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International criminal justice and the role of international criminal court

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Abstract
Dispensation of justice is the primary objective of International Law (in both public and private international law). International Criminal Justice is a sequential branch of international law that calls for the prosecution of men who are accused of heinous war crimes and a crime against humanity. However, many believe, that "International Law is an era of definitional ambiguity" as propounded by John F. Murphy while some others are of the view that international criminal justice fails to register its viable existence. There can be many reasons for the non-deliverance of justice to the victims at the national level, for example, where offenders are in politically influential positions, insufficient resources, deficiency, and inadequacy in national laws or/and the conduct in question may not have been criminalized in national law or a statute, etc. The United Nations has acknowledged the importance of crime prevention and criminal justice in the maintenance of international peace and security, since its early days. In 1948 UN set up the Center for International Crime Prevention. This center was part of the United Nations Office for Drug Control and Crime Prevention. Towards the goal of preventing the crime and punishing the culprit, the Economic and Social Council of the United Nations established the Commission on Crime Prevention and Criminal Justice in 1992. Several tribunals like ICTY, ICTR, and Nuremberg were set up for prosecuting the offenders. The International Court of Justice is the principal organ among the international judicial institutions with competence to deal with international crimes. In 2002, the world witnessed the establishment of the International Criminal Court. Keeping in mind the above development in the field of International Criminal Justice this paper would be discussing the issues posed in the field of International Criminal Law and the functioning of the International Criminal Court in the backdrop of sovereignty and complementarity principle.

Keywords: international justice, international criminal court, united nations, crimes, victim, criminal procedure, tribunals etc

Introduction

Concept of International Criminal Justice

International criminal justice is changing its nature and shape in such a manner that it is difficult to condense it in form of a static coded law. In this 21st century the challenges before the international criminal justice are many and the pressure is on the international criminal court to do justice with the parties and maintain peace and tranquility in international society.

The main goal of the international justice is associated with restrictive and preventive measures. At the same time, it is also related to solicit condemnation of catalytic effect of violent atrocities and the effect of peace on international and domestic society. It has been widely approved in some cases that criminal justice serves as an elaborative preventive measure [1]. International criminal justice creates greater awareness of atrocities and prohibits involvement in crimes. It also counters the benefits and influences of aristocrat politicians and empowers domestic courts and victims to demand justice. Renowned scholar Kathrin Sikkink highlighted a new 'justice cascade' wherein he argued that prosecutions have a positive effect on human rights protections [2].

International criminal justice has become an integral part and parcel of UN functioning in promotion of rule of law. Accountability is reflected in strengthening the peace operations and a growing numbers of thematic and country specific resolutions [3].

Many scholars are of the opinion that international criminal justice is based on a rupture between past and present. It analyses historical events mainly through the lens of crimes. Idea of justice can be traced back to ancient civilization, and is reflected in domestic criminal justice systems. However, as a field of international law, international criminal justice is relatively young. It is in many ways a body of law in the making. It has a complete identity. Some scholars are of the view that it has never been fully international, or purely criminal. The connection between law and politics is permeable.

According to Professor Carsten Stahn the term 'justice' is broad and carries a number of different meanings. Further he said, International criminal law has been pragmatist and non-committal in relation to justice theories. It may be associated with at least four different ideal types of justice [4]:-

1. Retributive justice, which is focused on the punishment of the perpetrator and the reaffirmation of norms through the legal process.
2. Restorative justice, which is geared at repairing the damage caused rather than on penalizing the offender.
3. Distributive justice, which is concerned with the just allocation of benefits and burdens, including resources allocation and distribution of blame.
4. Expressive justice, which focuses on the communicative dimensions of the legal process such as its capability to send messages, outline discourses and manipulate the age group and observation of norms. The four dimensions of justice are interconnected.

