


## Pakistan's Commitment to Human Rights: A Probe into the Question of Ratification of the Rome Statute of International Criminal Court

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### Abstract

The question of ratification of the Rome Statute of International Criminal Court is one of the most debated questions in public international law. Because it involves strict commitment to human rights many states often see it as a hurdle to their national interests. Nevertheless a number of states have ratified the statute except a few. Pakistan is one of those states that have not ratified the Rome Statute even though it has been a party to various other treaties on human rights. This article focuses on the question why Pakistan did not ratify the statute? The article also provides recommendations how the ratification can be made possible.

**Key words:** Human rights, International Criminal Court, Pakistan, Ratification.

### Introduction

International Criminal Court (ICC or the Court) is an autonomous international organ established under a treaty. Its salient features distinguish it from other international bodies, those established under the United Nations (UN) Charter. Unlike ICC, International

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Court of Justice (ICJ) exists by virtue of UN Charter with non-binding jurisdiction over the states unless a particular state accepts it. Whereas, the recognition of ICC depends on ratification of its treaty and consequently it exercises compulsory jurisdiction over the state parties. Triggering jurisdiction of ICC could be in different manners such as by state party against a state party; by the UN Security Council (UNSC) against the state party or non-party state; and by a state party against the national of a non-party state.<sup>1</sup> The last two types of jurisdiction is a controversial subject both in political and academic circles. However, these differences are of divergent political nature varying from state to state.

The establishment of ICC in the year 1998 is regarded as milestone sphere of international criminal justice. From human rights perspective, the creation of Court is viewed as progressive development in relation to bringing international crimes within a defined framework of accountability.<sup>2</sup> Soon after its creation, the Court had to face controversies pertaining to its jurisdiction and thus resulted in stepping back by several states. Pakistan initially voted in favour of the Court at the Rome Conference of plenipotentiaries, but later recoiled from signing the Statute. This sudden withdrawal could not be taken on a lighter note rather it was a matter of serious implications. Why the country stepped back from the Court after voting in its favour at first instance and whether the country should reconsider ratification of the Rome Statute (the Statute) are important questions. This work is an attempt to look at whether ICC represents collective system of accountability and whether its support is necessary? Whether Pakistani laws are consistent with the ICC Statute and whether the country's legal and political norms accept the Statute? Further, what implications the ratification process entails?

### **Does ICC Represent A Collective System Of Accountability?**

Stating that ICC represents a collective system of accountability is not a simple statement especially when it is argued in reference to state's future course of action i.e. seeking ratification of the Statute. There could be several justifications for stating that ICC represents the collective system of accountability. Firstly, it aims at ending impunity for core international crimes concerned to "international community as a whole" as envisaged in the preamble to the Statute.<sup>3</sup>

Secondly, the traditional doctrine of universal jurisdiction over serious international crimes has strong basis in national and international laws and as well in Customary International Law (CIL). Universal jurisdiction entitles the states to try the perpetrators of serious international crimes regardless of nationality or territoriality.<sup>4</sup> Thirdly, the emergence of world as a global community and the existence of UN itself has resulted in undermining the traditional concept of absolute state sovereignty to reasonable extent. For instance, the operation of article 2(4) of the UN Charter is of an absolute prohibitory nature.<sup>5</sup> Similarly, the recent advancements in information technology; cross border flow of persons, economic inter-dependence, currency, ideas and diseases; issues of environmental protection and the worldwide growing concerns for human rights violations are the main factors which are indicating towards a borderless world in a near future.<sup>6</sup> European Union is an example of the borderless international community.

Fourthly, the incorporation of international peremptory norms into the Vienna Convention on the Law of Treaties, 1969 (VCLT) and its categorical recognition in the judgments of the ICJ is a progressive development in sphere of public international law for the reason that these norms have superior force over all other norms.<sup>7</sup> Similarly, the *erga omnes* rights and obligations of states are categorically affirmed by the ICJ and other international tribunals on different occasions.<sup>8</sup> Fifthly, the peremptory norms of International Humanitarian Law (IHL) and International Human Rights Law (IHRL) have superior force over all other national and international norms and even invalidate the provisions of a treaty that is in conflict with the peremptory norms of general international law by virtue of Article 71 of the VCLT.<sup>9</sup> Hence, the elements of crimes within the Court jurisdiction are the grave breaches of IHL and IHRL as well.<sup>10</sup>

Lastly, crimes falling under the ICC jurisdiction are of *jus cogens* character and are prohibited under customary law as well, therefore, giving rise to *erga omnes* obligations in terms of prevention and punishment.<sup>11</sup> Moreover, the obligation to extradite or prosecute binds the states to deal with the core international crimes.<sup>12</sup> The “principle of complementarity” enshrined in the Statute primarily enables the states to prosecute perpetrators of international crimes within the Court jurisdiction.<sup>13</sup> In addition to, there is a plethora of international treaties between the states on almost each and every

issue, which prove the existence of international community or 'the global community'.<sup>14</sup> To date more than five hundred multilateral and thousands of bilateral treaties are concluded under the patronage of the UN, proving that states are linked to one another in a comprehensive chain of international rules and principles. These international rules and principles reflect the common values of humanity concerned to the "international community as a whole".<sup>15</sup> In the above context, ICC represents the collective system of accountability aimed at protecting the common values of humanity.<sup>16</sup>

### **The Question Of Ratification for Pakistan**

Ratification of treaty is a lengthy process involving complex issues. This process obliges the states to incorporate the provisions of the treaty into domestic laws in letter and spirit. The simpler and less technical would the country legislative mechanism, the easier will be the ratification process. For this purpose, examining the legislative procedure of Pakistan is crucial for present discussion. Similarly, in reference to the ratification of ICC's Statute, it is essential to evaluate the general principles of law, the penal provisions and procedural laws of Pakistan. This section aims to evaluate the aforesaid issues in detail.

