Dedication

I dedicate this M.Phil thesis to my mother, the ultimate superstar of my life who has inspired me in every step of my journey. I also want to dedicate this thesis to my supervisor Professor Dr. Jamila A. Chowdhury, an amazing person who has guided me through this challenging journey.

Declaration

I, ZannatulFerdous, hereby declare that the M. Phil thesis titled "**Guaranteeing Universal Administration of Criminal Justice: Realities and Challenges**" submitted in fulfillment of the requirements of M. Phil. degree embodies the results of my own research activity pursued under the supervision of Dr. Jamila A Chowdhury, Professor, Department of law, University of Dhaka. I have done this research with my own effort and incorporated relevant information. I have used lots of literature in my study and also provided accurate references for completing the thesis as a partial fulfillment of the requirementsforthe degree of Masters in Philosophy (M. Phil.) in International Criminal Law. I am submitting this thesis to the department of law, University of Dhaka.

I further declare that this thesis is myoriginal workthatis free from plagiarism and has not been submitted earlier partly or wholly to any other university or institution for any degree or diploma.

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Certificate of Approval

This is to certify that ZannatulFerdous has conducted her M.Phil thesis titled "**Guaranteeing Universal Administration of Criminal Justice: Realities and Challenges**" under my supervision. Her registration no. is 28/2019-2020.

To my knowledge, no part of this thesishas been submitted anywhere else for any other degree, diploma or publication. This thesis is submitted to theDepartment of Law, University of Dhakaas apartial fulfillment of the requirements for the degree of 'Mastersin Philosophy' in the Field of International Criminal Law.

I wish her all the best for the coming future.

Dr. Jamila A. Chowdhury
Professor,
Department of Law
University of Dhaka

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With Regards,

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Abbreviation and Acronyms

ACHR-American Covenant of Human Rights

CAH-Crimes Against Humanity

DRC- Democratic Republic of Congo

EU- European Union

GA- General Assembly

ICC- International Criminal Court

ICCPR-International Covenant on Civil and Political Rights

ICJ- International Court of Justice

ICRC- International Committee of the Red Cross

ICT-BD-International Crimes Tribunal Bangladesh

ICTR- International Crimes Tribunal for Rwanda

ICTY-International Crimes Tribunal for the Former Yugoslavia

IRMCT- International Residual Mechanism for Criminal Tribunals

SCSL-The Special Court for Sierra Leone

STL- Special Tribunal for Lebanon

UNDP -United Nations Development Programme

UNEP- United Nations Environment Programme

UNFPA- United Nations Fund for Population Activities (United Nations Population Fund)

UNICEF- United Nations International Children's Emergency Fund (United Nations Children's Fund)

UNSC-United Nations Security Council

UN-United Nations

US- United States

WFP- World Food Programme

WW- World War

ECJ-European Court of Justice

IMT- International Military Tribunal

IRMCT- International Residual Mechanism for Criminal Tribunals

Table of Contents

Abstract

A countries ability to pursue justice for all depends on how well-functioning and broadly applicable its criminal justice system is. Most of the national laws for international crimes follows the fundamental principles and instruments of internationally recognized and applied criminal laws for which no significant differences can be seen between national and international tribunal regarding the trial of those crimes. The present applied universal principles of international crimes are not completely successful to stop the ongoing crimes of genocide, crimes against humanity and war crimes all over the world. The global peace and security, brotherhood and sovereignty of state are under threat by the current geopolitical situation. The overall trend of contemporary criminal justice system of the world served as a driving force to search for a better universal judicial system that can ensure global justice and end the culture of impunity along with deterring them from happening again in future. This study conducts a thorough examination of the procedures and difficulties of national and international tribunals and how criminal justice systems are now functioning throughout the world on a purpose of guaranteeing the equitable administration of criminal justice on a global scale. It also explores various gaps between national and international tribunals that they face while prosecuting international criminals and also pointing out the differences and injustices that impede the achievement of universal criminal justice. It investigates how administrative norms, judicial structures, and demographic factors contribute to the persistence of systemic prejudices considering both the contribution and loopholes of global authority like ICC, EU, and UN. Introduction of new principles on the trial of international crimes, application of the principle of complimentarily along with better cooperation of other countries, following obligatory principles of international legal instruments are crucial to reduce the rate of international crimes happening worldwide. This study found that adaptation of international principles and transferable strategies like parenspatriae jurisdiction can diverse the contexts to foster a more equitable and accessible criminal justice system. This thesishas concluded that how harmonization between national and international tribunals through application of new principles could have helped to develop the existing jurisprudence of international criminal laws as well as it provides ways to overcome the existing challenges faced by international Criminal Court.

Guaranteeing Universal Administration of Criminal Justice:

Realities and Challenges

CHAPTER 1

INTRODUCTION

1.1.RESEARCH BACKGROUND

Municipal laws and international laws often face conflicts of jurisdiction. Universal jurisdiction allows states or international organizations to claim criminal jurisdiction over an accused person regardless of where the alleged crime was committed, and regardless of the accused's nationality, country of residence, or any other relation with the prosecuting entity. Crimes prosecuted under universal jurisdiction are considered crimes against all, too serious to tolerate jurisdictional arbitrage. However, a gap is apparent in the role of State and international mechanisms. There is no international *parenspatriae* mechanism in existing international criminal laws to assist national courts and tribunals for the trial of genocide, crimes against humanity, and war crimes under the established doctrine of universal jurisdiction.

In many ways, international criminal justice for the atrocity crimes of genocide, crimes against humanity, and war crimes truly begins with post-World War II trials, most notably the International Military Tribunal at Nuremberg (Nuremberg Tribunal). The purpose of setting up the tribunal was to ensure justice for crimes committed during the war only. Following the Eichmann Case, the most heinous crimes receiveduniversalrecognition for trial in subsequent many national and international instruments.[1]The ICC was eventually born amidst difficult negotiations and now must live in the rough-and-tumble world of international relations and diplomacy.[2]However, the ICC and the domestic courts have no mechanism to harmonize with the trial of international crimes. The thesis will investigate if there are any reluctance and silenceof the existing international setup of criminal justice in denying due justice.

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[1]*Attorney General of the Government of Israel v Eichmann,*District court of Jerusalem, 40/61 (1962).
[2]BruceBroomhall, *International Justice and the International Court: Between Sovereignty and the Rule of Law*(Oxford University Press, 2003) 43-44.

It is highly apparent that national and international laws have no significant difference in substantive laws of criminal justice for trials of crimes mentioned. International legal instruments for the trial of genocide, war crimes, and crimes against humanity have so far supported national laws with conceptual and argumentative facilities. For example, the Tokyo War Crimes Tribunal followed the drafting set up of the Nuremberg Tribunal[3],the International Crimes Tribunal of Bangladesh also received drafting support from International legal instruments[4] and the Supreme Court of Argentina reopened the trial of crimes committed by the military dictatorship following the arguments of international criminal jurisprudence.[5]However, none of the national or international mechanisms in initiating, standard and procedural issues of the trials of international crimes is beyond criticism. The thesis will investigate the points and extent of such contrasts.

Therefore, this thesis aims at investigating as to whether national and international laws and mechanisms should compromise at any level to ensure international criminal justice forall with less criticism.

1.2. RESEARCH QUESTIONS

1. What is the jurisprudential basis forenvisioning a Universal Administration of International Criminal Justice?
2. How such a universal administration be administered among nations?
3. What are the loopholes and challenges to materializing this universal concept?

The research will investigate three basic questions. Firstly, what are the apparent gaps between national and international laws in ensuring criminal justice? Secondly, is the existing setup of international criminal justice responsible for the denial and delay of justice within

[3]Charter of the International Military Tribunal for the Far East, Constitution of Tribunal, (1999) available at: <https://web.archive.org/web/19990222030537/http://www.yale.edu/lawweb/avalon/imtfech.htm>accessed on 22 September 2023.
[4] See, for example, the definition clauses of the International Crimes (Tribunal) Act, 1973 [Act No. XIX of 1973].
[5]María José Guembe, 'Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship' (2005) 2 (3) IJHR, available at: <https://sur.conectas.org/en/reopening-trials-crimes-committed-argentine-military-dictatorship/> accessed on 22 September 2019.

national jurisdiction? Thirdly, is it possible to universalize the existing mechanism of international criminal justice?

1.3.RESEARCH OBJECTIVES

There are some specific underlying objects of this proposed thesis. First of all, this piece will enlist the reasons and significanceof a universal international mechanism for the trial of international crimes in harmony with national mechanisms. This will explore the areas of jurisprudence and possible legal mechanisms by which international criminal justice can be made accessible to all. In such investigation, the thesis will outline the procedural and concerned gaps between various national and international instruments. After that, the existing legal instruments will be revisited and the reasons forthe deviation from the 'standard' willbe categorized. The thesis will tend to make a possible link between national and international mechanisms. Finally, a logical conclusion on the possibility and the setting of a universal administration of criminal justice will be brought.

The global community always cherished to have a permanent independent global forum for the administration of international crimes which became true after the establishment of the court. The ICC is believed to be an impartial court having independent process of trial and adjudication. However, the Rome Statuteprovides an adequate framework of law that can effectively carry out the court's mandates.[6]But the present scenario shows that the ICC is a less effective authority at meeting the expectations of the global community. This paper includes revisioning the existing legal instrument, both national and international tribunals and also discusses the concerned procedural, jurisdictional and administrative gaps of both national and international tribunals.

[6]Nakib M. Nasrullah and BorhanUddin Khan, 'Impediments to the Smooth Functioning of the ICC: Who Is Responsible?" in BorhanUddin Khan and Md. Jahid Hossain Bhuiyan (eds) *Human Rights and International Criminal Law* (BRILL| NIJHOFF, 2022).

1.4.METHODOLOGY

The research will be a qualitative one and it will be based on both primary and secondary sources. Relevant national and international legislation, judgments, official notes, reports, and data will be the primary sources. On the other hand,consistentarticles, newspapers, commentaries, and online and offline resources will be applied as secondary sources in arguing facts and issues of existing tension between national and international jurisdictions. The research will follow the analytical standards in visualizing the reality and impacts of non-harmonization between national and international laws although both have the same spirits and objectives. Finally, the manuscript will come into justified remarks and recommendations if it is possible to guarantee a universal administration of justice.

1.5. RESEARCH LIMITATIONS

The research does aim at being through a few limitations. This is be limited to dealing with the most hatred and civilization-threatening crimes having international dimensions like genocide, crimes against humanity, and war crimes. For analyzing national jurisdictions, the research accommodates case studies of few Stateson the basis of expert opinion from my supervisors. Obviously, the case of Bangladesh and Argentina is there. The research is focus on the challenges against a harmonized fusion of universal criminal justice.

The Rome Statutewill be reinvestigated in finding the true conflicts between national and international jurisdictions.

CHAPTER-2

MEANING AND APPLICATION OF A UNIVERSAL ADMINISTRATION OF CRIMINAL JUSTICE

2.1. CHAPTER SUMMARY

This chapter discovers the idea of universal administration for international crimes with thedefinition from the researcher's point of view. The first part of the chapter defines the term 'universal administration of criminal justice,' highlighting its importance in creating a worldwide framework for dealing with criminal activity.Secondly, a brief discussion about the significance of universal administration of criminal justice will be given along with the jurisprudential basis of universal administration. This chapter also discusses the differences between the national and international jurisdiction of international crimes and in what circumstances the national government might have lost the jurisdictional authority to conduct the trial of international crimes. Additionally, the chapter also examines the essential elements of universal administration criminal justice.Universal administration of criminal justice comprises legal doctrines, customary practices, and institutional structuresintended to guarantee the uniform and unbiased administration of justice worldwide.This thesistries toaddress issues with legal customs, national sovereignty, and cultural variety while highlighting the advantages and disadvantages of putting such a system into place.

The main themes of this chapter include the promotion of a global approach to criminal justice through the work of international bodies and treaties. Similarly, the roles played by organizations like the United Nations, and ICC and regional alliances like the EU in establishing international norms and encouraging cooperation between various legal systems will also be discussed in the next chapter.As a whole, this chapter provides a thorough examination of the significance and practical implications of an international criminal justice system.It guides readers through theoretical underpinnings, real-world scenarios, and practical difficulties to provide them with a comprehensive grasp of the difficulties in developing an international framework for maintaining justice in the face of changing criminal environments.

2.2. INTRODUCTION

In general, criminal justice refers to a set of rules, structures, as well as procedures placed together to uphold the rule of law, deter and penalize crime, and ensure that justice is rendered impartially.[7] As they are molded by legal customs, social norms, cultural norms, and the political dynamics of each jurisdiction, criminal justice systems may differ significantly from one nation to the next.Similarly, the global regulation of criminal justice refers to a uniform administration or principles of international criminal law by which the accused will be prosecuted by every state regardless of any other ties to the prosecuting nation'.[8]These principles are the pre-requisites to prosecute the criminals of international crimes and also serve as the foundation of international criminal law. Since criminal justice systems are normally established at the national or regional level and can differ greatly in their laws, procedures, and practices, there is currently no uniform or universal administration in use. It is crucial to remember that the creation and implementation of criminal justice systems are complicated, diverse, and influenced by a variety of circumstances.Moreover, criminal justice seeks to deter future crimes by penalizing the criminal conduct and sometimesrehabilitatingthe criminals through incarceration.[9]

Similarly, the Universal administration of criminal justice eludes the notion of global or unified norms of criminal justice.Generally, a set of laws or principles acknowledgedand applied worldwide is referred to as having a universal jurisdiction.[10]It may refer to an idealized collection of rules or guidelines thatwouldbe followed consistently throughout all nations or jurisdictions to establish a universalstandard for the administration of justice in criminal

*The term **universal jurisdiction** refers to a principle based on which a national court may prosecute individuals for serious crimes against international law — such as crimes against humanity, war crimes, genocide, and crimes of aggression. Such crimes are so heinous in nature that it harms the international community or international law and order situation, which individual States may act to protect.

[7]'Compendium of United Nations standards and norms in crime prevention and criminal justice'(United Nations Office on Drugs And Crimes, 2006) available at: <https://www.unodc.org/unodc/en/justice-and-prison-reform/compendium.html> accessed on July 12, 2003.

[8]'Universal Jurisdiction' (European Center for Constitutional and Human Rights) available at: <https://www.ecchr.eu/en/glossary/universal-jurisdiction/> accessed on 25 September, 2023.

[9]'Introducing the aims of punishment, imprisonment and the concept of prison reform' (UNODC, July 2019)<https://www.unodc.org/e4j/en/crime-prevention-criminal-justice/module-6/key-issues/1--introducing-the-aims-of-punishment--imprisonment-and-the-concept-of-prison-reform.html> accessed on 23 September 2023.

[10]Xavier Philippe, 'The principles of universal jurisdiction and complementarity: how do the two principles intermesh?' (2006) 88 (862) selected articles on IHL.

cases.[11]Moreover, the concept of a universal administration of criminal justice would demand substantial international cooperation and consensus among states and probably would face difficulties due to legal, cultural, and practical factors.[12]According to the principle of ***AutDedereAutJudicare***,'it is the legal obligation of states under public international law to prosecute persons who commit serious international crimes where no other state has requested extradition'.[13] This principle authorizes the legal obligation of a state to try a person for committing international crimes who arenot linked to that particular state by either nationality of the suspects or victims or by harm to the state's own national interest. This is the basisof universal jurisdiction.Its potential applications would depend on its substance and scope, which would need to be established and approved by a global agreement.

For the purpose of this paper, the universal administration of criminal justice reflects the idea of a universally accepted mechanism for the trial of international crimes. Currently, various international mechanism is used worldwide to bring the perpetrators of international crimes before justice but in a nutshell, those international bodies and organizations with their established court and mechanism couldn't successfully deter the happening of crimes like genocide and war crimes. The current legal mechanism for international crimes is well accepted and applied by the world community but the time consumed to start the trial and the jurisdictional dilemma of the court is hampering the right to fast and speedy trial. However, by the maxim of 'justice delayed is justice denied', it is widely expected that justice will be delivered timely and efficiently.[14] Moreover, the objective of criminal justice is not only to ensure justice forthe victims but also to deter international crimes from happeningfurther. However,by analyzing the world's current situation, it can be said that the legal mechanism is not successful in preventing international crimes from happening. This thesis will try to find out the procedural and concerned gap between

[11]Isidoro Blanco Cordero, 'Universal jurisdiction General report'(2008) 79(1/2) RIDDP, available at:<https://www.cairn.info/revue-internationale-de-droit-penal-2008-1-page-59.htm>accessed on 18 June 2023.
[12]'Manual on InternationalCo-operationin Criminal Mattersrelated to Terrorism'(United nations office on drugs and crimes,
2009)<https://www.unodc.org/documents/terrorism/Publications/Manual_Int_Coop_Criminal_Matters/English.pdf> accessed on 09 May 2023.
[13]'International Law Commission: The Obligation to Extradite or Prosecute (Amnesty International,*AutDedereAutJudicare*)' (2009) https://www.amnesty.org/en/wp content/uploads/2021/07/ior400012009en.pdf>accessed on 09 September 2023.
[14]Justice Delayed is Justice Denied is a maxim which often used to emphasize the importance of timely and efficient delivery of justice. In short, this legal maxim means if the justice is not served timely, it is as if no justice is served.

the national and international tribunal and their rules of procedure.For the purpose of this paper, international crimes will be termed as international criminal justice, and among the international crimes, war crimes and genocide will be more focused on in this thesisthan other international crimes. Similarly, universal jurisdiction will be termed as universal administration with the meaning of universal applicability of legal mechanisms and procedures of international crimes.

A universaladministrationof criminal justice might theoretically be used in several ways, including:

2.2.1. International Criminal Justice: Universal administration ofcriminal justice could serve as a foundation for developing international criminal laws that regulate crimes of international concern such as genocide, war crimes, crimes against humanity, and transnational crimes such as human trafficking, terrorism, or cybercrime.[15]The term universal administration or jurisdiction is the most effective way to discourage and stop international crimes by increasing the likelihood of trial and sentence of the wrongdoers.[16]It could establish a unified set of legal rules and standardsfor countries worldwide to adopt and implement in their national legal systems to handle cross-border crime and hold the perpetrators accountable under the law. Moreover, it could be helpful to reduce the burden of a permanent international criminal court.

2.2.2. Harmonization of Criminal Laws: Universaladministrationofcriminaljusticecouldserveas a guideline for fostering the harmonization or convergence of criminal laws across countries or regions.It could serve as an example for countries to bring together their laws and procedures with a view to promote uniformity and coherence in the adjudication of criminal acts, particularly where national laws differ or contradict. The principle of harmonization means that if there is any conflict between national and international laws, the national laws will be applicable within the national jurisdiction and separate the state obligations to the international laws.[17]Minimizingthe differences between these two laws through a harmonization process would lead to an equivalent

[15]For details see, Daeh Chang, 'Administration of Criminal Justice and Universal Human Rights'(2011)15(1) IJCACJ, <https://www.tandfonline.com/doi/abs/10.1080/01924036.1991.9688950> accessed on 13 September 2023.
[16]n 9.
[17]For details see, 'International Law and Municipal Law' (UN academy) https://unacademy.com/content/upsc/study-material/law/relationship-between-international-law-and-municipal-law/>accessed on 12 October 2023.

position for both kinds of laws.[18] It would be more effective to ensure justice byapplying national laws in the trial of international crimes because various kinds of jurisdictional crises would not affect the regional justice process asit does the trial by the ICC.

2.2.3. Best Practices and Guidelines: A universal administration of criminal justice might encompass the best practices, guidelines, or suggestions for criminal justice administration in national jurisdiction, such as fair and impartial investigations, prosecutions, trials, and sentencing, as well as the preservation of human rights and due process. Political interference cannot hamper the judicial procedure and a fair trial can ensure justice to the victims. Additionally, the universal administration of criminal justicecould serve as the foundation of training and educational initiatives for legal professionals, law enforcement authorities, judges, as well as other criminal justice stakeholders.[19]It might establish a uniform set of rules and guidelines thatcould be learned and applied throughout jurisdictions to improve efficiency and competency in the criminal justice industry.

Universal administration refers to a standard that would be applied universally, no matter what global or political power the state holds or in what financial statusthe country belongs.Compromise and coordination among nations, mutual respect for the state sovereignty,and maintaining legal traditions and customs of individual nations can also initiate fruitful application of universal administration of criminal justice.[20]Though universal criminal jurisdiction over heinous crimes including genocide, piracy, enslavement, and slave trading was recognized by customary international law[21], it faces significant legal and cultural challenges with practical considerations while developing and implementing this notion. However, the Rome Statuteof 2002[22] presently governs the grave violations of the 1949 Geneva Conventions[23]

[18] n 16.
[19]'*Handbook on Ensuring Quality of Legal Aid Servicesin Criminal Justice Processes: Practical Guidance and Promising Practices*'(UNODC,2019) <https://www.unodc.org/documents/justice-and-prison-reform/HB_Ensuring_Quality_Legal_Aid_Services.pdf>accessed on 03 March 2023.
[20]For details see, AndreasSchloenhardt, 'International Cooperation in Criminal Matters Involving the United Nations Convention Against Transnational Organized Crime as a Legal Basis' (Research Report, Vienna, Austria 2021) <https://espace.library.uq.edu.au/view/UQ:f2275cd> accessed on 08 August 2023.
[21]For details see, Douglass Cassel, 'Universal Criminal Jurisdiction' (NDL Scholarship, 2004) <https://scholarship.law.nd.edu/law_faculty_scholarship/966/>accessed on 28 September 2023.
[22]Rome Statuteof the International Criminal Court 2002.
[23]The Geneva Conventions of the 12 August 1949.

and the 1977 Geneva Protocol[24], which have also recently been acknowledged as matters of universal jurisdiction under the title of international crimes.Even though the International Criminal Court lacks sufficient funding and all 195 internationally acknowledged sovereign nations are not state parties, it continues to work towards its founding objective of assisting in ending the culture of impunity for the individuals who committed international crimes.[25]State parties of the Rome Statute are united by universal bonds to protect people from being victims of unimaginable atrocities. The preamble of the Statute reiterates the goals and tenets of the United Nations, including the clause that forbids all States from threatening or using force to violate the sovereignty or political independence of another State or in any other way that runs counter to the purposes of the UN.[26] Over time, the perpetrators of international crimes committed within their national borders are being prosecuted by numerous national, ad hoc, and hybrid tribunals other than the ICC. Moreover, theRome Statute, theGeneva Convention, Geneva Protocol, along with the ICC's standards of process and evidence, are generally implemented by national legislation.

Although the national jurisdiction has the primary responsibility for prosecuting the offenders, the ICC can only step in when the state is unable or unwilling to do so.[27]Moreover, a state not party to the Rome Statutecan also accept the jurisdiction of the court concerning crimes committed in its territory or by its nationals.[28] However, the option to accept the jurisdiction of the court is open for the sovereign state, neither the United Nations nor the Rome Statute can force any sovereign state to accept the jurisdiction of the court. At the same time, the sovereign state has the right to withdraw its signature from the Rome Statute or not to ratify it to its own national jurisdiction.[29]This is one of the reasons for which, the authority of ICC is questioned.Despite being the firstcomprehensive articulation of international criminal laws, the ICC statute's application has certain significant flaws that eventually prevent it from being

[24]Protocol Additionalto The Geneva Conventions Of12 August 1949and Relating to The Protection of Victims of Internationalarmed Conflicts (PROTOCOL I and II), OF 8 JUNE 1977.
[25]For details see, Global Citizen, 'Six countries that are not part of the ICC', available at: <https://nomadcapitalist.com/global-citizen/countries-arent-part-of-icc/> accessed on 05 June, 2023.
[26]Preamble, n21.
[27]n 7.
[28]Rashedul Islam,'ICC jurisdiction and Non-party States' *the Daily Star*(Dhaka, 05 February, 2019).
[29]Article 127(1) of the ICC Statute provides that A State Party may, by written notification addressed to the Secretary General of the United Nations, withdraw from this Statue. The withdrawal shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

universally applicable. Though its jurisdiction is widely accepted, nevertheless it can't be a universal administration because of its internal structural problems.

2.3. JURISPRUDENTIAL BASIS AND THE SIGNIFICANCE OF THE UNIVERSALADMINISTRATION OF CRIMINAL JUSTICE

International criminal justice delivers a responsibility mechanism for International Crimes like war crimes, genocide, crimes against Humanity, and so on. The legal tools of international criminalcourts and tribunals set down the subject-matter jurisdiction over core international

crimes. There are numerous categories of crimes, but they are not included as crimes of a heinous nature in the Rome Statute commentary. Article 5 indicates the jurisdiction of ICC where it is stated that the jurisdiction of the court will be limited toonly four core international crimes.[30]The ICC review conference rejected the proposition of inclusion ofinternational drug trafficking into the Rome Statute commentary.[31] Crime of terrorism, threats, or use of nuclear weapons also couldn't stay strong at the negotiation tables proposed by the Netherlands and Mexico.[32] While enforcement jurisdiction is generally limited to national territory, the universal administration of international crimes recognizes that in certain circumstances a state may legislate for, or adjudicate on, events occurring outside its territory.[33]

The universal administration for international crimes is based on several key jurisprudential sources.

Firstly, The Nuremberg Trials, which took place after World War II, were the first ad hoc tribunals that established the inspiration of personal criminal responsibility for the

[30] Rome Statute of the international Criminal Court 2002, a 5.
[31]International Criminal Court, Review conference of the Rome Statute, 'Focal points' compilation of examples of projects aimed at strengthening domestic jurisdictions to deal with Rome Statute Crimes'(30 May 2010) https://asp.icc-cpi.int/sites/asp/files/asp_docs/RC2010/Stocktaking/RC-ST-CM-INF.2-ENG.pdf> accessed on 11 October 2023.
[32] n 31.
[33] 'General principles of international criminal law'(International Committee of The Red Cross (ICRC), Advisory Service on IHL) <file:///C:/Users/User/Downloads/dp_consult_34_general_principles_icl-1.pdf> accessed on 05 August, 2023.

commission of International Crimes like genocide, crimes against humanity, and war crimes.[34] This idea was later adopted into the International Criminal Court's (ICC) Rome Statute. It is the basic principles of international humanitarian law that no one may be convicted of an offense except based on individual criminal responsibility.[35] The Hague regulation along with the fourth Geneva Convention provides that 'no protected person may be punished for an offence he or she has not personally committed'.[36]Additional protocols I and II also recognized individual criminal responsibility as a fundamental rule of criminal procedure.[37] It is one of the basic rules of most national legal systems.

Section 25 of the Rome Statute stated about the Individual criminal responsibility where it says that[38]:

1. The Court shall have jurisdiction over natural persons.
2. A person who has committed a crime that falls within the jurisdiction of the Court shall be individually responsible and liable for punishment.
3. The Court should have jurisdiction over the crimes committed by the individuals and his/ her commission should include: Commission of such crime, order, solicits or inducessuchcommission, aids, abets or assists in commission or attempted in its commission, contributes to the commission or contributes in attempting to the commission of such crime.

It was established by these tribunals that an international legal shield would protect all of mankind, and 'even a Head of State would be held criminally liable and punished for aggression and crimes against mankind'.[39] The official designation would not protect a criminal from being prosecuted under that international legal shield. For example; General Augusto Pinochet Ugarte

[34]For details see, Tove Rosen, 'The influence of Nuremberg trial on international criminal law' (Robert H Jackson Center)<https://www.roberthjackson.org/speech-and-writing/the-influence-of-the-nuremberg-trial-on-international-criminal-law/>accessed on 27 September 2023.
[35]A number of 161 rules regarding customary international humanitarian law (IHL) is identified in volume I (rules) of the ICRC's study on customary IHL. It was originally published by Cambridge University Press in 2005. Of them, rule 102 discusses about Individual Criminal Responsibility. It is said that 'No one may be convicted of an offence except on the basis of individual criminal responsibility'.
[36]n 33.
[37]n 33.
[38]n 21 s 25.
[39]n 33.

was prosecuted for the systematic and widespread violation of human rights that took place in his regime.[40] He was not given immunity because of being a head of the state rather he was held accused under the superior command responsibility.[41]

Secondly, the principle of universal jurisdiction has widely been recognized by customary international law. It allows states to prosecute individuals for certain international crimes regardless of where the crime was committed or the nationality of the perpetrator.This principle of universal jurisdiction enables national courts of third nations to deal with international crimes committed elsewhere, to hold offenders accountable, and to end impunity. When the State has passed legislation identifying the pertinent offenses and permitting their prosecution, national courts may exercise universal jurisdiction.[42]International treaties like the Convention against Torture and the Inter-American Convention to Prevent and Punish Torture require state parties to adopt the laws necessary to prosecute or extradite any person who is within the state party's territorial jurisdiction and has been accused of torturing.[43] It depends on both the domestic legal framework and facts of each particular case whether the national or international court's authority may prosecute a person or persons for international crimes like genocide, war crimes, and crimes against humanity committed in other territories.According to an Amnesty International report, approximately 163 of the 193 UN Member States 'can exercise universal jurisdiction over one or more crimes under international law'.[44]It also includes that a total number of 147 States have provided universal jurisdiction over one or more crimes under international law and not less than 166 countries have defined one or more international crimes out of four as crimes in their national legislation.[45]States like New Zealand and Canada provide domestic exercise of universal jurisdiction by introducing various acts like the International Crimes and International Criminal Court Act of 2000,and the Crimes against Humanity and War Crimes Act of 2000.[46] Moreover, a country like Bangladesh also introduced the International

[40]n 33
[41]n33.
[42] For details see, 'Universal Jurisdiction'(International Justice Resource Center) available at: https://ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction/ accessed on 17 September 2023.
[43]n 42.
[44]n 41.
[45]n 41.
[46]n 41.

Crimes (Tribunals) Act, 1973 which prosecuted individuals who aided or abets in committing genocide in 1971.[47]

Thirdly, International treaties such as the Geneva Conventions and the Convention on the Prevention and Punishment of the Crime of Genocide have established a framework for defining and prosecuting international crimes.[48]Under international law,certain crimes are beyond any statutory limitation. According to customary international law, no matter how much time has lapsed after the commission of the crime, judicial proceedings can still be initiated against the perpetrators.[49] The Geneva Conventions of 1949 and additional protocols of 1977 are also silent about the non-applicability of statutory limitations to international crimes.[50] Later on, the Rome Statute of ICC stipulates in section 29 that statutory limitations won't be applicable for war crimes, crimes against humanity, genocide, and the crime of aggression.[51] It is very challenging to prosecute the perpetrators right away after international crimes arecommitted.It is frequently essential to wait for a change in the geopolitical environment, an end of the conflict or the installation of a new government, before taking any legal action.Statutory limitations keep the most heinous and challenging crimes to prosecute from going unpunished. An international convention was adopted on the non-applicability of statutory limitations to war crimes and crimes against humanity by the UN General Assembly on November 26, 1968.[52] After it came into effect on 11 November 1970, fifty-five state parties exercised this as of right.[53] Moreover, a European convention was also adopted on 25 January 1974 on the non-applicability of statutory limitation to crimes against humanity and war crimes which later came into effect on 23 June 2003.[54]

[47]International Crimes Tribunal Act 1973, Preamble.
[48]For more details see, Convention on the Prevention and Punishment of the Crime of Genocide, 1948.
[49] UN Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, 1948 a 1 <https://ihl-databases.icrc.org/en/customary-ihl/v2/rule160> accessed on 12 September, 2023.
[50]The Practical Guide to Humanitarian Law, 'Non-applicability of Statutory Limitation' (Medicine Sans Frontiers) <https://guide-humanitarian-law.org/content/article/3/non-applicability-of-statutory-limitations/> accessed on 23 July 2023.
[51]n 21 s 29.
[52] For details see, Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, 1968.
[53]n 51.
[54] For details see, European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crime, 1974.

To ensure the effectiveness of those above-mentioned conventions, the state needs to incorporate such laws, regulations, and proceedings in their domestic legislation to ensurethe extradition of the perpetrators of the crime following their respective constitutional process. However, the primary responsibility belongs to the state to ensure that statutory limitations shall not apply to the prosecution and punishment of these international crimes. If such limitations exist, they are to be abolished.Overall, the universaladministrationfor international crimes is based on the idea that certain acts are so heinous that they offend the conscience of humanity, and those individualswho commit such acts must be held accountable regardless of where they occur or who commits them.

