

Title of Paper:
ROLE OF ICC TO ENSURE GLOBAL PEACE AND HUMAN RIGHTS: A CHALLENGING ANALYSIS

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Abstract:

In search for global peace, order, stability the International Criminal Court (the "ICC") came into being. The destructing reminiscence of the two World Wars shook the global conscience, the heart of the millions of peace-loving people. Genocide, war crimes, communalism, racism, aggression had been in greater prevalence. To put end to the political absolutism causing deaths of millions of people and to establish justice all over the world the ICC came into play with the light of hope. How far ICC is fruitful succeeded in reflecting the aspiration of the people? Whether ICC is using as a political tool kit to suppress the third world countries? Is the ICC another means of neo-colonialism? What are the factors that questioning the very impartiality of the ICC? Whether the Court working to establish Victor's Justice? Would the Court be another scapegoat? This write is delved into these questions. Starting with the context and dreams of establishing the Court, this article examines the reality in light of the argument including the future of the ICC. In a bid to ensure global peace, order, stability, the International Criminal Court (the "ICC") came into being. The destructing reminiscence of the two World Wars shook the global conscience, the heart of the millions of peace-loving people. This write up is delved into the hopes and efforts of global community to stabilize the world, to establish justice through forming ICC and the performance of the same. Starting with the context and dreams

of establishing the Court, this article examines the structure and performance of ICC in light of the reality with special concentration on global politics including the future of the ICC.

Introduction:

The world witnessed two devastating wars. Life and dreams of the millions of peace-loving people had been compromised with the lust of the blood-sucker autocrats. Humanity experienced most inhumane treatment. Apart from the two World Wars, wave of genocide, ethnic cleansing, communalism, religious fanaticism, racism, apartheid intolerance and different other crimes against humanity clash claimed and still claiming millions of life around the world. The border of sovereignty could not let other conscience-dominating nations interfere with the situations and could come up to uphold the causes of humanity. There had been no single universal authority to bring the offenders into justice and to establish accountability in criminality. Later on, the International Criminal Court (the “**ICC**”) came into being to address the causes of humanity and to stop the culture of impunity. On July 17, 1998 120 states voted to adopt the Rome Statute establishing ICC¹. ICC is called to be the gift of hope for the new generations². Following 60 ratifications, the Rome Statute entered into on 1 July 2002 and the International Criminal Court was formally established. It has been the leap step towards establishing human rights, justice, peace, security and stability in the world³.

1. ICC: Looking Back:

The need for an impartial organ to bring the perpetrators into justice felt worldwide. Absence of an independent and authoritative court made the trial of genocide, war crimes and other offences against peace almost impossible⁴. The first attempt was made during the Paris Peace Conference in 1919 following the First World War by the Commission of Responsibilities. The issue later came before a conference held in Geneva under the auspices of the League of Nations in 1937. A convention was adopted but signed by thirteen states, but none ratified it and the convention never entered into force.

Following the Second World War, the allied powers established two ad hoc tribunals; namely the Nuremberg and Tokyo Tribunals, to prosecute axis power leaders accused of war crimes. In 1948 the United Nations General Assembly first recognized the need for a permanent international court

to deal with atrocities that the world witnessed in World War II. At the request of the General Assembly, the International Law Commission (ILC) drafted two statutes by the early 1950s but these were shelved during the Cold War.

Later on, the then Prime Minister of Trinidad and Tobago revived the idea of a permanent international criminal court by proposing the creation of such a court deal with the illegal drug trade in June 1989. The General Assembly tasked the ILC with once again drafting a statute for a permanent court. The International Criminal Tribunals for the former Yugoslavia and Rwanda were created in response to large-scale atrocities committed by armed forces and Genocide. The creation of these tribunals further highlighted the need for a permanent international criminal court⁵.

ILC presented its final draft statute for the International Criminal Court to the General Assembly in 1994 and recommended that a conference be convened to negotiate a treaty that would serve as the Court's statute. Later, the General Assembly established the Ad Hoc Committee on the Establishment of an International Criminal Court, which met twice in 1995. From 1996 to 1998, six sessions of the Preparatory Committee were held at the United Nations headquarters in New York City. The General Assembly convened a conference in Rome in June 1998 with the aim of finalizing the treaty to serve as the Court's statute.

