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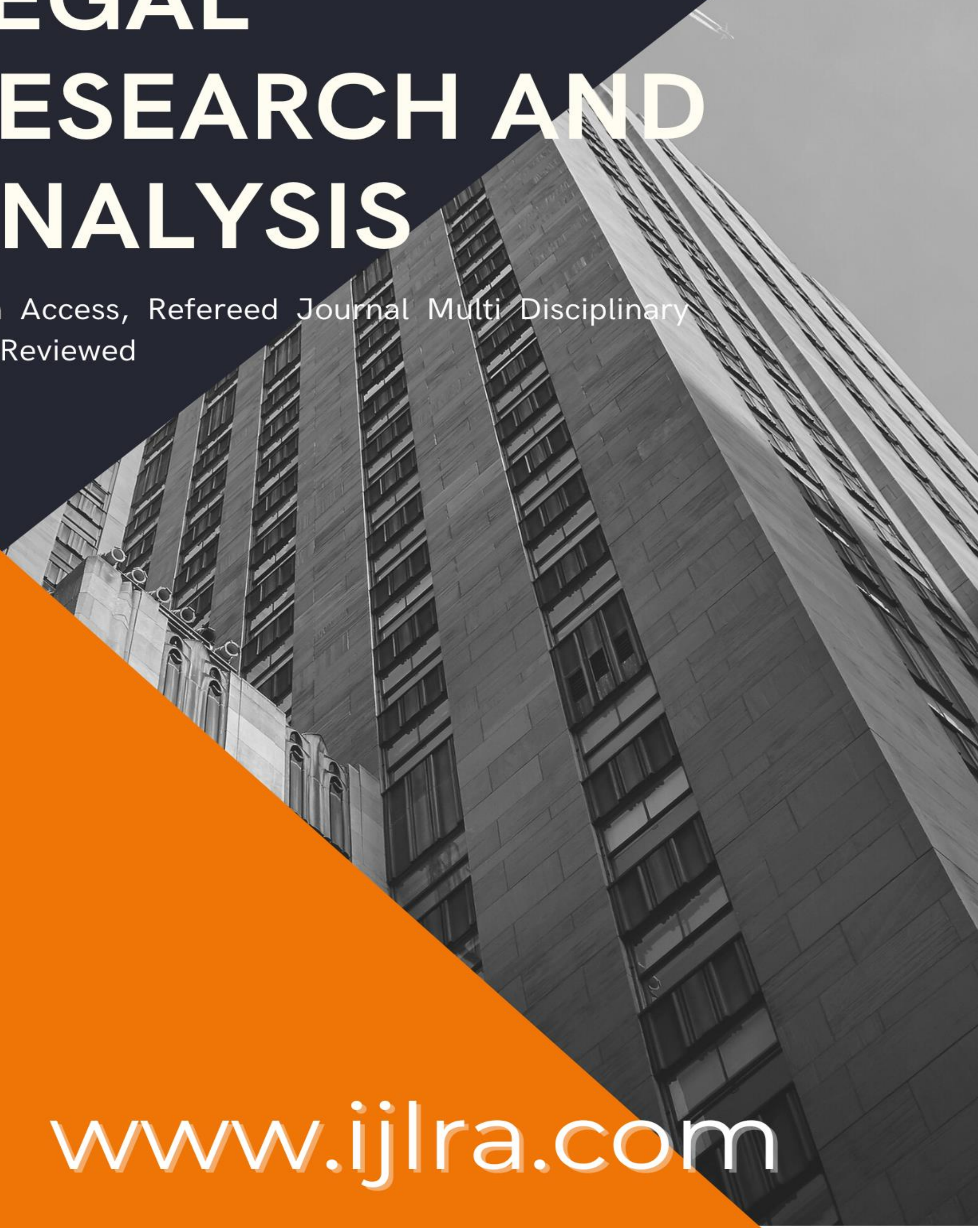

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FINANCING OF INTERNATIONAL CRIMINAL COURT: AN OVERVIEW

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ABSTRACT

A well know maxim as stated by Hendrith Vanlon Smith Jr., "*The flow of financial capital dictates the rhythm of social progress*" is apt when we talk about funding and financing in any arena as it plays a very crucial in making full use of the resources and improve the efficiency of any institution in any field. This article throws light upon the financing structure of the International Criminal Court. It briefly examines what the position regarding the cost and financing of the ICTY[1], ICTR[2] and various other internationalised institutions before ICC came into picture and talks about the financing of ICC when it was at its nascent stage. Furthermore, it discusses about how budget is prepared, who funds the ICC, for what purpose the funds are used, what are major issues regarding the budget and funding and some suggestion to overcome these challenges.

