

The International Criminal Court: Antecedents, History, and Prospects

Charles B.A. Ubah, Ph.D.

Georgia College & State University, USA

Charles.ubah@gcsu.edu

Osy E. Nwebo , Ph.D.

Imo State University, Nigeria

osynwebo@yahoo.com

Abstract

The principle of domestic jurisdiction in international law makes national governments responsible for protecting their citizens, investigating alleged abuses of human rights in their countries and bringing the perpetrators to justice. They governments may also extradite those accused of abuse of human rights to any other states prepared to give them a fair trial. Problem arises however, when governments are unable or unwilling to perform this duty or are themselves perpetrators of these crimes. Thus, millions of people have fallen victims of genocide, crimes against humanity and serious violations of humanitarian laws. But only very few of these perpetrators have been brought to justice in national courts as many governments claim sanctuary under the principle of domestic jurisdiction. The need therefore arises for the international community to act in order to protect helpless or defenseless citizens from being victims of crimes against humanity and human rights abuses, by bringing the perpetrators of these crimes to justice. The thrust of this article therefore, is that the creation of the International Criminal Court (ICC) fills this void by fulfilling a central and pivotal goal in international jurisprudence. This article, therefore, provides insights and lessons into the history and prospects of the International Criminal Court. These are insights and lessons that are too important and too costly to ignore in the 21st century understanding of international criminal justice system.

Keywords: International Law, International Criminal Court, Genocide, Crimes against Humanity and Human Rights Violations

Introduction

The attempt by the international community to establish a permanent and credible international Tribunal or court to try persons who commit war crimes has a long and checkered history which culminated in the establishment of the International Criminal Court. Thus, since the First World War, the international community had sought to establish a court to prosecute perpetrators of major international crimes like aggression, genocide, crimes against humanity and war crimes. About half a century ago, on the experience of the former Nuremberg Tribunal, an International Military Tribunal (IMT) which was established in 1945 by the various Allied Powers to try the Nazi war criminals, the International Military Tribunal for the Far East (IMTFE) to try the political and military leaders of the defeated Germany and the European Axis powers at Nuremberg and their Japanese counterparts at Tokyo. These tribunals suffered credibility crisis which was worsened by the cold war. However, outraged by the unprecedented brutality and impunity in the crisis in the former Yugoslavia in the Balkan Peninsular, Cambodia and Rwanda in Central Africa, Ad-hoc war crimes tribunals were set up to try and punish war criminals in these war zones (International Criminal Tribunal for the Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR), under the resolution of the security council while the special court for

Sierra Leone (SCSL) was established by the agreement between the United Nations and the Government of Sierra Leone (Barnes, 2015; Anoushirvani, 2010). But these were temporary tribunals established to respond to the human rights violations in those countries.

The success of these ad-hoc tribunals provided impulse and momentum for the establishment of the International Criminal Court (ICC) as a permanent court for the trial and punishment of war criminals. Thus, Editorial Board (2015:1) assert that “it was position as a way to replicate with a permanent court what had accomplished in previous tribunals, such as the Nuremberg trial after World War II and South Africa’s Truth and Reconciliation Commission, which probed human rights violations of the Apartheid era.” Thus, member states of the newly founded UN recognized the necessity to pledge themselves to the creation of a new system of international justice. They recognized that an international criminal court was an essential element in building respect for human rights throughout the world, but the court was never set up. Many state governments have been reluctant to pursue the establishment of such a court because of its potential to limit their own sovereignty and political options (Ciampi, 2006). However, in theory, such a court could only bring to justice those who were responsible for the crimes of genocide, crimes against humanity and serious violations of humanitarian laws (Editorial Board, 2015). “Currently 114 states are ICC members. Fifteen are Asia states; eighteen are Eastern European; twenty-five are Latin American and Caribbean states; twenty-five are Western European and other states; and thirty-one are from Africa, making Africa the region with the most member states” (Barnes, 2015:1589).

With the eventual establishment of the international criminal court, the international community could bring to justice those accused of the most outrageous crimes against human rights and humanitarian law in proceedings which guarantee all recognized safeguards for fair trial adopted by the international community. It would hold individuals personally responsible for planning, ordering or committing gross crimes under international law. It would prosecute them whether they were committed in war or peace and regardless of whether the perpetrators were leaders or subordinates, civilians or members of military, paramilitary or police forces. According to the statute, the court would complement prosecutions in national courts; acting when states were unwilling or unable to bring perpetrators to justice (Abass, 2006).

