

**Reham El Morally**

## The International Criminal Court. A third arm of the Global North?

The relationship between the International Criminal Court and the Security Council

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# The International Criminal Court: A Third Arm of the Global North?

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Reham El Morally

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**Abstract:** All those questions shall be answered during the course of this essay. It is my duty to give voice to the injustices of the world exerted by those who claim to be just, regardless of their authoritative power. My thesis is, there is a strong correlation between the work of the ICC and its special interest in the “dark continent” Africa, and the permanent member of the Security Council. In this paper I shall thus discuss the history of the ICC, the structure and funding of the ICC, jurisdiction of the ICC, and the relationship between the ICC and the Security Council. Further I will discuss whether there is a possible influential relationship between the ICC and global political economy. Moreover, a closer investigation into the work of the ICC, in the cases of Sudan and Libya, will follow and how it might relate to global political economy. Lastly, this paper will discuss some reforms that would enhance the ICC and highlight weaknesses of the ICC. In this paper there will be a special focus on Articles 13 and 16 of the Rome Statute and how they could be used as tools by global hegemony to control the ICC.

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**Keywords:** *International Criminal Court, Africa, International Law, Dark Continent, Imperialism, Global North*

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## INTRODUCTION

*“In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realization. We will do our part to see it through till the end. We ask you . . . to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity. Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished”*

*~ Kofi Annan*

*“We are at a point in our work when we can no longer ignore empires and the imperial context in our studies”*

*~ Edward W. Said*

The two quotes above illustrate what I intend to discuss in the following paper. Kofi Annan<sup>1</sup>, the seventh Secretary-General of the United Nations, highlighted in many of his speeches the obligations the United Nations (UN) owes the international community. The questions however are: to what extent has the UN, especially the Security Council (SC), actually been fulfilling its obligations towards the international community? Does the UN and its bodies, namely the Security Council, realize and acknowledge the differences in the power dynamics between the global north and the global south? Is the Security Council operating through the International Criminal Court (ICC) to perpetuate global inequality in order to secure the interests of the west? Is the ICC working for the enhancement of international justice or is it security for the SC members?

All those questions shall be answered during the course of this essay. It is my duty to give voice to the injustices of the world exerted by those who claim to be just, regardless of their authoritative power. My thesis is, there is a strong correlation between the work of the ICC and its special interest in the “dark continent” Africa, and the permanent member

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<sup>1</sup> Mr. Annan joined the UN system in 1962 as an administrative and budget officer with the World Health Organization in Geneva. Immediately before becoming Secretary-General, he was Under-Secretary-General for Peacekeeping. See more <http://www.un.org/sg/formersg/annan.shtml>



of the Security Council. In this paper I shall thus discuss the history of the ICC, the structure and funding of the ICC, jurisdiction of the ICC, and the relationship between the ICC and the Security Council. Further I will discuss whether there is a possible influential relationship between the ICC and global political economy. Moreover, a closer investigation into the work of the ICC, in the cases of Sudan and Libya, will follow and how it might relate to global political economy. Lastly, this paper will discuss some reforms that would enhance the ICC and highlight weaknesses of the ICC. In this paper there will be a special focus on Articles 13 and 16 of the Rome Statute and how they could be used as tools by global hegemony to control the ICC.

### **WHAT IS THE ICC?**

The negotiators of the ICC statute created an institution almost breathtaking in its complexity and organizational structure. The 128-article Statute is divided into thirteen Parts, each addressing some feature of the Court's establishment, jurisdiction or operation.<sup>2</sup> The Statute is supplemented by important ancillary documents negotiated following the Rome Conference (but prior to the Statute's entry into force), including, importantly, the Elements of Crimes, the Court's Rules of Procedure and Evidence, a relationship agreement between the Court and the United Nations, an agreement on the privileges and immunities of the Court and the rules of procedure for the Court's Assembly of States Parties (ASP) that would ultimately provide the Court's management and oversight. The drafting of these ancillary documents was taken up by a Preparatory Commission composed of representatives of member states, which had signed the Final Act of the Rome Diplomatic Conference, and other States, which were invited to

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<sup>2</sup> Rome Statute of the International Criminal Court, U.N. Doc. A/ CONF.183/9 (July 17, 1998).

participate in the Rome Conference.<sup>3</sup>

Like the Preparatory Committee that had prepared the draft Statute taken up in Rome, the Preparatory Commission was composed of State delegates, many of whom had represented their governments during the Preparatory Committee meetings and the Diplomatic Conference. This facilitated the work of preparing the Statute's entry into force. The Statute attained the requisite ratifications needed for entry into force with the deposit of eleven ratifications in April, 2002, bringing the total number of States Parties to sixty-six<sup>4</sup>. On July 1, 2002, the Rome Statute entered into force.

