

## The International Criminal Court: Its Success and Limitations for Pursuing International Justice

Mohammad Rabiul Islam\*

Atish Dipankar University of Science and Technology, Dhaka, Bangladesh

### Abstract

The ICC (International Criminal Court) is the last great international institution of the twentieth century. In July 17, 1998, 120 states voted to adopt the Rome statute of the ICC at headquarters of the FAO (Food and Agriculture Organization of the United Nations) in Rome. The elaborate and complex negotiated instrument, a framework for an international criminal justice system, represented the highest point of a process that began in the wake of the Nuremberg Judgement, when the first time United Nations considered the establishment of an international criminal jurisdiction. In future, the ICC resolve more increasingly be capable of show, by way of powerful judgements resulting from fair and efficient trials, that it sets legal and moral standards that will contribute to the expansion of International Justice. The ICC is based on a treaty, joined by 123 countries. The mechanism of Art.21(3), which is more precise than that of the ICTs, could encourage them to give greater weight to International human rights instruments.

**Keywords:** International Criminal Court (ICC); ICTR; ICTY; Criminal justice

### Introduction

The ICC (International Criminal Court) is the last great international institution of the twentieth century [1]. In July 17, 1998, 120 states voted to adopt the Rome statute of the ICC at the headquarters of the FAO (Food and Agriculture Organization of the United Nations) in Rome [2]. The elaborate and complex negotiated instrument, a framework for an international criminal justice system, represented the highest point of a process that began in the wake of the Nuremberg Judgement, when the first time United Nations considered the establishment of an international criminal jurisdiction [3]. Less than four years later - far sooner than even the most hopeful observers had imagined the statute had obtained the essential sixty ratifications for its entry come into the force, on July 1, 2002 [2]. The ICC was officially opened in The Hague on March 11, 2003 in a special ceremony attended by the Queen of Netherlands and Secretary General of the UN Kofi Annan [4]. While the Nuremberg and Tokyo Tribunals were established by the occupying and victorious powers, the ICTY (International Criminal Tribunal for the Former Yugoslavia) and the ICTR (International Criminal Tribunal for Rwanda) are the first truly international criminal courts [5]. The setup of an International Criminal Court has twofold purpose. In one hand, the court would thereby preserve a common belief in the importance of implementing the legal order by punishing those guilty of serious breaches of intention and humanitarian law, which itself, would be an important goal to attain. Erstwhile, the court may be expected to have a strong preventive impact on those who plan to commit a criminal act [6]. In future, the ICC resolve more increasingly be capable of show, by way of powerful judgements resulting from fair and efficient trials, that it sets legal and moral standards that will contribute to the expansion of International Justice [4]. The ICC is based on a treaty, joined by 123 countries. The mechanism of Art.21 (3), which is more precise than that of the ICTs, could encourage them to give greater weight to international human rights instruments [7].

### International Criminal Law

International law as an nearly shadowlike form that, having an important effect in the 6<sup>th</sup> and 17<sup>th</sup> centuries, than hovers above the future world [8]. International criminal law is a comparatively new and early branch of public international law. Nowadays, it is consist of a

body of laws that includes statutes, customary international law, and, to a slighter extent, case law [9]. International criminal law is the law that governs international crimes. It may be said that this discipline of law is where the penal aspects of international law, including that body of law protected victims of armed conflict known as international humanitarian law, and the international aspects of national criminal law [10]. International law originated like a product of the customs along with practices of states, but it all derived from certain basic national principles, and these in time became a separate source of international law known as "general principles" [11]. A key concern of the ICC, as it will operate in the Hague, will be how to ensure that it is speaking to local needs as well as broader concerns for justice [12]. ICC combines the universalism of global criminal justice which bases the gravity of international crimes on their attack on universal values, with the relativism of national concepts, which encourage taking into account certain criteria, in a differentiated fashion [13].

### Rome Statute of the International Criminal Court

The ICC statute is that is to say core document of International Criminal law today. It lay down the legal bases of the essence International Criminal Court and develops of new brands of procedure. The ICC statute was also a most important step self-assured for substantive international criminal law [14]. Intended for all its imperfections, the statute of the ICC, implemented on July 17 1998 by the Rome Diplomatic Conference, was a major breakthrough in the effective enervated of international criminal law [15]. The statute of the state parties, determined to these ends and on behalf of present with upcoming generations, to institute an independent permanent International Criminal Court in relationship with the United Nations system, by jurisdiction over the most ruthless crimes of concern to the

\*Corresponding author: Mohammad Rabiul Islam, Atish Dipankar University of Science and Technology, Dhaka, Bangladesh, Tel: +880 2-8816762; E-mail: [rabiulctg@hotmail.com](mailto:rabiulctg@hotmail.com)

Received January 11, 2016; Accepted February 16, 2016; Published February 23, 2016

Citation: Islam MR (2016) The International Criminal Court: Its Success and Limitations for Pursuing International Justice. J Civil Legal Sci 5: 180. doi:[10.4172/2169-0170.1000180](https://doi.org/10.4172/2169-0170.1000180)

Copyright: © 2016 Islam MR. This is an open-access article distributed under the terms of the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original author and source are credited.

entire international community [1].

