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Enhancement Of International Criminal Court's Jurisdiction For Saving Uyghur Muslims: A Case Of "Effect Doctrine"

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ABSTRACT

"If one wants to witness one of the most pressing human rights violations on the face and at the same time the helplessness of the international community to address the same in front of an international tribunal is the Genocide of Uyghur Muslims in China. The petition filed before International Criminal Court against China, was rejected by the office of prosecutor for want of jurisdiction. Though a private tribunal in London held China guilty of international crimes, it lacks legal sanction against China. Hence, it is necessary that the reach of International Criminal Court is extended in the manner that the Non-State parties are forced to observe atleast the obligations which are erga omnes in nature. Therefore, in the present paper, I shall be using a doctrine which though predominantly used in Anti-competitive practices, its basic principles can still be used by ICC for enhancing its jurisdiction."

Keywords: Uyghur Muslims, International Criminal Law, International Criminal Court, Effect Doctrine, Anti-Competitive Practices, Territorial Jurisdiction, Universal Jurisdiction

INTRODUCTION

Since 2017 and especially during the spread of Covid-19, some suspicious activities were going around in Xinjiang region of China. Many scholars who were studying in foreign country, they suspected the returning of their Uyghur Muslim colleagues to China and many of them started disappearing. Infact some of the foreign Uyghur diaspora recalled that their family relatives in China asked them not to contact them ever.[1] However, it was later found with much investigation that the Communists Party of China is in full process of genocide or in their words "Cultural rationalization" of the minority community. Survivors, human rights activists, journals, states have reported a mass indoctrination camps being installed in Xinjiang Uyghur Autonomous Region (XUAR), wherein sexual abuse, torture, forced labor, population control methods are being used on them at full force.[2]

China rebutted these human rights violations arguments by stating that such activities are being carried out to eliminate the religious extremism, terrorism etc. but such arguments were not found sufficient to be digested by international organizations.[3] Some estimates states that out of 11 Million Uyghur Muslims in China, around 1-2 million are in the custody in these camps.[4] Due to such activities, many Uyghurs were reported to have flee the country to countries like Cambodia and Tajikistan. Tajikistan consists of one of the biggest populations of Uyghur Muslims outside China but due to the economic pressure by China on both the countries, these countries have deported them back to China.[5]

Due to all such activities being carried out by Chinese government, East Turkistan Government in Exile and the East Turkistan National Awakening Movement filed a complaint with Office of Prosecutor of International Criminal Court on 6th July 2020, arguing that China is carrying out crime against humanity against the minority Muslim community.[6] However, the office of prosecutor rejected the complaint on the ground that there is no sufficient evidence of such crime against humanity and since China is not a party to Rome Statute , the court cannot proceed against it.[7] The Office mentioned certain grounds as to how the court does not have jurisdiction including the argument that the deportation activity being carried out by Cambodia and Tajikistan against Uyghur Muslims won't amount to Crime against humanity.

Meanwhile a Uyghur Tribunal was established in United Kingdom in 2021 to adjudicate upon the allegations of the genocide against PRC government of China against Uyghurs. Though the judgment was not binding upon any government, this tribunal was established with a hope that a pressure is created on international community to hold Chinese government responsible for the acts of genocide.[8] In the objectives of the establishment of this tribunal, it noted that "There is no known route to any other court that can deal with the issues before the tribunal".[9] This is the point on which the author wants to argue that a certain interpretation of the jurisdictional power of ICC, can certainly allow it to adjudicate upon Uyghur's genocide.

The author will argue in the present paper that with the help of the principle of "Effect Doctrine" which was predominantly used by United States Court in Anti-Competitive practices, ICC can enhance its jurisdictional power within the confines of the Rome Statute upon Non-Member countries especially in the case of China.

Xinjiang Uyghur Autonomous Region

I. BACKGROUND: UYGHUR MUSLIMS IN CHINA

Uyghurs are generally Muslims whose language is inherited from a Turkish family and inhabit the XUAR region but they prefer to call the area as "Eastern Turkistan". This region, they consider as their homeland houses almost 11 Million Uyghurs[10] and additionally 500,000 Uyghurs live in different parts of the world,

majority being in Kazakhstan, Kirgizstan and Turkey.[11] If we talk in terms of linguistic, cultural and historically then this group shares bond majorly with the people of the former Soviet Central Asia than they do with the Han ethnic group of China.[12] It is a settled group which is in contrast to the nomadic culture of the Kazakhs, Kyrgyz and Turkmen but has similarity with Uzbeks.[13]

