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# Trial of Genocide Perpetrators by International Criminal Court: Challenges and Problems

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## ABSTRACT

*The International Criminal Court was created through the adoption of the Rome Statute on July 17, 1998. It came into effect on July 1, 2002. By July 1, 2005, a total of 99 States had ratified or acceded to the Statute. The Court functions as an autonomous and enduring legal body, responsible for addressing individuals accused of the gravest international offences, including genocide, crimes against humanity, and war crimes. The Statute acknowledges that it is the States' primary responsibility to investigate and punish these crimes. The Court supports and works alongside States in their endeavours to investigate and prosecute international crimes. The jurisdiction of the court is limited to cases where national systems are unable or unwilling to conduct proceedings. The Court aims to contribute to the prevention of serious international crimes by ensuring that those responsible for genocide, crimes against humanity, war crimes, and aggression are not able to escape punishment. The International Criminal Court aims to support endeavours to restore and uphold international peace and security, while ensuring the enduring promotion and enforcement of international justice. Nevertheless, the Court cannot achieve success on its own. The work of the Court relies on the collective effort and collaboration of all States parties, as well as other States, international organisations, and civil society. The ICC does not possess a jurisdiction that extends beyond national boundaries in the strictest sense. The voluntary renouncement of a portion of domestic jurisdiction by the sovereign States involved and the gradual process of auto-The challenges faced by the International Criminal Court include the ongoing limitation of power by sovereign States.*

**Keywords:** *Genocide, International Criminal Court, Jurisdiction of Court, International Peace and Security, Sovereign States.*

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## I. INTRODUCTION

The establishment of the International Criminal Court represents a promising stride towards a more equitable society, since it effectively embodies the notion of eradicating impunity for the most egregious crimes against humanity<sup>3</sup>. International crimes are offences that are acknowledged by the international community because their prevention is deemed crucial for safeguarding the basic interests of the international community. The determination of whether a crime is considered international or not is made by the States themselves, who consider its character and its impact on the basic interests of the international community. Preventing incidences of international crimes is necessary since they disrupt or endanger the regular progression of international relations and pose a threat to world peace and security.

A crime is an action that is subject to legal punishment, as defined by the law, which establishes certain regulations and designates penalties for their violation. International law establishes certain regulations, the violation of which constitutes a criminal offence. In national legal systems, crimes are decided by courts, and individuals who are proven guilty of committing these crimes are subsequently punished. International law has established certain regulations, such as The Hague Rules, to govern the behaviour during times of conflict<sup>4</sup>. These norms were flagrantly disregarded throughout the First and Second World Wars. The Permanent Court of International Justice (PCIJ) was the first permanent international judicial body founded in 1921. It was subsequently replaced by the current International Court of Justice (ICJ) in 1946. However, these Courts lack the authority to adjudicate on matters pertaining to international crimes. The Genocide Convention, established in 1948, introduced the concept of genocide as a distinct criminal offence. Consequently, genocide was also classified as an international offence. Subsequently, other conventions and treaties have established international crimes; nevertheless, there was no judicial body available to prosecute the transgressions of these laws. The Rome Treaty, finally, created the International Criminal Court (ICC) in 1998. The Rome Statute, which was approved or acceded to by 66 States, was enacted on July 17, 1998 and came into effect on July 1, 2002. The Court is an autonomous and enduring legal body that has authority against individuals or nations for the gravest offences of global significance, specifically: genocide, crimes against humanity, war crimes, and aggression<sup>5</sup>. There is evidence

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<sup>3</sup> Bassiouni, M. Cherif, and William A. Schabas, eds. *The Legislative History of the International Criminal Court: Introduction, Analysis, and Integrated Text* (3 vols). Vol. 18. Brill, (2021).

<sup>4</sup> Birkett, Daley J. "Twenty years of the Rome Statute of the International Criminal Court: appraising the state of national implementing legislation in Asia." (2019) 18 *Chinese Journal of International Law* 353-392.

<sup>5</sup> Florea, Dumitrita, Narcisa Gales, and Loredana Terec-Vlad. "The premise of the Establishment of the International Criminal Court." (2019) 6 *Eur. JL & Pub. Admin.* 213.

indicating that the establishment of the Court has introduced a novel factor into discussions and actions aimed at achieving peace. The individuals who were in attendance for the signing of the Rome Statute have a distinct feeling of satisfaction when the Court begins its operations. The Statute acknowledges that it is the main duty of States to investigate and punish international crimes. The Court supports and enhances the endeavours of States to investigate and punish such offences. The International Criminal Court has the authority to handle cases only when national legal systems fail to conduct proceedings or when they are reluctant or truly incapable of doing so. The Court aims to prevent major international crimes by ensuring that those responsible for genocide, crimes against humanity, war crimes, and aggression are held accountable and not allowed to escape punishment<sup>6</sup>. The primary objective of the International Criminal Court is to support endeavours aimed at reinstating and upholding global peace and security, while ensuring enduring adherence to the implementation of international justice<sup>7</sup>. This document aims to address the difficulties and issues faced by the International Criminal Court in the process of administering criminal justice.