2.4. THE SIGNIFICANCE OF A UNIVERSAL ADMINISTRATION

Universaladministration for international criminal law is significant for various reasons. As discussed before a universaladministrationof international criminal law refers to an idealized collection of rules and guidelines for the benefit of all humankind, it is assumed that justice will be ensured by complying with the universaladministrationworldwide. The significance of universal administration is discussedbelow:

2.4.1. Ensuring Accountability: The universal administration ofinternational crimes provides a framework thatholds individuals accountable for committing serious international crimes such as genocide, war crimes, crimes against humanity, crimes of aggression irrespective of the place where the crimes were committed or whatever the nationality of the perpetrator.[55] Individual criminal responsibility for a crime involves both attempting to conduct the act and assisting in, enabling, aiding, or abetting its commission. It also covers the planning or instigation of a crime.This principle of international criminal law helps to ensure that those who commit such crimes will be brought to justice to ensure justice for the victims. Rule 102 of ICRC, Article 50 of The Hague Regulations, Article 33 of The Fourth Geneva Conventions, Article 75(4)(b) ofAdditional Protocol I, and Article 6(2)(b) of Additional Protocol II, all stated about the individual criminal responsibility.[56]It is a norm of

[55] 'What is Universal Jurisdiction'(Trial International, Geneva) available at: <https://trialinternational.org/topics-post/universal-jurisdiction/> accessed on 20 October 2023.

[56] Individual criminal responsibility is defined in Rule 102 of ICRC as 'No one may be convicted of an offence except on the basis of individual criminal responsibility'; Article 50 of The Hague Regulations said that 'No general

international customary law and a fundamental principle of criminal procedure that no penalty can be inflicted on a person for acts for which they are not responsible.[57] Article 5(3) ofThe American Convention on Human Rights, Article 7(2) of the African Charter on Human Rights and People Rights, Article 19(c) of the Cairo Declaration on Human Rights in Islam, the European Court of human rights also ensures personal accountability for committing international crimes or violating humanitarian law.[58] Article 25 of the Rome Statutealso states that a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment following this Statute.[59] So it is clear that under the universal jurisdiction of criminal law, every perpetrator is criminally responsible for committing international crimes. Territorial or jurisdictional boundary is no hindrance here.

2.4.2. Promoting Justice and The Rule of Law: The primary intention of the international community is to send a message to the world by establishing a universal administration that international crimes will no longer be tolerated and the responsible personnel will be brought before the court to ensure justice to the victims. Besides promoting justice, this helps to establish the rule of law worldwide irrespective of the demographical position of the countries. As every place has a different legal system, it might not be easy to bring all of them under the same umbrella. However,ensuringtherule of law is a must-follow principle for maintaining peace and security among the international community which practically prevents the world from starting a third world war. A universal administration ofinternational crimesbringsthe perpetrator under a uniform same legal system where there is no discrimination. ICC, as an example of an international judicial body, seeks to

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penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible'; Article 33 of The Fourth Geneva Conventions refers that 'No protected person may be punished for an offence he or she has not personally committed'.; Article 75(4)(b) of the additional protocol I and Article 6(2)(b) of Additional Protocol II also said about individual criminal responsibility.

[57]'International Humanitarian Law Databases' (IHL Databases) <https://ihl-databases.icrc.org/en/customary-ihl/v1/rule102>accessed on 12 September, 2023.

[58]n 56.

[59]n 21 a 25.

advance the rule of law both directly and indirectly in other nations without infringing the state's sovereign right to investigate and prosecute.[60]

2.4.3. Protecting Human Rights: The main purpose of every law and regulation is to protect humans from different attacks or violations. Protecting human rights is the basisof all national and international treaties and conventions. In international criminal law, the universal administration helps to protect human rights by deterring individuals from committing international crimes. It also ensures that those who commit such crimes will be punished by law. The ICC as a universaladministrationof international criminal lawcollaborates with other organizations and institutions that share its mandate to promote and protect human rights. This involves collaborating with the United Nations, regional organizations, and civil society organizations to combat systemic human rights violations and promote global respect for the rule of law and human rights.In conclusion, the ICC actively works to promote and defend human rights through partnerships with other institutions and organizations, as well as through investigating and bringing cases against those guilty of the most serious crimes of international significance.

2.4.4. Strengthening International Cooperation: The universal administration requires international cooperation inthe investigation and prosecution of international crimes, which can help to promote cooperation and collaboration between states. International cooperation is also required for enforcement mechanisms as the state holds the primary responsibility to investigate and prosecute the perpetrators of the crimes. International cooperation includes providing evidence, facilitating the transfer of suspects, and enforcing the Court's orders. A universal administration will also work with states to build their capacity to investigate and prosecute international crimes at the national level.

[60]Sang-Hyun Song,'The Role of the International Criminal Court in Ending Impunity and Establishing the Rule of Law' (UN Chronicle, 12 December 2012) <https://www.un.org/en/chronicle/article/role-international-criminal-court-ending-impunity-and-establishing-rule-law> accessed on 11 October 2023.

Overall, the universal administration ofinternational crimes is significant because it helps to establish a framework for addressing serious international crimes and promoting justice, the rule of law, and human rights.

2.5. UNIVERSAL AND MUNICIPAL JURISDICTION IN THE ADMINISTRATION OF CRIMINAL JUSTICE

National jurisdiction, in the context of the administration of criminal justice, refers to the authority of a state government to enforce laws and prosecute criminal offenses that occur within its geographical boundaries.[61]Nationaljurisdictions generally have limited authority in the administration of criminal justice compared to higher levels of authority, such astheUnitedNations or the International Criminal Court (ICC). It usually handlesoffenses committed within the state territories, things, and persons within its boundaries.Moreover,it is the power of a country to create, enforce and interpret laws, and to regulate activities and behavior within its borders. Additionally, National jurisdiction is based on the principle of sovereignty, which indicates that the state is an autonomous and independent body, and has the right to govern itself without external interference.However, the specific scope of state jurisdiction can vary depending on the laws and regulations of the particular jurisdiction.

National jurisdiction generally follows the rule of state sovereignty. The administration of criminal justice in national jurisdictions typically involves national law enforcement agencies,courts and other local government entities responsible for maintaining law and order within its boundaries. The state hasits own police departments, courts, and other criminal justice agencies that handle the investigation, arrest, prosecution, and adjudication of criminal cases that occur within its jurisdiction. National authority is limited by its constitution as well as the basic laws of the country. It is quite impossible to administer international crimes by a single entity or organization, instead, it is a framework implemented and enforced bytheglobal community and organizations. Individual states have the primary responsibility to prosecute the perpetrators who

[61]Fannie Lafontaine, 'National jurisdictions' in William A. Schabas (Ed.), *The Cambridge Companion to International Criminal Law* (Cambridge: Cambridge University Press, 2016) 155-177.

are alleged to have committed international crimes. In prosecuting perpetrators of international crimes, the state has the primary responsibility to investigate and prosecute suspected individuals and also cooperate with other states and international institutions in the investigation and prosecution of such crimes.

On the other hand, the principle of universal jurisdiction is a legal theory that empowers national courts to prosecute persons for certain crimes regardless of where crimes were committed or what is the perpetrator's or victim's nationality.[62] This principle allows a state to exercise jurisdiction over a crime committed by a foreigner outside the state's territory that would not otherwise be prosecuted in any other country.Theconceptof universal jurisdiction is founded on the belief that some crimes are so heinous that they violate humanity's conscience and must be punished regardless of where they occurred or who is involved.It is a mechanism for holding perpetrators of these crimes accountable, even if they have eluded justice in their home nation or the country where the crimes were committed.[63] These types of crimes are often seen as offenses against humanity, rather than just against a single state or individual.The exercise of universal jurisdiction necessitates a careful examination of several legal and practical issues, including the scope and extent of offenses, applicable laws and jurisdictional restrictions, and the accuser's rights.[64] It is frequently utilized when there are no other options for holding the culprits accountable, such as when the country's national judicial system is unable or unwilling to do so.However, the purpose of the universal administration of criminal justice is not only to serve justice to the victims of international crimes and to teach a historical lesson of 'never do again'tofuture generations[65], but also to protect the peace situation all over the world.

Presently, ICC statutes run the administration of international crimes with a high point of efforts at codifications of general principles of international criminal law.[66]It exercises jurisdiction over member states of the Rome Statutebased on the principle of complementarity. It

[62]n 21 s 29.
[63]For details see, Centre for Constitutional Rights, 'Factsheet: Universal Jurisdiction'(December 07, 2015) https://ccrjustice.org/home/get-involved/tools-resources/fact-sheets-and-faqs/factsheet-universal-jurisdiction> accessed on 07 July 2023; According to Prof Ryngaert, Universal jurisdiction, is a form of extraterritorial jurisdiction exercised by states which do not have a strong nexus with the crime. It is a mechanism to offer accountability for gross human rights violations and to offer remedy for victims.
[64] n 62.
[65]European Centre For Constitutional and Human Rights (ECCHR), 'Universal jurisdiction'<https://www.ecchr.eu/en/international-crimes-and-accountability/> accessed on 21 February 2023.
[66]Gerhard Werle& Florian Jessberger, *Principles of International Criminal Law* (3rd Edition, Oxford University Press, England 2005).

contains the comprehensive provision of general principles that the member state of Rome Statutehas ratifiedwith the intentionto live in peace and together.[67]It has been more reliable and efficient than the ad hoc tribunals built in many other countries in its references.[68]Other international organizations such as the United Nations and regional human rights bodies also play vital roles in administering the universal administration by monitoring and reporting on human rights abuses, providing technical assistance to states, and promoting international cooperation in the investigation and prosecution of international crimes.[69]

The goal of administration of criminal justice or ensuring fair justice to victims through a single international institution or by a particular state is not easily achievable. It should be kept in mind that international institution is not superior to the state sovereignty and there is nothing that can demine the authority of a state. So, it is not easy to say that either the national court or international court will administer the common code of international crimes.A considerable number of states have incorporated genocide, war crimes, crimesagainsthumanity, and crimes of aggression into their domestic legislation in compliance with the requirements of customary international law. In most cases, it is mandated by mutual bilateral or multilateral treaty agreements between countries. Both the victim state and the accused state might try to prosecute the offender based on their different jurisdictional capacity, for example, the principle of territorial nationality or the principle of protective nationality. In summary, it is tough to decide who will administer the universal code as well andthe authorityto decide is not fixed. It all depends on the mutual cooperation of states.

2.6. UNIVERSAL JURISDICTION OFJUSTICE FOR INTERNATIONAL CRIMES

International criminal law is concerned with the ascription of individual criminal responsibilityto the culprits of international crimes.Primarily, the Victim State has

[67]See for details, Article 87 of the Rome Statute. It discusses about the Requests for cooperation: general provisions, available at: https://www.ohchr.org/en/instruments-mechanisms/instruments/rome-statute-international-criminal-court> accessed on 9 September 2023.

[68] Nicolas A. J. Croquet, 'The International Criminal Court And The Treatment Of Defence Rights: A Mirror of the European Court of Human Rights Jurisprudence' (2011) 11(1) HRLR available at: <https://academic.oup.com/hrlr/article-abstract/11/1/91/652971> accessed on 26 July 2023.

[69] n 67.

theresponsibility to prosecute the criminals and the ICC may exercise the same jurisdiction only when the victim state fails or is unable or unwilling to carry out the proceedings. It is the principle of customary international law that no state or group of states has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other state.[70]Similarly,ratifying the Rome Statuteis the discretionary power of that sovereign state. State is bound to follow the obligation of Rome Statuteafter ratifying it but no authority can compel a sovereign state to accept the jurisdiction of any authority or compel a state to be a member state of Rome statute. Moreover, ICC jurisdiction is based on the principle of cooperation, not on replacement. If the state, being a member of the Rome Statuteis unwilling or unable to prosecute the alleged criminals of war crimes or genocide, then only the ICC can prosecute. The state's unwillingness or inability is a matter of question here. Who will determine the inability of a state or how the unwillingness of a state can be proven? How much time a victim will wait to see the prosecution start or how many days the international authority will wait to hear that the prosecution has been started by the victim state? Silence of a state who hassuffered frominternational crimes keeps the international community in dilemma to start a proceeding against those perpetrators.

Moreover, ICC has only jurisdiction over persons alleged to heinous crimes of international concern, not over the sovereign state. Member state or state that has ratified the Rome Statutehas the customary jurisdiction to exercise the principle of universal jurisdiction over international crimes on consideration of the efficiency and effectiveness of the cases, as the victim state has the effective ways to collect evidence, witnesses, and resources to carry out the proceedings of the cases.At the same time, the International Criminal Court may also start the proceedings when it finds that the state is unwilling to prosecute the responsible individual or that the state is protecting that individualfrom prosecution. Though the matter of state unwillingness or inability is a matter of question,theICC cannot start the proceedings of international crimes without the consent of the member state.

[70] For details see, B. Donovan Picard, 'State Sovereignty, Intervention, and International Law' (Picard Kentz& Rowe, 30 September 2014) <https://pkrllp.com/news-insights/state-sovereignty-intervention-and-international-law accessed on 5 September 2023.

The unwillingness or inability of a state may be determined by probable relevant factors. Those are:

a. **Circumstantial Consideration**: There is certain contextual background that helps to determine the admissibility assessment of the national government either under the heading of inability or unwillingness. Those major determiners are:
   - **i.** Privileges and immunities given to the responsible personnel by the state authorities.
   - **ii.** Granting of amnesties, pardons, enforcement of sentences, parole regimes.
   - **iii.** Integrity or corruptibility of staff and institutions.
   - **iv.** Resources invested and the ability of State institutions to cope with the scale of crime;
   - **v.** Legislative framework (offenses, jurisdiction, procedures, defenses); and
   - **vi.** Jurisdictional territorial divisions; special jurisdictional regimes (military tribunals).[71]

b. **The unwillingness of the National Government**: The unwillingness of a state may be proved by some relevant facts and evidence. Such as:
   - **i.** Evidence of shielding the perpetrator may exist in legislation, orders, amnesty decrees, instructions, and correspondence of the state. It can be sought through expert witnesses on the politicized nature of the national system. Moreover, national shielding can also be proved by delay, lack of impartiality, longstanding knowledge of crimes without action, and so on.[72]
   - **ii.** There is no justification for delay and every unjustified delay is inconsistent with intent to bring the personconcerned to justice.[73]

If the judiciary, prosecutors of investigating agencies, the government body, and the procedures of the appointment and dismissal of the judges as well as prosecutors are not

[71]For details see, 'Informal expert paper: The principle of complementarity in practice'(International Criminal Court, 2009) <https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009_02250.PDF>accessed on 11 October 2023.
[72]n 70.
[73]n 70.

independent, it clearly indicates the unwillingness of the national government. Political interference in trial proceedings and investigations also indicates the same.[74] The unwillingness of a national government may also be understood by some other factors. Partiality, official statements given by government officials like condemning or praising actions, financial support, promotion or demotion, awards or sanctions, deployment or withdrawal of law enforcement may also be indications of national unwillingness.[75]Old information of crimes without taking any action, and starting investigation after the ICC took any action; insufficient funds and other resources allotted to investigation and proceedings; fewer number of investigations opened in proportion to the number of crimes that occurred; insufficient evidence gathered in the light of availability; following lesser investigative steps than usually needs to follow and unusual careless indicates the unwillingness of a state to prosecute the perpetrators of international crimes. Additionally, if the special tribunals or process or investigation is following the lenient approaches of criminal proceedings than the normal process it also might be an indicator of state unwillingness.[76]Thus the principle of complementarity acts as an instrument to inspire and enable the acquiescence of the States with their primary responsibility to investigate and prosecute core crimes. If the State fails to carry out the proceedings, the Prosecutor of the ICC will provide self-determining and fair justice by demonstrating the purpose of the international community to limit international crimes.[77] When the state fails or is unable to look after the trial, it is ultimately losing control over the trial proceedings. But before that, the prosecutor's office of the ICC must be satisfied by the relevant factors that prove the unwillingness or incapacity of the state to start the proceedings.

2.7. CONCLUDING REMARKS

In summary, the universal jurisdiction of criminal justice directs the administration of international crimes of a heinous nature that affects humanity. International crimes like genocide, war crimes, crimes against humanity, and crimes of aggression are a global concern. For the

[74] n 70.
[75]'Informal expert paper: The principle of complementarity in practice'(International Criminal Court, 2009) <https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2009_02250.PDF>accessed on 11 October 2023.
[76]n 74.
[77]n 74.

purpose of this paper, war crimes and genocide are given more emphasis. This chapter has shed light on the ideas and principles of international criminal justice on a global scale. This chapter explored the fundamental idea of international crimes that all individuals, regardless of their nationality or place of commission of crimes, should be brought to justice within the criminal justice system. Additionally, the probable challenges and complexities related to universal administration havebeen delved throughout this chapter.Moreover, the jurisprudential basis and significance of universal administration,and the role of municipal and universal jurisdiction in holding perpetrators of international crimes accountable for their actions has been discussed briefly.Moving forward, it is crucial to keep researching and improving the framework for global criminal justice administration, keeping in mind the shifting legal standards, societal norms, and technological developments.

This chapter also provides a solid foundation for comprehending the subtleties and intricacies of a judicial system that aims to cut across distinctions and provide justice for everyone, guaranteeing that no one is above the law, no matter where they may hide. The quest for universal justice still represents our shared commitment to the values of justice, equity, and the rule of law on a worldwide scale in an increasingly interconnected world.

CHAPTER-3

EXISTING INTERNATIONAL LAWS FOR CRIMINAL JUSTICE

3.1. CHAPTER SUMMARY

This chapter examines the development of universal jurisdiction for international criminal justice, the function of significant international organizations like the International Criminal Court (ICC), the United Nations (UN), and the European Union (EU), as well as the numerous jurisdictional, administrative, and judicial difficulties they encounter.The chapter opens by outlining the historical evolution of the principle of universal jurisdiction that enables states to charge and punish people for specific crimes committed on a global scale regardless of the location of the crimes or the nationality of the offenders. It explores the intellectual and legal foundations of this idea, showing how they have changed through time to handle the horrible atrocities that shocked humanity's conscience.

Secondly, this chapter explores the establishment, functions, and challenges of ICC. The ICC is crucial in trying people for crimes including genocide, war crimes, crimes against humanity, and aggression as it was the first permanent international criminal court. The chapter looks at the ICC's authority, how it interacts with national legal systems, and how difficult it is to bring about justice on a worldwide scale.The chapter also discusses how the UN and EU influence and administer the global criminal justice system. It looks into how the UN established special courts like the International Criminal Tribunal for Rwanda (ICTR) and the International Criminal Tribunal for the former Yugoslavia (ICTY), as well as how it supported the work of the ICC.Moreover, the EU has also actively supported efforts to combat global crime, advance the rule of law, and improve collaboration among its member states. The chapter discusses the UN and EU's work in this area and explores the difficulties thesetwo organizations face in upholding security, accountability, and peace in the face of serious international crimes.

3.2 INTRODUCTION

In this rapidly connectedworld where global crisis exceeds physical boundaries, the need for a comprehensive framework of international laws for criminal justice has never been moreevident.A complex web of international legal instruments has been developed tocombat transnational crime, uphold human rights, and guarantee fair and impartial treatment ofhumans. Moreover, to achieve universal aspiration for justice and accountability, the nationality differences among human beingshavebeen alleviated. This chapter explores the complex framework of international laws that govern the international criminal justice system, their development, the guiding principles and challenges, and the vital role they play in preserving world peace and fostering a just and equitable society. From the establishment of the Nuremberg Trials after World War II to the ongoing efforts to combat international crimes in the twenty-first century, international laws have played a significant role in maintaining world peace.

In a world where justice knows no borders, understanding the principles and distinctions of current international legislation for criminal justice is essential. This chapter offers to learnabout the long history of developments, pressing problems faced by international organizations, and the promising future of a world order that upholds justice, human rights, and the rule of law for all. In the very fast of this chapter, the evolution history of universal administration for international crimes has been briefly discussed with proper references. The journey of the international criminal court started by establishing the Nuremberg Tribunal after World War II. From Nuremberg to ICC, there were several ad hoc and hybrid tribunals established with the mandate to prosecute the perpetrators of international crimes. Sometimes United Nations and European Union also works

as judicial body for the member states. Through mediation and reconciliation, most of the states of the world maintain peace and security, and political and diplomatic relationships among them. From that point of view, both the United States and the European Union play a crucial role in maintaining global peace and promoting human rights and the rule of law. This chapter will also discuss various judicial, administrative, and jurisdictional challenges thatthe United Nations and European Union faced while acting as a superior judicial body.

3.3 EVOLUTION OF UNIVERSAL JURISDICTION FOR INTERNATIONAL CRIMINAL JUSTICE

The present International Criminal Justice in the real sense begins with the most known International Military Tribunal for Nuremberg (Herein mentioned as Nuremberg Tribunal) after World War II. As the first international war crimes tribunal, Nuremberg had a great influence over numerous ad hoc tribunals that were created in the post-World War era. The history of international criminal justice is not a product of one night; rather other numerousevents had a large contribution to the establishment of the ICC.

In the 1870s, GustaveMoynier, who was a co-founder and president of the International Red Cross Society (IRCS), was the first person to suggest and propose the creation of an International Legal Institution and for a Universal International Law to punish the violation of such kinds that goes against the humanity. He observed the breach of the Geneva Convention during the Franco-Prussian War and felt the need for a universal authority that would have control over such kinds of violations.[78] But there was no such development in establishing an International Legal Institution that can be found between 1870-1918. In 1919s, a proposal for constituting a special tribunal to try the accused of the highest offense against international integrity and the inviolability of treaties was made in the Versailles Treaties. It was also proposedthat there will be five judges allotted by each of the following countries: The United States, Great Britain, Japan, Italy, and France for a special tribunal to hold trial against the accused. Though the Treaty of Versailles didn't come into force, it was another walk on the way to the establishment of ICC.[79]

However, the 20th century has shown numerous events on the way to establishing the universal jurisdiction of international criminal justice. Firstly, The Moscow Declaration of 1943 and the Potsdam Declaration of 1945 discussed the urgency to punish the war criminals of

[78]For details see, Andre Durand, 'The role of GustaveMoynier in the founding of the Institute of International Law (1873): THE WAR IN THE BALKANS (1857-1878) THE MANUAL OF THE LAWS OF WAR (1880)'<https://international-review.icrc.org/sites/default/files/S0020860400072818a.pdf> accessed on 17 October.
[79] For details see, The Versailles Treaty June 28, 1919<https://avalon.law.yale.edu/imt/partvii.asp> accessed on 4 April, 2023.

theGerman and Japanese governments.[80] Both declarations were signed by the United States and its Allies (Soviet Union and Britain)to put an end to the impunity of government officials alleged to the crime of international concern.[81]Later on, the allies of World War II established the Nuremberg and Tokyo tribunal to try the war leaders of Germany and Japan. The principle of individual criminal responsibility and universal legal protection had been brought to light by the Nuremberg tribunal.[82]

After that,the Convention on The Prevention and Punishment of The Crime of Genocide was adopted by the UNGA in 1948. At the same time, the General Assembly invited the International Law Commission to discuss the idea of establishing an international judicial organ thatcan try international crimes of Genocide, War Crimes, Crimes Against Humanity, and Crime of Aggression. The commission concluded with a possibility of desire to establish such a judicial organ and a drafted statutewas presented consequently in 1951 and 1954 by a subsequent committee. Unfortunately,the breakdown of the Cold Warstoppedthe development of international criminal law for several decades.[83]

Furthermore, the Geneva Convention was adopted in 1949 by a diplomatic conference whichincludes 4 different conventions followed by 2 additional protocols. These four Geneva Conventions are considered as the backbone of International Humanitarian Law which are binding on all states and other actors of armed conflict as customary international law. Those provide special protection to the selected classes of people for example; to the residents, the injured, aid workers, and others who are no longer taking part in active conflict. Later on, grave breaches like willful killing, torture, inhuman treatment, causing great suffering, unlawful deportation, hostage taking, and extensive destruction of property were codified as War Crimes in the Rome Statute.[84]Providing that, AdolfEichmann was the first person, prosecuted and

[80]For details see, Moscow Declaration on atrocities, 1943<https://www.cvce.eu/en/obj/moscow_declaration_on_atrocities_1_november_1943-en-699fc03f-19a1-47f0-aec0-73220489efcd.html>; The Potsdam Conference, 1945<https://history.state.gov/milestones/1937-1945/potsdam-conf> accessed on 12 November 2023.
[81]For details see, The Moscow Conference; October 1943<https://avalon.law.yale.edu/wwii/moscow.asp> accessed on 4 April, 2023.
[82]International Criminal Court Project, Evolution of International Criminal Justice, https://www.aba-icc.org/about-the-icc/evolution-of-international-criminal-justice/>accessed on 09 July 2023.
[83]n 80.
[84]n 80.

convicted for genocide during WW II by the Israeli courts in 1962. At these trial proceedings, the exercise of universal jurisdiction by a national court was held for the first time which was a great achievement for the universal community. [85]

While on the rise of the international drug trade, Trinidad and Tobago restored the initiative of an International Criminal Court in 1989 whereas the International Law Commission got the responsibility to start its work on drafting the Statutefor the proposed International Criminal Court.[86]After a few years,theInternationalCriminal Tribunal for the former Yugoslavia (ICTY)andInternationalCriminal Tribunal for Rwanda (ICTR) was established consecutively by the United Nations Security Council resolution in 1993 and 1994. ICTY was the first ad hoc international criminal tribunal thatheld accountable the perpetrators of the Balkans conflicts in 1990. In the same way, ICTR holds responsible to the perpetrators of the genocide and division of the ethnic lines that took place between 1 January1994 to 31 December 1994.[87]

Afterward, a preliminary committee was created by the UNGA to establish the International Criminal Court in 1995. That committee was entitled to prepare a consolidated text following the draft Statuteby the International Law Commission prepared in 1994 and the report given by the ad hoc committee established by the UNGA in 1994. The final draft prepared by that committee was approved at the Rome Conference in 1998.[88]

As a result, the United Nations Conference of Plenipotentiariestook place in 1997for the establishment of an International Criminal Court at the 52nd Session of the UNGA. It was universally called as Rome Conference and exposed to all Member States of the United Nations and members of specialized agencies. Later on, the United Nations General Assembly finalized and adopted a convention to establish a universal criminal court popularly known as the International Criminal Court.[89]In 1998, more than 160 states participated in the Rome conference and 120 countries voted in favor of it. Finally, the Rome Statutewas opened for signature and ratification on July 17, 1998. Officially it came into force in 1st July, 2002 after the ratification

[85]n 80.
[86]n 80.
[87]n 33.
[88]n 33.
[89] n 80.

by the 60th country, creating the International Criminal Court, the first permanent international criminal court to investigate and prosecute crimes against nations. Retrospective effect has not been given and it can only try the cases that held after the Rome Statutecame into force and within the court jurisdiction.[90]

Later on, a new resolution was adopted in 2017 where three war crimes were recommended to be brought under the jurisdiction of the ICC for example; Employing microbial, biological, or toxic weapons; employing weapons that injure by fragments undetectable by x-rays; and employing laser weapons. However, the option to approve these revisions completely or in part is left up to the state parties. the proposition to include international terrorism into the jurisdiction of the ICC has also been made[91] but till now the jurisdiction of the ICC is limited to four international crimes of heinous nature. A details discussion of the ICC with its complex challenges is given below:

3.4.THE INTERNATIONAL CRIMINAL COURT (ICC)

"This cause … is the cause of all humanity"

Former United Nations Secretary-General Kofi Annan[92]

ICC,theworld's first permanent court for trying international crimes, in a global fight to end the culture of impunity, holds accountable to the person of highly authoritative or person of government officials, with an inspiration that the most horrendous crime will no longer go unpunished. It is believed that this restrictive effect will expressively decrease the occurrence of crimes like genocide or war crimes. These crimes are not the concern of a particular state or a few states. It is a matter of universal concern; concern of all humanity and its jurisdiction applies to all.Becoming the member state of the Rome Statuteand ratifying it to the national legislation,

[90] n 80.
[91]For details see, Zamfirlonel, 'International criminal court, Achievements and challenges 20 years after the adoption of the Rome Statute', (13 July 2018, European Parliament Briefing)<https://www.europarl.europa.eu/RegData/etudes/BRIE/2018/625127/EPRS_BRI(2018)625127_EN.pdf> accessed on 21 September, 2023.
[92]ICC: Trying individuals for genocide, war crimes, crimes against humanity, and aggression, 'How the Court works' available at: <https://www.icc-cpi.int/about/how-the-court-works> accessed on 02 October 2023.

most of the country has accepted the jurisdiction of the ICC which gives the ICC universal jurisdiction over the criminal laws. Similarly, as the field of international laws is vast, the ICC restricts its jurisdiction to only four crimes. These four crimes are known as international crimes.

The establishment of ICC was an unprecedented accomplishment. It was established by Rome Statutethat would have the jurisdiction and competence in pursuance of the principle of complementarity to try the most heinous crime that mankind has ever heard. As an independent institution, ICCis based on cooperation among the countries of the world.

3.4.1. JURISDICTION OF ICC

The jurisdiction of ICC is conditional upon either the nationality of the person over whom the crime was committed or the territory within which the crime took place.[93] One of them needs to be satisfied in order to invoke the jurisdiction of the ICC. Individuals or the state has to be the nationals or the party state of Rome Statute. Non-party states can also be the subject of ICC jurisdiction if a referral is made by the Security Council of the United Nations. It is made possible by article 13(b) of the Rome Statutewhere it is mentioned that a situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor of the court by the Security Council of the United Nations, the court may exercise its jurisdiction here.[94]Additionally, article 06 of the Genocide Conventions indicates that both the competent national tribunal on which territory the act of genocide has taken place andany international penal tribunal having jurisdiction.[95]Moreover, article 27(1) (2) of the Rome Statuteclearlystatesthat it will be equal to all persons without any distinction based on official capacity. Particularly, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative, or a government official shall in no case exempt a person from criminal responsibility underthis Statute. However, immunities or special procedural rules thatmay attach to the official capacity of a personshall not bar the Court from exercising its jurisdiction over such a person.

[93]Rashedul Islam, 'ICC jurisdiction and Non-party States' *the Daily Star* (Dhaka, 5 February2019).
[94]n 21 a 13(B).
[95]Convention on the Prevention and Punishment of the Crime of Genocide 1948, a 6.

Aproper and elaborate definition of the four main crimes of ICC jurisdiction is provided in the Rome Statute. To know how the court works, it is mandatory to have a basic idea about the crimes of ICC jurisdiction. The four crimes within the ICC jurisdictions are Genocide, War Crimes, and Crimes against Humanity and Crimes of Aggression. As the thesisis focused on international crimes, brief definitions of four international crimes are given for understanding.

Firstly, the crime of genocideis defined in Article 6 of the Rome Statutewhere it is categorized by-

a. specific intent to destroy
b. wholly or partly
c. a national, ethnic, racial, or religious group
d. by killing; causing serious bodily or mental harm; deliberately inflicting such a condition of life which is calculated to bring physical destruction to members of the group.
e. imposing measures intended to prevent births within the group.
f. forcibly transferring children of the group to another group.[96]

This definition makes it very clear that not only killing of person but also inflicting such a situation which is calculated to bring destruction to that class of people will also be considered as genocide. The intention of the perpetrator is a very important factor to be considered as genocide under the statute. Additionally, the Genocide Convention considers this crime as a crime under international law whereas both the ICC and ICJ have jurisdiction over the crime. ICC holds individuals responsible for the crime of genocide and ICJ holds a state responsible for committing genocide.

Secondly, War crimes are a clear indicator of serious violations of the Geneva Conventions of 1949. It may occur during an armed conflict and take the form of the murder or torture of civilians or prisoners of war, the deliberate targeting of hospitals, historical sites, or

[96] For details see, Rome Statuteof The International Criminal Court 2002.

structures used for charity, educational, artistic, or scientific purposes, or the use of children as combatants.[97] Article 8 of the Rome Statuteindicates a vast and elaborate definition of war crimes.[98] Shortly, it is an act carried out during wartime that violates the international rules of war.