The Court has jurisdiction in accordance with this statute with respect to the following crimes:

- (a) The Crime of Genocide
- (b) Crime against humanity
- (c) War Crimes
- (d) The Crime of aggression [11]

## The Nuremberg and Tokyo Trials

It was precisely such scenarios that led to the successful establishment, in that way immediate post-war period, of the Nuremberg and Tokyo Tribunals. These tribunals were a response to the overwhelming horrors of the Nazi genocide in Europe and the Japanese wartime occupation of large parts of the many South – East Asian nations [15]. In its judgement of 1946, the International Military Tribunal at Nuremberg assumed that Art.6(a) of the London Charter is declaratory of modern international law, which regards war of aggression as a crime [16]. The framers of Nuremberg were confronted with a new offence, the bureaucratic crime, and a novel political menace, the criminal state [17]. Although according to long tradition, international law had permitted to try members of the aristocracy forces of an enemy state committing war crimes during the 19<sup>th</sup> and the 20<sup>th</sup> centuries no actual cases occurred where the political leadership of a defeated country had been put on trial [18]. The reception of the historic trial by the German legal community, and its legacy, that is its evolution into modern international criminal justice, should be understood as the result of a highly complex mixture of moral, political and legal considerations [19]. The Nuremberg and Tokyo Tribunals drew heavily on the 1929 Geneva prisoner of war convention and the Fourth Hague Convention of 1907 as establishing the substantive law to be applied - that is, as customary law, and as norms of both state responsibility and individual criminal liability [5].

## The Nuremberg Charter

The subsequent acts, or several of them, are crimes coming within the jurisdiction of the tribunal for which there shall be individual liability: (a) Crime against peace, (b) War Crimes (c) Crimes against humanity [20]. In a world riven by lawless violence, it demonstrated that people need not stand by helplessly and witness atrocities without bringing the perpetrators to justice. Nuremberg began our halting efforts to impose the rule of law worldwide [21].

## The Tokyo Charter

Like the Nuremberg charter, the Tokyo Charter, which was actually issued on 26 April 1946, included the newly articulated crimes against peace and humanity (Art.5). As defined in the Tokyo Charter the crimes against peace and humanity target high level orchestrators of war [22]. The Tokyo Tribunal relied heavily on the Pact of Paris of 1928 for the legal basis for the crime against peace. In addition, the Nuremberg and Tokyo tribunals represented a first effort by the international community to create a judicial mechanism for addressing the atrocities that can be committed during war [23]. These trials are the first major precedents of our time. Much less weight is generally accorded to the decision of the International Military Tribunal for the Far East than to Nuremberg for a variety of reasons, including the perception that the Tokyo proceedings were substantially unfair to many of the defendants. Indeed, its example is primarily relevant in considering what a credible international criminal justice system ought not to look like [1].

## The International Criminal Tribunal for the former Yugoslavia

On Feb.22, 1993 the Security Council of the UN adopted a resolution envisaging the creation of an ICTY (International Criminal Tribunal for the Former Yugoslavia) shortly afterwards, on May 25, 1993, the tribunal was established by Security Council Resolution 827 [24]. Whatever the practical achievements of the ICTY may prove to be, the UN Security Council has recognized the first truly international criminal for the prosecution of persons responsible for serious violations of international humanitarian law [25]. “ The Tribunal” means the International Tribunal for the Prosecution of persons Responsible for serious violation of International humanitarian law committed in the territory of the Former Yugoslavia since 1991, established by the SC ( Security Council) pursuant to its resolutions 808(1993) and 827(1993) [26]. The establishment of the ICTY under Chapter VII was a measure not concerning the use of force and, thus, fell squarely within the influence of Art. 41 of the 1945 UN Charter, even though the fact that the indicative list of measures envisaged in that article make reference to judicial bodies. Its relation to the Security Council is that of a subsidiary organ under Art.29 of the UN Charter [27]. The Tribunal was established, and which are comprehensive in Article 2 to 5 (‘grave breaches’ of the Geneva Conventions, genocide and crimes against humanity, violations of the laws or customs of war,) are of relatively recent origin going back to the immediate aftermath of the Second World war [28]. The UN War Crimes Commission shares the view the conflicts in Yugoslavia be international along with thus the intention of all the laws of war, including, of course, the rules governing war crimes, are applicable [25]. According to the UN Secretary General report on the ICTY Statute, crimes against humanity were primary acknowledged in the Nuremberg Charter and in the trials of war criminal following World War II [29]. The ICTY Statute, in Art.5 defines “crimes against humanity” subject to the Jurisdiction of the Tribunal as certain crimes “committed in armed conflict, wherever chartered of Internal or International [5].” The definition of ‘crimes against humanity’ in Art.6(c) of the Charter of the IMT (International Military Tribunal) exception that such crimes not to linked near the war or to the commission of other crimes [30].