There are two major reasons for the differentiation between the Uighurs and Han ethnic community of China. One difference is their appearance. Uighur developed through the amalgamation of various groups as their homeland was first inherited by Turkish people followed by the inhabitants of the Indo-European place, thus making their appearance to differ from the majority of the Han group of China.[14] Another bone of contention between the two is to whom that land actually belongs? These differences of opinion are well illustrated by the fact that both the parties name the region differently. Where Uighurs name the region as Shärqi Turkistan or Eastern Turkistan, asserting their indigenous bond with Turkic population, Chinese government prefer to call it
Xinjiang (or 'New Frontier'), a name which comes from the time when this land was conquered by Qing Empire and is in official use since 1880s.[15]

Uighur Men setting in a mass internment camp in Lop near Khotan (2017)[16]

In the modern era, under the leadership of Mao Zedong, the policy of the country was framed in accordance with the principle of Marxists-Leninist class struggle. In other words, bridging the gap between the class struggle which in other words meant reducing the gap between Uighurs and Han community.[17] For this, he introduced policies like Xinjiang Production and Construction Corps (XPCC) under which, military power was used for economic development of Xinjian region and also to especially target minorities so as to assimilate them with Han community.[18] The successor of Mao, Deng Xiaoping farmed policy under which Han community members were allowed to migrate to Uighur region so as to dilute the minority culture and thus strictly following the MarxLeninist class struggle gap.[19]

II. FINDINGS OF UYGHUR TRIBUNAL

In its 63 pages judgment, the tribunal considered the evidences given by the eye witnesses as well

the expert testimony from various non-governmental organisations. It observed that Xi Jinping, who came to power in 2013, visited XUAR region where he declared "struggle against terrorism, infiltration and separatism" and that no mercy will be shown.[20]. Moreover, the tribunal also observed that large machinery was deployed as a surveillance on this community including establishment of detention centres, which aptly shows that it cannot be done without the authorisation from the highest level (Figure 1).[21]. Coming to the charge of crime against humanity and genocide, there were ample evidences to suggest that there was a large-scale cultural destruction of this community along with torture and sexual violence against the children and women of this community.

The tribunal noticed that almost 16000 mosques were destroyed[22], several people were imprisoned without assigning any reasons and there were no whereabouts of them as well.[23]. However, one of the major atrocities against this community was met by the government in the form of the birth control policy. Due to the rising indigenous population, a debate was initiated by the government and academicians as to how to control such imbalance between the indigenous population and Han community which is on decline.[24] This resulted in the stringent enactment of birth control policies. The result was such that many Uyghur women were forced to go for abortion at the near stage of giving birth[25] or as some witnesses stated that in many hospitals, the newly born babies were killed.[26] The result of such policies was that the national growth population of this community between the year 2018-19 declined by 75% and in some areas, it was almost zero[27] (Figure 2). In other words, according to some research papers these polices reduced the population of this community by almost 4 million, who would have been alive in the year 2040.[28]

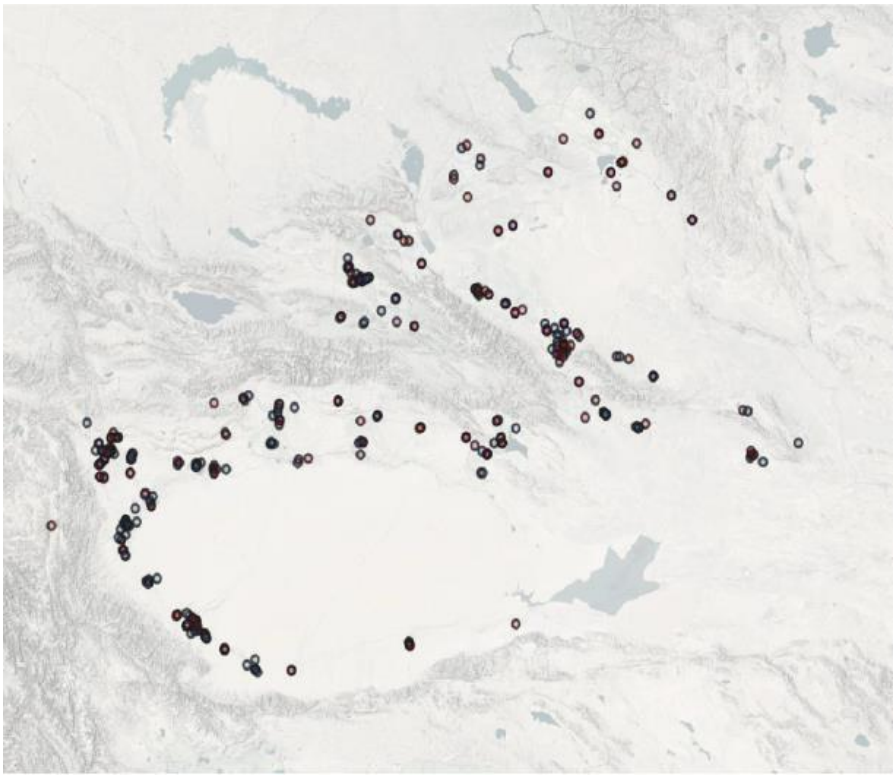

Figure 1: Detention Centres around XUAR Region[29]

