

The road to rome law international essay

Law



**ASSIGN
BUSTER**

As mentioned earlier the formation of two separate temporary ad hoc tribunals formed under the UNSC , further highlighted the need for a permanent international criminal court . But it was prior to the formation of these two bodies that a draft for the Roman Statute was underway by the ILC upon request from Trinidad and Tobago . This resurrection to a pre-existing proposal was made in the hot summers of 1989. But it was not until 1994 that a final draft was presented by the ILC to the UN General Assembly and to negotiate and build a general consensus over the terms and conditions for this treaty-based organization a conference was convened. A committee by the name of Ad Hoc Committee on the Establishment of an International Criminal Court was announced which was to meet twice a year in order to discuss and consider major substantive issues in the draft. From 1996 to 1998, a total of six sessions of the UN Preparatory Committee were held at the UN headquarters in New York, where input provided by NGOs regarding discussions about the ICC formed Coalition for an ICC (CICC). Once the draft was considered by the UN GA, it established a Preparatory Committee which was to prepare a consolidated draft text. In the beginning of 1998 the members of this committee called for a meeting in Zutphen , Netherlands to fuse the draft and restructure the components and articles into a formal draft. Thus upon receiving this draft the UN GA decided to finally call the United Nations Conference of Plenipotentiaries on the Establishment of an ICC, this was done at the fifty-second session of the GA and purpose was to " finalize and adopt a convention on the establishment" of an ICC. More commonly known as the " The Rome Conference ", it was convened in July of 1998 Italy, in which 160 countries participated to negotiate with NGOs forming coalitions to carefully assess the discussions, this information was <https://assignbuster.com/the-road-to-rome-law-international-essay/>

distributed worldwide following developments which facilitated the participation and parallel activities of more than 200 NGOs. After five strenuous weeks of deep negotiations 120 States voted in favor of adopting the RS of the ICC . But on the contrary seven nations voted against the treaty including United States, Israel, China, Iraq and Qatar and 21 states refrained from voting. Finally on 11 April 2002, the 60th ratification necessary to trigger the entry into force of the RS were submitted by several states in coincidence entering the treaty into force on 1 July 2002. Structure of the ICC Since 2002 the Court has developed into a professional institution with a four part structure . Although housed in the same building the four organs carry out distinctive mandates. Each of the four organs is briefly introduced below in terms of their significance and authority:

Presidency

The presidency is primarily made up of three judges. As the term is self-explanatory the entire administrative procedures are to be catered by this organ. 3 judges of the court are appointed at this level by the process of election, for a term of three years. As of 2013 President of the Court is Judge Sang-Hyun Song (Republic of Korea). Judge Sanji Mmasenono Monageng (Botswana) is First Vice-President, and Judge Cuno Tarfusse (Italy) is Second Vice-President. The presidency manages the Court and has the task of representing the Court to the outside world; it also helps to organize the work of the judges . In addition the presidency is also responsible for carrying out other tasks such as supervising the punishment imposed on persons found guilty by the Court.

Chambers

Decisions in the Courtroom are taken by the judges present in the chambers. The chambers otherwise known as the Judicial Divisions consist of eighteen judges organized into the Pre-Trial Division, the Trial Division and the Appeals Division. The judges of each Division sit in Chambers which are responsible for conducting the proceedings of the Court at different stages. Assignment of judges to Divisions is made on the basis of the nature of the functions each Division performs and the qualifications and experience of the judge. This is done in a manner ensuring that each Division benefits from an appropriate combination of expertise in criminal law and procedure and international law.

Office of the Prosecutor

The Office of the Prosecutor is an independent office . It is responsible for selection of the case to be prosecuted and then cases inside the situation. They investigate the crime and they present the case in the courtroom. The Prosecutor can independently start prosecution in a situation if the pre-trial chamber authorizes it. This is a huge change in International Relations. It receives referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. The Office is headed by the Prosecutor, Mrs. Fatou Bensouda (Gambia) who is the first African Prosecutor.

