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The International Criminal Court: A Figurehead of Justice

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INTRODUCTION

International law has existed since nation states began to recognize one another. However, the defined study of international criminal law and the resulting International Criminal Court is a fairly recent institution in our history, so there are still many questions about its operation. The question explored here is the power of the court. When put in the international political stage, the International Criminal Court can seem very powerful, but this is a question of the international influence the court can have over the world, and potential international criminals. To explore these ideas, the history of the court and international criminal law in our modern world will help shed light on the workings of the court today and begin to shape the ideas about the courts power. The International Criminal Court may be a young institution, but there have been international criminal trials before its conception and this history has had an important influence in how the court is operating today. The general proceedings of the court are also very important in analyzing its international importance. These can include the official jurisdiction, investigation, trial procedures, verdicts, and punishments that can potentially come from a case held in the Court. The cases considered through the court since it came into operation will then show how the Court deals with international crime and how effective they may be when dealing with international criminals. All of this will culminate in a conclusion of the real power of the International Criminal Court.

HISTORY

Although not always enforced by an international entity, there have always been humane standards of decency, suggested even in ancient times through philosophers and religion. Ancient philosophers and religious figures developed and debated the Just War Theory, which is

critiqued and adjusted even today. Scholars expanded this theory not only to include the circumstances in which going to war is just, but the proper conduct and behavior for parties at war. States used this developed standard of conduct for human decency for many years in the form of treaties and customs. This idea dates all the way back about 380 BCE to Plato's philosophies in his book *Republic* in which he references reasonable moral restraint in war (Wells, 1996).

A physical body to uphold these morals would not come for thousands of years, partly due to the idea of sovereignty that developed in the Peace of Westphalia in the year 1648 (Schabas, 2011). This idea of sovereignty was extremely important because it shaped and influenced international law forever. A sovereign state has supreme power and authority over its own people and affairs. This development means sovereign states no longer had any right to interfere in the matters of other sovereign states, a philosophy still in political practices today. In the last hundred years, the development of the permanent International Criminal Court emerged through a string of events that shaped international law, from World War I all the way through to the implementation of the Court in 2002.

The end of World War I saw many devastated nations. A call for justice sparked a conversation at the Paris Peace Conference about the overlap of morality and justice. There was not an international institution to uphold broken international customs, and no written laws to even break. The United States argued this point at the conference and that legal punishment would not be justified when no laws existed in the first place. Even though States broke international treaties, those sovereign States suffered through with the loss of the war. To satiate the demand for someone to blame for the war, the Treaty of Versailles officially arraigned Kaiser Wilhelm II. Section 227 of the Treaty of Versailles reads: "The allied and Associated powers

publically arraign William II of Hohenzollern, formerly German Emperor, for a supreme offense against international morality and the sanctity of treaties” (The Trial of the Former Kaiser, 1920). However, though this seemed a promising development for the implementation of international criminal law, the Kaiser escaped to neutral Holland, which refused to extradite him. As a result of this incident, the conversation about violation of international treaties and the reasonable morals of war was a vital conversation after World War I, and the international community expanded the international written laws about war crimes and conduct. The Geneva Conventions in 1929 wrote codes on the treatment of prisoners of war and the Kellogg-Briand Pact declared that initiating a war on the grounds of simple aggression was illegal (Developments in the Law, 2001). However, these laws failed to predict the brutalities of World War II. The drastic violations of international law and basic human decency committed during that war were enough to create the first effective tribunals in enforcing international criminal law from a standpoint of justice.

The Nuremberg Trials were monumental for international criminal law. In 1945, the allied powers established the International Military Tribunal, which would sit in Nuremberg. In addition to this tribunal, the Allies created a separate court to sit in Tokyo to try the war criminals of Japan. Since World War I, many considered tribunals to prosecute war crimes and affronts on human decency, and the Nuremberg trials actually accomplished this task.

The Nuremberg trials represented another milestone in International Criminal Law; they tried the accused for crimes they committed in their own country against their own people (Altman and Wellman, 2004). Before this, the thought of international tribunals mainly concerned the aggressive invasion of other countries. It was logical that in an international

tribunal tries crimes against other states in an international setting, but this limitation was transcended in the Nuremberg trials.

Before the tribunal in Nuremberg, the precedent was to try criminals in their own home country, consistent with the idea of sovereignty, but over the years this yielded a pattern of incompetency in enforcing appropriate justice. For example, after WWI, the Allies insisted that Germany try war criminals in their own courts, but the result was that only about a dozen out of an expansive list actually went on trial, (Schabas, 2011) and out of those the court only convicted a few, and gave them almost negligible jail time. Another example of this was the perpetrator of the Armenian genocide in the 1910s, Talaat Pasha, whom a Turkish court convicted of war crimes, but then escaped punishment by taking refuge in Germany (Altman and Wellman, 2004). This cycle of war criminals escaping justice needed to be stopped, and the Nuremberg trials answered this need.

The Nuremberg trials broke this cycle of unfulfilled justice and tried the domestic crimes of the Nazis against their own people. This was arguably one of the first times that countries broke with the idea of state sovereignty, not allowing the Germans to try their own people accused for crimes inside their country. This breakthrough, among others after World War II, would pave the way for the expansion of international institutions and holding countries responsible to something larger than themselves, especially when dealing with issues of human rights and abuses against its citizens. The Nuremberg trials pushed the boundaries of international criminal law in the name of justice, an important model for the future of the International Criminal Court, which, even today, often deals with sovereignty and international treaties and the boundaries on its jurisdiction. This is one of the first instances where we can see the questions of the power of international criminal tribunals answered, because the Nuremberg

trials were successful in their mission of upholding international justice, even though they faced some jurisdictional barriers.

The jurisdictional issues arose in the Nuremberg trials with the treaties that the international community wrote before World War II, which expanded international criminal law to include crimes against humanity and other charges for international criminals. Germany was not a party to, that is, they had not agreed to or ratified, all of these treaties that listed these crimes. So, the legality of the tribunal trying Germans under treaties that they were not a party to was controversial to say the least. Mostly, the unprecedented nature of the Nuremberg trials was highly questioned in the realm of international law, but the Axis powers stood up for justice and implemented the tribunals in order to deter future atrocities and enforce the morality and importance of international justice. The solution to this problem and the final justification was proof that the scope of the crimes against the citizens in a sovereign country was so large that the international community was affected and therefore the problem becomes an international matter to try in international courts (Altman and Wellman, 2004). This is a matter that is even studied by law scholars today, trying to navigate the intricacies of international law and the need for international justice.

