“The International Criminal Court is a noble idea, but it can never work”

THE WORLD
WITH ITS HUMAN RIGHTS INEQUALITY

AAP2015
INTERNATIONAL RELATIONS

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Date of Submission : 13th May 2010
SUMMARY

“The twentieth century witnessed two world wars and a number of brutal regional conflicts that resulted in massive killings. One response to some of these tragedies has been the imposition of war crimes tribunals on certain of the warring parties, by either the victors or the United Nations Security Council. More recently, the world community, through the United Nations, has embarked upon the venture of establishing a permanent international criminal court (ICC) with jurisdiction over human kind’s most serious crimes.”(i)

The establishment of International Criminal Court is a noble idea. But throughout its experiences in solving the problem, there are still many mistakes that appeared to be criticized by a lot of organizations and media. The attitude towards the member and outside the member will become one of the public spotlights.

This essay will point out three facts about the ICC which could lead them into a failure if they do not fix it. Several cases also discussed and informed as the source of the problems. Most part occurs in African countries, where there are so many leaders comes from different way of thought about how to rule the land. Finally, the civilians become the target and numbers of deaths are rising throughout the year. This condition caused many organizations, local government, NGOs, and the ICC to take action, with the magic word ‘peace’ as their motivation, they involved in those conflict, trying to get rid of the terrorists and save the innocent lives.

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Introduction

A country will not survive without its leader. That is certainly right, but what form of leader can lead a nation in a proper way? The democratic based, socialist, reformist, or maybe the one who always make arbitrary rules? All these ideologies will effect and involve people, local government, organizations, and even international relation. It may cause many problems, attracting public attention and will create imbalances over the structure of the region or country. If problems could not be taken care of by the local government, then it is the role of an international organization that should give them advice and find solutions.

Established in 2002, the International Criminal Court (ICC) was charged with the jurisdiction over the crimes of genocide, crimes against humanity, and war crimes. As of 2008, 106 states were signatories to the founding treaty and hence members of the ICC. China, India, and the United States were amongst states which did not support the establishment of the ICC. The ICC can investigate cases where citizens of member states who have been accused; incidents take place in member states; or where the United Nations Security Council refers a case.¹

Several cases such as the case of Lord’s Resistance Army (LRA) in Northern Uganda², the case of civil war in the Democratic Republic of Congo (DRC)³, the case of civilian attack by the DRC rebel groups in Central African Republic⁴, the case of genocide in the Darfur region of Sudan⁵, and others that will

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be briefly discussed later in this essay involving the leader of nations who had a desire to obtain a strong power to rule their land. Will the ICC be wise enough to handle it? Otherwise, it will turn into something more unfair and the ICC’s name will become just a formality, so people of the world can see that European nations do “care” about the problem and, in fact, the truth it was just pointless.

**Human rights and its surrounding**

The words “human rights” have become famous today, especially among the people who suffered in many African countries. Poverty and inequality have been a critical issue and trying to get rid of these is the unimagined dream that constantly passes through their minds. It is a noble action by most of European countries that ICC has published to handle human rights inequality problems, but in order to make it run on the right track, it needs a serious effort, fairness, justice, and an objective way to solve the conflicts and problems.

Rights and freedom are the key words that best describe what every human being is entitled to. From there, the United Nations seems to need more specific explanation, so they divided it into three parts:

1. **First Generation**, this generation consist of civil and political rights which restrict what others (including the state) may do, for example life, liberty, and freedom from torture.

2. **Second Generation**, this generation usually deal with social economic rights, where require active provisions, such as imposing an obligation on government. Some analysts often call them ideals and controlled in practice by poor resources.

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3. *Third Generation*, this generation mainly concerns the rights of peace, rights to develop the nation, and humanitarian assistance. While many of the claims attach to individuals, some belong to collectivities, such as the right to national self-determination.\(^7\)

For many years, most of African countries who were mentioned above have experienced human rights’ violation, the oppression of minorities (often economically as well as politically), the suppression of dissent and the terrorising of a population, which are not only morally reprehensible, but exceedingly often have the effect of causing a decline in investment, outflows of refugees and disputes with neighbours. Most of the refugee crises around the world today, which constitute 22 million people at the present time, are the result of the abuse of human rights.\(^8\) This country, Australia, is also particularly aware of the effect of the abuse of human rights in relation to the influx of asylum seekers from Afghanistan, Sudan, Iraq and Sri Lanka at present.

