

Generality of the Treaty-based Criteria of Statute of International Criminal Court Facing International Crimes

Erfan karimirad*

Department of Criminal Law and Criminology, College of humanities,
Islamic Azad University, Hamedan Branch, Hamedan, Iran
*E-mail: karimirad122123@gmail.com

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Abstract

The international crime court (ICC) takes into consideration the inherent international crimes; while, the court is established by a multilateral treaty and its statute has treaty-based criteria. But, to be on the basis of the treaty, by classifying the states relative to the ICC, can reduce the court's decisive actions; because ICC non-party states principally are not committed to the ICC. While the inherent international crimes are threatening all the human societies, any limitation on the jurisdiction of the inherent international crimes would make them more dangerous. But, there are fewer challenges regarding the fact that the ICC statute is treaty-based against inherent international crimes and the main challenge is with the inherent international crimes.

Keywords: treaty based, ICC, statute, international inherent crimes, treaty international crimes

Introduction

The world always has witnessed many brutalities. Therefore, after crimes for missile developments, lack of dependency on ethical commitments, weakness of sanction of international laws that resulted in many financial and physical damages especially in the age of violence (20th century) made scientists and activists to invent strategies for controlling such events with human being as their victims to be followed rapidly. But in this way, some courts were established that the permanent international criminal court was the last loop of them which for preventing the lack of punishing criminals the heaviest anti-humanity crimes were formed. Crimes that finally result in victimizing human being that, with their spread cause, shock the conscience of humanity.

With such interpretations, it should be stated that, despite the basis, custom and nature of international criminal court that are not restricted to government or a specific land and have general characteristics called *Erga Omnes* (Rostam Zadeh, 2005, p. 11), but it should be mentioned that before anything the statute of the judicial institute is a multidimensional and international formal treaty. Accordingly, a number of governments have agreed that international courts, according to benefits and their duties formed in the statute and crime committers that are indicated in the statute, should be punished (Shariat Bagheri, 2013, p. 22). Therefore, when we speak about treaty, it will be appropriate for this issue that indicates the regulations of international treaties law should be included in, it means that the ICC statute is necessary for the entire party states, therefore, interpreting it depends on principles of interpreting treaties, as in the Vienna convention regarding the right of treaties some issues presented (Chaisari, 2010, p. 75). It means division of two poles from states against ICC, including party states and non-party states. In other words, states which are committed to ICC and their regulations and states that have no obligation for ICC and are considered as the third states. But, the issue is about international institutions with criminal features that deals with the most important causes of international crimes to which authoritative behavior is a

response, and this issue as an international criminal crime has been created by a multidimensional treaty and can be challenging, because treaty-based action for governments occur based on satisfactions and international criminal court in accordance to this issue, despite considering real persons and criminals, can investigate a crime when one of the conditions mentioned in the article 12 of statute exists. It means that crime has occurred in the territorial of a party states which represents territorial jurisdiction and this condition empowers the ICC to perform capability in the cases in which the crime committing person is not the party states and may have no satisfaction (Morris, 2009, p. 363) or the crime by one of the party states nationals has been committed, though occur in the territorial of a non-party states. It represents personal jurisdiction for the ICC or non-party states accept ICC jurisdiction voluntary or Ad Hoc (paragraph 3 of article 12). So defect of treaty-centrality would stay, neither there is crime committed in non-party state nor is convict of party state's nationals that in this condition the hope may be seen in referring the condition from the behalf of security council organization according to paragraph B of the article 13 for the statute that surely it may not be considered as a definite strategy. (Because of special situation exist in Security Council, such as being political and probable optional referring which is not appropriate to be discussed in this research and it needs more investigation). Given these interpretations, the primary interpretation lies in causing affects that we are facing. But, having such introduction and attitude toward the benefits of treaty-based statute regarding ICC and by discussing the general rules and jurisdiction that were referred to, it is possible to get into discussions and analyze the generality of treaty-based issue regarding international crimes.

A: International crimes

At first, we can claim that international crime is an action that occurs against commitments and regulations of the international general principles and the intensity of a damage that in response causes the order of global society and it is to the extent that is rightly called international crime and result in justice and equity that the agent of such a crime can be punished heavily (Lavasani, 1964, p. 183), therefore, international crimes or those crimes that are open to the title of international crimes are totally hated.

