



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2021 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

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## The effectiveness of International Criminal Court - An analytical study

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*Received* 20 October 2021; *Accepted* 08 November 2021; *Published* 11 November 2021

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*This research assesses the want for the foundation of the International Criminal Court that was to be ruled by the Rome Statute. The basic objective to set up the court at the termination of the Cold War was to terminate the privilege and aids for the individuals who commit abhorrent offences, like the crime of massacre, offences against humankind, and crimes that take place at the time of war. Nevertheless, since its inauguration, the panel set up by the ICC is handling several dares to manage crimes in war and in bringing legal proceedings against the persons who have committed these heinous crimes. The work ponders upon the character of democracy in providing international justice, how the guilty one is brought to justice, victories, and shortcomings of the ICC, and also puts the spotlight on the war offences which took place in Darfur and Uganda. In writing this research paper an effort has been there to evaluate if this major juridical supreme has been prepared to accomplish its objective of discouraging people from executing offences and further cruelties or not. At the end of this paper, suggestions are provided for an impartial as well as the essential performance of the court.*

**Keywords:** *international criminal court, international justice, democracy, war crimes, rome statute.*

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## INTRODUCTION

The ICC was the court which was recognized as the International Criminal Court in year 1998 it was technically a result of the Rome Statute in 1998; the beginning of it was a reason to file a suit on a person who committed war crimes, the crimes contrary to humanity & genocides. Here the first hearing of this court as being the initial and only permanent International Criminal Court was in The Hague, Netherlands and now this is the place where its head-quarter is located. Here the formation of the ICC was operating only on the basis, when necessary or needed.

At that time the Rome Statute makes a pledge that everyone has access to approach for justice on the international level, and they also ensure that the culprits get penalized for the crime for which they are guilty and also that victims get lawful justice as soon as possible. And afterward of the ICC, the world needs to be on track with the promise of post-World War II i.e., "never again". The ICC is the initial and permanent, international judicial structure capable of allocating justice to the sufferers when the state is impotent or reluctant to do so. There are numerous words in order to the virtue and efficiency of the ICC; still, its effective results and downgrading judgements can be estimated tracking it's till records.

No impunity is fixed against this, not indeed to the Chairpersons in office at the time-which is obligatory, considering that top government officers are more frequently than not at the origin of war crimes and the likes. The International Criminal Court is a self-governing association & isn't a segment of the United Nations. Still, they do work combined with each other and the UNSC can relate to situations consisting of transnational delinquencies to the ICC. In the present era, ICC is working with over 900 staff members in 6 different languages i.e., English language, the language of France, Russian, Spanish, Chinese, and Arabic. ICC has offices in New York, USA; seven other country offices in Democratic Republic of Congo, Uganda,

Central African Republic, Côte d'Ivoire, Georgia, and Mali. However, a fact is that some of the world's leading nations are not part of it i.e., the United States, Russia, China, and India.<sup>1</sup>

## THE AUTONOMOUS BESTOWAL OF THE ICC

In the disputation that has rolled around the ICC, too slight consideration has been given to its part taking it up the republic to a public position. Spectators comprehend that the mentioned thing of the Court is to support the preservation of mortal rights of them that what they have generally failed to pay attention to is that the ICC will negotiate this thing mainly through the civilization, connection, and improvement of popular autonomous education centers. The Court offers states a means to ameliorate the administration of inter-state justice and to slow down the face of anti-democratic contenders in disparate terms; it promotes its things by cracking through public level institutions and reorienting those foundations in a fashionable direction. At the same time, the Court needs a popular constituency in order to succeed it can save its forcefulness and veracity only if the healthy maturity of its member countries is democracy.<sup>2</sup>

Therefore, by assisting the republic, the Court is assisting the issue itself. The ICC's investment in democracy is deficiently appreciated by its knockers, particularly the U.S. command, its most compulsive challenger. The United States' most well-known exception is that the Court exercises implicit governance over non-party citizens, together with American natives. U.S. critics have knitted this criticism into a massive dispute that the Court dumps the popular frame of work because it acts over and independently of public delegate societies.

