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The powers of international criminal court in prosecuting crimes; war crimes, crimes against humanity and genocide

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Abstract
The emergence of International Criminal Court had been a welcome development owning to its contribution to the protection of minorities, children and unarmed citizens during armed conflict. The importance of International Criminal Court cannot be overemphasized owing to the fact that the peace and security of the human race depends on this court. Owing to the excessive importance of protecting human rights the International Criminal Court has been mandated to ensure its enforcements. It will be noted that the International Criminal Court is not a domestic court but an Intergovernmental and International court which sits in The Hague, Netherlands. The International Criminal Court is designed to complement the existing national judicial structure as it prosecutes states as well as individuals for international crimes. However this paper seeks to examine the complementary nature of the International Criminal Court, the role of the Security Council of the United Nations in prosecuting international crimes and the methods of evaluating the proper functioning of International Criminal Court. This paper will hereby suggest the review of international personality and the review of sanctions for disobeying the court's order.

Keywords: Humanity, Genocide, Court, Prosecution, Jurisdiction and Conviction

1. Introduction
The idea of some kind of internationally arbitrated justice system to preserve peace and punish crimes against humanity has become a popular one, spawning the creation of the International Criminal Court (ICC) in The Hague, which was enacted in 1998 and opened in 2002 [1].
International Criminal Court established as a global response to the problem facing humanity was saddled with a lot of responsibilities. Such as powers: These powers includes but not limited to: The power to investigate, the power to prosecute, the power to arrest and the power to punish crimes within the court's jurisdiction.
The international body operates on the principle of complementarity. It can only prosecute when states won't or can't prosecute crimes within the jurisdiction of the court.
Some of the crimes within the jurisdiction of the court include crimes against humanity, war crimes, genocide and aggression.
Global peace and security was really threatened at the historic development of the human race. Battles and wars destroyed a lot of lives and property. Some wars were fought even without obeying the rule of engagement because there was no such strong body to compel obedience to such rules [2]. Crimes against humanity were rampant and even genocides were witnessed in some states. Rwanda genocide was a real example to the great evils of the notion of ethnic cleansing [3]. The Geneva Conventions of 1949, granted protections to soldiers, sailors, prisoners of war, and civilians after the conclusion of World War II but an international court with real criminal jurisdiction was necessary for the maintenance of world peace and security.
However the emergence of the United Nations was seen as a real solution to the problem of world peace and security. Thus the birth of this child called the United Nations was heralded with great pomp and pageantry. The UN Charter gave to the General Assembly the responsibility, among other things, to initiate studies and make recommendations for "promoting international co-operation in the political field and encouraging the progressive development of international law and its codification." The International Law Commission (ILC) is a body of experts named by the UN General Assembly and charged with codification and progressive development of international law. After the Second World War, the General Assembly had asked the Commission to prepare what are known as the 'Nuremberg Principles', a task it completed in 1950, and the 'Code of Crimes Against the Peace and Security of Mankind', a job that took considerably longer time and resources. Much of the work on the draft statute of an international criminal court and the draft code of crimes went on within the Commission in parallel, as if the two tasks were hardly related. The General Assembly also established a committee that was in charge of drafting the statute of international criminal court. Composed of seventeen States, it submitted its report and draft statute in 1952.
In 1989, Trinidad and Tobago introduced a suggestion in the General Assembly for the establishment of a specialized international court to combat drug trafficking. The General Assembly requested that the ILC complete the draft statute.' This draft became the basis for the negotiating text for the treaty of the International Criminal Court ("ICC") that would be approved by 120 nations in Rome in 1998 and subsequently known as the Rome Statute [4].
Thus the International Criminal Court became a reality after many struggles and it was charged with the enormous duties of prosecuting crimes within her jurisdiction. Such crimes includes crime against humanity, genocide, war crimes and others. However this work will examine the power of the

International Criminal Court to prosecute crimes, the power to arrest offenders and above all the complementary nature of the court.

The aim of this work is to present the International Criminal Court as a permanent court with criminal jurisdiction clothed with the power to prosecute crimes under her jurisdiction, the crimes includes war crimes, crimes against humanity, genocide and aggression. In pursuant to the powers given to the court by the Rome Statute the court has the power to investigate crimes, the power to arrest and even the power to punish offenders. It is of essence to note here that both states and individuals are subject of the international Criminal Court.

It will also be important to highlight that one of the objectives of this scholastic work is to elucidate on the complementary nature of the International Criminal court thus the court's power starts when state parties are unwilling or unable to prosecute crimes within the jurisdiction of the court.

And finally this work has the mission of revealing the problems of the International Criminal Court and how it will be solved. One of such problem is that world powers like USA had refused to be a signatory to the Rome statute that created the court and thus it is recommended that the Rome Statute will be reviewed to accommodate states like the United States of America.

This research deals with the history of international criminal prosecution, the pre International Criminal courts, the drafting of the Rome Statute of the International Criminal Court and the principles of its operation, including the scope of its jurisdiction and the procedural regime.

It considers the Court's complementary nature, the subjects of the court, the judges of the court and the role of the prosecutor. It also addresses the problem created by US opposition and it deals with the rights of the accused before the court. However it is limited to the power of the court to prosecute crimes such as war crimes, crimes against humanity and genocide within her jurisdiction, it is also limited to the court's power to investigate crimes within her jurisdiction, the power to arrest and the power to punish the offenders after convictions.

An important literature worthy to be reviewed owing to its contribution to the development of this scholarly work is "Lessons from the Special Court for Sierra Leone in the Fight against Impunity"

[5] This paper discusses the lessons from the Special Court for Sierra Leone and their ramifications for ongoing efforts at combating impunity for heinous crimes across the world. In a broad sense, it also discusses how the international and national political context at the time of establishing the Court, its constitutive statute, and other operational arrangements impacted on its work as a "genuine" model of combating impunity for the crimes that took place in Sierra Leone. It briefly discusses the impact of the Court's verdicts on victims.

Also it will be important for this writer to do a brief review of the book, understanding the International Criminal Court. It defines International Criminal Court as a permanent international court established to investigate, prosecute and try individuals accused of committing the most serious crimes of concern to the international community as a whole, namely the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

It also explained Rome Statute that Rome statute came into existence on 17th July, 1998, a conference of 160 States which established the first treaty-based permanent international criminal court. The treaty adopted during that conference is known as the Rome Statute of the International Criminal Court. Among other things, it sets out the crimes falling within the jurisdiction of the ICC, the rules of procedure and the mechanisms for States to cooperate with the ICC. The countries which have accepted these rules are known as States Parties and are represented in the Assembly of States Parties.

2. Historical development of international criminal court

Sanctity of human life has always been an idea cherished by mankind. Blood is seen as sacred and ancient city states that were governed by natural law and divine law saw it as their responsibility to punish war crimes [6] The Hammurabi code of ancient Babylonian Empire outlined rules that will govern war crimes. Idealists and moralists like Aristotle, Plato and Socrates regarded the protection of lives as sacred. However it is Emperor Constantine the Great of Roman Empire that classified the maltreatment of women and children as crime. Before he won the battle of the [7] Milivian Bridge, women and children were seen as mere chattels that can be easily conquered during war. But his laws made it a crime for women and children to be abused during war era and outside the time of wars. Thus maltreatment of women was seen as a major crime that is punishable with death.