## **II. ORIGIN OF INTERNATIONAL CRIMINAL COURT**

In the past, international law did not place significant emphasis on international crimes, as individuals were viewed as passive recipients of international law rather than active participants. No rights or obligations were assigned to them under the principles of international law, except for the crime of 'piracy', which was acknowledged. Any person involved in piracy can face legal consequences from any country, regardless of their citizenship. However, in today's world of international law, the international community is deeply concerned about the increasing occurrence and severity of various criminal acts in different regions across the globe<sup>8</sup>. People have certain obligations that they must fulfil, and if they fail to do so, they may face consequences. An individual can be held responsible for an action that could also be attributed to a State if they act as a representative of the State, on behalf of the State, in the name of the State, or in a de facto relationship. Individuals and nations can be held responsible for committing international crimes.

During the era of the League of Nations, a select few crimes, including slavery, counterfeiting, and narcotics, were recognised as international offences through the creation of multilateral

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<sup>6</sup> Bassiouni, M. Cherif, and William A. Schabas, eds. *The Legislative History of the International Criminal Court: Introduction, Analysis, and Integrated Text* (3 vols). Vol. 18. Brill, (2021).

<sup>7</sup> Shelton, Dinah. *International crimes, peace, and human rights: the role of the International Criminal Court*. Brill, (2021).

<sup>8</sup> Tsilonis, Victor, and Angeliki Tsanta. *The Jurisdiction of the International Criminal Court*. Springer International Publishing, (2019).

treaties. The United Nations has taken on a significant role in crime prevention and the establishment of standards and principles of criminal justice. This is in line with the mandate outlined in Article 1 Paragraph 3 of the Charter, which requires the organisation to actively engage in international cooperation to address global issues of an economic, social, cultural, or humanitarian nature<sup>9</sup>. There are various crimes that are acknowledged in international law. These include genocide, piracy on the high seas, aircraft hijacking and unlawful acts against the safety of civil aviation, trafficking in women and children, trafficking in narcotic drugs, counterfeiting currency, kidnapping of diplomatic personnel and other officials, hostage-taking, apartheid, slave trade, psychotropic substances, and crimes committed during times of war.

States possess the power to penalise individuals who engage in international crimes, whether it be in the jurisdiction where the offence occurred or in the jurisdiction where the individuals are apprehended, provided they are extradited. Prosecution is always carried out in accordance with the domestic legislation of the respective states. The implementation of national laws by domestic courts to criminals is insufficient for various reasons. The approach could potentially lead to unequal treatment of criminals depending on the states they come from<sup>10</sup>. Furthermore, it is worth noting that domestic judges might exhibit a certain bias when their nation's vital interests are at stake, especially when dealing with criminals from a hostile or enemy state.

In certain cases where a regular criminal Court was not available, States would occasionally set up adhoc tribunals to handle the prosecution of criminals. After the Second World War ended, two International Military Tribunals were established in Nuremberg and Tokyo to hold accountable those who had committed war crimes in Germany and Japan<sup>11</sup>. The two War Crimes Tribunals, despite their limitations, marked a crucial milestone in the development of a strong criminal justice system. The cases had a profound effect by questioning the idea of State sovereignty as a safeguard against international crimes. An insightful observation was made by the Nuremberg Tribunal, highlighting that individuals, rather than abstract entities, are responsible for committing crimes against international law. Thus, to ensure the adherence to international law, it becomes imperative to hold those responsible for such crimes accountable and impose appropriate punishments. In the realm of contemporary international law, the International Military Tribunal at Nuremberg marked a significant milestone as it held individuals accountable for international offences. The notion of individual responsibility,

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<sup>9</sup> Werle, Gerhard, and Florian Jessberger. *Principles of international criminal law*. Oxford University Press, (2020).

<sup>10</sup> Galand, Alexandre Skander. "A Global Public Goods Perspective on the Legitimacy of the International Criminal Court." (2018) 41 *Loy. LA Int'l & Comp. L. Rev.* 125.

<sup>11</sup> McDougall, Carrie. *The crime of aggression under the Rome Statute of the International Criminal Court*. Cambridge University Press, (2021).

which was developed by the Tribunal, was officially approved by the General Assembly of the United Nations in 1946.

The Security Council created two International Tribunals, one in 1993 to hold accountable those responsible for serious violations of international humanitarian law in the former Yugoslavia, and another in 1994 to prosecute individuals responsible for serious violations of international humanitarian law and genocide in Rwanda, as well as Rwandan citizens responsible for genocide in neighbouring states<sup>12</sup>. These tribunals obtained their authority from Chapter VII of the UN Charter. However, there are numerous shortcomings in the process of establishing the adhoc Criminal Tribunals. The process can be quite demanding, requiring careful consideration of factors such as the time involved, the qualifications of judges and prosecutors, and the selection of an appropriate location. It is important to note that the International Court of Justice does not have the authority to settle matters concerning individuals. As per Article 34, Paragraph 1, participation in matters before the Court is limited to States only. Therefore, it is advisable to establish a permanent International Criminal Court that can deliver criminal justice without limitations on the types of crimes or specific individuals involved<sup>13</sup>.