Pursuant to Art.13 of the ICC statute, there are three modes of triggering the ICC’S jurisdiction: (a) recommendation of a situation to the prosecutor by a state party; (b) referral of a situation to the prosecutor by the Security Council of the UN acting under chapter VII of the UN Charter; (c) initiation of an investigation by the prosecutor his own initiative [10]. The relationship of the Tribunal to national jurisdiction, as enunciated in Art.9 and 10 provides insight regarding to possible intent of the Security Council. Art. 9 of the statute clearly establishes concurrent jurisdiction between national courts and the Tribunal, while Art.10 gives the Tribunal qualified primacy [31]. Subsequently, customary international law, Art.5 of the ICTY Statute (1993) defined the crimes against humanity, when crimes committed in armed conflict internationally or internally directed against any civilian population: “(a) murder; (b) extermination; (c) enslavement; (d) deportation; (f) torture; (g) rape; (h) persecutions on political, racial and religious grounds; (i) other inhumane Acts” [28]. Since the Appeals Chamber decision referred to the *Tadic Case* assessment on protection motion for interlocutory appeal on jurisdiction (Oct 2, 1995), proof that the armed conflict in question in international in character has been treated as a jurisdictional must for the applicability of Art.2 [32]. The question in dispute was whereas the accused might be held criminally liable for breaches of international humanitarian

law allegedly committed in an internal armed conflict; in other words, whether he might be held responsible for war crimes perpetrated in a civil war [33]. Wilfully causing great suffering or serious injury, a grave breach of the Geneva Conventions, is punishable under Art.2(c) of the statute. Cruel treatment, a violation of the laws or customs of war is punishable under Art.3 of the statute and is recognised by Art.3(1)(a) of the Geneva Conventions [34].

Art.2(3) of the statute contains a list of punishable crimes, including 'genocide' and 'complicity in genocide'. Art.2(2), which prescribes the *dolus specialis*, does not say that it pertains to 'genocide' with the other crimes listed in Art.2(3) including 'complicity of genocide'. Nor does Art.2(3) which contains the list of crimes, say so [35]. In terms of the ICTY'S establishment, the international court should be build up to attempt those responsible for war crimes and crimes against humanity committed in the former Yugoslavia. To prove a charge under Art.5 of the ICTY statute (on crime against humanity), the prosecution has to prove not only that crimes took place, but also that those crimes were committed as part of a 'widespread or systematic' attack [36]. The ICTY case has often stressed that Art.3 of its statute constitutes a broad section which is intended to cover all serious violations of international humanitarian law not falling under other specific provisions, e.g. Art.2 (grave breaches) [37]. Much of the prosecution case in ICTY trials in concerned with evidence of the commission of crimes by subordinates of the accused, called 'Crime base' evidence. The prosecution must also lead other to link the accused to the crimes [38].

Art.25(3)(d) was problematic because it equated the responsibility of the defendant who intended to further the aim of the criminal enterprise with the defendant who was merely aware of the groups intention to commit the crime [39]. Security Council Res.1503 (2003) was the first comprehensive blueprint for the ICTY completion strategy, emanating from the Security Council rather than ICTY itself [40]. Dominic Raab, says there are two lessons for the ICC: First, the ICC will need to foster a degree of collective responsibility to enable it to operate with greater transparency. Secondly, the ICC status parties will need to take up the mantle of conducting meaningful oversight in relation to matters of general legal policy [40]. Art.5(h) of the ICTY Statute prohibits 'persecution on political and religious grounds.' This offence has been used to encapsulate as a crime the ethnic cleansing practices relied upon by certain parties to the conflict in former Yugoslavia territory [41]. Art.19(2) of the ICTY Statute provides that, "upon confirmation of an incident, the judge may, at the request of the prosecutor, issue such as orders and warrants for the arrest, detention, surrender or transfer or persons, and any other orders as may be required for the conduct of the trial [42]." Extensive powers of arrest have been provided *expressis verbis* in the ICTY'S rules of procedure and evidence, and few objections based ahead the contents of rule 59 bis or other relevant rules *vis-à-vis* the overall scope of the ICTY'S general framework of delegated competence from UN Security Council Resolution 827 and chapter VII of the UN Charter appear convincing [42]. Art.2(7) of the UN Charter – which provides that the prohibition of UN intervention in matters fundamentally surrounded by states' domestic measures under Chapter VII – paved the way for the evolution of norms applicable to internal conflicts and, eventually for the resolutions by which the security council has authorized forcible interventions in response to internal atrocities [29]. The ICTY Prosecutor's decision not to investigate NATO, for example, which is further discussed in part IV of this article, was widely reported in the media and affected attitudes toward that tribunal [43].

