

The role and relevance of the icc in the international system



**ASSIGN
BUSTER**

Introduction:

With the International Criminal Court (ICC) having such limited power, there has been ongoing debate among scholars of the importance of the organization. Scholars such as Appel (2018) and Dancy & Montal (2017) argue that the ICC creates a significant impact on nation states by altering the behavior of governments even with their limited power. However, scholars like Buitelaar (2016) and Moran (2018) highlight that the ICC does not have sufficient power to amend the problems it faces and neither does it have a strong mandate. Firstly, the essay briefly examines the triumphs of the predecessors of the ICC in International Law; International Criminal Tribunal for Rwanda (ICTR) and the Former Yugoslavia (ICTY). The essay then outlines the role of ICC and some of the problems it faces as an organization for international justice. The essay then considers the implications of the involvement of the ICC in Africa and how the court is affected both when the Nations cooperate and refuse to cooperate. The essay then examines the effect ICC has on nation states it investigates as well as the criticisms faced by the ICC. The essay concludes with an attempt to answer the question of the relevancy of the International Criminal Court in the international system.

The importance of International Criminal Tribunals: a historical outlook

The establishment of an international court to regulate the behavior of states is not recent. The Permanent Court of International Justice was established in 1922 which evolved into the International Court of Justice in 1945. It set out punishment for the war crimes against humanity during the First and Second World Wars. This then led to The International Military Tribunal and the

International Military Tribunals for the Far East, which set the stage for International Criminal Tribunal for Rwanda (ICTR) and the Former Yugoslavia (ICTY)(Cassese, 2005). All of these came about to be able to establish the International Criminal Court. Richard Goldstone argues that, “ without the ICTR and ICTY there would not have been an ICC and the greatest achievement of the international criminal court has been to get more than half of the members of the United Nations to ratify its existence” (Goldstone, 2009). The United Nations International Tribunals especially need to be examined to highlight the importance of international courts and because they are considered to be one of the biggest contributions to international criminal law.

The UN Criminal Tribunals have worked to stress the importance of international courts and proven their strength through international accountability, the power of international law and more importantly, the consequences of violating them. ICTY’s charges against 161 people for crimes against humanity and ICTR’s life sentence to 3 individuals for encouraging the 1994 genocide are examples of the importance of an international justice system. The two tribunals were also responsible for the indictment of Rwandan Prime Minister, Minister of Family and Women’s Affairs and the Yugoslav President post World War II. Had these tribunals not existed, the perpetrators of such violence would have gone unpunished.

A brief outline of the International Criminal Court

The International Criminal Court (ICC) was established through the Rome Statute in 1998 to enforce international justice when national systems were unable or unwilling to act. Even then, the ICC does not replace the domestic
<https://assignbuster.com/the-role-and-relevance-of-the-icc-in-the-international-system/>

system, it only complements it. The court does not have universal jurisdiction; it can only intervene when the crimes are committed by the people of or by the leaders of states that have voluntarily ratified the Statute. The ICC has a limited budget and has a small number of staff members who are involved in multiple cases at a time. Due to the limited amount of resources available to them, the ICC has to rely on individual nations to investigate and prosecute their own cases. Given that the ICC doesn't have its own police force, when it does open investigation on a country, it has to rely on the cooperation of the domestic government to make arrests and protect the investigators in the team. This is a big challenge to the ICC as there can be time when it is launching an investigation on the state officials who themselves are suspected of having committed atrocities. The court is responsible for prosecuting crimes against humanity, genocide and war crimes. Despite having the potential to deter human rights abuse in the world both scholars and policy makers are skeptical of the organization and question its role in world order its contribution to preserving global political stability.

Africa and the ICC

One of the biggest criticisms of the International Criminal Court (ICC) is its focus on the African continent. Scholars and critics of the ICC have pointed out that by focusing mostly on conflicts in Africa, it represents a neo-colonialist intervention in the affairs of the African nation states. However, the strength of the ICC is exaggerated by the neo-colonialists even with justifiable concerns of impact on the global African court. The ability of the African government to manipulate the international justice system has also

<https://assignbuster.com/the-role-and-relevance-of-the-icc-in-the-international-system/>

been overlooked and underestimated. ICC's involvement in Africa points out that problems can arise both when the government agrees and disagrees to cooperate with the court. Regardless of how cooperative nation states are, their domestic politics will always work against the ICC. A structural limitation of the ICC; this issue will linger wherever they go, and it doesn't only apply in Africa.

