

Leiden University College The Hague

Name: Kevin Suleiman – ID: 1904795

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Spider in a Cobweb

The ‘global’ quest to ‘justice’ and ‘peace’ thrives on a mosaic of legal institutions and organizations that attempt to enhance these objectives, yet the paradox here is that peace and justice are not always ‘pari passu’ compatible; the complexity of the legal affairs discussed hereafter are partly embodied within this paradox¹. As Charles E. Wyzanski asserts in ‘*Nuremberg: A Fair Trial?*’ that prosecuting actors who have committed international crimes may issue a signal to the international community that grave crimes will not go unpunished. However, here Wyzanski reflects upon the contradiction between the laudable objectives of the Nuremberg tribunal and the arguably ‘double standards’ that were utilized by those who constructed the ‘Nuremberg’ tribunal; the victors of the WWII.² In harmony with this doctrine, the laudable objectives of the International Criminal Court are embodied in a ‘double edged sword’, as this legal structure pursues to prosecute perpetrators for the gravest crimes codified in the Rome Statute, while simultaneously empowering a deterrent notion that ‘justice’ shall prevail in the international community. The former objective of the ICC is viable in selective cases despite the wide array of legal and political complications and the dependency of selective political support. This selective politically-motivated support essentially constructs an international ‘cobweb’ in which the ‘ICC-spider’ can operate. Within this cobweb, the latter objective to deter potential perpetrators of crimes is arguably more complex and has not proven to be effective so far.³ Therefore, this essay mirrors that the ICC does not have a sufficient deterrent effect to withhold potential perpetrators from criminal conduct, as a result of interdependent political and practical

¹ Stahn, “Evolution, Revolution,” 3.

² Wyzanski, “*Nuremberg*,” 31.

³ The grave crimes that are under the jurisdiction of the ICC are codified in the Rome Statute, which entered into force in 2002, and encapsulates war crimes, genocide and crimes against humanity. Mullins, “The Ability of the International Criminal Court,” 771-772.

complications with regard to the legal enforcement in the international community; the spider needs the fundamental ‘cobweb’ infrastructure to grab the offenders.

Firstly, one will analyse the general viability and effectiveness of prosecution and subsequent possible deterrent effect that the ICC pursues in its objectives, as a means to illustrate the complex international context in which the ICC has to operate. Secondly, drawing upon the fragile foundation sketched in the first paragraph, the implications of the political and financial dependency of the ICC within the international context will be touched, as this fact tends to structurally devalue the ICC in its legitimacy. Thirdly, the ‘rational thought’ embodied within organized bureaucratic structures will be discussed, implying the ‘low-risk’ perception of potential perpetrators, partly due reasons asserted in previous paragraphs. Fourthly, the specific scope and focus of the ICC will be questioned – ironically - illustrating that this limited scope may produce counter effective-consequences, viz. sustaining criminal conduct.

In principle, one challenges the viability of prosecution and subsequent deterrent effect that the ICC pursues, as today still an array of grave crimes is committed by both state and non-state actors in the international community. This is view confirmed by Mullins and Rothe, as they assert that despite the perception of a deterrent effect of practitioners in the legal field, the wide array of ongoing crimes proves that these claims are not proven legitimate.⁴ Thus, in order to explain the continuum of these crimes – as a result of limited deterrent effect – it is crucial to assess the mosaic of implications that counteracts against the objectives of the ICC within the contextual framework of the international community. What makes the matter more complicated is that this ‘community’ is arguably defined by realism and “rational calculation” in international relations.⁵ Therefore, the interdependent complications are rooted in the fragmented infrastructure and degree of ‘enforcement’ that the ICC possesses. In order to illustrate this fundamental obstacle, one can illustrate the good-willing states as those that construct the cobweb in which the ICC can operate; this ‘infrastructure’ provided by the states itself is of utmost importance to the ICC, for it can: A) not impose any jurisdiction on states, and B) is thus unable to coerce states to extradite the prosecuted. As a result, (potential) perpetrators of

⁴ Mullins., Rothe, “The Ability of the International Criminal Court,” 771.

⁵ Mullins., Rothe, “The Ability of the International Criminal Court,” 781.

grave crimes in states that do not provide ‘access and resources’ to the ICC, feel unthreatened by the ‘ICC-spider’, and thus continue their illegal conduct outside the ‘cobweb’.

This fragmented cobweb illustrates the political and financial dependency of the ICC, which may reduce the capacity to investigate all legal cases similarly and consequently jeopardize objectivity and equitable legal approaches. As a result, cases are selectively chosen and this process might be polluted by ‘conflict of interests’, which subsequently devalues the legitimacy and facilitates ‘inequitable’ conduct of the ICC. Therefore, the decrease in legitimacy within the international community, also imposes detrimental implications upon the viability of deterrence. Why should states accept ‘double standards’ which selectively inflict potential disadvantageous consequences upon them? These harmful consequences are also asserted by Mullins and Rothe: “The courts limited capacity greatly reduces its potential deterrent value”.⁶ Additionally, the arbitrariness of the ICC enforcement enhances and consolidates notions of bias and ‘imperial’ conduct, viz. the perception that the ICC subjugates ‘fragile’ states within the hierarchy of the already competitive international community.⁷

