The International Criminal Court: a flawed institution which holds little promise for the future?

Abstract

The tone of academic discourse concerning the International Criminal Court (ICC) has oscillated. From initial post-cold war enthusiasm to more despondent reproval of the court, the modern pattern projected today is one of stringent criticism. Thus, many call into question the ICC's promise in years to come. This paper assembles varying opinions regarding how flawed the court currently is, through analysis of the court's alleged African bias, its relations with the US, prosecution selectivity and legitimacy and the principle of complementarity. The essay's conclusions were formed through evaluation of legal documents and relevant academic and opinion literature. This paper concludes that with the arrival of new Prosecutor Mr Karim Khan Q.C, alongside the cordiality of the Biden administration, the ICC's future looks bright. Its flaws are amendable, though that responsibility needs sharing across national judicial institutions. Despite being inevitably flawed, it should continue to hold much promise for the future, especially as it emerges from adolescence and moves towards adulthood.

Introduction

On 18th July 1998, at Campidoglio, Rome, Kofi Annan declared the International Criminal Court a "giant step forward in the march towards universal human rights and the rule of law" and a "gift of hope to future generations" (United Nations, 1998). Succeeding the International Criminal Tribunals for Rwanda and the Former Yugoslavia, the adoption of the Rome Statute was momentous for the apostles of international criminal justice. (Mutua, 2015). Its role today, established initially by five years of onerous deliberation, has evolved substantially but leaves much still to be desired. This report has been written in response to large quantities of literature where a rooted dichotomy of opinion seems to dominate the legal discourse (Kersten, 2015). Scholars argue the ICC to be either grossly insufficient or, alternatively, a horribly misinterpreted institution which is both flawed, but beautiful and necessary (Robinson, 2015). This report cites four main issues: its alleged African bias, the legitimacy and selectivity of the Office of the Prosecutor (OTP), the acrimony between the court and hegemon states like the USA, and its relationship with national courts. These areas were widely quoted as shortcomings of the international criminal justice administration, having the potential to either impinge the court's potential, or rather, make no difference to the necessity of the institution. The persistent referencing of these issues by scholars and academics in itself suggests a need for appropriate evaluation, a sign that flaws are endemic. It will analyse the legitimacy of these four argument areas, evaluating whether they are marred by bias or conversely, rooted in substantiated evidence. This report recognises the ICC's jurisdiction over war crimes, crimes against humanity and

genocide. I have excluded the crime of aggression since most academic commentary on the area is conjecture and speculation. Only as of 17th July 2018 did The Assembly of State Parties to the Rome Statute officially actuate the Court's jurisdiction over the crime of aggression, through endorsing a resolution (Akande, 2017). Finally, the report considers throughout how both expectations of the court and the practice of the institution's judicial organs need to be refreshed.

An Overview of the International Criminal Court

The International Criminal Court is the "world's first permanent international criminal court", which "investigates and, where warranted, tries individuals charged with the gravest crims of concern to the international community: genocide, war crimes, crimes against humanity and the crime of aggression" (ICC, 2020). Its mandate is laid out in the Rome Statute, of which 123 states are signatories after ratifying the Statute (ICC, 2021). It has a distinct role as a court of last resort, intended not to supersede, but to assist domestic institutions. Crucially, it is leading the charge to curb impunity and bring perpetrators of mass atrocity to account, contributing to lasting development in broken communities and to longstanding peace. Though a relatively young institution (based on its size and jurisdiction) the court is plagued though in particular by four main issues: accusations of an alleged African bias, hopeless relations with the US, selectivity and a lack of legitimacy in the Office of the Prosecutor, and its ignoring of the principle of complementarity. Despite its budget which is in excess of $180, the court has encountered much difficulty in convicting high-up personnel and military commanders (Burke & Okiror, 2021).

