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Challenges Faced by Municipal Courts in the Enforcement of International Criminal Law

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Abstract

The enforcement of international criminal law increasingly relies on municipal (national) courts, which play a crucial role in prosecuting serious crimes such as genocide, war crimes, crimes against humanity, and torture. However, municipal courts face significant challenges in implementing international criminal law due to legal, institutional, political, and resource-related constraints. The inability of many national courts to effectively enforce international criminal law despite existing international obligations. This study aims to examine the challenges faced by municipal courts in enforcing international criminal law and to assess their impact on the administration of justice. This work adopts a doctrinal and qualitative methodology, relying on the analysis of international treaties, national legislation, judicial decisions, and scholarly literature. Findings reveal that major challenges include inadequate domestic incorporation of international criminal law, jurisdictional limitations, lack of judicial expertise, political interference, insufficient resources, and difficulties in obtaining evidence and international cooperation. These challenges often hinder accountability and contribute to impunity for international crimes. The study concludes that effective enforcement of international criminal law at the national level requires stronger legal frameworks and institutional capacity. It recommends that states harmonize domestic laws with international standards, enhance judicial training, strengthen international cooperation mechanisms, and ensure the independence and adequate funding of municipal courts to improve the prosecution of international crimes and promote global justice.

Keywords: municipal courts, international criminal law, enforcement

1. Introduction

Justice Powell remarked twenty years ago that 'until international tribunals command a wider constituency; the courts of the various countries afford the best means for the development of a respected body of international law'. [1] Few would challenge this statement which underlines the promise of world-wide development and

[1] See, e.g., L Brownie, System of the Law of Nations - State Responsibility (1983) (Part I), 144.

enforcement of international law by national courts. But can national courts really live up to this challenge? Apparently, there are weighty factors that inhibit national courts from the rigorous application and enforcement of international law. This is particularly the case when the application of international norms is sought in an attempt to constrain the activities of the national court's executive.[1]

It would be almost trite to mention that from the point of view of international law, national courts are state organs and thus are required to conform to international norms. Failure to do so may impose international responsibility on the state.[2] International law assumes that national courts can be instrumental in enforcing international obligations upon recalcitrant governments. International proceedings may be instituted by the state whose nationals have been injured, assumes that national courts can reasonably be expected to correct wrongs done by their executive to aliens within their jurisdiction. It is common among international lawyers to refer to national courts as a reliable if diffuse system for ensuring compliance with international norms, and therefore to urge judges to apply these norms rigorously lacking central enforcement.[3]

2. Challenges Faced by Municipal Courts in the Enforcement of International Criminal Law

2.1 Jurisdictional Challenges

National courts may struggle with asserting jurisdiction over international criminal cases that involve crimes committed outside their territory or by foreign nationals. Determining which court has jurisdiction and addressing issues extraterritoriality can pose legal complexities and challenges in prosecuting international crimes within a national legal framework.[4]

International Criminal Law aims to hold individuals accountable for serious crimes such as genocide, war crimes, and crimes against humanity. Unlike domestic laws, which typically apply within specific territorial boundaries,[5] ICL transcends national borders and seeks to address violations that affect the international community as a whole. [6] Jurisdiction in international criminal law can be categorized into several principles Territorial Jurisdiction which allows a state to prosecute crimes committed

