

## INTERNATIONAL CRIMINAL COURT AND PRINCIPLE OF NATIONAL SOVEREIGNTY: ICC'S PERFORMANCE AS A LEGAL AND POLITICAL INSTITUTION

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### I. INTRODUCTION

Prior to the end of World War II, save for domestic prosecution of war crimes, there was no international criminal law at all.<sup>1</sup> The only criminal law dispensed was by domestic courts, and this was the reason that international criminals could not be held accountable to their wrongs. The circumstances started changing after the crimes were committed by Nazi regime during the World War II. With the change in technology, the law has to change in order to keep pace with it. Thus Geneva Conventions had to be changed to include air warfare. The huge change was observed when the violation of the fundamental rights of their citizens by other nations was taken into consideration and was evident from the Charter of the United Nations, which, for the first time ever in an international legal instrument, recognizes and seeks to protect individual human rights.<sup>2</sup> No standing in international law was given to individual human beings; it was only observed after the United Nations Charter came into existence. International law dealt with governments, and there were no courts, no mechanisms at all for individuals to seek justice outside their own domestic courts.<sup>3</sup> So, the law followed the Universal Declaration of Human Rights<sup>4</sup> (hereafter UDHR) which was an ambitious document; which was not having any legally binding effect, but it was a source which led to existence of series of international covenants dealing with human rights, particularly the International Covenant on Civil and Political Rights<sup>5</sup> (hereafter ICCPR) and the International Covenant dealing with Economic, Social and Cultural Rights (hereafter ICESCR).<sup>6</sup> Another effect of World War II was that people started doubting and questioning the absolute theory of the sovereignty of nations.<sup>7</sup> It led to grow a belief that people and their governments were entitled to take notice and to comment when human rights violations were perpetrated.

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<sup>1</sup> Antonio Cassese, *INTERNATIONAL CRIMINAL LAW* (2003) p 16.

<sup>2</sup> See, e.g., U.N. CHARTER Art. 1, para.3, Art. 13, para. (1)(b), Art. 55, para. (c).

<sup>3</sup> *Supra* n. 1.

<sup>4</sup> G.A. Res. 217, U.N. GAOR, 4th Sess., U.N. Doc. A/810, at 71 (1948).

<sup>5</sup> G.A. Res. 2200A (XXI) U.N. GAOR, 21st Sess., Supp. No. 16, pp. 49, U.N. Doc A/6316 (1966).

<sup>6</sup> *Ibid.*

<sup>7</sup> M. Cherif Bassiouni, *From Versailles to Rwanda in Seventy-Five Years: The Need to Establish a Permanent International Criminal Court*, 10 HARV. HUM. RTS. J. 11, 21 (1997).

### II. INTERNATIONAL CRIMINAL COURT AND ITS JURISDICTION

When the Dutch first colonized the Cape of Good Hope, racial discrimination and oppression was practiced in South Africa.<sup>8</sup> It was further observed with the systematic development of apartheid system, which legalized racist policies. In the General Assembly in the United Nations a voice was raised by India against legalization of such injustice.<sup>9</sup> A resolution was moved by India regarding the discriminatory treatment of its citizens in South Africa. The resolution was passed and observed negative votes of South Africa, U.S, U.K and Australia.<sup>10</sup> Such resolution and later responses to it attracted a long discussion. Initially the response of South Africa<sup>11</sup> that: "this is not your business; the way we treat our citizens or ill-treat our citizens is our internal affair" was very widely accepted and was seen to be the internal matter of a country of metting out a particular treatment to a particular situation within the state. But such acceptance could not be observed longer and international community played an important role to end the apartheid system in South Africa. Apartheid System was declared to be a crime against humanity and concerning this international Treaty was passed in General Assembly.<sup>12</sup> The treaty followed the Nuremberg trials, which first recognized crimes against humanity.<sup>13</sup> With the growing experience of World War II many countries decided that there has to be a forum with universal jurisdiction to address war crimes.<sup>14</sup> It meant when a crime has been committed, the nature of the crime should be considered to see the jurisdiction rather than looking into the fact that where the crime was committed.<sup>15</sup> It leads to the understanding that people who are suspected of committing serious crimes could be prosecuted by courts of any country, it does not matter however disconnected with the actual commission of the crime.<sup>16</sup> It was Geneva Conventions 1949, which was credited with the fact of first

<sup>8</sup> Francois du Bois, *The Past and Present of South African Law*, 32 INT'L J. LEGALINFO. 217 (2004).

