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Lack of universal jurisdiction in ICC, without punishment Increased

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Abstract

Introduction of Statute of International Criminal Court, like most international documents observe justice and combat impunity of criminals at large. However, with the formation of the Court, impunity has increased. Four-sided slaughter of the Syrian people by domestic terrorism, Islamic and foreign governments, and two-way killing of Yemenis by internal government and allied Saudi are proofs of this claim. In addition, the absence of a competent international body to deal with tragedies like the massacre of innocent people in the Mena disaster in Saudi Arabia and the issue of asylum-seekers in Europe are causing innocent people to be deprived of their life rights and done many crimes against humanity, without identifying criminal perpetrators and punishing them. Regardless of whether consent of government is a permanent intruder of international law and first obstacle for Criminal Courts growth, it seems that additional qualification in Article 17 of the Statute of the International Criminal Court and absence of universal jurisdiction and universal jurisdiction for national courts, the main reason for the ineffectiveness of Criminal Court is the result of great criminals' crime. Since the reform of Statute of International Criminal Court, contrary to the amendment of Articles 108 and 109 of Charter is relatively simple, so constitution amending and granting the initial jurisdiction for the ICC would be a step for fighting against impunity and loss.

Keywords: Criminal Court, Impunity, great criminals, universal jurisdiction, Supplementary jurisdiction

Introduction

Justice and conscience dictates that person should get punishment after committing the crime; so punishment of great criminals is considered by international scientists and lawyers for many years. However parallel to the principle of fairness, justice and progressive development of international law; lawyers try to find appropriate ways to punish great criminals, great criminals are always trying to escape punishment. Because crimes and offenses usually occur by those in power as dictators, kings, political leaders or military leaders of various, paramilitary or terrorist, groups and unfortunately, occur due to the nature of international law regulation by governments or the International Criminal.

Who does not know the participating Iraqi, Egyptian, Libyan, Sudanese and other delegation like them in the international conference to establish the International Criminal Court in fact was Saddam and Mubarak and Ben Ali and ..... Therefore, parallel to the absolute immunity of the rulers, impunity and escaping punishment has become the norm in international law because the authorities in the formulation of law, foresight their fate for a time that they are no longer in power. Thus they prevent the formation of strong criminal tribunals for crimes and this conflict that is the conflict between international law and the sovereignty of states would exist over years. As well the creation of the International Criminal Court gives hopes to be right-seekers;[1]and no court may make might be interested in some powerful states and criminals. Concise summary in the history and the fate of international criminal tribunals and domestic courts with universal jurisdiction in today international law clearly manifests apparent conflict between the goals of justice-seekers and independent lawyers and function of governments and international political institutions. Due to general public thirst toward punishing great criminals and to relish of most rulers to influence the international arena, most governments with the development of its national jurisdiction have recognized outside the international borders of universal jurisdiction in their courts. In other words, governments resorted to this excuse that some crimes are so great and brutal that marred the conscience of

humanity and such a crime is not enclosed in a border and the national court are all countries should handle it. It is strange that governments do not give universal authority to the International Criminal Court, but give the right for the national court to recognize them.

As a criminal tribunals establishment of Tokyo and Nuremberg made fair people happy despite their numerous disadvantages[2] and undermining the criminal tribunals of Rwanda and the former Yugoslavia neutrality or the birth of a political conception and by most political organ of the United Nations, the Council of security or creating an International Criminal Court despite granting of 12 months authority in Article 16 of the Statute of Security Council (Shariat Bagheri, MohammadJavad;1386),without doubt the incomplete competence or insufficient guarantees to run the provisions of the International Criminal Court[3], because of governments and authorities; was most pleasing for yesterday officials and today criminals, and some today officials accused and future defendants.

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[1] - UN Secretary General, Kofi Annan in response to establishing the International Criminal Court stated that it is a gift of hope for future generations and a huge step for universal human rights and the rule of law.