Thirdly, another area of responsibility for the ICC is the crimes against humanity, which are grave offenses committed as part of an extensive assault against any civilian population. The Rome Statutelists 15 categories of offenses as CAH. It encompasses torture, apartheid, murder, rape, imprisonment, forced disappearances, enslavement of women and children, sexual slavery, and deportation.[99] Article 07 of the Rome Statutestated that to be the CAH, the above-mentioned attack must be widespread and systematic and the attacker must know the nature of the attack.[100]

The fourth crime of ICC jurisdiction is the crime of aggression which refers to the use of armed force by a State against the sovereignty, integrity, or independence of another State. This definition was adopted by the assembly of state parties based on mutual consensus in 2018.[101] Article 8 bis of the Rome Statutedefined this crime as a violation of the United Nations Charter by such person who has the capacity or in a position to effectively control political or military action over the state. [102]

However, a number of 123 countries are member statesofthe Rome Statuteand those member states become the party states of the ICC. Of them, 33 countries are from Africa, 28 countries are from Latin America and Caribbean States, 19 countries are from Asia-Pacific States, and near around 25 countries are from Western Europe and other countries.[103]Nearly 31 states have signed the Rome Statutebut they are not sure whether to ratify it or not. Moreover, there are many states including China, the United States, Russia, and India that are not member states of the Rome Statutewith the opinionthat it undermines national sovereignty. Additionally,

[97]n 94.
[98]n 21 a 08.
[99]n 21 a 08.
[100]n21 a 07.
[101]n 21.
[102]n 21 a 08 bis.
[103]For details see, International Law and Human Rights Program, 'States Parties to the Rome Statute' (08 December 2022)<https://www.pgaction.org/ilhr/rome-statute/states-parties.html>accessed on 23 October 2023.

two countries already have withdrawn their membership from ICC; Burundi and the Philippines.[104] This clarifies that if any of the four international crimes happened to those countries or against their nationals, they may establish their own tribunals or any other party state of Rome Statutemay conduct the trial under the principles of universal jurisdiction. However, the non-state party may also have the Court's jurisdiction under certain circumstances.

The International Criminal Courtis generally considered a global court to try international crimes with a mandate to deter the commission of such crimes in the future. In the present world, crimes like genocide and war crimes are happening every day and the global community is mostly silent. Their silence is instigating the perpetrators to commit those crimes further. The ICC, being the judicial body, could not stop the world from committing those crimes because of administrative, judicial, and jurisdictional challenges. A brief discussion of ICC's challenges is given below:

3.4.2 ADMINISTRATIVE CHALLENGES OF ICC

When the Rome Statutewas ratified, there was a tremendous expectation that the ICC would form the heart of a universal criminal justice system to which all nations would eventually commit and that its decisions would be binding on both state parties and the persons involved. Though the ICC is a permanent tribunal for international crimes, its jurisdiction is not universal as many countries of the world have not ratified the Rome Statute.The administrative gaps of ICC arediscussedbelow:

a. Major powers countries like the US, China, India, and Russia have refused to join the ICC, at the same time, a country like South Africa is not willing to cooperate.[105] Those are the recent defection that causes threats and strains to the global authority of the court. Besides, the connection between the former prosecutor of the ICC and the US Administrative Head has raised doubt about the neutrality of

[104]n 101.
[105]"Six Countries that Aren't Part of the ICC", (*GLOBAL CITIZEN*, NOMAD CAPITALIST) <https://nomadcapitalist.com/global-citizen/countries-arent-part-of-icc/> accessedon 12 November 2023.

the prosecutor.[106]The ICC cannot force any country to accept its jurisdiction instead it prosecutes individuals and that's probably the reason why major powers like the United States are not part of this treaty. It is well known to all that the ICC does not prosecute organizations or governments like ICJ and with this universal jurisdiction, the ICC only focuses on sophisticated administrative officials because it is difficult for a national government to prosecute those high-level officials within the country boundary.

b. The prosecutor's office is the engine of the court, whereas systematic efforts for professional investigations and practical cooperation fuel the entire court. Though the judges of the court require insight into the prosecutor's office, there is still room for improvement in terms of general work methodology in investigations, ensuring cooperation as well as efficient structures, and efforts to have highly qualified prosecutorial staff. It is considered that the court has arbitrarilychosenseveralcases at the urging of strong member states. Although most African cases have been referred by national governments, there has occasionally been talk of external pressure on them. It has been called inefficient and biased for initiating so many cases against Africa, For example; the ICC issued an arrest warrant for former Libyan leader Muammar Gaddafi in 2011, following the referral of the situation in Libya to the ICC by the UNSC.[107]However, the UNSC referral itself was influenced by political considerations among its permanent members. Moreover, the subsequent NATO intervention in Libya also raised questions about the politicization of the ICC's involvement as Gaddafi was killed before he could be apprehended by the ICC. The manner of his death and the broader political context of the Libyan conflict raised concerns about the ICC's ability to conduct a fair and impartial trial.

[106]Adam Taylor, "The United States and ICC have an awkward history", *The Washington Post*,(Washington D.C,March 16, 2023)<https://www.washingtonpost.com/world/2023/03/16/icc-us-cooperation-international-criminal-court-history/> accessed on 16 November, 2023.
[107]Editorial, 'Libya: Muammar Gaddafi subject to ICC arrest warrant' *BBC News* (London, 27 June 2011) < https://www.bbc.com/news/world-africa-13927208>accesed on 12 August 2023.

c. ICC has been working for more than 20 years since its commencement but only proceedings against 30 have been completed till the end of 2022.[108]The first verdict came 10 years after the Rome Statutecame into force. Though it is nearly impossible for any court to have a hundred percent conviction ratethe court prosecutor can be criticized for initiating so few prosecutions and presenting weak cases.[109]Moreover,the ICC faces resource constraints, which affects its ability to conduct thorough investigations and prosecutions, especially for complex cases that require extensive resources.[110] For example; In the DRC (Democratic Republic of Congo) case[111], the ICC faced resource constraints in its efforts to investigate and prosecute those responsible.Therefore, limitations of resources, including financial and logistical challenges, can impede the ICC's ability to conduct investigations which potentially affects the quality of evidence and the comprehensiveness of its cases.In Thomas Lubanga's case,[112] resource constraints affected the provision of legal aid and defense representation. However,Mr. Dicker and Hiatt point out the challenges of ensuring fair trials, including adequate legal representation, within the constraints of the ICC's resources.[113] Moreover, prosecutorial polarization is also apparent in the ICC's activities. In the Uganda situation, the ICC chose to focus on a limited number of high-profile cases, such as that of Joseph Kony and other senior LRA leaders, due to resource constraints.[114] This prioritization meant that many lower-level perpetrators were not prosecuted by the ICC. Therefore, resource constraints can force the ICC to make difficult decisions about case selection and prioritization,and its ability to communicate its mission which may not align with the pursuit of comprehensive justice for all individuals responsible for international

[108]For details see, International criminal court, 'Trying individuals for genocide, war crimes, crimes against humanity, and aggression' <https://www.icc-cpi.int/cases> accessed on 2 October 2023.
[109] Milena Sterio, 'The International Criminal Court: Current Challenges and Prospect of Future Success of Future Success'(2020) 52(1)CWRJIL<https://scholarlycommons.law.case.edu/cgi/viewcontent.cgi?article=2580&context=jil> accessed on 7 October 2023.
[110]For details see, Robert Cryer, HakanFriman, Darryl Robinson, and Elizabeth Wilmshurst, *An Introduction to International Criminal Law and Procedure*(Cambridge University Press, 2010).
[111]For details see, Leila Nadia Sadat, 'Human Rights and Humanitarian Law: The Quest for Universality and the International Criminal Court' (2006) 100(4) AJIL 799-846.
[112]n 107.
[113]For details see, L.R. Dicker and Laura M. Hiatt, 'The International Criminal Court's First Verdict: Justice for Child Soldiers' (2008) (1) JICJ 81-104.
[114]*The Prosecutor v. Joseph Kony and Vincent Otti,* ICC-02/04-01/05.

crimes.This can also hinder the Court's outreach efforts and can impact the perception of the ICC's legitimacy among various stakeholders.

d. Douglas Guilfoyle, a famous International Criminal Law professor asserts that there are grave indications of a breakdown in the ICC judges' sense of collegiality, which jeopardizes both the formal consistency of the court's rulings and their broader legitimacy when he was asked for his thoughts on the atmosphere of strife among the judges and their public regarding a pay dispute.[115] ICC judges have shown their level of discord among themselves, inconsistent in the application of substantive laws, even a dissenting decision has been rebutted by a joint declaration which was characterized 'as a potential abuse of administrative functions'.[116] Along with this, the court fails to present any credible threat to the person who should fear the accountability lack of which the present world is still facing the violation of human rights worldwide. It was believed that simple accountability of the authority would deter them from committing serious atrocities, butpractically the existence of ICC couldn't change the behavior of some authorities.

e. Furthermore, the absence of harmony over substantive law among ICC judges is detrimental to the court as this restricts the court from emerging comprehensible jurisprudence on problematic or new legal issues stanching from the Rome Statuteand also causes uncertainty in the development of universal norms of the criminal justice system.[117] It might be argued that as the judges came from different countries and legal traditions, some disagreements and dissenting opinion is permissible but judges'accusation of unfairness or acting *ultra vires* against one another displays a level of animosity which undermine the legitimacy of ICC.[118]

3.4.3 JUDICIAL CHALLENGES OF ICC

[115]n 109.
[116]n 109.
[117]n 109.
[118]n 109.

A strong judiciary of ICC is well presumed and deserved thought of the international community because any kind of judicial pragmatism poses a risk of judicial tyranny. Besides, a serious problem for the court is the scarcity of necessary provisions regarding protection for the witnesses and victims. Most alarmingly the witnesses and victims from the African region are often at great risk and face concrete threats because of this judicial weakness of the ICC. However, procedural laws explicitly allow redactions to make witnesses and victims anonymous, which poses a serious threat to the accuser's right to a fair trial. This gap helps to gain a tactical advantage.Afew judicial weaknesses of the ICC are discussed below:

i. The victim participation system of ICC right now is not satisfactory. This newly emerged system has also been skewed by some tactics used by victims' advocates in court. For instance, the practice of lawyers gathering mandates from African victims; using these mandates, they apply to be admitted as victims' legal representatives and obtain the court's generous legal assistance funds. However, it is frequently unclear whether they continue to inform and solicit the opinions of the concerned victims.

ii. Another challenge for ICC is to collect necessary evidence.As the court is situated and runs from the Netherlands, it is not always possible to carry out its most important and complicated investigations from thousands ofkilometers away. It might be difficult to travel to the place where the crimes were committed; the security might be volatile, collection of evidence might not be easy, the authority might not be cooperative, and above all the scarcity of funds is one of the big reasons behind the inefficiency of ICC. Moreover, states non-cooperation is another inefficiency of ICC. D. Luban points out some individuals indicted by the ICC have evaded arrest for extended periods due to the reluctance of states to apprehend them. This undermines the Court's credibility and ability to hold perpetrators accountable.[119]Additionally, the ICC lacks its own enforcement mechanism and mostly relies on state cooperation for the arrest and surrender of individuals. This dependency on states' willingness to cooperate can hinder

[119]For details see, David JLuban, 'The ICC and the Politics of State Cooperation' in Roy S. K. Lee (Ed.) *The International Criminal Court: The Making of the Rome Statute: Issues, Negotiations, Results* (2003).

its effectiveness. States may choose not to cooperate due to political considerations or lack of capacity.[120]

iii. The ICC's work can be influenced by political considerations, for example; powerful states may exert pressure to protect their interests or shield individuals from prosecution.[121]The political influence on the ICC can affect its performance in various ways, including case selection, investigations, and the implementation of its decisions. For example; the ICC issued an arrest warrant for Sudanese President Omar al-Bashir in 2009 on charges of genocide, crimes against humanity, and war crimes related to the conflict in Darfur.[122] Some African and Arab countries were critical of the ICC's indictment and they provided political support to President al-Bashir, allowing him to travel freely within their territories despite the arrest warrant. The political support for President al-Bashir effectively hindered the ICC's ability to arrest and prosecute him, as several countries chose to prioritize their political and diplomatic relationships with Sudan over their obligations under the Rome Statute. This referral of the Darfur situation to the ICC by the UNSC in 2005 (Resolution 1593) is seen by some as a reflection of geopolitical interests. Professor DeGuzman explores the role of political factors in the ICC's case selection and compliance with its decisions.[123]

iv. Usually international crimes occur at the time of internal or external armed conflict which is a result of an order from the top issued by the rulers who tried their best to cover up their responsibility for the crimes. In such a situation, the work of the court often gets hampered by the adverse political wind. As the ICC has a difficult relationship with the superpowers like China, Russia,and the United States, Russia,

[120]For details see, AletteSmeulers, 'The Geopolitics of International Criminal Court: The Impact on National Interests of Cooperation with the ICC' (2015)9(2) IJTJ252-269.
[121]For details see, William Anthony Schabas, *An Introduction to the International Criminal Court*(Cambridge University Press, 2011).
[122]*The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09.
[123]For details see, Christopher K. Lamont, *International Criminal Justice and the Politics of Compliance* (Oxford University Press, 2017).

and China have vetoed the draft Security Council Resolution several times that referred Syria issues to ICC. The Same goes with the Myanmar Rohingya issue where these two countries exercised their veto power against the UN resolution calling on the Myanmar junta to stop persecution of minority and group killing.[124]In both cases Security Council decided to sidestep the ICC, dealing a blow to its authority. On the other hand, the United States signed several bilateral treaties with numerous countries to prohibit the extradition of its citizens to the ICC.Bypassing the American ServiceMembers Act 2002, the US intention to prohibit its cooperation with ICC came to light.[125] Thus the US is limiting the courts' authority in arresting certain individuals found in other countries, especially those who are signatory countries of bilateral treaties with the USA.

v. Ensuring the safety and cooperation of witnesses and victims is challenging, especially in conflict zones, and it requires significant resources.[126] TheICC faces significant challenges in the area of witness and victim protection. Ensuring the safety and cooperation of witnesses and victims is crucial for the effective functioning of the Court and the pursuit of justice. Witnesses and victims who come forward to testify or provide evidence in ICC cases often face serious security risks, for example; risk of threats, intimidation, harassment, or even physical harm from those accused of committing international crimes. Additionally, witness intimidation and retaliation are persistent challenges. Those accused of crimes may attempt to influence or obstruct witnesses, preventing them from testifying truthfully or at all. Moreover, ensuring the cooperation of witnesses, especially in situations where they may be reluctant or fearful, can be challenging. On top of that the ICC often operates in conflict zones or areas with limited infrastructure where the logistics of witness protection and support are complex. However, transporting witnesses to the court in The Hague or providing remote testimony via video link can present logistical challenges.Moreover,the ICC also faces the challenge of providing appropriate mental health services to address the

[124]Evelyn Leopold, 'China, Russia cast rare veto against U.S. on Myanmar' *REUTERS*(Canada,21January2007).
[125]n 106.
[126] For details see, Mark A. Drumbl, 'Reimagining Child Soldiers in International Law and Policy' (2013) 24 (1) EJIL.

emotional toll of their involvement in proceedings. It is also challenging for the Court to ensureappropriate mental health services to the witnesses and victims, especially in regions with limited access to information.

vi. From the beginning of its establishment, ICC has triedto show that it is a purely nonpolitical, neutral, judicial, and objective-based organization. It was established withtheintent to end the impunity of the rulers and prevent crimes of a heinous nature. But practically, war crimes have not been stopped, neither genocide. As per Professor Ferencz, there is no war without war crimes; war crimes and crimes against humanity are inescapable, and people are facing the odious consequences of the ruthless use of armed forces.[127] Neither the use of armed has been stopped or controlled, nor can the ICC hold the rulers of major powerful countries accountable or deter them from such a notorious act. For example; the ICC pursued cases against high-ranking Kenyan officials, including President Uhuru Kenyatta and Deputy President William Ruto, for their alleged roles in post-election violence in 2007-2008.[128]The Kenyan government itself with Some African Union (AU) member states expressed concerns about the ICC's handling of the Kenyan cases. The ICC faced significant challenges in securing cooperation from the Kenyan government and witnesses. Ultimately, the cases against President Kenyatta and Deputy President Ruto were dropped due to insufficient evidence and lack of cooperation.

The ICC's focus on African cases and the relatively limited pursuit of cases outside of Africa have led to criticisms of bias and unequal treatment which is according to critics partly influenced by political considerations. This political influence is a complex and multifaceted issuethat affectscase selection, the cooperation of states, and the implementation of its decisions. The above-mentioned cases illustrate instances where political influence had an impact on the

[127] n 122.

[128]For details see, United Nations, International Criminal Court case against Kenyan officials to proceed (UN News Global perspective Human stories, 30 August 2011), available at: <https://news.un.org/en/story/2011/08/385262>accessed on 12 August 2023.

ICC's ability to carry out its judicial actions. Moreover,these cases also highlight the complex challenges the ICC faces in balancing its judicial mandate with geopolitical considerations.

3.4.4 JURISDICTIONAL CHALLENGES OF ICC

The main problem the ICC faces while prosecuting international crimes is jurisdictional limitations. According to the Rome Statute, the ICC cannot go beyond the jurisdictional limits provided in the statute. While prosecuting international crimes, the ICC faces several jurisdictional challenges. Those are:

i. The main jurisdictional weakness of the court is the second authority to try international crimes. According to the principle of complementarity, ICC acts as a last resort. If the national court can discharge its duty to prosecute crimes, the ICC hasnothing to do then. There will be no case before ICC. As the court is a non-political and neutral international entity, a legitimate desire of the member states that a case before the ICC will be dealt with proper care and concrete evidence. But this principle of complementarity also limits the court's competence. The big 5 powers of the world economy are not the member states of the Rome Statutewhich keeps them out of the jurisdictional authority of the ICC. Regarding the ICC's limited effectiveness, Professor Faruque replied that the ICC is more lenient towards powerful countries.[129]

ii. Despite being a universal and impartial court, the ICC is charged with bringing justice for the crimes that fall under its purview and are committed all over the world. ICC's jurisdiction is limited tofour crimes only whereas several serious and heinous crimes are committed daily in the world.According to Dr. MasumBillah, Professor of Law, Jagannath University, the ICC is mostly unsuccessful both in protecting human rights and guaranteeing universal administration of international crimes. Its effectiveness is

[129]Interview with Dr. Abdullah AL Faruque, Professor, Department of Law, University of Chittagong (Interview through questionnaire, 27 November 2023).

limited due to weak record of prosecutions, discord among the court's judges, difficult relationship with the world's great powers like the USA, the unsure status of the state parties about the function of the complementarity theory and classified action on African countries. According to him, composition of international crimes tribunals with both national and international authorities would help to reduce the present gap of universal administration of criminal justice.[130] However, the jurisdiction of the ICC should be broadened so that besides this small number of extremely serious cases, the ICC can prosecute other serious criminals.[131]

iii. One of the most serious criticisms leveled at the court is that it is politically biased.Such accusations of political bias frequently point to the prosecutor's partiality. When a major global power or the Security Council determinesanything about the ICC, it cannot be used against them.At the same time, a lack of political action or backing from governments calls the ICC's position into question. Moreover, being an international body, the ICC can interpret its statute. Article 17(1) (d) of the Statuteclarifies that a case is inadmissible if it is not sufficiently grave to justify further action by the court. However, the jurisprudence of the court doesn't give the prosecutor any discretion to decide whether the situation is grave or not.[132]

iv. The ICC can only prosecute crimes committed after the Rome Statuteentered into force on July 1, 2002. This means that offenses done before this date cannot be prosecuted, even if they were major violations of international law. Furthermore, the ICC's jurisdiction is limited to crimes committed on the territory of the member states ofthe Rome Statuteor by nationals of the member states ofthe Rome Statute. This excludes non-state parties, which is a threat to the global peace and order situation because some of the most heinous international crimes are committed in nations that are not the participants of the Rome Statute.

[130]Interview with Dr. MasumBillah, Professor of Law, Jagannath University (Interview through questionnaire, 27 November 2023).
[131]n 91.
[132] n 91.

v. Another judicial challenge for the ICC is limited enforcement power.As it lacks its police force to carry out arrests and bring suspects to trial, it depends on other states to arrest and hand over suspects to the ICC. However, some states may be unwilling or unable to comply with ICC requests, either for political or logistical reasons. Moreover, the member states have to contribute a handsome amount of money tobear the cost of ICC which is not always easy for a country that just came out from crimes like genocide or war crimes.

vi. Another major challenge for ICC is that some states have shown serious concerns about surrendering sovereignty to an international body like the ICC. They worry that ICC jurisdiction might infringe upon their ability to handle domestic issues as they see fit. Pro. Smeulers explores how national interests and sovereignty concerns influence states' cooperation with the ICC.[133] Additionally, the ICC has been accused of being selective in its prosecutions, particularly in its focus on African cases. The contentious relationship between the ICC and African states, highlighting the accusations of selectivity has been explained by Megret.[134] Finally, some states have also expressed reservations about the role of the UNSC in referring cases to the ICC. UNSC referrals arealso seen as influenced by the political interests of its permanent members. Pro. Akande'sexamination finds the role of politics in UNSC referrals to the ICC.[135]

These are just a few of the ICC's flaws which really create difficulties in carrying out its mission to stop the impunity of international crimes. The ways to overcome those challenges will be discussed in Chapter 6 of this thesisby which a way forward to universal administration of criminal justice will be clear and achievable.

[133] For details see, AletteSmeulers, 'The Geopolitics of International Criminal Court: The Impact on National Interests of Cooperation with the ICC' (2015) 9 (2) IJTC 252-269.
[134]For details see, Frederic Megret, 'Africa and the International Criminal Court: Mending Faces' (2008) 19 (5) EJIL 791-819.
[135] For details see, DapoAkande, 'The International Criminal Court and the Security Council: Subjectivity in Law and Politics' (2011) 22 (1) EJIL 89-120

3.5.UNITED NATIONS

TheUnited Nations is the place where the world's nations gather together to discussuniversal problems and find shared solutions that benefit all. This international organization was founded in 1945 made up of 193member states and guided by the purposes and principles contained in its founding charter.[136] Starting from 1945, October, the United Nations has been silently working to uphold universal harmony and safety by giving benevolent assistance to those in necessity, protecting human rights, and endorsing international law. To achieve a better and more sustainable future for the world, the UN is working in a system thatincludes different UN organizations established with different purposes.

3.5.1. ORGANS OF UNITED NATIONS

United Nations runs its activity through 6 different organs; UNDP, UNEP, WFP, UNFPA, UNICEF, and UN-Habitat. Other 15 international organizations are working as specialized autonomous institutions with the UN based on negotiated agreements.[137] It is founded on the UN Charter that was accepted and signed in 1945, after the conclusion of the United Nations conference. It has a unique international character and a power vested in it through the charter that is considered as an international treaty. It codifies the major principles of international relations which the UN member states are bound to obey.Except forthe ICJ, the five otherorgans of the UN are headquarters based in New York. Only ICJ is located in Hague, Netherlands. The structure of the 6 UN organs isshortly discussed below.

General Assembly: The General Assembly is the main deliberative, representative, and policy-making organ of the United Nations. The universal representation of the UN is confirmed by the presence of all 193member states. Decisions on important global issues are decided by the two-thirds majority of the GA. An elected president holds office for one year only.[138]

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[136]'Countries in the united nations'(worldometer)< https://www.worldometers.info/united-nations/ > accessed on 11 November 2023.

[137] For details see, United Nations: Peace, Dignity and Equality on a Healthy Planet (UN System) <https://www.un.org/en/about-us/un-system> accessed on 12 September 2023.

[138]United Nations: Peace, Dignity and Equality on a Healthy Planet, 'Main Bodies' <https://www.un.org/en/about-us/main-bodies> accessed on 14 October 2023.

Security Council: It is the responsibility of the Security Council to maintain international peace and security. Five permanent members along with ten non-permanent members of SC have one vote per each and they are legally obligated by the council's decision. The council would decide whether there is an existence of a threat to global peace or there is anyact of aggression. Sometimes, the SC plays the role of mediator by settling disputes between parties, imposing sanctions, or authorizing the use of force to maintain international peace and security.[139]

Economic and Social Council (ESC): The responsibility of coordination, policy review, policy dialogue, and implementation of internationally agreed development goals belongs to the economic and social goals of the United Nations. The general assembly elects 54 members for overlapping three-year terms. The ESC is the central platform of the United Nations for reflection, debate, and innovative thinking on sustainable development.[140]

Trusteeship Council: The Trusteeship Council suspended its operation after it achieved its goal of self-government and independence for 11 trust territories. This council was established in 1945 and ended its mission in 1994. Now it often meets at the request of the member states or at the decision of the president.[141]

International Court of Justice: The principal judicial organ of the United Nations is the ICJ located in Hague, Netherlands. It was established with the purpose of settling international disputes referred to it by the member states or givingadvisory opinions asked by the SC or by other organs or agencies of the United Nations. Like the ICC, ICJ functions according to its statute.[142]

Secretariat: This large organ of the United Nations consists of the secretary general and other ten thousand UN staff members who carry the duty mandated by the general assembly. The secretary-general is the head of administration of the organization represents the world's people and advocates for the poor and vulnerable.[143]

[139]n 131.
[140]n 131.
[141] n 116.
[142]n 116.
[143]n 116.

It is crucial to have a basic idea about the six main organs of the United Nations for further discussion. Along with the ICJ, the judicial function of the UN is conducted by other organs. While conducting different mediation and reconciliation procedures, the UN faces a lot of difficulties. The main administrative, judicial, and jurisdictional weaknesses of the UN arediscussedbelow:

Though the UN is a global authority, it is not free from weaknesses. Being an international organization, it plays a crucial role in determining global politics. Moreover, the United Nations stands as a universal platform for countries to clear the standpoint of a country or seek assistance while in trouble. It plays some judicial and administrative roles while acting as a global platform and faces a lot of hurdles while performing its duty. The judicial challenges of the UN are discussedbelow.

3.5.2. JUDICIAL CHALLENGESOF UNITED NATIONS

UN peacekeeping mission is a well-known fact where more than 85,000 civil and military personnel are deployed in different peacekeeping missions worldwide.[144] That peace-keeping mission is successfully continuing in Africa, Asia, Europe, the Middle East, and America at less cost than it would for a particular country. Besides resolving regional conflicts, the UN has played the most vital role in averting a third world war. Despite this entire success story, in some cases, the UN seems powerless in resolving international conflicts. For example;in the Russia-Ukraine issue, the UN failed to ensure the states' independence and sovereignty which is the central principle of the UN charter. In 2015, the then-Ukrainian president spoke about the external aggression of his country in the UNGA but now the world is witnessing the ineffectiveness and powerless situation of the UN in controlling the Russian aggression over Ukraine's sovereignty.[145] Agreeing with Ukraine's president, the member states of the United

[144]United Nations Peacekeeping 'DATA'(31 July 2023)<https://peacekeeping.un.org/en/data>accessdedon 12 October 2023.
[145]The United Nations' Strengths and Weaknesses(*StudyCorgi*., 22 August, 2023) <https://studycorgi.com/the-united-nations-strengths-and-weaknesses/ accessed on 21 October, 2023.

Nation also opinioned that comprehensive reform is needed in the UN to reflect the reality of the 21st century and enhances its activities to achieve its mission.[146]

Despite having a large number of military armies in its peacekeeping mission, the UN still doesn't have its military force which the UN could use in the different conflict resolution process. Moreover, these huge numbers of militaries are from different member states, so they have theirown way of training, equipment, military administration,and regulations. It became a serious problem when they embarkedon a joint operation, this divergence resulted in collaboration difficulties. This difficulty can be solved if the member states agree to the formulation of a universal army for the UN having uniform military administration and training. It would enhance the collaboration among the soldiers and units.[147]

Another judicial weakness of the UN is the veto power of the 5 most powerful states. These 5 states have been given more prerogative power than the member states which gave them the power to impose severe restrictions if it goes against their national interest. This dispersal of power undermines the needs of the current global community. More member states need to join as permanent members of the United Nations so that the proper representation can be reflected and they can have their say in the UN.[148]Russia has breached the UN charter measures prohibiting the use of force and it is widely reported that Russia has committed atrocities. Moreover, Russia has opened a criminal case against the ICC prosecutors and judges because they had issued an arrest warrant against the Russian president on the charge of war crimes.[149]

From the above-mentioned discussion, it is clear that the judicial difficulties faced by the UN are not rumors at all. Having its own military or allowing another member state to be apermanent member might reduce the gaps that the UN faces while functioning its duty. UN ineffectiveness in protecting state sovereignty should be given more importanceso that no other member state can violate the sovereignty rights of other states.

[146]n 142.
[147]n 138.
[148]n 138.
[149]Editorial, 'After arrest warrant for Putin, Russia opens case against ICC' *ALJAZEERA*(Doha, Qatar, 20 March 2023).

3.5.3 ADMINISTRATIVE CHALLENGES OF UNITED NATIONS

As discussed earlierthe UN has become the first global authority to establish a platform for open discussion within the international system, cooperation, and mediation between nation-states. It was primarily hoped that theUN would fix all the world's problems butit does hesitate as a 'world government' as it proclaims little supremacy over sovereignty and ineffectiveness being a progressive power.[150]Critics note that the present consultant of the UN unreasonably gives special treatment to the permanent members, thus hampering the UNSC's ability to distance itself from the sovereign interests of states when attempting to combat international security risks.[151] Moreover, in modern war strategy, there is a great change and at the same time, state engagement is increasing through proxy strategies which have impacted the UN intervention. In the last half of the twentieth century, four out of five wars were between states and it was the global hope that the SC would prevent the war and resolve the inter-state conflicts. Nevertheless, the war situation has been complicated and the mediation process gets prolonged because of the intervention of third parties while they use a proxy war strategy to influence the outcome in favor of their preferred bloc.[152]The UN was ineffective in stopping war between states.

The UN Security Council's ability to adapt to geopolitical shifts has been challenged due to the organization's responsive rather than reactive attitude in difficult international crisis. As a result, the emerging nations are uninterested in forging international consensus. Furthermore, the protection of civilians, the threat of extreme violence, and state-building issues are creating roadblocks that will eventually force both the UNGA and the UNSC to reconsider their ability to address current global challenges broadly.[153] Moreover, the UN'sfailure to denounce human rights violations in Myanmar, SriLanka, and China has also been criticized. However, UN tactics

[150]For details see, Nikolas Eristavi, 'Strengths and Weaknesses of the United Nations**:** How to Make it a More Effective International Organization' (Seminar Paper, Munich2010).
[151] For details see, Nina Kalantar, 'The Limitations and Capabilities of the United Nations in Modern Conflict' (2019) EIR https://www.e-ir.info/pdf/79174 accessed on 28 September, 2023.
[152] n 143.
[153] n 143.

of isolating states for violating human rights might not be effective in all cases like it worked for Cote d'Ivoire, in early 2011.[154]

3.5.4 JURISDICTIONAL CHALLENGES OF UNITED NATIONS

It is a well-known fact that the UN's implementation powers are restricted because the UN has to depend on the member states to putits resolutions into effect.This implies that the UN can do little to enforce compliance if a member state decides to disobey or violate its decision. Additionally, powerful member states are unwilling to give up their control in defending their own sovereignty. This may make it more difficult for the UN to successfully handle some global concerns specially created by those big global powers. However, as the five permanent members of the UNSC have the veto power in any decision of the UN, a resolution cannot be enacted regardless of the amount of support from other member states if any of the permanent members veto it. This causes a deadlock and makes it impossible for the UN to act effectively and promptly in some crucial global circumstances.

Moreover, the UNhas exclusive authority over its member states but it has limited jurisdiction or no jurisdiction over non-member states. So, it is challenging for the UN to solve global concerns when non-members are engaged.Even though all the member states are represented in the UNGA,the allocation of seats among the member states does not always correspond to the size of the world's population or the political and economic influence of a country. This imbalance of power and unequal representation of member states in decision-making may raise the question of unequal treatment by the UN.[155] Moreover, the administrative structure of the UNis deliberate and unwieldy which makes it difficult to respond swiftly to the global crises and challenges. Similarly, the decision-making process of the UN is slow as it needsthe consensus of the member states.Though the UN plays a vital role in creating and advancing international laws, its ability to carry out these laws is restricted because of certain member states who might decide not to obey international laws without experiencing significant

[154] For details see, Alex J. Bellamy, 'Human Rights and the UN: Progress and Challenges' **(**UN Chronicle, December 2011) <https://www.un.org/en/chronicle/article/human-rights-and-un-progress-and-challenges> accessed on 16 September, 2023.