<sup>9</sup> G.A. Res. 265, U.N. GAOR, 3d Sess., Supp. No. 20, at 6, U.N. Doc. A/RES/265 (1949).

<sup>10</sup> 1948-49 U.N.Y.B. [310], U.N. Doc. A/RES/395 (1949).

<sup>11</sup> See, C. Jalloh, M. du Plessis & D. Akande, *Assessing the African Union Concerns about Article 16 of the Rome Statute of the International Criminal Court*, AFRICAN J. LEGAL STUD. 5-13 (2011).

<sup>12</sup> *International Convention on the Suppression and Punishment of the Crime of Apartheid* (1973).

<sup>13</sup> See, *Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal*, adopted by The International Law Commission of the United Nations, G.A. Res. 95, U.N. GAOR, at 188 (1946), U.N. Doc. A/CN.4/SER.A/1950.

<sup>14</sup> The reason for extending universal jurisdiction is perhaps best explained in the case of *Eichmann* by the District Court of Jerusalem, judgment of 12 December 1961, English translation in 36 I.L.R. 5-276: "Not only do all the crimes attributed to the appellant bear an international character, but their harmful and murderous effects were so embracing and widespread as to shake the international community to its very foundations."

<sup>15</sup> *Supra* n. 1.

<sup>16</sup> *Ibid.*

recognizing Universal jurisdiction internationally.<sup>17</sup> It defined the worst of all crimes and called them grave breaches.<sup>18</sup> Presently many countries have ratified the Geneva Conventions.<sup>19</sup> Under the obligations of these conventions, member nations are supposed to punish people who committed grave breaches, it does not matter when and where it has been committed.<sup>20</sup> It also provides an arrangement of turning or handing over of the wrongdoer to another country if in case one country finds it difficult to deal with or have shown unwillingness of prosecuting that person.<sup>21</sup> It could be observed as a principle, which is more focused about punishing the wrongdoer rather than looking into the jurisdictional aspect and providing obligation clause to exchange of wrongdoer.

It further led to creating universal jurisdiction in case of crime of apartheid under the Apartheid Convention.<sup>22</sup> However this convention was denied by most of the democracies of West.<sup>23</sup> It makes the way clear for those South Africans, who were guilty of committing crimes of apartheid with no fear of them being subject to any arrest, could visit London, Paris, New York and Washington.

There have been many deliberations and discussions about the universal jurisdictional aspect. The provision of universal jurisdiction was though evident in the 1984 Torture Convention<sup>24</sup>, it did not have an effect. A very important development happened in international regime with regard to the crimes committed in Chile and, at the request made by the Spanish judge, the former dictator of Chile, General Pinochet was arrested in London.<sup>25</sup> It attracted lot of attention of the international community. In this incidence, the House of Lords agreed to recognize the universal jurisdiction and the Spanish court too accepted the universal jurisdiction and ordered the extradition of General.<sup>26</sup> House of

<sup>17</sup> See, Geneva Convention Relating to the Treatment of Prisoners of War, Oct. 21, 1950; Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949 (entered into force Oct. 21, 1950); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, adopted on Aug. 12, 1949 (entered into force Oct. 21, 1950); Geneva Convention Relating to the Protection of Civilian Persons in Time of War, adopted on Aug. 12, 1949 (entered into force Oct. 21, 1950).

<sup>18</sup> See, Geneva Convention Relating to the Protection of Civilian Persons in Time of War, Art. 147.

<sup>19</sup> For a list of parties to the Geneva Conventions and its Protocols, see International Committee of the Red Cross, *States Party to the Geneva Conventions and their Additional Protocols* (July 6, 2017), available at <http://www.icrc.org/eng/party-gc> (last visited August 10, 2017).