INTRODUCTION

The International Criminal Court is the first permanent court set up to try individuals for the gravest international crimes, including genocide, war crimes, crimes against humanity, and the crime of aggression. Since its inception with the Rome Statute in 1998, it has been envisioned that the ICC would function as an autonomous and impartial judicial entity with the capability to provide justice across borders. However, the effectiveness and reach of the Court are closely interlinked with one practical but very often overlooked factor: financing. Understanding how

[1] ICTY which is also known as the International Criminal Tribunal for Former Yugoslavia, which was established on 25th May, 1993 by resolution 827 passed by the United Nations. It was an *ad hoc* court of the United Nations that was established to prosecute the war crimes that had been committed during the Yugoslav Wars and to try their perpetrators. The tribunal was located in The Hague, Netherlands and operated between 1993 and 2017. It had jurisdiction over four clusters of crimes committed on the territory of the former Yugoslavia since 1991: grave breaches of the Geneva Conventions, violations of the laws or customs of war, genocide, and crimes against humanity.

[2] ICTR which is also known as the International Criminal Tribunal for Rwanda was an international *ad-hoc* court established in November 1994 by the United Nations Security Council in Resolution 955 in order to adjudicate people charged for the Rwandan genocide and other serious violations of international law in Rwanda, or by Rwandan citizens in nearby states, between 1 January and 31 December 1994. It was finally dissolved in 2015.

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the ICC is financed is essential to assessing its ability to carry out its mandate.

ICC financing is not only about providing money for investigations, trials, or administrative functioning but also relates to the political will, cooperation, and priorities of the international community. The Court mainly relies on assessed contributions from its member states and complements this with voluntary contributions, donations, and assistance from international organisations. Through such a system, designed to ensure shared responsibility, the Court is also exposed to financial instability, stemming from states withholding payments, contesting budgetary increases, or trying to use financing as a tool to control the Court's activities.

ICC financing debates have gained growing prominence over the years, since financial constraints directly affect the ability of the Court to initiate new investigations, assist victims, protect witnesses, and undertake outreach activities. This might limit the operational independence of the Court, even determining which situations and cases come into focus. Furthermore, political disagreements among states often find their reflection in budgetary pressures, exposing the difficulty of sustaining a judicial body that depends on the cooperation and good will of sovereign states.

Hence, the financing of the ICC offers a unique insight into its strengths and limitations, as well as the greater dynamics regarding international criminal justice.

LEGAL FRAMEWORK THAT DEALS WITH FINANCING

ROME STATUTE

1) *Article 113*- Financial regulations – It mentions that all financial matters related to the court and the Assembly of State Parties (ASPs) are governed by the Statute and the Financial Rules and Regulations adopted by the ASPs.
2) *Article 114*- Payment of all expenses of the court and the ASPs shall be paid from the funds of the court
3) *Article 115*- Funds of the Court and the ASP: Two possibilities to cover the expenses of the court a). From the assessed contributions by the states and b). Funds provided by the United Nations in relation to the expenses incurred due to the referrals by the UN Security Council
4) *Article 116*- Governments, international organizations, corporations, individuals and other entities to provide the Court with voluntary contributions, in accordance with relevant criteria adopted by the Assembly of States' Parties (Voluntary)
5) *Article 117*- Assessment of contributions from state parties as per Article 115(a) in accordance with an agreed scale of assessment; based on the scale adopted by the

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United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based.

6) *Article 118*- Annual audit by an independent auditor.