The Nuremberg trials themselves began in 1945 and came to close almost a year later. The tribunal tried twenty-four Nazi leaders and convicted nineteen of them for crimes against humanity, crimes against peace, and war crimes. Twelve of those convicted were sentenced to death. The court was highly controversial in many ways. Supporters of the tribunal referred to the previous Kellogg-Briand pact and the other earlier treaties when justifying that crimes against humanity and crimes against peace were already illegal, and therefore this was not retroactive justice. Many argued that the creation of the tribunal after the crimes meant that the convictions

ex post facto justice, and therefore invalid. *Ex post facto* justice is the application of laws or penalties to an act committed in the past, when those laws or penalties did not exist. However, *ex post facto* justice is a principle that exists to ensure fair justice is upheld, so the counterargument in the case of the tribunal at Nuremberg was that these genocides were so heinous that it would be a disgrace to justice to let this go unpunished, and therefore the prosecution took priority over avoiding retroactive justice.

The trials went through many long and tedious hurdles concerning the application of law because of the unprecedented nature of this international tribunal. The Allies, the United States, France, Great Britain and the Soviet Union, appointed one judge from each of their countries. These countries did not always agree on the law procedures and this proved to make the Nuremberg trials difficult to complete. Many sought to make the trial about retribution for the war the Germans waged against Europe, while others stood firm in their beliefs of a fair and unbiased trial for justice. The Nuremberg trials were the primary examples of mixing international affairs, diplomacy, and criminal law. The allied powers worked together, even though they had differing domestic law systems, to deliver justice to the leaders of the holocaust. This opened the door for the further exploration of international criminal law and set an important precedent for tribunals in the future, and eventually for the International Criminal Court.

The Allies created the International Military Tribunal that sat in Nuremberg through an intricate negotiation of the London Convention that was an agreement of the allied powers on how to conduct the trials (Taylor, 1955). Conflicts arose in procedures of the trials because of the differing domestic court procedures between the Allied countries. The French and Russian judges had different indictment procedures and presentation of evidence than those of Great

Britain and the United States. Great Britain and the United States use a common law system, which relies heavily on precedent set by previous cases and is generally uncodified. France and Russia use a civil law system, which is codified and relies on concrete statutes and legal codes. This became an issue at the beginning of the trial because each respective country expected the procedures to match their domestic procedures. Eventually, the judges agreed upon a system close to that used by the United States and Great Britain.

The judges had their own country loyalties that would have been impossible to ignore in a trial. Without a permanent court, these appointed judges still represent their own country instead of the international criminal law system, which is a problem that the United Nations designed the International Criminal Court to overcome. The Nuremberg trials exposed this weakness and set that precedent for the International Criminal Court. But even with obvious alliances, the court did try to hold justice above all. Taylor (1955) recalls, “Victors were about to judge vanquished. There was no alternative: ‘The world-wide scope of the aggressions carried out by these men has left but few real neutrals.’ Therefore, the ‘dramatic disparity between the circumstances of the accusers and of the accused’ underlined the victors' responsibility for a ‘fair and dispassionate’ trial and judgment” (p.504). This ideal of justice is something that contributed to the creation of and has carried over into the International Criminal Court. While the Trials at Nuremberg were not perfect models, they were important milestones in the search for international justice.

After the Trials at Nuremberg concluded, they sparked a keen interest in international law, specifically international criminal law. The formation of more stable international institutions, including the United Nations, made it much more viable to create mandates and statutes about international criminal law and the intricacies of war crime tribunals. The creation

of the International Criminal Court would not happen for another fifty years, but there were many important developments in international law in this time.

In 1947 the charter of the United Nations formed the International Law Commission. This commission was devoted to expanding and studying international law and its applications, especially related to the United Nations. The members of this commission worked in an individual capacity dedicated to justice and law, and not on behalf of their own countries. From an article in the 1948 edition of *International Law Quarterly*, “In the resolution adopted by the General Assembly there is a provision which directs the International Law Commission- (a) to formulate the principles of international law recognized by the Charter of the Nuremberg Tribunal and by the judgment of that Tribunal, and (b) prepare a draft code of offences against the peace and security of mankind” (p.45). At the conception of this commission, the majority of its work was to reaffirm and clarify the work of the Nuremberg trials, with writing official codes for the United Nations and its dealings with war crimes. This would prevent the criticisms that plagued the Nuremberg trials such as the *ex post facto* debate by created the codes before another such incident could happen again. This commission ended up having a significant effect on international law and eventually was the reason for the formulation of the permanent International Criminal Court. One of the original statutes for the United Nations, around the time of the creation of the international law commission, was to create a more permanent court than the special tribunals, but it was not approved and would not be realized for another fifty years. In the meantime, the commission did an enormous amount of work for the advancement of international law, succeeding in the task it was assigned to do.

However, the end of World War II brought the beginning of the Cold War. As the tensions rose between the United States and the Soviet Union, the workings of the United

Nations became strained. Two of the most powerful permanent members of the Security Council in the United Nations were so at odds with each other that everything, including the International Law Commission, was basically put on hold. At that time, the International Law Commission was in the process of writing statutes on war crimes, and what constituted war crimes. While this was happening, the Soviet Union committed atrocities against its people. The power of the Soviet Union in the United Nations created a severe problem and a conflict of interest for the United Nations and the International Law Commission, and its work was put on hold during the worst of these times. However, other achievements of the International Law Commission include contributions to the creation of the World Trade Organization, and the creation of the UN High Commissioner for Human Rights (International Law and its Effectiveness in the Post Cold War Era).

After the Cold War ended with the fall of the Berlin Wall, the International Law Commission continued its work in international criminal law. Foremost was the drafting of the creation of the International Criminal Court. The commission considered many drafts and ideas on how to run the Court throughout the 1990s. Finally, in 1998, the International Law Commission introduced the Rome Statute to the United Nations.

AD HOC TRIBUNALS

While the International Law Commission worked on a permanent institution of an international criminal court, some parts of the world experienced human rights infringements. The creation of *ad hoc* tribunals addressed these issues, basically just more specific and guided versions of the Nuremberg trials but temporary in the same way as the tribunal at Nuremberg. The *ad hoc* tribunals borrowed statutes and clauses from the drafts of the International Criminal

Court, and were created with more specific jurisdictions and with the purpose of investigating and prosecuting various war crimes. Leaders committed serious violations of human rights in the former Yugoslavia starting in 1991, while other incidents of genocide and human rights violations happening in Rwanda in 1994. The missions of these temporary courts and their formation were very similar to those of the permanent International Criminal Court, so these *ad hoc* tribunals are valuable for precedent and the development of the International Criminal Court that came into operation in 2002. They applied the international criminal law concerning humanitarian laws and war crimes, and used written statutes to enact justice in these places.

