Hacettepe University Graduate School of Social Sciences
Department of International Relations

THE INTERNATIONAL CRIMINAL COURT: AN AUTONOMOUS AGENT OF HUMAN SECURITY?

Rana Baltacı

Master's Thesis

Ankara, 2014

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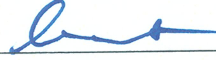

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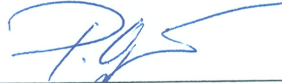

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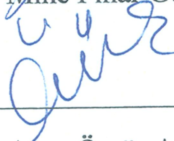

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Rana Baltacı

To My Brother

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I would like to express my sincere appreciation and gratitude to my advisors, Assoc. Prof. Müge Kınacıoğlu and Assoc. Prof. Havva Kök Arslan. They offered the knowledge, guidance, encouragement, and emotional support throughout my master's study. I count myself lucky to find the opportunity to work with them and gain from their knowledge and guidance.

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ÖZET

BALTACI, Rana. *Uluslararası Ceza Mahkemesi: Birey Güvenliğini Temel Alan Üstün Bir Araç Mıdır?*, Yüksek Lisans Tezi, Ankara, 2014.

Bu çalışma, birey güvenliğinin zirvesi kabul edilen Uluslararası Ceza Mahkemesinin incelemesi üzerinden güvenlik çalışmalarına alternatif bakış açılarını bir arada sunmayı amaçlamaktadır. Eskiden, güvenlik çalışmaları devleti temel alırdı. Bu sebeple, ulusal ve uluslararası güvenlik konuları, güvenlik çalışmalarının incelediği temel konular olmuştur. Soğuk savaş sonrası dönemde, güvenlik konuları, tehdit algılamasının değişmesiyle değişikliğe uğradı. Artık devletin varlığı, esas güvensizlik ve istikrarsızlık sebebi haline geldiğinden, devletler değil bireyler devlete karşı koruma altına alınmalıydı. Dolayısıyla, güvenlik çalışmaları sivillerin güvenliği üzerine yoğunlaştı. Birey güvenliği kavramı nispeten yeni olmasına rağmen devletler, sivil toplum kuruluşları ve uluslararası örgütler tarafından büyük ölçüde desteklendi. Kavramsallaştırılmasının ötesinde, birey güvenliğinin uygulamaya konması, kalıcı bir uluslararası ceza mahkemesinin kurulmasıyla can buldu. Uluslararası Ceza Mahkemesi, bireyler üzerinde yargılama gücüne sahip ve uluslararası örgütlerden tamamen bağımsız bir mahkeme olarak tasarlanmıştır. Bu yapısıyla yürürlüğe girdiğinden, oldukça etkin ve tarafsız bir mahkeme olması bekleniyordu. Ancak, ilk 12 yılında, sadece Afrika odaklı dava seçimleri yüzünden şiddetli eleştirilere maruz kalmaktan ve ABD'nin mahkeme karşıtı propagandasıyla güvenilirliği zedelenen bir mahkeme olmaktan öteye geçemedi. Genel olarak, bu çalışma, uluslararası ceza mahkemesinin birey güvenliğini temel alan üstün ve etkili bir güç olup olamadığını tartışmaktadır.

Anahtar Kelimeler

Uluslararası Ceza Mahkemesi, Birey Güvenliği, Roma Statüsü, Uluslararası Ceza Mahkemesi Davaları, Uluslararası Ceza Mahkemesi Karşıtı Propagandalar.

ABSTRACT

BALTACI, Rana. *International Criminal Court: An Autonomous Agent of Human Security?*, Master's Thesis, Ankara, 2014.

This study aims to present a completion of alternative perspectives to security studies through the analysis of the international criminal court which is accepted as the culmination of human security. It was the 'state' that was referred as the referent object in security studies. Thus, national and international security concerns were the core issues examined in security studies. After the end of the Cold War, security concerns multiplied with the shift in threat perceptions. Now that the existence of the state has been the principal reason of instability and insecurity, there should be protection for the individuals, not the states. Hence, the security studies also concentrated on the security of the civilians. The concept of human security is a relatively new issue and it is considerably supported by states, NGOs, international organizations. Beyond its conceptualization, the implementation of the human security has been most vivid with the establishment of a permanent international criminal court that is based on human security, namely the International Criminal Court (ICC). The Court has jurisdiction over individuals and it has been designed as fully independent from international organizations. Since it entered into force with this structure, it was expected to be highly efficient and unbiased court. However, in its first twelve years, the Court was severely criticized with its case selection (mostly concentrated on Africa) and it was considerably undermined with the anti-ICC campaign of the USA. In general, this thesis argues that the ICC could not be an effective and autonomous agent of human security although its statute was designed as giving nearly no room for abuses and misinterpretations.

Key Words

International Criminal Court, Human Security, Rome Statute, ICC Cases, Anti-ICC Campaign.

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LIST OF ABBREVIATIONS

AFDL: Alliance of Democratic Forces for the Liberation of Congo

AFRC: Armed Forces Revolutionary Council

ARLA: Revolutionary Army for the Liberation of the Azawad

AMICC: American American Non-Governmental Organizations Coalition for the International Criminal Court

ASAP: Assembly of State Parties

ASPA: American Servicemembers' Protection Act

AU: African Union

BIAs: Bilateral Immunity Agreements

CAR: Central African Republic

CNRDR: National Committee for the Restoration of Democracy and State

CW: Committee of the Whole

DRC: Democratic Republic of Congo

EU: European Union

FDLR: Democratic Forces for the Liberation of Rwanda

FIDH: International Federation for Human Rights

FNI: Nationalist and Integrationist Front

FPLA: Front for the Liberation of Azawad

FPLC: Patriotic Forces for the Liberation of Congo

FRPI: Front for Patriotic Resistance in Ituri

HRW: Human Rights Watch

ICJ: International Court of Justice

ICRC: International Committee of the Red Cross

ICTY: International Criminal Tribunal for former Yugoslavia

ICTR: International Criminal Tribunal for Rwanda

ILC: International Law Commission

IPEP:	International Panel of Eminent Personalities
JEM:	Justice and Equality Movement
LRA:	Lord's Resistance Army
MNLA:	National Movement for the Liberation of Azawad
MOJWA:	Movement for Oneness and Jihad in West Africa
MONUC:	United Nations Mission in the Democratic Republic of Congo
MPA:	Popular Movement for the Azawad
NGO:	Non-governmental Organization
ODM:	Orange Democratic Movement
OTP:	Office of the Prosecutor
PREPCOM:	Preparatory Committee
PNU:	Party of National Unity
R2P:	Responsibility to Protect
RDC:	Congolese Rally for Democracy
RDP:	Rassemblement des Republicans
RPF:	Rwandan Patriotic Front
RUF:	Rebel United Front
SCSL:	Special Court for Sierra Leone
SLM/A:	Sudan Liberation Movement/Army
SPLM/A:	Sudanese People's Liberation Movement/Army
UK:	United Kingdom
UN:	United Nations
UNDP:	United Nations Human Development Report
UNPROFOR:	United Nations Protection Force
UNSC:	United Nations Security Council
UPC:	Union of Congolese Patriots
UPDF:	Uganda People's Defence Force
USA/US:	United States of America
USSR:	Union of Soviet Socialist Republics

INTRODUCTION

Although it is stated that the conceptual basis of human security dates back to the era of Enlightenment, human security concept and humanitarian approaches are being promoted since the beginning of the 20th century (Ovalı, 2006, p. 3). Since the Treaty of Westphalia human security has been accepted as a part of national security and it was believed that there could not be human security without national security. However it was later problematized that the most important element of a state is to protect its citizens instead of national security (Jackson and Sorensen, 2007, p. 2). The approaches were also more likely to be state-centric to explain and understand the state-centered relations. In state-centric system, the focus used to be on the conflict among states as the threats were assumed to be against the existence of the state. However, especially after the end of Cold War with the rise of globalization and increasing interdependence among states, the threat perceptions have also changed (Newman, 2001, p. 243-245). It has been contended that threats can be against any actor at any level (state-individual or international) in international arena and it can even come from the state itself. These changes have also affected the power and role of the individual rights and humanitarian approaches. They have begun to gain more and more importance and they have begun to shape the international relations (IR) as well. One of the critically important improvements in human security studies is the establishment of the International Criminal Court (ICC). It is accepted as the culmination of humanitarian approaches and the beginning of the international legal community (Ovalı, 2006, p. 22-25).

The main aim of this study is to argue the effectiveness of the international criminal court as a supranational and autonomous court based on human security. In this regard, the basic research question is: ‘Is the International Criminal Court an autonomous agent of human security?’ In the beginning, some definitional points should be clarified for better understanding of the research question and main argument. The term ‘autonomous’ is used as ‘supranational, independent and having the power to make its own decisions and having the freedom to govern itself when controlling its own affairs’ throughout the thesis

(Dictionary.cambridge.org, 2013; Oxforddictionaries.com, 2013). The term ‘agent’ is used as ‘one who exerts power or has the power to act, an actor’ (En.wiktionary.org, 2013). Another commonly used term is ‘human security’. This term does not refer to protection of human through state security. Rather, it refers to ‘protection of humans from violent and non-violent threats and from direct and indirect threats’ (Alkire, 2008, p. 2-5, p.8).

In terms of literature review, this thesis includes books, articles, newspapers, internet sources and some other relevant sources. Although the thesis mainly concentrates on the critiques of the international criminal court as an autonomous agent of human security, it is important to note here that there are many supporter voices in the literature. One of the main active supporters of the ICC, William A. Schabas (2011) claims that this court constitutes ‘a new era in the protection of human rights’ (p. 26). For Schabas, ICC is already designed as an autonomous agent of human security and it functions in the same way despite the anti-ICC campaigns. Schabas (2011) further presumes that the support for ICC will increase which will affect the credibility of the court as well (p. 25-34). On the other hand, Marlies Glasius (2002) points out the growing support for the ICC both from the international community and from the NGOs and other humanitarian organizations (p. 137-168). Benjamin Schiff (2008) also emphasizes that other previous humanitarian judicial bodies were temporary; however, ICC will be the only and most commonly supported criminal court (p. 1). Catherine Gegout (2013) also claims that it is a newly established court, thus, in first years, it is normal to have some deficiencies. In the first years and first investigations, it can be claimed that there were prone to be criticized for applying selective justice since the so far conducted and some ongoing investigations and prosecutions were heavily one-sided. However, some of these deficiencies have already been eliminated. According to Gegout, it can be observed in the latest investigation of the ICC, which is on the situation in Mali, that both sides of the conflict (government forces and the rebels) have been under investigation, which leaves no room for claims of selective justice (p. 807). Still, the thesis does not deny the claims of the supporters. Rather, it

attempts to build its argument on the criticism of the international criminal court as an autonomous agent of human security.

The methodological approach in this study is qualitative and normative. Throughout the thesis, the concept of human security is the guide to support the main argument. In this vein, the thesis seeks two main purposes. First, it tries to examine the conceptual and practical dimensions of human security and then, to examine the International Criminal Court as an autonomous agent of human security. Since the main argument of this study is multidimensional, the thesis attempts to answer the following sub-questions as well:

- What is the conceptual reach of human security?

- How much comprehensive and responsive is the concept of human security in definitional terms?

- To what extent did the previous *ad hoc* international criminal tribunals contribute to the establishment of a permanent international criminal court?

- To what extent do the structure and the scope of Rome Statute of the ICC represent the human security?

- Are the investigations and prosecutions conducted by the ICC biased and against the nature of human security?

- Can the ICC be blamed for practicing selective justice?

In this regard, this thesis consists of five chapters. In the first chapter, the thesis focuses on the conceptual framework, scope and content of human security. Various definitions, and definitional arguments are included in this chapter. The question whether the ICC is able to

become an autonomous power in international system or not is examined from human security perspective in a conceptual way. The effectiveness of the concept of human security as a concept and as a foreign policy tool is discussed in the final part of the chapter. The second chapter of the thesis deals with the historical background of the ICC, namely, the previous developments and tribunals as well as the birth of the idea of an international criminal court. The effects and contributions of previous, military tribunals are discussed in the process of establishment of ICC. The establishment of a permanent international criminal court was the main subject of the third chapter. To understand the effectiveness of the ICC, this thesis analyzes the developments during the road to the founding treaty of ICC and the details of the articles included in the treaty. In the fourth part the trials of ICC, i.e. investigations and prosecutions so far and the latest improvements in these trials are discussed. In the final part of the study, the limits of ICC, its effectiveness, and its influence on security studies are discussed.

Within this context, this study does not aim to bring a new and an alternative argument. Instead, it attempts to combine different critiques into one study. The purpose of this study is to show the limits and problematic ways of international criminal court as an autonomous agent of human security to the policy and theory makers. In this vein, there could be further studies to make the court function in a more autonomous way or to make plans for a new and more effective international judicial body.

CHAPTER 1

HUMAN SECURITY

The aim of this chapter is to provide a conceptual framework to the thesis. In this regard, firstly, there will be a historical background regarding the concept of human security. Following this, the definitional vagueness and the problematic ways of the concept will be analyzed so that this chapter will be a guide for the following chapters. The state practice of human security will be included in the final part of this chapter. In parallel with the analysis of state practice, the theoretical and practical clash of the concept of human security will be discussed. Throughout the thesis, there will be the analysis of the effectiveness of the international criminal court as an agent of human security. Thus, this chapter will give the necessary conceptual framework to question it.

1.1. THE EVOLUTION OF THE CONCEPT OF HUMAN SECURITY

Security has always been a controversial issue. Although the state system has been in a constant progress and change from the very beginning of the existence of states, the security concerns and the issue of security itself have preserved their importance in IR. Since the establishment of nation-state system after the Treaty of Westphalia 1648, the state has been defined as 'a clear cut territory with a permanent population under the jurisdiction of supreme government that is constitutionally independent of all foreign governments' (Jackson and Sorensen, 2007, p. 2). By implication, security is considerably accepted as related to the protection of these principle elements of state. Thus the first and foremost referent object of security has been the state. Though each and every state is sovereign, due to the anarchical nature of the international system, states should help themselves to survive among other states. This state-centric security approach gave way to

the idea of national security and was largely adopted by realist tradition in IR. It was the prevailing view in practical domain until the end of the Cold War. When the dominance of realist thinking has proved to be insufficient to explain and understand the new political concerns, many scholars have argued for a new or expanded security approach. From then on it has been argued that the conflicts among states which were mostly because of territorial or hegemonic reasons have ended. Before the end of the Cold War, the general belief was that the security meant state security and human security could only be provided with the state security (Neack, 2007, p. 199). However, after the Cold War, with the rise of new conflicts the states have become the source of human insecurity. It has increasingly been stated that there is a need for redefinition of security. As a result, the emphasis on human security has increased in security studies as well as in policy circles.

Admittedly, the human insecurity and security are not new-born concepts. There are some records of certain direct security threats against humans even in 2000BC (Alkire, 2003, p. 9). However, the significance of security and insecurity has only recently found expression in IR. According to Edward Newman, there are basically three reasons which have forced the change in security perception. The first one is systemic change, i.e. the 'end of Cold War and the bipolar state-system'. The probability of conflict among states has decreased so the scope of the conflicts has started to change. Lack of a bipolar system is argued to lead to lack of threats in terms of state-level. So issue of security of states becomes secondary. Second factor that affected the development of the concept of human security is 'globalization'. The interdependence and the relations among states increased and the need for common interests both in terms of economy and politics has been accentuated. Furthermore, the difference between national and international concerns has disappeared (Newman, 2001, p. 242). That is, once an environmental problem was only concern of a state because of its sovereign rights over its territory , however, it has now been seen that one of the problems in a state in the world can be a threat for other states so it should be handled with the cooperation of all states. Especially in terms of security if

there is insecurity in a state, even if the problem is an internal issue, it is a matter for other states. Such concerns were humanitarian for the most of the time.

For Thomas and Tow, the development of human security concept has had three stages. The differences among the policies of states lead to inequality and vulnerability among individuals. For these individuals have been left so vulnerable and are unable to protect themselves. ‘People require some form of international intervention to gain freedom from want and fear’ which are the fundamental objectives of human security (Thomas & Tow, 2002, p. 178).

Chandler’s remark is also an alternative one which has some similarities with Newman’s. According to Chandler (2012), human security was born after the end of Cold War with the change in understanding of national security and national identity. The basic change is the change of perception of state as a security agent (p. 218). Similarly, as it was stated by Newman (2001), it is increasingly argued that the external and internal politics should not be considered separately. Instead, national and international politics are started to be conceived as parts of the same whole. Thus, it was argued that the primary security object should not only be the state as it was (p. 241). States are taken to have legitimate right over the protection of human beings in any part of the world justified by ‘natural law, cosmopolitan law and global ethics’ (Chandler, 2012, p. 218-9).

Others argue that the concept of human security dates back to era of the Enlightenment. However, this concept has recently found a room for itself in security studies after the end of Cold War with the change in perceptions of threats (Ovalı, 2006, p. 3). To Ovalı (2006), the increasing focus on human security especially in 1990s is not a coincidental issue. The humanitarian grievance and increasing human rights violations in 1990s because of the intra-state, ethnic, religious conflicts are the basic events that have led to a shift to security of humans rather than states. When states are unable to end these grievances effectively, it was argued to be the responsibility of all states to do so (p. 3-4). However, this approach

dethrones the concept of sovereignty of states. In international system, all states are accepted as sovereign and non-intervention is the rule. Therefore, even if there are serious human rights violations and human grievances, no state is entitled to intervene. The shift from understanding of absolute sovereignty has become the impetus for change in security studies. Ovalı (2006) also points out revolution in communication as a factor which has a deep impact on the transition from state-centric to human-centric security approach (p. 18). With the rapid improvements in communication technologies, the humanitarian grievances around the world have become too obvious to ignore. Due to these developments in IR, most security scholars have argued that traditional security approaches should be redefined and reformulated according to the rapid changes of the time. Another leading scholar, Richard H. Ullman, emphasized the need to redefine the national security by taking the new and more humanitarian security concerns into consideration (Ullman, 1983, p. 129-130).

Within the theoretical domain, there appeared approaches, which are born against the dominant, state-centric realism after 1990s. Although these approaches are different from one another, their common point is that they all have had positive effect on the conceptualization of human security. For example, the Third World security studies claim that security studies should be reshaped to meet the need of the Third World countries by drawing the attention to the human security issues in the Third World (Ovalı, 2006, p. 9). On the other hand, Copenhagen School has made important contributions to the concept of human security as well. Among others, Barry Buzan claimed that it was not possible to stand up to the post-Cold War security threats with traditional military-based security understanding. He argued that in addition to military security, regime security, economic, societal and environmental security concerns should be taken into consideration (Buzan, 2008, p. 107,119). Critical security studies have also contributed to the issue. For them, ‘Theory is always for someone and for some purpose’ (Robert Cox, 1981, p. 128). They argue that any theory cannot be unbiased and objective. Thus, realism and the other state-centric approaches are socially and politically constructed and misled security studies

(Jackson & Sorensen, 2007, p. 292). It is hard to say that all these different approaches have direct relations to human security. Nevertheless, they all helped to reveal that the traditional state-centric security approaches are not sufficient to explain the new security concerns.

In short, it can be said that the need for a new approach to security has become inevitable especially in the aftermath of Cold War, with the change in threat perceptions which are heavily and increasingly affecting humans in a direct way and with the contributions of the alternative and unconventional approaches and theoretical studies.

1.2. THE DEFINITION AND CONTENT OF HUMAN SECURITY

The definition of human security is rather a controversial issue for it is a recent and in-progress concept. At the outset it should be emphasized that 'human security is not a theory; it is supported by theories' (Newman, 2001, p. 249). Therefore, the debates are not much theoretical. Rather, they are in search of conceptualization. It is important to note that a clear definition of human security is the key for the problem of application of the concept in foreign policies of states (Alkire, 2003, p. 9).

1.2.1. Human Security in 1994 UN Human Development Report

As mentioned earlier, it is generally claimed that the philosophical base of human security dates back to Enlightenment. However, most of the recent definitions are based on the 1994 UN Human Development Report (UNDP). The concept of human security was defined in this report for the first time. In this report, human security is defined as:

> 'safety from the constant threats of hunger, disease, crime and repression. It also means protection from sudden and hurtful disruptions in the pattern of our daily lives-

> whether in our homes, in our jobs, in our communities or in our environment' (UNDP, 1994, p. 3).

It is clear from this definition that human security does not have any common characteristics with state or national security. Contrary to the national security concept, whereby the object to be secured is 'state' from threats to their sovereign rule, it is about humans and the possible threats to them. However, there are many kinds of threats that directly threaten the daily lives of human beings such as poverty, famine, economic crisis, diseases, political pressure etc. These are left untouched and ignored because of the gravity of so-called 'high politics issues' in IR (Ovalı, 2006, p. 18-19). With the UN development report, the security perception and the referent object of security have changed drastically. In other words, the claim that 'the world can never be at peace unless people have security in their daily lives' found expression (UNDP, 1994, p. 1). According to this report, human security should be regarded as not only preventing threats to human life but also protection of humans against any critical changes that can be harmful in daily lives of individuals and societies (Ovalı, 2006, p. 19).

According to the classification of 1994 UN report, human security has mainly seven new dimensions that are complementary parts of it. The first one of them is 'economic security' which requires basic and regular income and economic protection for people. Second one is 'food security' which is based on the assumption that people should have enough food for their survival. Third one is 'health security' because in most parts of the world people are suffering from serious diseases and the rate of death is so high. Rather than violence and military threats, their lives are under the threat of simple infectious diseases. Fourth one is 'environmental security'; even today the world has many vital environmental problems like pollution and insufficiency of water. If the environment where human beings will live cannot be protected and used wisely with a common consciousness and cooperation among states, the results can be deadly and irreversible. Fifth one is 'personal security' which provides 'security from physical violence'. This security should be against

any kind of physical violence. People should be secured against wars, conflicts, crimes, threats from their own states or external threats. The sixth one is ‘community security’ which is one of the reasons of conflicts of post-Cold War era. The term community should be regarded in large scale. Even families which are the tiniest example of community and ethnic groups and tribes can be examples of community. The security of people in their community is also so important for them since many ethnic and tribal conflicts have been experienced since 1990s. The seventh one is ‘political security’ which depends on being free from any political repression and being able to enjoy human rights (UNDP, 1994, p. 25-33).

Most importantly, the report has made the distinction between ‘freedom from want and freedom from fear’. These two important features of definition of human security are also a useful summary of new dimensions of security. ‘Freedom from want’ can be interpreted as security from any non-violent threats whereas ‘freedom from fear’ refers to security from any violent threats (Axworthy, 1997, p. 189).

Within the context of this report, it can be concluded that the concept of human security has some distinctive features. First, it includes and addresses every man in the world, it does not discriminate and it has a universal scope. Second, the dimensions of human security (personal, environmental, economic, political, community, health and food security) are interrelated and ‘interdependent’, for there cannot be food security without personal security or if people are insecure environmentally, this could also affect their health (Alkire, 2003, p. 13). Third, human security is only human-centered. Contrary to other human security conceptualizations which is centered on expansion of the scope of national security by adding some new aspects, human security does not share common interests with national security. More precisely, ‘human security’ does not aim to secure the state through securing people. Finally, the threats to human security should be addressed and prevented before they occur physically (Alkire, 2003, p. 13).

1.2.2. Definition and Scope of Human Security

Although the main definition of human security is the one drawn in the 1994 UN Report, there are many other different and alternative definitions of the concept. While some definitions end up with supporting and strengthening the state-centric security approach, some others have contributed to and changed this concept of security. One of the most commonly accepted definitions of human security is that 'the objective of human security is to safeguard the vital core of all human lives from critical pervasive threats, in a way that is consistent with long-term human fulfillment' (Alkire, 2003, p. 2).

In addition, according to this conceptualization, human security should give the priority to human development by avoiding the direct and indirect threats against human beings and human development should not be state-centered and discriminatory. Rather, it should be people-centered and 'protect the fundamental rights and needs of human beings' (Alkire, 2008, p. 2-5, p.8).

Another scholar presented human security is as 'the central principle of international humanitarian law'. According to this understanding, 'the root of it is to civilize warfare, to aid its victims and to reduce their sufferings' (Suhrke, 1999, p. 269). Although there are various definitions and conceptualizations for human security, it can be said that the emphasis on people and their lives runs common in all. In its basic sense, human security is 'an alternative way of seeing the world, taking people as its point of reference, rather than focusing exclusively on the security of territory or governments' (Suhrke, 1999, p. 269).

Another definition has been offered in the 'Human Security Now' report of the Commission on Human Security in 2003. It states that 'the objective of human security is to protect the vital core of all human lives in ways that enhance human freedoms and human fulfillment' (Human Security Now, 2003). Ovalı (2006) identifies 3 characteristics of human security. First characteristic is 'its referent object'. The referent object should be

individuals not the states or the international community. Second, people and their lives should be the primary security concerns in security studies. Finally, people should be protected and secured against both direct and indirect threats (p.19).

According to Thomas and Tow (2002), ‘state-security and human security are interlinked’ in that human security can be guaranteed only with the security of states and state security, on the other hand, derives and strengthens its legitimacy through human security (p. 379-80).

Ellen Seidensticker (2002) has provided for an alternative definition that has focused on a different component of human security, which is the relation between human security and human rights. For Seidensticker (2002), human security is a concept that can limit the sovereign power of state. As the states violate human rights by abusing their sovereign power; a more human-based approach is required so that states are forced to reshape their power politics. On the other hand, human security provides an opportunity firstly for individuals and for societies to develop economically, culturally and socially. Lastly, it is assumed that if human security is given emphasis, the incoherence and the contradiction between human rights practices of states will gradually disappear (p. 1).