[155]MerveGülAydoğanAğlarcı,'UNSC has serious inequalities in terms of representation: Expert' **(**ANKARA, 17 January 2022)<https://www.aa.com.tr/en/world/unsc-has-serious-inequalities-in-terms-of-representation-expert/2475782accessed on 02 November, 2023.

consequences. Besides, the resource constraints of the UN, the ineffective contribution of the UN in conflict resolution hinders the organization from being a global government.

In conclusion, it is important to remember that the UN also has a lot of strength including the ability to promote human rights worldwide, act as a diplomatic platform, and provide humanitarian aid. Despite its shortcomings in terms of jurisdiction, the UN is nevertheless very important for tackling world issues and preserving world peace and security.This organization is undergoing continuous reform and strengthening itself day by day but the progress can be sluggish due to the complexities of international relations and member state interests.

3.6. EUROPEAN UNION

The European Union (EU) is a political supranational and economic forum for the 27 member states of Europe.[156] EU member states are the biggest budget providers of ICC.[157] Though it is a political and economic forum, it expressed its support for achieving the universality goals through an action plan in 2011.[158]One of the goals of the 2011 action plan is to maximizepolitical will for the ratification, accession, and implementation of the ICC law to attain the desired universality.[159] Moreover,the ICC clause has been incorporated by the EU into several cooperation agreements with its partner nations. Additionally, the EU has been helping nations that have trouble implementing the Rome Statutes. Above all, the EU is also not beyond the limitationsof other organizations. The various weaknesses of the EU arediscussedbelow.

[156]'The European Union: What it is and what it does' (European Commission) <https://op.europa.eu/webpub/com/eu-what-it-is/en/>accessed on 3 November 2023.
[157] Olympia Bekou, TriestinoMariniello, Yvonne Mcdermott, 'Workshop Envisioning International Justice: what role for the ICC?' (European Parliament, November 2021)<https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653659/EXPO_STU(2021)653659_EN.pdf>accessed on 3 November 2023.
[158]For details see, 'EU Strategic Framework and Action Plan on Human Rights and Democracy' (COUNCIL OF THE EUROPEAN UNION, Luxembourg, 25 June 2012) <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/foraff/131181.pdf> accessed on 04 November 2023.
[159]n 150.

3.6.1. ADMINISTRATIVE CHALLENGES OF EU

One potential administrative weakness of the EU is the complexity of decision-making processes. The EU consists of 27member states, each with its interests and priorities. As a result, the decision-making process can be slow and cumbersome, which can make it difficult for the EU to respond quickly to new challenges and crises. Moreover, the lack of transparency and accountability of EUinstitutions is another backlog in the administrative success. Critics also argue that the EU is too distant from its citizens and that decision-making processes are opaque and difficult to understand.[160]In addition, there have been concerns about the effectiveness of EU policies and regulations. Some argue that the EU has not done enough to address issues such as economic inequality and climate change, while others argue that EU regulations can be overly burdensome for businesses and hinder economic growth.Overall, the administrative weaknesses of the EU are complex and multifaceted and are the subject of ongoing debate and discussion among policymakers, academics, and citizens.

3.6.2. JURISDICTIONAL CHALLENGES OF EU

The EU has faced several jurisdictional challenges that make it difficult to govern effectively. For example, the division of powers between the EU and its member states can sometimes lead to disputes over which level of government has the authority to regulate certain areas. This can create confusion and uncertainty for citizens, businesses, and policymakers.[161] Moreover, the EU has limited enforcement powers. It relies heavily on member states to implement and enforce its policies and regulations. This can lead to inconsistencies in enforcement across different member states and can make it difficult to ensure compliance with EU laws. Moreover, the EU operates in a complex and constantly evolving geopolitical landscape, which can make it difficult to address cross-border issues such as migration, terrorism, and cybercrime. These issues require coordinated efforts across different levels of government and between different countries, which can be challenging to achieve.

[160]n 150.
[161] n138.

Additionally, the EU faces ongoing challenges to its democratic legitimacy, as some citizens and politicians argue that decision-making within the EU is too distant from citizens and lacks transparency and accountability.Jurisdictional challenges also arise from parallel investigations by both EU and member states without any coordination between them.[162]And finally, the EU faces ongoing challenges in terms of institutional reform, as policymakers struggle to balance the competing demands of member states and maintain the stability and coherence of the EU as a whole.[163]

3.6.3. JUDICIAL CHALLENGES OF EU

Being the most effective and strong organization inEurope, the potential judicial weakness of the EU is the limited power of its judicial institutions. The European Court of Justice (ECJ) is the highest court in the EU and has the power to interpret the EU laws, but its decisions are often difficult to enforce, particularly when member states refuse to comply with its rulings.[164] Additionally, the ECJ has limited jurisdiction over national legal systems, which can limit its effectiveness in ensuring compliance with EU law.

Another crucial weakness of the EU is the lack of diversity among judges on the European Court of Justice as 27 judges are from 27 countries.[165]There have also been concerns about the transparency and accessibility of the EU's judicial institutions. Critics argue that the language used in legal proceedings can be overly complex and difficult to understandwhichmakes it difficult for citizens to participate in the legal process. Overall, the judicial weaknesses of the EU arealso complex and multifacetedandit became the subject of ongoing debate and discussion among policymakers, academics, and citizens.

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[162] For details see, 'European Union Agency for Criminal Justice Cooperation: Conflicts of jurisdiction' (EUROJUST)<https://www.eurojust.europa.eu/judicial-cooperation/instruments/conflicts-jurisdiction> accessed on 2November 2023.

[163]n 154.

[164]BREXIT 'What is the European Court of Justice and why does it matter?' (The Law Society, 19 December 2022) <https://www.lawsociety.org.uk/topics/brexit/what-is-the-european-court-of-justice-and-why-does-it-matter>accessed on 31 October 2023.

[165]ArjenBoin& Susanne K. Schmidt, The European Court of Justice: Guardian of European Integration inArjenBoin, Lauren A. Fahy, Paul t Hart (eds) *Guardians of Public Value*(Palgrave Macmillan, Cham,2012).

3.7. CONCLUDING REMARKS

This chapter has examined the complex network of current international organizations that control criminal justice on a worldwide scale. As a part of the discussion, this chapter hasexploredthejurisdictional, administrative, and judicial difficulties of the International Criminal Court (ICC), the United Nations (UN), and the European Union (EU) in their pursuit of justice on a global scale.Moreover, the idea of universal jurisdiction for international crimes has evolved over this time and enabled states to bring charges against those responsible perpetrators for the most heinous crimes regardless of their country or the crime scene.However,it is clear that there are obstacles in the way of achieving justice for international crimes. Persistent jurisdictional and judicialdifficulties lead to delays in the prosecution of people charged with those crimes. This chapter clearly shows howthe ICC, UN, and EU tribunalsfaces crucial judicial difficultiesinthe proceedings of international crimes concerning fair trials, gathering evidence, and upholding rulings.However, the ICC, UN, and EU have all significantly improved the global criminal justice system despite these obstacles. In particular, the ICC serves as a glimmer of hope in the fight for justice. Similarly, the UN has been instrumental in creating ad hoc tribunals for certain wars, highlighting the significance of accountability in the face of widespread atrocities. Moreover, the EU has supported worldwide efforts in criminal justice through its different instruments, demonstrating its dedication to safeguarding human rights and the rule of law.

In summary, the difficulties and complexities of maintaining justice on a global scale continue to be issues for the international community. With the advancement of universal jurisdiction and the persistent work of international organizations like the ICC, UN, and EU, the world is getting closer to a society in which the most horrific acts are no longer accepted without facing consequences.

CHAPTER 4

JURISDICTIONAL CHALLENGES TOADMINISTER INTERNATIONAL CRIMES BY NATIONAL & INTERNATIONAL TRIBUNALS

4.1. CHAPTER SUMMARY

A jurisdictional crisis refers to a situation where there is a dispute or uncertainty regarding the legal authority or jurisdiction of a particular case. There is alwaysconfusion about who has the rightful authority to conduct the trialof transitional crimes, the national court or the international tribunals.Though the principle of complementarity eliminates the confusion, nevertheless, the jurisdictional dispute of international crimes still exists. This chapter examines the complex and numerous problems related to the administration of criminal justice for international crimes. It also explores the proliferation of different international crime tribunals at both the national and international levels, highlighting the challenges posed by jurisdictional overlaps, resource competition, and so on. Challenges of national tribunalsstart with the dilemma ofstates'inability or unwillingness to carry out the responsibility of holding the trial of international crimes. Most of the tribunals both national and international faced the difficulties of legitimacy, lack of funding, ambiguitiesinthe legal framework, resource allocation,impartiality and independence, and difficulties in transferring the cases from national to international authorities. This section of the thesisalso explores the rising conflict and disagreements over jurisdiction between national and international tribunals along with a study of jurisdictional gaps based on the current global situation.

In conclusion, this chapter highlights how crucial it is to confront jurisdictional obstacles while seeking justice for international crimes. In a world where such issues continue, it highlights the need for improved cooperation, clear legal frameworks, and adaptation to the constantly changing terrain of international justice.

4.2. INTRODUCTION

International crimes are often called international criminal law *strictosensu* that harm the entire world by crossing over national boundaries.[166]Dealing with these crimes requires a change from traditional legal and judicial structures to establish specialized international tribunals from time to time. However, the jurisdictional challenges are the challenges where the authority of the adjudicators to determine a case is challenged. If the adjudicator doesn't have the authority to deal with the dispute or if the court doesn't have the authority to deal with particular crimes, it causes jurisdictional challenges. It is focused on legal points of whether the court or tribunal is competent to rule its jurisdiction or not.[167]This chapter explored the complex jurisdictional issues in administeringjustice for international crimes. It also examines the gapsin, international crime tribunals at both the national and international levels, scrutinizing their growth while highlighting the challenges brought on by jurisdictional overlaps, resource competition, and the necessity of effective coordination among these states.

The overall international tribunal is divided into 3 parts; ad-hoc, hybrid, and permanent tribunals. This chapter also discusses the distinctive challenges faced by the national, ad hoc, and hybrid tribunals.The Rome Statuteallows principles of complementarity by which the state would have the primary authority to conduct the trial of international crimes within the diverse legal systems and the risk of national political influence.Thoughthis principle intended to harmonize the functions of national and international courts, it frequently leads to disputes as states contest the authority of international tribunals in favor of their own courts. On the other hand, the legitimacy of ad hoc tribunals which are created for specific conflicts,contendswithissueslike resource constraints, delicate transfer of cases between national and international jurisdictions, and so on. on the other hand, the challenges faced by hybrid tribunals which combine foreign and national components, struggles with the issues like legal frameworks, resource allocation, and independence and impartiality.

[166] The four international crimes are referred to as international criminal law ***strictosensu*** as they are considered the gravest crimes of concern to the international community, and are prohibited because they threaten international peace and security and fundamental human rights.

[167]See for details, Michael D Nolan, KamelAitelaj, Milbank LLP, 'Jurisdictional Challenges' (2021) GAR<https://globalarbitrationreview.com/guide/the-guide-challenging-and-enforcing-arbitration-awards/2nd-edition/article/jurisdictional-challenges> accessed on 09 October, 2023.

In conclusion, this chapter acknowledges the various current jurisdictional difficulties that exist in the present world. The difficulties of selectivity, threats to withdraw from the Rome Statute,lack of cooperation from some states, and lack of enforcement troops all the challenges of ICC have been discussed in the previous chapter. In this chapter, other national and international tribunals than ICC will be discussed with some important case studies in comprehending the changing landscape of international justice.

4.3. CHALLENGES OF NATIONAL JURISDICTION

National courts or tribunals are those tribunals that are established within the boundary of a state to prosecute the perpetrators of international crimes that took place within the country. National tribunals are pure domestic tribunals specially established for a particular purpose and end with completing the task that the tribunal is assigned to. The judges, prosecutors, place of the tribunal, and resources all are provided by the host country where the trial is taking place. Mostly, national tribunals adopted principles of customary international laws, rules of procedure, and evidence followed or accepted by the international authority. As per Professor Faruque National tribunals are always under criticism because it is composed of judges from national courts and it has lack procedural fairness.The non-adherence to international norms and principles and not maintaining the principles of fair trial is also the reason for such criticism. He added that all national tribunals do not lack these standards.[168]

While adjudicating the cases of international crimes, the national tribunal faces several challenges.Afew of the national tribunals and their challenges are discussedbelow.

[168]Interview with Dr. Abdullah al Farooq, Professor, Dept. of Law, University of Chittagong (Interview through questionnaire, 27 November 2023).

4.3.1. International Crimes Tribunal, Bangladesh

The International Crimes (Tribunals) Act, 1973 (ICTA) was enacted by the sovereign parliament of newly emerged Bangladesh to provide for the detention, prosecution, and punishment of persons responsible for war crimes and other crimes under international law during the liberation war of Bangladesh in 1971.[169]It was a purely domestictribunal with material jurisdiction over war crimes, crimes against humanity, and genocide.[170] There was no treaty or agreement between the domestic court and any other authority about the founding instrument of the tribunal, nor any kind of accountability mechanism for violation of human rights during the prosecution of those criminals,no participation of international prosecutors, members or judges in the adjudicating mechanism of the tribunal.[171]To accomplish the purpose of section 3 of the ICTA, International Crimes Tribunal-1 was set up in 2010 to come out from the culture of impunity. Later on, ICT-2 was established on 22 March 2012 to expedite the trial of the above-mentioned crimes.[172] On 15th September 2015 the government of Bangladesh officially merged these two tribunals into a single one and conducted all the trials of war criminals in Bangladesh. The principal legal instrument that was applied by the tribunal was both the International Crimes Tribunals Act 1973 and the Amendment Act 2009. However, being a signatory country of the Genocide Convention of 1948, Bangladesh was legally entitled to prosecute the perpetrators of war crimes and Bangladesh did it through its legislation.[173] Though the act is purely national legislation, it incorporated international fair trial standards and principles of customary international law in different provisions of the mentioned act and also in its rules of evidence and procedure.[174] ICTA didn't take any prosecutorial or judicial assistance from international authority rather it established a standard for other countries to prosecute such perpetrators nationally. However, the ICTA faced several challenges while adjudicating as national jurisdiction, including:

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[169]For details see, International Crimes Tribunal-1, Bangladesh<https://www.ict-bd.org/ict1/>accessed on 11 October, 2023.
[170] For details see, MarufBillah, 'Prosecuting Crimes against Humanity and Genocide at the International Crimes Tribunal Bangladesh: An Approach to International Criminal Law Standards'(2021)10(4) Laws<https://www.mdpi.com/2075-471X/10/4/82> accessed on 15 September, 2023.
[171]n 160.
[172]For details see, 'International Crimes Tribunal-2, Bangladesh'< https://www.ict-bd.org/ict2/> accessed on 4 October 2023.
[173]AbdusSamad, 'The International Crimes Tribunal in Bangladesh And International Law'(2016) 27 CLF<https://link.springer.com/content/pdf/10.1007/s10609-016-9282-7.pdf>accessed on 4 October 2023.
[174]The International Crimes (Tribunals) Act, 1973, s 10.

1. Bangladesh is a relatively small and underdeveloped country, and the government lacks of resources and expertise those are necessary to conduct complex international criminal trials. There was no international authority to look after the trial, neither were any expert prosecutors or judges having international authority, the absence of which raisedthe question of fair trial and neutrality of the court. Moreover, the Skype conversation between the Chairman of ICT-BD-1 and an expert ininternational criminal law clarifies the lack of expertise in this regard.[175]

2. The trials conducted under the ICTA were often criticized for being politically motivated where it is claimed that the government is using the legal system to target political opponentsto justify their actions during the war.[176] The reason for such an accusation is thatmost of the accused of ICTA belong to a particular political party or group and are held responsible for committing internationally recognized crimes during 1971.[177]Especially when the ICTA includes political groups in the definition of genocide beyond the four protected groups.[178]On some points, the International Centre for Transitional Justice calls for international monitoring to assess the nature of the proceedings and recommended the suspension of the proceedings.[179]

3. While the ICT-BD was recognized by the United Nations as a legitimate means of prosecuting international crimes, it received limited support from the international community, which generally hindered its ability to effectively investigate and prosecute cases. The Tribunal was never precluded from seeking guidance from the universally

[175]Sheikh HafizurRahman and FarhanaHelalMehtab, 'National Trials of International Crimes: Evaluating the International Crimes Tribunals in Bangladesh' (2016) 16 (2) BJL 17.
[176]For details see, Surabhi Chopra, 'The International Crimes Tribunal in Bangladesh: silencing fair comment' (2015)17(2) JGR< https://www.tandfonline.com/doi/full/10.1080/14623528.2015.1027080>accessed on 3 September 2023.
[177]International Crimes Tribunal(Bangladesh):Justice orPolitics? (Student Paper, University of Exeter, 2015)<file:///C:/Users/User/Downloads/International_Crimes_Tribunal_Bangladesh.pdf>accessed on 02 July 2023.
[178]For details see, RaghaviViswanath, 'SanjeebHossain on 'International Crimes (Tribunals) Act 1973 and the Principle of Legality' (Law Blogs, University of Oxford, 2019) https://blogs.law.ox.ac.uk/current-students/graduate-discussion-groups/south-asian-law-discussion-group/blog/2019/07/sanjeeb accessed on 08 August 2023.
[179]*supra* note 9.

recognized norms and principles laid down in international law and International Criminal Law but it truly received little assistance from the international body.[180]

4. The ICT-BD was criticized for not meeting international fair trial standards, including concerns about the impartiality of the judiciary where Skype conversation hadbeen hacked and the partiality came to light. Access to legal representation by the accused, conducting the whole trial in absentia, changing the law in the middle of the proceeding to allow the prosecution the right to appeal, not allowing enough time to defense for preparing the case, not giving any scope to ask for presidential impunity,the use of coerced confessions as evidence all are considered as barriers to the fair trial.[181] Trial in absentia was a regular fact like the bench that gave the final verdict but had not heard the entire evidence.[182]It was criticized by saying that ICTA might be successful as a domestic tribunal but in case of following the fair trial standard, there is a great debate about it.

5. Some of the individuals accused of international crimes under the ICTA were living outside of Bangladesh and the national government is still facing several challenges in securing their extradition to stand trial. For example,ChowdhuryMueen-Uddin and Ashrafuzzaman Khan were convicted by the tribunal and sentenced to death but as they are living in UK and US, they cannot be brought before the court.[183] Judgments were passed but could not be executed because of their non-availability in the country and countries like the UK or USA will not extradite that person in Bangladesh becausethedeath penalty is prohibited under their respective legal system.[184] Moreover, there is no extradition treaty between Bangladesh and the United Kingdom but with the USA, there is a possibility of signing a bilateral extradition treaty.[185] In theside, the

[180]For details see, Muhammad Abdullah Fazi, PardisMoslemzadehTehrani& Azmi Bin, 'A Legal Analysis of the International Crimes Tribunal Bangladesh: A Fair Trial Perspective' in *The Asian Yearbook of Human Rights and Humanitarian Law*(Brill|Nijhoff Publications, The Netherlands, 2020).
[181] n 138.
[182]n 138.
[183]For details see, Editorial 'Bangladesh sentences UK and US residents to death over war crimes' *The Guardian* (London, 03 November 2013)
[184]Editorial, 'Summary of ICT verdict in Abul Kalam Azad Case' *The Daily Star* (Dhaka, 22 January 2013).
[185]'Dhaka urges Washington to conclude extradition treaty' *The Business Standard* (Dhaka, 08 October 2022) <https://www.tbsnews.net/bangladesh/dhaka-urges-washington-conclude-extradition-treaty-510462>accessed on 24 November 2023.

'confessed and convicted killer' of Bangabandhu, SHMB Noor Chowdhury is free in Canada. A recent report has shown that Noor Chowdhury is freely moving in Canada with his car avoiding the reporters' question regarding the assassination of Bangabandhu.[186] The Canadian government is still silent in extraditing Noor Chowdhury to Bangladesh.

6. There have been complaints that the tribunal processes have not always been transparent and that defendants' opportunity to prepare a strong case has been limited. Critics claim that this weakens the tribunal's legitimacy and calls into question the fairness of the trial process.[187]The accused were not given enough time to be prepared and senior officials tried to pressure the presiding judge.[188] Moreover, there have been worries that the prosecution relied on insufficient or untrustworthy evidence, such as hearsay and coerced confessions.This has raised questions regarding the accuracy of the verdicts and the fairness of the judicial process. [189]Criticsof the tribunal claim that it has not always acted independently of the government and has been biased in favorof the prosecution.

7. The tribunal also doeshavea research team, media,orIT cell within the register. A research team having expertise ininternational criminal law could help the judges of the tribunals to deal with the new act as it was a new job for Bangladesh. Moreover, a media and IT cell within the registry of the tribunal could help the world get the proper information that the media could brief from time to time. The absence of the media cell facilitates the spread of misleading information.[190]

Overall, the challenges faced by the International Crimes Tribunal Act in Bangladesh underscore the need for strong international support and cooperation in the fight against international crimes.Six of the accused still have Interpol red notices against them and are considered wanted felons. They are Abdur Rashid, RisaldarMoslemuddin, Abdul Majed, M

[186]'Bangabandhu's killer shown on video in Canadian investigative report' *The Business Standard*, (Dhaka, 18 November 2023)<https://www.tbsnews.net/bangladesh/bangabandhus-killer-shown-video-canadian-investigative-report-741814>accessed on 23 November 2023.
[187]n 9.
[188]n 138.
[189] n 138.
[190]n 171.

RashedChowdhury, SHMB Noor Chowdhury, and SharifulHuqDalim. To bring them toBangladesh, an extradition agreement is a must. Moreover, cooperation from other countries includes providing resources and technical assistance to national legal systems, and assisting in prosecution and investigation so that the trials face less criticism regarding fair trial standards.

4.3.2. Argentina's 'Trial of Juntas'

Like Bangladesh, Argentina started the 'trial of juntas' convicted of crimes against humanity after a long time that took place during the military dictatorship of 1975-1983.[191]It restarted trials against humanity in 2003 and by 2023, it succeededin convicting more than 1,100 criminals in a total of 320 sentences.[192] The broader social and political context of the Argentine national legal system restricted the trial in various ways.Argentina had amnesty laws named 'law of full stop' and 'due obedience'which provided immunity to human rights abusers. In 2005, the Supreme Court of Justice of Argentinadeclared the 'law of full stop' and 'due obedience' are contrary to international covenant like ICCPR and the American Covenant on Human Rights (ACHR) in which Argentina is a state party.[193]In June 2005, the court also declared the laws of impunity to be contrary to the Argentine constitution.[194]Nowadays, many countries are following Argentina as a source of inspiration as Argentina successfully set the example of remembrance and justice after a long time of political sensitivity. During the justice journey, the national court has also faced a jurisdictional crisisin administering the international crimes of CAH. Some of the key challenges of the Argentine National Court of International Crimes are discussedbelow.

1. Military dictatorship in Argentina ended in 1983 but the prosecution of the criminals started in 2003. In the meantime,Argentina had several amnesty laws like many other countries by which legal protection was given to many perpetrators. The exoneration laws of 'full stop'

[191] For details see, Marie Jose Guembe, 'Reopening of Trials for Crimes Committed by the Argentine Military Dictatorship (2005)3 IJHR https://sur.conectas.org/en/reopening-trials-crimes-committed-argentine-military-dictatorship/ accessed on 12 August 2023.
[192]'Trials for crimes against humanity in Argentina' (Ministry of Justice and Human Rights, Government of Argentina)<https://www.argentina.gob.ar/derechoshumanos/trials-crimes-against-humanity-argentina> accessed on 9 July 2023.
[193] n128.
[194]n128.

and ‘due obedience’ posed a long-term obstacle that resisted prosecuting those human rights abusers. In November 2001, the ArgentineChamber of Appeals ratified the judicial decision which had declared the law of full stop and due obedience to be null and void on the ground of inconsistency with different international treaties.[195] It also interpreted it as legislation incompatible with the right to justice under Article 18 of the American Declaration of Rights and Duties.[196]

2. Among the juntas, four military juntas had considerablepressureabove the political landscape of Argentina. As the ‘dirty war’ was financially supported by the U.S. Congress, the country had a collapsing economy after the end of the junta regime.[197]There were lots of political interventions in the judicial process of Argentina. In 1989, the then Argentines president pardoned ‘the leaders of the *proceso*’ at the start of his office which was highly controversial. From the presidential point of view, it was a part of the healing process of the country.[198]At that time, amnesty laws were promulgated to protect the perpetrators and the prosecutors and judges went through differenthazards and fears from powerful military and political figures.[199]

3. The trial against humanity in Argentina started in 2003 which is nearly 20 years later of the commission of such a heinous crime.[200]Gathering relevant evidence and information after a long period was challenging for the prosecution because in the meantime many records had been destroyed or gone missing, many victims are not alive anymore, many witnesses had died, and many of them were reluctant to come forward because of the fear of reprisal. These also complicated the collection of evidence.

*the *Proceso*refers the military dictatorship of Argentina from 1976-1983.
[195] n 128.
[196]n 128.
[197]‘National Reorganization Process’<https://en.wikipedia.org/wiki/National_Reorganization_Process#cite_note-59> accessed 8 October 2023.
[198] n 183.
[199]For details see, Mirna D. Goransky, ‘Dictatorship Trials and Reconciliation in Argentina’ (TorkelOpasahl Academic EPublisher, FICHL Policy Brief Series No 89, 2018).
[200] n 137.

4. After the Nuremberg trials, this is the first major trial of international crimes which wasconducted by a civilian court.[201] Moreover, human rights activists along with the survivors of the 'dirty war' gave enough effort and used every possible legal and official means and method to bring the concern of justice into public knowledge. Moreover, human rights activists filed litigation outside of Argentina to bring back the responsible perpetrators of dirty war and asked for global intervention under universal jurisdiction for committing international crimes. It created extensive pressure on the Argentine government and courts.[202]The international community, including organizations like Amnesty International and Human Rights Watch, pressured Argentina to address human rights abuses and bring those responsible to justice. This added both external support and scrutiny to the judicial proceedings.[203]

Moreover,the trials for international crimes facedlengthy judicial procedures which is very frequent and common. The substantial legal procedure and investigationsput a load on theresources of the justice system.[204]Nevertheless, Argentina's judiciary, civil society, and the determination of justices seeking people helped the country to make great steps in combating crimes against humanity.Over time, repealing the amnesty laws ledto the conviction of senior military leaders for their roles in the violations of human rights.

4.3.3. Gacaca Court in Rwanda

The Rwandan genocide was tried by two categories of court; the Gacaca court and the International Criminal Tribunal for Rwanda (ICTR).The Rwandan government established the

[201] For details see, NataliDaianaChizik, 'The Implementation of Trial By Jury in Argentina: The Analysis of a Legal Transplant As A Method Of Reform' (Graduate Thesis and Dissertations, University of British Columbia, 2020).
[202]NoaVaisman& Leticia Barrera, On Judgment: Managing Emotions in Trials of Crimes Against Humanity in Argentina (2020) 29(6) SJ.
[203] n 188.
[204]Fabian Raimondo, 'Overcoming Domestic Legal Impediments to the Investigation and Prosecution of Human Rights Violations: The Case of Argentina' (2011)18(2) WCL Journals and Law Reviews.

Gacaca courts in 2002 to prosecute the local perpetrators of the 1994 genocide.[205] It was a traditional community court, which wasempowered to try local individuals accused of genocide, crimes against humanity, and war crimes. The courts based on the country's established legal frameworkservetwo purposes: to serve justice for the genocide's victims and survivors, as well as to advance peace and harmony throughout the nation.[206] The word 'Gacaca' is derived from a Kinyarwanda term that designates a communal gathering spot where people typically assemble to settle conflicts and make decisions.[207]The Gacaca courts were run at the local level with witnesses and judges coming from the local community.[208] People accused of taking part in the genocide were tried in court and other conflicts that developed within communities had to be settled as well.

The Gacaca courts were renowned for their distinctive characteristics, such as a focus on community involvement and the application of conventional Rwandan beliefs and traditions. Moreover, the courts were created to be open to everyone, with a streamlined legal system that didn't demand professional representation.[209] Although it had received praise for itspart in fostering justice and peace in Rwanda, the system has also come under fire. Some people have expressed concerns about the standard of justice delivered by the legal system as well as the possibility that it will be abused for personal or political gain. However, the Gacaca courts continue to be a significant and distinctive part of Rwanda's initiatives to address the effects of the 1994 genocide.[210]Like any legal system, the Gacaca courts had their weaknesses and limitations. Here are some of the jurisdictional weaknesses of the Gacaca courts:

1. The Gacaca court was frequently presided by the community members with little to no legal education. This implied that they might not have fully comprehended the rules of law and processes applied in the cases they were hearing. This resulted in irregularities in

[205]Susan Thomson, 'Rwanda's Gacaca Courts' (2015) 121 DTM <https://journals.openedition.org/temoigner/3537?lang=en> accessed on 2 September 2023.
[206] n 191.
[207]For details see, Christopher J. Le Mon, 'Rwanda's Troubled Gacaca Courts' https://acjr.org.za/resource-centre/Gacaca.pdf accessed on 26 September 2023.
[208]For details see, Laura Seay, 'Rwanda's Gacaca Courts are hailed as post genocide success: The reality is more complicated' *The Washington post* (Washington D.C., 02 June 2017) <https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/02/59162/> accessed on 03 August 2023.
[209] n 5.
[210] n 5.

the way the law was applied and the possibility of injustices.[211]Moreover,the Gacaca courts only had the authority to hear matters involving the 1994 genocide.[212] They lacked the power to deal with any further crimes or conflicts that might have occurred in the areas they were supposed to serve.

2. The Gacaca courts did not offer the same level of due process protections to everyone as other legal systems. For instance, there was no official appeals procedure, and defendants were not entitled to legal counsel and so on.[213] Moreover, Gacaca was criticized for settling personal and political scores, corruption, and procedural irregularities.[214]Additionally, the Court faced resource constraint problem when it was first founded.[215] For instance, there had not been enough funding to thoroughly look into incidents, gather data, or support survivors and witnesses.[216]

3. Critics argued that the Gacaca system had the potential to be misused for political or personal benefit.[217] For instance, there had been instances where people were unfairly accused or singled out of attention for factors unrelated to their participation in the genocide which questioned the validity and credibility of the Gacaca courts. In preparation forinquiries, more than 10,000 Rwandans left the country out of concern about false accusations and unfair trials. Later on, many of these worries were quickly confirmed.[218]

4. Another challenge for Gacaca courts werethe rise of violence against genocide survivors who were called as witnesses in Gacaca court hearings. Unfortunately, some witnesses

[211] n 167.
[212] For details see, Allison Corey & Sandra F. Joireman, 'Retributive Justice: The Gacaca Courts in Rwanda' (2004) 103 (410) AA.
[213]Editorial, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Court' (Human Rights Watch, 31 May 2011) https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courtsaccessed on 10 September 2023.
[214] n 199.
[215]Mark Ampofo, 'In Search of Justice and Reconciliation: Rwanda' in Dennis B. Klein (ed.) Societies Emerging from Conflict: The Aftermath of Atrocity (Cambridge Scholars publishing, 2007).
[216] n 167.
[217]n 167.
[218]n 166.

among them and the court officials have been murdered around the nation, frequently in a manner that is violent and reminiscent of the 1994 genocide.[219]

Despite these flaws, the Gacaca courts continue to be a crucial and distinctive part of Rwanda's efforts to deal with the effects of the 1994 genocide. Their effect on justice and reconciliation in the nation was assessed within the context that they were created to address the unique challenges faced by Rwanda in the wake of the genocide. Along with that the Gacaca court reduced the burden of ICTR by conducting the trial of local perpetrators through the community trial. Moreover, local people know better who were the local culprits that aided in the commission of genocide.

4.3.4. The Special War Crimes Chamberin Serbia

The Special War Crimes Chamber (SWCC) was established within the Serbian court system in 2003 to prosecute individuals accused of war crimes, crimes against humanity, and genocide committed during the hostilities in the former Yugoslavia in the 1990s.[220] The Serbian assembly passed the law on the Organization and Jurisdiction of Government Authorities in prosecuting the perpetrators of war crimes. The specialized War Crimes Chamber of the District Court in Belgrade and the Office of the War Crimes Prosecutor ofthe Republic of Serbia was created by this law in July 2003.[221] Though it was a domestic court, it was established with the help of ICTY and thegovernment of the United States.[222] However, the SWCC had gonethrough several jurisdictional difficultiesjust like other national courts. Here are afew of the main difficultiesdiscussedbelow:

[219] n 166.
[220]BogdanIvanišević, 'Against the Current—War Crimes Prosecutions in Serbia' (International Center for Transitional Justice, 2007) <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Crimes-Prosecutions-2007-English_1.pdf>accessed on 11 October 2023.
[221] n 206.
[222] For details see, 'Unfinished BusinessSerbia's War Crimes Chamber'(Human Rights Watch, June 2007)<https://www.hrw.org/legacy/backgrounder/eca/serbia0607/serbia0607web.pdf> accessed on 11 October 2023.