It is critical to lay out what these accusations are actually saying, in order to carry out an appropriate analysis. The first accusation is that the ICC is unjustly pursuing investigations primarily on the African continent: hence, the court is acting as a "servant to the permanent five", a "tool of Western imperialism

An Alleged African Bias

At an African Union (A.U.) summit in 2013, Ethiopian foreign minister Tedros Adhanom Ghebreyesus declared the ICC to be a "political instrument targeting Africa and Africans" (Taylor, 2015). This dissonance starkly contrasts with Africa's warm embrace of the ICC when it was constructed in 1998. In no other continent was the fight against impunity so replete, African states adopting the Rome Statute in great numbers. Fourteen situations are currently under investigation, ten of those opened across the African continent. (ICC, 2021). It is evident, as Kersten surmises, that the ICC needs to tarmac a path stretching away from Africa, the court in a legitimacy crisis which could threaten its future (Kersten, 2015). Critics and optimists alike concur that in particular, the targeting

of senior government officials has exacerbated this strain. Since 2002, only 2 minor warlords have been convicted by the ICC (Taylor, 2015).

Branch's report is both sensitive but realistic, recognising that it is impossible to render this African-centric bias as anything but a flaw (Branch, 2017). Branch's expertise with the politics of peace-keeping and judicial intervention is evident, his piece taking a historical perspective on pivotal moments in African-ICC relations. Hence, it is easy to accept his claims without much hesitancy. Interestingly, he points to the opposition by African states as being "symptomatic" of a more rooted problem: how in a world with great imbalances of power can international criminal justice be administered uniformly? (Branch, 2017). When arguing that the ICC's future is bright, one major hurdle is acknowledging its insensitive, grossly flawed application of international criminal justice, which carries a perceived African-centric bias. Jalloh and Branch appear two of the few scholars to address the most critical point of contention: Africa's turbulent history with colonialist intervention and foreign institutions. (Jalloh, 2009). Jalloh's warning seems even more relevant today, the ICC appearing to exercise the exact non-partisan, callous distribution of justice he cautions against. Something is clearly flawed when an institution designed to delicately combine legal practice with an appreciation of political history is the poster child of the opposite: of complete political insensitivity.

However, it's true that the ICC's work is generally received well by grassroots victims, even if opinions differ regarding the efficacy of the court (Gegout, 2013). In 2011, 73% of Kenyans, alongside other MPs, expressed approval at the ICC looking into the 2007 election violence, helping to prosecute the chief individuals culpable (The Economist, 2011). The opinion poll referenced showed that Kenyans thought "their government's stance was laughable": with over 600,000 displaced and 1,100 killed individuals, the ICC had to pick up the case exactly because of "two years of inaction and empty promises" (The Economist, 2011). It is impossible to deny that the aims of the court are not both ethical and honourable. Thus, the bias seems based purely on the court's indictment of African officials, like Sudan's Bashir, or the Ivory Coast's Gbagbo, not so much its ideological credentials. Hence, it should be no surprise that it is these same government officials who proclaim the ICC to be flawed and devoid of future promise. The lack of immunity for senior leaders and heads of state outlined by the Rome Statute should be one of its great strengths, not flaws.

Another effect of this Western slant worth considering is that signatory states and members of the ICC are beginning to offer only lukewarm support, if any, in cases. An area where the ICC has begun to look particularly flawed and vulnerable recently is in South Africa, where relations have soured. In previous decades, the proclamation of South Africa's African National Congress Party that the ICC "was no longer useful for the purposes for which it was intended", would have been unthinkable (Taylor, 2015). Just emerging from apartheid regime, South Africa was instrumental to the

negotiations prior to the Rome Conference. Indeed, on 17th July 1998, the day the Rome Statute was adopted, South Africa became a signatory, later authorising it in November 2000 (International Commission of Jurists, 2017). However, South Africa's reputation as a model student in the classroom of law seems long blackened (Goldston, 2019); its resolution to withdraw from the ICC on 19th October 2016, though later revoked after the High Court called the desire "unconstitutional", could have presented a huge problem for the ICC (BBC News, 2017). Their belief that the ICC is a "servant to the permanent five" is complex to critique (Robinson, 2015): as the International Commission of Jurists (ICJ) point out, the United States, the Russian Federation and China, three out of the five Permanent Members of the Security Council, are not even partakers in the Rome Statute (International Commission of Jurists, 2017). However, it later acknowledges that these three Members have a veto power when passing situations onto the court, opening up the opportunity to hide their states away from prosecutorial scrutiny: this disproportionate Security Council power could be a flaw which needs amending. In reality though, the Security Council has no power to "issue an indictment", and "cannot compel the ICC to accept such a referral" (International Commission of Jurists, 2017). This briefing, contributed to by eight acclaimed former judges and jurists, is extremely academic in tone, backed up with appropriate referencing and legal knowledge. Therefore, the source can be taken as both instructive and impartial.