<sup>20</sup> *Supra* n. 18, Art. 146.

<sup>21</sup> *Ibid.*

<sup>22</sup> See, *Supra* n. 17, Art. 4.

<sup>23</sup> There have been no documented cases of prosecution on the basis of the Apartheid Convention.

<sup>24</sup> Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, (1984).

<sup>25</sup> *R. v. Bow St. Metro. Stipendiary Magistrate, Ex Parte Pinochet*, 1 A.C. 147 (H.L. 2000).

<sup>26</sup> *Ibid.*

Lords decided not to fulfill the order keeping in mind the ill health of the wrongdoer.<sup>27</sup> This case of arrest in London and recognition of its legality by the courts of England proved to be important one especially in Chile. With this development, the universal jurisdiction got recognized. There have been as many as twelve international conventions which provide universal jurisdiction, for example, conventions dealing with diplomats being taken hostage, terrorism, ships on the high seas, airplane hijacking, etc.<sup>28</sup> Now the governments empowered their courts to exercise universal jurisdiction in case of serious crimes. Under the 1948 Genocide Convention,<sup>29</sup> jurisdiction would be conferred either on domestic courts where the crime was committed or in an international court having jurisdiction, but this convention didn't recognize or confer universal jurisdiction.<sup>30</sup>

It was understood that if war crimes are committed, it does not matter where it has been committed and there would be an International Criminal Court (hereafter ICC), which will exercise the jurisdiction. However the idea of the development of such an institution was prevented and took a back seat with some of the nations like China and Russia showed no interest in it.<sup>31</sup> Even, module for the procedures and rules of an ICC was not given much attention. But it did not take much time when UN Security Council came up with a surprise and set up the first ever International Criminal Tribunal for the former Yugoslavia,<sup>32</sup> which was further followed by another International Criminal

<sup>27</sup> *Pinochet Set Free*, BBC News, Mar. 2, 2000, at <http://news.bbc.co.uk/1/hi/uk/663170.stm> (last visited April. 10, 2017).

<sup>28</sup> The twelve conventions are as follows: Convention on Offences and Certain Other Acts Committed on Board Aircraft, Sept. 14, 1963, Convention for the Suppression of Unlawful Seizure of Aircraft, Dec. 16, 1970, Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, Sept. 23, 1971; Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, Including Diplomatic Agents, opened for signature on Dec. 14, 1973, International Convention Against the Taking of Hostages, Dec. 17, 1979, Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, Mar. 10, 1988; International Convention for the Suppression of Terrorist Bombings, Dec. 15, 1997; International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999; Convention on the Physical Protection of Nuclear Material, Mar. 3, 1980; Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, Feb. 24, 1988; Convention on the Marking of Plastic Explosives for the Purpose of Identification, Mar. 1, 1991; Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf, Mar. 10, 1988.

<sup>29</sup> Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948.

<sup>30</sup> *Id.*, Art.6.

<sup>31</sup> Roy S. Lee, *THE INTERNATIONAL CRIMINAL COURT: THE MAKING OF THE ROME STATUTE: ISSUES, NEGOTIATION, RESULTS* (Kluwer Law International, The Hague, 1999).

<sup>32</sup> *Updated Statute of the International Criminal Tribunal for the Former Yugoslavia*, S.C. Res. 827, U.N. SCOR, 48th Sess., 3217th mtg., at 6, U.N. Doc. S/RES/827 (1993).

<sup>33</sup> *Statute of the International Criminal Tribunal for Rwanda*, S.C. Res. 955, U.N. SCOR, 49th Sess., U.N. Doc. S/RES/955 (1994).