## **STRUCTURE OF THE ICC**

The Court's organizational structure is much more complex than predecessor international tribunals. The four organs of the Court are the Presidency, the Judiciary (composed of three divisions: Appeals, Trial, and Pre-Trial Divisions), the Office of the Prosecutor and the Registry. In addition, the Assembly of States Parties established by Part 11 of the Statute oversees the operations of the Court (including its budget) and the Trust Fund for Victims, established by a decision of the Assembly of States Parties under Article 79. The Trust Fund administers funds and other forms of assistance for the benefit of victims of crimes within the jurisdiction of the Court. It advocates for victims and mobilizes individuals, institutions with resources and the goodwill of those in power for the benefit of victims and their communities. As of this writing, the Court's annual budget is just short of 122 million Euros, 10 million of which are allocated to the Judiciary, 33

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<sup>3</sup> Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of the International Criminal Court on 17 July 1998, Annex I, Resolution F, U.N. Doc. A/CONF.183/10 (1998). See also Philippe Kirsch, 'The Work of the Preparatory Commission', *The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence* xivi (2001).

<sup>4</sup> Leila Nadya Sadat, "Summer in Rome, Spring in the Hague, Winter in Washington?: U.S. Policy Towards the International Criminal Court", (2003) 21 WIS. INT'L. L. J. 557, 575.

million to the Office of the Prosecutor and 66 million to the Registry, and the staff number in the several hundred.

The Court has eighteen judges, nominated and elected by secret ballot by the Assembly of States Parties. Each judge must be a national of an ICC State Party and be a person of “high moral character, impartiality and integrity” who possess the qualifications required in their respective States for appointment to the highest judicial office of that State. In choosing, Article 36 of the Statute requires the Assembly to “take into account” the need for gender balance, equitable geographical representation, and the representation of the principal legal systems of the world. Each judge serves one, non-renewable nine-year term, and at least nine of the judges must have established competence and experience in criminal law and procedure; five must have competence and experience in relevant areas of international law. The judges organize themselves into Divisions upon their election, and elect the members of the Presidency, who serve for a term of three years. Five judges sit as members of the Appeals Chamber, which decides upon a Presiding Judge for each appeal. Three judges sit in each Trial Chamber and Pre-Trial Chamber, although a single judge may carry out the functions of the Pre-Trial Chamber if the Statute so provides. The Pre-Trial Chamber oversees the initiation of a case until confirmation of the charges against the accused, after which time the accused is committed to a Trial Chamber for trial.<sup>5</sup>

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<sup>5</sup> Leila Nadya Sadat, “The International Criminal Court: Past, Present, and Future”, *Forthcoming in the Cambridge Compendium of International Criminal Law*, (2014): 2-14.

## JURISDICTION OF THE ICC

In terms of jurisdiction *ratione temporis*, pursuant to Article 11(1), the Court only has jurisdiction with respect to crimes committed after the entry into force of the Rome Statute. Additionally, with respect to States ratifying the Statute after July 1, 2002, the Court only has jurisdiction with respect to crimes committed after the entry into force of the Statute for that State, unless that State decides otherwise.