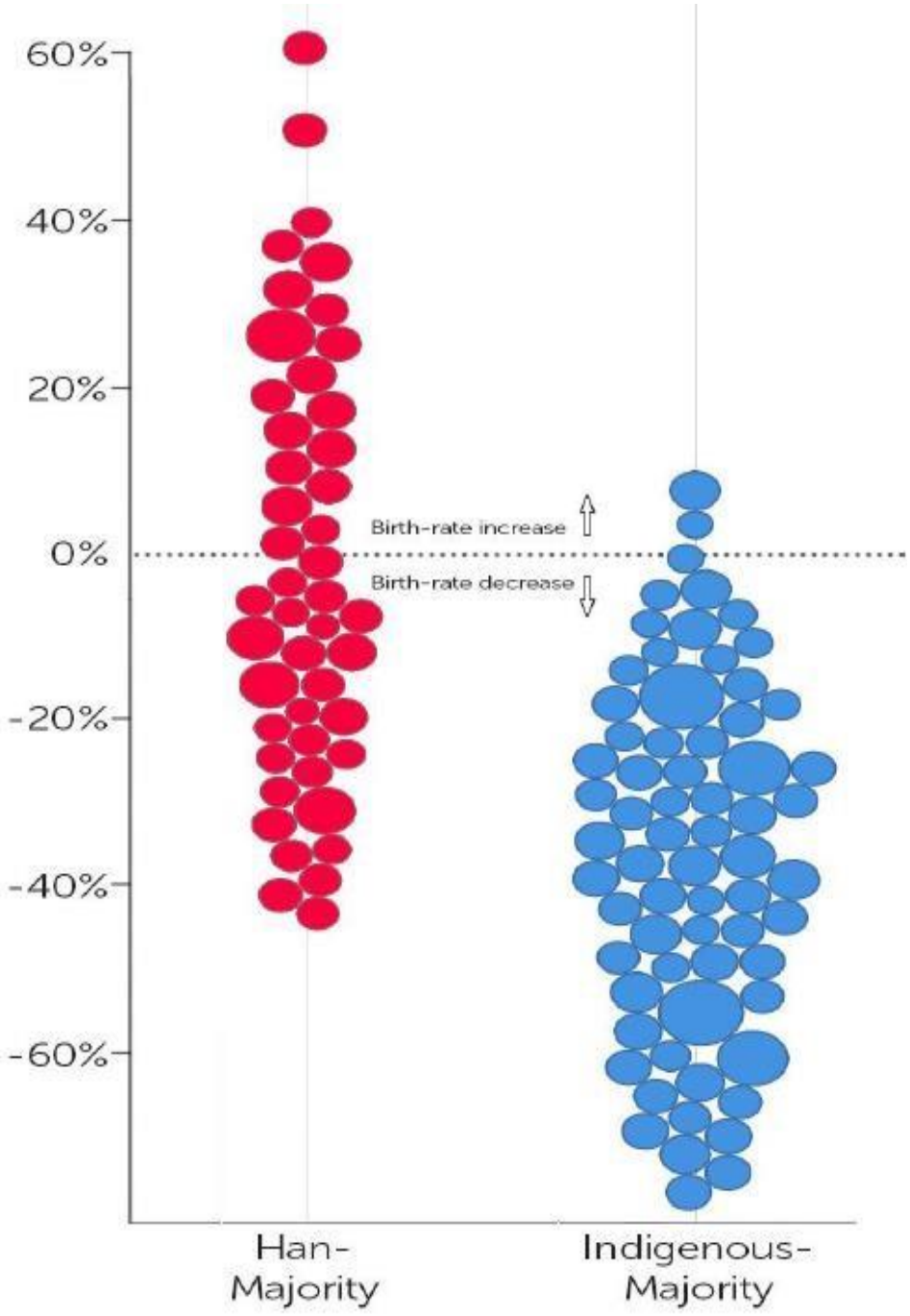

Figure 2: Population imbalance between Han majority (denoted by red colour) and Uyghurs (denoted by blue colour)[30]

Though as such there was no evidence to attribute China with mass killings[31], the tribunal noted that the term "destruction" mentioned in Genocide Convention has to be used context specific and cannot be just confined within the boundaries of physical and biological destruction.[32] Taking into consideration the large amount of evidences both documentary and oral and even after the sanctions issued by PRC against the tribunal[33], the tribunal concluded that China is guilty of crime against humanity[34] and genocide.[35]

The major drawback with this tribunal is that it does not have legal sanction, as a result it cannot

enforce any legal sanction against China. Therefore, it begs the question: whether Uyghurs shall remain in denial of justice for the rest of life? Whether China shall not be held guilty just because it is not a party to International Criminal Court? The answer to such questions will be made in the next part, where I shall try to argue that ICC can enforce its jurisdictional reach through the principle of "effect doctrine".

