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**KNOWING ABOUT THE BIRTH OF ICC FROM ROME STATUTE  
MEANWHILE FINDING THE INFLUENCE OF THE UNITED STATES  
IN THE PROCESS**- Nilanjana Banerjee<sup>1</sup>**ABSTRACT**

ICC is one of the most prominent inter-governmental institution and US is unforgettably a hegemonic power. Hence, it become highly pertinent to know how influential was the role of US in giving birth to ICC. Though ICC is an international forum, it is supposed to be neutral to every member regardless of the power they exhibit. The birth of ICC can be traced back to the immense human rights violations during the world wars, which thereafter led to the thought of creating a neutral body which would encapsulate human rights provisions at International Level and ensuring its promotion. However, it is a matter of deliberation as to how much influence it experiences and to what extent it resists the same. This paper endeavors to study the birth of ICC from the iconic Rome Statute. Moreover, it aims to find out significant Rome convention provisions, along with penning down the timeline of Rome Statute. Most significantly, it has even attempted to capsulize the US- ICC influence.

**INTRODUCTION**

As we all know that every nation identifies a certain range of acts as wrongful acts, hence they are crimes. But another well-known fact is that crimes know no boundaries, there can be such acts, rather a chain of acts which spread across the boundaries on several nations; or even two different nations are parties to act; or the offending state, victim states are different also the crime is committed in a third state. To address such cases, a conflict might arise as to which state will have jurisdiction to try i.e. whether the victim state shall try or the nation where the act is committed. To reach an answer, reference must be made to several international charters, doctrines, and conventions and Rome Statute is one of them which

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gave birth to the International Criminal Court (hereinafter mentioned as ICC). United States has played an active role from the very inception of this idea of the formation of ICC. Moreover, the immense influence United States possesses on United Nations was quite evident during this phase. The whole process was initiated by the UNWCC i.e. United Nations War Crimes Commission in 1943 when human rights violation cases were reported enormously. Thereafter the need for a permanent International Court was felt to try these war crimes, crimes against humanity. Several rounds of negotiations took place and the US was an avid part of those, along with 160 more states. However, the US neither became a state party to it nor ratified it. At the eleventh hour, the US backed off from signing it, furthermore, such laws were formulated which could prevent ICC from exercising its jurisdiction over the US. However, a few years later, it repealed such laws but has not become a state party to them yet.

This paper aims to know about the Rome Statute, who are the parties to it, what are the general principles enshrined in it, also what constitutes a crime under the Rome Statute. Thereafter, this paper would give a glimpse of the Rome Statute on the matters of ICC jurisdiction, its functioning, the elements of crimes, and the process of ICC working.

It would even trace the timeline of developments in making of Rome Statute and thereafter analyse the influence of the US on Rome statute formation, also, ICC.

## WHAT IS ROME STATUTE?

### **2.1.ABC of Rome Statute**

**“The most serious crimes of concern to the international community as a whole must not go unpunished”**

**-Preamble to the Rome Statute, ICC<sup>2</sup>.**

The Rome Statute is the founding treaty for ICC, which was adopted on July 17, 1998, at a conference of 160 states it led to the establishment of the 1<sup>st</sup> treaty-based permanent criminal court but, it came into force on July 15, 2002, on receiving ratification from 60 states.

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<sup>2</sup> Preamble, Rome Statute, available at [https://legal.un.org/icc/statute/99\\_corr/cstatute.htm](https://legal.un.org/icc/statute/99_corr/cstatute.htm) (last visited on May 6, 2022)

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Currently, 123 parties are members of the Rome Statute and they are called the Assembly of State Parties.

The history of establishing the international criminal court spanned over a century and this long road has been quite contentious. It can be traced back to 1872, when Gustav Moynier who was one of the founders of the Red cross, proposed the formation of a permanent court in response to the Franco Prussian war. The next situation where an international permanent court was demanded was in 1919 when the drafters of the treaty of Versailles had envisaged an international court which would try the war criminals.<sup>3</sup>

Thereafter, after World War II, allies were set up in a few places and the UN made attempts to create a permanent court, however in vain. In 1948, UNGA i.e. United Nations General Assembly adopted a convention concerning the prevention of genocide and invited the International Law Commission to analyze the desirability of such an institution. In the early 1950s, the ILC drafted a statute and this effort was put on pending. In the 1990s, there have been having been several instances of human rights violations, crimes of aggression, and genocide and this led the UN to establish two temporary ad hoc tribunals to hold the individual accountable. While working, these aforementioned tribunals once again put forth the idea of an international permanent criminal court. They even demonstrated the justiciability, and desirability of the court. In 1994, ILC presented its final version of the ICC draft statute. UNGA established an Ad Hoc Committee for the setting up of ICC. Thereafter, in 1996, a preparatory committee was set up to ponder over ICC and its draft statute. In two years around 6 sessions have been conducted in New York and meetings were held for ICC. In 1998 January Bureau and coordinators of the preparatory committee called for meetings where the Netherlands consolidated the draft articles and reframed them into a draft.<sup>4</sup>

Thereafter, the Rome conference took place from 17<sup>th</sup> June 1998 to 15<sup>th</sup> July 1998, where 160 countries participated closely and monitored the information available at hand. After this immense discussion, 120 nations voted in favour of it while only seven nations voted against it (US, China, Israel, Iraq, Qatar and two more) after this, the preparatory commission was given the task of formulating incidental documents like rules of evidence, elements of crime etc.

<sup>3</sup>Human Rights Commitment (2015) *History of the Rome Statute of the International Criminal Court*, available at <http://humanrightscommitments.ca/2015/12/history-of-the-rome-statute-of-the-international-criminal-court/> (last visited on May 6, 2022)

<sup>4</sup>Human Rights Commitment, (2015), *History of the Rome Statute of the International Criminal Court*, <http://humanrightscommitments.ca/2015/12/history-of-the-rome-statute-of-the-international-criminal-court/> (last visited May 5, 2022)

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Finally, on 11<sup>th</sup> April 2002, the 60<sup>th</sup> ratification pushed the Rome statute for entry into force and the Assembly of States met in September 2002 for the first time.

## 2.2 Number of ratifiers

Currently, Rome Statute has 123 member states who have signed as well as ratified the statute, while there are 32 such states who have signed but have not ratified it yet. The table below would depict a few states who ratified and who signed but did not ratify<sup>5</sup>.