The ICC has jurisdiction in the following cases: 1) crimes have been committed *by a citizen* of a member state, i.e. of a state that has ratified the Statute<sup>6</sup>. 2) The crimes have been committed *on the territory* of a member state<sup>7</sup>(which means that the Court may, under certain circumstances, be able to exercise jurisdiction over the nationals of a non-state party). 3) The *Security Council refers* a situation to the ICC (in such cases, the Court's jurisdiction is truly universal, meaning that it is not necessary for the alleged perpetrator of the crime to be citizen of a state party or for the crime to have been committed on the territory of a state party)<sup>8</sup>. 4) A state that is not party to the Statute (or was not party at the time the alleged crimes were committed) makes an *ad hoc* declaration for the Court to have jurisdiction "with respect to the crimes in question"<sup>9</sup>. Lastly 5) One of the key features of the International Criminal Court is that it is *complementary* to national courts<sup>10</sup>. This means that the Court will only investigate and prosecute cases when national authorities are *unable or unwilling* to do so, in accordance with Article 17.

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<sup>6</sup> Article 12(2) of the Statute of Rome

<sup>7</sup> Article 12(2) of the Statute of Rome

<sup>8</sup> Article 13(b) of the Statute of Rome

<sup>9</sup> Article 12(3) of the Statute of Rome

<sup>10</sup> Article 12(3) of the Statute of Rome

## **FUNDING OF THE ICC**

According to Article 113 of the Rome Statute, which discusses the financing regulations of the ICC “Except as otherwise specifically provided, all financial matters related to the Court and the meetings of the Assembly of States Parties, including its Bureau and subsidiary bodies, shall be governed by this Statute and the Financial Regulations and Rules adopted by the Assembly of States Parties”<sup>11</sup>. This process is governed by the Finance rules and regulations, as adopted by the ASP at its first Session.

The Court, under the coordination of the Registrar, produces a draft budget. The draft budget is considered and commented upon by the Committee on Budget and Finance (CBF), which meets twice a year, once before the meeting of the Assembly of States Parties (ASP) to consider the draft budget and once to consider other financial matters. The ASP then considers the budget and the recommendations of the CBF and adopts the final budget<sup>12</sup>. The States Parties to the Rome Statute, i.e. the members of the Assembly of States Parties share the costs of the ICC budget. How much each State Party pays is decided according to a system developed by the United Nations, whereby the contribution percentage per State Party is calculated according to their financial situation. It is of utmost importance for the financial stability of the Court that States Parties pay their contributions in full and on time, i.e. on 1 January of each financial year.<sup>13</sup>

## **THE RELATIONSHIP BETWEEN THE ICC AND THE SECURITY COUNCIL**

Article 13(b) under the statute of Rome states: “*The Court may exercise its jurisdiction*

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<sup>11</sup> Article 113 of the Statute of Rome

<sup>12</sup> Coalition for the International Criminal Court, “Budget and Finance Background of the ICC”, *Organization for the Coalition of the international Criminal Court* (2015), (accessed December 7<sup>th</sup>, 2015) <http://www.iccnw.org/?mod=budgetbackground>

<sup>13</sup> Coalition for the International Criminal Court, 2015.

*with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if: (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations;*<sup>14</sup> and therewith, in other words, gives the Security Council jurisdiction over territories that may have signed but not ratified the Statute and are therewith not within the jurisdiction of the ICC.

Article 16 of the Statute which discusses the case in which a deferral of investigation or prosecution is permitted *“No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect; that request may be renewed by the Council under the same conditions”*.<sup>15</sup>

Before starting with the history of the creation of the ICC I need to first define what I mean by “imperialism”. I chose a couple of the scholarly Marxist definitions of imperialism, because they pave the way to the understanding of this paper. Imperialism according to Karl Kautsky *“Is a product of highly developed industrial capitalism. It consists of the urge of every industrial capitalist nation to subjugate to itself and to annex an always larger agrarian territory, regardless of which nations inhabit it.”*<sup>16</sup> The second definition is by Rudolf Hilferdine and states that imperialism *“It [capital] seeks to overcome the restriction of productivity resulting from the contraction of the economic territory, not by conversion to free trade, but by expanding its own economic territory and*

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<sup>14</sup> International Criminal Court, *The Rome Statute of the International Criminal Court*, A/CONF.183/9 (July 17, 1998) [http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome\\_statute\\_english.pdf](http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf)

<sup>15</sup> Ibid.

<sup>16</sup> Karl Kautsky, “Der Imperialismus,” *Die Neue Zeit*, Vol. 32, No. 2 (1914), p. 909.

