

A CRITICAL ANALYSIS: INTERNATIONAL CRIMINAL COURT

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ABSTRACT

The International National Criminal Court is established on 2002 July 1st with the help of 120 state parties and governed as per Rome statute the ICC. International criminal courts object to working for the internal community and building a welfare community on the matter of genocide, prosecuting crimes against humanity, war crimes and crimes against aggression to regulate such kinds of offences when national courts failed to do so international criminal courts extend the jurisdiction of the same. there are four organs of the international criminal court presidency, judicial division, office of the prosecutor and registry the president is elected by the states parties with a majority of votes and the responsible for administrative and judicial functions and responsible for the conduct of the court like prosecutor also elected by the states parties he is responsible by the work of the investigation inquiries like registry also controlled by the registrar and he will and examination witness safeguard as per informed by the authority the division of the judges as per the chambers pre-trial 3 judges, trial 3 judges, and appeal also 5 judges there are non-state parties also there who criticise the influences of the states parties and the third parties jurisdiction.

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“In English mean, the whole world is a family or words of globalisation we say the whole world is the international village. So as per the world's needs time being for regulation authority is needed. like in the year 2002 July 1st International Criminal Court (ICC) comes into the picture. In the ICC. There are 123 member states which are called state parties and the court has jurisdiction all over the member countries official languages are English, Arabic, Chinese, French, Russian and Spanish and the working languages are English and French. The headquarters of the IIC.established in The Hague, Netherlands. The ICC deal with Human rights matters and is governed under the Rome statute. Before going further let us discuss the evolution and needs of the International criminal court.

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EVOLUTION AND NEEDS OF ICC

The state of [Westphalia](#) of 1648 with the development of arm forces and different conflicts the twentieth century for humanitarian abuse slowly began to emerge. The founder of the Red Cross movement in Geneva 1860, then the Hague Convention 1864 first significant codification of the war in an international treaty want different regulations after World War I Criminal Prosecution among the general people increase. [League of Nations](#) in 1937 decided the establishment of an international criminal court but that never came to force. The [Nuremberg and Tokyo tribunal](#) established that time Nazis' war crimes were declared and the prosecution of genocide was investigated by UN General Assembly after the trial it declared that it is against humanity that atrocity was committed against Jewish people of Europe after that [UN General Assembly](#) declared prevention and punishment of the crime of genocide. At this time the need for an international code is reflected and Article 4 of the Genocide Convention is in the post-war euphoria about war crime prosecution, the continued growth of heinous crimes in different territories establish *ad hoc* tribunals and the law commission work as *ad hoc* tribunal. In 2002 July 1st strongly decided to create another institution that is International Criminal Court.

WHAT IS ROME STATUTE?

On 17 July 1998, a conference of 160 states signatories of the particular conference the country and all the members' parties are known as state parties these state parties provide funds to run the international criminal court and the signatory has any matter against human rights then international criminal court come to action.

This statute provides power, function and procedure for running of International Criminal Court. The table content of the Rome statute is mentioned below

Parts-1 (Articles 1-4) elaborated about establishment of the court

Parts-2 (Articles 5-21) speak about Jurisdiction, admissibility and applicable law

Parts-3 (Articles 22-33) General principle of criminal law

Part-4 (Articles 34-52) Composition and administration of the court

Parts-5 (Articles 53-61) Investigation and prosecution

Parts-6 (Articles 62 to 76) Trial

Parts-7 (Articles 77-80) Penalties

Parts-8 (Articles 81-85) Appeal and revision

Parts-9 (Articles 86-102) International cooperation and assistance

Parts-10 (Articles 103-111) Enforcement

Parts-11 (Articles 112) Assembly of States parties

Parts-12 (Articles 113-118) Financing

Parts-13 (Articles 119-128) Final Clauses

OBJECTIVE OF INTERNATIONAL CRIMINAL COURT

Rome's statute regulated or dealt with matters of human rights but major fourth things-

- Crime and genocide body and mental harm issues
- International Criminal Court can prosecute crime against humanity – There are 15th types of different types of offences and murder rape included.
- War crimes which are grave breaches of the [Geneva Convention](#) – Those guidelines are violations of convention like armed convention, use of child labour, killing torture or prisoner war, and building dedicated to religious education and charitable purposes.
- Crime of aggression is the use of armed force state against the sovereignty, integrity or independence of another state.

The preamble of the Rome statute in a better way explains the objective consciously all the people (signatory countries) are united to make common bond culture and heritages as well, mindful the protection of children, women and men have a victim of unimaginable atrocities, recognizing and well being of the world .affirming most serious crime must not go unpunished enhancing international cooperation ,recalling that duty to every state to exercise thire criminal jurisdiction and responsible of crime, reaffirming the purposes of the charter of the UN use of force against the territorial integrity and political independence of any party, emphasizing that state party not intervene in armed an armed conflict or any state affairs, determined the present and future of international cri9minal court be permanent in

relationship with other organization and jurisdiction of other offence also this body it is a complimentary to national criminal jurisdiction and resolved to guarantee of international justice.