## International Criminal Tribunal for Rwanda

The International Criminal Tribunal for Rwanda (ICTR) was set up

by UN Security Council Res. 955 of Nov.8, 1994, in response to genocide along with other systematic, widespread, and blatant violations of international humanitarian law which had been committed in Rwanda [10]. For the period of time approximately 800,000 people were killed in the genocide of Rwanda. The methodical massacre of men, women and children that took over the course of about 100 days since April and July 1994 will be remembered as one of the most distasteful measures of the twentieth century [44]. In the first week of the genocide, it is estimated that 10,000 people a day were killed [45]. Contained by two weeks after the genocide started some 250,000 Tutsis were massacred. As Tutsi refugees in Uganda reported the atrocities, the RPF (The Rwanda Patriotic Front) launched a northern offensive; however, the RPF'S offensive "simply could not match the pace at which the militiamen and soldiers were massacring civilians [46]. The violence in Rwanda was distinctive of many brightly and euphemistically titled "post –conflict" operations that were overseeing transitions from civil war to civil peace [47]. The organizers of the massacres wanted to create a new Rwanda a community of murders, who shared a collective sense of accomplishment or guilt. The new Rwanda's would undergo an initiation rite by killing their neighbour [48]. The ICTR shall have the power to prosecute persons responsible for serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for such violations committed in the territory of neighbouring states, among Jan 1, 1994 and Dec.31, 1994, in agreement among the provisions of the present statute [49].

Mr. Waly Bacre Ndiaye argued (Rapporteur of the Commission on Human Rights), massacres and superfluity of other serious of human rights violations were pleasing in Rwanda. The targeting of the Tutsi population the term genocide might be applicable [50]. The former Prime Minister of the Interim Government of the Republic of Rwanda, Jean Kambanda, pleaded guilty to the crimes of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, complicity in genocide and crime against humanity [51]. Art.27(1) primarily addresses the substantive responsibility of state officials for international crimes rather than questions of immunity. The main effect is to set up the official capacity of a person does not relieve him of individual criminal accountability and it eliminates a substantive defence that may be put forward by state officials [52]. After the Second World War, in 1994 Rwanda erupted into one of the major horrendous cases of mass murder the world had witnessed. The killings fell into three broad categories: (a) combatants killings combatants; (b) Hutu citizens and military and paramilitary forces killing Hutu citizens because the victims were either moderates willing to live and work with Tutsi or persons whose land and wealth the murderers wanted to appropriate; and (c) Hutu killing Tutsi because they were Tutsi. Of these, the second and clearly constituted grievous crimes; the third amounted to genocide [48]. The jurisdiction of ICC'S is limited to cases alleging the commission of crimes against humanity, genocide, or war crimes, occurring after 1 July,2002, the date of entry into force of the Statute, as defined in the Rome Statute [43].

The subject matter of the ICTR is formulated differently and covers the crime of genocide (Art.2), crimes against humanity (Art.3) and violations Art.3 common to the Geneva Conventions and of Additional Protocol 11(Art.4). The Crime of genocide is formulated identical towards the one laid down in the ICTY Statute [53]. Every single individual indicted by the ICTR has been stimulated with genocide or else of the other punishable, genocidal acts such as conspiracy to commit genocide (Art.2(3)(b) of the ICTR'S Statute), direct and public incitement to commit genocide (Art.2(3)(c) and complicity in genocide Art.2(3)(e)) [32]. Jean Mukimbi, described

the Rwanda genocide happened in the following ways : (a) definition of the target group; (b) registration of the victims; (c) designation of the victims; (d) restrictions and confiscations of goods; (e) exclusion; (f) systematic isolation; (g) mass extermination [54]. Even though the top officials were detained by the ICTR, immeasurable fatalities cover to live subsequently to neighbours who participated in the killings. Channelling the wish for retribution keen on legal process, constant with the sentence of thousands, bought time until incident enhanced and mitigated the cruelty of castigatory abuses [55]. The Genocide Convention in Art.6 provides that: “persons charged with genocide shall be tried by a competent tribunal of the state in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction [56].” One year after it was established, the Rwanda tribunal issued its first indictments on December 12, 1995, accusing eight Rwandans of genocide [57]. Art.6(c) of the Nuremberg Charter acknowledged that two categories of crimes against humanity relating to: (a) inhumane acts, and (b) persecution on specified grounds [49]. Art.2.1. of the Rwanda Tribunal Statute confers on the Rwanda Tribunal the authority to accuse persons accountable for the crime of genocide [49]. The definition of the genocide, the prohibited acts that may constitute the crime of genocide when committed with the necessary intent are set forward in Art.2.2.a-e of the Statute of Rwanda Tribunal [49].