*promoting the export of capital.*”<sup>17</sup>

On the 17<sup>th</sup> of July 1998, 120 states came together and adopted the Statute in Rome, which later came to be known as the Rome Statute of the International Criminal Court, therewith giving birth to the ICC. For the first time in international history have states accepted jurisdiction of a permanent international criminal court for the persecution of people(s) who commit serious crimes against humanity, e.g. genocide, and other internationally offenses committed anywhere in the world, regardless of whether they were committed on their own territories or foreign soil. The statute entered into force on July 1, 2002. It was welcomed with an optimistic belief that it would put an end to impunity for dictators and their henchmen, and blossom the international society into a new era of international justice.<sup>18</sup>

Since the establishment of the court they have paid special attention to Africa. The ICC issued its first arrest warrant in 2005 against Congolese rebel leader Thomas Lubanga Dyllo for recruiting children as soldiers. This, amongst many more cases such as the Prosecutor authorized investigation *proprio motu* into the situation in Côte d’Ivoire, Sudan, Uganda, Central African Republic, Republic of Kenya, Libya, and Mali<sup>19</sup>, prompt skepticism about the ICC and raised the doubt of whether the ICC is targeting the “dark continent” fully aware of its insignificance to the trade-centered global north.

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<sup>17</sup> Rudolf Hilferding, “The Economic Policy of Finance Capital”, in *Das Finanzkapital*, (Vienna: Wiener Volksbuchhandlung, 1910): 314.

<sup>18</sup> Eric Posner, “The Absurd International Criminal Court”, *The Wall Street Journal*, June 10, 2012, <http://www.wsj.com/articles/SB10001424052702303753904577452122153205162>, (accessed July 29, 2015).

<sup>19</sup> International Criminal Court. Situations and Cases. [http://www.icc-cpi.int/en\\_menus/icc/situations%20and%20cases/pages/situations%20and%20cases.aspx](http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/pages/situations%20and%20cases.aspx) (accessed July 29, 2015)

## **THE WORK OF THE ICC IN LIBYA AND SUDAN**

In February 2011, the Libyan revolution took a turn when organized violence was exerted by the Gaddafi regime against the civilian population. The North Atlantic Treaty Organization (NATO) answered the call of the United Nations on the international responsibility to protect the Libyan civilians. By March 2011 NATO had planned and executed the plan of an arms embargo and a no-fly zone therewith attempting to protect the civilian population. This has come to be known as Operation Unified Protector (OUP), which ended “successfully”, according to NATO, in October 2011.

In May 2011, Luis Moreno Ocampo, the chief prosecutor at the ICC had issued a warrant for the arrest of the Libyan Leader Moammer Gaddafi under the accusation of having committed crimes against Humanity. Moammer’s son, Saif al-Islam and the Libyan intelligence chief Abdullah Senussi were also accused of committing crimes against the Libyan civilian population.<sup>20</sup>

Regardless of the attempts of Tripoli for truce between the revolutionaries stationed in Benghazi and the regime through peaceful means, and their calling for the end of NATO bombing of Libya, NATO did not acknowledge the callings of the civilians, rather it had turned its mission from “protection of the civilian population” to a police force whose mission is to bring a criminal to justice regardless of his standing in the diplomatic field. Their actions were justified and covered-up by the indictments declared by the ICC. This speaks against The State Immunity Act 1978, s14(1), which extends privileges and immunities to “the sovereign or other head of the state in his public capacity”. Furthermore, it violates article 2(1)(b)(i) and (iv) of the State Immunity Act 1978, which state officials enjoy immunity from prosecution which arose from customary international

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<sup>20</sup> ICC-01/11-01/11 The Prosecutor v. Saif Al-Islam Gaddafi



law. However Article 13 and 16 of the Statute of Rome gives the SC the power to authorize the ICC to prosecute state heads. NATO is peculiar in itself, seeing that the two hegemonic powers in the Security Council, US AND UK, are also founding members of NATO, which makes their intervention even more suspicious. This, in my opinion has been exploited by NATO forces and misused by the ICC as a cover-up for the aggression in Libya. This is however not an unusual behavior, as seen from the NATO bombing Yugoslavia in support of Albanian rebels in Kosovo in 1999. The bombing intensified and the ICTY prosecutor Louise Arbor issued a warrant for the arrest of the Yugoslav President for crimes against humanity. All the chaos caused by the bombing of NATO was thereafter forgotten, closing all doors for negotiations in both cases, Kosovo and Libya causing the situations to aggravating and further destabilize.

