

The Role of the International Criminal Court in Fighting International Crimes

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Abstract

This work focuses on international criminal court as an institution aimed at combating and preventing mass violation of human rights and inter and intra state disputes and thereby exercise jurisdiction over individual for most heinous crimes committed over territory of state party, by national of state party referred to the ICC by the United Nations Security Council. The ICC operates independently and impartially, and its proceedings are based on the principles of fairness and due process. The ICC has faced criticism from some states, who argue that it is biased against African countries [1]. Despite this, the ICC has actively engaged in investigating and prosecuting individuals for international crimes and its work is supported by the Assembly of States Parties [2]. Such an institute has not emerged in a day but it was made over centuries, it is the apotheosis in International Criminal law evolution, therefore time and condition in which it was established cannot be ignored. This article studies the development of International Criminal Court through historical background & judicial decision. Moreover it analyses the Structure & Powers of ICC and debates around the establishment of International Criminal Court.

Keywords: International criminal court, principle of non-retroactivity, principle of complementarity, international court of justice, international military tribunal

INTRODUCTION

The International Criminal Court (ICC) is a permanent International Criminal court established in 2002 as a consequence of Rome statute (1998) to prosecute individuals for the most heinous crimes of international concern, such as genocide, war crimes, crimes of aggression and crimes against humanity. The ICC has its headquarters in Hague, the Netherlands, but it can exercise its jurisdiction to prosecute persons for crimes committed on the territory of a state party, by a state party or by citizens of a state party, referred to the International Criminal Court by the United Nations Security Council. Before the establishment of ICC, criminal courts were functioning on adhoc basis. The Rome Statute guarantees that everybody has access to international justice and also ensures that victims get justice and criminal are punished for the criminal acts. There are arguments about the effectiveness of the court; however, its success or failure can be evaluated by its track record of how successfully it has brought to justice those individuals who were responsible for the brutal acts.

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The ICC Statutes was promulgated on July 1, 2002 when it was ratified by sixty states as required by them. At present, 123 countries are a state party to the Rome statute of ICC. This indicates that still seventy-one countries that are members of the United Nations, out of a total of 193 countries, are not a state party to the ICC. The international body, the United Nations, also affirms the consensus among nations for the establishment of the court for prosecuting and punishing individual who are involved or responsible for

genocide. At the end of World War II, various groups floated the idea of an international criminal court. The Allied Powers were quick in their reaction after finding the crimes committed by their opponents, the Axis Powers. Consequently, the formation of 'Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis' and the 'Charter of the International Military Tribunal (IMT took place [3]. The difference between the two courts is that the International Court of Justice (ICJ) at Hague took up only cases between states while ignoring the crimes committed by persons. Hence, there was an absence of a legal platform for the punishment of persons who committed the atrocious acts of genocide, war crimes and crimes against humanity and blatantly defied human rights. This has been witnessed in a number of cases over the last fifty years where the guilty persons have not been held responsible for these outrageous acts.

In addition, the International Criminal Court has filled many gaps and shortcomings present in the international legal system. The court gave hopes to many that the perpetrators would of war crimes or genocide may be brought to justice. The important aspect of the court is that it acts as a deterrent and increases the possibility of preventing as well as bringing a conflict to an end.

HISTORICAL OVERVIEW

The development of the International Criminal Court (ICC) can be traced back to the late 19th and early 20th centuries, when the international community first began to consider the idea of establishing an international tribunal to prosecute individuals for crimes against peace and humanity. However, it was not until the aftermath of World War II and the Nuremberg Trials that the concept of an international criminal court gained significant traction.

The Nuremberg Trials, which were held in 1945 and 1946, established the principle that individuals could be held accountable for committing international crimes such as war crimes, crimes against peace, and crimes against humanity. It led to the establishment of the International Criminal Tribunal for the former Yugoslavia International and Criminal Tribunal for Rwanda in the 1990s, which were created to prosecute individuals for war crimes and genocide in the Balkans and Rwanda, respectively.

