

Critiques on the Tribunals and The Hague Court

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ABSTRACT

This critique is a review of heinous crimes. It assesses to connect with perpetrators, victims, people and institutions and change professed through the works of the Tribunals and The Hague Court and share the feeling with the concerned ones. The objectives of the paper are three-fold: (1) to study the situations of the investigation, prosecution and punishment on accountability; (2) to analyze the preference for justice: victors' justice or victims' justice; and (3) to access the critiques on violations of human rights and humanitarian law beyond the borders. Experiences on Transitional Justice, Human Security, and Human Rights among others feel touched, inspired and motivated to the author for this pioneer paper. This state-of-the-art paper is examined based on archival research, exchanging and sharing way forward with over 100 international publications and lessons-learned centric theoretical approach comprising snow-ball techniques. The study theorizes: (1) Retributive Justice Theory: Punishment is justified as perpetrator deserves for penalty, equivalent vengeance; (2) Utilitarian Justice Theory: Punishment is justified to mid-and-junior level perpetrators scooting-free to the top-most policymakers including Emperor Hirohito. Allied powers believed that Hirohito can only fight against the communism; (3) Denunciation Justice Theory: Punishment is justified by pressure of society that sends a clear message: offence is a heinous crime and sentencing a perpetrator is logically just; (4) Restorative Justice Theory: Punishment is justified as crimes of perpetrators hurt everyone and justice repairs the damage satisfying through accountability, reparation, rehabilitation and reconciliation; and (5) Transnational Justice Theory: Punishment is justified to operate outside a nation territory that penalizes the perpetrators as a crime of international concern. The Nuremberg and Tokyo Tribunals had virtually been victor's justice with self-righteous fraud and lynching bodies. The Tokyo Tribunal never talks about bombings at Chinese cities. The U.S. and its axis powers discourage future aggressions accepting victor's justice. The UN failed to restore peace and security. Cronyism was/is widespread. All Tribunals seemed pseudo justice bodies. People criticize these for being one-sided, inefficient, ineffectiveness, politicized, lengthy, very costly and unfair bodies. The U.S. and its satellite nations control both Tribunals and The Hague Court providing funds, instruments and staff. The Hague Court is a highly debated body with many flaws, targeting mostly poor and opponent African countries. Most grave crimes committed go unpunished. Thus, justice delivery appears as a sword in a judge's toupee. If The Hague Court is continuously influenced by powerful non-signatories of Statute,

the relevance of its functions are hopeless. Justice becomes elusive for the innocent, weak and poor ones.

Keywords: Nuremberg and Tokyo Tribunal, Tribunal, International Criminal Court, The Hague Court, Victims, Perpetrators, Critique, Justice and Rome Statute.

INTRODUCTION

Tribunal is a special judiciary body that examines certain types of debates or disputes or conflicts in a given timeframe. Tribunal is “a specific court or group of people who are officially chosen to examine problems of a particular type” Generally, a Tribunal is an institution with judgment authority that determines disputes by persons (Walker, 1980). Tribunal is not a court of normal and regular jurisdiction, but constituted for specific duration with certain purpose on the course to comply with international human rights law and humanitarian law.

The International Military Tribunal (IMT) was established and opened on November 19, 1945 in the Place of Justice, Nuremberg which is now known as the Nuremberg Trial. The Nuremberg had largely remained undamaged by the WW II. It was set up six-and-half months after Germany surrendered. The Tribunal was formed by the allied forces such as United States of America, Soviet Union, France and Britain under international law and the laws of war (No. 251, August 8, 1995). The principal objective of the IMT was bringing Nazi war criminals under accountability for justice. The International Military Tribunal for the Far East (IMTFE) which is still little-known as the Tokyo Military Tribunal or Tokyo Tribunal was established by the Allied Victors of the WW II against the leaders of the Japanese Empire on January 19, 1946. The Allied victors were: Australia, Canada, China, France, British-India, the Netherlands, Philippines, the Soviet Union, the United Kingdom and the United States. The Victors appointed U.S. Army General Douglas MacArthur, Supreme Commander for the Allied Powers (SCAP) in January 1946 (Kaufman, 2013) to lead the Tokyo Tribunal. The Tokyo Tribunal agreed to identify the worst perpetrators, to investigate, to prosecute and to punish them (the high-level political officials and military authorities) for war crimes and other atrocities against innocent humans.

The United Nations Security Council established the International Criminal Tribunal for the former Yugoslavia (ICTY) as the UN Court of Law that dealt with war crimes during the armed conflicts taken place in the Balkans in the 1990s. The ICTY has been the world’s longest Tribunal (1993-2017). It had an opportunity to tell the horrible truth before the ICTY where victims suffered, witnessed and experienced and proved that those suspected individuals or perpetrators of bearing the maximum responsibility for war crimes and other atrocities committed during armed conflicts can be called to account (<https://www.icty.org/>).

The United Nations Security Council established the International Criminal Tribunal for Rwanda. It had an objective to prosecute the perpetrators responsible for genocide and other serious violations or abuses of international humanitarian law committed between January 1994- and December 1994 in the territory of Rwanda and neighboring States. The Tribunal has been the first global fight against impunity, prosecuting those who were considered most responsible for the heinous crimes committed (<https://unictr.irmct.org/>). Besides, the Tribunal has been the first institution that recognizes rape as a means of committing genocide.

The temporary Tribunals had been sources of inspiration to establish the permanent court called the International Criminal Court (ICC) at The Hague Court which is simply called The Hague Court in this study. The Rome Statute defines the structure and areas of jurisdiction of The Hague Court. Therefore, the ICC is the Court of the Statute. The ICC prosecutes individuals either from the State Party or non-State Party on four kinds of heinous international crimes of concerns. The main objectives of The Hague Court are to find out the worst perpetrators held accountable for these crimes; to investigate, prosecute and punish the perpetrators of genocide, crimes against humanity and war crimes; to assist national judiciaries in the investigation and prosecution of perpetrators; and to help promote peace and security by deterring potential perpetrator.

This paper aims to thoroughly study the works of the Tribunals and The Hague Court investigating the axiomatic truth of human wrongdoings which occurred between and among the State to State, State to non-State and non-State to non-State after the World War II till date. It analyzes a set of judicial measures of systematic human rights violations and/or abuses of International Humanitarian Law (IHL) and reviews them critically.

The General Objective of the paper is to investigate the truth of offences of war crimes, crimes against humanity and genocide by critically examining the specific contribution made by the Tribunals and The Hague Court and their critical perceptions argued by victims, commoners, leaders, eyewitnesses or survivors, perpetrators and academia inland and beyond.

The Specific Objectives are to examine the situations of investigation, prosecution and punishment for the perpetrators' decisions taken by the Tribunals and The Hague Court; to evaluate the work records of the Tribunals and The Hague Court in Theoretical frameworks; to analyze the preference of justices: victors' justice or victims' justice initiated and adopted by the Tribunals and The Hague Court; and to access the critiques of Tribunals and The Hague Court assessing the influence on violations or abuses of international human rights and humanitarian law beyond borders by internal and external forces to the State Party and non-State Party of the Rome Statute during Cold-War and Post-Cold-War era.

The author of this paper prefers to use a soft word "Critique", but the concerned individuals, institutions and States of the victims use the vague word "Criticism" in the present day world. Critique is a detailed analysis and assessment of something. Critique is a serious examination and judgment (<https://www.vocabulary.com/dictionary/critique>). Critique connotes to review something critically. Author observes, "A critique is a careful analysis of an argument to determine what is said, how well the points are made, what assumptions underlie the argument, what issues are overlooked and what implications are drawn from such observations. It is a systematic, yet personal response and evaluation of what you read" (<https://www.hws.edu/academics/ctl/pdf/critique.pdf>).

Critiques of Justice Bodies are examined on the basis of author's three-decade long studies, researching, observations and teachings on international human rights-humanitarian law and conflict management-transformation, human security studies and transitional justice among others. The author gained experiences working with human wrongdoings; human insecurities, armed conflict and heinous crimes committed and analyzed their cause (of conflict) and effect (victor's or victim's justice) relationships. The author's reflections are gained either through literature review

or exchanging and sharing approach rather than theoretical conception. The author's experiences acquired from a few of his notable international publications, for instance, Jurisdictions of The Hague Court (February 2020), Generations of Transitional Justice in the World (July 2019), A Comparative Study of World's Truth Commissions: From Madness to Hope (2017) and World's Disappearance Commissions: An Inhumanous Quest for Truth (2016). Therefore, this state-of-the-art paper is pursued based on the archival research with lessons-learned centric conception following networking tracking method or snowball techniques. The pioneer paper briefly adopts victim-centric and reader-friendly approaches. It reviews whole critiques of the Tribunals and The Hague Court in a single paper to ease faculty members, research scholars, students of educational institutions and policymakers.

The paper is further categorized into five subheadings, namely Retributive, Utilitarian, Denunciation, Restorative and Transnational theories. Such categorization is based on justice for the victims or survivors and their families for dignified lives and roles of perpetrators (victors' justice) or punishment to the perpetrators bringing them under the judicial custody. The categorization is carried out following the universality, indivisibility, interdependence and interrelatedness as well as possible violations of International Human Rights and Humanitarian Law of both Tribunals and The Hague Court.

On the whole, the entire critique is to connect the victims, societies and other concerned persons and institutions with the changes they attained by the Tribunals and The Hague Court and share them accordingly.

RETRIBUTIVE JUSTICE THEORY

Retributive Justice Theory is a proportional punishment which is an ancient method of justification for punishment. It is a response of crime that is proportional to the past offence (Kumar, January 15, 2015) in which wrongdoings caused to (innocent) humans or the society are held as indictable offences. Retribution is a theory of punishment imposed on someone (offender or perpetrator) as vengeance for a wrongdoing or a criminal act. It is the same punishment in return to the perpetrator for their past inhumane actions. For example, a perpetrator gets the death penalty for having committed a murder or killing in the past. Retributive ideas seem an inherent part of thinking having crime and punishment (Tony, 2011). The retributive principle is blameworthy for wrongdoers who must be punished. However, there is a retributive gap between the allegation of such offenders and the punishment inflicted upon them (Materni, September 2011).

Kant and Hegel stated that retribution is punishment that gratifies the public desire for vengeance (Stephen, 1883). Retributive hatred is a desire for revenge (Murphy, 1990). The Retributive Theory indicates that offenders or perpetrators shall receive the same punishment what they deserve for their past wrongdoings (Baier, 1977). The punishment is the reaction of the human beings or society against crimes committed. The purpose of punishment is to be neutralizing the effect of the wrongful act of the offender or perpetrator (Shrivastava, November 25, 1920). It is a crime imposed for punishment in the name of justice for victims. It means, the perpetrators who break the rules of law deserve to be punished. It is the punishment to the perpetrators for crimes which is acceptable as long as a proportionate response is made for the crimes committed. The U.S. widely practiced the rationale for punishment through the retribution theory such as International Military Tribunal

(IMT) at Nuremberg rather than utilitarian and denunciation theories. The IMT is also called the victor's justice.

The IMT (Nuremberg Trial) was established on November 19, 1945 in the Place of Justice at Nuremberg. The Tribunal was formed after World War II by the allied forces such as United States of America, Soviet Union, France and Great Britain under international law and the laws of war (No. 251, August 8, 1995). The Nuremberg had largely remained undamaged by the WWII; a large prison had been a part of the complex; and was considered ceremonial birthplace of the Nazi Party (Burleigh, 2000). The allied four nations supplied the prosecution team. The Nazi Party under the leadership of Adolf Hitler killed some 5.7 million European Jews along with over 4 million non-Jews during the WW II (Bauer, 1978). Hitler had not been the first State-leader who practiced enforced disappearances and extrajudicial killings to repress his political opponents. Stalin regime also followed the same methods against his rivalries (Vermeulen, August 1979).

A total of 24 policymakers (high-ranking Government-Political Officials) and policy implementers (military officials) were indicted along with seven Nazi organizations (Pathak, 2019). Seven organizations included the Nazi Party, the Reich Cabinet, the Schutzstaffel, General Staff and High Command of the Army, the Gestapo and the Sturmabteilung, which were determined as criminal organizations (Fraser, 2017). Among 24 indicted individuals, Hitler and two of his top associates namely Heinrich Himmler and Joseph Goebbels committed suicide before they could be brought to trial. One of the indicted men had been medically unfit to stand trial, another indicted man killed himself when the trial began. Twelve accused were sentenced to death (hanged till death), six received prison sentences ranging from 10 years to life imprisonment and one had been in absentia on October 16, 1946 (Solsten, 1995). Hitler's promoted successor Hermann Göring, Head of the German Air Force, committed suicide by cyanide capsule the night before his execution (Henkel, 2011).

Article 6 of the London Charter has provisioned to charge both men and women on four disciplines: Crimes against Peace (planning and making war violating international agreements), War Crimes (violation of customary laws, treatment of civilians and prisoners of war), Crimes against Humanity (killing, enslavement, deportation to civilians and racial persecution) and Conspiracy to commit other crimes. The Charter had been applicable to all including civilian officials and military officers who had been responsible for the holocaust. The Nuremberg Trial has been controversial on the course of prosecution and punishment for the criminals of the WW II.