1. One of themain jurisdictional problems of theSWCC was the lack of cooperation from some of the local nations; for example; refusals to hand up perpetrators of war crimes as well as unwillingness to grant access to crucial information or witnesses.[223] It has been manifested primarily in the failure of Serbian authorities to arrest outstanding inductees, such as former Bosnian Serb commander Ratko Mladic who was accused of genocide in Srebrenica. It was believed that he might be hiding in Serbia.[224]

2. The Special War Crimes Chamber of Serbia had a very narrow scope of authority. It was only competent to punish crimes committed on Serbian soil or by Serb nationals.[225] This meant that the Chamber had no authority over those who had committed international crimes abroad or who were not Serbian citizens.Moreover, the political meddling inthe SWCC's operations was not beyond criticism. This includes worries about political sway in judge and prosecutor selection as well as pressure to dismiss or postpone cases that could be politically controversial.[226] Serbia was alsoa great victim of external forces.

3. The SWCC had trouble in protecting those who gave testimony in its proceedings. Particularly, witnesses from Serbia often feel intimidatedfrom testifying against police officers suspected of war crimes.[227] It has arecord of suspects fleeing outside the borders. Along with that, it was difficult for the Chamber to obtain the funding it required to fulfill its mission.Limited resource leads to difficulties in hiring and trainingemployees, and conducting investigations and trials. More precisely, the absence of legal, investigative, and analytical help is seriously deterring the chamber's ability toinvestigate morecomplex criminal cases.[228]

[223]For details see, MiodragMajic&DusanIgnjatovic, 'Ten Lessons from Serbia's Experience in War Crimes Issues' (TorkelOpasahl Academic E-Publisher, FICHL Policy Brief Series No. 9, 2012).
[224] n 177.
[225]For details see, MilicaStojanovic, 'Serbia: A Year of Denying War Crimes' (Balkan Transitional Justice,December 26, 2019) <https://balkaninsight.com/2019/12/26/serbia-a-year-of-denying-war-crimes/> accessed on 04 August 2023.
[226]For details see, MilicaStojanovic, 'Serbian War Crimes Prosecution 'Extremely Inefficient'(Balkan Transitional Justice,May 6, 2022) <https://balkaninsight.com/2022/05/06/serbian-war-crimes-prosecution-extremely-inefficient-report-says/> accessed on 09 October, 2023.
[227]n 178.
[228]n 178.

Despite these obstacles, the SWCC has significantly aided in the quest for justice and holding those responsible for war crimes in the former Yugoslavia. Its efforts have assisted in advancing the rule of law in the area and resulted in the prosecution and conviction of several people charged with war crimes, crimes against humanity, and genocide.

4.3.5. The War Crimes Chamber ofBosnia And Herzegovina

The War Crimes Chamber was established in the Bosnian state court system in 2005 to prosecute individuals accused of war crimes, crimes against humanity, and genocide committed during the conflicts in Bosnia and Herzegovina.[229] Though it contains a significant impact of international component, it is purely a domestic court operating under national laws.[230]While the establishment of the WCC was a significant step toward addressing the legacy of these conflicts, it also had some jurisdictional flaws that limited its effectiveness.

1. The WCC had limited ability to pursue high-level officials and political figures who may have been involved in the genocide. Since the WCC could only prosecute individuals who were physically present in Bosnia and Herzegovina, many of the top-level perpetrators who had fled the country were not prosecutable by the chamber. Moreover, it operates on a relatively tiny budgetofaround 6% of the money considered required for the ICTY's operation.[231] More than seventeen thousand Bosnia Serb soldiers, police officers, and officials were involved in the killing but only a small number of cases were brought before the court.[232]

2. Another shortcoming of WCC was the lack of cooperation from the neighboring countriesin apprehending and extraditing suspects. While the WCC had the legal authority to request the extradition of suspects from other countries, it frequently

[229]See for details, Looking for Justice, 'The War Crimes Chamber in Bosnia and Herzegovina' (Human Rights Watch, February 7, 2006) <https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina>accessed on 12 September, 2023.
[230]n 215.
[231] n 215.
[232]n 215.

encountered political and practical obstacles. Some countries refused to work with the WCC, while others lacked the resources and capacity to locate and apprehend suspects.[233]

3. Another challenge for the WCC was acquiring evidence and witness testimony, particularly in cases where witnesses had been intimidated or were afraid of retaliation. This was exacerbated by the fact that the crimes had occurred many years before which made it difficult to locate as well as acquire reliable evidence.[234]

Despite these obstacles, the WCC has made significant progress in prosecuting those responsible for war crimes and other atrocities committed during the former Yugoslavia's conflicts. However, much work remains to be done to ensure that all those responsible are held accountable and that victims and their families receive justice.

4.4. COMMON CHALLENGES OF NATIONAL CRIMES TRIBUNALS

The above-mentioned examples demonstrate that national courts can prosecute individuals accused of international crimes within their national jurisdiction. The success of these efforts depends on a variety of factors, including the independence and impartiality of the judiciary, the availability of resources and expertise, and the support of the international community. Most of the tribunals face a lot of difficulties while prosecuting international crimes. As per Mr. BayazidHossain, national tribunals are always under criticism mostly because of political polarization of the national government, sometimes the government's intention is viewed critically, and importantly those who justify genocide, will politically criticize the trial at any cost.[235]In this regard, Dr. Billah added that as national prosecution have close attachment to native politics, national and cultural peculiarities and probably for that reason, national initiatives are more prone to criticism.[236]

[233]n 215.
[234] n 215.
[235]Interview with Mr. BayazidHossain, Assistant Prof. of Law, Bangladesh Open University (Interview was taken through questionnaire, 27 November 2023).
[236]n 130.

From the above-discussedweaknesses of the national tribunals,a few common challenges are discussedbelow:

1. The universal weakness of most of the national tribunals is the jurisdictional limits. The territorial principle of jurisdiction governs most national legal systems at the same time restricts a country's ability to prosecute crimes committed outside its borders. This creates a lot of difficulties in prosecuting international crimes, which often crossnational boundaries and involve multiple countries.

2. International crimes often involve individuals or groups who operate in multiple countries, making it difficult to locate and apprehend them. Countries may also be reluctant to cooperate due to political, cultural, or legal differences. In most of the cases, the national tribunal of Bangladesh[237], Serbia[238]and Bosnia & Herzegovina[239]didn't get a proper response from the neighboring country where the criminals were hiding. A bilateral extradition treaty was a crying need for acountry like Bangladesh to ensure complete justice. It is nearly impossible for a national court to ensure complete justice without the cooperation of other states or international institutions.

3. International crimes often require extensive resources to investigate and prosecute. Smaller or less developed countries like Bangladesh, Serbia[240], Rwanda[241], Bosnia &

[237] For details see, Editorial 'Bangladesh sentences UK and US residents to death over war crimes' *The Guardian* (London, 03 November 2013)
[238]For details see, MiodragMajic&DusanIgnjatovic, 'Ten Lessons from Serbia's Experience in War Crimes Issues' (TorkelOpasahl Academic E-Publisher, FICHL Policy Brief Series No. 9, 2012).

[239] See for details, Looking for Justice, 'The War Crimes Chamber in Bosnia and Herzegovina' (Human Rights Watch, February 7, 2006) <https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina>accessed on 12 September, 2023.
[240]BogdanIvanišević, 'Against the Current—War Crimes Prosecutions in Serbia' (International Center for Transitional Justice, 2007) <https://www.ictj.org/sites/default/files/ICTJ-FormerYugoslavia-Crimes-Prosecutions-2007-English_1.pdf> accessed on 11 October 2023.
[241] For details see, Laura Seay, 'RwandasGacaca Courts are hailed as post genocide success: The reality is more complicated' *The Washington post* (Washington D.C., 02 June 2017) <https://www.washingtonpost.com/news/monkey-cage/wp/2017/06/02/59162/>accessed on 03 August 2023.

Herzegovina[242]may not have the necessary resources or expertise to effectively investigate and prosecute these types of crimes. At the same time, international institutions are confused about their capability of completing the task of prosecuting criminals. That's why they are not interested in any kind of financial or logistic help to that particular country. At the same time, it is a matter of state interest and no state will go against its own benefit.

4. Governments or political leaders may interfere with the judicial process, either to protect themselves or their allies from prosecution or to use the legal system to persecute their opponents. This can undermine the independence and impartiality of the judiciary, making it difficult to ensure fair and effective trials. In most cases, the national judicial process of the country like Bangladesh[243], Serbia[244], Rwanda[245], and Argentina[246] is hampered by internal or external political interference. In the case of Bangladesh, most of the accused of war crimes belong to a particular political party or group and are held responsible for committing such crimes during 1971.[247]Sometimes, it becomes a matter of international politics that is run by powerful economic countries of the world. War is a matter of self-expansion that a major powerful state will want. At the same time, if the same state follows the principle of customary international law, there will be no war in the world; there will be no war crimes then.

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[242]For details see, Looking for Justice, 'The War Crimes Chamber in Bosnia and Herzegovina' (Human Rights Watch, February 7, 2006) <https://www.hrw.org/report/2006/02/07/looking-justice/war-crimes-chamber-bosnia-and-herzegovina>accessed on 12 September, 2023.

[243] For details see, Surabhi Chopra, 'The International Crimes Tribunal in Bangladesh: silencing fair comment' (2015)17(2) JGR<https://www.tandfonline.com/doi/full/10.1080/14623528.2015.1027080>accessed on 3 September 2023.

[244]' For details see, MilicaStojanovic, 'Serbian War Crimes Prosecution 'Extremely Inefficient'(Balkan Transitional Justice, May 6, 2022) <https://balkaninsight.com/2022/05/06/serbian-war-crimes-prosecution-extremely-inefficient-report-says/> accessed on 09 October, 2023.

[245]For details see, Christopher J. Le Mon, 'Rwanda's Troubled Gacaca Courts' <https://acjr.org.za/resource-centre/Gacaca.pdf>accessed on 26 September 2023.

[246]For details see, Mirna D. Goransky, 'Dictatorship Trials and Reconciliation in Argentina' (TorkelOpasahl Academic EPublisher, FICHL Policy Brief Series No 89, 2018).

[247]International Crimes Tribunal(Bangladesh):Justice orPolitics? (Student Paper, University of Exeter, 2015)<file:///C:/Users/User/Downloads/International_Crimes_Tribunal_Bangladesh.pdf>accessed on 02 July 2023.

5. There is no universal definition of what constitutes an international crime, and different countries may have different laws and standards for prosecuting these crimes. This can create inconsistencies in the application of justice and make it difficult to ensure that perpetrators are held accountable for their actions. States are promulgating laws for their own benefit keeping their own culture and practice in their background study. For example, the ICTA was criticized for not meeting international fair trial standards.[248] Gacaca was criticized for settling personal and political scores, corruption, and procedural irregularities.[249]The definition ofthe standard that an international authority follows might not always be beneficial for another country and they might not follow the international standard of prosecuting international crimes.

6. The trial of crimes against humanity in Argentina and against genocide and war crimes in Bangladesh started many years later of the commission of such heinous crimes. It was challenging for both countries to collect relevant evidence and information after that long period because of the destruction of many pieces of evidencein the meantime. Additionally, violence against genocide survivors in Rwanda and Bosnia & Herzegovina cannot be ignored. Witnesses were intimidated orafraid of retaliation which made it difficult to acquire reliable evidence for the proceedings.

In summary, the challenges of national jurisdiction to try international crimes underscore many essential issues like the need for greater international cooperation and coordination, proper resource allocation, and impartial trial procedure without political interference and intimidating witnesses. This can assist in developing international legal frameworks as well as inthe establishment of domestic courts and tribunals to prosecute these crimes. Mutual agreement of cooperation among countries especially among neighboring countries is a crucial need for the

[248]For details see, Surabhi Chopra, 'The International Crimes Tribunal in Bangladesh: silencing fair comment' (2015)17(2) JGR<https://www.tandfonline.com/doi/full/10.1080/14623528.2015.1027080>accessedon 3 September 2023.
[249]Editorial, 'Justice Compromised: The Legacy of Rwanda's Community-Based Gacaca Court' (Human Rights Watch, 31 May 2011) https://www.hrw.org/report/2011/05/31/justice-compromised/legacy-rwandas-community-based-gacaca-courtsaccessed on 10 September 2023.

completion of judicial procedure. Financial and logistic support might also be a great support for a country that just came out from a hazardous situation.

4.5. CHALLENGES OF INTERNATIONAL CRIMES TRIBUNALS

From existence to now, several international tribunals have been establishedto prosecute the perpetrators of international crimes happening worldwide. International authoritieslike the UN, EU, and ICC and their several types of weaknesses have been discussed in Chapter 3. Atthe start of this chapter, various weaknesses of national tribunals for prosecuting international crimes havebeen discussed. In this part, the challenges of international tribunals will be discussedof finding out the best authority for prosecuting those perpetrators with less criticism. For a better understanding, the international tribunals have been divided into 3 different categories; ad hoc international crimes tribunal, permanent international criminal court, and hybrid international tribunals.

4.5.1. AD-HOC INTERNATIONAL CRIMES TRIBUNALS

An ad-hoc international crimes tribunal is a special court or tribunal thatis temporary in nature to address a particular legal matter or dispute.[250]These tribunals are usually established on the basis of the need to deal with individual cases, usually when specialized knowledge is required or when the current judicial institutions would not be able to address the particular legal challenges at hand. Ad hoc tribunals are established for a particular case or group of cases, not like the permanent tribunals. After World War II, some ad hoc tribunals were established in different countries to prosecute the accused of international crimes. A brief discussion is given below:

(a). Nuremberg Tribunal

[250] Erika de Wet, 'The Relationship between the International Criminal Court and Ad Hoc Criminal Tribunals: Competition or Symbiosis? (2008)83(4) DFW 33–57.

The International Military Tribunal (IMT) popularly known as the Nuremberg Tribunalwas the military tribunal founded in 1945 to prosecute high-ranking Nazi officers for war crimes and crimes against humanity committed during World War II.[251] It was established in Nuremberg, Germany, by the Allied powers including the United States, the United Kingdom, France, and the Soviet Union.[252]For the first time in history, this international tribunal recognized the concept of crimes against humanity along with individual criminal responsibility. The Nuremberg tribunal conducted its trial in two different parts. The first one named as International Military Tribunal(IMT) was set up to try the high ranks Nazi war criminals. The IMT indicted for the first time that an individual can be held criminally responsible for committing an act that violates conventional international law.[253] The other several set up were for prosecuting individuals who are responsible for several Nazi atrocities, for example, helping in medical experiments.[254]

(b).Tokyo Tribunal

The International Military Tribunal for the Far East (IMTFE) mostly known as the Tokyo Tribunal, was a military courtfounded in 1946 to try high-ranking Japanese government officials for war crimes and crimes against humanity committed during World War II.[255]The notion of 'superior command responsibility' was established through this tribunal which states that military commanders can be held accountable for crimes committed by their subordinates.[256] The tribunal also acknowledged the concept of 'crimes against peace', which refers to acts of aggression that lead to war and was a major problem in the run-up to World War

[251]Nuremberg Trial Archives, 'The International Court of Justice: Custodian of the Archives of the International Military Tribunal at Nuremberg'(Human Rights Watch, 2018) <https://www.icj-cij.org/sites/default/files/documents/library-of-the-court-en.pdf>accessed on 4 July 2023.
[252] n 235.
[253] United States Holocaust Memorial Museum, 'Introduction to the Holocaust'(Holocaust Encyclopedia)<https://encyclopedia.ushmm.org/content/en/article/introduction-to-the-holocaust>Accessed on 05 November 2023.
[254]n 237.
[255] International Military Tribunal for The Far East, 'Special Proclamation Establishment of An International Military Tribunal for The Far East' <https://www.un.org/en/genocideprevention/documents/atrocity crimes/Doc.3_1946%20Tokyo%20Charter.pdf> accessed on 7 July 2023.
[256]For details see, ShiraMegerman,'The Tokyo War Crimes Trials (1946-48): Notes, Selected Links & Bibliography'(TOKYO WAR CRIMES TRIALS, The International Military Tribunal for the Far East) <http://law2.umkc.edu/faculty/projects/ftrials/tokyo/tokyolinks.html> accessed on 07 August 2023.

II.[257] Tokyo tribunal is frequently compared to the Nuremberg tribunal and both these tribunals helped to establish significant precedents for the later development of international criminal law and the creation of other international criminal tribunals.[258]

(c). International Criminal Tribunal for the Former Yugoslavia (ICTY)

TheInternational Criminal Tribunal for the Former Yugoslavia (ICTY) was formed in 1993 by the United Nations Security Council to prosecute persons for war crimes, crimes against humanity, and genocide perpetrated during the Yugoslav Wars of 1990.[259]This ad-hoc tribunal was a temporary institution in nature with a mandate to finish the trial as soon as feasible.The headquarters of ICTY was located in The Hague, Netherlands and it ran until 2017 when it finished its mission and shut downby giving the duty to handle the remaining cases to the International Residual Mechanism for Criminal Tribunals (IRMCT), which is now dealing with both the ICTY and the International Criminal Tribunal for Rwanda (ICTR) cases.[260] Moreover, the establishment of ICTY has permanently reformed the landscape of international humanitarian law by providing victims with the opportunity to share the experience and horrors they witnessedduringthe wartime. This court also established that the superior command responsibility can no longer protect them from prosecution.[261]

ICTY has laid down the foundations of universally accepted norms for conflict resolution and post-conflict development around the world.[262]In 24 years of working, 161 accused were accounted for genocide by ICTY; of them, ninety-one were sentenced and fifty-nine of them have already served their sentences. Eighteen accused were acquitted for not proving their

[257]n 240.
[258] Yuma Totani, The Case against the Accused' in Yuki Tanaka, Tim McCormack and Gerry Simpson (eds.)*Beyond Victor's Justice? The Tokyo War Crimes Trial Revisited* (MartinusNijhoff publishers, Leiden, 2010).
[259]'About the ICTY: The Tribunal irreversibly changed the landscape of international humanitarian law'(United Nations: International Criminal Tribunal for the Former Yugoslavia)<https://www.icty.org/en/about> accessed on 08 August 2023.
[260]For details see, 'The International Residual Mechanism for Criminal Tribunals: Vote on Resolution' (Security Council Report,21 June 2022) <https://www.securitycouncilreport.org/whatsinblue/2022/06/the-international-residual-mechanism-for-criminal-tribunals-vote-on-resolution.php> accessed on 27 August 2023.
[261] For details see, Jamie Allan Williamson, 'Some considerationson commandresponsibility andcriminal liability' (2008)90(870) IRRC 306.
[262]Alex J. Bellamy, 'Human Rights and the UN: Progress and Challenges' (UN Chronicle, December 2011) <https://www.un.org/en/chronicle/article/human-rights-and-un-progress-and-challenges>accessed on 23 August 2023.

involvement in the crime.[263]In comparisonto the ICC, in the last 21 years, the ICC has issued only 40 arrest warrants in 31 cases; of them,only 21 people have been detained in the ICC detention center and presented before the court.[264] During this prosecution period, ICTY faced a lot of challenges. A brief discussion of challenges is given below:

Challenges faced by ICTY:

1. ICTY was not a part of the municipal judicial framework rather it was a special tribunal formed to try the war criminals of former Yugoslavia. It didn't get any supportfrom the allied powers like the Nuremberg or Tokyo tribunals received.However, it had to rely on thehost nations and international organizations to carry out its functions.ICTY had lack of a police force for the enforcement of the court decision and to seek assistance in compelling the attendance of defendants. Though the member states of the United Nations were obliged to cooperate and comply with the court requests and orders, the national governments were less cooperative.[265] Additionally, ICTY had to rely on the Security Council to compel its decision and enforceits order. To ensure the cooperation of the state parties for the enforcement of the court's order, the United Nations adopted rule 61 which states that if the Chamber finds the state failed tocooperatewith the Tribunal, the President can notify the Security Council in this regard.[266] But apparently, the rule didn't bring any changes.

2. In 1998, the ICTY issued205 arrest warrants in total, of which only six arrest warrants were carried out by the states whichclearly indicates the failure of rule 61. Moreover, the tribunal suffered a partial setback and was soon aided by the increased cooperation from international organizations and the collective activism of some states. However, the

[263]'The ICTY Indicted 161 Individuals for serious violations of international humanitarian law committed in the territory of the former Yugoslavia' (United Nations, Internationals Criminal Tribunal for the former Yugoslavia, September) <https://www.icty.org/en/cases/key-figures-cases> accessed on 29 October 2023.
[264]International Criminal Court, 'Trying individuals for genocide, war crimes, crimes against humanity, and aggression' https://www.google.com/search?client=firefox-b-d&q=total+cases+of+ICC accessed on 2 August 2023.
[265] United Nations Charter a 29.
[266]United Nations, General Assembly, 'Resolution adopted by the General Assembly on 13 December 2006' (Sixty-first session Agenda item 67 (b), 24 January 2007) <https://watermark.silverchair.com/mqh048.pdf?> accessed on 14 July, 2023.

tribunal was designed as a full-fledged international criminal institution, the SC had to pass resolution 1207 to order Yugoslavia to transfer three accused persons and allow tribunal access to Kosovo.[267] Nonetheless, this forceful response failed to bring an end to unashamed non-compliance.[268]

3. One of the major institutional challenges for the tribunal was the lengthy and complex trial process. In the United States, the average criminal trial, even for felonies, rarely runs longer than a few weeks but in the ICTY, the average length of trials was more than sixteen months.[269] Strict Statuterestriction over the serious violation of humanitarian law, focused only on high-level perpetrators; connected to the entire military campaigns that haveoccurred over years were the reasons behind the lengthy trial procedure. For example, the trial of Slobodan Milosevic was extremely complex as it encompassed three separate indictments. Furthermore, the defendant's health has led to a great number of delays and the trial chamber could sit only three days a week.[270]

4. ICTY faced difficulties in gatheringevidence from foreign countries which was quite difficult for a newly emerged country without the support of a strong police force and the full collaboration of regional govern ments.[271] The governments were willing to share information only if the sources were kept confidential. Along with this, the state had the authority to block the use of such confidential evidence that they had provided the tribunal. Moreover, a system of eyewitness protection was introduced by this tribunal and the use of such testimony through video links blocked out the face and voice of the witnesses.[272]

[267]United Nations Security Council Resolution No 1207 (1998). It was adopted at its 3944th meetingon 17 November 1998.
[268]n 228.
[269]For details see, Theodor Meron, 'The Challenges Facing the International Criminal Tribunal for the former Yugoslavia' in *The Making of International Criminal Justice: The View from the Bench: Selected Speeches*(Oxford, 2011).
[270]n 253.
[271]'ICTY Manual on Developed Practices' Prepared in conjunction with UNICRIas part of a project to preserve the legacy of the ICTY (UNICRI Publisher, Italy 2009)
[272] n 255.

5. One of the major institutional challenges faced by the ICTY was combining the elements of different legal traditions. Nuremberg trials were mostly based on the universal law of adversarial model whereas the ICTY was a combination of both the civil and universal judicial system.[273]Moreover, the ICTY Tribunal faced the problem of creating a coherent sentencing scheme. ICTY does not have a strictly defined sentencing regime or sentencing guidelines rather it provides very general guidance on the sentencing issue with no chance for rehabilitation.[274] However, asan international crime is more heinous than a generalcase,the application of 'general practice' in sentencing a war criminal indicates the methodological loopholes of ICTY.

From the above-mentioned discussion, it is clear that ICTY faced several challenges duringthe trial of international crimes. Less international cooperation made itdifficult for ICTY to be more successful. Hence, the lengthy trial process and inadequate allocation of resources made the trial more difficult to complete. Comparedto Nuremberg and Tokyo, ICTY wasmore successful. The success rate of ICTY could be higherif it received support from international organizations or from neighboring countries.

(d). International Criminal Tribunal for Rwanda (ICTR)

ICTR was established in 1994 by the UNSC as an ad hoc tribunal to try those accountable for the genocide and other grave breaches of international humanitarian law perpetrated in Rwanda that year.[275]It was developed in reaction to the extensive genocide that took place in Rwanda, where Hutu ethnic members ruthlessly murdered an estimated 800,000 people, mostly members of the Tutsi ethnic group.[276]ICTR wasofficially closed on December 31, 2015. By then, it had fulfilled its purpose, which included prosecuting significant military and political

[273]For details see, Theodor Meron, 'The Challenges Facing the International Criminal Tribunal for the former Yugoslavia' in *The Making of International Criminal Justice: The View from the Bench: Selected Speeches*(Oxford, 2011).
[274]n 257.
[275]For details see, 'The ICTR in Brief' (United Nations International Residual Mechanism for Criminal Tribunals) <https://unictr.irmct.org/en/tribunal>accessed on 13 October 2023.
[276]n 259.

personalities found guilty of crimes connected to the genocide in Rwanda.[277]ICTR was the first international court to pass a judgment against a former mayor, Jean-Paul Akayesu, on nine counts of genocide and crimes against humanity.[278] A number of ninety-three people were found guilty, including businessmen, politicians, high-ranking military and government officials, media executives, and religious leaders and two-thirds of them received sentences. More than 3,000 witnesses testified in court, sharing their first-hand accounts of crimes against humanity.[279]During the establishment of ICTR, the SC requires that the entire UN state member will effectivelycooperate with the ICTR.[280]Though ICTR succeeded in ensuring justice forthe victims, it went through a lot of challenges. Some of them are discussed below.

Challenges Faced by ICTR

1. The ICTR went through a lot of challenges while trying military chiefs, local politicians, journalists, and administrative leaders who were involved in the Rwandan genocide. One of the major challenges for ICTR was the relocation issue. Once the President of the ICTR, VagnJoensendrew the world's attention to theissue that the acquitted and the convicted released persons were residing in the same city where the tribunal was based. From his point of view, relocating the accused and the convicted was the major daunting issue that the tribunal has failed to solve.[281]Indeed, the absence of any specific provisions in the ICTR Statuterelating to thiswas also acrucial challenge.

2. The ICTR Statutealso mandated the prosecution of the Tutsi rebels by the tribunal but the crimes of the Rwandan patriotic front (RPF) werenot investigated. This side of genocide was completely ignored by the court. Moreover, ICTR was also criticized for being extremely costly to run criminal proceedings. It is said to have devoured about 2 billion

[277] Alastair Leithead, 'Rwanda genocide: International Criminal Tribunal Closes'*B.B.C NEWS*(Doha, 14 December 2015) <https://www.bbc.com/news/world-africa-35070220> accessed on 29 October 2023.
[278]n 261.
[279]n 261.
[280] Robert David Sloane, 'The International Criminal Tribunal for Rwanda' (2011) BUSL <file:///C:/Users/User/Downloads/SSRN-id1969981.pdf>accessed on 28 October 2023.
[281]International law blogger, 'Challenges facing ICTR and ICTY (*International Law Prof Blog*, 04 June 2015)<https://lawprofessors.typepad.com/international_law/2015/06/challenges-facing-ictr-and-icty.html> accessed on 29 October 2023.

US dollars (1.8 million Euros)and has repeatedly been criticized for inefficiency, lack of professionalism, and corruption.[282]

3. ICTR failed to dispense its duty to justice. Almost in 20 years, less than 90 people were sentenced which was not satisfactory as an international criminal tribunal. Moreover, many of the perpetrators fled to other countriesbut those third-party countries are reluctant to investigate and bring the perpetrators to justice.[283] This kind of non-cooperation always hinders the complete justice of a tribunal.

In summary, it is clear to point out that though ICTR was successful in punishing some high officials, it failed to bring most of the perpetrators to justice. Lacking's in ICTR Statuteand gaps in diplomatic relations couldn't make this tribunal a complete success story. The UNSC also failed to bring assistance from the member states though they were bound by the SC resolution. Despite all these challenges, ICTR ended its mandate by punishing the mastermind of the Rwandan genocide.

(e). Special Court for Sierra Leone

The Special Court for Sierra Leone (SCSL) was establishedwith the collaboration ofthe Government of Sierra Leone and the United Nations in 2002 through the Security Council resolution 1315.[284] It was set up to try those perpetrators who were held to be responsible for committing serious violations of international humanitarian law in Sierra Leone during its 11 years of civil war (1991-2002).[285]SCSL ended its works in 2013 by the dissolution of the court

[282] n 80.
[283]Antonio Cascais, 'ICTR: A failed tribunal for genocide victims and survivors' (*Made for Minds*,11 August 2019) https://www.dw.com/en/ictr-a-tribunal-that-failed-rwandan-genocide-victims-and-survivors/a-51156220 accessed on 24 October 2023.
[284]For details see, Charles C Jalloh, The Establishment of the Special Court for Sierra Leone in *The Legal Legacy of the Special Court for Sierra Leone* (Cambridge: Cambridge University Press, 2020).
[285] For details see, Joseph F Kamara, 'Preserving the Legacy of the Special Court for Sierra Leone: Challenges and Lessons Learned in Prosecuting Grave Crimes in Sierra Leone'(2009)22(4) LJIL <https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/abs/preserving-the-legacy-of-

and replacing it with a residual special court for Sierra Leone.[286]The SCSL is a mixed institution thatapplies bothitsStatuteand set of operating procedures with international law.[287]It was located in the host country with jurisdiction over other offenses under Sierra Leonean law. SCSL faced several significant challenges while trying the perpetrators of civil war. Some of them are discussed below:

1. Financial aid and logistic support were significant hindrances for SCSL like other tribunals. Due to the crisis in fund and human resources, the court's ability to conduct investigations and trial were hampered effectively.[288] Though it was located in the country of the conflict, it faceda lot of unique challenges in the court administration and delivery of justice.

2. Another crucial challenge for SCSL was the volatile political and national environment.Ensuring the safety and security of the victims, witnesses, and accused had become a major problem for the court. Witnesses often faced threats that made them feel insecure and not interested to testify. Later on, the court had to implement robust witness protection measures to secure them which made them free of fair while testifying.[289]

3. Arresting high-ranking officials and leaders accused of war crimes and crimes against humanity was a great challenge for the court. It was a security issue also. Moreover,the court had to rely on international actors to gather evidence, apprehend suspects, facilitatethe court with logistic work, and so on.However,all the international actors were not cooperative in aiding the court.[290] In the case of Charles Taylor, the special court was

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the-special-court-for-sierra-leone-challenges-and-lessons-learned-in-prosecuting-grave-crimes-in-sierra-leone/781780DD2D7ABA9E700611220676F7B4>accessed on 29 October 2023.

[286] n 218.

[287] n 178.

[288]'Special Court for Sierra Leone Faces Funding Crisis, As Charles Taylor Trial Gets Under Way, Security Council Told Today in Briefing by Court's Senior Officials' (UN Security Council, SC/9037, 8 June 2007) <https://press.un.org/en/2007/sc9037.doc.htm > accessed on 29 October 2023.

[289] n 222.

[290]n 222.

unable to affectthe arrest warrant due to no cooperation fromthe host country while he was traveling to Ghana to attend peace talks.[291]

4. Additionally,Sierra Leone is a country of multiple languages and ethnic groups.[292] This diversity created lots of problems while the trial was conducted because parties could not communicate or understand properly due to linguistic and cultural barriers.[293] This barrier couldn't be avoided completely which had a great impact on the overall trial procedure.

From the above-mentioned discussion, it can be said that SCSL faced a lot of difficulties like other tribunals. Despite these challenges, the special court for SierraLeone achieved the success of prosecuting high-raking individuals. It contributed to the idea of international jurisprudence on issues related to individual criminal responsibility, sexual violence in conflict, child soldiers, and so on.

4.5.2. PERMANENT INTERNATIONAL CRIMINAL COURT

TheInternational Criminal Court (ICC) is thepermanent international institution that investigates and prosecutes persons for war crimes, crimes against humanity, genocide, and aggression.It was formed in 2002 and has jurisdiction over the above-mentioned crimescommitted after the Statutecame into effect. This is the first international tribunal established for humanity. Chapter 3 of this thesishasa details discussion on ICC challenges and Chapter 6 has a discussion on how ICC can overcome its challenges.