These ad-hoc tribunals were a great success which led to the emergence of a permanent international criminal court. In 1991, the United Nations (UN) established the Preparatory Committee on the Establishment of an International Criminal Court, which was tasked with drafting a statute for such a court. It took several years of negotiations, for the adoption of Rome Statute, hence it was adopted by a diplomatic conference in Rome on July 17, 1998. The court became operative when the signatory nations gathered in the Assembly to appoint a prosecutor and 18 judges. It opened on March 11, 2003.

The Rome Statute of the ICC is the most important of the international agreements that defined International Crimes. It established the ICC as a permanent international criminal court with the jurisdiction to prosecute individuals for the international crimes of genocide, crimes against humanity, Crimes of aggression and war crimes. It also established the principle of complementarity, which means that the ICC can only exercise its jurisdiction if national courts are unable or unwilling to investigate and prosecute such crimes [4].

The ICC officially came into existence on July 1, 2002, after the Rome Statute had been ratified by 60 states. At present, the ICC has 123 member states. The ICC has been criticized by some countries and leaders, but it has also received support from many countries and organizations, including the European Union and the African Union. The ICC has indicted several high-profile individuals for international crimes since its establishment, including Sudanese President Omar al-Bashir for genocide, crimes against humanity, and war crimes in Darfur; and Bosco Ntaganda for war crimes and crimes against humanity in the Democratic Republic of Congo.

In addition to its judicial functions, the ICC also plays a crucial role in promoting international criminal justice and the rule of law. It provides technical assistance and capacity building to states to help them investigate and prosecute international crimes, and it works to raise awareness about the ICC and the importance of ending impunity for international crimes.

Overall, the development of the International Criminal Court has been a long and complex process, but it represents a significant step forward in the international community's efforts to hold individuals accountable for the most serious crimes of concern. While the ICC has faced challenges, it has also made important contributions to the fight against impunity for international crimes and the promotion of international criminal justice.

Structure of the International Criminal Court

There are 4 essential organs of ICC:

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

The assembly of parties have 3 main function i.e the court's administration, supervision and judicial functions. However it's not an organ of the ICC. Likewise it also performs some other functions such as preparing budget, electing judges and prosecutors, amending laws and regulations, and conducts different activities in accordance with the Rome Statute

The Presidency

It represents the International Criminal Court and performs certain judicial functions such as organizing the judicial chambers and assigning cases. It comprises of president and 2 Vice-Presidents, the vice president assists the president in performance of his or her duties.

The presidency organ is responsible for the organization of the court, maintaining relations with state parties & it promotes awareness and impressive of the court through external relation.

The Chambers

It comprises of 3 chambers:

- The Preliminary Trial Chamber
- The Trial Chamber,
- The Appeals Chamber

It has a total of 18 judges, it has 3 judges each and appeals chamber consist of 5 judges.

It mainly has 5 principal functions of the chambers:

- To issue arrest warrants.
- To decide the jurisdiction and admissibility.
- To certify or reject the charges.
- To hear the appeals.
- To settle the cases.
 - The Pre-trial chamber has a significant role in the first phase of the trial as it determines charges against the accused.
 - After the charges are confirmed by pre trial chamber then the trial chamber is responsible to decide whether the accused is guilty or innocent. It also imposes a sentence and compensation on the accused.
 - In the event that the accused chooses to appeal the judgement of the trial chamber then the appeal chamber comes to play and may decide to alter the judgement or it may order a new trial.

The Office of the Prosecutor

Office of the prosecutor is an autonomous organ responsible for examining & investigating situation where heinous crime appear to have been committed and it additionally prosecute individuals who were allegedly liable for those crimes.

