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**AN ANALYSIS OF INTERNATIONAL ADJUDICATION AUTHORITY IN WAR  
CRIMES WITH SPECIFIC REFERENCE TO RUSSIA AND UKRAINE**- M. Abinaya<sup>1</sup> & P. Ragu Balan<sup>2</sup>**ABSTRACT**

The law is an essential element for society. The society cannot survive without efficient law. But, international law plays an important role in the international relations and world peace. A country's law does not fit with efficient law and failure in enforcement of law. It leads to problems in the application of law and in particular countries only. Failures of International law will cause and disrobe the violation of international peace and security. Sovereignty of international law vested with application of law. Ukraine and Russia issues were continued by the reason of failure of international law. Russia made averments against Ukraine not to join with North Atlantic Treaty Organization. Actually, how other may intervene the decisions of other country. It causes a negative effect on the concept of sovereignty. The international shall ensure domestic sovereignty and not in current practice. Due to the veto power, the International Criminal Court or International Court of Justice cannot make any decisions over disputes. Security Council is the enforcement machinery of United Nations Organization. This enforcement authority also get fails by invoking of veto power. This veto power holds in the hand of the following countries such as, China, France, Russia, United Kingdom, and United States. These countries are using their veto power when they have problems. Veto power result in inequality. There are more than 40 countries referrals these disputes to the international criminal court. Even though, there are no decisions taken by the International Criminal Court. The weakness the international law is the result of non-implementation of law. The research will put the fire on the research gaps and find out appropriate suggestions to phase these loopholes.

**Keywords:** International Law, War Crimes, International Court, Criminals, Nation.

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**Introduction:**

Law is the set of principles to regulate the society. Initially, the laws were enacted and administered justice by the king. The king's acts never commit the action of the offence. It is stated the king cannot do wrong. The act of king flagged as good and moral. This principle is evolved in the point of three different organs of the government such as, Parliament, executive, and judiciary. These three organs of the government or state acted in the name of the king. Generally, the law evolved from the supreme legal authority such as, concern state or country legislations or parliament. This law may govern the principles of the relation among the people to people, people to government, Government to people. Countries have political and administrative independence within their country. Now days, this law extend its scope in international relations.

International law is commonly known as public international law and law of nations. It is a combination a set of rules, norms, and standards which are binding between the nations. International law created on the basis of the general custom, treaty, convention between the respective countries. "International law is the body of rules which are legally binding on States in their intercourse with each other. These rules are primarily those which are governing the relations of states, but states are not the only subjects of international law. International Organizations and, to some extent, also individuals may be subjects of rights conferred and duties imposed by international law".<sup>3</sup> The war took place between the Ukraine and Russia by the reason of Ukraine planned to join with North Atlantic Treaty organization (NATO). Russia opposed the Ukraine not to join with NATO. It caused the war between the Ukraine and Russia. Usually, the war may easily be held by the small problems or country-based issues.

The First World War was also called as "great war" and it started from 1914-1918. The international conflicts were between nations Europe, Russia, United States, Middle East and other regions. The main causes of First World War were the assassination of Archduke Ferdinand and morganatic his wife, who was shot dead by Bosnia Serb Ganviho Princip, on June 28, 1914. There are other reasons also to started war, such as, Nationalism, Militarism, and mutual defense. At the end of the war both the countries failed in their efforts. On both-sides, soldiers were affected by the influenza, so the government loses control military

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<sup>3</sup> DR. S.K. KAPOOR, INTERNATIONAL LAW & HUMAN RIGHTS 32 (central law agency 2017).

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structure with lots of experienced mutinies. Germany agreed and signed the armistice to surrender their arms, to expand the territory to give a multiple navy so the people could freely move from the place. The United States, entered into world war to play a vital role, and upcoming peace treaty in the country, it stayed neutral. At the point of public opinion and Woodrow Wilson's the following factors to be added to enter the war to the invasion of Belgium; failure to repay the debts on the crises of economic interest etc.<sup>4</sup>

The importance of international law identified after the Second World War. The world wars gave the lesson to the world to maintain international peace and security. During the year 1939-1945, the Second World War started in each and every part of the world biggest dispute in the geopolitical history to be recorded. On September 1, 1939, the Second World War was begun with Germany attacking Poland. Most of the persons died in the world's population. The reason for the war, was the seed to be sowed in the First World War itself; the bomb blast by United States of America to Japan. Most of the persons died in the world's population.<sup>5</sup>

#### **Hypothesis :-**

- International adjudication authority has sufficient rules and regulations to prevent war crimes.
- International law has strict rules to prevent war crimes between Russia and Ukraine.