Edward Newman (2001), on the other hand, presents four basic perceptions of human security to provide a coherent definition. The first one is the approach which has been coined by UN Development Report. For Newman the only weakness of this report is that there is not enough room for human development (p. 243). Human development is defined in 1994 Human Development Report as ‘providing economic growth, life opportunities for present and future generations by enlarging human capabilities in all fields including economic, social, cultural, and political’ (UNDP, 1994, p. 4). The second perception of human security is stated as ‘assertive / interventionist focus’. The basic assumption of this approach is that ‘the security of the state does not necessarily ensure the security of its citizens’ (Newman, 2001, p. 243). Thus when it becomes clear that a state is incapable in

securing its citizens, the sovereign rights of states should be suspended the humanitarian intervention should be acceptable. This approach makes it clear that humanitarian intervention can be an instrument of human security in politics. Third complementary approach is 'social welfare / developmentalist focus' that is based on UN Development report but distinctively, this approach provides opportunity for human development only in economic and intellectual fields. Finally, Newman (2001) refers to 'New security focus'. This approach includes mostly non-traditional security concerns (such as drugs, epidemics, terrorism) which are the outcomes of globalization and increasing interdependence among states (p. 245). According to Newman (2001), human security is briefly human-centered; it focuses on providing basic needs of human by not ignoring human development and its main concern is protection of people against traditional and non-traditional threats even by placing sovereignty in secondary status when it is deemed necessary (p. 243-245).

1.3. LIMITATIONS OF THE CONCEPT OF HUMAN SECURITY

In terms of theory and conceptualization, it is generally argued in the literature that the first and foremost need is a clear definition of human security leaving no room for debates. However, the most important deficiency of the concept is due to the variety of definitions which refer to different components. Definitions cover so many concerns which are too wide and too general to be handled in an effective way. Along with the definitional problems, there are other restrictive factors deriving from the nature of politics.

First of all, to address humanitarian issues comprehensively is costly and it requires common interests and common identity, that is to say a global identity for the sake of humanity. Nevertheless, when the records are examined in detail, it is observable especially in state spending between 1991 and 2001 for humanitarian purposes is higher and efficient to meet many basic economic, social needs and for projects. However, especially the attacks of 9/11, the money began to be reserved for again military spending

for the security concerns of states have changed dramatically. Secondly, it is too risky for any state or any international organization to take all responsibility to apply human security in foreign policy. When an international organization, for example, has become willing to speak out on behalf of suffering people, most of the time it falls into the political limits of the organization. Furthermore, human security is presented as the ideal approach which should be appreciated by foreign policy mechanisms but states are, still, strict followers of their own national interests and this makes effective decision-making much harder (Ovalı, 2006, p. 35-38).

In short, since the determinative concerns in politics are still state-centric and human security concerns are not primarily among *high politics* issues. Additionally, states interpret and apply human security components as they desire. Although most humanitarian interventions after 1990s were claimed for the sake of protection of people, they were violent and military interventions. That was totally controversial when the basic concerns of human security are taken into consideration because human security does not merely mean security from aggression under threat of military intervention.

One other limitation of the concept of human security raised by Roland Paris (2001) is its 'vagueness':

> 'Human security is like 'sustainable development' – everyone is for it, but a few people have a clear idea of what it means. Existing definitions of human security tend to be extraordinarily expansive and vague, encompassing everything from physical security to psychological well-being, which provides policymakers with little guidance in the prioritization of competing policy goals and academics little sense of what, exactly, is to be studied' (p. 95).

Buzan, Waever and de Wilde (1998) also point out another problem of human security, that is, 'incoherence'. For this concept is too general and comprehensive it does not make contradicting issues clearer. There should be clear classifications about certain components of human security and the policies should be designed regarding the priorities that are set

by human security. So different perceptions and interpretations of human security have many points in common for example most of them are in favor of that it should be multi-dimensional and there are some prerequisites for it however the aspects are appreciated differently so the concept keeps being instable and inconsistent (p. 21-27).

For critical security studies scholars, the dominant realist security thinking which makes state as the only referent object set the priorities of the security. Without a fundamental change, in this understanding, human security cannot find fertile ground to develop (Ovalı, 2006, p. 31). On the other hand, a change in perception of humanity is indispensable; there should be a universal, abstract and commonly accepted concept of humanity and human security so that protection of human rights and the scope of any possible international intervention might be less costly and more effective. However critical security studies scholars are also against this idea because such a concept can be an outcome of Western ideologies that are biased and socially and politically constructed (Ovalı, 2006, p. 31).

Another restriction of human security has been discussed by Yuan Foong Khong. Khong (2001) claims that the purpose of human security is to bring any issues about human and human security into the political agenda as high politics issues by putting people as fundamental referent object however states and all other structures of IR are not well-prepared for this transition. First of all, there are not enough resources to meet any kind of humanitarian demands. This makes human lives more vulnerable and aggrieved which is harder to compensate (p. 231-236).

Realists have also revealed similar limits of human security. They have referred human security as 'incoherent, idealistic, utopist, non-scientific and non-policy oriented' (Ovalı, 2006, p. 51). In other words, according to realists, the state system is still assumed as anarchical and the dynamics of the state system have not been changed and have been oriented in search of power even in 21st century. States utilize the power of human security as foreign policy tools for the sake of their own interests. Thus, this new human security

approach is assumed as a mere reflection of conflict of interests and power relations among states (Chandler, 2008, p. 2-5).

In the light of all these critiques of human security, it will be reasonable to conclude that general human security is regarded as the most ideal and desired security for the sake of people, however, it has many weaknesses due to lack of clear definition and due to lack of a fundamental change in policy determinants.

1.4. HUMAN SECURITY IN PRACTICE

The most vital weakness of human security concept is its ineffectiveness in politics. Many states and international organizations have long been aware of the fact that a human-centered security approach could be the only response to most humanitarian grievances. However, as it has discussed above, they end up with different and irrelevant interpretations.

It is argued that states adopt human security as foreign policy goal as they are in struggle to have more political power in international arena. In the case of Canada and Norway, Suhrke (1999) discusses that the idea of adopting human security into political arena was first brought about in a bilateral meeting in 1998. It is argued that through human security both states have a great opportunity to acquire a new 'identity' and 'foreign policy' in international arena (p.265-6). However there are several serious distinctions between human security policies of Canada and Norway.

In Canada, human security concept was brought into the political agenda in 1993 with the increasing effect of liberals and it had gained acceleration after Lloyd Axworthy came into foreign ministry. It is claimed that according to Axworthy, the security strategies of Cold War would be insufficient to address the post-Cold War security concerns so these new

concerns should be addressed with new policies. The Canadian perception of security, which is also the fundamental concern of the human security concept, is regarded as that international and national security and peace can only be maintained by securing the individuals. Axworthy argued that the only way to achieve this aim is to create common, universal norms of human security. In this regard, it is increasingly accepted that Canada has adopted more active role in humanitarian concerns. Along with the ratification of Treaty on Ban of Landmines, Canada is assumed to play a leading role in establishment of International Criminal Court, which is accepted as the culmination of human security studies, and in international peace-keeping, peace-building operations by participating in many international operations (Ovalı, 2006, p. 22-25).

It is argued that the main aspect of human security of Canada is to 'focus on personal security from violence' (Neack, 2007, p. 203). However, it can be said that Canada has not hesitated to apply military measures as foreign policy element. As Axworthy (1997) states 'ensuring human security can involve the use of coercive measures, including sanctions and military force, as in Bosnia and Kosovo' (p. 190). Canadian human security policies can be claimed to be incoherent and contradictive. Although the claim of Canada is to provide security against both violent and non-violent threats, it can be asserted that Canada is supportive to the use of violent methods to do so. Conceptually, the human security perception of Canada can be regarded only similar to 'freedom from fear' in 1994 UN Development report. Thus it can be claimed that Canada generally deals with the violence-oriented threats whereas it disregards many social, economic, intellectual and societal matters such as poverty and human development which are among the main components of human security (Alkire, 2003, p. 20-1). As it is stated by one of the leading scholars, Canadian human security elements are 'protection of civilians, peace support operations, conflict prevention, governance and accountability and public safety' (Alkire, 2003, p. 49).

In the case of Norway, it is generally assumed that Norway has a similar perception for adopting human security. Its human security perception is accepted as focused on 'freedom

from fear' which disregards the elements of 'freedom from want'. Thus, it is generally accepted that while Norway has followed human security-oriented policy, it also supported and encouraged its NGOs and governmental organizations to participate actively in foreign policy issues. Furthermore, Norway has considerably contributed to the foundation of the 'Lysøen Group' which is also known as 'Human Security Network' and work internationally to increase international support for 'protection for civilians, landmines treaty, a permanent international criminal court, organized crime networks and children's issues' (Alkire, 2003, p. 21).

There are some slight distinctions between Canada and Norway in the expected outcomes of adopting human security to their foreign policies. One purpose of Canada to adopt human security as a foreign policy is to increase its power in international arena in general and in UN Security Council. From the very beginning of the establishment of UNSC, Canada has always been a subsidiary member of the council so its aim to be a 'progressive middle power' by supporting 'progressive values' like human rights and international humanitarian law (Suhrke, 1999, p. 266-7). In terms of human security it is invaluable for humanity to have a support from UNSC. However the real purpose is to gain more power politically which is totally contrary to the concept of human security because it is state-centric. On the other hand, Norway is in pursuit of some other political purposes. By the end of Cold War Norway has not found a chance to belong to any particular international or regional group. It was one of the states that are not a member of European Union (EU). Thanks to human security, Norway has this chance and it has tried to gain 'humanitarian large power status' (Suhrke, 1999, p. 267).

Japan is also the third state that places human security as the core of foreign policy. However the perception of Japan is a little bit different from Norwegian and Canadian human security concerns. Japan has decided to adopt human security concept especially after the Asia economic crisis in 1997. The main concerns of Japan are 'human development, environmental issues and underdevelopment' rather than military concerns

(Ovalı, 2006, p. 26). So it would be meaningful to discuss that Japan has valued 'freedom from want' more but it has also some room for 'freedom from fear'. For Japan human security can be defined as 'security from any kind of threats against people' and people are always in risk of being exposed to a threat in their daily lives. Thus, it is claimed that it is critical for governmental and non-governmental actors to be active in addressing these threats. Japan has become a part of international peace operations however rather than military involvement Japan has contributed to human security by aiding monetarily. When compared to Norway and Canada, Japanese human security-oriented policies are the most effective and long-term solutions.

Although all these countries have tried to contribute to the development of human security, all of them end up with concerning national interests and political power. Suhrke (1999) claims that these countries use this concept as an umbrella term 'to enhance their own status and to influence in the international arena' which is called 'embedded humanitarianism' (p. 267).

As it is discussed previously and as it has presented in examples, human security is almost completely flawless in conceptual terms however it is far from being effective and pragmatic in real politics. The only successful example of human security in politics is accepted as the establishment of International Criminal Court which is very skeptical because of its many problematic aspects. This argument will constitute one of the core arguments of this thesis. From the conceptual framework of human security, although the concept is relatively new, it brings about many arguments which are considerably supported by the scholars. It prioritizes human life, human needs, human protection and human rights. All these points constitute the basis of the idea of a permanent international criminal court which has jurisdiction over individuals. With the following historical background chapter, the conceptual framework of the thesis will be examined by making a comparison of the ICC with the previous ad hoc criminal courts.

CHAPTER 2

THE HISTORICAL BACKGROUND OF INTERNATIONAL CRIMINAL COURT

The idea to establish a genuine international criminal court was the desire which took a great deal of time and effort. Before the establishment of today's International Criminal Court (ICC), there were some other important institutions and developments which made the path for a universal criminal court. Thus, it is essential to examine these developments and institutions. In this chapter, the idea which gave birth to the need for an international criminal court will be examined. In addition, previous *ad hoc* international criminal tribunals, namely International Military Tribunal for Nuremberg and Tokyo, and International Criminal Tribunal for the Former Yugoslavia (ICTY) and Rwanda (ICTR) will be the issues of this chapter as the first important and concrete examples of international criminal courts. Thus, their historical backgrounds, Statutes and the differences and similarities among them will be discussed. Although it was set up slightly ahead of ICC, Special Court for Sierra Leone (SCSL) is another recent international criminal court which has jurisdiction over individuals. Due to its similar function and structure, the SCSL will be the final focus of this chapter.

2.1. THE BIRTH OF THE IDEA OF THE ESTABLISHMENT OF ICC

The original idea of establishment of a universally accepted criminal court can be dated back to as early as the 19th century. For some scholars, the idea of an international criminal court is as ancient as the idea of combination of the issues: 'international' and 'criminal' (Glasius, 2006, p. 1). At the core of this idea, it is argued that there is criminal responsibility of the rulers towards their societies. If the responsible person is the ruler

himself, he should be punished without exemption. Nevertheless, this idea was not welcomed in a state-centered system which undermines the authority and superiority of state. The idea of protection of the individuals and societies rather than states began relatively to be accepted in the political arena slowly through globalization and efforts of global civil society[1].

It is argued that in the international humanitarian law history, one of the earliest examples of an international criminal court was 1474 trial of Peter von Hagenbach. When the crimes are compared to those charged today, it can be said that Hagenbach was charged and convicted of crimes against humanity (murder, rape and perjury), which were allegedly committed during his governorship in the town of Breisach. It was an *ad hoc* tribunal which had twenty-eight judges coming from different towns and countries (Schwarzenberger, 1970, 46-51, Schwarzenberger, 1968, 462-466). Despite its similar jurisdiction and function, this trial was criticized by scholars for being victor's justice as a result of the conflict between Austria and the Holy Roman Empire at that time.

In addition to ancient examples of international criminal courts that concern individual criminal responsibility, the effect and contribution of international humanitarian treaties and organizations are important to note here. International Committee of the Red Cross (ICRC), which was established in 1863 with the aim to help and protect wounded soldiers under the name of 'Committee of the Five' at that time, is one of the most important examples of such organizations. A year later, in 1864, the committee adopted 'The Geneva Convention for the Amelioration of the Condition of the Wounded in Armies in the Field' and the Convention was signed by the many significant powers of the time. Although the Convention was seemingly to help the wounded, the main purpose was to prevent or decrease such armed conflicts. Yet, it took only four years with the break out of Franco-

[1] Global civil society is a rather political term which refers to 'people organizing to influence their world', including people outside the government and non-governmental organizations. For further information, see Glasius (2006).

Prussian War of 1870 to realize that this convention was not efficient enough to prevent such conflicts and to protect the wounded soldiers (Glasius, 2006, p. 5-7). Thus the Convention was disregarded by the party states. After this unsuccessful attempt, Gustave Moynier, who was a lawyer from Geneva and one of the founder members of ICRC, claimed that it was necessary to set up a superior international criminal court which would be deterrent against violations of the Convention instead of ignoring it as a whole (Boissier, 1985, p. 371-373). Moynier's proposal was not about a permanent court. It was rather about a temporary court. If there had been a conflict between two parties of the Convention due to any violation of it, this court would judge the responsible with its two judges from the states in conflict plus three more judges from neutral countries. In this way, the trials would be fairer and more credible. Although this proposal was not welcomed by the party states, Gustave Moynier is regarded as the father of the idea of a superior international criminal court which has jurisdiction over individuals (Glasius, 2006, p. 7).

During 1900s and 2000s, the development of the idea of an international criminal court was largely related to most of the interstate conflicts which constituted the very basis of the human security approach. Due to all these conflicts, the concept of justice had been shaped and regulated by those who were politically and economically more powerful. Even at those times whereby the defeated party was extensively viewed as the victim in terms of justice, the eventual system had always been a product of the prevailing party. Especially the war crimes that had been committed by the powerful side were overlooked and not taken into consideration effectively and sufficiently (Ulusoy, 2008, p. 4). This situation started to go through a slight change for the first time in political history in 1899. The issues of trial of the war criminals and protection of the civilians during wartime were examined in detail in the Hague Convention of 1899, to which was attended by the most important political actors of that time, including the Ottoman Empire, Japan, USA, China and 19 other states. Although this convention was successful in enacting laws of war – *jus*

in bello, it was limited and insufficient in terms of protection of the civilians during wartime (Ulusoy, 2008, p. 4).

In the subsequent second Hague Convention in 1907, the judicial criterion of ‘crimes against humanity’ was added to the previous Hague Convention of 1899 decisions. In addition, there were increased on extending laws of war at the second Hague Conference, which led to expansion of the scope of criminal justice (Ulusoy, 2008, p. 4). Nonetheless, the criminal responsibility was still regarded as a part of state responsibility. Those who were mainly responsible for the atrocities were mostly the individuals but they were not subject of neither national nor international courts. Thus, the two Hague Conferences were insufficient in terms of bringing individual criminal responsibility into international law. Yet, the regulations that were made in the Hague Conventions were regarded as having real significance for they constituted ground rules in terms of protection of human during wartime, extension of laws of war and addition of crimes against humanity (Glasius, 2006, p. 7-8).

2.2. INTERNATIONAL MILITARY TRIBUNAL FOR NUREMBERG AND THE FAR EAST

The destructiveness of World War I provided the opportunity to judge the war criminals. However, due to the economic and political interests of the states, the establishment of an *ad hoc* tribunal was not considered. Nonetheless, during the Second World War, it is widely accepted that there were secret negotiations and agreements among the Allies about the important figures who had played critical role in triggering the war.

A concrete step had been taken only towards the end of the Nazi threat, and the issue of crimes against humanity was taken into consideration in the London Conference of 1945 in a similar way it is defined in Rome Statute of today’s ICC. Nevertheless, it is important to

underline that the concept of crimes against humanity was defined by the Allies (USA, France, England, the Soviet Union). At the end of this conference, the Allies decided to establish *ad hoc* criminal courts for individuals who were responsible for war crimes. First, the International Military Tribunal for Nuremberg was set up. The main aim of this tribunal was to try some critical leaders and decision takers of Nazi Germany. These trials focused mostly on four basic crimes, which were 'conspiracy against peace', 'war crimes', 'crimes against peace' and 'crimes against humanity'. The definition of 'conspiracy against peace' included all actions, which could lead to atrocity between two states. War crimes were the actions, which were against the laws of war. On the other hand, 'crimes against peace' were defined as the violations of international law, while 'crimes against humanity' were articulated as any kind of murder, massacre, and mass killing of civilians (Kazmi, p. 2). There were four judges of these trials, each of whom were from an Allied power. The judge that was appointed by the USA was responsible for the 'common plan or conspiracy' crimes, which in effect refers to any plan of aggression, while British judge was appointed to deal with the 'crimes against peace'. The judge by Russia, on the other hand, was examining the cases related to the 'war crimes'. And finally the appointed judge by France was responsible for the cases of 'crimes against humanity'. The Nuremberg trials started in November 1945 and ended in December 1946 (Kazmi, p. 2-3).

The International Military Tribunal for the Far East, on the other hand, was created after Nuremberg Tribunal to try the significant figures of Japan. The crimes that were taken under investigation were once again the 'crimes against humanity', the 'crimes against peace' and 'war crimes'. However, there were some differences between these two tribunals. First of all, the Tokyo trials prioritized the 'crimes against peace'. Most of the allegations and the resulting penalties were related to the 'crimes against peace', while the 'war crimes' and 'crimes against humanity' disregarded as 'optional' (Tanaka, McCormack, & Simpson, 2010, p. 147). Secondly, the Tokyo trials lasted longer than Nuremberg trials, which took 13 months. The Tokyo trials started on 29 April 1946 and came to an end on 12 November 1948, and thus took 31 months. The reason for the length

of the trial is very much related to the fact that it consisted of much more members including the USA, the Soviet Union, the Great Britain, France, Canada, China, India, the Philippines, the Netherlands, New Zealand, and Australia, which in turn required the detailed compilation of documents and their translation to each member's languages (Kemp & Corriell, 2012, p. 8).

As such, the Nuremberg and Tokyo tribunals were established with the purpose of prosecution and investigation of war crimes, which were committed during the Second World War. However, there has been much criticism regarding the way this aim was carried out. It is widely argued that underlying these trails was the aim to punish the defeated states by the victors and take revenge under the cover of 'humanity' (Şen, 2009, p. 20). In this sense, they are criticized for being biased and unfair because of their many judicial and political deficiencies. The objections can be classified in two groups: 'objections to the law and existence of the Tribunals' and 'objections to the decisions and sentences of the Tribunals' (Brunner, 2002, p. 3). In terms of international law, it was argued that these trials were against the principle of 'legality', which is one of the basic rules of criminal justice. According to this principle, if a crime is committed at a time when this crime is not regarded as against law, even if this action is named as a 'crime' in a later period, no one can be judged and found guilty with the allegation of committing that particular crime (Şen, 2009, p. 21). However, in the trials of Nuremberg and Tokyo, this principle of legality was completely overlooked in that many actions that were committed during the Second World War, which were not regarded as crimes were taken into consideration in terms of crimes against humanity and war crimes. That is to say, many people were tried and penalized against law. Many of these decisions were justified by referring to *opinio juris*,[2] however, a case can only be regarded as 'opinio juris' if that case

[2] *Opinio Juris*, 'an opinion of law', is an element of customary international law and it has been interpreted by both the International Court of Justice and the Permanent Court of Justice as 'acceptance' of a particular practice by states as law. See '*Opinio Juris* in Customary International Law' by JL Slama in Oklahoma City University Law Review, 15 (2), 1990.

was adapted as an example by many of the states in international system. Besides, the sanctions and the penalties should depend on international treaties and international criminal law (Şen, 2009, p. 22).

Regarding the objections to the decisions and sentences of the Tribunals, primarily, the trials were under total control of the prevailing powers only, which made these trails seem more biased and unreliable. For example, it was the Soviet troops that invaded Poland and Finland before there was no clear threat or an act of aggression but, since the Soviet Union was among the prevailing states, its aggressions were basically ignored (Kazmi, p. 1). In addition, the concepts like 'crimes against humanity' and 'crimes against peace' were not clearly defined, thus it was debatable according to which criteria exactly, the trials had been carried out. Another criticism against these trials was about the obstruction of the right of defense. Although every criminal was allowed to defend himself, the arguments of defense were translated into only one language (usually English or French), and thus there were suspicions that there could have been some changes made to the original arguments. Moreover, it is argued that most of the defendants were compelled to acknowledge the allegations as their lives were under threat, and thus the neutrality of the trials was questionable (Kazmi, p. 4).

Despite all the criticisms, these two trials were important improvements not only for international law and the establishment of an International Criminal Court (ICC), but also for the development of the idea of human security. First of all, as it is stated by Tanaka, McCormack and Simpson:

> 'The Allied governments, and in particular the USA, pursued this policy as a concrete step toward instituting and international legal system for deterring future aggressors and preventing the kind of war devastation that the Axis aggression had caused' (Tanaka, McCormack, & Gerry Simpson, 2010, p. 147).

They were the first international criminal courts in which the concept of ‘crimes against humanity’ had been formally employed. The scope of the crimes which had been defined in these Tribunals was preserved. They were referred to as ‘the principles of Nuremberg and Tokyo’ and became the fundamental principles of the Genocide Convention and the Universal Declaration of Human Rights of 1948 (Kazmi, p. 3-5). In addition, it was after these tribunals, in 1948, that the international community realized that there was a need for an international criminal court which should be over domestic legal systems. However, it took 54 years for the setup of a genuine international criminal court which is authorized to tri individuals for criminal responsibility.

2.3. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA AND RWANDA

After Nuremberg and Tokyo Tribunals, there was almost no concrete development in the field of human security and individual criminal responsibility at the international level due to the Cold War following the Second World War. The tension between the two ideological blocs suspended the idea of trial of many crimes under international humanitarian law for forty years (Şen, 2009, p. 20). Nevertheless, there are some views which claim that there were some improvements during that period as well. For example, the former legal adviser of Foreign Ministry of Holland, Adriaan Bos, who had an essential role in the establishment of ICC, emphasizes that the Cold War parameters led to the expansion of many international organizations which not only raised awareness in international society regarding the protection of civilians especially in intrastate conflicts but also gave rise to an extensive redefinition of ‘crimes against humanity’ and ‘war crimes’. Yet, the lack of agreement between the two superpowers remained as a critical obstacle to any further improvement.

2.3.1. The Road to International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR)

The end of the Cold War with the dissolution of the Soviet Union and Yugoslavia were widely regarded as the beginning of a new era concerning human security and international humanitarian law. However, post-Cold War proved to be much complicated with the eruption of several ethnic and political conflicts within states, which in the end led to the establishment of two *ad hoc* tribunals, namely the International Criminal Tribunal for Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). In order to assess the contribution of ICTY and ICTR to the establishment of the ICC, the historical background, the scope and jurisdiction of these two *ad hoc* tribunals should be examined.