Tribunal for Rwanda.<sup>33</sup> With the advent of these two tribunals a positive wave was flown in the international community. There have been some doubts about the standing of US towards international law. US want its citizens to be subjected to its courts and not to any international courts because of an anti-American bias. International community is very much aware that it was the United States, which played a crucial role in the establishment of the Yugoslavia tribunal by the Security Council.<sup>34</sup> Again it was the USA, which convinced the UN Security to set up an international criminal tribunal.<sup>35</sup> The Rwanda tribunal would never have become a reality without the political and financial assistance of the United States. Now it's unfortunate to see that US does not wish to subject its citizens to the jurisdiction of ICC through bilateral Immunity Agreements allegedly entered into under Article 98 of the Rome Statute.<sup>36</sup>

The path of the court has not been free from difficulty; nonetheless, the inclusion of large number of members joining the court lead to positivity. There have been instances of horrific crimes being committed throughout the world and thousands and millions of the people were forced into situations of starvation and death.<sup>37</sup> Such kind of crimes must be brought into the category of genocide as considered by US.<sup>38</sup> The reasons for putting such brutal and heinous crimes into the category of genocide would result into putting an obligation on the United States to check that criminal conduct. At times it has been observed that China has made the resolutions weak in the Security Council with no fault of US and under the threat of veto.<sup>39</sup> It demanded the Security Council to intervene and instruct the ICC to immediately investigate war crimes in the Sudan, which the Security Council could do under the Rome Treaty. It would be an exemplary use of the power of the International Court of Justice and eye opener for the rest of the world, leaving a message that situation like Rwanda does not happen again. President Clinton apologized on behalf of the United States for not doing more to stop the Rwanda genocide.<sup>40</sup> The Security Council should come forward and do something right now at very little cost; it wouldn't even be contrary to the approach of the United States, that the Security Council shall hold the key to

<sup>34</sup> Barbara Crossette, *Time is Short for U.S. to Join the International Criminal Court*, NEW YORK TIMES, Nov. 24, 2000, p. 9.

<sup>35</sup> *Ibid.*

<sup>36</sup> See, e.g., Treaty Affairs Staff, *A List of Treaties and Other International Agreements of the United States in Force on January 1, 2004*, available at <http://www.state.gov/documents/organization/38401.pdf> (last visited August 10, 2017).

<sup>37</sup> See, REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON DARFUR TO THE UNITED NATIONS SECRETARY-GENERAL, available at <http://www.un.org/News/dhlsudan/com-inq-darfur.pdf> (last visited August 10, 2017).

<sup>38</sup> Colin Powell, Speech to the Senate Foreign Relations Committee (Sept. 9, 2004); see Powell calls Sudan Killings Genocide, Sept. 9, 2004, available at <http://www.cnn.com/2004/WORLD/africa/09/09/sudan.powell> (last visited August 10, 2017).

<sup>39</sup> See, Human Rights Watch, *The United Nations and Darfur* (Jan. 2005).

<sup>40</sup> See, *A News Hour with Jim Lehrer Transcript: Promoting Peace* (Mar. 25, 1998).

trigger the jurisdiction of the ICC.

### III. WHAT DOES THE FUTURE HOLD FOR THE INTERNATIONAL CRIMINAL COURT?

The ICC is considered and received as one of the important developments and innovations of the world.<sup>41</sup> The institution of ICC is vested with the power to deal with crimes like crimes against humanity, aggression, war crimes, and genocide etc. The negative attitude led to perception that the ICC focuses more upon African countries and at the same time this focus is absent when the serious crimes are committed in other parts of the world. This fear and negative attitude finds its way again when with the inception of the court in the year 2002 when the first prosecutor started investigation, which was followed by another investigation with more focus upon African countries resulting it having a polarizing effect and reaffirming the fear of the court serving the West only.<sup>42</sup> It was entirely predictable that the ICC would soon be accused of neo-colonialism.<sup>43</sup> But the fact seems that most of the cases were sent to ICC by the African governments themselves. Most of the cases before the court involve the defendants who are Africans and are tried under the investigation of Africa. Counter to this there have been some horrific crimes committed around the world, which have not even been noticed or addressed by the court, for example, atrocities in Syria and Iraq.<sup>44</sup> We must pay heed to this reason that the court was not competent to take into account the situation of those countries because neither of these countries are party to the Rome Statute nor the court was having the jurisdiction. There was veto by Russia and China to Security Council resolutions referring situations in those countries to the Court.<sup>45</sup> It further strengthens a call from Kenya asking the African members to withdraw from the Rome Statute and some of the leaders from Kenya have been under the investigation of the court and a call from parliament of Kenya to withdraw from ICC.<sup>46</sup> The unrest with the ICC among African countries is

<sup>41</sup> Created by 1998 Rome Statute of the International Criminal Court and situated in The Hague.