[1] Many lawyers have commented favorably on the prospect! Of national courts as efficiency of international obligations. A partial list includes: Chantey, 'Judicial Deference in Foreign Relations', 83 AJIL (1989) 803; Kofa, Transnational Public Law Litigation'. 100 Yale U. (1991) 2347; Lauterpacht, 'Implementation of Decisions of International Organizations through National Courts', in S. Scnwebel (ed.), 77K Effectiveness of International Decisions (1971) 57; Lillich, The Role of Domestic Courts in Promoting International Human Rights Norms', 24 NYLSL Rev. (1978) 161; Lowenfeld, 'US Law Enforcement Abroad: The Constitution and International Law, Continued', 84 AJIL (1990) 444; Marm, International Delinquencies Before Municipal Courts', 70 LfiK (1954) 181; Reprinted: F. Mann, Studies in International Law (1973)366; id. The Consequences of International Wrongs in International and National Law', 49 BYbIL (1975-76) 1; reprinted: F. Mann, Further Studies in International Law (1990) 124; M. McDougaL Act of State in Policy Perspective: The International Law of an International Economy, in Private Investors Abroad - Structures and Safeguards (1966) 338; UL, 'Jurisdiction in Human Rights Cases: Is the Tel-Oren Case a Step Backward?*, 79 Am. Soc Int'L L Proc (1985) 361; Schreuer. The Relevance of United Nations Decisions in Domestic Litigation', 27 ICLQ(1978) l; Sbodcey, 'Enforcement in United States Conns of the United Nations Council for Namibia's Decree on Natural Resources', 2 Yale Studies in Word Public Order (1976) 285. Other scholars concede significant limitations on the national courts' autonomous role: Brilmayer, 'International Law in American Courts: A Modest Proposal. 100 Yale LJ. (1991) 2277; R. Falk, 77K Role of Domestic Courts in the International Order (1964); Franck, The Courts, die State Department, and National Policy: A Criterion for Judicial Abdication', 44 A«mt.£.tev.(1960) 1101; Stephan, 'Constitutional Limits on International Rendition of Criminal Suspects', 20 VaJJnt'LL (1980) 777; Trimble, 'A Revisionist View of Customary International Law'. 33 UCLA L Rev. (1986)

[2] A characteristic observation is the following: respect for international law is guaranteed to the extent that national judicial enforcement t agencies since men undeniably share certain basic values which go beyond national barriers - pay need to that international solidarity which is so often lacking at governmental level. B. Conforti, Uzioni di diritto baemazUmaU (2nd ecL, 1982) 8 (as translated by A. Cassese in 'Modem Constitution! and International Law' 192 RdC (1985-01) at 312).

[3] On the need to friiKiif judges on international law see McDougal, Jurisdiction in Human Rights Cases: Is the Tel-One Case a Step Backward T, supra note 3, at 376. On the background an personality of judges as possible factors see Koh, Why the President (Almost) Always Wins in Foreign Affairi-Lessora of the Iran-Contra Affair 1, 97 >W<L7. (1988) 1235.1315-16.

[4] A. Cassese, 'Modern Constitutions and International Law' 192yWC(1985-m), 331 etseq. There was no need to develop such an argument in the United States, where customary international law is considered part of the common law.

[5] For these constitutions see A. Blaustein & G. Flanz(eds), Constitutions of the Countries of the world, Vol. 1 (Austria), Vol 6 (Germany). Vol 8 (Italy).

[6] Article 55 continues: 'subject, for each agreement or treaty, to its application by the other party.' (Blaustein & Flanz, supra note 8, Vol 5 (France). On the French provisions and practice regarding these matters see de la Rocbere, 'France', in Treaties, supra note 9,39 et seq.

within its territory. However, [1] it often complicates cases involving transnational crimes where the acts occur in multiple jurisdictions.

Active Personality Principle grants jurisdiction based on the nationality of the perpetrator. Challenges arise when the accused is not present in the prosecuting state. Equally Passive Personality Principle allows a state to claim jurisdiction if the victim is a national. This principle can lead to conflicts between states when victims and perpetrators are from different countries.[2]

2.2 Legal Complexity and Capacity Constraints

International criminal law is a specialized and evolving field that requires expertise in complex legal principles and international treaties. [3] National courts may lack the resources, training, and infrastructure necessary to handle the intricacies of international criminal cases effectively. This can lead to delays, inefficiencies, and errors in the judicial process.