FINANCIAL RULES AND REGULATIONS OF THE INTERNATIONAL CRIMINAL COURT

ICC financial rules and regulations provide the framework under which the Court manages, allocates, and oversees its resources. Enacted under the Rome Statute and FRR of the ICC, they ensure the principles of transparency, accountability, and responsible financial administration are maintained. They include rules on the preparation, approval, and execution of the budget, as well as mechanisms for internal oversight, procurement, and auditing. The ASP has primary authority over the Court's budget, but its Registrar and the Committee on Budget and Finance are responsible for supervision of implementation. Controls provided by the FRR also extend to voluntary contributions, the operation of Trust Funds, and mechanisms to avoid misuse of funds. Taken together, these regulations protect financial integrity and ensure independence and efficient functioning of the Court.

FINANCING OF ICC AT ITS NASCENT STAGE

Before the establishment of the ICC and implementation of the Rome Statute, there was a rapid increase in the budget of ICTY and ICTR. When the Rome Statute was entered into force on 2nd July 2002, the mounting of costs ICTY and ICTR were the subject of frustration, and it was highly criticised by the states globally and by some senior officials of UN.

Therefore, it was thought of bringing an internationalised criminal court which would sit in the countries where the crimes were being committed and adjudicate upon the matter consisting of national and international staff, which would probably be less expensive and cost effective. However, this residual mechanism took much longer than anticipated to wrap up their work and costed much more than expected. This inefficiency tested the commitment of the international community in international criminal justice system and its approach to fight impunity due which these states refused to pay their estimated shares. Moreover, there was also the significant reduction in the voluntary contributions.

Now, these factors posed a serious threat to ICC at that time especially because it was a newly established institution and still at a nascent stage but unfortunately it was at a risk of being perceived as a permanent institution which was nothing but an expensive version of ICTY and ICTR, which was far from the truth since it was established to cut down the cost, make

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international criminal justice system more cost effective and improve its overall approach to fight against impunity and its overall functioning.

Although it is not expected that the ICC will ever be cheap, this unique mandate offers the Court the opportunity to distinguish itself from its predecessors by championing national justice for potentially many more victims and step ping in to investigate and prosecute crimes only when necessary.

Prior to the commencement of the working of ICC the ASPs introduced the main budget design wherein the ASPs[3] would consider and decide on the ICC's budget request, as stated in Article 112(2) (d)[4] of the Rome Statute. The Financial Regulations and Rules adopted by the Assembly at its first session provided that the Registrar would each year request budget proposals from the Office of the Prosecutor and other heads of organizational units and "elaborate a consolidated draft programme budget" for the ICC." The rules were properly framed to make sure that the independence of the Prosecutor is not affected in the process and that the Registrar does not acquire full control over the substance of the Prosecutor's request. To ensure proper oversight of the budget, the Assembly established a Committee on Budget and Finance (Committee) which is made up of 12 "experts of recognized standing in finance matters."[5] The independent members consider ICC's budget proposal and make recommendations to the ASPs. The ASPs then after considering those recommendations makes a final decision on the budget at its annual sessions.

"The total approved budget is then apportioned between states parties in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget. This allocates a percentage of the budget to each state party considering its gross national income and other criteria. An Office of Internal Audit was established at the ICC to ensure internal financial control over financial transactions and administrative systems? In addition, an External Auditor was appointed by the Assembly to audit the ICC annually. It was expressly tasked with making observations with respect to the efficiency of the financial procedures, the accounting system, the internal financial controls and, in general the administration and management of the Court."[6]

The first budget ever, that was proposed by ICC manifested a flexible institution which would

[3] Article 112(1) talks about Assembly of State Parties. It states that, "An Assembly of States Parties to this Statute is hereby established. Each State Party shall have one representative in the Assembly who may be accompanied by alternates and advisers. Other States which have signed this Statute or the Final Act may be observers in the Assembly."
[4] Article 112(2)(d) states that, "The Assembly shall consider and decide the budget for the Court."
[5] Jonathan O'Donohue, Financing the International Criminal Court, 13 INT'l CRIM. L. REV. 269 (2013).
[6] Supra Note 3.

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increase the efficiency and economy to the maximum. ICC committed itself to develop build performance-based budgets instead of budgets that are organizationally driven structure? It announced that the "ICC would concentrate on prosecuting the most important perpetrators and establishing a well-functioning complementarity regime. This would limit judicial activities and hence the budget of the ICC.? Despite its Strong commitment to complementarity, in practice the ICC focussed both its activities and budget requests primarily on its own investigations and prosecutions. Little was allocated to take measures promoting national justice."[7]

WHO CAN FUND ICC?