The conflicts in Yugoslavia, which broke out in 1992, blew off the hopes regarding the 'new world order' in the post-Cold War. Generally speaking, the multiethnic structure of the country is usually referred to as the main cause of the conflicts. This multiethnic structure was united in a fragile constitution during the period of Tito between 1945 and 1980. However, nationalism among different ethnic groups, which emerged after Tito's death, it turned into an extremist micro-nationalism especially after the dissolution of Yugoslavia. The conflicts in Yugoslavia had three different stages. The first clash in the region broke out after Croatia's declaration of independence in 1991. The Serbs in the newly established Croatia were defined as minority, yet they could not enjoy their minority rights. To protect the rights of the Serbs, Yugoslavia declared war to Croatia. When the two sides of the conflict were forced to make peace by the UN in January 1992, thousands of people were killed and many more of them were displaced (Barria & Roper, 2005, p. 350-1). The second conflict, which was later to be referred as one of the worst massacres of the post-Cold War era, started in Bosnia in April 1992 (Akhavan, 2001, p. 10-11). The Serbian minority in Bosnia had desired to be part of Yugoslavia and to establish the Greater Serbia in the long-run. In 1993, Serbs had taken over the control of more than half

of Bosnia. To end the military conflict and to bring peace, the UN sent United Nations Protection Force (UNPROFOR) to the region. However, this was not effective as it was desired and in July 1995 more than 7500 people were slaughtered in Srebrenica. The third conflict in the region was between Kosovo and Yugoslavia. After the Serbian leader Milosevic ended the autonomy of Kosovo, the region demanded independence and Kosovo Liberation Army started military campaigns especially against the Serbs. The military conflict had finally ended in 1999 (Barria & Roper, 2005, p. 350-353).

The conflicts in Rwanda, on the other hand, were different from Yugoslavia. It is misleading to relate them to ethnic concerns. In its basic terms, they were tribal conflicts. Therefore, the Rwandan conflict can be characterized as a political one. The parties to the conflict, namely Hutu and Tutsi tribes had been in conflict even before the colonization period in the country. Although the Tutsis were regarded as the minority group, they had the administrative and political power. The killings of Tutsis by Hutus had started in 1962 and it continued over years. During this period, most of the Tutsis had to escape to neighboring countries like Uganda, Tanzania and Burundi and they created a military power, called Rwandan Patriotic Front (RPF). RPF started a military campaign against Hutus. The military conflict ended in August 1993 with Arusha Peace Accords. However, peace did not last long and after the Hutu president was killed, the mass killings of Tutsis had started again. Only in three months from April 1994 to July 1994, nearly a million people were killed (Barria & Roper, 2005, p. 352-353).

Regarding the Yugoslavian conflict, when the peace negotiations among the parties failed, the UNSC imposed an embargo on the region. Moreover, the UNSC condemned the violent conflicts and crimes against humanity in Yugoslavia by adopting Resolution 764 and 771. However, the following adoption of Resolution 780 by the UNSC in October 1992 can be regarded as the most concrete step in this process of establishment of ICTY. Resolution 780 calls for a special commission, which consists of experts, to observe and report the violations of international humanitarian law. According the Resolution, the

commission was to consist of five experts from different states and to be chaired by Professor Frist Kalshoven from the Netherlands (Greenwood, 1993, p. 642). This commission completed their mission and presented their first interim report in February 1993, whereby it pointed out that there had been severe violations and crimes against humanity and there should be a temporary international criminal tribunal. The idea was supported and adopted easily by Bosnia and Croatia, while it was resisted and disliked by Yugoslavia (Barria & Roper, 2005, p. 354). In fact, International Law Commission[3] asserted that establishment of a permanent International Criminal Court would be more effective especially in addressing such grave violations. Nonetheless, it also noted that the establishment of such a court would be much more costly and time consuming and the violence in Yugoslavia should have been addressed immediately. Thus as an alternative, an *ad hoc* international criminal tribunal was considered to be the most optimum solution in the relevant time period. Eventually, ICTY and its Statute formally entered into force after the adoption of Resolution 827 on 25 May 1993 (Greenwood, 1993, p. 643).

In a similar way, in the process of establishment of ICTR, UNSC authorized a special group of experts to observe and report the grave violations of human rights. The report of the commission presented to the UN in October 1994 indicated that there was evidence for genocide against Tutsis and that there should be an international criminal court which should address this genocide. Unlike Yugoslavia, the decision for the establishment of such a temporary court was accepted and supported by the Rwanda government. On 8 November 1994, UNSC adopted Resolution 955 declaring the judicial power of ICTR and its Statute (Barria & Roper, 2005, p. 354).

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[3] International Law Commission was established by United Nations General Assembly in 1948 for the ‘promotion of the progressive development of international law and its codification’. See *United Nation General Assembly Resolution A-RES-174(II).*

Even in these first establishment phases of these tribunals, there were many critical voices. One of the criticisms concerned the ineffectiveness and insufficiency of the UN in addressing the violence and genocide in both regions. The expectation of the international community was that the UN should have taken precautions to end the violence totally, however, the military conflict and many violations of human rights were recorded for a long time until ICTY and ICTR started to function effectively. Yet, the UN could only decide on the establishment of tribunals and could not end the violence as expected (Greenwood, 1993, p. 643). Another criticism was about the location of the tribunals. The permanent location of ICTY was designed to be in the Hague which is a neutral zone, whereas the location of ICTR could not be made clear in its Statute, but later was decided to be in Arusha, Tanzania. The fact that it was located in the territory of a state that had been subject to the flow of refugees of this conflict, but not in the territory of Rwanda which is subject to the conflicts or not in the Hague, alienated the parties to the conflict from ICTR and degraded the credibility and effectiveness of the Tribunal (Barria & Roper, 2005, p. 355).

2.3.2. The Content and the Scope of ICTR and ICTY

In terms of content and scope of the tribunals, ICTY and ICTR Statutes have jurisdiction over genocide, crimes against humanity, war crimes, and grave breaches of Geneva Convention. Both tribunals were established through the authorization of the UNSC which was based on the UN Charter's Chapter VII that deals with international peace and security matters.

The main objective of ICTY is defined as:

> '…to try those individuals most responsible for appalling acts such as murder, torture, rape, enslavement, destruction of property, and other crimes listed in Tribunal's Statute' (''About the ICTY'').

According to Article 1 of the Statute of ICTY, the tribunal has jurisdiction over individuals who are responsible for the crimes and violation of international humanitarian law in former Yugoslavia since 1 January 1991. Article 2 includes the definition of ‘Grave breaches of the Geneva Conventions of 1949’, Article 3 defines ‘Violations of the laws or customs of law’, Article 4 includes the scope of ‘Genocide’ and in Article 5, ‘Crimes against humanity’ is explained (‘‘Updated Statute of the International Criminal Tribunal for the former Yugoslavia’’, 2009). On the other hand, according to Article 1 of the Statute of ICTR, it has also jurisdiction over ‘crimes committed by Rwandans in the territory of Rwanda and in the neighboring states, as well as non-Rwandan citizens for crimes committed in Rwanda’ from 1 January 1994 to 31 December 1994. Article 2, 3 and 4 respectively included the definitions and scope of ‘genocide, crimes against humanity and violations of Geneva Convention’ (‘‘Updated Statute of the International Criminal Tribunal for the former Yugoslavia’’, 2009). Some scholars argue that the order of the articles in both Statutes indicates their priority. Thus, in the jurisdiction of ICTY, war crimes are more privileged than genocide and crimes against humanity, whereas in ICTR, genocide was defined as the most important crime in Rwanda (Reydams, 2005, p. 980).

One of the important characteristics of the ICTY and ICTR Statutes is that both Statutes have room for cooperation with national courts. In international criminal law, according to the principle of *Non bis in idem*, one legal action cannot be tried twice. However, in ICTR and ICTY, this principle has been revised in a way that if a legal action is tried by a national court and if the crime is defined as ‘ordinary crime’ in the national jurisdiction or if the judicial organs of that country are regarded as unwilling or incapable of adjudication, Tribunals can hear the same legal action for a second time. On the other hand, national courts do not have the authority to adjudicate an action, which was tried by the Tribunals before. It can be said that the priority and superiority of the tribunals over national courts are constituted in the Statutes of the tribunals (Surlan, 2005, p. 1-8).

In terms of the administrative structure of the tribunals, they had ‘tripartite organizations’ which consisted of Chambers, the Office of the Prosecutor (OTP) and the Registry. OTP is headed by the Prosecutor, while the Registry is headed by the Registrar. The judges of the tribunal are elected every four years by the General Assembly. The list of judges is determined by the UNSC and the judges can be reelected (Schiff, 2008, p. 46). However, the coordination and cooperation among these tripartite organizations have been argued to be weak and insufficient. One reason for the lack of coordination and cooperation is their relative autonomy from each other. In this respect, each has broad and extensive jurisdictions, and none is willing to cooperate or accept the jurisdiction of the other. This had a negative effect on the speed of the trials (Zacklin, 2004, p. 543). Due to this heavy bureaucratic structure of the tribunals, along with some financial, administrative problems, the tribunals have been stuck under the burden of this bureaucracy. As Zacklin (2004) states, ICTR and ICTY have become ‘unwieldly instruments, with a cumbersome bureaucratic structure’ (p. 542).

2.3.3. Similarities and Differences of ICTR and ICTY from Tokyo and Nuremberg Trials

When the structure and the establishment of ICTR and ICTY are compared to Tokyo and Nuremberg tribunals, it is generally argued that gathering evidence and necessary sources for proceedings was not a vital problem in Tokyo and Nuremberg trials as these trials were under the authority of the prevailing powers. In contrast, in ICTR and ICTY, the interests and political preferences of parties to the conflict made the evidence-gathering harder. Thus, as a result, the length of the trials was longer, and the process in general was more time-consuming and costly (Şen, 2009, p. 27). 10% of the UN total annual budget is still being transferred to ICTR and ICTY (Zacklin, 2004, p. 543). Another reason for a high budget and more time for ICTR and ICTY proceedings was that in these trials, the witness statements were accepted as the primary judicial source and arrest and extradition based on witness statements had been problematic, which extended the proceedings. However, in

Tokyo and Nuremberg trials, the well-documented papers and concrete evidence were the legal provisions which were gathered in the shortest period of time by the victor states. Thus, the cost of Tokyo and Nuremberg was fairly low and the legal processes were faster than in ICTR and ICTY (Barria & Roper, 2005, p. 359-361).

Article 6, in the Statutes of both ICTR and ICTY, is about ‘jurisdiction over natural persons’ which was rather a new concept addressed in international criminal law. According to this article, the individuals cannot be exempted from their illegal actions due to their positions. Thus, it can be said that although some political and military leaders were not charged as the main responsible for the crimes in Tokyo and Nuremberg trials, in ICTR and ICTY the proceedings went far beyond Tokyo and Nuremberg, and some leaders were directly charged of abusing their authority to provoke genocide and other crimes (Greenwood, 1993, p. 652).

Another difference between the post-Cold War Tribunals and the Tokyo and Nuremberg trials is that although the crime of genocide was defined and prohibited in 1948 Geneva Convention, it was not one of the criminal cases in Tokyo and Nuremberg trials. There were basically three crimes under the jurisdiction of Tokyo and Nuremberg trials, which were crimes against peace, war crimes and crimes against humanity. However, in ICTR and ICTY, especially in ICTR cases, genocide has been the most serious crime (Greenwood, 1993, p. 645).

There are also some similarities between post-Cold War tribunals and Tokyo and Nuremberg trials. As in Tokyo and Nuremberg trials, in ICTR and ICTY, some crimes were defined as interlinked and in overlapped way. With respect to war crimes and crimes against humanity, there were many similar, overlapped definitions which can be interpreted and included in the scope of both crimes. For instance, rape was a crime against humanity according to the definition of it in both Statutes; however, if it is interpreted in a way that it is a violation of protection of women in wartime as it was indicated in Geneva

Convention, it can also be a grave breach of Geneva Convention. In a similar way, ethnic cleansing can fall under both the scope of genocide and of crimes against humanity (Greenwood, 1993, p. 645-9).

2.3.4. Successes and Failures of ICTR and ICTY

Some scholars claim that the success or the failure of the tribunals can best be evaluated with a comparison of a time when there has been no post-Cold War tribunals established. Since it cannot possibly happen in real terms, every kind of evaluation would be imaginary or estimated. However, it could be acceptable to start evaluation with the aims and how many of these have been addressed effectively by the tribunals (Barria & Roper, 2005, p. 357). The main aims of ICTR and ICTR were determined as ‘to deter future atrocities, to render justice to thousands of victims, to maintain peace and security in both former Yugoslavia and Rwanda, and to contribute the process of national reconciliation’ (‘‘About the ICTY’’; ‘‘General information about ICTR’’). Thus, when the weaknesses and strengths of the tribunals are assessed, the first issue should be whether these defined aims were realized or not. First of all, it is increasingly argued that the Tribunals have had a considerable deterrent effect in both regions as well as in the international arena given the fact that the leading figures and authorities were tried and held responsible for the atrocities (‘‘General information about ICTR’’). It is also widely considered that even if the existences of the post-Cold War tribunals were not able to end the violent conflicts totally and abruptly, they still have proved to be preventive of further atrocities. Thus, one can argue that their effect has not been limited to these two regions of conflict only, but extended to many other countries from different parts of the world (Akhavan, 2001, p. 7). Secondly, in terms of rendering justice to thousands of victims, Barria and Roper (2005) argue that there should be two different criteria: one is the processes of ‘apprehension and extradition’, the other is ‘the speed of the trials’. With regards to apprehension and extradition, the most important problem has been the lack of cooperation among states, especially those in conflict due to political interests and privileges. With the increase of

global interdependence and cooperation in recent years, it can be said that cooperation for the apprehension and extradition of the suspects of the tribunals has improved, but it should be noted that these attempts are still not strong and sufficient as they should be (p. 360). In terms of the speed of the trials, Resolution 827 and 955 indicate that all indictees have the right to be tried in a short period of time without any delay and exception. However as it was mentioned above, due to the fact that the witness statements have been the main judicial source in proceedings, the speed of the trials has been a controversial issue from the early days of the ICTY and ICTR. Another reason of these slow proceedings is the great number of the hearings. According to the UN reports, this is the problem of most of the international criminal trials (‘‘Seventh Annual Report of the International Criminal Tribunal’’, 2002, p. 4). It is claimed that lack of cooperation on apprehension and extradition and the problem of speed in trials have affected the judicial process negatively. Thus, although the number of simultaneous trials has increased from four to six in 2002 which accelerated the speed of the trials, in terms of providing justice for victims, the Tribunals have been claimed to be not sufficient as many of the trials are still under process even today (Barria & Roper, 2005, p. 361-2).

The maintenance of peace and security can be alleged to be the most legitimate aim in the establishment of both post-Cold War tribunals, as these tribunals have been legalized under Chapter VII of the UN Charter. Nonetheless, how much peace and security have been maintained by these tribunals has been a controversial issue. According to Adam Roberts (1998), there is a need for a clear definition of peace. If peace is regarded as non-existence of violent conflicts, it could be claimed that both tribunals have been ineffective in terms of maintenance of peace and conflict, given the severe conflicts in former Yugoslavia until Dayton Peace Accords in 1995 and the killings of Hutus and Tutsis in Rwanda and in other neighboring states in large numbers even after the official declaration of ceasefire (p. 277).

Lastly, in terms of contribution to the process of national reconciliation, there are some different views. First of all, some scholars note that despite the fact that national

reconciliation was not referred to as one of the aim of the ICTY, it was among the expected outcomes of the trials. On the other hand, it was stated as one of the concrete objectives of ICTR in its Statute (Humphrey, 2003, p. 502). Specifically, in the case of ICTY, it is hard to claim that ICTY has contributed to the process of national reconciliation because there are still thousands of people who have to live in other countries and who are afraid of returning to their homelands. However, the case has been different in ICTR since national reconciliation was one of main objectives. In its basic terms, national reconciliation is an internal transformation. Yet, as an international criminal tribunal, the role of ICTR has been an external imposition for the sake of contribution to this internal transformation process through its international authority. It is claimed that the reason of this external imposition is that the national courts have not had the sufficient competence to conduct fair and impartial trials. Thus, ICTR has risen up to the role (Barria & Roper, 2005, p. 362-3). Some have argued that for national reconciliation, especially in Rwanda, the location of the Tribunal should have been in Rwanda, where most of the crimes were committed. Even though the location of the ICTR is in a neighboring country, this has not been enough for internalization of the judicial process by both sides of the conflict, which leads to further ineffectiveness regarding the process of national reconciliation. Another reason of the failure of the national reconciliation in ICTR is that even the prisoners have not been kept in the local prisons. Instead, they have been placed into prison facilities of neighboring and other volunteer countries.

Furthermore, for a successful national reconciliation, many scholars argue that there should not be ‘victim’s justice’. In the cases held in ICTR, however, it is increasingly argued that the trials of the ICTR have been mostly on the crimes committed by Hutus by ignoring many violations by RPF. Especially after the change in the Office of the Prosecutor in 2003, the judicial process has been severely criticized due to its lack of fairness and impartiality. In the report ‘Rwanda: The Preventable Genocide’ which was issued by the International Panel of Eminent Personalities (IPEP) in July 2000, the conflicts mostly after 1994 were examined and it has been indicated that there had been many serious violations

of international humanitarian law by RPF since its establishment (Reydams, 2005, p. 982). In another report by the SCSL Chief of Prosecutions, it has been pointed out that:

> '…. the lack of eagerness on the part of the Prosecutor to initiate investigations about crimes committed by members of the Rwandan Patriotic Front…. challenges the image of independence of the Prosecutor' (Côté, 2005, p. 176-177).

In such a judicial proceeding, it would be difficult to expect judicial impartiality which may lead to further national reconciliation. Thus, it is generally argued that the contribution of ICTR to the process of national reconciliation has been insufficient due to its judicial questionability (Reydams, 2005, p. 988). If national reconciliation has been measured according to the number of the people who returned after displacement and exile, on the other hand, it can be said that it has been effective in Rwanda. Nearly 2.5 million Hutus and Tutsis have come back to their homeland and the government encouraged the people to return to the country through some governmental projects and programs such as 'villagisation', that is, creation of small villages especially for the victims of conflict and the responsible of the conflict so that it could accelerate to the process of national reconciliation (Barria & Roper, 2005, p. 363). Notwithstanding, it is commonly argued that in terms of reaching national reconciliation, both ICTY and ICTR have not been sufficient and effective as expected.

Although there have been some criticisms against the tribunals, many scholars claim that ICTY and ICTR have been remarkable achievements in international criminal justice. First, the international community supported them financially and politically to a considerable extent. Many of the trials have been accepted as 'fair and impartial' and the international accountability and credibility have increased (Akhavan, 2001, p. 9). Most of the trials have been conducted without making any racial, religious, ethnic discrimination. Furthermore, in both tribunals, it has been guaranteed that both victims and the offenders have the right to be tried in the shortest period of time and in judicial proceedings, the offenders should be tried without neglecting their rights.

Another supporting argument concerns peace building in the respective countries. Despite their failure to generate a full-blown national reconciliation, they have discouraged further aggression in both regions. Individually, ICTY has brought regulations to the social life by recreation of 'multiethnic coexistence and non-violent democratic process' in former Yugoslavia (Akhavan, 2001, p. 9). Human rights violations, especially in Srebrenica, were accepted as 'genocide' by whole international community and it has been also accepted that rape and many other serious crimes have been committed. These have been important improvements in the name of international humanitarian law (''About the ICTY''). ICTR, on the other hand, has had a preventive effect on Tutsi revenge and on further Hutu aggression. Thanks to ICTR, the rule of law was acknowledged by many African states thus; the political, financial and judicial cooperation among them has increased in a considerable extent (Akhavan, 2001, p. 9-10).

Crimes against humanity, war crimes, grave breaches of Geneva Conventions have been crimes which have not been addressed effectively in international justice since Nuremberg and Tokyo trials. As a result of the establishment of ICTR and ICTY, these crimes have been brought back to the judicial agenda (Zacklin, 2004, p. 542). Furthermore, cooperation with national courts by the tribunals has been reformative for improvement and restoration of credibility of the national courts. It has been mainly argued that ICTR and ICTY were effective in closing the judicial gap between the national and international courts. In the first years of the tribunals, international criminal litigation was a controversial issue for the national courts because the national courts have not had the sufficient legal competence to conduct such trials. However, in later years, this gap has decreased and the national courts have been strengthened and restructured through cooperation with ICTY and ICTR (Humphrey, 2003, p. 498).

Most importantly, it has been understood that there can be a permanent international criminal court which is independent, credible and autonomous and which is based on

human security. The tribunals have functioned as ‘transitional justice’ mechanisms which have been constituted to restore and develop the present and future political and social structure of the post-conflict region through judicial organs (Humphrey, 2003, p. 500). As it is stated by Schiff (2008), ICTR and ICTY were established ‘in response to specific events’ and ‘for limited purposes’ (p. 43). However, they were instrumental in launching the argument for an autonomous, permanent, reconstructive judicial mechanism which can address crimes in larger scope and extent.

2.4. SPECIAL COURT FOR SIERRA LEONE

Special Court for Sierra Leone (SCSL) is another example of international criminal tribunals which has jurisdiction over ‘the persons who bear the greatest responsibility’ for committing crimes defined in the Statute of SCSL (‘‘Statute of Special Court for Sierra Leone’’, 2002). This court was established on 16 January 2002 with a bilateral agreement between the Government of Sierra Leone and the UN. Due to its establishment with a bilateral agreement, rather than a direct UN subsidiary like ICTY and ICTR, this court is regarded as a new type of international criminal tribunal (Dougherty, 2004, p. 311). Yet, it has many essential similarities with other international criminal tribunals. Thus, it is important to analyze and discuss the historical background and structure of SCSL on the road to ICC.

It is generally accepted that the civil war at Sierra Leone was among the most brutal wars in recent history. The political and economic unease can be dated back to the independence of the country from Britain in 1961. From 1961 to 1985, the dictator Siaka Stevens was the president of the country. Later, Joseph Momoh took over the presidency in 1985 and in a few years, the tension started to reach a climax due to the intervention of neighboring countries, most notably Liberia and Libya. For most of the historians and scholars, the beginning of the civil war in Sierra Leone was accepted as the attack of Rebel United Front (RUF), led by Foday Sankoh, to Sierra Leone with the help of Qaddafi of Libya and

Charles Taylor of Liberia in 1991 (Schocken, 2002, p. 436-8). In the following years, the RUF had conducted many operations against civilians. After the intervention of the UN in February 1995, civil rule had been brought to Sierra Leone with the election of Ahmed Tejan Kabbah in 1996. The elections further gave rise to the peace talks between the government and the RUF and the negotiations ended up with Abidjan Peace Accord in November 1996 (Miraldi, 2003, p. 850). However, peace lasted for only six months and in May 1997, the RUF cooperated with the Armed Forces Revolutionary Council (AFRC), led by Johnny Paul Koroma, to overthrow Kabbah. Later, the coalition of the AFRC/RUF had perpetrated the worst violence of the civil war in Sierra Leone by the time the Lomé Peace Accord was signed in July 1999 between the RUF and the Kabbah government (Dougherty, 2004, p. 315). Although this peace agreement brought amnesty to all combatants in the war including the leaders of RUF and AFRC, the RUF violated the Lomé in May 2000 and continued its hostilities by taking UN peacekeepers hostage. When the UN realized that the peace efforts would not be the end of the conflict in the country, UNSC adopted the Resolution 1315 which authorized negotiations for establishment of a special court with jurisdiction over crimes against humanity, war crimes and other violations of international humanitarian law (S/RES/1315, 2000). The SCSL was never intended to cover the crime of genocide due to the non-ethnic structure of the conflict, which is different from both ICTY and ICTR (Schocken, 2002, p. 442). Eventually, at the end of the negotiations, the UN General Secretary Kofi Annan had submitted his report regarding the bilateral agreement and the draft Statute of SCSL on 4 October 2000 and the bilateral agreement, which set up the SCSL, was signed in the capital city, Freetown, on 16 January 2002 (Frulli, 2000, p. 857).

To analyze the contribution of the SCSL to the progress in international humanitarian law, the important features of this court should be taken into consideration in detail. According to the statute of the SCSL, there are two categories of crimes under the jurisdiction of the court. The first category includes the crimes under the international humanitarian law: crimes against humanity against civilians, violations of Article 3 common to the Geneva

Conventions and of Additional Protocol II and other serious violations of international humanitarian law. In the second category, there were crimes under Sierra Leonean law: Malicious Damage Act of 1861 and Prevention of Cruelty to Children's Act of 1926 (''Statute of Special Court for Sierra Leone'', 2002). It is argued that both national and international character of the SCSL formed the most important difference of this court from ICTY, ICTR and ICC. Due to the amnesty provisions of the Lomé Accord, national jurisdiction of the court would cover the crimes committed after July 1999 while the international jurisdiction would cover the crimes committed after the Abidjan Peace Accord of 30 November 1996 (Frulli, 2000, p. 859).

Another important distinction of SCSL is its location. Unlike ICTY and ICTR, which were located in third countries, the SCSL was located in Sierra Leone and this is argued as a considerable contribution to the national reconciliation and to the involvement of the sides of the conflict into the proceedings (Dougherty, 2004, p. 317). In addition, since the court was established with a bilateral agreement between the UN and the government, it could not enjoy the international cooperation and regular funding as ICTY and ICTR did. Firstly, due to this bilateral structure, the Statute was not binding to the third parties. Even if there was an arrest warrant for the indictees of the court, states did not have to be in cooperation with the court. Secondly, the court was organized to be supported voluntarily. Thus, it was severely criticized that this limited and voluntary funding had affected the effectiveness of the court in a negative way. As a result of the limited funding, it is argued that the SCSL could have only one trial chamber and an appeals chamber with a limited number of judges and personnel. Furthermore, the operation period of the court was expected to be three years, however, due to the problems of funding and lack of enforcement on international cooperation, the court has still been exercising its jurisdiction (Schocken, 2002, p. 453-4).