[2]. America, Britain, France, Soviet Union

[3]-one of the tangible results and international law and sovereignty conflict is supplementary jurisdiction of the Court, as the main reason for the Court to combat impunity of crimes and willing and no ability of national courts but according to Article 1 and 17 of the Statute of the Court there is no contradiction of the established objectives and jurisdiction involve when national courts are not able and willing to handle them. For Supplementary Jurisdiction issues consider

Criminal trial in Kosovo on 23 February 2014 and as a result of pressure from the authorities in Europe and America and the criminal trial of the Kosovo Liberation Army during 1998 and 1999 or the establishment of tribunals established by the Security Council after the International Criminal Court; Like the Court of Rafiq Hariri in Lebanon, , Saddam's trial in Iraq and continuation of Impunity[1] (Aghaee Bahman 1378) and Impunity of criminals aborting the conquered records for some of them, like the case of Bashir Omar and Mubarak and killing the rights like Mena disaster in Saudi or helpless of migrants in Europe and the continuing genocide in Syria and ruthless killing in Yemen and no possibility of a lawsuit of above cases in an international court alongside reluctance and permanent disability of criminal domestic courts in most cases (Zamani, Sayed Kassem, 1381) are all indicate the failure of Criminal Court and continued satisfaction of rulers. Although the Court is causing trial of great criminal, regardless of their political position and lots of positive points observed in the Court observed but in this study the disadvantages, lacked competence of universal jurisdiction and Secondary Court been taken into consideration. For this purpose the vicious cycle of secondary qualifications and ability of national courts and the International Criminal Court and its Supplementary jurisdiction, then the uselessness and lack of universal jurisdiction in national courts and its failure in courts have been investigated and ultimately requiring an international court with universal; primary and Forced jurisdiction has proved and to realize it, some proposals presented.

Additional qualification in order violation

Certainly one of the most basic objectives of the International Criminal Court is punishing great criminals, in order to understand the nations links, unimaginable atrocities; in the introduction of International Criminal Court, that the most heinous crimes causes anxiety the international community, it should not remain unpunished and the fact that impunity and punishment escape should be stopped, is emphasized. The main intent is to create such a court to fight impunity of great criminals, in other words before the establishment of the Court, great criminals and that deeply shocked the conscience of humanity escape from punishment, because very soon from design, drafting, negotiation, formation of numerous conferences and the establishment of the Court, the national tribunals were exist with adequate qualification, but not punished great criminals. This means that national courts with all their properties are not qualified enough and lack the authority to punish criminals and did not have the ability and interest to do so. It is clear that individuals and week groups are not able to perform great crimes and therefore great crimes requires the participation of the powerful beyond-ethnic and groups forces and is likely armed, that such a group is established in international law or government or in the next government and in other words the crimes that threaten humanity re performed just by present governments or their successors. In the meantime, the final gathering of the Statute of the International Criminal Court, like all international treaties have been formulated by governments and not the people, so we can claim that the Statute of the Court prepared and adopted by an agent or representative of governments and future criminals and victims and complainants and the Court did not have any role in this matter. Therefore, this Statute and the Rules of Procedure in addition to being one of the most outstanding characteristics of the proceedings has violated the principle of neutrality, and future governments and respected criminals in the absence of the Courts have interred what they liked in this statute that one of the them is stipulated Supplementary jurisdiction in article 17 of the Statute. In Article 1 of this founding document stated that the Court has Supplementary

[1]. Cherif BASSIOUNI, international criminal law court**,** compilation of united nations documents and Draft ICC statute befor the Diplomatic conference NPEJ, 1988

jurisdiction to national courts, it means that primary jurisdiction belong to national courts or the courts under the jurisdiction of the great criminals and Court enjoyed Supplementary jurisdiction and paragraph (a) of Article 17 of this document subject Court's reluctance and inability to the competent national tribunals. Since according principles of national criminal law and the principle of territoriality of criminal offenses are within the jurisdiction of the courts regardless of the crime scene is big or small. the court of country has jurisdiction over serious crimes in any country, And according what we told before the crime is only possible by the government its successor, and therefore gave the primary jurisdiction statute to the court that is his fan or enemy and so lacked impartiality, however, finally a conflict has a winner part and another defeat, then the competent courts under the Statute inevitably win, and, if court Crime done by authorities to court, the court has no authority and interest to address it. And if the crime was committed by the defeated group, then the aforementioned Court must think about revenge that is not fair. So clearly national courts for crimes that have transnational effects are unwilling or unable to investigate and handle them. In short, the Court which want to cease incompetence, inability and unwillingness of national courts to punish criminals and criminal immunity in the first step and their first article of its Constitution in violation of their purpose and aims, accept principles compared to National courts competent and their Supplementary jurisdiction subject to the inability and unwillingness of the national courts.