The Committee of Jurists, who were tasked with drafting the Statute of the Permanent Court of International Justice in 1920, made substantial endeavours to pave the way for the creation of an International Criminal Court. This court possesses the jurisdiction to handle offences that violate the principles of 'international public order' and 'the universal law of nations'<sup>14</sup>. It also has the ability to establish the definitions of these crimes and decide on the appropriate punishments. Later on, the League of Nations developed a Convention that detailed the structure of the International Criminal Court. This court would consist of five judges and five deputies from different nationalities, selected by the Permanent Court of International Justice (PCIJ). As a result of the absence of ratification, the Convention was unable to come into effect, which ultimately prevented the establishment of the Court. In 1951, the establishment of an International Criminal Court was recognised by the United Nations. A committee was established to investigate the feasibility of creating a Criminal Chamber within the International Court of Justice (ICJ). Regrettably, it did not yield the desired outcome<sup>15</sup>. In 1953, there was a

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<sup>12</sup> Cryer, Robert, Darryl Robinson, and Sergey Vasiliev. *An introduction to international criminal law and procedure*. Cambridge University Press, (2019).

<sup>13</sup> Hathaway, Oona A., Alexandra Francis, Aaron Haviland, Srinath Reddy Kethireddy, and Alyssa T. Yamamoto. "Aiding and Abetting in International Criminal Law." (2018) 104 *Cornell L. Rev.* 1593.

<sup>14</sup> Williams, Sarah, Hannah Woolaver, and Emma Palmer. *The amicus curiae in international criminal justice*. Vol. 18. Bloomsbury Publishing, (2020).

<sup>15</sup> Mégret, Frédéric. "International criminal justice as a peace project." (2018) 29 *European Journal of International Law* 835-858.

proposal to establish a self-governing International Criminal Court, but unfortunately, it did not materialise.

In December 4, 1989, the General Assembly made a formal request to the International Law Commission to investigate the possibility of establishing an International Criminal Court. Thus, the Commission initiated the investigation into the issue of establishing an International Criminal Court in 1990. The General Assembly, in both 1992 and 1993, strongly urged the Commission to expeditiously develop the Draft Statute for the establishment of such a Court. In 1994, a preliminary version of a legal document for the creation of the International Criminal Court (ICC) was approved by the International Law Commission<sup>16</sup>. They proposed to the General Assembly the organisation of an International Conference of Plenipotentiaries to review the document and conclude a treaty to establish the International Criminal Court. The General Assembly, however, decided to have the Draft Statute reviewed by an adhoc committee. The Committee presented its findings in September 1995. Later, in December 1995, the General Assembly decided to establish a Preparatory Committee. The committee was formed to tackle the important substantive and administrative matters that arose from the Draft Statute. During 1996 and 1997, the Committee came together to collaborate on a draft of a convention that would be universally accepted for the creation of the Court. The Statute of the International Criminal Court (ICC) was established on July 17, 1998, during a Diplomatic Conference that took place in Rome<sup>17</sup>. The adoption of the statute involved numerous compromises and encountered opposition from certain countries, particularly India and the United States

As stated in Article 126 of the Statute, the Draft Statute of the International Criminal Court was scheduled to come into force upon ratification by sixty states. With the ratification of 66 states, the Statute took force on July 1, 2002. In the wake of the dissolution of the Yugoslavia International Criminal Tribunal (ICTY), the Tokyo International Military Tribunal, the Nuremberg International Military Tribunal, and the Rwanda International Criminal Tribunal (RICT), four adhoc International Criminal Tribunals were established, the ultimate source of which was the International Criminal Court (ICC)<sup>18</sup>. Both of the first courts were created by Allied Powers agreements during WWII; the United Nations Security Council, with its power under Chapter VII of the UN Charter, established the other two. Those who are believed to have committed the gravest international crimes may be tried by the permanent International

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<sup>16</sup> Ochs, Sara L. "Propaganda Warfare on the International Criminal Court." (2020) 42 Mich. J. Int'l L. 581.

<sup>17</sup> Ford, Stuart. "A hierarchy of the Goals of International Criminal Courts." (2018) 27 Minn. J. Int'l L. 179.

<sup>18</sup> Ba, Oumar. *States of justice: The politics of the International Criminal Court*. Cambridge University Press, (2020).

Criminal Court (ICC). Criminal jurisdiction at the national level is supplemented by this Court. The Netherlands' capital city of The Hague is home to the Court. The jurisdiction and operations of the International Criminal Court may be carried out inside the borders of any State Party or, with an additional agreement, any other State.