Capacity constraints refer to the limitations a national court faces in terms of resources, expertise, infrastructure, and institutional support.[4] These constraints can hinder a court's ability to investigate, prosecute, and adjudicate international crimes effectively. [5] Budget Constraints causes many national judicial systems operate under limited budgets, which restrict their ability to allocate sufficient funds for complex international cases. [6] Cost of Prosecutions. International crimes often involve extensive investigations, expert witnesses, and lengthy trials, all of which require significant financial investment.[7]

National courts lack sufficient judges, prosecutors, and legal staff trained in international law. This shortage can slow down proceedings and limit the 'Judicial Enforcement of International Law against the Federal and State Governments', 104 Han. L Rev. (1991) 1269, 1285-87. FOTI critical discussion of the use of the separation of powers doctrine in the Israeli context tee infra text accompanying notes 92-96bility to handle multiple cases. Specialized knowledge is essential for understanding the nuances of international crimes. Many national legal professionals may lack training in ICL, impacting the quality of prosecutions.

2.3 Political Interference and Diplomatic Sensitivities

Cases involving high-ranking officials, state actors, or sensitive geopolitical issues may face political pressures, external influences, or lack of cooperation from governments.[8] National courts may encounter challenges in maintaining impartiality and independence in the face of political interference, which can impact the fair and effective enforcement of international

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[1] As trie GM of Cassation later explained u its Aijait/judgment of 14 July 1934, 't treaty is a law of a superior nature [essence] having a superior origin than the will of an internal [national] organ.' (quoted, together with the other cases, in Polakiewicz et al, supra note 12, at 126)

[2] See Cassese. supra note 6, at 439: '[E]ven in the most tntwimiiwiiy minded Western or socialist countries, domestic courts often place such an interpretation on international customary rules as to fit their municipal standards or accommodate diem to national interests' (italics in original); Henltin, 'International Law as Law in me United States', 82 Mich. L Rev. (1984) 1553.1566 (referring to US courts): *Courts are often reluctant to conclude that a principle has become customary international law'; Trimble, supra note 3, observes after surveying the entire case-law of American courts on this issue, thai there is 'a clear trend away from judicial determination of legal rules and a move men toward judicial deference to political branch direction' (at 687).

[3] Compare the famous precedent of Filartiga v. Pena-Irala, 630 F.2d 876 (2d Or. 1980), where me Federal Government filed a luemmandnm (19ILM (1980) 385) urging the conn to apply international human rights law against a Paraguayan official (the court applied that law), with Tel-Oren v. Libyan Arab Republic, 726 F-2A 774 (DC Qr. 1984) where the State Department did not favor the adjudication of the case (Brief reprinted in 24 ILM (1983) 427), and the court acted accordingly.

[4] Set Gur Corp. v. Trust Bank of Africa LvL, [19^3 Vfettiy Liw Siepota 583,59Z. Attorney General for Robt Jones House, (New Zealand H.C, 1988) 80 ILR 1 (1989).

[5] Appeal Cases 256,264: Our State cannot speak with two voices on such a matter, the judiciary saying one thing, the executive another. Our Sovereign bat to decide whom be win recognize as a fellow sovereign in the family of states.'

[6] Brilmayer, supra note 3, suggests that courts can and most distinguish between a 'horizontal model', in which conflicting national interests loom large, and a *venial model', in which individual interests are the bean of the case, as in many hinmn rights issues. The of 'democracy deficit', arguing that cases that belong to the vertical type may be adjudicated under international law. A similar approach was suggested by Franck.

[7] On the change of antinode by French courts with inspect to both the Community law and the of the European Convention on Human Rights «ee supra notes 15,17, and 39 and accompanying text. On the 18. On the shift in Germany's Constitutional Court see Forewing, supra note 19. On the recent compliant attitude of the British Home of Lords regarding the supremacy of Community law see R. v. Secretary of State for Transport, Ex pane Factor tame, [1990] 2 Appeal Cases 85 (HX.); R. v. Secretary of State for Transport, Ex pane Factor tame (No. 2) [1990] 3 Weekly Law Reports 856 (Hi.).

[8] In interpreting the legislature does not intend to derogate from the international obligations of the its treaty-based obligations, unless a different intention is (see, e.g. Samra, supra note 90, at 1831; Lapidate, supra note 84, at 455). This attests that such interaction between me Government and the legislature is permissible under the separation of powers doctrine.

criminal law. Political interference represents a significant obstacle to the effective enforcement of international criminal law (ICL) by national courts.[1] This interference can manifest in various ways, undermining judicial independence and the rule of law. Below, we discuss the nature of political interference, its implications, and the challenges it poses to the prosecution of international crimes.[2]

Political interference occurs when governmental authorities, political actors, or other influential groups exert pressure on judicial processes, impacting the impartiality and effectiveness of legal proceedings. [3] This can include direct actions, such as influencing judicial appointments or case outcomes, as well as indirect pressures, such as public opinion manipulation.

