

# The Role of the International Criminal Court Against War Crimes in Afghanistan

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**Abstract.** War crimes are regulated in Rome Statute Article 8 paragraph (1). Based on the 1998 Rome Statute on the International Criminal Court, war crimes are extraordinary crimes, commonly known as Extraordinary Crimes, which are severe violations of human rights worldwide. This paper will examine and discuss the roles of the International Criminal Court in dealing with war crimes in Afghanistan. The author will describe the various roles of the International Criminal Court in dealing with war crimes in Afghanistan.

**Keywords:** War Crimes, Roles, International Criminal Court.

## 1 Introduction

The International Criminal Court is a form of human struggle in the world in upholding law and justice and protecting the various human rights of the world's civilian population from various forms of serious human rights crimes in the world, one of which is extraordinary crimes, namely war crimes which is the main topic of the author. In addition, the International Criminal Court has another meaning as a form of international criminal court institution that is independent, complementary, and also permanent. It should be noted beforehand that human rights are the primary rights inherent in the human soul as a great gift from God Almighty since a human being is born without being able to be snatched away or deprived of his existence for any purpose or reason.

The role of the International Criminal Court is eagerly awaited by a country that is being hit by cases of international crimes. However, few countries are unwilling or unwilling to be assisted by the International Criminal Court because they can still investigate their cases only after they are unable to the International Criminal Court. It will assist in the investigation of the country. This phenomenon often occurred in several countries in recent years, one of which is Afghanistan. For more than 18 years since Afghanistan became a member state of the ICC in 2003, the International Criminal Court has tried to carry out its role as best as possible in investigating alleged war crimes committed against the entire Afghan civilian population.

Nevertheless, unfortunately, some obstacles and obstacles hinder the implementation of the role of the International Criminal Court in investigating alleged war crimes in Afghanistan. One of them is the absence of war crimes perpetrators into the jurisdiction of the International Criminal Court because the United States is not a member country of the ICC. The Government of Afghanistan refused to be assisted by the ICC, so the ICC was forced to stop its investigation

and then the lack of support and strong collaboration between judges and prosecutors of the ICC in solving related problems. These two obstacles are evidenced by the Judge's refusal of the ICC Prosecutor's request to officially open an investigation in Afghanistan so that the International Criminal Court has not entirely investigated it for a dozen years.

War crimes are regulated in the Rome Statute Article 8 paragraph (1). Based on the 1998 Rome Statute on the International Criminal Court, war crimes are extraordinary crimes, commonly known as Extraordinary Crimes, which are severe violations of human rights worldwide. It can be concluded that war crimes fall into the criminal jurisdiction of the International Criminal Court according to the regulations contained in the Rome Statute of 1998, so the ICC has the authority to carry out its role in adjudicating various cases of war crimes in the world, one of which happened to the civilian population of Afghanistan.

International Criminal Court (ICC) prosecutors in 2017 asked ICC judges to open a formal investigation into alleged war crimes committed in Afghanistan since Afghanistan became a member of the ICC in 2003 by the Taliban and the United States. However, the ICC judges rejected the ICC Prosecutor's request because the United States was not a member country of the ICC and the United States refused the ICC to investigate. Therefore, the ICC Judge rejected his Prosecutor's request because the chances of a successful investigation were low. This made Amnesty International condemn the International Criminal Court. It should be noted that on September 11, 2021, as many as 2,700 Afghan civilians died due to the armed war between the Taliban forces and the civilian population; also, gun attacks followed. Even recorded data from the United Nations states that since 2007, 47,000 Afghan civilians and 73,000 Afghan soldiers have died in the war. The death toll due to the war carried out by the Taliban forces also involved US contractors who helped humanity in Afghanistan, humanitarian and democratic institutions; 6,000 Afghan soldiers and 1,100 NATO troops also died in the war. Therefore, Amnesty International condemns the International Criminal Court for not accepting the ICC prosecutor's request to open a re-investigation of alleged war crimes in Afghanistan.

## **2 Method**

This paper will examine and discuss the various roles that the International Criminal Court has carried out in dealing with war crimes in Afghanistan in a normative juridical manner using doctrinal law data collection techniques or literature studies. The author will describe various sources of primary and secondary legal materials related to the various roles that the International Criminal Court has carried out in dealing with war crimes in Afghanistan since Afghanistan officially became a participating country of the ICC in 2003 and until 2022 by analyzing the legal basis of the relevant legislation. War crimes and the International Criminal Court, namely the Rome Statute of 1998, are associated with cases of alleged wars that occurred in Afghanistan and the role of the ICC in investigating them..

## **3 Research and Discussion**

The war that has been going on for a dozen years between the Taliban, the United States and Afghanistan are still happening today. The bloody attack that occurred at the United States World Trade Center in 2001 was the trigger for the beginning of the war. After the attack, the United States, dated October 7, 2001, President Bush officially made Afghanistan a battlefield or battlefield between the United States and the Taliban forces. Afghanistan and the United

States have negotiated, but the Taliban forces insist they do not want to make peace and want to control Afghanistan. Therefore, this war lasted for a very long time, up to 2 decades. The United Nations (UN) stated that the death toll, including the Afghan civilian population, especially ethnic Hazara, due to the war carried out by the Taliban troops reached the highest record of war casualties in 2018, which was 10,993 fatalities. The death toll due to the war carried out by the Taliban forces also involved US contractors who helped humanity in Afghanistan, humanitarian and democratic institutions; 6,000 Afghan soldiers and 1,100 NATO troops also died in the war. It was recorded that since 2007, as many as 47,000 ethnic Hazara and Afghan civilians and 73,000 Afghan soldiers have died in the war. Therefore, the UN assistance mission in Afghanistan, namely UNAMA, took action by starting to document the deaths of Afghan civilians due to war from 2007 to 2021 yesterday. The war targeted its victims, namely the Afghan civilian population and the ethnic minority in Afghanistan, namely the Hazara, so that the Taliban forces could fully control the territory and necessary borders and expand their power in the country of Afghanistan.