Art.6 of the International Criminal Court statute reproduces Art.11 of the Genocide Convention. Statute of the ICC provides separately for those forms of criminal participation which entail individual criminal liability under the statute, including relative to genocide. The organization of the ICC Statute also excludes potential contradictions between genocide provision and the provision providing for individual criminal responsibility, as has been the case with the *ad hoc* Tribunals where Art.4/2 and Art.7/6 of the ICTY/ICTR status overlap and may contradict each other in part [58]. The Appeals Chamber started that there is denial provision in the statute limiting the criminal accountability under common Art.3 and Protocol 11 to a specified class of persons. No special and a priori relationship to individual party to the conflict or towards public authority in necessary for triggering criminal responsibility under Art.4 of the Statute [37]. The offence of incitement to commit genocide requires two essential conditions under Art.2(3) (c), namely : (1) a public statement; (2) call for direct action [49]. Art.3 of the Rwanda Tribunal Statute confers on the authority to prosecute persons responsible for inhumane acts which constitutes crimes against humanity. The definition of this category of crimes against humanity consists of three essential elements which relate to the prohibited act, namely: (1) the act must be inhumane character, (2) the act ought to be dedicated as a part of a extensive or systematic attack against any civilian population, and (3) the act must be committed on political, national, racial, ethnic, or religious grounds [49]. At least some of the possible factors in the Rwandan genocide imply, the limits on the ICTR'S Jurisdiction are not simply the result of resource constraints. Broader jurisdiction for the ICTR could well have led to inquiries that would have embarrassed either the UN as a whole or particular the Security Council permanent members [59]. Additionally, Genocide is liable where the power of govern elites or eroding. In Rwanda, multiparty politics, fierce intra-ethnic political opposition, the original low-grade civil war with Tutsis, and the Arusha peace agreement compromised Habyarimana's ruling party and his inner circle [60]. In brief, the decisive cause of Rwanda genocide was the increasing imbalance in land, food and people that led to malnutrition, hunger, periodic famine along with fierce competition for land to farm [48]. The criminal responsibility of the superior for the unlawful acts of his subordinates,

if he failed to discharge his duty of prevention or suppression (after the fact), is well established in customary and conventional international law (Art.7(3) of ICTR Statute; Art.6(3) of ICTR Statute) [37].

## Comparison and Contrast Between the ICTY and the ICTR

### Similarities

(a) Both are the set up by the UN Security Council exercising its enforcement power under chapter VII of the UN Charter maintain international peace and security.

(b) Both are the subsidiary organs of the UN Security Council.

(c) Both are bound to apply rules of international law that are beyond doubt part of customary international law.

(d) Both have almost identical Rules of Procedure and Evidence.

(e) Both have the same Prosecutor [10].

(f) Both the engagement of national and foreign courts has in some way exorcised the spectre of genocide and other massive crimes from our midst [55].

### Differences

(a) The ICTY has jurisdiction over crimes in both international armed conflicts and internal armed conflict. The ICTR has jurisdiction over crimes committed in internal armed conflict only.

(b) The ICTY has jurisdiction over crimes against humanity only if they are 'committed in an armed conflict'. The ICTR has jurisdiction over crimes against humanity only if they are committed “on national, political, ethnic, racial, or other religious grounds.”

(c) The ICTY has jurisdiction over crimes under the ICTY statute dedicated the territory of the former Yugoslavia since 1991. The ICTR has jurisdiction over crimes under the ICTR Statute committed in Rwanda and Rwandan neighbouring States since January 1, 1994 to December 31, 1994.

(d) Unlike the ICTY, the ICTR does not have a pool of *ad litem* judges to help in its work [10]. The fundamental distinction among the ICC along with the ICTY-ICTR model is the primarily consensual starting point for the exercise of ICC jurisdiction [3].

Since the ICTR has no jurisdiction over aggression and does not limit criminal liability to offenses committed in the course of aggressive war, it does not run the same risks. Neither the ICTR nor the ICTY is required to show that the crime against humanity known as persecution, for example, occurred in the course of international armed conflict [59]. Both ICTY and ICTR have remarkably contributed to peace building in post war societies, along with to introducing criminal responsibility into culture of international relations. Both institutions have helped to marginalized nationalist political leaders along with other armed forces related to ethnic war and genocide, to discourage retribution by victim groups, and to transform criminal justice which is an important aspect of the current international agenda [55].