#### **PAKISTANI LEGISLATIVE FRAMEWORK DEALING WITH RATIFICATION OF INTERNATIONAL TREATIES**

By implications, Pakistan is a dualist state and its Constitution of 1973 empowers the Parliament (*Majlis-e-Shoora*) to legislate on the matters provided under its Fourth Schedule. The Fourth Schedule to the Constitution of Pakistan, *inter alia*, provides the legislative domain of the Parliament and states: "External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan."<sup>17</sup> The plain reading of these provisions depict that legislation over international treaties and their implementation is the authority of Parliament. Moreover, in matters related to international cooperation the Parliament exercises the authority to ratify extradition treaties and as well surrender of criminals to foreign countries. The powers to introduce any bill in the Parliament dealing with Federal subject including

ratification of international treaties are provided under Article 70 of the Constitution.<sup>18</sup>

Additionally, Pakistan has enacted a legislation known as “Ratification of International Treaties Act, 2013” providing a comprehensive procedure for ratification of international treaty.<sup>19</sup> The Act, however, provides the Parliament shall not ratify a treaty if its provisions are contrary to the fundamental rights guaranteed by the Constitution.<sup>20</sup> For all purposes, the ratification of a treaty and its domestic implementation is the sole domain of Parliament in Pakistan.<sup>21</sup> In pursuance to treaty obligations, the Parliament of Pakistan may amend any law with simple majority of its present members.<sup>22</sup> Similarly, for a constitutional amendment the votes of not less than two thirds of the total members of both Houses (Senate and National Assembly) are required subject to transmission to other house after passed by one.<sup>23</sup> In this context, the ratification of international treaty is the sole prerogative of the Parliament and the Constitution doesn’t place any bar over the powers of Parliament to adopt any legislation in pursuance of treaty obligations.

Another interesting aspect is that Pakistan by virtue of its constitution -the supreme law of the land- is a Muslim state.<sup>24</sup> Article 227 of the Constitution provides for bringing all the laws of the land in conformity with the injunction of Islam as laid down in *Quran* and *Sunnah*.<sup>25</sup> Likewise, Article 40 of the Constitution provides for strengthening bonds with Muslim world and promoting international peace as matter of state policy.<sup>26</sup> Protection of human rights and punishing the offenders is primary duty of state both under the constitution and Islamic law. Moreover, in view of majority *fuqaha* (Muslim jurists) signing a treaty by *Imam* (head of Islamic state) is permissible under Islamic law subject to that the treaty is beneficial for Muslim community and is not in contrast with the injunctions of Islam.<sup>27</sup> According to Muslim scholars, it is the obligation of a Muslim state to cooperate with the international community for the maintenance of international peace and security in order to protect the faith of Muslim community from external threat.<sup>28</sup> Thus, it can be held that the salient and core features of the Constitution does not prevent the Parliament to enact any legislation beneficial to the peace and security of Muslims in particular, and to the international community in general.

After going through the constitutional provisions and legislative enactments dealing with ratification of treaty, it is crystal clear that there is no legal bar on Pakistan to ratify a treaty and the authority to ratify a treaty is with the Parliament which is the country's supreme political and legislative body elected through public votes. And for this reason, it is now simply a matter of public opinion as to whether Pakistan should ratify the ICC Statute or not.

#### FUNDAMENTAL PRINCIPLES OF ROME STATUTE VIS-A-VIS PAKISTANI LAW

Article 38(1) of the ICJ Statute lay down the sources of international law which includes the "general principles of law recognized by civilized nations". These general principles are, however, part and parcel of national legal systems.<sup>29</sup> International Courts and Tribunals relies on the general principles of national laws in their decisions as well.<sup>30</sup> For present discussion, it has to be seen that whether the general principles of the Rome Statute have any roots in Pakistani national legal system and to what extent these principles are in conformity. Generally, Article 22 to 33 of the Statute deals with the principles of criminal law. These principles, however, with different scope exist in the Constitution and the country's substantive criminal law- Pakistan Penal Code (PPC), 1860. SO far as to what extent the principles of Pakistani criminal law are in line with those contained in the Rome Statute, is a matter of constitutional restraint and judicial interpretation.<sup>31</sup>

The Constitution of Pakistan guarantees strict adherence to the principle of legality, which the ICC Statute refers in Articles 22 and 23.<sup>32</sup> Except in high treason matters, Article 12 of the Constitution lay down both the principles "*Nullum crimen sine lege*" and "*Nulla poena sine lege*" as general rule.<sup>33</sup> Similarly, the spirit of Article 25 fixing criminal responsibility for natural person is replicated in PPC, wherein, individual criminal responsibility is assigned to a natural person for an offence including the abetment, aiding, assistance, common object and common intention.<sup>34</sup> The principle of ousting the jurisdiction of Court over persons under eighteen year's age partially imitate Pakistani law. According to Section 82 PPC the principle is absolutely applicable to person under the age of seven years; and under Section 83 it partially applies to person between seven and twelve, having immature understanding.<sup>35</sup> Persons not falling within

the aforesaid exceptional provisions, are prosecuted in the manner provided under Juvenile Justice System Act, 2018.

In the same manner, head of state immunity is no more a valid ground of defense in Article 27 of the Statute. On the contrary, the Constitution of Pakistan extends absolute protection to the head of state and as well to the head of government under Article 248, for anything done in exercise of their powers and functions of respective offices.<sup>36</sup> In addition to, there is bar on the initiation or continuation of criminal proceedings during their terms in office. As far the responsibility of commanders and other superiors under Article 28 of the Statute is concerned, Pakistani law is altogether silent over this aspect. Section 33 of the Pakistan Army Act, 1952 slightly refers to disobedience of lawful command and prescribes punishment for the act of disobedience. This very aspect could be one of the reasons that has kept away Pakistan from the ICC in terms of ratification.

Grounds of exemptions for criminal liability in state of lunacy or mental disease, intoxication, duress and self-defense are provided in Article 31 of the Statute. Although, these grounds are offered under PPC known as general exceptions but could only be raised in matter of domestic offences.<sup>37</sup> The counterpart provisions of Article 32 of the Statute stating the principles of mistake of law and mistake of fact are Sections 76 and 79 of PPC. These principles are almost in line with those contained in the Statute. Certainly, except the provisions dealing with irrelevancy of official capacity, responsibility of commander and superiors and the exclusion of responsibility for persons under eighteen years, the rest of the principles of Pakistani Constitution and law qualify the elements of substantive principles of the Statute. In reference to ratification, the exclusion of immunity and assigning responsibility to commander seems to be a strong reason of Pakistan's reluctance in moving towards ICC.

So far as the penal aspect of the Rome Statute is concerned, there is no legislation in Pakistan dealing with the crimes enlisted under the Statute. Although there are anti-terrorism laws in Pakistan but altogether lacks the elements of war crimes, genocide and crimes against humanity.<sup>38</sup> In this context, Pakistan is legally not capable to deal with these crimes.<sup>39</sup> The lack of penal provisions dealing with international crimes necessitate the ratification of Statute more than ever. Likewise, criminal procedural laws of the country are based on the constitutional principle of the right to fair trial. The functions of

Magistrate under the Code of Criminal Procedure (CRPC), 1898 are similar to that of Pre-Trial Chamber of ICC. The Magistrate under Pakistani law supervises overall investigation including issuance of warrants of arrest and proclamations.

