

International Justice mechanisms in our contemporary world

In this analytical piece, Harold Hongju Koh illustrates the development of international justice mechanisms in our contemporary world through five phases. Here, the very foundations of addressing international crimes through judicial structures is rooted in the foundation and objectives of the Nuremberg tribunals. Furthermore, the empowering role of the United States through the course of international justice development is emphasized, yet the US does not recognize the jurisdiction of the ICC, as it may pose a threat and political implications to the extensive worldwide US military and peacekeeping operations. However, it is underlined that the US continuously supports the objectives of the ICC to hold perpetrators of the gravest crimes accountable, yet it is vital that these judicial processes are compatible with the objectives and national security of the US.

Firstly, it is argued that it was extraordinary that the Nuremberg tribunals (1.0) were devised as a means to prosecute the perpetrators of the Nazi regime, as after the WWII many advocated to eliminate these criminals by execution. However, the US persistently emphasized that the only justified and legitimate manner to deal with these criminals was through transparent judicial processes. Here, the objective was to project a strong statement that the international community would never accept grave human rights violations and war crimes to go unaccounted for.

In essence, it is emphasized that the viability of a judicial structure is determined by four fundamental attributes: legitimacy as a means to gain traction; legal professionalism in order to ensure judicious conduct; cooperation between the various state- and non-state actors; and legality to consolidate the legitimacy in the international community. Subsequently, the Ad Hoc tribunals (2.0) were constructed by the UNSC¹ as a revolutionary legal structure to advocate accountability, embodied in the ICTY and the ICTR. However, these courts were arguably perceived as too distant from the crime scene.

¹ United Nations Security Council

In order to attain more legitimacy and grassroots support, hybrid tribunals (3.0) were devised in the countries where the grave crimes had been committed. These tribunals were mostly regulated by the UN, and thus, highly dependent of the goodwill of the political leaders to provide transparency and support. Moreover, these tribunals gained more public legitimacy and support, as they were located closely to the crime scenes and were primarily conducted by domestic judicial personnel. The tailor-made approach and assessment of local contextual factors, empowered these courts in their quest to justice.

Despite the fact that the US didn't ratify the Rome statute of the ICC, it fulfilled a vital role in advocating the creation of a permanent international criminal court, as a means to attain justice in a sustainable manner. Here, the establishment of the ICC (4.0) created a fundamental judicial institution, upon which international legal justice and processes to hold perpetrators accountable could be further modified. In this process, the US utilizes the "smart power" approach, which enables them to further dialogue with the international community as a means to make compromises and enhance mutually beneficial objectives.

In conclusion, one argues that the framework of international justice structures is sufficiently constructed. Therefore, the international community should merge the powers harmonize the mosaic of legal "software and hardware" in order to devise a sustainable and fruitful international justice system.