JURISDICTION OF INTERNATIONAL CRIMINAL COURT

Exercise of jurisdiction opens the state parties. any non-state parties decide to submit its jurisdiction or any crime which is committed or any crime committed within the territory of state parties. all these conditions do not apply when the security council acts under Chapter 7 of the United Nations Charter. International Criminal Court can not act retrospectively from 1st July 2002 after the date of same the international criminal court going to be acting.

The criminal court is acting open different crimes as per Article-5 of the Rome statute:

Crime of genocide (Article 6)

A crime which is violet national ethical religious group interest

- Killing members of the group;
- Causing bodily or mental harm to the members of the group;
- Physical destruction of any parts of the community;
- Prevent birth within the group;
- Forcibly transfer any child of a group to any other group;

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Crime against humanity (Article 7)

When any crime related to or against the entire human community and with proper knowledge

- Murder;
- Enslavement;
- Forcibly transfer the population;
- Wrongful restrain as against national and international law;
- Torture;
- Rape sexual slavery or any other sexual violation;
- Persecution of any identifiable group on political, racial, cultural religious gender, etc.
- Enforced disappearance of a person;

- Other inhuman acts etc.

War Crime (Article 8)

When the breach of the Geneva Convention of 12 August 1949:

- Willful killing;
- Torture in human treatment;
- Willfully causing great suffering a bodily injury like;
- Extensive destruction and appropriation of property except for military necessity;
- Compelling a prison of war other protected person force of a hostile;
- Wilfully deprive a person of war;
- Unlawful confinement;
- Taking of hostages etc.

Crime against aggression (Articles-8)

Planning preparation, initiation or execution of a person exercise direct-controlled over military

- Attacked by arms forces;
- Attacked on the different territories;
- Sending state-armed in illegal ways;
- Use armed by different agreements and contracts.

ORGANS OF INTERNATIONAL CRIMINAL COURT

- **Presidency**
- **Judicial division**
- **Office of the prosecutor**
- **Registry**

PRESIDENCY –

This position is the four most organs of the international criminal court as per section 38 of the Rome statute president is elected among 18 judges on a proper election basis. The president is responsible for the smooth work of the international criminal court. he has to look

into administrative as well as judicial work. the president as also external works like public awareness and relation and communication with other bodies or organizations and each time communicated with the prosecutor as well.

SERVICE OF THE JUDGES – All judges should elect full-time members of the court based on workload extent the of the court and consultation with its members and work as full time.

QUALIFICATION(Articles -36) - Each judge comes on an election basis by the states parties, all judges should be highly intellectual, impartial and have morals and integrity, candidate must form legal background expertise in criminal and procedural law, advocate prosecutor in criminal law, must be a good knowledge in the humanitarian law human rights other relevant law experts in working language, must form the states parties, and worked in a state highest court of the state.

JUDICIAL DIVISION

There are 18 judges in the International Criminal Court they have proper judicial work and they do all kinds of summon warrant judgments and other judicial work they are elected them self one president and two vice presidents they are the head of the court the division between them self there judges for the pre-trial, again three are for the trial judges and five are for the appeal judges.

PRE-TRIAL CASES- Generally 3 judges looking into the matter have the power to issue notice, summons, warrant, judgement, and investigation, they have the power to give orders for investigation, Inquiry, and provide protection to the witness and accused grant council for the defence check the investigation and other reasonable power.

TRIAL CASES- Generally 3 judges are actively looking into matters of a fair trial, check out evidence charges, and evidence investigation decide on compensation relief provided by them if any person is found guilty then provide a sentence as well

APPEAL CASES- Appeals are handled by five judges bench they can look into matters modify the decision or confirm sentences if they found any unfair they send it to the other chamber for trial again and provide different relief.

OFFICE OF THE PROSECUTOR (Article-42)

the prosecutor shall act independently as a separate organ of the court the prosecutor is responsible for case information and jurisdiction conducting examination and investigation as well. Office members shall not seek instruction from outside. the prosecutor has full authority over the office and staff assistance and administration of the office and they all serve on a full-time basis. The prosecution has in-depth knowledge of the law and matters and practical knowledge as well they have to master any of the working languages.

The prosecutor is elected by secret ballot by an absolute majority of votes by the assembly of the state parties and the deputy speaker also in the same manner the candidate of the deputy speaker is provided by the prosecutor and they are elected for the 9 years and they can not be re-elected again. The prosecutor can not be engaged in other works which is affect the confidential information with any others and arise questions on the sovereignty of the position. the presidency may excuse any matter in which the prosecutor wants to work the prosecutor or deputy impartial and doubt on any ground.

Any matter of disqualification of the prosecutor or deputy shall be decided in the appeal chamber at any time investigation of the prosecutor is being started they are free to comment on the matter. The prosecutor may appoint an expert in a particular matter related to sexual violence and allegation against the child.

PRELIMINARY EXAMINATION

Any offence that happens within the jurisdiction of the international criminal court jurisdiction has to work properly any group has to communicate to the prosecutor about the matter the prosecutor gets any offence 12,000 such communication comes under the purview of the preliminary investigation. any crime that happens in the territory of the particular state parties and comes under the criteria of the after the 2002 July 1st such situation but the in case of country state statute unable to perform or failed then Rome statute involved. There is no fixed time limit mentioned in the statute.