NAME OF THE STATE	DATE OF SIGNATURE	DATE OF RATIFICATION
Afghanistan	-	10 <sup>th</sup> Feb 2003
Albania	18 <sup>th</sup> July 1998	31 <sup>st</sup> January 2003
Algeria	28 <sup>th</sup> December 2000	Not yet
Argentina	8 <sup>th</sup> January 1999	8 <sup>th</sup> February 2001
Australia	8 <sup>th</sup> December 1998	1 <sup>st</sup> July 2002
Bahamas	28 <sup>th</sup> December 2000	Not yet
Bangladesh	16 <sup>th</sup> September 1999	23 <sup>rd</sup> March 2010
Belgium	10 <sup>th</sup> September 1998	28 <sup>th</sup> June 2000
Brazil	6 <sup>th</sup> February 2000	20 <sup>th</sup> June 2002
Cambodia	23 <sup>rd</sup> October 2000	11 <sup>th</sup> April 2002
Cameroon	17 <sup>th</sup> July 1998	Not yet
Canada	18 <sup>th</sup> December 1998	7 <sup>th</sup> July 2000
Chile	11 <sup>th</sup> September 1998	29 <sup>th</sup> June 2009
China	--	--
Costa Rica	7 <sup>th</sup> October 1998	7 <sup>th</sup> June 2001
Congo	8 <sup>th</sup> September 2000	11 <sup>th</sup> April 2002
Denmark	25 <sup>th</sup> September 1998	21 <sup>st</sup> June 2001
Egypt	26 <sup>th</sup> December 2000	Not yet
El Salvador	26 <sup>th</sup> November 2015	3 <sup>rd</sup> March 2016
France-	18 <sup>th</sup> July 1998	9 <sup>th</sup> June 2000
Germany	10 <sup>th</sup> December 1998	11 <sup>th</sup> December 2000
Gibraltar	--	--

<sup>5</sup>International Criminal Court Project, *State Parties to the ICC*, available at <https://www.aba-icc.org/about-the-icc/states-parties-to-the-icc/> (last visited on May 4, 2022)

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Honduras	7 <sup>th</sup> October 1998	1 <sup>st</sup> July 2002
Iceland	26 <sup>th</sup> August 1998	25 <sup>th</sup> May 2000
India	--	--
Italy	18 <sup>th</sup> July 1998	26 <sup>th</sup> July 1999
Kenya	11 <sup>th</sup> August 1999	15 <sup>th</sup> March 2005
Kosovo	--	--
Libya	--	--
Luxembourg	13 <sup>th</sup> October 1998	8 <sup>th</sup> September 2000
Macedonia	7 <sup>th</sup> October 1998	6 <sup>th</sup> march 2002
North Korea	--	--
Nepal	--	--
Pakistan	--	--
Portugal	7 <sup>th</sup> October 1998	5 <sup>th</sup> February 2002
San Marino	18 <sup>th</sup> July 1998	13 <sup>th</sup> May 1999
Seychelles	27 <sup>th</sup> December 2000	10 <sup>th</sup> August 2010
South Korea	8 <sup>th</sup> march 2000	13 <sup>th</sup> November 2002
Sudan	8 <sup>th</sup> September 2000	--
Syria	29 <sup>th</sup> November 2000	--
Thailand	2 <sup>nd</sup> October 2000	--
UK	30 <sup>th</sup> November 1998	4 <sup>th</sup> October 2001
US	31 <sup>st</sup> December 2000	--
Ukraine	20 <sup>th</sup> January 2000	--
Yemen	28 <sup>th</sup> December 2000	--
Zimbabwe	17 <sup>th</sup> July 1998	--

### **2.3.Jurisdiction**

The ICC exercises its jurisdiction over crimes as specified in the Rome Statute. It has a fixed number of categories of crimes where the ICC can exercise its jurisdiction and they are-

Crimes against humanity, war crimes, genocide, and atrocity crimes. Exercising jurisdiction over these issues can be done in three ways and they are<sup>6</sup>-

- State referral
- UNSC referral
- Proprio motu investigation

The aspect of jurisdiction is dealt with under part two of the Rome Statute. Art 5<sup>7</sup> explicitly mentions the crimes wherein ICC can exercise its jurisdiction. Art 6, 7 and 8<sup>8</sup> deal with genocide, crimes against humanity and war crimes respectively. All these three sets of crimes are together called **ATROCITY CRIMES**. Crimes against humanity include all such crimes which are systematic attacks on civilians. War crimes are such grave criminal acts committed in armed conflict. It can also be called civil war. Genocide is the killing of any whole or part of an ethnic, racial or religious group.

Details of it have been discussed in subsequent subheadings.

There has been the issue of several other aspects while considering the case like assessing several other aspects of jurisdiction i.e. time aspect, subject matter, territorial, personal etc. ICC is permitted to take up cases which have arisen after 1<sup>st</sup> July 2002 i.e. the date when Rome Statute came into force. Moreover, art 12<sup>9</sup> lays down that a state which becomes a party to this statute impliedly accepts the jurisdiction of the court. Art 13<sup>10</sup> talks about the referrals as mentioned already.

Art 17<sup>11</sup> deals with the issue of admissibility. A case is said to be inadmissible if-

- If the case is being prosecuted by another state which has jurisdiction over it
- The concerned person has already been tried for the same subject matter
- The case is not of adequate gravity
- The case is investigated by other case and it has decided not to prosecute

<sup>6</sup>ABA-ICC Project, How the ICC Works, available at <https://how-the-icc-works.aba-icc.org/> (last visited on 3<sup>rd</sup> May 2022)

<sup>7</sup>Rome Statute, 1998, Art 5.

<sup>8</sup>Rome Statute, 1998, Art 6,7,8.

<sup>9</sup>Rome Statute, 1998, Art 12

<sup>10</sup>Rome Statute, 1998, Art 13

<sup>11</sup>Rome Statute, 1998, Art 17

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#### 2.4. Preliminary aspects of the statute

Art 1 and 3<sup>12</sup> provide the very basic things about the court and i.e. it shall be a permanent body and will hold power to exercise jurisdiction over the serious crimes as has been prescribed in the subsequent provisions of the Rome Statute. It is headquartered in Hague, Netherlands and the court shall enter into agreements to be approved by state parties. Moreover, the court can decide to sit elsewhere if it seems desirable to it.

Art 4<sup>13</sup> clarifies that the court holds a legal personality and will hold all such capacity which is required for fulfilling its duties. The court can even exercise its power on any state party by special agreement.