The Article 6(c) of the Tribunal which charges of crimes against humanity at Nuremberg has not been immune from criticism. Douglas pointed out that the Military Tribunal failed to clarify exactly what they meant by the word "humanity"; whether it referred to a precise standard of humaneness or whether it denoted to humankind as a whole (2001). The Article 6(c) mentions a number of restrictions and limits on the application of the Article. The crimes against humanity could be interpreted as a kind of a byproduct of war or applicable in connection with war (Schwelb, 2008). In regards of crimes against humanity, the pre-war atrocities against the Jews did not fall within its jurisdictional competence (Douglas, 2001). More so, the crimes against humanity violated the principles of national sovereignty and domestic jurisdiction (Schwelb, 2008). The Nuremberg trial dominated state-centric law or domestic law by international authority. It means, the Nuremberg judgment ratified the supremacy of international law beyond the borders over national law

(Beigbeder, 2006; Ratner & Abrams, 2009). Thus, international law went beyond obligations on States and attaching duties to individuals involved in criminal responsibility (Clapham, 2003). However, Teitel describes post-Nuremberg liability as explosion (2000). Nuremberg's instigators used a number of arguments in answering the charge that the Military Tribunal was implementing a retroactive law (Santry, August 19, 2013).

Harlan Stone, Chief Justice of the U.S. Supreme Court described the proceedings of the Nuremberg Trial as a "sanctimonious fraud" and a "high-grade lynching party" to Germans (Mason, 1956). After the conclusion of the Nuremberg Trial, the U. S. Political Scientist Quincy Wright objected how the Nuremberg Tribunal could have obtained jurisdiction to find Germany guilty of aggression, when Germany had not consented to the Tribunal and how the law (Nuremberg Charter) could have bound the defendants on trial when they committed the acts years earlier in April 1948.

In October 1945, having the weakness of the trial, Robert H. Jackson (Chief United States Prosecutor) wrote a letter to the then U. S. President Harry S. Truman stating, "Allies themselves have done or are doing some of the very things we are prosecuting the Germans for. The French are so violating the Geneva Convention in the treatment of prisoners of war [...]. We say aggressive war is a crime and one of our allies asserts sovereignty over the Baltic States based on no title except conquest" (Luban, 1994). A U. S. Associate Supreme Court Justice William O. Douglas charged that Allies were guilty of "substituting power for principle" at Nuremberg and Nuremberg trials were unprincipled (Thompson & Strutz, 1983). U. S. Deputy Chief Counsel Abraham Pomerantz resigned protesting the low caliber of the judges assigned to try the industrial war criminals (Ambruster, 1947). The Chief Justice of the United States Supreme Court Harlan Fiske Stone called the Nuremberg trials a fraud (Mason, 1956). Robert A. Taft, a US Senate Majority Leader (Ohio) criticized the Nuremberg Tribunal for trying Nazi war criminals under *ex post facto* laws (Kennedy, 1955).

Sir Geoffrey Lawrence of Britain had been chosen to serve as the President of the Tribunal, but, the most prominent of the judges there was his American counterpart, Francis Biddle (Persico, 2000). Prior to the judge of the trial, Biddle had been working as an Attorney General of the United States, but he was ousted from the position by the U.S. President Harry S. Truman earlier in 1945. The President Truman appointed Biddle as the main American judge at the Tribunal as an apology asking for his resignation (Persico, 2000). Working as an Attorney General, Biddle opposed the idea of prosecuting Nazi leaders for crimes committed before the beginning of the war (Smith, 1977).

Professor A. L. Goodhart at Oxford University opposed stating that judges were appointed by the victors; the Tribunal was not neutral and could not be regarded as a court in the true sense (Goodhart, April 1946). The IMT had not been a binding treaty as there had not been signatories. That just addressed based on the judgment of war crimes and crimes against humanity (Yale Law School, 2008). The Tribunal itself got disputed as London Charter had been an *ex-post facto* law. The validity of the Tribunal had been questioned on a number of grounds such as rules of evidence (Art. 19 & 21). There had not been defendants' provision of appeal. Rather being a watershed of modern law, the Nuremberg had been an example of high politics masquerading as law, then the trial, instead of promoting, retarded the coming of the day of world law (Wyzanski, April 1946). A contemporary German jurist stated that justice is not served when the guilty parties are punished in any old way. Justice is only served when the guilty are punished in a way that carefully and

conscientiously considers their criminal errors according to the provisions of valid law under the jurisdiction of a legally appointed judge (Pendas, 2005).

The Chief Soviet prosecutor submitted false documentation stating that Germany murdered thousands of Polish soldiers in the Katyn forest. However, the other allied prosecutors refused to support German lawyers. None of the Germans were charged or found guilty at the Nuremberg Trial for the Katyn Forest massacre (BBC, April 28, 2010). In 1990, the Soviet Government acknowledged that more than 20,000 Polish soldiers were massacred at the Katyn forest by the Soviet secret police, not by the Germans (BBC, December 16, 2004).

Utley noted that General Sergei Rudenko, the Chief Soviet Prosecutor, became commandant of the Soviet Union established socialist concentration camp in August 1945 (Wiggers, 2003). After the fall of East Germany, the human remains of 12,500 Soviet-era victims mainly children, adolescents and elderly people were uncovered at the camp (The New York Times, September 24, 1992) due to the catastrophic prison conditions, hunger, psychological and physical exhaustion (www.stiftung-bg.de/gums/en/geschichte/speziallager/spezial01.htm).

Amongst other things, Freda Utley charged the Nuremberg Trial as double standards (January 1, 1949). She pointed to the Allied use of U.S.'s inhumane treatment of German captives, civilian as slave and deliberate starvation of civilians occurred in their occupied territories (Wiggers, 2003). It was very pity that Americans dropped the atom bomb and the British destroyed the cities of western Germany, but the Tribunal did not hear the pleading of the Germans (The Economist, October 5, 1946).

Michael Newton and Michael Scharf noted that opinion polls conducted by the US State Department starting from 1946 to 1958 revealed 80 percent of the West German population did not believe the findings of the International Military Tribunal and rejected it as 'Victor's Justice' (Newton & Scharf, September 16, 2008).

On October 16, 1946, they were given death sentences by hanging not using the standard drop method instead of the long drop, but the U.S. soldiers denied claims. The short drop length had been caused to condemn on the course to die slowly from strangulation instead of quickly (Time Magazine, October 29, 1946). Some of the condemned men died (agonizingly) slowly, struggling for 14-28 minutes before finally choking to death (Flagpole Magazine, 17 July 2002).

Some of the dead bodies were taken to Dachau and burned there in a crematorium in Munich where the ashes scattered over the river Isar (Hirsch, 2020). The French judges suggested that the military personnel be shot by a firing squad as standard for military court-martial, but that was opposed by the U.S. and Soviet judges arguing that the military officers had violated their military ethos (Evans, 1996).

Nuremberg Tribunal argued that the charges against the perpetrators were only defined as crimes after they were committed (Nicholls, Undated). Nuremberg had not been the first attempt to bring German leaders to book for starting a World War. In 1918 and 1919, the British Prime Minister Lloyd George and the France Prime Minister Georges Clemenceau both wanted to bring the Kaiser, the Crown Prince and others to justice. Under Article 227 of the Versailles Treaty, the Kaiser was to

be brought before an international tribunal of 5 judges appointed one each by France, UK, USA, Italy and Japan and under articles 228 and 229 the Germans undertook to surrender accused persons committed under violation of the laws of war (Nicholls, Undated).

The Economist, a British weekly newspaper, criticized the hypocrisy of both Britain and France for supporting the removal of the Soviet Union from the League of Nations over its unprovoked attack against Finland in 1939 and for six years later cooperating with the USSR as a respected equal to all at Nuremberg (Editorial, October 5, 1946). The victor in war had ensured the right to conduct court-martial to the defeated nation's individuals who had committed atrocities in the past contrary to the accepted laws of war against the victor's nationals (Editorial, October 5, 1946). The Economist asks, "Can the Anglo-Saxon leaders who at Potsdam condoned the expulsion of millions of Germans from their homes hold themselves completely innocent?" (Editorial, October 5, 1946).

The secret agenda of all victors was to prosecute and punish the Germans so that it would not rise and boast of being a powerful country again, rather than to ensure free, fair and independent investigation and provide fair justice to them. It had happened owing to the vested interest of international politics (Pathak, July 25, 2019). Despite changes taken place in world order system, same egoistic attitude, coldhearted behavior and contentious structural context have been continued by the U.S. Government till date, for instance, U.S. President Trump ended relations with World Health Organization on May 30, 2020. The U.S. never favors peace, co-existence, harmony, conflict transformation by peaceful means and informal-formal indirect and informal-formal direct dialogue as it achieves one of the largest incomes through selling the weapons, trading war related instruments and earning money through copyrights jurisdiction. Therefore, the U.S. led war on terror is branded as a misnomer. Thus, retributive holds that if an offender breaks the law, justice suffers similar to ancient Jewish cultural justice 'tit for tat': 'life for a life', 'eye for an eye' among others.

UTILITARIAN JUSTICE THEORY

Utilitarian derives from the word of utility. Utility is a principle which approves or disapproves of every action (Jeremy, 2009). Utility is the property that tends to produce benefit, pleasure, good and happiness (Rosen, 2003). It is the absence of pain. Utilitarian is a moral theory that accepts the rightness or wrongness of action which depends upon its consequences for happiness and pleasure (Mill, 2011). It equally considers the interests and makes happy to mankind of a particular senior most ones, for instance, functions of the Tokyo Tribunal.

The International Military Tribunal for the Far East (IMTFE) is known as Tokyo Military Tribunal (Tokyo Tribunal) that was established against the leaders of the Japanese Empire (International Military Tribunal for the Far East, January 19, 1946). The Tribunal marked a changing point of classical law doctrine to contemporary international law.

In July 1945, the U.S. President, the President of the National Government of the Republic of China and the Prime Minister of Great Britain signed the Potsdam Declaration (Proclamation Defining Terms of Japanese Surrender) that delivered straight path to all Japanese armed forces belonging to the WW II for unconditional surrender to initiate a stern action in the name of justice that meted out to all war criminals (Potsdam, July 26, 1946).

Unlike the IMT, the Tokyo Tribunal had emerged from international agreements to prosecute and punish the Japanese war criminals (International Military Tribunal for the Far East, January 19, 1946). The IMTFE had been established by a special proclamation of the US Army General Douglas MacArthur, Supreme Commander for the Allied Powers (SCAP) on January 19, 1946 (Kaufman, 2013). Outspoken, disobedient, arrogant and callous MacArthur had been granted authority to issue all orders for the implementation of the Terms of Surrender, the Occupation and Control of Japan and all Supplementary Directives (German Instrument of Surrender, May 8, 1945). On September 2, 1945, Japan signed the Instrument of Surrender by agreeing that war criminals would be brought to justice (MacArthur, 1994). MacArthur laid out the composition, jurisdiction and function of the Tribunal and appointed eleven judges. The signatories were: Australia, Canada, China, France, British-India, the Netherlands, Philippines, the Soviet Union, the United Kingdom, and the United States. Each of these countries had a separate prosecution team member (Kaufman, 2010).

The Tokyo War Crimes Trials were held from May 1946 to November 1948. The IMTFE established with three-broad criminal categories: (i) Class 'A' (Crimes against Peace) (ii) Class 'B' (Conventional War Crimes) and (iii) Class 'C' (Crimes against Humanity) (Tanaka, McCormack, & Simpson, 2011). The Class 'A' is also known as policy-makers, 'B' as policy-supervisors and 'C' as policy-implementers.

A total of 28 personnel including 18 military officials and 10 political leaders had been charged with class 'A' who were responsible for planning, preparation and initiating or waging of a war of aggression violating international law and treaties (AlMadani, January 24, 2020 & Timothy, 2001). The Class 'B' violated the laws or customs of law. The Class 'C' were involved in murder, enslavement, deportation, and other inhumane acts committed against the civilian population, before or during the war. More than 5,700 Japanese nationals were charged with Class 'B' and 'C' crimes on the course of entailing prisoner abuse. There are several controversies in regards of the functions of the Tokyo Tribunal under the leadership of the U.S. appointed military. For both Class 'B' and Class 'C', the utilitarian justice theory does not care having accountability or responsibility, justice, reparation and dignity and permits happening of pain, mischief, evil and unhappiness without thorough trials.

When the Potsdam Declaration had been signed, the war in Europe had ended but the war with Japan had been continuing (Japan Institute of International Affairs, March 2014). However, the Soviet Union did not sign the Declaration till August 8, 1945, till the United States dropped the second atomic bomb at Nagasaki. Finally, Japan surrendered six days after the six atomic bombs were dropped on August 14, 1945 (Butow, 1954).

Solis Horowitz argues that the Tokyo Tribunal had an American bias, unlike the Nuremberg trials. There had been only a single prosecution team led by an American General Douglas MacArthur, although the members of the Tribunal represented 11 different Allied countries (November, 1950). As a result, the Tribunal received less official support than the Nuremberg trials. The U.S. assistant Attorney General had a much lower position than Nuremberg's Robert H. Jackson, a justice of the U.S. Supreme Court (November, 1950).

MacArthur was in favor of a strong military action who criticized sharply on pacifism and isolationism that made him unpopular with the President Roosevelt administration (James, October

1, 1970). The U.S. President Eisenhower D. Dwight said, "MacArthur could never see another sun, or even a moon for that matter, in the heavens, as long as he was the sun" (Perry, May 25, 2014). Perry stated that MacArthur ranked among America's worst generals alongside Benedict Arnold and William Westmoreland and he was outspoken, insubordinate and arrogant, callous in dealing with dissent (Perry, May 25, 2014). Although, President Franklin D. Roosevelt promoted MacArthur to Supreme Commander of the Southwest Pacific Forces, the President stated that MacArthur had been the worst politician and had been a difficult General to manage (Sparrow, October 20, 2015). While MacArthur forces were compelled to withdraw from North Korea owing to China's intervention on war, he publicly spoke against the strategy that irritated Harry S. Truman, the President of the U.S. (Schnabel, January 24, 2016).