The International Criminal Court (ICC) was established through a treaty adopted in Rome on July 17, 1998 by 120 States which ratified its Statute. It is called the Rome Statute of the ICC, 2002 (hereinafter referred to as the ICC Statute). According to Articles 5, 6, and 7 of the ICC Statute, the Court has jurisdiction over four categories of core crimes of concern to the international community namely: genocide, crimes against humanity, war crimes and the crime of aggression (Barnes, 2015; Bassiouni, 1970; Ciampi, 2006).

The ICC’s jurisdiction over the above crimes became effective after July 1, 2002 when the Rome Treaty entered into force upon the deposit of the sixtieth instrument of ratification. One of the most critical developments under the Rome Statute is that nobody has immunity from prosecution including heads of State or Government, members of Parliaments, governments, commanders and superiors of military or civilian forces (Article 28, ICC Statute). The International Court of Justice, the principal judicial organ of the United Nations (UN), was designed to deal primarily with disputes between States. It has no jurisdiction over matters involving individual criminal responsibility. The principle of *nullum crimen sine lege* is applicable here. The maxim states that there can be no crime committed, and no punishment meted out, without a violation of penal law as it existed at the time of its drafting. Another consequence of this principle is that only those penalties that had already been established for the offence at the time when it was committed can be imposed. This maxim finds expression in Article 34 (1) of UN Charter. It states that: “*Only States may be parties in cases before the Court.*” Article 22 (1) of the ICC Statute states that: “*A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court*” (Ciampi, 2006).

However, the preambles of both the UN Charter and the ICC Statute convey the same international perspective by states. The UN Charter portrays a determination of states “*to save succeeding generations from*

the scourge of war..." (Ian, 1983), and in the ICC Statute, states are "*mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity*" (Abass, 2006). Consequent upon the above, this article perceives the ICC Statute as an instrument that fortifies international resolve to save succeeding generations from the scourge of war, and to ensure that those responsible for perpetrating unimaginable atrocities on women and children are criminally responsible before the international criminal justice system. It must be noted however that the ICC is a recent Statute yet to be ratified by many states. It follows therefore that the article's analysis is centered primarily on the provisions of the Statute provisions. This is reinforced by the fact that the cases that have appeared before it are very few, and few scholars have conducted research on the Court (Barnes, 2015).

The Evolution and Conceptualization of the ICC

According to Bassiouni (1970), it has been a long academic debate to identify the legal nature of international crimes committed by individuals and considered as serious violations of the rules of international humanitarian law. However Schwarzenberger (1968) traces the earliest trial for war crimes to Peter Von Hagenbach, in the year 1474. Hagenbach, the governor, had been placed at the helm of the government of the fortified city of Breisach, by his boss, Charles the Bold, Duke of Burgundy (1433-1477), known to his enemies as Charles the Terrible. The governor, overzealously following his master's instructions, introduced a regime of arbitrariness, brutality and terror in order to reduce the population of Breisach to total submission. Murder, rape, illegal taxation and the wanton confiscation of private property became generalized practices. All these violent acts were committed against inhabitants of the neighboring territories, including Swiss merchants on their way to the Frankfurt Fair. A large coalition of countries (Austria, France, Bern and the towns of Upper Rhine) put an end to the ambitious goals of the powerful Duke. When Hagenbach was finally defeated, instead of remitting the case to an ordinary tribunal, an ad hoc court was set, consisting of 28 judges of the allied coalition of states and towns. The tribunal was a real international court, set up to try Hagenbach, for compliance with superior orders, and Charles the Bold himself was also tried for the atrocities he ordered.

According to the explanation of Schinder (1988:5), a further leap was made in the twentieth century, after the First World War. The Treaty of Versailles of June 28, 1919, in its Articles 228 and 229, established the right of the Allied Powers to try and punish individuals responsible for "violations of the laws and customs of war." The German government therefore had the duty to hand over all persons accused, in order to permit them to be brought before an allied military tribunal. Article 227 indicted those guilty of "international morality and the sanctity of treaties." The Allied Powers agreed to establish a special tribunal composed of judges appointed by the United States, Great Britain, France, Italy and Japan to try the accused. In its decision, the tribunal will be guided by the highest motives of international policy, with a view of vindicating the solemn obligations of international undertakings and the validity of international morality. The provisions of this article anticipated the category of "crimes against peace."