Countries like Uganda, Central African Republic and the Democratic Republic of Congo have voluntarily referred the ICC to their situations of conflict.

Ocampo, the first prosecutor of the ICC, uses this example to question how it is possible to accuse the ICC of unjustly interfering in the matters of African countries when they have been voluntarily invited to assist with the situation. However, critics point out that the governments were willing to cooperate with the ICC in exchange for immunity for the crimes committed by their officers. Clarks research on Uganda and Democratic republic of Congo has revealed that the ICC has actively chased the referrals given by these two countries. It is however, important to note that both the states involved took part in year-long negotiations before engaging with the court. These governments who were initially reluctant to work with the court are believed to have come around because of deals and promises made. Indeed, these suspicions are further fueled by the fact that the ICC has avoided pursuing criminal cases that involves the state officials of Uganda and Congo despite the widespread abuse committed by the governments.

The situation in Congo and Uganda allows questions to be raised on how closely the ICC should be working with state leaders throughout the process of the investigation: before, during and after. When the ICC investigated the <https://assignbuster.com/the-role-and-relevance-of-the-icc-in-the-international-system/>

Lord's Resistance Army in Uganda, President Museveni benefited greatly having been locked in a civil war with the rebel forces for a quarter of the century. ICC's investigation of the Democratic Republic of Congo, where the state formally referred the situation to the court themselves. The investigation prosecuting the rebel leaders benefits the president. Historically as well, when the ICC prosecuted Jean-Pierre Bemba, President Joseph Kabila benefited as Bemba was his main opponent in the presidential elections. Through these examples, we can conclude that even with the states cooperating with the ICC, it is impossible for them to be drawn into the internal politics of the nations they are investigating. Additionally, it is hard for the ICC when nation states refuse to work with them. The Sudanese government in the Darfur situation refusing to let ICC investigators in forced the court to gather information from sources such as refugee and people who had been exiled.

The effect of the ICC on Nation States

Appel (2016) posits that the contrary to the realist argument of international organizations not having an impact on the international government, the ICC does in fact alter the behavior of leaders of states, even with its limited authority. There is a big advantage in economic and military sector for state governments by maintaining a favorable reputation in the international community. In the domestic setting, Scholars like Conrad and Ritter (2013) argue that when a government is tied by international law, it helps create a standard of appropriate behavior which help the civilians rebel against a repressive government. ICC's involvement also lets the citizens of the state realize that there has been grave abuses of the international law. When

there are investigations underway, the ICC gets involved in the society to explain the situation and what they are doing by broadcasting on the radio and raising awareness through seminars and campaigns.

Dancy and Montal (2017) put forth the “willingness game” theory that hypothesizes an increase in the number of human rights persecutions in Nations that are under investigation by the ICC. This increase can arise from the ruling coalitions trying to show their commitment to the International Law and their willingness to cooperate with not just the ICC but the international community at large. The opposing coalition then can spot this and report the wrongdoings of the ruling coalition to prove that they aren't being completely genuine. By opening an investigation and accidentally pitting the two coalitions against each other, there has been a recorded increase of four times the number of persecutions on offenses by state agents like police officers on the grounds of torture and sexual violence when compared to other countries going through conflict.

Criticisms of the ICC

The lack of a central authority has become one of the biggest criticisms of the ICC. It is argued that there is no plausible reason for a State to prioritize compliance with International Law. When the state thinks it necessary, even though they comply to regular monitoring, can choose not to if it serves their interest. Without constant monitoring and lack of inspections grave violations may go unnoticed (Cassese, 2005). However, the pressure from powerful states may make most nations comply to international law and custom. Additionally, the authority of ICC to indict leaders of the states may raise the issue of sovereignty can be an infringement of the international law <https://assignbuster.com/the-role-and-relevance-of-the-icc-in-the-international-system/>

on national courts and jurisdictions. Acceptance of the jurisdiction of an international court is up to individual states because they define the characteristics of public international law. The issue of sovereignty rises again because many of the state leaders that were put on trial have enjoyed popular support among their citizens. Being tried by an international criminal court have the ability to be understood by the public as a discredit to the national sovereignty. Moreover, there are three ways to trigger the jurisdiction of the court: by the referral of a State Party, the initiation of an investigation by the Prosecutor or the referral by the United Nations Security Council (UNSC). While the former two have roots in State authority, the latter does not. UNSC referrals are recognized as 'middle ground between universal jurisdiction and complete consent' (Moran, 2018). However, even with the referral from the UNSC, the ICC is still dependent on the cooperation of the State. If they have not ratified the Rome Statute, they are within their rights to refuse cooperation. The close proximity of the ICC to the UNSC doesn't stretch the courts authority to other states.