Indian Justice Radhabinod Pal argued that the Tokyo Tribunal failed to provide anything other than the opportunity for the victors to retaliate. He claimed that it has been an exclusion of Western colonialism and the atomic bombings at Hiroshima and Nagasaki from the list of crimes (Brook, August 2001). One prominent Calcutta barrister stated that the Tribunal had been little more than "a sword in a judge's wig".

The Dutch Professor and Justice of the Tokyo Military Tribunal B.V.A. Röling stated that the Allied forces were aware of the bombings and the burnings of Tokyo, Yokohama and other cities. We were there to defend the laws of war, but we saw that every day the Allies had violated them extremely (Schouten, 2014).

In regards of the statements by Justices Pal and Röling, having the conduct of air attacks, there had not been specific customary international humanitarian law of aerial warfare before and during the WW II. Once an American defense counsel for Japanese defendants argued that the surprise bombing of Pearl Harbor at Hawaii had been murder (Remembering Pearl Harbor, December 7, 2001). The Tokyo Tribunal did not speak a word having the indiscriminate bombings at Chinese cities by Japanese Imperial Forces (The Japanese Times, March 31, 2006). The Japanese soldiers gathered 1,300 Chinese forces and civilians at Taipai Gate and they were blown up by landmines. Besides, the Japanese troops tied the hands of 57,000 prisoners of war who were divided into four columns and shot (http://www.kevinpezzi.com/blog/Hirohito_war_criminal.php). It was evident that the Japanese troops had been terrorizing there under the active leadership of Emperor Hirohito.

The Tribunal never raised questions in Tokyo in fear of America being accused of the same for its atomic bombings at Hiroshima, Nagasaki and other Japanese cities (Sellars, March 2013). The bombings at Hiroshima and Nagasaki were war crimes even under the 1907 The Hague Convention (Streifer, 2017). As a result, the Japanese pilots and officials were prosecuted for their aerial bombings neither at Pearl Harbor nor at cities in China and other Asian countries (Primoratz, June 23, 2010).

Japanese former Prime Minister Prince Fumimaro Konoe (Hirohito's brother) stated that Hirohito was a major war criminal, but MacArthur did not prosecute him (Dower, June 2000). Why had Hirohito been that much favored by MacArthur? There were numbers of reasons. In 1945, U.S. discovered that Japanese had hidden large quantities of gold bullion and other pearl in the Manila, the Philippines. President Truman ordered to loot all of them secretly and decided to mobilize those

riches as action fund to fight global communism bribing political and military leaders and to manipulate elections in foreign countries for more than fifty years (Seagrave & Seagrave, 2003). When MacArthur arrived in Japan and met with shogun Hirohito, Hirohito asked him how much booty he had collected from conquered countries. MacArthur put forward a concept of project named Golden Lily (Gold Warriors) or America's secret recovery of Yamashita treasure (Seagrave & Seagrave, 2003). The Golden Lily had been used by the Emperor Hirohito to bribe MacArthur where he later lived a life of luxury after his retirement against meager Army salary. Moreover, the Golden Lily worked in close cooperation with the new premier; a Yamato named Prince Higashi-Kuni and Class 'A' category perpetrators. Konoe might also have been killed in the name of suicide as he strongly criticized Hirohito as the supreme leader of crime.

The perpetrators included former Prime Ministers, former Foreign Ministers and former Military Commanders of various ranks and files. However, Japanese Emperor Hirohito and other imperial family members had not been indicted. Hirohito retained his position on the throne, *albeit* with diminished status. The Tokyo Tribunal found many perpetrators guilty and sentenced them to punish ranging from death to seven years' imprisonment, whereas two defendants died during the trials. In Japan, several additional trials took place in cities outside Tokyo. A few allies such as Australia, Canada, India, and the Netherlands had been willing to see some reductions in sentences (Wilson et al, 2017).

The U.S.A. had the controlling roles in both Tribunals. It means, it had provided Chief Prosecutor, staff and necessary funds for running the Tribunals. There is a historical impression that the U.S.A. never pursues free, fair and impartiality (Horowitz, May 18, 2013). Because of American bias and vested political interest of superpower, the Tribunals had no more means for the acceptance of perpetrators or victor's justice (Tanaka, McCormack & Simpson, 2010).

The 124th Japanese Emperor Hirohito including other members of the Imperial Families such as Princes Yasuhiko Asaka, Fushimi Hiroyasu, Higashikuni and Takeda has been regarded as a potential suspect to establish the Tokyo Tribunal (European Journal of International Law, November 2010). Before the defeat of Japan by the Allied forces in 1945, Hirohito frequently appeared as the commander of the Japanese armed forces with military uniform (Krauth, 2001). After Japan's surrender, Hirohito had been scot-free for war crimes and crimes against humanity similar to many other leading government figures (Dower, June 2000).

On November 26, 1945, MacArthur confirmed that there was no need of emperor's resignation (Dower, 2000, June). Before the war crimes Tribunal was actually organized, the Allied Powers, the international peace and security and the court officials worked behind the scenes to escape the imperial family from being accused. However, they needed to gather to skew the testimony of the defendants for not to implicate the Emperor. Senior officials of the Court and the Japanese Government worked in collaboration with General Headquarters in compiling the lists of suspects' potential war criminals. The suspects arrested as Class 'A' and confined in the prisons of Europe (Sugamo Prison) seriously vowed to defend their sovereignty against any possible flaw of war accountability (Dower, 2000, June). Herbert P. Bix stated that when Brigadier General Bonner Fellers landed in Japan, he directly went to work protecting Hirohito and allowed the major suspected criminals to coordinate their stories that the Emperor would be freed from indictment (Bix, 2000).

Hideki Tojo, a General of the Imperial Japanese Army who served as the Prime Minister of Japan for the majority of the WW II period said, "I further wish to add that there is no Japanese subject who could go against the will of His Majesty, more particularly among high officials of the Japanese government or of Japan" (<http://www.hope-of-israel.org/hirohito.htm>). After Japan's surrender in September 1945, Tojo was sentenced to death by hanging on December 23, 1948 (Yenne, September 23, 2014).

In regards of the criminal responsibility of Hirohito, Judge-in-Chief William Webb of Australia declared, "No ruler can commit the crime of launching aggressive war and then validly claim to be excused for doing so because his life would otherwise have been in danger ... It will remain that the men who advised the commission of a crime, if it be one, are in no worse position than the man who directs the crime be committed" (Röling & Rüter, 1977). Justice Henri Bernard of France determined that Japan's declaration of war had a principal actor Hirohito, but escaped from all prosecutions of the past crimes (Röling & Rüter, 1977).

The Emperor Hirohito could not reverse cabinet decision is no less than a myth fabricated after the WW II. The Armed forces stopped fighting as soon as Hirohito ordered them to stop. MacArthur did a lot to make Hirohito easily fabricating as cohesion of Japanese people, but MacArthur believed that Hirohito can only fight against communism. Hirohito had been accountable for the endless war and a series of war crimes. Japanese slaughtered 30 million civilians including children and women who were raped before being murdered. Imperial Japanese soldiers inhumanly raped even girl children, in addition to elderly women who speared through her vagina Thus, Hirohito, Head of the State of Japan, had been one of the most heinous war criminals in the history whose brutality is expected never to be excused. History will recall Hirohito's war of aggression, war crimes and crimes against humanity forever till the existence of human beings in the world.

The Nuremberg and Tokyo Tribunals were highly influenced by the military doctrine and revenge politics, no truth for justice was granted to the victims or survivors and inducted perpetrators in both Germany and Japan. Both Tribunals were pseudo which were formed just to show the entire world that allied forces conducted Transitional Justice process to prosecute and punish the perpetrators and make them accountable and ensure justice to the victims and survivors.

In this study, however, utilitarian theory has its intrinsic value to make happy to the top-most elites providing bounty for the sake of booty. Intrinsic value has its own instrumental value, for instance, a carpenter needs a screwdriver. In the case of the IMTFE, it maximizes happiness, pleasure and well-being to the supreme leader and his immediate senior State leaders and security officials such as Class 'A' and it reverses to the Class 'B' and Class 'C' affected by the atomic bombs and armed conflict. It means, the utilitarian theory seeks to punish the offenders or perpetrators of Class 'B' and Class 'C' to discourage the society for future aggression or wrongdoing. This theory provides punishment to the Class 'B' and Class 'C' perpetrators without trials, but does not ensure justice, reparation and dignity to the victims forgetting their pain, suffering, mischief, evil and dissatisfaction.

DENUNCIATION JUSTICE THEORY

Denunciation is a hybrid of retribution and utilitarian justice theories. The Denunciation is a third major rationale that has close relationship between the heinous crimes and punishment. It

investigates the impact of punishment on law-abiding society (Rychlak, December 1, 1990). It leads to punish the perpetrators based on the sharp situation examination, observation and criticism of society (<https://law.jrank.org/pages/9576/Punishment-THEORIES-PUNISHMENT.html>).

Duhaime's Law Dictionary said, "A principle of sentencing in criminal law; that the sentence sends a clear message to the general public that the offence is a serious crime and the punishment just" (<http://www.duhaime.org/LegalDictionary/D/Denunciation.aspx>). Two Tribunals namely, the International Criminal Tribunal for the former Yugoslavia (ICTY) and sister judicial body International Criminal Tribunal for Rwanda (ICTR) shall be studied under this subheading.

Before the formation of the ICC in The Hague, a temporary judicial body called the ICTY and the ICTR were established on May 25, 1993 (Zupan, 2006). President Slobodan Milosevic and four other top officials were charged of war crimes in connection to the wars in Bosnia, Croatia and Kosovo. Milosevic became the first sitting Head of State who was charged of war crimes. The ICC was recognized as the 'UN Court of Law' that aimed to investigate the crimes of an individual in a specific country (Pathak, July 2019). Milosevic and other officials were charged of ethnic cleansing, killings of Kosovo Albanian civilians and indicted on 340 counts of murder, stemming from seven separate massacres (Amanpour et al, May 27, 1999).

The ICTY was continuing its war crimes investigation. Meanwhile, the terrible and subversive attack was initiated across Belgrade at 7.45 pm on March 24, 1999 by the NATO air strikes to Milosevic's troops to withdraw from Kosovo. The NATO bombings was continued till 78 days or ended on June 10, 1999 in the former Yugoslavia after signing of the Kumanovo Peace Deal that adopted the UN Security Council Resolution 1244. Immediately after the withdrawal of the Yugoslav military forces from Kosovo, world's largest 36,000 international peacekeepers were mobilized by the UNSC (Zivanovic & Haxhijaj, March 22, 2019) in the name of the United Nations Interim Administration Mission in Kosovo (UNMIK) and the NATO-led forces (KFOR) on June 10, 1999 (Yannis, December 7, 2010), the same day of the NATO strikes ended. The UNMIK was the officially mandated mission of the United Nations in Kosovo. The UNMIK was established in order to provide an interim administration in Kosovo with a sole purpose of ensuring Kosovo's autonomy (June 1999).

The then Chief Prosecutor of the ICTY Justice Louise Arbour stated that the Security Council had written a letter to provide permission to investigate allegations of war crimes and crimes against humanity in Kosovo (Press Release, January 16, 1999), even though she had not been allowed to go there. She issued warrants of arrest of all five men, but there had been no mechanism for arresting them. The Yugoslav Government denied providing visas to the ICTY officials (Human Rights Watch, November 5, 1998).

On September 24, 2000, Milosevic resigned from the Yugoslav Presidency amid demonstrations owing to the disputed on the immediate past Presidential Election (CNN.Com, March 31, 2001). He had charges of financial misdealing, causing damage to the Serbian economy, electoral frauds and bringing instability to the country during the period of hyperinflation in the early 1990's (Erlanger & Gall, April 2, 2001). When heavily police armed standoff surrounding nearly 36-hour at President Belgrade villa where five single shots and a burst of automatic gun fire were heard on March 31, 2001 (Human Rights Watch, June 19, 2001), Milosevic surrendered at 1.30 AM (April 1, 2001) with the Federal authorities signing a written negotiation deal that had guaranteed, "Milosevic will have an appropriate treatment, a fair trial to be provided, physical and

financial security to his family to be provided and he won't transfer at the international war crimes tribunal in The Hague (Erlanger & Gall, April 2, 2001).

He was detained before the March 31 deadline imposed by the U.S. Government (Abrahams, October 2001). On April 2, the U.S. Government stated that while the conditions had been met, economic assistance to Yugoslavia to be continued and supported for a future international donors' conference. The Government warned that the assistance shall be withheld if the Yugoslavia continued non-cooperation with the Tribunal (Abrahams, October 2001).

The 7,000 pages long report finally concluded that there was no any evidence of linking Milosevic committed genocide during the worst atrocity done in the Bosnian war where 7,000 Muslims were massacred at Srebrenica (Stephen, October 10, 2004). However, the conspiracy theory was initiated by the then Serbian Prime Minister Zoran Djindjic who announced to extradite him at the ICTY to stand trial for charges of war crimes instead and expressed his fear that the army would stop the transfer of him at the International Tribunal (Gall, July 1, 2001).