To sum up, the ICC intervenes during the heart of a domestic conflict, after the intervention of NATO in that conflict under the claim of “humanitarian reasons” and the protection of civilians -- after having received insubstantial evidence provided to them by NATO or its reveal clients. Henceforward the ICC could be considered as an extension of western imperialism over the global south, practicing not international justice and “equality” between states, but rather a perpetual force for the maintenance of power relations between the global north and the global south. In short, the ICC so far acts mainly as a way of putting political pressure on, or justifying military action against weak governments that the Western powers want to replace with leaders of their choice to serve their economic interests.

On 31 March 2005, the UN Security Council referred the Situation in Darfur to the

Prosecutor of the ICC in Resolution 1593 (2005)<sup>21</sup>, after the UN Secretary General Kofi Annan established the International Commission of Inquiry on Darfur in 2004, which reported back to the UN in January 2005 that simply stated the situation needs immediate international intervention. Further the resolution read that Sudan is required to cooperate with the ICC, and invited the Court and the African Union to cooperate and discuss reasonable agreements that will satisfy both parties and facilitate the process of the court in indicting those responsible for the situation in Darfur. The question arises here: why did the ICC and the SC decide to intervene in Sudan and Libya but not in other parts of the world, like Syria? In 2012 China and Russia<sup>22</sup> vetoed the SC Resolution (S/2014/348)<sup>23</sup>, therewith blocking the ICC from persecuting Bashar Al Assad. Frank Gardner makes the claim that Syria is the last foothold of Russia in the Middle East, which it would like to protect and did protect by preventing western intervention.<sup>24</sup> Michel Schuman builds on that by stating that the rise of the eastern block has raised red flags in the west, specifically in the United States.<sup>25</sup> Furthermore, Simon Tisdall states that the world atmosphere seems to be a replay of the 1960s.<sup>26</sup>

### **Where and why does the ICC intervene?**

Darfur is a perfect case to analyze. Sudan is part of the global south, hence its ability to establish bilateral treaties to protect its nationals from being persecuted by the Court are

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<sup>21</sup> Security Council Res/1593/2005 <http://www.un.org/press/en/2005/sc8351.doc.htm>

<sup>22</sup> BBC News. "Russia and China Veto UN move to refer Syria to ICC." *BBC News*, May 22, 2014, <http://www.bbc.co.uk/news/world-middle-east-27514256> (accessed July 30, 2015).

<sup>23</sup> Security Council S/2014/348 [http://www.un.org/en/ga/search/view\\_doc.asp?symbol=S/2014/348](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2014/348)

<sup>24</sup> Frank Gardner, "Russia in the Middle East: Return of the Bear", *BBC News UK*, November 14, 2013, <http://www.bbc.co.uk/news/world-middle-east-24944325> (accessed July 30, 2015).

<sup>25</sup> Michel Schuman, "Why do we fear a rising China", *Time Magazine*, June 7, 2011, <http://business.time.com/2011/06/07/why-do-we-fear-a-rising-china/> (accessed July 30, 2015).

<sup>26</sup> Simon Tisdall, "The new Cold War: Are we going back to the bad old days?", *The Guardian*, November 19, 2014 <http://www.theguardian.com/world/2014/nov/19/new-cold-war-back-to-bad-old-days-russia-west-putin-ukraine> (accessed June 31, 2015).

smaller compared to its neighbor Egypt for example. The United States government, on the other hand, has consistently opposed an international court that could hold US military and political leaders to a uniform global standard of justice. Washington began to negotiate bilateral agreements with other countries, insuring immunity of US nationals from prosecution by the Court. As leverage, Washington threatened termination of economic aid, withdrawal of military assistance, and other painful measures.<sup>27</sup> Putting the economic power of the US and Sudan in contrast, would Sudan have been able to do the same agreements? No. Sudan was thus presented as an “easy” target for the ICC.

