INDIA AND THE ROME STATUE: AN EXAMINATION OF THE COUNTRY'S VIEWS ON THE INTERNATIONAL CRIMINAL COURT

Kirti Yadav*

ABSTRACT

This abstract aims to clarify the changing position toward international efforts to address apathy for international crimes through a thorough analysis of the country's engagement towards the ICC, including its involvement in debates on global justice systems and interaction with the Court on particular cases. The first permanent international tribunal with virtually universal authority to try anyone for war crimes, crimes against humanity, genocide, and crimes of aggression is the International Criminal Court. India's position on the International Criminal Court (ICC) reflects the intricate relationship between its commitment to global justice, pragmatic principles, and sovereignty. India has exhibited a circumspect and selective stance towards the International Criminal Court (ICC) since its founding in 2002. It has endeavored to reconcile its endorsement of global criminal justice with apprehensions about excessive jurisdiction and possible encroachment upon state sovereignty. India has not signed and ratified the Rome Statute due to concerns about some articles that may affect its judicial autonomy and national sovereignty. Instead, India has pushed for a more nuanced approach to international justice, highlighting the value of regional systems and state collaboration in combating serious crimes. This abstract illuminates India's views on the ICC. It helps to understand better the intricacies concerning international criminal justice and the contribution of developing nations in forming the global governance framework.

Keywords: International Criminal Court, Rome Statue, India etc.

*BA LLB, FIFTH YEAR, KR MANGALAM UNIVERSITY.

INTRODUCTION

From 1998 to 2002, we saw the formal establishment of the International Criminal Court (ICC) with the 1998 Rome Conference. The point here is that we essentially go from having ad hoc spatters of tribunals that are essentially erected and then essentially disbanded after they have served their purpose. Still, there was this growing desire to have not this ad hoc tribunal here and there but to have a unique permanent court to deal with international crime and that's what the Rome Statute does. These crimes comprise genocide, crimes against humanity, war crimes, and the crime of aggression. They also try to punish offenses that, under standard categories of jurisdiction, local authorities would not be able to execute.

HISTORICAL DEVELOPMENT OF THE INTERNATIONAL CRIMINAL COURT

We are limiting our understanding of history to the modern period. Even though ideas about international criminal law existed before the Nuremberg trial and before the Second World War, it is an international criminal law as we know it today that developed at the end of the Second World War with the establishment of the new principles of international law and these new principles of international criminal law and so with that being said you can broadly define and delineate international criminal law. As we know it today, there are three distinct periods of historical development. These three periods are significant for how legal principles developed each time. Still, there is no evidence to suggest that there are no instances where we see international criminal law being practiced or discussed during this period. It's just that the majority of the authority that we are going to drive our ideas comes out of these three distinct periods.

The first of this period is the post-1945 settlement, so we see the end of 1945, or at least around May 1945, we see the end of the Second World War. It was established before the end of the Second World War that there would be International Military tribunals and criminal tribunals for both war criminals who had or at least for the Nazis who committed crimes in Europe and for the imperial Japanese who had committed crimes in the Pacific. These were established at various conferences, such as the Teran and the Yola. So essentially, this is what the Nuremberg and Tokyo International military tribunals were; they were aimed to capture and prosecute crimes committed by the Axis powers at the end of the Second World War.

In terms of actual criminal tribunals and establishing criminal tribunals, there was a big break during the Cold War. Partly because international law developed a bit slower during the Cold

War because everybody essentially tries to become less willing to work with others in the global community with the growing divide of a unipolar or a bipolar world between the Soviet union and the United States. But in the early to mid-1990s, we start to see the collapse of the Soviet Union, and we see a rise in multilateralism. We see a rise in the international community's working with each other, and we also see, unfortunately, a rise in the atrocities being committed in two major conflicts in two significant areas of the world. We see the breakup of the collapse of the former Yugoslavia into various states. This then envelopes into a conflict between all of the different states essentially and then also the Rwandan Genocide, which took place in the mid to late 1990s and is also the result of a civil war between Horthy and Tosti. Since public international law is a subset of international criminal law, the sources of both types of legislation are essentially the same.[1]. International and hybrid criminal courts often draw from five sources of ICL:

1. Treaty law
2. Customary international law (custom, customary law)
3. General principles of law
4. Judicial decisions (subsidiary source)
5. Learned writings (subsidiary source).

Customary international law can be demonstrated by national laws and court rulings, but international courts do not directly apply them. The Appeals Chamber of the ICTY has ruled that domestic judicial opinions or methods had to be used cautiously when dealing with matters at the international level so as not to overlook the unique circumstances surrounding international criminal procedures.[2].

WORKING OF ICC

The Rome Statute's Article 12 outlines the fundamental prerequisites for utilizing the power of jurisdiction. According to Article 12, the Statute can only be used to pursue legal action if the accuser's country of residency or the state where the crime was carried out has ratified the Rome Statute or acknowledged the International Criminal Court's ad hoc jurisdiction over the

[1] Dapo Akande, The Sources of International Criminal Law, in OXFORD COMPANION TO INTERNATIONAL CRIMINAL LAW AND JUSTICE, p.g (41-53).
[2] Tihomir Blaskid, Judgement on the Request of the Republic of Croatia for Review of the Decision of Trial Chamber II of 18 July 1997, Appeal Chamber, 29 Oct. 1997.

relevant offense.[3]. Investigation can be initiated in three ways: A conflict can be referred to the prosecutor by state parties under the ICC law. For instance, this was the situation in Mali, Uganda, and the Democratic Republic of the Congo. As in Libya and Darfur, Sudan, the UN Security Council can ask the prosecutor to begin an inquiry.