However, the U.S. State Department stated that the Government expects Yugoslavia to deliver Milosevic to the Tribunal, but the support for continued aid would not be based on single step alone. At least, right persons including top Army officials inducted by the Tribunal would also be delivered to the Tribunal. Because of the continued threat by the U.S. Government and strong U.S. ally's pressure, the Serbian Government transferred Milosevic to the Tribunal in The Hague on June 28, 2001 (Human Rights Watch, June 19, 2001 & Abrahams, October 2001). Milosevic denounced the Tribunal saying it was illegal as the Tribunal was established without the consent of the UN General Assembly. Therefore, he refused to appoint defense lawyers (Richard, July 3, 2001). He was charges of war crimes and genocide including violation of the laws or customs of war, grave breaches of the Geneva Conventions in Kosovo, Croatia and Bosnia.

He continued his own defense in the five-year long trial till he was found dead in his war time UN detention cell, The Hague on March 11, 2006 (Press Release, May 31, 2006 & BBC, March 11, 2006). His death occurred shortly after the Tribunal defined his request seeking specialized medical treatment at the cardiology clinic in Russia (Russian Press, February 25, 2006). Milosevic died from a heart attack and that there was no poison or other chemical substance found in his body that contributed to death (United Nations, May 30, 2006 & BBC, March 11, 2006). Milosevic suffered from high blood pressure (BBC, March 11, 2006). There were frequent reports in media that Milosevic had been poisoned by Tribunal in order to silence him (Waters, 2013). About 100,000 people attended the farewell ceremony of Milosevic in Belgrade and in Pozarevac in a major outburst of nationalist sentiment (Associated Press, March 19, 2006).

The UN War Crimes Tribunal rejected a request by the former president to go to Russia for medical treatment. A spokesman from Russia's foreign ministry said "Russian doctors were prepared to give him the necessary aid and the Russian authorities guaranteed to meet all the demands of the International Criminal Tribunal for the former Yugoslavia" (BBC, March 11, 2006).

Milosevic's lawyer Tomanovic requested for the autopsy to be moved to Moscow claiming that he was being poisoned in the jail, but the Tribunal rejected the demand. But autopsy was carried out by the Dutch pathologist. Milosevic was not popular at home, even though many Serbs were

intensely suspicious of The Hague Tribunal (United Nations, May 30, 2006). After sitting for 10,800 days, hearing 4,650 witnesses and digesting 2.5m pages of transcripts, the ICTY formally dismissed on December 21, 2017 (Bowcott, December 20, 2017).

The ICTY was the UN's first Special Tribunal, but it has been criticized for being politicized, lengthy, very costly, biased and unfair mission. While it has taken controversial decisions, there has still been a growing loss of faith on the Tribunal in the world. Tensions were intensified due to its critics and ability of working of it in Balkans. Despite a number of shortfalls and lessons learned, the Tribunal had been instrumental for the establishment of permanent international criminal court. Before the expiration of the Tribunal's tenure in 2014, the UNSC established the International Residual Mechanism to support the ICTY initiatives.

Established by the UN two years before Srebrenica, the ICTY failed to stop the Bosnian-Muslim genocide massacre slaughtered by Bosnian Serb soldiers in July 1995. The UN or its Tribunal failed to stop the violence in the Balkans (Askin, July 16, 2010). One Bosnian woman said, "finding that what happened at Srebrenica was a genocide is the most important achievement and without the ICTY this would not be possible" (Orentlicher, July 2010). However, the ICTY was criticized for its lengthy and complex hearings (Orentlicher, 2008).

Orentlicher in his book *That Someone Guilty be Punished: The Impact of the ICTY in Bosnia* writes, "If the new court evoked the potent symbolism of Nuremberg, its creation also seemed to symbolize the United Nations' lack of resolve—another in a series of inadequate responses to atrocities routinely described as the worst in Europe since World War II" (July 2010). While an anti-Serb bias is not inherent within the Tribunal, it does exist within individual actors in the ICTY who have influence over the outcome of the system (Bruning et al, undated).

Peter J. Verovšek writes, "The ICTY closed at the end of 2017 after 24 years in operation. It made a major contribution to the rise of global justice..., but did the Tribunal do anything to promote reconciliation in former Yugoslavia?... but calls the cycles of hatred" (January 12, 2018). Serbian President Tomislav Nikolic stated that The Hague war crimes court was a biased inquisition. He further stated that during the UN General Assembly debates, it was boycotted by the U.S. as inflammatory. Nikolic said,

"ICTY trials will never reach the real truth that is why the reconciliation will not be real and honest" (Ristic, April 11, 2013).

Despite Milosevic's poor health and Tribunal's fair and expeditious desire, the ICTY Registrar appointed Steven Kay and Gillian Higgins, who had been involved in Milosevic's defense as *Amici Curiae* on September 2, 2004. Milosevic refused to cooperate with them questioning the adequacy of the defense being offered to them by the Tribunal. Both Kay and Higgins have attempted to resign from their post, but the Tribunal had forced them to stay and work. The statute does not confirm the proposal that counsel can be assigned to Milosevic against his will (Markovic, 2005).

In regards to the highly controversial innovation of the ICTY to introduce international justice even during war, some people think that applying international law can stop new future crimes being committed. But, others have doubt that the independence of such justice makes peace negotiations even more difficult. They think it can reinforce the desire of military-political leaders suspected of

war crimes such as Syria's Bashar al-Assad to stay in power, so as not to spend the rest of their lives in jail (Hazan, January 3, 2018).

The ambition of the ICTY in the eyes of many was to influence the transformation of this post-communist warzone. But, democratization had never been declared a part of the Tribunal's mandate, but was strongly implied in holding leaders accountable, bringing justice to victims, giving victims voice, establishing the facts, developing international law and strengthening the rule of law (Jovana & Vladimir, 2017).

The negative perceptions of the Tribunal have impacted the domestic power balances by bolstering support for anti-reform forces and undermining the strength of the liberal democratic movement resulting the destabilization of Serbia's liberal democratic transition (Spoerri & Freyberg-Inan, December 12, 2008).

The attitude of the international community to war crimes Tribunal is considered by a degree of uncertainty. The principle of accountability for international crimes is increasingly entrenched towards conflict resolution. The awful state of funding for war crimes Tribunal demonstrates frustration with the efficiency of such Tribunals in practice. That inconsistency is attained by current approaches towards the ICTY and, in particular, its Completion Strategy (Raab, March 1, 2005).

The ICTY indicted over 150 political and military personnel to prosecute and punish individual war crimes in the former Yugoslavia. Most of the warlords of war-crimes in Croatia and Bosnia were never indicted. Finally, only six people from Serbia or Montenegro were indicted by the ICTY for war crime in Bosnia. One was killed before being arrested. Another died during the trial. Two war crimes Bosnian Serb leaders Radovan Karadžić and Ratko Mladić indictees (beside Slobodan Milošević) were not arrested till April 2008 (Hoare, April 2008).

Quoting a book by Florence Hartmann (former Spokesperson to the Chief Prosecutor), according to Professor Hoare, a former investigative team employee at the ICTY worked on indictments of senior members not only Milošević but also Veljko Kadijević (Serbian General of the Yugoslav People's Army), Blagoje Adžić (Minister of Defense-Yugoslavia Government), Borisav Jović (Yugoslavia's Ambassador to Italy), Branko Kostić (Serb Politician) and Momir Bulatović (first President of the Yugoslav Republic of Montenegro) among others. However, Hoare claims that, owing to intervention of Carla del Ponte (Chief Prosecutor), these drafts were rejected and the indictment confined to Milošević alone (<https://greatersurbiton.wordpress.com/2008/01/10/florence-hartmanns-peace-and-punishment/>). Florence Hartmann criticized the failure of the Western alliance to support the cause of justice in the former Yugoslavia. Her book paints a portrait of Western powers, mainly the U.S., Britain and France in the ICTY prevented the arrest of war-criminals through a combination of obstruction, manipulation, mutual rivalry and sheer inertia (<https://greatersurbiton.wordpress.com/2008/01/10/florence-hartmanns-peace-and-punishment/>).

Former Chief Prosecutor Carla del Ponte was accused of allowing bullying and bribing of witnesses in trial of alleged Serbian warlord Vojislav Seselj. On August 18, 2010, Judges of the ICTY in The Hague ordered an independent inquiry into the practices of Del Ponte and two prominent serving

prosecutors: Hildegard Ürtz-Retzlaff and Daniel Saxon, after complaints from witnesses that they had been harassed, paid, mistreated and their evidence tampered with. One Serbian witness stated that he was offered a well-paid job in the US in return for testimony favorable to the prosecution (Traynor, August 18, 2010). This in itself was evident that such Tribunal supports the U.S. vested interest justice rather than true, fair and impartial judgment.

On the course of allegations censorship, on July 2011, the Appeals Chamber of Tribunal confirmed the judgment of the Trial Chamber which found journalist and former Tribunal's Chief Prosecutor's spokesperson Florence Hartmann guilty disrespecting court and fined her €7,000. Hartmann argued that Serbia was freed of the charge of genocide. A group of individuals and organizations stated that the Tribunal in these appellate proceedings "imposed a form of censorship aimed to protect the international judges from any form of criticism" (Sense Tribunal, July 19, 2011).

Slobodan Milošević claimed that the Tribunal had no legal authority for interrogation as it was formed by the UN Security Council. The Tribunal was established on the basis of Chapter VII of the United Nations Charter under which Security Council can take measures to maintain or restore international peace and security (Mak, November 8, 2007). British Conservative Party leader Daniel Hannan had called for the court to be abolished. He claimed that it was anti-democratic and a violation of national sovereignty (Hannan, February 26, 2007).

No report was produced as the Tribunal never registered complaints from the victims, never conducted interviews and public hearings (Ilic, April 23, 2004). The Tribunal was much criticized both inland and abroad (Hayner, 2011). In May 2001, Yugoslav president Vojislav Kostunica repeatedly denigrated The Hague Tribunal as a politicized and anti-Serb court (Human Rights Watch, June 19, 2001). Thus, the ICTY held it to be flawed in principle (Yee, January 1, 2004).

In 24 years and seven months period, a total of 161 persons were indicted, amongst them 90 were convicted and sentenced by the Tribunal. On November 29, 2017, the final judgment was issued by the Appeal Chamber of the Tribunal. The Tribunal was formally closed on December 31, 2017 (ICTY, November 29, 2017). The residual functions of the Tribunal such as appeal proceedings since July 1, 2013 are under the jurisdictions of the International Residual Mechanism for Criminal Tribunals or IRMCT (<https://unictr.irmct.org/en/tribunal>).

International Criminal Tribunal for Rwanda (ICTR)

The ICTR had been set up by the UN Security Council Resolution 955. It had a mandate to find-out the most responsible persons of crimes, namely genocide and violations of international humanitarian law committed on the territory of Rwanda and neighboring States from January 1, 1994 to December 31, 1994 on the course to deliver justice to the victims (S/RES/955, November 9, 1994). The ICTR was located in Arusha, Tanzania and has office in Kigali, Rwanda (S/RES/977, February 22, 1995). Its Appeals Chamber is located in The Hague, Netherlands (<https://unictr.irmct.org/en/tribunal>). The ICTR was formed to deliver verdicts against persons responsible for committing genocide. The ICTR was also the first institution to recognize rape as a means of perpetrating genocide (<https://unictr.irmct.org/en/tribunal>).

On the evening of April 6, 1994, a plane carrying the then Rwandan President Juvenal Habyarimana and his counterpart Cyprien Ntaryamira of Burundi (both Hutus) was shot down by air missiles

while preparing to land in Kigali that killed everyone on board (BBC, April 4, 2019). In 100 days (April to June, 1994) of genocide, most of the minority ethnic Tutsis and moderate Hutus estimated 500,00 to 800,000 were killed. Thousands of Tutsi women were taken away and kept as sex slaves (BBC, April 4, 2019). The Tribunal indicted 93 individuals where two-third (62) percent were sentenced (Eagle, December 27, 2015). Those indicted individuals were politicians, high-ranking military and government officials, businessmen, militia and media leaders.

Hutu extremists blamed the Tutsi led-guerrilla group, named the Rwandan Patriotic Front (RPF) assassinated two Hutu Presidents (BBC, April 8, 2014). The RPF under the leadership of current President Paul Kagame conquered the Hutu-led Government and ended the genocide (BBC, December 26, 2018). After four-year long running investigation into the shooting down of a plane by French Judges, one judge stated that the then Rwandan and Ugandan Presidents were shot-down by the Paul Kagame - the leader of a Tutsi rebel group carrying out the rocket attack (BBC, May 17, 2011).

The Tribunal (1995-2012) was criticized as it was first of all established in Kigali, the capital of Rwanda far from the victims of the genocide. Western countries did nothing to stop the genocide. They turned blind eyes. Besides, the ICTR was established and functioned in three countries: Arusha, Tanzania and Kigali, Rwanda, but Appeals Chamber in The Hague, Netherlands (<https://unictr.irmct.org/en/tribunal>). There had been a difficulty to bring Rwandan witnesses to testify in their cases Arusha and The Hague (Crawford, December 15, 2015).

In regards of the Tribunal establishment, opinions remain divided on whether or not the court dispensed justice. When the mass killing began, the Belgian battalion which had mandated to protect the then prime minister left the school. Then Hutu militia group moved in and killed an estimated 2,000 Tutsis who had sought refuge on the premises (<https://www.dw.com/en/ictr-a-tribunal-that-failed-rwandan-genocide-victims-and-survivors/a-51156220>).