Politicians attempt to control or manipulate judicial proceedings to protect allies or punish adversaries. This can involve threats, coercion, or direct orders to judges or prosecutors. Governments also enact or amend laws to obstruct prosecutions or create legal loopholes that hinder accountability for international crimes.[4]

Governments can sway public sentiment against prosecutions, portraying them as politically motivated or harmful to national unity, which may deter judicial action. State-controlled media can disseminate narratives that undermine the legitimacy of international criminal prosecutions, influencing public perception and judicial independence.[5]

2.4 Lack of International Cooperation

The enforcement of international criminal law (ICL) by national courts is inherently complex and often requires robust international cooperation. However, a lack of such cooperation presents significant challenges that can hinder effective prosecution of international crimes. This discussion will explore the various dimensions of this issue, including its implications, causes, and potential solutions.

International cooperation in ICL involves collaboration among states, international organizations, and judicial bodies to ensure accountability for serious crimes. This cooperation is essential for gathering evidence, facilitating extraditions, and sharing information, all of which are critical for successful prosecutions. States often rely on treaties to facilitate the extradition of individuals accused of international crimes. However, the absence of such treaties or differing legal standards can obstruct extradition request.[6] Even when treaties exist, political considerations may lead states to refuse extradition, particularly if the accused holds significant political influence or if the requesting state is perceived as biased.

International cooperation is vital for the collection and sharing of evidence across jurisdictions. However, varying national laws regarding evidence and privacy can complicate

[1] See, e.g., Samarav. Commander of the Judea and Samaria Region, H (4) Piskei-Din (Judgments) 1 (1979); 7&« Electricity Co. for the District of Jerusalem v. Minister of Energy and Infrastructure 35 (2) Piskei-Din (Judgments) 673 (1981). See also supra note 106 (noting that die Supreme Court never rejected the practice of bourse demolition as contrary to international law.

[2] In addition to the compliance with customary law, the Conn requires the occupation administration to conform with the principle* of the Israeli administrative law: Abu Aim, supra note 103, at 230; supra note 103 at 810. Accordingly, the Court required the administration to hearings before to bourse demolition; The Civil Rights Association in Itmti v. The Commander Central of the Central Region, 43 (2) 529 (1989).

[3] The Association for Civil Rights in Israel et al v. The Minister of Defense et al High Court of Justice 5973/92,28 Jimmy 1993 (to be published in ILM, 1993). The Court ruled that the denial of the right to be heard prior to die deportation, if such a right had existed, did not invalidate the deportation orders. During subsequent hearings of the deportees, it reasoned, all procedural failures.

[4] A characteristic observation is the following: '[R]expect for international law is guaranteed to the extent that national judicial tend enforcement agencies — since men undeniably share certain basic values which go beyond national barriers - pay need to that international solidarity which is so often lacking at governmental level.' B. Con, 1982) 8 (as translated by A. Cassese in 'Modem Constitution! and International Law' 192 RdC (1985-01) at 312).

[5] On the need to friiKiif judges on international law see McDougal, 'Jurisdiction in Human Rights Cases: Is the Tel-Oen Case a Step BackwardT, supra note 3, at 376. On the background and personality of judges as possible factors see Koh, 'Why the President (Almost) Always Wins in Foreign Affairi-Lessora of the Iran-Contra Affair. (1988) 1235.1315-16.

