



The creation of international criminal court

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Abstract

The history is full of brutal episodes against humanity. Grave violations of human rights, genocide, and mass killings of civilians and abuse of prisoners of wars during armed conflicts are all characterized as international crimes. Apart from mass killings, atrocities and outrages upon human dignity included torture, mass rapes, ethnic cleansing, extermination, summary executions, enforced prostitution and enforced disappearance. Many of these killings and atrocities were the direct result of armed conflicts, ethnic violence and civil wars. The international criminal justice mechanism is expedited when the most serious crimes were committed and the national courts were not being able to act because of the state involvement in the commission of serious international crimes or because of widespread or systematic violence. Therefore, an effective independent justice system is required to promote and maintain international peace. Consequently, United Nations led to a Diplomatic Conference in Rome from 15th June to 17th July, 1998 which ultimately paved way for the establishment of the International Criminal Court (ICC). The ICC is the world's first permanent, international judicial body capable of bringing perpetrators to justice and providing redress to victims when states are unable or unwilling to do so. The present study highlights the reason behind the creation of ICC, the structure and the jurisdiction of ICC.

Keywords: international criminal court (ICC), genocide, killings, prosecutor, human rights

Introduction

The history of civilization is full of human cruelty. The books of history are full of brutal episodes in war crimes and crimes against humanity have been committed with impunity. Grave violations of human rights, genocide, and mass killings of civilians and abuse of prisoners of wars during armed conflicts are all characterized as international crimes. Apart from mass killings, atrocities and outrages upon human dignity included torture, mass rapes, ethnic cleansing, extermination, summary executions, enforced prostitution and enforced disappearance. These stories of atrocities were presented by the media and the human rights organizations in graphic details. Many of these killings and atrocities were the direct result of armed conflicts, ethnic violence and civil wars. In many instances, atrocities were perpetrated at the instigation of the state. Dictators and totalitarian regimes ordered ruthless violations of fundamental human rights.

1.7 million People were massacred in Cambodia from 1975 to 1979 during the reign of Khmer Rouge. About 30,000 disappeared in Argentina's "Dirty War" of the 1970s and 1980s. 750000 were massacred in Uganda. Besides, one lakhs Kurds were exterminated in Iraq and more than 75,000 peasants were killed by death squads in El Salvador. Leaders like Saddam Hussein and Mohammed Aided remained targets of worldwide condemnation. In almost all the incidents, impunity for horrible atrocities remained the rule rather than the exception. The prevailing extrajudicial or prosecution system under international law remained almost dysfunctional. The international criminal justice mechanism is expedited when the most serious crimes were committed and the national courts were not being able to act because of the

state involvement in the commission of serious international crimes or because of widespread or systematic violence. Therefore, an effective independent international criminal justice system is required to promote and maintain international peace, to meet the common interest of global society and to adequately respond to the perpetrators of violence.

International Law Commission (ILC) was established with the objective of progressive development and the codification of international criminal law. Furthermore, The General Assembly asked ILC to look into the possibility of establishment of an international criminal court in order to enforce the code of human rights and for assurance of peace and security in the late 1980's. The General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. After the General Assembly had considered the Committee's report, it created the Preparatory Committee on the Establishment of an International Criminal Court to prepare a widely acceptable consolidated draft text for submission to a diplomatic conference. The Preparatory Committee, which met from 1996 to 1998, held its final session in March and April of 1998 and completed the drafting of the text. The General Assembly resolution regarding the adoption of the Rome Statute of International Criminal Court (ICC) was brought and sixty ratifications of the state parties were required for the statute to become enforced. All these conditions were met and the Rome statute of ICC became enforced on 01st July, 2002. It was the formal establishment of International Criminal Court (ICC). The Rome Statute is a multilateral treaty which serves as the ICC's foundational and governing document.

International Criminal Court

The ICC is a treaty based body adopted in the Rome Diplomatic Conference on 17 July 1998 but it starts functioning from 1 July 2002, the date that the Rome Statute entered into force.

