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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

W H I T E B L A C K
L E G A L

ACCOUNTABILITY OF INTERNATIONAL CRIME VIVA INTERNATIONAL LAW

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ABSTRACT-

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community. The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in the Netherlands. Although the Court's expenses are funded primarily by States Parties, it also receives voluntary contributions from governments, international organisations, individuals, corporations and other entities.

KEY WORDS- International Criminal Court , Rome Statutes, United Nations , International Crimes, States.

1. INRODUCTION-

The International Criminal Court (ICC) is a permanent International Court established to investigate, prosecute and try individual accused of committing most serious crimes of concerns to the International community as a whole. The idea of a system of International Criminal Justice re-emerged after the end of Cold War.

ICC is an intergovernmental organisation and international tribunal that sits in Hague Netherland. It began functioning on 1 July 2002 , the date that Rome Statue came into force. There are 123 states which are party to the Rome Statues and therefore members of ICC.

2. INETR NATIONAL CRIME-

International crime may be referred to those crime which are recognized by international

community on account of their prevention is essential for protection of fundamental interest of international community. It implies that, whether a crime is international or not is decided by the states themselves after taking into account of its nature and its relationship with the fundamental interest of the international community. The incidents of international crime required to be prevented to protect international peace and security.

During the period of league of nation only few international crimes were in existence such as – slavery, counterfeiting, narcotic drug etc. The United Nation has taken a leading role in the field of crime prevention and to formulate standard and norms of criminal justice under Article 1 Para 3. It seeks international co-operation in solving international problems of an economic, social, culture and humanitarian nature.

A series of crimes at presents considered as international crime – Genocide, Trafficking, High jacking, slave trade, narcotic drugs, kidnapping of diplomatic personnel.

A person committed the above mention crime are prosecuted by the states where they are found or where the crime has been committed. In both the cases prosecution is carried on according to the national laws of the states. Such system may be unsatisfactory. It may be a different treatment to the different offenders belonging to different states. Further, domestic judges may not be impartial when the vital interest of their country is a stake especially when the offender belongs to a hostile or enemy state. ¹

Need of Permanent Criminal Court- because of absence of permanent criminal court , the state led to establish ad hoc tribunals time to time to prosecute the offenders. After second world war two international Military tribunal established at Nuremburg and Tokiyo for the prosecution of the major German and Japanese war criminals respectively of the second world war. In addition to this two international tribunal were established for the prosecution of serious offence which hurts international humanitarian law in 1993 at Yugoslavia and in 1994 for the prosecution of those persons who were responsible for the genocide and other violation of international Humanitarian law in Rwanda.

The appointment of ad hoc committee frequently suffers from number of defects and which were also very time consuming. Even International Court of Justice does not have competence to

¹ H.O. Agrawal, “*International law and Human Rights*” 715- 717(16th ed.)2009.

decide the cases of individuals. Article 34 Para 1 lays down that, only state may be parties in the cases before the court. It is therefore desirable to establish Permanent criminal court to administer the criminal justice which would not be limited.

3.EFFORTS FOR THE CREATION OF THE INTERNATIONAL CRIMINAL COURT.-

The earliest efforts taken for the creation of international criminal court by the committee of jurist which drafted statutes of International court of Justice in 1920 but the attempt was failed.

In 1950 at the request of the General Assembly , the International Law commission studied the desirability and possibility of establishing an International Organ for the trial of genocide and certain other crime. and commission concluded that, the establishment o International Criminal court was both possible and desirable. In 1950, the general assembly decided to create a committee on International Criminal jurisdiction (the Geneva Committee) to prepare a draft . the seventh session of the General Assembly had a report and draft statutes of the International Criminal court brought before it by the committee. However, no decision was taken. But it created a new committee Known as seventeen members Committee. The committee completed a draft of the statutes for an International Criminal Court.

In 1952, the General assembly decided to set up a new committee consisting again of Seventeen members, which met at United Nations Headquarter in 1953. The report of the committee was placed before the assembly at its 1954 session. But the assembly however postponed the consideration of this topic.