Ultimately, despite non-compliance being partly down to the ICC demanding African accountability, the claim that the ICC is a "race-hunting institution" tells of a more politicised, propaganda view than the accurate reality (Kersten, 2015). As Kersten states, more African governments have been legitimated than undermined by the ICC, so the criticism should not be accepted blindly (Kersten, 2015). Though having a world of vast power disparities is in no way an excuse, the reality of ICC prosecutors opening investigations where it's viable to do so needs recognising. More importantly, only the Ivory Coast and Kenyan situations were brought about via the prosecutor's individual request: Mali, Congo, Uganda and the Central African Republic all requested ICC intervention themselves (Taylor, 2015). For a wide range of grounds, preliminary investigations across the globe do not always lead to indictment, like those in Columbia and Venezuela (2006) or South Korea (2010) (Gegout, 2013). Regarding future promise, it is unarguable that this bias poses the biggest threat to the ICC's potential: the ICC needs to vocally pursue a pathway out of Africa in order to cement its future promise. Otherwise, politicised claims, deliberately ignorant of further evaluation, will come to dominate legal discourse surrounding the ICC.

Relations with the USA

Widely cited by scholars as a factor rendering the ICC to be flawed, relations with hegemon states like the USA are considered embryonic, and at worst, dire. The world's most affluent states

have never graciously welcomed the ICC, powerful authoritarian leaders like Trump and Putin sending relentless gales of opposition in the court's direction (Goldston, 2019). John Bolton's infamous comment about the ICC being a "product of fuzzy-minded romanticism that is not just naïve, but dangerous" is wildly inaccurate (Goldston, 2010). Yet, it certainly echoes a certain George W. Bush rhetoric, when the US, alongside Israel, Libya, China, Yemen, Qatar and Iraq, refused to comply with the Rome Statute when it was first introduced (Gegout, 2013). Whether or not the court is a "monster" that needs to be slain (Senator Rod Grams), the changing presidential position on what constitutes 'serving the American national interest' has made the ICC's future promise rest once again in the hands of the states its mission intends to serve (Birdsall, 2010). At times it looks either doubtful or, conversely, bright and rosy.

Brett Schaefer and Charles 'Cully" Stimson's damning indictment of the ICC tells of a generalised brash American opposition to the court (Schaefer & Stimson, 2019). Clearly a more sensationalist piece, their claims lack academic rigour. Yet, their report provides an apposite commentary on the reaction of government officials to the Pre-Trial Chamber's rejection of the Bensouda's Afghanistan investigation request. On 12th April, the Pre-Trial Chamber of the ICC declined Bensouda's request to open an investigation into crimes against humanity and war crimes enacted since May 2003 in Afghanistan. Crucially, Bensouda's request had the potential to compromise the reputation of and expose American military personnel. However, Schaefer and Stimson's response to this rebuttal can be refuted as heavily partisan, for it covers only a very narrow top-down perspective. As proof, an Ipsos Poll, conducted on April 11th 2018, tells of a wholly different story. Providing quantitative evidence for the American Bar Association's ICC project, the online survey of 1,004 adults showed that 50% believed the United States should fully join the ICC or become more involved; a number up from 34% in February 2014 (Ipsos Public Affairs, 2018). Only one fifth believe the US should remain disassociated from the ICC, a clear sign of ICC's reputation being positive, not flawed. Ipsos Public Affairs are a highly regarded "non-partisan, objective, survey-based research practice", the survey sample itself reflecting "fixed sample targets on demographics" (Ipsos Public Affairs, 2018). Its findings reached through impartial "river sampling", conducted by equally impartial research experts, proves far superior to Schaefer and Stimson's account, both senior fellows at the Heritage Foundation. Schaefer is a Republican, nominated by Trump for membership to the UN committee on contributions (Crossette, 2018): Stimson served in the George W. Bush administration as a senior government official, though resigned after a controversy regarding his statements about prisoners' legal representation at Guantánamo Bay (The Heritage Foundation, 2021). The conclusions they reach unsurprisingly fit the expected jigsaw of their respective administrations: fundamentally though, the conflict between the US and the ICC remains simmering, but perhaps the flaws are not as dreadful as first established.