- Determines the jurisdiction and the admissibility.
- Investigating the crimes
- Prosecuting individuals liable

Registry

- It administers court services and also provides external protection and victim counselling.
- It safeguards witnesses and victim.
- It further encourages victim involvement and restitution.
- It provides authoritative and legal support to all the organs of the court.
- It additionally provides the protection and security to both the witnesses and victims.
- Responsible for supervision and regulation of all the detainees under ICC.

Overall, the ICC is structured to ensure the independence and impartiality of its organs and to ensure that the rights of both the accused and the victims are protected. The ICC operates under a principle of complementarity, which means that it can only exercise its jurisdiction if national courts are unable or unwilling to investigate and prosecute such crimes. This structure ensures that the ICC is able to effectively prosecute individuals for international crimes while also respecting the sovereignty of states.

Powers of ICC

The ICC can exercise its jurisdiction over individuals, not states. It can only investigate and try cases that are referred to it by states or the United Nations Security Council. The ICC can also initiate investigations proprio motu (on its own initiative) if it receives information from any source that suggests that a crime within its jurisdiction has been or is being committed.

Article 5 of Rome Statute states that ICC has the jurisdiction over most heinous crimes i.e. Genocide, Crimes against humanity, War crimes & Crimes of aggression

ICC can exercise its jurisdiction and authority on the crimes mentioned in Article 5 [5] of the Statute. Minimum age of the accused must be 18 years at the time of commission of the offence.

Article 11(1) [6], ICC does not have any retroactive authority. Article 24(1) lays down the principal of non-retro activity which states that no individual can be held liable for crime committed before the enforcement of ICC's statute.

The ICC has various powers to investigate and prosecute individuals for crimes committed in its jurisdiction. These include the power to:

- Issue arrest warrants and summonses for individuals suspected of committing crimes within its jurisdiction
- Conduct investigations and gather evidence
- Summon and question witnesses
- Arrest and detain persons who are suspected of committing crimes within its jurisdiction
- Try and prosecute individuals for crimes

The ICC also has the power to request the cooperation of states and other international organizations in its investigations and prosecutions. This includes the power to request states to arrest and surrender suspects, to provide evidence, and to assist in the execution of arrest warrants and

summons. It also has the power to impose penalties on individuals found guilty of committing crimes within its jurisdiction. These include imprisonment, fine and other penalties as provided under the Rome Statute.

The ICC's powers are limited in several ways. First, the ICC can only investigate and tries individuals for crimes committed after the Rome Statute to the ICC came into force on July 1, 2002. Additionally, the ICC can only investigate and prosecute cases that are referred to it by states or the United Nations Security Council. ICC also has limited jurisdiction over certain types of crimes. For example, the ICC can only investigate and prosecute individual of War Crimes, Genocide, Crime against humanity, and Crime of aggression. It does not have jurisdiction over other types of international crimes, such as terrorism or drug trafficking.

The ICC also has limited enforcement powers. The ICC can issue arrest warrants and summonses, but it relies on states to arrest and surrender suspects. Additionally, the ICC can impose penalties on individuals found guilty of committing crimes within its jurisdiction, but it relies on states to enforce these penalties.

In conclusion, the International Criminal Court (ICC) is a permanent international court established to investigate, prosecute and try individuals for most heinous crimes such as genocide, crimes against humanity etc. The ICC has powers to investigate and try individuals for crimes within its jurisdiction, including the power to issue arrest warrants and summonses, to conduct investigations and gather evidence, and to try and prosecute individuals for crimes within its jurisdiction. However, the ICC's powers are limited in several ways, including its jurisdiction over certain types of crimes and its enforcement powers

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Legal Procedure of ICC

The ICC operates under the principle of complementarity which means that it only acts when a state is unable or unwilling to investigate or try these crimes.

