International Criminal Justice: A Historical Perspective

Introduction

The purposes and functions of a permanent international criminal court combine humanistic values and policy considerations which are not only essential to the attainment of justice, redress, and prevention, but also to the preservation, restoration, and maintenance of peace.1

The Preamble of the Rome Statute states:

The States Parties to this Statute,

Conscious that all peoples are united by common bonds, their cultures pieced together in a shared heritage, and concerned that this delicate mosaic may be shattered at any time,

Mindful that during this century millions of children, women and men have been victims of unimaginable atrocities that deeply shock the conscience of humanity,

Recognizing that such grave crimes threaten the peace, security and well-being of the world,

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation,

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes,

Recalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes,

Reaffirming the Purposes and Principles of the Charter of the United Nations, and in particular that all States shall refrain from the threat or

use of force against the territorial integrity or political independence of
any State, or in any other manner inconsistent with the Purposes of the
United Nations,

Emphasizing in this connection that nothing in this Statute shall be
taken as authorizing any State Party to intervene in an armed conflict or
in the internal affairs of any State,

Determined to these ends and for the sake of present and future genera-
tions, to establish an independent permanent International Criminal Court
in relationship with the United Nations system, with jurisdiction over the
most serious crimes of concern to the international community as a whole,

Emphasizing that the International Criminal Court established under
this Statute shall be complementary to national criminal jurisdictions,

Resolved to guarantee lasting respect for and the enforcement of inter-
national justice,

Have agreed as follows . . .

The history of civilization reveals that every polity, no matter how structured or
unstructured, has developed judicial institutions whose purposes are to medi-
ate, resolve, and impose settlements to conflicts that disrupted the social order.\(^2\)
The mere existence and effective operation of judicial institutions alone cannot
create the conditions for order, lawfulness, rectitude, redress, prevention, jus-
tice, and peace, but without such institutions, such conditions could not exist,
even when imposed by forceful means.\(^3\) Force is never a satisfactory means
to bring about social order, except in the short term. Even then, however, it
frequently brings about more harm than ultimate good. Furthermore, imposed
order lacks legitimacy. Judicial institutions, along with other social, political,
and economic institutions, are indispensable to the attainment of the desired
social conditions in national societies and the international community.

In the latter half of the twentieth century, we witnessed the emergence of
a more globalized society, and the newest judicial institution to address that
reality is the International Criminal Court (ICC). In order to accomplish the

\(^2\) See Histoire des Institutions et des Faits Sociaux (2 vols. 1957). See also, The
Philosophy of Law in Historical Perspective (Carl Joachim Friedrich ed., 2d
ed. 1963); Henry Wigmore, A Panorama of World Legal Systems 1206 (3 Vols,
xxxi 1928).

\(^3\) W. Michael Reisman, Stopping Wars and Making Peace: Reflections on the Ideology of Conflict