The ICTR Prosecutor Carla Del Ponte secretly launched special investigation on Tutsi's RPF for its alleged crimes against the Hutus during the genocide; however, she was removed from the job under pressure from Rwandan (Tutsi) President Paul Kagame (Edwards, September 17, 2003). The Kofi Annan, the UN Secretary-General, had been inflexible when she appealed for his help in plugging leaks that had begun to undermine her authority. Annan (from Ghana) had been under pressure to recommend an African prosecutor replacing a Swiss national Ponte (Edwards, September 17, 2003). The Tribunal had unwillingness to prosecute war crimes and crimes against humanity committed in 1994 by the RPF also that ended the genocide and has been Rwanda's ruling party ever since. The RPF troops killed thousands of predominantly Hutu civilians (Human Rights Watch; December 23, 2015).

Human Rights Watch said, "all serious crimes, whoever commits them and wherever they are committed, should be prosecuted and tried" (Human Rights Watch, December 23, 2015). The Tribunal has had number of limitations and attracted criticism. On December 1, 2015, the Rwandan Justice Minister reiterated the Government's criticisms as Government failed to deliver reparation for victims and suspected persons were allowed to speak to the media. Others have criticized the relatively small number of victims' cases handled by the Tribunal despite its high operating cost, bureaucratic processes and the length of time trials have taken (Human Rights Watch; December

23, 2015). Jean Pierre Dusingizemungu, an umbrella group for genocide survivors in Rwanda, said, "The ICTR has delivered nothing for either the victims or the survivors of the genocide" (Leithead, December 14, 2015).

Diplomatic representatives of Belgium, the U.S., France, and Germany residing in Kigali all had good sources of information within the Rwandan community and frequently consulted with each other. Besides, the diplomats rarely shared what they knew with the peacekeepers (Forges, March 1, 1999). There had been little formal exchange among their military intelligence services. Hutu criticized the ICTR delivering "victor's justice." Yolande Bouka, Institute for Security Studies at Nairobi wrote, "The tribunal did not fully investigate and prosecute crimes allegedly committed by the RPA during that period is a significant failure of the ICTR" (Kelley, January 9, 2016).

Geraldine Mattioli-Zeltner, the International Justice Advocacy Director of Human Rights Watch said, "In most of history, genocide, mass killings and what today are called crimes against humanity went unpunished" (Eagle, December 27, 2015). The Tribunal has been the issue of continued criticism in regards of accused persons, cost (\$1.5 billion), and length of trials (Peskin, 2008). The Security Council called the Tribunal to complete all its work by the end of 2012, but could not accomplish the tasks on time. The lack of indictments of alleged crimes done by the RPF resulted in severe criticism of the Tribunal by civil society and NGOs (Eltringham, April 29, 2014).

The ICTR was criticized accusing the Tribunal of being biased which focused Hutus involvement in the 1994 genocide, crimes against humanity and violation of Common Article Three of Additional Protocol II of the Geneva Convention and forgetting crimes committed by the minority Tutsis in Rwanda (Kagire, February 1, 2014). Most witnesses criticized that the Tribunal worked to prosecute crimes of genocide done by predominantly Hutu Government only, not alleged war crimes and crimes against humanity by predominantly Tutsi Rwandan Patriotic Front (RPF) as Victor's Justice where Victors won the war capturing State Power in Kigali in July 1994 (Crawford, December 15, 2015).

There are a number of differences on ICTY and ICTR. The ICTY had jurisdiction over crimes committed in both international and domestic or internal armed conflict unlike ICTR jurisdiction determined in internal armed conflict alone. The ICTY had jurisdiction over crimes against humanity if they were committed in an armed conflict, but the ICTR had jurisdiction over crimes against humanity committed on national, political, ethnic, racial, or other religious grounds (Islam, February 23, 2016). The ICTY had jurisdiction over crimes committed on the territory of the former Yugoslavia, but ICTR had jurisdiction over crimes committed in Rwanda and Rwandan neighboring states. Both Tribunals were the model of starting point to exercise permanent ICC jurisdiction.

Thus, the denunciation theory normally aims at discouraging the society from committing crimes or criminal acts (<https://www.britannica.com/topic/punishment#ref272336> & Melissaris, November 2014). It is considered logical and just. Perpetrator makes accountable through the legal punishment owing to his/her involvement on crimes or wrongdoings. It generally happens because of society's pressure of condemnation to promote the idea that offenders deserve to be punished.

RESTORATIVE JUSTICE THEORY

Crimes hurt everyone (i.e., victims, community and country as a whole). Restorative justice generates an obligation to make things towards righteousness. Restorative Justice is a theory of fair-hearing that emphasizes restoring the damage caused by criminal behavior. (<http://restorativejustice.org/restorative-justice/#sthash.gWd9PhOe.dpbs>). It transforms people's mindset, relationships (among the populace), communities and territories. Restorative justice aims to get perpetrators to take responsibility for their past crimes or actions to give them an opportunity redeeming them and to discourage them for not further harm (Webber, October 25, 2009). Restorative justice is to ensure satisfaction to the victims and punishment to the perpetrators (Sherman, & Strang 2007) under the international and national legal jurisdiction. The Hague Court complements existing domestic judiciary system exercising its international jurisdiction. In this restorative justice, when national Courts failed to prosecute and punish criminals or perpetrators, the concerned conflicting (post-conflict) State or UN Security Council refers situations to The Hague Court to investigate the crimes under the Rome Statute.

The Rome Statute is the treaty that aimed at establishing a permanent international court to prosecute individuals on the accusation of international crimes (ICC, 2011). The Hague Court has unique functions. The Court shall investigate and prosecute the crime of genocide, the crimes against humanity and war crimes when concerned national authorities were or are unable or unwilling to identify and make accountable the perpetrators under the legal management and provide justice to the victims. It has power to exercise its jurisdiction on the serious human rights law violations (crimes) of international concern. If the United Nations Security Council suspects that most serious crimes of international concern have been committed by the State authorities, there shall agree to precede a truth investigation.

Kenya

A delegation of African Foreign Ministers met with the UN Security Council for informal discussions on October 10, 2013 seeking a deferral of the charges against Kenya's President Uhuru Kenyatta and his Deputy William Ruto. The deferral is a serious threat to international peace and security in the entire African Region. The UN Security Council has the power to issue deferral for ICC cases pursuant as an Article 16, but such a decision would require the agreement of all 15 Council members, but they were divided on the issue (Besheer, October 31, 2013). Kenyatta pushed accusing fingers at the United States of America and Britain which were major proponents of the Court yet. They refused to subject themselves under its jurisdiction (Hodgins, July 23, 2015). The special Summit agreed a resolution stating that no sitting African Head of State should appear before the Court as African leaders had been complaining for long that the ICC unfairly targets them. The AU had also discussed withdrawing from the ICC (Doyle, October 12, 2013).

In February 2014, the prosecution admitted Kenyatta's investigations where a key insider witness had confessed giving false testimony. In March, the judges granted a temporary adjournment in the trial to permit the prosecution and the government of Kenya to work together to resolve a long-outstanding request for Kenyatta's financial and other records and evidences. However, the vast majority of records had not been produced by October 2014. In October 2014, the OTP asked the judges to refer Kenya to the ICC's Assembly of States Parties for non-cooperation and suspend the case indefinitely until the government submitted (Human Rights Watch, December 8, 2014). On December 3, 2014, the ICC's Judges rejected the prosecutor request for further delay to try to get

records from an uncooperative Government of Kenya. The judges gave the prosecution for couples of day to find-out whether there had been sufficient evidence to go to trial or to withdraw the charges. However, on December 5, the prosecution stated that it did not have the evidence to prove Kenyatta's alleged criminal responsibility. Kenya's long tradition of impunity and pressure to the witnesses became a serious obstacle to a fair process before the ICC (Human Rights Watch, December 8, 2014).

Carla Ferstman stated that the withdrawal of Kenyatta had been a devastating blow to victims of the post-election violence where The Hague Court completely failed to prosecute the perpetrators. She further said that Kenya's lack of cooperation and allegations concerning the witness intimidation are serious commitment to justice on the course to use full arsenal of the Rome Statute (Ferstman, December 5, 2014).

The Open Ended (Foreign) Ministerial Committee to 28th Ordinary Session of the Assembly of the African Union (January 30-31, 2017) expressed its dissatisfaction over the role of the UNSC in regards to the cases conducted in The Hague Court. The Committee decides to discontinue any further engagement with the UNSC as no tangible result will come out due to the recalcitrant position of some members of the UNSC. The Committee further expressed its deep concern over the slow pace of ratification of the Protocol Amendments to the Protocol of the African Court of Justice and Human and Peoples' Rights that was adopted on June 27, 2014. It reiterates its previous call on Member States to sign and ratify the Protocol as soon as possible. The Committee fully welcomes and supports the sovereign decisions taken by Burundi, South Africa and The Gambia as pioneer implementers of the Withdrawal Strategy from the ICC and calls on Member States to consider implementing its recommendations (Assembly/AU/Dec.622(XXVIII), January 30-31, 2017).

The African Union deferral requested the UNSC to postpone the cases against Kenyatta and Ruto after the attack at a Nairobi mall by al-Shabab militants. There had been a robust debate between the African Union and The Hague Court on Africa's quest to end impunity and the international legal order in general (Chigara & Nwankwo, December 8, 2015). The Extraordinary Summit was called upon the request of Kenya having Kenyan leaders' trial at the Court. Kenya campaigned aggressively for the Summit. There had been self-interest whether The Hague Court will further pursue to other African leaders as well. African leaders wished to reverse international law course for not to apply prosecution to the sitting Heads of State and Government or senior officials of a Government in power for serious crimes before the Court. Extraordinary Sessions required the support of two-thirds of AU Member States which were held at Addis Ababa in Ethiopia on October 12, 2013 (Dersso, October 28, 2013). The excerpt of the Summit outlines the following decisions:

- No charges shall be commenced or continued before any International Court or Tribunal against any serving AU Head of State or Senior Member of a Government in power;
- The trials of President Kenyatta and his Deputy Ruto should be suspended until they complete their terms of office;
- The Executive Council of the African Union shall undertake consultations with five Permanent Members of the UNSC having deferral of the Kenyan and the Sudan cases of The Hague Court;

- AU demanded to expand the mandate of the African Court on Human and Peoples' Rights (AfCHPR) to deal with international crimes: genocide, crimes against humanity and war crimes and invited Member States to support the process;
- African States Parties proposed relevant amendment such as Article 121 (amendment provisions) of the Rome Statute;
- African States Parties shall state to The Hague Court having the prosecution to the African sitting Heads of State and Government and its impacts on peace, stability and reconciliation there;
- AU Member State wishes to seek advice of the AU for any referral case at The Hague Court;
- Kenya should send a letter to the UNSC requesting deferral, in conformity with Article 16 (deferral of investigation or prosecution) of the Rome Statute and postpone trial of President Kenyatta; and
- President Kenyatta will not appear before The Hague Court until the time as concerns raised by the AU and its Member States (Ext/Assembly/AU/Dec.1-2. October 12, 2013).

The Hague Court has its own final determination jurisdiction over the case. The Hague Court shall override the decision of a nation's judicial system and it shall pursue a case if it decides that a State is unwilling or unable to do so (Amann & Sellers, 2002). For example, if the prosecutor of The Hague Court wanted to investigate and charge the U.S. President Reagan for a bombing raid in Libya, the only way to prevent the case from going forward would be to have own U.S. Justice Department investigate the President. If the U.S. Government then declined to prosecute, it would be up to the judgment of The Hague Court whether to prosecute and pursue the case (<https://www.govinfo.gov/content/pkg/CHRG-105shrg50976/pdf/CHRG-105shrg50976.pdf>).

However, the judges of The Hague Court will be elected by a super majority of the State Parties those of democratic countries respecting rule of law. The group of 77 developing countries in the UN General Assembly who often vote against the United States shall mainly be targeted to establish the Court(<https://www.govinfo.gov/content/pkg/CHRG-105shrg50976/pdf/CHRG-105shrg50976.pdf>).

Under the irrelevance of Official Capacity (Article 27) of the Rome Statute, the issue of the immunity of Heads of State for serious international humanitarian crimes had been put to rest. However, the Statute applies equally to all persons without any distinction based on official capacity: Head of State or Government, Parliament, an elected Representative and so forth. It means, no case excuse a person from grave criminal responsibility under the Statute of The Hague Court. It is to be noted that if the AU Member States demands are fulfilled, there is needed a reverse amendment on The Hague Court Statute.

Having the AU decision to the UNSC deferral against the leaders of Kenya and Sudan cases is equally baffling, impossible to understand. Under Article 16 of the Rome Statute, there is no any right of deferral to the UNSC, except the suspension of an ongoing investigation or prosecution for an initial period for 12 months. Remarkably, the suspension of the trials further time being may result in loss of testimonies or evidences. In regards to submit testimonies to the OTP, the Attorney General of Kenya claims that only the Court can force the Government to provide such evidence, not the Prosecutor (Olugbuo, September 12, 2014). On the other hand, the UNSC shall exercise its authority

under Article 16 only if it determines to continue the investigation or prosecution that creates a threat to international peace and security within the frame of Chapter VII of the UN Charter. Terrorism facing by Kenya shall be a reason enough to deferral. Kenyatta will not appear at the ICC until African demands are met (Daily Nation, October 12, 2013). Speaking at a Press Conference at the end of the Summit, Ethiopia's Foreign Affairs Minister Tedros Adhanom, who also chaired the AU Executive Council, stated the Special Summit has asked President Kenyatta to skip the trial (Daily Nation, October 12, 2013). His trial was scheduled to open on November 12, 2013 by The Hague Court.