However the first individual who was tried for breaking international criminal rules [8] was Peter Von Hagenbach [9]. Legal historians generally cite the 1474 case of Peter von Hagenbach as the first ever international criminal trial, or the first trial that considered the theoretical concept of what would come to be known as a war crime. "In 1474, while occupying the town of Brisach, the troops of Peter Von Hagenbach pillaged the town and murdered civilians." Von Hagenbach was accused of crimes against the laws of God and humanity and was tried by a tribunal which included judges from Alsace, judges from Switzerland and judges from elsewhere in the Holy Roman Empire.

Two international law scholars, Michael Scharf and William Schabas described Von Hagenbach's trial as a major stepping stone in the history of international law but it was not entirely the only foundation for the development of international criminal jurisdiction [10].

However the "Lieber Instructions" represent the first attempt to codify the laws of war. They were prepared during the American Civil War by Francis Lieber, then a professor of Columbia College in New York, revised by a board of officers and promulgated by President Lincoln. Although they were binding only on the forces of the United States, they correspond to a great extent to the laws and customs of war existing at that time. The "Lieber Instructions" strongly influenced the further codification of the laws of war and the adoption of similar regulations by other states. They formed the origin of the work of an international convention on the laws of war presented to the Brussels Conference in 1874 and stimulated the adoption of the [11] Hague Conventions on land warfare of 1899 and 1907.

The Lieber Code codified 'that branch of the law of nature and nations which is called the law and usages of war on land' regulating 'action between hostile armies' [12] (Art. 40). A succinct compilation of the existing rules and custom, it addressed a wide range of topics. Several core principles of modern international humanitarian law are discernible in the text, albeit with significant differences as to their scope: the

principles of humanity (Humanity, Principle of) and military necessity, the distinction between civilians and combatants, and certain inviolable rules such as the prohibitions of perfidy or torture (Torture, Prohibition of) (see below). Conversely, the Code also included norms that are no longer considered admissible in modern international humanitarian law, for instance giving no quarter to the enemy (Arts 61–63, 66), starvation of non-combatants (Art. 17), or executions of prisoners of war (Art. 59 in fine) [13].

2.1 Tracing the Birth of the International Criminal Court

Gustave Moyiner of Switzerland played a great role in the creation of a permanent international criminal court. He was one of the founders of the International Committee of the Red Cross and a man who believe in world peace. Initially he was against the establishment of a permanent international criminal court because he firmly believed in the decency and commitment of states to adhere to conventions and the laws of war as well as a public and press system guided by moral principles of international solidarity and peace.

[14] The Franco-Prussian War 1870-71 tarnished his convictions and was a turning point in Moynier's writings. Both belligerents were signatories to the Convention, but things went terribly wrong when confusion and ignorance regarding the application of the new rules reigned on the battlefields. French medics refused to treat the enemy and civilians painted the Red Cross on bed sheets at random to protect their homes. The Germans - reacting to the poor behavior of the French - kidnapped French doctors and accused them of espionage. In the course of the war, the press and the public opinion became evermore nationalistic. The Geneva Convention was close to foundering altogether and the only solution according to Moynier was the creation of a strong punitive system in the form of an international tribunal.

The next serious call for an internationalized system of justice came from the drafters of [15] the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War I. Following World War II [16], the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals.

In 1948 [17, 18] the United Nations General Assembly (UN GA) adopted the Convention on the Prevention and Punishment of the Crime of Genocide in which it called for criminals to be tried "by such international penal tribunals as may have jurisdiction" and invited the International Law Commission (ILC) "to study the desirability and possibility of establishing an international judicial organ for the trials of persons charged with genocide." While the International Law Commission drafted such a statute in the early 1950s, the Cold War stymied these efforts and the General Assembly effectively abandoned the effort pending agreement on a definition for the crime of aggression and an international Code of Crimes.

In June 1989, motivated in part by an effort to combat drug trafficking, Trinidad and Tobago resurrected a pre-existing proposal for the establishment of an International Criminal Court and the United Nations General Assembly asked that the International Law Committee to resume its work on drafting a statute. The conflicts in Bosnia-Herzegovina and Croatia as well as in Rwanda in the early 1990s and the mass commission of crimes against humanity, war crimes, and genocide led the UN Security Council to establish two separate temporary ad hoc tribunals to hold individuals accountable for these atrocities, further highlighting the need for a permanent international criminal court.

In 1994, the ILC presented its final draft statute for an ICC to the UN GA and recommended that a conference of plenipotentiaries be convened to negotiate a treaty and enact the Statute. To consider major substantive issues in the draft statute, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995.

After considering the Committee's report [18], the UN GA created the Preparatory Committee on the Establishment of the International Criminal Court to prepare a consolidated draft text. From 1996 to 1998, six sessions of the United Nations Preparatory Committee were held at the United Nations headquarters in New York, in which Non-Governmental Organization's provided input into the discussions and attended meetings under the umbrella of the Non-Governmental Organization Coalition for an International Criminal Court (CICC). In January 1998, the Bureau and coordinators of the Preparatory Committee convened for an Inter-Sessional meeting in Zutphen, the Netherlands to technically consolidate and restructure the draft articles into a draft.

Based on the Preparatory Committee's draft, the UNGA decided to convene the United Nations Conference of Plenipotentiaries on the Establishment of an ICC at its fifty-second session to "finalize and adopt a convention on the establishment" of an ICC. The "Rome Conference [20]" took place from 15 June to 17 July 1998 in Rome, Italy, with 160 countries participating in the negotiations and the NGO Coalition closely monitoring these discussions, distributing information worldwide on developments, and facilitating the participation and parallel activities of more than 200 NGOs. At the end of five weeks of intense negotiations, 120 nations voted in favor of the adoption of the Rome Statute of the ICC, with seven nations voting against the treaty (including the United States, Israel, China, Iraq and Qatar) and 21 states abstaining.

The Preparatory Commission (PrepCom) was charged with completing the establishment and smooth functioning of the Court by negotiating complementary documents, including the Rules of Procedure and Evidence, the Elements of Crimes, the Relationship Agreement between the Court and the United Nations, the Financial Regulations, the Agreement on the Privileges and Immunities of the Court.

On 11 April 2002, the 60th ratification necessary to trigger the entry into force of the Rome Statute was deposited by several states in conjunction. The treaty entered into force on 1 July 2002.

Following the completion of the PrepCom's mandate and the entry into force, the Assembly of States Parties (ASP) met for the first time in September 2002 [21].

3. The Ad Hoc International Criminal Tribunals

3.1 The International Criminal Court for Former Yugoslavia

[22] During the Bosnian war in the early 1990s ethnic cleansing, genocide and other serious crimes were committed on all sides. [23] In May, 1993, the UN Security Council established the International Criminal Tribunal for Yugoslavia (ICTY) to try those responsible for violations of international humanitarian law in the territory of the former Yugoslavia since 1991. The purpose of the tribunal was to bring justice to the victims of the conflict and deter future leaders from committing similar

atrocities. The ICTY has also taken on cases from the Kosovo crisis of the late 1990s.

The ICTY was the UN's first special tribunal and came under intense scrutiny. It has been criticized for being politicized, biased, unfair and very costly. Lengthy trials and controversial decisions have led to a growing loss of faith in the tribunal, and critics question the tribunal's ability to ease tensions and promote reconciliation in the Balkans. Despite its shortfalls, the tribunal has however been instrumental in the creation of the first permanent international criminal court [24].

The key objective of the ICTY is to try those individuals most responsible for appalling acts such as genocide, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions on political-racial and religious grounds-and other inhumane acts. The ICTY has jurisdiction over natural persons extended to the territory of the former Socialist Federal Republic of Yugoslavia, including land surface, airspace and territorial waters beginning on 1 January 1991. The ICTY has primacy over national courts and has convicted 160 individuals to date [25].

