

ANALYSIS OF THE ROLE OF INTERNATIONAL CRIMINAL COURT IN DELIVERING JUSTICE

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Abstract: The International Criminal Court provides creative and composite structure of justice that consider all the rights and privileges given to suspects. The International Criminal Court has very aspiring target as it not only focuses on establishing international justice, but also peace. This paper evaluates structure of International Criminal Court, its jurisdiction, its Legal Process, its role in establishing international peace and providing justice, challenges and criticism faced by ICC, and rights given to the suspect by ICC. The article evaluates role of ICC in providing quality justice and in establishing international peace. The basic aim to setup ICC was to investigate, prosecute, and try people accused of committing the most serious offences. The ICC has power to prosecute individuals for the international crimes of genocide, crimes against humanity, war crimes, and crimes of aggression.

Keywords: International Criminal Court, War Crimes, Crimes Against Humanity, Crime of Aggression.

1.0 Introduction

The International Criminal Court (ICC), established in 2002, seeks to hold to account those guilty of some of the world's worst crimes. Champions of the court say it deters would-be war criminals, bolsters the rule of law, and offers justice to victims of atrocities. But, since its inception, the court has faced considerable setbacks. It has been unable to gain the support of major powers, including the United States, China, and Russia, who say it undermines national sovereignty. Two countries have withdrawn from the court, and many African governments complain that the court has singled out Africa. U.S. opposition to the ICC hardened under President Donald Trump, and although the Joe Biden administration has taken a more conciliatory approach, tensions remain.

2.0 Origin of International Criminal Court

In the aftermath of World War II, the Allied powers launched the first international war crimes tribunal, known as the Nuremberg Trials, to prosecute top Nazi officials. It wasn't until the 1990s, however, that many governments coalesced around the idea of a permanent court to hold perpetrators to account for the world's most serious crimes. The United Nations had previously set up ad hoc international criminal tribunals to deal with war crimes in the former Yugoslavia and Rwanda, but many international law experts considered them inefficient and inadequate deterrents.

Trinidad and Tobago requested that a UN commission look into the creation of a permanent court in 1989. In the following years, such efforts gained support, especially in Europe and Africa. As CFR's Michelle Gavin points out, African countries make up the largest bloc of ICC members. The European Union is also a staunch supporter of the court; it adopted a binding policy in support of the ICC in 2011.

The ICC's founding treaty was adopted by the UN General Assembly at a conference in Rome in July 1998. After being ratified by more than sixty countries, the Rome Statute entered into force on July 1, 2002.

3.0 Structure of the International Criminal Court

The International Criminal Court is composed of mainly 4 primary organs:

1. The Presidency.
2. The Chambers.
3. The Office of the Prosecutors.
4. The Registry.

The assembly of parties serves as the court's management, oversight, and legislative body, and is not an organ of the court. It establishes the budget, elects judges and prosecutors, amends law and procedure, and conducts other activities consistent with the Rome Statute (Structure of the ICC)

3.1 The Presidency

- It represents the International Criminal Court externally.
- It also performs selected number of judicial functions.
- Presidency organ of International Criminal Court organises the judicial chambers and assigns cases.

The presidency organ of the International Criminal Court is also responsible for the administration of the court except the office of the prosecutor as it is responsible for its own administration. The presidency organ is also responsible in maintaining relations with states & promotes common awareness and perception of the court through external relation.

3.2 The Chambers

There are 5 main functions of the chambers:

- To issue arrest and warrants.
- To determine the jurisdiction and admissibility.
- To confirm or rejects the charges.
- To hear the appeals.
- To adjudicate the cases.

The Chamber of the International Criminal Court consists of 18 judges organised into the pre-trial division, the trial division, and the appeal division. The pre-trial division and the trial division have 3 judges each and the appeal division consists of 5 judges.

The pre-trial chamber has a very important role in the very first phase of the trial as the judges of pre-trial chamber makes the decision whether to confirm the charges against the accused or not.