Deciding upon the powers of the Security Council vis-à-vis the ICC was a controversial aspect of the deliberations. It implicated potential conflicts between the Council's mandate to maintain international peace and security, on the other hand, and the prospect that ICC indictments against political or military leaders may complicated power transitions and the conclusion of armistices, on the other hand [3]. One of the criticisms of the *ad hoc* international criminal tribunals has been their absence and rejection of provisions related to

victim participation in the proceedings. With the increased focus on victims by several UN Organs, however, early on, the issue of victim-related provisions was included in the agenda of drafting the statute for proposed international criminal tribunal [61]. The contradiction inherent in the decision to refer the Darfur situation to the ICC, on one hand, and, on the other hand, to expressly confine the obligation to cooperate with the court to the states party to the status, is however, nothing but one sign of the overall scant coherency of Res.1593 (2005) [62]. It has been argued that Security Council Resolutions 1422, 1487 and 1497 are all unlawful. At the time of its adoption a number of states criticized Resolutions 1422 because it provided for 'blanket immunity' rather than immunity on a 'case-by-case' basis. This, it was argued, put the resolution outside the scope of Art.16 of the Rome Statute [63]. Apart from Security Council referral, the ICC had two viable "triggering mechanism", or bases, for exercising jurisdiction: a state's referral of a situation to the prosecutor pursuant to Art.13(a) and 14 of the statute, and the prosecutors initiation of investigations proprio motu pursuant to Art.13(c) and 15 [64].

In recent years, detailed theoretical and practical analyses of the Rome Statute, have made it increasingly clear that the complementarity principle, as the most important principle for the courts functioning, indeed its crucial foundation, amounts to far more than an element in the competence of the court [4]. For both Uganda and the ICC, the case presented an important opportunity. For Uganda, the referral was an attempt to engage an otherwise aloof international community by transforming the prosecution of LRA (The Lord's Résistance Army) leaders into a litmus test for the much celebrated promise of global justice. Art.16 was already controversial at the preparatory committee and at the Rome Conference. In any case, due to the precedence of the charter over other international agreements (Charter Art.103 and 25), UN members are under an obligation to follow the council rather than the court. This does not answer the question, however, of what happens in the event that the Security Council acts ultra-virus, that is, beyond the powers conferred upon it by the charter [65]. In addition to protecting the specific 'minimum guarantees' listed in article 67, the court has residual authority to 'ensure that a trial is fair and expeditious and is conducted with full respect for the rights of accused' (Art.64(2)) [66]. One rationalist counter-argument could be the following - if too much tribute was paid to sovereignty and support by the powerful, the ICC would fail to solve the problem of impunity that it was meant to address. One NGO represent warned that the amendments sought by the US would create 'a loophole the size of the Grand Canyon that any rogue state would drive right through [67].' At least three ways the standards set for the deployment of criminal sanctions are more stringent. They guarantee stronger rights of defence; they impose a higher standard of proof; and they are more insistent on the burden of proof remaining with the body bringing the prosecution [68].

## Conclusion

A successful International Criminal Court have to need American support and it can simply gained if both the United States and the leadership of the preparatory commission seek an acceptable compromise which would not reduce the power of the court [29]. China should accede to the Rome Statute and make good use of its rights as a state party in order to fulfil the aim of ending impunity, and thus also protect its national interests [69]. The United States maintains its present position of seeking immunity against the ICC jurisdiction, there seems little likelihood of any improvement of its relations towards the ICC. The gap between the concept of international law upheld by the USA and that on which the ICC is based is simply too wide for any

common ground to emerge [70]. Art.7 of the statute, on crimes against humanity, and problems that potentially from the scarcity of Muslim judges at the court [71]. Moreover, a great deal, and of greater extent, remains to be done if into justice is to attain determined roots and achieve its potential in the present world order. The early jurisprudence of the ICC will provide one opportunity to begin proposing approaches to the outstanding problems [72]. The coming out of an prolonged humanitarian regime intimidate to wear down the human rights discourse and value system, which was previously and independent perspective that legitimate for normative critique of the global rule of law in prevailing political here [73].