Finally, on 17 July 1998, the Rome Statute of the International Criminal Court was adopted by a vote of 120 to 7, with 21 countries abstaining. Unfortunately the seven countries that voted against the treaty were China, Iraq, Israel, Libya, Qatar, the United States, and Yemen. Following 60 ratifications, the Rome Statute entered into on 1 July 2002 and the International Criminal Court was formally established. Nearly two-thirds of the United Nations' membership, 121 states, has ratified the ICC's statute, which legally obligates them to cooperate with the court⁶.

Recently, in 2010 the states parties of the Rome Statute held the first Review Conference of the Rome Statute of the International Criminal Court in Kampala, Uganda and adopted two amendments to the Statute. The second amendment defined the most debated crime of aggression and outlined the procedure by which the ICC could prosecute individuals.

1.1 International Criminal Court:

The International Criminal Court is constituted under and governed by the Rome Statute. It is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community⁷. The ICC is an independent international organization and unlike the International Court of Justice the ICC is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organizations, individuals, corporations and other entities. On 17 July 1998, the international community reached an historic milestone when 120 States adopted the Rome Statute, the legal basis for establishing the permanent International Criminal Court⁸. Following the prescribed number of ratification (sixty states), the Court started its journey on 1st July 2002.

1.2 Organization:

1.2.1 Assembly of States:

The Court's management oversight and legislative body, the Assembly of States Parties, consists of one representative from each state party. Each state party has one vote and all possible efforts be made to reach decision based on consensus. If consensus cannot be reached, decisions are made by vote. The Assembly is presided over by a president and two vice-presidents, who are elected by the members to three-year terms. The Assembly meets in full session once a year in New York or The Hague, and may also hold special sessions where circumstances require. Sessions are open to observer states and non-governmental organizations.

Assembly of states appoints the judges and prosecutors to run the business of the Court and decides the Court's budget, adopts important texts including Rules of Procedure and Evidence and provides management oversight to the other organs of the Court. Rome Statute (Article 46) allows the Assembly to remove from office a judge or prosecutor on the ground prescribed by the Statute.

1.2.2 Judicial Body:

The Judicial Divisions consist of the 18 judges of the Court, organized into three chambers

- a. the Pre-Trial Chamber;

- b. Trial Chamber;
- c. Appeals Chamber;

Judges are elected to the Court by the Assembly of States Parties. They serve nine-year terms and are not generally eligible for re-election. The judges are usually of higher ethical integrity and they must be nationals of states parties to the Rome Statute, and no two judges may be nationals of the same state.

1.2.3 Jurisdiction:

The Rome Statute prescribed the jurisdictional requirements for the Court to try the offences. The jurisdiction of the ICC can be illustrated under three heads, namely:

- (1) Subject-matter jurisdiction;
- (2) Territorial or personal jurisdiction;
- (3) Temporal jurisdiction;

Article 5 of the Statute provides a list of offences that the ICC can try. The Court can try the offence of genocide, crimes against humanity, war crimes and crimes of aggression. An individual can be prosecuted if he or she has either (1) committed a crime within the territorial jurisdiction of the Court or (2) committed a crime while a national of a state that is within the territorial jurisdiction of the Court. The territorial jurisdiction of the Court includes the territory, registered vessels, and registered aircraft of states which have either (1) become party to the Rome Statute or (2) accepted the Court's jurisdiction by filing a declaration with the Court. Personal jurisdiction of the Court extends to all natural persons who commit crimes, regardless of where they are located or where the crimes were committed, as long as those individuals are nationals of either the states that are party to the Rome Statute or the states that have accepted the Court's jurisdiction by filing a declaration with the Court.