Registry

The Registry is biggest organ of the Court . Its purpose is to provide administrative and operational support to the judiciary and to the office of <https://assignbuster.com/the-road-to-rome-law-international-essay/>

the Prosecutor. It also provides support for its own activities concerning defense, victims, communications and security . It helps to service the Court and develop effect mechanisms to assist victims, witnesses and the defense with a view to safeguarding their rights in accordance with the Statute and the Rules of Procedure and Evidence . The Registry also carries out field operations in support of investigations on prosecutions. In the field the Registry protects the witnesses, victims and the affected community. The Registry is headed by the Registrar who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court. The current Registrar, elected by the judges for a term of five years, is Ms Silvana Arbia (Italy).

Other Offices

The Court also includes a number of semi-autonomous offices such as the Office of Public Counsel for Victims and the Office of Public Counsel for Defense. These Offices fall under the Registry for administrative purposes but otherwise function as wholly independent offices. The Assembly of States Parties has also established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and the families of these victims.

State Parties to Rome Statute:

Member States of any International body determine its effectiveness and authority. The ICC is a physical form of when International Crime meets International law and for the IL to be respected it has to be the individual states which must act under IL in order to comply with demands of the International community . As of 2013, 122 States are members of the ICC and form an assembly which is termed as Assembly of States. This is also an <https://assignbuster.com/the-road-to-rome-law-international-essay/>

additional organ of the ICC through which states communicate to the Court their concerns and opinions to various issues under the ICC. According to the treaty, " each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers" and each State Party shall have one vote. All other States which have signed the RS or the Final Act of the Rome Conference may attend as observers' . Out of the 122 state parties to the RS. Out of them 34 are African States, 18 are Asia-Pacific States, 18 are from Eastern Europe, 27 are from Latin American and Caribbean States, and 25 are from Western European and other States. The serious concern for the ICC is the absence of three permanent members of the UNSC from the RS , the US , Russia , and China . Other significant state actors which are not state parties to the statute include India , Israel , Pakistan , Turkey , Libya , Iran and Sri Lanka along with many others which tend to take a toll on the Courts authority as a International legal body. Jurisdiction of ICCThe jurisdiction of the Court needs to be understood in different contexts: Jurisdiction *ratione materiae*, (which answers the question of " which crimes can be tried before the ICC")Jurisdiction *ratione personae* , (" who can be judged")And jurisdiction *ratione temporis* (" when might the crimes have been committed"?)As for *ratione materiae* the Court is authorized under the RS to exercise jurisdiction over genocide, crimes against humanity and war crimes and Crime of Aggression. These crimes have been clearly defined in detail in the RS. In addition, a supplementary text of the " Elements of Crimes" provides a breakdown of the elements of each crime in order to avert any confusion once investigation of a case is initiated. But for Crimes of Aggression, the definition of this crime could not be agreed upon at the Rome conference and was accepted in 2009 in a revision conference

<https://assignbuster.com/the-road-to-rome-law-international-essay/>

therefore it cannot exercise upon this crime at least until 2017. For *ratione personae* the Court can exercise jurisdiction over individuals accused of these crimes. This includes those directly responsible for committing the crimes as well as those who may be liable for the crimes, for example by aiding, abetting or otherwise assisting in the commission of a crime. The latter group also includes military commanders or other superiors whose responsibility is defined in the Statute. Finally, as the jurisdiction *ratione temporis* is concerned the ICC has jurisdiction only for crimes committed after the entry into force of the Rome Statute (1st of July 2002).

Furthermore, the competence of the Court only holds for the crimes committed after the date of adherence to the statute for that particular state. Another significant element of the RS is that it does not give the Court Universal jurisdiction. The Court may only exercise jurisdiction in three simple conditions that are if: The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court; The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime.

Principle of Complementarity in the ICC

This is the fundamental principle upon which the working of the ICC is based. As stated in the RS the ICC adopting this principle can only investigate or prosecute a case if a State Party of which the accused is a national, is unable or unwilling to prosecute. Thus the ICC is a Court of last resort. In other words even where the Court has jurisdiction it may not act.