#### 2.5. General Principles Laid Down-

1. Art 22- NULLUM CRIMEN SINE LEGE<sup>14</sup>- Only such cases will be tried by the court which falls within the jurisdiction of the court. The definition of crimes shall not be extended by analogy and ambiguous provisions shall be interpreted in the favour of the accused or convicted as the case may be.
2. Art 23- NULLA POENA SINE LEGE<sup>15</sup>- a person who is convicted by ICC shall be punished only as per the statute.
3. Art 24-NO RETROACTIVE APPLICATION<sup>16</sup>- No person can be held criminally responsible for any act which they did before entry into force of the statute. In case there is any amendment before giving final judgement, then in such cases, the more favourable law shall be applied to the accused.
4. Art 25- CRIMINAL RESPONSIBILITY<sup>17</sup>- the court will have jurisdiction over the natural persons only (individual or joint liability). It even punishes soliciting of crime, abetting, aiding, and inciting (especially in genocide). Moreover, it is clearly stated that individual criminal responsibility shall not affect the state's responsibility in any way.

<sup>12</sup>Rome Statute, 1998, Art 1 & 3

<sup>13</sup>Rome Statute, 1998, Art 4

<sup>14</sup>Rome Statute, 1998, Art 22

<sup>15</sup>Rome Statute, 1998, Art 23

<sup>16</sup>Rome Statute, 1998, Art 24

<sup>17</sup>Rome Statute, 1998, Art 25

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5. Art 26- EXCLUSION BELOW 18<sup>18</sup>-The court shall have no jurisdiction over any person who is under 18 years of age at the time of the commission of the crime.
6. Art 27-IRRELEVANCE OF THE OFFICIAL CAPACITY<sup>19</sup>- This statute would apply equally to every person regardless of the official position such a person holds (can be government representative, government official, member of parliament). Even if such person holds any immunity, then too it shall not preclude the court from exercising jurisdiction over him.
7. Art 28- RESPONSIBILITY OF SUPERIORS<sup>20</sup>- In case, there is any military commander under whom the force has committed any crimes, then such commander shall be held responsible for it unless there has been no effective control or authority. Superiors shall be criminally responsible for the crimes which were committed by the subordinates under effective control or command, superior knew that such an activity was committed and failed to take preventive measures.
8. Art 29- INAPPLICABILITY OF STATUTE OF LIMITATION<sup>21</sup>- The limitation rules shall not be applied to such crimes which fall within the jurisdiction of ICC.
9. Art 30- SIGNIFICANCE OF MENTAL ELEMENT<sup>22</sup>- In general, the mental element, intent, and knowledge (awareness about the situation and the consequence) are necessary, however, exceptions can exist.
10. Art 31- PRECULSION OF CRIMINAL LIABILITY<sup>23</sup>- Unsound mind people, involuntary intoxication, and reasonable proportion of self-defence shall be a valid ground for preclusion of criminal responsibility. If any act is committed under duress, the threat of imminent danger, then too it is precluded.
11. Art 32- MISTAKE OF LAW OR LAW<sup>24</sup>- Mistake of fact is excusable only if it removes the mental element required in any crime. While the mistake of law shall not be a ground for excluding criminal liability unless it again excludes the requirement of mental element (due to superior orders).

<sup>18</sup>Rome Statute, 1998, Art 26

<sup>19</sup>Rome Statute, 1998, Art 27

<sup>20</sup>Rome Statute, 1998, Art 28

<sup>21</sup>Rome Statute, 1998, Art 29

<sup>22</sup>Rome Statute, 1998, Art 30

<sup>23</sup>Rome Statute, 1998, Art 31

<sup>24</sup>Rome Statute, 1998, Art 32

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**12. Art 33-** WHEN SUPERIOR LIABLE<sup>25</sup>- in case a criminal act is done by a person who is obligated by governmental order to do so or did not know that such an act was wrong or the governmental order was not manifestly unlawful, then the person doing the wrongful act shall not be liable (exception- orders to commit genocide is manifestly wrong)

**13. Art 66-** PRESUMPTION OF INNOCENCE<sup>26</sup>- everyone shall be presumed to be innocent until proven guilty as per the procedures of law.

**14. Art 68-** PROTECTION OF VICTIMS, WITNESSES<sup>27</sup>- the court is to take all such appropriate measures which are necessary to ensure the safety, dignity, and privacy of the victims as well as witnesses.

## **WHAT IS ICC?**

### **3.1.An introduction to what ICC is<sup>28</sup>**

The International Criminal Court is the only permanent judicial institution which is empowered to investigate three categories of crime i.e. war crimes, crimes against humanity and crimes against aggression. It is established through a multilateral treaty i.e. Rome Statute, which currently has 123 members. Among these 123, 33 are from the African region, 19 from the Asia Pacific region, 18 from Eastern Europe, 28 from the Latin American and Caribbean region and 25 from Western Europe and North America. It was adopted in 1998 and the ICC began to function in 2002 after it was ratified by the 60<sup>th</sup> country. It works independently and not in collaboration with the UN or any of its agencies. ICC can investigate and prosecute only when any national court is 'unable to' or 'unwilling to do so themselves. Since its inception, it has opened around 13 cases and many of them are still going.

Being an international permanent tribunal, it respects the highest standards of justice and aims to incorporate a just and fair trial processlike preserving the rights of the accused, the presumption of innocence, the right to present evidence, witnesses, the benefit of the doubt as well as prove beyond a reasonable doubt.

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<sup>25</sup>Rome Statute, 1998, Art 33

<sup>26</sup>Rome Statute, 1998, Art 66

<sup>27</sup>Rome Statute, 1998, Art 68

<sup>28</sup>International Criminal Court Project, available at <https://www.aba-icc.org/about-the-icc/evolution-of-international-criminal-justice/> (available on May 6, 2022)

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The prosecutor and the judges are accountable to the Assembly of State Parties, who even hold the authority to remove them from their offices in case they misuse or abuse their power. For fair functioning, an Independent Oversight Mechanism has been set up, which among many other functions conducts investigations of fraud concerning the court staff.

The court is seated at the Hague in the Netherlands and if it finds desirable, it may sit somewhere else too. As per art 4 of the Rome Statute. The court holds an international legal personality and holds the legal capacity to exercise its functions. Art 5 talks about its jurisdiction and lists out the most heinous crimes in the international community and they are crimes of genocide, crimes against humanity, war crimes, and crime of aggression. As per Art 34<sup>29</sup>, there are four organs of the government and they are the presidency, trial division, office of prosecutor, and registry. The qualification of the judges are listed in Art 36<sup>30</sup> which mentions ‘Qualifications, Nomination and Election of judges’.

This court is funded by the contributions of the member states and also by the voluntary contributions from various states, organisations, and individuals.