[6] 5 See United States v. Belmont, 301 US 324,57 S.Ct 758; 81 LEd.1134 (1937); United States v. Pink, 315 US 203,62 552, 86 LEd. 796 (1942); Dames <t Moore v. Reagan, 453 US 654. 101 2972, 69 T.Fd, 918 (1981). And see the Restatement (Third) on the Foreign Relations Law of the United States (1987) (hereinafter 'Restatement'), Sec. 303 and comment: 'Presidents have asserted abroad authority to make many other international agreements [in addition to recognition of states and armistice agreements], at least in the absence of inconsistent legislation or of Congressional action restricting such agreements.'

this process. Requests for judicial assistance may be denied due to bureaucratic hurdles or a lack of resources, hampering investigations.

Effective enforcement of international criminal law often requires international cooperation in areas such as extradition, mutual legal assistance, and the transfer of evidence and witnesses. National courts may struggle to secure cooperation from foreign governments or international bodies, hindering the prosecution of international crimes and the pursuit of justice for victims.

2.5 Limited Awareness and Understanding

There may be a lack of awareness and understanding among judges, prosecutors, and legal practitioners about the principles and procedures of international criminal law. National courts may face challenges in applying international legal standards correctly and consistently, leading to inconsistencies in the interpretation and application of international criminal law.

2.6 Capacity Building and Training Needs

National courts require specialized training, capacity building, and institutional support to effectively enforce international criminal law. Investing in judicial education, legal resources, and technical assistance can help enhance the capacity of national courts to handle international criminal cases and uphold the rule of law.[1]

3. How to Overcome the Challenges Faced by National Courts in the Enforcement of International Criminal Law

As earlier described above, National courts play a crucial role in the enforcement of international criminal law (ICL), but they face numerous challenges, including capacity constraints, political interference, lack of international cooperation, and jurisdictional issues. However, there are several ways to overcome this various challenges.

3.1 Strengthening Judicial Capacity

Governments should prioritize funding for judicial systems to ensure they have the necessary resources for handling international cases.

International organizations and NGOs can provide financial support and technical assistance to bolster national judicial capacity.[2] More so, developing training programs for judges, prosecutors, and legal professionals on international criminal law can enhance expertise and improve prosecution quality.[3] Regular workshops that focus on best practices, case studies, and legal updates can keep legal professionals informed and engaged.[4]

3.2 Enhancing Legal Frameworks

States should enact or amend laws to incorporate international crimes into their domestic legal frameworks, providing clear legal definitions and procedures for prosecution.[5] Establishing

[1] hat, for example, the Yugoslav Constitutional Court trotted the United Nikons Charter, the Universal Declaration of Human Rights, tad the International Covenant on Civil and Political Right as expressing the generally recognized norm* of international law: decision of 16 March 1977, cited in Cassese, supra note 6, at 377. Right after gaining independence from Portugal, a court in the People's Republic of Angola a criminal offence of 'mercenaries', on the basis of United Nations resolutions and state mm ts of the Organization of African Unity (the decision is reprinted in Lockwood, Report on the Trial of Mercenaries: Angola, June 1976,7 Manitoba LJ. (1977) 183,198-99.

[2] Compare the famous precedent of Filartiga v. Pena-Irala, 630 F.2d 876 (2d Or. 1980), where me Federal Government filed a luemmandnm (19ILM (1980) 385) urging the conn to apply international human rights law against a Paraguayan official (the court applied that law), with Tel-Oren v. Libyan Arab Republic, 726 F-2A 774 (DC Qr. 1984) where the State Department did not favor the adjudication of the case (Brief reprinted in 24 ILM (1983) 427), and the court acted accordingly.

[3] A curative order serves as an opportunity for the applicant state to take further steps in order to cure a defect in the pleading. For example, the court may order the applicant state to join a third party in the dispute. When the defect is cured by the applicant state, the court may then admit the dispute for hearing.

[4] The Convention on International Civil Aviation (1944) provides for appeals to the ICJ from the decisions of the Council of the International Civil Aviation Organization (ICAO). Convention on International Civil Aviation, Dec. 7, 1944, art. 84, 3 Bevans 944, 15 U.N.T.S. 295. Also, the International Air Services Transit Agreement (1944) provides for appeals to the Court. International Ai Transit Agreement, Dec. 7, 1944, art. 2, para. 2, 3 Bevans 916, 84 U.N.T.S. 389.

