



EXAMINE THE STRENGTHS AND WEAKNESSES OF THE PROCEDURE AND PRINCIPLES OF THE INTERNATIONAL CRIMINAL COURT

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1.1 Abstract

The international criminal court started from something called the Rome statute, which had to be signed by states who want to become member states of the ICC. After the agreement of states to join the international court, the court began to resume its duty gradually, by trying individuals for war crimes and crimes against humanity. The main reason for the creation of the international criminal court is to investigate, punish and try people who have been accused of serious war crimes and crimes against humanity. The ICC tries powerful individuals who oppress weaker states or weak people who do not have a voice and the court helps them get justice. The ICC works like any other court and follows a procedure. There are lawyers and there are judges. However, the ICC does not possess the police force but when they want to investigate, they do so using the forces of member states. The theory adopted for this study is liberalism which is a theory that supports human rights and checks and balances which the international criminal court also supports. This paper concludes by stating why the international criminal court should not stop its global service, and why the international criminal court should keep on investigating afghan and the USA despite the obstacles the court is currently facing.

Keywords: ICC, Justice, War Crimes, Genocide, Rome statute

1.2 Introduction

The international criminal court is an autonomous court that tries individuals for war crimes, genocide, and other crimes that concern the international community as a whole. The aim of the international criminal court right from time was to prevent violence and maintain peace in different countries through peaceful negotiations.

Genocide can be described as criminal acts committed with the intent to destroy, partly or in whole, a racial, ethnic, religious, or national group such as; killing and deliberately inflicting on that, group, to bring destruction to such group in whole or in part. While crimes against humanity can be defined as criminal acts committed as a systematic or calculated attack, directed against a civilian population. Crimes such as murder, deportation, sexual violence, or forcefully transferring a population can be categorized as crimes against humanity. War crimes are offenses that breach the Geneva conventions laws and customs. War crimes are applicable in conflict when they are committed as part of a plan on a large scale. War crimes include pillaging, intentionally directing attacks against civilians, rape, enlisting child soldiers under the age of fifteen, and others may fall under this category (Int'l criminal court, 2010.).

According to Schabas (2011), wrongdoers during wars have been punished before and during the time of ancient Greeks. The art of war can be found in the early writings of classical authors and historians. And those who broke these laws were subject to trials and punishments. Present-day codifications of this law like detailed texts, arranged by Colombian professor, Francis Lieber, which was applied by Abraham Lincoln to the Union armed force during the American civil war, banished inhumane behavior and set out assents, including capital punishment for assaulting regular citizens, mishandling detainees and comparable abominations. Abuses of war and wrongdoings were influenced by the national courts, and these were and stay ineffective. At the point when the individuals who carried out the violations are as yet in power and their casualties remain oppressed. Truly, the oppression of war violations was restrained to the vanquished or the isolated cases of rogue warriors in the victor's armed force. National justice frameworks have regularly demonstrated themselves to be unequipped for being imbalanced and fair in such cases.

During this period not everyone was tried equally, in most situations, it turns out the oppressors are powerful and cannot be touched so they remain in power, and the oppressed keeps being oppressed. So it was a state of civil unrest.

The Rome Statute

Before the Rome statute was approved, after the post-world war II, a trial took place which involved Nuremberg and Tokyo tribunals. The Tokyo trials saw the end of the Japanese empire's regime and it helped lay a foundation for the introduction of the international criminal court. The Tokyo trials happened to mark the second time the tribunal sentenced people to death for war crimes. Japan had been living in isolation for centuries until the United States forced them to open their ports and their markets. Japan soon realized how economically backward they were so they decided to modernize and industrialize their growth. Later on, they ran out of resources to run their economy (History Scope, 2019). Japan then had to fight several wars to gain resources and ended up taking over a huge section of Asia, until they were defeated by allied powers. In the process of trying to gain resources for their economic growth, Japan ended up committing heinous crimes like slavery, slave labor, massacres, and the maltreatment of women. Eventually, leaders of different

powers came to declare that Japan will be punished for these crimes. Thus the Tokyo trial was held. The decision of Japan's faith was left in the hands of the United States. One of the reasons being that the United States is the most powerful, and another being that the United States took over the Japanese island after Japan surrendered itself for trial. The United States decided to apply the same punishment given to Germany during the Nuremberg trials to Japan.