#### **Proposition:-**

- Russia and Ukraine war crimes cannot be prevented by adjudicatory authority. This failure held with reason of inefficiency in international law.
- Russia's veto power may curtail the implementation of international law.

#### **Role of International Criminal Court in war crimes:**

International Criminal Court was a permanent judicial body. It was developed by Rome Statute in 1998, around 60 countries signed into the ratified agreement after the court was established on July 1, 2002. Nearly 123 countries are parties to the Statute. It headquarters

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<sup>4</sup> INDIANA DEPARTMENT OF EDUCATION, <https://www.in.gov/doe/files/guide.pdf> (last visited March. 10, 2022).

<sup>5</sup> DRISHTIIAS, <https://www.drishtiias.com/to-the-points/paper1/world-war-ii> (last visited March. 11, 2022).

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was situated in Netherlands at Hague. The international court of justice was totally different from the ICC, international tribunals are not permanent, but it was located in Rwanda. To approach any dispute arises, the main purpose of this court was to investigate and prosecute the criminal wars, genocide, crimes against humanity and crimes of aggression<sup>6</sup>. It gives all the rights and privileges to suspected offenders. International Criminal Court confirms jurisdiction under article 5 of the Rome Statute of the International Criminal Court. The ICC has exclusive jurisdiction over Ukraine and Russia issues and may pass appropriate decisions.

The person who has completed the age of eighteen years to commit any offence; it will be treated as criminals. The declaration adopted by the state to recognize the ICC plays a multi-dimensional system which aims to prevent violence with specific norms of international law to conclude free from punishment in future, so it was organized the rule of law. To maintain international quality of justice not only but also spread international peace among countries. More chances of failure in individual cases not able to bring legal action in national or United Nations and any states at any situation to transfer the International Criminal Court. The court followed Statute as it developed a conciliatory treaty.<sup>7</sup> In 2006, the first hearing was held in the ICC. More than sixteen judges to be cited in the court, they are selected from different countries as elected members from states. Representatives are necessary in the judiciary and the term period of judges and advocate counsel is fixed by nine years. The court languages to be considered as English and French, added six other official languages are functioned. The definition of **war crimes**, “strike at the very roots of international society”.<sup>8</sup>

The opinion given by Quincy Wright, “Acts committed in violation of laws of war constitute war crimes in a narrow sense.” The term war crime has been used in military circles as synonymous with violation of the laws of war, but in current official and juristic discussion it has acquired a wider connotation”.<sup>9</sup> Article 8 of the Rome statute defines war crimes: a war crime is one kind of offence which constitutes a severe violation of the law. It is defined as unjustified acts of violence, infringement of treaties etc.

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<sup>6</sup>Rome Statute of the International Criminal Court, 1988, Article 5

<sup>7</sup>GOVERNMENT OF NETHERLANDS, <https://www.government.nl/topics/international-peace-and-security/international-legal-order/the-international-criminal-court-icc> (last visited March. 1, 2022)

<sup>8</sup> TRIESTINO MARINIELLO, THE INTERNATIONAL CRIMINAL COURT IN SEARCH OF ITS PURPOSE AND IDENTITY, 221 (Routledge, 2016)

<sup>9</sup> Ibid.

**Uganda dispute handled by the ICC:-**

This case was very famous to the world in the name of the first warrant issued by the international criminal court. Uganda Government made allegations before the ICC as, war crimes, and other crimes with respect to the crimes against humanity. These cases took place between the Lord's Resistance Army (Lord's Resistance Army hereinafter called as LRA) and national authorities of Northern Uganda. The ICC conducted the trial and collected evidence from the both parties. Victims were died in the effect of age factors. So, the ICC issued a summons him to ask to appear as the victim's legal representative for collection of evidence. The ICC held that, the court finally concludes the total number of cases up to 61 crimes committed. These crimes have the nature of war crimes and crimes against humanity. The criminals are punished up to 25 years of imprisonment. Some criminals have already been kept in prison for more than 6 years before passing the conviction. Therefore, the conviction fixed according to the deduction 6 years from the total conviction.<sup>10</sup> The case was started in the year 2004 and justice delivered by the ICC (2021). The delayed justice causes the denied justice.