Despite its all unique features, there are some similarities of the SCSL with other international criminal courts. Needless to say, the SCSL is an international criminal court with jurisdiction over individuals who are responsible for committing crimes against

humanity, war crimes and violation of international humanitarian law. These features are common to all international criminal tribunals that have been established so far. However, it is increasingly argued that there is an obvious influence of the ICC on the SCSL, since the Statute of ICC was finalized and signed in 1998 before the establishment of the SCSL. First, in terms of personal jurisdiction, both courts extended their jurisdictions over those who bear the greatest responsibility. Secondly, in both statutes, the attacks against humanitarian missions personnel and UN peacekeeping personnel are included as crimes under the jurisdictions of these courts. Finally, both Statutes categorize the ‘sexual crimes’ among the crimes against humanity (Frulli, 2000, p. 862-6). It can be argued whether there was a need for such a newly-structured international criminal court when there was already a permanent court on the way. As it was mentioned above, the SCSL was established in January 2002 and the establishment of the ICC, which will be discussed in the detail in the following chapter, was only six months later in July 2002 with the completion of ratifications. Many scholars have argued that another criminal court would undermine the number and acceleration of the ratifications of the Statute of ICC while many others have supported the SCSL. The justification of the pro-SCSL arguments was the need for addressing the past hostilities (Frulli, 2000, p. 869). The architectures of ICC have designed a permanent court which will have jurisdiction over crimes committed ‘after’ its entry into force, which is after July 2002. In Sierra Leone, on the contrary, the war was officially declared as over in January 2002. Thus, the crimes committed in the civil war of Sierra Leone could not be addressed by the ICC. Instead, they could only be addressed by a special court in Sierra Leone (Dougherty, 2004, p. 315).

The Special Court for Sierra Leone has conducted more than a dozen of trials and has completed many of them so far (‘‘Special Court for Sierra Leone Cases’’, 2009). Although it did not directly affect the establishment of the ICC, it can be argued that it has contributed to the international humanitarian law and human security by being an example of international criminal courts.

As it is discussed in this chapter, the previous *ad hoc* international criminal tribunals are regarded as highly essential for the establishment of a permanent international criminal court. The establishment of this permanent court took more than a half century. In each new phase of international criminal courts, the flaws and weaknesses of previous courts were eliminated and each new type of court was designed in a better way, as in the examples of post-Second World War tribunals, as in ICTY and ICTR and as in the SCSL. Due to their similarity in functions and judicial reach, these tribunals are accepted as the pioneer of today's permanent international criminal court. In the following chapter, the establishment of the ICC and Rome Statute which is the founding treaty of the ICC will be examined in detail. This historical background will provide an opportunity to make a comparison between the ICC and the previous *ad hoc* courts. Thus, this will reveal the strengths and the weaknesses of the ICC.

CHAPTER 3

INTERNATIONAL CRIMINAL COURT

After the controversial examples of ICTY and ICTR, the steps for the establishment of a permanent international criminal court must be taken much more cautiously and must be extended in a long period. In the first part of this chapter, the process of creation of Rome Statute, Rome Conference and the developments after Rome Conference will be examined. The reflection of the road to the court is important for this study since it was for the first time in this conference that there were critical voices against the court. Inclusion of this mainly descriptive chapter will try to reinforce the main argument of this thesis which is about the effectiveness of the ICC as an agent of human security. In the second part, scope and content of Rome Statute will be discussed. This will be a humble attempt to examine the accountability of the Statute from the perspective of human security.

It is argued that the establishment of an international criminal court was originally started by International Law Commission (ILC) in 1948, which was authorized by the UN General Assembly. However, ILC was never able to complete its work due to the political struggle in international arena. It can be said that it was not the initial plan to keep the establishment process so long but it could only be completed at the end of fifty years when the first establishment authorization in 1948 was taken into account. During the Cold War, an agreement over a genuine international criminal court was almost impossible. Thus, there was almost nothing done for establishment of such a court.

It was the request of prosecution and investigation on the international drug trafficking by Trinidad and Tobago in 1989 which paved the way to Rome Statute. Aftermath of this request, the establishment of an international criminal court has been back into the international political agenda. Eventually, in 1994, ILC submitted its Draft Statute to the

UN General Assembly. Later, it was 1995 when UNSC gave authorization for the creation of a Preparatory Committee to work on a statute for ICC (Ulusoy, 2008, p. 8).

3.1 MAKING OF THE ROME STATUTE

3. 1. 1. Creation of Rome Statute

Although the need for an international criminal court had been argued since the Second World War, it took fifty years to establish one. The beginning of the creation of the ICC can be dated back to the assignment to ILC in 1948 which was given by the UN General Assembly in order to work on whether there was a need for a permanent and superior international criminal court. In the following year, ILC clarified that the establishment of an ICC was ‘desirable and possible’ (Lee, 1999, p. 2). After this clarification, the General Assembly assigned the preparation of draft statute. However, due to the political disagreements on the definition of the crime of aggression, the preparations had to be postponed so as to be discussed in subsequent meetings. Even after a relatively convincing definition of crime of aggression had been adopted, the continuum of any further preparation of a draft statute had been interrupted as a result of these political disagreements once again.

With the request of Trinidad and Tobago for an international criminal court in 1989, the UN General Assembly invited ILC to examine the matter in 1990, and in 1993 General Assembly gave priority to the preparation of draft statute for a criminal court. In twelve months period, ILC completed and submitted the draft statute to states to go over it. Then, General Assembly decided to establish an Ad-Hoc Committee to review the articles in draft statute (Lee, 1999, p. 2-4). The duty of this Committee as defined in the official report of the UN (1995) is:

> 'to review the major substantive and administrative issues arising out of the Draft Statute for an International Criminal Court prepared by the International Law Commission (ILC) and, in the light of that review, to consider arrangements for the convening of an international conference of plenipotentiaries' (UN Doc. A/50/22, para.259).

The Ad-Hoc Committee held two subsequent meetings in 1995 and almost sixty delegates had participated in these meetings to fulfill the duties above. This Committee reviewed the issues in the Draft Statute. However, some of these issues such as the relation of the court with the national courts were highly debatable. On one hand, some delegates were willing to have more meetings to discuss these controversial issues in detail, on the other hand, others, which are generally referred as 'Like-Minded States'[4], insisted that there should not be too many meetings before a Diplomatic Conference and the Statute should be completed in 1997 without any further delay. It was in these meetings that the Preparatory Committee was established to take over the examination of the draft (Lee, 1999, p. 3). The mandate of Preparatory Committee was defined as:

> 'to discuss further the major substantive and administrative issues arising out of the draft Statute for an International Criminal Court prepared by the International Law Commission and, taking into account the different views expressed during the meetings, to draft texts, with a view to preparing a widely acceptable consolidated text of a convention for an International Criminal Court as a next step towards consideration by a conference of plenipotentiaries' (UN Resolution 50/46, 1995).

Preparatory Committee (PrepCom), which was chaired by Adriaan Bos, after taking over the duty, held six intensified meetings in fifteen weeks between March 1996 and April 1998. In these meetings, states submitted their preferences and proposals for draft texts especially on substantive issues. It is argued that despite the controversial disagreements,

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[4] Like-minded states are 'a group of states who shared the objective of establishing a strong Court joined forces, calling themselves the "Like Minded." The Like Minded included countries like Canada (the original chair of the group), Australia, most European countries with the significant exception of France, Argentina, Costa Rica and others.' For more information, see Bedont B. & Matas D. 1998. Negotiating for an International Criminal Court. *Peace Magazine*, p. 21.

the meetings were productive and the Draft Statute was prepared on the basis of the ILC Draft Statute and additional hundreds of proposals by states (Lee, 1999, p. 4). However, there were still contradicting ideas on the further development towards a possible Diplomatic Conference. Like-Minded Group insisted that the negotiations on the Draft Statute should be concluded in a brief time period while many other states were against this idea and they argued that the Diplomatic Conference should not be held before 1998. At the end of these negotiations, General Assembly adopted Resolution 51/207 of December 1996 which indicates that the PrepCom would hold three or four more discussion-based meetings during 1997 and the spring of 1998 and the Diplomatic Conference would be held in Rome in the summer of 1998 (Hebel, 1999, p. 34-35).

During this preparation period for Diplomatic Conference, the public sessions of PrepCom continued. One of the contributing points of these sessions was that not all records of the sessions but rather the results of the negotiations were included and revised in draft articles. In Resolution 52/160 of 15 December 1997, General Assembly decided that the Diplomatic Conference would be between 15th and 17th July, 1998 (Hebel, 1999, p. 34-35). Months before the Conference, with the initiatives of Adriaan Bos, the Chairman of PrepCom, the content and the controversial issues of the Draft Statute, which would be discussed in the Conference, were regulated and organized in two important inter-sessional meetings in January 1998. The first of these meetings was Zutphen meeting in the Netherlands. The members of different working groups and their chairmen, coordinators and UN secretariat participated in the meeting. The main focus was to determine the duplications and the inconsistencies in the Draft Statute (Kirsch, 1999, p. 2). The Courmayeur meeting, on the other hand, took place in May 1998 in Courmayeur, Italy. Along with the members of the PrepCom working groups, Conference chair nominees and some officials of Italian Ministry of Foreign Affairs attended in the meeting. In this meeting, the working plan and the schedule of the different working groups were regulated (Bassiouni, 2008, p. 133).

Many scholars argue that despite many objections and difficulties during sessions, many key controversial issues which would be designed to be included in the Statute were clarified and textualized before the Conference with the efforts of working groups and the coordinators, in general, PrepCom as a whole. It is generally accepted that some core issues, these are, establishment of the court, principle of complementarity, the relation between national courts and ICC and reconciliation of incompatible legislative proposals of states by creating an international criminal law system, were discussed and narrowed down before the Conference.

At the beginning of the negotiations on the relation between ICC and the national courts, the Draft Statute of ILC was taken as the primary source. In this draft Statute, the ICC was designated as a superior legislative organ, which was similar to the relation between national courts and ICTY and ICTR. However, during the discussions before the Rome Conference, many states objected to an omnipotent position that could be given to the ICC. Thus, the principle of complementarity came out of these negotiations. According to this principle, national courts were determined as the prior judicial organs. However, ICC would invalidate this priority in three conditions: if the national judicial organs of a state were unwilling to investigate and prosecute the situations, if the national system of a state did not have the judicial capacity to conduct prosecutions and investigations and if the ongoing investigations and prosecutions of a state were suspected as being unconvincing and unfair (Ulusoy, 2008, p. 9). It can be argued that this limited power of ICC was fondly approved by states much more easily in a relatively short time. Unfortunately, many other core issues could not be compromised, thus, left to Rome Conference to be solved. Some of these issues were ‘definition of the crimes, jurisdiction of the court, the relationship between the Court and the UNSC, composition and administration of the Court, the role of the Prosecutor, international law principles, international law procedures, international judicial cooperation, penalties, financing of the Court and the Assembly of the State Parties’ (Lee, 1999, p. 21).

3. 1. 2. Rome Conference

United Nations Diplomatic Conference of Plenipotentiaries on the establishment of an International Criminal Court, more commonly known as, the Rome Conference, started its first session in Rome on 15 June 1998. The Conference was attended by 160 states, 33 international organizations and 236 non-governmental organizations (Ulusoy, 2008, p. 10; UN Diplomatic Conference of Plenipotentiaries, 1998). It can be asserted that during the Conference, the most significant body was the Committee of the Whole of the Conference (CW), which was chaired by Canadian Philippe Kirsch. The main responsibilities of CW were to organize the coordination of the working groups and to allocate different parts of the Draft Statute to separate working groups in addition to ensuring proper and coherent translation of it into all languages (Kirsch, 1999, p. 451).

The initial matter of debate in the Conference was the Draft Statute, which was prepared by PrepCom from 1995 to 1998. This Statute was covering various issues and many of them were adopted by the participant states in a relatively short time. Although the Draft Statute was including accentuated and previously discussed matters, due to desire to include almost all possible proposals of states regarding the scope of the Draft Statute, it was too detailed and long. It is argued that it seemed almost impossible to revise every detail in a five weeks' time (Kirsch, 1999, p. 2). Thus, some other alternative working strategies had been developed specifically for the acceleration of the Conference. Bureau of the Committee of the Whole was assigned for the organization and the coordination of the negotiations. This bureau consisted of a chairman, Philippe Kirsch, three vice-chairmen, a rapporteur and fifteen additional coordinators (Hebel, 1999, p. 36). The main responsibility of the bureau was to strengthen the Statute in the process of negotiations by attempting to provide political and financial support on a larger scale. For some scholars, the bureau was well aware of that in this sensitive process, voting could have a malign influence on previously consolidated issues. Furthermore, any possible early voting could

degrade the credibility and consistency of the Draft Statute. Thus, by taking the practice of PrepCom as an example, CW brought those previously consolidated parts of the Draft Statute up for negotiation at first. After the preliminary negotiations, the proposals were submitted to the working groups which were assigned to work specifically on the same issues. At regular intervals, the responsible coordinator of the groups submitted reports, which were discussed and finalized rigorously, to the CW for reconsideration. If the CW granted approval for the issue, it was submitted to the Drafting Committee. If not, the reports were sent back to the working groups for another revision (Kirsch, 1999, p. 451-454). This working strategy was put into practice till the end of the Conference. The Bureau held some periodical meetings to pursue the development process of the negotiations and when it was necessary, the Bureau regulated some changes in strategic planning of the Conference. It can be said that despite the cumbersomeness of these bureaucratic developments during the Conference, all issues included in the Draft Statute were covered comprehensively which enhanced the quality of the Statute as a whole.

The most controversial part of the Draft Statute, which included the issues of selection and definition of crimes, jurisdictional system, proceedings, discretion of the Prosecutor, the relationship between ICC and UNSC, was Part 2 (Kirsch, 1999, p. 2-3). For some scholars, this was the fundamental part of the Statute. To enhance the support for the ICC, this part would be critical. Due to these reasons, Part 2 of the Statute was discussed and compromised in a rather different way. As for the other parts of the Statute, issues in Part 2 were firstly reviewed by CW and were submitted to the specialized working groups. However, when it was understood that an agreement on a consolidated text in the report format was almost impossible, Bureau of CW chaired the process of the negotiations. In this way, proponent and opponent proposals of the delegates were reconciliated individually and successfully with the efforts of the Bureau on 16 July, only a day before the final day of the Conference (Kirsch, 1999, p. 455-456).

Giovanni Conso (1999) states that on the final day of the Conference, there were no more time, patience and alternative for reconciliation left. In the initial schedule of the Conference, the final session of the CW would have been a week before; however, the Final Draft could only be submitted during the night of 16 July. Yet, most of the scheduled work had been completed before the final session of the Conference. This session was chaired by Philippe Kirsch, as many scholars describe, 'in a masterly manner' (p. 472).

Before the final decision on the future of the ICC, the Bureau of the CW, which was working with the coordinators specifically on the fundamental and the most controversial issues of the Draft Statute, had submitted the final revision of the Part 2. While this final version was being negotiated, the delegate of India offered a proposal of two amendments which could change the future of the Conference and the ICC. One of them was covering the relationship between the UNSC and the ICC, the other was about inclusion of the use of nuclear and mass destruction weapons under the jurisdiction of the ICC as war crimes. Both of the amendments were about the most critical and problematic issues of the Draft Statute. It was argued that any reconsideration of these amendments at the final moments of the Conference could be fatal to all parts of the Draft Statute. Following this development, Norway offered to take no action, which was a tactical movement, and the offer was readily approved by 114 states, leading to no need for any voting on these amendments. However, another proposal of amendment was offered by the delegate of USA. This amendment was regarding Article 12 of the Draft Statute which was about the jurisdiction of ICC on the non-party states. This proposal was also interrupted by the no action motion of Norway (Hebel, 1999, p. 37-38). It can be concluded that many of the states were in favor of no more suspension in the Conference and they were willing to adopt the integrated version of the Draft Statute by avoiding any specific voting on critical issues. When chairman Kirsch submitted the Draft Statute to the CW, it was accepted without voting. In this way, CW had completed its mission successfully and the Draft Statute and the Draft Final Act were submitted to the Plenary of the states. Eventually, on 17 July 1998, the Statute for International Criminal Court, which is Rome Statute, was

adopted by 120 in favor to 7 against with 21 abstentions (USA, China, Libya, Iraq, Israel, Qatar and Yemen) (Conso, 1999, p. 473).

3. 1. 3. Developments after the Rome Conference

On 18 July 1998, the Rome Statute was opened for signature. On the same day, twenty-seven states signed it. However, according to Article 126, the Statute could only enter into force with the 'ratification, approval and accession of 60 states' (Rome Statute of the International Criminal Court, 1998). For some pessimist scholars, the Statute would not be able to be signed and ratified for at least five or ten years. For optimist scholars, on the other hand, the ratification process would not be long standing. After the first ratification, more and more states would be willing to sign and ratify the Statute (Schiff, 2008, p. 102).

For further development and approval of the Statute, the Preparatory Commission for the Establishment of an International Criminal Court was established by the Final Act of Diplomatic Conference on 17 July 1998. This Commission dealt with many unsolved issues such as 'rules of procedures and evidence', 'defining the crime of aggression', 'elements of crimes', 'agreements with UN and the ICC', 'financing', 'rules of Assembly of States Parties', and 'agreements with UN and the host country' in ten sessions from 1998 to 2002 (Rome Statute of the International Criminal Court, 1998; Preparatory commission for the International Criminal Court, 2002). Through the progress in the work of the Commission, the number of the signing and ratifying states increased. Almost all states that signed the Final Act were invited to involve in the efforts of Preparatory Commission in order to accelerate the process of ratification.

On 2 February 1999, Senegal became the first state party of ICC with its ratification. Following this, Trinidad and Tobago was the second party in April 1999. At the end of 2000, there were twenty-seven state parties. Most importantly, with the ratification of ten different states at the same time (Bosnia-Herzegovina, Bulgaria, Cambodia, Republic of

Democratic Congo, Ireland, Jordan, Mongolia, Nigeria, Romania, Slovakia) on 11 April 2001, it was guaranteed that the Rome Statute would formally be acceptable. Finally on 1 July 2002, the Statute entered into force (Ulusoy, 2008, p. 12). In September 2002, the First Assembly of States Parties (ASAP) was held in New York for the first time. Its primary work was to discuss the budgetary issues, nomination and election procedures for judges and the prosecutor in the draft presented by the Preparatory Commission. Some other important regulations were determined in this very first meeting of ASAP. One of the first assignments of the ASAP was Bruno Cathola to the position of Director of Common Services. This was a temporary position because according to the Statute of ICC, the Registrar would be chosen by the judges; however, the judges were not elected yet. Thus, in this meeting, it had officially been announced that the nomination as candidate judges and prosecutor would be accepted by 8 December 2002. Almost a year later, in February 2003 meeting of the ASAP, the eighteen judges of ICC were elected. It is generally criticized that these first elections were taking some political concerns into consideration rather than experience of judges and common representation principle (Schiff, 2008, p. 106-107).

The elected judges took their oath of office on 11 March 2003 and after coming into office, they elected Philippe Kirsch as the President of the Court, Akua Kuenyehia and Elizabeth Odio Benito as Vice presidents and Bruno Cathola as the Registrar. The electoral process of the Prosecutor was more challenging. The Prosecutor would be elected among the candidates that were presented by the ASAP and a non-UNSC member candidate would be preferable. Eventually, Luis Moreno Ocampo from Argentina was unanimously elected as the Chief Prosecutor on the 21 April 2003 and took his office on 16 June (Muller, 2004, p. 194-195). Although Rome Statute was adopted in 1998, it took five more years to constitute the judicial and administrative structure of the ICC.

3.2. STATUTE OF THE INTERNATIONAL CRIMINAL COURT

3. 2. 1. Structure and Administration of the Court

One of the lessons which were learnt from ICTY and ICTR tribunals was that there should be a strong administrative and organizational structure for a strong and effective ICC (Rwelamira, 1999, p. 154). Thus, an appropriate, delicate and self-checking balance among the different divisions of the ICC was the first and foremost condition for the efficiency of ICC. According to the Rome Statute, the court was consisted of four basic organs: 'Presidency, Chambers (Appeals Division with a Pre-trial and Trial division), the Office of the Prosecutor and the Registry' (Rome Statute of the International Criminal Court, 1998).

3. 2. 1. 1. Presidency

In the Presidency, there is one President and two Vice Presidents. Both President and Vice Presidents are elected among judges by the judges of the court for three years period with absolute majority. They can be reelected for a second term. According to some leading scholars, responsibilities of the President can be divided into two in terms of their scopes: external representation of the court and proper administration of the court in accordance with the Statute. In terms of external representation, the president has the authority to make and finalize contractual negotiations which can be with states or national and international organizations. In addition to this, other duties of the president are to raise the awareness about the court in the civil society and to make sure that the court is accurately perceived by the society. As for the proper administration of the court, the president is in charge of supporting the Registry in getting involved in judicial activities of the court effectively, formation and application of the administrative policies, staff management and providing information (Ulusoy, 2008, p. 29-31). The president does not have any judicial responsibility rather than management and execution of the judicial activities in

accordance with the Statute. Most importantly, the Office of the Prosecutor is completely exempted from the authority and the management of the President. However, the latter is expected to act in cooperation with the former when fulfilling their duties.

The responsibility of the First Vice President is to act for the President in the absence or when he/she is disqualified. Identically, the Second Vice President takes over the presidency in the absence or disqualification of both President and the First Vice President. In the first elections in 2003, Judge Philippe Kirsch from Canada became the president while Akua Kuenyehia from Ghana and Elizabeth Odio Benito from Costa Rica were occupying the positions of the First and Second Vice Presidency respectively (Rothe & Mullins, 2006, p. 62-63).

3. 2. 1. 2. Chambers

Chambers are the judicially responsible bodies of the court and consist of three divisions: Pre-Trial Division, Trial Division and Appeals Division. These divisions are created after the appointment of eighteen judges by the election of Assembly of the State Parties (seven judges to the Pre-trial division, six judges to the Trial division and five judges plus the president to the Appeals Division). In the election of the judges, the experience, ‘equitation in geographical representation and fair representation of male and female judges’ are the most important factors (Rwelamira, 1999, p. 165). Thus, for this geographical equity, there should be three candidates from African countries, three from Asian countries, three from Eastern European countries, three from Latin American and Caribbean countries and three from Western European and other countries (Rothe & Mullins, 2006, p. 63). Another important point is that the candidates can only be from the highest experienced judicial personnel of the State Parties.

The Pre-Trial Division is the division of the court which mostly based on common law practice. It respects and represents the combination of the pioneer judicial systems in the

world. Its primary responsibility is to identify the legality of the cases and to decide to which extent the case would be under the jurisdiction of the ICC. Before the trial begins, it is also the responsibility of the Pre-Trial Division to make the interim decisions for the trial. According to the Rome Statute, the judges in Pre-Trial Division are elected mostly in compliance with their experience in criminal law and to serve for three years. Working in coordination with the Prosecutor, this division also complies with the pre-investigation demand that comes from the Prosecutor. If the investigation does not require further proceedings, the Pre-trial division can dismiss the case. Some other legal responsibilities of this division are to make decision to issue summons and an arrest warrant, and to provide security for victims and witnesses (Ulusoy, 2008, p. 31-33).

The Trial Division takes over after the official acceptance of the indictments by the Prosecutor. The judges in the Trial Division are elected for three years. However, if there is an incomplete trial, even if their formal duty period is over, the judges can perform their duties in their positions till the completion of the trial. The Trial Division is expected to conduct trials in a fair and expeditious way. It is also the legal responsibility of the trial division to provide security and protection to the victims and witnesses. After the legal acceptance of the indictment, this division negotiates with the parties of the case and determines the legal and applicable procedures and the appropriate language of the court. The judgments of the trials are approved mostly unanimously or, in some cases, it could be with absolute majority (Rome Statute of the International Criminal Court, 1998; Ulusoy, 2008, p. 33-34). Appeals Division deals with the judgments and decisions made by the Trials Division. It adjudicates the compatibility of these judgments through examination of the legal procedures and principles. At the end of this detailed examination, Appeals Division may approve, change or reverse the judgment. Although the judges in Pre-Trial and Trial divisions can serve in different divisions, this is not the case of the judges of Appeals Division. According to the Statute, it is not allowed for judges of Appeals Division to serve in different divisions (Rwelamira, 1999, p. 168).

3. 2. 1. 3. The Office of the Prosecutor

The Office of the Prosecutor is the independent and separate organ of the court. It is chaired by the Prosecutor. The Prosecutor is elected by the ASAP with secret ballot and absolute majority for nine years. The Prosecutor cannot be reelected. The Deputy Prosecutors are also elected by the ASAP under the same conditions, but from a list of three candidates which has been submitted by the Prosecutor. Prosecutor and the Deputy Prosecutors are not allowed to work professionally in any other profession and they are not allowed to engage in any activity which can ruin their independence and contradict with their judicial responsibilities. The Office of the Prosecutor is accepted as the most important and critical organ of the ICC for the future success of the court. Thus, the Prosecutor has full authority over both the judicial and the administrative management of the Office. Furthermore, the Prosecutor should be supported and respected institutionally and judicially by the other organs of the court.

Under the Article 42 of the Rome Statute, besides the authority of State Parties and the UNSC or International Court of Justice (ICJ), the Prosecutor is also fully independent and authorized to start an investigation and prosecution (Rome Statute of the International Criminal Court, 1998; Rwelamira, 1999, p. 168).