The International Criminal Court (ICC) needs steady and reliable money every year to run its investigations, trials, witness protection programs, victim support, and staffing. The Rome Statute created a funding system that would keep the ICC independent and prevent powerful countries from controlling it.

The main source of money for the ICC is the funding from the mandatory payments made by all the member countries. These payments are calculated based on each country's wealth using a scale like the UN's that is based on the size of the country's GDP economy, ability to pay and its national income. The Rome Statute also says that the United Nations can pay for ICC cases that the UN Security Council refers.

The idea was that if the Security Council wants the ICC to act, then the UN should help pay for it. The Office of the Prosecutor created two new funding methods one is A voluntary trust fund, where countries who are not members to ICC can fund or donate money voluntarily that is to say the ICC can also receive voluntary donations from states, organizations, or individuals. And the other one is Seconded staff which means apart from giving money, countries can also support the ICC by sending experts, providing equipment, or offering services. This is a form of in-kind support, meaning it is not direct funding, but it still helps the Court carry out its work. This kind of support has become more common in recent years, especially when the ICC suddenly needs more resources for a particular investigation.

Also, the ICC can get financial and logistical support through cooperation agreements with other international institutions.

[7] Supra Note 3.

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PROCEDURE OF PREPARING THE BUDGET

The ICC follows a fixed and structured process every year to prepare its budget. The goal is to ensure transparency, independence, and proper financial planning. Every year, the organs of the ICC (Office of the Prosecutor, Chambers, Registry, etc.) calculate how much money they will need for the next year. They consider expected number of investigations, trials, and appeals, workload in each situation, staff needs, inflation and rising costs, field offices, victim support, defence, detention, translation, etc. This becomes the Proposed Programme Budget of the ICC.

Then the proposed budget will be presented before The Committee on Budget and Finance (CBF) which reviews the Proposal.

The CBF is a group of independent financial experts created by the Assembly of States Parties (ASP). Their job is to examine the ICC's proposed budget, check whether requests are reasonable also to identify inefficiencies or places where money can be saved and suggest reductions or adjustments.

The CBF prepares a detailed report telling the ASP which parts of the ICC's request they support and which parts they think should be cut or changed.

The Assembly of States Parties (ASP) Debates and Approves the Final Budget. At the ASP's annual meeting, all ICC member states discuss the proposed budget, debate the CBF recommendations, negotiate increases or cuts and consider political and financial concerns. The ASP then votes to approve the final budget for the next year.

Once the budget is approved each state receives its assessed amount (based on UN scale of assessment) and all the member states are expected to pay in full and on time.

After the ICC budget is approved and the year begins, the Court does not simply spend the money freely. Instead, there is a continuous process of checking, reviewing, and controlling how the money is used. This is important to ensure transparency, prevent waste, and make sure funds are used properly. The Independent Oversight Mechanism (created because states wanted stronger accountability) evaluates and investigates Court operations.

They check issues like misconduct, Inefficiency and misuse of funds This ensures the ICC is accountable not only internally but also externally.

HOW ICC USES ITS FUND

The ICC uses the funds it receives to carry out all the work needed to investigate and prosecute the world's most serious crimes. A major part of the money goes toward investigations, because

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gathering evidence in war zones is very costly. Investigators must travel to conflict areas, interview witnesses, collect documents, conduct forensic tests, and work with translators, analysts, and security teams. Trials also require a lot of funding since they involve judges, lawyers, interpreters, transcripts, and secure courtrooms. ICC trials are long and complex, often including many witnesses and several languages, so they demand a large budget.

Another important use of ICC funds is to support the Office of the Prosecutor, which builds cases and leads investigations. This includes salaries for investigators, analysts, legal officers, and technical experts. Defence lawyers also need funding so that accused persons receive a fair trial, but the defence usually receives a much smaller portion of the budget compared to the Prosecutor. The ICC also spends money to help victims participate in cases by providing legal support, psychological assistance, and communication through field offices. Witness protection is another major expense because many witnesses are at risk and may need safe housing, relocation, counselling, and security escorts.