Answering the question, why is justice better then revenge, in the case of war crimes and crime against humanity? A. Cassese, an international law jurist in one of his articles said that although revenge is undoubtedly a primitive form of justice- a primitive system of law enforcement yet it has altogether a different foundation from that of justice. Revenge can nevertheless be the last resort for a person who has been denied due process. Giving answer of another question, why is justice better than forgetting? A. Cassese said that justice is preferable to forgetting both on a moral and a practical level……forgetting crimes against humanity and war crimes is, in any event a fiction, in fact, massacres and disappearances are never forgotten. Turning now to criminal justice, as opposed to revenge, forgetting and amnesty, A. Cassese [5] was not in favor of pardon, at the end of a war, for crimes committed during the armed conflict, on the ground that criminal trials can prolong or rekindle animosity and prevent return to peace and reconciliation. According to him, forgetting appalling crimes is immoral, counterproductive and practically pointless. He briefly enumerated the situation in which bringing culprit to justice has some notable merits like:-

1. Trial, establishes individual responsibility over collective assignation of guilt. For example- not all Germans were responsible for the holocaust, nor all Turks for the Armenian genocide, or all Serbs, Muslims, Croats but individual perpetrators- although they may be a great number of perpetrators.
2. justice dissipates the call for revenge, because when the court metes out to the perpetrators their just deserts, then the victims' calls for retribution are met.
3. by dint of dispensation of justice, victims are prepared to be reconciled with their erstwhile tormentors, because they know that the latter have now paid for their crimes.
4. a fully reliable record of atrocities is established so that future generations can remember and be made fully cognizant of what happened.

As Herbert Packer has argued, the essence of criminal justice may be explained by two models: the '*crime control model*' and '*due process model*'. The *crime control model* is grounded in the idea that the criminal process is a positive guarantor of social freedom. It stresses the value of criminal law enforcement to prevent the breakdown of public order. The *due process model* emphasizes the protection of the liberty of persons. It introduces controls and safeguards against the abuse of power. International criminal justice encompasses both dimensions. However, it places special emphasis on the defense of international public order and peace and security. History has shown that these two conceptions may clash with each other [6].

The interplay between international and national criminal justice in international law can offer opportunities for mutual improvement and legal reflection. The international law approach is explored to scrutinize the relationship between international and national criminal justice, originating from the wider general interface between national and international law. In broad terms, the interface between the national and international legal rules can be appraised from three different perspectives. The *first* perspective requires understanding as to how rule of law at the national level recognizes, receives and resists the international rule of law. The *second* perspective requires examining how rule of law at the international level recognizes, receives and resists the national rule of law. The *third* perspective requires assessing how the correlation between them can be comprehended and assessed from external perspectives. While the domestic and international legal systems are both crucial constituents of global governance, the overlap between them often gives rise to conflict in their relationship. Arguably, domestic courts' dynamic application of international law is a signal to "international courts that the national courts are no longer passive recipients of the decisions of the international courts but rather equal partners [7].

Sovereignty and Justice

The desire to balance national sovereignty with justice led the drafter of the ICC statute at Rome to impose a much more detailed set of provisions on the crimes within the jurisdiction of the court and the rules of evidence and procedure in comparison to the Ad hoc Tribunals for Yugoslavia and Rwanda. The imposition of rules upon the ICC was the subject of much heated discussion at the Rome Diplomatic Conference [8].

The provision in the ICC statute that allows states almost complete leeway to pursue national reconciliation and pace through their own investigative, judicial and other similar institutions is the principle of complementarity [9].

Some said that it is a time to revisit a number of assumptions about how international criminal tribunals and state authorities interact cooperates, ignore each other, undermine one another's work etc. There is no silver bullet for the problem of impunity. If international, regional and national actors (civil societies, governments, international organizations) really want states to prosecute international crimes then international criminal tribunals should be endowed with primacy of jurisdiction, not complementarity [10]. A central theme of the ICC's work is to 'foster positive complementarity' [11].

Some of the authors have attempted to prove that the principles of complementarity are the torch-bearer of the grander goal of ensuing that there is international accountability and justice for the most serious crimes [12]. On the other side Carsten wrote in his book [13] that, international criminal justice continues to face criticism and rejection [14]. Several African states have threatened to withdraw from the ICC (in 2017, Burundi became the first state to withdraw from the Rome Statute) and even advocated for a collective withdrawal from the ICC statute [15]. The Philippines notified their withdrawal in 2018 from the ICC. Enforcement of criminal justice remains a challenge to bring hard cases that threaten powerful states [16].