Based on UNICEF investigations and studies published in 1997, 90% of Afghan civilian children think they will die in war, while 80% will live with fear and trauma from war. These children experience lifelong trauma that greatly disrupts their mental and psychological health. This has attracted the attention of the international community, one of which is the International Criminal Court (ICC), plus the State of Afghanistan is a member country of the ICC and war crimes that occurred in Afghanistan are included in the jurisdiction of the ICC because the International Criminal Court has the authority to carry out all forms of its role in investigating and prosecute alleged war crimes and re-establish peace in Afghanistan and the world.

The first role that the International Criminal Court played in investigating alleged war crimes in Afghanistan was in September 2016; after a lengthy investigation, ICC Chief Prosecutor Fatou Bensouda stated that it was most likely the United States and the United States military and intelligence agencies, the Taliban forces, and the United States. The CIA committed war crimes in Afghanistan between 2003 and 2004, as concrete evidence that the United States has tortured Afghan prisoners of war. The end of 2015. Therefore, the Chief Prosecutor of the ICC is trying to immediately decide whether to continue his full investigation into the alleged war crimes case that occurred in Afghanistan and await the decision of the ICC Judge or not. Since then, the International Criminal Court has begun intensively investigating the alleged war crimes cases.

Another role of the International Criminal Court (ICC) was seen in 2018. ICC Chief Prosecutor Fatou Bensouda has decided to continue investigating alleged war crimes committed by the United States and Afghan forces against Afghanistan. At the same time, the ICC was criticized by the United States because it did not accept being accused of committing war crimes in Afghanistan. The United States condemnation is in the form of threats. It will immediately impose severe sanctions on ICC judges who, if they dare to accept the request of their prosecutors, open a formal investigation in the case of war crimes committed by the United States against Afghanistan. The threat was conveyed through an official speech by the Federalist Society in Washington DC, United States. However, the chief Prosecutor of the ICC did not think much about the threat; Fatou Bensouda continued his investigation while waiting for the decision of the ICC judges on his request.

In April 2019, the Judge of the International Criminal Court decided to prohibit the continuation of the investigation of alleged war crimes by the ICC Chief Prosecutor and would not declare a

full investigation even though Fatou Bensouda, as the ICC Chief Prosecutor, had struggled to carry out his formal investigation in investigating the alleged war crimes committed by the ICC. United States and Taliban forces against the State of Afghanistan. The International Criminal Court did this after the United States and the Taliban troops signed a peace agreement. This ICC judge did create peace within the State of Afghanistan after two decades of war. Even the President of the United States, Donald Trump, signed a peace agreement and ended the endless war on February 29, 2020.

Not staying silent, the ICC Prosecutor tried his best to appeal the decision of the ICC Judges. Prosecutors do not accept that the investigation they have carried out for a long time has to be stopped while the victims of the war and perpetrators are clearly in front of their eyes. After successfully filing an appeal against the International Criminal Court, the ICC Prosecutor awaits the Judge's further decision.

On March 5, 2020, the Court of Appeals Chamber of the International Criminal Court decided firmly to authorize the Prosecutor of the International Criminal Court to initiate investigations into alleged crimes under the Court's jurisdiction concerning the situation in Afghanistan. Pre-Trial II, dated April 12, 2019, rejected the International Criminal Court Public Prosecutor's request for investigation authorization on November 20, 2017. The International Criminal Court prosecutor has been allowed to officially open and investigate alleged war crimes committed by the United States & Taliban forces against Afghanistan. There is even a new fact that the Afghan government itself also committed this extraordinary crime. The Appeals Chamber of the International Criminal Court found that the Public Prosecutor was authorized to investigate, within the parameters identified in the Prosecutor's request dated November 20 2017, crimes allegedly committed on Afghan soil since May 1 2003, as well as other crimes alleged to have been connected to the armed conflict in Afghanistan. Afghanistan against the Taliban forces. The International Criminal Court delivered the official decision in response to the ICC Public Prosecutor's appeal against the pre-trial Chamber decision two years ago.

The role of the International Criminal Court in investigating alleged war crimes in Afghanistan was recently carried out on July 12, 2022 yesterday, which alleged that British troops committed war crimes in Afghanistan, namely the Special Air Service in 2010-2011. Amnesty International also supported the investigation. Other evidence is contained in the Afghan Military Documents, which state that as many as 54 Afghan civilians were killed in Afghanistan by Afghan army troops called the Special Air Service. Therefore, the International Criminal Court will immediately consider this matter as soon as possible.

#### **4 Conclusion**

War crimes are not only a national problem but have entered the international realm. Because Afghanistan is a member country of the ICC, the International Criminal Court has the authority. It can carry out all forms of its role in investigating cases of alleged war crimes in Afghanistan. The role of the International Criminal Court until July 2022 was still at the investigation stage, which gave allegations that the United States, CIA, Taliban forces, and Britain committed war crimes against Afghanistan. The author knows some obstacles the International Criminal Court faced in investigating alleged war crimes. However, in the future, the ICC will be more compact between the Prosecutor and the Judge so that it will not take long to formulate a decision because

the decision will be beneficial for the sustainability of the fate of war victims and the entire future civilian population of Afghanistan.

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