Trial of accused is mainly conducted under CRPC extending all due opportunities to the accused including the right to be presumed innocent until proven guilty, the right to engage counsel, and the right to be informed about the charges. Every trial is held in an open court in the presence of accused. The law of the land provides the rights of revision and appeal to the accused. Apart from general law offences, special courts are also established in pursuance of Article 212 of the Constitution for prosecuting accused persons under special law. These courts includes Anti-Terrorism Court, Anti-Narcotics Court and Accountability Courts. Furthermore, through amendments in the Constitution and Pakistan Army Act 1952, military courts were established in Pakistan for the prosecution of the perpetrators of terrorism.<sup>40</sup> The role of these trial and appellate courts in Pakistan could be compared to the Trial Chamber and Appeal Chamber of the ICC both in terms of functions and as well procedure.

#### PAKISTAN'S NATIONAL AND INTERNATIONAL COMMITMENTS FOR COOPERATION IN CRIMINAL MATTERS

At domestic level, since its creation, Pakistan has enacted various laws dealing with international cooperation in criminal matters, and as well other prohibitory laws in pursuance of IHL Conventions. The Extradition Act of 1972 is an example of cooperation at international level regarding transfer of accused person. Similarly, the Parliament of Pakistan has enacted a landmark legislation known as Mutual Legal Assistance (Criminal Matters) Act, 2019. This Act provides comprehensive procedure for mutual legal assistance such as matters related to “inquire about the identification and location of witnesses, suspects or offenders; taking of evidence or production of document; obtaining of search warrants authorizing search of evidence; freezing and seizing of property which is subject of investigation or proceedings; confiscation of property; transfer of a person consenting to assist either of the country in investigation or proceedings; effective service of judicial documents, provision of certified copies of any document; and any other assistance not contrary to the domestic law”.<sup>41</sup>



The most interesting aspect of this legislation is that legal assistance could be extended even to a country with whom there is no prior agreement or memorandum by the Federal Government.<sup>42</sup> Mutual Legal Assistance Act, 2019 could perform the role of catalyst in future in relation to ratification of the Statute. Moreover, the Implementation of Geneva Convention Act of 1936 is another good sign in terms of adherence to international rules. In the same manner, the Chemical Weapon Convention Implementation Ordinance, 2000 demonstrate the country's efforts for domestic implementation of international treaties. Verily, these legislations are perfect examples of the country's course of action in relation to implementation of international treaties.

As far Pakistan's commitments at international level are concerned, the country has a very good history. After the Second World War, two conventions specifically provided for international criminal jurisdiction: Article 6 of the Genocide Convention of 1948<sup>43</sup>; and Article 5 of the Apartheid Convention of 1973<sup>44</sup>. The Genocide Convention only referred to the "jurisdiction of a future international criminal court over the crime of genocide".<sup>45</sup> While the Apartheid Convention refers to the establishment of ICC to try the crime of apartheid.<sup>46</sup> However, the provisions of both conventions could not be complied. Pakistan has ratified both the conventions and in case of establishment of ICC or tribunal pursuant to the above provisions, it would have to accept the jurisdiction due to being legally binding. Similarly, Pakistan is party to the four "Geneva Conventions of 1949" which bind the state parties for enacting necessary legislation providing penal sanctions against the grave breaches of the four conventions.<sup>47</sup>

Moreover, being signatory to the core human rights conventions, Pakistan is under obligation to comply with the provisions of these conventions.<sup>48</sup> In case of violations of either of the norms of Genocide convention, Apartheid Convention, four Geneva Conventions or human rights treaties constitute the elements of war crimes, genocide, apartheid, and crimes against humanity.<sup>49</sup> Under the above Conventions, Pakistan has primary obligations to extradite or prosecute the perpetrators of international crimes.<sup>50</sup> Besides conventional obligations, the customary force of international crimes (concerned to "international community as a whole") within the Court jurisdiction binds the states *erga omnes* to prosecute and

punish the perpetrators in pursuance of article 38 of the VCLT.<sup>51</sup> Furthermore, being member of the UN, Pakistan perhaps would not escape any referral of situation to the Court against it by the UNSC under article 13(b) of the Statute.<sup>52</sup>

Likewise, Pakistan has signed and ratified multiple conventions and treaties relating to suppression of organized crimes; protection of environment and climate change;<sup>53</sup> international human rights;<sup>54</sup> and the Geneva and Hague laws of armed conflicts.<sup>55</sup> As far the preventive mechanism for certain transnational organized crimes is concerned, Pakistan has signed dozens of treaties in this regard.<sup>56</sup> In the UN peace keeping missions Pakistan has played a vital role by providing third highest number of forces among the UN members for the maintenance of “international peace and security”.<sup>57</sup> In addition to, Pakistan has hosted more than 1 million refugees of the war affected neighboring Afghanistan for almost 30 years regardless that Pakistan is not party to the “Refugee Convention of 1951”.<sup>58</sup> All these international commitments by Pakistan in one way or the other contributes in promotion and development of international criminal justice system, and could be analogous with the ratification of the Statute.<sup>59</sup>

#### PAKISTAN'S OBJECTIONS TO INTERNATIONAL CRIMINAL COURT: SUSTAINABILITY AND SOLUTION

Interestingly, Pakistan has previously remained supportive to the UN *ad hoc* tribunals: International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). It was not mere support, rather Pakistani nationals acted as judges in the *ad hoc* tribunals. Mr. Justice Rustam Sidhwa and Mr. Justice Saad Saood Jan were appointed judges of the ICTY one after another when the former resigned due to health issues. Similarly, Justice Khalida Rashid was first appointed as judge and later as president of the ICTR. The appointment of Pakistani judges to the key posts in the UN *ad hoc* tribunals manifest the country's dedication for international prosecution. Why Pakistan has not yet signed the Rome Statute whereas it has always been remained supportive of prosecution by international organs and why the country stepped back are questions of serious consideration.<sup>60</sup>

As far the legal and political stance on non-ratification of the Statute is concerned, Pakistan initially voted in favour of ICC at the

UN Conference of Plenipotentiaries in 1998.<sup>61</sup> However, Pakistan didn't sign the Statute on the grounds that: the Statute does not provides for head of state immunity; non-provision of reservations over the Statute upon ratification or accession; provisional arrests; and possibly use of politically motivated charges against the peace keepers whereas the country is one of the largest suppliers of UN peace keeping mission.<sup>62</sup> Moreover, Pakistan also objected to the role of UNSC in triggering the jurisdiction of ICC which entails the probability of being politically motivated rather it should be based on some legal principles. Most importantly, Pakistan another objection was over the inclusion of provisions dealing with conflicts not of an international character within the Court's jurisdiction, which could possibly amounts to the violation of state sovereignty.<sup>63</sup>

