

## THE INTERNATIONAL CRIMINAL COURT: AT A GLANCE

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### ABSTRACT

*The origin and purpose of establishing the International Criminal Court is to make sure those crimes against humanity and mass atrocities don't occur with freedom. The International Criminal Court has the jurisdiction to prosecute people for the international crimes of genocide, crimes against humanity, and war crimes and crime of aggression. It is the trust and cooperation of nations that make an institution effective in finding out solutions to crimes at the global level otherwise in the present scenario it is very tough to catch hold of this evil. Though these crimes might sound to differ however the impact of each of those crimes features long lasting result. The International Judicature (ICC) solely exercises its jurisdiction once bound conditions are met, like once national courts area unit unwilling or unable to prosecute criminals or once the world organization (Security Council) or individual states refer thing to the court.*

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**Keywords:** *Humanity, Crimes, Mass Atrocities, ICC, Security Council.*

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### INTRODUCTION

"In the panorama of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished." <sup>1</sup>

The effect of crime is felt at the international level and measures are devised through institutions to curb this international monster. In this effort, the International Criminal Court is an independent and intergovernmental organization situated in The Hague, the Netherlands. It's the result of a long struggle to save justice at the International level and to promote harmony amongst nations at the worldwide. The nations were at regular struggle to establish a platform at the international level that will hear matters relating to the offences that affect the harmony and peace at global level.

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<sup>1</sup> Kofi Annan, United Nations Secretary-General

The origin and establishment of the institution was done to make sure that there is an institution at the global level which ensures the existence of a check agency to the ongoing increase in the level of offences and its effect globally. The ICC has been operative since 1st July 2002, the date on which the Rome Statute entered into force. The date becomes of more importance as it marks the beginning of a new era in the formation of social justice and international harmony at the global level. The Rome Statute is a treaty involving by more than two nations and it was signed on 17 July 1998 and it has established the International Criminal Court (ICC). This treaty was talked within the UN; but it created an self-regulating judicial body distinct from the UN. Definitely, the Rome Statute couldn't get existence easily however was a result of the long struggle and was an outcome of the lengthy method of thought of the question of international criminal law in the United Nations. It is the ICC's foundational and governing document. To ensure that there is no gap between the theory and practice of the practical working of the institution, the Statute provides powers which are enough to deal effectively with the rising graph of crime at the global level. The States became member states of the ICC by ratifying the Rome Statute. Currently, there are 123 member states<sup>1</sup> in the ICC which are party to the Rome Statute. The International Criminal Court has four major organs The Presidency, Judicial Divisions, Office of the Prosecutor and Registry which through their specialized functions facilitate its working to achieve the purpose of its establishment.

#### **HISTORICAL BACKGROUND**

Though the need for an institution like the International Criminal Court was felt at the global level from a long time but the effort could become a reality when ICC actually came in existence. When the ICC was not in existence, there were broadly speaking four tribunals which in particular showed that there was a necessity for a permanent international court to serve the international community. Out of four tribunals the International Military Tribunal at Nuremberg (1945-1946) and the International Military Tribunal for the Far East in Tokyo (1946-1948) were established after World War II<sup>nd</sup>. The primary aim and main purpose of establishing these tribunals was largely to punish Nazi leaders and the Japanese war criminals who led their people to fight with Germany in the World War II<sup>nd</sup>. It was not the intention while establishing the International Criminal Court to establish an institution away from the existing once but the motive behind its establishment was to supplement the existing the institutions with the similar objectives. It was first proposed in 1919 to establish a tribunal to judge those leaders who are accused to commit a crime at the international level, also at the same time made sure that the ICC would plays role when definite conditions are met which would be elaborated further. The awe that existed after the World War II at the worldwide level prompted the foundation of the United Nations Convention on the prevention and punishment of the crime of genocide. The Convention assumed a significant job in the foundation of the International Criminal Court. Each effort to curb crime at the international level has to face opposition also which also happened when an intention was expressed to establish the International Criminal Court but since the convention had come into existence, all such attempts came to an end. The convention marked as the guiding principle behind the