### **III. ROME STATUTE – PROVISIONS**

The ratification of the International Criminal Court's (ICC) Rome Statute is a symbol of the universal desire that those responsible for atrocities against humanity should face the full weight of justice, and that this can only be achieved through concerted efforts at the national and international levels<sup>19</sup>. The most difficult parts, nevertheless, are the parts dealing with admissibility, relevant legislation, and jurisdiction. The Rome Statute, when eventually ratified, removed a crucial criteria for the Court's Jurisdiction—the permission of the State of the accused's nationality, which was backed by a small number of states, among them the United States. Article 12 of the Statute states that the Court may exercise its jurisdiction against non-party states' citizens or crimes committed on their territory, even without permission, for the offences mentioned in the Statutes. Because of the apparent contradiction between Article 12 of the Rome Statute and Article 34 of the Vienna Convention on the law of treaties, the major States opposing the Statute, including the United States, India, and China, rejected the Statute on the very first day of its adoption, igniting a great deal of controversy and providing an ongoing challenge<sup>20</sup>.

The primary kind of jurisdiction that the Court exercises is: (i) Subject matter jurisdiction, which pertains to the war crimes, genocide, crimes against humanity, and aggression that the Court has the authority to prosecute; *ration material*. (2) *Ration temporis*, or temporal jurisdiction, states that the Court cannot have authority over crimes that occurred before the Rome Statute went into effect. (3) *Ration personae*, or personal jurisdiction, states that the Court can prosecute citizens of both State parties and non-party states that accept its jurisdiction on an as-needed basis, either through a declaration or a decision by the Security Council<sup>21</sup>.

The fact that the International Criminal Court (ICC) may only hear cases involving the gravest international crimes—aggression, genocide, crimes against humanity, and war crimes—presents a significant obstacle.

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<sup>19</sup> Tsilonis, Victor, and Angeliki Tsanta. *The Jurisdiction of the International Criminal Court* (Springer International Publishing 2019).

<sup>20</sup> Mégret, Frédéric. "International Criminal Justice as a Peace Project." (2018) 29 *European Journal of International Law* 835-858.

<sup>21</sup> Shelton, Dinah. *International Crimes, Peace, and Human Rights: The Role of the International Criminal Court* (Brill 2021).



Any of several actions with the goal of eradicating a whole or partial human population is considered genocide under Article 6 of the Rome Statute. Because of this goal, proving genocide is more challenging than proving other crimes against humanity. According to Article 7 of the Statute, there are three ways in which crimes against humanity differ from regular crimes. The commission of the murder or other crime must have been coordinated with other, more extensive actions in order to be considered a systematic or broad assault<sup>22</sup>. The second criterion is that they were committed in accordance with a policy of the state or an organisation, and the third is that they were intentionally targeted at civilians. War crimes, as defined in Article 8 of the Rome Statute, include sexual abuse, torture, pillaging, the use of toxic weapons, and the deliberate starvation of people. It is easy to understand in light of current occurrences that provide proof or evidence against such crimes, both in one's imagination and in one's actual experience.

No further statement is necessary for a state to recognise the Court's jurisdiction over the offences listed in Article 12 (Paragraph 1) after it becomes a party to the Statute. Yet, this clause faces obstacles to its effectiveness due to issues with the primacy of national jurisdiction, the standards of admission, the concept of complementarity, and the option of opting out for war crimes under Article 124. Another reason a challenge can emerge is when the accused's home state or territory state isn't a party to the Statute yet the Court needs their assent to exercise its jurisdiction. If any of the following states have accepted the court's jurisdiction under Article 12, Paragraph 3, then the court may exercise its jurisdiction over that matter: (a) If the crime took place on land, the state where the land was located is relevant; otherwise, it is the state where the ship or plane was registered: (b) The country of citizenship of the suspected criminal<sup>23</sup>.

So, these are a few of the obstacles that the ICC must overcome. On the other hand, when the Security Council refers a case to the Prosecutor under Chapter VII of the UN Charter, neither the accused's state of nationality nor the territorial state's regime of alternative concern applies.

The Court faces additional obstacles to its authority due to the notion of complementarity. For cases where the ICC's jurisdiction cannot be exercised due to the principle of complementarity, the clues provided by Article 17, which addresses admissibility concerns, are more than enough. When national jurisdictions fail or refuse to prosecute criminals, the International Criminal

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<sup>22</sup> Ochs, Sara L. "Propaganda Warfare on the International Criminal Court." (2020) 42 Mich. J. Int'l L. 581.

<sup>23</sup> Hathaway, Oona A., Alexandra Francis, Aaron Haviland, Srinath Reddy Kethireddy, and Alyssa T. Yamamoto. "Aiding and Abetting in International Criminal Law." (2018) 104 Cornell L. Rev. 1593.

Court (ICC) steps in. The Rome Statute specifies what counts as a country's "unwillingness" or "inability" to act when it comes to investigating and prosecuting criminals:

1. An action was taken at a national level in order to avoid legal responsibility for the person involved<sup>24</sup>.

2. The procedures have been needlessly prolonged, which contradicts the initial goal of ensuring the accused's accountability.