These tribunals differed from the tribunals after World War II in a few important ways. First, the United Nations as an international organization created these tribunals, instead of just the victorious allied powers (Aksar, 2004). This made the tribunals arguably less biased in pursuit of true international justice, because they were not seeking any retribution for their own countries. Second, the International law commission researched statutes and codes based on international law for about forty years, and therefore they had substantive material to base their prosecutions on, so while retroactive justice was a point of contention for the Nuremberg trials, it was not a problem here.

There were many other crimes that a tribunal could have tried, but the creation of that many tribunals is not feasible and so they can be seen as a selective justice, ignoring some international humanitarian crimes and prosecuting others. While the International Criminal Court is bound by some jurisdictional limitations, the permanent nature of the court lets it be less selective when taking cases on human rights violations. The *ad hoc* tribunals paved the way for the creation of a permanent court, while putting an emphasis on the importance of recognizing severe violations of human rights and the need for international justice. The success of the

tribunals in bringing justice to international human rights violations only strengthened the argument for a permanent court. While the approval of Rome Statute happened in 1998, other *ad hoc* tribunals continued to exist, with a specialized tribunal made for Sierra Leone in 2002, because the jurisdiction of the International Criminal Court does not stretch to before the official establishment of the Court in 2002, so the creation of the Sierra Leone Court was for justice of war crimes before that time. *Ad Hoc* tribunals continue to be an important part of international justice and the United Nations can still create a tribunal to address severe and extensive examples of human rights violations in a specific location.

THE ROME CONFERENCE

The Rome conference in 1998 focused on the creation of the permanent International Criminal Court by the United Nations. The International Law Commission and others went through countless drafts and the final version that went to the Rome conference had 116 articles, each with multiple sub topics and each containing important information for the establishment of the court (Arsanjani, 1999). This draft then went to the conference to be torn apart and negotiated. Not all of the countries were even on board with the existence of the International Criminal Court because of the power it may have when it came to fruition, and supporting countries had to band together to continue to cultivate backing worldwide for a permanent court. Thus, the creation of the court intertwined international politics and law. The articles contained procedures and legal rules that were sensitive for some countries in the United Nations, so they had to approach this undertaking of negotiation with great care. They separated the articles into relevant sections and committees went through each one. Legal consultants were present every step of the way, and the negotiation was a true fusion of diplomacy and law.

The final content of the Rome Statute, after approval from the United Nations, is 128 articles in addition to an extensive preamble. The design of the document encouraged countries to individually ratify it so the most important sections pertained to jurisdiction and other procedural aspects that would affect these countries the most. The main parts of the Rome statute have three underlying principles. The first is the principle of complementarity. This principle is centered on the International Court being a complement to the court systems in individual countries. The International Court only has jurisdiction when the origin courts cannot or will not act. When the origin court can handle a case, the International Criminal Court will not interfere. The second underlying principle is the nature of the cases that court takes. The International Criminal Court will only take cases of the worst and most serious breaches of human rights and international law. This ensures sovereignty, as they will not violate the jurisdiction of the domestic courts and will keep the integrity of international justice at its core. This would streamline the role of the court into a last resort so as not to give it too much power and to minimize the financial expense of the court. The third principle was that the statute should remain within the realm of customary international law (Arsanjani, 1999). Customary international law is a source of international law derived from the customs and accepted law practices of the sovereign states. That is, laws that the international community consider widely recognized and accepted. These underlying principles of the court are important to the form and function of it. Today, 124 states are parties to the court, meaning that the court has jurisdiction over all acts committed in these states and the acts that nationals of these states commit. The history and formation of the court culminates in the formal process and the application of the court in the international community.

THE ROME STATUTE

The formation and the physical establishment of the Court are extremely important milestones in international law. Once sixty countries ratified the Rome Statute, it could officially come into effect. The Statute includes provisions and guidelines about the formation of the Court and how the Court will operate once it is functioning. The jurisdiction and deep intricacies of established international law will reveal the real power of the Court and the impact it can have on the international community.

The articles that pertain to the creation of the Court state the most concrete facts about the Court. The Court is subject to temporal jurisdiction. It cannot prosecute any crimes from before the date that the Court became operational, July 1, 2002. Now that the Court has been operational for 15 years, it seems unlikely that this would be a problem that would arise, but it led to the formation of an *ad hoc* tribunal in 2002 for the crimes committed in Sierra Leone. The first few articles listed in the Rome Statute are the most important to the establishment of the Court. These include that the Court is a permanent institution, and the three underlying principles discussed earlier including the complementary nature of the court. These articles say that the Court will prosecute international crimes and will sit in The Hague. These provisions include the nature of the crimes that the court will accept, saying that only the most serious offenses against human rights will be heard before the court. Another important point mentioned in the first few articles of the Rome Statute is that the court will have jurisdiction over persons and not legal entities. The Court has jurisdiction over natural persons, instead of corporations or other entities. This was an important point for the Statute to be ratified because the Court does not have jurisdiction over countries themselves, something that would assure signatory states that the Court's interest is solely in international justice. Countries that opposed the creation of the Court

were in favor of this article because it would limit the power of the Court in the international community. The focus of the Court is human rights infringements committed by individuals instead of a larger jurisdiction over corporations. The design of these first articles is important information points for countries that would be ratifying the Statute. They were the formation of the Court.

The heart of the Statute deals with jurisdiction and other mechanisms for the Court to actually try crimes. This is the most important part of the Statute because it gets into the real purpose and power of the Court. During negotiations, this was the most debated part of the Rome Statute and a very important part for the ratification from States. The research and progress that the International Law Commission accomplished are most evident in this part of the Statute. Arsanjani (1999), says of this part of the statute, “Jurisdiction, Admissibility and Applicable Law, composed of seventeen articles (Articles 5-21), is the heart of the statute and was the most difficult to negotiate. This part deals with the list and the definition of crimes, the trigger mechanism, admissibility and applicable law. The text of part 2 was negotiated until the penultimate day of the conference” (p.25). The importance of international law and the International Criminal Court is clear in this section of the Statute, as well as strong evidence toward the international power of the Court.