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<sup>1</sup> India has neither signed nor ratified the Rome Statute on the International Criminal Court (ICC).

formation of the International Criminal Court. The Convention defined genocide as a criminal act in international law and it was under this convention that the International Law Commission (ILC) was first permitted to explore the possibility of creating an international judicial body for trying people for crimes of genocide.<sup>1</sup> The ILC consists of thirty-four members who have a "recognized competence in international law" and are nominated and elected by the UN General Assembly.<sup>3</sup>

### STRUCTURE AND COMPOSITION OF THE ICC

The structural composition of the International Criminal Court consists of the Presidency, Chambers, Office of the Prosecutor and the Registry. To provide a comprehensive coverage in terms of structure and composition, it was kept in mind while framing the structure of the ICC that there is a check on each activity of the various parts of the court playing a role in the entire process and to ensure further that no interference or undue influence is allowed by any nation while there is a trial of any offence at the International level. It was more important to assure such in immunity since it was very clear from the structural composition that a great institution at the international level is soon to come into existence.

They have the conspicuous distribution of tasks and a well-defined pattern of working provides ineffective machinery for the purpose of its establishment. The Presidency comprises of the President and Vice-Presidents and three judges of the court who are chosen for the Presidency by their individual judges for a limit of two three-year terms.<sup>2</sup> As of March 2018, the President is Chile Eboe Osuji from Nigeria, who took charge of office on 11<sup>th</sup> March 2018. His first term will lapse in 2021. The Assembly of States Parties fills in as the Court's oversight body and not an organ of the court. The Presidency serves and represents the ICC externally. The office of the prosecutor is under the primary task of administration and the final responsibility for the proper administration of the court is given to the Presidency. The basic function of this organ is to watch out the whole administration of the court. The Judicial Divisions includes the 18 judges of the court, systematized into three chambers i.e. Pre-Trial Chamber, Trial Chamber and Appeals Chambers completes the legal elements of the court. Judges are chosen by the Assembly of States Parties. They serve nine-year terms and commonly qualified for re-election.<sup>3</sup> All judges must be nationals of states gathering to the Rome Statute, and no two judges might be nationals of a similar state. They should be "persons of high good character, fair-mindedness and uprightness who have the capabilities required in their individual states for arrangement to the most noteworthy legal offices". The Prosecutor or any individual being examined or arraigned may demand the exclusion of a judge from "any case where his or her unprejudiced nature may sensibly be questioned on any ground". Any solicitation for the preclusion of a judge from a specific case is settled by a total dominant part of the other judge. A judge might be disconnected from office in the event that the person "is found to have engaged with genuine wrongdoing or a genuine break of his or her obligations" or can't practice

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<sup>1</sup> International Criminal Court. *Chronology of the International Criminal Court*.

<sup>2</sup> [Article 38](#) of the Rome Statute. Accessed 21 July, 2007

<sup>3</sup> International Criminal Court. "[Chambers](#)". Archived from the original on 18 July 2007. Retrieved 21 June, 2007

his or her capacities. The evacuation of a judge requires both a 66% greater part of different judges and a 66% larger part of the state parties.<sup>1</sup> The Rome Statute provides enough powers to the prosecutor to discharge effectively its functions and to further ensure that it works independently. It is made sure by providing a basic frame work and circumstances under which the prosecutor might start an investigation against any offence committed at the global level.

The Office of the Prosecutor or OTP is accountable for making investigations and prosecution based on the investigation conducted and material collected and it is managed by the Chief Prosecutor, who is assisted by one or more Assistant Prosecutors. The Rome Statute provides that the Office of the Prosecutor shall take action independently<sup>2</sup> and no member of the Office may pursue or act on directions from any outer source, such as states, international organizations, non-governmental organizations or individuals. Broadly speaking, the Prosecutor can start an enquiry under three situations, once a situation is referred to him or her by a state party, secondly when a situation is referred to him or her by the United Nations Security Council, and when a threat to international peace and security is pretended by any member state or any other state and such a threat is to be addressed by the ICC or thirdly when the Pre-Trial Chamber authorizes to open an investigation on the basis of information received from other sources, such as individuals or non-governmental organizations.