1.2.4 Office of the Prosecutor:

The Office of the Prosecutor is responsible for conducting investigations and prosecutions. The Chief Prosecutor heads the office, who is assisted by one or more Deputy Prosecutors. The Rome Statute provides that the Office of the Prosecutor shall act independently; as such, no member of the Office may seek or act on instructions from any external source, such as states, international organizations, non-governmental organizations or individuals. The Prosecutor is empowered to initiate proceedings or investigation *suo moto* in different situations like:

- a. when a situation is referred to him or her by a state party;
- b. when a situation is referred to him or her by the United Nations Security Council, acting to address a threat to international peace and security; or
- c. when the Pre-Trial Chamber authorizes him or her to open an investigation on the basis of information received from other sources.

1.3 Current Scenario:

The Court is currently dealing with 21 cases in 8 situations at different stages of proceedings. The Office of the Prosecutor is conducting investigations and judicial proceedings in 8 situations⁹(Central African Republic, Côte d'Ivoire, Darfur (Sudan), Democratic Republic of the Congo, Kenya, Libya, Mali and Uganda), and is also working proactively to gather information and conduct preliminary examination activities in 10 situations (Afghanistan, Central African Republic, Colombia, Comoros ("Gaza Freedom Flotilla" incident), Georgia, Guinea, Honduras, Iraq, Nigeria and Ukraine).

The Court has thus far issued 30 warrants of arrest against individuals, with nine suspects or accused persons currently in custody. In addition, nine summonses to appear have been issued since 2002¹⁰. Of the cases before the Court, three trial verdicts have been delivered and appeals are pending in two of them. One verdict became final in June 2014. Six cases (concerning seven persons) are at the trial preparation or trial stage, and in two cases, confirmation of charges proceedings are expected to come to a close in 2014¹¹. Arrest warrants issued by the Court remain outstanding against 12 individuals.

1.4 ICC: A tool to uphold the interest of justice globally:

International Criminal Court came as a symbol of global commitment towards establishing justice all around the world and to stand against the heinous offences of genocide, war crimes and others offences threatening global peace, security and stability. The global community came under a single platform to stop the culture of immunity of the perpetrators and make the world life-friendly. The Court, unlike the ad hoc tribunals, has a reach that goes far beyond one continent or sub-region. The ICC is authorized to exercise its mandate over the "most serious crimes of concern to the international community" if either the state on whose territory the crimes occurred or the state of nationality of the accused has ratified the treaty and has failed to do its own investigations¹². This broad authority offered the promise of a more level international playing field for justice, and this prospect fueled widespread support¹³.

1.5 Challenges of ICC:

Since the coming into being the Court has been facing immense challenges. Cold war between the two super powers deferred the birth of ICC. Still now the major global players are reluctant to be a part of ICC and co-operate the investigation and other proceedings of the Court. Besides the consent-based jurisdiction, budget constraints and non-cooperation by the non-state parties are some of the hurdles faced by the ICC. The challenges of ICC more discussed in details in below:

1.6 Structural Defects:

1.6.1 Consent-based Jurisdiction:

The jurisdiction of the Court extends to those states that choose to ratify the Rome Statute. That is, any country which is not a member of the ICC can ever be brought to face any trial whatever the situation in that country and however the country may be affected. If the government of the victim country or where the perpetrators committed the offence is willing to try the offenders in that country, ICC cannot proceed to try the offenders. This is great limitation of the ICC because the perpetrators use this lope hole to escape the trial. . The court's authority, virtually with the exception of referrals by the Security Council, rests on the voluntary decision of states to join the "Rome Statute system," and with 121 members, the court's arm reaches far beyond a law-abiding handful of states. Unsurprisingly, those with the most egregious records -- North Korea, Sri Lanka, Zimbabwe, to name a few -- have not joined. Because of the limitations in this consent-based

jurisdictional regime that states negotiated in Rome, there are sizable "impunity gaps" on the international landscape¹⁴.

1.6.2 Unlimited Power of Prosecutor:

The prosecutor has been vested with unlimited power to initiate investigation into any offences of genocide, war crimes and crimes against peace. There is also concern about the wide-ranging powers endowed on the prosecutor who is "not accountable to any government or institution. China and India have categorically refused to cede to the Rome Statute and have expressed concern over various issues, including powers of the prosecutor and the court's jurisdiction, among others. Both of these countries fear that the powers granted to the prosecutor are too broad and may lead to subjectivity and arbitrariness in the way that investigations and prosecutions are conducted¹⁵.