At the UN Security Council, political differences between some African and non-African Members have clearly been seen. The UN Security Council did not respect the AU's views. Kenya's Foreign Minister argued that the past two years seemed to indicate undesirable and disregarding trends that appear on the part of the Security Council (Boutellis & William, April 2013).

Despite the African Union and its Member State Parties' request, the UNSC voted seeking deferral of Kenyan leaders' trial fails to win adoption: 7 voting in favor, 8 abstaining (SC/11176, November 15, 2013). The 8 UNSC Members abstained the motion are U.S.A., France, Britain, Guatemala, Argentina, South Korea, Australia and Luxembourg. It is to be noted that U.S.A. has not been a Member of The Hague Court. The 7-Member of the UNSC who voted 'yes' are not Court Members: China, Russia, Togo, Azerbaijan, Rwanda, Morocco and Pakistan. Resolution needs 9 votes to adopt it (Nichols, November 15, 2013). Kenyan Ambassador to the UN stated that they wanted to see reform in the UNSC to avoid powerful states imposing their will on the rest of the world (Kelley, November 23, 2018). Kenyan Foreign Minister expressed in a statement that the UNSC failed to act in the interest of the peace, security and stability of the African continent that resulting humiliated the continent and its leadership (Nichols, November 15, 2013). U.S. Ambassador to the United Nations Samantha Power said, "...justice for the victims of that violence is critical to the country's long-term peace and security. It is incumbent on us that all to support accountability for those responsible for crimes against humanity" (Nichols, November 15, 2013).

A total of 34 African Member States are members of The Hague Court Statute. Nine out of the 10 situations of The Hague Court which has been investigating are from African countries (France 24, March 15, 2012). The AU Summit proposed a coordinated withdrawal unless The Hague Court was reformed (Maasho, February 1, 2017). African leaders have adopted a strategy calling for a collective withdrawal from the Court (Meseret, February 1, 2017). For the withdrawal purpose, the Open Ended Committee of Ministers of Foreign Affairs (OECMFA) was established pursuant to Decision Assembly that was adopted on 25th Assembly in June 2015 (Assembly/AU/Dec.569-587(XXV), June 14-15, 2015). It was designed to develop strategies to implement the various decisions of the Assembly concerning to the Court and follow up the AU's request on suspension and withdrawal against Darfur and Kenya's President and Deputy President respectively. The Committee had been responsible to develop a comprehensive collective withdrawal strategy from the Court and submit the strategy to an Ordinary Session of AU Executive Council (EX.CL/ Dec.986-1007(XXXII)).

The Policy Organs of the Union has been raising the issue of withdrawal since 2009 and African Union Assembly called to the UNSC to defer the proceedings initiated against a sitting Heads of State and Government. Since then, the triangular (AU, UNSC and The Hague Court) debate moves ahead

over its mandates. The AU Assembly has formed the OECMFA to develop a withdrawal strategy intending for the following actions:

- ensure international justice in fair and transparent manner to devoid of any perception of double standards;
- guarantee legal and administrative reforms in The Hague Court;
- enhance regionalization of international criminal law;
- encourage the adoption of regional solutions for the African problems; and
- preserve the sovereignty, integrity and dignity of the Member States (Assembly/AU/Dec.569-587(XXV), June 14-15, 2015).

The withdrawal from a treaty aims to provide a holistic approach, analysis and implications of initiating the withdrawal provision under the Rome Statute respecting a strategy of mapping constitutional provisions of individual African Member State party.

The AU held its bi-annual Summit in Addis Ababa, Ethiopia from January 22 to 31, 2017. Similar to previous years, international criminal justice received much attention that came up with final draft of the Withdrawal Strategy Document. The draft calls on Member States to consider implementing its recommendation (Kasande, Gitari & Suma, February 16, 2017). The document stated that the collectiveness of the action has been the potential to radically reconfigure existing forms of international cooperation. Withdrawal from a treaty, "can give a denouncing state additional voice, either by increasing its leverage to reshape the treaty to more accurately reflect its interests of those of its domestic constituencies or by establishing a rival legal norm or institution together with other-like-minded states" (African Union, January 12, 2017). Individual consequences of withdrawal are just as much political as they are legal. The concept of collective withdrawal has not yet been recognized by international law which is further required to seek out additional guidance regarding the potential emergence of a new norm of customary international law. The Hague Statute treaty obligations are inconsistent with the customary international law that offers diplomatic impunity to sitting Heads of the State. Former UN SG Kofi Annan said, "African exodus from ICC must be stopped" (Wintour, November 18, 2016).

In 2016 three African states namely South Africa, Burundi and the Gambia submitted written notifications of withdrawal from The Hague Court Statute (Keppler, February 17, 2017). The withdrawal notification was submitted to the Secretary-General of the United Nations pursuant to Article 127 of the Rome Statute (Ssenyonjo, June 13, 2017). In accordance with Article 127(1) of the Rome Statute, any State Party to the Rome Statute may withdraw from the treaty by written notification at the UNSC. The AU welcomed and supported three withdrawal notifications considering them as pioneer implementers' of its Withdrawal Strategy' (<https://www.bbc.com/news/world-africa-38826073>).

South Africa who has been one of the first signatories (first open day of signature on July 17, 1998) and the first African State to domesticate the Rome Statute has also been a second State Party to send withdrawal notification to the Secretary-General of the UN on October 19, 2016 (C.N.786.2016.TREATIES-XVIII.10, October 25, 2016). The cancellation of State Party to the Rome Statute was finally notified in March 2017 (C.N.121.2017.TREATIES-XVIII.10, March 7, 2017).

The refusal to execute an ICC warrant for Sudan's President Omar al-Bashir had been a major cause of withdrawal of South Africa from the Rome Statute. Tensions started to rise in June 2015 when al-Bashir had attended the African Union summit in Johannesburg. On February 22, 2017, the High Court of South Africa ordered that the government's notification was illegal and that was ruled effective from March 7, 2017 (C.N.121.2017.TREATIES-XVIII.10, March 7, 2017). South African Parliament rescinded the bill of ICC withdrawal endorsed by the Cabinet (Coalition for the International Criminal Court, March 15, 2017). However, the ruling African National Congress party strongly supported the withdrawal from the ICC.

Burundi has been the first State Party to the Rome Statute in the world to withdraw from the Rome Statute. On October 18, 2016, Burundi's President Pierre Nkurunziza signed legislation calling for its withdrawal from The Hague Court alleging that the Court has been an instrument of powerful countries to punish leaders who do not comply with the West imperials (Human Rights Watch, October 27, 2016). Burundi's Parliament has claimed The Hague Court is merely "a political tool used by foreign powers to remove whoever they want from power on the African continent" (Human Rights Watch, October 27, 2016). The withdrawal decision was formally announced on October 27, 2017.

On November 10, 2016, Gambia sent a notice to the UN Secretary-General of their decision to withdraw from The Hague Court with immediate effect, but The Gambia rescinded its withdrawal notification on February 10, 2017 (C.N.62.2017.TREATIES-XVIII.10, February 10, 2017) after the new President elected through presidential election.

Zimbabwean President and African Union Chairman Robert Mugabe stated that ICC is unwelcome in Africa and Africa does not want The Hague Court at all (Aljazeera, June 16, 2015). One of the criticisms of The Hague Court is that it failed to consult the African Union before a decision to prosecute African leaders (Apiko & Faten, November 2016). One of the significant concerns is that The Hague Court prosecutor exclusively focuses to sub-Saharan Africa.

Finally, restorative justice significantly reduces repeating crimes by the perpetrators; perpetrators are brought to justice making them accountable for their past crimes; victims' post-traumatic stress is diminished through counseling; provides satisfaction to the victims offering reparation based on victims' needs; and minimizes victims' desires for violent retaliation against the concerned perpetrators through the thorough investigation informing to the concerned victims. Therefore, restorative justice is to prosecute individuals for the international gravest crimes of war crimes, crimes against humanity, genocide and crime of aggression.

TRANSNATIONAL JUSTICE THEORY

Transnational is extending the circumstantial situation beyond the borders of a single nation. It extends to operate in more than one national boundary or beyond the border (www.collinsdictionary.com/dictionary/english/transnational). Armed conflict greatly influences the transnational people that enhance the immigration, weakening the control of a nation-state border, inhabitant and territory (Huff, Undated). Transnational justice follows both judicial and non-judicial response which is used by societies to address widespread human rights violations and or abuses, mass atrocities, or other forms of degrading treatment and collective trauma (Trent, August 23, 2019).

Transnational crimes committed on the territory of the non-State Party, but its magnitudes significantly affect the people of another State Party of the Statute, in some cases, transits State may also be influenced: Afghanistan-USA, Bangladesh-Myanmar, Iraq-UK, Palestine-Israel, Russia-Georgia, Syria-Jordan and Ukraine-Russia. Transnational justice attracts within domestic jurisdiction and beyond border pursuing international humanitarian law.

Afghanistan-USA

Afghanistan is not a State-party to the Rome Statute, but deposited its instrument of accession on February 10, 2003, in which The Hague Court may exercise its jurisdiction over crimes committed on the territory of Afghanistan since May 1 2003. The prosecutor started investigation on alleged crimes against humanity by the Taliban and alleged war crimes by Afghan National Security Forces and the US military and Central Intelligence Agency (Human Rights Watch, April 12, 2019). The OTP initiated the preliminary examination of the situation in Afghanistan on May 1, 2003, and the report of it was made public in 2007. The preliminary examination focuses on war crimes and crimes against humanity committed in the context of the armed conflict between pro-Government forces and anti-Government forces (<https://www.icc-cpi.int/afghanistan>).

On November 20, 2017, the Prosecutor requested the Judges to initiate an investigation into war crimes and crimes against humanity committed in Afghanistan after May 1, 2003 (ICC, December 4, 2017). On September 11, 2018, the National Security Advisor of the United States of America threatened to arrest and sanction judges and other officials of the ICC if it moved to charge against the US citizens who served in Afghanistan (Agency France Presse, September 11, 2018). Besides, on April 4, 2019, the US Government rejected entry visa for the Court's Prosecutor Fatou Bensouda to investigate into possible war crimes and crimes against humanity committed by the American soldiers and their allies in Afghanistan (BBC, April 5, 2019 & Reuters, April 5, 2019).

On April 4, 2019, the Secretary of State Mike Pompeo threatened, "If you are responsible for the proposed ICC investigation of the US personnel in connection with the situation in Afghanistan, you should not assume that you will still have or get a visa, or that you will be permitted to enter the United States." He further warned, "We are prepared to take additional steps, including economic sanctions if the ICC does not change its course" (BBC, April 5, 2019). On April 12, 2019, fearing the US Government's threat; the Pre-Trial Chamber II unanimously rejected the request of the Prosecutor to proceed with an investigation into alleged war crimes and crimes against humanity committed in Afghanistan (ICC, September 17, 2019).

The U.S. President welcomed the decision of The Hague Court as a major international victory, but international human rights bodies severely criticized it. The decision came a week after the U.S. annulled entry visa of the Court's Prosecutor (BBC, April 12, 2019 & Human Rights Watch, April 12, 2019). Having the decision of the Pre-Trial Chamber II, the Prosecutor appealed at the Appeals Chamber of the Court. On December 4-6, 2019, the Appeals Chamber of the Court held a hearing to receive oral arguments in the appeals of the victims and of the Prosecutor against the Pre-Trial Chamber II's decision pursuant to Article 15 of the Rome Statute for the Investigation into the Situation of Afghanistan (ICC, November 29, 2019).

On March 5, 2020, the Appeals Chamber of The Hague Court unanimously decided to authorize the Prosecutor to initiate an investigation into alleged crimes under the jurisdiction of the ICC in

relation to the situation in Afghanistan. The Appeals Chamber amended the previous decision of Pre-Trial Chamber II of April 12, 2019 (Press Release, March 5, 2020). The Appeals Chamber given a verdict to investigate Afghanistan's case within the limitations identified in the Prosecutor's request of November 20, 2017 (Press Release, March 5, 2020).

Bangladesh-Myanmar

It is estimated that 1.1 million Rohingya, one of the many ethnic minorities but the largest percentage of Muslims in Myanmar were targeted by the State security forces (BBC, April 24, 2018). In 2012, as all Rohingya made illegal immigrants from Bangladesh, the tensions between Rohingya and majority Rakhine (predominantly Buddhist) population erupted where tens of thousands Rohingya compelled to leave homes and into squalid displacement camps. Those living in the camps were confined and segregated from other communities (Amnesty International, September 7, 2017). In October 2016, Rohingya lethal attacks on police outposts in northern Rakhine State, the Myanmar army launched a military to crackdown targeting the community as a whole. Soldiers and police extrajudicially killed thousands of Rohingya, no counts of raped infants, girls and women, dozens of thousands torched whole villages and no records of arbitrarily arrested Rohingya men without any information and no account of whereabouts arrested persons. Those actions have been identified as crimes against humanity (Amnesty International, December 19, 2016) and ethnic cleansing. About 750,000 Rohingya fled from non-State Party Myanmar to the neighboring territory of State Party Bangladesh.

On July 4, 2019, pursuant to article 15 of the Rome Statute, the Prosecutor requested to have an authorization from Pre-Trial Chamber to initiate an investigation into crimes within the jurisdiction of the ICC. On November 14, 2019, the Pre-Trial Chamber granted permission and the Prosecutor of the ICC initiated an investigation of atrocities against Rohingya Muslim minority in the Situation in Bangladesh-Myanmar for the alleged crimes within the ICC jurisdiction (ICC, November 14, 2019). They claimed that Myanmar's military carried out mass murder, rape and destruction of Rohingya Muslim communities brought by the Gambia, a West African State that belongs to the Organization of Islamic Cooperation (Bowcott, December 8, 2019).