It has additionally been given under the Statute that any individual being examined or indicated may demand the preclusion of an investigator from any case "where their fair-mindedness may sensibly be questioned on any ground".<sup>3</sup> The Statute further gives that the solicitations to the exclusion of examiner are chosen by the Appeals Chamber. It has likewise been given by the statute that an investigator might be expelled from office by flat out lion's share of the state parties in the event that the person "is found to have committed serious misconduct or a serious breach of his or her duties" or is unable to exercise his or her functions.<sup>4</sup> The Registry mostly deals with and has the duty regarding the non-legal parts of the organization and overhauling of the court. The elements of the Registry are to administer the court techniques and to deal with the procedural angles. In spite of the fact that the registry has numerous errands to perform identifying with the organization of the court however the real capacities incorporate, in addition to other things, the organization of lawful guide matters, court the board, exploited people and witnesses matters, protection counsel, detainment unit, and the customary administrations given by organizations in worldwide associations, for example., account, interpretation, building the executives, acquisition and personnel. The Registry is led by the Registrar, who is elected by the judges for a term of five years. The current Registrar Peter Lewis, who was elected on 17 April, 2018.

### **JURISDICTION OF THE ICC**

Article 5 of the Rome Statute states that the ICC will have jurisdiction to the utmost grave crimes with respect to the crime of genocide, war crimes and crimes against humanity.

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<sup>1</sup> Article 46 of the Rome Statute.

<sup>2</sup> Article 42 of the Rome Statute

<sup>3</sup> Article 42 of the Rome Statute

<sup>4</sup> Article 46 of the Rome Statute

The basic purpose and aim behind establishing the ICC can only be attained when heinous offences will be dealt in a strong way and punitive action will be taken against the commission of such crimes. The crime of genocide<sup>1</sup> is characterized by the definite intent to abolish in whole or in part a national, ethnic, racial religious or group by killing its members, causing serious bodily or mental harm to members of the group, or forcibly transferring children of the group to another group.

Second, the ICC can prosecute crime against humanity<sup>2</sup> which are serious violations committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The fifteen types of violation against mankind recorded in the Rome Statute, incorporate offenses, for example murder, rape, imprisonment, enforced disappearances, enslavement- particularly torture, assault, racial segregation and deportation. Third, war crimes<sup>3</sup> which are a grave ruptures of the Geneva Conventions of 12 August, 1949, to be specific, any of the accompanying demonstrations against people or property ensured under the arrangements of the pertinent Geneva Convention.

- Wilful executing;
- Torture or cruel treatment,
- Wilfully causing incredible torment,
- Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- Wilfully denying a captive or other ensured individual of the privileges of reasonable and ordinary preliminary,
- Unlawful deportation or transfer or unlawful confinement;
- Taking of hostages.

At last the fourth wrongdoing falling inside the ICC's purview is the crime of aggression.<sup>4</sup> For the motivation behind The Rome Statute, "crime of aggression" signifies the arranging, preparation, initiation or execution, by an individual in a position adequately to exercise power over or to coordinate the political or military activity of a State, of a demonstration of animosity which, by its character, gravity and scale, comprises a show infringement of the Charter of the United Nations.. The definition of this crime was received through amending the Rome Statute at the first Review Conference of the Statute in Kampala, Uganda, in 2010. On 15 December 2017, the Assembly of States Parties embraced by accord a goals on the actuation of the purview of the court over the crime of aggression as of 17 July, 2018.

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<sup>1</sup> Article 6 of the Rome Statute

<sup>2</sup> Article 7 of the Rome Statute

<sup>3</sup> Article 8 of the Rome Statute

<sup>4</sup> Article 8 of the Rome Statute Inserted by resolution RC/Res.6 of 11 June 2010.