After the Second World War, Brownlie (1989:16) observed that a movement started up within the international community which clearly began to engender a deeper consciousness of the need to prosecute serious violations of the laws of war, with regard to both the traditional responsibility of states, and the personal responsibility of individuals. The horrible crimes committed by the Nazis and the Japanese led to a quick conclusion of agreements among Allied Powers and to the subsequent establishment of the Nuremberg and Tokyo International Military Tribunals "for the trial of war criminals whose offences have no particular geographical location whether they be accused individually or in their capacity as members of organizations or groups or in both capacities". This provision is stated in Article 1 of the London Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, of August 8, 1945.

Later in 1948, the United Nations (UN) first recognized the need to establish an international criminal court to prosecute crimes such as genocide. Raphael Lemkin coined the term genocide which in Latin means

“geno” (tribe or ethnic group) and “cide” (massacre). Simply, genocide meant ‘to carry out massacre on an ethnic group.’ He served, alongside Professor H. Donnediu de Vabres and V. Pella, as expert advisers to the Secretariat of the International Law Commission, responsible for the Convention relating to genocide. In resolution 260 of December 9, 1948, the General Assembly, *"recognizing that at all periods of history genocide has inflicted great losses on humanity; and being convinced that, in order to liberate mankind from such an odious scourge, international co-operation is required"*, adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Article I of that convention characterizes genocide as "a crime under international law", and article VI provides that persons charged with genocide *"shall be tried by a competent tribunal of the State in the territory of which the act was committed or by such international penal tribunal as may have jurisdiction . . ."*

Since that time, the question of the establishment of an international criminal court has been considered periodically. In December 1989, in response to a request by Trinidad and Tobago, the UN General Assembly asked the International Law Commission to resume work on an international criminal court with jurisdiction to include drug trafficking. Then, in 1993, the conflict in the former Yugoslavia erupted and quickly escalated with cases of atrocities that amount to war crimes, crimes against humanity and genocide -- in the guise of "ethnic cleansing". The situation once again captured international attention and outrage of gross violation of human rights. In an effort to bring an end to this widespread human suffering, the UN Security Council, under resolution 827 of May 25, 1993, established the ad hoc International Criminal Tribunal for the Former Yugoslavia (ICTY), with jurisdiction for the “prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991.” Later, in 1994, following the Rwandan genocide, which was a slaughter of an estimated 800,000 Tutsis by Hutus, the UN Security Council, under resolution 955 of November 8, 1994, intervened and created the International Criminal Tribunal for Rwanda (ICTR) for the prosecution of persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda and Rwandan citizens responsible for genocide and other such violations committed in the territory of neighboring states, between January 1, 1994 and December 31, 1994.

At its fifty-second session, the General Assembly decided to convene the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an international criminal court, which subsequently held in Rome, Italy, from June 15 to July 17, 1998, to finalize and adopt a convention on the establishment of an international criminal court. One of the primary objectives of the UN is securing universal respect for human rights and fundamental freedoms of individuals throughout the world. In this connection, few topics are of greater importance than the fight against impunity and the struggle for peace and justice and human rights in conflict situations in today's world. The establishment of a permanent ICC is seen as a decisive step forward. The Court is now a reality, and it can be said that one of the prospects of it is promise of universal justice (Anoushirvani, 2010). But is it meeting this promise? This is one of the major questions our forthcoming paper tries to answer.

The Purpose of the International Criminal Court

One of the major innovations of ICC is the need, as every criminal law will have, to deter future war criminals. In this dimension, the Court is significant as an instrument to deter future war criminals and contribute to global security, promote human rights and good governance in all states. With particular reference, in principle, the court represents a message to all potential warlords around that globe that they must be aware that depending on how a conflict develops, there is an international tribunal before which those who violate the laws of war and humanitarian law will be held accountable. Seating at The Hague, Netherlands as its headquarters, ICC is not constrained by time and place limitations. It will be able to act more quickly than if an ad hoc tribunal had to be established.