3. It has been concluded that the proceedings lack impartiality and independence, which undermines the objective of ensuring a fair trial for the accused.

When it comes to determining 'inability', judges must assess whether the State is unable to obtain the accused or the necessary evidence and testimony, or if its national judicial system has completely or substantially collapsed or become unavailable, preventing it from carrying out its proceedings. According to the Rome Statute, the International Criminal Court (ICC) does not have priority jurisdiction over national courts when a case falls under the exceptions outlined in Article 17.

Now comes the question of when the ICC can exercise jurisdiction. According to Article 13 of the Statute, the jurisdiction of the ICC can be exercised by a State in general. Any State party has the ability to bring attention to the Prosecutor regarding situations where one or more crimes within the jurisdiction of the ICC seem to have taken place. In addition, the Security Council has the authority to exercise the power of referral under Chapter VII of the UN Charter<sup>25</sup>.

Considering the primary responsibility of the UN Security Council for maintaining international peace and security, it could be argued that other organs of the United Nations, such as the General Assembly, could also be empowered to handle these matters under the charter<sup>26</sup>. The provision concerning the deferral of investigation or prosecution by the ICC, following a Security Council resolution, poses a significant challenge to the jurisdiction and efficient operation of the ICC. In addition, it is worth noting that while the Statute does include the crime of aggression, the ICC's jurisdiction over it can only be exercised once a definition of aggression is adopted by a Review Conference. Article 15 acknowledges the authority of the Prosecutor to independently bring a situation to the attention of the Court. However, this power is also subject to the review of a Pre-Trial Chamber consisting of three judges. According to Article 124 of

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<sup>24</sup> Galand, Alexandre Skander. "A Global Public Goods Perspective on the Legitimacy of the International Criminal Court." (2018) 41 *Loy. LA Int'l & Comp. L. Rev.* 125.

<sup>25</sup> Bassiouni, M. Cherif, and William A. Schabas, eds. *The Legislative History of the International Criminal Court: Introduction, Analysis, and Integrated Text* (3 vols) (Brill 2021).

<sup>26</sup> Werle, Gerhard, and Florian Jessberger. *Principles of International Criminal Law* (Oxford University Press 2020).

the Rome Statute, a State has the option to declare that it does not accept the jurisdiction of the Court for a specific category of war crimes mentioned in Article 8<sup>27</sup>. This declaration can be made for a period of seven years after the Statute comes into force for that State, in cases where the alleged crime is committed by its national or on its territory. However, a State has the option to withdraw a declaration under this provision at any time. Regarding the admissibility of the case, the ICC must establish jurisdiction in accordance with Article 19 (1) of the Statute for any case brought before it<sup>28</sup>. Article 17 lists four types of cases that are considered inadmissible: The case is being handled by a State with jurisdiction, or it has already been investigated by such a State and they have chosen not to prosecute the person involved. Additionally, if the person has already been tried for the same conduct, the Court cannot hold a trial under Article 20, Paragraph 3. (d) The case does not warrant any further action by the Court.

Someone who is not directly involved in the investigation can question the validity of the case and/or the authority of the Court before or at the start of a trial. Anyone involved in a case, whether it's the accused, someone who has been issued a warrant or summons, or a State with jurisdiction, can raise objections to the admissibility of the case or the Court's jurisdiction. These objections can be based on factors such as ongoing investigations or prosecutions by the State, or the requirement for acceptance of jurisdiction by a particular State<sup>29</sup>.

The provisions of the Rome Statute carefully consider the need for an effective International Criminal Court while also respecting the principle of State sovereignty. The preconditions for the principle of complementarity, rules of admissibility, and the option to opt out of the ICC have significantly limited its jurisdiction to only a minority of cases. It is challenging to understand how Article 12 imposes obligations on non-party States, as the Statute does not require these States to cooperate with the ICC in investigating and prosecuting crimes within the Court's jurisdiction. Provisions for amendments on the subject matter of jurisdiction and the nature of jurisdiction at a review conference are outlined in Article 121 & 123 of the Statutes. This conference can be called seven years after the Statute comes into force<sup>30</sup>.

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<sup>27</sup> Williams, Sarah, Hannah Woolaver, and Emma Palmer. *The Amicus Curiae in International Criminal Justice* (Bloomsbury Publishing 2020).

<sup>28</sup> Cryer, Robert, Darryl Robinson, and Sergey Vasiliev. *An Introduction to International Criminal Law and Procedure* (Cambridge University Press 2019).

<sup>29</sup> Ventura, Manuel J. "Prosecuting Starvation under International Criminal Law: Exploring the Legal Possibilities." (2019) 17(4) *Journal of International Criminal Justice* 781-814.

<sup>30</sup> Rankin, Melinda. "The Future of International Criminal Evidence in New Wars? The Evolution of the Commission for International Justice and Accountability (CIJA)." (2018) 20(3) *Journal of Genocide Research* 392-411.