The explanation of the ICC as an "institution of unbounded power," in the meantime, is disproven by the addition of numerous precautions counter to obsession stroke by prosecutors and adjudicators. These embrace the right of condemned individualities to demand; the rule that a prosecutor may not launch an official exploration on his or her own initiated action lacking in authorization from a pre-trial compartment of judges; and the right of any state to

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<sup>1</sup> International Criminal Court, 'About the Court' (ICC) <<https://www.icc-cpi.int/about>> accessed 13 October 2021

<sup>2</sup> *Ibid*

challenge the legality of exploration or prosecution of its citizens. The supreme check is the power of member countries to designate and remove juries and prosecutors. The admissibility of this check is come violently by the fact that, as we shall see, the Court's member countries are excessively democratic. In short, the ICC interweaves composed values of democracy, choice, and to come in force allowing support to each-others. The ICC adjudicators and prosecutors are tagged and may be detached, by its participant countries, reunion in and gathering of States Parties; April 26, 2004, when 93 countries had verified the Rome Statute.<sup>3</sup>

### **ACCOMPANYING THE GUILTY TO JUSTICE: CAN THE ICC BE SELF - ADMINISTERING?**

When a nation turns out to be a party in the Rome Statute, it comes to an understanding to submit himself in the governance of the ICC within the environment of the felonious conditioning listed in the Statute. A court may imply its governance in purpose wherever the plodded malefactor is a public of a Nations Party or where the crime was executed in the home of a Nations Party. Also, a nation not a party to the Statute, it may conclude to accept the regime of the ICC. The ICC is a regime only with reference to circumstances that passed after the submission comes into force of its Statute on 1 July 2002.<sup>4</sup> Still, the Court, if a Nation turns into an associate to the Statute afterward its arrival inter force may bring into play it imposes a judgment on a condemned person and may also order the condemned individual to recompense plutocrat for compensation.

Still, also the application chamber comes into the part; the subject may settle to reorder or alter the judgement and can also instruct for a new trial before a distinct trial chamber if the condemned person or the prosecutor appeals the judgment of the trial chamber. Basically, it has regime and control over the criminal things or actions written in Article Five of the Rome Statute.<sup>5</sup> There is a specific minimum age criterion of the accused that it must be more than or

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<sup>3</sup> Jamie Mayerfeld, 'The Democratic Legacy of the International Criminal Court' (*The Fletcher Forum of World Affairs*, 2004) <<https://faculty.washington.edu/jasonm/mayerfelda.pdf>> accessed 13 October 2021

<sup>4</sup> *Ibid*

<sup>5</sup> Rome Statute 1998, art 5

equal to 18 years at the time of commencement of the sin; article 11(1)<sup>6</sup> also states, the ICC does not have an ex post facto administration over delinquencies that were executed before the Statute was imposed.<sup>7</sup>

Some of the articles state the jurisdiction of the ICC with the specific activity of perpetrators i.e.,<sup>8</sup> article 6,<sup>9</sup> article 7<sup>10</sup> , and article 8<sup>11</sup> which are Genocide criminalities, Crimes in contradiction of civilization, and war crimes respectively. And they come over the crimes of aggression which is typically a crime in which individual plans. Embarking of an offensive act by involving or using the armed force which invades the guidelines of the UN charter consequently they extended the article 8 which is 'Article 8 bis' Crime of aggression.<sup>12</sup>

## THE CONQUESTS OF THE ICC

Since the ICC is the precursor in its obligation to provide justice to the sufferers and penalties for the offenders. There was a bit of rationale to be constructive and pragmatic owing to the operating of the committees previously. For instance, in the period of 1990s, the bars of Rwanda and Yugoslavia prepared blueprints for imparting justice. All these instances demonstrated what was impractical to think – an erstwhile leader of the state facing the proceedings until that incident.<sup>13</sup> This enhanced the point of view that a multinational juridical structure could be set up. These forums were attributed to having declared guilty various offenders for offences against human mankind, crimes in war, and annihilation.<sup>14</sup>

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<sup>6</sup> Rome Statute 1998, art 11(1)

<sup>7</sup> International Criminal Court, 'Structure of the ICC' (*International Criminal Court Project*) <<https://www.aba-icc.org/about-the-icc/structure-of-the-icc/>> accessed 13 October 2021

<sup>8</sup> *Ibid*

<sup>9</sup> Rome Statute 1998, art 6

<sup>10</sup> Rome Statute 1998, art 7

<sup>11</sup> Rome Statute 1998, art 8

<sup>12</sup> 'Rome Statute of the International Criminal Court' (*International Criminal Court, 1998*) <<https://www.icc-cpi.int/resource-library/documents/rs-eng.pdf>> accessed 14 October 2021

<sup>13</sup> *Ibid*

<sup>14</sup> Jennifer Trahan, 'Interview with Richard Goldstone, David Tolbert, Hassan Jallow and Diane Orentlicher' (New York, 30 November 2009)

The rationality to introduce the ICC,<sup>15</sup> apart from punishing the individuals who have done wrongs such as mass slaughter, offences against humankind, and offences that take place in wars, also behave as a barrier to putting an end to such crimes which can take place in likelihood. These components will aid in evaluating the prosperity of the court. Additional reasoning introduced by Birju Kotecha<sup>16</sup> is that if the working of the ICC is recognized on the basis of graphical figures established on hearings as well as judgments, the ICC's measured achievement is fairly erratic. Presently, there have been only 8 formal inquiries and 6 persons are detained as of now. Moreover, a legal proceeding has been concluded with a judgment, though it is subject to appeal as well. The opposition reasoning by the earlier prosecutor Moreno - Ocampo is that the positive result of the court is evident from deficiency of universal inquiry which is due to imposing local hegemony.<sup>17</sup>