Besides, to say that hostility has been consistent would be erroneous. Schaefer and Stimson's remark on the USA keeping its distance from the ICC repeatedly, even during Obama's administration, is blatantly imprecise (Schaefer & Stimson, 2019). Though Biden and Obama seem anomalies to the archetypal US position on the court, most scholars ignore fluctuations of support levels, whether that constitutes partial-involvement or full cooperation. It is true that hostility peaked under the George W. Bush administration (Chibueze, 2003). However, Hillary Clinton, Secretary of State, openly displayed considerable remorse at the US "not being a signatory to the ICC", when, at the June 2010 First Review Conference of the ICC, the US had been "in fact an observer": a keen observer at that (Gegout, 2013). Likewise, the transfer of Bosco Ntaganda in 2013 from the US Embassy to the ICC, who since 2006 had been a wanted individual, further evidences the US extending out its hand of assistance to international tribunals (Gegout, 2013). As a further example, the US facilitated an ICC probe into Darfur from its very opening stages. It should be noted here though that there was a strategic closing off of non-state parties from the jurisdiction of the ICC in the UN resolution reached, the US an infamous non-state party. Nevertheless, "domestic pressure from [Bush's administration's] own ranks" was rife (Gegout, 2013). When pitted against this evidence, Schaefer and Stimson's claims prove to be altogether incorrect.

Most importantly, on 2nd April 2021, President Biden lifted visa restrictions which had been placed on particular ICC individuals, alongside revoking the June 2020 Executive Order 13928, which terminated the economic sanctions imposed by Trump on Prosecutor Fatou Bensouda and senior ICC member Phakiso Mochochoko. (Blinken, 2021). This cordiality has been well-received by the court and further abroad, many activists delighted that Biden looks to be ushering in a refreshed American position in international criminal law. The extensive reach of Trump's economic sanctions triggered outbursts of regional and international disgust, the consequences applying to "any foreign person found to have materially assisted the ICC in its efforts to investigate US persons" (Cox, 2021). Hence, it makes sense that many commentators view Biden's actions as having granted a new lease of life to the ICC, guaranteeing its future potential. It is clear also that the US's realignment of position runs parallel to the ICC's own objective resetting. Todd Buchwald labelled the Court as being "at an inflection point in its history": indeed, with Biden's emerging, genial foreign policy stance, the ICC and the US have too reached an "inflection point" in their relationship which could dictate the court's future promise (Cox, 2021). Hence, it is easy to see with a broader perspective, that the extent to which Americans state the ICC to be flawed is easily open to exaggeration. The blanket history of hostility which has dominated talks of the ICC's future promise smothers many clear examples of more affable US-ICC cooperation. Even the most truculent US administrators have agreed that the ICC's mission is exemplary, not flawed: it runs in line with their own insistence on advocating the rule of law and justice (Birdsall, 2010). As Birdsall insists, its part in the formation of the ad-hoc ICTY and ICTR should not be forgotten, along with its presence at the Nuremberg Trials of 1945-46

(Birdsall, 2010). As Cox eloquently writes, it is a conflict "which waxes and wanes depending on the prevailing domestic climate", either deepening or healing up depending on the President's decided foreign policy trajectory (Cox, 2021).