#### **IV. CHALLENGES AND PROBLEMS**

The International Criminal Court does not possess a supranational jurisdiction in the strictest sense of the term. The challenges faced by the ICC include the extent and voluntary relinquishment of domestic jurisdiction by sovereign States, as well as the slow process of self-limitation of power by concerned sovereign States. The Court is currently encountering various challenges in fulfilling its mandate, but it is making steady progress. The Court has initiated investigations in four different situations, namely Uganda, the Democratic Republic of Congo (DRC), the Central African Republic, and Darfur. Arrest warrants have been issued for each of these cases<sup>31</sup>. The Court has faced challenges in navigating the evolving circumstances and establishing effective working methods, while States and other institutions adapt to the permanent International Criminal Court. However, the Court, its States parties, and other supporters are currently encountering several challenges. One of the most crucial aspects is to ensure that the Court receives the necessary cooperation and support, especially when it comes to arrest and surrender. The Court lacks the necessary means to carry out the warrants it issues. It is an obligation that the States have assumed when they became parties to the Rome Statute. The Court remains committed to upholding fairness, impartiality, and independence in its actions.

The Court relies on the assistance and collaboration of States to maintain its credibility and ensure smooth operations. This includes providing financial and logistical support, apprehending and handing over suspects, and safeguarding victims and witnesses. Significant advancements have been achieved in establishing a lasting foundation for positive collaborative partnerships with two key entities, the United Nations and European Union<sup>32</sup>. The Court has established cooperative and assistance agreements with both organisations. Establishing clear procedures and designated points of contact can greatly enhance cooperation and serve as a model for how States can interact with the Court. One significant drawback is the Court's reliance on the cooperation and support of State parties for effective criminal proceedings. Given the Court's lack of executive powers and absence of a dedicated police force, its effectiveness relies entirely on the cooperation of States parties, which must be full, effective, and timely.

On the factual side, there is a severe lack of resources due to the great difficulty of investigating and gathering evidence from areas that are insecure, difficult to reach, and thousands of

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<sup>31</sup> Harris, Morgan. "Considering Colonialism: The Contentious Drafting History and Politics of the International Criminal Court." (2019) 9 *Strategy & Development Review*.

<sup>32</sup> Mendes, Errol P. *Peace and Justice at the International Criminal Court* (Edward Elgar Publishing 2019).

kilometres distant from the court. Investigating in Darfur, the Central African Republic, the Democratic Republic of the Congo (DRC), or Uganda presents unique challenges in terms of logistics and technology that no other prosecutor or court has ever encountered. There is also the undeniable fact that the Court's investigations and other operations are severely underfunded<sup>33</sup>. The validity of an arrest warrant against a citizen of any country is another area where the ICC has shown its problematic side. In October 2005, five members of the Lords Resistants' Army (LRA) were subject to warrants of arrest in relation to Uganda. Not only have the five suspects not been apprehended by the ICC, but the arrest warrants have also not been implemented, demonstrating how dependent the ICC is on successful cooperation. The transfer of one suspect, Thomas Lubanga Dylio, to the Hague is noteworthy with respect to the Democratic Republic of the Congo<sup>34</sup>. Also, it's clear that the ICC is still facing a number of challenges. Truly, the International Criminal Court (ICC) is a work in progress when it comes to achieving more justice.

The original plan was for Thomas Lobanga, a militia commander in the DRC, to be the first defendant tried by the courts. But a major obstacle was overcome when the trial was halted because the prosecutor misused Article 54(3)(e) of the Rome Statute. Disclosure of secret information to the Prosecutor under the aforementioned Article is not admissible as evidence in a trial but may serve as a "spring board" for the development of fresh evidence. In these cases, the prosecutor assumed that materials received under confidentiality agreements could be utilised as evidence during trial, even though they were not always informed beforehand whether the materials' intended use was limited to creating new evidence or had other intentions. The Prosecutor's disclosure requirements under Article 67 of the Rome Statute were not adequately considered in this approach<sup>35</sup>. On June 13th, the Trial Chamber found that the prosecutor had violated Article 54(3)(e) by using secret agreements to acquire material that was unrelated to the case's possible lead. Because of the confidentiality agreements that were struck with several UN organisations, the Prosecutor now possesses exculpatory material that cannot be divulged to the defendant as required by due process. As a "compromise," the United Nations proposed that the judges only be able to see the relevant papers, rather than record them. They could next give narrative summaries of the Prosecutor's evidence to the defendant after

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<sup>33</sup> O'Sullivan, Eugene, and John E. Ackerman. *Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia: with Selected Materials from the International Criminal Tribunal for Rwanda* (BRILL 2021).

<sup>34</sup> May, Richard, and Marieke Wierda. *International Criminal Evidence Vol. 9* (Brill 2021).

<sup>35</sup> Clark, Phil. *Distant Justice: The Impact of the International Criminal Court on African Politics* (Cambridge University Press 2018).

comparing pertinent documents with them. In the eyes of the ICC judges, this was a band-aid approach as evidence summaries couldn't stand in for the actual revelation of the material.