III. JURISDICTION OF INTERNATIONAL CRIMINAL COURT

ICC has interpreted the term "Jurisdiction" as "competence to deal with a criminal cause or matter under the Statute"[36] The Jurisdictional issue of ICC was one of the most debated provision as many countries especially USA was fearing that giving jurisdiction to an international criminal tribunal over nationals of Non-member states would have wide ramifications. This is in consonance with some of the legal scholars' arguments that powerful countries will never accept or support those courts on which they cannot exercise 'significant control'.[37]

The power of Territorial Jurisdiction is provided under Article 12 of the Rome Statute which states:

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.

2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:

(a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;

(b) The State of which the person accused of the crime is a national.

3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

Art. 12 needs to be interpreted considering the large atrocity being committed by China against Uyghurs otherwise in future any Non-State party can commit certain international crimes, and the international community and the affected group will be left remediless just because the concerned states is not a party to the Rome Statute.

A) "The Conduct in question" and Non-State party

Article 12(2)(a) states that the court can have jurisdiction on "the State on the territory of which the conduct in question occurred". The term "conduct in question" is somewhat a puzzling term and it has not been defined explicitly in the Statute. For instance, there are two States: A and B. B is the party to the Rome Statute and both the countries adjoin each other with a border. Now supposedly, firing is done from the side of State A and the person gets killed on the side of B, so whether the court can assume jurisdiction considering that the person got killed in a State party but again the firing was done from the territory of non-State party. Such is the confusion of the term "conduct in question".

However, the court in Rohingya/Bangladesh case dealt in depth in interpretation of this term, but in Uighur case the court did not accepted the Rohingya judgment. Hence, it is imperative to understand as to where the loophole is being created between these two cases.

(i) Rohingya/Bangladesh Case

Office of the Prosecutor (hereinafter 'OTP') filed a request on 9th April 2018 before the Pre-Trial Chamber-I of ICC to adjudicate upon the question as to whether the court has jurisdiction under Article 12(2)(a) of the Statute over the alleged crime of deportation of Rohingya by Myanmar

(which is a non-State party to the Statute) to Bangladesh (which is a State party)? The Pre-Trial

Chamber-I answered in affirmative by interpreting "conduct in question" in respect to Jurisdiction under article 12(2)(a) "as a minimum, fulfilled if at least one legal element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party."[38] This was also upheld by the Pre-Trial Chamber III by further enunciating this provision. The court said that there is no evidence of putting a limitation on the term "conduct in question" in respect to an actus reus which can have transboundary effect. For instance, the act of killing a person results in the death, so both the facts and consequences have to be established for putting up a charge of murder.[39] Hence, in that case the act of deportation is completed when the victims crossed the international border of Myanmar to go to Bangladesh and therefore the element of deportation i.e. crossing the international border occurred in Bangladesh and therefore one of the element of "conduct in question" did happened in the territory of the State party.[40]

(ii) Uyghur Muslims Case

The court received a communication alleging the act of Genocide and Crime against humanity being committed by Chinese officials on Uyghur Muslims and also the act of deportation been done by Cambodia & Tajikistan to Uyghurs who came as a refuge in these countries from China.[41] The OTP considered Myanmar case to adjudge as to whether the court's jurisdiction lies in Uyghur case or not to which it answered in negative. OTP considered that the acts of Genocide and Crime against humanity was committed by Chinese officials in their own territory only i.e. China and since it is not the party to Rome Statute , the court cannot assume jurisdiction over the same.[42] The Court arrived at this conclusion on the basis of two reasoning:

a) All the acts of Genocide and Crime against humanity was committed in the territory of China only and none of the elements of the crimes were committed or concluded in the territory of any State party.
b) Cambodia and Tajikistan did not commit the offense of deportation under the Rome Statute

Though the court is correct in saying that none of the elements of actus reus of Genocide and Crime against humanity occurred in the territory of some other State party unlike in Myanmar case where the act of deportation was being done by Myanmar against Rohingyas, the jurisdictional issue in Myanmar case was not discussed taking into consideration all the jurisdictional principles.