One of the contemporary critiques of international criminal justice is that 'the theory of international criminal justice is often understood as the theory of its institutions (primarily the tribunals) and its legal practices, rather than ……. in terms of justice. The conceptions of justice that international criminal law pursues vary partly across institutions and their underlying mandates and goals [17].

Peace vs. Justice

From the perspective of global south, the 'fight against impunity' is sometimes perceived as a movement with certain disempowering features. It may dominate the discourse on peace, entrench inequalities or prioritize

specific western-liberal approaches to accountability and hide those who benefit from such policies.

The nexus between peace and justice remains a bone of contention. Although there is broad agreement that the two prerogatives are interconnected, timing, sequencing and the precise modalities of justice remain open to discussion. The slogan '*no peace without justice*' is too general. Sometimes, there might be '*no justice without peace*'.

Experiences over past decades leave some doubts whether international trials can be expected to create security or an accurate account of the past. There is typically a focus on spectacular trials. There are numerous historical examples: the Nuremburg and Tokyo trials which tried German and Japanese leaders after World War II, the trial of Nazi leaders Adolf Eichmann in Jerusalem, the trial of Saddam Hussain after the fall of the Iraqi regime, the trial against Slobodan Milosevic, Radovan Karadzic or Ratko Mladic before the international criminal tribunals for the former Yugoslavia in the Hague, or the trial of Charles Taylor which completed the work of the Special Court for Sierra Leone. Such criminal trials are in many ways imperfect.

International criminal law sometimes overlaps with domestic criminal law. It includes offences, defenses, modes of liability, as well as principles and procedures relating to evidence, sentencing, victim participation, witness protection or mutual legal assistance and cooperation.

International criminal law differs from human rights law and humanitarian law through its specific focus on individual criminal responsibility for violations. Unlike classical human rights law, it is not predominantly centered on obligations of states. The addressee of international criminal law is primarily the individual as opposed to the state [18].

The principle of legality of international criminal law and Rome Statute (*Nullum Crimen Sine Lege*- no crime without law) requires that the law be clear, accessible and predictable. Initially, international criminal law was governed by the intersection of peace and justice. That is the reason this looked like a more peace project rather than justice [19].

International Criminal Court- Objective and Significance

The purpose and functions of a permanent international criminal court combine humanistic values and policy considerations which are not only essential to the attainment of justice, redress and prevention, but also to the preservation, restoration and maintenance of peace [20].

Total 123 countries are states parties to the Rome Statute of the International Criminal Court. Out of them 33 are African States, 19 are Asia-Pacific States, 18 are from Eastern Europe, 28 are from Latin American and Caribbean States, and 25 are from Western European and other States.

According to W. Michael Riesman the mere existence and effective operation of judicial institutions alone cannot create conditions and outcomes of order, lawfulness, rectitude, redress, prevention, justice and peace [21]. Judicial institutions along with other social, political and economic institutions are indispensable to the attainment of conditions and outcomes of order, lawfulness, rectitude, redress, prevention, and justice and peace in national societies. And that also applies with respect to the international society [22].

In order to accomplish these value-oriented goals, the international criminal court-(ICC) must be capable of translating moral values commonly shared by the international polity into applied precepts that engender positive reactions within the collectivity [23].

The purpose of the ICC includes: dispensing exemplary and retributive justice, providing victim redress, recording history, reinforcing social values, strengthening individual rectitude educating present and future generations and more importantly, deterring and preventing future human depredations [24].

One of the most lauded principles of the ICC and international criminal justice in general is the notion of nurturing and enabling domestic legal systems to adequately prosecute and try individuals suspected of committing international crimes. The ICC was always envisioned as a '*court of last resort'*, existing to 'plug the impunity gap'. This gap exists where states and their domestic legal systems are unable or unwilling to prosecute perpetrators of international crimes [25].