The Office of the Prosecutor can be divided into two: investigation division and prosecution division. The investigation division mostly concerns with the ‘preliminary examinations, conduct of investigations, collecting and examining evidence, questioning persons being investigated’ while the prosecution division is ‘responsible for the litigation of the cases before the chambers of the court’ (Rothe & Mullins, 2006, p. 65).

3. 2. 1. 4. The Registry

The Registry, the non-judicial body of the court, has been established with the purpose of administrative management of the different divisions of the court with the exception of the Office of the Prosecutor. It is headed by the registrar. The registrar is elected by the judges, after consultation with the ASAP, for five years with absolute majority. At the end of the five years period, the registrar can be reelected. The responsibilities of the registrar can be classified under two categories: administrative responsibilities and responsibilities for victims and witnesses. Management of human resources, communication of the court with states, inter-governmental organizations, NGOs, scholars and law professionals, financing of the court are some of the administrative responsibilities of the Registry. On the other hand, the Registry is responsible for establishment of a Victims and Witnesses Unit with the purpose of 'assisting the witnesses and victims with legal advice and representation with providing agreements for relocation and support services' (Rothe & Mullins, 2006, p. 63; Rome Statute of the International Criminal Court, 1998; Ulusoy, 2008, p. 35-36).

3. 2. 1. 5. The Assembly of the State Parties (ASAP)

The Assembly of the States Parties can be regarded as the executive body of the court. ASAP was established with Article 112 of the Rome Statute. It consists of the representatives of the state parties. It has a bureau of eighteen members who are elected for three years. The members of the bureau are elected with the concern of equity in geographical and legal representation of the leading legal systems. The Bureau holds at least one meeting yearly. Main responsibilities of the ASAP are the election of the Prosecutor, Deputy Prosecutors and the judges of the court, the control of the budget, and most importantly, the adoption, regulation and revision of the Rome Statute. The decisions made by ASAP should be consensus-based. Each state has only one right to vote in the Assembly of the States Parties (Ulusoy, 2008, p. 37-38; Rome Statute of the International Criminal Court, 1998; Rothe & Mullins, 2006, p. 62).

3. 2. 2. Scope of the Rome Statute

The Rome Statute consists of thirteen parts and a preamble, totally 128 articles. Part 1 of the Statute is about the 'Establishment of the Court' and it has four articles. In these articles, the Court's seat, its complementarity principle to national courts, its jurisdiction over persons and over the most serious internationally accepted crimes are expressed (Arsanjani, 1999, p. 25; Rome Statute of the International Criminal Court, 1998).

The second Part, namely 'Jurisdiction, Admissibility and Applicable Law', was the mostly discussed part of the Statute, including the jurisdiction of the court, the list and definition of the crimes within the jurisdiction of the court, the proceedings, its admissibility and the principle of complementarity. There are seventeen articles in this part and it is mostly referred as 'the heart of the Statute' (Arsanjani, 1999, p. 25). The four core crimes within the jurisdiction of the court are 'crimes against humanity, war crimes, crime of genocide and crime of aggression'. During the negotiations of the articles related to the crimes, some other crimes like 'drug trafficking, terrorism, use of nuclear weapons and crimes against the personnel of UN' were also discussed to be included in the jurisdiction of the court. However, these crimes were not included in the Statute as separate categories of crimes. Instead, some of them were included in 'the Final Act of the UN Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court' or they were covered roughly in the sub-definitions of the core crimes because it has been concluded that these crimes can be better addressed in national jurisdictions and they require more detailed and elaborate investigation process compared to the four core crimes (Arsanjani, 1999, p. 30).

Of these four crimes, crime of aggression was the most problematic one in terms of its definition. It was not expected to be a problem as the majority of the states were in favor of its inclusion in the Statute. Nonetheless, for some scholars, crime of aggression is 'an arch crime' which is a direct threat to the international society. More specifically, crime of

aggression is likely to be the direct reason of a larger and more extensive conflict or a war. Thus the frame of it should be drawn very carefully and meticulously (Cassese, 1999, p. 146). The problematic issue in the inclusion of the crime of aggression was basically about the role of the UNSC in determination of an aggression. Many states opposed the idea of determination of an aggression by UNSC while a group of states including the five permanent members of the UNSC alleged that crime of aggression should be addressed only after the UNSC determined that there was an act of aggression. However, at the end of the negotiations, it was clearly understood that it was not easy and simple to define the crime of aggression within a limited time and this definitional problem was postponed to be discussed in a later meeting of the ASAP. Thus, the crime of aggression was included in Article 5 without a clear and agreed definition. This means that ICC will not have jurisdiction over acts of aggression until a generally accepted definition has been agreed (Cassese, 1999, p. 147; Arsanjani, 1999, p. 28-29).

The crime of genocide, which is included in Article 6, is the crime that was accepted in a relatively shorter time period by great majority of states. The definition of it was based on the Article II of 'Convention on the Prevention of the Crime of Genocide of 1948' and it was defined as 'any of the acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group' (Rome Statute of the International Criminal Court, 1998).

Article 7 of the Statute was about the crimes against humanity. The definition of this crime had also become an issue of intensive discussions. Some states supported the statement of 'any widespread or systematic attack directed against civilians' instead of 'any widespread and systematic attack directed against civilians'. However, it was argued that the statement of 'or' was narrow-scoped and insufficient. Eventually, it was agreed to include any widespread 'and' systematic attack directed against civilians in Article 7, in addition to the crimes committed during armed conflicts in war time. Furthermore, any attacks by states, other organizations or political entities were also included in the scope of crimes against

humanity. In this way, crimes against humanity have been defined much more broadly and satisfactorily and it has covered many controversial issues such as forced pregnancy, deportation, sexual slavery, persecution (Rome Statute of the International Criminal Court, 1998; Arsanjani, 1999, p. 30-32).

'Grave breaches of the 1949 Geneva Conventions, war crimes under Protocol I Additional to the Geneva Conventions, Violations of common Article 3 of the four Geneva Conventions and breaches under Protocol II' have formed the basic structure of the definition of war crimes in Article 8. During negotiation process, some states had the desire to include the war crimes committed in internal armed conflicts in addition to the international conflicts and wars. This was essential especially in the post-Cold War period as majority of the conflicts have been internal or intrastate. Eventually, inclusion of war crimes which are committed in internal armed conflicts has been compromised. Crimes committed against UN personnel are also attached in the definition of war crimes. In this sense, Article 8 (2) (b) (iii) and (e) (iii) have stated:

> 'intentionally directing attacks against personnel, installation, material, units or vehicles involved in a humanitarian assistance of peacekeeping mission in accordance with the Charter of the UN, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict' (Rome Statute of the International Criminal Court, 1998).

The use and limits of some prohibited weapons are other concerns of Article 8 of Rome Statute. In particular, the use of nuclear weapons and some similar weapons which could possibly be invented in future led to some problems. Many states proposed that the use of nuclear weapons and some future weapons with similar features should be accepted as war crimes while some other states including mainly the nuclear states opposed this idea. Although the prohibition of nuclear weapons was not included in the Statute, some subparagraphs regarding the prohibition of future weapons with similar features were added to Article 8. According to subparagraph (b) (xx) of Article 8 (2), there are three conditions which are necessary to regard the use of future weapons as war crimes:

> 1- 'These new weapons must be of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict'.
> 2- 'Such weapons must be the subject of a comprehensive prohibition'.
> 3- 'Such weapons must be included in an annex to the Statute, by an amendment in accordance with the relevant provisions set forth in Articles 121 and 123' (Arsanjani, 1999, p. 34).

In the Articles from 12 to 19, the jurisdiction of the court, complementary structure of the court and its admissibility are clarified. Along with Preamble and Article 1, the principle of complementarity has been referred in Articles 17 and 19. This principle is one of the most remarkable strengths of the Statute which makes the ICC more acceptable, credible and supportable. As it was stated in previous parts of this study, according to principle of complementarity, the ICC is designed to have jurisdiction when the national courts are not able, not willing to exercise jurisdiction (Kirsch, 1999, p. 5). In this sense, ICC can exercise jurisdiction depending upon two prerequisites: 'if it has the consent of territorial state where the crime was committed' or 'if it has the consent of the state of nationality of the accused' (Rome Statute of the International Criminal Court, 1998; Arsanjani, 1999, p. 26). However, if the situation is referred by the UNSC, ICC can exercise its jurisdiction over the crimes committed in the territory of a non-party state or the crimes committed by a national of a non-party state. The only exemption from this jurisdiction has been added in Article 124, in 'Transitional Provision' part. This article has enabled the State Parties not to accept the jurisdiction of ICC over the crimes defined under Article 8 for a seven years period after ratification, even if that party is a territorial state or the state of the suspect's national (Rome Statute of the International Criminal Court, 1998).

In terms of trigger mechanisms of the court, investigations may be initiated in three ways: at the request of a state, at the request of UNSC or by the Prosecutor, which is referred as 'the three-pronged system' by some leading scholars (Cassese, 1999, p. 162). On the request of a State Party, the Prosecutor is responsible for notification of this request to the

other states so that the principle of complementarity can be applied first. If the request is from the Prosecutor, this request should be approved by the Pre-Trial Chamber and should be notified to the other states. However, when the request for initiation of an investigation comes from the UNSC, there is no need for the approval of Pre-Trial Chamber and for notification to other states. In this way, a very delicately balanced system has been designed by the draughtsman of the Statute (Cassese, 1999, p. 162). Article 16 deals with the situations which require deferral of an investigation or prosecution. According to this article, the UNSC has the authority to propose a deferral for twelve months by claiming that the initiation of such an investigation or prosecution will be a threat against international peace and order under Chapter VII of the UN Charter and this deferral can be renewed at the end of twelve-month period (Rome Statute of the International Criminal Court, 1998). Later, this article has been an issue of discussion among scholars which will be discussed in the fifth chapter of this study.

Some other issues involved in Part 2 are ‘temporal jurisdiction’ in Article 11 and 19 which declares that Statute has jurisdiction only over the crimes committed after its date of entry into force, ‘*Ne bis in idem’* in Article 20, which is a legal doctrine that guarantees any legal action cannot be judged twice. That is especially important for the ICC for it is complementary to national courts. Normally ICC will not have jurisdiction over the same crime that had been tried before national courts. However, if it has been found out that the case is not conducted fairly, impartially and independently by the national courts, the proceedings regarding this case can be initiated by the ICC for a second time (Rome Statute of the International Criminal Court, 1998).

Part 3 of the Statute deals with ‘General Principles of Criminal Law’. It consists of twelve articles and it starts emphasizing the principles of ‘*Nullum crimen sine lege’* and ‘*Nulla poena sine lege*’ (‘no crime without law and no penalty without law’) in Articles 22 and 23 respectively (Schaack, 2008, p. 1). Court’s jurisdiction over ‘natural persons’, grounds for excluding criminal responsibility, basis for individual criminal responsibility, non-

retroactivity of jurisdiction over natural persons, exclusion of jurisdiction over persons under eighteen, and criminal responsibility of superiors or commanders are the subjects of this part of the Statute (Arsanjani, 1999, p. 36-37; Rome Statute of the International Criminal Court, 1998). In Part 4, the Composition and Administration of the Court is dealt with as it was explained comprehensively in the previous section of this study. In Part 5, 6 and 8, 'the Procedural matters', regarding investigation and prosecution processes, trial process and appeal process are addressed.

In Part 7, Penalties are included. As a distinctive feature, exclusion of death penalty from the Statute is important to note here. Part 9 is about 'International Cooperation and Judicial Assistance' which underlines the obligation of State Parties to cooperate with the court. The cooperation request can be in respect of filing necessary documents and evidence, protection of victim and witnesses, surrender of a person or property, arrest of a person. In Part 10, the issue of 'Enforcement' of court decisions is addressed and it has been clarified that the imprisonments will be served in the prisons of a state which is chosen among voluntary states (Rome Statute of the International Criminal Court, 1998). In addition, the fines and forfeiture measures are explained in this part of the Statute. Part 11 deals with the composition and responsibilities of the Assembly of State Parties which was also stated in 3. 2. 1. 5. section of this study. The financing and the funds of the Court are issues of Part 12. It has been stated that the State Parties will primarily be liable for the financing of the court. In addition to that, the funds from the UN and other voluntary financial supports from non-party states and from organizations will be welcomed by the Court. Part 13 is the final part of the Statute and it consists of thirteen articles regarding the amendment procedures. Besides, the solution of a dispute among state parties is stated in this part. It has been clarified that when there is a jurisdictional or collusive dispute between the State Parties, and if this dispute does not come to an end in three months, it is referred to the ASAP to be resolved. The conditions for withdrawal and the entry into force of the Statute (through the ratification of 60 states) are also stated in this final part (Kirsch, 1999, p. 5-7; Arsanjani, 1999, p. 39-42, Rome Statute of the International Criminal Court, 1998).

As it is stated in the chapter, the road to the Rome Statute was highly compelling. However, it was overcome due to the decisiveness of the international community. Rome Statute was designed in a way which addresses the most accepted humanitarian crimes. It is one of the most important concrete steps in terms of trying individuals. With its complementary structure, with its compliance with the principle of legality and most importantly with its independence structure from the UNSC, it is argued as the most desired court which is an autonomous agent of human security. Human security, as it was indicated in the first chapter, is about human protection as well as human needs and human rights and with its deterrent structure, the ICC is designed to maintain international peace and order which prioritizes the civilian security and civilian protection. However, more importantly, the practice of this statute is the main concern, which will be the issue of the next chapter. In addition to examination of the historical background of the conflicts, there will be an analysis of the effectiveness of the Rome Statute in practical cases.

CHAPTER 4

INTERNATIONAL CRIMINAL COURT INVESTIGATIONS

Beyond the scope and the content of the Rome Statute, its implementation is the most important criteria in terms of evaluation of the court's effectiveness as an autonomous agent of human security. Thus, the aim of this chapter is to analyze the historical developments which gave birth to the humanitarian conflicts and how these conflicts have been addressed by the ICC. According to the principle of complementarity, the court is required to give the judicial priority to the national courts to initiate the investigations and prosecutions. When they fail to do so, the ICC can take over the investigation through three ways: through the referral by a State Party, through the referral by the UNSC under Chapter VII of the UN Charter or through the initiation by the Prosecutor after the authorization of the Pre-Trial Chamber. Thus, in this chapter of the study, the investigations by the ICC will be examined under three categories regarding their types of referrals. Examination of the ICC investigations and its case selection is considerably critical for this study as it will highlight the question of whether the ICC is a supra-national institution based on human security rather than the interests and security of the states.

Since the Rome Statute entered into force on 1 July 2002, there have been eight situations brought to the ICC. Four of them were initiated with the request by the governments of the State Parties, two of them were initiated with the UN Resolutions and the other two were initiated by the Prosecutor with the authorization of the Pre-Trial Chamber.

4.1. SITUATIONS REFERRED BY THE STATE PARTIES

4.1.1. The Situation in Uganda

Since its independence in 1962, the conflict in northern Uganda has been in the center of one of the most brutal humanitarian crises in the world. The conflict between the rebel group of Lord's Resistance Army (LRA) and the Uganda People's Defence Force (UPDF), which is the government force of Uganda, had a devastating impact on the society and it continued for more than twenty years. It is argued that there are some reasons that deepen the roots of this conflict; such as the conflict between Sudan and Uganda. It can be argued that both states have been willing to support the rebel groups on each other's territory and it is increasingly accepted that Sudan has been the greatest supporter and the supplier of the LRA (Apuuli, 2006, p. 180-181). Another trigger is the long-term conflict between the North and the South of Uganda. The roots of this conflict date back to the colonial period of the country. During the colonization period, the North of the country was only used as the source of labor force while the South was developing and industrializing. After the independence, this gap has widened and has been hard to recover. The poorer people in the North were getting, the more the Southerners were enjoying the economic abundance. Politically, the South was the center of decision-making and the North was not active in political arena. Thus, these undeveloped and poor Northerners were the main participants of the LRA when Joseph Kony was establishing the LRA in 1987 since they had already been suffering from economic and political problems (Doom & Vlassenroot, 1999, p. 7-8). From the very establishment of the LRA, Kony was criticized of conducting a violent and religious propaganda against the government of Uganda. It is generally argued that his intention was to overthrow the president Yoweri Kaguta Museveni. To achieve his aim, he organized countless attacks without concerning the difference between the civilian and the military. In addition, he systematically abducted and recruited thousands of children to force them to kill civilians (Apuuli, 2006, p. 181-183).

Uganda signed the Rome Statute on 17 March 1999 and has become a party state since its ratification of the Statute on 14 June 2002. Thus, in accordance with the legal procedure, the government of Uganda was able to refer the situation to the ICC as it was one of the state parties. Eventually, the situation in Uganda was referred to the ICC for investigation on 16 December 2003. With his referral, the initial intention of the President Museveni was to end the military conflict as the previous negotiations with the LRA on ceasefire ended with failure for a couple of times. On the other hand, in his referral, he asked for a specific investigation which would mostly be concentrated on the grave violations of human rights conducted by the members of the LRA. In this way, the allegedly committed crimes by the UPDF would be uncovered. However, in the reports of Human Rights Watch (HRW), it is claimed that there have been records of violations by the UPDF as well (Human Rights Watch, Sept 2005). This issue will be discussed in the next chapter of this study in detail.

Following the initial examination, the Prosecutor, Luis Moreno Ocampo, applied for warrants of arrest for the suspects on 6 May 2005. These warrants were issued and sealed by the Pre-Trial Chamber II on 8 July 2006 and finally, the investigation started on 14 October 2005 after the Prosecutor had unsealed the arrest warrants for five top leaders of the LRA: Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen and Raska Lukwiya (ICC, Uganda, 2004). This has been the first official investigation of the ICC.

Nonetheless, this case is still in the phase of investigation as all indictees are at large. It is claimed that Kony and Ongwen are actively the leaders of the LRA and they continue their hostilities and it is suspected that they can be either in Uganda or in other neighboring states (Gettleman, 2010). Of all the five indictees, the allegations and the investigation on Raska Lukwiya were dismissed after his decease was publicly announced on 12 August 2006 (ICC, Uganda, 2004).

As for the counts on them, alleged commander-in-chief of the LRA, Joseph Kony is charged with thirty-three different crimes. Of all these crimes, twelve of them are crimes

against humanity while the rest are war crimes. Vincent Otti, alleged vice-chairman and second-in-command of the LRA, is allegedly liable for twenty-two counts; eleven counts of crimes against humanity and twenty-one counts of war crimes. The alleged deputy army commander of the LRA, Okot Odhiambo, on the other hand, is allegedly criminally responsible for ten counts: two counts of crimes against humanity and eight counts of war crimes. Lastly, Dominic Ongwen is the alleged brigade commander of the Sinia Brigade of the LRA and there are seven counts against him including three counts of crimes against humanity and four counts of war crimes (ICC, Uganda, 2004).

4.1.2. The Situation in Democratic Republic of Congo

It is alleged that the political and societal unease in Democratic Republic of Congo (DRC) started after the end of the colonial period of DRC in 1960. Following the independence, under the autocratic rule of President Mobutu Sese Seko (1965-1997), it reached a peak level and brought further corruption and power struggles to the country (Vinck, Pham, Baldo, & Shigekane, 2008, p. 10). In the last years of Mobutu's regime, the opponent voices gained strength and turned into violent rebellions against the regime. In the leadership of these rebellions, there was Mobutu's strong leftist opponent Laurent Kabila who mobilized tens of thousands of people and established Alliance of Democratic Forces for the Liberation of Congo (AFDL). In 1996, the AFDL launched so-called liberation war against Mobutu's rule with the help of five neighboring states; Uganda, Rwanda, Burundi, Angola and Zambia. This conflict is also called 'the First Congo War'. Eventually, the military campaign forced Mobutu to leave the country in May 1997 (Reyntjens, 1999, p. 241). However, the triumph of Kabila was not the end of the conflict in the region.

After Kabila's take-over, he intended to lessen the effect of the neighboring on the internal affairs of DRC while he was struggling with the rebel group Congolese Rally for Democracy (RCD) against his new regime. This was perceived as a security threat by Rwanda and Uganda and they started to support the military campaign of the RCD. It

provoked the outburst of the Second Congo War in 1998. Many key regional actors involved in this conflict. Zimbabwe, Angola and Namibia were in the support of Kabila while Rwanda and Uganda insisted on the support to the RCD (Tull, 2009, p. 216). However, it was apparently understood in July 1999 that the war did not bring any victory for any of the sides. Thus, the Lusaka Peace Accord was signed. According to this agreement, the UN was called to deploy a peacekeeping force into the conflict region and the UN Mission in the Democratic Republic of Congo (MONUC) was established to implement the agreement and control the disarmament and reconciliation. Yet, it was soon understood that the deployment of the MONUC and the Lusaka Peace Accord were not enough for permanent peace in the region when the violence was ignited with the assassination of Laurent Kabila in 2001 (Vinck, Pham, Baldo, & Shigekane, 2008, p. 11-12). Following this, Laurent Kabila's son, Joseph Kabila came to the presidency. Joseph was more prone to have peaceful and stable relations with the neighboring states. Thus, the Sun City peace agreement was signed in 2003 and it contributed to the democratization and reconciliation process of the country. Although this peace agreement was regarded as the determiner of the end of the Second Congo War, the military conflicts and human right abuses in eastern parts of the country, especially in North and South Kivu and in Ituri, have been reported since then (Vinck, Pham, Baldo, & Shigekane, 2008, p. 14).

Democratic Republic of Congo signed the Rome Statute on 8 September 2000 and ratified it on 11 April 2002. The situation in DRC was referred by the government of Joseph Kabila on 19 April 2004 during the Second Congo War (ICC, DRC, 2004). In response, the Prosecutor Luis Moreno Ocampo announced the initiation of the investigations on 23 June 2004 and since then, there have been six cases regarding the situation in DRC. The investigations were mostly concentrated on the conflicts and the crimes committed in the district of Ituri during Second Congo War (1998-2003).

In accordance with the investigations of the Pre-Trial Chamber I and II, six warrants of arrest have been issued. The allegedly leader and founder of the Union of Congolese

Patriots (UPC)[5] and its military wing Patriotic Forces for the Liberation of Congo (FPLC)[6], Thomas Lubanga Dyilo was accused of recruiting and using children actively in hostilities in the district of Ituri during the Second Congo War. On 16 March 2006, he was transferred to the Hague and his trial was opened on 26 January 2009. He was convicted of responsible as the co-perpetrator of 'enlisting and conscripting children under the age of 15 years into the FPLC and using them to participate actively in hostilities in the context of and armed conflict not of an international character from 1 September 2002 to 13 August 2003'. He was sentenced to fourteen years of imprisonment by the Trial Chamber I on 10 July 2012 (Morgan-Foster, 2007, p. 1-7).

Germain Katanga, who is allegedly commander of the Front for Patriotic Resistance in Ituri (FRPI)[7], was first being charged with Mathieu Ngudjolo Chui in the same case but the cases were severed on 21 November 2012. The decision on confirmation of the charges against Katanga was announced on 26 September 2008 and on 24 November 2009, his trial was initiated. There are a total of ten counts against him, including three counts of crimes

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[5] Union of Congolese Patriots (UPC) is a political and military group which actively involved in the hostilities in Ituri during the Second Congo War. It was established by Thomas Lubanga in 2001 and was heavily supported by Uganda. . For more information see 'DRC: Who's who in Ituri – militia organizations, leaders' by IRIN humanitarian news and analysis, the UN office for the Coordination of Humanitarian Affairs, 20 April 2005 on http://www.irinnews.org/report/53981/drc-who-s-who-in-ituri-militia-organisations-leaders.

[6] Patriotic Forces for the Liberation of Congo (FPLC) is the military wing of the UPC. It was again established by Thomas Lubanga and was commanded by both Lubanga and Bosco Ntaganda. There were many records of human rights abuses committed by the FPLC in Ituri during the Second Congo War. For more information see 'DRC: Who's who in Ituri – militia organizations, leaders' by IRIN humanitarian news and analysis, the UN office for the Coordination of Humanitarian Affairs, 20 April 2005 on http://www.irinnews.org/report/53981/drc-who-s-who-in-ituri-militia-organisations-leaders.

[7] Front for Patriotic Resistance in Ituri (FRPI) is a military and political group, established in November 2002 in the district of Ituri. It was led by Germain Katanga till his arrest and transfer to the ICC. There are records of military campaign and human right abuses of the FRPI from January 2003 to March 2003. For more information see 'Ituri: The bloodiest Corner of Congo—Who is who - Armed Political Groups in Ituri' by Human Rights Watch, May 2003 on http://www.hrw.org/legacy/campaigns/congo/ituri/armedgroups.htm.

against humanity and seven counts of war crimes (ICC, DRC, 2004). The case of *Prosecutor v Germain Katanga* is still in the phase of trial.

Another indictee, Bosco Ntaganda, is the allegedly former Deputy Chief of the General Staff of the FPLC. There are two warrants of arrest issued for him. The first warrant of arrest was issued on 28 April 2008 and it consisted of the charges of committing three war crimes: enlistment, conscription and using of children in hostilities. In the second warrant of arrest issued on 13 July 2012, he was charged as an indirect co-perpetrator of additional four war crimes and three crimes against humanity. On 22 March 2013, he surrendered voluntarily and he is still in the custody of the ICC (ICC, DRC, 2004).

