REGISTRY

The Registry shall be responsible for the non-judicial aspects of the administration and servicing the Court without prejudice to the functions and powers of the Prosecutor (Article 43). The Registry shall be headed by the Registrar who shall be the principal administrative officer of the Court. The Registrar shall exercise his functions under the authority of the President of the Court. The Registrar and the Deputy Registrar shall be persons of high moral character and shall be highly competent. The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation of the Registrar, the Judges shall elect, in the same manner, a deputy registrar (Article 43). The Registrar shall hold office for a term of five years and shall be eligible for re-election once. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the bass that the Deputy Registrar shall be called upon to serve as required.

PROCEEDINGS OF INTERNATIONAL CRIMINAL COURT

1. APPLICATION OF THE LAW BY THE COURT

Article 21 of the statute provided that the court shall apply the law in proper segment which we are discussing as follows-;

1)- Elements of crime and the rules of procedure and evidence.

2)- Applicable treaties, principle and rules of International law of Armed conflict.

3)- General principles of law derived by the court from national laws of legal system of the world including , as appropriate , the national laws of states that would normally exercise jurisdiction over the crime provided that it should not be inconsistent with statute and international norms and standards.

4)- The principle that the court has to keep in mind is Criminal law such as "*nullem crimen sine lege*[56]*"* and *"nulla poena sine lege*[57]*"*.

2. ADMISSIBILITY OF THE CASE

The court shall decide the admissibility of the case on its own motion depend upon the jurisdiction and other related factors which is to be examined by the court but for inadmissibility there are certain norms which the court has to follow ;-

1)- A case is being investigated or prosecuted by a state which has the jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or prosecution.

2)- The case has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the persons concerned, unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute.

3)- The person concerned has already been tried for conduct which is subject of the complaint.

4)- The case is not of sufficient gravity to justify further action by the court.

5)- The Admissibility of the case also take cares of principle *"ne bis in idem"*[58].

3. INITIATION OF THE CASE

Any State Party to the Rome Statute can request the Office of the Prosecutor to carry out an investigation. A State not party to the Statute can also accept the jurisdiction of the ICC with respect to crimes committed in its territory or by one of its nationals, and request the Office of the Prosecutor to carry out an investigation. The United Nations Security Council may also refer a situation to the Court.

4. DETERMINATION OF INVESTIGATION

If the Office of the Prosecutor receives reliable information about crimes involving nationals of a State Party or of a State which has accepted the jurisdiction of the ICC, or about crimes

[56] The maxim nullum crimen sine lege literally means 'no crimes without law' available at Nullum Crimen Sine Lege, Legal Information Institute, available at *http://www.law.cornell.edu/wex/* nullum_crime n_sine_lege (accessed 21st of March 2019).

[57] nulla poena sine lege which means 'no punishment without a previous penal law. Nulla Poena Sine Lege, https://www.princeton.edu/~achaney/tmve/wiki100k/docs/Nulla_poena_sine_lege. html (accessed 21 March 2019).

[58] The phrase is derived from the Roman law maxim *nemo bis vexari pro una et eadamcausa* (a man shall not be twice vexed or tried for the same cause). The term double jeopardy is derived from the wording of the Fifth Amendment to the US Constitution, which states, inter alia, ". . . [N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb".

committed in the territory of such a State, and concludes that there is a reasonable basis to proceed with an investigation. Such information can be provided by individuals, intergovernmental or non-governmental organizations, or any other reliable sources. The Prosecution must, however, obtain permission from the Pre-Trial Chamber judges before initiating an investigation under such circumstances[59].

The Prosecutor determines whether, in his or her opinion, the Court has jurisdiction with respect

to the alleged crimes. Following a thorough analysis of the available information, the Prosecution decides whether there is a reasonable basis to proceed with an investigation. Thus, it must establish whether the crime of genocide, crimes against humanity or war crimes may have been committed and, if so, whether they were committed after 1 July 2002. The Prosecution must also ascertain whether any national authorities are conducting a genuine investigation or trial of the alleged perpetrators of the crimes. Lastly, it must notify the States Parties and other States which may have jurisdiction of its intention to initiate an investigation.