The jurisdiction of the Court is an important issue in both the operation of the Court itself and the international community. There are multiple articles in the Statute concerning this issue. This is one of the many points where international politics and international law coincide. Many countries were hesitant about giving the Court too much jurisdiction over their internal conflicts, especially ones they felt they could handle themselves. This goes back to the rights of sovereign states and their desire for independence. However, the United Nations also recognized that it was

important for the Court to be able to exercise justice where it needed to, and came up with a compromise to ensure that the Court could enforce justice without imposing on the independence of a sovereign state. The Court can exercise jurisdiction when the country victim to the crime gives permission, when the origin country of the person who committed the crime gives permission, or when the Security Council overrides this jurisdiction so the Court does not need any countries permission. The authority of the Security Council in this matter is very important, because that is where the issue of international politics becomes the most evident. The permanent members of the Security Council consist of the most powerful countries in the United Nations, and this article gives them permission to decide whom the Court prosecutes for crimes. This could be very useful when countries will not cooperate with the Court, and the Security Council steps in on behalf of the victims to give the International Criminal Court the authority to bring justice, however, it gives the Security Council even more power over justice and international politics. These articles highlight the dependence of the Court on cooperation of countries. The need for justice for crimes against humanity and peace is the reason for the Courts existence, but the power of the Court comes into question when it has no jurisdiction over ongoing crimes and wrongdoing, and only the ability to bring justice after the fact. This is a pattern that existed in many of the *ad hoc* tribunals, along with the Nuremberg trials, that prosecuted crimes long after the fact of the genocides. The courts and the United Nations brought justice after the deaths of so many people, but could do nothing in the midst of these atrocities.

As a comparison the International Criminal Court, the courts in the United States, especially the Supreme Court, have vast powers in the political realm, while also carrying the burden of providing justice to those wronged. While the International Criminal Court and the Supreme Court of the United States are different in countless ways, these differences can reveal

the power of the International Criminal Court compared to the Supreme Court. The Supreme Court of the United States has the power to stand up to the most powerful man in government, the President of the United States, through judicial review. Meanwhile, the International Criminal Court needs political permission, or permission from the affected states to enact justice, or even to begin an investigation. The jurisdiction of the International Criminal Court is very important to the power of the Court in the international community, and recognizing the political implications of the Court, especially compared to the United States Supreme Court, can be enlightening when analyzing the role of the International Criminal Court in the international community.

The jurisdiction was a contested issue in the formation of the Rome Statute, with the conflicts of international politics. The United States was convinced that these articles would allow States that had not ratified the Statute as liable to its implications. Specifically, the United States is so involved in overseas missions that the diplomatic party in Rome worried that the Court would be able to prosecute Americans, especially soldiers, even if the United States was not a party to the Court. The United States was one of the most outspoken critics of the Court, and to this day is neither signatory nor a party to the Court, even though it heavily influenced the negotiation of the Rome Statute. However, the strong coalition of States that saw the importance of the Court and the expansion of jurisdiction necessary prevailed and today the Court has geographic jurisdiction over all nations party to the Rome statute and their citizens.

Many saw the problem of giving the Security Council too much power over the actions of the Court, and therefore another contested jurisdictional point that was the issue of ongoing investigations by the Security Council. The Council wanted to exclude the Court from any ongoing issue that was under its consideration, but many saw this as a way to undermine the

power of the Court and to control which cases it took. As a compromise, the Security Council can file for a waiver of jurisdiction for ongoing situations they have under investigation, and that waiver will last one year, at which point the Council will have to renew that waiver. This ensures that the Council cannot sit on issues indefinitely just because they do not want the case to go to the International Criminal Court. The power that the Security Council holds over the Court was a problem for many of the negotiating states, because the Security Council is such an exclusive group of countries, it only expands their power when they can control International Justice as well. Finding a balance of power between the Court and the Council was a struggle, and the powers of the Security Council over the Court were lessened from the original proposal, but are still vast and are vital when considering the real power of the Court.

The International Criminal Court may also get cases by reference from a State or from the Security Council. Remember, the Court needs permission from either the State where the act was committed, or the State of nationality of the offender. Referencing a situation to the Court is an easy way of giving the Court permission to investigate that situation and bring it to trial. The prosecutor is the key player in these situations because he or she, once they receive a reference, starts an investigation *proprio motu* for the pretrial chamber's approval (Arsanjani, 1999). This gives the prosecutor a lot of power over the cases and the investigations. This argument against this article was because of the political pressure that one person can be subject to, and the potential abuse of references from States. However, the pretrial chamber is one way of balancing this power of the prosecutor. The integrity of the office of the prosecutor is vital to the integrity of the Court because of the importance of pretrial investigations, and sorting through references from both States and the Security Council. Ultimately, giving the prosecutor this responsibility was deemed necessary for the independence and power of the Court.

Once the prosecutor decides to begin investigation of a case, the rules for deferral or taking the case to the International Criminal Court come into effect. The prosecutor must inform all States party to the Statute, as well as non-party States, if those States have relevance, either involvement or jurisdictional relevance, to the crime being investigated. Then, the pretrial chamber has to decide whether the International Criminal Court should take the case, based on the other jurisdictional matters, mostly whether the State in question is willing and able to take the investigation. If the State in question meets those requirements then the investigation and the case is deferred to the State. Once it is deferred, the prosecutor for the International Criminal Court can periodically ask to review the investigation, and after six months, can reevaluate if the State is capable or willing to investigate the matter in question. These procedures were put in place to preserve the integrity of the Court and its complementary nature, and to ensure that the Court stays within its jurisdiction without infringing on the sovereignty of the States.

The Statute not only includes strict guidelines for referencing situations to the Court and the process before that case can actually be tried in the Court, but also strict rules when a case cannot be prosecuted by the International Criminal Court. These were included so as to ensure complete clarity on the jurisdiction and the circumstances in which a case will be brought before the court. There are “four grounds of inadmissibility: (1) the case is being investigated or prosecuted by a state that has jurisdiction over it; (2) the case has been investigated by a state that has jurisdiction over it and the state has decided not to prosecute the person concerned; (3) the person concerned has already been tried for the conduct in question; and (4) the case is not of sufficient gravity to justify action by the court” (Arsanjani, 1999 p.27). The first three rules for inadmissibility are very separate from the fourth. The first three are dependent on the State in question, and are not absolute. That is, they depend on the most important principles of the court;

that the state is able and willing to carry out the investigation and prosecution. This means that if a State is, in the first rule for inadmissibility, for example, carrying out an investigation in a matter it has jurisdiction over, it does not automatically mean inadmissibility. The investigation of the State has to have the integrity that is expected of such an investigation. There are specific criteria and guidelines for determining if a State is unable or unwilling to prosecute listed in this article. The language that the Statute repeatedly uses to determine the competence of an investigation is “inconsistent with the intent to bring the person concerned to justice” (The Rome Statute, p.13). That means that the Court can determine that the investigation is biased, or that the State is reluctant to prosecute, then the jurisdiction can fall back under that of the International Criminal Court.