To achieve the objectives of criminal justice, the ICC should act with predictability, consistency and publicly perceived fairness and when appropriate it must have the courage and wisdom to temper the harshness of the law with understanding and compassion.

Role of International Criminal Court in dispensation of Criminal Justice

There has been tremendous progress over the past century in fashioning global laws against the most serious of international crimes. Since the establishment of the ICC pursuant to the entry into force of its statute on 1st July 2002, the international community is hoping that the ICC will provide a key forum for the prosecution and punishment of criminals and would thus prove helpful in the prevention of crimes. The basic role that the ICC would have is the provision of an effective tribunal in which perpetrators of certain crimes can be prosecuted under international criminal law. In the light of this primary mission, it is interesting to note that the Rome Statute does not envisage the ICC as the primary tribunals for such prosecutions. Instead, the responsibility for investigating and prosecuting perpetrators of crimes within the ICC jurisdiction remains first with the domestic courts. This responsibility arise from the "principle of complementarity', which grants jurisdiction to the ICC only when a country with primary competency is unwilling or unable to investigate or prosecute the crime at issue.

The rules of evidence, witness protection, testimony and trial in the ICC statute have been specially tailored to fit the crimes within the court's jurisdiction. A single set of procedural and substantive laws will apply to all parties and proceedings before the ICC. It would lead to consistency and greater legal certainty. State parties to the ICC or Security Council or non state parties may refer a case to the ICC. Alternatively, the ICC prosecutors may initiate an investigation.

On the issue of referral by the Security Council, where some held it as an extraordinary political interference, others by linking it to the operation of the ICC have interpreted that the ICC is not solely dependent on Security Council referral and is therefore less vulnerable to the political will of the Security Council's permanent members. The most the Security Council can do to obstruct the court's operation is to instruct the ICC to defer an investigation for a renewable period of twelve months [26]. A single permanent member

will not therefore be able to use its veto rights to suspend an investigation. On the issue of regulating the ICC, it is hard to be convinced that a political body (i.e. Security Council) should exercise control over a judicial forum (i.e. ICC) may it be by referral of a case or even more seriously by deferral of proceedings.

ICC will be able to prosecute those who fall within its jurisdiction, provided that either the state on whose territory the crime was committed or the state the accused is a national of is a party to the ICC [27]. Even if neither of these states in such a scenario is a party to the ICC, either of them can specially submit to the ICC jurisdiction for the prosecution of the alleged perpetrators. With this assumption, the whole world is asserting that the ICC is based on universal jurisdiction, binds not only the state parties but also the non-state parties through the potential exercise of jurisdiction over their nationals. But these claims seem to be misunderstood. The fact that the ICC statute should stimulate the incorporation of universal jurisdiction into national law is widely unforeseen, since the statute imposes no obligation on state parties to prosecute the crimes it defines, whether on a universal or any other basis.

The possible Obstacles in the Prosecution of serious International Crimes-

The obstacles started with the crimes defined in the Rome Statute. Like, among the four major crimes of the Rome Statute, the crime of *Aggression* has been the most troublesome and controversial. The term 'aggression' however nowhere is defined in the London Charter, nor was the term defined in the tribunal's opinion. Nowhere in the UN Charter is the 'concept of aggression' defined either. It is thus perhaps surprising that aggression would appear in the ICC Statute.

If we are talking about the 'Genocide', then the Charter of the Nuremberg Tribunal did not expressly use the term "genocide". Unlike the other 'crimes against humanity', the crime of 'genocide' has been defined in a widely ratified multilateral convention. The Genocide Convention of 1948 and the *prohibition against genocide* are generally regarded as *jus cogens* norms. On the other hand 'war crimes' were arguably well established by the time of Nuremberg trial. But, the scope and content of 'crimes against humanity' have been uncertain.

It is well said that criminal activities at any levels are the main factor, which destabilize society and leave behind the goal of establishing peace, by creating terror in the minds of people and by causing a sense of insecurity. Since the World War -I variety of international crimes and sophisticated means of their commission have emerged. The challenge posed by these crimes can only be met by a well strengthened international law.