Callixte Mbarushimana, the alleged Executive Secretary of the Democratic Forces for the Liberation of Rwanda (FDLR)[8], was also one of the indictees of the ICC. After his warrant of arrest issued on 20 August 2010, he was arrested by the French authorities on 11 October 2010 and transferred to the Hague on 25 January 2011. Following the completion of investigations, however, the Pre-Trial Chamber I announced the declining of the charges against Mbarushimana on 16 December 2011 and the Chamber gave him his freedom on 23 December 2011 (ICC, DRC, 2004).

Sylvestre Mudacumura is another indictee of the investigation concerning the situation in DRC. He is another alleged commander of the FDLR and his warrant of arrest was issued on 13 July 2012. He is charged with nine counts of war crimes allegedly committed in Kivu conflict that was one of the major conflicts during Second Congo War. Nevertheless,

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[8] Democratic Forces for the Liberation of Rwanda (FDLR) is the rebel group which is located in the east of DRC. The FDLR was led by Callixte Mbarushimana and later by Sylvestre Mudacumura. It is alleged that the FDLR involved in the military conflicts both in Rwandan genocide in 1994 and in the last part of the Second Congo War. For more information see ‘World Report 2012-2013-2014: Democratic Republic of Congo’ by Human Rights Watch, on http://www.hrw.org/world-report/2014/country-chapters/democratic-republic-congo.

this case is in the phase of pre-trial as Mudacumura is still at large (ICC, *Prosecutor v Sylvestre Mudacumura*, 2012).

The final case of the ICC regarding DRC was *Prosecutor v Mathieu Ngudjolo Chui*. Chui is the alleged former leader of the Nationalist and Integrationist Front (FNI)[9]. He was arrested on 6 February 2008 and his trial initiated on 24 November 2009. There were 10 counts of crimes against him, however, with the verdict of Trial Chamber II on 18 December 2012, he was acquitted and later released on 21 December 2012 (ICC, *Prosecutor v Mathieu Mgudjolo Chui*, 2012).

4.1.3. The Situation in Central African Republic

As in Uganda and DRC, the conflicts which brought Central African Republic (CAR) to the ICC arose with the end of the colonial period in the country. Since its independence in 1960 from France, the country had struggled with rebel groups and numerous attempts of military coups. From 1960 to mid-1990s, the country had to welcome three different presidents (respectively; David Dacko, Jean-Bedel Bokassa, David Dacko for a second term and André-Dieudonné Kolingba). Almost all the presidential changes included severe violence and bloody massacres of civilians (International Crisis Group, 2007, p. 2-9).

Of all the presidents of the country, only a few of them were elected through fair elections and the first of these was Angé-Felix Patassé elected in 1993. Although Patassé was welcomed by the majority of the people, the stability did not last long. After his re-election in 1999, the rebellions and opponent voices were ignited. The military took the advantage

[9] Nationalist and Integrationist Front (FNI) is a rebel group consisting of mostly Lendu people. This group is allegedly responsible for many military attacks against the UN peacekeeping forces and civilians, especially in Ituri district. For further information see 'DRC: Who's who in Ituri – militia organizations, leaders' by IRIN humanitarian news and analysis, the UN office for the Coordination of Humanitarian Affairs, 20 April 2005 on http://www.irinnews.org/report/53981/drc-who-s-who-in-ituri-militia-organisations-leaders.

of the instability and active rebellions and attempted a serious military coup in October 2001. It is alleged that one of the most important actors behind the coup was the former president André-Dieudonne Kolingba (Vinck & Pham, 2010, p. 426). However, Patassé found the chief of staff, François Bozizé, responsible for this coup and issued a warrant of arrest for him. Bozizé was forced to escape to Chad and he spent a year there. Meanwhile, the political and societal unease was not relieved in CAR and the supporters of Bozizé were getting prepared for a counter-attack against the government of Patassé. When Bozizé came back to the country on 25 October 2002, he attacked directly to the capital, Bangui from the north, allegedly backed by France and Chad. As military was among the weakening institutions in CAR, Patassé did not have enough military back-up to fight Bozizé's forces back (Glasius, 2008, p. 51). Thus, he asked for help from warlords of neighboring countries. It did not take a long time for Patassé to push the Bozizé's forces back with the help of Jean-Pierre Bemba, a strong warlord from DRC, and Colonel Abdoulaye Miskine, an appointed military officer to suppress the rebels in the north. Yet, the conflict continued for months. When Patassé left the country for a visit in March 2003, Bozizé arranged a full-scale attack and captured the capital. In a few weeks, he established a transition government and declared himself president of the country (Vinck & Pham, 2010, p. 426).

CAR has been one of the state parties to the Rome Statute since the ratification on 3 October 2001. Thus, it had already accepted the jurisdiction of the court over the human rights violations on its territory or by its citizens. During the power struggles between the forces of Bozizé and Patassé, from October 2002 to March 2003, numerous human right violations, killings of civilians and some forms of sexual crimes were continuously recorded in international reports. The first and most comprehensive report was prepared by International Federation for Human Rights (FIDH) on 14 February 2003. FIDH claimed that there were substantial grounds to believe that both sides of the conflict committed several war crimes and crimes against humanity. In terms of individual criminal responsibility, the report was underlining three names: Ange-Felix Patassé, Jean-Pierre

Bemba and Colonel Abdoulaye Miskine (International Crisis Group, 2007, p. 15-16). This report was sent to the ICC with the request of an investigation of the situation in CAR. However, it was in January 2005 when the government of Bozizé officially referred the situation to the ICC. The referral covered all crimes which were committed in CAR since the Rome Statute's date of entry of the force, 1 July 2002.

In compliance with the principle of complementarity, the national courts of CAR were expected to initiate the investigation and prosecution of the most responsible. However, the Court of Cassation of the Central African Republic, the most authorized judicial organ of the country, transferred the investigation to the ICC in 2006 with the claim that it was incapable of conducting such a large scale and serious investigation (Glasius, 2008, p. 52). Finally on 22 May 2007, the Prosecutor of ICC announced the initiation of the investigation concerning the crimes committed between 2002 and 2003 and focusing mostly on sexual crimes. The first arrest warrant was issued for Jean-Pierre Bemba on 24 May 2008 by the Pre-Trial Chamber III. Bemba was arrested on the same day while he was in a visit to Belgium. On 3 July 2008, he was transferred to the Hague (Vinck & Pham, 2010, p. 426-7). The Pre-Trial Chamber III announced its decision to confirm the charges of Bemba on 15 June 2009 and his trial began on 22 November 2010. Bemba was charged 'as military commander' of two crimes against humanity (murder and rape) and three war crimes (murder, rape and pillaging) (ICC, CAR, 2005).

Recently, another case relating to the situation in CAR has been filed and the investigation process has been initiated. In the case of *The Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido,* the arrest warrants for the indictees were made public on 28 November 2013. This case is still in the Pre-Trial investigation, to date. According to the official records of the ICC,

> 'Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido are allegedly criminally responsible for several offences against the administration of justice, including the following counts:
>
> - Presenting evidence that the party knows to be false or forged to the Court in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (article 70-1-b of the Statute) ;
> - Corruptly influencing a witness to provide false testimony in the case of *The Prosecutor v. Jean-Pierre Bemba Gombo* (article 70-1-c of the Statute)'
>
> (ICC, CAR, 2005).

4.1.4. The Situation in Mali

Of all the other self-referrals, the situation in Mali is the most recent referral. Although the self-referral by Mali was sent to the Prosecutor in 2012, the background of the conflict in the region dates back to the pre-independence structure of the country. Mali was one of the colonies of France and it gained its independence in 1960. Since its colonial days, the north of Mali had risen up with the claim of semi-autonomy for several times. Historically, the north of the country had been populated with the semi-nomad Tuareg people. There were some other Tuareg people who located in neighbor countries such as Niger, Burkina Faso, Algeria and Libya. These people are of the ten percent of the whole population in Mali and traditionally they gave the name of 'Azawad' to the north of the country (Sanders & Moseley, 2012, p. 1). Some strategically important cities like Timbuktu, Kidal and Gao which are the central cities of the north are claimed to be in this Azawad region.

The first uprising of Tuareg people was against France, however, they were brutally suppressed by the French forces in a short period of time and they could not find the strength for a second uprising. Once they gained their independence, their rebellion became much more intrusive and hard to quell. In 1962, the first well-organized Tuareg rebellion broke out and it lasted a year. The Tuaregs had to withhold confronting with strong resistance of Mali government. During 1970s and 1980s, the Tuaregs were invited to Libya to fight for Gaddafi's military forces and most of them did not intent to return to

Mali and chose to stay in Libya. The rest was too weak, unorganized and poor to fight for their independence for a few decades (Sanders & Moseley, 2012, p. 1).

In 1990, a new Tuareg rebellion burst out. There were several important ethnic rebel groups supporting the rebellion like Popular Movement for the Azawad (MPA) which was led by Iyad Ag Ghaly, Revolutionary Army for the Liberation of the Azawad (ARLA) which was led by Phissa Ag Sidi Mohamed and the Front for the Liberation of Azawad (FPLA). Some of the leading figures of these groups continued to be key figures in the following Tuareg-oriented uprisings in northern Mali. At the end of this second Tuareg rebellion, the government and the rebels signed a peace agreement and the peace brought stability to the country for fifteen years (Sanders & Moseley, 2012, p. 2).

Even though there were some similar attempts by Tuaregs during 2000s and 2010s, they were relatively in small-scale and not effective enough to bring about a fundamental change in Azawad. With the overthrown of Gaddafi in 2011, many Tuaregs were forced to return their countries. In a few months after their arrival to the hometown, they began to unite with other smaller regional groups to fight for their liberation. The National Movement for the Liberation of Azawad (MNLA) was the most organized and heavily armed group which was established with the aim ‘to free the people of Azawad from illegal occupation of the Azawadian territory by Mali’ (Sanders & Moseley, 2012, p. 2). The MNLA continued to grow and intensified its military attacks in the second half of 2011. Ansar Dine, on the other hand, was another rebel group which had operated in northern Mali. This group was religion-oriented and was the practitioner of the strict Sharia law. The group was established by Iyad Ag Ghaly in November 2011 (‘‘Situation in Mali: Article 53(1) Report’’, January 2013).

Towards the end of 2011 and in the first few months of 2012, while these rebel groups were getting more and more powerful and autonomous in the north, anti-government voices began to be much more threatening for the existence of a legitimate government in

the south. Finally on 22 March 2012, the President Amadou Toumani Touré was overthrown by a military coup. This chaotic atmosphere gave a chance to the rebel groups in the north to gain strength. Both the MNLA and Ansar Dine had organized successful military attacks against the government and had taken over the control of critical but separate parts of the north (Lindberg, 2013, p. 7-8). According to the Article (53) (1) (2013) report by the Office of the Prosecutor on the situation in Mali, from January to April 2012, the MNLA and Ansar Dine separately took control of more than half of the north. Eventually, in May 2012, these two groups announced their official coalition. They gathered the regions they had under control and declared independence of 'Islamic Republic of Azawad'. However, their coalition did not take long and a month later, the MNLA declared the independence of its own state which did not adopt the Islamic and Sharia laws. Yet, Ansar Dine denied the existence of this new state established by the MNLA and excessive violence between these two groups intensified.

The conflict between the MNLA and Ansar Dine, which was followed and supported by many other religious groups, formed a new structure of violence in Mali. In contrast to the liberation war of Tuaregs, this conflict was shaped by the power struggle of the groups in the north. Due to its religious motives, Ansar Dine had many supporters. The most important supporting group was the Movement for Oneness and Jihad in West Africa (MOJWA). Throughout June and July 2012, Ansar Dine, MOJWA and other supporting groups fought successfully against the MNLA and the group forced the MNLA to leave almost all cities in the north under its control (Mills, Lang & Lunn, 2013, p. 12-13). When Ansar Dine gained the control of the whole north of Mali, the threat was directed towards the capital. Since the overthrow of the president, there was a lack of autonomy in the country. Following the coup, Captain Amadou Sanogo, who was the leader of the coup, established the National Committee for the Restoration of Democracy and State (CNRDR) to discuss and solve the governmental problems. In April 2012, the transitional government of interim President Dioncounda Traore was established.

Although the transitional government of Traore was too weak to resist the pro-military propaganda and Traore's government did not live long, it was the government which referred the situation in Mali to the ICC on 13 July 2012. According to the Article 53 (1) Report prepared by the OTP on 16 July 2013, there was a reasonable basis to initiate an investigation regarding the situation in Mali. For Mali has been a party state to the ICC since its ratification on 16 August 2000, the court has jurisdiction over crimes against humanity, war crimes and genocide committed in the territory of Mali or by the nationals of Mali. After the initial examinations, the Prosecutor Fatou Bensouda officially announced to initiate the investigation focusing on the violence since January 2012 on 16 July 2013 (Mills, Lang, & Lunn, 2013: p. 23). The Prosecutor Bensouda stated in her press release regarding the investigation:

> 'There is still turmoil in North Mali and populations there continue to be at risk of yet more violence and suffering ……….. My office will ensure a thorough and impartial investigation and will bring justice to Malian victims by investigating who are the most responsible for these alleged crimes' (ICC Prosecutor opens investigation into war crimes in Mali, 2013).

The proceedings are still in the phase of Pre-Trial and no warrants of arrest have been issued so far.

4.2. SITUATIONS REFERRED BY THE UNSC

4.2.1. The Situation in Darfur, Sudan

Darfur is the western part of Sudan and can ethnically be categorized in three main areas: North, South and the Central Darfur. South Darfur is mostly populated with Arab-oriented tribes of Baqqara, Boni Halba, Habbaniyya and Rizayqiat while in the north of Darfur, both Arab and non-Arab tribes of Zaghawa and Bideyat are located. In the central part of Darfur, there are non-Arab agricultural tribes of Fur, Masalit, Tama, Qimr, Mima and the others (Salih, 2005, p. 2-3). Most of these tribes enjoy similar linguistic characteristics,

thus, language is not one of the distinctive features which determine ethnic differences. Historically, Darfur was a state which was established within the combination of Islamic sultanate and African kingship in 1650. During the period of sultanate, the region was stable and peaceful ethnically and administratively. By 1916, Darfur was the buffer area between French Chad and Anglo-Egyptian Sudan. After the beginning of the First World War, this region was attached to Sudan because both France and Great Britain did not want the German expansion in Africa. However, this was not a voluntary integration both for the people of Sudan and Darfur. Since then, Darfur had become the excluded region of Sudan (Wadlow, 2005, p. 1). From 1916 to 1956, Sudan as a country was the colony of Great Britain. Although the country gained its independence in 1956, the recovery of the country took almost fifteen years. During the recovery period, Darfur was ignored once again as the political and societal reforms were fairly weak to the region.

It was in the beginning of 1980s when the ethnic violence broke out in the region with the increase of poverty and drought. Most of the conflicts were not too bloody and were not causing large number of killings due to the unimproved arms like spears and arrows. Yet, in 1986, the government of Sudan decided to arm the Arab militias (commonly known as 'Janjaweed'), most notably Baqqaras, in southern Darfur, to defend themselves against the Sudanese People's Liberation Movement/Army (SPLM/A). As the government was in conflict with the South of the country, the intention of the government was to provide military power to itself in the fight against SPLM/A. This rebel group was one of the parts of the dominant North-South conflict in the country which was characterized by power struggles between Arab and Muslim North which enjoyed the wealth of the country and the undeveloped South (Lipscomb, 2006, p. 188). Nonetheless, the armed Arab militias in the region of Darfur exacerbated the conflict as the southern Darfur targeted the non-Arab tribes of Fur, Masalit and Zaghawa in the north. After the President Omar al-Bashir came to the power by a military coup in 1989, he seemed to be in favor of peace and stability in Sudan and he encouraged disarmament in Darfur. Instead of being fair, he only forced the

non-Arab militias to disarm while letting Arab militias keep their arms (O'Fahey, 2006, p. 27).

The ignition of the ethnic cleansing in Darfur was incited when the peace negotiations between the SPLM/A and the new government were initiated in the beginning of 2000s. During the negotiations, the ethnic conflict in Darfur was not taken into consideration and non-Arab Darfurians were not involved in the negotiations. Thus, the Darfurians decided to establish their own organized military forces. Sudan Liberation Movement/Army (SLM/A) was one of these military groups. It originally was established in 1980s under the name of Darfur Liberation Front to fight against the government supported militias. The aim of the SLM/A was to proclaim the independence of Darfur. The Justice and Equality Movement (JEM), on the other hand, was another opponent group against the Khartoum government. However, it was not seeking independence. Instead, it was in favor of a federal system in which all ethnic groups could be represented equally and fairly (Salih, 2005, p. 2-3). In 2003, these two groups started to organize mutual attacks against the government. According to the reports of many humanitarian institutions and the UN, the conflict in Darfur was not only concerning mass killings but also 'starvation, diseases, mass displacement, coercive migration, forcing into refugee camps, creating a large humanitarian crisis, a kind of genocide or acts of genocide' (Jones, 2011, p. 373). Most commonly, the reports of Human Rights Watch, Amnesty International, the UN and the US State Department described the violence in Darfur as 'ethnic cleansing and genocide' (Lipscomb, 2006, p. 189-190). The international response addressing the conflict came only in 2004. International community was in demand of legal investigation of the situation in Darfur by the ICC and Rome Statute (Article 12 and 13) authorizing the referrals by the UNSC. Thus, the UNSC authorized Resolution 1564 on 18 September 2004. This became the first referred situation to the ICC by the UNSC. The resolution was accepted by eleven votes of France, Russia, Britain, Argentina, Benin, Denmark, Greece, Japan, the Philippines, Romania, and Tanzania while there were four abstentions of the USA, China, Brazil and Algeria (Schiff, 2008, p. 232). The Resolution 1564 was

authorizing sanctions on Sudan, as well as the establishment of an international inquiry to investigate the human rights violations in Darfur (S/RES/1564, 2004). In January 2005, the International Commission of Inquiry on Darfur submitted its report stating that there was substantial evidence of grave humanitarian violations. Finally, on 31 March 2005, the UNSC officially referred the situation with the Resolution 1593 to the ICC (S/RES/1593, 2005).

After the initial examinations, the Office of the Prosecutor officially announced its decision to open investigation regarding the situation on 6 June 2005. The ICC has issued eight warrants of arrest concerning Darfur and the investigations and trials are still in progress. In February 2007, the Prosecutor issued two warrants of arrest for Ahmed Haroun and Ali Kushayb. Ahmed Haroun, former minister of State for the Interior of the Government of Sudan and the minister of State for humanitarian affairs of Sudan, is allegedly liable for forty-two different counts including twenty counts of crimes against humanity and twenty-two counts of war crimes. Ali Muhammed Ali Abd-Al-Rahman, on the other hand, is the allegedly leader the of Janjaweed militia. He is allegedly responsible for fifty counts under Article 7 and 8 of the Rome Statute. Both of them are still at large (ICC, Darfur, Sudan, 2005).

Omar Hassan Ahmad Al-Bashir is still the president of Sudan. There are two warrants of arrests for Al-Bashir; first one was issued on 4 March 2009 and the second was issued on 12 July 2010. In the first warrant of arrest he was only criminally responsible for committing crimes against humanity and war crimes. It was alleged that there were not substantial grounds to prove that Al-Bashir was a part of genocide. Thus, there was no count of genocide against him under the first warrant of arrest. Even though there is an arrest warrant for Al-Bashir, African Union announced that they rejected to comply with the international cooperation for arresting him in July 2009. A year later, Al-Bashir made visits to Chad and Kenya, which are party states to the ICC, however, these countries did not enforce the law. In response, they have been reported to the ASAP. On 12 July 2010,

second warrant of arrest concerning allegedly committing genocide against some ethnic groups. In addition to crimes against humanity and war crimes, there are three counts of genocide against him. However, he is still at large in the records of the ICC (ICC, Darfur, Sudan, 2005).

Bahar Idriss Abu Garda is the chairman and general coordinator of military operations of the United Resistance Front. The warrant of arrest for him was unsealed on 7 May 2009 and he voluntarily gave in on 29 September 2009. However, after the completion of the initial examination of the Pre-Trial Chamber I, the Chamber rejected to confirm the charges against Abu Garda on 8 February 2010. Furthermore, the appeal application by the Prosecutor was also rejected by the Chamber on 23 April 2011 (ICC, Darfur, Sudan, 2005). Abdallah Banda Abakaer Nourain, is the commander-in-chief of the JEM and Saleh Mohammed Jerbo Jamus was the chief-of-staff of the SLM/A. They surrendered together voluntarily. Nourain and Jamus are allegedly responsible for committing three war crimes and the charges against Nourain were accepted on 7 March 2011. The first trial of Nourain is scheduled on 5 May 2014. The proceedings against Jamus, on the other hand, were terminated by the Pre-Trial Chamber IV on 4 October 2013 when his death was officially confirmed (ICC, Darfur, Sudan, 2005). Abdel Raheem Muhammad Hussein is the current minister of National Defense and former minister of the Interior and former Sudanese president's special representative in Darfur. On 1 March 2012, Pre-Trial Chamber I sealed the arrest warrant for him. Although there are thirteen counts against him, the execution of the arrest warrant concerning him is still pending (ICC, Darfur, Sudan, 2005).

4.2.2. The Situation in Libya

The violence and uprising in Libya erupted in February 2011 as a reaction to Gaddafi's brutal and autocratic regime for forty-two years (from 1969 to 2011). The Gaddafi regime in Libya started on 1 September 1969 after a bloody military coup. Throughout his forty-two years presidency, there were numerous reported humanitarian crisis and human rights

violations recorded in Libya (Vandewalle, 2006, p. 73-79). However, the fundamental revolution in Libya broke out as a part of Arab Spring which started in Tunisia following the protest of an unemployed man by burning himself alive in the street on 17 December 2010, then spread to Egypt and Libya. Unlike Egypt and Tunisia where many reforms were enforced in response to the protests, Gaddafi responded with violence (Liolos, 2012, p. 590-591). International community was able to elicit a response to the violence in Libya through the UN Resolution 1970 on 26 February 2011. Resolution 1970 authorized a strict control and limitation on the assets of Gaddafi and his relatives. It also prohibited the free right of travel and included a few more economic sanctions. Most importantly, with this Resolution 1970, the UNSC referred the situation in Libya to the ICC for investigation. This resolution was passed unanimously and it has become the first and only unanimously referred situation by the UNSC to ICC (S/RES/1970, 2011).

Following its referral to the ICC, the Prosecutor initiated the investigations on 8 March 2011 and on 27 June 2011, the Pre-Trial Chamber issued three warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. When Muammer Gaddafi was captured on 20 October 2011 while trying to leave the country, he was killed brutally. The charges against him were terminated on 22 November 2011. His son Saif Al-Islam Gaddafi, on the other hand, was captured by local militias on 19 November 2011 and put into the detention center in Libya (Leanos, 2012, p. 2296). Abdullah Al-Senussi is the current head of the military intelligence in Libya and he is the brother-in-law of Saif Al-Islam Gaddafi. Both of them are charged with two counts of crimes against humanity; murder and persecution, under Rome Statute Article 7 (1) (ICC, Libya, 2011).

Libya is not a state party to the ICC but only a member of the UN. In this regard, it was emphasized that the jurisdiction of ICC was not directly binding to Libya but it had an obligation to cooperate with the court. Besides, the ICC was established on the basis of principle of complementarity. It is commonly argued that due to long years of corruption

under Gaddafi's regime, the judicial organs in the country were too weak to conduct the proceedings regarding the situation in Libya. Thus, the conducts of the proceedings have totally transferred to the ICC (Liolos, 2012, p. 594). The cases of Saif Al-Islam Gaddafi and Abdullah Al-Senussi are still in the stage of Pre-Trial.

4.3. SITUATIONS INITIATED BY THE PROSECUTOR

4.3.1. The Situation in Kenya

Kenya has been one of the most stable countries in Africa by the eruption of post-election conflicts in December 2007. Following the announcement of the results of the presidential elections of 2007, the President Mwaki Kibaki from Party of National Unity (PNU) was elected as the president once again. However, the results were severely criticized by Kibaki's opponent Raila Odinga from Orange Democratic Movement (ODM) and his followers. The non-violent protests turned into violence in a rather short term as a result of the violent response of the government forces. During the protests, the Kikuyus tribe was heavily supporting the Kibaki's presidency while some other prominent tribes like Luos and Kalenjin were in defense of Odinga. Thus, the violence in the country quickly turned into ethnic cleansing among tribes. From December 2007 to January 2008, more than a thousand civilians were killed and approximately a hundred thousand of them were internally displaced (Lynch & Zgonec-Rozej, 2013, p. 3). While the violence was unabated, the UN General Secretary Kofi Annan made a formal visit to the country to negotiate the situation and mediate two sides of the conflict. With the help of the Annan's efforts, Odinga and Kibaki reconciled and agreed to sign the National Accord and Reconciliation Act on 28 February 2008. According to this act, a new coalition was created. In this coalition, President Kibaki remained in presidency while his opponent Odinga was appointed as prime minister. The act was also authorizing the establishment of a commission to investigate the crimes committed during the conflicts. Thus, the Commission of Inquiry into Post-election Violence, most commonly known as 'the Waki

Commission' due to its chairman Kenyan Judge Philip Waki, was established (Okuta, 2009, p. 1064). Waki Commission submitted its report on 15 October 2008 stating that there had been grave violations of human rights in Kenya and there was a need for special court for investigation of the crimes committed in the conflicts (Waki Report, 2008). The report coerced the government of Kenya to conduct investigations and if Kenya was unwilling to prosecute the perpetrators, the ICC would take over the investigations. Waki Commission sent a copy of the report to the Prosecutor Ocampo on 16 January 2009. When it was understood that Kenya was unable to implement abstract reforms and initiate necessary prosecutions within the given deadline, the situation in Kenya was referred to the Pre-Trial Chamber II by the ICC Prosecutor on 6 November 2009 and on 26 November 2009 the Prosecutor requested authorization from the court to initiate the investigation (International Justice Monitor, 2011). Kenya ratified the Rome Statute on 15 March 2005, thus, the ICC has jurisdiction over the crimes committed in Kenya. According to Article 15 of the Rome Statute, the Prosecutor has the power to initiate an investigation; however, as indicated in the previous chapter, it is necessary to request authorization from the Pre-Trial Chamber. This authorization was given by the chamber on 31 March 2010. After nine months of initial examinations, Prosecutor Ocampo gave a list of six suspects to be arrested. These suspects were Mohammed Hussein Ali, Uhuru Muigai Kenyatta, Henry Kiprono Kosgey, Francis Kirimi Muthaura, William Samoei Ruto and Joshua Arap Sang. Charges against Kenyatta, Muthaura, Ruto and Sang were confirmed by the Pre-Trial Chamber on 23 January 2012 while the Chamber concluded that there were not substantial evidence to bring Kosgey and Hussein Ali to trial (Lynch & Zgonec-Rozej, 2013, p. 6).