If the charges are confirmed by the pre-trial chamber, then the trial chamber comes into play. The trial chamber's responsibility is to decide the innocence or guilt of the accused; it also imposes a sentence on a convicted person and may also order the convicted person to pay money for compensation.

If the convicted person or the prosecutor appeals the judgement of the trial chamber, then the appeal chamber comes into role and it may decide to reverse or alter the decision and can also order a new trial before a distinct trial chamber.

3.3 The office of the Prosecutor

- It analyses the jurisdiction and the admissibility.
- It investigates the crime.
- It prosecutes individuals.

Office of the prosecutor is an independent organ of the court. It is responsible for examining situation under the jurisdiction of court where genocide, crime against humanity, war crimes and aggressions appear to have been committed, and carrying out investigation and prosecution against individuals who were allegedly most responsible for those crimes.

3.4 Registry

- The registry of International criminal Court administers court services.
- It helps external defence and victim counsel.
- It organises witnesses and victim protection.
- It promotes victim involvement and reparation.

The registry of ICC basically provides the administrative and judicial support to all the organs of the court. It also provides counsel support functions to victim and it also ensures the protection and safety of both witnesses and victims. The registry of ICC is also responsible for supervising and regulating the detention of all who are detained under ICC's command. Registrar who leads the registry is the principle administrative officer of the court.

4.0 Jurisdiction and Working of ICC

The Rome Statute, grants the ICC jurisdiction over four main crimes:

- **The crime of Genocide**
- **Crimes against Humanity**
- **War crimes**
- **Crime of Aggression**

The Court may exercise jurisdiction in a situation where genocide, crimes against humanity or war crimes were committed on or after **1 July 2002**,

The crimes were committed **by a State Party national**, or in the territory of a State Party, or in a State that has accepted the jurisdiction of the Court;

The crimes were **referred to the ICC Prosecutor by the United Nations Security Council (UNSC)** pursuant to a resolution adopted under chapter VII of the UN charter.

As of 17 July 2018, a situation in which an act of aggression would appear to have occurred could be referred to the Court by the Security Council, acting under Chapter VII of the United Nations Charter, irrespective as to whether it involves States Parties or non-States Parties.

The **ICC is intended to complement, not to replace, national criminal systems**; it prosecutes cases only when States do not are unwilling or unable to do so genuinely.

ICC is not a UN organization but is has a cooperation agreement with the United Nations.

When a situation is not within the Court's jurisdiction, the **United Nations Security Council can refer the situation to the ICC granting it jurisdiction**. This has been done in the situations in Darfur (Sudan) and Libya.

4.1 Funding of ICC:

In 2021, the ICC's annual budget stood at roughly \$170 million. The vast majority of that funding comes from member states. Contributions are determined by the same method the United Nations uses to assess dues, which roughly correspond to the size of each member's economy. In 2020, the largest contributions came from Japan, Germany, France, and the United Kingdom. Some countries, notably Brazil and Venezuela, have run up millions of dollars in overdue payments.

The UN General Assembly can approve additional funding for cases referred to the court by the Security Council. Some governments and transnational organizations also offer voluntary contributions.

Some analysts have criticized the ICC as too expensive. Others counter that the court's cost effectiveness cannot be based solely on the number of cases it tries or convictions it secures.

4.1.1 Powers of ICC

According to Article Five of Rome Statute ICC has the authority & powers over genocide crimes against humanity, war crimes & crimes of aggression.

ICC has jurisdiction and control on the crimes mentioned in Article Five of the Statute. Minimum age of the accused must be eighteen years at the time of commission of the offence.

According to Article eleven clause one, ICC do not have any retroactive authority over crimes that were committed before the Statute was enforced. The principal of non-retro activity is re-enforced by Article 24 clause one which say that no individual will be held liable under this statute for conduct done before the enforcement of ICC's statute.