The Nuremberg trials took place because Germany started the Second World War. When the Second World War was over, the Nuremberg trials are a series of international prosecutions which took place in Nuremberg, Germany. The trials were administered by the four principal nations of the allied powers. The United States, Great Britain, France, and the Soviet Union. Even though these countries had their laws, they had to come to a common ground concerning the Nuremberg trials. In 1945, these four powers came together to analyze the London charter, and with this, the allies agreed that defendants would be tried but they also had a right to their defense attorney, and instead of a single judge, there will be a tribunal of four judges that consist of the four different allied countries. Germany was charged with crimes against peace, war crimes, and crimes against humanity. The Nuremberg trials lasted from 1945 to 1949, and from 1945 to 1946, high-profile crimes were treated. And this period was referred to as the trial of the major war criminals. Among the Nazi leaders on trial, there were Hermann Goring, Rudolf Hess, the Nazi foreign minister, Joachim Von Ribbentrop, and a German architect named Albert Speer. The decision the tribunals made were 12 death sentences, 4 long jail terms, and 3 life in prison sentences (History, 2017). The Nuremberg and Tokyo trials both led to the making of the international criminal court, to avoid future wars.

Over 112 states have ratified the Rome statute and they have representatives in the assembly of state parties which creates general policies for the administration and running of the court and adopts the ICC's annual budget (History, 2017).

1.3 Methodology

This paper will be focusing mainly on the objection of states to accept the international criminal court and the objective evaluation of the procedures and principles formulated in the light of an ideal court. This study will adopt the qualitative method as books, journal articles, internet sources, and so on will be used.

1.4 Literature Review

On July 17, 1998, the global community decided on the Rome Statute for the International Criminal Court (ICC,) if ratified by 60 nations, would establish for the first time in history, a permanent international criminal tribunal council. The result was overwhelmingly good, with 120 nations casting a ballot in favor, 21 abstentions, and 7 nations, the international criminal court, was coming to life. The United States marked the Rome Statute on December 31, 2000, which addressed the last date, under the Statute, when a nation could sign the arrangement without endorsement. After that date, nations need to confirm when marking the rule. The United States, in any case, presently can't seem to sanction the Rule. Until this point in time, 139 states have marked and 52 nations have endorsed it, the latest nations being Portugal and Ecuador on February 5, 2002 (Vigorito, 2002).

The stimulus to set up an establishment to settle international crimes, like genocide, acts against mankind, and atrocities surfaced in the consequence of World War I, and afterward

re-surfaced toward the finish of World War II. In 1948, the UN General Assembly commended the International Law Commission to contemplate the production of such a court, yet there was no political motivation to go ahead on this in the international regional area at that point. In this way, the possibility of a perpetual criminal court was required to be postponed for a few years (Vigorito, 2002). The international criminal court at this time had made their policies solid yet because war crimes began to surface once again so the court had to be postponed and the countries who ratified it had to go back to the drawing board.

following World War I, the Commission on responsibilities of the Authors of War and Enforcement of Penalties, set up to look at charges of war violations submitted by the Central powers, But indictment for infringement of the Hague laws Shows that they would need to wait until the Nuremberg trials. Offenses against the laws and customs of war, known as 'Hague Law' due to their foundations in the 1899 and 1907 Conventions, are classified in the 1993 Statute of the International Criminal Tribunal for the Former Yugoslavia and Article 8(2)(b), (e) and (f) of the Statute of the International Criminal Court. As World War I came to an end, general tension built, especially in England, for the criminal arraignment of those viewed as answerable for the war (Schabas, 2011).

