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INTERNATIONAL CRIMINAL COURT

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ABSTRACT

In this lengthy and prolonged attempt to build an international rule of law and deliver the offenders of odious crimes before the international criminal court was among the proudest successes. Nevertheless, the ICC has withstood allegations of partiality and preferential treatment over its 10 years as an unbiased, independent legal institution which endanger its legitimacy. This legislation provides for an unparalleled extent of political intervention on the Court's judicial proceedings through the empowerment of the United Nations Security Council (a political body) to revoke the proceedings of the court "with the best interest of peace" at the heart of those accusations. This paper examines the background of the regulatory process in Article 16, its implementation in so far as the politicization accusations arose from it and provides the resulting Africa-ICC stalemate with practical solutions focusing on the very source of the problem – sensitive and problematic Article 16.

INTRODUCTION

The International Criminal Court is an international tribunal and intergovernmental institution based in The Hague, Netherlands. The International Criminal Court (ICC) is the world's first and only independent international court with the authority to try persons for international offenses such as genocide, crimes against humanity, war crimes, and aggression. Its purpose is to supplement existing national judicial systems, and it may thus exercise authority only when national courts refuse or are unable to charge offenders. The ICC does not have universal geographical authority and can only examine and punish atrocities perpetrated within member states, crimes committed by member state residents, or crimes being committed in circumstances referred to the Court by the UN Security Council.

The International Criminal Court (ICC) commenced operations on July 1, 2002, when the Rome Statute, a multinational treaty that acts as the court's foundational and regulating document, entered

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into existence States that ratify the Rome Codex become participants of the ICC's Assembly of States Parties, which oversees the court's operations. There are 123 ICC member states as of December 2020. The Rome Statute has not been signed or ratified by 42 countries.

The Presidency, Judicial Divisions, Office of the Prosecutor, and Registry are the four main components of the International Criminal Court. The President is the highest senior judge in the Judicial Division, which considers matters before the Court, and is appointed by his or her colleagues. The Attorney leads the Office of the Attorney, which examines offenses and brings criminal cases before the Judicial Division. The Registrar is in command of the Registry, which is responsible for all of the ICC's administrative duties, including the offices, detention unit, and public defense office.

WHAT IS ORIGIN OF THE COURT?

Following World War II, the Allies established the Nuremberg Trials (the first international war crimes tribunal) to convict prominent Nazi officials. Governments did not unite around the concept of constructing a permanent court to hold persons accountable for the globe's most egregious crimes until the 1990s. The United Nations established ad hoc international criminal courts to address with war crimes in Yugoslavia and Rwanda, but many international law experts regarded these tribunals ineffective and insufficient². In 1989, Trinidad & Tobago proposed that a UN commission investigate the establishment of a continuous tribunal. In the years that followed, such initiatives acquired traction particularly in Europe and Africa. In 2011, the European Union passed a legally enforceable policy supporting the International Criminal Court.

The UN General Assembly ratified the ICC's establishing treaty in July 1998 at a summit in Rome. The Rome Statute became effective in July 2001 after being accepted by more than 60 countries around the world.

WHAT IS ROMAN STATUTE?

A convention of 160 countries formed the very inaugural treaty-based independent international criminal court on July 17, 1998. The Rome Statute of the International Criminal Court is the treaty approved at that summit. It lays down the offenses that come under the International Criminal Court's authority, as well as the rules of procedure and methods for States to collaborate with the

² Rai, Diva "International Criminal Court" <https://blog.iplayers.in/international-criminal-court/> Accessed 9 July 2021
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ICC. States Parties are nations that have agreed to these rules and are recognized in the Assembly of States Parties.³

The Assembly of States Parties, which gathers at minimum once every year, establishes the Court's general policies and evaluates its operations. The States Parties examine the activity of the working parties created by the States, as well as any other matters concerning the ICC, consider new projects, and adopt the ICC's yearly budget during these meetings.

COUNTRIES MEMBERS OF COURT

The Rome Statute has been ratified by 123 nations. Ethiopia, North Korea, Iraq, Turkey, Saudi Arabia, Indonesia, China, and India were among the nations that haven't ever accepted the treaty. The statute was signed by a number of additional countries, but it was never approved by their parliament. Egypt, Israel, Iran, Sudan, Russia, Syria, and the United States are among these nations.

STRUCTURE OF COURT

The Convention of Those Parties, made up of states that have signed the Rome Statute, is in charge of the ICC. The Chamber appoints Court bureaucrats endorses its expenditure and embraces changes to the Statute of Rome. Nevertheless, the Tribunal itself consists of four bodies: the presidency, the judges' separation, the perpetrator's desk and the registry.⁴

1. PRESIDENCY

One of the four Organ systems of the ICC is the Presidency. Its President, First Vice-President, and Second Vice-President are all chosen for a three-year extendable tenure by an overall majority of the Court's Members and serve filled. With the exclusion of the Office of the Prosecutor, the Presidency is accountable for the general management of the Tribunal as well as particular tasks allocated to it by the Legislation.

2. CHAMBERS

The Chambers are made up of eighteen judges who are divided into three divisions: pre-trial, trial, and appeals. Each Unit's judges are then separated into Chambers, which are in charge of executing

³ *Rome Statute of the International Criminal Court* 17 July 1998; available at: <http://www.refworld.org/docid/3ae6b3a84.html> [accessed 10 July 2021]

⁴ Structure of ICC <https://www.aba-icc.org/about-the-icc/structure-of-the-icc/> Accessed 10 July 2021

the Court's procedures on particular issues and circumstances at various levels of the judicial process.