Also a case can be deemed inadmissible if has been already investigated or prosecuted by a state with jurisdiction. However in a case that the state is then unable to carry on with the investigation the Court may adopt the case in progress. For example, a case will be inadmissible if it is not of sufficient gravity to justify further action by the Court . In addition, a case would be admissible if national proceedings were undertaken for the purpose of shielding the person from criminal responsibility. So we can define the Court as a complementary judicial body made to assist the judicial systems of states under crises and not as one which was made to replace the domestic courts. Jurisdiction regarding Non-State ActorsThe ICC is entitled to exercise Jurisdiction upon Non-State parties to the RS under certain conditions. This phenomenon is the reason for apprehensive behavior of certain states towards the ICC. Firstly the ICC may prosecute persons from non-party states if the situation is referred to the Prosecutor by the UNSC. Secondly, if national of a non-party state commits a crime on the territory of a state-party then he/she falls under the jurisdiction of the ICC only if his/her state has acknowledged and accepted the jurisdiction of the ICC in respect to that crime, which the suspect is accused of. Thirdly and lastly the ICC may have jurisdiction upon non-party nationals given that the non-party state has consented to the exercise of the jurisdiction with respect to a particular crime. Thus it is clear that in neither of the first two conditions the consent of non- party state is a prerequisite. This brings us to the rationale of why States which are not part of the RS feel that their nationals may be targeted under political prejudices by the Court. But this objection alone does not to completely reject participation and support for the ICC.

CHAPTER IV

ACCEPTABILITY OF A NEW ORGAN BY STATES

There is no denial to the fact that Human Rights suffer serious setbacks from the very parties which apparently seem to be vocal on the need to protect them. This clear cut disparity between theory and practice is most obvious hurdle when it comes to the subjects of ICC and is a major hurdle towards the effectiveness of the Court's authority. For any International Institution to function effectively it heavily relies on the co-operation and compliance by the member states. Tragically, for the ICC the absence of such influential and powerful states from the RS generates many problems . The controversies surrounding such behavior will be studied in this chapter with reference to, USA, China, Israel, India, Russia and Pakistan.

United States Objections to the Court

During the drafting of the Rome Statute it was almost certain that the USA would lead the ICC and support the institution for the right causes as it played an active role in the formation of the institute for example United States contribution to the Statute are drafting of supplemental code and inclusion in the jurisdiction of the Court , this attitude adopted under the Presidency of Clintons Administration took a reverse swing during the Bush administration and USA withdrew from its support for the ICC by " unsigned" the RS this not only attracted much attention but created a debate within and outside USA regarding such action. In addition, it must be added that although President Clinton signed the RS on December 31, 2000 (Shah, 2005) he did so with recommendations to his successor saying that the US must not ratify the RS due to the " flawed " nature of it, it was then that the

world community and even those with in the USA could saw grave effects of the initial discomforts USA had with certain provisions of the RS. The US has long championed human rights and has been more than supportive of the ideal that those who commit international crime must be brought before international courts. US basically pioneered the Nuremberg and Tokyo Trials it was also a key supporter for the temporary ad hoc tribunals ICTY and ICTR then why is it so apprehensive of the ICC . Here are a few obvious objections the USA has openly shared for its withdrawal from the ICC: Powers of the Prosecutor When announcing complete withdrawal from the ICC Donald Rumsfeld the then Secretary of Defense explained that the decision was based upon " a number of serious objections to the [International Criminal Court] - among them, the lack of adequate checks and balances on powers of the [Court's] prosecutor and judges; the dilution of the U. N. Security Council's authority over international criminal prosecutions; and the lack of any effective mechanism to prevent politicized prosecutions of American service members and officials (Garamone, 2006) USA believes that the ICC prosecutor enjoys unrestrained powers and may exercise them against US nationals under certain set of circumstances to politically prosecute US nationals which may then disturb or disrupt US interventions for humanitarian causes and those which are for national security reasons (GPF, 2005). Nevertheless To present a critique of this very " objection " posed by the USA towards the ICC reality shows a much different picture of the actual powers of the prosecutor and I must add that under no other international court are there so many controls over a prosecutor as there are in the ICC. The Prosecutor can only investigate crimes that meet strictly defined definitions as crimes against humanity, genocide or major war crimes " of <https://assignbuster.com/the-road-to-rome-law-international-essay/>

concern to the international community as a whole." United States negotiators agreed to the definitions that bind the Prosecutor. Secondly it must be added that the Prosecutor cannot start an investigation without the official approval of the three-judge panel. And thirdly, the ICC is under the complete control of the very many countries that form the Assembly of State Parties - including the entire European Community, England, France, Germany, Canada, Australia and many other faithful friends of the United States. They control the budget and can fire anyone who might be tempted to politicize the office (Mayerfeld, 2003). Issues of sovereignty and Protection of US Constitution