5. CONDUCTING INVESTIGATION

The Office of the Prosecutor sends its investigators to collect evidence in areas where crimes are alleged to have been committed. The investigators must be careful not to create any risk to the victims and witnesses. The Office of the Prosecutor also requests the cooperation and assistance of States and international organizations. The investigators look for evidence of a suspect's guilt or innocence.

6. ARREST PROCEEDINGS

After the initiation of an investigation, only a Pre-Trial Chamber may, at the request of the Prosecution, issue a warrant of arrest or summons to appear if there are reasonable grounds to believe that the person concerned has committed a crime within the ICC's jurisdiction[60].

When the Prosecution requests the issuance of a warrant of arrest or summons to appear, it must provide the judges with the following information:

• the name of the person;

• a description of the crimes the person is believed to have committed;

[59] United Nations Conference of Plenipotentiaries on the Establishment of an ICC http://legal.un.org/icc/rome/proceedings/contents.htm)

[60] International Law Commission (http://www.un.org/law/ilc/index.htm)

• a concise summary of the facts (the acts alleged to be crimes);

• a summary of the evidence against the person;

• the reasons why the Prosecution believes that it is necessary to arrest the person.

The Registrar transmits requests for cooperation seeking the arrest and surrender of the suspect to the relevant State or to other States, depending on the decision of the judges in each case. Once the person is arrested and the Court is so informed, the Court ensures that the person receives a copy of the warrant of arrest in a language which he or she fully understands and speaks.

7. EXECUTION OF WARRANT OF ARREST

The responsibility to enforce warrants of arrest in all cases remains with States. In establishing the ICC, the States set up a system based on two pillars. The Court itself is the judicial pillar. The operational pillar belongs to States, including the enforcement of Court's orders States Parties to the Rome Statute have a legal obligation to cooperate fully with the ICC. When a State Party fails to comply with a request to cooperate, the Court may make a finding to that effect and refer the matter for further action to the Assembly of States Parties. When the Court's jurisdiction is triggered by the Security Council the duty to cooperate extends to all UN Member States, regardless of whether or not they are a Party to the Statute. The crimes within the jurisdiction of the Court are the gravest crimes known to humanity and as provided for by article 29 of the Statute[61] they shall not be subject to any statute of limitations. Warrants of arrest are lifetime orders and therefore individuals still at large will sooner or later face the Court.

8. POST-ARREST PROCEEDINGS

An arrested person is brought promptly before the competent judicial authority in the custodial State, which determines whether the warrant is indeed for the arrested person, whether the person was arrested consistently with due process and whether the person's rights have been respected. Once an order for surrender is issued, the person is delivered to the Court, and held at the Detention Centre in The Hague, The Netherlands.

[61] As early as 1947, the General Assembly requested the International Law Commission to formulate a Draft Code of Crimes Against the Peace and Security of Mankind. (http://legal.un.org/ilc/summaries/7_3.htm .

9. CONDITION OF THE DETENTION CENTRE, HAGUE

The ICC Detention Centre operates in conformity with the highest international human rights standards for the treatment of detainees, such as the United Nations Standard Minimum Rules. An independent inspecting authority conducts regular and unannounced inspections of the Centre in order to examine how detainees are being held and treated.

At the ICC Detention Centre[62], the daily schedule affords the detainees the opportunity to take walks in the courtyard, exercise, receive medical care, take part in manual activities and have access to the facilities at their disposal for the preparation of their defence. Additionally, the centre has multimedia facilities and offers a series of training, leisure and sports programmes. ICC detainees also have access to computers, TV, books and magazines. Those who are indigent have the right to call their Defence Counsel free of charge during official working hours. A standard cell contains a bed, desk, shelving, a cupboard, toilet, hand basin, TV and an intercom system to contact the guards when the cell is locked. The Court provides three meals per day, but the detainees also have access to a communal kitchen if they wish to cook. A shopping list is also available to detainees so that they can procure additional items, to the extent possible.

All detainees may be visited by their families several times a year and, in the case of detainees declared indigent, at the Court's expense, to the extent possible. Persons convicted of crimes under the jurisdiction of the ICC do not serve their sentence at the ICC Detention Centre in The Hague as the facility is not designed for long-term imprisonment. Convicted persons are therefore transferred to a prison outside The Netherlands, in a State designated by the Court from a list of States which have indicated their willingness to allow convicted persons to serve their sentence there.