Furthermore, grave crimes are mostly committed by bureaucratic and organized bodies, such as organizations and governments.⁸ Consequently, the ‘rational thought’ embodied in these structures assesses the degree to which their actions can be answered with legal sanctions. This may imply, taking into account the array of crimes that are perpetuated, that these structures anticipate the legal consequences and actions of the ICC as a nonviable and insignificant threat. Here, this seemingly logical criminal-conduct is reassessed by scholars, for invoking that this “rational calculation” is in the very nature of the human kind and arguably, its quest of survival.⁹ Despite this intrinsic reflex in human nature, it must be noted that the ‘potential risk’ of legal consequences can significantly affect the conduct and intensity in which crimes are conducted.¹⁰ Hence, the structures that commit these crimes might attempt to concede their crimes and produce counter-evidence for potential accusations of accused crimes. Thus, these low-risk rational judgements by potential perpetrators of such crimes are

⁶ Ibid, 781.

⁷ Stahn, “Evolution, Revolution,” 3.

⁸ Mullins., Rothe, “The Ability of the International Criminal Court,” 775.

⁹ Ibid, 775.

¹⁰ Ibid, 774.

rooted in the fundamental flaws and obstacles faced by the ICC, such as the lack of jurisdiction and decisive enforcement in the international community.

Moreover, the ICC issues that it primarily targets those who are most responsible for the crimes that have been committed, viz. the political and military leadership. Consequently, those who solely execute their orders may feel immune and perhaps strengthened in their criminal conduct, as they are not specifically targeted by the ICC.¹¹ Mullins and Rothe argue: “On-the-ground soldiers will not be deterred from more opportunistic war crimes when the Court only tries leaders and limits itself to widespread and systematic cases of violations.”¹² Therefore, it is vital that the scope of the ICC must be expanded as a means to consolidate the universal and equitable deterrent effect within the international community. In fact, expanding the scope of the ICC would construct a ‘double-edged sword’ that enhances the objectives and effectiveness of the ICC. Firstly, the people ordered to commit certain crimes will be more likely to refrain from such conduct, as they perceive a ‘high-level risk’ of prosecution for their crimes. Thus not the fact that the conduct itself is intrinsically wrong or inhumane, but the consequences that it might inflict upon the individual’s action is the most vital factor in the ‘rational’ decision making process. As a result of an expanded scope, the leadership which orders these atrocities might reassess the viability of these criminal activities, for the fact that their men might resist or even turn against them in order to clear oneself from any legal prosecution. Thus, it is crucial for the ICC to devise a level playing field and project the signal that ‘each and every one’ who has contributed to the overall conduct of specific crimes, is eligible to legal prosecution, for one should have known what may define criminal ‘inhuman’ conduct.

Considering the various structural and contextual-dependent obstacles that the ICC does face in its laudable quest and objectives, it must be emphasized that the mosaic of complications is essentially rooted within the fundamental shortcomings of the ICC; namely the international legal ‘cobweb’ that is too limited and flawed. This cobweb does not solely embody the jurisdiction of the ICC in relationship with states, but merely the enforcement mechanisms for which the ICC is dependent on cooperation of

¹¹ Ibid, 782.

¹² Ibid, 782.

the international community. Consequently, one may assert that as a result of this fragmented foundation, the ICC is partly forced to utilize a selective and arguably pragmatic conduct, resulting that the legitimacy and equitability of the ICC is devalued in certain circles. In fact, this lack of universal legitimacy as a result of illustrated points, partly explains why massive human rights violations are conducted in all corners of the world; and it is exactly these corners that are not included in the legal cobweb of the spider.

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Personal Reflection

Prior to reflecting upon the writing process, I want to state that my quest for peace and justice is rooted in my Kurdish refugee background, which in some way provides me with an everlasting drive to enhance peace, justice, and humanity in our world. Moreover, as I seek to work as a human rights lawyer, the legal material covered in the first block of the academic writing course thrives upon my great interest regarding these complex world affairs. Moreover, I believe that it is of utmost importance to comprehend the fundamental writing competencies in order to become a successful academic and lawyer, and perform effectively in other occupations. Hence, I believe that reflecting upon this writing process will empower my extensive learning process and simultaneously enrich my future academic publications. While writing this essay, I attempted to focus upon the fundamental obstacles that the ICC does face in its quest to attain justice, for the reason that as long as this foundation of interdependent flaws are not extensively addressed and modified, many perpetrators will walk free from justice, for the unfortunate reasons mentioned. From the chain of arguments provided, I attempt to illustrate that the laudable objectives of the ICC are structurally undermined by the foundation of political and practical complications. Herein, I attempted to structure the arguments in such a manner, that it would become clear for the reader that most contemporary challenges faced by the ICC are rooted in the very fragmented foundation of the ICC itself. Hence, in order to empower the ICC in its quest to attain Justice, it is crucial to first address the fragmented foundation whereupon the ICC is built.

The feedback that I received from Dr. Dol was certainly helpful and thought-provoking and stimulated me to critically reflect upon my sometimes 'ambiguous' language. Despite the fact that I seek to provide leverage for interpretation, I also endeavour to utilize an academic tone and to ensure academic objectivity. Moreover, I should modify the structure of my arguments in such a manner, that the cohesiveness and coherence of the essay will be empowered, and that the arguments are clear for the reader. In fact, I believe that writing essays is a continuous learning process, and therefore I seek to learn from the feedback that is provided by my professor and peers in order to improve my approaches.