Unlike the first three grounds for inadmissibility, the last rule is not dependent on the State, but on the judgment of the International Criminal Court prosecutor and pretrial chamber. They have to determine the seriousness of the crime in question and if it falls under the crimes listed in the Statute that the Court could prosecute. Article 5 of the Statute lists the four crimes that are admissible and fall under the jurisdiction of the Court: genocide, crimes against humanity, war crimes, and the crime of aggression. Articles 6-8 then detail the qualifications and definitions for these crimes. For example, the Statute defines genocide as acts intended to destroy a national, ethnical, racial, or religious group (The Rome Statute). These criteria and definitions are used to determine the jurisdiction of the Court and what satisfies the fourth rule for inadmissibility.

Of course, with the assurance of bringing fair justice to these cases, those directly involved in the case may challenge the jurisdiction of the Court. This includes the accused, the State of nationality of the accused, the State in which the crime was committed, and the State

that has jurisdiction over the case. The Court needs the permission of the State of nationality of the accused or the State where the crime was committed, so a lack of permission can constitute a challenge. The State that has jurisdiction over the case can challenge on the basis that it has already conducted a fair investigation or prosecution of the accused and therefore the Court does not have the authority to take over that matter. These types of challenges are only valid one time at the start of the process, and exist to ensure the jurisdictional integrity of the Court and the adherence to the rules of how the Court can take cases without infringing on the sovereignty of the States, and that there is no abuse of power within the court. It is important to note that any State or person not directly involved in the case cannot challenge the jurisdiction of the Court. The politics and challenges that would ensue would jeopardize the function of the Court and impede it from properly administering international justice. This is clear in the rule specifying that if the accused has already stood a fair trial, then the International Criminal Court cannot prosecute this person. Similar to the double jeopardy rules in the United States judicial system, this ensures justice and rights of the accused. This is just another way for the Court to stay on track in its assigned role and to ensure the integrity of the cases that it takes.

The applicable sources of law of the Court are very important to the operation of the Court during trials. Article 21 lays out the applicable laws and the sources of law that the Court can draw from during trials. The first source of law is the Statute itself, and the crimes that it lays out in the first few articles. The details provided in those articles stating what entails those types of crimes are the main purpose for the Court and therefore the primary source of law. The second source of law is slightly more open to interpretation. This source includes other international documents such as treaties and principles of international law, which include law studied and applied through the International Law Commission. This paragraph also includes the

“Principles of armed conflict” (The Rome Statute p.16). These include things such as war crimes and the morally accepted armed conflict practices, which many treaties discuss as well. The last source of applicable law is international customary law. These include norms and common laws from countries all over the world, but especially from the State that would normally have jurisdiction over the matter in question. Since the International Criminal Court draws cases from sovereign States, the laws of the State that would normally have jurisdiction are most heavily considered when the Court draws from common law. However, this article also explicitly points out that any law in the Rome Statute has precedence and any law that is inconsistent with the Statute or with common international norms will not be considered. Also, the Court can draw from previous international law cases, just as courts in the United States draw from precedents set by other cases. However, unlike the United States, the International Criminal Court does not have to follow precedents, but it may make its decisions using them. The Court has the responsibility to interpret all these sources of law in order to properly administer justice in these international law cases.

The Rome Statute then enters part three, General Principles of Criminal Law. This extends from Article 22, to article 33. Most of these articles address the application of criminal law in the Court; many domestic practices of criminal law are outlined in how they pertain to the International Court. A strict definition of a crime is the first paragraph in article 22, and states that if there is any “ambiguity, the definition shall be interpreted in favor of the person being investigated, prosecuted or convicted” (The Rome Statute, p.17). That is, if the crime committed has any question of falling under the jurisdiction of the Court, then the Court cannot rule on that case. The other articles within this section include the exclusion of jurisdiction over anyone under the age of eighteen, and also a non-discriminatory article in which the Court declares the

status of a person irrelevant. Meaning that the official rank or status of an individual does not grant them exclusion or special treatment from the Court. The Court also declares that it does not recognize any statute of limitations on any crimes, as well as the rules for declaring an individual mentally ill or insane. These are common rules for courts worldwide and necessary for a functioning and fair court.

The rules of military commands are also explored in this section of the Statute. The first article to mention this is article 28, in which it states what the responsibilities of commanding officers are. Article 28 puts direct responsibility on military commanders shoulders for acts committed under their power. This article ensures that a military commander cannot escape responsibility for crimes that fall under jurisdiction of the Court just because they were not committed by his or her hand. A commander is responsible based on the circumstances, so the Court can interpret whether the commander did know, or should have known, what was happening under their command, and also if they did not take reasonable precautions to prevent serious war crimes or other crimes that fall under the jurisdiction of the Court. This article essentially deprives the commanding officer of plausible deniability. Article 33 goes hand in hand with article 28 in that it covers the role of subordinate officers in crimes. This is a relatively short article and holds the subordinate officer responsible for their actions and the crimes they committed, especially for crimes related to genocide. The article states that, “For the purposes of this article, orders to commit genocide or crimes against humanity are manifestly unlawful” (The Rome Statute, p. 21). So the subordinate must take full responsibility for these crimes because they are so innately wrong. This is an important issue because the defense of “just following orders” can be strong one especially if the punishment for not following orders is severe. But in

this case the court considers the crimes that fall under its jurisdiction to be so severe that the subordinate is always in some way held responsible.

Grounds for exclusion from criminal responsibility are clearly laid out in the statute so as to have clear cases of who will fall under jurisdiction of the Court. Many of these are commonly found in other courts, of law, such as mental capacity at the time of the crime. If a person does not have the capacity to recognize the wrongdoing of the crime, then they are excluded from criminal responsibility. This incapacity can come from mental disorders or from intoxication. However, the intoxication clause is not all-inclusive, for if the person voluntarily became intoxicated and disregarded the risk to this behavior then the criminal responsibility applies. Self-defense is another form of defense from criminal responsibility. As long as the resulting action does not exceed the threat of harm, then self-preservation is a viable defense in the Court. However, this article also grants the Court discretion to determine the criminal responsibility of the accused, so these rules are subjective according to the Court.

This concludes section three of the statute, general principles of criminal law. The section covered general rules of procedure and operation in a criminal court, many of which are commonly found in criminal courts worldwide. It is clear in this section that The Statute consistently takes into consideration the gravity of the crimes that fall under jurisdiction of the Court, and makes it difficult to escape responsibility when the crimes committed were so serious. Section four details the administration and operation of the Court including the rules for judges and personnel. This is essential to the function of the Court and important procedures for the operation of the Court can be found in this section.