The ICC also serves as an instrument to bringing an end to conflicts. Once investigations start as to the perpetrators of the crimes, there is every reason for the conflict to cease as most of them begin to escape to other

States while others are arrested or in the verge of it. The ICC Statute provides an opportunity for the international community of states to combat crimes through provisions against international conspiracy like criminals that engage in organized crime, transnational or international criminal activities such as drug trafficking; and political organizations that commit genocide, war crimes and crimes against humanity (Albanese, 2011; Gastrow, 2011; Nwebo and Ubah, 2015; Paraschiv, 2013; Ubah et al, 2015). Similarly, terrorist organizations such as Al Qaeda have membership networks that stretch across most of the globe and use their international reach to engage in illegal activities in Africa, Asia and other parts of the world (Davis, 2012; Hanlon, 2009; Levi, 2012; Fitchtelberg, 2006; Shelley, 2005).

Thus, according to Article 25 of the ICC Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person commits such a crime as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible. He is also responsible if he orders, solicits or induces the commission of such a crime which in fact occurs or is attempted. Again, if, for the purpose of facilitating the commission of such a crime, a person aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission, he is criminally responsible (Anoushirvani, 2010; Abass, 2006; Ciampi, 2006). Pape (2002) takes the view that injustice in the efforts to allocate criminal responsibility for war crimes may occur because war crimes are often born of extreme political opportunism and desperation. Witnesses are ready to lie to convict sworn enemies and impartial witnesses are, at times, nearly impossible to find. Truth is particularly elusive when evidence sites are despoiled, the lines of command are blurred and official orders are secret.

The Prospects of International Criminal Court Invigorated

The prospects of the ICC mainly are conceptualized here in terms of the wisdom and strength of its jurisdiction. The Court deals with the most serious crimes committed by individuals: genocide, crimes against humanity, and war crimes. These crimes are specified in the Statute and are carefully defined to avoid ambiguity or vagueness. Crimes of aggression will also be dealt with by the Court when determination has been reached on the definition, elements and conditions under which the Court will exercise jurisdiction.

According to Article 6 of the ICC Statute, "genocide" means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group (Abass, 2006; www. icc-cpi-int.).

The crime of genocide is unique because of its element of *dolus specialis* (special intent) which requires that the crime must be committed with 'intent to destroy'. The International Criminal Tribunal for the Former Yugoslavia, Appeals Chamber, states that "Among the grievous crimes this tribunal has the duty to punish, the crime of genocide is singled out for special condemnation and opprobrium (*The Prosecutor v. Kristic*).” Crimes against humanity cover those specifically listed prohibited acts when committed as part of a widespread or systematic attack directed against any civilian population.

Aggression as a crime under the Court is still to be given a clear definition. Article 5 (2) of the Rome Statute is to the effect that "the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted.....defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations." However, soon, the definition of aggression is going to be determined without much controversy (Ciampi, 2006). Generally, it includes a violent attack or threats by one state against another state, particularly its territorial rights (The Random House College Dictionary).

The act may be considered legitimate in cases of national defense or counter-terrorism policies. A line must be drawn between the two, so that terrorists do not make use of the term aggression to escape punishment. Criminal responsibility will be applied equally to all persons without distinction as to whether he or she is a Head of State or government, a member of a government or parliament, an elected representative or a government official. Nor may such official capacity constitute a ground for reduction of sentence. The fact that a crime has been committed by a person on the orders of a superior does not normally relieve that person of criminal responsibility. Thus article 27(1) is to the effect that "...immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person." This principle in international criminal justice is known as command responsibility, the Yamashita or Medina Standard.

Sanford and Stephen (1989) points out that the Yamashita Standard is based upon the precedent set by the United States Supreme Court in the case of the Japanese General Tomoyuki Yamashita. He was prosecuted for atrocities committed by troops under his command in the Philippines, and was charged with unlawfully disregarding and failing to discharge his duty as a commander to control the acts of members of his command by permitting them to commit war crimes (US Military Tribunal, Nuremberg Judgment, October 28, 1948).

The Medina Standard is based upon the massacre at My Lai which United States captain Ernest Medina failed to prevent. The principle holds that a commanding officer, being aware of a human rights violation or a war crime, will be held criminally liable when he does not take action. Thus command responsibility is an omission mode of individual criminal responsibility: the superior is responsible for crimes committed by his subordinates and for failing to prevent or punish them (Keman and Hamilton, 2003).