To some extent the objections raised by Pakistan over the triggering of Court jurisdiction by the UNSC- a political organ of UN- seems reasonable.<sup>64</sup> For instance, Pakistan objected to the invoking of the Court's jurisdiction by the UNSC for the reason that it "violates the principle of state sovereignty" and it is the state party alone that is competent to trigger the Court jurisdiction for the purpose of investigation and prosecution.<sup>65</sup> This very principle of jurisdiction under Article 13(b) of the Statute is subject to the principle of complementarity which could be a best possible safeguard against the violation of sovereignty.<sup>66</sup> Secondly, the elements of war crimes which contains provisions dealing with conflicts not of an international character within the Court's jurisdiction, are, in Pakistan's view the violation of the national sovereignty of a state because such type of conflicts purely falls within domestic jurisdiction of state, and assuming jurisdiction by the Court either on its motion, or referred by a state party, or by the UNSC is tantamount to an adverse claimant of national sovereignty.<sup>67</sup> The Statute nowhere anticipate preventing of states from exercising jurisdiction over the crimes committed in internal conflicts, however, enabling states to prosecute the perpetrators at first instance.

Thirdly, the objection regarding exclusion of head of state immunity is a matter of political consideration. Previously, the then incumbent two prime ministers in Pakistan were disqualified from their offices by the country Supreme Court, whereas both were protected under Article 248 of the Constitution. The implied suspension of the constitutional immunity clauses could not be ruled

out in the circumstances. Although the Statute provides exclusion of immunity clause, but on the other hand enable the States to proceed with the prosecution of its accused officials, before the matter is referred to the Court by other state. As far the objection to non-provision of reservations is concerned, perhaps it might need to be compromised, however, Pakistan may attach declarations with its instrument of ratification.<sup>68</sup> Any reservation to the Statute would ultimately defeat its object and purpose.

#### LEGAL AND POLITICAL IMPLICATIONS

Legally in ratification, the obligations of Pakistan may be enhanced in terms of cooperation with the Court, besides its other obligations under the UN Charter, human rights treaties, Geneva Conventions and environmental protection treaties.<sup>69</sup> Provisions of these treaties entail *erga omnes* rights and obligations, thereby obliges third states to act on behalf of "international community as a whole".<sup>70</sup> In ratification, the most undesired measure would be the elimination of immunity for the head of state and military commanders under the Constitution. It will require a constitutional amendment and as well introducing other legislations. Similarly, bringing at par the fundamental principles of criminal law and procedure of the country with the Statute needs a comprehensive legislative package which could possibly results in ousting of immunity clauses for state officials.

Politically, the cost of ratification is not that much high as it could be in non-ratification. On ratification, the head of state and other high profile officials could be exposed to prosecution by the Court, which the country perhaps may not want. Moreover, the cost of amending the domestic laws could also be high in terms of compromising the principle of state sovereignty. By accepting the Court jurisdiction, Pakistan would be required to cooperate with the Court in execution of arrest warrants even against the nationals of foreign countries which could put the relationship of the country with other states at stake. Similarly, the country would also amend its military laws in order to remove the immunity for war commanders which may result in political unrest among the military and political government. Last but not the least, the neighboring countries with whom the relations of Pakistan has not remained good enough could possibly invoke the Court jurisdiction against its

nationals who are allegedly operating with insurgents and militants groups abroad.

On the other hand, ratifying the Statute by Pakistan will not only provides an international support in investigation and prosecution against the perpetrators of crimes but will enable it to refer a situation to the ICC against nationals of any of the State party who have committed serious international crimes within or outside Pakistan. Article 7 of the Rome Statute defines the crimes against humanity. In the definition most of the crimes are routine matter in Pakistan. The governmental agencies are mostly helpless in curbing these crimes such as domestic crimes including murders on daily basis,<sup>71</sup> torture,<sup>72</sup> sexual violence,<sup>73</sup> persecution against any identifiable groups such as Shia and Ahmedis,<sup>74</sup> enforced disappearances<sup>75</sup> and “serious injury to body or to mental or physical health”. These crimes could be easily dealt with after incorporating all its elements into the domestic laws and even the criminals could be referred to the Court in case they have escaped from the country. Moreover, the acceptance of the ICC jurisdiction will also held accountable the civilian and military institutions to follow the human rights standards. In addition to, Pakistan will have potential stake in running the affairs of the Court including the appointment of Pakistani judges at the Court.<sup>76</sup>

Moreover, one of the reasons for keeping Pakistan on the Grey list until June 2020 and again till February 2021 by the Financial Action Task Force (FATF) is the loopholes in prosecution system of Pakistan.<sup>77</sup> Pakistan was this time hopeful to be on the white list but the FATF required Pakistan to bring improvements within its prosecution system i.e. inflicting harsher and strict penalties on facilitators of terror financing.<sup>78</sup> Pakistan has ensured the FATF to make improvements in its prosecution system by introducing effective legislations. After appearing on the grey list of FATF, Pakistan is confronted with criticism by international civil society and human rights watchdogs. They demands meaningful and effective action against the facilitators of terror financing for the betterment of human rights record.<sup>79</sup> Ratifying the ICC statute would enable Pakistan to prosecute the perpetrators of international crimes and as well the facilitators without facing restrictions from international counter-terrorism institutions. Furthermore, it would

ensure international community a formal commitment by the country in fight against impunity for international crimes.<sup>80</sup>

### Conclusion

The Rome Statute by virtue of its salient features represent the collective system of accountability aiming at punishing the perpetrators of international crimes. However, few countries are reluctant to support the Court due to various legal and political reasons. Pakistan is one of the countries that initially voted in favour of the Court but later on stepped back from acceding to it. Although, the legal system of Pakistan is flexible enough to adopt and ratify any international treaty but there are certain political and legal pitfalls due to which the country is reluctant to ratify the Rome Statute. Moreover, the country fundamental principles dealing with criminal law and procedure imitates the principle of the Rome Statute with few exceptions. In past, the country has signed and ratified several international treaties and conventions that are analogous to the ratification of ICC Statute. The main obstacles in ratification for Pakistan could be addressed through the jurisdictional principle of complementarity. Ratification of Statute entails implications for Pakistan, however, the ratio of its advantages is high than disadvantages. In nutshell, Pakistan would be able to prosecute and punish the perpetrators of international in domestic courts, and as well at international level referring it to the ICC.

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<sup>1</sup> Article 13 of the Rome Statute.