The 6 official languages of the court are Arabic, English, French, Chinese, Russian, and Spanish and the judgements shall be provided in these languages. The working languages are English and French

It is an autonomous court and not a part of the UN like the ICJ which requires a special mandate from the UN to try cases. It does not replace the national criminal court but rather complements it as it will investigate, and prosecute individuals of such concerned states which is unwilling to do so. This is the principle of complementarity. ICC prosecutes individuals and not states. It does not take into account an official position and no person is exempted from prosecution merely because he or she holds any governmental or parliamentary position. Also, children below 18 years are not tried by the ICC. Further details shall be discussed in sub topics hereinafter.

### 3.2.STRUCTURE<sup>31</sup>

<sup>29</sup>Rome Statute, 1998, Art 34

<sup>30</sup>Rome Statute, 1998, Art 36

<sup>31</sup>International Criminal Court Project, available at <https://www.aba-icc.org/about-the-icc/structure-of-the-icc/> (last visited on May 4, 2022)

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The court has four different organs i.e. the presidency, the office of the prosecutor, the chambers, and the office of the registrar.

The Presidency (Art 38<sup>32</sup>) consists of three judges (one President and two vice presidents) who are elected by an absolute majority of the 18 judges. The term is a maximum of 2 to 3 years. It is bestowed with the duty to maintain the administration of the court except for the office of the prosecutor. Another task of the Presidency is to ensure the enforcement of sentences imposed by the court.

The Chambers (Art 39<sup>33</sup>) consist of 18 judges including the Presidency judges. They are assigned the three trial divisions i.e. the pre-trial chambers, trial chambers and appeal chamber. The pre-trial division consists of seven judges, while the trial division and the appeals division comprise six and five judges each. The pre-trial chamber resolves all the issues which arise before the trial begins. It aims to supervise the office of the prosecutor in investigatory and prosecutorial procedures. It works on protecting the rights of suspects, victims, and witnesses during the investigatory process. It decides whether or not to issue any warrant, and whether to confirm the charges against such person. In short, it even decides on the admissibility of the cases. The trial chamber ensures that the trials are conducted in a fair manner and that there is no unreasonable delay. Moreover, it checks that there is no disrespect done to the accused and that its rights are duly respected. It also actively participates in ensuring that victims are adequately respected during the whole process. It even determines if the accused is guilty of charges and whether the sentence imposed is in proportion with the crime committed. The appeals chamber consists of the President of the court and four other judges. The parties to a case can opt to appeal if they are dissatisfied with the decisions of the trial chambers. The appeals chamber may amend the decision, may uphold it, may reverse it. Further, it may even order a new trial before the chamber. The judges are to be independent and shall not involve in any such activity which interferes with unbiased judicial proceedings. If there exists any reasonable doubt as to whether the judgement given is biased, then the judge shall be disqualified (Art 41<sup>34</sup>). They are to serve on a full-time basis.

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<sup>32</sup>Rome Statute, 1998, Art 38

<sup>33</sup>Rome Statute, 1998, Art 39

<sup>34</sup>Rome Statute, 1998, Art 41

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The office of the prosecutor (Art 42<sup>35</sup>) is an independent organ and its task revolves around receiving information about the situations, and alleged crimes. It even investigates into the fact whether there has been any reasonable ground to raise the complaint i.e. whether there has been any violation of human rights or whether there has been any war crime or genocide.

This office is subdivided into three sections i.e. the

- investigation department, ( receiving information on the case)
- the prosecution department (litigating the case)
- the jurisdiction, complementarity and cooperation department (assess the information, determines the admissibility)

if there arises any situation as to disqualification of the prosecutor, it shall be dealt with by the appeals division.

The registry (Art 43<sup>36</sup>) aids to court in conducting a fair trial. The core function is to provide administrative and operational support to the prosecutor's office and the chambers. It ensures that the court functions effectively assess the victims, witnesses and defences. It is also responsible for the outreach activities.

The judges are persons of high intellectuality, integrity and moral character. They need to be impartial and possess such requisite qualifications in their respective states for an appointment. They are elected by the Assembly of state parties based on their competence in relevant fields, like international criminal law, human rights areas etc, women's rights, child rights etc. while appointing judges fairly, it is considered that there is a fair representation of the principal legal systems across the world, justified representation to men & women.

### 3.3.JURISDICTION<sup>37</sup>

This court tries individuals and not states and to hold such person accountable, the list of crimes mentioned in the list has to be fulfilled, namely the war crimes, crimes against humanity, genocide, and crimes of aggression. It is dealt with under Part 2 of the Rome statute. Art 5 broadly mentions the 4 areas where the ICC can prosecute.

Genocide- Art 6<sup>38</sup> lists out the activities which if happens can be called genocide. It includes-

<sup>35</sup>Rome Statute, 1998, Art 42

<sup>36</sup>Rome Statute, 1998, Art 43

<sup>37</sup>Understanding the ICC, available at <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> (last visited on May 6, 2022)

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- killing members of a group
- causing serious bodily injury or mental injury
- inflicting such situations which will lead to physical destruction
- imposing such measures which prevent births within the group
- forcibly transferring the children of that group to another.

Crimes against Humanity- Art 7<sup>39</sup> pens down the following acts which when committed as a part of a widespread attack against civilians and with proper knowledge-

- murder
- extermination
- enslavement
- deportation
- imprisonment or such deprivation of physical liberty
- rape
- sexual slavery
- forced prostitution, forced pregnancy, forced sterilization
- torture
- enforced disappearance
- apartheid
- persecution of any collectivity may be racial, ethnic, cultural, political, religious etc.
- or any such activity of similar nature

War crimes- Art 8<sup>40</sup> chalks out a long list of activities which can be counted as being a war crimes. Some of them are-

- violations of Geneva conventions on 12<sup>th</sup> August 1949 which might include-
  - ✓ Wilful killing
  - ✓ Torture, inhuman treatment
  - ✓ Causing serious injury to the body as well as the mind
  - ✓ Extensively destroying property
  - ✓ Compelling war prisoners to serve

<sup>38</sup>Rome Statute, 1998, Art 6

<sup>39</sup>Rome Statute, 1998, Art 7

<sup>40</sup>Rome Statute, 1998, Art 8

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- ✓ Depriving the prisoner of war of basic rights
- ✓ Not providing a fair and just trial to war prisoners
- ✓ Unlawful deportation
- ✓ Taking of hostages
- Other serious violations of laws and customs form a part of international armed conflict.
- Internationally attacking civilian
- Internationally attacking personnel, installation, and material unit involved in peacekeeping forces.
- Attacking or bombarding towns, settlements, buildings
- Killing any wounded or combatant who is not left with scope to defend.
- Improperly using flags or any military uniforms
- Attacking buildings of religion, education, art, science, medical or charitable purposes, monuments
- Killing treacherously
- Poisoning weapons
- Committing outrages on personal dignity
- Rape, sexual slavery, prostitution, forced pregnancy

Crimes of aggression- Assembly of State parties in Rome Statute held that it means planning, preparation, initiation or execution of such an act using armed forces, which would have interfered with state sovereignty, integrity or independence. It can include military invasion, the annexation of territory etc. The jurisdiction of the court concerning this came into effect subject to 2/3<sup>rd</sup> majority of state parties and ratification. In these situations, the court will be able to exercise its jurisdiction only when the states have previously accepted that ICC can exercise jurisdiction over them.