A military commander is criminally responsible for crimes committed by forces under his or her command and control. Criminal responsibility also arises if the military commander knew or should have known that the forces were committing or were about to commit such crimes, but nevertheless failed to prevent or repress their commission. There is responsibility of commanders and other superiors. A military commander is criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control. This will be as a result of his or her failure to exercise control properly over such forces. He must have known that the forces were committing or about to commit such crimes. Secondly, it should be shown that the military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution (Article 28, ICC Statute).

Those crimes enshrined in the ICC Statute are often committed by or with the approval of governments. It is unlikely that a government sponsoring genocide, war crimes or crimes against humanity would consent to the prosecution of its nationals for his or her participation. The ICC Statute therefore annuls municipal legislation granting immunity to heads of state or military commanders. Most decisions of the International Criminal Tribunal for the Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) have applied the principle of command responsibility. The *Kambanda* Judgment (Case No. ICTR 97-23-S) for example, in which former Rwandan Prime Minister was tried and sent to 30 years imprisonment, represents a new accountability of political leadership at the national level with regard to a prime minister. Similarly, in the ICTY Judgment of *Prosecutor v. Naser Oric* (Case No. IT-03-68), Oric, Srebrenica's Muslim wartime commander was convicted and sentenced for failing to prevent the murder of four persons and for the cruel treatment of five Serb individuals detained in the eastern Bosnian town of Srebrenica between December 1992 and March 1993.

Though this trend has been progressing unhindered, a contradictory position was taken by the International Criminal Justice (ICJ) in the case of *Belgium v. Congo* (ICJ, Arrest Warrant Case, 2002). The case involved the validity of an international warrant for the arrest of the then Congolese Minister of Foreign Affairs on the ground that he had committed serious violations of international humanitarian law. The judges unanimously held that customary international law grants incumbent foreign ministers, absolute immunity from

criminal jurisdiction and inviolability, for as long as they hold their office. This position appears to have diluted the developing international customary rule that suspends legal immunity whenever a grave international crime has been committed.

The ICC should not infringe on the jurisdiction of national courts. It will not supersede, but will complement national jurisdiction (Article 1, ICC Statute). Barnes (2011) claims that the ICC Statute, provides national courts with primary jurisdiction to prosecute heinous crimes, but that this primacy is not absolute because a state may lose its primacy when it manifests unwillingness or inability to exercise its jurisdiction over a specific case. Thus national courts will continue to have priority in investigating and prosecuting crimes within their jurisdiction. If a national court is willing and able to exercise jurisdiction, the ICC cannot intervene and no nationals of that State can be brought before it except in cases referred to it by the UN Security Council acting under Chapter VII of the UN Charter dealing with “Action with respect to threats to the peace, breaches of the peace, and acts of aggression.” Article 39 of the UN Charter states that “the Security Council shall determine the existence of any threats to the peace, breaches of the peace, and acts of aggression and shall recommend, or decide what measures shall be taken to maintain or restore international peace and security.”

The principle of universal jurisdiction is very important and has been mentioned by the ICC Statute. According to this principle, states can claim jurisdiction over persons whose alleged crimes were committed outside the boundaries of the prosecuting state, regardless of nationality or country of residence. In 1993, the Belgium Parliament voted on the law on universal jurisdiction, thus giving it power to judge people accused of war crimes, crimes against humanity or genocide. The Belgium court succeeded in 2001 to arrest and convict, four Rwandans for their involvement in the Rwandan genocide. In September 2005, Chad’s former President and dictator Hissen Habre was indicted for crimes against humanity, torture, war crimes and other human rights violations by the Belgium court. Arrested in Senegal following requests from Senegalese courts, he was put under house arrest to be sent to Belgium. The Belgian court faced a quick explosion of suits. For instance, former Israelis Prime Minister Ariel Sharon was accused of involvement in the 1982 Sabra-Shatila massacre in Lebanon, and some Israelis deposed a suit against Yasser Arafat for his presumed responsibility for terrorist actions (Barnes, 2011).