It is worth stating that in spite of the protests by a few countries, the Rome Statute was enacted, and the agreement was sanctioned which proved the desirous feat against the persons having a hand in such wicked conspiracies. There is a steep rise in approval of and help for the ICC, especially among the tiny countries of the globe. Apart from this, another salient fact is that, in order to enlarge its potency on the international platform, the court has to be admiring and in addition to the national courts which will allow the nations to try the persons according to their own will as well. In instances, if a nation is not able to try or does not want to punish the culprits of wicked crimes, the ICC comes into attack. Since the ICC provides the methods for the states in prosecuting their own culprits, it is considered as one of its triumphs.<sup>18</sup>

Recent evolution in amplifying the character of ICC was the incorporation of terrorism and related activities to the catalog of offenses and to extend upon an agreement in elucidating terrorism at a review congress in 2009. The duty of attaching terrorism to the range of the ICC

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<sup>15</sup> *Ibid*

<sup>16</sup> Birju Kotecha, 'The ICC: What Counts as a Success?' (*Justice in Conflict*, 13 September 2013)  
<<https://justiceinconflict.org/2013/09/13/the-icc-what-counts-as-a-success/>> accessed 14 October 2021

<sup>17</sup> *Ibid*

<sup>18</sup> Daniel Donovan, 'International Criminal Court: Successes and failures of the past and goals for the future' (*Inter Policy Digest*, 2012)  
<[https://issuu.com/interpolicydigest/docs/international\\_policy\\_digest\\_volume\\_i\\_issue\\_v/3](https://issuu.com/interpolicydigest/docs/international_policy_digest_volume_i_issue_v/3)> accessed 14 October 2021

is yet to take shape since the modification for the incorporation of terrorism is yet to be completed. Every good of the court is yet to acquire achievement in the genuine sentencing of the criminals. This does not threaten the character of the court as composition has been mentioned with ease of the requirement for transforming the world that should check its successiveness in the coming days.<sup>19</sup>

The Kampala Conference in 2010 was an affirmative measure for the national groups as it demonstrated the modifications and easiness of the national parties to the transforming multinational context.<sup>20</sup> At the time of the conference, UN Security Resolutions 3314 was discussed in particular. In the provisions of this particular resolution, hostility was inducted in a record of possible offences which is within the authority of the ICC. It is anticipated that the proposals of this congress are to be applied on letter and psyche and can achieve as an agreement on January 1, 2017. The inclusion of hostility to the offences has eased in increasing the ICC's and side by side power and at the same time promising international harmony and law and order.<sup>21</sup>

### **THE INTERNATIONAL CRIMINAL COURT AS AN UNDERACHIEVER**

Although the ICC was a genuine shimmer of aspiration for innumerable nations experiencing disputes as it came into effect after sufficient preparations via the Rome Statute. Nonetheless, it is viewed by several nations as a lack of success. The primary ground used for their regret was the sluggishness of the ICC up to 2009 as it unfolded its first lawsuit. The initial head prosecutor, Luis Moreno - Ocampo who got appreciation by enlightening the fraud of the Argentine Republic in the Trial of the Juntas, but he has usually been criticized for his constant disappointment which has supplemented to the hesitation of the nations.<sup>22</sup>

The ICC as directed by the extemporary bars, which were formed earlier, advanced the theory of liability. The right to power over civil rights has been nominated to the Security Council.

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<sup>19</sup> *Ibid*

<sup>20</sup> International Criminal Court, 'ICC - Review Conference of the Rome Statute concludes in Kampala' (2010)

<sup>21</sup> Donovan (n 18)

<sup>22</sup> *Ibid*

For the well-ordered working of the ICC, a lot of assets have been allocated to it; sadly, it was unsuccessful to achieve a good amount of summons. Adding on, there has been a topographical inconsistency as well in its hearing. It has been perceived that the court is specific regarding the steps taken against the violation of human rights in Africa. Even though there is a blatant human rights breach on nearly every continent, the significance of the ICC's probes has stayed on Africa only. This has increased worries on several sides concerning the trustworthiness of the ICC and in many terms as a key to the West. Besides, the shortcomings of the ICC to aim accusations against the offenders having substantial possibilities of being prosecuted are also being condemned.<sup>23</sup>