But, in general classification, crimes in the international law can be created by international custom or international treaties or by both of them (Scharf, 2001, p. 83). Therefore, the first category: are treaty international crimes that may be committed against common human values and cause inciting general conscience of people or might be against national security or economic interests of one or several governments. But its intensity is not as much as international inherent crimes. In other words international custom has not formed in relation with such crimes based on inherent crimes acceptance and reason of considering crimes are treaties that states sign and accept based on their will among them. For example we can refer to drug trafficking or international terrorism that are subgroups of international treaty crimes. Therefore; generally, according to such international crimes, interests of two or several governments are addressed that by two or several treaties it is attempted to preserve interests or their security.

But the second category of international crimes is inherent international crimes known as custom crimes. Inherent international crimes are illegal behaviors that damage international society (Hosaini Nejad, 2012, p. 100). Accordingly, inherent international crime is so that endangers or threatens the entire human interests. Therefore, the entire governments are to react against such crimes since they deal with the shared heritage of humanity and they are not due to treaty international crimes.

1: Treaty-based and international inherent crimes (current crimes that are considered by the ICC)

In fact, it was evaluated that among international crimes, inherent international crimes are the most important; while ICC with a treaty-based feature covers international inherent crimes that are globally widespread. (For example crimes against humanity or genocide and generally, specified crimes in article 5 of statute of ICC). In fact, they cover the worst crimes and the nature of those crimes is so that causes shocking the human conscience.

As the statute of ICC stated in the introduction section and at the beginning of the third paragraph that the sever crimes causing worry of the set of international society should not remain unpunished.

Specifically, the inherent international crimes are of international custom property. Here, by the international custom it means the consensus between the states and human societies on considering the action taken as a crime and the harmful action against the human in international crimes (Jafari, 2011: 172).

When the number of such countries increased at the global level and became the majority, that crime would be international custom crime (Jafari, 2011, p. 172). Therefore, inherent international crimes for their nature and intensity are custom at the level of the globe and principally international custom in the international criminal law, for its acceptability is enforcing. In fact, the nature of such crimes is so that requires determinate and regular movement of the entire governments in line with them, not just a part of governments or by contracting treaty with treaty-based conditions for an international criminal institute that is representative of the entire governments which tries to establish human right. Since, among them, the government satisfaction should not be considered and general uprising can response their needs.

Accordingly, with such understandings of inherent and custom crimes, we can indicate that generally the feature and treaty-based criteria for such a set of international crimes that have global and custom extension afflict the entire society and meantime the international criminal court tries to investigate and cover them and it cannot be a proper feature and respond them and such feature for the statute prevents determination by international criminal court, and as mentioned in the introduction, according to governments classification to party state and non-party state which face the governments with ambiguous conditions that are not successful for an international court. In fact it should be indicated that we need rather definite and determinant universal criteria¹ to see international crimes with such an extension.

2. Treaty-based and treaty international crimes

Since the possibility of adding treaty international crimes to the ICC is imaginable, it is possible to follow discussions in the form of treaty-based and treaty international crimes.

In fact, the treaties and treaty international crimes are related and they have a close relationship. As mentioned, treaty international crimes like international inherent crimes still have not reached international custom degree and global society has not reached a common decision about whether they may damage the humanity heritage. Having such interpretations, we can say that such international crimes are less important than inherent international crimes. Therefore, as it is obvious from the names of these crimes, the treaty is a part of its identity and according to such international crimes, interests of two or several governments is the issue that by preserving treaties they are attempting to preserve their interests or security. Therefore, they try to sign treaties based

1 - for example universal jurisdiction that proportionate for this crimes category

on their willing for which the treaty deals with internal law makings for investigating them, since it is committed against that treaty and accepted its outcomes. Therefore, regarding treaty international crimes, general uprising of the entire governments is not posed to control them. In fact, according to general international laws and principles of treaties, when countries are required to investigate and punish treaty international crimes that are adjoin to respective treaties without functioning a right of condition about them (Jafari, 2011, p. 40). Having such interpretations, and according to features of such crimes, generally treaty-centrality for such a category of crimes is not an inappropriate or challenging element and its domain is specific and restricted to parties of contract that consider it. Therefore, necessity of it for mutual parties is related to it.

3: treaty based and annexing treaty international crimes to the ICC

During Rome conference, the great international crimes changed to main crimes and other international crimes and many attempts were performed that some of the treaty crimes such as drug smuggling and terrorism were under jurisdiction of the ICC, but finally governments voted for jurisdiction of the ICC regarding the main international crimes (Tahmasebi, 2012, p. 39). That, of course, in the list of the ICC crimes, the aggression crime was under the jurisdiction of the ICC, but no definition of it offered and the ICC until agreement of assembly of states parties according to articles of 121 and 123 of the Rome statute cannot start investigating such crimes (Scharf, 2001, 67). But, now the fourfold crime in the statute of international criminal court are international inherent crimes with international custom features and treaty international crimes are not included in the stated court. But, ICC was expected that to be able to cover the entire international crimes with low resources and challenges with high and unrelated expectations.