The Bush admin propagated that the ICC will not offer US nationals a fair and free trial but facts suggest otherwise as the ICC guarantees " Due Process" which is the same as USA Bill of Rights provided below:

- *Protection against double jeopardy.
- *No arrest warrants without probable cause.
- *Right to be present at trial.
- *Exclusion of illegally obtained evidence.
- *No trials in absentia.
- *Presumption of innocence.
- *Speedy and public trial.
- *Assistance of counsel.
- *Right to remain silent.
- *Privilege against self-incrimination.
- *Right to written statement of charges.
- *Right to examine witnesses (American Bar, 2008)

Thus the truth is that trials by the ICC offer as much of protection to individuals rendering the US claims null in this regard. As for the subject of sovereignty the RS clearly prioritizes state law above international law which means that the USA will be given priority to try its own individuals . Also the ICC, is required by its RS to yield primary jurisdiction to the United States for the fair trial of its nationals, this would thereby deprive the ICC of any authority over American citizens. The risk that United States proceedings would be held to be a sham that would be ignored by the ICC is conceivable but, in fact, is so far-fetched as not to constitute a

<https://assignbuster.com/the-road-to-rome-law-international-essay/>

plausible objection. (Ferencz, 2003) American myth states that ICC rests on the premise that its Statute is a higher legal authority than all other law, including the US Constitution but in reality in accordance with US constitutional law, if the US ratified the ICC Statute, it would become part of the federal law of the US, and thus superior to state laws, but not to the Constitution. (AMICC, 2009) Every treaty creates mutually accepted obligations and thus infringes on the "sovereignty" of the states involved but it must also be noted that even in absence of any treaty or agreement there exist certain universal prohibitions which aim to protect the interests of people everywhere without and prejudice. Law whether International or domestic, does not proceed solely by statute; it grows by practice, custom and binding legal decisions to meet the needs of a constantly changing society.

China

To begin with, unlike USA China have no military commitments overseas therefore it is not under fear of ICC trial of its troops. But that was not enough to convince China to become part of the ICC. Yes, China also is NOT a state-party to the Rome Statute and therefore not a member of ICC. China objects the ICC on five pretexts. Which are? The ICC jurisdiction is not based on the principle of voluntary acceptance; furthermore, principle of complementarity gives the ICC the power to judge whether a state is able or willing to conduct proper trials of its own nationals. War crimes in internal armed conflicts fall under the jurisdiction of the ICC. Crimes against humanity are prohibited in time of peace also. Inclusion of the crime of aggression within the jurisdiction of the ICC weakens the power of the UN

Security Council. Proprio motu[1]power of the Prosecutor may make the ICC open to political influence. (Wuthnow, 2012)China has neither signed nor ratified the RS. The PRC still claims to hold an " open attitude" about the Court, and does not " exclude the possibility" of one day acceding to it. In the meantime, it must be added that China has been an active observer state in the ICC's day-to-day affairs at The Hague. RussiaAs for Russia, it had initially signed the RS but has not yet ratified it . So the ICC statute has not been yet submitted to Russian parliamentary chambers although efforts by the Ministry of Justice has made efforts to introduce certain amendments into the Russian Constitution so as to facilitate Russia's cooperation towards the ICC . Problems regarding Russian ratification include certain provisions of the Russian Constitution. Having said that it must be added that there are no insurmountable legal hurdles to harmonizing the Russian Constitution and laws with the ICC Statute: therefore it all comes down to the question of Russia's political will. (Tuzmukhamedov, 2005)

Israel

Israel is also not a state party to the RS and thus does not fall under the Jurisdiction of the Court . But Palestine in time and time again has tried to bring Israel under the ICC . But unfortunately each time the ICC found that because Israel is not a signatory, and Palestine was not a legal sovereign, the Court had no jurisdiction in the occupied territories. However, recent upgrade of the Palestine Liberation Organization observer mission at the UN General Assembly to " nonmember observer state" might just change things and allow this newly redefined entity to accede to the RS and join the Assembly of State Parties at the ICC. But nothing is clear as yet. In April