**Ukraine and Russia dispute before ICC:-**

Rome statute is applicable to countries that are all accepted to follow the statute. Ukraine had not joined as the state party a Rome Statute. Even though, Ukraine has voluntary submitted the jurisdiction twice. On 28 February 2022, ICC prosecutor asked Ukraine to give permission to conduct investigations into new war crimes. There are more than 40 states parties has submitted his referral before the ICC. Therefore, the prosecutor declared that issues were open for investigations. The ICC framed the Office of the Prosecutor (OTP) to conduct the investigation and collect evidence from the victims and witnesses. The OTP was instructed to investigate the cases equally. The OTP cannot conduct self-investigation. They have to get assistance and cooperation from other referral states and international organizations. Due to that, the OTP sent their investigating team to the crime scene and investigated the same. Still, there is no conclusions and decision taken by the ICC.<sup>11</sup> The

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<sup>10</sup> National authorities of Uganda v. Lord's Resistance Army (LRA), ICC-02/2004.

<sup>11</sup> Situation in Ukraine, ICC-01/2022

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ICC has authority and power over the dispute. The ICC has already handled more than 16 cases like war crimes<sup>12</sup> and other crimes committed against humanity<sup>13</sup>.

### **Failure of International law:-**

Currently, any non-state party disputes referrals through Security Council have become inefficient. As per this issue concern, Veto powers countries easily break any referral taken by Security Council. Veto power used as the shield to escape the criminal from the eye of the law. The UN charter preamble clearly denotes that international peace and security is essential for international relations.<sup>14</sup> These veto powers encourage future war crimes and offence against humanity. International Criminal Court may get exclusive powers on only at the date of revocation of veto powers from the UN Charter. Otherwise, it causes the imbalance promotion of international peace and security through the ICC.<sup>15</sup>

### **Other factors:-**

The concept of self-preservation or self-defence plays a vital role in war crimes. Every state has a right to protect their territory. Unless, any disputes arise from the outside, of the territory. The weapon of self-preservation used to protect their country and peoples. Russia made averments that, Ukraine made decisions to join their hands with NATO. It causes an indirect issue for Russia and Russia is not interested see NATO army near their territory. This issue was root of this dispute between the countries. According to article 51, every state may use self-defense at the time of external influences. But, they have to inform the situation to the Security Council. The Security Council takes necessary measures to prevent and pass any order to maintain international peace and security among the nations.<sup>16</sup> The Security Council took any decisions on this Ukraine and Russia issue. Such decisions may easily be broken by the invoking of the veto power against those decisions. This is an actual default in international law. It shall be evicted from the United Nations Charter.

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<sup>12</sup> Rome Statute of the International Criminal Court, 1988, Article 8

<sup>13</sup> Rome Statute of the International Criminal Court, 1988, Article 7

<sup>14</sup> Charter of the United Nations, 1948, Preamble & Article 1(3)

<sup>15</sup> Nathan Hogan, Five Sides of Justice: The Dangerous and Disproportionate Influence of the Permanent Five Members of the UN Security Council on the International Criminal Court, 32, *BYU*, 243, 227-245 (2018).

<sup>16</sup> Charter of the United Nations, 1948, Article 51

**Conclusion and suggestions:-**

The research finally concluded with international law shall have some sovereignty over the disputes. Otherwise, it causes the individual sovereignty. The strength of the state should not be based on the power of military, economic, developed nations or any other criteria. Every people of the world have a right to observe the international peace and security. The international law and other international organizations shall take necessary measures to prevent war crimes, Genocide, and crime against the humanity. The research finds some appropriate conclusions over the topics:-

- The veto power shall be erased from the United Nations Charter. It maintains the equality among the nations.
- International Criminal Court or International Court of justice shall have exclusive jurisdiction or mandatory jurisdiction on the disputes with respect to the genocide, Crime against humanity, war crimes and aggression etc.,
- International law has less effect its implementation. It causes bad effects on the valuation of international law and leads to escape of criminals before the law.