Currently, there are 123 states which are the members of the ICC. It is the world's first permanent, international judicial body capable of bringing perpetrators to justice and providing redress to victims when states are unable or unwilling to do so. This represents a major stride for international justice. It is an international tribunal established to prosecute individuals for the heinous crimes of genocide, crimes against humanity, and war crimes. It ensures that crimes against humanity and mass atrocities do not occur with impunity. While national governments often have capable systems to enforce laws, in occasions of mass atrocity national governments are often unequipped to deal with such grave issues. These incidences fall far outside the capacities of most legal systems or even the system itself becomes compromised.

The ICC is a court of last resort. It acts essentially as a safety net when national courts are unable to prosecute, either because the criminal justice system is unequipped or collapsed, or because the perpetrators continue to wield influence over the government. Under the principle of "complementarity," the ICC prosecutes crimes only when national courts are unable or unwilling to do so, because these crimes are most effectively and fairly prosecuted in the territories where they committed. The ICC will not act if a case is investigated or prosecuted by a national judicial system unless the national proceedings are not genuine, for example if formal proceedings were undertaken solely to shield a person from criminal responsibility. The ICC is regarded as the institutionalised response to end the culture of impunity by punishing genocidal leaders and persons responsible for grave violations of human rights.

The ICC can serve as a catalyst and model for reform of domestic laws and procedures: in order for countries to join the Court, they need to bring their laws and procedures into conformity with ICC standards. It is formed out of that legacy with the goal of ending impunity for mass atrocities and bringing justice to crimes that warrant international attention. It ensures highest standard of international criminal justice system. Its commitment is to deliver justice with due process and through fair trial to all accused persons before it, regardless of their nationality or legal status. Furthermore, The ICC justice is based on the principle that even perpetrators responsible for commission of heinous crimes should be entitled to all the guarantees of fair trial, full rights of accused to defence and human rights.

Objectives of the Study

The objectives of the study are as follows:

1. To explicate the purpose behind the creation of ICC.
2. To highlight the structure of ICC.
3. To elucidate the jurisdiction of ICC.

Structure of ICC

The ICC has four principal organs:

- Presidency,

- Judicial Divisions,
- Office of the Prosecutor,
- Registry

The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge chosen by his or her peers in the Judicial Division, which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office. The Office of the Prosecutor has opened ten official investigations and is also conducting an additional eleven preliminary examinations.

Presidency

The Presidency is responsible for the proper administration of the Court (apart from the Office of the Prosecutor). It comprises the President and the First and Second Vice-Presidents—three judges of the Court who are elected to the Presidency by their fellow judges for a maximum of two three-year terms. The current president is Chile Eboe-Osuji who was elected 11 March 2018, succeeding Silvia Fernández de Gurmendi.

Judicial Divisions

The Judicial Divisions consist of the 18 judges of the Court, organized into three chambers—the Pre-Trial Chamber, Trial Chamber and Appeals Chamber—which carry out the judicial functions of the Court. Judges are elected to the Court by the Assembly of States Parties. They serve nine-year terms and are not generally eligible for re-election. All judges must be nationals of states parties to the Rome Statute, and no two judges may be nationals of the same state. They must be "persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices". A judge may be removed from office if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. The removal of a judge requires both a two-thirds majority of the other judges and a two-thirds majority of the states parties.

Office of the Prosecutor

The Office of the Prosecutor (OTP) is responsible for conducting investigations and prosecutions. It is headed by the Chief Prosecutor, who is assisted by one or more Deputy Prosecutors. The Rome Statute provides that the Office of the Prosecutor shall act independently; as such, no member of the Office may seek or act on instructions from any external source, such as states, international organisations, non-governmental organisations or individuals. Any person being investigated or prosecuted may request the disqualification of a prosecutor from any case "in which their impartiality might reasonably be doubted on any ground". Requests for the disqualification of prosecutors are decided by the Appeals Chamber. A prosecutor may be removed from office by an

absolute majority of the state's parties if he or she "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions. However, critics of the Court argue that there are "insufficient checks and balances on the authority of the ICC prosecutor and judges" and "insufficient protection against politicized prosecutions or other abuses

Registry

The Registry is responsible for the non-judicial aspects of the administration and servicing of the Court. This includes, among other things, "the administration of legal aid matter court management, victims and witnesses matters, defence counsel, detention unit, and the traditional services provided by administrations in international organisations, such finance, translation, building management, procurement and personnel". The Registry is headed by the Registrar, who is elected by the judges to a five-year term.

