



- International Committee on Red Cross (ICRC) suggested the formation of a permanent global criminal mechanism to try criminals of the Franco Prussian war of 1872.
- The demand for an internationalized justice system was further propelled by the horrific crimes perpetrated during the course of the World War I.
- The immense destruction of human life and property made the League of Nations - the first global institution consisting of States to rethink the notion of establishing a permanent penal tribunal.
- LON in a conference adopted a Convention for the Creation of an International Criminal Court
- It was accepted by 10 other states but due to shortage of State support, it never came into operation.
- The bloody aftermath of the World War II gave an impetus to the movement of establishing a permanent criminal institution
- The Treaty of Versailles of 1919, the peace settlement document did comprehend the presence of a penal tribunal to hold the German Emperor and other German war criminals accountable
- A piecemeal progress was shown by holding the Nuremberg and Tokyo trials by military tribunals for German and Japanese war criminals.
- Although these tribunals were criticised for their biased role by defending victorious sides to trial but just punished the German and Japanese war criminals as both the countries lost World War II - Popularly termed as 'Victor's Justice'
- The United Nations Organization recognised the need for a specialized criminal tribunal as a result of past atrocities.
- In the Convention on the Prevention & Punishment of the Crime of Genocide 1948, recognition of a penal tribunal addressing the crime of Genocide, was another endorsement of will to set up a court.
- United Nation General Assembly requested the International Law Commission(ILC) to study the possibility of a permanent criminal mechanism.
- The ILC steadfastly worked on several drafts in the period between 1951 and 1958 & finally submitted a refined version of its draft treaty in 1994.
- Prior to this, the Security Council established two ad hoc courts in Former Yugoslavia & Rwanda to hold individuals accountable for serious war crimes
- The ILC recommended series of meetings to finalize the text of the treaty resulting in the General Assembly setting up a Preparatory Commission.
- From 1996 to 1998 two years the Preparatory Commission worked on the draft & in a conference in Rome in 1996 asked States to debate on the draft treaty.
- The one month long conference witnessed the participation of 160 countries & over 200 innumerable NGOs & the Rome Statute was finally adopted on 17 July, 1998 after intense negotiations with 120 nations voting in favor
- Seven nations voting against the treaty (inclusive of the United States, Israel, China, Iraq and Qatar) and 21 states abstaining.
- Sixty states were required to ratify the Rome Statute for the International Criminal Court (ICC) to come into force.
- On 1st July 2002, the Rome Statute entered into force & the world got its first ever international criminal court.
- ICC contains path-breaking provisions like the concept of rights of victims which was never a part of previous tribunals/courts.
- All these measures are aimed at ensuring effective justice to the victims & their families.
- ICC is a treaty based institution.
- ICC is an independent body & is not one of the bodies under the United Nations Organization (UNO).
- The ICC binds only those States that have ratified the Rome Statute.
- ICC is vital in ending impunity & bringing in accountability based on the experience of the past few decades of conflicts & crimes .
- The lack of a permanent criminal tribunal encourages govts & individuals to break the basic morals & rules of humanity & to practice gross violations of international humanitarian laws.
- ICC aims to prosecute & punish individuals who commit some of the most serious offences of the world like genocide, war crimes, crimes against humanity, rape, torture, persecute, enslave, killing people based on their gender, religious, racial, ethnic, cultural differences etc.
- It will point out individuals who bear greatest responsibility for acts or omissions they have committed.

ORGANIZATION

- The Presidency has the responsibility of managing the administration of the Court.
- The Judicial Divisions consist of 3 levels — Pre Trial, Trial & Appeal Divisions.
- The Office of the Prosecutor (OTP) is responsible for receiving complaints & conducting investigations & receiving referrals from UN & for prosecuting the offender before the Court.
- The Registry has the main task of other non-judicial functions & administration of the Court.

- Apart from these four main organs that constitute the backbone of the ICC, a Trust Fund has also been created for the victims of crimes.
- The Trust Fund provides material & other assistance to the most vulnerable victims. It assists the victims in implementing the Court's orders. It also facilitates rehabilitation of the victims.
- It also contributes to ensuring victims receive justice by identifying them & by raising awareness on the plight of the victims of these massive crimes.
- The ICC by the year 2010 hearing cases from four countries — Uganda, Democratic Republic of Congo, Central African Republic and Sudan. Out of these, the first three cases have been referred by the States to the office of the Prosecutor
- Whereas the case on Sudan was referred by the UN Security Council to the Office of the Prosecutor. All the four cases are from the African Continent.