1.6.3 Budget Constraints:

Financial constraints is another setback that hinders the service of ICC to outreach to different corners of the world. Different donor countries are now cutting their contribution. Several of the largest contributing states are trying to slash the court's budget at a time when demands on the ICC are growing. If successful, this "zero nominal growth" approaches risks sacrificing legal defense, victim participation, and outreach¹⁶.

1.6.4 Lack of Cooperation:

In the absence of any implementation Organ the Court is to depend on the other countries for the execution of warrants and arrests. The non-state members are not willing to co-operate the ICC. This non-cooperation makes the efforts of ICC futile.

1.6.5 Interference of Security Council:

The Rome Statute prescribed for the greater co-operation of the ICC and UN. The UN Security Council can postpone the enforcement or the proceedings of the Court for one year which can be renewed. This provision has armed the Security Council members with the power to interfere with the proceedings of the Court. This provision seems unrealistic in the context where the most of the

permanent members of the Security Council are not member of the Rome Statutes. The inconsistency can make the court seem less like a permanent institution of international justice and more like a light switch at the fingertips of a few permanent Security Council members¹⁷.

1.7 Non-structural Limitations:

1.7.1 North-South Crisis:

African governments are making a stand against the International Criminal Court. African countries signed on to the Rome Statute without much thought to the implications of the Statute, primarily because there was great pressure from donor countries that used their financial support to twist the arms of these governments to cede to the statute. Specifically, many critics hold that African countries were pressured to sign on the Treaty of Rome by the EU as a condition for being part of the EU-Africa trade pact—the Cotonou Agreement¹⁸. A large number of African states are now considering ending their membership of the International Criminal Court and thus weakening this indispensable and very successful form of international criminal justice¹⁹.

1.7.2 Does ICC stand for International *Colonial* Court?

The statistics revealed shows clearly that in all most all the trials and investigations the African Countries are being the target of ICC jurisdiction. The court has tended to focus almost exclusively on Africans and—more specifically—black Africans. Worse atrocities in other countries have not featured prominently in the court's agenda²⁰. African critics of the ICC cite many examples that suggest that there are biases in the selection of countries and cases followed up by the court. Burma, Venezuela, Colombia, Iraq, Syria, Afghanistan and even Egypt are some examples where crimes against humanity have not been a focus of ICC.

The key positions that are responsible for investigations and the preparation of cases—are overwhelmingly staffed by members of the European Union. For the ICC, there is a tight relationship between funding and staffing. This close relationship has raised justified concerns that the court is a tool of the EU, which, unfortunately, reinforces the “new colonialism” sentiments²¹.

1.7.3 Political Manipulation:

The Court is often criticized to be subject of political manipulation. It is a common fear. This fear of political manipulation appears to be a concern to many other countries, including the United States. In 1998, Senator Dianne Feinstein noted, "I share the concerns which ultimately led United States to determine that it could not support the draft statute that emerged from Rome. None of us would like to see a court that frivolously prosecutes Americans or which acts with politics, not justice, as its motivating force." This observation clearly points to the fact that the court can be subject to political manipulation. Senator Gram specifically observed that the ICC process would not provide an "effective screen against politically motivated prosecution from being brought forward²²." This observation clearly points to the fact that the court can be subject to political manipulation. It can be recalled that after initially agreeing to be a party to ICC for a short time, Israel "unsigned" the Rome Statute because of concerns that "political pressure on the court would lead it to reinterpret international law or to "invent new crimes²³."

1.7.4 Non-participation by global Players:

The major players in the global politics including three permanent members of the U.N. Security Council -- the United States, Russia, and China -- have not joined the court. Through their non-ratification and veto power, they have insulated themselves from the ICC. Recently they have also shielded the leaders of certain "client states." Syria. This non-participation has made the ICC a nominal organization, a paper tiger.