Liberalism depends on the ethical argument that guaranteeing the privilege of a distinctive individual to life, freedom, and property is the most significant standard of government. A political framework described by unchecked force, like a monarchy or a tyranny, can't secure the life and freedom of its residents. In this manner, the fundamental concern of liberalism is to build establishments that ensure singular opportunity by restricting and checking political force. The essential concern is that war expects states to develop military force. This force can be utilized for battling states, however, it can likewise be utilized to persecute its residents. Consequently, political frameworks established in liberalism regularly limit military force by such methods as guaranteeing regular citizen or democratic power over the military (Meiser, 2018.).The theory best fits this study because the international criminal court is all about the safety of people, checking on powerful governments and militaries who oppress the weak. The ICC supports human rights and freedom of movement and the life of peoples. The theory of liberalism strictly supports checks and balances, which the ICC also stands for. They check states and maintain peace in any way they can.

1.5 The objection of states to accept the international criminal court

Nine countries are not members of the international criminal court and they are the United States of America, Russia, China, India, Iraq, Libya, Yamen, Qatar, and Israel.

India and the ICC

When the international criminal court first introduced the Rome statute, India exempted itself and ended up not voting in favor of the international criminal court, because there was some lack of trust amongst the Indian delegation. They believed that they would have been open to the acceptance of the international criminal court if it allowed a state to accept through declaration. They also were never comfortable with the fact that an international organization would be involved in their affairs (Ramanathan, 2005). Even though there have been reports of mass graves dug in Kashmir and random killings in northern India, India also opposed the international criminal court because they are not comfortable with the power given to the international criminal court over them. Also, the United States has influenced India from accepting the international criminal court. And made them believe that becoming a member of the ICC would threaten India's sovereignty (Menon, 2015). According to Gegout (2013),

States can influence and encourage other states to be party states to the ICC or not. However, India is subject to different international organizations like the world trade organization, the United Nations, and many more. In my opinion, being a member of the international criminal court should not be a problem for India, and I don't believe that India's sovereignty will be threatened in any way. But I believe that India is trying to prevent itself from being investigated by the international criminal court for crimes of genocide and crimes against humanity committed by them in the past.

Darfur and the ICC

The UN Security Council first considered the crisis in Darfur in April 2004, and the crisis was seen as a crisis of protection that involved human rights violations and other atrocities. The UN went further to visit Darfur along with the then UN security general, Kofi Annan and Colin Powell. The United States later provided a draft resolution on Darfur to the United Nations, and the United Nations later came up with resolution 1556, they called on the government of Sudan to disarm Janjaweed and bring justice to those responsible for the crimes committed (Maxmen, 2005).

Sudan had not ratified the Rome statute and the crimes in Darfur were referred to the ICC following resolution 1539 which was adopted by the UN Security Council on March 31, 2005. And the case was opened in June 2005. And even though Sudan is not a member state and party to the Rome statute, it is a member of the united nations, so it has to respect decisions made by the united nations security council, and as a result of this, Sudan must fully cooperate with the international criminal court. The result of this act led to the international criminal court issuing about 4 warrants of arrest for the situation that took place(Int'l Criminal Court, 2010). The crisis in Darfur started as an ethnic and marginalized conflict. After on, tensions grew and the conflict escalated to one that could not be controlled or stopped easily. According to Kastner (2007) in February 2003, another conflict erupted between members of the SLA and indigenes of the town of Golu who killed 200 soldiers. Hauschildt (2012) emphasized that the Darfur crisis demanded a response by the international community and that the GOS didn't ratify the Rome statute either. So the international criminal court created resolution 1593. And UN Security Council (2005) stated that this resolution emphasized that all parties in Darfur and the government of Sudan will cooperate with the international criminal court and its prosecutors. Furthermore that the rule of law will be applied accordingly.