## JURISDICTION RATIONE TEMPORIS<sup>1</sup>

The Court has jurisdiction as for violations committed after the passage into power of The Rome Statute. In the event that a State turns into a Party to Rome Statute after its entrance into power, the Court may exercise its jurisdiction only with respect to crimes committed after the commencement of this Statute. There are several features and provisions of the Rome Statute that provide it a sanction of deterrence to the commission of these crimes. It is very important to mention that the ICC exercises its jurisdiction when such crime is referred to the Prosecutor by a State Party<sup>2</sup> or such crime is referred to the Prosecutor by the Security Council, or the Prosecutor has started an investigation in respect of such a crime.

The most important limitation on the ICC's jurisdiction is contained in Article 16<sup>3</sup> and it provides for the procedure of investigation and states that no investigation or prosecution could also be started with beneath this statute for a amount of twelve months when the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request could also be revived by the Council under the identical conditions. This is however only a reflection of the law developed by the International Criminal Tribunal for Former Yugoslavia (ICTY). Article 11 of the Statute limits ratione temporis jurisdiction to offences committed after the Statute. Further limitation of the ICC's jurisdiction is contained in Article 12 of the statute.

Article 12 provides that the ICC can exercise its jurisdiction with respect to crimes committed in States are either parties to the Statute or accepted its jurisdiction. Under Article 13 of the Statute, it has been provided that the exercise of jurisdiction is triggered by referral of a situation to the Prosecutor of the ICC either by a State Party or the UN Security Council, or when the Prosecutor has commenced an investigation in respect of the crimes. Nonetheless, the Court will decide that a case is inadmissible on the off chance that it is being investigated by a State which has purview over it, except if the State is reluctant or unfit really to do the investigation. This may occur for example on account of an aggregate or generous breakdown or inaccessibility of a national legal framework.

Article 103 of the Statute provides that a sentence of imprisonment will be served in a State assigned by the ICC from a rundown of States which have shown to the ICC their ability to acknowledge condemned people. The Statute depend on the rule that States Parties should share the duty regarding upholding sentences of detainment, as per standards of impartial circulation, as gave in the Rules of Procedure and Evidence.

## CASES SO FAR

Since 2004, the Office of the Prosecutor has developed 17 cases, with 30 suspects, out of seven situations that they have fully investigated. Of these seven situations, Member States (Uganda, the Democratic Republic of the Congo, and the Central African Republic) referred three, the UNSC referred two (Libya and Darfur, Sudan), the Office of the Prosecutor initiated one (Kenya), and one state (Cote d'Ivoire) gave jurisdiction to the ICC.

<sup>1</sup> Article 11 of the Rome Statute

<sup>2</sup> Article 14 Referral of a situation by a State Party

<sup>3</sup> Deferral of investigation or prosecution

## CONCLUSION

Conclusively, it can be stated that the International Criminal Court serves as a tool to curb the crime of genocide, war crimes and crimes against humanity. The Rome Statute is the base document that provides for the establishment and working procedure of the Court and also provides for the procedure of trial of crimes by the Court. The Statute has laid down procedure for administration of the affairs of the court and the Court carries on its functioning effectively despite of criticisms and controversies. The Court though faced many criticisms over the past years since its establishment but has surely proved through its working procedure that it is effective in serving the purpose with which it has been brought into existence.

## REFERENCES

- ⇒ Bassiouni, M. Cherif. *Crimes against Humanity in International Law*, 2d ed. The Hague, London, and Boston: Kluwer Law International, 1999.
- ⇒ Ferencz, Benjamin B. *An International Criminal Court, A Step Toward Peace: A Documentary History*. London: Oceana Publications, 1980.
- ⇒ Pictet, Jean. *Commentary on the Four Geneva Conventions of 1949*. Geneva: International Committee of the Red Cross, 1952–1960.
- ⇒ Schabas, William. *Genocide in International Law*. Cambridge, U.K.: Cambridge University Press, 2000.
- ⇒ Varaut, Jean-Marc. *Le proces de Nuremberg*. Paris: Perrin, 1992.