The ICC also uses funds to run its detention centre, which must follow international human rights standards, covering food, healthcare, and security for detainees. Field offices in situation countries are another important cost, as they help with investigations, outreach, and support for victims and communities affected by crimes. In addition, a large amount of money is needed for the Court's administration such as IT systems, translation services, human resources, and public communication handled by the ICC Registry.

The ICC's building and infrastructure also require maintenance, repairs, and security upgrades. A big portion of the budget goes to salaries for judges, prosecutors, and staff across all departments, ensuring it can function as an independent and effective international court.

SOME LANDMARK JUDGEMENTS

Although there are no cases of ICC as of now till date that explicitly deals with the financing of ICC, how its budget is prepared, who and funds ICC is funded, where ICC uses its funds, challenges regarding budget and funds, etc but there are a few cases which reveal how resource limitations, budget constraints, and lack of financial support shape the Court's work.

In the Lubanga case[8], the ICC showed clearly how a lack of resources can affect justice. In 2008, the judges stopped the trial because the Prosecutor could not share important evidence with the Defence, partly due to limited staff and budget that slowed evidence processing and communication with information providers. The judges said that a fair trial cannot depend on

[8] Prosecutor v. Thomas Lubanga Dyilo, ICC-01/04-01/06.

how much money or resources the Court has. The Defence also explained that they could not properly investigate in the field because the legal aid funds were too small. This case is often used to show that when the ICC does not have enough money, trials can be delayed, Defence teams may be disadvantaged, and the overall fairness of the process can be affected.

In the Banda case[9], the Defence repeatedly asked the ICC for more funds so they could investigate properly, meet witnesses, and travel for hearings. However, the Registry had to review these requests under a tight budget, which meant not all needs could be fully supported. As a result, parts of the case were delayed because money for Defence travel, witness coordination, and other logistics was limited. This case clearly shows how the ICC's restricted budget can slow down progress, especially in situations that require travel to remote or difficult locations and more complex fieldwork.

In 2005, the UN Security Council sent the Darfur conflict [10] to the ICC but did not give any money to handle the case. This meant the ICC had to investigate a huge crisis using its already small budget. Because of this, the Court struggled with staff shortages, high security costs, and limited ability to collect evidence or protect witnesses. Darfur is the best example showing how the ICC is given big responsibilities but not enough funding to properly carry them out.

When the ICC began investigating the 2007–08 post-election violence in Kenya [11], the Court faced limited money and staff, even though the situation required many investigators, witness protection measures, and travel. Because the ICC was already handling several other cases at the same time, its budget was stretched thin. This meant some investigations were slower, evidence collection was harder, and the Court struggled to support witnesses properly. The Kenya situation is often used to show how underfunding and a heavy workload can weaken the ICC's ability to build strong cases.

CHALLENGES FACED BY ICC REGARDING BUDGET AND FUNDS

1. One of the major challenges that ICC faces while preparing its annual budget is that while preparing and designing its budget, they have to submit a proposal for the approval to the Committee on Budget and Finance and the Assembly of State Parties before the commencement of the procedure of preparation of the budget in the month of January in the year in which the procedure will be initiated. However, for that ICC have to predict in advance about all the actions that could or would take place in the

[9] The Prosecutor v. Abdallah Banda Abakaer Nourain ICC-02/05-03/09.
[10] Situation in Darfur, Sudan, ICC-02/05 (2005).
[11] Situation in the Republic of Kenya, ICC-01/09 (2010).

following year for which they would need funds and prepare budget. For instance, ICC must predict in advance how many investigations will be conducted, how many trails will be conducted and at what stage each trial could reach, how many accused would be arrested, how many victims and their families will be compensated and so on. However, it is almost impossible to predict all these instances with absolute accuracy because of the change in these the implementation of these events as planned due to change in circumstances. For instance, even though ICC allots a time frame for the completion of trial but it has been observed quite often that the trials get delayed and continues even after the expiry date of the set time frame because of various reasons like, absconding of accused, delay in collection of evidences and so on due to which the expenditure of ICC increases and exceeds the budget. Furthermore, this unpredictability of future events sometimes also leads to over-budgeting and under spending.