APPOINTMENT OF JUDGES

- The International Criminal Court (ICC) is composed of 18 judges, who are elected for terms of office of nine years by the Assembly of States Parties (ASP) to the Rome Statute, the founding instrument of the Court. They are not eligible for reelection.
- The judges are chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
- They have either established competence in criminal law and procedure, and the necessary relevant experience, whether as a judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court.
- Candidates for election to the Court need to be nationals of States Parties to the Rome Statute. Nominations are made by State Parties.
- Each State Party may put forward one candidate for any given election but the latter does not necessarily need to be a national of that State Party.
- Judges are elected by secret ballot at a meeting of the ASP convened for that purpose.
- The persons elected to the Court are the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present & voting.
- The election of the judges takes account of the need to represent the world's principal legal systems, a fair representation of men & women, and equitable geographical distribution.
- In addition, at least nine judges need to have relevant experience in criminal law and procedure and at least five need to have established competence in relevant areas of international law.
- The judges are independent in the performance of their duties. They may not engage in any other activity

which is likely to interfere with their judicial functions or affect confidence in their independence

- A judge may not participate in a case in which his or her impartiality might reasonably be called into question on any ground.
- The judges elect the President and the two Vice-Presidents of the Court from among their ranks.
- Acting on behalf of the Court, the Presidency can propose the increase in the number of judges, if this is necessary and appropriate.
- The Court organises itself into three divisions: Pre-Trial, Trial and Appeals Divisions.
- The assignment of judges to divisions is based on the nature of the functions to be performed by each division and the qualifications and experience of the judges so that each division contains an appropriate combination of expertise in criminal law and procedure and in international law.
- Although judges are not eligible for re-election, a judge assigned to a Trial Chamber or the Appeals Chamber may remain in office after the end of his or her term to complete any trial or appeal which has already begun before that Chamber.

FEATURES

- It is the first ever permanent treaty based institution commands better authority & status than its predecessors the Nuremberg & Tokyo military tribunals.
- It commands the membership of 123 States as of October 2009.
- Almost all European & South American countries as well as half of the African nations have accepted the Rome Statute.
- The focal point of the ICC is individual criminal responsibility.
- It implies that it will investigate, prosecute & punish individuals responsible for international crimes.
- These individuals can be heads of States, or ministers or other civilian rulers.
- It also includes military commanders as well as military heads.
- Even low ranking officials & soldiers would find themselves under the scrutiny of the ICC if they have committed these grave crimes.
- The principle of complementarity is the biggest asset of the ICC.
- The Court will initiate action against an individual only after the State to which he belongs to has either been unable to prosecute him or has been unwilling to do so.
- The principle of complementarity means that the international court will complement the national courts & the former would be used only as a last resort.
- The ICC will investigate & prosecute only when the national courts have failed.
- ICC does not seek to replace the authority or supremacy of domestic courts