Taking the lawsuit of Omar al – Bashir, the President of Sudan, the ICC imposed accusations against the existing chief of state for committing offences in Darfur. It is to be mentioned that the President had the ability to dodge the seizure and elude probe, owing to the web of aid laying their helping hand for him. He went to those countries, which are parties to the ICC, but the nations did not take the present chief of the state into custody. The incapability of the ICC to persuade those nations to capture Omar has defamed its status. It is also significant to mention that there was a minimum of 10 other crucial human rights offenders in Sudan who could have been comfortably arrested and were trialed with a greater likelihood of sentencing. This step would have conveyed a brawny note to every additional violator that the hoop covering their neck would get strengthened any time.<sup>24</sup>

One of the chilly responses on the working of the ICC is that it emphasizes largely on the offences in the African subcontinent than on offences committed by the defense forces of a large number of Western nations in the Middle East, Asia, or Latin America. With regard to offences committed by individuals, it is also to be mentioned that defined localities in the Muslim, as well as the Western countries, have amplified their worries regarding the trials of the US President George Bush along with Tony Blair since the event of 9/11 and their

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<sup>23</sup> Ali Ezzatyar, 'Fending off Failure: The International Criminal Court's New Chief Prosecutor' (*The Moderate Voice*, 2012) <<https://themoderatevoice.com/fending-off-failure-the-international-criminal-courts-new-chief-prosecutor/>> accessed 14 October 2021

<sup>24</sup> *Ibid*



involvement in Afghanistan and Iraq. So, it is a huge charge for the ICC to pull steps against the strong persons of the mighty nations.

## DARES IN FRONT OF THE ICC

Like another intercontinental organization, the ICC apart from accomplishing victory and in a few instances failures has been coming across specific dares when handling war-related crimes and other offences. There are several positions where the ICC has to recover and construct its show extra successful. The ICC has been misleading under the difficulties of implementation since its establishment. There have been efforts to rectify this problem, nonetheless, the attempts were useless. The ICC will not be up to that mark to accomplish its goal for delivering justice for worldwide offences except if it advances the procedure to overcome the fundamental issue of applicability.<sup>25</sup>

The case connected to the seizing of al-Bashir as well as the likely removal of South Africa from the International Criminal Court speaks of major challenges to the ICC.<sup>26</sup> The South African government declared its discontinuation from the ICC on 19th October 2016.<sup>27</sup> Nonetheless, when the trial took place in court, the verdict of the high court of South Africa defined that parliamentary acceptance is essential before notification of withdrawal. The government at that point rejected the withdrawal notice on 7th March 2017. The ANC party has however promised their stand on withdrawal.<sup>28</sup>

There have been uninterrupted attempts by the African Union to authorize the majority withdrawal of African states from the ICC. Much has been made of the threatened likely mass withdrawal, complaisant with the focuses as set down at the 28th African Union Summit in January of this year. In the time since the conference nevertheless, innumerable states have guaranteed their dedication to the ICC or have revoked their withdrawal (such as the

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<sup>25</sup> Maryam Jamshidi, 'The enforcement gap: How the International Criminal Court failed in Darfur' (*Opinion*, 2013) < <https://www.aljazeera.com/opinions/2013/3/25/the-enforcement-gap-how-the-international-criminal-court-failed-in-darfur/> > accessed 15 October 2021

<sup>26</sup> *Ibid*

<sup>27</sup> Alexander Kay, 'Challenges Facing the ICC' (*Bedford Row International*, 21 August 2017) < <http://9bri.com/challenges-facing-the-icc/> > accessed 15 October 2021

<sup>28</sup> *Ibid*

Gambia), only adding to the confusion. Burundi is set to pull out from the court on 27th October 2017.<sup>29</sup>

## CONCLUSION

Inspection and tasks of the ICC are obligatory for the nations to realize the significance of this court. This survey further aid in grasping any more development that is vital to be completed for the International Criminal Court. The ICC is a secured as well as firm global court set up to probe, carry out, and try individuals booked for doing heinous offences. The International Criminal Court has the capability to conduct people for global offences of mass murder, offences against humankind, crimes in times of war, and crimes of aggression. The ICC probes wicked offenses committed by people in instances where state courts are impotent to probe offenders or when the United Nations or particular country shifts the affairs to the court.

The ICC has very aspiring goals as its centre of attention is not only setting up worldwide justice but harmony as well. The ICC is progressively being identified globally as a legitimate organization. The ICC must supply a central focus on fairness, regional justice, and global communal justice to reform its legitimacy and task. To amplify the influence of the ICC, its member nations have a key contribution to play in aiding the court to deliver universal justice. Lawsuits of the ICC may be dull as well as high-priced, but the ICC is certainly expressing that it can put its efforts cooperatively with state and zonal courts for imparting justice in good faith.

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<sup>29</sup> *Ibid*