Jurisdiction Requirements

The Court's subject-matter jurisdiction means the crimes for which individuals can be prosecuted. Individuals can only be prosecuted for crimes that are listed in the Statute. The primary crimes are listed in article 5 of the Statute and defined in later articles: genocide (defined in article 6), crimes against humanity (defined in article 7), war crimes (defined in article 8), and crimes of aggression (defined in article 8 bis) (which is not yet within the jurisdiction of the Court; see below). In addition, article 70 defines offences against the administration of justice, which is a fifth category of crime for which individuals can be prosecuted. For an individual to be prosecuted by the Court either territorial jurisdiction or personal jurisdiction must exist. Therefore, an individual can only be prosecuted if he or she has either (a) committed a crime within the territorial jurisdiction of the Court or (b) committed a crime while a national of a state that is within the territorial jurisdiction of the Court.

Territorial Jurisdiction

The territorial jurisdiction of the Court includes the territory, registered vessels, and registered aircraft of states which have either (a) become party to the Rome Statute or (b) accepted the Court's jurisdiction by filing a declaration with the Court. In situations that are referred to the Court by the United Nations Security Council, the territorial jurisdiction is defined by the Security Council, which may be more expansive than the Court's normal territorial jurisdiction. For example, if the Security Council refers a situation that took place in the territory of a state that has both not become party to the Rome Statute and not lodged a declaration with the Court, the Court will still be able to prosecute crimes that occurred within that state.

Personal Jurisdiction

The personal jurisdiction of the Court extends to all natural persons who commit crimes, regardless of where they are located or where the crimes were committed, as long as those individuals are nationals of either (i) states that are party to the Rome Statute or (ii) states that have accepted the Court's jurisdiction by filing a declaration with the Court. As with

territorial jurisdiction, the personal jurisdiction can be expanded by the Security Council if it refers a situation to the Court.

Conclusion

The history of civilization is full of human cruelty. Grave violations of human rights, genocide, and mass killings of civilians, atrocities and outrages upon human dignity included torture, mass rapes, ethnic cleansing, and abuse of prisoners of wars during armed conflicts are all characterized as international crimes. It is recorded that around 1.7 million people were massacred in Cambodia from 1975 to 1979 during the reign of Khmer Rouge. Besides, 30000 disappeared in Argentina's "Dirty War" of the 1970s and 1980s. 750000 were massacred in Uganda and one lakhs Kurds were exterminated in Iraq. Dictators and totalitarian regimes ordered ruthless violations of fundamental human rights. It has been further revealed that the national courts were not being able to act because of the state involvement in the commission of serious international crimes or because of widespread or systematic violence. Therefore, an effective independent criminal justice system is required to promote and maintain international peace. Hence, International Criminal Court (ICC) was established on 02nd June, 2002. It is the world's first permanent, international judicial body capable of bringing perpetrators to justice and providing redress to victims when states are unable or unwilling to do so. It ensures that crimes against humanity and mass atrocities do not occur with impunity. The ICC is a court of last resort. It acts essentially as a safety net when national courts are unable to prosecute, either because the criminal justice system is unequipped or collapsed, or because the perpetrators continue to wield influence over the government.

The ICC has four principal organs: the Presidency, the Judicial Divisions, the Office of the Prosecutor, and the Registry. The President is the most senior judge which hears cases before the Court. The Office of the Prosecutor is headed by the Prosecutor who investigates crimes and initiates proceedings before the Judicial Division. The Registry is headed by the Registrar and is charged with managing all the administrative functions of the ICC, including the headquarters, detention unit, and public defense office. So far jurisdiction of ICC is concerned; individuals can only be prosecuted for crimes that are listed in the Statute like genocide, crimes against humanity, war crimes, and crimes of aggression.

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