On December 11, 2019, Aung San Suu Kyi defended Myanmar from accusations of genocide in her opening statement in front of judges in the ICC (UN News, December 11, 2019). Following day, she pleaded with its 17 ICC judges to dismiss allegations that Myanmar has committed genocide and urged them instead to allow the country's court-martial system to deal with any human rights abuses (Bowcott, December 12, 2019). Because of State Counselor Suu Kyi's negative role to flee the Rohingya Muslim communities from Myanmar, United States Holocaust Museum Memorial rescinded her award in March 6, 2018. She was honored by the first Elie Wiesel Award in 2012 due to her long resistance to military dictatorship and her advocacy for freedom and human rights for all the people of Myanmar (Press Release, March 6, 2018).

On January 23, 2020, the International Court of Justice in The Hague ordered Myanmar Government to take all necessary measures to protect Rohingya Muslims from genocide (Singh, January 27, 2020). On February 5, 2020, the ICC senior official said that a Team of Investigators is visiting Rohingya refugee camps to gather pertinent evidences and testimonies to deliver justice to the victims whether Myanmar cooperates or not (Alam, February 5, 2020). This investigation shall

make accountable to the Suu Kyi and her associated senior Army officials and ensure justice to the refugees that definitely heals the affected communities.

Iraq-UK

The United Kingdom is a State-party to the Rome Statute, signed on October 4, 2001, but Iraq is a non-State Party. Therefore, the ICC may exercise its jurisdiction over the Rome Statute crimes that are either committed on the territory or by nationals of the United Kingdom as of July 1, 2002 (www.icc-cpi.int/iraq). It is reported that the alleged war crimes committed by the United Kingdom nationals in Iraq armed conflict and occupation from March 2003 to July 2009 included murder, torture and other forms of ill-treatment (A/72/349, September 29, 2017). The preliminary examination of the situation in Iraq was initially terminated on February 9, 2006, but was re-opened on May 13, 2014, when the European Center for Constitutional and Human Rights and Public Interest Lawyers provided new information on January 10, 2014, against war crimes committed by the United Kingdom nationals in Iraq (ICC, December 4, 2017). The OTP continued to receive communications pursuant to article 15 of the Statute in relation to the situation in Iraq/UK (ICC, December 5, 2019) as there are reasonable bases in which British troops had committed war crimes against Iraqi detainees (Robbins, December 31, 2017). Thus, the preliminary examination continues.

An investigation by the *BBC Panorama* and the *Sunday Times* revealed that the detectives have collected evidence of war crimes committed by British soldiers in Iraq. On November 18, 2019, the “Panorama, War Crimes Scandal Exposed” was aired on the BBC which stated that there is new evidence implicating British troops in the killing of children and in the torturing of civilians in Iraq and Afghanistan (Mudukuti, November 20, 2019). An investigation of Iraq Historic Allegations Team stated (set up by the UK Ministry of Defence in March 2010) that British troops committed crimes in Iraq. The European Centre for Constitutional and Human Rights revealed the fact that 70 percent allegations were dismissed by the Hague Court before they even reached the full investigation (July 31, 2019). The shadow Attorney General Shami Chakrabarti said, “To cover up abuse only undermines Britain’s reputation, military morale, and leaves our own people more vulnerable to abuse by enemy hands in the future” (Sabbagh & Proctor). However, the Downing Street denies any cover-up has taken place.

On March 20, 2020, Prime Minister Boris Johnson proposed new law and that bill would greatly increase the risk to British soldiers who committed serious crimes overseas military operations will avoid justice (Baldwin, March 20, 2020). Although, British Civil Courts and public inquiries found extensive evidence of torture and degrading treatment by the UK forces in Iraq after 2003. Moreover, the UK Government has already accepted that her troops had been involved in war crimes and crimes against humanity in Iraq. As a result, the UK Government has paid out 3 million pounds to torture victims (Iraqis) (<https://www.dw.com/en/british-government-pays-compensation-for-iraq-torture/a-3476172>) who were abused by the UK forces.

Palestine-Israel

On January 1, 2015, Palestine lodged a declaration under Article 12(3) of the Rome Statute which accepted the jurisdiction of The Hague Court over alleged crimes committed in the occupied Palestinian territory and East Jerusalem from June 13, 2014, onwards. In mid January 2015, the OTP, its own initiative, opened a preliminary examination into the situation in Palestine (ICC,

December 4, 2017). On May 22, 2018, extending the geographical areas, Palestine referred the situation for an investigation to the Prosecutor to investigate following the temporal jurisdiction of the Court, past crimes were committed in all parts of the territory in Palestine. There is a reasonable basis to proceed with an investigation into the situation in Palestine following the article 53(1) of the Rome Statute. The Prosecutor said, "(i) war crimes have been or are being committed in the West Bank, including East Jerusalem and the Gaza Strip ...(ii) potential cases arising from the situation would be admissible; and (iii) there are no substantial reasons to believe that an investigation would not serve the interests of justice" (ICC, December 20, 2019). The OTP would launch a full investigation into alleged war crimes in the Palestinian Territories as soon as the court's jurisdiction had been established.

The Palestinian Authority said, "Palestine welcomes this step as a long-overdue step to move the process forward towards an investigation, after nearly five long and difficult years of the preliminary examination. The Court decision was a dark day in the history of Israel" (Reuters, December 20, 2019). Commenting on the decision of the OTP, Israel stated, "The ICC only has jurisdiction over petitions submitted by the Sovereign States. But there has never been a Palestinian State". Supporting Israel, U.S. Secretary of State Mike Pompeo added, "We firmly oppose this and any other action that seeks to target Israel unfairly" (Reuters, December 20, 2019).

On January 28, 2020, Pre-Trial Chamber I of The Hague Court issued an order inviting Palestine, Israel, interested States and others to submit written observations on the question of jurisdictions set forth in the Prosecutor's request by no later than March 16, 2020. The Pre-Trial Chamber instructed Prosecutor to file a consolidated response in writing to any observations submitted by no later than March 30, 2020 (Press Release, January 28, 2020). The Hague Court received a number of observations from victims and *amici curiae* on the Prosecutor's request. On March 23, 2020, the Chamber granted the Prosecutor's request for an extension of time for the submission of consolidated response of the observations on Palestine situation until April 30, 2020 (ICC-01/18-125, March 23, 2020). On April 30, presenting a 60-page paper, Fatou Bensouda concluded: "The Prosecution has carefully considered the observations of the participants and remains of the view that the Court has jurisdiction over the Occupied Palestinian Territory" (ICC-01/18-131, April 30, 2020).

Due to the developed nations including the U.S.A. and the United Kingdom's interest and bias towards endlessly favoring Israel, there is a less possibility to continue the investigation in the situation of Palestine approving Court's jurisdiction. Even though, presenting a report of legal opinion to the Pre-Trial Chamber, the Chief Prosecutor of The Hague Court reiterated her position that Palestine is a state for the purposes of transferring criminal jurisdiction over its occupied territory to The Hague (Ahren, April 30, 2020). It means, there has been jurisdiction for an investigation of alleged crimes committed in the West Bank, the Gaza Strip and East Jerusalem.

Israel Minister Yuval Steinitz who handles the ICC in the Cabinet stated that The Hague Court does not have jurisdiction over the case as Palestine is not a Sovereign State. Therefore, the Prosecutor could not delegate criminal jurisdiction over its territory and nationals. He allegedly stated that the Prosecutor's latest position continues to espouse her typical anti-Israel stance influenced by the Organization of Islamic Cooperation and the global BDS [Boycott, Divestment and Sanctions]

movement (Ahren, April 30, 2020). On the other, the Palestine Liberation Organization welcomed Prosecutor's reaffirmation of the position.

Russia-Georgia

Georgia ratified the Rome Statute on September 5, 2003. The Hague Court shall exercise its jurisdiction over crimes listed in the Rome Statute committed on Georgia's territories. The Office of the Prosecutor gathered required information on alleged crimes committed by three parties involved in the armed conflict: the Georgian armed forces, the South Ossetian forces and the Russian armed forces in its preliminary examination. The Independent International Fact-Finding Mission on the Conflict in Georgia (IIFFMCG) of the Council of the European Union reported that about 850 persons died while more than 100,000 civilians fled their homes. The Government of Georgia claimed that 412 persons lost their lives where 228 were civilians, 170 military and 14 policemen. Ten military and 14 policemen were reported missing (ICC-01/15-4, October 13, 2015). The Prosecutor stated that relevant national proceedings in Georgia were indefinitely suspended.

Based on the evidence collected, the Prosecutor found reasonable grounds to believe a person was criminally responsible for crimes within the jurisdiction of the Court and requested the judges to issue an arrest warrant or summons to appear (ICC, January 27, 2016). On January 27, 2016, the Pre-Trial Chamber of The Hague Court granted the Prosecutor's request to open the war crimes and crimes against humanity investigation that occurred during an international armed conflict in and around Ossetia, Georgia from July 1 to October 10, 2008 (ICC-PIDS-TCT-01-090/18_Eng, June 13, 2018). The violations of international human rights law spread during the short but violent war among the Georgian armed forces, the South Ossetian forces and the Russian armed forces (<https://www.icc-cpi.int/georgia>).

On December 4, 2015, the OTP submitted a report of a total of 6,335 victims who were in favor of investigating the serious human rights violations by The Hague Court (ICC-01/15, March 21, 2018). Georgian Justice Minister presented more than 700 pieces of evidence that Russia started the 2008 war (Agenda.Ge, March 20, 2019). The investigation is still in progress.

Syria-Jordan

In March 2011, the pro-democrats started demonstrations for political freedom inspired by the "Arab Spring" in neighboring countries. When the Syrian Government used deadly force to crush the protestors, the dissents demanded the President Bashar al-Assad's resignation. The dissents took up arms for their own defense at first, but used against the state-security forces later on. President vowed to crush what he called "foreign-backed terrorism" (Syrian Civil War, February 25, 2019).

Syria has extreme pressure to establish the ICC to investigate, prosecute and punish having the heinous and systematic crimes committed by the Syrian President Bashar al-Assad and its closet officials (Killingsworth, March 13, 2019). There are 10 million displaced (forced deportation) people and 500,000 civilian casualties in Syria. Victims or survivors have been looking for justice and welcoming relief packages. More than 200,000 civilians are missing, but presumed to be killed (Syrian Civil War, February 25, 2019). They hope that those most responsible for the heinous and barbaric crimes committed against civilians during armed conflict must finally be brought to The Hague Court account (Killingsworth, December 24, 2019).

Human rights lawyers first-time filed the case against the Syrian President Bashar al-Assad at the ICC on behalf of 28 Syrian refugees residing in State Party Jordan in early March 2019 (Aljazeera, September 20, 2019). Lawyers have given a precedent set in 2018, when the ICC Pre-Trial Chamber ruled “that the Court has jurisdiction over the alleged deportation of members of the Rohingya people from Myanmar to Bangladesh” (Killingsworth, December 24, 2019). The lawyers look forward to The Hague Court to make a similar ruling regarding Syrian refugees who have fled the armed conflict to neighboring State Party Jordan. Syria similar to Myanmar is a non-State Party to The Hague Court Statute but Jordan has been a State Party to the Statute.

On December 20, 2019, Russia backed by China casted its 14th-time UN Security Council veto since the start of the Syrian armed conflict in 2011. Veto powers were used to block cross-border aid deliveries from Turkey and Iraq to millions of Syrian civilians (The New York Times, December 20, 2019). Russia used its 13th-time veto powers and seventh by China till September 20, 2019 at the UN Security Council for not to have Court's referral to its non-State Party Syrian ally (Aljazeera, September 20, 2019). Unlike Myanmar, Assad has been backed by Russia who is responsible for the merciless, systemic and endlessly repeated aerial bombings in schools, hospitals and community centers. Moscow has used chemical weapons more than 100 times in flagrant breach of legal commitments made in 2013 (Tisdall, March 9, 2019).

The United Nations High Commissioner for Human Rights and other international organizations have called for Syria to be referred to The Hague Court. While the U.N. Security Council refused to call The Hague Court to address the crimes in Syria, it asked to promote national prosecutors in France, Germany and other European countries to launch their own cases. That resulted to arrest a Syria's former high-ranking member General Intelligence Directorate in Berlin in February 2019 on the charge of mass torture in the Bashar al-Assad regime's detention facilities (Goldston, August 8, 2019).

The European Center for Constitutional and Human Rights gathers the evidence to establish cases. German Government uses the concept of universal jurisdiction to argue that they can try anyone for war crimes committed anywhere, against any nation's people (Schaer, July 31, 2019). The Independent International Commission of Inquiry on the Syrian Arab Republic was established on August 22, 2011 by the Human Rights Council to investigate all alleged violations of international human rights law since March 2011 in Syria (Human Rights Council, Undated). At the end of April 2020, German prosecutors have charged Anwar Raslan and Eyad al-Gharib under the principle of universal jurisdiction on the charges involving war crimes and crimes against humanity even when the actions occurred outside the country and were perpetrated by or against non-nationals (Bailed, April 22, 2020).

