

Analysis of International Criminal Law Cases

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Abstract: The title of my thesis is whether prosecutions do or do not stand in the way of peace. In international criminal law, criminals who are heads of state or symbols of state, like members of royalty, often do not receive the punishment they deserve. Whether or not to prosecute them is also a problematic issue that often leads to international conflicts if not appropriately handled. To address this issue, there are often different solutions for different situations. I will use the following four cases to analyze whether prosecution is appropriate in different situations and what consequences may occur after prosecution. My thesis has five parts; the first part is the case "After world war II, Should the emperor of Japan be prosecuted." The second part of my thesis is the case about "the government of Uganda prosecuted the head of the Lord's Resistance Army (LRA)." The third part of my thesis is "SLC and Mišelović." "Milosevic is the first person who was prosecuted as a head of a country. The fourth part of my thesis is about "Pugin and Russia." In the end, the conclusion is about Whether or not prosecutions do or do not stand in the way of peace; it depends on the different situations.

Keywords: prosecutions, International Criminal Court (ICC), the heads of state, trial

1. Introduction

As for why I chose this topic, my interest in international criminal law is the main reason. After researching the history of international criminal law, I found that the criminals who are heads of state or symbols of state, like members of royalty, often do not receive the punishment they deserve.

In my opinion, ICC always does not prosecute the people who have a significant impact on the world of politics; there are different situations with different solutions. Therefore, I will use the following four cases to analyze whether prosecution is appropriate in different situations and what consequences may occur after prosecution.

2. Main Body

Should the Emperor of Japan be prosecuted after World War?

On August 15, 1945, Emperor Hirohito's "Final Edict of War" broadcast officially announced Japan's unconditional surrender to the Japanese people and even to the world [1]. After Japan's surrender, some people in Japan, some victim countries, international arbitration bodies, and even Hirohito himself held the emperor responsible for the war. Many people persecuted by the war at home and abroad in Japan were eager to hope that Emperor Hirohito could be treated as a war criminal and receive justice by the International Court of Justice as the head of state during the war. As the

number one war criminal, several proposals have been made to change the existing political system of Japan ruled by the Mikado. However, in the end, Hirohito was not prosecuted. As a Chinese, I was unhappy that Hirohito was not punished; however, after analyzing the case, I think the Americans have some reasons to keep Hirohito's status. While it is in the interest of the United States to keep Hirohito in place, it is also in the interest of most of the allies that the emperor should be prosecuted.

In 1945, China united with the United States and Britain to issue the Potsdam Declaration. The only promise associated with the emperor was that after occupation and satisfactory proof that Japan would keep the peace, the Japanese people would have a chance to choose their government [2]. This left enough space for the Japanese to retain their emperor. The Japanese people continued to support their emperor, even though Emperor Hirohito brought war and disaster to the world.

MacArthur's reply, dated January 25, 1946, glossed over Hirohito's war role, reportedly based on a nonexistent investigation [1].

In the Asia Pacific War, all Japanese actions were carried out in the name of the Emperor, so the Allied countries had sufficient evidence to try Emperor Hirohito. However, some people still believe that the Mikado should not be tried. There is enough reason to retain Mikado Hirohito, although it will eventually pay a considerable price. Suppose Emperor Hirohito is not held accountable in some form. In that case, people in many invaded countries and regions will feel pain and betrayal, and this will distort Japan's relations with many countries it has hurt and Japan's internal affairs. In hindsight, the United States' policy should initially retain Hirohito to ensure domestic political and economic stability after Japan's surrender and avoid a humanitarian crisis close to famine. After the domestic crisis is lifted, Emperor Hirohito should abdicate and be responsible for the act of provoking war.

Before World War II, the Japanese emperor was the supreme leader of Japan and had the final say. He should be responsible for the September 18th Incident, Lugouqiao Incident, and the Pearl Harbor Incident. From the perspective of Japan's political structure during World War II, the Prime Minister and the military headquarters had no right to launch military operations against another sovereign country without the consent of Emperor Hirohito. He was the critical commander of Japan's invasion plans and was the spiritual backbone of Japan's invasion of other countries. He should be prosecuted and tried as a war criminal, which would comfort the invaded countries and oppressed people, which is the reason for the existence of international law.

Joseph Kony, the leader of the Lord's Resistance Army. The Lord's Resistance Army originated (LRA) in 1987 as a Ugandan resistance group from the Ajoli community. The organization kidnapped and killed thousands of northern Uganda civilians by cruel means and cut off their ears, lips, hands, noses, and feet to maim many people. It even took orphans to become one of them. Kony used to be a victim's kid being kidnapped by the LRA, but Surprisingly, he was forced to join the LRA after he had been abused.