However, keeping in mind the frequency, the size and the degree of the menace of crime, special efforts are always required to further strengthen international criminal law. One of the steps could be to look into the possibility of revising definitions of crimes in criminal law conventions in their respective fields and consolidating them in one instrument by identifying the principle of law commonly applicable to all crimes in the prevention and punishment thereof.

The other obstacle is from the state, where, for a variety of reasons, states have been unwilling or unable to prosecute perpetrators of serious crimes. There are some shortcomings in ICC statutes also. Although, the ICC statute is widely ratified, certain provision of it may result in undermining the effectiveness of the court. *They include*: the consent regime for the exercise of jurisdiction by the court, "opting out" of the court's jurisdiction by state parties over war crimes for a limited period; referral of cases and deferral of proceedings by the Security Council which may have the effect of direct interference by a political body in the functioning of a judicial body, and freedom of the prosecutor to initiate investigation or prosecution on his own and the potential reaction of states.

If world community is really serious about preventing and dealing effectively with widespread criminality, it may have to put sincere efforts into having a comprehensive international extradition treaty creating explicit obligation to extradite a criminal. Wide ranging international criminal justice reforms are thus required in defining the crimes, providing for more effective measures to counter them by ensuring the availability of criminals for prosecution, which could certainly help to minimize the criminal activities and could contribute to the goal of establishing international peace and security [28].

Contemporary Issues and Challenges before the ICC

In 1946 the UN General Assembly unanimously affirmed "the principles of international law recognized by the Charter of the Nuremberg Tribunal and the judgment of the Tribunal [29]". The General Assembly then requested the newly established International Law Commission to formalize the Nuremberg Principles. The seven principles were enunciated in 1950, but then largely ignored, even in academic texts [30]. Though, it was held that the principles established at Nuremberg could serve as the foundation for the future accountability of political leaders and other actors for state crimes.

The breakup of multiethnic and multi religious Yugoslavia in 1991–1992 brought some of the horrors of the Holocaust back on European soil. The ICTY, with its seat in the Dutch capital The Hague, was the first international war crimes tribunal established since the Nuremberg and Tokyo tribunals. Like its predecessors, the ICTY was a temporary international court, established on an ad hoc basis to prosecute individuals who had committed genocide, war crimes, and crimes against humanity on the territory of the former Yugoslavia in the 1990s. The atrocities in the former Yugoslavia were soon overshadowed by an even greater human tragedy occurred in Rwanda.

On April 6, 1994, the fragile peace between the majority Hutu and minority Tutsi tribes in Rwanda was shattered when the Rwandan president's plane was shot down as it was about to land in the capital Kigali.[10] Immediately thereafter, Hutu extremist militias began an organized killing program to destroy the entire Tutsi population of Rwanda. The massacre ended one hundred days later when a Tutsi rebel army defeated the Hutu extremist regime in early July. By that time, an estimated 800,000 men, women, and children were murdered. The Hutu extremists killed those whom they called "cockroaches," usually by hacking them to death. As shocking was the fact that the United Nations had peacekeepers on the ground when the killings began, but the UN leadership in New York ordered the UN commanders not to intervene, leaving the helpless civilian Tutsi victims to fend for themselves.

The immediate reaction of the UN in 1994 was to create a

second ad hoc tribunal. Accordingly, the Security Council established the International Criminal Tribunal for Rwanda (ICTR) on November 8, 1994, through Resolution 955. With its seat in the city of Arusha, in neighboring Tanzania, the mandate of the ICTR was to prosecute individuals who committed genocide, war crimes, and crimes against humanity on the territory of Rwanda between January 1 and December 31, 1994.

The establishment of these international criminal tribunals (ICTs) led to additional mixed ad hoc courts for Sierra Leone, East Timor, and Cambodia [31], and ultimately provided momentum for the adoption of the Rome Statute and the creation of the permanent International Criminal Court in 1998.