## References

1. Sadat LN (2002) *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*. Transnational Publishers, Inc. New York.
2. Schabas WA (2011) *An Introduction to the International Criminal Court*. Cambridge University Press.
3. Akhavan P (2003) Review: The International Criminal Court in Context: Mediating the Global and the Local in an age of Accountability. *The American Journal of International Law* 97: 712-721.
4. Kaul HP (2005) Construction Site for More Justice: The International Criminal Court After Two Years. *American Journal of International Law* 99: 370-384.
5. Meron T (2006) Reflections on the Prosecution of War Crimes by International Tribunals. *American Journal of International Law* 100: 551-579.
6. Broome B (1996) *The Establishment of an International Criminal Court*. In: Dinstein Y, Tabory M (eds.), *War Crimes in International Law*. Martinus Nijhoff Publishers, London.
7. Marty MD (2006) Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC. *Journal of the International Criminal Justice* 4: 2-11.
8. Strawson J (2004) Book Review: *Universalizing International Law* by Christopher Weeramantry. *Melbourne Journal of International Law*.
9. <http://www.internationalcrimes.com/>
10. Kittichaisaree K (2001) *International Criminal Law*. Oxford University Press.
11. Bassiouni MC (1988) *The Statute of the International Criminal Court: A Documentary History*, Transnational Publishers, Inc. New York.
12. Sriram CL (2004) Globalising Justice: From Universal Jurisdiction to Mixed Tribunals. *Netherlands Human Rights Quarterly*.
13. Marty DM (2006) Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC. *Journal of International Criminal Justice* 4: 2-11.
14. Werle G (2005) *Principles of International Criminal Law*. Oxford University press.
15. Cassese A (2002) From Nuremberg to Rome: International Military Tribunals to the International Criminal Court. In: Cassese A, Gaeta P, Jones JRWD (eds.), *The Rome Statute of the International Criminal Court: A Commentary*.
16. Dinstein Y (1996) The Distinctions between War Crimes and Crimes Against Peace. In: Dinstein Y, Tabory M (eds.), *War Crimes in International Law*. Martinus Nijhoff Publishers, London.
17. Luban D (2004) The Legacies of Nuremberg. 54: 779-829.
18. Tomsuchat C (2006) The Legacy of Nuremberg, *Journal of International Criminal Justice* 4: 830-844.
19. Burchard C (2006) The Nuremberg Trial and its impact on Germany. *Journal of International Criminal Justice* 4: 800-829.
20. Marrus MR (1997) *The Nuremberg War Crimes Trial 1945-46: A Documentary History*, St. Martins press, New York.
21. Landsman S (2005) *Crimes of The Holocaust: The Law Confronts Hard Cases*. University of Pennsylvania Press, Philadelphia.