4.5.3. HYBRID TRIBUNALS

[291] n 178.
[292]Natasha Deveau 'Sierra Leone History & Tribes' (study.com, 08/18/2022)< https://study.com/learn/lesson/sierra-leone-people-ethnic-groups.html > accessed on 31 October, 2023.
[293]n 276.

A hybrid tribunal is a tribunal that incorporates the components of both national and international legal systemsto address a particular situation for a limited amount of time.[294]This is an international or internationalized court andis also known as the mixed tribunal. Hybrid tribunals deal withserious crimes like war crimes, crimes against humanity, genocide, and other transnational crimes. Generally, hybrid tribunals purpose to strike a balance between local authority and international participation, usually in those countries that have seen violent conflict or mass murder.[295]There are several hybrid tribunals around the world that were established to prosecute responsible persons. A brief discussionof the challenges faced by those tribunals isgiven below.

(a). Special Tribunal for Lebanon (STL)

The Special Tribunal for Lebanon (STL) was established by the United Nations Security Council in 2007 to investigate and prosecute those responsible for the death of former Lebanese Prime Minister Rafik Hariri and other connected incidents in 2005.[296] The headquarters of this hybrid tribunal is in The Hague, Netherlands. STL functions under Lebanese criminal law but with the participation of United Nations-appointed international judges and prosecutors.[297] Additionally, the STL has the authority to conduct investigations, hold trials, and sentence individuals who are found guilty along with the charge of ensuring that proceedings are fair and unbiased, as well as protecting the rights of the accused, victims, and witnesses. The STL is the first international tribunal to deal with terrorism as a crime.[298]It is also the first to be founded with the Lebanese government's approval and the first to employ a blend of international and national legal systems.

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[294]'International and Hybrid Criminal Courts and Tribunals' (United Nations and The Rule of Law)<https://www.un.org/ruleoflaw/thematic-areas/international-law-courts-tribunals/international-hybrid-criminal-courts-tribunals/> accessed on 07 November 2023.
[295]n 278.
[296]AmalAlamuddin& Anna Bonini, 'The UN Investigation of the Hariri Assassination' in AmalAlamuddin, Nidal Nabil Jurdi, and David Tolbert (eds), *The Special Tribunal for Lebanon: Law and Practice* (Oxford, 2014; online edn, Oxford Academic, 22 May 2014).
[297]n 280.
[298]'Unique features' (Special Tribunal for Lebanon)<https://www.stl-tsl.org/en/about-the-stl/unique-features> accessed on 21 October 2023.

(b) Extraordinary Chambers in Cambodian Courts (ECCC)

The ECCC was another hybrid tribunal founded in 2006 by a mutual agreement between the United Nations and the Kingdom of Cambodia to put an end to atrocitiescommitted by Khmer Rouge regime leaders like war crimes, crimes against humanity, and genocide committed in Cambodia during the 1970s.[299]Since its inception, the ECCC has held several high-profile trials, includingthe former president,KhieuSamphan, and NuonChea, the former Khmer Rouge regime's primary ideologist.[300] The tribunal has been lauded for its efforts to deliver justice to victims of the Khmer Rouge government, but it has also been chastised for its slow pace and narrow scope.Though the Cambodian government insisted the trial be held in Cambodia, due to the weakness of the Cambodian legal system and the international nature of the crimes, the Cambodian government invited international participation, as well as assistance in meeting international standards of justice.[301]Among lots of challenges, thecreationof a standalone 'hybrid' court in Cambodia to prosecute Khmer Rouge members has had little success.

From the above-mentioned discussion, the common encounters of hybrid tribunals are given below:

1. The fundamental problem faced by most of the hybrid tribunals is the institutional framework. Both thegovernment officials and United Nations staff worked together at the courts and they followed their own authorized rules and protection. For example, in the case of ECCC, the UN payschecks to their staff whereas Cambodian staff haveto pay parts of their salaries to the government official. Several interviews disclosed that most of the Cambodian staff was appointed for their connection with the government more than

[299]For details see,Hans Corell, 'Agreement between the United Nations and the Royal Government of Cambodia concerning the prosecution under Cambodian law of crimes committed during the period of Democratic Kampuchea'(Audiovisual Library of International Law, 6 June 2003)<https://legal.un.org/avl/ha/abunac/abunac.html> accessed on 31 October 2023.
[300]For details see, Rosemary Grey&Rachel Killean, 'Communicating Justice: Cambodian Press Coverage of the ECCC's Final Judgment' (2023)23(4) ICLR 487-521.
[301]'Introduction to the ECCC' (Extraordinary Chambers in the Courts of Cambodia)<https://www.eccc.gov.kh/en/introduction-eccc> accessed on 31 October 2023.

their qualification. This high level of involvement has led to a question of the impartiality and effectiveness of the said court.[302]

2. Another crucial challenge for a hybrid tribunal is the disagreement between theauthoritiesregarding issues like trial place. For example; in the case of ECCC, it was decided by an agreement that the trials should take place in Phnom Penh, but the Cambodian government decided to hold the trial out of the center which made the court less accessible tothe ordinary Cambodian people.[303] This allegation of judicial misconduct has had an invidious effect which ultimately ledto an 'unprecedented crisis of confidence' in the court as well as against the Cambodian government. It causes sufficient fund-generating problems for the institution to continue its work.[304] Later on, the UN and many of its member statesharshly criticized Cambodia's judiciary for its lack of independence, low levels of competence, and corruption.[305]

3. National and international actors can impose political pressure on hybrid tribunals. A fair and impartial trial depends on the tribunal's independence from political influences.[306] Moreover, Hybrid tribunals frequently function in nations with inadequate infrastructure and resources. Having insufficient funds and resource constraints for conducting comprehensive investigations is a significant challenge for hybrid tribunals.[307]

4. As the hybrid tribunals consist of both national and international authorities, it is a great challenge to deal with people with different cultural and linguistic backgrounds. It can be difficult to make sure that everyone, including witnesses, defendants, and legal counsel,

[302]For details see, 'Problems Faced by ECCC' (Academic Library) https://ebrary.net/42454/law/problems_faced_eccc accessed on 24 October 2023.
[303]n 286.
[304]n 286.
[305] For details see, Richard Dicker & Elise Keppler, 'Beyond the Hague: The Challenges of International Justice' (Human Rights Watch, 2004) <https://www.refworld.org/pdfid/402bacd74.pdf>accessed on 30 October 2023.
[306]RudinaJasini, 'Challenges in the Quest for Justice in Cambodia'(8 June 2010)< https://www.law.ox.ac.uk/sites/default/files/migrated/jasini_challengesinthequestforjusticeincambodia1.pdf >accessed on 23 November 2023.
[307]n 300.

is communicating and understanding with each other effectively.[308] Additionally, hybrid tribunals may encounter more difficulties inwitness protection because of local security concerns. It is challenging to set up an active witness protection systemin hybrid tribunals.[309]

No society can tolerate genocide without takingaction, no matter how serious the problems are, otherwise, society will lose its moral standing.These hybrid tribunals are not free from challenges but it aims to be a bridge between the national authority and international body to provide major international crimes with reasonable and efficient justice. Thisbalance between the interest of the national and international community in ensuring justice is crucial.

4.5.4. WEAKNESSES OF INTERNATIONAL TRIBUNALS

From above-mentioned discussion, it is clear that both the ad-hoc and hybrid tribunals have major issues in the case of prosecuting international crimes. The common challenges of International tribunals to try international crimes include:

1. The principle of territoriality governs most national legal systems, which means that a country's jurisdiction is generally limited to crimes committed within its borders. This jurisdictional difficulty is a barrier in prosecuting international crimes, which often crossnational boundaries and involve multiple countries. Except forICC, other international tribunals were established within the jurisdiction of that state to prosecute a particular class of criminals who are accused of committing heinous crimes within the boundary of that state. Like, ECCC wasestablished to prosecute high-profile official criminals including former Khimar Rough president and STL was established to prosecute the criminals of former Lebanese president Rafiq Hariri's murder.

[308] n 300.
[309] Kevin Jon Heller, 'Problems at the ECCC' (*OpinioJuris*, 02 July 2009) <http://opiniojuris.org/2009/07/02/problems-at-the-eccc/> accessed on 23 November 2023.

2. International crimes often involve individuals or groups who operate in multiple countries, making it difficult to locate and apprehend them. Countries may also be reluctant to cooperate due to political, cultural, or legal differences. As cooperation is a matter of choice; sovereign states cannot be forcedto cooperate with other sovereignty. For example; the neighboring nations were expected to assist the ICTY in its attempts to prosecute those responsible for these crimes. Nevertheless, throughout the ICTY's existence, neighboring states' levels of cooperation were fluctuated.[310] Initially refusing to cooperate with the tribunal, some nations, including Croatia and Serbia, were charged with obstructing justice[311] which made it more difficult for the tribunal to successfully prosecute cases.

3. International crimes often require extensive resources to investigate and prosecute. Smaller or less developed countries may not have the necessary resources or expertise to effectively investigate and prosecute these types of crimes. For example; ICTY and ICTR faced the fund, staff, access of evidence, time, and infrastructural constraints at the time of prosecution.[312] In the case of ECCC, it also faced the same resource constraints as the ICTY and ICTR. In most of the cases, funding by the UNSC was not enough to complete the process of prosecution, access to evidence needed cooperation from the state government as well as international organizations which were absent at the time of trial.

4. Governments or political leaders may interfere with the judicial process, either to protect themselves or their allies from prosecution or to use the legal system to persecute their opponents. This can undermine the independence and impartiality of the judiciary, making it difficult to ensure fair and effective trials. For example, ICTY, ICTR, ECCC, and STL all faced extreme political interference at the time of the trial processwhichalready have been discussed previously. Besides that,in most of the cases, governments obstructed the investigations, intimidated the witnesses, and faced difficulties in securing funding, personnel, or other resources thatwere necessary to carry out the court work effectively.

[310]For details see, Theodor Meron, 'The Challenges Facing the International Criminal Tribunal for the former Yugoslavia' in *The Making of International Criminal Justice: The View from the Bench: Selected Speeches*(Oxford, 2011).
[311]n 290.
[312]n 290.

5. It is easy to presume that different countriesmay have different laws and standards for prosecuting these crimes but a common definition of what constitutes an international crime was missing. This can create inconsistencies in the application of justice and make it difficult to ensure that perpetrators are held accountable for their actions. Moreover, all of the above-mentioned tribunals faced the difficulties of lengthy proceedings, which violates the right to a speedy trial, andmost of the tribunals were criticized for not being transparent and lack of accountability.

6. In most cases, ad-hoc tribunals are spotted for extreme complications, unreasonable delays, and cumbersome proceedings. For example; The former head of the Bosnian Serbs was detained in 2008, and his trial commenced in 2009.[313]However,the trial was continually postponed because of the accused non-appearance before the court.The trial lasted for more than five years before a decision was made in 2016.[314] Moreover, in another case, a former commander of the Bosnian Serb military, Ratko Mladic, was detained in 2011, and his trial commenced in 2012.The trial lasted for more than five years before a decision was made in 2017.[315]Additionally, two former heads of Serbia's secret police, JovicaStanisic, and FrankoSimatovic, were accused in 1999 but their trials did not start until 2008.[316]It took more than eight years to conclude the trial as a result of several procedural delays. These delaysin the delivery of justice led to unnecessary painful experiences for the victims and their families.

The overall challenges of international jurisdiction in conducting the trial of international crimes underscore the need for greater international cooperation and coordination in the fight against these heinous crimes. This also includes the development of international legal frameworks, the sharing of resources and expertise, fair and speedy trial, harmonization between national and international laws,and so on. The challenges of the international tribunals can be overcome by mutual cooperation and coordination among states.

[313]For details see, 'JovicaStanisic and FrankoSimatovic Indicted by the ICTY for Crimes Against Humanity and War Crimes' (Press release, United Nations: ICTY, The Hague, 6 May 2003).
[314]For details see, Alex Kleiderman, 'Radovan Karadzic: Ex-Bosnian Serb leader to be sent to UK prison' *BBC NEWS*(London,12 May 2021)<https://www.google.com/search?client=firefox-b-d&q=BBC+NEWS+LOCATION>accessed on 05 October, 2023.
[315]For details see, 'Trial Judgement Summary for Ratko Mladic' (UN JUDGEMENT SUMMARY, The Hague, 22 November 2017)< https://www.icty.org/x/cases/mladic/tjug/en/171122-summary-en.pdf> accessed on 05 October, 2023.
[316]For details see, 'JovicaStanisic and FrankoSimatovic Indicted by the ICTY for Crimes Against Humanity and War Crimes' (Press release, United Nations: ICTY, The Hague, 6 May 2003).

4.6. JURISDICTIONAL CRISIS BETWEEN NATIONAL AND INTERNATIONAL TRIBUNALS

It is crucial to find out the jurisdictional gap between national and international tribunals in trying international crimes. it generally refers to the limitations or differences in the legal authority and powers of these two types of courts. Both types of courts were intended to punish international criminals to put an end to the culture of impunity. However, nothing is beyond criticism. In prosecuting international crimes, both the national and international courts followed the basic principles of customary international law. Still, there are some jurisdictional gaps between these two courts for which ending the culture of impunity and accountability has become nearly impossible. The major gaps between national and international jurisdiction are given below:

1. National courts have the jurisdiction to try crimes committed within the national territory, while international tribunals have the jurisdiction to try crimes that are considered to be of concern to the international community as a whole, regardless of where they were committed. However, thesejurisdictional gaps between the twoauthoritiescan create challenges in prosecuting and punishing perpetrators of international crimes.

2. One significant gap between these two tribunals is that many countries do not have laws that criminalize all types of international crimes. This indicates that perpetrators of these crimes may not be prosecuted at the national level which can make it difficult to bring them to justice. At the same time, if those countries are not ratified countries of the Rome Statute, it won't be easy to bring them under international authority to prosecute for international crimes as the Rome Statuteis not effective for non-state party actors. At this point, there is a need for harmonization of law and authority by which prosecuting international criminals will be easy. To bring the perpetrators to justice, to put an end to the culture of impunity and to ensure accountability of the authority, cooperation among the states isa must. Though the ICC is working as an international authority or global body, it cannot compel any state or organization to

accept its jurisdiction. For these reasons, many crimes like genocide in Myanmar, aggression against Ukraine, and war crimes against Iraq and Syria cannot be stopped and the responsible persons cannot be brought before the proper court.

3. Another jurisdictional gap is that national courts may not have the resources, expertise, or political will to prosecute international crimes effectively. International tribunals, on the other hand, have been established specifically to investigate and prosecute these types of crimes and have the necessary resources and expertise to do so. As the primary court, a national tribunal should be given all kinds of support both from neighboring countries and international authorities so that the orders and judgments passed by the national tribunal can be executed properly without any kind of criticism. National and international interests should be given more priority than national politics.

4. National courts should be provided with necessary resources along with expertise, judges, and prosecutors so that they can prosecute the crimes effectively and thus how the burden over international tribunals will be reduced.

5. Finally, there is also a jurisdictional gap in terms of the authority to enforce sentences. International tribunals can impose sentences, but they may not have the power to enforce them, particularly if the convicted individual is not within their jurisdiction.On the other hand, national courtscan impose and enforce sentences, but they may not have the authority to try certain international crimes. For example;ICC doesn't have any enforcement force. It needs to depend on national cooperation to arrest any criminals hiding inside the country and bring witnesses before the court. As the national court can punish citizens of their own who are residing within the boundary but cannot bring a citizen of a different country without their help, International authority should be helpful to bring the perpetrators before the court. However, harmonization between these two courts isimportant at some point. These jurisdictional gaps can create challenges in bringing perpetrators of international

crimes to justice and highlight the need for continued cooperation and coordination between national and international tribunals.

4.7. JURISDICTIONAL GAPS AND POSITION OF ICC IN REALITY

When it comes to deciding whether the court has jurisdiction over a given matter or not, jurisdictional disparities between national and international tribunals can cause difficult legal issues. In practice, how jurisdictional gaps are traversed is determined by a variety of circumstances, including the nature of the issue, the applicable laws and treaties, and the specific courts involved.In general, international tribunals such as the International Criminal Court (ICC) and the International Court of Justice (ICJ) have jurisdiction over specific sorts of matters that fall under their jurisdiction. The ICC, for example, has jurisdiction over war crimes, crimes against humanity, and genocide, whereas the ICJ has authority over state-to-state disputes. International tribunals like ICC have only jurisdiction over crimes committed within their mandate, which can be limited in scope. Crimes committed outside the mandate of the Rome Statuteare beyond the jurisdiction of the ICC. National courts, on the other hand, have jurisdiction over many of the same types of matters that international tribunals have, and in other cases, they may have authority over issues that international tribunals do not. A national court, for example, may have jurisdiction over a case involving a non-state actor accused of committing war crimes, whereas the ICC only has jurisdiction over cases involving states or state actors. When there is a jurisdictional gap between national and international tribunals, the issue of forum shopping may develop, in which parties seek to have their case heard in the forum most favorable to their viewpoint. This can pose difficulties in determining which court has jurisdiction, as well as potential conflicts between rulings and legal interpretations.

To bridge these jurisdictional gaps, several processes have been devised to ensure that matters are heard in the right forum. National courts, for example, may be obligated to send specific types of cases to international tribunals, or international tribunals may collaborate with national authorities to investigate and prosecute matters that fit within their jurisdiction. To ensure that justice is served, overcoming jurisdictional gaps between national and international tribunals necessitates careful analysis of the applicable legal frameworks and a willingness to

cooperate across borders.However, the volatile position of the ICC due to the jurisdictional restriction causes a great challenge in the way of justice. A practical scenario is discussedbelow:

4.7.1 RUSSIA-UKRAINE ISSUE AND POSITION OF ICC

As a court of last resort, the ICC has been keeping a close eye on the Russia-Ukraine situation and has launched a preliminary investigation to see if there is enough evidence to launch a thorough investigation into alleged crimes committed by all parties to the conflict. Though Russian aggression has been ongoing since 2014,[317] it is a matter of concern that till now ICC hasn't found necessary evidence to act against Russia. However, the ICC's authority is limited to crimes committed on the territory of governments that have accepted the Rome Statute. Because Russia has not joined the Rome Statute, the ICC lacks jurisdiction over crimes committed on Russian territory. Furthermore, the ICC's jurisdiction is confined to crimes committed after a state has joined the Rome Statute, which Ukraine did in 2014. This means that the ICC lacks jurisdiction over crimes committed by Russian nationals or forces before 2014[318] unless they are related to the Ukrainian conflict. Furthermore, the ICC can only investigate and prosecute individuals, not governments which indicates that the ICC cannot pursue an action against Russia as a state, but only against responsible individuals accused of committing international crimes under the jurisdiction of the ICC. However,the ICC has issued an arrest warrant for Vladimir Putin for his role in the kidnapping of Ukrainian children, putting Russia one step closer to becoming a pariah state.[319] Russia may also be concerned about the ICC's jurisdiction in Syria, where its soldiers have been accused of war crimes on numerous occasions in recent months. Human Rights Watch and other organizations have asked the ICC to look into the events in Syria but as Syria is not a member state of the Rome Statute, the ICC cannot prosecute war crimes and crimes against humanity committed in Syria.[320]Moreover, theICChas struggled to gain significant international acceptance, for example;TheUnitedStates, India, and China, as well as the majority of Middle Eastern states where most of them have refused to ratify

[317] Shaun Walker,'Russia withdraws signature from international criminal court statute' *The Guardian,* (London, 16 November 2016) https://www.theguardian.com/world/2016/nov/16/russia-withdraws-signature-from-international-criminal-court-statuteaccessed on 30 October 2023.
[318]n 297.
[319]n 297.
[320]'Syria and the International Criminal Court' (Human Rights Watch, 17 September, 2013) <https://www.hrw.org/news/2013/09/17/qa-syria-and-international-criminal-court> accessed on 05 November 2023.

the Rome legislation.[321]It is a sovereign choice to ratify the ICC Statuteand the ICC is respectful to state sovereignty. Though Russia stood for the ICC at the time of its establishment and cooperated with its agency, later it felt that the ICC hadfailed to consolidate the rule of law and failed to maintain the stability of international relations.[322] However, the Brexit and rise of nationalist politics in the USA indicate that the tide is moving against international legal institutions. Additionally, the withdrawal of African countries represents a more serious threat to the ICC. If this dangerous trend cannot be halted, the courts' own legitimacy will be jeopardized.[323]

4.7.2. GENOCIDE IN MYANMAR AND POSITION OF ICC

It is already mentioned that the ICC can only prosecute individuals, not a nation, and that its jurisdiction is confined to crimes committed inside the territory of states who have accepted the Rome Statute.[324] Myanmar is not a signatory to the Rome Statute, hence the ICC's authority to prosecute persons for crimes committed in Myanmar is limited. But the ICC authorizedan investigation against alleged crimes committed in Myanmar in November 2019 which is a crucial step toward accountability for victims of alleged international crimes.[325] Moreover, the ICC's Prosecutor, Fatou Bensouda, sought the court in September 2018 to establish jurisdiction over the situation in Myanmar because some of the crimes committed against the Rohingya occurred in Bangladesh, which is a party to the Rome Statute.[326] The Pre-Trial Chamber I of the ICC granted the Prosecutor's motion and approved the inquiry.[327]On the other side, being a host country of over a million Rohingya, Bangladesh signed a cooperation treaty with the ICC by

[321]n 300.
[322] n 300.
[323]n 300.
[324] n 9.
[325]John Dugard, Chris Gunness,Tommy Thomas**,** YuyunWahyuningrum**,** &Ralph Wilde, 'The ICC Must Engage with Myanmar's Democratic Government and Hold the Junta to Account' *The Diplomat* (Washington D.C, August 17, 2022)<https://thediplomat.com/2022/08/the-icc-must-engage-with-myanmars-democratic-government-and-hold-the-junta-to-account/ >accessedon 30 October 2023.
[326]Editorial, 'ICC approves probe into Myanmar's alleged crimes against Rohingya' *ALJAZEERA* (Doha,15 November 2019) <https://www.aljazeera.com/news/2019/11/15/icc-approves-probe-into-myanmars-alleged-crimes-against-rohingya>accessed on 29 October 2023.
[327] n 249.

which the ICC is authorized to collect evidence from Rohingya residing in Bangladesh.[328] Nevertheless, the ICC issued an arrest warrant against two individuals who are accused of crimes against humanity in Myanmar.[329] A small African nation Gambia also refused to stay silent on the Myanmar issue and has taken legal action against it to assist the persecuted RohingyaMuslim people of Myanmar.[330] All these facts prove that the ICC took action of prosecution lately which had a detrimental effect on the overall international justice system. Many have raised questions about the capability and authority of the ICC. These jurisdictional gaps of ICC are acting as a backlog of the international legal system.

4.7.3. DESTRUCTION IN PALESTINE AND POSITION OF ICC

The government of Palestine accepted the jurisdiction of the ICC on 1 January 2015. Upon receipt of a referral, the prosecutor opens a preliminary examination into the situation in the State of Palestine in order to determine whether the criteria for opening an investigation are met.[331]In 2021, an investigation was opened into the situation inPalestine.[332]Both the United States and Israel opposed the investigation conducted by the ICC.[333]According to the current prosecutor of ICC, Karim AA Khan, additional fund is needed for a complete investigation team in Palestine. The investigation team isunderfunded and under-resourced. Cooperation from the state parties and the international community is needed to complete the task in Palestine.[334]A United Nations inquiry commission has recently stated that there is already enough clear evidence of war crimes happening in Gaza[335] but the global community is still silent against such aggression.The violence in Palestine cannot be stopped by the ICC alone. Recently, Bangladesh

[328]ShehabSumon, 'Bangladesh to support ICC prosecutor probing Myanmar's crimes against Rohingya' *ARAB NEWS*(Soudi Arabia, 06 July 2023).
[329]'ICC approves probe into Myanmar's alleged crimes against Rohingya' *ALJAZEERA*(Doha,15 Nov 2019)
[330]ICC green-lights probe into violent crimes against Rohingya'(United Nations, UN news: Global Perspective and Human Stories, 15 November 2019)https://news.un.org/en/story/2019/11/1051451 accessed on 23 October 2023.
[331]'State of Palestine: Situation in the State of Palestine' (International Criminal Court) <https://www.icc-cpi.int/palestine> accessedon 07 November 2023.
[332]Tyler McBrien, 'Where Does the ICC Palestine Investigation Stand?' (LAWFARE, October 16, 2023)<https://www.lawfaremedia.org/article/where-does-the-icc-palestine-investigation-stand>accessed on 23 October 2023.
[333]n 312.
[334]n 298.
[335] Mark Kersten, 'The ICC prosecutor needs to break his silence on Israel-Palestine' *ALJAZEERA* (QATAR,DOHA, 12 Oct 2023)<https://www.aljazeera.com/opinions/2023/10/12/the-icc-prosecutor-needs-to-break-his-silence-on-israel-palestine>accessed on 08 November 2023.

with 4 other nations charged Israel of committing war crimes in Palestine.[336]The court and the prosecutor ought to strongly denounce the violence and pledge to use all of theirresources to confront it, in addition to looking into current international crimes and obtaining arrest warrants for those most accountable for the horrors in Palestine.[337]Till now there has beenno action from the ICC or from the prosecutor whereasa strong statement from the ICC prosecutor can show support towards the victim and show that the court is standing up for those whose fundamental rights are being infringed.A global notice should be served to clarify that the authorityis keeping an eye on things happening around us.

From the above-mentioned discussion, it can be said that the relationship between national and international tribunals is complicated though it can be changed depending on a variety of conditions. Cooperation and coordination between national and international institutions can help each other to ensure that victims of international crimes receive justice.

4.8. CONCLUDING REMARKS

The chapter concludes by offering a thorough examination of the many and varied problems pertaining to the investigation, prosecution, and resolution of international crimes by national, ad hoc, and hybrid tribunals. It also explored the several legal, political, and practical challenges faced by these tribunals that frequently come up when trying to hold people accountable for international crimes.The conflict between the desire for international justice and national sovereignty is one of the main lessons to be learned from this discussion. The need to strike a careful balance between a state's right to exercise control inside its borders and the necessity of making sure that the most terrible crimes are not left unpunished is highlighted by jurisdictional difficulties. Though the ICC has proven to be a crucial step toward overcoming these obstacles by establishing a global framework for the prosecution of international crimes, it has been unsuccessful in bringing the powerful five under the jurisdiction of the Rome Statute.

[336]'Bangladesh, 4 other nations charge Israel of committing war crimes in Palestine', *The Business Standard* (Dhaka, 18 November 2023)< https://www.tbsnews.net/world/israel-committing-war-crimes-palestinian-five-nations-charge-741390>accessed on 19 November 2023.
[337] n 315.

Furthermore, the chapter has emphasized the significance of precise legal frameworks and international collaboration among governments, international organizations, and non-governmental enterprisesin tackling impunity and bringing wrongdoers accountable from the complications of complementarity to the complexities of extraterritorial jurisdiction.It has underlined the necessity of information and evidence sharing across borders as well as reciprocal respect for legal systems. This cooperation strategy can aid in bridging jurisdictional gaps and aid in the effective prosecution of crimes committed abroad.In summary, it is crucial to understand that the search for justice is a universal effort. In addition to the cooperation of state governments, the international community must also be committed to addressing jurisdictional concerns. Against this backdrop, this chapter has shown that enforcing international criminal justice is not beyond its challenges.It is an essential endeavor that highlights the common commitment toprotecting human rights and the rule of law universally.

CHAPTER 5

POTENTIALS OF*PARENS PATRIAE* JURISDICTION FOR IMPROVING THE EFFICIENCY OF NATIONAL JURISDICTIONS

5.1.CHAPTER SUMMARY

This abstract explores the concept of *parenspatriae* jurisdiction and its potential role in improving the efficiency of national jurisdictions operating under the universal administration to ensure justice for international crimes. *Parenspatriae* is a legal doctrine that grants the state the authority to act as a 'parent' and protect the interests of its citizens, particularly those who are unable to protect themselves. In the context of war crimes, this doctrine can be employed to address jurisdictional challenges and enhance the efficiency of national legal proceedings. However, with the establishment of International Criminal Tribunals, the ICC efforts have been made to hold individuals accountable for war crimes committed during armed conflicts. Whereas the jurisdictional reach of international tribunals is limited, national jurisdictions can play a crucial role in prosecuting war crimes cases. Operating under a universal administration, national jurisdiction canensure consistency and coherence in the application of international humanitarian law.

By considering *parenspatriae* jurisdiction, national jurisdictions can proactively assert their authority to prosecute war crimes and genocide committed against their citizens, even if the crimes were perpetrated in foreign territories. This approach enhances the efficiency of justice systems by reducing reliance on international tribunals and facilitating local investigations and trials. Moreover, it enables national courts to better understand the unique circumstances and complexities of cases involving their own citizens, resulting in more effective prosecution of war crimes.However, the implementation of *parenspatriae* jurisdiction in cases ofinternational crimes requires careful consideration. Challenges may arise in establishing jurisdiction in national courts or tribunals, overcoming political obstacles, and ensuring compliance with international legal norms. In such cases,cooperation and coordination between national jurisdictions and international bodiesare crucial to strike a balance between national interests and

the pursuit of global justice. The main purpose of this abstract is the inclusion of *parenspatriae* jurisdiction in the framework of national jurisdictions operating under a universal administrationwhich is believed to contribute significantly toimproving the efficiency of justice for international crimes. It emphasizes the importance of collaboration between national and international entities to ensure the effective prosecution of perpetrators, the protection of victims' rights, and the advancement of global accountability for war crimes.

5.2. INTRODUCING THE CONCEPT OF *PARENS PATRIAE* JURISDICTION

Parenspatriae is a Latin term thatmeans 'parent of the country or homeland'. Under *parenspatriae* jurisdiction, a State or court has a paternal and protective role over its citizens or others subject to its jurisdiction. Under this doctrine, a state has third-party standing to bring a lawsuit on behalf of a citizen when the suit implicates a state's quasi-sovereign interests for the well-being of its citizens.[338]*Parenspatriae* jurisdiction is a fundamental concept in international law that grants states the authority to act as guardians or protectors of their citizens, particularly those who are vulnerable or unable to protect themselves. This doctrine serves as the legal basis for states to intervene and provide aid or seek redress on behalf of their citizens in various circumstances. In the realm of international law, *parenspatriae* jurisdiction finds application in areas such as human rights protection, child welfare, and the prosecution of war crimes. This introduction explores the principles and applications of *parenspatriae* jurisdiction in international law, supported by specific references.

Parenspatriae jurisdiction is rooted in the inherent duty of a state to safeguard the welfare and interests of its citizens.[339] The principle acknowledges that the state has a unique role as the protector and representative of its nationals, particularly in situations where they face harm or are unable to assert their rights. As explained by Shany, *parenspatriae* jurisdiction

[338] 'ParensPatriae' (Cornell Law School, Legal Information Institute, May 2022) <https://www.law.cornell.edu/wex/parens_patriae>accessed on 09 November 2023.
[339]For details see,Tom Dayman, 'Protecting those who cannot look after themselves – the *parenspatriae* jurisdiction'(Gilchrist Connell, Limelight articles)<https://gclegal.com.au/limelight-newsletters/protecting-those-who-cannot-look-after-themselves-the-parens-patriae-jurisdiction/> accessed on 2 November 2023.

'authorizes the state to act as a surrogate parent and sue, be sued, or otherwise intervene in legal proceedings to protect the interests of certain individuals.[340]The concept of *parenspatriae* jurisdiction is often guided by principles of sovereignty, territoriality, and the universality of human rights. States exercise this jurisdiction based on their authority over their nationals, regardless of their location or the jurisdiction of other states. Moreover, this jurisdiction recognizes that states have an obligation to ensure justice, accountability, and protection for their citizens, particularly in cases involving war crimes and atrocities.This jurisdiction plays a crucial role in safeguarding and enforcing human rights. States can exercise this jurisdiction to seek remedies for their nationals who have suffered human rights abuses, even when the violations occur outside their territories. For instance, in the landmark *Filartigacase*, the U.S. Court of Appeals recognized *parenspatriae*jurisdiction to hold a Paraguayan official accountable for torturing a Paraguayan national in Paraguay.[341] This case established the extraterritorial reach of *parenspatriae* jurisdiction in human rights cases.