1.8 ICC: Looking Forward:

Recent Kenya debate has brought the role of ICC as independent and impartial judicial under great criticism. In the Kenyan cases, the ICC seems to have been drawn into domestic ethnic politics, which, again, greatly erodes the integrity of the so-called neutral player. Despite different major drawbacks, the global community hopes that the ICC shall play better role to uphold the interest of

justice in the future. More and more countries are joining the Rome Statute. Till the date almost 121 countries two-thirds of the UN Members have ratified the Statute in a bid to accelerate the global movement of bringing the perpetrators to the justice. If ICC can rectify its loopholes and bring changes in its structure and principles it is hoped that the Court will be able to materialize the dream of global community of a peaceful planet.

Concluding Remarks:

ICC has been termed to be the last resort of Justice. The Court is at the nucleus of hope of international community. However, with the passage of time the Court could not reflect the aspiration of global community. ICC can better be turned into a forum of justice, a platform of civilized nations, a last resort of the peoples hope to establish peace, security and order in the world. ICC is its own worst enemy and, unless reformed, Africans will continue to see it as nothing more but an International Colonial Court²⁴. The world is not willing to experience the devastating effect of war. ICC is the people's center of hope.

¹ Benita Sumita, *The International Criminal Court and its Role in Conflict Resolution: The Emperor's New Clothes*, July 2007

² Quoted by Kofi Anan, cited by Bruce Broomhall, *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*, Oxford: Oxford University Press 2003 and referred in Benita Sumita, *The International Criminal Court and its Role in Conflict Resolution: The Emperor's New Clothes*, July 2007

³ Otto Triffterer, 'The Preventive and the Repressive Function of the International Criminal Court', in Mauro Politi and Giuseppe Nesi (eds.) *The Rome Statute of the International Criminal Court A Challenge to Impunity*, Aldershot: Ashgate 2001. "Delegations at the Rome Conference 1998 had agreed that there could be "no peace without justice", given the capacity justice has to foster reconciliation and deter future

crime." Referred in Benita Sumita, *The International Criminal Court and its Role in Conflict Resolution: The Emperor's New Clothes*, July 2007

⁴ Dr. M Shah Alam, *Antorjatic Songoton* (International Organization), p. 99

⁵ Coalition for the International Criminal Court. "History of the ICC". Retrieved 31 December 2006.

⁶ Richard Dicker, *ICC: The Court of Last Resort*

⁷ International Criminal Court

<http://www.iccpi.int/en_menus/icc/about%20the%20court/Pages/about%20the%20court.aspx
> accessed on 04 December, 2014

⁸ Ibid

⁹ Report of the International Criminal Court for the Year 2013-14, 18 September 2014, p. 2

¹⁰ Report of the International Criminal Court for the Year 2013-14, 18 September 2014, p. 2

¹¹ Ibid, p. 2

¹² Richard Dicker, ICC: The Court of Last Resort Will the ICC's next decade see the court expand the stop-start gains of its first 10 years?, June, 2012

¹³ Ibid

¹⁴ Richard Dicker, ICC: The Court of Last Resort Will the ICC's next decade see the court expand the stop-start gains of its first 10 years?, June, 2012

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid

¹⁸ Can the International Criminal Court Play Fair in Africa?, 17 October 2013.

<<http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court-kimenyi>> accessed on 4th December 2014

¹⁹ Nooke dismisses African countries' criticism of the International Criminal Court, Deutsche Welle. Available at <http://www.dw.de/nooke-dismisses-african-countries-criticism-of-the-international-criminal-court/a-17259996>, accessed on 4th December 2014

²⁰ Can the International Criminal Court Play Fair in Africa?, 17 October 2013.

<<http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court-kimenyi>> accessed on 4th December 2014

²¹ Can the International Criminal Court Play Fair in Africa?, 17 October 2013.

<<http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court-kimenyi>> accessed on 4th December 2014

²² Is the ICC Subject to Political Manipulation? Available at

<http://www.brookings.edu/blogs/africa-in-focus/posts/2013/10/17-africa-international-criminal-court>- accessed on 4th December 2014.

²³ Ibid

²⁴ Ibid