In 2003, Iraqi victims of a 1991 Baghdad bombing deposed a suit against George H.W Bush, Collin Powell and Dick Cheney. Confronted with this sharp increase in deposed suits, Belgium established the condition that the accused person must be Belgian or present in Belgium. Universal jurisdiction is premised on the concept that certain crimes are so serious that all humanity has reason to bring the perpetrators to justice, regardless of the place of the offence or of the nationalities of the offenders or victims. The question of consent versus the universality principle has been raised. Abass (2006), asserts that the requirement of the consent of the state on whose territory the crime was committed would be unnecessary if the court’s basis of jurisdiction were universality.

The jurisdictional relationship between the ICC and nonparty states became a subject of academic debate in 2001. Scharf (2001), the then US Ambassador-at-Large for War Crimes issues, stated that the Rome Treaty of the ICC “purports to establish an arrangement whereby United States armed forces operating overseas could be conceivably prosecuted by the international court even if the United States (US) has not agreed to be bound by the treaty.... contrary to the most fundamental principles of treaty law.” The US later secured the adoption of Security Council resolutions no. 1422 (2002), 1487 (2003), 1497 (2003), 1593 (2005) and launched a campaign for the conclusion of bilateral non-surrender agreements. On June 30, 2002, when the Rome Statute was about to enter into force, the US declared that it would vote against a resolution renewing for six months the mandate of the UN Mission in Bosnia and Herzegovina (UNMIBH) and threatened to do the same with respect to all other UN peacekeeping operations if US military personnel participating in such operations were not granted an exemption from the ICC jurisdiction. None of the resolutions above can be qualified as an exercise of the Security Council’s power to request the ICC not to commence or proceed with investigations or prosecutions under Article 16 of the Rome Statute, as this provision was not conceived to cover future and

hypothetical cases. It should be observed that by adopting resolutions 1422 and 1487 it would seem that the Security Council acted *ultra vires*, since no threat to the peace can be found in order to justify the exercise of Chapter VII powers.

On August 1, 2003, the Security Council adopted resolution 1497, authorizing the establishment of a Multinational Force in Liberia in order to support the peace process in that country. Paragraph 7 provides that “current or former officials or personnel from a contributing state, which is not a party to the Rome Statute of the ICC, shall be subject to the exclusive jurisdiction of that contributing State for all alleged acts or omissions arising out of or related to the Multinational Force or UN Stabilization Force in Liberia, unless such exclusive jurisdiction has been expressly waived by that contributing state.” According to Roscini (2006), the above resolutions prevent the exercise of the ICC jurisdiction over nationals or personnel of all states nonparties to the Rome Statute, not just of the US. Thus, a state non-party not wishing that its personnel participating in peacekeeping missions enjoy the permanent or temporary exemption by the ICC jurisdiction could only ask the Security Council to amend the resolutions and remove the exemption with regard to its nationals and personnel.

The problem of the possible exercise of jurisdiction over nationals of non-parties is exacerbated by the fear of the US that the Prosecutor might start *proprio motu* (of his own motion) politically motivated proceedings against US citizens participating in military operations abroad. The US has also criticized the disparity between the Rome Statute and several provisions of its Constitution such as those providing for immunities of state officials and for the right to be tried by a jury; the inclusion of the crime of aggression, which might affect the primary responsibility of the Security Council in the maintenance of international peace and security; as well as the idea of subject for liability for certain actions the US might take to protect their national security and foreign policies which the ICC might find problematic. The risk highlighted by the US is that senior US officials may be at risk of criminal prosecution for national security decisions involving such matters as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression (American Service members’ Protection Act, Section 2002, Para.9; Abass, 2006; Barnes, 2015).

Conclusion

In sum, this article has made serious effort in examining the antecedents, evolution, and development of the International Criminal Court (ICC). It has also surveyed its perspectives, problems and prospects. Thus, according to Article 13 (a) (b) and (c), of the ICC Statute, cases come before the International Criminal Court in one of three ways: the UN Security Council may refer a “situation” using its powers under Chapter VII of the UN Charter regardless of where or by whom the crime or crimes in question were committed; a situation may be referred to the Prosecutor by a country that has ratified the Rome Statute; or the Prosecutor may initiate an investigation on his or her own (but may only pursue it with the approval of the Pre-Trial Chamber). Except in the case of a Security Council referral, the ICC will only be able to exercise jurisdiction over crimes committed by nationals or on the territory of countries that have ratified the Rome Statute of the ICC (Adel, 2006; Pillay, 2002).