The question here is, who does it benefit that the African continent is unstable? Hannah Brock makes the argument that in the new globalized world we live in, new challenges have risen for the international community, and more specifically for the global hegemonic powers. These challenges include rapid militarization of the world, competition of resources, climate change, and marginalization of the majority of the world. She analyses that the global north that wish to dictate global political and economic security can no longer ignore the voices of the global south. She claims that the global north, or the drivers of insecurity, dismisses the notion of national boundaries when for instance challenges or threats to their interests arise, and predicts that the west will either intervene or collaborate with states, whose domestic policy violates the liberal democratic values, when it serves their national interest.<sup>28</sup> She further argues that the idea of “war on terror” which the global north is now “fighting”, is an example of artificial insecurity to place the mindsets of nationals in a state of fear, to justify their use of hard and soft force,

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<sup>27</sup> Global Policy Forum, “US Opposition to the International Criminal Court”, *Global Policy Forum*, December 2003, <https://www.globalpolicy.org/us-un-and-international-law-8-24/us-opposition-to-the-icc-8-29.html> (accessed July 31, 2015).

<sup>28</sup> Hannah Brock, “Bridging the North-South Divide: Sustainable Security for all”, *Oxford Research Group*, (January 1, 2011): 2-7.

to ultimately protect their interests in the global south.

How does economics fit into the liberal ideology of the global north? To what extent does the Beijing Consensus and its economic effects in the global South play a role in how the ICC focuses on Africa? According to Ellen Lammers of *The Broker Newspaper* China has been challenging the West with the Beijing Consensus<sup>29</sup>, by extending not only economic investments to poorer African Countries but also by extending free-of-political-constraints aid, loans and investments. She argues that China's growing presence, and ultimately the presence of the former communist bipolar atmosphere in the global sphere is alarming to the unipolar superpower, the United States and by extension the Bretton Woods institutions such as the International Monetary Fund (IMF) and its Structural Adjustment Programs (SAPs).<sup>30</sup> The argument here could be made that the African nations preferred the Beijing Consensus over the Washington Consensus due to many viewing the Washington Consensus as a "universal convergence"<sup>31</sup> that was made for the people of the global south starting with Latin America without their voluntary approval. This gave rise to the idea that the western liberal model is the "good" model and that the western nations have a moral obligation to export what has worked for them to the rest of the world.

Investigating the presence of beneficiaries in Libya, the United States is the biggest beneficiary. After the presence of Chinese aid and investment in Libya, which exceeded 20 billion USD<sup>32</sup>, their investments were dramatically affected, pushing the Chinese

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<sup>29</sup> Joshua Cooper Ramo. "The Beijing Consensus", *The Foreign Policy Center*, (May 11, 2004): 7-21 <http://fpc.org.uk/fsblob/244.pdf> (accessed August 1, 2015).

<sup>30</sup> Ellen Lammers, "How will the Beijing Consensus Benefit Africa?", *The Broker*, March 22, 2007, <http://thebrokeronline.eu/en/Articles/How-will-the-Beijing-Consensus-benefit-Africa>

<sup>31</sup> John Williamson, "Democracy and the `Washington Consensus". *World Development*, 21 (8),(1993): 1329-1336. [http://www.visionaryvalues.com/wiki/images/Williamson\\_DemocracyandWashingtonConsensus.pdf](http://www.visionaryvalues.com/wiki/images/Williamson_DemocracyandWashingtonConsensus.pdf)

<sup>32</sup> Michael Kan and Belinda Yan, "China's Investments in Libya", *The African Business Journal*, 2013 [http://www.tabj.co.za/northern\\_africa/michael\\_kan\\_and\\_belinda\\_yan\\_assess\\_what\\_chinese\\_investors\\_will\\_n.html](http://www.tabj.co.za/northern_africa/michael_kan_and_belinda_yan_assess_what_chinese_investors_will_n.html) (accessed August 1, 2015).

government to call for the protection of its interests<sup>33</sup>.