The United States and the ICC

There isn't a particular reason why the United States is not a member of the ICC. The reasons are complex and involve three presidents and issues concerning ratifications. The relationship between the US and the ICC began during the era of President Bill Clinton. Clinton signed the Rome statute and was open to the idea of the creation of the ICC, but he was not aware that there were some concerns and reservations about the Rome statute. When George W. Bush began his term, he took an entirely different approach and had a different mindset concerning the ICC. He was against the court because he cared about the American soldiers, because during this period, the united states were engaged in the Iraq war and Bush believed that the American soldiers in Iraq, who performed their duties to their country would be held accountable by the ICC for crimes of genocide, and to prevent this from happening, president George bush unsigned the Rome statute and worked against the international criminal court through bilateral agreements, which protects the united nations and some other nations from

prosecution from the ICC. And these bilateral agreements were made by the United States and over 100 countries. However, the United States is one of the permanent members of the United States Security Council, and this means they have the power to differ any case brought up by the international criminal court. When President Barack Obama took office, the relationship between the United States and the ICC changed in the sense that, Barack Obama pre-signed the Rome statute once again, and American delegates were sent to a conference hosted by the ICC. However, the United States was not yet a member of the ICC (Lynn, 2012). With the take over of office by Trump, the pre-signed ratification was no more and the main reason the United States didn't ratify the Rome statute is that the United States believed that the ICC is a threat to their sovereignty as well. And the thought that the International Criminal Court could bypass the United States Security Council was threatening to them as well. The United States also complained about the fact that the International Criminal Court statute posed the risk of unfair treatment and trial. They also complained about the judges the ICC possessed and how they were chosen in an undemocratic manner (Amann, 2002).

For what reason does the United States hate the International Criminal Court to such an extent? What precisely is it about the ICC that appears to turn the tail of the Department of State, the Pentagon, the National Security Council, different legislators, and senators, and the host of different members in Washington's complex policy-making community? The current antagonism shows itself in various manners: Security Council resolution that blocks expected prosecutions by the Court, embraced in light of dangers to sabotage humanitarian missions through the utilization of veto, bilateral agreements to shelter the US nationals and other countries from the threat of transfer to the court (Schabas, 2004).

The ICC is investigating whether war crimes are being committed in Afghanistan. Not only by the Afghan forces but by the United States military as well. And the then president of the US, Donald Trump reacted by imposing sanctions on the ICC prosecutors, referring to the ICC as a kangaroo court. And the ICC was put in place to check and punish the most powerful people who have committed international crimes against humanity. The international criminal court is also referred to as the court of last resort because they fight for individuals who need justice but the state is not willing to give it to them. The ICC works like a regular court and is allowed to investigate people from the 123 member states and even from non-member states like the United States, Iraq, China, Yamen, Libya, Israel, Qatar, and India. And the United States can also refer cases to the court. The United States military was accused of abusing prisoners in Afghan, also killing and disposal of bodies, and abduction of Afghans. The Clinton administration of the United States reluctantly signed the Rome statute in 1998 and two years later President George. W. Bush withdrew from the Rome statute. Then the United States took more drastic steps to protect itself for example, in 2002, the Bush administration passed a law that allowed the US to ignore the ICC and also allowed for the re-use of force to free detained United States nationals who have been imprisoned by the ICC. With all this, the United States has been known to also support the ICC. An example is when the US government delivered Dominic Ongwen to the court. And countries are pulling out of the ICC to avoid being investigated so the ICC has no way of enforcing its policies by allowing countries to turn in people for them to investigate. In 18 years the ICC has only successfully convicted four powerful people, like the Congolese warlord Thomas Lubanga, who was convicted of war crimes and for recruiting child soldiers. He was imprisoned for 14 years. Also, Bosnian Serb was given a life imprisonment sentence for crimes of genocide and other crimes (Al Jazeera English, 2020). So many do not believe the international

criminal court is important and necessary. But some states do. Like afghan for example, which has been suffering for the past 40 years and has not had any chance at justice, they see the international criminal court as their last resort. And they believe the ICC would be able to solve their problems and bring justice to them.