The first article in section four of the Statute is article 34, a simple and straightforward statement of the different bodies included in the Court. These are the Presidency, the pretrial

division, the trial division, and the appeals division, the office of the prosecutor, and the registry. Stating these offices of the Court was important for the establishment and starting operation of the Court, especially when informing states of the structure of the Court when they were considering ratification. The next article in the Statute establishes that judges will be full time members of the Court. This means that they will not also serve in their respective countries, and therefore have no political loyalties. This is another important point to make in order to separate international politics and international law, and therefore fairly administer justice.

The Process of judge selection is laid out in depth in article 36 of the Statute. This is yet another informative article for the sake of the States that would be ratifying the Statute, and assuring them of the intentions and fairness of the Court, since the judges would have so much power in the Court. Just like the role of the prosecutor was important to discuss in negotiations, so too was the selection of judges so that the court would not be tainted by political motivations and bias.

Eighteen judges make up the Court, but that number can change depending on recommendations of the presidency based on concrete and thoughtful reasons, which all States party to the Court will then consider. Some of the qualifications for nomination of judges are, “The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices” (The Rome Statute, p.23). The character of the judges is very important to the operation of the Court and upholding the values of the court. Without these outstanding qualities, the court would not be able to operate according to its purpose of administering justice fairly. Any State party to the statute can nominate a judge, and elections for judges are held by ballot at a convention of States party to the Statute. There cannot be two judges from the same

State, again, a precaution against political bias. The strict rules governing the appointment of judges and the duties of judges once they are elected was very important to States so that they could trust in the non-biased nature of the Court and to be sure that the Court would not become corrupted. The fair administration of justice for international crimes could easily become tainted by politics and agendas of more powerful States, so the independence of judges from politics is repeatedly enforced in the Statute.

The other rules and positions of the Court are not necessarily related to the power of the court internationally, and while the Statute goes into detail about the presidency and the registrar and the prosecutor and the duties and appointment of these offices, the main goal of all of these articles is to have a clear function of the Court and to lay out these rules in clear detail so as to keep the Court running as smoothly as possible. While these offices and staff are important to the Court, many do not have a significant role when considering the international standing and power of the Court, except for a select few, such as the office of the prosecutor.

As previously mentioned, the prosecutor is responsible for analyzing and investigating cases that either State references or the Security Council have brought to the attention of the Court. Based on the rules of the admissible cases previously mentioned, the prosecutor can begin the investigation. The prosecutor has specific responsibilities and duties when performing an investigation, the principle duty being to conduct a complete and unbiased investigation with all relevant information and evidence. The Statute uses the language “In order to establish the truth” (The Rome Statute, p. 34) when beginning the paragraph about the responsibilities of the prosecutor. This phrase speaks to the purpose and mission of the Court, and the aversion to just completing convictions. The truth about the crime and the warranted actions of justice are the

most important aspects of the International Criminal Court trials, which is very evident in these articles about the role of the prosecutor.

The Court is also careful to protect the rights of both victims and the accused. Many of these paragraphs pertain to the treatment and the procedures for questioning and detain the accused. These include standard and common rights such as they have the right not to incriminate themselves, they must not be subject to coercion or threat, they must not be unlawfully detained, the right to counsel, and be questioned in the presence of counsel. Victims have special rights especially based on age and gender. The Court recognizes the nature of the crimes that come before them can often be so painful and inappropriate that victims can be traumatized. This is especially true when the victims are children. These possibilities require sensitivity on the part of the prosecutor when conducting the investigation. They must take into consideration the health and their mental state of the victims, especially when the crime involves sexual violence or violence against gender, especially involving children. However, the Statute does state that the prosecutor has the ability to summon and question any witnesses or victims important to the investigation. So, while the Court recognizes the sensitivity of witnesses based on the crimes that fall under the jurisdiction of the Court, they also prioritize the integrity of the investigation the gathering information on the accused and the crimes committed. This stage of the process highlights the power of the prosecutor because they are in charge of the investigation, unlike many state Court systems, which have police forces handle investigations. Even after the investigation, the prosecutor continues to be a powerful figure in the courtroom.

Upon completion of the investigation, the pretrial chamber reviews the findings of the prosecutor and decides to move forward with the case, and on which charges. If the case moves forward, then the pretrial chamber issues a warrant for the arrest of the accused. The pretrial

chamber will then hold a hearing in the presence of the accused and the prosecutor, confirming the charges that will be brought to trial. The accused also has the right to hear the evidence that the prosecutor will present at the hearing. This is to ensure that the accused is informed and can correctly defend themselves. The accused has the right to object to charges at the hearing, challenge evidence brought by the prosecutor, or to present evidence. The pretrial chamber then confirms or declines to confirm the charges brought against the accused. This is the end of the duties of the pretrial chamber, and the trial begins as the next step in the court process.

The first few articles contained within the Statute regarding the trial itself would be very familiar to those who live in a nation with a developed court system. These contain the rights of the accused during the trial, including presumed innocence until proven guilty. Other standard and common practices that the International Criminal Court uses are the burden on the prosecutor to prove the guilt of the accused. The prosecutor conducted the investigation and must convince the judges that the accused is guilty, and the accused does not have to prove their innocence. Other standard court procedures included in this section are the measures taken if false testimony is given or forged evidence is presented. The procedures for this are clearly to preserve the credibility of the Court and trials, and so important for the function of the Court and the fair determination of justice.

At the conclusion of the trial, the Court follows procedures laid out in the statute for deliberation and, if necessary, to hand down a sentence. The judges strive for a unanimous decision, but it is not necessary for a conviction. When considering the evidence, the judges also consider reparations for the victims, whenever possible. If the Court finds the accused guilty, can impose a sentence of up to thirty years, or if the crime was especially wicked, a life sentence in prison, as well as fines, including forfeiture of assets and property, especially those that were,

either directly or indirectly, a result of the crime. Under some circumstances, the offender is allowed to appeal the decision of the Court. The sentencing procedures are some of the most important to the Court and to the Courts power. They reflect the justice that the Court is trying to accomplish, and the punishment awaiting those who committed the most horrible crimes someone can commit. Part ten of the Statute details the enforcement of the punishments that the Court hands down. The Court does not have a police force or its own state with prisons to handle the offenders, so it must rely on the States party to the Statute for enforcement of its decisions. States can volunteer to take responsibility for the imprisonment of convicted persons, and submit their application to the Court, where they are allowed to attach conditions or requests to their submission. The Court requires that any State imprisoning the convicted person adhere to international standards set by treaties on prisoner treatment. The States have a large hand in the enforcement of the Courts sentences, even though the Court ultimately can transfer the prisoner to any State they choose, the Court must trust the States with proper imprisonment and treatment of the offender. This gives States a lot of power in enforcing the decisions of the Court, and while this section isn't the last section of the Statute, it is the last that deals directly with procedure of the court. Many of the other sections deal with assembly of the State parties, and other administrative matters that could come up within the Court. The practical applications of these procedures, and the manifestation of the Statute in real court cases, are vital to analyzing the practical power of the International Criminal Court.