10. SYSTEM OF BAIL

All detainees are entitled to apply for interim release pending trial. In the event of rejection, the decision is periodically reviewed by the competent chamber, at least every 120 days, and may be reviewed at any time at the request of the detained person or the Prosecution.

[62] American Society of International Law (ASIL) (http://www.asil.org).

11. CONFIRMATION OF CHARGES BEFORE TRIAL

The suspect's first appearance before the Court takes place shortly after his or her arrival in The Hague. During the first appearance, the Pre-Trial Chamber confirms the identity of the suspect, ensures that the suspect understands the charges, confirms that language in which the proceedings should be conducted, and sets a date to begin the confirmation of charges hearing. At the confirmation of charges hearing – which is not a trial, but a pre-trial hearing – the Prosecution must present sufficient evidence for the case to go to trial. The suspect's defence may object to the charges, challenge the Prosecution's evidence and also present evidence. The confirmation of charges hearing is held in the presence of the Prosecution, the person being prosecuted, and his or her counsel, as well as the representative of the victims. As provided by article 61 of the Statute, the suspect can waive his or her right to be present at this hearing.

The purpose of the confirmation hearing is to safeguard the rights of suspects by preventing proceedings with insufficient legal basis from being brought against them. In the pre-trial phase, the Prosecution must support each of the charges with sufficient evidence to establish substantial grounds to believe that the person committed the crimes charged. If one or more charge is confirmed, the case is committed to trial before a Trial Chamber.

12. POST- CONFIRMATION OF CHARGES[63]

Following a confirmation of charges hearing, a Pre-Trial Chamber may:

• decline to confirm the charges; such a decision does not prevent the Prosecution from presenting a subsequent request for confirmation of the charges on the basis of additional evidence;

• adjourn the hearing and request the Prosecution to consider providing further evidence or conducting further investigation, or amending the charges because the available evidence shows that a different crime was committed;

• confirm the charges and commit the case for trial; upon confirmation, the Presidency of the Court constitutes a Trial Chamber responsible for the subsequent phase of the proceedings: the trial.

After the confirmation of charges, the Pre-Trial Chamber commits the case for trial before a Trial

[63] Country Information (http://www.iccnow.org/?mod=world) : an overview of progress toward ratification and implementation in countries around the world, including the Rome Statute Signature and Ratification Chart (http://www.iccnow.org/?mod=romesignatures)

Chamber, which will conduct the subsequent phase of the proceedings: the trial. Before the commencement of the trial, the judges of the Trial Chamber consider procedural issues that may be submitted to them by the parties and hold hearings to prepare for trial and to resolve procedural matters in order to facilitate the fair and expeditious conduct of the proceedings.

13. TRIAL PROCEDURE

Trials take place at the seat of the Court in The Hague, unless the judges decide to hold the trial elsewhere. This issue has been raised in several cases. The accused must be present at his or her trial, which is held in public, unless the Chamber determines that certain proceedings be conducted in closed session in order to protect the safety of victims and witnesses or the confidentiality of sensitive evidentiary material.

At the commencement of the trial, the Trial Chamber causes the charges against the accused to be read out to him or her and asks whether he or she understands them. The Chamber then asks the accused to make an admission of guilt or to plead not guilty[64].

If he admits the guilt, then First, the Trial Chamber ensures that the accused understands the nature and consequences of the admission of guilt, that the admission is voluntarily made by the accused after sufficient consultation with his or her lawyer and that the admission of guilt is supported by the facts of the case that are contained in the evidence and charges brought by the Prosecution and admitted by the accused. Where the Trial Chamber is satisfied that these conditions have been met, it may convict the accused of the crime charged. If it is not satisfied that the conditions have been met, the Chamber shall consider the admission of guilt as not having been made, in which case it shall order that the trial be continued.

At trial, the Prosecution and Counsel for the defence have the opportunity to present their case. The Prosecution must present evidence to the Court to prove that the accused person is guilty beyond all reasonable doubt. This evidence may be in the form of documents, other tangible objects, or witness statements. The Prosecution must also disclose to the accused any evidence which may show that he or she is innocent.