2012, the ICC prosecutor's office expressed that it " has assessed that it is for the relevant bodies at the U. N. or the Assembly of State Parties to make a legal determination whether Palestine qualifies as a state for the purpose of acceding to the Rome Statute." (The Jerusalem Fund, 2012). The International Criminal Court could hold Israel culpable for West Bank settlement activity if the Palestinians become party to the Rome Statute, states a UN Human Rights Council probe. Israel has however rejected the report and has not cooperated with the mission and had barred its entry into the occupied area known as the West Bank. Article 49 of the Fourth Geneva Convention prohibits the transfer of civilian populations into an occupied territory, as does Article 8 of the Rome Statute. Article 8 is the chapter of war crimes,. So we can say that to put people directly or indirectly into the occupied land is a war crime. But the fact remains that only a court could conclusively determine whether Israel's transfer of population in this situation is a war crime, or not (Ku, 2011) . Thus there are solid reasons for the Israeli government to be apprehensive of the ICC as it is not in their political interest to be a part of it.

India

Indian stance on the ICC is slightly different than the states discussed earlier yet the bottom line here remains the same. Yes, India too is not a member of the ICC. India abstained from voting in favor or against the RS treaty. After digging out some information regarding India's reservations regarding the ICC it was found that Indian government seemed concerned about the lack of a certain " opt -in" provision whereby a state could accept the jurisdiction of the ICC by declaration (possibly for a specified period), and this might be

limited to particular conduct or to conduct committed during a particular period of time. Furthermore the inclusion of 'armed conflict not of an international character' in defining 'war crimes' in Article 8 of the ICCSt. constitutes another reason for India's concern (that the conflicts that persist in Kashmir, the North-East and as was experienced in Punjab, as well as the violence of more recent vintage in Gujarat, could be referred to the ICCTo sum up India's anxieties related to the ICC three are most serious: A broad definition of the term "Crimes against humanity". The right given to the Security Council to refer cases, delay investigations and bind non-State Parties. And how the principle of "Complementarity" would be implemented into the Indian Criminal System (Ramanathan, 2004). PakistanAlthough Pakistan supports the objectives of the ICC yet it too falls in the same category as other states discussed in this chapter. Following the same lines as others Pakistan objects to certain provisions of the Court which are: Lack of option to "reserve" any provision of the statute. Provisional arrest; something which is against the Pakistani legal system, where a person has to be charged within 24 hours. Lack of immunity for certain government officials such as head of state. (Akram, 2003)It must be added that Pakistan is one of the largest supplier of Peace keeping forces in the world therefore it seems inconsistent that it did not join the ICC . Pakistan too , like the USA expressed its concerns of falling victim to politically motivated prosecutions by the ICC. As mentioned above the objections of various states discussed above has presented its own version of objections towards the ICC . Ranging from States which are leading the rest of the world in terms of economy, politics and nuclear energy to those which are following the lead. But what's surprising here is the attitude of the most developed nations towards the ICC <https://assignbuster.com/the-road-to-rome-law-international-essay/>

which suggests that the Court is not taken as a serious body at all. If it was then not only USA, China and Russia but rising nations such as India would aim to secure prominent position in such an institution as it has already begun to demand a permanent seat in the Security Council. What is generally expected of a world's hegemonic power is a positive attitude towards such an effort towards humanitarian and criminal law body. But such USA's contradictions with various provisions of the ICC and its withdrawal from the treaty has not only disappointed those who saw the ICC as an answer to the problems of international criminal law but has also casted doubts regarding US commitment to safeguard international criminal law as a whole.

CHAPTER V

CASE STUDIES

Thomas Lubanga Dyilo (Congo Situation)

Congolese warlord Thomas Lubanga Dyilo was the first person ever to be convicted by the ICC . He is the founder and the leader of a revolutionary party called the Union of Congolese Patriots (UPC) . Rebels under his command are accused of horrendous crimes on mass levels , crimes such as ethnic massacres, rape, mutilation, murder, torture, and forcibly recruiting child soldiers.