In order to eliminate the Lord's Resistance Army (LRA), governments have taken many military actions, which also forced the LRA to move towards southern Sudan and enter the Democratic Republic of the Congo in 2005 and 2006. Although the LRA is already moving away from northern Uganda, the organization still abuses villagers, kills civilians, and seizes children to work in remote border areas in Congo, Central African, and South Sudan.

The International Criminal Court (ICC) in The Hague in 2005 issued arrest warrants for Kony and four other senior LRA leaders on charges of Against Humanity Crimes and War Crimes in northern Uganda.

(Brussels) - The trial of a Lord's Resistance Army (LRA) commander at the International Criminal Court (ICC) has begun, Human Rights Watch said today, in an essential new chapter of accountability for the rebel group's brutal crimes in northern Uganda [3].

"The trial of Dominic Ongwen at the International Criminal Court is the first major event to bring justice for LRA atrocities," said Ellis Kepler [3].

The International Criminal Court can intervene only when national courts can or unwillingly prosecute. However, because of the seriousness of the situation, all countries strongly condemned the Lord's Resistance Army. Therefore, at the request of the Ugandan government, the International Criminal Court began investigating crimes in northern Uganda in July 2004.

Ongwen is believed to be the only former abducted child facing charges from the International Criminal Court.

Although he committed many severe crimes against humanity in his adult life, the identity of the former child soldier who was forced to serve in his childhood will be taken into account by the judge, which is conducive to his defense and may reduce his sentence when convicted.

The International Criminal Court has prosecuted and sentenced the leaders of the Lord's Resistance Army, which has committed genocide, crimes against humanity, and other grave crimes against humanity in Uganda. Their trial reflects the nature and significance of international criminal law. International criminal law does not threaten the safety of the world's people but guarantees the peace and security of Uganda and other affected countries.

The verdict is an important step forward for the International Criminal Court, and the number of prisoners, witnesses, and victims involved is enormous. The verdict also reflects the international community's determination to eliminate terrorist organizations and maintain world peace. The verdict is a good deterrent for other terrorist organizations like the LRA and sets the stage for the prosecution of other terrorist organizations that threaten human security.

On February 12, 2002, former Yugoslav President Slobodan Milosevic was tried in The Hague, the Netherlands, for genocide and war crimes committed in Bosnia, Croatia, and Kosovo [4]. On March 11, 2006, Milosevic died in a prison cell from a heart attack at 64.

Milosevic, born on August 20, 1941, joined the Communist Party at 18; In 1989, Michelovic was elected President of Serbia [5]. In March 1999, Louise Arbour, Canada's chief prosecutor in The Hague, first accused Milosevic of war crimes in Kosovo. Subsequently, Arbor's successor, Carla Del Ponte, a Swiss activist, expanded the scope of the charges to include the charges against Croatia and Bosnia. In the latter case, Michelovic was accused of complicity in killing more than 7000 Muslim men in Srebrenica in July 1995, thereby committing genocide [6].

In 1999, Slobodan Milosevic, the former President of Yugoslavia, became the first current head of state charged with war crimes. He was accused of planning a war that lasted for ten years and killed more than 200000 people. Thus, three years later, he became the first former head of state to stand trial for crimes against humanity and violations of the Geneva Conventions of the Croatian and Kosovo wars in the war in Bosnia and Herzegovina [6].

Slobodan Milosevic is charged with genocide, crimes against humanity, grave breaches of the Geneva Conventions, and violations of the laws or customs of war; he is charged with 29 individual crimes [7].

Milosevic was the first head of state to be prosecuted, a breakthrough for international criminal law, representing the fundamental principle of equality before the law. Although Milosevic died of a heart attack during the trial, and his final verdict was not completed, the significance of prosecuting heads of state for international criminal law goes beyond the case itself and perhaps in the future, thanks to the efforts of judges and international law lawyers, more and more influential figures will be treated fairly and brought to justice.

On the other hand, the fact that the International Court of Justice in The Hague acquitted Misericovic ten years after his death makes Misericovic's case unusual. Many speculate that this resulted from a political struggle, that no one knows whether Misericovic died of a heart attack and that the truth of the matter is hard to find. However, there is no doubt about the importance of the Misericovic case for international criminal law. International criminal law is often more than just law; the political and diplomatic game between countries is also the key to implementing international criminal law.

Therefore, prosecuting Misericordia was acceptable for the international environment at the time, and it would not have jeopardized world peace.