- The ICC can investigate & prosecute most of the important international crimes.
 - The ICC will try individuals who commit some of the most serious offences like genocide, war crimes, crimes against humanity & aggression.
 - The ICC can investigate into situations of mass human rights violations only if they have been committed after 1st July 2002.
 - Rome statute have no retrospective application, but only prospective
 - As stipulated in the Rome Statute, genocide is defined as a list of prohibited acts, such as killing or causing serious harm, committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group.
 - The second category is crimes against humanity that includes crimes such as the extermination of civilians, enslavement, torture, rape, forced pregnancy, persecution on political, racial, national, ethnic, cultural, religious or gender grounds, and enforced disappearances - but only when they are part of a widespread or systematic attack directed against a civilian population.
 - This "widespread or systematic" component for crimes against humanity is extremely important, since it provides a higher threshold, requiring a particular magnitude and/or scope and intensity before a crime qualifies for the Court's jurisdiction.
 - This specific qualification differentiates random acts of violence – such as rape, murder, or even torture – that could be carried out, perhaps even by soldiers in uniform, but which may not actually qualify as crimes against humanity.
 - War crimes comprise of grave breaches of the Geneva Conventions & violations of the laws & customs that can be applied in international armed conflict, & in armed conflict "not of an international character", as listed in the Statute, when they are committed as part of a plan or policy or on a large scale.
 - The crime of aggression is mentioned in the Rome Statute but the international community is divided over the definition of the term.
 - ICC Review Conference at Kampala in July, 2010, has significantly developed the jurisprudence on this point
 - The crime of terrorism was also debated during the Rome Conference. However it is not included in the Rome Statute, because there are already numerous international, regional and national treaties and agreements dealing with this crime at all levels
 - It was deemed more appropriate to draft a separate & comprehensive treaty on Terrorism subsequently.
 - Drug trafficking not included in the list of crimes over which the court can exercise jurisdiction. Because countries felt that given the transnational, trans-boundary & Trans continent character of the crime, it might result in exhausting too much of time.
 - The Rome Statute describes clearly how and when the Court can initiate investigations into a matter or initiate prosecutions against a leader-military or civilian.
 - This is to ensure that the Court is not influenced by political motives, powerful countries or frivolous complaints.
 - The Court can step in under 3 conditions the crime is committed in the territory of a State party, the accused is a national of State party or one or more of the parties involved is a State Party.
 - If a non party State wishes to accept the Court's jurisdiction into a specific matter & finally if the Security Council of the UNO refers a case to the Court, it can act.
 - The Office of the Prosecutor is the focal point in all these activities. So either the Prosecutor himself initiates an investigation or the State party refers a matter/ situation to the Prosecutor or the UN Security Council refers a situation to the Prosecutor.
 - The ICC has also taken a special interest in the status of the victims. It not only provides for the usual monetary compensation that most victims but also accords certain extra rights to the victims.
 - A Trust Fund has been set up to adequately rehabilitate and resettle the victims.
 - Witness & Victims Counselling Centre wherein the physiological trauma & sufferings of the victims
 - The victim is not a silent spectator when the trial is in process.
 - They have been given the right to participate in the trial, question the accused, question the witness etc., and are thus assigned special rights unlike before
 - The rights of the accused are also sought to be protected.
 - The usual list of rights available to them are the right to remain silent, right to a lawyer, fair trial, right to family contact etc.
 - The Court is mainly financed & funded through States who are parties to the Rome Statute & the amount each State pays is determined on the basis of the income of the country.
 - Organisations, individuals, corporations, voluntary contributions from States etc., also are other sources of funding.
 - The United Nations Organization may also provide financial resources on two conditions- it has to be approved by the UN General Assembly & it has to be related to a case/matter that has been referred by the UN to the ICC.
 - The Court is located in The Hague, the Netherlands.
- DIFFERENCE BETWEEN ICC & ICTY (ICTR)**
- The ICC is a treaty based institution. The Rome Statute is the text on which the ICC is based.
 - Both the ad hoc courts ICTY (INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA) & ICTR (International Criminal Tribunal for Rwanda) were established by the United Nations Organization (UNO).