Some jurists are of the opinion that the Nuremberg paradigm has become the "gold standard" by which any significant domestic prosecution of state actors for international crimes is evaluated. It is impossible to put someone on trial today for war crimes, crimes against humanity, and genocide (even though it was not one of the crimes enunciated at Nuremberg) without invoking the legal norms developed at Nuremberg.

Every recent significant domestic legal proceeding of state leaders or for international crimes, whether it is the trial of Saddam Hussein for crimes against humanity and genocide or the current military tribunal trials at Guantánamo under the Military Commissions Act of 2009, are invariably compared to the standards of Nuremberg. The ICTs are built on the virtues of Nuremberg.

Advantages and Criticism of Nuremberg Tribunal and ICTs

The most important criticism of Nuremberg widely voiced at the time and ever since, is that it violated the fundamental legal principle of *ex post facto* by holding the German defendants accountable for acts that had not been designated in advance as crimes. The ICTs [32] do not suffer from the *ex post facto* defect.

The second major criticism of Nuremberg was that it constituted "victor's justice." That is not the case for the ICTs. None of the judges came from a country that was a party to the conflicts that took place in the former Yugoslavia and Rwanda. Instead jurists from over twenty different countries have sat as judges on the ICTs. A corollary criticism was that the victorious Allies themselves committed many acts during the war which they accused the defendants of committing (the "you too" or *tu quoque* argument).

Other advantages that the ICTs have had over Nuremberg include: non applicability of death penalty, trials *in abstentia* are no longer considered procedurally proper, Appeal Chamber hears the appeal against the judgment of Trial Chamber, appeal against acquittal is provided, and due process and fair trial is guaranteed to defendant. Though, the due process and fair trial was criticized on various grounds.

On the other hand provisions giving voice to the victims during the trials, with a special "Victims and Witnesses Section" were created for fair trial.[25] While the Nuremberg trials featured testimony of some victims, it was not until the Eichmann trial in Israel that victim testimony became a leading feature of a mass atrocity trial. This embracement of a "victim-centered" approach continues with the ICC, where so-called "Legal Representatives of Victims" have a seat at the counsel table alongside counsel for the prosecution and the defendants. One last improvement cannot be ignored i.e. bringing diversity to the international bench and bar. Nuremberg was an all-male affair, with almost all the principal players coming from Europe or the United States. However, this is not the case with the ICTs, the mixed tribunals, or ICC. Women and people of color have played a critical role in modern-day international criminal justice. The current ICC chief prosecutor, Fatou Bensouda, is a female barrister from Ghana.

The new procedural guarantees made the ICT trials fairer than those conducted at Nuremberg. The two biggest challenges for the upstart courts was lack of sufficient funding and getting countries to cooperate in arresting suspects indicted by the ICT prosecutors. The ICT judgments filled the empty shell of genocide by adjudging criminal cases unprecedented in scope and scale and involving acts rarely prosecuted on a national level. The understanding of international criminal law today in the terms of genocide comes from these actual prosecutions before the ICTs.

Joint criminal enterprise (JCE) is mentioned nowhere in the Genocide Convention or in the ICTs' statutes. Rather, it is solely a construct of the ICT judges—and especially the ICTY's first activist president Antonio Cassese—who held that it is derived from customary international law, similar to the way the Nuremberg judges found crimes against humanity to be derived from international custom.

All criminal systems recognize that individuals can be guilty for the acts of another. At the IMT at Nuremberg, the Nazi newspaper editor Julius Streicher was convicted of crimes against humanity while Nazi radio Chief Hans Fritzsche was acquitted of the same charge. The antithetical holdings left us unsure whether public incitement through speech is criminalized by international law. We now definitely know that individuals can be convicted for genocide simply through words.

In Rwanda, as one prosecution witness explained: "In the case of the 1994 genocide in Rwanda, the effect of language was lethal … hate media … played a key role in the instigation of genocide."[40] In 2005, the ICTR prosecutor charged Rwanda's most popular singer Simon Bikindi, known as Rwanda's Michael Jackson, with incitement to genocide. At trial, Bikindi was acquitted of incitement through his anti-Tutsi songs but convicted of incitement for statements he made at a public rally calling Tutsis "snakes" and exhorting his audience to kill Tutsis.