The Ituri Conflict and Thomas Lubanga Dyilo

Ituri is a province in the northeastern region of DRC . Two ethnic groups namely the agriculturalist Lendu and pastoralist Hema have gone through various episodes of conflict back to colonial time's . In 1998 the Second Congo War broke out after merely a year from the First Congo War. It is

rated as Africa's most deadly war not only due to high death and casualties rates but because of its vast number of foreign states involvement. A total of 8 African states were involved in the war and death tolls had reached 5.4 million (McGreal, 2008). Thomas Lubanga was the military commander in Congolese Rally for Democracy-Liberation Movement (RCD-ML) but due to strict competition from other leaders of the same group he resigned and founded his own rebel group by the name of Union of Congolese Patriots. He was also the founder of the military wing of the party which was called Patriotic Force for the Liberation of the Congo (FPLC). By 2002 he led the FPLC to gain hold of the gold-rich region of Ituri and demanded that Ituri was given the status of autonomous province. According to HRW rebels under Lubanga's command have recruited child soldiers into their army ranging from ages 8-15, they are also accused of crimes such as mass murders, torture, rape and mutilation based on ethnic discrimination (HRW, 2006). In 2003 the UPC is reported to have destroyed 26 villages, killing hundreds of people and forcing thousands to flee to save their lives from the violence. Lubanga was arrested in 2005 for killing of nine Bangladeshi UN Peace Keepers in the Ituri Conflict. It was not until 2004 that the Congo government authorized the ICC to send Lubanga to trial as it was believed that he was the core of evil in the vast spread violence in the entire country (ICC, 2009). So, the ICC in 2006 issued an arrest warrant for Thomas Lubanga which was released by the Pre-Trial chamber. The Crimes for which Thomas Lubanga was to be tried were: Recruiting children of under 15 in his armed group, Enlisting children into armed groups, and Using children to participate actively in armed conflict. The Prosecutor has charged that because Lubanga was leading the UCP and FPLC all the crimes that his rebel followers have committed were part of his policy

<https://assignbuster.com/the-road-to-rome-law-international-essay/>

to spread terror in the region so as to gain political interests and popularity for his party (Lubanga Trial, 2012).

Other Criminals of War under trial in Situation in Congo

1 . Germain Katanga, also known as " Simba" (Alleged commander of the Force de résistance patriotique en Ituri (FRPI))2 . Bosco Ntaganda (Former alleged Deputy Chief of the General Staff of FPLC and alleged Chief of Staff of CNDP armed group, active in North Kivu in the DRC . 3 . Callixte Mbarushimana (Alleged Executive Secretary of the (FCA, FDLR)4 . Mathieu Ngudjolo Chui (Alleged former leader of the Front des nationalistes et intégrationnistes (FNI) . (ICC, 2013)

Trial

The trial began in 2009 and the prosecution presented the case and the victims before the Court . As easy as it may sound the real picture is much complex. During the trial Lubanga's lawyers, who also belong to the ICC, appealed for Stay due to non-implementation of the Chamber's orders by the Prosecution. However, the trial resumed in 2010 and after a long and tiring year it finally reached the verdict (Lubanga Trial , 2012).

Verdict

On 14th March 2012 the ICC released a guilty verdict against Lubanga . Guilty on the charges mentioned above for the time period between 2002 to 2003 Lubanga was sentenced for 14 years of imprisonment. Lubanga is currently detained in the cells of ' Haaglanden Prison' in Scheveningen in The Hague since 17 March 2006 . There is an impressive list of states which are ready to accept the sentenced prisoners from the ICC and the list includes

Finland, United Kingdom Belgium, Austria, Denmark, and Serbia (CICC , 2012)ICC's first case against a sitting president of a country is against Omar Hassan Ahmed Al Bashir of Sudan. Despite issuing of not one but two arrest warrants by the ICC Omar Hassan Ahmed Al Bashir has not been arrested or brought before the Court to be sent to trial. Reason for such bravery is a rare situation of the Arab countries which is their consensus regarding the rejection of handing over Omar to the ICC. This was done under the pretext that the ICC is " Anti Africa" and so is the prosecutor Luis Moreno-Ocampo when it comes to charging states with violations of international law(Waal , 2009) . But in this case it was the UNSC that referred the Darfur Genocide case to the ICC back in 2005 , eight years on Omar Al Bashir is still on the loose.