In the case of situation between Russia and Georgia (Ossetia region), the Prosecutor of The Hague Court may face a hard situation to initiate investigation owe to Russia's non-intention for investigation. Moreover, Russia is a non-signatory of the Court Statute and permanent member of the UNSC. What Russia can do shall be understood by the situation of Syria. Russia had signed the Rome Statute in 2000, but never ratified The Hague Court treaty.

Ukraine-Russia

On November 16, 2016, Russian approved an order to withdraw the nation from all processes of joining with The Hague Court as the Court ruled Russia's takeover of the Crimea peninsula in 2014 that had been an armed conflict between it and Ukraine (BBC, November 16, 2016). It is to be remarkable that the annexation fell under The Hague Court jurisdiction. Thus, Russia is neither a member of the Court Statute nor a donor country of it. The withdrawn finally took place calling The Hague Court as one-sided, inefficient and ineffective.

Article 8 of the Ukraine–European Union Association Agreement needs Ukraine to sign and ratify the Court Statute. On April 4, 2012, the Foreign Minister of Ukraine said that Ukraine is ready to join the Rome Statute once the necessary legal preconditions have been done reviewing the country's constitution. Constitutional amendment bill was tabled in Parliament in May 2014 and it adopted accordingly allowing for ratification of the treaty. However, the Statute is yet entering into force.

Pursuant to article 12(3) of The Hague Court Statute, Côte d'Ivoire and Ukraine which are not Party to the Statute have declared and accepted the jurisdictions of the Court. Egypt also accepted the jurisdictions of the Court in December 2013, but while coup d'état happened in July 2013, the Prosecutor dismissed the declaration (May 8, 2014).

The UN Treaty Collection reported that out of 56 Asia-Pacific countries, only 10 (18%) have been State Party to the Rome Statute. They are: Afghanistan, Bangladesh, Cambodia, East Timor, Japan, Jordan, Maldives, Mongolia, South Korea and Tajikistan. China and India outrightly rejected The Hague Court Statute since its establishment.

Nine signatories of the Rome Statute did not ratify the treaty. They are: Bahrain, Israel, Kuwait, Russia, Sudan, Thailand, Ukraine, United States and Yemen. Israel voted against the adoption of the Court Statute, but it signed the Rome Treaty in December 2000, for a short period only. In June 2002, Israel notified the UN Secretary General stating that it no longer intended to become a Party to the Rome Statute (Israel Ministry of Foreign Affairs, June 30, 2002) assuming that political pressure to The Hague Court would lead it to reinterpret international law differently as new crimes. On March 24, 2007, the Yemeni parliament voted to ratify the Rome Statute (Coalition for the International Criminal Court, March 26, 2007), but it never adopted to enter into force.

The US signed the Rome Statute at the end of 2000 under the Clinton administration, but the Court treaty was never submitted to the Senate for ratification. In 2002, President George W. Bush decided unsigned and withdrew the treaty. However, US citizens shall face The Hague Court jurisdictions as it investigates alleged war crimes that took place in Afghanistan, Poland, Lithuania and Romania as latter are State Parties to the Court (Human Rights Watch, March 23, 2020).

Out of the United Nations recognized States with full-treaty making capacities, 42 States including Bhutan, China, India, Indonesia, Iraq, Malaysia, Myanmar, Nepal, Pakistan, Qatar, Saudi Arabia, Sri Lanka and Vietnam have neither signed nor ratified the Statute (Pathak, March 25, 2020). However, seven countries namely China, Iraq, Israel, Libya, Qatar, the United States of America and Yemen voted against the treaty (Scharf, August 11, 1998). The Statute was finally approved by a vote where 120 were in favor, 21 abstained and 7 against. The ICC deals with the crimes committed after July 1, 2002, without retroactive jurisdiction.

When heinous crimes happened, the question of justice to the victims, communities and nation and healing to them always comes at forefront nationally and internationally. The Transnational (cross-border) crimes doctrine is used for the international criminal justice system. It is a part of International and Transnational Criminal Law. Transnational crime is extensively used as a generic concept covering a multiplicity of different kinds of criminal activity which are described as an actual or potential effect across national borders or international concern (Boister, November 2003) and crimes shall be interstate that influences the justice system of the international community.

CONCLUSION

Both Nuremberg and Tokyo Tribunals were established to investigate, prosecute and punish to the perpetrators in theory. But in practice, the Tribunals were used as a platform to show and prove victors' justice through their own power, politics, property and privileges further weaken the poor and vulnerable victims, communities and nation as a whole. Besides the criminal offence, victors were accountable or responsible for political assault, physical injury, mental or emotional impairment, socio-cultural trauma and economic loss. The victors had adopted conspiracy to suppress victims' voices and opinions as well as ordered the rank and file to snatch and destroy evidence what the victims had. Victors applied the threatocracy congestion (crowd-crazy) on the poor victims and defeated nation to further discourage them. The Tribunals did not have a complaint registration, concomitant and prospectant places for storytelling or telling the truth of victims' pains, sufferings and grievances. Though the Tribunals pursued thorough investigation, the officials were instructed to deliver one-sided judgment or final verdict to victims as per the vested interests and desires of the victors. The decision of the Tribunals were one-sided, inefficient and ineffectiveness. As a result, double-standard, hypocrisy and arrogance threatocracy prioritized retribution (pay one in his own coin) to both Germans and Japanese soldiers, politicians and bureaucrats-technocrats. Therefore, the Tribunals are no less than *tu queque* in practice.

Freda Uitley charged the Nuremberg Trial as double standards (Uitley, January 1, 1949). She pointed to the Allied use of the U.S.'s inhumane treatment of German captives, civilian as slave and deliberate starvation of civilians occurred in their occupied territories (Wiggers, 2003). It is very pity that Americans dropped the atom bomb and the British destroyed the cities of western Germany, but the Tribunal did not hear the pleading of the Germans (The Economist, October 5, 1946). Michael Newton and Michael Scharf noted that opinion polls conducted by the U.S. State Department starting from 1946 to 1958 revealed 80 percent of the West German population did not believe the findings of the Tribunal and rejected it as 'Victor's Justice' (Newton & Scharf, September 16, 2008).

In German, the victors ordered their chains of command to destroy structural facts, statements and other evidence that might prove them guilty or affect their showy investigation. The same victors took special attention to draft the perpetrator-centric Act or Decree that further weakened the voices of the victims and survivors. They prioritized cronyism appointing officials at the Tribunals as the victors provided necessary funds and staffs. And such cronies' appointment defended their respective vested interest, institution(s) and individuals rather than pursuing free, fair and independent investigations. A question arises, "whether Hitler was assassinated similar to Che Guevara in 1967 immediately after the Germany surrendered?" A further study needs to be done.

How much America's worst (to deal with dissent) General Douglas MacArthur shall be furious and retaliated against the so-called enemies if similar atrocities and crimes happened to Chinese and other Asian infants and girl-children and women who were mutilated by having speared into their vaginas after brutal rape? Will U.S. tolerate and make the Emperor Hirohito scot-free if such atrocities and brutalities happened to America's citizens? The answer is no. It seemed that U.S. had been happy as heinous crimes occurred to communist people and women. On the other side, U.S. can earn money selling the weapons and other war related instruments when armed conflict initiates.

Imperial Japanese troops terrorized Chinese commoners with brutal atrocities and crimes: raping infants, children and women. Those victims were killed immediately after being raped; many victims were mutilated by penetrating vaginas with bayonets, bamboo sticks and other objects. Young girl-children were cut open to allow troops to rape them (Clancey, undated; Gray, February 1996, *Dragon Daily*, February 7, 1938)

On the other hand, the U.S. President Gerald Ford invited and warmly welcomed Emperor Hirohito in red carpet and the White House organized for a state dinner on October 2, 1975. The Tokyo Tribunal tried hard to maximize happiness, pleasure and well-being to the supreme Emperor Hirohito and his 'A' category immediate subordinates policymakers including political leaders and security forces penalizing classes 'B' (policy supervisors) and 'C' (policy implementers). To influence the Tribunal as he had been a ceremonial Emperor, Hirohito ordered a few Generals to continue the fighting on the whisper of the U.S.A.

The U.S. policy adopted discouraging future aggressors against axis power whose Charters were drafted by a handful of statesmen from the highest ranks of the Government for a very specific end. The Tribunals had not been more than a sword in a judge's wig. It means, IMT and IMTEF were for the acceptance of victor's justice. It was no less than brutalization and overthrow of the conquered nations.

The ICTY was created in the wave of post-Cold War transitional justice discourses to transform the societies from authoritarianism to democracy as well as from armed conflict to post-conflict peacebuilding. Both the ICTY and the ICTR were set up by the UN Security Council to exercise its power under chapter VII of the UN Charter to maintain International Peace and Security. As both Tribunals were the subsidiary organs of the UNSC, they are bound to apply rules of international law which are beyond uncertainty part of customary international law. Both Tribunals had identical Rules of Procedure and Evidence and had the same Prosecutor (Kittichaisaree, July 12, 2001). Both Tribunals were engaged in exercising the dimensions of genocide, war crimes and crimes against humanity (Akhavan, 2004). Both Tribunals had unusually contributed to peace building in post-war societies which introduced criminal responsibility based on international humanitarian law.

However, the UN has almost failed to restore peace and security and to make harmonious society in the post-conflict countries as it works mostly being loyal to its donors or powerful western countries rather than resolving and eliminating the pains, grievances and sufferings of the common populace since its senior team members and officials appointed under the recommendations of such strong-arms.

The Tribunals and The Hague Court need to follow certain victim-centric norms as being free, fair and autonomous investigative justice bodies. The autonomous body respects humanity, neutrality, impartiality and independence of such trials. Such justice bodies in principle oblige to ensure required power to summon the (alleged) perpetrators such as security forces, high-ranking Government officials and leaders; to appear before the Tribunals for examination and interrogation; to easily get inspection permission at any custodial places, prisons and military barracks; to have legal authority to collect or confiscate evidences and testimonies from such inspected places, areas, homes and offices; to have an access for the conduction of exhumation including excavation of victims' buried sides without prior notice; and compelled to obtain official cooperation and security on entire proceedings places and investigative officials, victims or survivors and witnesses. However, none of those measures were or are adopted.

Thus, both Tribunals and The Hague Court have been subjects to critique forever. Critique is non-personalized because of prejudiced decision taken by the authority. In many situations, the history has been a witness that critique of major judgment 'victim's justice' defeats; minor controlled judgment 'victor's justice' wins. It happens as trial occurs hastily or unacceptably delayed. Fast trial arises without proper methodological practices such as complaint registration, situation examination, investigation, and interrogation among others. Delay theoretically initiates systematic method which takes longer period than planned or expected, but adopts strategy to convince, to make tired, to threat and to lose evidences of the victims. Thus, the Tribunals and The Hague Court are being criticized for having a racist, national or regional origin, ideological, religious and resource controlled agendas, a flawed investigation by conspiratorial principle, a prosecutorial strategy and suffering from unendurable drawing conclusion of prosecution and punishment to specific nation or persons. When The Hague Court was established in 2002, there had been a real optimism about holding those most accountable or responsible for crimes to account (Murphy, June 6, 2013), but it in vain.

The works of The Hague Court is very slow or lengthy, monotonous, tedious and biased. The situation examination and investigation are very expensive. So far, a total of 45 suspected individuals were/are issued warrants of arrest by the Court till the end of May 2020. Out of 45 persons, proceedings against 50 per cent (22) have been completed: the charges of six were dismissed; two are serving; four completed their sentences; two are acquitted; the charges of two were withdrawn; two have declared inadmissible and four have died before trial (Pathak, February 25, 2020). Commoners including victims have rare hope of justice to be received from such big name institution, The Hague Court. Neither the feudal perpetrators have any fear of action to be taken against, bringing them under the judicial custody. It appeared therefore that The Hague Court is more a political and less a judicial body.

The Hague Court has many flaws which hint that it is a Court of the Western Countries. The Court mostly targets developing, poor and weak countries, mainly African nations who often oppose the ideas to control countries' resources of traditional and or feudalistic mindset big powers, primarily U.S. and its satellite nations. The Hague Court lets to the powerful offenders scot-free opening the door to impunity in the name of dismissing, acquitted, withdrawn and inadmissible cases. The Hague Court needs to deliver justice to the victims making the perpetrators accountable. Justice is not just realized or satisfied by the victims alone, but also seen by ALL. The Hague Court should not

act on the little ones and please the big ones. Thus, many signatories of the Statute are in a favor of abolishing the Court function, stating anti-democratic and a violation of national sovereignty.

The current Prosecutor, Fatou Bensouda has been a hit back at critics in a few situation examination and investigation. It looks that she is trying to protect the perpetrators of heinous crimes (Murphy, June 6, 2013) because of her fault finding, limit systematic inquiry and negative judgment, for instance, toing and froing on the Registered Vessels of Comoros, Greece and Cambodia. Bensouda denied Pre-Trial Chamber' decision to investigate Israeli Defense Forces (close ally of U.S.) attacked at the Humanitarian Aid bound for the Gaza strip in 2015 (Pathak, February 25, 2020). The Court does not have reparation and dignity programs to the victims.

Besides, the Tribunals and The Hague Court failed to ensure 5Rs of Repatriation, Resettlement, Rehabilitation, Reintegration and Reconciliation (Pathak, 2019). If The Hague Court continuous slowness or lengthy, bias, complex hearings, affiliation or favoring the specific States or persons and constantly controlled by big (non-signatories of the Statute) power as their puppet Court, there is a further growing loss of faith on The Hague Court in the world. Neither there would have been any trust of people and victims with such institution nor would they perform their tasks properly as an autonomous justice body.

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