

INTERNATIONAL CRIMINAL COURT AND UNSC

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ABSTRACT

There is the connection between the international criminal court and UNSC which create a route between the two. It is one of most contentious way to achieve ICC jurisdiction because they are not ratifies with the Rome statute.

Keywords: International Criminal Court, UNSC, Afghanistan Case.

INTRODUCTION

United Nations Security Council resolution 1593 (2005) under chapter VII of UN Charter may refer a case to the ICC under Article 13(b) of the Rome Statute. This power can be exercised even in the case of a Non-member State. Till date UNSC has exercised this power twice. First instance was the conviction of Omar Al-Bashir of Sudan. Further, the power has been used in the case of, Mohd.Gaddafi of Libya.

REFERRALPOWER OF UNSC

Both the cases have slight non-convergence as Sudan was not a member of the ICC when the case against the country was referred by the Security Council. The “Referral Power” vested on the UNSC is the most contentious route to achieving ICC jurisdiction as the States have intentionally not ratified the Rome Statute may fall under the ICC investigation. On the contrary, in 2004, France proposed a draft UNSC Resolution referring the situation of Syria to the International Criminal Court. However this resolution was, unsurprisingly, vetoed by China & Russia. So, there sound basis of the referral but there some flaws attached too. When case of Libya was referred to ICC, the African Union (AU) was adamant that African Nations, regardless of their ICC membership, would not arrest and surrender Gaddafi, believing that the “Power of Referral” exercised by the UNSC was based on “Political Interests” and lacks credibility and legitimacy.

Darfur, Sudan is a perfect example to show the ill consequences of such powers. Critics of the ICC point out that both Sudan and Libya were referred to the court by the UN Security Council, where

three of five veto-wielding countries (China, Russia and the United States) are not even members of the court.[1]

While the Security Council was quick to have leaders of the two countries indicted, the critics have observed that efforts to refer countries like Syria have so far been thwarted by some of these countries.

DEFERRAL POWER OF UNSC

Under Article 16 of the Rome Statute, no investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the UNSC, in a resolution adopted under Chapter VII of the Charter of UN, that requests may be renewed by the Council under the same conditions.

“Article 16 of the Rome Statute and its impact on the Independence and autonomy of the International Criminal Court.” - Antoine Kesia Mbe- Mindua.”

AFGHANISTAN CASE

In 2007, ICC Chief Prosecutor, Mrs. Fatou Bensouda requested the ICC to form a three judge panel to investigate alleged crimes committed in Afghanistan. In addition, she requested to investigate related crimes in Poland, Romania and Lithuania. Preliminary examinations started in 2007 on the request of the Chief Prosecutor. The case is regarding “Operation Enduring Freedom” a military operation led by US and UK in Afghanistan. The operation was an act of retaliation by the US military for 9/11 WTO attack. Millions of civilians alleged to have been killed by US military during the execution of the operation in Afghanistan.[2]

There are signs that the ICC may consider prosecuting Americans over the alleged war crimes involving Bombings, Airstrikes, Targeted killings and crimes against humanity. 1.17 million Afghans have filled their applications consenting to the prosecution of American soldiers who were involved in the atrocities against the Afghan civilians. This will be the first time that Americans presumably (CIA operatives) would face real possibility of prosecution before the ICC. Appointment of John Bolton, long opponent of the ICC as the President’s National Security Advisor, this could become an interesting legal battle indeed. Millions of Afghans tell the court they are war crimes victims. Will the ICC Prosecute Americans over Afghanistan?

“Among those alleging war crimes is a man who asked The Associated Press to be only by his first name, Shoaib, because he fears for his safety. Shoaib said his father, Naimatullah, was on a bus in Dawalat Yar district in Afghanistan's central Ghor Province in 2014 when a band of gunmen

stopped it and two other buses, forced the passengers off and told them to hand over their identity cards. The 14 Shiites among them were separated from the rest and killed, one by one, he said.”[3]

CONCLUSION

The ICC should be kept out of the purview of United Nations Security Council in order to avoid unnecessary. Politicisation of matters dealt with by the ICC. All the Member states of United Nations should sign and ratify the Rome Statute so that there would be no concerns regarding the Court’s jurisdiction.

REFERENCES

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