4. ROAD TO ROME:-

After a long interval, the General assembly on December 4, 1989 requested the International Law commission to address the question of establishment of permanent International Criminal court. Consequently, in 1990 the International Law Commission started a the consideration of establishment of International criminal court . In 1994 the commission completed a draft statute and same was submitted to the General assembly. The assembly in 1994 decided to establish Ad hoc Committee open o all members of all states. Further, in 1995 the General Assembly decided to establish a preparatory Committed on Dec. 11, 1995 to be known as Preparatory Committee. The General Assembly on December 15, 1997 requested the Preparatory Committee to continue its work for the establishment of a ICC.²

² General Assembly Resolution, 52/160, Dec. 15,1997

The committee in its meeting held from March 16 –April 1998 completed the preparation of the draft convention on the Establishment of the International Criminal Court which was transmitted to the conference. Thereafter, General Assembly requested the Secretary General to invite all State members of the United Nations, to participate in the conference. The conference met at the Headquarters of the Food and Agriculture Organisation in Rome in July 1998. The diplomatic Conference of Plenipotentiaries on the last day of its meeting i.e. only on July 17 1998 adopted the Rome statute of the International Criminal Court.

5. STATUTE AND CONSTITUTION OF THE INTERNATIONAL CRIMINAL COURT-

i. STATUTE- The statute of the court consists of 128 Articles which are divided into 13 parts. Article 1 lays down that an International Criminal Court is hereby established. It shall be a permanent institution and have power to exercise its jurisdiction over a natural person for the most serious crimes of international concern. The court is established at The Hague in the Netherlands. The court sits there³. But the court may sit elsewhere, whenever it considers it desirable, as provided in the statute.⁴ Article 126 of the statute provided that the statute shall come into force after it has been ratified by 60 states. Accordingly, it came into force on 1 July 2002. By March 2008, the statute has been ratified by 106 countries. The court was inaugurated on March 11, 2003 in The Hague with the swearing in of its judges.

ii. CONSTITUTION- The court shall have 18 judges. Article 36. The number may be increased on a proposal made by the Presidency in this regard indicating the reasons for the increase. All the judges shall hold office for a term of 9 years and shall not be eligible for re-election. At the first election one third of judges elected for the terms of three years, one third of judges shall be elected by a lot for a term of six years, and the remaining judges shall serve for a term of nine years.

iii. QUALIFICATION OF JUDGES- The qualifications of judges are also mentioned in the statute. The judges shall be chosen from among persons of high moral character, impartiality and integrity and they require shall possess the qualification required in their respective states for appointment to the highest judicial offices.⁵ They have great experience in criminal law and procedure and with necessary experience as a Judge, Prosecutor, advocate, or in other similar capacity, in criminal proceedings.

³ Article 3, para 1, Rome Statute

⁴ Article 3, para 3, Rome Statute.

⁵ Article 13, para (a), Rome Statute.

6. COMPOSITION OF THE COURT

The statute of the court under article 34 lays down that the court shall be composed of the following organs-

- a. The Presidency
- b. An Appeals Division, Trial Division and a Pre-trial division.
- c. the office of the prosecutor and
- d. the Registry

7. JURISDICTION OF THE COURT-

The jurisdiction of the court is very much limited to the most serious crime offences which disturb the international community as a whole. The Court shall have jurisdiction in accordance with this statute with respect to the following crimes-

- i. The Crime of Genocide
- ii. Crime against humanity
- iii. War Crimes
- iv. The Crime of aggression

The Court shall have jurisdiction only with those crimes committed after the entry into the force of the statute.⁶ Further, the court has no jurisdiction over any person who has not completed the age of 18 years. The statute apply equally to all person. In particular, official capacity as head of state or Government, a member of Government or Parliament an elected representative or a Government official, shall in no case exempt a person from criminal responsibility under the statute, nor shall be exempted on ground of reduction of sentences.

8. LAW APPLICABLE

Article 21 of the statute lays down that the court shall apply-

- i. The element of crime and, the rules of procedure and evidence
- ii. In the second place, where appropriate applicable treaties and the principles and rules of international law- including established principle of international law or international law relating to the armed forces

⁶ M.P. Tondon, V.K. Anand, "International Law and Human Rights", 469 (11th ed.) 2010

- iii. An appropriate national of the state that would normally exercise jurisdiction over the crime ,provided that, those principles are not inconsistent with the statues and the international law and internationally recognized norms and standards.
- iv. The court may apply principles and rules of law as interpreted in its previous decision.