Jurisdiction

In accordance to this resolution, the tribunal has multiple objectives. The main goals are: to judge persons responsible for serious violations of the humanitarian laws, to bring justice to the victims, to prevent new violations of the humanitarian laws, to hinder revisionism by seeking and imposing the judiciary truth, to help build back peace and reconciliation in former Yugoslavia.

Its jurisdictions read as follows:

Temporal jurisdiction: Crimes committed since 1991.

Territorial jurisdiction: Crimes committed in the territory of former Yugoslavia.

Personal jurisdiction: The tribunal has jurisdiction over physical persons excluding moral persons.

Competence: the ICTY has competence to judge four types of crimes, the serious violations of [26] the 1949 Geneva Conventions, violations of the laws and customs of war, crimes against humanity and genocide.

Remarkable is the fact that the ICTY doesn't hold the monopoly of prosecution and sentencing violations of the humanitarian laws committed in former Yugoslavia, it shares this competence with national jurisdictions. Though the ICTY has priority on these latter and can, in the interest of justice, ask a national jurisdiction to desist at any step of the procedure.

From the beginning of its activities, the Tribunal has indicted 161 persons for serious violations of international humanitarian law committed in the territory of the former Yugoslavia.

By March 2012, 126 procedures have been concluded: 64 persons have been found guilty and sentenced, 13 acquitted, 36 had their indictments withdrawn or are deceased and 13 procedures have been referred to a national jurisdiction. 35 criminal proceedings are still ongoing. In 2011, after many years on the run, the last remaining fugitives [27] Ratko Mladić and Goran Hadžić, were arrested and transferred to The Hague, thereby ensuring that none of the 161 individuals indicted by the Tribunal remain at large [28].

The ICTY is a bold experiment. It tracks to some degree the earlier Nuremberg and Tokyo World War II war crime trials but it goes far beyond those precedents in important ways. It is performing three functions: adjudicating international crimes, developing international humanitarian law, and memorializing important, albeit horrible, events of modern history. Except for Nuremberg and Tokyo and subsequent isolated war crimes prosecutions in national courts of figures such as [29] Adolph Eichmann and Klaus Barbie, the Tribunal has very little case law to rely upon. Its procedures are a hybrid of common law and continental practice and its judges speak a dozen native languages more fluently than the official French and English of the Tribunal [30].

Judges

There are nine ICTY trial judges who sit in panels of three, usually five days a week for four to seven hours a day. Trials have lasted between two weeks and two years, with one of the judges, usually the senior judge on the panel, acting as presiding officer. This regime produces problems when one judge is absent for sickness or urgent personal matters. The Rules are quite rigid. A judge may not be absent from trial for more than three days in a row without defense counsel's consent once the trial has begun, no matter the reason. Some chambers have obtained counsels' consent to treat a regular trial day as a deposition when one of those members of the panel is absent for reasons other than sickness or emergency.

At the ICTY the sixteen judges are elected for four-year terms by the General Assembly of the UN, based on the nomination of member countries. The ICTY Statute says only that candidates must be qualified to serve on the highest judicial level in their own countries. The new ICC law is somewhat more specific, requiring a proportioned mix of judges expert in criminal procedure and international law. Judges come to the Tribunal at all ages (a few in fragile health) and with widely different careers as politicians, scholars, diplomats, and practicing lawyers or judges. They are assigned to trial or appeals work by the President of the Tribunal, largely based on vacancies.

3.2 International Criminal Tribunal for Rwanda

In the spring of 1994 more than 500,000 people were killed in Rwanda in one of the worst cases of genocide in history. The slaughter began on 6 April 1994, only a few hours after the plane bringing the Presidents of Rwanda and Burundi back from peace negotiations in Tanzania was shot down as it approached Kigali Airport.

It would seem that the genocide had been planned long in advance and that the only thing needed was the spark that would set it off. For months, [31] Radio-Télévision Libre des Mille Collines (RTMC) had been spreading violent and racist propaganda on a daily basis fomenting hatred and urging its listeners to exterminate the Tutsis, whom it referred to as Inyenzi or "cockroaches".

According to one source:

> "*The genocide had been planned and implemented with meticulous care. Working from prepared lists, an unknown and unknowable number of people, often armed with machetes, nail-studded clubs or grenades, methodically murdered those named on the lists. Virtually every segment of society participated: doctors, nurses, teachers, priests, nuns, businessmen, government officials of every rank, even children*".

In Rwanda, a person's ethnic identity became his or her death warrant or a guarantee of survival. The crusade was led by the Rwandan armed forces and the [32] Interahamwe (those who

stand together) and Impuzamugambi (those who fight together) militias. Its main targets were Tutsis and moderate Hutus. Surprisingly, these killings took place while a contingent of UN peacekeeping forces - the United Nations Assistance Mission to Rwanda (UNAMIR) - was in the country trying to facilitate the peace negotiations between the Hutu government of the time and the Tutsi-dominated Rwanda Patriotic Front (RPF). The International Criminal Tribunal for Rwanda (hereinafter referred to also as the Rwanda Tribunal or simply as the Tribunal) was set up to prosecute those involved in instigating, leading and perpetrating the genocide.

[33] The International Criminal Tribunal for Rwanda is not the first of its kind. In fact, it is almost a branch of the International Criminal Tribunal for the Former Yugoslavia, established in 1993. The two Tribunals share certain facilities and officers; in particular, they have the same Chief Prosecutor and Appeals Chamber. That is why some commentators argue that the Rwanda Tribunal was grafted onto the Yugoslavia Tribunal.

Further examples of tribunals such as the Rwanda Tribunal can be pointed to in modern times. They include the International Military Tribunal in Nuremberg and the International Military Tribunal for the Far East in Tokyo, both of which were set up in 1945 to prosecute and punish major Axis war criminals in Europe and Japan. The main difference between those earlier tribunals and the recent ones is that while after the Second World War it was the victors who set the rules for punishing the vanquished, today it is the international community as a whole which is seeking to bring perpetrators of genocide and other crimes against humanity to justice. In doing so, the international community, acting through the United Nations, has taken into account the development of both international law and international humanitarian law since 1945. That is why, for example, the Statute of the Rwanda Tribunal takes note of both the Geneva Conventions of 1949 and their 1977 Additional Protocol II.

The International Criminal Tribunal for Rwanda was established by the [34] UN Security Council Resolution 955 of 8 November 1994. The purpose was to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighbouring States between 1 January and 31 December 1994. At the same time, the Security Council adopted the Statute of the Tribunal and requested the UN Secretary-General to make political arrangements for its effective functioning.

On 22 February 1995, [35] the Security Council passed resolution 977 designating the town of Arusha in the United Republic of Tanzania as the seat of the Tribunal. An agreement between the United Nations and Tanzania concerning the Tribunal's headquarters was signed on 31 August 1995.

The Tribunal, which has a relatively wide jurisdiction, is supposed to prosecute persons responsible for genocide and other serious violations of international humanitarian law. The Statute of the Tribunal more or less follows the [36] Genocide Convention of 1948 in defining genocide as any act committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group. Such acts include: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures to prevent births within the group; and forcibly transferring children of the group to another group. According to the Statute, genocide itself, conspiracy to commit genocide, direct and public incitement to commit genocide, attempts to commit genocide and complicity in genocide are all punishable.