Without the pioneering work of the ICTR and the ICTY, it would have been difficult to create the ICC. The ICTR serves as an important bridging device between the immediacy of the crises of the moment that led to its creation and the long term quest for a permanent global framework of international criminal justice. With the adoption in July 1998 of the Statute of a permanent ICC by 120 States at a Diplomatic Conference of Plenipotentiaries in Rome, the latter vision has been realized. The ICTR delivered the first judgment in history for the crime of genocide, as well as the first conviction of an individual for rape as a crime against humanity in the case of *Prosecutor v. Jean Paul Akayesu* in September 1998. In the same month, it became the first international tribunal to convict a head of government for genocide. This was Jean Kambanda, former Rwandan Prime Minister and head of government at the time of the genocide, who was sent to life imprisonment. He is

currently serving prison sentence in Mali, one of the African countries that have entered into agreements with the UN to enforce the international tribunal's sentences (Barnes, 2015; Ciampi, 2006).

Judge Pillay (2002) asserts that President of the ICTR, observes that the concept of universal jurisdiction is a perfect illustration of the globalization of justice. It is an important avenue to tackle impunity not only in the future, but even at present – at a time when so many violations of humanitarian law are occurring in many part of the global but appear to be caught in between the cracks of the architecture of international justice because, on the one hand, the ad hoc tribunals do not have jurisdiction over the events that generate these crimes and, on the other, the ICC has just become operational and will not have retrospective jurisdiction. Some observers query whether it will not be victors' justice, or the justice of the strong against the weak. Has the international community been selective in the conflicts it has chosen to address? Africans share these reservations. The challenge facing the international community is to ensure that an architecture of justice is established that truly enforces the rule of law, binding the strong as well as the weak in the international system.

Be that as it may with all its shortcomings, the establishment of the International Criminal Court provides a watershed in the historical struggle by the International community to create a permanent court for the trial and punishment of war criminals and to fill the gap left by national criminal jurisdictions in this area. Thus, with the establishment of the court and its effective functioning, proactive machinery for global crime management with the potentiality of enthroning good governance and democratic values around the global can be achieved if administered evenly, fairly and justly and these are issues upon which many African leaders have major concern with the court and the examination of the concern of African leaders about ICC can be too important and too costly to ignore for the future of the court. As a result, we have made it the focal issue of our forthcoming article (Nwebo and Ubah, 2016).

References

- Abass, A. 2006. The International Criminal Court and Universal Jurisdiction. *International Criminal Law Review* 16 (3): 349.
- Albanese, J. S. (2011). *Organized Crime in our Times*. Sixth Edition. Burlington, MA: Anderson Publishing.
- Adel. M. 2006. Withdrawal of Referrals-A Serious Challenge to the Function of the ICC. *International Criminal Law Review* (6): 419-446.
- Anoushirvani, S. 2010. The Future of the International Criminal Court: The Long Road to Legitimacy Begins with the Trial of Thomas Lubanga Dyilo. *Pace International Law Review* 22(1): 213-237.
- Barnes, G. P. 2015. The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir. *Fordham International Law Journal* (6): 1585-1613.
- Bassiouni, M.C. 1970. *A Treatise on International Criminal Law*. Springfield: USA.P.1.
- Ciampi, A. 2006. The International Criminal Court. *The Law and Practice of International Courts and Tribunals* 5 (2): 325.
- Davis, R. (2012). "Organized Crime in a Network Society: An Interview with Misha Gleeny." *Journal of International Affairs*, 66(1): 145-149.
- Ezeanyika, S.E. 2010. *Introduction to African Politics*. Owerri: DESREG, in collaboration with Gabtony Press Ltd.
- Fitchtelberg A. 2006. Conspiracy and International Criminal Justice. *Criminal Law Forum* (17):149-176.
- Gastrow, P. (2011). "Termites at Work: Transnational Organized Crime and State Erosion in Kenya." *International Peace Institute* (www.ipinst.org), p.1-16.
- Hanlon, Q.H. (2009). "Globalization and the Transformation of Armed Groups" in *Pirates Terrorists and Warlords*. Edited by Jeffery H. Norwitz Skyhorse publishing.