- The United Nations Security Council passed two resolutions to set up the ad hoc courts.
 - These are not treaty based institutions but are based on Security Council resolutions.
 - The ICC is a permanent criminal institution.
 - Both the ad hoc courts are temporary institutions. They were set up for a specific time and conflict.
 - Both the ad hoc courts are supposed to finish their work by 2010 whereas the ICC will be in existence forever
 - The ICC is broad based & all member States of the Rome Statute can refer their cases to the court.
 - The non-member countries have the option of referring a particular case to the ICC.
 - The ICTY & ICTR have very restricted mandate in comparison.
 - The ICTY was set up to try cases only from Former Yugoslavia & the ICTR was established to hear cases from only Rwanda.
 - Both the courts cannot hear cases/issues from any other countries.
 - The ICC also possesses a wider mandate as it can hear cases from all countries regardless of its location
 - The ICC is completely independent of the UNO. It is not controlled or influenced by the UN.
 - The ad hoc courts were set by United Nations Security Council so they share a close relationship with the UNO especially the Security Council.
 - Thus the ad hoc courts to that extent, are not independent bodies.
 - The ad hoc courts are, in fact, subsidiary bodies of the UNO.
 - The ICTY and ICTR exercise primary jurisdiction over cases and suspected individuals. This means that if the domestic (national) courts in Rwanda or Yugoslavia have an offender in their custody and against whom they are hearing a case, if the ad hoc tribunals seek the custody of the offender as well as the transfer of the case from the domestic to the ad hoc courts, the same has to be implemented. The domestic courts to that extent are secondary to the ad hoc courts.
 - The ICC is built on the principle of complementarity which means if the national and domestic courts in investigating or hearing a case, the ICC will not interfere
 - The only exception being that if the State is unable or unwilling to investigate a case and prosecute an offender, the ICC will step in.
 - A permanent institution represents the collective will of the world
 - This is the demand of the international community & thus its support would make a permanent court like the ICC more effective.
- COMPARISON BETWEEN ICJ & ICC**
- The international community may not be excited about ad hoc tribunals as they are country and conflict specific Only a handful of States shape the success of these ad hoc courts
 - The International Court of Justice (ICJ) is the principal judicial organ of the United Nations Organization (UNO).
 - The ICJ was established under the UNO Charter in 1945. Thus it's an integral organ of the UN and thus is a treaty based institution (under UNO Charter).
 - The ICJ hears disputes between States/governments of different countries only.
 - The ad hoc courts and the ICC will hear cases only against individuals who have committed crimes. No States/governments are involved herein.
 - The ICJ cases refer to disputes like border issues, land & maritime issues. The ad hoc courts and ICC hear cases pertaining to gross human rights violations like war crimes, genocide, crimes against humanity, torture etc.
 - The ICJ is a permanent body and is sometimes referred to as the 'world court'.
 - The ad hoc courts are temporary while the ICC is a permanent international criminal institution.
 - The ICJ thus has the power and authority to only address civil disputes between States whereas ad hoc courts & the ICC tries criminal cases against individuals.
 - The ICJ is within the UN system that is the legal basis of its existence.
 - The ad hoc courts are product of the UN - the Security Council and thus both share a close relationship with the UNO.
 - The ICC is completely independent of the UN with a prima facie simple working relationship with the UN, in reality however, political compulsions and the world order have ensured that it is not entirely devoid of any influence or coercion by the UNO.
 - For example, the Rome Statute gives certain powers to the UN over the conduct of the Court's affairs and investigations.
 - Article 13 gives the Security Council the power of referral, even with respect to matters wherein the Court would not have strictly had jurisdiction- such as in the case of Sudan which was referred to the ICC for the
 - A further example of the influence that the UN may potentially exercise stems from Art 16 of the Rome Statute which permits the Security to mandate that the ICC defer investigations on a particular matter for a period of 12 months which may be indefinitely extended by the Council.
 - The lack of support that the ICC enjoys from some of the powerful countries of the world like USA.
 - USA has openly been undermining the authority of the ICC and has gone to the extent of "unsigned" the Rome Statute.
 - India has also refused to sign the Rome Statute
 - Moreover, most Asian countries have bypassed the ICC has meant that it is not enjoying world support.
 - The utmost reliance that the ICC places on States who have joined the Rome Treaty.

- Since the ICC has no police force or investigative agency of its own – it totally depends on State parties for complete, timely and regular support.
- This shortcoming has been brought into sharp relief by the arrest warrant issued against President Omar al-Bashir (Sudan)– without the compliance of other states, even in cases when they have been party to the Rome Statute, the ICe has proved powerless to bring him to book.
- Most conflicted countries are in far flung areas, unstable and unsafe, there is problem of accessing the sites for investigation, collecting evidence etc., and this can hamper the effective functioning of the Court.
- There is also a huge shortage of funds for the ICC to carry out its work effectively and without any interruptions
- Still further, the ICC has no jailor detention centre of its own.
- It yet again depends on State cooperation in this matter and would hope that States would offer their territory for housing some of these dreaded criminals.
- This also implies that the ICC would also heavily depend on State cooperation for arresting criminals or extraditing them if they are found in their territory.
- The ICC will have to work on a successful, effective and non biased criminal justice system.
- Furthermore, not only should more States join the ICC but existing States should show their cooperation with effective action and by diligently following the ICC's directions. Only if there is actual obedience to the ICC's directions and not mere lip service or formality, will the ICC succeed and the onus is on the States to collectively ensure this. The strength and successes of the ICC depends on the extent, duration and quality of cooperation and support that the State parties and non-State parties showcase.
- The ICC is also currently facing stiff resistance from the African States. This is a major blow to the ICC as most of the African nations are party to the Rome Statute. The ICC is currently investigating and hearing 4 cases- all four are from African Continent. This has made the African States feel that the ICC is targeting African leaders and countries and that the powerful countries of the world are again trying to oppress the African people through the ICe.
- This remains an unjustified stance as out of the four cases that the ICC is right now hearing, three of those cases were directly referred to it by the concerned governments of the States.
- These States have voluntarily submitted themselves to the authority of the ICe.
- It is only the case of Sudan that was referred by the UN Security Council and the Sudanese Government has been protesting against this move. However the African States have decided not to cooperate with the ICC, situations like this can affect the ICC's future



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