Perhaps the largest advantage of government is abuses of international criminal law. Because seemingly effort to end the impunity, criminals have formed a tribunal, but the tribunal has been established that no initial qualification and its competence is subject to the interest of governments and many constraints and the development of legal document, there are lots of ways for criminals to escape. This means that initially according to Articles 1 and 17 they ounish no authority as far as possible with legalization of primary jurisdiction of the court dominated the criminal and secondary jurisdiction of court. And in the next step and in possible failure of previous trick and arresting any authority in the process of international court proceedings on the basis of Articles 15 and 18 subject to investigation with prosecutors confirmed by preliminary branch confirmation of the indictment by judicial authorities to delay proceedings as much as possible; in the third stage, when for low probability, future criminals and leaders have to be present at the Statute of the Court under the name of human rights, in accordance with Article 55 and with a political career in the clothing of human rights, in contrast to the actions in trial indicating for cooperation and silence and not having to know himself as an offender provided maximum commutation of the sentence, and in conclusion, if likely he be accused of crimes against humanity and brought to court proceedings; Despite proof of the victim and establishing responsibility for the murder of millions of people, apparently due to human rights in accordance with Article 77 of the Statute and open political elimination of the death penalty, minimum penalty considered for him and sentenced for maximum 30 years imprisonment.

So authorities prevented establishing any competent jurisdiction court and in desperation considered for the establishment of useless and impotent Court and fruitless and ineffective punishment; it is true that human rights is necessary and respectful in the case but it should be doubted in development of the Statute, because when ordinary people are as victims of human rights issue, then in view of governments, human rights are tools and pretext for interference of other states and has no value, but when it comes to his own, suddenly human rights become sacred, human rights it is considered necessary, governments and human rights gesture human rights to us, and unfortunately some lawyers either because of poor masonry in the absence of unjust, deceived and knows impunity necessary for growth and progress of Human Rights on

count Statute. Consequently knows it as evidence which by abolishing the death penalty for criminals who were executed people to entertain themselves. And document is created which, clearly, was inadequate for justice and relief for victims and has no trace of the inhibitions and is the safety of criminal life. Ways to escape punishment and, above all, supplementary jurisdiction of the Court with a simple chase by the national court to prevent criminal to sit in court, and cause Impunity to be increased

Uselessness of universal jurisdiction in national courts

as the offenses referred to in Article 5 of the Statute of the Court because cause the international community stress and injuries of the conscience of humanity, are among the international crimes expecting justice from a national court to punish international criminals at least in nominal terms is invalid because international crimes requires International Criminal Court, and as it was described, Supplementary jurisdiction of international criminal tribunals due to violations to achieve global justice is insufficient and incomplete. In this situation, the only case one may claim that international justice can be realized by resorting to it is the universal jurisdiction of national courts.

The principle of universal jurisdiction competent is to enforce the criminal laws proportional to international crime, in accordance with this principle governments do not have the right to prosecute some offenders regardless of territory, the crime scene, citizenship or nationality of the victim or criminal. (Tahmaseby Javad, 1388). universal jurisdiction is according to the fact that principles such as the principle of territorial jurisdiction and jurisdiction based on the nationality due to the complexity of international crime in the present era and the absence of criminalization in different countries to achieve justice is inadequate. Since the first and the last obstacle to the development of international law, i.e. principle of the ruling, prevents the formation of an independent and strong international judicial authority, therefore nations and governments who were concerned that human rights were trampled too much, brought the authority to National courts in the world and is known as universal jurisdiction. Accordance with this principle, a National Court can judge without connection to the place and the parties of crime.