The Prosecution presents its case first and calls witnesses to testify. When the Prosecution has finished examining each witness, the Counsel for the Defence is given the opportunity to also

[64] Reports & Declarations (http://www.iccnow.org/?mod=reportsdeclarations) from national and regional conferences, seminars, and workshops on the International Criminal Court.

examine the witness. Once the Prosecution has presented all its evidence, it is the turn of the accused, with the assistance of his or her counsel, to present his or her defence.

14. PRODUCTION OF EVIDENCE

All parties to the trial may present evidence relevant to the case. Everyone is presumed innocent until proven guilty according to law. The Prosecution has the burden of proving that the accused is guilty beyond all reasonable doubt. The accused has the right to examine the Prosecution's witnesses, and to call and examine witnesses on his or her own behalf under the same conditions as the Prosecution's witnesses.

When the personal interests of victims are affected, the Court allows their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Their views and concerns may be presented by their legal representatives[65].

15. JUDGMENT

Once the parties have presented their evidence, after hearing the victims and the witnesses called to testify by the Prosecution and the Defence and considering the evidence, the Prosecution and the Defence are invited to make their closing statements. The Defence always has the opportunity to speak last after which the judges decide whether the accused person is guilty or not guilty. The judges may order reparations to victims, including restitution, compensation and rehabilitation. To this end, they may make an order directly against a convicted person. The sentence is pronounced in public and, wherever possible, in the presence of the accused, and victims or their legal representatives, if they have taken part in the proceedings.

16. PENALITIES

The Statute under Article 77 lays down that the Court may impose one of the following penalties on a person convicted of a crime;

[65]Coalition for an International Criminal Court (CICC) (http://www.iccnow.org/)

(a) imprisonment for a specified number of years which may not exceed a maximum of 30 years or

(b) a term of life imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted persons.

In addition to the imprisonment, the Court may order (a)a fine under the criteria provided for in the Rules of Procedure and Evidence; (b) A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the rights of bona fide third parties. It is to be noted that the Court does not have any enforcement powers. It can neither enforce its own arrest warrants nor its own judgments. The Court depends primarily on the co-operation of the States and as a secondary resort to international and other organizations.

17. APPEAL PROCEDING

Any party may appeal the decisions of a Pre-Trial or Trial Chamber. The Prosecution may appeal

against a conviction or acquittal on any of the following grounds: procedural error, error of fact or error of law.

The convicted person or the Prosecution may also appeal on any other ground that affects the fairness or reliability of the proceedings or the decision, in particular on the ground of disproportion between the sentence and the crime.

The legal representatives of the victims, the convicted person, or a bona fide owner of property Adversely affected by an order for reparations to the victims may also appeal against such an order.

The Appeals Chamber may reverse or amend the decision or conviction or order a new trial before a different Trial Chamber[66].

18. REVISION PROCEEDING

The convicted person or the Prosecution may apply to the Appeals Chamber to revise a final judgment of conviction or sentence where:

• new and important evidence has been discovered;

• it has been newly discovered that decisive evidence, taken into account at trial and

[66] U.S. Policy Toward the International Criminal Court: Furthering Positive Engagement. Report of an independent Task Force convened by the American Society of International Law. (http://www.amicc.org/docs/ASIL%20ICC%20Report.pdf)

upon which the conviction depends, was false, forged or falsified;

• one or more of the judges has committed an act of serious misconduct or serious. Breach of duty of sufficient gravity to justify the removal of that judge or those judges from office under the Rome Statute[67].

19. VICTIM PROTECTION[68]

Victims are individuals who have suffered harm as a result of the commission of any crime within the jurisdiction of the ICC. Victims may also include organisations or institutions that have sustained harm to any of their property which is dedicated to religion, education, art, science or charitable purposes.

The judges of the ICC determine the types of harm to be taken into account, such as bodily harm,

psychological harm, that is, where a person's mind has been affected by what he or she has experienced or witnessed, or material harm, which consists of loss of or damage to goods or property. Victims before the ICC have rights that have never before been granted before an international criminal court. Victims may be involved in the proceedings before the ICC in various ways:

• victims can send information to the Office of the Prosecutor and ask the Office to initiate an investigation;

• at a trial, a victim may voluntarily testify before the Court, if called as a witness for the Defence or the Prosecution or other victims participating in the proceedings;

• victims are also entitled to participate in proceedings through a legal representative; during proceedings, victims may participate by presenting their views and concerns to the judges; such participation is voluntary and enables victims to express an opinion independently of the Prosecution or the Defence and offers them the opportunity to present their own concerns and interests;

• victims participating in proceedings may also, in some circumstances, lead evidence pertaining to the guilt or innocence of the accused; they may also challenge the admissibility or the relevance of evidence presented by the parties;

[67] The First Review Conference of the Rome Statute of the International Criminal Court, by David Kaye, May 14, 2010.