Darfur Crises and Omar Hassan Ahmed Al Bashir

The Second Sudanese War came to an end in 2003 which began back in 1983 but as the war came to an end another monstrous and deadly conflict began to unfold in the Darfur region . The conflict is rooted in the exploitative nature of the GoS. The rebel groups involved in this violent conflict are Sudanese Liberation Army and the Justice and Equality Movement whereas due to lack in military troops the GoS has installed a militia by the name of Janjaweed to fight off the rebels . The conflict began when two rebel groups URF, also known as JEM , and SLMA revolted against the GoS claiming that the GoS had been neglecting the Darfur region . The conflict took the form of guerilla warfare and was internationally condemned and was labeled as " Genocide" by the UN under the UN Genocide Convention . Acting under Chapter VII of the UN Charter, the UN

adopted Resolution 1593 which referred the Darfur situation to the ICC (AMICC , 2013). A striking death toll from between 200, 000 to 400, 000 has attracted international attention and the continuous humanitarian crises in the region called for desperate political changes. Thus in 2011 South Sudan became an independent State on the world map . Yet the horrors and devastation of the conflict still has got millions of victims including more than 2 million IDPs (The New York Times , 2009)There is a total of six cases ongoing in the situation as the verdict on Omar Al Bashir has been reached, the remaining accused are: 1. Omar Hassan Ahmad Al Bashir (President)2. Ali Muhammad Ali Abd-Al-Rahman (Alleged leader of the Militia/Janjaweed)3. Ahmad Muhammad Harun (Former Minister of State for the Interior of the Government of Sudan; Minister of State for Humanitarian Affairs of Sudan)4. Bahar Idriss Abu Garda (Chairman and General Coordinator of Military Operations of the United Resistance Front)5. Abdel Raheem Muhammad Hussein (Current Minister of National Defence and former Minister of the Interior and former Sudanese President’s Special Representative in Darfur)6. Saleh Mohammed Jerbo Jamus (former Chief of Staff of SLA-Unity and currently integrated into JEM)7. Abdallah Banda Abakaer Nourain (Commander-in-Chief of JEM Collective-Leadership, one of the components of the United Resistance Front) (ICC, 2013)

Accusations

Omar Al Bashir has been accused of trying to exterminate all non-Arab ethnic groups from within . Bashir is currently on the " Wanted" list of the ICC as most of the African states have refused to hand him over to the ICC for a trial.

Accusations in the first Arrest warrant

Five counts of crimes against humanity (murder, extermination, forcible transfer, torture and rape) and two counts of war crimes (intentionally directing attacks against a civilian population and pillaging (AMICC, 2012)

1st Warrant of Arrest

The Pre-trial Chamber at the ICC issued the first warrant on 4th March 2009 for the arrest of the sitting president of Sudan on seven charges of War Crimes and Crimes against humanity these included murder, extermination and rape (AMICC 2012).

Accusations in the Second Arrest Warrant:

Three counts of genocide (by killing, by causing serious bodily or mental harm and by deliberately inflicting conditions of life calculated to bring about a group's physical destruction) (ICC, 2013)

2nd Warrant of Arrest

Issued by the Pre-Trial Chamber on 12th July 2010 the second arrest warrant for Ahmed Al Bashir included three charges of Genocide (AMICC 2012) In addition the arrest warrant states that there are " reasonable grounds to believe" that the Bashir regime carried out this ethnic cleaning of three non-Arab tribes namely the Zaghawa, Fur, and Masalit. Prosecutor Luis Moreno-Ocampo accused Mr. Bashir under Article 25(3)(a) of the RS as an indirect (co) perpetrator of genocidal activities. In both case studies a clear contrast exists when the outcomes of each trial are compared . Both states belong to the African continent and are third world states which have been involved in continuous wars and political instability has weakened the states internal

structures. So why is it that Thomas Lubanga is serving his 14 years in prison for violating international law while Omar Ahmed Al Bashir is still the sitting head of state of Sudan . The answer lies in the regional politics of the African continent.