Clearly, the Pre-Trial Chamber's refusal to pursue the Afghan investigation remains a sign of powerlessness, a "naked concession to Washington's intimidation" (Goldston, 2019); one of the ICC's most complex flaws is its "dyad of independence", this fascinating paradox explored most notably by Robinson (Robinson, 2015). While the ICC's legal legitimacy relies on its exact legal independence, it also remains helplessly dependent, unable to complete its jurisdictional mission without backing from independent states (Robinson, 2015). Darryl Robinson's thesis is highly acclaimed, Heller calling Robinson the "leading purveyor of international criminal law (ICL) scholarship" and claiming his article to be a "must-read" (Heller, 2015). In evaluating the text, it is clear to see that Heller's praise is well-founded, Robinson's article proving both clear and accessible. Robinson's thesis echoes Antonio Cassese's renowned comparison of an international tribunal, like the ICC, being a "giant with no arms of legs": the "artificial limbs" it relies on to "walk and work are state authorities" (Cassese, 1998). The Afghanistan investigation presents this dilemma perfectly: the Pre-Trial Chamber's rejection was based purely of practical, not legal grounds. The "poor prospects for securing meaningful cooperation from relevant authorities" deemed the investigation unfeasible, a deep issue the ICC and other states need to work together to resolve (Schaefer & Stimson, 2019).

It is clear that the ICC being generally flawed is inevitable: the ICC's jurisdiction, though plainly set out in the Rome Statute, is one which is intensely convoluted. Its mission is self-contradicting, and the court is severely more dependent on states, non-parties and signatories alike, than initially realised. However, to write off the institution as being devoid of future promise would be utterly foolish. Biden's administration looks to open another chapter in US-ICC relations, and although his foreign policy is still budding, there is no doubt that it looks more favourable than the total opposition of Trump or George W. Bush. The ripple effect of hegemon states denouncing major tribunals like the ICC in front of more malleable national institutions is potentially dangerous (Mutua, 2015); however, the US-ICC waters now look clear and still, something which could help solidify the ICC's future promise.

Prosecution Selectivity and Legitimacy

Legitimacy concerns the subjective belief in an institution's right to rule. The ICC's legitimacy has been particularly threatened by accusations of haphazard, drawn-out investigative procedures and by the inconsistent selectivity of the Chief Prosecutor. All of this has ultimately seen faith in the institution dwindle (Goldston, 2019). This evidence of flawed practice however seems

again unavoidable. Judge Sang-Hyun Song (2nd President of the ICC) noted this inevitability in his speech for the 20th Anniversary of the Rome Statute. He emphasised the dilemma that ICC is a "judicial institution operating in a political world" (Song, 2018): E.H. Carr's argument mirrors this same problem, where he believes that the interpretation of law is impossible to detach from its political context (Gegout, 2013). Yet somehow, the ICC is paradoxically "expected to be in the world but not of it" (Robinson, 2015).

Weiner's publication is thorough and informative, providing an excellent analysis of the role of the Prosecutor (Weiner, 2013). The Prosecutor's rocky relationship with the political landscapes they have to navigate in order to curtail the trend of impunity is considered appropriately. Though, he fails to acknowledge how prosecutorial discretion is the most significant flaw in the OTP. Superficially, it seems that the court is deeply flawed, when "putting an end to impunity" constitutes only a weak examination of very few criminals, at a staggering price of over $140m for 766 staff members (Goldston, 2019). However, he only touches on the fact that the court is overloaded and blisteringly underfunded with resources to carry out these investigation requests. Hence, it seems natural that the ICC is more 'selective' than the ICTR or ICTY (Robinson, 2015). Likewise, the lack of a police force is another flaw which looks difficult to amend, placing more strain on prosecutorial discretion (Goldston, 2010). The statement made by Moreno-Ocampo that the "absence of trials before the court" due to national institutions operating effectually (as opposed to the number of hearings and convictions) should be the measure of a court's success suitably encapsulates this reality (Béres, 2016). For many, the measure of an institution's success cannot be on convictions, but on how its 'deterrent' effect is felt, or how it enhances already established domestic institutions. This point is fully expanded on in my next section.

The inconsistency of the Prosecutor's jurisdictional decisions has provoked further dissent. In Kenya for example, the ICC looked to be examining those who could be easily convicted rather than those who committed the most egregious crimes (Gegout, 2013). Gegout also astutely references the Democratic Republic of Congo situation, where evidence of enslavement, pillage, rape and torture against Thomas Lubanga proved inadequate. Hence, only the conscription of child soldiers was paid attention to (Gegout, 2013). A certain level of flexibility is granted to the Prosecutor with their *proprio motu* powers (like with Kenya and the Ivory Coast), though the likelihood of cooperation by state officials and the availability of incriminating evidence often dictates where investigations are opened (Gegout, 2013).