Under command responsibility being a commander of armed forces does not automatically make the commander guilty for acts committed by his troops. The proof beyond reasonable doubt is required that the commander had actual knowledge of the crimes.

The ICTs also have made significant contributions to crimes against humanity and war crimes. A crime against humanity is no longer a crime that can only be committed in connection with war. The ICTs established that an individual can be convicted of crimes against humanity for acts committed in peacetime, a proposition not accepted at the IMT judgment. With regard to war crimes, the ICTY in its first case, *Prosecutor v. Tadić*,[49] established that war crimes can also be committed in internal armed conflicts.

Both tribunals had a rocky start. Much credit for the tribunal's continued existence goes to the ICTY's first president (Chief Justice), Antonio Cassese, and first

prosecutor, Richard Goldstone. Judge Cassese himself admitted that he was an activist judge.

Criticism of the ICTs

The major substantive criticism of the ICTs is that they have produced an inconsistent jurisprudence, with various panels interpreting the text of the Genocide Convention and the law of war crimes and crimes against humanity according to the judges' own proclivities and understanding of the law.

The ICT judges in Arusha and at The Hague were the first to tackle the difficult problem of what the prosecution must prove for an individual to be found guilty of this crime of crimes. It was inevitable that different panels would come up with different conclusions.

Judges appointments were made by the United Nations based on regional diversity and just plain horse-trading, with not the best and the brightest always being appointed to the bench[55]. The bigger problem was lack of bench experience.

On the procedural side, the two major criticisms of the ICTs have been their cost, averaging around $400 million per year for each tribunal, and the slow pace of the trials, with some taking years to complete. The length of these cases and the corresponding cost reinforce the notion that justice is very slow and very costly, and so as a result is only going to capture very few people.

After twenty-one years, the ICTR closed its doors on December 31, 2015, after delivering its forty-fifth and final judgment. The ICTY was set to close by the end of the 2017 upon completion of its ongoing prosecutions.

Another criticism has been about the lack of connection of the ICTs with their most important stakeholders: the people of the region where the atrocities took place. Physical distance is a major contributing factor. The ICTY sits in The Hague and the ICTR sat in Arusha, Tanzania. The successor IRMCT [33] court sat in Arusha. As a consequence, the ICTs have been accused of being inflicted with the Ivory Tower Syndrome: more interested at how international legal scholars view their work than the local Serbs, Croats, Bosniaks, Kosovars, and Rwandans.

International Criminal Court

With the growing global reach of the Rome Statute, there are fewer safe havens for perpetrators of massive crimes. Exactly ten years after the adoption of the Rome Statute, this Court embodies the promise of seeing individuals held responsible for the gravest crimes they committed, regardless of their position. It is believed that at the beginning of a new age (ICC) when the establishment of these kinds of militias that commit crimes against humanity is no longer a corridor to power, but a pathway to prison.

But, the fact that to date only Africans have been indicted and prosecuted has led some African leaders and local activists to accuse the ICC of having an anti-Africa bias. The problem is not that the ICC is "targeting" Africa. Rather, the problem is that the Court lacks jurisdiction over many parts of the world where international crimes are occurring, such as in Syria and Iraq today.

It was said that those attacking the ICC for Africa bias should redirect their criticisms towards those countries that have refused to join the ICC or to find other means to achieve accountability for international crimes, either through domestic processes or other international or regional courts. They should also redirect their criticisms towards the UN Security Council, which referred the cases of Sudan and Libya to the ICC, but to date has failed to refer Syria or to establish an alternative justice mechanism for the massive crimes being committed in that country. The problem is not that accountability is sought in Africa for crimes committed against Africans. That is a good thing. The problem is that there is a failure to pursue accountability in other places where crimes are also being committed. That is a failing not of the ICC but of the international community, and that's where critics should direct their attention. Unlike the situation with the ICTs, states have been much less cooperative with the ICC.