[68] Insight on the ICC, (http://www.iccnow.org/index.php?mod=insight) a quarterly newsletter focused on developments in The Hague. Coverage: April 2004 through July 2006.

• lastly, victims can seek reparation for the harm that they have suffered.

20. WITNESS PROTECTION

The Office of the Prosecutor, the Defence or victims participating in the proceedings can ask experts, victims or any other person who has witnessed crimes to testify as a witness before the Court. The Office of the Prosecutor selects witnesses based on the relevance of their testimony, their reliability and their credibility The Court does not compel a witness to appear before it to testify without his or her consent. Witnesses who appear before the Court are provided with information and guidance. For this purpose, the Victims and Witnesses Unit's (VWU's) support team offers services including the provision of psychosocial support, crisis intervention, and access to medical care when needed.

MERITS AND DEMERITS OF INTERNATIONAL CRIMINAL COURTS

MERITS:

I. International criminal courts are more impartial than domestic courts, for they comprise of judges having no link with the territory or the state where the crimes were perpetuated.

II. International judges being selected on the account of their competence in the area of international humanitarian and criminal law, are better suited to pass judgments over crimes that markedly differ from ordinary criminal offences.

III. That the court acts on the behalf of whole international society, therefore they are entitled to pronounce upon crimes that offend universal values.

IV. International criminal trials are more visible than national criminal proceedings, holding international trials signal the will of the international society and acceptable standards of human behavior.

DEMERITS:

I. The major problem the international criminal court faces is the lack of enforcement agencies directly available to those courts for the purpose of collecting evidence, searching premises, seizing documents, executing arrest warrants and other judicial orders.

II. There exists a need for international criminal courts to amalgamate the approach of judges, each with a different cultural and legal background.

III. Another serious issue is excessive length of international criminal proceedings and its complexities of nature of crimes.

IV. The international criminal courts perforce confine themselves to prosecuting and trying those who bear the heaviest responsibilities for the international crimes.

V. They suffer from victor syndrome in which they only prosecute and try the losers of the war and victors remain shattered from any judicial scrutiny.

CRITICAL ANALYSIS

The International Criminal Court (ICC) is a permanent tribunal, established under the Rome Statute as a governing body to regulate, adjudicate, and prosecute the member states if they are engaged in crimes against humanity. The functioning of the ICC relies on the claims brought to it by member states from all across the globe. ICC as a tribunal has been vested with exclusive authority to prosecute the member states and their leaders because it is deemed as an un-bias body to preside over the cases brought to them. The leaders and the member states cannot in any scenario exercise their influence over the tribunal to grant them immunity against the prosecution. However, the tribunal has been barred with controversies in the recent times. The very nature, ICC is known for has been subject to criticisms of what appears to be a bias against the third world or developing countries. The alleged claim is a subject to the observation by the general public, who state that ICC only prosecutes nationals of the African descent, and the leaders belonging to the third world countries, hereby inferring that ICC is “white man’s

court"[69] taking its orders from the first world/western states. In the following topics, we'll be exploring these alleged claims and provide an analysis of the cases that have led to the ICC being deemed as a bias tribunal.

AFRICA-CENTRIC PROSECUTION

It's been stated by many observers that ICC specifically tends to profile leaders from the African sub-continent despite ICC having a greater responsibility to keep the rest of the member states in check as well. At several instances the ICC has been dubbed as the ICCA, International Criminal Court for Africans, largely due to the conception amongst the observers who state that ICC has an embedded "Africa problem"[70]. The problem seems to have gained traction amongst prominent policymakers and critiques who point out that the people, the ICC has prosecuted in its entirety are approx. 90% Africans. Ms. Fatou Bensouda, the eminent Gambian jurist, has constantly condemned the act allegedly undertaken by the ICC, having claimed that "the court's focus on Africa is a sign that the continent is dedicated to international justice[71]". The situation is such that it might suggest that only Africans are the ones committing genocides. ICC is flawed, but the flaw that outweighs all the other ones is the fact that ICC like every other major western institution is a western incorporation which deems itself to be the moral regulator towards all these backward states of the world to attain the higher ground.