All these crimes shall have all such elements as will be adopted by 2/3<sup>rd</sup> majority of members of Assembly of state parties. Such elements shall be proposed by any state party, judges acting by absolute majority and prosecutor. Such elements shall be consistent with the statute.

Art 11 mentions that the court shall exercise its jurisdiction only after its entry into force. A state by becoming a party to the statute accepts jurisdiction concerning the crimes. The court shall exercise its jurisdiction on the territory where the crime has occurred, if committed on

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any vessel, then the state in which is registered, the state of which the person is national. As per art 13<sup>41</sup>, the court may exercise its jurisdiction (for all the crimes) if one or more such crime has been committed and is referred to the prosecutor by a state party or if it has been referred by the security council or the prosecutor himself has initiated investigations (and also requested for authorization).

The prosecutor initiates investigation proprio motu, it shall at first enquire into the reasonableness of the information received, then he shall request authorization from Pretrial chambers, if it is accepted then it will be authorised. However, if it is refused, then a subsequent request may be submitted. The details of this have been discussed hereinafter.

### 3.4. Working System<sup>42</sup>

For an effective understanding of the working of ICC, it is convenient to subdivide it into several headings-

- INVESTIGATION & REFERRALS- Art 53 to 55<sup>43</sup> explicitly deal with the investigation of any case. The prosecutor after receiving information about any case will determine if it should move ahead with the investigation and to decide this, the following aspects shall be counted in-
  - If the information provides a reasonable basis to believe that crime has taken place
  - Considering the gravity of the crime and the victim's interest
  - Admissible under 17 (admissibility rules)

If the prosecutor finds no reasonable basis to investigate, it shall inform the pre-trial chamber and also the state after making a referral to Security Council. The pre-trial chamber may initiate a review of the prosecutor's decision to effectively check if the decision was reasonably correct. This scope of the investigation is open for states as well as non-states who accept the ICC jurisdiction and request the prosecutor for an investigation.

For the conduction of the investigation, the office of the prosecutor shall send its investigators to collect evidence in areas where the crime is said to be committed. While

<sup>41</sup>Rome Statute, 1998, Art 13

<sup>42</sup>Understanding the ICC, available at <https://www.icc-cpi.int/sites/default/files/Publications/understanding-the-icc.pdf> (last visited on May 4, 2022)

<sup>43</sup>Rome Statute, 1998, Art 53-55

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investigating, it must be adequately taken care of so that the victims and witnesses are not put at any risk.

The prosecutor while making an investigation respects the rights of the victims, considers all the facts, and takes appropriate measures to not prejudice the life of such persons. While investigating, the prosecutor may examine the evidence, request the presence of investigators, and victims, seek cooperation from the governmental or intergovernmental bodies, and not disclose any highly confidential information openly (collected from them). While the investigation is going on, the prosecutor shall respect the rights of the victims or witnesses which are listed under Art 55<sup>44</sup>. Some of them are-

- o Not compelled to self-incriminate art 20 (3)
- o Not subject to coercion, threat or any inhuman treatment
- o Not subject to arbitrary arrest related to sec 57 crpc
- o Choose to have legal assistance (even without payment in case of pauper suit) CrPC, Art 39A.

It is on the investigating body to collect evidence and based on this only the court can work on prosecution, hence a humungous responsibility lies on the investigating bodies.

A case can even come as a referral like a State referral, where the country that has ratified the Rome Statute refers any atrocity to the ICC prosecutor. For a state to refer, it must either be committed on the territory of the state party or by a national of it. United Nations Security Council referral may refer to an alleged atrocity crime in any country by passing a resolution like in 2005 March, UNSC referred the situation in Darfur, Sudan, to the ICC. The time limit to consider such cases is 12 months i.e. within this period no investigation can be commenced. No matter whether the cases are referral or proprio motu, there is a preliminary examination done for assessing the temporal jurisdiction (ICC can take up only such crimes which were committed after 1<sup>st</sup> July 2002), territorial jurisdiction (only the state parties and for such non-state parties who have consented to it), subject matter jurisdiction (must either be a war crime, crime against humanity, or genocide), personal jurisdiction (natural person). Further, there has to be an admissibility assessment and complementarity i.e. ICC

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<sup>44</sup>Rome Statute, 1998, Art 55

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complements other courts in its jurisdiction. Furthermore, the gravity of the matter has also to be assessed.

- ARRESTS- After the information on the investigation is conveyed to the pre-trial chamber, it may issue a warrant of arrest or summon to appear. The following are the relevant piece of information for the pre-trial chamber to issue an arrest warrant (Art54<sup>45</sup>)-
  - Name of the person
  - Description of the crimes
  - A concise summary of facts
  - A summary of the evidence found
  - The reason behind the prosecution believing that the person shall be arrested.

If it is found adequate arrest warrant shall be issued and the registrar shall request the cooperation of the relevant states(as it does not have their police). Once an arrest is done, the court is informed. This duty of arrest based on the warrant lies in every state as states are one of the significant pillars. In case there is a role of the UNSC, then all the UN member states are also bound to cooperate in arrest. After the person is arrested, he is brought before the judicial authority of such a state, where the validity or legality of the arrest is determined. Thereafter, the person is detained at the detention centre in Hague. It runs in conformity with the international standards of Human Rights. There is a daily schedule for the detainees, which includes walking, exercising, taking part in some manual activity etc. they even get access to TV, a Computer etc. they are served a proper three meals and a shopping list is also available. They can be visited by their family several times a year.