In addition, the Tribunal has powers to prosecute persons charged with crimes against humanity, which include: murder; extermination; enslavement; deportation; imprisonment; torture; rape; persecutions on political, racial or religious grounds; and other inhumane acts Since such crimes can be committed in various circumstances, the Statute specifies that they only fall within the purview of the Tribunal when committed as part of a widespread or systematic attack against any civilian population on national, political, ethnic, racial or religious grounds.

Opening a completely new area for tribunals of this nature, [37] Article 4 of the Statute empowers the Tribunal to prosecute persons who commit or order to be committed serious violations of [38] Article 3 common to the 1949 Geneva Conventions for the protection of war victims and of 1977 Additional Protocol II relating to the protection of victims of non-international armed conflicts. Such violations include: violence to the life, health and physical or mental well-being of persons, in particular murder and cruel treatment such as torture, mutilation or any form of corporal punishment; collective punishments; the taking of hostages; acts of terrorism; outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault; pillage; the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples; and threats to commit any of the foregoing acts.

To date the Tribunal has issued several indictments and arrest warrants for persons suspected of having been involved in masterminding the genocide in Rwanda in 1994. Some of these persons have been arrested in various States and brought to Arusha, where three trials are under way. First of all there is the case of [39] Clement Kayishema, the former Prefect (Governor) of Kibuye, who is facing 25 charges related to massacres committed at various places. He is being tried jointly with [40] Obed Ruzindana, a businessman accused of having organized massacres in western Rwanda. Then there is the case of [41] Georges Rutaganda, from Gitarama, a senior official in the party of assassinated President [42] Juvenal Habyarimana. As Vice-President of the Interahamwe militia, Rutaganda is alleged to have helped arm the militia in Kigali, placed road-blocks and ordered the militia to kill Tutsis. He is also alleged to be a shareholder in Radio Télévision Libre des Mille Collines, which made regular broadcasts inciting its listeners to genocide. Finally, there is the case of [43] Jean-Paul Akayesu, the former Mayor of Taba, near Gitarama, who is charged on 12 counts, including genocide and crimes against humanity.

Also indicted by the Tribunal is [44] Colonel Theoneste Bagosora, who appeared before the Tribunal on 23 January 1997, charged with genocide and crimes against humanity and on two counts of violations of Article 3 common to the Geneva Conventions.

He pleaded not guilty on all counts. According to one report, Bagosora is the "biggest fish" that the Tribunal has so far managed to catch [45].

Mechanism for the International Criminal Court of Rwanda

With the Resolution 1966 (2010) the Security Council has established the "International Residual Mechanism for Criminal Tribunals", latest step undertaken in the framework of the completion strategy.

The "Mechanism" will be composed of two branches, one mandated to complete the work of the ICTR, the other one charged of finalizing the work of the ICTY. In particular, the former branch will commence functioning on 1 July 2012 and will seat in Arusha. In its first stages "the Mechanism" will partly overlap with the work of the ICTR and it will then continue to operate until it deems it appropriate. Its progress will be reviewed in 2016 and every two years thereafter.

The Mechanism will perform a limited number of functions:

- It will have jurisdiction to prosecute and try the remaining fugitives arrested on or after 1 July 2012;
- It will have jurisdiction to conduct appellate proceedings for which the notice of appeal against the sentence of the ICTR is filed on or after 1 July 2012;
- It will perform retrials disposed by the ICTR Appeals Chamber six months or less before 1 July 2012 or ordered by the Mechanism Appeals Chamber;
- When an application for review of a final judgment based on the discovery of a new fact unknown at the time of the trial is filed after 1 July 2012, the Mechanism will conduct the review proceeding;
- It will carry out investigations and trials over contempt of the court and false testimony committed before the ICTR after the 1 July 2012 or before the Mechanism;
- It will undertake the necessary measures aimed at the protection of victims and witnesses;
- The Mechanism will designate the States where its sentences and the sentences adopted by the ICTR after 1 July 2012 will be enforced, and it will supervise their enforcement;
- It will assist national courts, prosecutors and defence lawyers in relation to domestic proceedings related to violations of international humanitarian law in the territories of Rwanda and of the neighbouring States;
- It will preserve the ICTR archives;
- It will proceed to its own organization [46].

3.3 Special Court for Sierra Leone (SCSL)

[47] After 11-years of brutal conflict in which at least 50,000 people were estimated to have been killed and limbs of thousands of civilians hacked off, the Sierra Leone government wrote a letter to the United Nations Secretary-General requesting assistance from the UN and the rest of the international community in establishing a Special Court for Sierra Leone. In 2002, an agreement was signed between the Sierra Leone Government and the United Nations to establish a Special Court with a mandate to bring to justice "those who bear the greatest responsibility" for the atrocities that took place in the territory of Sierra Leone since 30th November, 1996. It was certainly a novelty - the first criminal tribunal based on an agreement between the UN and a government of a member state. The Special Court was seen as an improvement in terms of implementing a narrow focus on "those bearing the greatest responsibility", which in turn would allow for a more limited and efficient approach.

The Court had a number of limitations, though: First, it could not try crimes that occurred before November 30, 19961, and only those who "bear the greatest responsibility" for the atrocities could be tried. I propose that those limitations, even if justified in light of a genuine need to respond to the pitfalls of the ICTY and ICTR, somewhat undermined Court's competence to combat impunity for the crimes that took place in Sierra Leone.

The Proceedings

In March 2003, the Prosecutor of the Special Court for Sierra Leone handed down the first set of indictments, and included the leaders of all three major factions in the war - the Revolutionary United Front ([48] Foday Sankoh and Issa Sesay), the Armed Forces Revolutionary Council (Johnny Paul Koroma), and the Civil Defence Forces (Sam Hinga Norman). This batch of indictments also included the indictment of Charles Taylor, although it was kept under seal until June 4, 2004. Sam Bockarie and Foday Sankoh died before their trials began, while Chief Sam Hinga Norman died in the course of his trial. Charles Taylor was finally transferred into the custody of the Court in 2006. Eight accused – including two former leaders of the CDF, three former leaders of the RUF, and three former leaders of the AFRC were ultimately tried and convicted by the court in Freetown. They were sentenced to prison terms ranging from 15 to 52 years. They are currently serving their prison terms in Rwanda.

The Landmark Ruling and its Impact on the Development of International Criminal Court

Through a number of landmark rulings, the Special Court's proceedings contributed to the development of the jurisprudence of international criminal justice. On May 31, 2004, for instance, the Appeals Chamber held that the recruitment or use of children under the age of 15 was a crime under international law since 1996, and that defendants are subject to individual criminal responsibility for this offence during the entire period covered by the court's jurisdiction. This ruling certainly helped promote justice for the thousands of children who were recruited by the various fighting forces.

Furthermore, [49] on May 31 2004, the Appeals Chamber held that heads of state immunity does not apply to the prosecution of international crimes, and unanimously rejected Charles Taylor's preliminary motion challenging the legality of his indictment on the grounds that he was the President of Liberia at the time it was issued. The significance of this ruling is huge. It means that no one – including national leaders who perpetrate or order the commission of crimes - will be legitimately shielded from facing justice on the basis of their political power.

The Appeals Chamber also held that the amnesty granted under the Lomé Peace Agreement could not bar the Court from prosecuting crimes of international nature before July 1999. It ruled that the amnesty granted in the [50] Lome Peace Accord applied only to national criminal jurisdiction and not international crimes. This essentially paved the way for the Special Court's trials. In essence, while countries emerging from conflict can grant amnesty, such amnesty provisions cannot preclude international criminal justice system from holding perpetrators accountable.