### **Reforming the ICC**

The Rome Statute of the ICC upholds the responsibility to pursue justice when the most brutal crimes against humanity occur. The ICC Statute pledges: “The most serious crimes of concern to the international community must not go unpunished.”<sup>34</sup> The novel mechanism to exert jurisdiction over state parties to the treaty intends to enforce international law to protect human rights. Nonetheless, the ICC’s ability to pursue its objectives remains tethered to politicization and dependency. The United Nations Security Council, explored later in this essay, can limit the ICC’s scope when investigating gross human rights violations. However, the creation of the Court is an important achievement of international law. The Court has the potential to materialize the project of global justice, imparting and defending human rights in states incapacitated or unwilling to protect individuals within their borders.<sup>35</sup> However, the element of power politics embedded in states’ interests might cripple the ICC’s objectives.

Franceschet’s critical model, originated from Marxist thought, offers useful mechanisms to transcend power politics. The model seeks to determine both the source of oppression and the relationship between dominant legal norms and emancipatory politics.<sup>36</sup> The recognition of the marriage between high politics and the reform of the

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<sup>33</sup>Michael Martina and Chris Buckley, “China urges Libya to protect Investments.” *The Reuters*, August 23, 2011 <http://www.reuters.com/article/2011/08/23/us-china-libya-oil-idUSTRE77M0PD20110823> (accessed August 1, 2015).

<sup>34</sup> International Criminal Court. *Rome Statute*, (1998): 1.

<sup>35</sup> Franceschet, A. "The Rule of Law, Inequality, and the International Criminal Court." *Alternatives: Global, Local, Political* (2004): 25.

<sup>36</sup> Franceschet, A. "Cosmopolitan Interventions and the Global Rule of Law." *The Practice of Humanitarian Intervention & Changes in International Law*. Turin: Sixth Pan-European International Relations Conference, 2007, pp. 1-16

world order is evident in the workings of the Court. However, the ICC as an institution of global justice should utilize its capacity to influence the exercise of politicized justice into an emancipatory project for equality. Indeed, the Court's practice of international law as a regulative idea can engender a new world order. The Court's application of international law and juridical decisions can help the law evolve to the point of "supporting different political orientations towards world order."<sup>37</sup> Therefore, the ICC is also a reflection of "changing perceptions of how the rule of law relates to larger problems of global inequality."<sup>38</sup> Thus, the ICC's role in reforming world order by protecting human rights and changing the practice of international law moves humanity closer to the condition of global justice.

### **Conclusion**

In sum, the ICC is an extension of Western Imperialism in Africa that is driven/engine by the interests of the five permanent members of the Security Council. The Security Council under articles 13 and 16 of the Statute of Rome has weight to authorize the ICC to issue arrest warrants and open investigations in countries that have signed but have not yet ratified the Statute. Andrew Moravcsik makes the argument that the liberal ideology of the West is initially driven by the ideas of Keynesian economic theories, making their political decisions driven by their economic interests.<sup>39</sup> This argument makes the understanding of the decisions by the Security Council to intervene in Sudan and Libya very easy to understand. It is a struggle between the new global economic power, China,

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<sup>37</sup> Franceschet, A., 2004, p. 28.

<sup>38</sup> Franceschet, A., 2004, p. 23.

<sup>39</sup> Andrew Moravcsik. "Liberal Theories of International Law." in *The State of the Art*, eds. Jeffrey L. Dunoff and Mark A. Pollack. (United States: Princeton University Press, 2012): 2-14.

and the western states (US, UK, and most of the EU states), after China has effectively taken most of the African continent under its sphere of influence. Martin Jacques statistically highlights in his book *When China Rules the World*, how the appearance of the west in regards to import and export has been immensely affected since 2007, after China started establishing bilateral treaties with individual African states, including Sudan as one of the major Chinese import source<sup>40</sup>, under the Beijing Consensus, without applying the conditioning factor that the west and the Washington Consensus have imposed on them. Henceforward, I believe that the ICC is only a tool for the western powers to use to create instability in regions of interest to them to indirectly affect their economic opponents. One could even go as far to call this an economic Cold War between the Washington consensus and the Beijing Consensus. I therefore believe that international criminal law and International law as a whole are only there to serve the global order of exploited and exploiter, by taking the form of international organizations that mask the western imperialism that is taking place.

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<sup>40</sup> Martin Jacques, "When China Rules the World", (2012): 414-422.

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