If convicted after the trial, such a detainee will not serve sentence at the Hague detention centre as the facilities are not for the long term. They are then transferred to a place outside and states who are willing to take his custody shall get it (based on the court's discretion)

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<sup>45</sup>Rome Statute, 1998, Art 54

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- CONFIRMATION OF CHARGES- Art 61<sup>46</sup> deals with this aspect. It says that after a reasonable time if the person surrenders or voluntarily appears before the court, the pre-trial chamber shall hold a hearing to confirm the charges on which he is to be tried. Even in the absence of the accused such confirmation can be done, if he has waived this right and the prosecutor requested to do so. A document containing all the charges shall be provided to him and he will be informed of all the pieces of evidence that the prosecutor is relying on. Before hearing the charges can be added or removed and in the latter case, the reasons have to be provided. The pre-trial chamber can even decline to confirm the charges. It can even stall the hearing and request the prosecution to consider further shreds of evidence. It does not prejudice the conviction of the accused but rather safeguards the rights of the accused and protects him from unnecessary legal action. After the confirmation, the trial chamber will consider the procedural issues.
- TRIAL- Part 6 (Art 62<sup>47</sup> onwards) of the statute relates to the trial. The trial takes place at Hague unless the Judges decide otherwise. The accused must be present at the trial. Usually, the court proceedings are to be held in public unless the court decided to conduct any part of it in closed rooms. At the time of initiation of the proceedings, the court allows the charges to be read aloud and asks if the accused could comprehend them. Thereafter, the chamber asks him if he pleads guilty or not.

In case the accused pleads guilty, the consequences of it are explained to him and it is reconfirmed if he still admits guilt. If the chamber is satisfied that the accused is made of all pertinent things, it may convict him. (Art 65<sup>48</sup>)

In case the accused does not plead guilty, the court shall order the trial to be continued. Both the parties get an equal chance to present themselves and produce shreds of evidence to prove themselves. The evidence can be in different forms like a documentary, tangible items or even statements by the witness. All such pieces of evidence shall be in accordance with the rules of procedure and evidence. Witness statements can be in oral or recorded versions or even via audio or video tech. the court may determine the admissibility of any evidence on the ground that it prejudices the rights of the accused. Adequate confidentiality shall be maintained. Moreover, the

<sup>46</sup>Rome Statute, 1998, Art 61

<sup>47</sup>Rome Statute, 1998, Art 62

<sup>48</sup>Rome Statute, 1998, Art 65

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court shall also look into the way the evidence is obtained, in case it makes violation of any human rights and leads to substantial doubt on the reliability or affects the integrity of the proceedings.<sup>49</sup> Art 69.

Firstly, the prosecution calls in a witness to testify, thereafter the defence counsel examines it. After the prosecution has finished his presentation, the defence comes up with his arguments and defences. Both parties can present their shreds of evidence to prove their issue beyond a reasonable doubt. The accused is presumed to be innocent until proven guilty beyond doubt.<sup>50</sup> Art 67

Suspects or accused are presumed to be innocent and they do have a right to a fair trial for ensuring that such rights are fulfilled, there is another set of rights. Such rights are mentioned hereinafter (Art 67)-

- Get defended by the counsel
- Tried without undue delay
- Not compelled to testify or admit the guilt
- Presumed to be innocence
- Free of cost assistance of a competent interpreter
- Not impose any kind of onus of proof

In case the suspects do not have a stable financial condition to pay for their legal assistance, the court may appoint a legal practitioner. Moreover, the detainees are entitled to apply for an interim release and if it is rejected the chamber might review it after every 120 days or at the request of the detainee. There is an office called the Office of Public Counsel for the Defence which works on promoting and researching the rights of defence, other defence, investigation or trial issues.

- JUDGEMENT& SENTENCE- A judgement is delivered after the victims are heard, parties have presented their evidence, and the prosecution and defence have presented their concluding statements. (the defence would always get to speak last.) the sentence is to be pronounced in public, in presence of the accused, victims, and their legal representatives. The judge can impose a prison sentence, fines, or order for forfeiture of property or other such assets. The court is not empowered to impose the death sentence and the maximum term of imprisonment that the court can give is 30 years,

<sup>49</sup>Rome Statute, 1998, Art 69

<sup>50</sup>Rome Statute, 1998, Art 67

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save exceptional cases where life imprisonment can be given.<sup>51</sup> Thereafter, the question arises where will such a convicted person serve his sentence. For this, the court prepares a list of states who are willing to aid the court in this and then the court is free to decide from among them.

The rules of imprisonment will be of that state which is enforcing the punishment. However, it has to be subject to and consistent with the standards set by the international treaty.

- APPEALS- Art 82 to 84<sup>52</sup> deals with appeals. As per art 82, any party can make an appeal. The prosecution may appeal the conviction or acquittal on the grounds like procedural error, error of fact or law. There can be an appeal on other grounds too which affects the fairness or reliability of the judgement or the convicted can even appeal on the ground that the punishment is disproportionate to the crime committed. It is not necessary that only the convicted person can appeal. Even the legal representatives of the convicted or victim, the bonafide owner of the property can appeal.

The appeals chamber shall have all the powers of the trial chamber. If it feels that the appeal is justified and the decision was unreliable, then it may reverse or amend it; or even order a trial afresh. An appeal can be made even if the punishment seemed disproportionate. The judgement in appeals shall be delivered in open court and proper reasons shall be provided. The majority and minority views shall be provided and the judgement can be delivered in absence of the person acquitted or convicted.

While the appeal is pending, the convicted person shall remain in custody unless otherwise ordered by the trial chamber. However, if such a situation arises where the duration of pending appeal exceeds the punishment duration, then such convict is released.

- REVISION- Art 84 governs the revision of a sentence. As per it, the convict or the prosecution can file for revision
  - ✓ if any new evidence has been found
  - ✓ it has been now discovered that the evidence produced in the trial was forged
  - ✓ judge(s) have conducted serious misconduct or a breach of duty rendering the judgement unreliable.

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<sup>51</sup>Rome Statute, 1998, Art 77

<sup>52</sup>Rome Statute, 1998, Art 82 -84

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If the appeals chamber is satisfied with this, it may order to reconvene the original trial chamber or constitute a new one or can retain the jurisdiction over the matter.

Moreover, Art 85 talks about such a situation when if a person has been convicted but subsequently it is found that the evidence was forged or any misconduct happened, hence the sentence has been reversed. In such cases of grave injustice or miscarriage of justice, the compensation shall be awarded by the court.

### 3.5.Art 79<sup>53</sup> (Trust Fund for victims i.e. TFV)

Art 79 reads, "1. A Trust Fund shall be established by decision of the Assembly of States Parties for the benefit of victims of crimes within the jurisdiction of the Court, and the families of such victims.