4.1.2 Genocide Crimes

Article 6 of the Rome Statute defines genocide crimes as:

1. Killing members of any group.
2. Causing mental harm or serious bodily harm to members of any group.
3. Coercively transferring children of a group to any other group.
4. Imposing measures intended to forbid births within any group.

Genocide was firstly recognised as a crime under International law in 1946 by the United Nations general assembly.

4.1.3 Crimes Against Humanity

Article 7 of the Rome Statute:

It means any of the acts when done as part of wide-spread or organized attacks directed against any civilian population with knowledge of attacks:

1. Murder.
2. Extermination.
3. Deportation or forced transfer of people.
4. Enslavement.
5. Detention or Serious Deprivation of physical freedom in Infringement of International rules of International law.
6. Torture.
7. Rape; Sexual slavery; Forced prostitution; Forced pregnancy; or any other Sexual violence of similar gravity.
8. Enforced disappearance of individuals.
9. Crimes of apartheid.
10. Another inhuman act of comparable nature purposely causing great suffering; genuine injury to body or mental or physical health.

4.2 War Crimes

Article 8 of Rome Statute defines War Crimes.

War crime is an offence that makes a severe violation of the law of war which gives rise to individual criminal responsibility. War crimes can also be defined as unjustified acts of violence, infringement of treaties, or violating practices that rule military conflicts.

War crimes include grave breaches of Geneva Convention.

War crimes are generally committed by army personnel but some time it may also be done by politicians and civilians. Some examples of War Crimes are:

1. Intentionally killing of civilians.
2. Torturing civilians.
3. Destroying civilian property.
4. Taking hostages.
5. Rape.
6. Using child soldiers.
7. Sexual slavery.
8. Pillaging.

4.3 Crimes of Aggression

It is a particular type of crime where an individual plans, commences or performs an act of aggression by using state military force that infringes the charter of the United Nations. Crimes of aggression is defined under Article eight bis of Rome Statute.

There are two essential elements which are required in the crime of aggression:

1. The offender of the crime must be political leader or a military leader.
2. The court must have to show that the offender was involved in the planning, preparation, commission, and execution of the crime.

An “act of aggression” means “the use of armed force by state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the charter of the United Nation” Article 8(2) bis Rome Statute.

5.0 Limitations of ICC

- As a judicial institution, the **ICC does not have its own police force or enforcement body**; thus, it relies on cooperation with countries worldwide for support, particularly for making arrests, transferring arrested persons to the ICC detention centre in The Hague, freezing suspects’ assets, and enforcing sentences.
- This **State cooperation is problematic** for several reasons. It means that the ICC acts inconsistently in its selection of cases, is prevented from taking on hard cases and loses legitimacy.
- It also gives the ICC less deterrent value, as potential perpetrators of war crimes know that they can avoid ICC judgment by taking over government and refusing to cooperate.
- There is **insufficient checks and balances** on the authority of the ICC prosecutor and judges.

- ICC has been accused of being a **tool of Western imperialism and biased** in favour of powerful countries against weak states.
- In 2020, the USA authorised sanctions against International Criminal Court (ICC) officials involved in investigations into possible war crimes by USA troops and its allies.
 - The United Nations had taken serious note about the USA order.
 - The European Union called the USA decision a matter of serious concern.
 - The international NGO Human Rights Watch has observed that by penalising war crimes investigators, the USA is openly siding with those who commit and cover up human rights abuses.
- ICC **cannot impose a death sentence**; it can impose lengthy terms of imprisonment of up to 30 years or life when so justified by the gravity of the cases.
- The ICC court has **no retrospective jurisdiction** as it can deal only with crimes committed after 1 July 2002 when the 1998 Rome Statute came into force.
- ICC has **automatic jurisdiction only for crimes committed on the territory of a state** which has ratified the treaty; or by a citizen of such a state; or when the United Nations Security Council refers a case to it.
- Procedural and substantive deficiencies leading to delays and frustration, have questioned the efficacy of the court.
- It also faces **scarcity of human resources and funds**.