Interestingly, Jacobs draws a comparison between the ICC's haphazard prosecutorial discretion when navigating state immunities and Aesop's Fable 'The Frog and the Ox' (Jacobs, 2014): in his opinion, prosecutorial "conceit may lead to destruction" (Jacobs, 2014). Jacob's fairy-tale rhetoric mirrors

another, Robinson, who suggests that there is no 'just-right' Goldilocks solution for this kind of institution (Robinson, 2015). Robinson's metaphorical comparison is more compelling in its more nuanced approach: the issue lies more with public expectation of the court, which demands that the ICC's "metaphorical porridge be just right" (Robinson, 2015). Though the OTP leaves much to still be desired, it seems unlikely its use of discretion will ever be satisfactory for all: that, according to Robinson is something which needs to be more widely appreciated.

It seems that court has not regained its legitimacy after the tenure of Fatou Bensouda's predecessor, Argentinian Chief Prosecutor Luis Moreno-Ocampo. Ocampo's success in Argentina did not translate to his new distinct office, his "proclivity for theatrics" and dramatic television appearances in areas of mass atrocity dragging the court into the political fray (Mutua, 2015). A character often accused of misconduct, his alleged organising of Ivorian Laurent Gbagbo's arrest, despite not yet possessing the appropriate authority over crimes against humanity, or his association with numerous secret fiscal affairs, has tarnished his and the court's name. (Cruvellier, 2017). Mutua places significant blame on Ocampo's decade long tenure which considerably drained optimism about the court's future, something fellow critic Saunders imitates: Matua's remarks should be embraced with some hesitation however, his career and credibility weakened by controversies surrounding his honesty at SUNY Buffalo Law School. Nevertheless, it is indisputable that the Office of the Prosecutor is the most important ICC organ, the judges in reality secondary actors to the Prosecutor in proceedings (Mutua, 2015). Saunders' statement that Ocampo's reputation as a "white-suited outsider" polluted the integrity of international criminal justice is brutal. Yet, it summarises truthfully the ICC's most flawed character (Saunders, 2012).

Though not as persistently vilified as Ocampo, current Prosecutor Bensouda's history of serving Gambia's dictator Yahya Jammeh has led some to question her title as champion of judicial honour: however, she remains a stark improvement on her predecessor, particularly in her advocacy of women's and children's rights. With the imminent changeover of office in June 2021 to the new Prosecutor, British human rights lawyer Mr Karim Khan Q.C, the ICC has the opportunity to re-establish its public standing and reset its prosecutorial targets. Rather, the future promise of the institution has never looked so bright. Now as the court reaches its adolescent years and approaches adulthood, it will surely begin to show something for its just over twenty years of existence.

Complementarity and National Courts

The ICC's role as a court of last resort is the bedrock beneath the Rome Statute. The principle of complementarity, alluded to shrewdly in the Preamble of the Rome Statute, affirms the idea that the court is meant to work in conjunction with, not supplant national courts (International Criminal Court,

1998). Though the term is defined nowhere explicitly, Articles 1 and 17 (1) a)-b) demands an insistence on the symbiotic relationship between the court and national institutions (Béres, 2016). The ICC intervenes only when states are genuinely unwilling or unable to do so. Critical to this overall evaluation of the court's future promise, it is not so much the theory behind it which is flawed, but its exercise in practice. Primarily, the reality of this principle is cited by some critics, like Dov Jacobs, as wider evidence of a court plagued by false, flawed promises (Jacobs, 2014).

Dicker and Duffy's report stands superior against publications on complementarity, succinctly explaining the Rome Statute's complementarity provisions and the importance of coaction between domestic and international institutions (Dicker & Duffy, 1999). Importantly, national judicial institutions having primacy over international institution's jurisdiction distinguishes the ICC from its predecessors, the ICTR and ICTY (ICC, 2003). Like others, Dicker and Duffy recognise the significant preconditional limits placed on the court's jurisdiction; however their insistence on these limits being "essential" and a great strength, a guarantee of future promise, is an extremely valid argument (Dicker & Duffy, 1999). It is entirely true that the constraints of ICC operation, that the Rome Statute lays out in its complementarity articles, create a productive dynamic between the ICC and domestic courts; it is no surprise then that this remains an uncontentious principle of the court. The statement made by Moreno-Ocampo that the "absence of trials before the court" due to national institutions operating effectually (as opposed to the number of hearings and convictions) should be the measure of a court's success suitably encapsulates this reality (Béres, 2016). For many, the measure of this institution's success should not be on convictions, but on how well it enhances already established domestic institutions, who bring justice which is reflective of their people closer to them. Complementarity is not a flaw, but rather an asset. Indeed, as Dicker and Duffy highlight, the principle, when properly applied, has "much to commend to it" (Dicker & Duffy, 1999). Complementarity will, and should remain, the gem in the crown of international criminal justice.