The Trial Chamber said that Lubanga should be freed because of the stay, but this decision will not be put into action until there are reviews of both the decision itself and the order for release<sup>36</sup>. The Court and the UN are still working hard to find a solution to the problem of access to the disputed in a way that upholds the principles of due process. The delay in the Lubanga hearing may have hurt the Court's reputation, giving its critics new evidence to use against it. In the long run, though, the Trial Chamber's decision gives the ICC legitimacy by showing that people suspected of war crimes can expect a fair trial in The Hague, complete with all the protections of due process. The International Criminal Court (ICC) has once again shown how hard it is to balance justice and peace. No one would argue that justice isn't an important part of making lasting peace. However, efforts to bring about foreign justice may clash with efforts to build peace on the ground.

There are parts of the Rome Statute of the International Criminal Court (ICC) that focus on victims. These parts could be seen as a huge step towards the goal of justice for crime victims. The Rome Statute not only lets victims be a part of criminal procedures and protects their rights, but it also says that victims should be given some kind of break to make up for their pain. The Statute also calls for the creation of the Trust Fund for Victims, which has been praised as a major improvement in the way foreign criminal justice is handled<sup>37</sup>. The bold and creative idea behind this institution is to help and compensate war victims so that they can rebuild their lives, which are often destroyed by war. The Trust Fund was set up in 2002, but it has only been working in the field for the past four years. The International Criminal Court has a lot of actions and programmes to help people who have been victims of crimes that fall under its jurisdiction. However, it still has a hard time helping these people and their families get better. In light of how important the Rome Statute makes the Trust Fund for Victims, compensation and the Trust Fund's role were talked about as part of taking stock at the ICC Review Conference in Kampala in June 2010.

Victim groups have liked the Trust Fund's efforts, which have helped the number of people in those groups. These victim groups say that the Fund's work has given the victims "hope, trust, confidence, and a sense of belonging"<sup>38</sup>. But all of this is going to make it very hard to handle

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<sup>36</sup> Clarke, Kamari Maxine. *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Duke University Press 2019).

<sup>37</sup> Luban, David, Julie R. O'Sullivan, and David P. Stewart. *International and Transnational Criminal Law* (Aspen Publishing 2018).

<sup>38</sup> Ruys, Tom. "Criminalizing Aggression: How the Future of the Law on the Use of Force Rests in the Hands of

the growing hopes of victims who want to get help from future settlements and the Fund's general aid operations. But since there are a lot of possible winners and the Trust Fund Limited has a lot of people to choose from, it remains to be seen how the Trust Fund will get around the financial and other problems.

The International Criminal Court doesn't have its own prisons, so it needs the help of States parties to run prisons. In addition, the ICC has relied on their help to move witnesses and keep them safe. It is very important for the success of the ICC that states are ready to take in prisoners convicted by the court and welcome witnesses seeking safety<sup>39</sup>. As planned and expected by its founders, the Court has a fundamental weakness in that it lacks the power and resources to carry out its own rulings. It seems likely that "Realpolitik" and State interest will continue to make it hard for the ICC to do its job. It looks like the fight between raw force and the rule of law will never end, and more failures and losses are possible. Due to complementarity of jurisdiction, legal actions before the ICC are only allowed when states that would normally have authority are unwilling or truly unable to use their jurisdiction. The Rome Statute says that national trials are the most important, which supports state autonomy.

## **V. CONCLUDING OBSERVATIONS**

The formation of the International Criminal Court was a significant milestone in the endeavour to ensure the responsibility of those who commit the gravest international crimes and to discourage the occurrence of such offences<sup>40</sup>. The Court is making significant strides in enhancing its capability and carrying out its fundamental duties. The Rome Statute of the International Criminal Court has promoted the concept of safeguarding victims of crimes and witnesses, ensuring their involvement in trial procedures, and guaranteeing their access to physical rehabilitation, psychological support, and material help. The Trust Fund is an essential component of the Court, aiming to offer aid and rehabilitation to the most susceptible victims of crimes falling under the jurisdiction of the International Criminal Court. Additionally, it carries out the implementation of Court-ordered reparations awards resulting from specific cases brought before the ICC.

Due to legal and other constraints, the International Criminal Court is only able to prosecute and try a small number of individuals responsible for crimes within its jurisdiction<sup>41</sup>. Therefore,

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the ICC." (2018) 29 *European Journal of International Law* 887-917.

<sup>39</sup> Stahn, Carsten. *A Critical Introduction to International Criminal Law* (Cambridge University Press 2019).

<sup>40</sup> Tallgren, Immi, and Thomas Skouteris, eds. *The New Histories of International Criminal Law: Retrials* (Oxford University Press 2019).