5.3. APPLICABLE PRINCIPLES

Parenspatriae jurisdiction in international criminal law refers to the authority of a state to act on behalf of its citizens and prosecute individuals responsible for war crimes. This concept is based on the principle that states have to protect their citizens and seek justice for crimes committed against them. The principles of *parenspatriae* jurisdiction in international criminal law can be understood through several key aspects. **Firstly**, *Parenspatriae* jurisdiction allows states to exercise jurisdiction over their nationals who have committed war crimes. This principle recognizes that states have a responsibility to hold their citizens accountable for international crimes. The International Criminal Tribunal for the former Yugoslavia (ICTY) emphasized this principle in the case of *Prosecutor v. Tadic* (1999), where it stated that states 'have an inherent right to exercise criminal jurisdiction over persons responsible for international crimes, such as war crimes, crimes against humanity, or genocide'.[342]**Secondly**, this jurisdiction operates under the principle of universal jurisdiction, which enables states to prosecute individuals for war

[340] Yuval Shany, 'The Competing Jurisdictions of International Courts and Tribunals' (Oxford University Press, 2001) 35-40.
[341]Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980)
[342] Prosecutor v. Tadic, Appeals Chamber, Judgment, IT-94-1-A, International Criminal Tribunal for the former Yugoslavia, July 15, 1999.

crimes regardless of the location of the crimes or the nationality of the perpetrators.[343]It also allows states to assert jurisdiction over war criminals who may have committed crimes in foreign territories. The principle of universal jurisdiction was affirmed in the landmark case of The *Prosecutor v. Demjanjuk* (2011) by the International Criminal Court (ICC), which recognized that states can exercise jurisdiction over international crimes regardless of territoriality.[344] Finally, the principle of complementarity, as enshrined in the Rome Statuteof the ICC, establishes that the jurisdiction of the ICC is complementary to the jurisdiction of national courts. This jurisdiction operates within this framework, allowing states to take the primary responsibility for prosecuting war crimes, while the ICC steps in only when a state is unwilling or unable to genuinely carry out the proceedings. This principle encourages states to exercise their jurisdiction over war criminals, ensuring accountability at the national level.[345]

5.4. *PARENS PATRIAE* JURISDICTION: WHY?

The significance of *parenspatriae* jurisdiction in ensuring global justice for the victims of war crimes, crimes against humanity, and genocide lies in its potential to address jurisdictional challenges, promote accountability, and provide redress for the victims. By allowing states to assert their authority to prosecute these crimes committed against their citizens, *parenspatriae* jurisdiction plays a crucial role in bridging gaps in international justice systems. The following discussion explores the necessity of *parenspatriae* jurisdiction in this context, supported by relevant references.

ICC haslimited jurisdiction and can only prosecute crimes committed within their specific mandates or with the consent of involved states.[346] This often leaves gaps in accountability for crimes committed in non-member states or under different legal frameworks. *Parenspatriae* jurisdiction allows states to step in and exercise their authority, irrespective of territorial or jurisdictional limitations, to hold perpetrators accountable. This approach helps

[343]RosemaryGrey, 'A Legal Analysis of Genocide by "Imposing Measures Intended to Prevent Births": Myanmar and Beyond' (2023) JGR.
[344] The Prosecutor v. Demjanjuk, Judgment, ICC-01/04-01/06, International Criminal Court, April 18, 2011.
[345]The Rome Statuteof the International Criminal Court, a 17.
[346]n 324.

overcome jurisdictional challenges and ensures that no perpetrators of war crimes or crimes against humanity go unpunished.

This jurisdiction emphasizes the rights and interests of the victims. It enables national courts to better understand the unique circumstances, needs, and experiences of their citizens who have suffered from war crimes or other international crimes.[347] By allowing states to exercise jurisdiction, victims have the opportunity to participate in legal proceedings, seek justice, and obtain reparations or compensation for the harm they have endured. This victim-centric approach helps ensure that justice systems address the specific needs and perspectives of the victims. On the other hand, the principle of complementarityrecognizes the primary role of national jurisdictions in prosecuting international crimes.[348]*Parenspatriae* jurisdiction aligns with the complementarity principle and promotes shared responsibility between the ICC and national courts. When states exercise *parenspatriae* jurisdiction, they contribute to the overall effectiveness and efficiency of global justice mechanisms. This shared responsibility allows for a broader reach of accountability, as more cases can be investigated and prosecuted, ultimately ensuring justice for a greater number of victims.

5.5. WEAKNESSES OF *PARENSPATRIAE*JURISDICTION EXERCISED BY NATIONAL GOVERNMENTS

Parenspatriae jurisdiction in international law, while offering certain advantages, also possesses several weaknesses. These weaknesses can hinder its effectiveness and pose challenges in achieving justice and accountability. This discussion will explore the weaknesses of *parenspatriae* jurisdiction in international law with proper references.

One of the weaknesses of *parenspatriae* jurisdiction is the potential for political interference and selective prosecutions. National governments may be influenced by political considerations, leading to biased or partial investigations and prosecutions. Political pressure

[347] R. Cryer et al., *An Introduction to International Criminal Law and Procedure*, (Cambridge University Press, 2010) 215.
[348] For details see, Mohammed M. El Zeidy,'*The Principle of Complementarity in International Criminal Law: Origin, Development and Practice*' (Brill publications, 2008).

can compromise the impartiality and independence of the justice system, undermining the pursuit of justice for all victims. From 1975 to 1995 no government of Bangladesh was interested in bringing war criminals of 1971 to justice.Such challenges have been observed in various cases, where political interests have influenced or obstructed the fair application of *parenspatriae* jurisdiction.

Secondly, *Parenspatriae* jurisdiction is primarily based on the premise of protecting and providing justice to a state's own citizens.[349] However, this jurisdictional approach has limited extraterritorial reach which makes it challenging for states to prosecute crimes committed against their citizens in foreign territories, especially when the crimes are perpetrated by individuals of another nationality. This limitation can hinder the ability of states to exercise *parenspatriae* jurisdiction comprehensively and ensure justice for their citizens.

Additionally, effective prosecution of international crimes often requires international cooperation in terms of sharing evidence, extraditing suspects, and facilitating the participation of witnesses. However, there may be challenges in obtaining cooperation from other states, particularly when political tensions, lack of bilateral agreements, or jurisdictional conflicts arise.[350] Insufficient international cooperation can hamper the ability of states to effectively exercise *parenspatriae* jurisdiction and impede the pursuit of justice for victims.Moreover, pursuing*parenspatriae* jurisdiction demands significant resources and capacities from national justice systems. Building the necessary infrastructure, legal expertise,and investigative capabilities, and ensuring adequate funding can be a challenge, particularly for states with limited resources or those recovering from conflicts.[351] Insufficient resources and capacity constraints can hamper the efficiency and effectiveness of *parenspatriae* jurisdiction, impeding the ability to adequately investigate and prosecute international crimes.

[349]For details see, Robert Cryer, HakanFriman, Darryl Robinson and Elizabeth Wilmshurst Frontmatter '*An Introduction to International Criminal Law and Procedure*' (Cambridge University Press, 2010).
[350]MichealScharf, *The Theory and Practice of International Criminal Law: Essays in Honor of M. CherifBassiouni*(The Netherlands: Brill | Nijhoff publishers, 2008)
[351] William A. Schabas, '*An Introduction to the International Criminal Court*' (5th ed, Cambridge University Press, 2017).

In summary, the weaknesses of *parenspatriae* jurisdiction in international law, including political interference, limited extraterritorial reach, lack of international cooperation, and resource and capacity constraints, highlight the challenges that need to be addressed for a more effective and comprehensive pursuit of justice and accountability. Overcoming these weaknesses requires strengthening the independence of national justice systems, fostering international cooperation mechanisms, and providing adequate resources and support to states in their exercise of *parenspatriae* jurisdiction.

5.6. EICHMANN CASE[352] AND *PARENS PATRIAE* JURISDICTION

The trial of Adolf Eichmann, a high-ranking Nazi official involved in the Holocaust, provides important lessons regarding the principles of *parenspatriae* jurisdiction, particularly in the context of prosecuting individuals responsible for genocide and war crimes. it was a landmark case that highlighted the role of *parenspatriae* jurisdiction in pursuing justice for international crimes. The following discussion explores the lessons learned from the Eichmann case in relation to *parenspatriae* jurisdiction.

The Eichmann case demonstrated the ability of a state to assert its jurisdiction through *parenspatriae* to prosecute individuals responsible for crimes against its citizens, even when the crimes were committed in foreign territories.[353] Israel, as the state representing the victims of the Holocaust, invoked *parenspatriae* jurisdiction to bring Eichmann to trial. This affirmed the principle that states have to protect their citizens and seek justice for crimes committed against them, regardless of jurisdictional barriers.This trial served as a significant precedent for holding individuals accountable for their role in genocide and war crimes. By prosecuting Eichmann, Israel sought to establish a legal and moral framework for ensuring that those responsible for mass atrocities would be held accountable with the intention to deter future atrocities.[354]

[352] Attorney General v. Adolf Eichmann, Israel, 1961.
[353]For details see, Hannah Arendt & Amos Elon, '*Eichmann in Jerusalem: A Report on the Banality of Evil*' (Viking Press, 1963).
[354] Baruch, N. 'The Legacy of the Eichmann Trial' (2016) 10(2) IJFA123-137; See also in BettinaStangneth, 'Eichmann Before Jerusalem: The Unexamined Life of a Mass Murderer' (Vintage Books, 2015).

The trial highlighted the significance of comprehensive documentation and evidence in prosecuting international crimes.[355]Though the trial presented extensive evidence, including testimonies, documents, and records, to establish Eichmann's involvement in the Holocaust,itsemphasis on documentation underscored the importance of preserving evidence for future prosecutions and ensuring a robust evidentiary basis in *parenspatriae* cases. This case demonstrated the ability of states to assert jurisdiction on behalf of their citizens and hold perpetrators accountable, contributing to the broader goals of accountability, deterrence, and closure for victims. Moreover, the trial emphasized the importance of comprehensive documentation and evidence in *parenspatriae* cases, setting a precedent for future prosecutions of genocide and war crimes.

5.7. *PARENSPATRIAE* JURISDICTION IN INTERNATIONAL CRIMINAL JURISPRUDENCE

Historically human security has always been at the heart of criminal jurisprudence. Criminal jurisprudence plays an important role in promoting global security in several ways. From this point of view, it is an undeniable fact that the parental role of international criminal law in securing justice for international crimes is to establish a legal framework for holding individuals accountable for committing these crimes and to ensure that justice is served for victims.

Generally, parents have a responsibility to protect their children and ensure that they are raised in a safe and secure environment. Similarly, international criminal law has a responsibility to protect individuals and ensure that they are not subjected to the most egregious crimes, such as genocide, war crimes, and crimes against humanity. By establishing legal frameworks for prosecuting these types of crimes and ensuring that justice is served, international criminal law can help to prevent these crimes from occurring in the future and provide a sense of closure for victims and their families.In addition, the parental role of

[355]Deborah E. Lipstadt, 'The Eichmann Trial: Fifty Years Later' (2011) 9(1) JICJ 1-11. See for details in BargmannMoshinsky,'The Eichmann Trial: A Reflection on the Banality of Evil' (2020) 25(1) IS 163-182.

international criminal law extends to promoting accountability and transparency in the criminal justice system. This includes ensuring accused individuals with the rights of due process and that investigations and trials are conducted impartially and transparently.Furthermore, international criminal law has a parental role in promoting reconciliation and healing for communities affected by international crimes that includingestablishing legal frameworks for transitional justice, such as truth commissions and reparations programs, which can help to address the underlying causes of conflict and promote long-term stability.

Overall, the parental role of international criminal law in securing justice for international crimes is to establish legal frameworks for prosecuting these crimes, promote accountability and transparency in the criminal justice system, and promote reconciliation and healing for communities affected by these crimes. By fulfilling this role, international criminal law can help to promote global security and protect individuals from the most egregious crimes.

5.8. POTENTIALS OF *PARENS PATRIAE* JURISDICTION IN INTERNATIONAL COURTS AND TRIBUNALS

The potential of *parenspatriae* jurisdiction in international courts and tribunals is significant, as it provides states with a legal mechanism to assert their authority and contribute to the pursuit of justice for international crimes. This jurisdictional concept holds several potentials that can enhance the effectiveness and reach of international justice mechanisms. The following discussion explores the potential of *parenspatriae* jurisdiction in international courts and tribunals, supported by relevant references.

Parenspatriae jurisdiction expands the scope of accountability for international crimes by enabling states to prosecute perpetrators on behalf of their citizens.[356] This jurisdictional approach complements the mandate of international courts and tribunals, allowing for a broader range of cases to be pursued and ensuring that individuals responsible for grave crimes face legal consequences. By exercising *parenspatriae* jurisdiction, states contribute to strengthening the overall accountability framework for international crimes.

[356]Florian Jessberger and Gerhard Werle, '*Principles of International Criminal Law*' (3rd ed., Oxford University Press, 2014).

Parenspatriae jurisdiction helps bridge jurisdictional gaps by empowering states to prosecute crimes committed against their citizens, even when the crimes occur in foreign territories.[357] It promotes victim-centric justice by recognizing the rights and interests of victims.[358] National courts exercising this jurisdiction can provide a more localized and tailored approach to justice, considering the unique circumstances and needs of their citizens who have suffered from international crimes. This potential allows for a more empathetic and meaningful engagement with victims, ensuring their voices are heard and their rights are protected.

5.9. CONTRIBUTING FACTORS OF UNCONSENTED JURISDICTION OF INTERNATIONAL COURTS AND TRIBUNALS

The issue of unconsented jurisdiction of international courts and tribunals refers to situations where a state or individual does not provide explicit consent or recognition of the jurisdiction of these judicial bodies. Several contributing factors can lead to unconsented jurisdiction, limiting the ability of international courts and tribunals to effectively carry out their mandates. The following discussion explores some of the contributing factors to unconsented jurisdiction.

One of the primary factors contributing to unconsented jurisdiction is the failure of states to ratify or accept the relevant international treaties or instruments that establish the jurisdiction of international courts and tribunals.[359] Without the consent of states through formal ratification, these judicial bodies may not have jurisdiction over certain crimes or disputes.In some cases, states may provide limited or ad hoc consent to the jurisdiction of international

[357]For details see, Robert Cryer, HakanFriman, Darryl Robinson & Elizabeth Wilmshurst '*An Introduction to International Criminal Law and Procedure*' (Cambridge University Press, 2010); See also in, Antonio Cassese, '*International Criminal Law*' (Oxford University Press, 2003).
[358]*supra* note 265. See further in, Barria, L. E., & Hall, K. L. 'The Potential Contribution of Domestic Courts in Advancing the Rights of Victims in International Criminal Law' (2017) 30(3)LJIL 597-616.
[359]For details see, Cesare P. R.Romano, Karen. J. Alter and Yuval Shany,*The Oxford Handbook of International Adjudication* (Oxford University Press,2018).

courts and tribunals.[360] This means they consent to the jurisdiction only for specific cases or under certain conditions. Such limited consent can create challenges in enforcing jurisdiction over a broader range of situations, as it requires individual consent for each case or dispute. Moreover, states have the option to choose not to participate in or withdraw from the jurisdiction of international courts and tribunals.[361] This non-participation or withdrawal can be a contributing factor to unconsented jurisdiction, as it indicates a lack of willingness to subject themselves or their citizens to the jurisdiction and decisions of these judicial bodies.

Political considerations and conflicts between states can impact the consent to the jurisdiction of international courts and tribunals. States may be reluctant to provide consent due to diplomatic tensions, disagreements over legal interpretations, or concerns about the impartiality of the judicial bodies.[362] These political factors can hinder the establishment and exercise of jurisdiction by international courts and tribunals. However, states often assert their sovereignty and national jurisdiction over certain matters, including criminal justice.[363] Some states may view the exercise of jurisdiction by international courts and tribunals as an encroachment on their sovereignty, leading to a lack of consent and resistance to their jurisdiction.

In conclusion, it is important to note that the consent and recognition of states are crucial for the functioning and effectiveness of international courts and tribunals. The lack of consent, due to factors such as the absence of ratification, limited ad hoc consent, non-participation or withdrawal, political considerations, and sovereignty concerns, can hinder the jurisdiction and impact the ability of these judicial bodies to carry out their mandates.

[360]For details see, James Crawford, *Brownlie's Principles of Public International Law* (8th ed., Oxford University Press,2012).
[361]For details see, AndreNollkaemper and Dov Jacobs (Eds), Distribution of Responsibilities in International Law (Oxford University Press,2019).
[362]For details see, YuvalShany, *The Competing Jurisdictions of International Courts and Tribunals* (Oxford University Press, 2018).
[363]For details see, Rosalyn Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press, 2015).

5.10. FORMULATION OF A UNIVERSAL ADMINISTRATION RECOGNIZING THE PRINCIPLE OF *PARENS PATRIAE* JURISDICTION

The formulation of a universal administration through recognizing the principle of *parenspatriae* jurisdiction requires a comprehensive and collaborative approach among states, international organizations, legal experts, and other stakeholders. Such administration would establish a framework for the exercise of *parenspatriae* jurisdiction in cases involving international crimes, ensuring justice for victims and accountability for perpetrators on a global scale.

5.10.1. POTENTIALS OF A UNIVERSAL ADMINISTRATION WITH*PARENS PATRIAE* JURISDICTION

The implementation of a universal administration with*parenspatriae* jurisdiction holds several potentials in ensuring justice for victims of war. Such an administration, which establishes a comprehensive legal framework for prosecuting international crimes, can enhance accountability, provide a mechanism for seeking justice, and contribute to the prevention of future atrocities. The following discussion explores the potential of a universal administration with*parenspatriae* jurisdiction in ensuring justice for victims of war.

A universal administration with*parenspatriae* jurisdiction would provide states with the authority to assert jurisdiction over crimes committed against their citizens, even if the crimes occurred in foreign territories. This expanded jurisdiction would enable states to prosecute individuals responsible for war crimes, ensuring that no perpetrator goes unpunished due to jurisdictional limitations. It would contribute to a more comprehensive and inclusive system of accountability.In situations where, international courts or tribunals have limited jurisdiction, a universal administration with*parenspatriae* jurisdiction can fill jurisdictional gaps. It empowers states to act when other judicial bodies are unable or unwilling to prosecute perpetrators. This potential ensures that justice is pursued, particularly when there are obstacles to the functioning of international courts or when specific situations fall outside their jurisdiction.

Parenspatriae jurisdiction places a significant focus on the rights and interests of victims. A universal administration with*parenspatriae* jurisdiction would prioritize the needs of victims, ensuring their participation in legal processes, protection from further harm, access to justice, and reparations. It would provide a platform for victims' voices to be heard and their rights to be upheld.

As the principle of complementarity is central to the functioning of the International Criminal Court and other international courts,a universal administration with*parenspatriae* jurisdiction would align with this principle by complementing the jurisdiction of international courts and tribunals. It would work in tandem with these bodies, filling gaps in their jurisdiction and enhancing their effectiveness in delivering justice. However, a universal administration with*parenspatriae* jurisdiction has the potential to act as a deterrent against future international crimes. This knowledge that states have the authority to prosecute perpetrators, regardless of their location, sends a strong message to the criminals as well as to the world that such crimes will not go unpunished. This potential can contribute to the prevention of atrocities and the promotion of peace and security. Accordingly, implementing a universal administration with*parenspatriae* jurisdiction would require broad international cooperation, consensus on legal standards, and the commitment of states to combat impunity. However, by harnessing the potential of suchadministration, the international community can enhance accountability, ensure justice for victims of war, and contribute to the prevention of future crimes against humanity.

5.10.2. CHALLENGES OF A UNIVERSAL ADMINISTRATION WITH*PARENS PATRIAE* JURISDICTION

Implementing universal administration with*parenspatriae* jurisdiction to ensure justice for the victims of war faces several challenges. While the concept of a universal administration has its merits, its practical implementation encounters obstacles that must be addressed. The following discussion explores some key challenges associated with establishing a universal administration with*parenspatriae* jurisdiction for justice in war crimes cases.

Establishing a universal administration with*parenspatriae* jurisdiction requires navigating complex jurisdictional issues. Different legal systems, domestic laws, and international agreements can create challenges in harmonizing jurisdictional frameworks. Moreover, coordinating the authority of national courts and international tribunals, as well as addressing conflicts between legal systems may present a significant challenge. Additionally, implementing universal administration with*parenspatriae* jurisdiction may raise concerns about state sovereignty andstates may be hesitant to cede authority over the prosecution of international

crimes to an international framework, particularly if it impinges on their sovereignty or legal traditions. Striking a balance between upholding state sovereignty and ensuring effective international justice is a critical challenge.

On the other hand, developing universaladministration requires achieving consensus on definitions and standards for international crimes. Divergent legal traditions, cultural perspectives, and political considerations can complicate the agreement between state interest and international framework on universal definitions and standards. Negotiating and reconciling these differences are crucial challenges in establishing a universally accepted administration.

Similarly, ensuring effective enforcement mechanisms and international cooperation is a key challenge of universal administration with *parenspatriae* jurisdiction. Sometimes,states may be reluctant to extradite or cooperate in the investigation or prosecution of international crimes suspects. In such cases, overcoming political considerations, building trust, and establishing mechanisms for international cooperation are essential for the success of a universal administration with*parenspatriae* jurisdiction.

A question regarding the application of *parenspatriae* jurisdiction to improve the efficiency of national jurisdiction was kept before several international criminal law experts whereas Professor Dr. MizanurRahman, Former Chairman of the Bangladesh Human Rights Commission, and Dr. Abdullah AL Faruque, Professor, Department of Law, University of

Chittagong replied negatively.[364] In the same question, BarristerTapas KantiBaul, prosecutor, International Crimes Tribunals, Bangladesh, replied positively. He also added that National International Crimes Tribunals are moderately successful because they use national resources and can arrest the accused person and bring them to justice.[365]

It is well-known fact that implementing a universal administrationwill require sufficient resources to support investigations, prosecutions, and the administration of justice. Adequate funding and support for national courts and international tribunals are necessary to ensure access to justice for victims of international crimes. Here,resource constraints can pose significant challenges to the effective implementation of a universal administration. Moreover, establishing a universal administration with*parenspatriae* jurisdiction is a complex endeavor.It has the potential to provide a comprehensive framework for accountability and justice on a global scale. By addressing the jurisdictional complexities, and resource constraints, progress can be made towards achieving justice for victims of international crimes.

5.11.CONFLICT OF STATE INTEREST AND PRINCIPLES OF *PARENSPATRIAE* JURISDICTION

The ignorance or reluctance of states to recognize and fully embrace *parenspatriae* jurisdiction of international courts and tribunals can be attributed to several reasons. These reasons highlight the challenges and complexities involved in delegating jurisdiction to international bodies. The following discussion explores some key reasons for states' ignorance or resistance towards recognizing *parenspatriae* jurisdiction of international courts and tribunals.

State sovereignty is a fundamental principle in international law. Some states may view the exercise of *parenspatriae* jurisdiction by international courts and tribunals as an encroachment on their sovereignty. They may be hesitant to cede authority over legal matters

[364]Interview with Professor Dr. MizanurRahman, Former Chairman, Bangladesh Human Rights Commission and Dr. Abdullah Al Faruque, Professor, Dept. of Law, University of Chittagong (Interview through questionnaire, 27 November 2023).
[365]Interview with Barrister Tapas KantiBaul, Prosecutor, International Crimes Tribunals (Bangladesh, 26 November 2023).

and the prosecution of crimes committed within their jurisdiction to external bodies. Therefore,concerns about maintaining control over national affairs and legal systems can lead to resistance torecognizing *parenspatriae* jurisdiction. Similarly, political considerations play a vital role in influencing states' decisions regarding international jurisdiction. It might have political ramifications, including diplomatic tensions and potential conflicts with national interestsStates may prioritize political considerations over the pursuit of justice or accountability.

The recognition of *parenspatriae* jurisdiction requires a consensus among states regarding its scope, application, and implications. However, reaching a universal consensus on the delegation of jurisdiction to international courts and tribunals can be challenging due to divergent legal systems, cultural perspectives, and varying levels of commitment to international justice. The lack of consensus can result in states ignoring or rejecting the concept of *parenspatriae* jurisdiction.Moreover, national legal frameworks may also limit the extent of delegation jurisdiction to external bodies. These domestic legal barriers may impede the recognition and implementation of *parenspatriae* jurisdiction.

Some states may perceive the exercise of *parenspatriae* jurisdiction by international courts and tribunals as selective or biased. States may question the fairness and effectiveness of these bodies which would lead to a lack of support for their jurisdiction. Moreover, addressing states' ignorance or resistance towards recognizing *parenspatriae* jurisdiction requires dialogue, diplomatic efforts, and a commitment to promote international justice and accountability. The most crucial steps towards increasing recognition and support for paren*spatriae* jurisdictions are trust building, sovereignty concerns, transparency and fairness, and fostering universal consensus on the delegation of jurisdiction.

5.12. REFLECTING HOLISTIC APPROACHES OF THE PRINCIPLES OF *PARENSPATRIAE* JURISDICTION

If the principle of *parenspatriae* jurisdiction were to be modified and incorporated into the jurisdiction of the ICC for the victims of international crimes, several modifications and

adjustments would be necessary. The following discussion outlines some key considerations and modifications that would be required:

The Rome Statutewould need to be amended explicitly to include *parenspatriae* jurisdiction as a recognized basis for the Court's jurisdiction. This would require a formal amendment process involving the state parties to the Rome Statute. Moreover, the modifications would need to define the precise scope and limits of *parenspatriae* within the ICC's jurisdiction. This would involve determining which crimes and situations fall under the purview of *parenspatriae* jurisdiction and establishing clear criteria for its application.

However, as *parenspatriae* jurisdiction involves the exercise of jurisdiction by a state on behalf of its citizens or residents, the modifications would need to address the issue of states' consent and participation. It would be essential to establish mechanisms to ensure that states are willing to exercise their *parenspatriae* jurisdiction and cooperate with the ICC in the investigation and prosecution of international crime cases. The modifications would need to reconcile the*parenspatriae* jurisdiction with the complementarity principle enshrined in the Rome Statute. Moreover, the relationship between *parenspatriae*jurisdiction and the complementarity principle needed to be clarified to ensure that the exercise of *parenspatriae* jurisdiction does not undermine the role of national jurisdictions.Similarly, adequate provisions regarding cooperation and assistance between the ICC and states exercising *parenspatriae* jurisdiction would need to be added. This would include mechanisms for evidence sharing, witness protection, and extradition of suspects, as well as mutual legal assistance to facilitate effective investigations and prosecutions. The importance of victim participation and protection in the context of *parenspatriae* jurisdiction should be emphasized. Provisions should be made to ensure meaningful participation of victims in the proceedings, guarantee their safety, provide necessary support services, and facilitate their access to justice and reparations.

Implementing*parenspatriae* jurisdiction within the ICC would require adequate resources and capacity-building efforts. It should address the allocation of resources to support the exercise of *parenspatriae* jurisdiction by states. These modifications would need to be carefully considered and negotiated among states, legal experts, and other stakeholders.

5.13. CONCLUDING REMARKS

In conclusion, considering *parenspatriae* jurisdiction in improving the efficiency of national jurisdictions operating under a universal administration holds significant potential for advancing justice and accountability for international crimes. The incorporation of this principle allows states to act on behalf of their nationals and take an active role in prosecuting individuals responsible for grave offenses such as war crimes, genocide, and crimes against humanity. By embracing *parenspatriae* jurisdiction, national jurisdictions can contribute to the global pursuit of justice, complementing the work of international courts and tribunals like the International Criminal Court.The application of *parenspatriae* jurisdiction offers several advantages. It enhances the reach of national jurisdictions, enabling them to prosecute crimes committed by or against their nationals even when the crimes occur outside their territories. This extension of jurisdiction promotes the protection of victims' rights and their active participation in legal proceedings, reinforcing the principle of victim-centric justice. Furthermore, the incorporation of *parenspatriae* jurisdiction reinforces the subsidiarity principle by empowering national courts to take the lead in prosecuting international crimes, with the ICC serving as a complementary institution when necessary.

However, challenges remain in implementing *parenspatriae* jurisdiction, including concerns about state sovereignty, political considerations, and the need for harmonizing legal frameworks. Overcoming these challenges requires international collaboration, dialogue, and a commitment to the pursuit of justice. States, international organizations, legal experts, and civil society must work together to ensure effective coordination, resource allocation, and cooperation among national jurisdictions operating under a universal administration.By recognizing and embracing *parenspatriae* jurisdiction, national jurisdictions can play a vital role in addressing impunity, promoting accountability, and providing justice to victims of international crimes. This inclusive approach, combining the strengths of national and international justice systems, has the potential to significantly improve the efficiency and effectiveness of legal processes and contribute to the prevention of future atrocities.

CHAPTER-6

A PLAUSIBLE WAY-OUT FOR ICC TO PROVIDE FAIR JUSTICE UNIVERSALLY

6.1. CHAPTER SUMMARY

The International Criminal Court (ICC) plays a pivotal role in the global pursuit of justice for serious international crimes. Established under the Rome Statute, the ICC's mandate encompasses prosecuting individuals responsible for genocide, crimes against humanity, war crimes, and crimes of aggression. This chapter provides an overview of the ICC's roles, challenges, successes,and prospects for the future.

The fundamental purpose ofthe ICC was to investigate, prosecute, and try the person who are accused of committing international crimes around the world. The ICC aims to hold those responsible accountable and to deter future happening of such crimes.[366] The ICC serves as a critical mechanism for addressing impunity for the most heinous crimes that shock the conscience of humanity. It plays a multifaceted role as an international court, aiming to ensure accountability, provide reparations to victims, and contribute to deterrence. Additionally, the ICC seeks to promote peace and reconciliation by addressing the root causes of conflict and fostering a culture of respect for international law.Over the years, the ICC has achieved notable successes in holding individuals accountable for international crimes. High-profile cases, such as those related to the Lord's Resistance Army in Uganda and the conviction of former Congolese warlord Thomas Lubanga, have demonstrated the Court's capacity to render justice. Furthermore, the ICC's victim-centered approach has provided thousands of survivors with a platform to seek redress and healing. In chapter3 of this thesisthe main challenges of ICCare discussed briefly. In this chapter, the ways to overcome the challenges of ICC arediscussed. This chapter ends with the prospects of harmonization between national and international legal systems.

[366]'About the court' (International criminal court) https://www.icc-cpi.int/about/the-court accessed on 27 November 2023.

The ICC confronts a range of challenges that impactits effectiveness and legitimacy. The challenges include accusations of bias, particularly regarding its focus on African cases, political interference, resource constraints, difficulties in securing arrests, and resistance from non-party states. A detailed discussion ofthe challenges of ICC is given in Chapter 3. Therefore, the ICC must continue to address its challenges while reinforcing its role as a cornerstone of international justice. This entails enhancing outreach and communication efforts to raise public awareness and clarify its mission. To broaden its legitimacy, the Court should strive for geographic diversity in its caseload and emphasize its commitment to impartiality. It should also work to secure the cooperation of states and reinforce partnerships with regional organizations.

6.2. INTRODUCTION

The International Criminal Court is a judicial institution that aims to provide fair and impartial justice to individuals accused of committing international crimes, including war crimes, crimes against humanity, and genocide. This international court stands as a landmark institution in the realm of international law and justice, tasked with the solemn duty of addressing some of humanity's gravest offenses.[367]The ICC represents a groundbreaking departure from the historical pattern of *ad hoc* international tribunals, as it is a permanent court with jurisdiction over individuals accused of international crimes. The ICC's mandate extends to situations where national legal systems are unwilling or unable to prosecute these heinous crimes, and it strives to uphold the principles of accountability, justice, and the protection of human rights on a global scale. Addressing its judicial proceedings and efforts to end impunity, this chapter will bring the ICC's pivotal role in fostering a more just and lawful world, serving as a beacon of hope for victims of international crimes and a deterrent to potential perpetrators into light. This analysis will be followed by some specifically identified required reforms of the Rome Statutein order to be more inclusive in guaranteeing justice for international crimes around the globe.