2. The Court may order money and other property collected through fines or forfeiture to be transferred, by order of the Court, to the Trust Fund.

3. The Trust Fund shall be managed according to criteria to be determined by the Assembly of States Parties."

The TFV, created in 1994 advocates for the most vulnerable victim of the crimes in ICC purview. It aims at identifying and raising awareness about victims of genocide, mobilising resources to reach the victims, and advocating for the reconciliation of the victim's families. In short, TFV is created to support the victim in the form of reparation or material support.

Its strategy is to assist in three ways-

- Physical Rehabilitation- provide care to victims who have suffered an injury in physical form so that they can resume their roles in society.
- Psychological Rehabilitation- Giving social, and health benefits to recover from the trauma and the social stigma. Like, in Bunia, Ituri provinces, Irumu, Djugu etc, psychological and material support was provided to women and children.
- Material Support- working to improve their economic status by rebuilding the community infrastructure and other employment opportunities.

Additionally, it even works to implement the court-ordered reparations

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<sup>53</sup>Rome Statute, 1998, Art 79

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From 2008 to 2011, there have been a total of 18,80,000 victims addressed. To avail the benefit of TFV, the local officers as designated in such countries. Such an officer will assess the jurisdiction and then provide referrals<sup>54</sup>.

Before starting with the project, the members of TFV shall evaluate and anticipate the resources which would be needed.

In the recent outbreak between Russia and Ukraine, there is an ICC initiated an investigation which works to find out the possible war crimes and crimes against humanity in Ukraine. The TFV board had called on the international community and especially the member states to be insightful of the happenings and recognise their right to justice.

On the occasion of women's day, TFV celebrated the strength of women and victims of sexual exploitation in Australia, Finland, Italy, Japan, UK. It even assisted women in Congo, Uganda, Kenya, and Georgia and participated in education for the elimination of sexual violence.

In this way, the TFV is working to ease the pain of the victims under ICC jurisdiction.

## **TIMELINE OF ICC FORMATION<sup>55</sup>**

20<sup>th</sup> OCTOBER 1943- The United Nations War Crimes Commission was established in London, it recorded war crimes across the world, and coordinated investigations, and prosecutions globally. During its operation from 1943 to 1948, it handled around 36,000 international atrocity crime cases. The US was heavily involved in this. The US here supported discussion about the creation of a permanent international criminal body, multilateral treaty and adoption of a draft statute.

8<sup>th</sup> AUGUST 1945- After world war II, US, UK, France, and USSR, signed the London agreement which led to the creation of the International Military Tribunal to try German Wartime leaders for crimes against humanity.

<sup>54</sup>TFV Background Summary, available at, [https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/E582AE21-D718-4798-97ED-C6C9F0D9B42D/0/TFV\\_Background\\_Summary\\_Eng.pdf](https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/E582AE21-D718-4798-97ED-C6C9F0D9B42D/0/TFV_Background_Summary_Eng.pdf)

<sup>55</sup> International Criminal Court Project, available at <https://www.aba-icc.org/about-the-icc/the-us-icc-relationship/>

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19<sup>th</sup> JANUARY 1946- International Military Tribunal for far east through a proclamation by General Mac Arthur to try the Japanese war leaders for their crimes against peace, and humanity.

25<sup>th</sup> MAY 1993- By a resolution, the UN Security Council established International Criminal Tribunal for Former Yugoslavia. The US was a firm supporter of it. The creation of this body rekindled the discussions on the creation of a permanent international criminal tribunal.

8<sup>TH</sup> NOVEMBER 1994- International Criminal Tribunal for Rwanda this increased the momentum for a permanent criminal tribunal.

1<sup>st</sup> FEBRUARY 1995- negotiations by ad hoc committee on the establishment of ICC and US sends its delegation f lawyers to participate in it. The US continues to participate till the 1998 Rome Conference.

25<sup>th</sup> MARCH 1996- 3<sup>RD</sup> APRIL 1981- US takes part in the sessions of the UN Preparatory Committee, where the final rounds of discussions for the draft of the Rome Statute were going on.

25<sup>TH</sup> MARCH 1998- US President Bill Clinton endorses the creation of ICC mentioning that the difficulties faced were grave, hence such an institution shall be created.

26<sup>TH</sup> MARCH 1998- US Senate foreign relations publicly releases his letter saying that the proposal for ICC would be dead on arrival in the senate.

15<sup>TH</sup> JUNE 1998- 17<sup>TH</sup> JULY 1998- Final negotiations for the Rome Statute take place with 160 countries participating in it. Even US was an avid participant throughout.

17<sup>TH</sup> JULY 1998-Rome statute was adopted with 120 to 7, with 21 nations abstaining. the US voted against the Rome Statute. It even established the preparatory committee to draft core documents of ICC.

29<sup>TH</sup> NOVEMBER 1999- US passes the foreign relations authorization act, which contained provisions against the US extending any kind of financial support to ICC.

JUNE 2000- the US takes part and helps in drafting the rules of procedure, evidence, elements of crime and other such core documents. Later in September 2002, it has been adopted by ICC assembly state parties.

31<sup>ST</sup> DECEMBER 2000- After authorization from Bill Clinton, the US signs the Rome Statute on its final day and held the view that it is still sceptical about its working, hence it should get a chance to observe.

11<sup>TH</sup> APRIL 2002- 1<sup>ST</sup> JULY 2002- ICC starts to operate after the 60<sup>th</sup> ratification of the Rome Statute. The Rome Statute was brought into force on 1<sup>st</sup> July 2002.

6<sup>TH</sup> MAY 2002- the US formally declared to not ratify the statute by the US Secretary of State for Arms wrote a letter to Kofi Anan stating that the sign by the UN is no more putting obligations on them.

2<sup>ND</sup> AUGUST 2002- the US passes the America Service members protection act, US president G.W. Bush signed it. It contained such provisions which were used to resist the implementation of ICC in the US. However, a 2015 amendment shows that the US reserved to itself the power of bringing certain individuals (involved in war crimes) to justice.

17<sup>TH</sup> OCTOBER 2006- the US removes the restriction on the military and educational training. President signs on such paper which repeal the provisions of American Service Members act.

NOVEMBER 2009- US attends the ICC Assembly of state parties meeting.

31<sup>ST</sup> MAY 2010- 11<sup>TH</sup> JUNE 2010- US sends delegation to its first ICC conference held in Uganda.

3<sup>RD</sup> JANUARY 2013- President Obama signs into those documents which extend the US state department's scope to get information on ICC fugitives.