<sup>41</sup> Akande, Dapo, and Antonios Tzanakopoulos. "Treaty law and ICC jurisdiction over the crime of aggression." (2018) 29 *European Journal of International Law* 939-959.

in order to fully achieve the rights of victims to justice and rehabilitation, the efforts of the State parties to the Rome Statute must also contribute to this cause. Given that the primary goal of the Rome Statute is to incentivize states to enhance their criminal justice systems in order to hold accountable those responsible for war crimes, crimes against humanity, and genocide, it would be wise for states that, due to policy considerations, do not accept the International Criminal Court (ICC) regime, to take the necessary actions. In addition, it is imperative to implement not only protective measures for victims and witnesses who are at high danger, but also to establish comprehensive compensating and rehabilitative programmes for the benefit of victims of crimes, including participating victims who are not witnesses and those who help the Court.

Therefore, in order to address significant obstacles and issues, it is recommended that the ICC should further strengthen its current progress in becoming a proficient and reputable international organisation, as well as a functional and trustworthy International Court. It is crucial for the ICC to consistently demonstrate, in all of its actions, that it is a strictly judicial, objective, impartial, and non-political organisation<sup>42</sup>.

**1.** As the ICC's motor, the Prosecutor and his office are uniquely responsible. The Court runs on the engine of the Prosecutor's office, which is fueled by thorough and competent investigations. The Rome Statute and the ICC Rules of Procedure and Evidence provide the constitutional basis for the activities of the Office of the Prosecutor. It is expected that the Prosecutor and his office will utilise this legal framework for two main purposes: first, to establish an organisation that is as effective as possible; and second, to develop and implement professional and efficient methods of working with well-defined priorities, especially in relation to investigations.

**2.** The Court's success is dependent on the active and unwavering support of the States parties, both in words and, more crucially, in tangible actions. Given the well-known absence of administrative authorities, police, military forces, and other such mechanisms from the Court, states parties are required to reach suitable conclusions<sup>43</sup>. As a result, the Court and the States parties will need to establish new standards for efficient criminal cooperation soon. These standards should be straightforward, adaptable, and devoid of superfluous red tape, while also facilitating a rapid exchange of information and other supplementary measures.

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<sup>42</sup> Van Schaack, Beth. "Hybrid Justice: The Extraordinary Chambers in the Courts of Cambodia." (2019) 21(3) *Leiden Journal of International Law* 581-600.

<sup>43</sup> DeGuzman, Margaret M. "The Hybrid Experience in Uganda and Cambodia: International Criminal Justice Reform Through National-Led Trials." (2018) 18(4) *International Criminal Law Review* 619-645.



3. Similar to other courts, the International Criminal Court is tasked with settling complex matters involving the interpretation and implementation of laws. Much is left to the discretion of the judges according to the statute and other pertinent documents.

4. The Court has challenges stemming from the fact that it functions in contexts where conflict is continuing. These challenges pertain to safeguarding witnesses and victims as well as conducting investigations into suspected crimes.

5. The International Criminal Court (ICC) and the State parties involved need to establish what the Court's capabilities are. It should be borne in mind that, so long as they are willing and competent to do so, national Courts are primarily responsible for trying and punishing war criminals<sup>44</sup>.

6. To reduce the load on the ICC, the States parties should fulfil their primary responsibility to pursue fundamental crimes wherever practicable, in accordance with the complementarity principle. The best way to prosecute criminal conduct is at the national level. This is why the Rome Statute requires States Parties to change their national criminal justice systems in order to meet its material criteria. Germany did this in 2002<sup>45</sup>.

In summary, it is crucial for all countries to seize the opportunities available to them in order to promote the universal nature of the ICC and encourage more nations to become members of the Court. In addition, it is crucial to have well-planned diplomatic and political efforts, along with ongoing collaboration with non-governmental organisations. The Court should make every effort to exhaust all possibilities in order to achieve universal acceptance. Overall, the establishment of the ICC has had a promising beginning<sup>46</sup>. While there has been notable progress in various aspects, it is important to acknowledge that the Court still has much work ahead. The ICC can be seen as a work in progress, both in a literal and figurative sense. Greater efforts are required from all parties involved, including the new institution and its staff, as well as the States parties that established the Court. The ICC does not possess a jurisdiction that extends beyond national boundaries in the strictest sense. The challenges faced by the International Criminal Court include the voluntary relinquishment of domestic jurisdiction by

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<sup>44</sup> Heinze, Eric A. "Challenges to the Legitimacy of Hybrid Tribunals: International Criminal Justice Lessons from Guatemala." (2020) 40(4) *Fordham International Law Journal* 1191-1226.

<sup>45</sup> Correa, Francisco-José Quintana. "The Legal Protection of Victims in the Context of Hybrid International Criminal Tribunals: The Special Tribunal for Lebanon." (2019) 10(1) *Journal of International Criminal Justice* 93-111.

<sup>46</sup> Crosby, Amanda. "The Role of International Tribunals in the Prosecution of Sexual and Gender-Based Crimes: A Comparative Analysis of the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, and the Special Court for Sierra Leone." (2018) 56(3) *Virginia Journal of International Law* 487-519.

sovereign States and the slow process of self-limitation of power by concerned sovereign States. These factors, along with the extent and speed of these actions, pose ongoing difficulties for the Court.

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