The President of Pre-Trial Chamber of ICC while adjudicating on the jurisdiction of ICC over Rohingya case expressed, "It is well known that, as a matter of public international law, States may exercise jurisdiction based on various principles, including territoriality (in various forms), personality (active and passive) and, according to some, the 'effects' doctrine. This request is concerned only with the principle of territoriality, and does not rely on the 'effects' doctrine."[43] The Rohingya case was decided primarily on the principle of territoriality which was in stricto seno sense applied by OTP in Uyghur case as well to argue that no actus reus occurred in the territory of any State party.

Taking into consideration this gap between the two cases, I shall be arguing that OTP failed to consider the principle of Effect Doctrine for assuming the jurisdiction of ICC over Uyghur Genocide.

IV. EFFECT DOCTRINE

A) Anti-Competitive activities as "Criminal Offense"

Pre-Trial Chamber III in Rohingya/Bangladesh case noted that the effect doctrine evolved in United States v Aluminium Company of America (ALCOA) et. al.[44] and was generally used in Antitrust and Competition law area[45]. The idea of reading this doctrine into Article 12(2)(a) is dependent upon answering two major questions:

Whether anti-competitive practices be considered as a criminal offense and whether this doctrine itself can be a valid ground for exercising jurisdiction under international law? There are scholarships to argue that cartel activity should be considered as a criminal offense.[46] Also countries like United States[47], Canada[48], United Kingdom[49], Denmark[50], France[51], Greece[52], Romania[53], Germany[54], Italy[55], Poland[56], Hungary[57] have imposed criminal sanctions on anti-competitive activities. Though there is a loophole in defining the "harm" caused by such cartel activities but there is a general understanding among such nations that there is a need to criminalise such activities.

B) History of "Effect Doctrine" and Nippon Case

Though ICC quoted ALCOA case to argue that it was the first case where effect doctrine was used, but in that particular case the court imposed civil action upon the defendant. However, in the present case since it is a matter of criminal offense and therefore ALCOA cannot be relied upon much. Be that as it may, the first case where the "effect doctrine" was used as a criminal prosecution was United States v. Nippon Paper Industries Co. Ltd.[58]. The facts of the case are: The defendant was a Japanese company which was suspected of coming into a collusion agreement in Japan for fixing the price of the sale of thermal fax paper in North America. There were two main argument on the interpretation of Section 1 of Sherman Act: Whether it can have extra-territorial effect on the agreements which solely happened on a foreign soil and whether a criminal sanction can be imposed under the same? In answering the first question, the court had abundance of precedence to state that the Sherman Act can have extra-territorial application if the same produces some effects in United States[59]. But with regards to the second issue, the court noticed that there is not even a single precedence for the same. However, the court moved ahead stating, "there is a first time for everything" to repeal the arguments of Nippon that since there is no precedent of applying Sherman act by criminal sanction on a foreign soil, no criminal prosecution is possible.

This decision got its further legitimacy with the rejection of the defendant's plea of Certiorari by the Supreme Court of United States[60] and was followed in other judgments as well by US Court.[61]

C) Purpose of adopting "Effect Doctrine"

There are two major reasons as to why this doctrine be employed by ICC:

i) **It will act as a deterrent**.[62] It is important to understand that by using this doctrine, the court can act as a deterrent authority so that a large-scale mass human tragedy can be averted if it was been done by a Non-state party.[63] Considering that the pogrom carried out by China is affecting a large proportion of the minority community, there is a need that a deterrent effect is used on it.

ii) **The purpose of this doctrine is useful.** The purpose of employing this doctrine was that any company which has committed some Antitrust activity, does not remain immune from the prosecution just because the same is not located in the territory of the State and as a result this doctrine promotes social and economic benefits.[64]

If we go by the stated argument, it will be not feasible for China to get away with such crime just because the same is being committed on its own territory when the effect of the same can atleast be felt in Tajikistan and Cambodia which are State parties to the Rome Statute . It will be an anarchy of justice if some positivists theorists will argue against the application of this doctrine for interpreting the jurisdiction of the court otherwise it shall mean that the lives of humans suffering from genocide is less important than some Antitrust issues

The effect doctrine was more illustratively used by Zimbabwe Supreme Court in S. v. Mharapara[65]. The facts of the case were that an ex-diplomat of Zimbabwe committed an offense of theft in Belgium in Zimbabwe Embassy. The issue here was that the offense was committed in a foreign land and at that time except treason, there was no such law in the country which allowed the prosecution of an offense committed abroad, though its effect may have been felt in the country. While accepting the argument that Zimbabwe Embassy in Brussels is not an extra-territorial part of Zimbabwe, Gubbay JA clearly held:

"The inevitable consequence of the development of society along sophisticated lines and the growth of technology have led crimes to become more and more complex and their capacity for harming victims even greater. They are no longer as simple in nature or as limited in their effect as they used to be. Thus, a strict interpretation of the principle of territoriality could create injustice where the constituent elements of the crime occur in more than one state or where the locus commissi is fortuitous so far as the harm flowing from the crime is concerned……A more flexible and realistic approach based on the place of impact, or of intended impact, of the crime must be favoured."[66]

Hence, the Zimbabwe SC rightfully placed a significant weight on the fact that the not only the constitutive element can occur in more than one state, but also the harm flowing from the same can also be felt in some other territory and therefore there is a need to liberalise the territorial extent of the criminal law, otherwise the wrongdoer may never be punished.

D) Criticism of the Judgment & Practical aspect

Though this judgment was supported by the then Attorney General of United States Janet Reno, who stated that the Antitrust Division of the Justice Department will enforce the Sherman act extraterritorially[67], this judgment was not without international criticism. Many foreign countries rushed to pass legislations to debar the enforcement of the US Courts Anti-trust judgments on their companies.[68] It was also pointed out that if United States is really serious to enforce Sherman act outside its soil, then it has to first respect the policy prerogatives of those countries.[69] This definitely shows that international relations can deteriorate if unilateral actions are taken by any State and especially in case of criminal prosecutions.

In the case of ICC's jurisdiction, such issues can very well come up. This was very well evident during the Pre-negotiations of Rome Statute also wherein countries like United States was highly vociferous against giving jurisdictional powers to the court over Non-State parties.[70] The adoption of effect doctrine may stir up the controversy about giving extra-jurisdictional powers to ICC. Therefore, it is incumbent to deal with such charges one by one.

i) ICC is created by the Consent of the States.

It is constantly argued that ICC is creature created out of the State consent[71]. In her influential work, Madelin Moris has argued that ICC is created out of delegated legislation of the States and therefore it cannot exercise any jurisdiction over Non-Member countries.[72] The same argument was also used by Myanmar in Rohingya/Bangladesh case that since the court is a creature of the consent of the States, it cannot assume jurisdiction over Non-member states, otherwise it will be a violation of the basic principle of pacta tertiis nec nocent nec pro sunt enshrined under Art. 34 of VCLT ("A treaty does not create either obligations or rights for a third State without its consent").[73] However, the Pre-Trial Chamber-I refuted all these arguments and held that this principle is itself not without exceptions.[74]

It also held that more than 120 countries which represent the vast majority of the international community, established International Criminal Court which possess "objective international personality" and not just a personality recognized by the States. By objective personality it means that it is in itself a "legal-judicial-institutional" entity.[75] The Court also observed that the Statute may have effect on Non-Party States in certain

circumstances. For instance, some of the provisions of Statute s are erga omnes in nature for example its Preamble, the provisions it adopted from
Genocide Convention 1948, 1949 Geneva Conventions and Additional Protocols, 1989 Convention on the Rights of the Child.[76]

Also, it is to be noted that in literature it is argued that these international courts possess "inherent jurisdiction" to try the offences[77]. By inherent jurisdiction, it doesn't mean that they have primary jurisdiction over such criminal offences, but they are treated as "exclusive agent" acting on behalf of the international community to try the offences which are of grave nature.[78] This relationship was well enunciated by ICTY in Tadić case:

"The trial chamber agrees that in such circumstances, the sovereign rights of states cannot and should not take precedence over the right of the international community to act appropriately as they affect the whole mankind and shock the conscience of the nationals of the world. There can therefore be no objection to an international tribunal properly constituted trying these crimes on behalf of the international community."[79]

Though the observation was given in the context of its own jurisdiction, it laid the foundation of one important facet of the international tribunal and that is that there is no transfer of criminal jurisdiction by states but actually these tribunals are bestowed upon with these jurisdictions. This argument can be supported by the observation of ICTY which it made in Tadić case that, "the establishment of the International Tribunal by the Security Council does not signify, however, that the Security Council has delegated to it some of its own functions or the exercise of some of its own powers. Nor does it mean, in reverse, that the Security Council was usurping for itself part of a judicial function which does not belong to it but to other organs of the United Nations according to the Charter."[80] In the same tone, Special Court of Sierra Leone also maintained that its establishment does not reflect the fact that it has been delegated with some jurisdictional powers but it is an international tribunal of its own having competency of ruling upon its own jurisdiction.[81]

Hence it can be safely presumed that the States did not delegate their jurisdictional powers to ICC, but ICC is in its own an international tribunal which is establishment for the maintenance of international peace and security.