Although the arrival of such authority should be welcomed in case of world justice, but regardless of the need for justice, it is clear that if any government claimed authority for the national court and his judge, the result instead of justice and international discipline will be Chaos (Shariat Bagheri, Mohammad Javad; 1386), especially that in any international agreement that has not even have the least legitimacy from the perspective of international law. Condemnation of Belgium by Court in the case of Congo foreign minister is a proof for this claim)[1]

The so-called universal jurisdiction, apparently founded for the first time in 1945 and with the belief that, because serious crimes considered against humanity and war crimes as crimes against the conscience of the civilized world and all nations, require interests of all states, to punish mentioned criminals. (Shariat Bagheri, Mohammad Javad; 1386). And the courts and prosecutors that prosecute these criminals act as the representation from whole humanity and not just act on behalf of their civil rights. But no international court of authority have such qualification and the question is that how to prosecute crimes that infringe conscience of all humanity, local prosecutors can act on behalf of all humanity but the international courts must

[1]. For more information about the vote of 14 February 2002, the Court of Justice to condemn Belgium for ordering arresting Congo foreign minister visit above reference in Page 162

ask permission all humanity for any small act? It remained unanswered. That show the reasons of proponents of universal jurisdiction in national courts is being shaken and this flawed argument caused that no success achieved in the practice and procedures of universal jurisdiction in different countries and no case arrived to its end. Rwandan priest in France case and former President of Chad Hussein Habré in Senegal are evidences of this claim. (Shariat Bagheri, Mohammad Javad; 1386).

yet, another important issue is that when it comes to universal jurisdiction, satisfying the nation and the country is not important and governments gave universal jurisdiction for their national courts and have no need to treaty between themselves and other governments; commitment and satisfaction of other states should not be considered, but as soon as the international criminal court jurisdiction raised, immediately determination and consent of the governments will be appeared and non-aligned of non-member of the state Court by virtue of Article 34 of the Vienna Convention[1] about mentioned treaties and criminal Court jurisdiction in Rome Conference become a problem and above question that why the local (national) Courts has universal jurisdiction, but the international court even do not have local authority, is raised again.

The cause of this conflict, the additional qualification and competence of national courts for International Court is obvious, and based on two political reasons; First, states assumed the universal jurisdiction of national courts as a tool for interference in other states, and do not respond to it, whereas the Court had to agree to limit their sovereignty, Second, they accept that this qualification is superficial and empty. In other words, when governments accept the universal jurisdiction for national courts and not committed to any party, by extra-territorial jurisdiction to their court involve in other governments, but accepting the universal jurisdiction of national courts is equivalent institutional acceptance of superior state and is a commitment to respond though imperfect in front of an international element and on the other hand governments in achieving universal jurisdiction of the court under their command, are aware that, in the light of the rule principle, legally are not accountable to other authority and Court and therefore accepting the universal jurisdiction of national courts not have any cost and obligation to him and conversely universal jurisdiction Court provides legal harassment to state. States in International Court qualify under their command are aware of this issue that, under the rule of law, are not accountable to any authority or Court and so with costs and the simple political benefits accept the first and reject second one. Otherwise it is clear that if the government is so fair to accept justice under the jurisdiction of another State then she accepting the jurisdiction of World Court would not be a problem for that.

Regardless of the reasons of such a contradiction in international criminal law, the exercise of this authority because of the failure of universal jurisdiction in the procedures applied by national courts, being tool for the government to intervene in other states and at the same time lack of accountability of any government against other state, according to paragraph 7 of Article 2 of the and uncompleted territorial integrity and national security excuse, lack any legitimacy on the basis of existing international law in this area and the lack of an international treaty between governments and apparent contrast of this authority by sovereignty and the UN Charter, lack of criminalization in different countries for universal jurisdiction, it is practically ineffective and futile and not only will not be able to fight for the impunity but also universal jurisdiction of national courts in international law due to birth of

[1] - Article 34 of the Vienna Convention says ((a treaty for a third country, without its consent does not create either obligations or rights))

more than 200 Act, courts and national procedure for each type of international crime follow world chaotic, because of non-compliance with laws and national courts with each other. As a result its rank in national court of an international court the rank that mentioned before is only a tool for governments to intervene in the affairs of others in the first stage and in the next stage impunity or combination of them, and is unprofitable and inefficient for human needs for international criminal justice and termination of impunity. In addition this competent which is incompetent inwardly because of the one-month deadline for states to pursue and six-month to declare violation of national jurisdiction Court according Article 18 of the Statute, offering international tribunal to national court proceedings and thus make prolongation of the proceedings and the emergence of escape for young people. And this apparent authority clear the issue, i.e. the need to an international court with universal jurisdiction exempted states to respond this human need. It seems that they are not accidental, but universal jurisdiction in national courts and its absence in Criminal Court with incomplete jurisdiction and multiple barriers to start, continuing to investigate and inadequate punishment of Court, as well as ways for great defendants to escape are all part of the puzzle movement that the author call it ((delaying the proceedings in order impunity)) movement. The last word is that universal jurisdiction which appeared in the conscience of all humanity as a tough response to great atrocities, due to confiscated of general jurisdiction of the Court, contrary to the objectives set forth in introduction of the International Criminal Court Statute led to great criminal immunity and has been increasing impunity.