During Taylor's trial, for instance, the Court ruled that raping of women and girls in public was part of a campaign aimed at

terrorizing the civilian population. Although there had been many previous judgments in international war crimes tribunals in which the accused were convicted of rape, sexual slavery, and other forms of sexual violence, all were when the accused physically perpetrated the rape or was present, ordering, or ignoring the crimes. According to [51] Kelly Askin, "The conviction of Taylor recognizes that civilian or military leaders who are far from the battlefield but who support and encourage sexual violence, or make no attempt to prevent or punish it, can be held responsible for sex crimes" [52].

Charles Taylor and the Special Court for Sierra Leone

Charles Taylor, the former president of Liberia, was tried and convicted in April 2012 on 11 charges arising from war crimes, crimes against humanity, and other serious violations of international humanitarian law, committed from [53] November 30, 1996 to January 18, 2002 during the course of Sierra Leone's civil war. He was subsequently sentenced to 50 years in jail.

The 11 specific counts against Taylor were:

- Five counts of war crimes: terrorizing civilians, murder, outrages on personal dignity, cruel treatment, looting.
- Five counts of crimes against humanity: murder, rape, sexual slavery, mutilating and beating, enslavement
- One count of other serious violations of international humanitarian law: recruiting and using child soldiers.

The Conviction

[54] On April 26, 2012 Special Court for Sierra Leone (SCSL) judges ruled that Taylor was guilty of aiding and abetting the RUF in all 11 charges, including murder, rape, and pillage. They also convicted the former Liberian president of planning, with former Revolutionary United Front (RUF) commander Sam Bockarie, the attacks on Kono, Makeni, and Freetown, which took place in late 1998 and early 1999.

The judges rejected the defense argument that Taylor was a peacemaker. They noted that while Taylor may have publicly supported the peace process in the region, he privately undermined the negotiations by continuing to support the RUF through financial, operational, and moral support. Notably, the judges did not accept the prosecution claim that Taylor had effective command and control over the RUF rebels, finding him only responsible for aiding and abetting their activities as well as planning attacks.

The Sentencing

The office of the Prosecutor of the SCSL, originally recommended that Taylor serve an 80 year jail sentence. According to the prosecution, that sentence would be commensurate with the "gravity of crimes and the specific conduct of the accused."

The defense argued against the high prison term and provided four reasons why Taylor should benefit from mitigating circumstances: that the period of offending was not an extended period, save for use of child soldiers and enslavement that cover a more prolonged period in the indictment Mr. Taylor's role in the Sierra Leone peace process; his voluntary departure from the Liberian presidency in 2003; and his age, being 64 years already at the time of his conviction.

On May 30, 2012, judges at the SCSL sentenced Taylor to a jail term of 50 years after he was convicted of aiding and abetting the commission of serious crimes in Sierra Leone and the planning of attacks on various towns in late 1998 and January 1999.

The Legal Issues on Appeal

On July 19, 2012 prosecution and defense teams filed notices of appeal, raising several grounds on which they will appeal the findings of the trial chamber, in both the decision on Taylor's conviction and his sentence.

The Prosecution

Prosecutors raised four grounds on which they appealed the findings of the trial chamber judges. These include the trial chamber's failure to find Taylor liable for ordering and instigating the commission of crimes, the chamber's failure to find him liable for crimes committed in certain locations in five districts on the ground that they fell outside the scope of the indictment, and then chamber's decision to sentence the former Liberian President to a single term of 50 years. Prosecutors argue that the judges in making these findings "erred" in fact and in law.

The Defense

Defense lawyers for Taylor raised 42 grounds on which they say the trial chamber "erred" in fact and in law as they convicted and sentenced Taylor in 2012. Included in the numerous grounds of appeal are findings of the judges that Taylor was involved in planning attacks on Kono, Makeni, and Freetown in late 1998 and early 1999, the chamber's finding that he assisted the commission of crimes by providing medical assistance to rebel forces in Sierra Leone, that he assisted the commission of crimes by providing a guesthouse for RUF rebels in Liberia, that the jail term of 50 years that Taylor was sentenced to is "manifestly unreasonable," that the judges "erred" in their failure to consider Taylor's expression of sympathy as grounds of mitigation, that there were irregularities in the proceedings based on the statement made by the Alternate Judge El-Hadj Malick So that there had been no deliberations among the judges, and that Justice Julia Sebutinde's participation in the proceedings after she had already become a judge of the International Court of Justice was irregular [55].

3.4 International Military Tribunal at Nuremberg

[56] On 13 January 1942, representatives of nine governments exiled in Great Britain and whose countries were under Nazi occupation met in London for « an allied conference on the punishment of war crimes. The idea of an international trial to punish those responsible for crimes committed under the Nazi regime, no matter the degree of responsibility of the perpetrators, began to take form. On 17 December 1942, for the first time, the extermination of the Jews was brought up and the governments concerned reaffirmed their resolve to punish those who were found guilty within the shortest possible time. However, at that stage in the process, no precise details were formulated concerning the nature or means of such punishment.

On 30th October, 1943, a War Crimes Commission was set up in London to collect and classify information on the crimes and those responsible for extermination. At the same time the Allies drafted the Moscow Declaration in which reference was made to two types of criminals: those who had committed crimes in one sole location and those whose offenses had

occurred in several different countries. The declaration stipulated that the latter would be punished by a joint decision of the Allied governments.

[57] On 28 November to 2 December 1943 a conference was held in Teheran, where Roosevelt, Churchill and Stalin met each other for the first time. War crimes were not listed on the conference agenda, but a dinner table discussion between the three statesmen took place on this subject. Stalin proposed mass execution for all German officers. Churchill was an adherent to the idea of summary execution but, nevertheless, rejected the suggestion of mass execution. The leaders of the American delegation leaned more towards executions after a trial, but their position was however, not unanimous.

At the Yalta Conference which was held from 4-11 February 1945, the question concerning the punishment of war criminals was brought up. Churchill again proposed summary execution of the high ranking Nazis after properly establishing their identity. Roosevelt's successor, Harry S. Truman adopted an unambiguous position: he refused to agree to summary executions.

As the war came to an end, negotiations came to a head [58]. On 2 May 1945, the American Supreme Court judge, Robert Jackson, was nominated Chief Prosecutor by President Truman and given the responsibility to prepare the trial. The Declaration of Defeat on 5 June 1945, concerning the assumption of complete authority with respect to Germany by the Allied Powers, made mention of bringing criminals to justice without delay. However, at that point in time, it had not yet been agreed what approach the Tribunal would adopt. On 20 June 1945, the American delegation arrived in London intent on negotiating with their British allies an agreement which would allow the trial to get underway. Two major questions were on the agenda: the number of trials and the content of the bill of indictment. The American delegation preferred a trial centred on the [59] "Nazi conspiracy", meaning that the accent would be on the crime of aggression with a limited number of defendants and with limited, but decisive proof, as well as on the indictment of certain organizations. The British wanted a quick trial to be concluded in less than two weeks.

Negotiations with the French and Soviet delegations proved to be more complicated. The USSR immediately expressed its disagreement over the procedure and the nature of the crimes. The French, just like the Soviets, wished to put the accent on war crimes and the suffering endured by the people, and not on the "crime against peace" as put forward by the Americans.