Proprio Motu[4]: Based on information obtained from dependable sources, the prosecutor's office may launch an independent inquiry. The prosecutor's office has applied this strategy in several cases, including those involving Kenya, the Ivory Coast, Georgia, Bangladesh, and Myanmar.

ICC officers must examine the accused offenses before an inquiry is launched. Additionally, find out if the court has jurisdiction if there is a suspicion of aggression, genocide, war crimes, or crimes against humanity. Analyze to determine when, where, or who committed the crime. Generally speaking, the ICC cannot look into events before July 1, 2002, when it was first established. Furthermore, four governments who joined after the date are prohibited from allowing the ICC to look into events before they ratified the Rome Statute, which established the ICC. Furthermore, the offense must have been committed by a national of one of the states parties to the Rome Statute or on its territory. If this need is not met, further research can be done. The UN Security Council may send a case to the court for violence that endangers global peace and security, or an unidentified state party may first file a statement admitting the court's authority.

Other components will also need to be confirmed by the prosecutor's office:

First, it is necessary to determine if national courts and tribunals are carrying out serious investigations or are unable or unwilling to do so, given that the ICC is a court of last resort. This is so the ICC can complement national courts rather than supplant them. States are primarily in charge of looking into and prosecuting these offenses. Second, only the most heinous crimes should warrant the intervention of the ICC. Thus, it is critical to assess the seriousness of the offense. This is determined by evaluating the type, scope, mode of commission, and consequences of such crimes using qualitative and quantitative criteria. Ultimately, the prosecutor will weigh the victim's interests and the pursuit of justice while deciding whether or not to launch an inquiry. The prosecutors may take some time to analyze and respond to these questions. Its outcome may lead the prosecutor to decline further

[3] Rome Statute art. 12(1)

[4] Rome Statute arts. 13(c) and 15.

investigation. The judges' approval is still necessary even when starting an investigation is agreed upon without a state party's or the UN Security Council's previous request.

INDIA'S VIEW TOWARDS ICC

India is against the ICC because it believes it will "directly infringe on the judicial sovereignty of States." The idea of sovereignty practically meant that each nation-state had complete authority over its affairs, including those about human rights, which were, in theory, unrestricted by international law. However, some States have used this ancient notion of sovereignty as a legitimate shield to inflict misery and suffering on their citizens. It has regularly maintained the position that careful observance of the fundamental tenets of the UN Charter—namely, the equal sovereign status of States, non-discrimination, and not getting involved in domestic matters is the sole means to creating a durable foundation for the growth of such international cooperation. India's conduct internationally and its involvement in several international forums have been guided by these values and beliefs.

1. Nuclear Weapon:

Presently, the Indian stance on the International Criminal Court ("ICC") seems odd and contradictory, given its dedication to multilateral cooperation and the constitutional obligation to uphold international laws. Critics pointed out that India's position on the prohibition of nuclear weapons use was also criticized. Still, the country's authorities refuted this claim, claiming that prohibiting the utilization of atomic weapons would be a "further obstacle" to making their use illegal. It would also put to the test the other nuclear-armed states' resolve to establish a precise timeline for getting rid of their weapons. Near the final days of the conference, some European nations who were vital to India's stance charged India with standing in the way of the agreement, even though India was backed by several countries, including its not allied supporters and the European countries, over the earlier phase of the Rome discussions regarding the incorporation of the usage of nuclear weaponry as a form of war crime in the International Criminal Court ("ICC") statute. Scholars contend that India's disapproval of the nuclear problem was not the main one and does not justify India's severe dissatisfaction. India's main complaint during the sessions of the Rome Agreement was the fact that it was unwilling to allow the International Criminal Court to possess "any kind of fundamental or compelled jurisdiction" that would violate its territorial integrity. India can choose whether or not to join any global agreement or treaties.

2. Terrorism:

India held the view that terrorism had to be on the checklist of offenses that the International Criminal Court was to judge if it was to rule on crimes of international significance. It put forth two suggestions to include terrorism. The initial plan included a description of terrorism and aimed to declare acts of terrorism as crimes against humanity. The additional suggestion sought for the addition of terrorist offenses to the Statute's list of fundamental crimes. The Preparatory Commission was charged with defining these offenses according to the plan. India has long been a target of terrorist attacks, and the country has led the effort to have the UN General Assembly establish a Consolidated Protocol on International Terrorism. The fact that India funded a draft text of the laid-out convention in 1996 is noteworthy.[5]. Put another way, this was a crucial problem for India. It was considered a defeat when the ideas were rejected. It had a significant role in India's choice not to vote in favor of the Rome Statute. The increase in terrorist attacks worldwide after the Statute's passage essentially validates India's response to a genuine threat and issue in many other nations.

CONCLUSION

The International Criminal Court, the ICC, presents a platform for the world's countries to deal with criminals. The International Criminal Court signifies four types of crimes: war crimes, genocide, crimes against humanity, and crimes of aggression. Most countries that suffered from those crimes are part of the ICC. Most important countries, like the US, Russia, India, China, and others, are not part of the ICC. In a recent ICC issued an arrest warrant against the President of Russia, Vladimir Putin, for the crimes of genocide and war crimes that they consider he committed during the war between Russia and Ukraine. However, Russia was not part of the ICC and did not accept the blame that was imposed on Putin, so the ICC was not able to take any further steps towards him until and unless the country gave its support to it. The ICC can take cognizance of international crime by itself, but for its application in that country, the country's permission is highly required. In the contacts with India, do not try it because India feels it affects sovereignty and the Indian legal system, the Supreme Court, is sufficient to deal with the criminals. India is not a country where genocide or war crimes happen. India is a part of the ICJ, so it does not want to involve the ICC in its axis of jurisdiction in its own country.

[5] Sixth Committee, 51st Annual Session of the General Assembly, Measures to Eliminate International Terrorism, 11 November 1996, A/C.6/51/6