Conclusion

A general legal principle which states that no one should be his judge in case of international courts had been neglected. The reason is that international courts generally is achieved through international treaties (Mosazadeh, Reza, 1388) between states and judge the differences between governments, i.e. its founders, on the other hand, international tribunals created by the Government and will monitor Governments actions and indirectly Governments are their own judges and this make us to ignored above principle, and the result is that important and dangerous criminal and penalties that all the evidence and facts done by governments abort[1] with impunity. Throughout the Statute of the Court paid to the rights of the accused and the majority of the statute rather than protecting the rights of victims and justice, suddenly remembered human rights and considered the rights of criminals. While preserving the rights of the accused are one of human rights parameters, but we should be concerned about this issue that how the government, nearly after a hundred years refused Universal Declaration of Human Rights, but when they actually are accused, human rights and the rights of the accused become important. In other words, governments in the Statute of the Court do not concern about Human Rights, but the creating innocence for future of the accused is a trick for sending his criminal case to dependant courts that due to direct feeding and organic dependence to the government are not be able to handle to his superior violations, and on the other hand universal jurisdiction of national courts of other states, is unprofitable first, in the light of political intervention in the form of humanitarian and secondly, in the shadow of diplomatic rights and immunity[2] and the Charter context. Unfortunately, in

[1]. The rulers of Serbia's war crimes in the former Yugoslavia civil war, that one of them now (5/2011) is on trial at the International Criminal Court:, or the crimes of the first and second world wars and Darfur crimes and killing by the Government of China and Russia and people inhumane repression of countries of North Africa and the Middle East and … are just some examples of international crimes perpetrated by the rulers.

[2]. Governments to evade accountability to any other power, covered their actions and criminal in civil veil and cited to paragraph 7 of Article 2 of the Charter and their diplomatic rights are not responsible for their crimes, the most obvious example are defiant dictators like Gaddafi, Bashir, and… toward the international public opinion.

apparent purpose violation, objective of the Court's establishment declare inability of national courts to punish criminals and on the other hand and equal with Article 17 of the Statute and for the satisfaction of the authorities or future criminals, jurisdiction of the Court is subject ability and not willing to the and national courts, and its absence for court has led the young seedlings in spite of significant developments in international law and creating a glimmer of hope for the realization of global justice, due to lack of cooperation of nations in contravention of Article 86 and the bilateral public obligations priority Agreement under article 98 and too much compliments on initial stage, investigation, trial and punishment do dare to use the word extradition, and faced with the obvious and hidden inefficiencies and fails to punish criminals and thereby increase great criminals impunity. Therefore, vacancy of international court with initial, global competent and independent of the government is quite tangible. According to international law and the sovereignty of the individual-oriented and relatively easy solution revision of the Court Statute and the lack of barriers to reform, such as Articles 108 and 109 of the Charter and in the absence of privileged veto right for governments in the revision of the Statute, it is recommended that in a review conference, paragraph A of Article 17 of the Court Statute be reversed or the interest in national court to be proved in one of the preliminary Court branches or Court referred the case to the competent national court. Along with the development of the crimes stipulated in Article 5 and the addition of other international crimes such as terrorist crimes, piracy, clear violation of the right to self-determination; violations of humanitarian in region war, such as Syria and Yemen, as well as the suspension of pursuit right of the Security Council and giving Referral right and the request to suspend with approval of Article 16 of the Statute of the Court and fundamental reform of the prosecution related to dependence; Prolongation of procedure, lack of deterrent punishment, immense leniency to criminals under the pretext of human rights, the possibility of abusing human rights by great criminals with titles such as supplementary jurisdiction and universal jurisdiction of national court in international law, end impunity for all great criminals.

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