2. Secondly, it has been observed that irrespective of the work being conducted by ICC, the delivering of justice by any international institution including ICC is very expensive and in normal parlance, it often exceeds the set budget without being able to meet the aims set for a particular year which tests the commitment of States to ICC especially when it to comes to poor, developing and under-developed states as it puts a huge financial burden on already economically challenged states due to which these states refuse to pay their assessed contributions. Furthermore, this lack of budgetary control also stunts the voluntary contributions from a lot of states which ultimately massively affects the functioning and administration of the ICC.
3. Furthermore, One of the biggest problems is the constant issue of late payments and arrears from member states. Some of the richest countries like Brazil, Venezuela, Argentina and Mexico owe large amounts of money, sometimes totalling tens of millions of euros. Because the ICC heavily depends on these mandatory contributions, large arrears can lead to cash shortages and even risk the Court running out of money during the year. Although the Rome Statute allows the ICC to suspend voting rights for states that don’t pay, only poorer states get punished, while wealthy states continue to avoid consequences. This creates financial instability and a sense of unfairness.
4. Additionally, another major challenge comes from the United Nations not paying for Security Council referrals, even though the Rome Statute allows for this. For cases like Darfur and Libya which were referred by the UN Security Council the UN has paid nothing. This shifts the financial burden entirely onto ICC member states, even though

some Security Council members are not ICC members and do not contribute financially. This situation goes directly against the original intention of Article 115(b) and has created frustration among ICC member states.

5. Lastly, the ICC also struggles with increasing workload but limited budgets. Every year, the Court has more investigations, trials, reparations, and appeals, yet many states push for "zero nominal growth," meaning they do not want the budget to increase. As a result, several areas of the Court remain underfunded especially defence teams, victim participation, gender-justice work, and the Trust Fund for Victims. Defence receives only about 2.2% of the ICC budget, far below what past tribunals provided, raising concerns about fairness and equality of arms. Victim programmes and gender-sensitive initiatives also suffer from lack of funds, despite being central to the ICC's mandate.

SUGGESTIONS TO OVERCOME THESE CHALLENGES

Firstly, The ICC can lessen the challenge of having to predict investigations, trials, arrests, and victim needs by moving from an annual forecasting model to a multi-year budget cycle supported by contingency or emergency reserve funds. A multi-year model would enable the Court to plan for long-term situations-such as ongoing trials or complex investigations-without requiring the Court to make precise year-to-year predictions. A contingency reserve-possibly funded through a modest mandatory levy or voluntary ear-marking-would ensure that unexpected events-delayed trials, unexpected arrests, or new investigations-can be financed without exceeding the approved budget. Several UN bodies already employ this approach, and doing so could go a long way toward stabilizing ICC operations.

Secondly, all countries should be treated equally when they pay late, including rich countries. If everyone faces the same rules and consequences, states will take their payments more seriously, and the Court will not struggle with sudden money shortages.

Thirdly, the ICC should push the United Nations to share the costs of cases that the UN Security Council sends to the Court. It is unfair that ICC member states pay everything while the UN pays nothing, even though the cases come from the Security Council. A shared funding system would reduce the burden on ICC members.

Lastly, since the Court's workload keeps getting bigger, but the budget does not, the ICC should plan its funding for several years at a time and make sure that essential areas like defence lawyers, victim support, and gender-justice work always receive enough money. This would help the Court work more smoothly and ensure fairness in its cases.

CONCLUSION

Finances for the International Criminal Court remain one of the most decisive factors in shaping its effectiveness, independence, and long-term credibility. While the Rome Statute created a financial system that was meant to be equitable, predictable, and impervious to political influence, ongoing budgetary deficiencies, arrears by powerful states, lack of UN support for Security Council referrals, and increasing workload pressures have all continued to progressively undermine the Court's ability to fulfil its mandate effectively. The ICC's current difficulties thus reflect not only specific administrative inadequacies but deeper and more damaging political divisions across the international community. Sustainable financing is indispensable for judicial independence, the protection of the rights of victims, and ensuring fair trial standards. Strengthening compliance with states' contributions in arrears, moving toward multi-year budgeting, increasing financial transparency, and sharing global responsibility equitably are important first steps toward allowing the ICC to deliver justice and maintain its position at the heart of efforts to combat impunity.

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