Although ICC has been active in its role of providing justice to those affected, it is not consistent in applying the laws and its jurisdiction with regards to the prosecution of war crimes and crimes against humanity. Which leads us to think, why did so many African nations support the inception of the ICC? It could be possibly due to the fact that the signatories who were party to the Rome statute were promised monetary incentives by the pro-ICC NGOs, which played an integral part in convincing the African nations to be member states of the tribunal. To elaborate, the Cotonou Agreement of 2002[72] specifically infers that the states denying to endorse the Rome statute would lose out on hundreds of millions of Euros worth of

[69]https://www.cbsnews.com/news/sudan-dubs-the-icc-white-mans-court/, "Sudan Dubs The ICC "White Man's Court" Accessed on: 20th March, 2019 at 7:53 pm.
[70]https://www.aljazeera.com/indepth/opinion/2012/03/20123278226218587.html, "Does ICC have an Africa problem?" Accessed on: 20th March, 2019 at 7:59 pm.
[71]https://www.nation.co.ke/oped/Opinion/International+justice+Is+Africa+on+trial+/-/440808/1380106/-/javpde/-/index.html, "International justice: Is Africa on trial?", Accessed on: 20th March, 2019 at 8:09 pm.

[72]https://ec.europa.eu/europeaid/regions/african-caribbean-and-pacific-acp-region/cotonou-agreement_en, A User's Guide for Non-State Actors, Accessed on: 20th March, 2019 at 8:26 pm.

development aid, which led many African to believe that the Europeans wanting to impose dominion over their continent with Eurocentric blueprints.

The states who have not ratified the Rome Statute are not a party to the treaty and are although obliged to refrain from "acts which would defeat the object and purpose of the treaty[73]", these states hereby termed as Third States[74]cannot be presided over by the ICC.The ICC has since been subjected to several criticisms and violations for exercising its jurisdiction over non-member states, the most prominent being the prosecution of Muammar Gadaffi of Libya[75]. Gaddafi along-with other wanted Libyan aristocrats were placed on the list of fugitives wanted by the International Criminal Court despite ICC having no authority or jurisdiction to do so. Libya is non-party to the Rome statute and is not bound by the ICC unless referred by the UN Security Council, which in the said statute states that:

"No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions[76]."

Subsequently in the case, the United Nations Security Council had recommended the prosecution of Gadaffi on February 26, 2011[77]. The resolution hereby demanded the full cooperation and the provision of necessary assistance of the Libyan Authorities to ICC, despite the fact that Libya is not a party to the Rome Statute. The action taken by the ICC was put in commission only 6 days after the recommendation made by the United Nations Security Council, flouting on the minimum 12 months' period as recommended by the court hereby proving the involvement of ICC to conspire against Gadaffi.

[73]Article 18 of the 1969 Vienna Convention
[74] Antonio Cassese, Paragraph 1, Pg. 160, Major Problems of International Criminal Justice, The Oxford Companion to International Criminal Justice, Edn. 2013
[75]https://africanholocaust.net/international-criminal-court/?fb_comment_id=373325229409764_2941681, "International Criminal Court", Accessed on: 20th March, 2019 at 8:55 pm
[76] Article 16 of Rome Statute of the International Criminal Court, 1998
[77] UN Security Council Resolution 1970

THE ASIAN REGION AND THE INTERNATIONAL CRIMINAL COURT

The Asia-Pacific region is home to half of the global population, yet the people of the region, especially those living in southeast Asian states, are apparently underrepresented at the International Criminal Court. This section aims to explore and discuss the relationship and reluctance shown by the Asian states towards ICC. The rationales behind the states refraining them from joining the Rome statute is their legal provisional scepticism against ICC. In this scenario China unexpectedly leads the trail to question ICC, regardless of its status as one of the permanent five member states of the UN Security Council. It states the following reasons as its reluctance to be a signatory of the Rome Statute[78]: The foremost being that ICC does not base its jurisdiction on the principle of voluntary acceptance and exercises its authority on the non-state parties without their assent, which in itself is in violation of the principle of state sovereignty and the Vienna Convention of the law of treaties. Further, China demands a clarification and scope of certain terms like war-crimes and genocides, which may turn out to be critical in case of a grave occurrence. This specific issue is highly debated upon since "war crimes" in accordance with ICC may denote an internal armed conflict within a member state and may not necessarily mean that the state is "at war" from a domestic standpoint, implicating that the situation does not fall under the jurisdiction of the ICC. The apprehensions have been termed plausible and gained endorsement amongst some Southeast Asian Governments as well.