On 2 August 1945, the American proposition was accepted by Stalin during the Potsdam Conference. It was agreed that the indictment would include the issue of aggression. The headquarters of the Tribunal was fixed as being in Berlin where the opening ceremony was held on 18 October 1945. However the trial was to be held in Nuremberg following the refusal of the Americans to allow it to be held in a city occupied by the USSR. Moreover, for a symbolic reason, the city of Nuremberg was a privileged location. The city had been host to the Annual Congresses of the Nazi party and it was here that the "Nuremberg Laws" were promulgated in 1935 with texts which fuelled the racist foundation of the Reich. A large Chamber of Justice having suffered very little war damage and located next to a large prison provided ideal conditions.

On 8 August 1945, delegation heads from the United States, Great Britain, France and the USSR signed the London Agreement of 8 August 1945 (Nuremberg Charter) and the Charter of the International Military Tribunal, as an integral part of this Accord [60].

A small summary of the proceedings of the International Military Tribunal at Nuremberg

[61] On 14 November 1945, the proceedings of the International Military Tribunal at Nürnberg (Nuremberg) were opened. The twenty-four accused, whose number was later reduced to twenty-two by disease and death, among the top officials of the National Socialist Party, the top leadership of the armed forces and of the state administration of the defeated German state, were confronted with three classes of accusations:

Crimes against peace

War crimes in a more restricted sense, e.g., violations of the laws and customs of war.

Crimes against humanity

Nine months later, twelve of the defendants were indeed condemned to death on the basis of two or more of the charges, three were set free, and the remainder was sentenced to prison terms of varying duration. Controversy was aroused among jurists and the general public alike, above all in regard to the validity and treatment of points (1) and (3).

For the epoch-making International Military Tribunal at Nürnberg, which lasted for nine months, members of the Tribunal were selected from among the four large victor nations: Britain, France, the U.S.A., and the USSR.

On the side of the prosecution,

Main Prosecutor for the U.S. was Justice Robert H. Jackson (who was also Chief of Counsel);

For Britain, State Attorney General Sir Hartley Shawcross;

For France, Francois de Menthon, Auguste Champetier de Ribes;

For the USSR, General R.A. Rudenko.

On the side of the Tribunal sat:

Mr. Francis Biddle, member for the U.S., and his alternate, judge John J. Parker;

M. le Professeur Donnedieu de Vabres, member for France, and his alternate, M. le Conseiller Falco;

Major-General I.T. Nikitchenko, member for the USSR, and his alternate, Lieutenant-Colonel L.T. Volchkov;

Sir Geoffrey Lawrence (now Lord Oaksey), member for the United Kingdom, and his alternate, Sir William Norman Birkett (now Lord Justice).

[62] October 14, 1945 British representative Sir Geoffrey Lawrence is elected President of the International Military Tribunal (IMT). The mechanical aspect of the proceedings was impressive by itself. The trial was conducted in four languages, involved the calling of thirty-three witnesses in open court for the Prosecution, sixty-one for the Defense, a further 143 for the Defense via written answers, and some thousands of others giving evidence by affidavit for Defense and Prosecution.

4. The approach of international criminal court in the enforcement of crimes against humanity, war crimes and genocide.

4.1. Sources of the Power of International Criminal Court

Part I Establishment of the Court

Article 1: The Court

[63] An International Criminal Court (the Court) is hereby

established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.

Article 2: Relationship of the Court with the United Nations

[64] The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf.

Article 3: Seat of the Court

1. [65] The seat of the Court shall be established at The Hague in the Netherlands ('the host State').
2. The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties and thereafter concluded by the President of the Court on its behalf.
3. The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

Article 4 Legal status and powers of the Court

1. [66] The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes.
2. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State

4.2 Crimes under the jurisdiction of International Criminal Court is contained in the Rome statute

[67] Rome statute which established the court also listed and defined crimes under the jurisdiction of the International Criminal Court.

Herein is the provision of Article 5 of Rome Statute.

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

a) The crime of genocide;
b) Crimes against humanity;
c) War crimes;
d) The crime of aggression.

The concept of 'international crimes' has been around for centuries. They were generally considered to be offences whose repression compelled some international dimension. Piracy, for example, was committed on the high seas. This feature of the crime necessitated special jurisdictional rules as well as cooperation between States. Similar requirements obtained with respect to the slave trade, trafficking in women and children, trafficking in narcotic drugs, hijacking, terrorism and money-laundering. It was indeed this sort of crime that inspired Trinidad and Tobago, in 1989, to reactivate the issue of an international criminal court within the General Assembly of the United Nations. Crimes of this type are already addressed in a rather sophisticated scheme of international treaties, and for this reason the drafters of the Rome Statute referred to them as 'treaty crimes'.

The crimes over which the International Criminal Court has jurisdiction are 'international' not so much because international cooperation is needed for their repression, although this is also true, but because their heinous nature elevates them to a level where they are of 'concern' to the international community. These crimes are somewhat more recent in origin than many of the so-called 'treaty crimes', in that their recognition and subsequent development is closely associated with the human rights movement that arose subsequent to World War II. They dictate prosecution because humanity as a whole is the victim. Moreover, humanity as a whole is entitled, indeed required, to prosecute them for essentially the same reasons as we now say that humanity as a whole is concerned by violations of human rights that were once considered to lie within the exclusive prerogatives of State sovereignty [68].

The Power to Prosecute

The International Criminal Court (ICC) investigates and, where warranted, tries individuals charged with the gravest crimes of concern to the international community: genocide, war crimes and crimes against humanity.

Court aims to hold those responsible accountable for their crimes and to help prevent these crimes from happening again [69].

The International Criminal Court will also have jurisdiction over nationals of a State party who are accused of a crime, in accordance with Article 12(2) (b). Again, the Court can also prosecute nationals of non-party States that accept its jurisdiction on an ad hoc basis by virtue of a declaration, or pursuant to a decision of the Security Council. Creating jurisdiction based on the nationality of the offender is the least controversial form of jurisdiction and was the absolute minimum proposed by some States at the Rome Conference. Cases may arise where the concept of nationality has to be considered by the Court. In accordance with general principles of public international law, the Court should look at whether a person's links with a given State are genuine and substantial, rather than it being governed by some formal and perhaps even fraudulent grant of citizenship.

Echoing provisions found in the Nuremberg Charter and the 1948 Genocide Convention, the Statute declares that rules in either national or inter-national law that create immunities or otherwise shelter individuals from criminal prosecution are of no effect before the Court. Traditionally, immunities have taken two main forms: first, some States, through their constitutions or ordinary legislation, provide that their own heads of State and in some cases other government officials or elected representatives are immune from prosecution; secondly, under both customary international law and international treaties, incumbent heads of State, foreign ministers and diplomats cannot be prosecuted by the courts of other States. Some States have had to consider constitutional amendments in order to eliminate such special regimes and thereby make their legislation consistent with the Statute. In its 2002 ruling in the Arrest Warrant case, the International Court of Justice recognized that an incumbent or former minister of foreign affairs would not have immunity before an international tribunal like the International Criminal Court, where it has jurisdiction. However, the Court did not consider that Article 27 of the Statute provided it with a basis for

concluding that incumbent heads of State and similar officials, such as foreign ministers, were not protected by traditional immunities, as a matter of customary international law.

There is an important practical exception, however, that can serve to shield certain classes of persons from prosecution. The Court is prohibited, pursuant to Article 98(1), from proceeding with a request for surrender or assistance if this would require a requested State to act inconsistently with its obligations under international law as concerns a third State, unless the latter consents. Diplomatic immunity falls into such a category. This means that, while a State party to the Statute cannot shelter its own head of State or foreign minister from prosecution by the International Criminal Court, the Court cannot request the State to cooperate in surrender or otherwise with respect to a third State. Nothing prevents the State party from doing this if it so wishes, and once the head of State was taken into the actual custody of the Court, he or she would be treated like any other defendant. Similarly, the Court is also prohibited from proceeding in a request for surrender that would require a State party to act inconsistently with certain international agreements reached with a third State [70].