The International Criminal Court (ICC) is the only international tribunal with the potential to pursue criminal liability against individuals such as Vladimir Putin. However, Ukraine has sued Russia before the International Court of Justice (ICJ) and the European Court of Human Rights (ECHR).

Russia and Ukraine both do not join the International Criminal Court. However, after Russia annexed Crimea in 2014, Ukraine accepted the jurisdiction of the Court. The Court can prosecute individuals suspected of Genocide, Crimes Against Humanity, and War Crimes. In 2017, the Crime of Aggression Was introduced in the International Criminal Court, but some restrictive conditions restricted it [8]. The crime of aggression refers to the use of force by a country to violate another country's sovereignty, territorial integrity, or political independence or in any other way inconsistent with the Charter of the United Nations declared in the definition of aggression. It is a war crime under international criminal law. Ukraine indicts Putin on this charge.

According to the UN General Assembly's Definition of Aggression, the following acts constitute acts of aggression, whether war is declared or not, among which are the invasion or attack by a state's armed forces into another state's territory or any military occupation resulting therefrom. As well as the bombing of the territory of another state by the armed forces of a state or the use of any weapons against the territory of another state [9]. Although the Russian attack aims to protect the country from possible future NATO attacks, NATO has not yet had any substantive armed attacks. Therefore, according to international law, it is not easy to constitute Russia's self-defense.

The following conditions exist for the ICJ to accept cases and enforce its judgments: If both member states are willing to submit their cases to the ICJ for adjudication, then the ICJ's judgments are legally binding on both parties to the proceedings. However, if one of the parties does not implement the judgment in force, it is enforced by the UN Security Council.

However, Russia has announced its withdrawal from the International Criminal Court (ICC) in The Hague, the Netherlands, saying that Russia has no intention of becoming a member of the Rome Statute of the International Criminal Court, and Russian President Vladimir Putin signed a law for this purpose [8].

In this case, Russia is not a member of the International Criminal Court, and Russia has a veto in the UN Security Council. Therefore, the International Criminal Court can only prosecute other crimes in this case.

Another problem: Putin, as the current President of Russia, enjoys immunity from arrest and prosecution in diplomacy, so the International Criminal Court cannot request member countries to arrest Putin. Because the International Criminal Court has no law enforcement authority, it can only rely on member States for arrest. So unless Putin leaves office or is forced to leave, he is unlikely to be detained.

In the case where the Russian army is accused of killing civilians in Kiev, if it is true, according to Article 28 of the Rome Statute, a military commander or a person acting effectively as a military commander fails to exercise control over the troops under his effective command, and, knowing that his subordinates are about to commit or have committed criminal acts, in order to prevent them from committing criminal acts, Or punish the criminal acts committed by his subordinates, the commander or superior shall bear criminal responsibility [10].

If it is true, Putin, as the top commander of the Russian army, is obliged to be responsible for the massacre, control the troops under his adequate jurisdiction and control, and bear criminal responsibility for the crimes committed by these troops within the jurisdiction of the court.

But the fact is that prosecuting Putin and Russia is an unwise decision that could cause greater international conflict and lead to a larger diplomatic or even military conflict. From an international

law perspective, prosecuting Putin would be extremely difficult and unlikely to succeed, as he has diplomatic immunity as Russia's president and Russia is not a party to the law, which would be a huge obstacle to trial and enforcement. Even success would cause greater international conflict. Russia also possesses nuclear weapons and only potentially threatens the peace, and prosecuting Putin would require careful consideration for any country. On balance, prosecuting Putin and Russia is a perilous decision that does not necessarily lead to the desired outcome and could put the security of the country and its people in danger.

3. Conclusion

These four cases teach us that there are different solutions for different situations. International criminal law is not only a legal solution; political diplomacy is also an unavoidable consideration. The most appropriate way to decide whether to prosecute a head of state is to consider all factors, while impulsively choosing to prosecute may lead to a more serious international conflict, while quickly abandoning prosecution may harm the real victims. Therefore, it is essential to consider the international situation, the form of diplomacy, and the legal requirements to make the most appropriate decision.

Military power and foreign policy need to be considered. For example, suppose a country has a robust foreign policy and enough military power to threaten world peace. In that case, it is responsible for world peace and security to consider not prosecuting, but the ICC should still retain the right to prosecute.

In most cases, we should prosecute and try those who violate international criminal law, whether they are influential political figures. However, if prosecution is not possible based on the realities of the situation, or if the prosecution would have peace-threatening consequences, then it may be more appropriate to use other methods of condemning and punishing their behavior while retaining the right to prosecute, in the interest of world security and peace.

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