3. OFFICE OF PROSECUTOR

The Office of the Prosecutor (OTP) is in charge of receiving recommendations and any confirmed evidence about offenses that fall under the Court's jurisdiction. The Office of the Prosecutor reviews these recommendations and documentation, conducts investigations, and prosecutes cases in front of the Court.

4. REGISTRY

It shall assist the Court's all bodies and shall fulfill the specific responsibilities in the fields of defense, victims and witnesses, access and detainment, and shall provide legal and administrative assistance. It is led by the Registrar, who is the Tribunal's chief administrative official and is in charge of a number of offices and sections that undertake administrative and support functions.

5. ASSEMBLY STATE PARTIES

The Court's management, supervision and legislative body is the Assembly of State Parties (ASP), and the position of it is outlined in Article 112 of the Statute of Rome. The ASP holds one vote for each State Party. Both of the ASP and its Agency are trying, by common understanding, to decide on issues of material with a two-thirds majority and simple majority in cases where a consensus cannot come about (on procedure). Furthermore, both ASP and Bureau meetings may be attended by the Chairperson of the Court or Prosecutor and the Registrar and their elected officials where applicable.⁵

HOW DOES COURT WORK?

The International Criminal Court is headquartered in The Hague, a Dutch city that is home to a number of international organizations, and maintains field operations in a number of nations. The Office of the Prosecutor, directed by Fatou Bensouda, a Gambia lawyer, is in charge of the tribunal's investigations. The Court has eighteen judges, each of whom is elected by the member states and hails from a different member nation The International Criminal Court (ICC) demands that its members pursue a gender-balanced panel and that its judges includes individuals from all

⁵ Assembly State parties https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-INF2-ENG.pdf (Accessed on 11 July, 2021)

United Nations areas. Judges and prosecutors are chosen for a nine-year term that cannot be renewed. The 2 Vice Presidents and the President of the Tribunal are nominated from each of the Court's judges, and they are in charge of the Tribunal's management and registry. Under international law, the court has the authority over the following types of crimes:

- genocide, or the deliberate destruction of an entire national, ethnic, racial, or religious denomination;
- War crimes, or flagrant violations of the laws of war, such as torture and assaults on civilian targets such as schools or hospitals, are prohibited by the Geneva Conventions.
- Crimes against humanity, or violations committed as part of large-scale assaults on civilian populations such as rape, slavery, torture, imprisonment, and murder; and
- Aggression, or the use or threatening of military force by one country against another country's territorial integrity, sovereignty, or political independence, or violations of the United Nations Charter

The tribunal can begin an examination into the atrocities in one of 3 ways: the signatory nation can allude a scenario to the Grand jury; the Security Council can respond a scenario; or the prosecuting attorney can “suo moto” start an examination into a signatory nation. The court has the authority to examine persons from non-member nations if the accusation offenses occurred on the landmass of a participant nation and the non-member state acknowledges the court’s judicial power or with the Security Council's authorization.

To call for, an inquiry the prosecuting attorney must first make sure that the criminal acts are of "sufficient gravity," which he can do after undertaking a preparatory investigation The prosecutor's desk transmits researchers and other employees to gather evidence after the inquiry is launched. Prior to actually releasing an arrest permit or summons, the judicial branch must authorize it based on information provided by the prosecuting attorney. A panel of prior to trial judges decides whether a scenario should go to court hearing. Accusers must constitute themselves through attorney, and they could also pursue external attorney to do so. If required, the tribunal will charge for attorney. To determine the guilty verdict and punishments on a trial bench, at least two out of the three judges must elect. Found guilty individuals have the right to appeal to the International Criminal Court's appellate seat, which is made up of five judges.

The ICC is designed to supplement national courts rather than to substitute them. Only when state authorities are unable to do so refuse to accept a case can the ICC step in. Furthermore, it can only

practice judicial power over offences committed/occurred after the current law went into effect in 2002.

CRITICISM OF THE COURT

Some people think that the court has little jurisdiction to throw away war perpetrators which makes it inefficient and unproductive, and others assume that it is over-processed, threatening state sovereignty. Discussions were also underway on the credential of judges. Some people are concerned, on the other hand, that this possibility of international justice will lengthen disputes by preventing the capitulation of criminals. The Court's lawyers also admitted that there were weaknesses. Many African nations have accused International Criminal Court of targeting the region unequally. ⁶The Tribunal has more than two dozen instances and the majority in African countries deal with criminal acts. At a 2013 summit, Kenyatta requested that the Court reassure members of the African union. The Court still retains broad public support in Kenya and in other nations.

CONCLUSION

International law and core capacities, i.e. Treaty-making, the right to conduct diplomacy and active international and inactive accountability are conferred upon the International Criminal Court. The legitimate character of the ICC is doubtless valid.

The ICC is an international body. It represents a new type of an embedded international judicial body. In a broader context an even greater comprehensive measures comprising employee and above all legislative power extends the new international justice system to the Assembly of the States Parties. These powers are exercised by a body consisting of the representatives of the State. The principle of separation of powers is better reflected in this institutional arrangement, as compared to ICTY and ICTR.

The ICC Statute includes a number of transnational aspects, notwithstanding the concept of interdependence. The authority to carry out inquiries on site first of all exists. Furthermore, the appointment of a presume and the authorization of an arrest warrant have direct consequences. Finally, in criminal proceedings, there is some reason to qualify as supranational all the orders issued directly by the ICC against the person.

⁶ Neier Aryeh "Indicting the International Criminal court" <https://www.project-syndicate.org/commentary/icc-criticism-afghanistan-investigation-by-aryeh-neier-2019-05> (Accessed on 11 July, 2021)