The charges against Muthaura were dropped by the Prosecutor on 11 March 2013 with the claim of lack of evidence. The initiation of the trials of Ruto and Sang was on 10 September 2013 while the opening of the trial of Kenyatta is 'vacated'. Ruto and Sang have been charged with committing three crimes against humanity: murder, persecution and deportation or forcible transfer of population and there are five counts against Kenyatta including five crimes against humanity (ICC, Kenya, 2010). Recently, another

arrest warrant has been unsealed on 2 October 2013 regarding the interference in the conduction of the cases. Though the case against Walter Osapiri Barasa, a Kenyan journalist, is still in Pre-Trial examination, he is allegedly ‘responsible for direct offences against the administration of justice consisting in in corruptly and attempting to corruptly influencing three ICC witnesses’ (ICC, *The Prosecutor v. Walter Osapiri Barasa*, 2013).

4.3.2. The Situation in Côte d'Ivoire

The violence and conflicts which brought Côte d'Ivoire to the ICC broke out in 2010 presidential elections. Historically, President Laurent Gbagbo came to the presidency in 2000 by defeating Alassane Ouattara from Rassemblement des Republicans (RDR). During the presidency of Gbagbo, the government was not conducting reformist and democratic policies. Instead, it was provoking ethnic disparity which was much deepened through the doctrine of ‘Ivoirite’. This doctrine was a highly discriminator policy against non-Ivorian originated citizens and was first introduced by the President Béidé in 1995 as a part of election policy (Bellamy & Williams, 2011, p. 830). According to ‘Ivoirite’, the non-Ivorian citizens were deprived of many legal rights. It was also used as a political weapon against Ouattara by Gbagbo in 1995 presidential elections as it was claimed that Ouattara’s father was originally coming from Burkina Faso. Except for making the ethnic discrimination exacerbated, Gbagbo did not hesitate to use his militia powers against rebel groups which challenged his authority for his ten years of presidency. Human Rights Watch Report 2010 recorded major human rights abuses and many forms of violence committed in the country between 2003 and 2010 (Bah, 2010, p. 602). Furthermore, the country under Gbagbo’s presidency went through an international intervention which was authorized by UNSC Resolution 1528. Moreover, presidential elections were delayed consecutively for several times due to unrelieved tension in the country (Human Rights Watch, 2010, p. 44-48).

When the Presidential election finally began on 27 November 2010, it marked the initiator of huge-scale of violence. There were many speculations about the early results of the elections. Many national and international observers were confirming the victory of Ouattara, however, Gbagbo and his supporters did not acknowledge these results and they invalidated many votes for Ouattara which made Gbagbo president again. However, this ignited the violence and the political power struggle turned into a widespread post-election violence in the country between the supporters of Ouattara and government forces. At the end of two months of severe conflicts, with the help of international forces including French and the UN forces, Ouattara started an effective campaign in February 2011 (Human Rights Watch, 2011, pg. 97-98). When Gbagbo was captured in Abidjan in April 2011, the crisis was over and Ouattara officially declared his presidency.

Since the beginning of the post-election violence in the country, the Prosecutor of the ICC was on track of the abuses and violations committed in Côte d'Ivoire. However, the investigations could not be initiated in the course of conflicts as Côte d'Ivoire was not officially a state party. The country signed the Rome Statute on 30 November 1998 yet it did not ratify. Thus, the court could not impose its jurisdiction on Côte d'Ivoire for two years in the aftermath of the conflict. Eventually, it declared that it accepted the jurisdiction of ICC in April 2003 though it did not ratify it by February 2013 (ICC, Côte d'Ivoire, 2011). In his preliminary examinations, Prosecutor Luis Moreno Ocampo confirmed that there were severe crimes committed between December 2010 and March 2011. Officially, Ocampo required authorization to open an investigation on 23 June 2011 and the Pre-Trial Chamber authorized the initiations of the investigations on 3 October 2011. In the first month of the investigations, an arrest warrant was issued for Laurent Gbagbo and he was transferred to the ICC’s custody on 30 November 2011. He is charged with four counts of crimes against humanity committed between 16 December 2010 and 12 April 2011. On 7 February 2012, a second arrest warrant was issued for Simone Gbagbo. She was the wife of Laurent Gbagbo. The charges against her consist of four crimes against humanity including ‘murder, persecution, rape and other forms of sexual violence

and other inhumane acts' (ICC, *The Prosecutor v. Simone Gbagbo*, 2011). Her trial is currently in Pre-trial.

In regard to the situation in Côte d'Ivoire, in February 2012, the Pre-Trial Chamber III announced its decision to extend the investigation in the country including the possibly committed crimes between 2002 and 2010. Thus, the third warrant of arrest was unsealed on 30 September 2013. It was for Charles Blé Goudé who is allegedly the leader of the Congrés Panafricain des Jeunes et des Patriotes. This group was commonly known as the primary supporter of the Laurent Gbagbo and involved in the military conflicts by the side of the government forces. He is also allegedly responsible for committing four crimes against humanity (ICC, Decision on the Prosecution's provision, 2012).

4.4. PRELIMINARY EXAMINATIONS

Within the scope of the Rome Statute, first, the situations are referred to the OTP through three different ways as state above. After the preliminary examinations of the situations, the OTP approves the initiation of the legal proceedings. According to the most recent report of the OTP regarding the preliminary examinations, there are eight ongoing examinations. In the assessment, the OTP takes four stages into consideration: respectively; 'initial assessment, subject matter assessment, admissibility assessment and interest of justice assessment' (AMICC, Current preliminary examinations, 2012). The examination in all stages should be completed and there should be sufficient evidence to believe that there is substantial ground to initiate an investigation before the official investigation is initiated.

The preliminary examination as to Afghanistan was initiated in 2007. Afghanistan has been a party state to the ICC since 10 February 2003 and the examination concerning the situation in Afghanistan is in the stage of subject matter assessment (DiCicco, 2009). Another examination is on Colombia. Colombia is a party state since 1 November 2002.

The ICC has been criticized of not initiating an investigation on the situation in Colombia as there have been records of human rights violations in Colombia since 2002 but Colombia took advantage of the Article 124 of the Rome Statute and it postponed the ICC jurisdiction over Colombia for seven years after its ratification. Thus, the examination could be initiated in 2006 by the OTP and it is in the stage of admissibility assessment (Rojo, 2009; Pena, 2005). The situation in Georgia is also under the preliminary examination by the OTP since 14 August 2008. Georgia is not a state party and the examination is in admissibility assessment stage (Coppin, 2008). The OTP announced the initiation of the preliminary examinations regarding Guinea on 14 October 2009. Guinea is one of the state parties to the Rome Statute since 1 October 2003 and the examinations are in the phase of admissibility assessment. Honduras is also in the examination of the OTP since 18 November 2010. As one of the first state parties since 1 July 2002, Honduras is in the second stage of subject matter assessment. The examinations regarding Israel were initiated in 2013. Israel was referred to the ICC by a state party, Comoros. The examination is mostly on the attack of the Israeli military forces to a ship in the conflict of Palestine and Israel (Randot, 2013). The examination is in the first stage of initial assessment. For the Republic of Korea, the OTP announced the initiation of the examinations in 6 December 2010. The examinations are concentrated on the conflict between North and South Korea. As not sufficient confidential information can be gathered by the side of North Korea, the examinations and assessment process is rather slow. The examination is proceeded only in the light of the information provided by South Korea and it is in subject matter assessment stage. The examination of the situation in Nigeria was initiated on 18 November 2010. The allegedly crimes committed since 2004 in Nigeria are in the focus of the examinations which are in the stage of admissibility assessment (AMICC, Current preliminary examinations, 2012).

Within the context of preliminary examinations, there are three completed examinations: Iraq, Venezuela and Palestine. All these three examinations were terminated in different stages of examination. Even though the leading motives to terminate the investigation

process for each case are distinctive, it was announced by the OTP that there was not substantial ground for further investigation regarding these situations.

The ongoing cases of the ICC along with the cases in preliminary examination are heavily criticized by many scholars. In theory, the ICC, the Rome Statute and the cases conducted by the ICC are the culmination of the human security. The structure and the content of the Rome Statute are designed as a supranational and autonomous statute regardless of the power struggles of the states. The court has been one of the rarest international organizations which is not a fully-dependent sub-organization of the UN. Nevertheless, in practice, it has many weaknesses. Main criticism concerning the inefficiency of the ICC is in regard to case selection. As it was indicated in this chapter, of all eight ongoing referred situations and majority of the preliminary examinations conducted by the ICC, almost all these cases are related to the states of the developing parts of the world, especially of Africa. This is in contrast with the genuine and non-discriminating nature of the concept of human security. This debate over the case selection will be detailed in the following chapter of this study.

CHAPTER 5

LIMITS OF INTERNATIONAL CRIMINAL COURT

Since the Rome Statute entered into force in 2002, it has investigated, prosecuted or conducted eighteen cases, including eight officially announced investigations, seven preliminary investigations and three terminated examination. Although the institution has been praised for setting to work briefly after appointment of the judges and the prosecutor, it has been criticized more. From the perspective of human security, ICC has become the hope for the victim and the weak. It was expected that the court would be the voice of the unvoiced and protector of the weak by concentrating on the individual criminal responsibility and by punishing the ones who are bearing the greatest responsibility.

As an agent of human security, ICC would be non-discriminatory and would address each and every human right abuse internationally regardless of the political and economic concerns. The protection of the rights of the civil society and the victims is the primary issue when there are crimes against humanity, war crimes and crimes of genocide committed in any part of the world. However, it can be claimed that there are many doubts and critiques on the function and efficiency of the ICC. In this final chapter, the efficiency and the effectiveness of the ICC will be questioned. Classifying the critiques into two groups, the case selection and the African question of the ICC will be the first group to be examined from rather an argumentative view. The question of how much non-discriminatory and neutral the ICC is in its heavily exclusive focus on African states will be addressed. In the second group, on the other hand, the relationship of the ICC with the USA and UNSC will be the matter to be discussed. Whether there is a negative effect of the USA and UNSC on the function of the ICC or not will be discussed.

5.1. PROBLEMS IN THE CASE SELECTION OF ICC

Of all eight cases the ICC investigated, all of them include the African states. The situation raised many questions about the intent and the motivation of the ICC. There are so many debates on this intent which is heavily focused on the cases only in Africa. Some critics argue that this was a natural phenomenon as there were many conflicts in Africa since 2002, thus the focus of the ICC had to be on Africa. On the other hand, there are many others who argue that this selection was not natural but rather it is highly artificial and politically motivated. It is reasonable to accept the fact that there are many conflicts in Africa in post-2002 period, however, it would be deceptive to assume that these have been the only conflicts in the world. The intervention in Iraq, the ongoing conflicts in Afghanistan and other parts of the world can easily be shown as the examples of other conflicts. Yet, these conflicts have never officially fallen into the jurisdiction of the ICC.

In the first eleven years of the ICC, the prosecutor was Luis Moreno Ocampo. As it was a newly established court, there were so many expectations in a rather brief time which led to too much pressure on the OTP. First of all, the first Prosecutor of the ICC was under great pressure. Although Luis Moreno Ocampo is accepted as a man with good will, there are some arguments about his competency to be in the position of prosecutor. It is argued that before appointed into the OTP, he had only eight years of experience and it was in domestic judicial systems. He had never worked in an international judicial institution. Thus, he was weak at case management (Bassiouni & Hansen, Mar 2013-Jan 2014). Besides, the ASAP has its own expectations as an assembly of the state parties and it is claimed that these expectations also put so much pressure on the OTP in case selection. There is also an external pressure coming from the non-party states, especially from the permanent UNSC members. These states are willing to learn about the activities of the court concerning the non-party states. Finally, the civil society and the NGOs are watching the ICC closely to observe the humanitarian contribution of the court which also put pressure on the ICC.

In addition to taking all this pressure into consideration, the ICC, but in particular, the prosecutor is required to raise the support to the court. That can be interpreted that he/she needs to balance the expectations and meet the requirements of all groups without detriment to the interests of these groups. It is highly argued that this pressure has been a critical determinant in the choice of the prosecutor and it shaped his selection of the cases to investigate. Thus, the first prosecutor of the ICC was hesitant to involve in some critical conflicts and instead, he/she limited the investigations with the African states because he knew that the focus on Africa would not challenge the existent system and the order of the international society (Bassiouni & Hansen, Mar 2013- Jan 2014).

Due to the focus on Africa, ICC was criticized for being discriminatory by various institutions and scholars. One of the heavy criticisms has come from Courtney Griffiths who is the lead defense attorney for former Liberian President Charles Taylor. He claimed that the ICC was applying selective justice and it was a new form of neocolonialism. He clearly blamed the court by stating:

> ‘the court acts a vehicle for its primarily European funders, of which the UK is one of the largest, to exert their power and influence, particularly in Africa.’ (Courtney, 2012).

In addition, some scholars claim that the selection of the cases was from Africa because all these states in conflict are ex-colonies and their leaders are not more than ‘neo-colonial puppet leaders’ (Taku, Mar 2013-Jan 2014). Taku (Mar 2013-Jan 2014) argues that these puppet leaders are acting on behalf of the ex-colonial powers and using the ICC to protect the political and economic interests of those states in the region. With self-referrals, African states are in the intent to protect their western allies’ autonomy in these states. As it was examined in the previous chapter there are four self-referrals to the ICC; Uganda, DRC, CAR and Mali. In the example of DRC, it is increasingly believed that there are many regional actors, presidents and officials who bear great individual criminal

responsibilities. It is claimed that the main responsible of grave violations of human rights are the figures who have closer relations with their ex-colonial states. However, it can be seen that the ICC investigations are only focused on the peripheral people. This strengthens the allegations of 'selective justice' which is in contrast to the all-embracing justice based on human security. Thus, it is alleged that case selection of ICC is not a 'legal consideration but a policy' (Taku, Mar 2013-Jan 2014). In this way, ICC failed in the fight against impunity and could not protect the rights of the victims.

In a similar way, in CAR, it is well-known that Francois Bozizé came to the power with a bloody coup d'état. This conflict led to death and injury of so many civilians. When he became president, he established one of the most brutal regimes in Africa. Many scholars claim that with the referral to ICC, Bozizé actually was willing to oppress and punish the opponents against his authoritarian regime. It can be said that the investigation of CAR is another example of selective investigations. Although it was recorded by the international observers that there are grave breaches of Rome Statute and international humanitarian law committed by the Bozizé and his supporters, the focus of the investigations is on his opponent, Ange-Felix Patasse and his followers. There are no allegations against Bozizé and the proceedings are only one-sided and biased (Taku, Mar 2013-Jan 2014). Instead of bringing justice, ICC has been used as a tool which provides the dictatorial legitimacy to African authoritarianism.

Another example of such biased investigations is the case of Uganda. Although this is a self-referral, there are many suspicions regarding the neutrality of the attitude of the ICC towards Uganda. As it was stated in the previous chapter, the conflict between the LRA and the government supported UPDF led the country to the ICC. When the Prosecutor of the ICC was officially announcing the initiation of the investigations in 2003 through a press release, Moreno-Ocampo and the Uganda president Museveni were together. This was interpreted as there is a hidden message which shows that there was a strong cooperation between Uganda and the ICC. However, after the initiation of the

investigations which were only about the criminally responsible officials of the LRA, it was understood that this is rather a mutual protection of the interests. It is claimed that Uganda and the ICC used the power of each other for the sake of their interests. As a newly-established court, there was an expectation of an expeditious proceeding from the ICC. Uganda was the first case of the ICC which would give it legitimacy and credibility in the eyes of the international society. As ICC was in search of widespread support, and as there were lots of debates on the complementarity and the effectiveness of the court, it would not be wise to start the first investigation as *proprio motu*. It is alleged that the OTP put pressure on the government of Uganda to make a self-referral. In return, the President Museveni would have the chance to strengthen its autonomy by getting rid of the threat of the LRA. Thus, the selective investigation regarding the case of Uganda has strengthened the allegation of that ICC is not an unbiased court (Otim & Wierda, 2010, p. 1-6).

Mali is the latest investigations and the latest self-referral of ICC which was officially initiated in 2013. It is also the only investigation which is carrying both sides of the conflict into the court. Some critics believe that this change is directly relevant to the change in the office of the prosecutor. Yet, it is not clear whether Fatou Bensouda will bring non-discriminatory justice to the world so far (Murithi, 2013, p. 5). It can be claimed that the OTP under the administration of Bensouda has not displayed a distinctive performance since it has not been able to bring any non-African case into the court so far.
Beside the investigations initiated through self-referrals, the criticisms are also intensified in the investigations which started with the determination of the prosecutor; the cases of Cote d'Ivoire and Kenya. The conflict in Cote d'Ivoire broke out between the supporters of the former president Laurent Gbagbo and his opponent, Alassane Ouattara's supporters as a result of the presidential election in December 2010. The intervention of the ICC into Cote d'Ivoire was only to legitimize the regime change in the country. Although there are UN reports claiming that not only Gbagbo's supporters but also Ouattara's supporters, many criminal gangs and non-state actors were actively involved into the conflict, these

violations were not included in the investigations conducted by the ICC (Taku, Mar 2013-Jan 2014).

The criticism about the case of Kenya has a different aspect. As it was explained in third chapter of this study, Prosecutor has the right to initiate an investigation according to the Rome Statute Article 15(1). However, before the initiation of the investigation, the principle of complementarity has to be applied under Article 17. As the ICC was designed as complementary to the national courts, the capability of them is crucial. If it is understood that the national courts are incapable and unwilling to conduct an investigation, the ICC can take over the investigation. When the ICC initiated an investigation regarding Kenya, the legal institutions of the country were too weak and incapable to conduct an investigation. In a few years, with many effective and radical judicial reforms, the capability of the institutions was improved. However, the investigations were not left into the national courts of Kenya. This manner is in contrast to the ICC's attitude towards Cote d'Ivoire. Even though there are international reports claiming that the legal institutions in Cote d'Ivoire are not trustworthy and capable to conduct such comprehensive international investigations, ICC insisted on giving time to the national legal institutions of Cote d'Ivoire (Taku, Mar 2013-Jan 2014). The investigations were not initiated for months. Thus, it is claimed that the ICC's interventionist approach to Kenya was highly motivated by political and ethnic concerns. Another criticism for ICC regarding its attitude towards Kenya was about the arrest warrants. The armed conflict in Kenya was as a result of the presidential elections in 2007-2008. However, the arrest warrants and the opening of the trials coincide the pre-election period in 2012 and 2013. The arrest warrants were for the four opponent figures; Kenyatta, Ruto, Muthaura and Sang. All these figures are in the critical positions in the government. Thus, it is claimed that the ICC was used as a political tool to make a political campaign before the elections (Murithi, 2013, p. 5).

The greatest reaction against ICC's exclusive focus on Africa has come from the African Union (AU) when the ICC started the investigation in Sudan with the referral by the

UNSC. Above all, Sudan is the first and the only state which is under the ICC investigation without being a state party to the Rome Statute. When the arrest warrant for the Sudanese President Omar Al-Bashir was issued in March 2009, the states of AU reacted against this decision in a summit in Libya in 2009. They announced that an arrest warrant for an existing president of a non-party state could not be acceptable and the member states of AU would not comply with the decisions of the ICC and they would not arrest Al-Bashir (Associated press, 2009). Furthermore, in 18th ordinary session of the Assembly of AU Heads of State and Government which is held in Ethiopia on 29-30 January 2012, the African states reiterated their counter-view against the ICC and they emphasized that there would be sanctions for the states which violate the decision of not cooperation with the ICC (Murithi, 2013, p. 5).

The AU argued that the investigations and the inappropriate targeting of Africa do not bring peace and stability in the region. Rather, it brings more instability and leads to more political, legal and ideological problems in the region. According to the members of the AU, the ICC has not been able to be successful in exercising jurisdiction evenly and fairly over persons who are allegedly responsible for committing the most serious crimes of international concern (Taku, Mar 2013-Jan 2014). Moreover, the AU asserts that even if the effects and reflections of the ICC investigations focusing Africa are seemingly positive, they cannot go beyond being provisional and temporary in the long term.

In the light of the various critical views on the investigations conducted by the ICC, Margaret M. de Guzman (2013) groups the criticisms of the ICC for targeting Africa under three main points. First one is the moral value of the investigation. With the exclusive focus on Africa, ICC’s core values on which the court, moral and non-discriminatory nature was built are in question. Secondly, as stated above, in some investigations ICC has been conscientious to comply with the principle of complementarity, however, there are examples of violations of this principle, as in the case of Kenya. That is interpreted by many scholars as an apparent violation of the sovereignty. This brings the question of

legality. For Guzman, lack of legality is another aspect reducing the credibility of the court. Finally, from the point of sociology, the unjustified targeting of Africa affected the African society in negative way. Although the people of Africa were among the first and strongest supporters of the ICC, they were the most disappointed and disheartened. They have lost their faith in the fairness of the ICC (Guzman, Mar 2013-Jan 2014).

In all the investigations and prosecutions conducted by the ICC in its first twelve years, ICC initiated eight African-focused investigations. With regard to the politically critical parts of the world such as Gaza, Sri Lanka and Chechnya, the ICC has kept its silence and pretended that the crimes committed in such critical areas would not fall under the jurisdiction of the ICC. Instead of adopting a universal jurisdictional approach, the ICC has failed to address international crimes effectively and it has failed to disperse justice evenly.

5.2. U.S. CAMPAIGN AGAINST THE ICC

The Rome Statute is the founding treaty of a genuine international criminal court which is perceived as the culmination of the international humanitarian justice. As the aim is to reach the highest standards of justice universally, the court has been supported on a large scale since the beginning of the debates of an international criminal court. To establish a credible international criminal court, it is essential to gather as broad support as possible. However, as it was pointed out in chapter three of this thesis, there has been a great deal of debates over the content and the scope of the Rome Statute. These debates have led hesitation in signing and ratification period. Most importantly, the hesitation of the USA disrupted the effectiveness of the court.

Historically, since the Second World War, the USA has always been the most active player in proliferation of the human rights in international arena. At Nuremberg trials, the USA was the pioneer which supported the idea that the criminally responsible leaders should be should be tried at trials. Moreover, when the prevailing Allies intended to execute the

responsible fascist leaders and officials in Germany, it was the USA which opposed this argument. Instead, it proposed establishment of a criminal court to try the liable individuals. The USA believed that a court would bring permanent peace and respect for international law. According to the assumption of the USA, when the Nazi leaders were tried and punished through criminal courts, this would be beneficial in two ways: first, it would be understood that rule of law is above the use of force and second, the punishments would be limited to the individuals rather than the states (Sewall, 2000).

Similarly, in post-Second World War period, the USA was again one of the most important actors which actively involved in the efforts to strengthen the international law. First, in 1948, the UN Genocide Convention was adopted and it was declared that the act of genocide would be accepted as an international crime. By adopting this convention, criminally liable individuals could be tried and punished when they committed crime of genocide. Following this, in 1949, four Geneva Conventions were ratified by over hundred and fifty states. In these conventions, the rules and regulations of the war were defined and individual criminal responsibility was established in cases of grave breaches. In 1950, the International Law Commission defined the 'Principles of Nuremberg Tribunal' and the first clause was '[a]ny person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment' (''Principles of Nuremberg Tribunal'', 1950). The efforts of the USA to promote the human rights were not limited to the period of post-Second World War. After the end of Cold War, the USA worked with the UNSC to address the humanitarian breaches in Yugoslavia and Rwanda and pioneered in the establishment of two special criminal courts. Furthermore, in 1994, Clinton administration declared that they would support the establishment of a permanent court. Clinton stated that establishment of a permanent international criminal court would be deterrent for future agonies and this court could be used as a critical foreign policy tool (Sewall, 2000).