22. Roling BVA, Cassese A (1993) The Tokyo Trial and Beyond: Reflections of a Peacemonger.
23. Kaufman ZD (2007) Designing Criminal Tribunals: Sovereignty and International Concerns in the Protection of Human Rights by Steven D.Roper and Lilian A. Barria. *Yale Human Rights and Development Law Journal* 10: 209-214.
24. Neussl P (2006) Introductory Note, International Criminal Tribunal for the Former Yugoslavia (ICTY). *The Hague, Human Rights Law Journal*.
25. Meron T (1994) Editorial Comment, War Crimes in Yugoslavia and the Development of International Law. *American Journal of International Law*.
26. Morris V, Scharf MP (1995) An Insider's Guide to the International Criminal Tribunal for the Former Yugoslavia. Transnational Publishers, Inc.
27. Bantekas I, Nash S (2003) *International Criminal Law*. Cavendish Publishing Ltd, London.
28. Campbell K (2004) The Trauma of Justice: Sexual Violence, Crimes Against Humanity and The International Criminal Tribunal for the Former Yugoslavia, *Social and Legal Studies* 13: 329-350.
29. Meron T (2000) The Humanization of Humanitarian Law. *American Journal of International Law* 94: 239-278.
30. Naftali OB, Tuval Y (2006) Punishing International Crimes Committed by the Persecuted: The Kapo Trials in Israel (1950s-1960s). *Journal of International Criminal Justice*.
31. Bassiouni MC, Manikas P (1996) *The Law of the International Criminal Tribunal for the Former Yugoslavia*. Transnational Publishers, Inc. New York.
32. Jones JRWD (1998) *The Practice of the International Criminal Tribunals For the Former Yugoslavia and Rwanda*, Transnational Publishers, Inc. New York.
33. Cassese A, Gaeta P, Jones JRWD (2002) *The Rome Statute of The International Criminal Court: A Commentary*. Oxford University Press.
34. Ackerman JE, Sullivan EO (2002) Practice and Procedure of the International Criminal Tribunal for the Former Yugoslavia: With Selected Materials from the International Criminal Tribunal for Rwanda, Kluwer Law International, London.
35. Eboe-Osuji C (2005) Complicity in Genocide' versus 'Aiding and Abetting Genocide': Construing the Difference in the ICTR and ICTY Status, *Journal of International Criminal Justice* 3: 56-81.
36. Nice G, Valliere-Roland P (2005) Procedural Innovations in War Crimes took Place Trials. *Journal of International Criminal Justice* 3: 354-380.
37. Kolb R (2000) The Jurisprudence of the Yugoslavia and Rwanda Criminal Tribunals on Their Jurisdiction and on International Crimes. *British Yearbook of International Law* 75: 269-335.
38. Robinson PL (2005) Rough Edges in the Alignment of Legal Systems in the Proceedings at the ICTY. *Journal of International Criminal Justice* 3: 1037-1058.
39. Ohlin JD (2007) The Conceptual Problems with The Doctrine of joint-Criminal enterprise. *Journal of International Criminal Justice*.
40. Raab D (2005) Evaluating the ICTY and its Completion Strategy: Efforts to achieve Accountability for War Crimes and Their Tribunals. *Journal of International Criminal Justice* 3: 82-102.
41. Fenrick WJ (2001) The Crime Against Humanity of Persecution in the Jurisprudence of the ICTY. *Netherlands Yearbook of International Law*.
42. Lamb S (1999), The Powers of Arrest of the International Criminal Tribunal for the former Yugoslavia. *British Yearbook of International Law* 70: 165-244.
43. Danner AM (2003) Enhancing the Legitimacy and Accountability of Prosecutorial Discretion at the International Criminal Court. *American Journal of International Law* 97: 510.
44. Carlsson I (2005) The UN Inadequacies. *Journal of International Criminal Justice* 3: 837-846.
45. Melvern L (2005) The Security Council in the Face of Genocide. *Journal of International Criminal Justice* 3: 847-860.
46. Roper SD, Barria LA (2006) Designing Criminal Tribunals: Sovereignty and International Concerns in the Protection of Human Rights.
47. Barnett M (2002) *Eyewitness to Genocide: The United Nations and Rwanda*. Cornell University Press, London.
48. Magnarella PJ (2005) The Background and Causes of the Genocide in Rwanda. *Journal of International Criminal Justice* 3: 801-822.
49. Morris V, Scharf MP (1998) *The International Criminal Tribunal for Rwanda*. Transnational Publishers, Inc. New York.
50. <http://www.globalpolicy.org/security/issues/rwanda/1999inquiry.pdf>
51. Aptel C (1998) *International Criminal Tribunal for Rwanda*. Yearbook of The United Nations.
52. Akande D (2004) International Law Immunities and The International Criminal Court. *American Journal of International Law* 98: 407-433.
53. Hebel HV (1992) Aspects of the Statute. In: Lammers JG, Schukking J (eds), *Reflections on the International Criminal Court*. T.M.C. Asser Press, The Hague.
54. Mukimbiri J (2005) The Seven Stages of the Rwanda Genocide. *Journal of International Criminal Justice* 3: 823-836.
55. Akhavan P (2004) Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities. *American Society of International Law* 95: 7-31.
56. Bassiouni MC (1999) *Crimes against Humanity in International law*. Kluwer Law International, London.
57. Mutua MW (2004) Never Again: Questioning the Yugoslavia and Rwanda Tribunals. *Temple International & Comparative Law Journal* 11: 167-187.
58. Mettraux G (2005) *International Crimes and The ad hoc Tribunals*. Oxford University Press.
59. Alvarez JE (2004) Crimes of States/ Crimes of Hate: Lessons from Rwanda. In: Gerry Simpson (ed), *War Crimes Law*.
60. Straus S (2006) *The Order of Genocide: Race, Power, and War in Rwanda*. Cornell University Press, London.
61. Aldana-Pindell R (2004) An Emerging Universality of Justifiable Victims' Rights in the Criminal Process to Curtail Impunity for State-Sponsored Crimes. *Human Rights Quarterly*.
62. Condorelli L, Ciampi A (2005) Comments on the Security Council Referral of the situation in Darfur to the ICC. *Journal of International Criminal Justice* 3: 590-599.
63. Happold M (2006) Darfur, the Security Council and International Criminal Court. *International and Comparative Law Quarterly*.
64. Akhavan P (2005) The Lord's Resistance Army Case: Uganda's Submission of the First State Referral to the International Criminal Court. *American Journal of International Law* 99: 403-421.
65. Paulus AL (2003) *Legalistic Groundwork for the International Criminal Court: Commentaries on the Statute of the International Criminal Court*. European Journal of International Law.
66. Young SNM (2000) Surrendering the Accused to the International Criminal Court. *The British Yearbook of International Law*.
67. Fehl C (2004) Explaining the International Criminal Court: A 'Practice Test' for rationalist and Constructive Approaches. *European Journal of International Relations* 3: 357-394.
68. Guinchard A (2005) Fixing the Boundaries of the concept of Crime: The Challenge for Human Rights. *International and Comparative Law Quarterly* 54: 719-734.
69. Jianping L, Zhixiang W (2005) China's Attitude towards the ICC. *Journal of International Criminal Justice* 3: 608-620.
70. Hafner G (2005) An Attempt to Explain the Position of the USA towards the ICC. *Journal of International Criminal Justice* 3: 323-332.
71. Abtahi H (2005) The Islamic Republic of Iran and the ICC. *Journal of International Criminal Justice* 3: 635-648.
72. Broomhall B (2003) *International Justice and the International Criminal Court: Between Sovereignty and the Rule of Law*. Oxford University Press.
73. Teitel RG (2002) *Humanity's Law, Rule of Law for the New Global Politics*. Cornell International Law Journal 35: 356-380.

Citation: Islam MR (2016) The International Criminal Court: Its Success and Limitations for Pursuing International Justice. J Civil Legal Sci 5: 180.  
doi:10.4172/2169-0170.1000180