The ICCs experience has been very different from that of other tribunals. The courts first prosecutor [34] sought to generate support for his investigations but he was not succeeded in his attempt because of lack of resources and responses. The situation has been changed now. The present prosecutor Fatou Bensouda who assumed the office of public prosecutor on 15 June 2012 not only gets support from the countries of the member states but non member states also. Countries consistent support contributing in prosecutor's ability to push the cases forward beyond the charging stage.

The ICC is still facing a lot of criticism from the media and human rights crusaders. In the case of Sudan president Al-Bashir, the *LA Times* published a lead editorial with the tag line: "The International Criminal Court has proved to be expensive and so far ineffective". The editorial pointed out that "after more than a dozen years and $1 billion, the ICC has brought just 22 cases and has obtained just two convictions…. the victims of inhumanity deserve better. [35]"

With all the criticism and non appreciation of work, ICC is still working for the victims of international crimes. Gradually, ICC's work getting support and appreciation from the countries and human right defenders. Many scholars of international criminal law agreed that ICC will stay here, though the court will face up and downs in near future. A bias-free, competent and highly regarded permanent international tribunal can play an important function in delivering justice to those committing the most serious international crimes.

Conclusion

We have seen that how criminal justice has changed its pattern from retributive justice to reformative justice in many parts of the world. International criminal justice is also based on the experience of past and present. It has analyzed the historical conflicts and atrocities from the lens of crime and justice. The idea of justice which is associated with international criminal law is not new. We know that justice was very much prevalent in ancient period and is an integral part of domestic criminal law. Earlier for providing justice to holocaust victims IMT, Nuremberg was established. Later on it was felt that for some offences which were defined and discussed in IMT Nuremberg, ICTY, and ICTR, there should be a permanent criminal court so that proceedings against the offenders can be started expediently and effectively. The ICC is committed for providing the justice to the victims of genocide, war crimes, crimes against humanity and aggression.

There are a lot of challenges ICC is facing now, while providing justice to victims. Some of them are- inherent jurisdiction which is not based on the consent of the state parties, the prosecutor's power to initiate investigation

proprio motu, jurisdiction of the ICC in internal armed conflicts for war crimes, power given to Security Council in referral and deferral of investigation or prosecution, different approaches of the principle of complementarity, bilateral immunity agreements, alleged victimization of African states etc. We are hopeful that these challenges will be addressed by the ICC and state parties in different case law with dedication and firmness.

But it is also true that due to the non cooperation of the most countries/states the purpose of the ICC seems to fail. Without the active assistance of states the ICC would not be able to function effectively. It is fair to say that the ICC's legal assistance regime is weaker than that of ad hoc tribunals. It is also highlighted that various complexities are involved in the jurisdiction of the ICC. Accordingly, it is required that ICC should adopt a professional and prudent approach for the exercise of jurisdiction by national courts on the one hand and on the other hand, they should demand an innovative, creative and constructive approach by national jurisdictions to the required interaction with the international criminal court. International accountability towards the crimes mentioned in the Rome Statute is necessary to achieve justice as well as peace and reconciliation between people in conflict torn areas. In other words, if not justice for victim's sake, then it can be justice for the sake of peace. It is well said that whether national or international, justice never comes easily or painlessly. A justice system with the characteristics of political independence, impartiality towards all persons, fairness to the accused and the victim, effectiveness in its functioning, and transparency in its process will have some deterring effect on potential future violators. That is what the ICC is intended to accomplish, and if it does so, the ICC will contribute to peace. ICC is a necessary institution for the attainment of the goals of international criminal justice.

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Principle I any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.
Principle II The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.
Principle III The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible Government official does not relieve him from responsibility under international law.
Principle IV The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.
Principle V Any person charged with a crime under international law has the right to a fair trial on the facts and law.
Principle VI The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). (b) War crimes: Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war, of persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity. (c) Crimes against humanity: Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are 3 done or such persecutions are carried on in execution of or in connection with any crime against peace or any war crime.
Principle VII Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.
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