The legal procedure of the ICC includes the following steps:

- **Investigation:** The ICC can initiate an investigation on its own or in response to a referral from a state party, the United Nations Security Council, or the ICC's Office of the Prosecutor.
- **Pre-trial proceedings:** Once an investigation is opened, the ICC's Office of the Prosecutor conducts a preliminary examination to determine if there is enough evidence to proceed with a trial. If so, the Office of the Prosecutor then requests the ICC's Pre-Trial Chamber to issue arrest warrants or summonses for the accused to appear before the court.
- **Trial:** The trial is conducted by the ICC's Trial Chamber, which hears evidence from both the prosecution and defense. The accused has the right to counsel and to be present at the hearing.
- **Appeal:** Either party may appeal the Trial Chamber's decision to the ICC's Appeals Chamber.
- **Sentencing and reparations:** If the accused is convicted, the Trial Chamber will sentence the accused and determine any reparations for the victims.

It is important to note that the ICC does not have its own police force, so states and other international organizations give their assistance to arrest suspects, and to enforce sentences.

Landmark Cases

Some notable landmark cases of the International Criminal Court (ICC) include:

- The case of Thomas Lubanga Dyilo (2006-2012): This was the first case to be tried by the ICC, and resulted in the conviction of Lubanga for conscripting and enlisting children under the age of 15 and using them to participate in hostilities in the Democratic Republic of Congo [7].

- The case of Jean-Pierre Bemba Gombo (2008-2018): This case resulted in the conviction of Bemba for war crimes and crimes against humanity, specifically for his role in the Central African Republic. For the first time the ICC convicted a person for the rape as a war crime [8].
- The case of Omar al-Bashir (2009-): The case against the President of Sudan, Omar al-Bashir, for genocide, crimes against humanity, and war crimes, is notable as it is the first time an arrest warrant has been issued for a sitting head of state by the ICC [9].
- The case of Charles Taylor (2006-2012): Charles Taylor, former President of Liberia, was convicted of aiding and abetting war crimes and crimes against humanity, including murder, rape, sexual slavery, and conscription of child soldiers, during the Sierra Leone Civil War [10].
- The case of Joseph Kony and his Lord's Resistance Army (LRA) (2004-): The ICC issued arrest warrants for Joseph Kony, leader of the LRA, for war crimes and crimes against humanity, including murder, enslavement, sexual enslavement, and inhumane acts of causing serious bodily injury and suffering [11].

All of these cases have set important precedents for the ICC and international criminal justice, and have helped to establish the ICC as a powerful tool for holding individuals accountable for the most serious crimes under international law.

CONCLUSION

The International Criminal Court (ICC) is a critical institution in the global fight against impunity for the most heinous international crimes. Its establishment in 2002 marked a significant step forward in the development of international criminal justice, and it has since prosecuted and convicted individuals for war crimes, crimes against humanity, and genocide.

However, despite its successes, the ICC has faced significant challenges in its ability to effectively investigate and prosecute cases. Some states, including the United States and China, have not ratified the Rome Statute that established the ICC, which limits the court's jurisdiction. Additionally, some African countries have called for the ICC to be reformed or abolished, citing a perceived bias against African states and individuals.

Despite these challenges, the ICC remains an important institution in the fight against international crimes. Its ability to hold individuals accountable for their actions serves as a deterrent to future atrocities, and its investigations and trials provide a measure of justice for victims and their families. The ICC's ongoing work in countries such as the Democratic Republic of Congo, Sudan, and Mali demonstrate the importance of its mandate to investigate and prosecute international crimes. All things considered, it is recommended that the ICC statute should include reprehensible crimes like rape, sexual slavery, enforced prostitution, human trafficking and other forms of sexual violence as a distinct category of war crimes, given the fact that these crimes comprise grave breaches of laws and customs in an armed conflict.

In conclusion, the ICC has made significant contributions to the development of international criminal justice and its ongoing work is essential to the fight against international crimes. However, the Court still faces many challenges, such as the lack of cooperation from some states and the criticism from some African countries, which need to be addressed to ensure the Court's effectiveness and credibility. Nevertheless, the ICC's role in the fight against international crimes is crucial and it will continue to be a valuable institution in the global effort to bring accountability for the most heinous crimes.

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