Rights of the Suspect

Presumption of innocence

The presumption of innocence, recognized in Article 66 of the Statute, imposes the burden upon the prosecution to prove guilt beyond any reasonable doubt, a specialized application in criminal law of a general rule common to most forms of litigation, namely, that the plaintiff has the burden of proof. But the presumption of innocence has other manifestations, for example in the right of an accused person to interim release pending trial, subject to exceptional circumstances in which preventive detention may be ordered, the right of the accused person to be detained separately from those who have been convicted, and the right of the accused to remain silent during the investigation and during trial. Several of the rules that reflect the presumption of innocence are incorporated within the Statute. For example, during an investigation, there is a right '[to remain silent, without such silence being a consideration in the determination of guilt or innocence'; there is a right to interim release; and there are grounds for appeal which are wider in scope for the defence than for the prosecution. Nevertheless, it was also felt necessary to affirm the principle generally and explicitly.

The European Court of Human Rights has defined the presumption of innocence as follows:

"It requires, inter alia, that when carrying out their duties, the members of a court should not start with the preconceived idea that the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will be made against him, so that he may prepare and present his defence accordingly, and to adduce evidence sufficient to convict him [71].

Suspects Are Presumed Innocent.

[72] They are present in the court room during the trial, and they have a right to a public, fair and impartial hearing of their case. To this end, a series of guarantees are set out in the Court's legal documents, including the following rights, to mention but a few:

- To be defended by the counsel (lawyer) of their choice, present evidence and witnesses of their own and to use a language which they fully understand and speak;
- to be informed in detail of the charges in a language which they fully understand and speak;
- to have adequate time and facilities for the preparation of the defence and to communicate freely and in confidence with counsel;
- to be tried without undue delay;
- not to be compelled to testify or to confess guilt and to remain silent, without such silence being a consideration in the determination of guilt or innocence;
- To have the Prosecution disclose to the defence evidence in its possession or control which it believes shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of the Prosecution's evidence. Suspects have the right to legal assistance in any case where the interests of justices require and, if the suspect does not have the means to pay for it, to legal assistance assigned by the Court.

The Trial

[73] 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.

What happens if the accused makes an admission of guilt? 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.

Conducting the Trial

[74] 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 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.

Presentation of Evidence

[75] 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 fair and impartial trial.

Their views and concerns may be presented by their legal representatives.

In a judgment rendered on 11th July, 2008, the Appeals Chamber granted victims the right to lead evidence pertaining to the guilt or innocence of the accused and to challenge the admissibility or relevance of evidence, although this right lies primarily with the parties, namely the Prosecution and the Defence. This right is subject to stringent conditions, namely proving that the victims have a personal interest in doing so, and to the request's consistency with the rights of the defence and the requirements of a fair trial.

Victims must also comply with disclosure obligations, notify the request to the parties, and comply with the Court's orders on the protection of certain persons. Lastly, the appropriateness of the victims' request is subject to the judges' assessment.

Judgment and Sentence

Once the parties have presented their evidence, the Prosecution and the Defence are invited to make their closing statements. The Defence always has the opportunity to speak last. 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. After hearing the victims and the witnesses called to testify by the Prosecution and the Defence and considering the evidence, the judges decide whether the accused person is guilty or not guilty. 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.

The judges may impose a prison sentence, to which may be added after or forfeiture of the proceeds, property and assets derived directly or indirectly from the crime committed. The Court cannot impose a death sentence. The maximum sentence is 30years. However, in extreme cases, the Court may impose a term of life imprisonment. Convicted persons serve their prison sentences in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept convicted persons.

The conditions of imprisonment are governed by the laws of the State of enforcement and must be consistent with widely accepted international treaty standards governing the treatment of prisoners. Such conditions may not be more or less favourable than those available to prisoners convicted of similar offences in the State of enforcement.

Appeals and Revision

[76] 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 factor 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 this proportion between the sentence and the crime.

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

Unless otherwise ordered by the Trial Chamber, a convicted person remains in custody pending an appeal. However, in general, when a convicted person's time in custody exceeds the sentence of imprisonment imposed, the person is released. In addition, in the case of an acquittal, the accused is released immediately unless there are exceptional circumstances.

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

I. new and important evidence has been discovered;
II. it has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified;
III. 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 [77].

The Power to Arrest

[78] 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.

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

I. the name of the person;
II. a description of the crimes the person is believed to have committed;
III. a concise summary of the facts(the acts alleged to be crimes);
IV. a summary of the evidence against the person;
V. The reasons why the Prosecution believes that it is necessary to arrest the person.

The judges will issue a warrant of arrest if it appears necessary to ensure that the person will actually appear at trial, that he or she will not obstruct or endanger the investigation or the Court's proceedings, or to prevent the person from continuing to commit crimes.

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.

The Court does not have its own police force. Accordingly, it relies on State co-operation, which is essential to the arrest and surrender of suspects.

According to the Rome Statute, States parties shall cooperate fully with the Court in its investigation and prosecution of

crimes within the jurisdiction of the Court.

Execution of the Warrant of Arrest

[79] 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 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.

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.

Conditions for Detention in the Detention Centre of Hague, Netherlands.

[80] 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, 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. Each 10m2cell is designed to hold one person only. 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 [81].

However there are dictatorial head of states who evaded the International Criminal court's power of arrest based on some provisions in the Rome Statute that created the International Criminal Court. Despite all the charges seen in the case below Omar Hassan Ahamad Al Bashir has not been arrested by the International Criminal Court.

The Prosecutor v. Omar Hassan Ahmad Al Bashir

[82] Hassan Ahmad Al Bashir was issued on 4 March 2009, the second on 12 July 2010. In issuing the warrant, Pre-Trial Chamber I stated that there are reasonable grounds to believe that: From March, 2003 to at least 14 July 2008, a protracted armed conflict not of an international character existed in Darfur between the Government of Sudan (GoS) and several organised armed groups, in particular the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM).

Soon after the April, 2003 attack on the El Fasher airport, Omar Al Bashir and other high-ranking Sudanese political and military leaders of the GoS agreed upon a common plan to carry out a counter-insurgency campaign against the SLM/A, the JEM and other armed groups opposing the Government of Sudan in Darfur.

A core component of that campaign was the unlawful attack on part of the civilian population of Darfur – belonging largely to the Fur, Masalit and Zaghawa groups – who were perceived to be close to the organised armed groups opposing the Government of Sudan in Darfur. The campaign was conducted through GoS forces, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Forces, the National Intelligence and Security Service (NISS) and the Humanitarian Aid Commission (HAC). It lasted at least until the date of the filing of the Prosecution Application on 14 July 2008.

During the campaign, GoS forces allegedly committed crimes against humanity, war crimes, and crimes of genocide, and in particular:

a) carried out numerous unlawful attacks, followed by systematic acts of pillage, on towns and villages, mainly inhabited by civilians belonging to the Fur, Masalit and Zaghawa groups;
b) subjected thousands of civilians – belonging primarily to the Fur, Masalit and Zaghawa groups – to acts of murder, as well as to acts of extermination;
c) subjected thousands of civilian women – belonging primarily to the said groups – to acts of rape;
d) subjected hundreds of thousands of civilians – belonging primarily to the said groups – to acts of forcible transfer;
e) subjected civilians – belonging primarily to the said groups – to acts of torture; and
f) contamined the wells and water pumps of the towns and villages primarily inhabited by members of the Fur, Masalit and Zaghawa groups that they attacked; and encouraged members of other tribes, which were allied with the GoS, to resettle in the villages and lands previously mainly inhabited by members of the Fur, Masalit and Zaghawa groups.