9. PENALTIES-

Article 77- of the statues provides following penalties-

- i. the court may impose one of the following penalties on a person convicted of a crime under Article 5 of the statues-
 - a. Imprisonment for specific number of year which may not be exceed a maximum of 30 years, or
 - b. term of life of imprisonment when justified by the extreme gravity of the crime and the individual circumstances of the convicted person.
- ii. In addition to imprisonment , the court may order:
 - a. A fine under the criteria provided for in the rules of procedure and evidence.
 - b. A forfeiture of proceeds, property and assets derived directly or indirectly from that crime, without prejudice to the right of bona-fide third parties.⁷

10. COMPENSATION TO AN ARRESTED OR CONVICTED PERSON

Any persons who have been the victim of unlawful arrest or detention, shall have an enforceable right to compensation.

11. SETTLEMENT OF DISPUTES

Any dispute concerning the judicial functions of the court shall be settled by the decision of the court. Any other disputes between two or more States – parties relating to interpretation or application of the statues which is not settled through the negotiation within three months of their commencement, shall be referred to the assembly of state parties. The assembly may itself seek to settle the dispute or make recommendations on further means of settlement of the dispute, including referral to the International court of Justice in conformity with the statues of the Court.⁸

12. GENERAL PRINCIPLES OF CRIMINAL LAW ADOPTED IN STATUES

⁷ M.P. Tondon, V.K. Anand, “International law and Human Rights”, 471(2nd ed.)2010

⁸ *Ibid* at 8.

i. Nullum crimen sine lege- A person shall not be criminally responsible under this statute unless the conduct in question constitutes, at the time it takes place crime within the jurisdiction of the court. The definition of the crime must be construed strictly and shall not be extended by analogy. In case of ambiguity, the definition shall be interpreted in favour of the person being investigated, prosecuted or convicted.

ii. Nulla poena sine lege- A person convicted by the court, may be punished only in accordance with this statute.

iii. Non retroactively ratione personae- No person shall be criminally responsible under this statute for conduct prior to the entry into force of the statute. In the event of a change in the law applicable to a given case, prior to final judgment, the law favourable to the person being investigated, prosecuted or convicted, shall apply.

iv. Individual criminal responsibility- Article 25 of the statute which deal with the individual criminal responsibility-

- a. A person who commits crime within the jurisdiction of the court, shall be individually responsible and be liable for the punishment in accordance with the statute.
- b. The court shall have jurisdiction over natural person pursuant to this statute.
- c. No provision in this statute relating to individual responsibility shall affect the responsibility of states under International Law.⁹

13. FIRST VERDICT AT THE INTERNATIONAL CRIMINAL COURT:

The case of the **Prosecutor vs. Thomas Lubanga Dyilo**¹⁰

The Lubanga case 1. Who is Thomas Lubanga and what are the charges against him? What is he? Thomas Lubanga Dyilo was the first person arrested and transferred to The Hague to be tried by the International Criminal Court (ICC). He is a Congolese national and was the president of the Union of Congolese Patriots (Union des Patriotes Congolais, UPC), a brutal armed group claiming to act on behalf of the ethnic Hema population in the Ituri region of northeastern Democratic Republic of the Congo (DRC). The UPC has been implicated in many serious human rights abuses, including massacres of other ethnic groups, summary executions, torture, rape, abduction and use of children as soldiers, and pillage. The ICC has charged Lubanga with the war crimes of enlisting and conscripting children under age 15 as soldiers and using them as active participants in hostilities in 2002-2003. The charges against Lubanga were confirmed in January 2007, and his trial began before

⁹ *Ibid* at 470

¹⁰ The Prosecutor v. Thomas Lubanga Dyilo, available at <http://www.parl.gc.ca/content/lop/researchpublications/prb0211-e.htm>, last seen on 17/06/2024.

Trial Chamber I of the ICC in January 2009.

14. CONCLUSION

The adoption of the Rome Statutes of the International Criminal Court is a great achievement itself in the context of restraining international crimes. There are certain shortcomings in the statutes eg- the crime of hijacking, terrorism have not been included in the list of the statutes. Some enforcements are not satisfactory. The making of a provision of review of the statutes of the court after seven years of entry into force, is a welcome step under the provision of the statutes, which will facilitate the general interest of the world community.



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SEMINAR PRESENTATION

(INTERNATIONAL INSTITUTION)

**“JOURNEY OF INTERNATIONAL CRIMINAL COURT WITH
CERTAIN PROVISIONS”**

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