But the ICC crimes always might not be limited to such crimes and might be renewable and additive. In such cases, article 123 of the ICC statute entitled reviewing the statute is devoted to this issue and in its first paragraph indicates that: seven years after enforcing this statute, the secretary-general of the United Nation shall convene a review conference to consider any amendments to this statute. Such review may include, but is not limited to, the list of crimes contained in article 5. The conference shall be open to those participating in the assembly of state parties and under the same conditions. Therefore, it is possible for crimes to be added. Particularly, regarding this issue that adding treaty international crimes exists and in discussion about adding international terrorism crime to the list as an international crime in reviewing kampala, 2010, it was completed.

The considerable issue is that statute of international criminal court has considered the treaty-based issue of inherent crimes and treaty international crimes are treaty-based and discussable in the territory of the party state and they have not taken custom and general features. Therefore, according to treaty basis of ICC, adding such crimes to the ICC might causes enforcements for governments that are not necessarily the party state of international criminal court. Accordingly, by different forms regarding states that are party of statute of ICC and treaty international crime, there would not be any problem in acting treaties, because if government act according to contracts or otherwise specified his competence, the ICC will not make use of its competence and therefore the ICC competence will not causes extinguishing a treaty (Saber, Sadeghi, 2013, p. 153). Also for a government that is the party of a treaty international crime and Vis versa the party of the statute of international criminal court and committed to it, again will have no problem with them and the mentioned court is addressed when they are passive and it acts according to its mission and authorities.

But the possible challenge regarding annexing treaty international crimes such as smuggling drugs or international terrorism according to treaty-centrality of international criminal court regarding non-party state can be addressed which is not be the party of treaty international crime and

believes in the fact that according to treaty-based criteria of ICC, their membership may result in enforcement (for example by security council reference). Though, regarding benefits of criminalization, such crimes should not be forgotten, since they will be very beneficial for weak and small forces and help weak countries and help international society to campaign against such issue (ibid, 2013, 156). In fact, weak and small countries that suffer from contractual international crimes such as smuggling drugs may show passivity by a superficial estimations and facilities for participating in a crime regarding controlling such crimes. Therefore if ICC supported such states with its jurisdiction, it would be beneficial and affects international society with its advantages. Also, it should be indicated that, according the extension of fourfold crimes that treaty international crime like terrorism and etc. is in line with one of the cases, there is an agreement with conformable indications, and for example war crime has several parts and has a long paragraph without a single definition.

Therefore, it should not have any problem principally with annexing treaty international crimes with stated court; whether as an independent crime tries to be in article 5 of statute of ICC or as a subordinate in one of the developed fourfold crime. While, currently a number of countries became the member of contractual crime conventions. Considering such items and according to treaty-centrality of the statute of international criminal court, the stated problem might be considered as a potential challenge. Therefore, justice-centered governments will have no problem with annexing such crimes (treaty international crime); the governments which became the member of the statute, but the way for referring such gaps did not close the way for disagreed countries.

Conclusion

International criminal court for treaty-based criteria and governments' classification regarding party state and non-party state and finally causing distinction in accepting rules and regulations of statute of ICC is not able to act completely dealing with and investigating all international crimes that are now inherent and custom international crimes. While international custom crimes, because of generality and acceptability among global society, are global and civil in society; they need decisive action without any discrimination for the reason that just-based court would be able to prevent from same crime that committed by its offenders. While the court would depend on reference of security council for enough and decisive empowering in occasion of empty jurisdiction that was mentioned earlier, (whether or not there is so many questions in references or non-action for various reasons and political innate of security council), it means that crime would be committed in territorial non-party state or by nationals of non-party state. But at the same time as it is possible to add treaty international crimes, there is also possibility of challenging in a condition that non-party state of international criminal court and also non-party state of treaty international crime claim that their membership is not seen in any treaties, and such assumption might be for personal jurisdiction or territorial court or possible reference of security council that, according to powerful and opponent non-party state, such assumption is not impossible and it can be considered as hidden challenge and argumentative issue. Therefore, it is not possible to neglect the treaty-based criteria of international criminal court regarding international crimes based on decisions of inherent and custom international crimes and; therefore, treaty international crimes that can be annexed to the ICC may result in lack of punishment for international crimes. In fact, it should be indicated that criteria of treaty-centrality is unreliable for international crimes, especially inherent and custom international crimes. In fact, treaty basis governance can be taken along that for a criminal institute that aims in line with punishing international crimes is rightfully a basis cannot be responsive and proper criteria.

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