A point explored by Menecke, Gegout, Dicker and Duffy in their respective publications, the principle of complementarity involves another layer. Positive complementarity implies that the ICC should actively help domestic institutions, through erecting "platforms for dialogue with national authorities" for example (Mennecke, 2008). Scholars agree that the bolstering of domestic legal systems cannot be a flaw, but an overwhelmingly positive side effect of ICC intervention. Similarly, Gegout recognises the benefit of states cooperating with the ICC in a harmonious manner in helping to recruit new signatories to the Rome Statute (Gegout, 2013). The promotion of the ICC by the Indian Coalition for the ICC, or the Malaysian Bar Association has proved fundamental to guaranteeing the future promise of the court: the advocacy within the Commonwealth of the ICC in the summer of 2011 was another positive example for future states (Gegout, 2013).

Overall, the respect between these two levels of legal administration, domestic and international, and their actively cooperative relationship is the ICC's greatest strength. The continued "synergy" between the two levels of institution is essential in guaranteeing the court a healthy future promise (Newton, 2010). The workings of national courts, which possess a better understanding of local legal customs and are closer to their victims of mass atrocity, in conjunction with experienced and robust international tribunals can only be a benefit, not a flaw (Dicker & Duffy, 1999). Besides, for both levels of administration to prosper, they need exposure to simple and complex cases, whether combatted single-handedly or through teamwork (Dicker & Duffy, 1999). Most importantly, the message of how important the rule of law is to global society can be transmitted from state to state. The court is thus an irreplaceable and utterly necessary institution, which is brimming with future potential waiting to be acted on.

Conclusion

It can be concluded that the International Criminal Court is in many ways flawed, most noticeably in its continued pursuit of African government officials. However, to suggest that the ICC has no promise would be a severe injustice to the court's earliest campaigners, who endured nearly five decades of fruitless negotiation prior to its inception. Its promise to positively benefit the global ecosystem of human rights is boundless. For this potential to be realised however, it is vital that states actively cooperate with the institution, those states educating and ultimately persuading the ICC's pessimists of its immense future promise. The ICC needs to carve a route out of Africa, its most obvious modern flaw. In particular, it needs to divert its attention away from senior government figures and tribal leaders, not only those who can be apprehended easily. It is this targeting which provoked calls of withdrawal, like in South Africa and across the African Union. The claim of an alleged African bias is superficially founded yet deserves a less politicised analysis. The flawed US-ICC relations of the Trump era look salvageable; Biden's fledgling foreign policy looks more amicable towards the ICC than that of his predecessors. American grassroot and domestic support is more ripe than political scholars falsely claim. The OTP under Moreno-Ocampo was grossly flawed, not least through the image of the prosecutor himself. However, Bensouda's tenure and Mr Karim Khan's imminent arrival need to erase the trace of Ocampo on the institution's reputation. The ICC's opening chapter needs closing, with individuals now looking at ways to rectify faulty prosecutorial procedures and mistakes, not dwell on past errors. The principle of complementarity is one of the ICC's greatest strengths, not a flaw. Its execution may get distorted at times when pitted against prosecutorial discretion and selectivity, but its benefits for domestic systems cannot be overemphasised. Finally, the ICC's flaws need not compromise its necessity and waste its future promise, which during this 'changeover' period at the ICC seems more vivid than ever. As Goldston rightly surmises, the ICC is a "capstone of a centuries long-search for a world in which the law

prevails over brute force" (Goldston, 2019); dismissing its promise on the basis of rectifiable flaws would be completely foolish.

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