- Ian, B. (1983). *State Responsibility*, London: Oxford University Press.
- International Criminal Court, The Office of the Prosecutor, www.icc-cpi-int.
- Kelman, H. C. and Hamilton, V. L., 2033. "The My Lai Massacre: A Military Crime of Obedience," in Massey, G., *Readings for Sociology*. Fourth Edition Pp. 39-57. New York, N.Y.: W. W. Norton & Company, Inc.
- Levi, M. (2012). "States, Frauds, and the Threat of Transnational Organized Crime," *Journal of International Affairs*, 66(1): 39-50.
- Nwebo, O. and Ubah, C. 2015. *Globalization of Crime: Problems and Challenges for World Peace and Security*. *International Journal of Liberal Arts and Science*, 3(2): 91-104.
- Nwebo, O. and Ubah, C. 2016. *The International Criminal Court and Africa: Perspectives, Problems, Solutions and prospects*. Forthcoming.
- Onwudiwe, I. D. O. 2007. *The Place of Criminology in the Study of Terrorism: Implications for Homeland Security*. *African Journal of Criminology and Justice Studies*, AJCJS 3 (1) July.
- Pape, E. 2002. Devil's Advocate. *L.A Times Magazine*, 21 Dec, 2002.
- Paraschiv, G. (2013). "Conceptualizing transnational Organized Crime." *Economics, Management, and Financial Markets*, 8(2): 173-178.
- Pillay, N. 2002. *African Perspectives of Universal Jurisdiction for International Crimes*. 18-20 October 2002, Arusha, Tanzania.
- Roscini. M. 2006. *The Efforts to Limit the International Criminal Court's Jurisdiction over Nationals of Non-party States: A Comparative Study*. *The Law and Practice of International Courts and Tribunals* 5 (3).
- Sanford H.K. and Stephen J.S. 1989. *Criminal Law and its Processes, Cases and Materials*. Fifth Edition, London: Little, Brown and Company.
- Schabas, W. 2000. *Genocide in International Law*. Cambridge: Cambridge University Press.
- Scharf, M. P. 2001. *The ICC's Jurisdiction over the National of Non-Party States: A Critique of the U.S. Position*. *Law and Contemporary Problems* (6):351-367.
- Schinder, D. 1988. *The Laws of Armed Conflicts: A Collection of Conventions, Resolutions and other Documents*, Martinus Nijhoff.
- Schwarzenberger, G. 1968. *International Law as Applied by the International Courts and Tribunals*. *The Law of Armed Conflict II*, London: Stevens.
- Shelley, L. (2005). "The Unholy Trinity: Transnational Crime, Corruption, and Terrorism." *The Brown Journal of World Affairs*, XL (2): 101-110.
- The Random House College dictionary, First Edition.
- Ubah, C., Nwebo, S. & Ezeanyika, E. 2015. *Globalization of Crime: Problems and Challenges for World Peace and Security*. *International Journal of Liberal Arts and Social Science* 3(2): 91-104.
- United Nations Security Council (2014). "Unanimously Adopting Resolution 2151 (2014), Security Council Underscores Need for National Ownership of Security-Sector Reform." [Http://www.un.org/news/press/2014/sc11369.doc.htm](http://www.un.org/news/press/2014/sc11369.doc.htm).

Biographical Sketch

Charles B.A. Ubah, Ph.D. is a professor of Criminology, Criminal Justice, Law, Sociology and Public Policy at Georgia College & State University Milledgeville. Dr. Ubah has published in a variety of peer-reviewed manuscripts in the areas of criminology, criminal justice, law, sociology and public policy. He has been active in the American Society of Criminology, Academy of Criminal Justice Sciences, Southern Criminal Justice Association, Criminal Justice Association of Georgia, the African Criminology and Justice Association, the Midwestern Criminal Justice Association, and the Midwestern Sociological Society. **Address correspondence to** Dr. Charles B.A. Ubah, Department of Government and Sociology, Georgia College & State University, Campus Box 18, Milledgeville, Georgia 31061-0490. E-mail: Charles.ubah@gcsu.edu.

Osy E. Nwebo, Ph.D. is a professor of Law at Imo State University, PMB 2000, Owerri, Imo State, Nigeria. E-mail: osynwebo@yahoo.com. Dr. Nwebo was a former Vice Chancellor of Imo State University. His research interests and publications are on the areas of Law, Conflict Management, International Organizations, Transnational Crime and Globalization etc. He has been active in a variety of Law, Criminal Justice, and Conflict Management professional organizations.