6.0 India's stand on International Criminal Court

The International Criminal Court is many times in highlight not for its role in tackling impunity but for the desertion of its state members. South Africa has informed its intent to withdraw from the Rome Statute. India has not yet signed the Rome Statute, but attended the conference of Rome Statute which was held in 1998. India is amongst those countries which have neither signed nor accepted the Rome Statute of the ICC.

The government of India has frequently opposed the ICC. India with holds in the vote adopting the Rome Statute in 1998. The main reason of not accepting the Rome Statute is that the Rome Statute of the ICC defines war crimes including the 'Armed Conflict not of an international character'. The insertion of armed dispute not of Global nature for describing war crime in the Article eight of Rome Statute for ICC has meet up with refusal by Indian Government.

Landmark Judgement of International Criminal Court

7.0 The Prosecutor v. Mathieu N. Chui

Judgement in accordance with Article 74 of the Rome Statute. Mathieu N. Chui was claimed as chief of Front Des Nationalist et Integrationists. He was alleged of three offences committed against humanity & 7 war crime for which he was relieved by the second trial chamber of ICC.

He was accused of committing:

- Three crimes against humanity which were- Murder under Article 7(1)(a) of the statute, sexual slavery, and rape under Article 7(1)(g) of the statute.
- Seven war crimes which were- Using children below the age of 15 to take active part in hostilities under Article 8(2)(b)(xxvi) of the statute, intentionally directing an attack over a civilian population as such of an individual civilians or against individual civilian not taking direct part in hostilities under Article 8(2)(b)(i), wilful killing under Article 8(2)(a)(i), destruction of estate in Article Eight (two)(b)(xiii), pillaging in Article Eight (two)(b)(xvi), sexual slavery & rape in Article Eight (two)(b)(xxii) of the statute.

The hearing was started in Nov. 2009 & continued till 18 /12 /2012 where in the judgement was given that N. Chui will be released because of court's judgement for not convicting the defendant without genuine evidence. He was free from custody on 21/12/2012 & this decision was appealed by the office of the prosecutor on 27th February 2015, the appeal chamber sticks to the decision of the trial chamber ii of acquitting Ngudjolo Chui.

Through this verdict the court gave a simple and clear message that ICC will be unwilling for convicting an accuse person if there are no proper substantive and meticulous evidence.

8.0 The Prosecutor v. Thomas Lubanga Dyilo

Thomas Lubanga Dyilo was indicted on 10th February, 2006 for three counts of war crimes. Lubanga Dyilo was also accused of enlisting children and using them to participate actively in hostilities. All the charges against Lubanga were confirmed on 29th January, 2007. His trial was started on 26th January, 2009 and ended with a

conviction of all three crimes on 14th March, 2012. He was sentenced to 14 years of imprisonment on 10th July, 2012. The appeal chamber supported the decision of both the conviction and the sentence.

Conclusion

Analyses and role of International Criminal Court is necessary for the world to know the importance of the court. This analysis also helps in understanding any further improvements that are required to be done for ICC. The ICC is a fixed and stable International Court established to investigate, prosecute, and try people charged for committing serious crimes.

The ICC has power to prosecute individuals for the International crimes of genocide, crimes against humanity, war crimes, and crime of aggression. ICC prosecutes serious crimes done by individuals in cases where National courts are unable to prosecute criminals or when the U.N. or individual state transfers the situation to the court. This paper reviews the background, structure, Legal process, Jurisdiction of ICC. It also reviews India's stand on ICC and current condition of ICC (which includes challenges and criticism faced by ICC).

The ICC has very aspiring targets as it not only focuses on establishing International justice but also peace. ICC is gradually being recognised worldwide as a justifiable institution. The ICC must provide centre of attention on equality, local justice, and International Social justice to upgrade its legality and work. To enhance the effect of ICC, its member states have an important role to play in assisting the court to provide International justice. Trials of ICC may be slow and costly, but ICC is surely revealing that it can work jointly with National and Regional courts for delivering quality justice.

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