ii) ICC cannot assume Universal Jurisdiction

Though some or the other jurisdictional principles works on the factors of the territorial links, universal jurisdiction is a different concept. It works solely on the nature of the crime, "without regard to where the crime was committed, the nationality of the alleged or convicted perpetrator, the nationality of the victim, or any other connection to the State exercising jurisdiction."[82] ICC itself put an embargo on its jurisdiction in Rohingya/Bangladesh case wherein it held that just because it has objective personality, does not ipso facto means that it will be having an automatic or "unconditional" jurisdiction as well.[83]

The argument against the adoption of "effect doctrine" can be that through this principle, ICC can assume the rule of Universal Jurisdiction, reviving back the Germany proposal.[84] The reason being there is "remoteness" of connection between the place of the actual crime and its territorial effect. However, if we analyse the two concepts, the difference between the two is apparent. First and foremost, the application of universal jurisdiction is based not on the effect the crime caused on the territory of some country, but the gravity of the crime itself. On the other hand, in the case of effect doctrine, a connection between the place of occurrence and its effect on the territory of the concerned state has to be established. This is aptly cleared by the judgment of US Supreme Court decision in American Banana Co. v. United Fruit Co.[85], in which the court refused to extend the
Sherman Act extraterritorially as the "conduct" occurred in Central America which had no significant effect on American soil.

However, it is important to analyse the embargo the ICC issued against itself (as mentioned before) that it won't assume automatic jurisdiction. Taking the words of the Preamble into consideration as well as Article 21(3) of the Constitution, this interpretation of ICC for its jurisdiction is not legally tenable. Cherif Bassiouni rightly articulated that when certain crime is considered as jus cogens, then to prosecute the same is not less than an erga omnes duty, otherwise the whole concept of jus cogens will vanish.[86] It is an undisputed legal fact that prevention of genocide and fulfilment of the obligations of the duties of the Genocide Convention have been described as erga omnes in nature.[87] One fails to understand that when domestic courts have the jurisdiction power of universal reach in grave crimes, then what puts a wall in between ICC and its universal reach.
Even for the sake of the argument, it is considered that the proposal of "universal jurisdiction" by Germany was rejected by the members of the negotiation and therefore the court cannot assume such vast power of jurisdiction, there is no suggestion that such negotiation talks can over-ride erga omnes obligations.

For instance, in 2002 the then government of Afghanistan entered into an agreement with United States according to which, the criminal trial of the US Personnel for any offence committed by them on Afghanistan soil shall be exclusively tried by US government itself. However, ICC refuted this argument, stating that such agreements does not put a bar on the jurisdiction power of the court.[88] **iii) Even if ICC has universal jurisdiction, it may result in judicial discord**

One has to have a practical outlook as well. Even if the above arguments that ICC may assume jurisdiction through effect doctrine is accepted, it may result into a judicial discord between the States and between the court and the States. One doesn't have to go far deeper in the history to understand as to what judicial discord is and how State's "sovereignty" can create rumbles in the international scenario. A Boeing 747 airliner on flight PA103 exploded in the Air space of Scotland (precisely Lockerbie) on 21st December 1988, killing all the 270 people on board. The victims on the flight belonged to United States as well as United Kingdom and the accused in this bombing belonged to Libya. However, as a result of much diplomatic and International Pressure, the countries agreed for a middle route. Under this, Libya got ready to surrender the accused for the trial which happened in Netherlands under the laws of Scotland and United States & United Kingdom gave an undertaking that they won't extradite the accused. If they are found guilty, then they will remain in prison in Scotland and if found innocent, they will be given a safe passage to Libya.[89]

With the above example, it is clear as to how in the gravest acts like terrorism, the sovereignty of States can become a major issue. However, there is one thing to be noted. Even though there was a jurisdictional discord among the States, Libya got ready to surrender the accused only after the political will of the United Nations and the member countries. Moreover, one should also understand a fact that just because there is a risk that the jurisdiction "overreach" of the court may cause mayhem at the international platform, is no bar to the exercise of jurisdiction. Another factor to be noticed from Lockerbie case is that United States, France and United Kingdom pursued vociferously in United Nations against Libya on the fact that since it has a bad track record in terms of containing terrorism, there is a bleak chance that they will carry out neutral investigation and trial against the accused.[90] This resonates with the current situation in China as well. The genocide which is being carried out, it is undoubtedly a state sponsored one and there are bleak chances that any investigation can be carried out by China against such wrongdoings.