[5] ICJ Statute, supra note 3, art. 34, Para. 1. It is noteworthy that this provision relates only to sovereign states. Further, it can be explained on the basis that at the earliest development of international law, only sovereign states were recognized as the principal subjects of international law. However, presently, there are new and emerging subjects of international law, like international organizations. In fact, some commentators have argued that it is time to expand the contentious jurisdiction of the Court to permit international organizations to become parties. See D.W. Bowett, et al., The International Court of Justice: Efficiency of the Procedures and Working Methods, 45 INT'L & COMP. L. Q. 524 (1996).

mechanisms that allow national courts to complement the work of international tribunals can enhance accountability. Equally, [1] implementing more efficient legal procedures can reduce delays and improve the overall effectiveness of the judicial process. Developing clear guidelines for prosecuting international crimes can help ensure consistency and fairness in legal proceedings.[2]

3.3 Promoting Judicial Independence

Ensuring that judges and prosecutors have secure tenures can protect them from political pressures and interference. [3] Establishing independent judicial oversight bodies can help safeguard the integrity of the judicial process. Raising awareness about the importance of judicial independence can help build public support for an impartial judicial system. Involving civil society organizations in advocating for judicial independence can create a robust support network for accountability.

3.4 Fostering International Cooperation

States should negotiate and strengthen extradition treaties to facilitate the transfer of accused individuals and ensure accountability. Developing MLATs can streamline the process of sharing evidence and information between countries. Collaborating with international bodies can enhance support for national prosecutions and provide access to resources and expertise.

Joining networks focused on ICL can facilitate knowledge sharing and best practices among states.[4]

3.5 Addressing Political Interference

Engaging in diplomatic efforts to encourage political leaders to prioritize accountability and support judicial processes. [5] Forming coalitions with other states and organizations to advocate for the rule of law can strengthen the push for accountability creating independent bodies to oversee judicial processes can help detect and prevent political interference. Regularly publishing reports on judicial proceedings and outcomes can enhance transparency and public

[1] There are three categories of states permitted to be parties in cases before the Court. The first category includes all 192 member states of the United Nations which are automatically parties to the Statute of the Court. U.N. Charter art. 93, para 1. The second category includes non-U.N. Members which want to appear permanently before the Court on the special conditions laid out by the General Assembly on the recommendation of the Security Council. U.N. Charter art. 93, para 2.

[2] ICJ Statute, supra note 3, art. 36, para. 1. See also id. art. 36, para. 2 ("The states parties to the present Statute may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other state accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning: a.) the interpretation of a treaty; b.) any question of international law; c.) the existence of any fact which, if established, would constitute a breach of an

[3] ICJ Statute, supra note 3, art. 36, para. 2. Other conditions are contained in paragraph three, which states that the declarations referred to above "may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time." Id. art. 36, para. 3. Paragraph four states that "such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute to the Registrar of the Court." Id. art. 36, para. 4. Paragraph five explains that "declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms." Id. art. 36, para. 5. In 1946, then-President of the United States Harry S. Truman signed a declaration accepting the Court's compulsory jurisdiction. In 1985, however, in protest over the ICJ's determination to entertain the case filed by Nicaragua against the United States, the latter terminated the 1946 Declaration. See Notice of Termination of the 1946 Declaration, signed by George P. Shultz, U.S. Secretary of State (October 7, 1985).

[4] The obvious benefit of appointing an ad hoc judge is re-enforced by the fact that rarely do states waive the right in a dispute. In fact, it has been stated that "[o]f 60 contentious cases and 40 advisory opinions, given by both the old and new Courts at The Hague from 1922 to the end of August, 1967, in one case, namely, Interpretation of the Greco-Turkish Agreement of December 1, 1926, between Greece and Turkey, given on August 28, 1928, did both parties waive their rights, although they were informed by the Court that they were entitled under Art. 31 of the Statute, to appoint ad hoc judges. This they did because they were satisfied with the equality of status derived from the fact that neither had a judge of its own nationality on the bench." Id. at 235-36. In support, the author cited to Acts and Documents Relating to Judgments and Advisory Opinions, 1928 P.C.I.J (ser. C) No. 15-1, at 10 and Interpretation of Greco-Turkish Agreement of Dec. 1st, 1926, Advisory Opinion,1928 P.C.I.J (ser. B) No. 16, at 7-8 (Aug. 28).