Furthermore, another big issue that is faced by the ICC that brings into question its legitimacy is the lack of support by powerful nations; most notably the United States. The ICC has not been able to seek support of the Washington DC to provide evidence for atrocities that have taken place in particular states of the US, which makes it hard to bring war criminals from other countries to trial (Peskin, 2008). Kersten (2012) goes as far as to call the ICC a "paper tiger" without the support of the US on their side. The refusal of the US to sign and ratify the Rome Statute makes American war crimes that were conducted in Iraq and Afghanistan immune to ICC

prosecution. Crossette (2003) raises the question on why the state that advocated for the creation of ICTY and the ICTR is now publicly vocal against the court that promotes criminal justice worldwide. This may perhaps be because in the tribunals, the US would not be vulnerable but with the ICC, it would constantly have to comply by the rules of the court. Amongst these issues, there also rises the question of the power actually wielded by the ICC. Buitelaar (2016) argues that the ICC doesn't have a strong mandate and lacks the adequate power to fix the problems it faces. He goes on to posit that the countries look to ICC for support are pinning "unrealistic hopes on the ICC".

Conclusion

Most of the ICCs criticisms come from the conclusions based on the current understanding of authority. Moran (2018) in her paper repeatedly reiterates that as the understanding of authority continues to evolve, the current concerns about the ICC may not remain so in the future. Since there is no way to look into the future, the best thing to do is to learn from the past and history has shown that International Criminal Tribunals were successful in punishing war criminals. A study of the ICCs involvement in Africa underlines the fact that despite how a State reacts to the ICC, it continues to face different challenges. However, as long as the existence of the court keeps the international system alert and cautious about committing crimes and stops gross violations of human rights, the court will continue to stay relevant in the international system.

References:

- Akhavan, P. (2001) ' Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?', *The American Journal of International Law* 95(7): 7-31.
- Alford, R. P. (2000) ' The Proliferation of International Courts and Tribunals: International Adjudication in Ascendance', *American Society of International Law* 94: 160-165.
- Appel, B. J. (2018) ' In the Shadow of the International Criminal Court: Does the ICC Deter Human Rights Violations?', *Journal of Conflict Resolution* , 62(1): 3-28.
- Brook, A., Clay, K. and Randolph, S. (2018). *Human Rights Measurement Initiative Methodology Handbook* . [ebook] Human Rights Measurement Initiative. Available at: <http://humanrightsmeasurement.org/>
- Buitelaar, T. (2016) ' The ICC and the Prevention of Atrocities: Criminological Perspectives', *Human Rights Review* 17 (3): 285-302.
- Cassese, A. (2005) *International Law*. 2nd Edition, Oxford: Oxford University Press.
- Conrad, C. R., Ritter, E. H. (2013) ' Treaties, Tenure, and Torture: The Conflicting Domestic Effects of International Law', *The Journal of Politics* 75(2): 397-409.
- Crossette, B. (2003) *The Wrong Kind of American Exceptionalism*, *Global Policy Forum* . 18 August 2003, available at <http://www.globalpolicy.org/component/content/article/164/28441.html> [accessed 11 August 2019].

- Dancy, G., Montal, F. (2017) ' Unintended Positive Complementarity: Why International Criminal Court Investigations May Increase Domestic Human Rights Prosecutions', *The American Journal of International Law* 111(3): 689-723.
- Falk, R. (2000) ' Humane Governance for the World: Reviving the Quest', *Review of International Political Economy* 7(2): 317-334.
- Ferencz, B (1999) ' A Prosecutor's Personal Account: From Nuremberg to Rome', *Journal of International Affairs* 52(2): 455-469.
- Goldsmith, J. L., Posner E. A. (2005) *The Limits of International Law*, New York: Oxford University Press.
- Moran, C. F. F. (2018) ' The Problem of the Authority of the International Criminal Court', *International Criminal Law Review* 18(5): 883-901.
- Peskin, V. (2008) *International Justice in Rwanda and the Balkans: Virtual trial and the struggle for state cooperation* , New York: Cambridge University Press.
- Sarooshi, D. (1998) ' The Powers of the United Nations International Criminal Tribunals', *Max Planck Yearbook of United Nations Law Online* 2(1): 141-167.
- Wippman, D. (1999) ' Atrocities, Deterrence, and the Limits of International Justice', *Fordham International Law Journal* 23: 473-488.