<sup>2</sup> Philippe Kirsch, "The Role of the International Criminal Court in Enforcing International Criminal Law," *American University International Law Review* 22, no. 4 (2007): 541 in 540-547.

<sup>3</sup> See e.g. James R. Crawford, "Responsibility to the International Community as a Whole," *Indiana Journal of Global Legal Studies* 8, no. 2 (2001): 303-322, accessed August 26, 2018, <http://www.repository.law.indiana.edu/ijgls/vol8/iss2/2>.

<sup>4</sup> See generally M. Cherif Bassiouni, "Universal Jurisdiction For International Crimes: Historical Perspectives And Contemporary Practice," *Virginia Journal Of International Law Association* 42, no. 1 (Fall 2001): 81-162, (2001); Dr. Mehmet Zülfü ÖNER, "The Principle of 'Universal Jurisdiction' in International Criminal Law," *Law & Justice Review* 7, no. 12, (2016): 173-220; Ademola Abass, "The International Criminal Court and Universal Jurisdiction," *International Criminal Law Review* 6 (2006): 349-385; Gabriel

Bottini, "Universal Jurisdiction after the Creation of the International Criminal Court," *New York University Journal of International Law & Politics* 36 (2004): 503-562.

<sup>5</sup> See e.g. Saraswati Srivastava and Saraswati Srivastav, "Impact of the United Nations on National Sovereignty- A Case Study," *The Indian Journal of Political Science* 25, no. 3 & 4 (1964): 67-75; SAMUEL M. MAKINDA, "The United Nations and State Sovereignty: Mechanism for Managing International Security," *Australian Journal of Political Science* 33, no. 1 (1998): 101-115; Benjamin N. Schiff, "Universalism Meets Sovereignty at the International Criminal Court," in *Negotiating Sovereignty and Human Rights Actors and Issues in Contemporary Human Rights Politics*, eds, Noha Shawki and Michaelene Cox (England: Ashgate Publishing Limited, 2009), 60.

<sup>6</sup> See generally Leonid E. Grinin, "State Sovereignty in the Age of Globalization: Will it Survive?," in *Globalistics And Globalization Studies*, eds., Leonid E. Grinin, Ilya V. Ilyin, and Andrey V. Korotayev (Volgograd: 'Uchitel' Publishing House, 2012); Dukagjin LEKA, "Challenges of State Sovereignty in the Age of Globalization," *AUDJ* 13, no. 2 (2017): 61-72; Leonid E. Grinin, "Transformation of Sovereignty and Globalization," in *Hierarchy And Power In The History Of Civilizations: Political Aspects of Modernity* eds., Leonid E. Grinin, Dmitri D. Beliaev and Andrey V. Korotayev (Moscow: KD "LIBROCOM", 2009); Richard Cooper, *The Economics of Interdependence* (New York: McGraw- Hill, 1968).

<sup>7</sup> See e.g. Hasan Oktay, "Ius Cogens Rules in the International Treaty Law," *Vision International Refereed Scientific Journal* 1, no. 1, (September 2016): 17-28; Ulf Linderfalk, "The Creation of *Jus Cogens* – Making Sense of Article 53 of the Vienna Convention" *Heidelberg Journal of International Law (HJIL)* 71 (2011): 359-378.

<sup>8</sup> See Case concerning Military and Paramilitary Activities in and against Nicaragua, (*Nicaragua V. United States of America*), ICJ, 1986 (Merits), para. 190. In its *Nicaragua* verdict the ICJ termed the *jus cogens* a fundamental principle of international law from which no derogation is allowed. Moreover the ICJ termed the prohibition of Genocide as *jus cogens* in its verdict in *Advisory Opinion of the International Court of Justice on Reservations to the Convention on the Prevention and the Punishment of the Crime of Genocide*, (1951) I.C.J., 15. Similarly on other occasions the ICJ has discussed the concept of *erga omnes obligations in detail* and declared the *erga omnes* obligations binding even on the third state. See for example *Barcelona Traction, Light and Power Co. Ltd. (Belgium v. Spain)*, Judgments, ICJ Reports, 1970; *Advisory Opinion on Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, I.C.J. Reports, 2003; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 11 July 1996; *Armed Activities on the Territory of the Congo-New Application: 2002 (Democratic Republic of the Congo v. Rwanda)*; ICJ Questions relating to the Obligation to Prosecute or Extradite (*Belgium v. Senegal*), Judgment of 20<sup>th</sup> July, 2012, ICJ Reports 2012; *Legality of the Threat or Use of Nuclear Weapons: Advisory Opinion*, ICJ Reports, 1996.

<sup>9</sup> See e.g. Oliver Dörr, "Article 53. Treaties conflicting with a peremptory norm of general international law ("*jus cogens*")," in *Vienna Convention on*

the *Law of Treaties: A Commentary*, eds, Oliver Dör and Kirsten Schmalenbach (Berlin/Heidelberg: Springer, 2012): 897-942.

<sup>10</sup> See for instance Rafael Nieto-Navia, "International Peremptory Norms (Jus Cogens) And International Humanitarian Law" in *Man's Inhumanity to Man: Essays on International Law in Honour of Antonio Cassese* (London, The Netherlands: Kluwer Law International, 2003). See also Lauri Hannikainen, *Peremptory Norms (Jus Cogens) in International Law, Historical Development, Criteria, Present Status* (Helsinki: Finnish Lawyer Publishing Company, 1988).

<sup>11</sup> See e.g. Maurizio Ragazzi, "The Examples of Obligations Erga Omnes Given by the International Court in its Dictum: (a) The Outlawing of Acts of Aggression," in *The Concept of International Obligations Erga Omnes* (Oxford: Oxford University press, 2000); William A. Schabas, "Origins of the Genocide Convention: From Nuremberg to Paris," *Case W. Res. J. Int'l L.* 40, no. 1 (2008): 35-55; Marco Longobardo, "Genocide, obligations erga omnes, and the responsibility to protect: remarks on a complex convergence," *The International Journal of Human Rights* 19, no. 8 (2015): 1199-1212.

<sup>12</sup> See for this contention Harry D. Gould, "Obligations Erga Omnes and the Actio Popularis," in *The Legacy of Punishment in International Law* (New York: Palgrave Macmillan, 2010): 65-79. See also *Final Report of the International Law Commission on The obligation to extradite or prosecute (aut dedere aut judicare)* adopted by the International Law Commission at its sixty-sixth session, and submitted to the General Assembly as a part of the Commission's report covering the work of that session (at para. 65). The report appeared in Yearbook of the International Law Commission, 2014, vol. II (Part Two), accessed November 13, 2017, [http://legal.un.org/ilc/texts/instruments/english/reports/7\\_6\\_2014.pdf](http://legal.un.org/ilc/texts/instruments/english/reports/7_6_2014.pdf).