CASE STUDY

The International Criminal Court has been operational for almost fifteen years and has had a multitude of cases come before it. There are ten situations currently under investigation by

the Court (International Criminal Court Cases), but many others cases that came to the Court had varying outcomes. Some cases have not even gone to trial, with the charges going unconfirmed by the pretrial chamber. Other cases resulted in convictions with jail time and reparations, and there have also been acquittals before the Court. Examining these cases has the potential to reveal the real power of the Court, and how it was applied practically in cases from around the world.

An important conviction made by the Court was *Prosecutor v. Jean-Pierre Bemba Gombo*, whom the Court sentenced to eighteen years in prison on June 21st, 2016. This trial is currently in the appeals process. Bemba was a national of the Democratic Republic of Congo that deployed troops to the Central African Republic to help them put down a coup between 2002 and 2003. At the time of his arrest in 2008, Bemba was a member of the Senate of the Democratic Republic of Congo. The new government of the Central African Republic referred the situation to the Court (McDermott, 2016). The pretrial chamber confirmed crimes against humanity and war crimes.

Bemba was the commander of the army, and pursuant to article 28 of the Rome Statute, is responsible for the actions committed under his command “as a result of his or her failure to exercise control properly over such forces” (Rome Statute, p.40). The question considered in the case against Bemba was his knowledge of the actions of his forces in the Central African Republic, and his ability to prevent it. The Court found him guilty on two counts of crimes against humanity for murder and rape, and three counts of war crimes for murder, rape, and pillaging. The Statute specifies that the circumstances are vital to the implication of the commander of forces committing crimes that fall under the jurisdiction of the Court, which can

often be difficult to prove beyond reasonable doubt, as needed for a conviction (Van der Vyer & Bederman, 2010). Right now, Bemba is in custody of the court and has applied for appeals.

While Bemba alone is going through the appeals process for his case, he is involved in another case *Prosecutor vs. Bemba et al.* for offences against the administration of justice and corruptly influencing witnesses in *Prosecutor v. Bemba* and a few other cases facing the Court. These offences are clearly taken very seriously by the Court and the decision for the obstruction of justice case found all the offenders guilty for influencing witnesses.

The Bemba case demonstrates a few things about the practical application of the Court. The first is that the cases can take extended periods of time to go through, since the crimes happened in 2002 and 2003 and the verdict came out fourteen years later, with appeal processes pending. This gap between the crimes and the trial is something that comes up in other cases as well, and can make it much more difficult for the Court to investigate and try a crime. Another aspect demonstrated in this case is the potential of corruption. The offenders who commit these crimes are powerful individuals who at some point used their power for serious and heinous crimes, and many would not be afraid to do so again in the face of the Court. The Bemba case is just one of many cases that demonstrates the effectiveness of the Court when applied to situations and cases worldwide.

One case that is still in the pre-trial stage of the Court is *The Prosecutor v. Joseph Kony and Vincent Otti*, formerly *The Prosecutor v. Joseph Kony, Vincent Otti, Raska Lukwiya, Okot Odhiambo and Dominic Ongwen*. The Court issued warrants for arrest for these individuals in July of 2005 on reasonable grounds to believe twelve counts of crimes against humanity, including murder, enslavement, and sexual enslavement, and twenty-one counts of war crimes including forced enlistment of children, pillaging, and rape, among many others alleged crimes.

Joseph Kony is still at large and therefore cannot face trial, as the Court does not try anyone absent from the proceedings. Two of those originally involved in the case passed away before coming before the Court, and therefore the Court terminated the proceedings against them. The Court relies on the forces of the countries party to the Statute to find the accused and makes arrests, then turning them over to the custody of the Court. It does not have its own police force to find those who have a warrant out for their arrest. The volume and magnitude of the crimes allegedly committed cannot come to justice unless those responsible face the Court for their actions, which can be a difficult task for the Court. Joseph Kony is not the only offender still at large, there are other cases, such as *The Prosecutor v. Ahmad Muhammad Harun ("Ahmad Harun") and Ali Muhammad Ali Abd-Al-Rahman ("Ali Kushayb")*, where the suspects have been at large since 2007. These cases deserve justice and yet are unable to get it because of the offenders avoiding the Court. The Court has administered justice on many count to those who have been found guilty, but the Court has many more cases to try in order to find justice for human rights violations worldwide.

These are just a few examples of cases that passed through the Court, other cases have had very different outcomes, with some having the charges dismissed without ever going to trial, and others that have gone through trial and been acquitted, and still others currently serving out their final sentence in the reparations stage. All these cases demonstrate the power of the Court and what it can really accomplish for the world. The Court, an important accomplishment on the international stage, has sentenced many offenders who could have walked free. However, the Court arguably still has a long way to go to continue to fairly and effectively administer justice. The power of the International Criminal Court can be questionable, especially when compared to other international institutions, and these case trials have shown the weaknesses and strengths of

the Court in the fifteen years since its establishment. Many aspects, such as the long gaps between the crimes and the trials, detract from the power of the Court in the international community. These cases show the Court in practice, and reveal weaknesses in the application of the Court to real international incidents. The Court is a tool of the United Nations to enact justice, but these cases reveal many problems that can occur in the pursuit of justice, subtracting from the international power and effectiveness of the Court.

CONCLUSIONS

The idea of an international and central source of justice seems like part of a utopian world. Unfortunately, the world today is not a utopia by any stretch of the imagination. However the ideal of justice is still a valuable concept to many countries around the world, so they banded together to create the International Criminal Court. At the same time, these countries could not give up sovereignty in favor of international justice, and therefore made it complementary to state courts, and contingent on the cooperation of state courts. The Court can have some power to bring justice to those who have committed crimes under its jurisdiction, but at this point it cannot be a stand-alone institution, and completely relies on states party to the Statute in order to carry out its duty. The power of the Court is, in reality, small to nonexistent when looking at it through the perspective of an international institution.