ICC and AFRICA

There has been some antagonism between the AU and the ICC and this is due to selective prosecution. According to Du Plessis et al. (2013), all the cases the international criminal court has investigated and prosecuted had to do with crimes committed in Africa. But the international criminal court keeps on investigating African countries because they want to maintain its authority. This has caused African leaders to speak out on this bias faced by the international criminal court.

Luis Moreno Ocampo, who happens to be the first prosecutor of the ICC, Stated that there is nothing like African bias for the international criminal court, also that the bias was created by President Bashir of Sudan to cover up his crimes of genocide. He went further to state that Africa was one of the first countries to ratify the Rome statute and join the ICC, also that Africa requested that the ICC investigates their countries, and they needed intervention, also that Africa has the worst crimes and have the highest crime rates in the world. So the ICC is justified for focusing on African countries (Al Jazeera, 2016). While critics believe that the ICC is only targeting Africa sovereignty, and the ICC is not practicing what they preach because the rule of law does not apply to all countries like the Middle Eastern countries, because the international criminal court cannot touch some political leaders because they are too powerful and some processes will not let the international criminal court investigate them. And although the ICC has an African judge, its focus should not be centered on African countries but Middle Eastern countries, because the Middle East in itself is in a state of crisis, and the ICC should be permitted by the UN Security Council to investigate these war crimes and bring justice as it should.

1.6 Strengths of the ICC

The court has had high levels of success since its establishment through the verdict the ICC implemented on Dvilo, the ICC has also recognized 39 criminals across the world which proves how effective they are. Also, the international criminal court is not afraid to try anyone, no matter how powerful they may pose to be

1.7 Criticisms and (Weaknesses) of the ICC

Despite the ICC'S growing budget, the court has only successfully convicted four people. It has been argued that the qualification of judges the ICC possesses has to be higher, requiring expertise in international law. It is unquestionably desirable that the judges be of the heights caliber possible and have much experience. Many have argued that the ICC lacks transparency and that most of their meetings are held in secret, but this may be due to the protection of the people convicted and the reasons best known to them. Also, some critics have argued that the standards of due process are not up to the highest standards of practice. The court does not have universal jurisdiction because it is a treaty-based court and it is not a creation of the United Nations. Individual countries decide to join if they want to.

Lack of police force

The international criminal court does not have a standing army or police force but they actively rely on the cooperation of the state to execute arrest warrants. This is a limitation for the international criminal court because the state police force can't do so much and they have jurisdictions that they cannot surpass. Therefore, this limits the international criminal court from investigating properly and with ease.

Another limitation faced by the international criminal court is the fact that they can only investigate countries that have ratified the Rome statute. Because these countries have signed and permitted the court to investigate however they like. Unlike countries that are not signed to the Rome state, the international criminal court has no power and no right to investigate them and if they do, it could be considered as a crime.

1.8 Recommendations

- There should be an alternative way the ICC can use to investigate counties that are not a party to the Rome statute.
- The ICC should consider adopting its police force that can investigate any country with ease.
- The ICC is a global court and should not be termed as weak when it comes to trying powerful individuals.

1.9 Conclusion

The ICC was created to bring justice to those who have been oppressed by the powerful, who believe they are untouchable by any authority and bring justice to the oppressed. Even though the court is trying to investigate one of the most powerful countries and bring justice and equality, other member states have turned against them to avoid being implicated. The ICC needs to stand its ground and remember what it is fighting for. The international criminal court should also desist from focusing its attention on just African states for a change because there are a lot of states in the global south who are misbehaving and think they can get away with it. Besides, there are states around the world apart from Africa that need the intervention of the international criminal court.

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