Pre-Trial Chamber I also found that there are reasonable grounds to believe that:
Omar Al Bashir, as the de jure and de facto President of the State of Sudan and Commander- in-Chief of the Sudanese Armed Forces at all times relevant to the Prosecution Application, played an essential role in coordinating the design and implementation of the common plan; and, in the alternative, that Omar Al Bashir also:

a) played a role that went beyond coordinating the implementation of the said GoS counter-insurgency campaign;
b) was in full control of all branches of the "apparatus" of the State of Sudan, including the Sudanese Armed Forces and their allied Janjaweed militia, the Sudanese Police Forces, the NISS and the HAC; and
c) Used such control to secure the implementation of the said GoS counter-insurgency campaign.

Pre-Trial Chamber I found that there are reasonable grounds to believe that Omar Al Bashir acted with specific intent to destroy in part the Fur, Masalit and Zaghawa ethnic groups [83].

The Complementary Nature of the International Criminal Court.

[84] When the outline for an international criminal court was established, it quickly became evident that in order for the court to not only appease the reluctant states, but maximize its usefulness on the international stage, the court had to be complimentary. This role of a complimentary institution maintains the domestic jurisdiction of the individual states to prosecute their own criminals if they find the evidence to prosecute as well as possess a functioning judicial body to properly convene a fair and just trial. By limiting the role of the ICC to complimentary, the Rome Statute and the states that are party to the treaty created a last resort institution that will only be utilized if the country is unable or unwilling to prosecute their war criminals. This entails many factors that must each be examined before an indictment or even an investigation is launched by the ICC.

First, is the country's judicial system intact? Many war crimes are committed during times of civil war, or in the recent case of Libya, the civil war often leads to regime change. If a new court is not established, and the state is therefore unable to launch an investigation or hold a court proceeding, then the ICC can step in as a support unit and take over the case. Also, if circumstances arise that invoke a sense of bias for or against a criminal who is being prosecuted, such as the case of President Al-Bashir of Sudan for the crimes committed in Darfur in which his country will never consider indicting him, then the ICC can step in and take over the case, as they have done.

In order to determine if the state is unwilling the court needs to examine if the proceedings are impartial, if the criminal is being shielded by government lackeys or whether there is an unjustifiable delay in the proceedings. The role of a complimentary court counts as a success because it limits the authority the court possesses, and it enables the states themselves to take the initiative in prosecuting their own criminals.

By limiting the power of the court, the Rome Statute correctly prevented the court from growing into an unrestricted power [85].

Rationale for the Complementary nature of The International Criminal Court Complementarity is a new concept in the context of the allocation of concurrent jurisdiction between international and national courts and tribunals.

Given the considerable implications of the establishment of an international criminal court in terms of state sovereignty, complementarity was strongly supported by States. According to this mechanism, States retain their right (and duty) to exercise their criminal prerogatives over persons responsible for the commission of international crimes. At the same time, the newly established international criminal court ensures that, in case of failure to investigate or prosecute at the domestic level, impunity is fought at the international level.

The choice of complementarity responded also to the specific features of the ICC, a permanent international criminal court with extremely wide potential jurisdiction, but limited structural and financial resources. Complementarity was also seen as the best tool to foster states' adhesion to the ICC Statute – an international treaty – and to ensure their cooperation with the Court.

The complementary relationship between the Court and States is regulated through the procedures for the admissibility of cases before the former. It is generally said that the Court [86].

I. Shall intervene – as a doctor entrusted to combat the virus of impunity – when States fail to take action, or where their action is not deemed genuine. In case of disputes over which forum shall exercise jurisdiction, the international Judges are in charge of deciding, in accordance with the statutory provisions. By doing so, they are not only arbiters of the Court's jurisdiction; they are also in charge of the delicate task of evaluating the conformity of domestic proceedings with the statutory provisions and criteria.
II. Since its adoption, complementarity was subject to extensive doctrinal elaboration.

Complementarity has been regarded to as both the mechanism that regulates the concurrent jurisdiction between the Court and national jurisdiction, and as an incentive for States to take action, in accordance with statutory requirements. Much attention has been devoted to the interpretation of the statutory provisions regulating the Court's activation and the exercise of its complementary jurisdiction. This is because of the consequences of complementarity in terms of States' compliance with their duty to prosecute, in particular through implementation of provisions on international crimes within their legal systems, and to the concrete realisation of the relationship between the Court and domestic jurisdictions [87].

5. Conclusion

The International Criminal Court headquartered at The Hague, the Netherlands is a permanent institution not constrained by time and place limitations. It is able to act more quickly than if an ad hoc tribunal had to be established. As a permanent entity its very existence will be a deterrent, sending a strong warning message to would-be perpetrators. It will also encourage States to investigate and prosecute grievous crimes committed in their territories or by their nationals, for if they do not, the International Criminal Court will be there to exercise its jurisdiction [88].

The establishment of the International Criminal Court is of great importance to the maintenance of world peace and security. The court's criminal jurisdiction is one of the reasons for her relevance but above the fact that both states and individuals are both subjects of the International Criminal

Court is another legal innovation that could not be ignored. The complementary nature of the court is also one of the reasons for her effectiveness since it recognizes state's sovereignty and the notion of cooperation in enforcing the law.

So far the court has carried out her duties of investigating and prosecuting crimes against humanity, genocide, war crimes and other crimes under her jurisdiction with great seriousness. However there are serious challenges facing the court that must be tackled. The International Criminal Court as a child of necessity is now growing with wisdom and power to tackle the responsibility facing her as the child of humanity's plea.

6. Recommendations

The International criminal court has played an important role in prosecution of war crimes, crimes against humanity, genocide and other degree of atrocities. However it depends on the cooperation of states that have ratified it to turn over suspects, and help in the information gathering process to speed up and actually complete fair and efficient trials [89].

Unfortunately for ICC this is not always the case. Many instances have occurred since the inception of the courts where the prosecutor has evidence, the indictment has been issued but no trial ensues simply because the indicted is not turned over to ICC for trial. Therefore the suspects remain at large as an international criminal. This is especially the case with Omar Al-Bashir of the Sudan. Because of lack of cooperation many head of states that were indicted and military leaders had escaped the sword of justice still living as a terror to the defenseless citizens that they are oppressing.

The Darfur conflict had really exposed the weakness of the International Criminal court in prosecuting war crimes. The effectiveness of the International Criminal Court is thus under serious suspension when thousands of civilians are massacred without the perpetrators being brought to justice. Justice thus will be an elusive world to harmless civilians.

It was Aristotle who said that "justice is the cry of the weak". This dictators and tyrants don't care about justice; they only care about their safety and the safety of their families. Thus this writer suggests that the International criminal court should ensure that there is cooperation amongst member states so that they can give it that support that is highly needed to prosecute crimes within the jurisdiction of the said Court.

And also it will be important for the International Criminal court to persuade a world power like the United States of America to sign in and become a member state of the International Criminal court. A policeman of the world like the United States of America will give more credence, credibility support, confidence, and back up to the said court.

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