RECENT DEVELOPMENTS

There's been a lot of discussion aimed at Asia's relationship with the ICC. Considering their current state with the ICC, one bombarded with claims of racial profiling and western influence, there's been an increment in the states belonging to both the Asian and African subcontinents opting out of the mutual relationship. The most recent one being of the Philippines' withdrawal from the tribunal on 19th March, 2019[79], the second country in the world to withdraw from the International Criminal Court, in what critics believe is an attempt to evade an investigation into President Rodrigo Duterte's war on drugs. The withdrawal comes

[78]Jianping L, Wang Z, Pg. 608–620, China's attitude towards the ICC, Journal of International Criminal Justice, Vol. 3.

[79] ICC prosecutor has been examining whether thousands of extrajudicial killings allegedly committed during Duterte's crackdown on drugs are sufficient to warrant a formal investigation; (visited at http://news.trust.org/item/20190318181004-ecoim on 22nd of March 2019).

a year after it submitted notice of its exit, which followed an ICC announcement that the country was under preliminary examination for thousands of killings since Duterte rose to presidency in 2016.

The incident is a reminder of Burundi's withdrawal from the ICC way back in 2017, becoming the first country in the world to do so amid accusations that the court focuses too much on the continent.

CONCLUSION

In conclusion, the authors of the research paper want to convey that at the part of the procedure and setup, International Criminal Court stands at a better position than any other court of the world. But, when it comes to the implementation, it, in some or the other way, is influenced by the western countries, and more specifically, the members of the UNSC. The jurisdiction of the ICC also suffers from many problems related to the amnesty laws in which we have seen that how Italy and France have granted amnesty to those nationals who fought against the Germans. The other legal impediment in the prosecution of international crimes is the functional and the personal immunities granted to the officials/diplomats of the countries. Although the Arrest Warrant case has clarified the issue, but now also, in some humanitarian approach, court fails to tackle the situation more efficiently. If we talk about the reach of the ICC, it is well for the developed and developing countries because they are economically capable of pursuing the prosecution. But, when it comes to under-developed countries, the ICC has no scheme to protect their humanitarian rights. The Asian and African approaches towards the ICC were also not satisfactory because there are many cases in which the ICC has shown a western inclination and reluctance towards the investigation and its proceedings. Very recently, on 19th March, 2019, the Philippines has withdrawn their consent from ICC on the point of failure of ICC to tackle drug-related issues which significantly shows the lethargic concern of the ICC. So it is very important for the ICC to maintain its credibility and to become fundamentally concerned towards the developing and underdeveloped countries in order to ensure its sustainability.

RECOMMENDATIONS

1)- The International Criminal Court should work as an efficient and transparent adjudicatory mechanism without getting influenced by the Permanent member Countries of United Nations Security Council and also the authority given to UNSC regarding referring the case and also to withhold the case should also be deleted from the statute.

2)- The International Criminal Court should not allow the countries to make amnesty laws in the cases of Heinous War crimes and other grave crimes.

3)- The statute of limitation should not be there in the International Crimes because the branch of the Court is in Hague, Netherland and for investigation they have to travel the concerned state and then investigate each minute details so it will obviously takes time otherwise it would be grave injustice to Asian and African which are far away from Branch of ICC and also they are not having such efficient financial and legal resources.

4)- Proper guidelines should be made for the Immunity related issues it should not be given at every case and circumstances.

5)- ICC should be given primacy of jurisdiction in Heinous international Crimes and complementarity should not be invoked in serious offences.

6)- More attention should be paid to the judicial management of all the stages of the process from confirmation of charges to final appeal and encourage regular training of the ICC judges and other officials.

7)- Another Area for improvement is securing arrest of the Culprit because court doesn't have its own police force to execute arrest warrants nor they are getting support for this by UNSC and Assembly of State parties(ASP).