**ICC and its cases**

“The creation of the Court is still a hope for future generations, and is a major step in the framework of the movement towards human rights and rule of universal law.” \(^9\)

Darfur, “a short history of a long war”\(^10\), tell us a complex and fascinating story of a remarkable and remote region of Africa. The first case of the ICC involvement to prosecute the Sudanese president, Omar Al-Bashir. In January 2005, a report made by the Commission\(^11\) had collected a series of potential war

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crimes suspects, which is confidentially investigated, and “strongly recommend[ed]” that the Security Council refers the circumstances in Darfur to the ICC.\textsuperscript{12} Omar Al-Bashir\textsuperscript{13}, with its militia called Janjaweed\textsuperscript{14} found a neat attack strategy to destroy a substantial part of the region. They massacred the people, burned up the villages and made an extraordinary number of deaths, at least 200,000, although the government itself says about 9,000. That number does not include the number of homeless people, which is more than 2million since the fighting broke out in 2003 when rebels took up arms.\textsuperscript{15} Considering Sudan is not a member party of ICC, the case can only be referred to the ICC by the U.N. Security Council under Chapter VII of Charter of the United Nations.\textsuperscript{16} As a result, the ICC will be able to authorize the case, but is not required to accept it.\textsuperscript{17}

From here, we obviously see that ICC did not put much effort or interest (in the first place) to help the conflict from outside its member. That is a point that we could mark as one of the weaknesses of being an international organization.

Something similar happened with the situation in Uganda, another African country. Here, the war led by the Lord Resistance Army (LRA)\textsuperscript{18}, which massacred hundreds of civilians including murder, sexual harassment, mutilation (cut off body


\textsuperscript{13} Sudanese; President 1993–Al-Bashir was born into a peasant family. He rose through the ranks of the Sudanese army, attended military college in Cairo, and fought with the Egyptian army in the Yom Kippur war against Israel in 1973. He led the Sudanese military campaign against southern rebels in the civil war between the Muslim/Arab north and the black African Christian/animist south in the 1980s. He led a successful coup against Sudan’s elected government in 1989. Political parties were banned and he set up and chaired a Revolutionary Council to run the country, supported by Hassan al-Turabi, an advocate for the formation of an Islamist state. In 1993 al-Bashir dismissed the Revolutionary Council and became President. In 1996 he felt the political position in the country was more stable and called for a presidential election, which he won. See J. Millard Burr & Robert O.Collins,\textit{ Revolutionary Sudan : Hasan al-Turabi and the Islamist State, 1989-200}, (Leiden, Boston : Brill, 2003).


\textsuperscript{16} See Appendix for details.


\textsuperscript{18} The Lord’s Resistance Army (also Lord’s Resistance Movement or Lakwena Part Two) is a sectarian Christian militant group based in northern Uganda. The group was formed in 1987 and is engaged in an armed rebellion against the Ugandan government. Mainly operates in northern Uganda, but also in parts of Sudan, Central African Republic and DR Congo. The LRA is currently proscribed as a terrorist organization by the United States.\textit{ Wikipedia}. Viewed 28 April 2010. <http://en.wikipedia.org/wiki/Lord%27s_Resistance_Army#Etymology>.
parts), and forced abduction. It committed war crimes and crimes against humanity. Uganda’s government referred the case to the Court in 2003. The first order issued by the Court was to arrest the LRA leader, Joseph Kony and its commanders, Otti, Odhiambo, Ongwen and Lukwiya.

The involvement of ICC in this case was bias. Tim Allen briefly state in his book that it is clearly seen from the first stage of involvement by the fact that Chief Prosecutor Moreno-Ocampo and President Museveni held a joint press conference in January 2004, announcing that the ICC would begin preliminary investigations.19

“Even Amnesty International, which welcomed the announcement, choose to make the point that ‘Any Court investigation of war crimes and crimes against humanity in northern Uganda must be part of a comprehensive plan to end impunity for all such crimes, regardless of which side committed them and the level of the preparatory’. »20

It seems that the ICC’s involvement indicated by rumours about the investigators’ use of Ugandan government vehicles and officials to facilitate their inquiries on the ground. Lack of information also is one of the factors for the Court when the formal investigation by the Office of the Prosecutor began in mid-2004.21 Finally, by peace talks, the situation became under control. It might be because the ICC is still unexperienced and unprepared to handle such a complicated case. They underestimated all the possibilities that could lead to failure. A valuable possession to be regarded as a learning process.