CONCLUSION

Andrew Guzman in one of his celebrated works, "How International Law Works"[91] argued,

"States do not concern themselves with the welfare of other states… They will only cooperate when doing so increases their payoffs." This is realistic approach being followed in today's globalised world. Though we keep on banging table on the issue of human rights, though we keep on emphasising the nature of how grave the issue of Genocide is, it may look

good on paper but in reality, there is a lack of political will on the same. The Uighur Tribunal which gave its judgment on the evidences it received, these evidences were not disputed by any foreign country including China which clearly lays down an important facet that when we all know that a mass crime is being openly committed against a particular community, do we have to just watch the ICC taking no cognizance of the same just because it is barred by some territorial limitations?

In the words of Kirsten Schmalenbach, there are two international communities which is divided on the basis of the extend of the justice they desire.[92] As was argued before that such international tribunals are bestowed with their inherent jurisdiction, ICC can especially adopt the approach of SCSL. Sierra Leone court was established through a bilateral agreement but it stated that it has its own distinct international criminal jurisdiction which is somewhat puzzling considering that only Sierra Leone was bound with the decisions of the court. It is also worth noting that there has never been an issue for European Court of Human Rights in asserting its jurisdiction in a Suprational way in the same way European Union asserts because it is assumed that has been a jurisdictional transfer to it by EU.[93]

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[24] Ibid ¶111

[25] Ibid ¶117

[26] Ibid

[27] Ibid ¶119

[28] Ibid ¶122

[29] Ibid ¶54(e)

[30] Ibid ¶121

[31] Ibid ¶39

[32] Ibid ¶159

[33] Ibid ¶34

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Bangladesh/Republic of the Union of Myanmar No. ICC-01/19 Date: 14 November 2019 ¶50 [40] Ibid ¶62

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[48] Canada imposes one of the stringiest penalties in the whole world on Cartel activity. Under section 45 of the Competition Act, any individual involved in Conspiracy or in agreement of collusion then he shall be liable to a fine of not more than $ 25 Million or 14 years imprisonment or both https://laws-lois.justice.gc.ca/PDF/C-34.pdf

[49]Section 190 of Enterprise Act, 2002 imposes an imprisonment for committing the offense of Cartel which is not less than 6 months and not more than 5 years https://www.legislation.gov.uk/ukpga/2002/40/section/190

[50] Section 23(3) of the Danish Competition Act imposes imprisonment of 1 year in the case of entering into a cartel agreement https://www.en.kfst.dk/media/1351/competition-act-8692015.pdf

[51] Article L 420-6 of French Commercial Code, states that any employee of a company who was involved in any anti-competitive practices shall be punished with a fine of either EUR75,000
Or/and 4 years imprisonment https://uk.practicallaw.thomsonreuters.com/7-572-

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[52] Article 44 of Protection of Free Competition states that any individual who is involved in anticompetitive practice shall be punished with a fine of EUR One hundred thousand upto EUR One Million along with an imprisonment of not less 2 years https://www.epant.gr/en/legislation/protection-of-free-competition.html

[53] Article 60 of Law of Competition States that any individual found guilty of anti-competitive practices like collusion the he shall be punished with imprisonment for not less than 6 months and not more than 3 years.
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[54] Section 298 of German Penal Code criminalise Collusive Trading with an imprisonment of not more than 5 years https://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html [55] Article 501-bis of Italian Criminal Code provides imprisonment of upto 3 years with fine of €25,822 in case of "speculations on prices and quantities of raw materials and basic food product"
https://www.dlapiper.com/~/media/files/insights/publications/2012/09/ithe-europeanhttps://www.dlapiper.com/~/media/files/insights/publications/2012/09/ithe-european-

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[56] Masteusz Blachucki, "Polish Competition Law – commentary, case law and texts" Office of the Competition and Consumer Protection (2013 Warsaw) 54, available at: https://www.uokik.gov.pl/download.php?plik=13220 (Article 305 of Criminal Code of Poland imposes an imprisonment of 3 years on any individual entering into any collusion activity or anti-competitive activity)

[57] Section 420 of Hungarian Criminal Code impose an imprisonment of one to five years on an individual for entering into an agreement in restraint to competition available at: https://www.legislationline.org/download/id/5619/file/HUngary_Criminal_Code_of_2012_en.pdf

[58] 109 F.3d 1 (1997)

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[60] United States v. Nippon Paper Industries Co. Ltd. Et. al. 118 S.Ct. 685 (1998)

[61] United States v. Hsuan Bin Chyen et. al., F. Suppl. 2d, 2011 WL 332713 (ND Cal. 2011), 4;

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[63] Prosecutor v. Laurent Koudou Gbagbo (Judgment on the Appeal of Mr. Laurent Koudou

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[73] PRE-TRIAL CHAMBER I Decision on the "Prosecution's Request for a Ruling on

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[75] PRE-TRIAL CHAMBER I Decision on the "Prosecution's Request for a Ruling on

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