8)- There is a lack of state cooperation in the proceedings of the International Criminal Court this can be tackled only if any binding provisions shall be made by UNSC in relation to cooperation of state so that the state will have to follow the same and the court carry out its mandate efficiently and effectively.

BIBLIOGRAPHY

1. Developments in the Law: International Criminal Law, Harvard Law Review 1943, 1961, (May 2001).

2. Draft Statute for an International Criminal Court with commentaries, 1994, Yearbook of the International Law Commission, 1994, vol. II, Part Two 26-35, (1994).

3. Leila Nadya Sadat, A Contextual and Historical Analysis of the International Law Commission's 2017 Draft Articles for a New Global Treaty on Crimes Against Humanity, Journal of International Criminal Justice (Mar. 21, 2019, 20:29), https://academic.oup.com/jicj/article/16/4/683/5104795

4. Progress in International Criminal Law?, The American Journal of International Law 452, 458, (April 1999).

5. International Criminal Court, African Holocaust, (Mar. 21, 2019, 17:47), https://africanholocaust.net/international-criminal-court/

6. Rome Statute of the International Criminal Court, 1998, International Criminal Court, 25-40, (July, 1998).

7. The Kenyan Section of the International Commission of Jurists (ICJ Kenya), International Criminal Justice: The ICC and Complementarity 1-21 (ICJ Kenya).

8. Cenap Cakmak, Historical Background: Evolution of the International Criminal Law, Individual Criminal Accountability and the Idea of A Permanent International Court, (Mar. 20, 2019, 18: 32), https://www.du.edu/korbel/hrhw/workingpapers/2006/39-cakmak-2006.pdf

9. International Criminal Court, Understanding the International Criminal Court 17-32 (ICC).

10. Gail Partin, International Criminal Law, (Mar. 20, 16: 48), https://www.asil.org/sites/default/files/ERG_CRIM.pdf

11. Devasheesh Bais, India and the International Criminal Court, (Mar. 22, 23:20), http://www.toaep.org/pbs-pdf/54-bais

12. A. Cassese, Cassese's International Criminal Law 253-323 (3rd Ed. Oxford University Press, 2013).

13. Obstacles in the Way of an International Criminal Court, The Cambridge Law Journal 329, 335 (Jul. 1997), https://www.jstor.org/stable/4508345

14. Africa and the International Criminal Court: Stocktaking in Uganda, Konrad Adenauer Stiftung, (Oct. 2010), https://www.jstor.org/stable/resrep09928

15. Ratification Patterns and the International Criminal Court, International Studies Quarterly 400, 400-409 (Jun. 2013), https://www.jstor.org/stable/24016147

16. Chemical Weapons and the International Criminal Court, The American Journal of International Law 436, 436- 442 (Jul. 2014), https://www.jstor.org/stable/10.5305/amerjintelaw.108.3.0436

17. The Statute of the International Criminal Court, The International and Comparative Law Quarterly 387, 387-392, (Apr.1999).

18. Walter F. Hoffman, The Substantive Jurisdiction of an International Criminal Court, The International Lawyer 377, 377, (Spring 1977).

19. Elliott A. Cohen, At a Glance: The International Criminal Court, International Journal on World Peace 3, 3-4, (Dec. 1998), https://www.jstor.org/stable/20753175

20. David Stoelting, The Rome Treaty on the International Criminal Court, The International Lawyer 613, 615, (Summer 1999).

21. Sara Wood, Should We Have a Permanent International Criminal Court? American Bar Association 30, 30-31, (Winter 1996), https://www.jstor.org/stable/27879963

22. Alex Whiting, Dynamic Investigative Practice at the International Criminal Court, Law and Contemporary Problems 163, 163-170, (2013), https://www.jstor.org/stable/24244676

23. United Nations: Rome Statute of the International Criminal Court, International Legal Materials 999, 999-1011, (Sep. 1998), https://www.jstor.org/stable/20698828

24. Mahnoush H. Arsanjani, The Rome Statute of the International Criminal Court, The American Journal of International Law 22, 22-26, (Jan. 1999).

25. John Dietrich, The Limited Prospects of Deterrence by the International Criminal Court: Lessons from Domestic Experience, International Social Science Review 1`, 5-12, (2014), https://www.jstor.org/stable/intesociscierevi.88.3.03