INVESTIGATION- while the prosecutor thinks of the needs of the investigation make a mission and send it to the includes different investigation officer and a different person for investigation and collect the relevant evidence for the investigation once the prosecutor

indicated sufficient evidence to prove and request the judges to kindly send the arrest warrant once judges feel and identified the ground send a warrant in case needed send summon

PROSECUTION

The accused of any case is present in the court then the prosecutor has to convince the court of sufficient evidence for the trial if judges agree then the prosecutor has to prove the case burden of proof lies on the prosecution all the documents and records of the evidence should be in a properly submitted and charges frame after framing of charges defence has to argue in the matter and if the person found guilty then he /she be punishable under law.

REGISTRY

The registry shall be responsible for the non-judicial aspect of court administration the chief of the registry is the registrar who is a principal administrative officer registrar do is act under the president of the court. registrar has an in-depth knowledge of his/her works and high moral character and must be fluent in the working language of the court. registrar is elected by judges by absolutely secret ballot with the majority elected for a term of five years shall be eligible for re-elected

The registrar shall set up a victims and witness unit in the registry. unit shall provide consultation with the office of the prosecutor. and arranges appropriate measures for the witness, victim, accused and present before the court unit shall be the expert trauma-related crime of sexual violence

PROCESS OF THE CASES

When a crime occurs:

Preliminary examination - Check out the jurisdiction and gravity of the offence and the needs of the investigation.

Investigation – collect evidence and request judges to make an arrest warrant or summon, or the court decides on the requirements.

Pre-trial – the judges confirm the suspect and enough evidence for the matter or not within 60 days.

Trial stages –the prosecution has to prove by reasonable doubt, the judges admit and decide the charges sentences as per the cases maximum punishment is 30 years and if need then life imprisonment and the decision is appealable.

Appeal stages – Both parties have the right to appeal the 5 judges bench has the decide the matter and provide relief or send it again for a fresh trial.

Enforcement of sentences- the concerned states have to agree to enforce the judgment.

DETENTION CENTRE – The convicted person in international criminal court in the detention center is safe, secure and the cooperation of the state parties physically mentally and spiritually makes stability .provide a scope for change them self and learning all types of vocational education news reading, computer, sports provides and scope for preparation for the cases as well, families of the prisoner can visit the centre different organization in the period come to the checking the detention administration.

DIFFERENT VIEWS OF THE NON-STATE PARTIES ON ICC

The international criminal court somehow replaces the national courts and affects the sovereignty of the other state as well as the states' parties have jurisdiction over the ICC so whenever any incidence in the internal boundary matter became interfered with by other countries. a developed nation like America by different peacekeeping missions conducted outside America for the betterment o the world so all the act of military matters where much violent act happens then it becomes wrongful use of international criminal court by the other states parties affect the sovereignty of the other nations and comes third parties jurisdiction county has no independency and the international criminal court has extra-territorial jurisdiction.

KEY FACTS

1. The minor person cannot be prosecuted by a court.
2. Before prosection investigation must be conducted
3. The investigation is finished all the evidence must be disclosed
4. The burden of proof is always on the prosecutor and the accused always be innocent until proven guilty

5. The defendant should have all the information in the languages they need at any stages
6. In the pretrial judges issue warrant of arrest to ensure is enough evidence a case can go to the trial
7. Before a case is committed to trial after the charges are confirmed defence refers to the suspect defendant refer as the accused
8. The judges listen to both parties and the sentence and decision are reparations
9. Appeal judges render decisions on appeals from prosecution or defence
10. If a case is closed the prosecutor can reopen the case by presenting new evidence.

CONCLUSION

The international criminal court has no special police force or enforcement body .so each of the states' parties' cooperation united support and financial assistance make this organisation successful State parties as influences by the same fairness are there but many times states try to overpass the decision. Some solutions of the non-states parties are to suspend the third parties' jurisdiction, and all the military action for peacekeeping should not come under the jurisdiction, which suggestions are justiciable as well.

REFERENCES

1. 'International Criminal Court' (The court, 12 June 2023) <<https://www.icc-cpi.int/>> accessed 12 June 2023
2. [R Wedgwood](#), "International Criminal Court an America view" [1999]EJL vol10 <<https://academic.oup.com/ejil/article/10/1/93/600889>> accessed 12 June 2023
3. Rome Statue 1998
4. 'ICRC', The Geneva Convention(1949)
5. 'General Assembly of United Nation'(UN,1945) <<https://www.un.org/en/about-us>> accessed 12 June 2023
6. 'International Criminal Court ' (the ICC. At a Glance)
7. By William A. Schabas 'An Introduction To International Criminal Court (2011)Cambridge <https://books.google.co.in/books?hl=en&lr=&id=9Awa7ghw5Q4C&oi=fnd&pg=PR1&dq=international+criminal+court&ots=CgT0iq9lnp&sig=gdeeYGbmHHH1to_SMOP27ritrMM&redir_esc=y#v=onepage&q=international%20criminal%20court&f=false> accessed 11 June 2023