<sup>42</sup> Eklavya Anand, *Third World Approach to International Law and the International Criminal Court: A Perspective from Global South*, in Ashish Kumar (ed.), CONTEMPORARY DEVELOPMENTS IN INTERNATIONAL LAW: SOME RANDOM REFLECTIONS (Satyam Law International, New Delhi, 2017) p. 21.

<sup>43</sup> See, President Uhuru Kenyatta's speech during the Extraordinary Session of the Assembly of Heads of State and Government of the African Union in which he repeatedly referred to colonialism and imperialism. His speech is available at [www.scribd.com/doc/175602445/President-Uhuru-Kenyatta-s-Speech-during-the-Extraordinary-Session-of-the-Assembly-of-Heads-of-State-and-Government-of-the-African-Union-Addis-Ababa](http://www.scribd.com/doc/175602445/President-Uhuru-Kenyatta-s-Speech-during-the-Extraordinary-Session-of-the-Assembly-of-Heads-of-State-and-Government-of-the-African-Union-Addis-Ababa) (last visited August 10, 2017).

<sup>44</sup> Available at <http://www.foxnews.com/opinion/2016/10/24/what-does-future-hold-for-international-criminal-court.html> (last visited on November 09, 2017).

<sup>45</sup> *Ibid.*

<sup>46</sup> See, C. Jalloh, *Situation in Republic of Kenya, No. ICC-01/09-02/11-274: Judgment on Kenya's Appeal of Decision Denying Admissibility*, 106 AJIL 119 (2012).

very much evident and motivated by the political complexities of being a State Party to the statute. This unrest is pointing towards the future dissatisfaction among the member states. One of the important developments could be seen when Sudanese President<sup>47</sup> could not be arrested by the South African government, which led to further criticism. It led to South Africa announcing its withdrawal. It could prove to be a crippling of ICC.<sup>48</sup> Some rising countries too showed their unwillingness to be a part of it.<sup>49</sup> The United States of America has been supporting the ICC, it also backed the referrals of Security Council regarding the prevalent situations in Sudan and Libya but U.S has not ratified the Rome Statute. There have been situations where the U.S citizens cannot be under the jurisdiction of the court without the prior permission from the United States as a result of 90 bilateral agreements. Apart from the political complexities, there have been other issues too which requires serious considerations for example the proceedings of the court are dilatory, expensive and more dependent upon the governments cooperation. It seems to be failing in its approach to contribute “to the prevention of serious crimes”. The ICC has launched only 23 cases and managed to arrive at 4 convictions with the staff capacity of 800, budgets of over \$150 million in 2016. There have been instances where the governments failed to locate the suspects or they willingly did not arrest them. Such a situation of the ICC does not leave international war criminals shaking their boots. The question of more dependency in seeking the cooperation of governments when it comes to making of arrest and of gathering evidences raise a serious thought as to effectively pursue and prosecute a bigger fish. There has been obstruction and intimidations of witnesses which have hindered the ICC in cases involving government officials, and have mainly involved political opposition figures or fugitives in the Court’s successful prosecutions.

#### IV. CHALLENGES BEFORE THE COURT

One of the important reasons and objects behind the establishment of the court was to end impunity for the perpetrators of the crimes which were most serious in nature to the whole international community which could be very much seen into the preamble of the Rome Statute. Neither Syria nor Iraq is a party to the Rome Statute. There were horrific crimes committed in these

<sup>47</sup> Sudanese President Omar Al Bashir, who visited South Africa and was subject to an ICC warrant for alleged genocidal crimes in Darfur.

<sup>48</sup> 34 of the 124 ICC states parties are African.