<sup>13</sup> See for example Xavier Philippe, "The Principles Universal Jurisdiction and Complementarity: How Do The Two Principles Intermish?" *International Review of the Red Cross* 88, no. 862, (2006); Jann J. Kleffner, "The Impact of Complementarity on National Implementation of Substantive International Criminal Law," *Journal of International Criminal Justice* 86, no. 1 (2003).

<sup>14</sup> See generally Gennady M. Danilenko, *Law-Making in the International Community* (The Netherlands: Martinus Nijhoff Publishers, 1993), 211-252.

<sup>15</sup> See for instance the commentary to the Article 19 of the Draft Articles on State Responsibility as follow: "This certainly does not mean the requirement of unanimous recognition by all the members of the community, which would give each state an inconceivable right of veto. What it is intended to ensure is that a given international wrongful act shall be recognized as an 'international crime', not only by some particular group of states, even if it constitutes a majority, but by all the essential components of the international community." *Summary Records of the 1374th Meeting*, (1976) 1 Y.B. Int'l L. Common 73, U.N. Doc. A/CN.4/291 and Add.1-2.

<sup>16</sup> See generally M. Cheriff Bassiouni, *Introduction To International Criminal Law: Second Revised Edition*, (The Netherland: Martinus Nijhoff Publishers, 2012).



<sup>17</sup> Fourth Schedule, Constitution of Pakistan, 1973, <http://www.pakistani.org/pakistan/constitution/schedules/schedule4.html>.

<sup>18</sup> See Article 70, Const. Pakistan.

<sup>19</sup> See Section 4 of the Ratification of International Treaties Act, 2013.

<sup>20</sup> See Section 5(3), *ibid.* which states: "Parliament shall not approve the ratification of a Treaty or parts of it if its provisions are contrary to the fundamental rights guaranteed in the Constitution, nor shall the House approve a reservation to a Treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant Treaty."

<sup>21</sup> Ahmad Ghouri, "Democratising Foreign Policy: Parliamentary Oversight of Treaty Ratification in Pakistan," *LUMS Law Journal* 6, no. 1 (2019): at 35 in 20-47.

<sup>22</sup> See Article 70, Const. Pakistan.

<sup>23</sup> See Article 239, Const. Pakistan.

<sup>24</sup> Article 2 states: "Islam shall be the State religion of Pakistan."

<sup>25</sup> Article 227 states: "(1) All existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, in this Part referred to as the Injunctions of Islam, and no law shall be enacted which is repugnant to such Injunctions. [Explanation:- In the application of this clause to the personal law of any Muslim sect, the expression "Quran and Sunnah" shall mean the Quran and Sunnah as interpreted by that sect.]"

<sup>26</sup> Article 40, Const. Pakistan.

<sup>27</sup> Muhammad Munir, "The Concept of Treaty in Relation to War and Peace in Islam," *Fikro Nazar Urdu Journal* 47, no. 1 (2009), 48 in 43-65. Available at SSRN: <https://ssrn.com/abstract=1813024>.

<sup>28</sup> Muhammad Munir, "Shari'ah and the Nation-State: The Transformation of Maqasid Al-Shari'ah Theory," *Hazara Islamicus* 6, no. 2 (July-Dec 2017), 9 in 1-14. Available at SSRN: <https://ssrn.com/abstract=2520820> or <http://dx.doi.org/10.2139/ssrn.2520820>.

<sup>29</sup> See for instance David Kennedy, "The Sources of International Law," *AUILR* 2, no. 1 (1987): 1-96.

<sup>30</sup> See e.g. Fabián O. Raimondo, *General Principles of Law in the Decisions of International Criminal Courts and Tribunals* (USA: Martinus Nijhoff Publishers and VSP, 2008).

<sup>31</sup> Pakistan is a common law jurisdiction. Article 189 and 201 of the Constitution empowers the Supreme Court and High Courts, respectively, to interpret the laws and decides complex questions of law. The decisions of superior courts in Pakistan are binding as matter of precedent over lower courts. See generally Muhammad Munir, *Precedent in Pakistani Law* (Karachi: Oxford University Press, 2014).

<sup>32</sup> See generally for principle of legality in criminal justice system Kenneth S. Gallant, *The Principle of Legality in International and Comparative Criminal Law* (New York: Cambridge University Press, 2009).

<sup>33</sup> "12. Protection against retrospective punishment

(1) No law shall authorize the punishment of a person:-

(a) for an act or omission that was not punishable by law at the time of the act or omission; or

(b) for an offence by a penalty greater than, or of a kind different from, the penalty prescribed by law for that offence at the time the offence was committed.

(2) Nothing in clause (1) or in Article 270 shall apply to any law making acts of abrogation or subversion of a Constitution in force in Pakistan at any time since the twenty-third day of March, one thousand nine hundred and fifty-six, an offence.”

<sup>34</sup> See Sections 34, 107, 108, 109, 148 and 149 of the Pakistan Penal Code (PPC), 1860. Available on: <http://www.pakistani.org/pakistan/legislation/1860/actXLVof1860.html>.

<sup>35</sup> Section 82 PPC states: “Nothing is an offence, which is done by a child under seven years of age.” Section 83 PPC: “Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.”

<sup>36</sup> Article 248 (1): The President, a Governor, the Prime Minister, a Federal Minister, a Minister of State, the Chief Minister and a Provincial Minister shall not be answerable to any court for the exercise of powers and performance of functions of their respective offices or for any act done or purported to be done in the exercise of those powers and performance of those functions: Provided that nothing in this clause shall be construed as restricting the right of any person to bring appropriate proceedings against the Federation or a Province.”

<sup>37</sup> See Sections 84, 85, 86, 94, 96 and 97 PPC.

<sup>38</sup> In the year 2014 Pakistan has adopted National Action Plan 2014 for encountering terrorism and terrorist activities. See <https://nacta.gov.pk/nap-2014/>.

<sup>39</sup> The Government of Pakistan has enacted various laws that are dealing with anti-terrorism and counter-terrorism measures and which includes: Arms Act, 1878; Foreign Exchange Regulation Act, 1947; Banking Companies Ordinance, 1962; Anti Terrorism Act, 1997 as amended in 2013; Chemical Weapons Convention Implementation Ordinance, 2000; Anti-Money Laundering Act, 2010; Investigation for Fair Trial Act 2013; National Counter Terrorism Act (NACTA) Act, 2013; Protection of Pakistan (amendment) Ordinance 2014 (Lapsed); and Prevention of Electronic Crimes Act, 2016.

