

THE CREDIBILITY OF THE INTERNATIONAL CRIMINAL COURT: A CRITICAL REVIEW OF THE JURISDICTION AND THE FUNCTIONS OF THE WORLD COURT

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Background

The establishment of the International Criminal Court (ICC) is seen as one of the greatest achievements of the new millennium. During the last century a number of temporary (ad hoc) international criminal tribunals were set up with specific purposes and limited mandates. The idea of having a permanent ICC was not new but it finally became a reality in year 2003. The Rome Statute of International Criminal Court of 1998 provides the legal framework of the ICC. There are advantages and disadvantages of having a permanent world court with much power. However, more than ever, the credibility of the ICC is being questioned at present due to numerous reasons. The objectives of this research paper is to evaluate the jurisdiction of the ICC, the cases before the court at present, the outcome of the court until now and the responses of the international community for what the court has done so far.

The main research problem of this paper is the actual operation of the ICC in the wake of the new global order. The changed political climate after the cold war era, efforts toward combating terrorism have had a strong impact over the traditionally accepted international norms, and the worst international crimes are reported to be committed than ever before. The UN Security Council can refer matters under the jurisdiction of the ICC to the prosecutor of the ICC albeit such matters have occurred in the territories of non-State parties to the Court and against the nationals of such States. However, the —Principle of Complementarity,” gives States the primary responsibility and duty to prosecute the most serious international crimes, while allowing the ICC to step in only as a last resort if the States fail to implement their duty. The ICC should prosecute the crimes under its jurisdiction in good faith. If States diligently prosecute the same crimes before municipal courts ICC cannot take over such matters. Though the ICC can prosecute individuals accused of crimes of genocide, war crimes, crimes against humanity⁶⁰ and the crime of aggression, the latter still remains undefined. To date, three States parties to the Rome Statute; Uganda, the Democratic Republic of the Congo and the Central African Republic have referred situations occurring on their territories to the Court. In addition, the Security Council has referred the situation in Darfur, Sudan which is a non-State Party. Moreover, the ICC Prosecutor can start an investigation based on information that he receives from victims, non-governmental organizations, or any other reliable source (proprio motu) but the Pre-Trial Chamber of the ICC should authorize such a case. This ability of the Prosecutor was one of the most vehemently debated issues during the negotiations of the Rome Statute. Resultantly, Articles 13(c), 15 and 53(1) of the Rome Statute regulate the circumstances under which such a power can be exercised at the ICC and the limitations of the Prosecutor in this regard. These will be critically examined in this research.

Methodology

This is mainly a library based research and hence scholarly work on the issue will be reviewed. Practical examples will be drawn from countries which have faced with prosecutions before the ICC. Text books and journal articles will be the main source of this research paper.

Outcome

The position of United States of America (USA) in relation to the ICC is quite peculiar. USA Originally voted against the adoption of the Rome Statute of 1998. However, President Bill Clinton signed the Statute in December 2000 but the successive President George W. Bush nullified this signature in May 2002. In year 2002, USA threatened to veto the renewal of all United Nations peacekeeping missions unless its troops were granted immunity from prosecution by the ICC. The UN Security Council compromised with the adoption of Security Council Resolution 1422 of 2002 but refused to renew the exemption again in 2004, after considering the inhumane incidents took place in Abu Ghraib against prisoners of war. In 2002, the USA Congress passed the American Service members' Protection Act which included provisions prohibiting USA military aid to countries which had ratified the treaty.

The independence of the prosecutor and the judges are well guaranteed. They should undergo a rigorous scrutiny before they are elected and appointed to the Court, and they are prohibited to do any activity during their term in office that might jeopardize their independence and impartiality. If they abuse their powers, they can be impeached. A member of the Office of the prosecutor must not seek or act on instructions from any external source.⁶² Thus, many provisions of the ICC Statute are carefully formulated to avoid politically motivated cases coming before the Court. All investigations and indictments need to be confirmed by a Pre-Trial Chamber of judges by examining the relevant evidence. The accused as well as any concerned countries can challenge the indictment/s during confirmation hearings. The Assembly of States parties to the ICC have the authority to nominate persons to be elected as judges and the prosecutor, and only those eligible to hold high judicial office in their own country can be nominated as judges of the ICC. Theoretically, the ICC maintains a high level of independence but a close examination of the actual operation of the ICC would reveal several practical problems which cause to challenge the credibility of the Court. These challenges will be investigated and examined in this research paper.

Conclusion

This is an ongoing research and it is too early to come up with a final conclusion. Now the ICC is about to celebrate its eighth birthday. So far, the Court has not given a final judgment over any case before it. Many powerful commanders, ministers and even a Head of a State have been prosecuted by the ICC and are issued with arrest warrants, but they do remain at large. A number of States have extended their solidarity towards these alleged offenders and query the legitimacy the Court. However, the ICC highly relies on State cooperation in its investigations and prosecutions of cases, and seems to be failed in winning good will of many States. Up to now there are 114 States parties⁶³ to the Rome Statute and Sri Lanka is neither signed nor ratified the ICC Statute. Recently Bangladesh became a member to the World Court and marked the first State party in the South Asia. However, a number of powerful States, including China, India, Russia and USA are critical of the Court and have not joined. The Crime of Aggression was agreed to be defined after 10 years from its inception but has not been done yet. Though it is pre-mature to assess the absolute outcome of the ICC, maintaining its credibility has become a fundamental concern for the World Court in order to ensure its sustainability.

60 All these crimes have been well defined in the ICC Statute.

61 Exceptions granted and the President was permitted to authorize military force to free any USA

military personnel held by the Court. However, the act was later modified to permit the cooperation of USA with the ICC when dealing with enemies of USA.

62 Such as States, International Organizations, Non Governmental Organizations or individuals.