[5] ICJ Statute, supra note 3, art. 31, para. 1 ("Judges of the nationality of each of the parties shall retain their right to sit in the case before the Court"). The second paragraph explains that "[i]f the Court includes upon the Bench a judge of the nationality of one of the parties, any other party may choose a person to sit as judge. Such person shall be chosen preferably from among those persons who have been nominated as candidates as provided in Articles 4 and 5." Id. art. 31, para 2. Article 31(3), however, states that "[i]f the Court includes upon the Bench no judge of the nationality of the parties, each of these parties may proceed to choose a judge as provided in paragraph 2 of this Article." Id. art. 31, para. 3.

trust in the legal system.[1]

3.6 Improving Evidence Gathering and Protection

Establishing joint investigative teams that include representatives from multiple jurisdictions can enhance evidence gathering and sharing leveraging technology for evidence collection and management can streamline processes and improve efficiency.[2] Developing comprehensive witness protection programs can encourage individuals to come forward and testify without fear of retaliation.[3]

Seeking international assistance to establish effective witness protection frameworks can enhance the safety of vulnerable witnesses.[4]

4. Conclusion

The challenges faced by national courts in the enforcement of international criminal law requires several approaches that includes strengthening judicial capacity, enhancing legal frameworks, promoting judicial independence, fostering international cooperation, addressing political interference, and improving evidence gathering and protection. By implementing these strategies, states can create a more effective and accountable legal system that upholds the principles of justice and the rule of law, ultimately contributing to global peace and security.

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[1] The tremendous amount of influence on the ad hoc judges to side with their state of origin—the state which, in most cases, nominated them to represent them in a dispute—can be illustrated with the following statement: "Of all influences to which men are subject, none is more powerful, more persuasive or more subtle than the tie of allegiance that binds them (judges) to the of their homes and kindred and to the great sources of the honors and performances for which they are so ready to spend their fortune and to risk their lives." Suh, supra note 66, at 225 (citing Fourth Annual Report of the Permanent Court of International Justice, 1928 P.C.I.J. (ser. E), No. 4, at 75).

[2] In this case, the United States government raised a preliminary objection to the Court's jurisdiction. After the Court decided that it had jurisdiction to entertain the case pursuant to Article 36(6) of the Statute of the Court, the U.S. government withdrew from the case and reserved "its rights in respect of any decision by the Court regarding Nicaragua's claims." Military and Paramilitary Activities in and Against Nicaragua (Nicar. v. U.S.), 1986 I.C.J. 14, 23 (June 27). The final judgment was against the U.S., and when the matter came before the Security Council for enforcement, the U.S. vetoed the resolution, thereby rendering the judgment unenforceable. See U.N. Docs. S/18250 (1986) and S/PV. 2704 (1986). The General Assembly, however, remedied the situation by adopting a resolution calling for "full and immediate compliance" with the Court's judgment. See G.A. Res. 41/31, U.N. GAOR, 53rd mtg., U.N. Doc A/RES/41/31 (1986).

[3] The Cold War era is estimated to have been from 1945 – 1991, when the Soviet Union collapsed. It marked a period of high political and military tension between the U.S.-led Western allies and the Soviet Union-led communist allies. George Orwell, the English author and journalist, is credited as the first person to coin the phrase in a general term. However, the American presidential advisor, Bernard Baruch, is credited as the first person to use it in the specific context of describing the geopolitical tension between the United States and the Soviet Union. See MICHAEL KORT, THE COLUMBIA GUIDE TO THE COLD WAR 3 (2001).

[4] In this instance, functions may include the coordination of the process for the selection of the candidates, the vetting of their qualifications, the interview of the short-listed candidates and the final selection of the most qualified candidates. Since the ILC is composed of eminently qualified legal experts and the process will be less prone to political influence and will command enormous credibility.

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