<sup>49</sup> The Court was not positive with refusal of some rising countries like US, China, India and Russia denying being a part of it. US initially signed the Rome Statute but showed its reservation for ICC being a flawed institution that lacks prudent safeguards against politicization, is insufficiently accountable to the U.N. Security Council, and violates national sovereignty by claiming jurisdiction over the nationals and military personnel of non-party states in some circumstances.

countries, the UN Security Council did not refer the problem to the Court. The court was unsuccessful in dealing and holding those responsible for such wrongs (in the case of Syria because of a veto by China and Russia, while on Iraq there has been no vote).<sup>50</sup> The preliminary investigation concerning war crimes committed by UK military personnel had been conducted by the Prosecutor in Iraq.<sup>51</sup> There have been instances where the people who committed serious crimes had not been caught and such crimes had not been nipped in the bud. This situation where the court could not catch those who were responsible and could not prosecute them led to raise a question upon the jurisdiction and incapacity of the ICC to really focus on the most serious crimes of its jurisdiction. However some of the perpetrators of serious war crimes could be prosecuted provided they are nationals of state parties. As per the evidence, which were gathered by the prosecutor, those in the highest chain of command, who would fall under the jurisdiction of the Court<sup>52</sup> taken into consideration the gravity criterion, are not nationals of states which are party to the statute.

#### V. STATE OUTSIDE THE JURISDICTION OF THE COURT

The United States of America has signed over 100 bilateral immunity agreements<sup>53</sup> with third countries and shields its citizens from the jurisdiction of the court and to ensure the citizens cannot be extradited to the Court by these states. European Union drafted guiding principles<sup>54</sup> for those states that were

<sup>50</sup> Available at [http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603920/ EPRS\\_ BRI\(2017\)603920\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603920/ EPRS_ BRI(2017)603920_EN.pdf) (last visited on November 18, 2017).

<sup>51</sup> *Ibid.*

<sup>52</sup> The ICC jurisdiction is different from the so-called universal jurisdiction, which existed for example between 1993 and 2003 in Belgium, where it was adopted in reaction to the Rwandan genocide. This universal jurisdiction afforded the right to anyone to submit a war crime for prosecution in Belgian courts, irrespective of whether it was committed on Belgian territory, and whether a Belgian national was involved as either perpetrator or victim.

<sup>53</sup> The international agreements mentioned in Article 98(2) of the Rome Statute are referred to by several terms, including Article 98 agreements, bilateral immunity agreements (BIAs), impunity agreements, and bilateral non-surrender agreements. In capitals around the world, the U.S. government representatives have been seeking bilateral non-surrender agreements, or so-called “Article 98” agreements, in an effort to shield U.S. citizens from the jurisdiction of the International Criminal Court (ICC). Dubbed bilateral immunity agreements (BIAs) by leading experts, these U.S. agreements provide that current or former U.S. government officials, military and other personnel (regardless of whether or not they are nationals of the state concerned, i.e., foreign sub-contractors working for the U.S.) and U.S. nationals would not be transferred to the jurisdiction of the ICC, available at [http://www.iccnw.org/documents/CICCF5\\_BIAstatus\\_current.pdf](http://www.iccnw.org/documents/CICCF5_BIAstatus_current.pdf) (last visited on November 19, 2017).

<sup>54</sup> EU guiding principles listed below will preserve the integrity of the Rome Statute of the International Criminal Court and – in accordance with the Council Common Position on the International Criminal Court – ensure respect for the obligations of States Parties under the Statute, including the obligation of States Parties under Part 9 of the Rome Statute to cooperate fully with the International Criminal Court in its investigation and prosecution of crimes falling within the jurisdiction of the Court. Available at <https://www.consilium.europa.eu/uedocs/cmsUpload/ICC34EN.pdf> (visited on November 19, 2017).

its members, with the purpose of maintaining the integrity and a response to Article 98 of the Rome Statute. The Court has been opposed often by some of the major powers that are non-members like USA, China and Russia on various grounds. One of the major powers of the world, USA initially signed the Rome Statute but it did not ratify it and later unsigned the same. Russia also signed it initially but withdrew later on. The attitude and position of United States of America seems to be difficult to understand and full of ambiguity as it refuses to accept the Court's jurisdiction, while on the other hand it has expressed positivity and supported the cause of the court and made many claims of the court being worthy and useful. What could be the future of the court? And the very purpose for which it was established as some of the nations like Burundi, Gambia, and South Africa withdrew from the ICC, though such withdrawal seems to be less and representing only a few nations which is 3 in count out of 124 who signed the Rome Statute. But it could be a major setback for the court and could lead to many other nations to follow.