<sup>40</sup> See for instance The Constitution (Twenty First Amendment) Act, 2015 passed by the National Assembly and Senate of Pakistan on January 6, 2015. The amendment empowered military courts for the expeditious disposal of terrorism cases.

<sup>41</sup> See Section 7 & 8 of the Mutual Legal Assistance (Criminal Matters) Act, 2019 (MLAC).

<sup>42</sup> Section 3 MLAC, 2019.

<sup>43</sup> Article 6, Genocide Convention, 1948.

<sup>44</sup> Article 5, Apartheid Convention, 1973.

<sup>45</sup> Decision on the “Prosecution’s Request for a Ruling on Jurisdiction under Article 19(3) of the Statute”, Pre-Trial Chamber I, ICC, 6 September, 2018, wherein the Chamber held: “After the entry into force of the UN Charter,

States committed themselves to establishing an 'international penal tribunal' in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, which is an instrument of quasi-universal participation nowadays. It was anticipated that this 'international penal tribunal' would have similar competences and working principles as the ICC, which was established fifty years later." *See at* para. 40.

<sup>46</sup> *See generally* Carola Lingaas, "The Crime against Humanity of Apartheid in a Post-Apartheid World," *Oslo Law Review* 2, no. 2 (2015): 86-115.

<sup>47</sup> Article 49 of the 1949 Geneva Convention I, Article 50 of the 1949 Geneva Convention II, Article 129 of the 1949 Geneva Convention III and Article 146 of the 1949 Geneva Convention IV. *See also* Roger O'Keefe, "The Grave Breaches Regime and Universal Jurisdiction," *Journal of International Criminal Justice* 7 (2009): 811-831, doi:10.1093/jicj/mqp051.

<sup>48</sup> *See e.g.* Dr. Markus Petsche, "Jus Cogens as a Vision of the International Legal Order," *Penn State International Law Review* 29, no. 2 (2010): 233-273.

<sup>49</sup> Ilyas Bantekas and Susan Nash, *International Criminal Law*, Second ed. (Australia: Cavendish Publishing, 2003), 17-48, 49-92, 109-128; William Schabas, *An Introduction to the International Criminal Court* (New York: Cambridge University Press, 2002), 16-66.

<sup>50</sup> *See e.g.* Final Report of the International Law Commission, *The obligation to extradite or prosecute (aut dedere aut judicare)*, Yearbook of the International Law Commission, 2014, vol. II (Part Two).

<sup>51</sup> *See generally* Yudan Tan, "The Identification of Customary Rules in International Criminal Law," *Utrecht Journal of International and European Law* 34, no. 2 (2018): 92-110.

<sup>52</sup> *See* Res Schuerch, "The Security Council Referral Power Under Article 13(b) Rome Statute," in *The International Criminal Court at the Mercy of Powerful States*, International Criminal Justice Series, Vol. 13 (The Hague: T.M.C. Asser Press, 2017): 169-217.

<sup>53</sup> Vienna Convention for the Protection of the Ozone Layer; Montreal Protocol on Substances that Deplete the Ozone Layer; Convention on Biological Diversity; Basel Convention on the Control of Trans-boundary Movements of Hazardous Wastes and their Disposal; United Nations Framework Convention On Climate Change and the Kyoto Protocol to the United Nations Framework Convention on Climate Change; United Nations Convention to Combat Desertification in those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa; Stockholm Convention on Persistent Organic Pollutants; and the Paris Agreement.

<sup>54</sup> International Covenant on Civil and Political Rights, 1966 (ICCPR); International Covenant on Economic, Social and Cultural Rights, 1966 (ICESCR); Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 1984 (CAT); International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Hague Convention on the Civil Aspects of International Child Abduction or Hague Abduction Convention; and the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

<sup>55</sup> Geneva Convention (I) on Wounded and Sick in Armed Forces in the Field, 1949; Geneva Convention (II) on Wounded, Sick and Shipwrecked of Armed

Forces at Sea, 1949; Geneva Convention (III) on Prisoners of War, 1949; Geneva Convention (IV) on Civilians, 1949; Hague Convention for the Protection of Cultural Property and Hague Protocol for the Protection of Cultural Property both of 1954;

<sup>56</sup> Convention on Offences and Certain Other Acts Committed on Board Aircraft, 1963 (Aircraft Convention); Convention for the Suppression of Unlawful Seizure of Aircraft, 1970; Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, 1971; the 1979 International Convention Against the Taking of Hostages; the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation; 1988 Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf; International Convention for the Suppression of Terrorist Bombings, 1997; International Convention for the Suppression of the Financing of Terrorism, 1999; UN Convention against Transnational Organized Crime (UNTOC); Single Convention on Narcotic Drugs, 1961 and Single Convention on Narcotic Drugs 1961 as amended by Protocol of 25 March, 1972; United Nations Convention on Psychotropic Substances, 1971; United Nations Convention against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances, 1988.

<sup>57</sup> This fact has also been acknowledged by the United Nations on different times and occasions. See e.g. UN News headlines available on its website which states: "Pakistan: One of the longest-serving and largest contributors to UN peacekeeping." Available at: <https://news.un.org/en/gallery/525401>. See also for more details <https://peacekeeping.un.org/en/pakistan>.

<sup>58</sup> In 2018, UNHCR officially declared Pakistan as home to the world largest refugee's population hosting more than 1.4 million Afghan refugees. See for details <https://www.un.org.pk/unhcr/>.

<sup>59</sup> See e.g. *Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan*, Pre-Trial Chamber II, ICC, Decision of 12 April, 2019, para. 96, wherein it was held that "the operation of article 98 would not debar the Court to proceed against the accused person because the jurisdiction of ICC is a matter of prescriptive jurisdiction and not of enforcement jurisdiction". Accessed April 20, 2020, [https://www.icc-cpi.int/CourtRecords/CR2019\\_02068.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_02068.PDF).

<sup>60</sup> See e.g. Statement by Mr. Asim Iftikhar Ahmad, Minister, Permanent Mission of Pakistan to the United Nations, during the Debate of the Security Council on ICTR and ICTY (7 June 2012), accessed April 21, 2019, [http://www.pakun.org/statements/Security\\_Council/2012/06072012-01.php](http://www.pakun.org/statements/Security_Council/2012/06072012-01.php).

<sup>61</sup> See for details United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court Rome, 15 June -17 July 1998, Official Records Volume I, II, III (New York: United Nations, 2002).