The second point of weaknesses when creating an international organization, do not establish it if the procedures are unclear and run by an amateur, care should be taken in such a dangerous place that could risk your life with

unprepared information and underestimate every possibility will only bring a complicated impact for the organization.

The third study of ICC’s case will take place in Democratic Republic of Congo (DRC) with its rebel groups that also spread the attacks until reach the region of Central African Republic. What happen there, is a disastrous civil war, terrorist in military uniforms from various lands have carried out strikes daily on innocent civilians, murdering, torturing, plundering and destroying. They have affected over than 1 million people, consist of them who are died, critical injuries, and homeless people. It has been estimated that 220,000 people had forced to flee their homes because of this conflict. The Congo President, Joseph Kabila, was referred to the ICC for committed crimes throughout all the territory of Congo.22

Unlike the other cases, the seven-year civil war has led to the collapse of the internal structure of government. The national judicial system is reportedly in such disarray that it could take years to establish a functioning judiciary. Even with massive outside help and even if it proves possible to settle the civil war. The national judicial system of the DRC will probably be unable to investigate and prosecute the gravest crimes that have occurred in the course of the last seven years.23

The DRC case presents still another dilemma. In spite of the efforts made by the drafters of the ICC’s Statute to maintain a distance between the Court and the Security Council as a demonstration of the independence and impartially of the Court, it is becoming increasingly apparent that, in practice, the consent and cooperation of the Security Council will be important, if not indispensable, when the Court undertakes to conduct investigations and apprehend suspects in an ongoing conflict.24 “… as a general matter, any conflict in which atrocities reach a

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level that requires action by the Court is likely also to involve the Security Council." 25 Where access by humanitarian aid workers requires security forces, whether provided by the United Nations, multinational forces, or some regional arrangements, investigators of the Office of the Prosecutor, in practice, will not gain access to these areas to conduct investigations and collect evidence without the arrangement and support of those security forces.

Because the ICC does not have a police force, it must rely on the cooperation of states. Lawful assistance by states parties is limited to the area where they exercise jurisdiction or control. It does not extend, even if a state wished, to the emplacement of its police or security force in the territory of another state without that state’s consent; or without the authorization of the Security Council. Situations of tense, ongoing internal conflict when the central government of a state is in disarray, or is a party to the conflict, or appears implicated in crimes sounding in the ICC’s Statute are precisely the situations that are likely to draw in the Security Council and involve UN or UN-authorized forces on the ground 26. And in these situations, the only impartial police or security force that can be provided to assist the prosecutor’s investigators will be UN forces, a multinational force, or forces provided by regional organizations. If UN missions are to extend such assistance to the Office of the Prosecutor, the mandates for those missions, which are drafted by the Security Council, will have to specify those tasks. 27

Third point that we can learn from this case is to investigate a big cases that seems will never ended, it needs a good corporate from all organizations that have a relationship in dealing with those matters. ICC seems to separate itself from others and make distance between them and the UN, also the other organizations and NGOs. It is not a good thing if we could not accept any critics from other people,

25 Ibid., p. 132
27 Ibid.,
but try to put all those critics in a good way as our introspection. With a good corporate and help each other, no matter how big and complicated the case is, it will be soon finish and satisfy those who were involved.

To conclude my essay, let us review the three points that we can pull out as a good lesson from the ICC experience. The first one is do not ever choose and judge any countries outside the member, if they need help and seems so much in trouble, help them, act as they are also the member even they do not put any contribution, but the word ‘International’ has been put to represent the whole world. The second point is selective in choosing the person who will be in charge to solve the problem. Any failures and misunderstanding caused by the person who did not have any knowledge about the conditions, will just bring a bad and complicated impact for the organizations. And the last third is making a good cooperation among other organizations. With a good ‘handshake’ big problem can be small, long solved can be short, and complicated can be simple. They are there to help, so it depends to the ICC, either want to close the gaps or even make it worse by isolating themselves.

**BIBLIOGRAPHY**