The ICC was established with the intention that it would be a permanent body, which will deal with crimes, which are serious in nature.<sup>55</sup> Whenever there were violations of international humanitarian law it could only be dealt with by tribunals like International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the Former Yugoslavia (ICTY), which were set up contemporary basis for specific circumstances. These tribunals had been subject to criticism since they were born.<sup>56</sup> Refusal on the part of USA to recognize the court's jurisdiction proved to be serious and major setbacks to the ICC since its inception and attracted criticism either in the form of proceedings being slow or a lack of progress into the proceedings, resulting into only four verdicts; three guilty and one not-guilty during its whole operation time. There was a need to look into the reasons, why are member nations withdrawing from the court's jurisdiction? Perhaps, one of the important and

<sup>55</sup> The ICC was founded in 1998 by the Rome Statute, with the intention of there being a permanent international court to deal with the most serious crimes such as the crime of genocide, crimes against humanity and war crimes. The court was officially established in 2002, when the Rome Statute entered into force, after being ratified by 60 states.

<sup>56</sup> The Court's two predecessors, the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) were both deeply political creatures and were accused of being products of Western European-style racial and political prejudice. The idea of creating the ICTY was triggered by the shocking images of ethnic cleansing in the Balkans, reminiscent of the Holocaust. The sight of Europeans suffering in this way was simply too much to bear. Something had to be done and creating an ad hoc international criminal tribunal by Security Council fiat was the innovative result. The erection of the ICTR was even more politically controversial. It has often been argued that the ICTR was the West's way of compensating for the American Clinton administration's failure to intervene to stop the genocide. See, Samantha Power, *A PROBLEM FROM HELL: AMERICA AND THE AGE OF GENOCIDE* (Harper Collins, New York, 2003).

underlying themes for the criticism of the courts had been its investigations, targeting African States. Such apprehensions of the Africans could find its place into the fact that nine out of ten cases, which were being investigated by the court, involve defendants from different African countries. One of the other facts was that the three trials, which are currently being heard by the ICC relate to Africans too. These apprehensions must have been taken into considerations as its member states raised a point that needed serious thought. One of the important arguments, which were advanced by Amnesty International in counter to the apprehensions raised by Africans nationals, was that for many Africans the only avenue for justice was the ICC for the crimes they have suffered. This fact also must be taken into considerations that 33 African states have ratified the Rome statute and signed up to the court's jurisdiction which made Africa the largest continental bloc to sign up, so perhaps more vulnerable to investigation.<sup>57</sup> Even the member nations, which showed their intention to withdraw and another fact of other countries joining them into withdrawal is a time taking process. There is no denial from the very fact that some of the African countries may join a withdrawal path, leaving a possibility of decrease in the member nations but there is also positivity lies into the fact some of other countries have stood up and reaffirmed their faith into this very institution and issued their continuous support. There may be testing times ahead which cannot be understood anyway unlikely the end for the ICC which will surely grow from the ashes and will prove to be a milestone into the path it is heading.

## VI. CONCLUSION

The birth and growth of international criminal justice has been impressive and has wide global acceptance. What of the future? One must be cautiously optimistic. The reason for caution lies in the present domestic and foreign policy of the United States—the only superpower, and traditionally regarded as the leader of the free world. The reason for optimism is the openness of the society and its commitment to democracy not only for your own people but also for all people around the world. Some African government's reservations about the ICC to a neo-colonial tool of Western governments must also be looked into to avoid any kind of favoritism or bias and setting up the high standard of integrity.

<sup>57</sup> M. duPlessis, *THE INTERNATIONAL CRIMINAL COURT THAT AFRICA WANTS* (The Institute for Security Studies, 2010) pp. 5-6 (It States the important role-played by African States in creation of ICC).