The first significant international justice court, at the Tribunals at Nuremberg and Tokyo, began as a tool for the Allied countries to punish and bring justice to those who had lost the war. While the crimes committed during World War II were certainly inhumane and horrible, the Allies used the court to make the losing countries pay reparations and answer for their crimes. While it was necessary to bring justice to the Nazi parties and acknowledge the Holocaust

victims, the Trials at Nuremberg simply secured victory in the war and ensured that the leaders of Axis powers were punished. Even though the Court is a permanent institution, and therefore not positioned to selectively punish one specific set of crimes, it is still a tool to the countries party to the Rome Statute. Any time the Court has a situation referred to it, it cannot proceed with a case unless it has permission from the countries involved. This could easily prove the Court ineffective in any current situations happening worldwide. For example, if a dictator or government was still in power in a country, and committing horrible violations of human rights, the Court could not act because the powers in that country would obviously not cooperate. In contrast, the courts of the United States generally permission to operate, and can act with sufficient evidence from the police force to make arrests and stop crimes. The International Criminal Court needs sufficient evidence and complete cooperation from countries involved which can sometimes take a change of power to accomplish, which is evidenced through many cases that have come through the Court, like the Bemba case and the Central African Republic. The Court is at the mercy of the countries party to the Statute, unable to act of its own accord, and unable to survive without the approval of those countries. Not only can the Court not stand without the States party to the Statute, the jurisdiction of the Court is arbitrary according to which countries have ratified the Rome Statute.

International treaties are only valid as long as countries see the benefit of being a part of them. If a sovereign State breaks the terms of the treaty, the other countries can go to war to punish them, or use the extent of their soft power to renegotiate. The Rome Statute is basically an international treaty within the United Nations. Therefore, a country could withdraw its ratification of the treaty at almost any time. It is unlikely that the other countries will go to war over withdrawing support of the Statute, so in reality there are almost no consequences to not

being a party to the Statute. Once a State withdraws support, the Court loses jurisdiction over any situation in that state and becomes powerless there. If multiple countries decided to the withdraw support of the Statute, then the Court would be completely ineffective in its goal of international justice, and would become just an extra complementary court to any states still giving support. Therefore it is immensely important to the function of the Court, and the Court only has power as long as sovereign countries grant them that power. While this is the case in many court systems, countries have support for the courts, such as a police force or an executive branch, that can be relied on for means of enforcement. In the situation of the International Criminal Court, the court is an autonomous body that has to rely enforcement and support from other sovereign states. So therefore the it has a much less reliable system than many domestic courts.

The United States is not a party to the Statute at all, and therefore the Court has no jurisdiction over situations in the United States involving nationals of the United States. However, the United States holds a permanent seat on the United Nations Security Council, which helps the Court and has the ability to refer situations to the Court, and override jurisdiction so the Court can take on situations. This means that if a State is unwilling to cooperate with the Court, then the Council can override the need for permission and give the Court jurisdiction anyway. This gives the United States immense power to use the Court as an international political tool. It is not obligated to the Court itself, but is vital to the operation of the Court and the situations the Court can pursue. In this situation, one country can have this much power of the Court without being a party to the Statute at all. The Court is not meant to be a tool for international politics, but simply for administering justice where others cannot. However, situations like this make it easy for the Court to become a political tool because powerful countries like the United States can have so much influence over it. While the Court is an

autonomous body with its employees and judges independent from their country of origin, the potential for political influence is apparent in situations like that of the United States, where the Court has no jurisdiction but it is placed in a position to be influenced by a powerful country. Although this hasn't happened yet, the Court is a fairly new institution compared to the United Nations and other international institutions. If the integrity of the Court is compromised, it could become a political tool of the Security Council to decide which situations to prosecute. The Court is supposed to be a fair way to administer justice in international crimes, but is set up to be under the power of the Security Council and other countries party to the Statute, which has the potential for influence and corruption.

While there are some situations that have the potential to influence the Court in the future, there are current problems that can be seen through the cases the Court has taken since its establishment. One of these issues is the amount of time it takes a case to pass through the Court. The case of *The Prosecutor v. Bemba* finished its first trial in 2016, when the crimes were committed in 2002 and 2003. Most of the cases take about ten years to complete. Some cases have been pending for over ten years and have not even initiated any proceedings. While these crimes should still be prosecuted even though too much time has passed, time can obscure investigations and evidence, and therefore make convictions less likely. The Court is convicting people of crimes that have long since come to pass, and this strategy is not consistent with any theories of criminal justice. Some theories of criminal justice use the words "certain, swift, and severe" to describe an effective justice policy, but the International Criminal Court has none of these elements. The punishment are not certain, as the Court has multiple warrants out for arrests that are unfulfilled, some dating back to 2005. The punishment is not swift, because cases from 2002 are just now going through the Court system and have not even begun the appeals process

yet, and the punishments the Court hands down are not severe at all compared to the crimes committed. Many of the cases include punishments of less than twenty years. *The Prosecutor v. Bemba* ended in a punishment of eighteen years in prison for crimes against humanity and war crimes. The magnitude of the crimes does not fit the relatively small punishment he will receive. While the Court has been doing its duty of investigating and trying those who have committed international crimes, it is not doing so effectively for the long term. One could argue that the Court gives closure and reparations to the victims of these crimes, but the reparations come so far after the crimes that this strategy doesn't accomplish either of those tasks. Many of the warrants and cases of the Court have been cancelled because the perpetrator died before the Court could even try them for their crimes. The process of the Court is long and difficult, but it makes the task of administering effective justice impossible.

The influence and control that states hold over the Court, combined with the lack of effective criminal justice that is a result of the Court procedures, makes the Courts power negligible in the international stage. The Court is a symbol for international justice and little else. The Court represents the will of the United Nations that the international community will not ignore violations of human rights, but in actuality the Court can do little to nothing about human rights infringements. Many times when someone is convicted and jailed after the Courts ruling, they are held in the country that referred the case to them in the first place. The Court is a figurehead for justice but is not effective in administering real justice like domestic courts can. The Court is completely dependent on the nations that are party to the Rome Statute, and without them it is completely powerless. The Rome Statute is simply an acknowledgement of the atrocities that are committed throughout the world, and an excuse for the United Nations not to go to war over them. As long as the Court exists, the international community can look to it to

recognize and investigate the situations, but the Court is powerless to interfere or actually help any of these human rights violations. The Court is supposed to be a peaceful way for victims to get reparations for the crimes committed against them, and to help domestic courts accomplish this task, but it has absolutely no power of enforcement. Other court systems not only have more inherent constitutional authority, but support systems of enforcement and a network of institutions that ensure their ability to be an effective tool of justice. All in all, the International Criminal Court is a symbol, and nothing more. It is powerless.

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