22<sup>ND</sup> MARCH 2013- US facilitated the transfer of ICC Fugitive Bosco Ntaganda after his voluntary service in the military.

10<sup>TH</sup> SEPTEMBER 2018- US announces a new policy concerning ICC. Trump was of the view any necessary steps shall be taken to protect the US and its allied units. Further, it is also said that the US would consider entering into bilateral treatments firstly.

11<sup>TH</sup> JUNE 2020- An order authorised that there shall be certain financial and other related restrictions shall be applied on the ICC as well as its staff.

2<sup>ND</sup> SEPTEMBER 2020- ICC prosecutor and a staff member designated it as the specially defined materials. ICC called these sanctions an interference in the matters of court and with other civil servants.

## **US- ICC RELATIONSHIP<sup>5657</sup>**

Historically speaking, the US has always been a supporter of the creation of a body like the ICC. It has played notable roles in the establishment of UNWCC (United Nations War Crimes Commission, its benches at Nuremberg as well as Tokyo, Yugoslavia, Rwanda, Lebanon etc. it is the only permanent body which is mandated to investigate, prosecute the international heinous atrocities like genocide, war crimes, aggression. At present, there are 123 states which have ratified the Rome Statute and they are member states too. As in the previous sub-topic, we saw that the US had played a key role in drafting the Rome Statute. However, despite all of these, the United States is not a party to the Rome Statute. In 1998, the US was one of the seven states- China, Iraq, Qatar, Yemen, Israel, and Libya which voted against the Rome Statute. Ambassador at large for War crimes, David Scheffer, with the authorization of president Bill Clinton signed the Rome statute in 2000, however it was not submitted to the Senate for ratification. The US formally announces its intention to not ratify the Rome statute on May 6<sup>th</sup> 2002. It was done by John R Bolton, under the secretary of state for arms control and international security by sending a letter to Kofi Annan, the then UN secretary-general. The letter stated that the US has no legal obligations arising from its signature on the Rome statute and that it does not intend to become a part of the ICC. On June 30, 2002, the US had threatened to veto a draft of a UN resolution which aimed at extending the peacekeeping force to Bosnia as the UN members refused to extend full immunity to the US from the ICC jurisdiction. However, later UNSC and US could reach a compromise to defer ICC for an initial period of one year for any prosecution of persons participating in the UN peacekeeping force.

A few months after this, i.e., in August 2002, the US passes the American Servicemembers protection act 2002. It contained such provisions which complicated US cooperation with ICC like US military force had to power to free American citizens if held by the court. It even constrained the use of funds for supporting or cooperating with the court. Sec 2004(d)

<sup>56</sup> International Criminal Court Project, available at <https://www.aba-icc.org/about-the-icc/the-us-icc-relationship/> (last visited on 6<sup>th</sup> May 2022)

<sup>57</sup> Human Rights Watch, available at <https://www.hrw.org/news/2020/09/02/qa-international-criminal-court-and-united-states> (last visited May 6, 2022)

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restricted assistance to ICC under all treaties, and mutual agreements. It did not ban absolute communication. Sec 2005 created a restriction on assisting the UN peacekeeping force. Moreover, in 2015, an amendment was brought in, named Dodd amendment 2015, which empowered the US to bring certain individuals or other foreign nationals who were accused of genocide, and war crimes to justice. Before this, in 2016 October, the US removed military educational and training aid restrictions to ICC as was provided in ASPA. And, a few years after this, in 2008, the US removed the provisions which constrained the direct foreign military aid to ICC.

In 2009, the US opened its path for diplomatic relations with the ICC by officially attending the first meeting of the ICC Assembly of State Parties. Thereafter from May 2010 to June 2011, there was the first ICC review conference held, where the US had sent its delegation. This meeting was aimed at adopting the language which defined the crime of aggression.

In 2013, US President Obama signed legislation which expanded the rewards of the US department of justice and allows rewards up to 5 million USD for supplying information relating to arrests, transfers or convictions. A few months later, the US helped in the transfer of Bosco Ntaganda to ICC after his surrender at the US embassy in Rwanda, although the US was not obligated to do so.

Though the relations seemed to grow cordial, it all got damaged in September 2018 when the then National Security Advisor John Bolton announced that the Trump government would do whatever it deems necessary to protect its citizens and its allies from ICC prosecutions. Among several measures to do so, Bolton mentioned a few of them like negotiating bilateral immunity agreements, travel bans, and financial sanctions on the ICC judges for instituting cases against them. This policy was later affirmed by President Trump. In one instance, the US secretary revoked the Visa of one ICC prosecutor and in 2020, the US had even imposed sanctions on specific ICC personnel. ICC had called this an interference into ICC judicial and prosecutorial independence.

However, the situation seemed to get better when US president Biden 2021, on April 2 revoked all the sanctions on ICC personnel, which was issued by Trump during his term.

This shows that the relationship between ICC and Rome Statute is a rollercoaster ride. There has been no consistency in how US and ICC are connected.

## **CONCLUSION**

As it has already been seen that crimes know no boundary and in cases where multiple nations are involved, determining the jurisdiction becomes an assiduous and contentious task. To resolve this, an organised international judicial organ was needed. Despite several failed attempts to constitute such a body, finally, in 1998, Rome Statute was drafted which gave birth to ICC. However, Rome Statute did not come into effect till 2002 July, only after 60 states ratified it. Presently, there are 123 members and 32 such states who have signed but haven't ratified it yet.

ICC holds jurisdiction over its member states and non-members who have accepted the jurisdiction. ICC's jurisdiction lies in the gravest forms of crimes which accumulatively is known as atrocity crimes. The cases can either be referred by states or UNSC or even an investigation can be started *Proprio motu*. The United States, one of the superpowers in the contemporary world, was an active participant in the whole process of constituting a permanent court at the international level. It even involved itself in the Rome statute drafting and signing. However, later it refused to ratify, furthermore, it enacted legislation which restricted the state from extending any helping hand to ICC. In certain instances, it had even threatened ICC judges and unnecessarily interfered in the judicial proceedings. Very recently it had refused to give VISA to an ICC judge, in these ways the US has not been supportive of the permanent international court.

In later years, the situation seemed to change a bit where the US had removed its restricting provisions, like in 2009, for the first time diplomatic relations were established with ICC, thereafter Barack Obama had expanded the rewards up to 5 million in the US Department of Justice.

There during the term of Trump situation didn't seem to go good. However, with Biden, the restrictions have now been removed.

Hence it can be safely concluded that the relationship between the US and ICC is not a very stable one and it has been fluctuating since its inception.