<sup>62</sup> See Statement by Ambassador Munir Akram, Permanent Representative of Pakistan to the United Nations, to the Security Council on the occasion of renewal of Resolution 1422 regarding International Criminal Court, June 12, 2003, accessed April 23, 2018,

<https://web.archive.org/web/20121130070125/http://www.amicc.org/docs/Pakistan1422Stmt12June03.pdf>.

<sup>63</sup> United Nations, *Year Book of United Nations-2003*, Vol. 57 (New York: United Nations, 2005), 77.

<sup>64</sup> See generally Julia Domnick, "The United Nations Security Council, International Authority and Legitimacy," *Transnational Legal Theory* 4, no. 3 (2013): 439-445.

<sup>65</sup> See for Security Council powers to invoke the ICC jurisdiction Res Schuerch, "The Security Council Referral Power Under Article 13(b) Rome Statute," in *The International Criminal Court at the Mercy of Powerful States*, International Criminal Justice Series, Vol. 13 (The Hague: T.M.C. Asser Press, 2017): 169-217.

<sup>66</sup> The Rome Statute provides for complementarity of the jurisdiction of ICC to the national criminal jurisdiction. See Article 1 read with Article 17 of the Rome Statute.

<sup>67</sup> Anupam Jha, "International Criminal Court: Baby Steps in South Asia," in *Shifting Horizons of Public International Law: A South Asian Perspective*, eds, J. L. Kaul & Anupam Jha (New Delhi: Springer, 2018): 303, 304 in 289-311.

<sup>68</sup> See for instance Amnesty International Report on "International Criminal Court: Declarations amounting to prohibited reservations to the Rome Statute" published in 2005. Available on: <https://www.refworld.org/pdfid/45be009d2.pdf>.

<sup>69</sup> See e.g. Andrea Bianchi, "Human Rights and the Magic of Jus Cogens," *The European Journal of International Law* 19, no. 3 (2008): 491-508; YORAM DINSTEIN, "The Erga Omnes Applicability of Human Rights," *Archiv Des Völkerrechts* 30, no. 1 (1992): 16-21, accessed April 22, 2019, <http://www.jstor.org/stable/40798679>; Harry D. Gould, "Obligations Erga Omnes and the Actio Popularis," in *The Legacy of Punishment in International Law* (New York: Palgrave Macmillan, 2010): 65-79; Knut Dormann and Jose Serralvo, "Common Article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations," *International Review of the Red Cross* 96, no. 895/896 (2014): 707-736; Ulrich Beyerlin and Thilo Marauhn, "Customary International Environmental Law: Environmental Jus Cogens and Obligations Erga Omnes" in *International Environmental Law* (Oxford: Hart Publishing, 2011): 282-289; see also Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (*Marshall Islands v India*) (Application) [2014]; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (*Marshall Islands v Pakistan*) (Application) [2014]; Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (*Marshall Islands v United Kingdom*) (Application) [2014].

<sup>70</sup> Karl Zemanek, "New Trends in the Enforcement of erga omnes Obligations," *Max Planck Yearbook of United Nations Law* 4, no. 1 (2000), 3; see also Oliver Dör and Kirsten Schmalenbach, eds, "Article 38. Rules in a treaty becoming binding on third States through international custom," in *Vienna Convention on the Law of Treaties: A Commentary* (Berlin/Heidelberg: Springer, 2012).

<sup>71</sup> According to the official statistics report of the Pakistan Bureau for Statistics the total countrywide number of recorded domestic crimes which includes murder, attempt to murder, kidnapping/abduction, dacoity, robbery and others as in 2012 is 645647; in 2013 is 634404; in 2014 is 627127 in 2015 is 633299; in 2016 is 677554; and in 2017 is 683925. See <http://www.pbs.gov.pk/sites/default/files//tables/Crimes%20Reported%20by%20Type%20and%20Provinces.pdf>.

<sup>72</sup> According to the Committee Against Torture 487 cases of alleged torture has been documented by non-governmental organizations during the period 2014 to 2016. See Committee against Torture examines initial report of Pakistan, 19 April, 2017, accessed April 24, 2019, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21514&LangID=E>. Similarly, according to Pakistan based organization-Foundation for Fundamental Rights "Over 10,421 cases of torture in police custody were reported in Pakistan in fact, during the years 2000-2010", accessed April 24, 2019, <http://rightsadvocacy.org/torture.html>.

<sup>73</sup> According to Reports the total number of registered cases of child sexual abuse against both the genders in Pakistan is 3445 in 2017 and 3832 in 2018. See Cruel Numbers 2018: A Compilation of Statistics on Child Sexual Abuse cases in Pakistan by Sahil, <http://sahil.org/cruel-numbers/>. In the same manner, according to a statistical report of the Centre for Peace and Development Initiatives Pakistan 206 gang rape and 2840 rape cases were reported in the year 2017 alone. See <http://www.cpdipakistan.org/archives/12055>.

<sup>74</sup> See "A Report on Persecution of Ahmadis in Pakistan During the year 2015 (Summary)", available at: <https://www.persecutionofahmadis.org/wp-content/uploads/2010/03/Persecution-of-Ahmadis-in-Pakistan-2015.pdf>.

<sup>75</sup> In 2011 the Government of Pakistan formed a Commission of Inquiry on Enforced Disappearances and according to the Report issued by the Commission on May 31, 2018 some 5177 cases of enforced disappearances has received by the commission since its inception. See for details <http://coioed.pk/>. Interestingly, The Government of Pakistan at the very start of this year decided to criminalize the enforced disappearances by incorporating it into the Penal Code of Pakistan and in this regard the bill has been put before the concerned committee for drafting. Hopefully, the bill will be passed this year.

<sup>76</sup> See Article 36 of the Rome Statute which provides for the nomination and election of judges.

<sup>77</sup> See e.g. APG, *Anti-money laundering and counter-terrorist financing measures - Pakistan*, Third Round Mutual Evaluation Report, (Sydney: APG, 2019). <http://www.apgml.org/includes/handlers/get-document.ashx?d=389ff465-24a1-41cf-9ab9-27edc2e4c836>.

<sup>78</sup> See for FATF recommendations made in its plenary held on 19-21<sup>st</sup> Feb, 2020 in respect of Pakistan <http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/documents/increased-monitoring-february-2020.html>.

<sup>79</sup> See for the human rights situation in different states of 2018 Human Rights Watch, *World Report 2019-Events of 2018* (USA: Human Rights Watch,

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2019). The report has covered almost all of the events occurred in 2018 pertaining to the violations of international human rights law and international humanitarian law. It gives country wise details.

<sup>80</sup> See e.g. Frédéric Mégret, "International Criminal Justice as a Peace Project," *European Journal of International Law* 29, no. 3 (2018): 835-858.