This chapter also explores the various facets of the ICC's function in promoting just legal systems worldwide. Starting from the principles of ICC, this chapter ends the discussion by

[367] Morten Bergsmo et al., 'Historical Origins of International Criminal Law' (2015) 3 TOAEP25.

providing ways forward for overcoming the challenges of ICC. The judicial, administrative, and jurisdictional challenges have been discussed in chapter 3 with other international organizations. However, the pursuit of universal justice is intrinsically linked with the ICC's mandate of holding people accountable for international crimes. This chapter aims to shed light on how the ICC can act as a catalyst for ensuring justiceforthose who commit heinous acts like genocide. It does this by examining the ICC's legal framework, jurisdictional reach, and operational procedures.

In the end, this chapter examines how international justice can develop further with harmonizing other principles to create a better world.ICC's commitment in overcoming obstacles and promoting the principles of fairness, transparency, and accountability is well appreciated and accepted on a global stage.

6.3. PRINCIPLES OF ICC

The International Criminal Court (ICC) is an independent international organization that was established to help secure justice on a global scale by addressing serious international crimes. It operates based on several key principles, which are essential for its functioning and the pursuit of international justice. Here are the principles of the ICC with specific references:

6.3.1. Principles of Complementarity

The principle of complementarity indicates the ICC isthe court of last resort. It can only prosecute cases when national jurisdictions are unwilling or unable to do so. This principle is enshrined in Article 17 of the Rome Statute, which established the ICC. For instance, the ICC intervened in the case of Sudanese President Omar al-Bashir[368], who faced allegations of genocide in Darfur, when Sudan was unwilling to prosecute him.

[368]*The Prosecutor v. Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09*

However, the complementarity concept reconciles two opposing traits and jurisdictions. The first is the state's sovereignty, which claims national jurisdiction over its inhabitants and crimes committed on its territory, even if these crimes are of an international nature and may fall under international jurisdiction. The second aspect operates only in extraordinary circumstances, granting an international tribunal jurisdiction over exceptionally grave crimes.[369] The procedural provisions of the ICC Statuteeither protect national sovereignty and domestic jurisdiction or strengthen the ICC's jurisdiction. The Rome Statute's complementarity regime is not limited to the application of Article 17. Other related provisions of the Statutedescribed in Articles 18-20 govern the procedural framework.

6.3.2. Jurisdiction and Legality

The ICC has jurisdiction over four core international crimes: genocide, crimes against humanity, war crimes, and the crime of aggression. These crimes are defined in the Rome Statute. For example, the ICC exercised its jurisdiction in the case of *Thomas LubangaDyilo*, a Congolese warlord who was convicted of conscripting and enlisting child soldiers.[370]In Article 25 of the ICC Statute, the Court's authority and the idea of personal criminal responsibility are discussed. Article 25(1) of the Statutestates thatthe Court has jurisdiction only over natural persons.[371]Furthermore, anybody who commits a crime within the Court's jurisdiction is exclusively accountable and liable for punishment in accordance with this Statute, pursuant to Article 25(2).[372] This above-mentioned article clarifies the limitation of the Court's jurisdiction. A court cannot bring charges against a state which indicates that a state cannot be brought to justice if the state authority commits international crimes. Action against a state can be brought before ICJ but ICJ doesn't have criminal jurisdiction. So, it is clear that there is a jurisdictional gap of ICC to bring charges against the perpetrators.

[369] Mohamed M. El Zeidy, 'Chapter IV. Complementarity - Related Provisions (Articles 18 - 20)' in *The Principle of Complementarity in International Criminal Law*, 239–308.
[370]*The Prosecutor v. Thomas LubangaDyilo, ICC-01/04-01/06*
[371] The Rome Statuteof the International Criminal Court, a 25(1).
[372] The Rome Statuteof the International Criminal Court, a 25(2).

Regarding the potentiality of the ICC, a question was put before several international law experts and most of them replied positively that the ICC doesn't have the potential to deter future international crimes. At the same time, on the basis of the last 20 years of experience, the success rate of ICC is still not satisfactory.International crimes are happening worldwide. Though it was not the purpose of the ICC to protect human rights, the researcher believes that international crimes ultimately violate human rights, and being a global authority, the ICC has failed to protect human rights by preventing the commission of international crimes. A similar question was posed before the international law experts and most of them replied positively that the ICC is mostly unsuccessful in protecting human rights.

Articles 22 and 23 of the ICC Statuteexpress the idea of legality. It states that only acts (and, less frequently, omissions) whose criminality was explicitly formulated in a source of international law that was in effect at the time the act in question was committed and for the commission of which individual criminal responsibility, associated with a sanction, was in place are considered crimes under international law. As a result, the ICC has jurisdiction over the four 'core' criminal offenses under international law (genocide, crimes against humanity, war crimes, and crime of aggression), but under Article 22(3) of the Rome Statute, states are not prohibited from designating any behavior as a criminal offense under international law separately from the Statute.[373]

6.3.3. Impartiality and Independence

The ICC operates independently of any political influence. Its judges and staff are expected to be impartial and free from external pressures. This independence ensures that the court can make objective decisions based on the law and evidence, rather than political considerations. This can be illustrated in Laty Kama's role in presiding over the first international genocide prosecution, that of Jean-Paul Akayesu.[374] Many of the principles established in that case have been applied in subsequent rulings of the International Criminal

[373] The Rome Statuteof the International Criminal Court, a 22(3).
[374] William A. Schabas, Independence and Impartiality of The International Criminal Judiciary, in *From Human Rights to International Criminal Law / Des droits de l'homme au droit international penal* (Brill | Nijhoff publishers, 2007)

Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia, reports of international commissions of inquiry and experts, and national tribunal decisions. In his appeal, Akayesu accused Judge Kama of acting without independence or impartiality during the trial. During the cross-examination of a rape victim, Judge Kama asked Akayesu's counsel, "Is that important? [...] She was raped so regularly that she can't recall how many times she was raped; 4, 5, 6, 7 times."[375]Akayesu's counsel said that this demonstrated that he believed the witness and wanted to shield her from inquiries that would have embarrassed her. The Appeals Chamber reasoned that, in the context of the full cross-examination, Judge Kama was simply carrying out his presiding duties. The Appeals Chamber viewed Judge Kama's remarks in the light of a broader discussion on impartiality by declaring that a Judge should not only be objectively free of prejudice but there should also be nothing in the surrounding circumstances that provide the appearance of bias.[376]

6.3.4. Victims' Rights and Participation

The ICC recognizes the rights of victims to participate in proceedings and seek reparations. Victims can present their views and concerns to the court, and they can also apply for reparations for harm suffered as a result of the crimes. This principle was highlighted in the case of *Thomas LubangaDyilo,*[377] where victims were allowed to participate in the trial.

The preamble of the Rome Statuteserves as a sobering reminder that "during this century, millions of children, women, and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity."[378] One of the most significant provisions of the Rome Statuteis the right of victims to participate in proceedings before the International Criminal Court. The new role for victims at the ICC has been welcomed by commentators as a 'landmark development', a 'major innovation', a 'significant step forward', and a 'major structural achievement'. They argue that victim participation will ensure that victims' interests, which should be a priority for international criminal justice, are considered. Furthermore, involvement

[375]n 350.
[376]n 350.
[377]*The Prosecutor v. Thomas LubangaDyilo, ICC-01/04-01/06*
[378] The Rome Statuteof the International Criminal Court, Preamble.

will aid in the restoration of victims' dignity, the reconciliation process, and the discovery of facts and evidence that can be utilized in court.[379] The Rome Statute's framers were properly concerned with safeguarding victims' interests in international criminal prosecutions. Todate, victims of mass crimes have mostly gone unheard, and the international community has generally neglected the impact that criminal procedures have had on them. Many victims have surely felt vulnerable and disappointed as a result of previous international criminal cases.[380] They have also inflicted further trauma on people who have been summoned to testify on occasion.

The victim-centered measures in the Rome Statuteand Rules of Procedure and Evidence constitute an important step towards addressing this issue. The Rome Statuteensures that victims' interests are considered at all stages of the proceedings and takes steps to preserve the mental and physical well-being of victims who participate in the procedures. The ability for victims to seek reparations, even if they are often collective or symbolic remedies, will also introduce a desirable aspect of restorative justice into international criminal law.

6.3.5. Cooperation

States that are parties to the Rome Statuteare obligated to cooperate with the ICC. This includes cooperating in the arrest and surrender of suspects, providing access to evidence and witnesses, and facilitating the execution of sentences. Failure to cooperate can lead to sanctions, as seen in the case of Sudan's non-cooperation during the al-Bashir case.[381]The principle of cooperation is a fundamental aspect of the International Criminal Court (ICC) and plays a crucial role in the court's ability to carry out its mandate effectively. Article 86 of the Rome Statuteoutlines the general obligation of states to cooperate with the Court.[382] This includes providing information, facilitating the travel of witnesses and ICC personnel, and executing arrest warrants issued by the ICC. Additionally, one of the most significant aspects of

[379]For details see, Charles P. Trumbull IV, The Victims of Victim Participation in International Criminal Proceedings, 29 MICH. J. INT'L L. 777, 2008, pp. 777-779.
[380]n 355.
[381]For details see, 'Sudan Not Meeting Cooperation Requirements with International Criminal Court, Prosecutor Tells Security Council, Urging Khartoum to Act Now' (The UN Press Release, 25 January 2023) available at: < https://press.un.org/en/2023/sc15183.doc.htm> accessed on, 10 September, 2023.
[382] The Rome Statuteof the International Criminal Court, a 86.

cooperation is the duty of states to arrest and surrender individuals who are the subject of ICC arrest warrants. Article 89 of the Rome Statutespecifies that states must arrest and surrender individuals to the Court in response to a warrant of arrest issued by the ICC.[383] Failure to do so could result in sanctions and penalties. Moreover, States are also obliged to take measures to protect witnesses and victims who cooperate with the ICC. Article 43 of the Rome Statuteemphasizes the rights and interests of victims and witnesses, including their protection.[384] In this regard, States and other entities are expected to comply with any orders issued by the ICC, such as orders for the production of evidence or documents.

Access to Evidence and Information ishighly significant in ICC. States are required to provide the ICC with access to evidence and information that is relevant to its investigations and prosecutions. Article 93(1) outlines the duty to cooperate with the Court in the collection of evidence.[385] The Statuteallows the ICC to enter into agreements with states to facilitate cooperation. These agreements can cover various aspects of cooperation, including the relocation of witnesses, the enforcement of sentences, and the provision of logistical support. While the primary obligation to cooperate falls on states that are parties to the Rome Statute, the ICC may also seek cooperation from non-party states on a case-by-case basis. Article 12(3) of the Rome Statuteallows the ICC to exercise jurisdiction over crimes committed on the territory of non-party states if they accept the Court's jurisdiction or if the United Nations Security Council refers a case to the ICC.[386] The principle of cooperation in the International Criminal Court, therefore, is a cornerstone of the Court's ability to effectively investigate and prosecute individuals responsible for serious international crimes. States and other entities are legally obligated to cooperate with the ICC, as outlined in the Rome Statute, to ensure justice is served and perpetrators of such crimes are held accountable for their actions.

These principles underpin the ICC's mission to secure justice internationally by holding individuals accountable for the most serious international crimes and providing a venue for victims to seek justice and reparations.

[383] The Rome Statuteof the International Criminal Court, a 89.
[384] The Rome Statuteof the International Criminal Court, a43.
[385] The Rome Statuteof the International Criminal Court, a 93.
[386] The Rome Statuteof the International Criminal Court, a 12(3).

6.4. RECOMMENDATIONTO OVERCOME ICC'S CHALLENGES

Overcoming the challenges of ICC is not easy to achieve. The challenges mentioned in Chapter 3 can only be achieved through several ways for example; through mutual global cooperation of states, international organizations, and civil society. However, it is mandatory to uphold human rights and dignity above every interest if the global community wants international crimes to be stopped. According to Barrister Baul 'Existing international laws must be applied upon each and every country equally andthe big 5 must be tried for crimes they have committed'.[387] However, here are some ways in which the ICC can provide fair justice universally:

6.4.1. Independence and Impartiality

Since the ICC is an impartial and independent tribunal, no outside forces or interests can sway its decisions. As the judges and prosecutors of the ICC are chosen on the basis of their knowledge, character, and objectivity; they are not the targets of outside pressure or influence.However, the impartiality of the ICC is mentioned in Article 40 of the Rome Statutewhere it is clearly stated that judges shall be independent in the performance of their functions.[388] But practically, many of the prosecutors faced political challenges while conducting their mandates.[389] In summary, the independence and impartial character of the ICC should be upheld in high so that no political power can intervene or challenge their general conduct.

6.4.2. Transparency

As part of its commitment to transparency, the ICC makes information about its cases, supporting documentation, and rulings available to the general public. There is no hide-and-seek game in the trial process of ICC. This openness of the ICC promotes faith in the legal system and

[387]Interview with Barrister Tapas KantiBaul, Prosecutor, International Crimes Tribunals (Bangladesh, 26 November 2023).
[388]Rome Statuteof the International Criminal Court 2002, a 40.
[389]For details see, Prisca Chaoui, 'Impartiality in a judicial setting: Reflections of Fatou Bensouda, former ICC Prosecutor' (UN today, 1 Nov 2022) https://untoday.org/impartiality-in-a-judicial-setting/ accessed on 31 October, 2023.

guarantees that justice is carried out.Oneprominent example of this is the exhibit in the ICC foyer, but there are other examples as well, including the livestreaming of court proceedings and the fact that the court website provides free access to the calendar, video content, and transcripts. Moreover, the judges and prosecutors carefully review and assess this evidence to make sure it is trustworthy and admissible. The ICC's rulings are supported by evidence rather than politics or prejudice.

6.4.3. Protection of Rights

The International Criminal Court (ICC) is dedicated to defending the rights of the accused, including the right to a fair trial, counsel, and the presumption of innocence unless proven guilty. Additionally, the ICC ensures assistance and safety to witnesses and victims who testify during its hearings. It has the power to prosecute anyone regardless of their nationality or the location of the crimes they are accused of committing. This guarantees that all victims of transnational crimes can access justice and that it is not restricted to particular regions or nations.

Overall, the ICC's dedication to impartial justice being delivered everywhere is made possible by its commitment to independence, openness, evidence-based decision-making, the preservation of rights, and universality.

6.4.4. Required Procedural Reforms

Procedural reforms refer to changes in existing procedures. To ensure fair justice universally, several procedural reforms should be implemented. Making the international procedure more accessible to the victims of international crimes, providing legal aid and other support so that they can participate in the proceedings, translation services and many other relevant legal services could be added tothe procedural reforms for the enrichment and achievement of ICC. In most cases, the trial proceedings of international crimes startlaterthan a normal criminal offence and takemore time to end the proceedings. If legal proceedings could be moved forward and be heard in a timely manner, it would speed up the whole process and many victims or witnesses couldsee justice being ensured in their lifetime. The legal procedure of ICC is known as fair and impartial which is a prerequisite for ensuring justice. It can be made fairer

and impartial in nature by the defendant's access to legal representation,presenting the evidence in an objective and transparent manner, and not allowing any global or political interference on the legal proceedings.As the court of first instance, national courts should be provided with the necessary resources and support so that it can effectively prosecute international crimes.

Last but not least, the victims should be allowed to participate in the legal proceedings of international crimes. In sentencing the offender, the victims'thoughts or desires should be heard before the sentencing hearings.

6.4.5. International Political Consensus

Consensus refers to agreement. International Political consensusrefers to a universal agreement or promise among the global leadership or countries on a particular issue like politics, policies, or a set of principles. The majority of the global powers or governments of the countries recognized and accepted that viewpoint on a belief that it will be beneficial to mankind. In most cases, the international community seeks political consensus when the decision of one or two countriesmight have an impact on other countries. Usually, international political consensus is achieved through negotiation among the parties, political and geographical diplomacy, compromising state interests, and so on. Global consensus on climate change, protection of human rights, trade agreements, international armed conflict, and nuclear disarmamentare examples of international political consensus. It is important in the sense that to achieve progress and resolve international conflicts, international political consensus works as a mechanism to stop conflict among or between states through negotiation and cooperation.International political consensus or cooperation is also required while trying international crimes in the international criminal court. The success of the ICC largely depends on the mutual cooperation of the member states; otherwise, the court order will bring no result.

6.4.6. Role of International Community

The international community playsavital role in the protection of human rights and global peacebuilding. The transgressions of war crimes, crimes against humanity, genocide, and terrorism can only be resolved through mutual partnership among states. The harmful impact of

these crimes on human life, societal stability, and economic development needs worldwide cooperation in their prevention. However, the Prevention of international crimes is a major obligation of the global community. These crimes are regularly carried out under the guise of national interests or regional disputes. As a result, the involvement of the international community offers a method of addressing these crimes that is impartial and objective. The engagement of the international community results from the understanding that crimes committed in one part of the world can have an influence on other parts of the world.

Nevertheless, preventing international crimes is the foremost duty of the international community. Such crimes can be stopped in a number of ways, such as by applying diplomatic, economic, or legal pressure to states or individuals who are likely to commit them. International cooperation and coordination are needed to make sure that potential offenders understand that these crimes will not go unpunished. International criminal tribunals and other appropriate legal frameworks are essential for preventing international crimes. These legal frameworks ought to be open to victims' access and designed to support the prosecution of those who commit international crimes.

However, the role of the international community in preventing international crimes goes beyond the legal system; it also includes fostering peace and stability within and between governments, providing humanitarian aid to marginalized groups, creating social safety nets, and putting into practice educational initiatives that encourage tolerance and respect for human rights.The success of the international community in preventing international crimes depends on the combined efforts of governments, international organizations, and civil society.Additionally, consistent support of democracy, the rule of law, and democratic institutions isalso needed to prevent international crimes.

6.4.7. Appearance of Harmonization

Harmonization between national and international tribunals for punishing the perpetrators of international crimes might bringsignificantimprovement in the field of international criminal law. Under the principle of complementarity, the national court has the primary jurisdiction to

prosecute international crimes and the ICC can only intervene if the national jurisdiction fails to do it properly. Hence, the harmonization of both courts and the emergence of a new neutral international legal system, particularly for international crimes can resolve the rising issues of international crimes.Moreover, the ICC has some difficulties in implementing court order inside a state boundary. To overcome this difficulty, state cooperation is a must. Not only the ICC but also other international tribunals need to build partnerships and cooperatewith national courts for collecting evidence, present victims and witnesses before the court, repatriation criminals from one country to another, and so on. In order to strengthen the courts' ability to prosecute international crimes, ICC needs to focus on the mutual relationship among states and also global peacebuilding. Hybrid tribunals like SCSL and ECCC were less controversial than other ad hoc tribunals because of the harmonization of both national and international criminal law practice. However, the emergence of harmonization between national tribunals and international tribunals for punishing international crimes reflects a growing recognition of the importance of accountability for these crimes and the need for a coordinated approach to their prosecution.

6.5. CONCLUDING REMARKS

Criminal justice is closely related to the idea of accountability that justice must be seen to be delivered. This thesis tries to analyze the practical scenario of universal jurisdiction of international crimes. The reality is completely different than the expectation of the world community through the establishment of an international criminal court. This thesis starts the discussion with a clear idea about the title of the paper. Chapter I gives an overview of the paper whereas Chapter II clarifies the idea of Universal Administration of Criminal Justice. In the administration of international crimes, it was believed that universal jurisdiction through the application of the Rome Statutewould ensure global justice against the heinous crimes but in reality, ICC is not as successful as it was expected before. The fundamental idea of international crimes and universal jurisdiction, the jurisprudential basis and significance of universal administration,and the probable challenges and complexities related to universal administration havebeen explored throughout the second chapter. The basic idea of national and universal jurisdiction of international crimes has also been discussed in this chapter to make one thing clear punishing the perpetrators is not the only purpose of universal jurisdiction, but rather to teach a historical lesson of 'never do again' to the future generation. In summary, the chapter has

built a solid foundation for understanding the details of a judicial system that aims to reduce differences and provide justice for everyone byensuring that everyone is under the law no matter where they may hide.

The next chapter starts with a discussion of the historical evolution of universal jurisdiction particularly for international crimes. The history part of this thesis shows the regular development of jurisdictional authority that ends in ICC. Along with ICC, the administrative, judicial, and jurisdictional challenges of the United Nations and the European Union have been discussed in this chapter which shows that till now, no international authority has been completely successful in bringing justice against international crimes. ChapterIII showed the complexity ofa multifaceted network of international organizations.The ICC, UN, and EU have challenges, but they have expressively improved the universal criminal justice system. In particular, the ICC was believed to fight for justice with the cooperation member states.However, it is a crucial issue for the international communityto balance peace and order on a wide scale despite these challenges and complexities. In conclusion, it can be said that international authority like the ICC, EU, and UN is working in a hope that one day the most horrific acts will no longer be accepted without facing consequences, no matter what the status of a country (Chapter III).

Chapter IV discussed the national and international tribunals and their jurisdictional gaps with the intent of finding out the best category of the tribunal that can work more effectively to bring the perpetrators under the umbrella of justice. Both the national and international tribunals fail to ensure complete accountability of the responsible individuals. It is clearly shown in that chapter that complete justice cannot be ensured due to the lack of cooperation, resource constraints, political interference, witness intimidation, jurisdictional gaps, and so on. To ensure the punishment of the most terrible crimes,it is needed to strike a healthy balance between a state's right to exercise control inside its borders and the cooperation of neighboring countries and international authorities. Chapter IV has underlined that the lack of reciprocal respect for legal systemsacrossborders needs to be reduced to bridge between jurisdictional gaps of countries.In this chapter, a large number of national, ad hoc, and hybrid tribunals are discussed with case references to show that the search for justice is a universal

effort. In summary, it can be said that the universal administration of criminal justice is an essential attempt to highlight the common commitment of the global authoritytoprotecting human rights and the rule of law.

Chapter V starts with a discussion of applying a new principle in international crimes by the national jurisdiction. The principle of *parenspatriae* jurisdiction gives the state a parental role to protect the citizens who are helpless or vulnerable and unable to protect themselves. This is an inherently rooted duty of a state to protect the welfare and interest of its citizens. At the same time,a state can seek remedies for its victim citizens who have suffered human rights violations. This all has been discussed in the first part of this chapter. As it is known that ICC has limited jurisdiction, particularly to the non-state members of the Rome Statute, *parenspatriae* could help to overcome jurisdictional challenges of national tribunals. It can also ensure that no perpetrators of war crimes or crimes against humanity will go unpunished whatever the designation of the perpetrators. *Parenspatriae* principle can make the national jurisdiction more efficient by improving its capacity to hold international crimes under universal jurisdiction. It has also some limitations like lack of extraterritorial jurisdictions, political interest not to hold trial, insufficient international cooperation, and so on. Moreover, the application of *parenspatriae* jurisdiction is not a new one in the field of international crimes. The potentiality of this jurisdiction in international courts and tribunals is significant as it enables the state to prosecute perpetrators on behalf of its citizens and expands the scope of accountability. Along with the potentiality of *parenspatriae* jurisdiction, the challenges of a universal administration with *parenspatriae* jurisdictionhave also been discussed in this chapter. Moreover, Chapter V summarizes that national jurisdictions can be crucial in combating impunity, fostering accountability, and delivering justice to victims of international crimes by acknowledging and accepting *parenspatriae* jurisdiction. This inclusive strategyhas the potential to greatly enhance the efficacy and efficiency of legal proceedings as well as aid in the prevention of atrocities in the future.

In summary, Chapter VIdiscussed the crucial role ofthe ICC in the global pursuit of justice for the most heinous international crimes. Though its establishment marked a significant step forward in the fight against impunity and it has achieved notable successes in holding individuals accountable for genocide, war crimes, and crimes against humanity, the ICC is

mostly unsuccessful in bringing global peace. However,some of its successes include the convictions of high-profile individuals and the establishment of important legal precedents. There are a lot of challenges that ICC is still facing including limited enforcement powers, accusations of bias, resistance from non-party states, resource constraints, and questions about its effectiveness and legitimacy. On the other hand, the way forward for the ICC involves a multifaceted approach. Strengthening the Court's enforcement mechanisms, addressing allegations of bias, enhancing outreach and communication efforts, and promoting universal ratification of the Rome Statuteare essential steps. Additionally, the ICC should continue to emphasize its commitment to impartiality, transparency, and accountability in its work.Ultimately, the success of the ICC depends on the support of the international community, cooperation from states, and the Court's ability to adapt to evolving challenges. As the ICC struggles to fulfill its mandate of ending impunity and ensuring justice for victims of international crimes, it remains a vital institution in the pursuit of a more just and peaceful world (Chapter VI).

To sum up the above-mentioned study, the research explores the complex landscape of ensuring universal administration of criminal justice by illuminating the realities and obstacles that permeate this essential side of societal governance. While addressing the complicated structure of legal systems around the world, guaranteeing everyone has access to justice is not just a basic human right but also a prerequisite for a fair and just society. The findings of this study highlight the persistent inequities in the administration of criminal justice systems. The path to universality is paved with challenges, ranging from systemic biases to economic restrictions, necessitating thorough and sophisticated remedies. The study has examined a number of factors, from socio-cultural impacts to legislative frameworks, demonstrating the complexity of the problem.

The research also shows signs of advancement and innovation in the midst of these difficulties. Technological advancement, global commitment, and reforms in universal laws and principles emerge as a hope of providing concrete means for bridging the gap and ensuring that justice is really accessible to all. Guaranteeing a universal administration of the criminal justice system that upholds the principles of equality and fairness requires acknowledging and expanding upon these beneficial developments. Basically, the pursuit of universal administration

of criminal justice necessitates a global effort to tear down obstacles, challengethe ingrained biases of powerful states and adopt a new way of thinking about criminal jurisprudence. In order to create a future where justice is not a privilege but an entitlement and where judicial bodieslike ICC or ICJ would not have to bring cases against the perpetrators after commission of such crimes, the thesisserves as a call to action for global authority to take strict action against the commission of international crimes and set an example of exemplary punishment for the future world. Coordinated efforts among states and respect forstate sovereignty as well as the universal principles of global peace and security cake make the way to achieve the necessary objectives of ensuring the universal administration of criminal justice.

This thesis has carefully investigated a number of aspects in an effort to gain a thorough grasp of the complexity involved in the administration of criminal justice on a global scale. It has helped to clarify the purposes and objectives as well as the reality and challenges in achieving universal administration of criminal justice. Investigating current international laws and challenges faced by different national and international tribunals as well as roles played by international bodies wasthe crucial step in finding out the gaps between the expectation and reality. The thesisexaminesthe benefits and drawbacks of the existing legal systems with some case studies and highlights the necessity of a unified and broadly applicable framework.

Finding and analyzing the obstacles of national and international tribunals is essential to identify the weaknesses of the current legal procedures and determining where changes should be made is the most important part of this study. Later on, the inclusion of *parenspatriae* jurisdiction contributed to the analysis's enrichment by providing valuable perspectives on how national jurisdictions should optimize their efficacy within the framework of a global criminal justice administration. This thesisalso examined the ICC's function as a key organization in delivering just and equitable justice for all, its challenges that create blockage to the ultimate justice, and ways forward to overcome those challenges. Moreover, assessing the methods and practices of the ICC, the study looked into how this international organization is ineffective in supporting its main objective of guaranteeing justice worldwide.

This thesis also shows the real-world difficulties by examining some cases of ICC and provides some possible solutions in addition to shedding light on the theoretical foundations. The

importance of international laws, the complexities of jurisdictional barriers, and the potential benefits of *parenspatriae* jurisdiction all highlight the necessity of a coordinated worldwide effort to transform the practices of criminal justice administration. The recommendations also highlight how crucial it is to work together to improve the legal frameworks that are already in place, resolve judicial and jurisdictional challenges, and utilize the ICC to realize a just and widely accessible criminal justice system. This study therefore lays the groundwork for future scholarly research and real-world application of the principle of *parenspatriae* jurisdiction in this vital topic and significantly adds to the academic conversation surrounding the advancement of a universal administration of criminal justice.

Appendices A-1

Questionnaire for Academic Experts

1. Do you think that the ICC is successful in protecting human rights? Please (√) one of the following.

   A) Highly successful [80% to 100% successful]
   B) Mostly successful [65% to 79% successful]
   C) Moderately successful. [50% to 64% successful]
   D) Mostly unsuccessful. [35% to 49% successful]
   E) Completely unsuccessful. [0% to 34% successful]

2. In your perception does ICC have the potential to deter future international crimes? Please (√) one of the following.

   A) Yes
   B) No
   C) Not sure

3. From your perspective, is ICC successful in guaranteeing universal administration of international crimes? Please (√) one of the following.

   A) Highly successful [80% to 100% successful]
   B) Mostly successful [65% to 79% successful]
   C) Moderately successful. [50% to 64% successful]
   D) Mostly unsuccessful. [35% to 49% successful]
   E) Completely unsuccessful. [0% to 34% successful]

4. From your point of view, what are the major causes for the limited effectiveness of ICC? Please specify:_____

   _____

5. Do you think that the composition of ICC tribunals in combination with both national and international authorities would help to reduce the present gap in the universal administration of criminal justice? Please (√) one of the following.
   A) Yes
   B) No

C) Not sure

6. In your opinion, why national tribunals are always under a criticism of fairness and impartiality?
   Please specify:_____

   _____

7. Do you think that the composition of national tribunals with international experts would help in improving the efficiency of national jurisdiction? Please (√) one of the following.

   A) Yes
   B) No
   C) Not sure

Appendices B-1

Questionnaire for Criminal Law Practitioners

1. Do you think that the ICC is successful in protecting human rights? Please (√) one of the following.

   A) Highly successful [80% to 100% successful]
   B) Mostly successful [65% to 79% successful]
   C) Moderately successful [50% to 64% successful]
   D) Mostly unsuccessful [35% to 49% successful]
   E) Completely unsuccessful [0% to 34% successful]

2. Is it possible to deter international crimes by the application of different treaties and conventions? Please (√) one of the following.

   A) Yes
   B) No
   C) Not sure

3. How significant is the role of ICC in the effective disposal of international crimes? Please (√) one of the following.

   A) Highly significant [80% to 100% successful]
   B) Mostly significant [65% to 79% successful]
   C) Moderate significant [50% to 64% successful]
   D) Mostly unsuccessful [35% to 49% successful]
   E) Completely unsuccessful [0% to 34% successful]

4. Do you think that national tribunals are more successful than international tribunals? Please specify the main reason behind the success/failure:_____

   _____

5. In your perception, what universal laws or principles should be applied for a more effective prevention of international crimes?
   Please specify:_____

   _____

6. Do you think that ICC is not effective in balancing the present global law and order situation? Please (√) one of the following.
   A) Yes
   B) No
   C) Not sure

   Please specify the main reason behind that:_____

   _____

7. In your opinion, what changes should be brought to make ICC more effective and successful?

   _____

   _____

8. Do you think that application of new principles would help in improving the efficiency of national jurisdiction? Please (√) one of the following.
   A) Yes
   B) No
   C) Not sure

Appendices C-1

Questionnaire for Former Human Rights Commissioner

1. Do you think that the ICC is successful in protecting human rights? Please (√) one of the following.
   A) Highly successful [80% to 100% successful]
   B) Mostly successful [65% to 79% successful]
   C) Moderately successful [50% to 64% successful]
   D) Mostly unsuccessful [35% to 49% successful]
   E) Completely unsuccessful [0% to 34% successful]

2. From your point of view, how effective is the principle of universal jurisdiction in punishing the perpetrators of international crimes? Please (√) one of the following.
   A) Highly effective [80% to 100% successful]
   B) Mostly effective [65% to 79% successful]
   C) Moderate effective [50% to 64% successful]
   D) Mostly effective [35% to 49% successful]
   E) Completely effective [0% to 34% successful]

3. In your perception does ICC have the potential to deter future international crimes? Please (√) one of the following.
   A) Yes
   B) No
   C) Not sure

4. What are the probable causes of ICC's ineffectiveness in protecting human rights from your point of view?
   Please specify:_____
   _____

5. In your opinion, what changes should be brought to bridge the gap between national and international tribunals?
   Please specify:_____
   _____

6. Do you think that application of *parenspatriae* jurisdiction would help to improve the efficiency of national tribunals? Please (√) one of the following.

   A) Yes
   B) No
   C) Not sure

7. Regarding the Russia-Ukraine and Israel-Palestine issue, as a human rights activist, do you think that the international community especially the ICC should take action against such violations of human rights? Please (√) one of the following.

   A) Yes
   B) No
   C) Not sure

8. Do you think that the absence of international cooperation or the absence of an extradition treaty between states is a hindrance to the way of effective justice? Please (√) one of the following.
   A) Yes
   B) No
   C) Not sure

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