Despite the supportive approach of the USA towards the international court which triggers the support internationally, the positive attitude gradually turned into an anti-ICC campaign after a hundred and twenty states signed the Rome Statute on 17 July 1998. The first reaction of the USA was its voting against the Rome Statute among other seven states. This reaction was quite contradictory because the democratic values which were the milestones of the USA were in a complete coherent with the values presented in the Rome. The Rome Statute was designed in a way that it embodies main American values and serves for the national interests of USA. The ICC was built upon the assumptions that it would 'promote of respect for human rights, advance rule of law around the world both domestically and internationally, reinforce the independence and effectiveness of the national courts, uphold and strengthen international norms' (Sewall, 2000). Thus, it can be argued that functioning of this court will be in USA's best interest as this court gives an opportunity for a more democratic, peaceful and integrated global system, which is the system the USA desires.

So what is the reason of the objection of the USA to the ICC? There are two main reasons of the political campaign of the USA against the ICC. First is due to the abundance of the American personnel in international peacekeeping and peacebuilding interventions in any part of the world. According to Article 12 of Rome Statute, although the USA is not a party state to the ICC, if there is a crime committed by its military personnel in the territory of a party state, those crimes will fall in the jurisdiction of the ICC. As stated in chapter three, this issue was the subject of the last minute amendment of the USA in the final sessions of the Rome Conference. The delegation of the USA demanded a revision on this issue to make it limited to the crimes committed by the nationals of a state party in the territory of a state party. Yet, this demand was not welcomed and reacted with no-action motion of Norway. Second reason of the objection is about the independent structure of the court which is beyond the control of the UNSC. It is argued that the role of the UNSC over the ICC was limited with this structure and the USA would not use its veto power when the court initiates an investigation which the USA would not approve.

Beyond these objections, the USA also claimed that ICC is highly open to abuse for it is not bounded by a higher institution like the UNSC, for it does not have a checks and balances system, for the investigations can be referred by any part state. However, the ICC was designed to prevent such kind of abuses. Firstly, the selection of the judges and the prosecutor of the ICC, as detailed in chapter three, was highly challenging and all the candidates of judges and prosecutor should be the legal experts with various experience. As Marc Weller argues 'even if the prosecutor would wish to initiate proceedings in the pursuit of unjustified political objectives, a case can only progress once a pre-trial chamber of ICC judges has approved it' (Weller, 2002, p. 703-4). Secondly, the court was built upon the principle of complementarity. Thus, ICC can only exercise its jurisdiction if the national court is observed as 'unwilling or unable' to exercise its judicial power. To prevent any misinterpretation of 'unwilling or unable', the Rome Statute itself provides a detailed definition. A state can only be defined as 'unwilling or unable' if 'a state undertakes an investigation of prosecution with a view to shielding the individual from the exercise of jurisdiction' or if 'there has been an unjustified delay inconsistent with an intent to bring the accused to justice' or if 'the proceedings were not conducted independently and impartially and consistently with the intent to bring the person concerned to justice' (Weller, 2002, p. 704). Finally, ICC's structure has hardly room for abuses as the UNSC has the power to request a deferral of a case for a period of twelve months according to Article 16 of Rome Statute.

Despite all these justification of the jurisdictional power of the ICC, the USA initiated an intensive political campaign against ICC. This campaign can be examined according to the administrative approaches of the presidents of the USA. In the time of establishment of the ICC, the president of the ICC was Bill Clinton. The first move of USA during Clinton administration was that USA intended to be a part of the Preparatory Committee to work on the revisions of the Rome Statute. It is asserted that the main purpose of the USA was to create opportunities for impunities. Moreover, USA was unwilling to sign the Statute till the last date for signatures and finally signed the Statute on 31 December 2000. However,

Clinton openly stated that USA would not ratify the Statute if there were not any changes in favor of USA (‘‘Clinton’s statement on war crimes court’’, 2000). It was in 2000 when the controversial American Servicemembers’ Protection Act (ASPA) was debated for the first time. During the administration period of Bush, the campaign against ICC got harsher. In the first term of Bush administration, it was declared that the USA would not be willing to ratify the Rome Statute. In the first half of 2002, it became obvious that the ICC would enter into force with the ratification of the sixtieth state. Thus, on 6 May 2002, Bush administration sent a note to the UN Secretary General and declared that the USA would not ratify the Rome Statute:

> ‘This is to inform you, in connection with the Rome Statute of the International Criminal Court adopted on July 17, 1998, that the United States does not intend to become a party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31, 2000. The United States requests that its intention not to become a party, as expressed in this letter, be reflected in the depository’s status lists relating to this treaty’ (US Department of State, 2002).

Following the entry into force on 1 July 2002, the USA attempted to use its UNSC veto power to obtain exemption from the ICC. The USA demanded a special impunity for its personnel that involved in all peacekeeping missions, beginning with the operations in Bosnia. It further stated that the USA would use its veto power to suspend the decision of extension of military operations in Bosnia and East Timor if there were no agreement on this demand. As Weller (2002) describes, ‘this created a grave constitutional crisis for the UN’ (p. 706). Majority of the states criticized this abuse of veto power by the USA. Some scholars interpreted this criticism as a reaction of the international community as a whole against the USA for the first time after the establishment of the unipolar system. Nevertheless, these counter-voices were not strong enough to oppose the demand of the USA. Thus, the Resolution 1422 was adopted in accordance with the US demands. Resolution 1422 enabled a twelve months exemption starting 1 July 2002 for the US personnel and officials that were actively participating in the UN authorized peacekeeping operations. At the end of that period, on 12 June 2003, the authorization of exemption was

renewed by the UNSC with the adoption of Resolution 1487 (Stahn, 2002, p. 85-86). Another point of criticism was the legality of the Resolution 1422 and 1487. According to the arguments of the UNSC, the resolutions were in compliance with Chapter VII of the UN Charter. However, many states, primarily Canada and New Zealand, criticized that a threat of US veto could not be a threat to international peace and security. Many NGOs and international organizations condemned the resolutions. Amnesty International described them as 'unlawful' and 'undermining the credibility of the ICC' (Amnesty International, 2003). Human Right Watch, on the other hand, claimed that the Resolutions were in breach of Article 16 of Rome Statute. The conditions pointed out in Article 16 with regard to deferral of investigations or prosecutions with the request of the Security Council were to limit the role of the UNSC in the ICC (Human Rights Watch, 2003). Nonetheless, this article was used to justify the resolutions by the UNSC.

After the adoption of the Resolution 1422, on 2 August 2002, the American Servicemembers' Protection Act was adopted. This act makes any US cooperation with the ICC illegal and it authorizes that since the USA did not ratify the treaty, the USA does not have any legal obligation to comply with it. Most importantly, the ASPA authorizes:

> '…the President to use all necessary means and appropriate to bring about the release of any US or allied personnel being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court' (Langbroek, 2009, p. 1).

ASPA also precludes any US participation in UN peacekeeping missions if there is no exemption of US personnel from the jurisdiction of the ICC. Due to its controversial clauses, the ASPA is also referred as 'Hague Invasion Act' (Human Rights Watch, 2002). Following the enactment of this act, the USA forced the party states of ICC to sign bilateral immunity agreements (BIAs) or bilateral non-surrender agreements. These agreements were signed with more than a hundred states and some of them are still in effect. It is claimed that the legal basis for justification of these agreements was Article 98

of Rome Statute. According to Article 98 (2), 'Cooperation with respect to waiver of immunity and consent to surrender':

> 'The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving the consent for the surrender' (Rome Statute of the International Criminal Court, 1998).

It is increasingly claimed that the USA deliberately misinterpreted the Article 98 so that it could provide exemption for its nationals from ICC's jurisdiction (AMICC, 2005). First BIA was signed with Romania on 1 August 2002 and continued with the others. The BIAs were used as political tools against many states. Some states were forced to sign this agreement with the threat of economic and military sanctions imposed by the USA. To resist against the US pressure was too risky particularly for some states. Some states were nearly fully dependent on the US aid. Moreover, as a Colombian senator stated, the sole problem was not only the cut in military aid but also close relations with the US were at risk (Kelley, 2007, p. 575). The BIAs can be regarded as a direct and severe blow to humanitarian law and human rights. Some scholars claim that these agreements 'place Americans above the rule of law' and 'permit them to commit the most heinous crimes without accountability' (Mutua, 2004). Amnesty International blamed the state parties which signed BIAs with the USA with the claim that these signatures were in violation of Article 86 of Rome Statute. Pursuant to Article 86, the state parties must arrest and surrender the accused people to the ICC. When a state party signs a BIA, it legally violates the Statute (Shah, 2005).

Despite the US persistence, there were some states that challenged the US pressure and they officially declared that they would not sign BIAs under any circumstances. Some of these states were Ecuador, Mexico, Paraguay, Peru, Barbados, Bolivia, Saint Vincent, Brazil, Costa Rica, Venezuela, Trinidad and Tobago and the Grenadines (Haugaard, 2006,

p. 11). However, these efforts could not restrain the anti-ICC campaign of the USA. Rather, they instigated new counter-attacks. In December 2007, the US Congress approved the Nethercutt Amendment which was imposed on the states that refused to sign the BIAs. This amendment mandated that there would be no economic aid to those party states if the US personnel and officials did not enjoy impunity from the jurisdiction of the ICC. For some states, this economic cut would have a negative impact on their budgets dedicated solely to 'peacekeeping, anti-terrorism and democracy-building measures and the war against drug trafficking'. Thus, this amendment caused more harm than the other cuts in military and political field (Ferencz, 2004).

Some scholars claim that US opposition would not be so strong if the ICC was not dependent from the UN. A tie to the UNSC with the right of referral of the situation to the ICC through a UNSC Resolution would be enough to enjoy the US support. However, this would bring about the debates of 'selective justice' and the enthusiastic support from other states would not be so expeditious and abundant. As Schabas (2004) argued that 'US opposition to the ICC was all about the Security Council' (p. 701-20). United States opposed to the ICC as it could not take over the control of the international criminal justice. This was considerably contradictory for a democratic state in particular in comparison with other democratic states in the council. The position of UK was supportive and with other states their attempt was to establish an independent and credible international criminal court. Besides, the UK was one of the critics of the US opposition. For the UK, the most noticeable feature of the ICC was that it was established on the principle of complementarity. The ultimate goal of the court was to reinforce the national judicial organs which are not efficiently functioning. Although the court initiates an investigation or prosecution, it can take over the proceedings to the national bodies when these bodies have become capable and willing to conduct an unbiased investigation or prosecution. In the case of the USA, it is remarkably accepted that the USA has the most sophisticated and competent the judicial organs which are specialized in the crimes under the jurisdiction of the ICC. Thus, according to the claim of the UK, US officials will not

fall under the jurisdiction of the ICC as they can be tried in their well-functioning courts due to the complementarity principle. As British Foreign Secretary Robin Cook stated in August 2000:

> 'The International Criminal Court will act only where national courts have failed to offer a remedy. Therefore I think the concern about US servicemen is misplaced. There is a strong judicial system in the USA. It can take action itself if there were to be breaches of international humanitarian law by US servicemen ……. in those circumstances the International Criminal Court does not apply. We have signed up to the International Criminal Court because we are confident there is no risk of that' (The Lawyers Committee for Human Rights, 2004, p. 179).

It can be claimed that the USA has undermined the International Criminal Court with this heavy anti-ICC campaign. Moreover, USA has undermined the humanitarian law and the concept of human security as well. Even though the ICC is accepted as the culmination of human security, it is increasingly argued that human security functions well only in theory. In practice, it falls behind the concerns of state security and international security based on the interests of states. As stated in the first chapter, the concept of human security 'does not aim to secure the state through securing people', human security should be more than the security of the states' interests. However, US opposition to an international criminal court which is entirely based on human security has shown that the security concerns are still associated with the state.

In addition, in chapter one, human security was conceptualized as 'giving priority to human development' and the claim was that this 'development should not be state-centered and discriminatory'. In the campaign of the USA, it is hard to claim that there was room for human development. Rather, it was all about the state. Besides, the efforts of the USA to control when and how the international criminal justice is done through its power in the UNSC cannot be regarded as non-discriminatory. As Jason Ralph (2011) states, 'that statute would have been tainted by the charge of 'selective justice' and consequently it would not have been as popular' (p. 119). It is overwhelmingly accepted that the ICC was

designed and established as an autonomous agent of human security. Nevertheless, this force was limited to the Rome Statute. Three of five permanent members of the Security Council (the USA, China and Russia) have not signed or ratified the founding treaty hence human security could not prevail over state security and the interests of great powers.

CONCLUSION

This thesis is a humble attempt to investigate whether or not ICC has been an autonomous agent of human security. In this regard, it aims to be a guide both in practical and theoretical human security studies. Since the establishment of better and flawless international organizations or institutions are in the hands of statesmen, this study can be an analytical guide to policy makers. As for the future of the court, it can be said that with the example of ICC, it has been obvious that an independent and autonomous international criminal court is possible in theory but there are lots to be changed and developed in practice. First of all, ICC is severely criticized for being a so-called International Criminal Court for Africa instead of the culmination of the international law. Even though the ICC was established as a permanent international criminal court, there are many problems in its practice. Most notably, the case selection of the ICC was severely criticized by the international community. In the first twelve years, all the investigations and legal proceedings conducted by the ICC are related to the African states. This has brought the debate of 'selective justice'.

If the ICC had established to address the humanitarian crimes committed all over the world since 1 July 2002, there would have been more than eight states. It will be unfair to disregard the bloody conflicts and severe human rights violations in these eight African states; however, it can be definitely proved that there have been more than eight conflicts in the world since 2002. When the military intervention took place in Iraq in 2003, the main justification for the intervention was the use of weapons of mass destruction (WMDs) on civilians by Saddam Hussein. Although use of WMDs is not specifically included in the Rome Statute, it can fall under war crimes or crimes against humanity according to the Article 7 and 8. However, his case or the cases of other high-ranking officials have never been brought to the ICC. Most recently, whole world have watched the grave breaches of human rights and inhumane use of force by the military forces of Bashar al-Assad since

March 2011. Why aren't these crimes referred to the ICC? Should the international community ignore the crimes committed in the politically critical regions? These are questions which haven't been answered comprehensively so far.

With this structure which is heavily on Africa and heavily on only one side's of the conflicts, ICC cannot go beyond a biased court of Africa. Thus, for a better functioning, genuine and non-discriminatory court, the case selection should be multiplied. Other situations from different parts of the world should be examined in an unbiased and autonomous way.

On the other hand, the oppression of the USA and the UNSC should be limited for a universally supported, non-discriminatory international criminal court. Whatever the reason is, the anti-campaign of the USA has undermined the credibility and the autonomy of the court in a great deal. As one of the most developed states which are the greatest supporters and pioneers of human rights and international humanitarian law, the non-ratification of the USA is a negative example for the other non-party states. Other than the USA, there is an obscure protest and anti-campaign of China and Russia through the UNSC.

Due to this lack of support from the permanent members of the UNSC, there have been problems in the international support to the court. The Rome Statute has been ratified by 122 states as of April 2014. However, lack of support by some key actors of international arena undermines the credibility of the court. Since the ICC was established independently from the control of the UNSC, and since the military and official personnel of these states are actively involved in the humanitarian interventions all over the world, there is a risk for the personnel of these states to fall under the jurisdiction of the ICC. If the existing judicial structure of the ICC is not changed or reformed in favor of these states, it is possible that they will never sign or ratify the Rome statute at all. The anti-ICC campaign started by the USA in 2000 was a great example of how further the members of the UNSC can go when

their authority has been challenged. The objections of strong and important actors in the international community have led to some concerns about the credibility and universality of the court. Once again, the powerful states are able to protect themselves against the legal proceedings of an international court, but the weak has become the target of the court, given the current case load of ICC which comprises cases from Africa. When the most powerful states of the world aren’t supportive for an existent permanent criminal court in a global scale, how can we expect the rest of the world will collectively embrace and enhance the humanitarian values? As Anup Shah (2005) states: ‘Although there was a pledge of ‘never again’ during the Nuremberg Trials after the Second World War, that pledge seems to have become ‘again and again’’.

BIBLIOGRAPHY

Akhavan, P. (2001). Beyond impunity: Can international criminal justice prevent future atrocities? *The American Journal of International Law*, 7-31.

Alkire, S. (2003). *A conceptual framework for human security* (CRISE Working Paper). Oxford, UK: Queen Elizabeth House, University of Oxford.

American Non-Governmental Organizations Coalition for the International Criminal Court. (2005). *Bilateral Immunity Agreement Campaign*. Retrieved 2014, from http://www.amicc.org/usicc/biacampaign

American Non-Governmental Organizations Coalition for the International Criminal Court. (2012, Nov). *Current Preliminary Examinations*. Retrieved October 30, 2013, from http://www.amicc.org/icc/preliminary

Amitai, E. (2006). Sovereignty as Responsibility. *Orbis*, 71-85.

Amnesty International. (2003, Apr 30). *International Criminal Court: Security Council must refuse to renew unlawful Resolution 1422*. Retrieved 2014, from http://www.amnesty.org/en/library/asset/IOR40/008/2003/en/37d592e0-d6f8-11dd-b0cc-1f0860013475/ior400082003en.pdf

Apuuli, K. P. (2006). The ICC arrest warrants for the Lord's Resistance Army leaders and peace prospects for Northern Uganda. *Journal of International Criminal Justice*, 179-187.

Arsanjani, M. H. (1999). The Rome Statute of the International Criminal Court. *American Journal of International Law*, 22-43.

Associated Press. (2009, Jul 4). African nations unite to defend Sudanese leader. *The Independent*. Retrieved from http://www.independent.co.uk/news/world/africa/african-nations-unite-to-defend-sudanese-leader-1731429.html

Axworthy, L. (1997). Canada and Human Security: the need for leadership. *International Journal, 11 (2),* 183-196.

Bah, A. B. (2010). Democracy and civil war: citizenship and peacemaking in Côte d'Ivoire. *African Affairs*, 597-615.

Bassiouni, M. C. (Ed.). (2008). *International Criminal Law: international enforcement*. Leiden: Martinus Nijhoff Publishers

Bassiouni, M. C. & Hansen, D. (2013, Mar – 2014, Jan). The inevitable practice of the office of the prosecutor. *ICC Forum: Africa question*. Retrieved from http://iccforum.com/Africa

Baylis, J., & Smith, S. (2006). *The Globalization of World Politics: An introduction to international relations* (3rd ed.). New York: Oxford University Press.

Bellamy, A. J., & Williams, P. D. (2011). The new politics of protection? Côte d'Ivoire, Libya and the responsibility to protect. *International Affairs*, 825-850.

Berger, Mark. (2006). From nation-building to state-building: The geopolitics of development, the nation-state system and the changing global order. *Third World Quarterly, 27 (1),* 5-25. doi:10.1080/01436590500368719.

Boissier, P. (1985). *From Solferino to Tsushima: history of the International Committee of Red Cross.* Geneva: Henry Dunant Institute.

Brunner, J. (2002). American involvement in the Nuremberg war crimes trial process. *Michigan Journal of History*, 1-10.

Buzan, B. (2008). *People, states & fear: An agenda for international security studies in the post-cold war era* (2nd ed.). University of Essex, UK: ECPR Press.

Buzan, B., Waever, O., & Wilde, J. d. (1998). *Security: A New Framework for Analysis.* London: Lynne Rienner Publishers.

Cassese, A. (1999). The statute of the International Criminal Court: some preliminary reflections. *European Journal of International Law*, 144-171.

Chandler, D. (2004). *Constructing Global Civil Society: Morality and Power in International Relations*, Basingstoke: Palgrave, 2004.

Chandler, D. (2008). The Human Security Paradox: How Nation States Grew to Love Cosmopolitan Ethics. *Globalization, Difference, and Human Securities* (p. 1-15). Osaka: Graduate School of Human Sciences, Osaka University.

Chandler, D. (2012). Resilience and human security: The post-interventionist paradigm. *Security Dialogue, 43 (3),* 213-249. doi: 10.1177/0967010612444151.

Clinton's statement on war crimes court (2000, Dec 31). [Editorial] *BBC news*. Retrieved from http://news.bbc.co.uk/2/hi/1095580.stm

Commission on Human Security. (2003). *Human security now*. New York. Retrieved from http://reliefweb.int/sites/reliefweb.int/files/resources/91BAEEDBA50C6907C1256D19006A9353-chs-security-may03.pdf

Conso, G. (1999). Looking to the Future. In R. S. Lee (Ed.), *The International Criminal Court: the making of the Rome Statute* (p. 471-479). New York: Martinus Nijhoff Publishers.

Coppin, A. (2008, Sept 10). *Communications to the ICC and Other Actions Regarding the Situation in Georgia*. AMICC. Retrieved October 30, 2013, from http://www.amicc.org/docs/Georgia.pdf

Corriell, S., & Kemp C. (2012). *The Tokyo Trial at Richmond: Digitizing the Sutton Collection of Documents from the International Military Tribunal for the Far East*. Richmond School of Law Faculty Publications.

Côté, L. (2005). Reflections on the exercise of prosecutorial discretion in international criminal law. *Journal of International Criminal Justice*, 162-186.

Cox, R. W. (1981). Social forces, states and world orders: Beyond international relations theory. *Millenium – Journal of International Relations, 10 (2),* 126-55.

Deng, F. M. (Et. al.), Kimaro, S., Lyons, T., Rothchild, D., & Zartman, W. I. (1996). *Sovereignty as Responsibility: Conflict management in Africa.* Washington D.C.: The Brookings Institution.

De Soto, H. (1989). *The Other Path: The Invisible Revolution in the Third World.* New York: Harper & Row.

DiCicco, L. (2009, Sept 14). *Communications to the ICC regarding the situation in Afghanistan*. AMICC. Retrieved October 30, 2013, from http://www.amicc.org/docs/Afghanistan.pdf

Dictionary.cambridge.org. (2013). autonomous adjective - Cambridge Dictionaries Online. Retrieved 26 March 2013, from http://dictionary.cambridge.org/dictionary/turkish/autonomous?q=autonomous

Doom, R., & Vlassenroot, K. (1999). Kony's message: a new Koine? the Lord's Resistance Army in Northern Uganda. *African Affairs*, 5-36.

Dougherty, B. K. (2004). Right-sizing international criminal justice: the hybrid experiment at the Special Court for Sierra Leone. *International Affairs* , 311-328.

En.wiktionary.org,. (2013). agent - Wiktionary. Retrieved 26 March 2013, from http://en.wiktionary.org/wiki/agent

Ferencz, B. B. (2004, Sept). The Nethercutt Amendment and the International Criminal Court. Retrieved 2014, from http://www.benferencz.org/index.php?id=4&article=19

Frulli, M. (2000). The Special Court for Sierra Leone: some preliminary comments. *European Journal of International Law*, 857-869.

Fukuyama, F. (2004). The imperative of state-building. *Journal of Democracy, 15 (2),* 17-31.

Gegout, C. (2013). The International Criminal Court: limits, potential and conditions for the promotion of justice and peace. *Third World Quarterly*, *34*(5), 800-818. doi:10.1080/01436597.2013.800737

Gettleman, J. (2010, Apr 10). Uganda Enlists Former Rebels to End a War. *The New York Times.* Retrieved September 8, 2013, from http://www.nytimes.com/2010/04/11/world/africa/11lra.html?_r=0

Glasius, M. (2002). Expertise in the cause of justice: Global civil society influence on the statute for an international criminal court. In H. Anheier, M. Glasius & M. Kaldor, *Global Civil Society Yearbook* (1st ed., pp. 137-168). Oxford: Oxford University Press.

Glasius, M. (2006). *The international criminal court: a global civil society achievement.* London and Newyork: Routledge.

Glasius, M. (2008). We ourselves, we are part of functioning: the ICC, victims, and civil society in the Central African Republic. *African Affairs*, 49-67.

Greenwood, C. (1993). International criminal tribunal for former Yugoslavia. *International Affairs*, 641-655.

Griffiths, C. (2012, Jul 3). The International criminal court is hurting Africa. *The Telegraph*. Retrieved from http://www.telegraph.co.uk/news/worldnews/africaandindianocean/kenya/9373188/The-International-Criminal-Court-is-hurting-Africa.html

Guzman M. M. d. (2013, Mar – 2014, Jan). Is the ICC targeting Africa inappropriately? ICC Forum: Africa question. Retrieved from http://iccforum.com/Africa

Haugaard, L. (2006, Mar). ‘Article 98’ Agreements and the International Criminal Court’, Latin America Working Group Education Fund. *The Latin America Working Group Education Fund*, 1-20.

Hebel, H. A. (1999). An International Criminal Court - A historical perspective. In H. A. Hebel, J. G. Jammers, & J. Schukking (Eds.), *Reflections on the international criminal court: essays in honour of Adriaan Bos* (p. 13-38). The Hague: T.M.C. Asser Press.

Human Rights Watch. (2002, Aug 3). *US: 'Hague Invasion Act' Becomes Law*. Retrieved 2014, from http://www.iccnow.org/documents/8-3-02HRWBushSignsASPA.pdf

Human Rights Watch. (2003, May). *The ICC and the Security Council: Resolution 1422: Legal and Policy Analysis*. Retrieved 2014, from http://www.hrw.org/legacy/campaigns/icc/docs/1422legal.htm

Human Rights Watch. (2005, Sept). *Uprooted and Forgotten: Impunity and Human Rights Abuses in Northern Uganda*. Retrieved June 20, 2013, from http://hrw.org/reports/2005/uganda0905/index.htm

Human Rights Watch. (2010, Oct). *Afraid and forgotten: lawlessness, rape and impunity in western Côte d'Ivoire*. Retrieved October 23, 2013, from http://www.hrw.org/sites/default/files/reports/cotedivoire1010webwcover_0.pdf

Human Rights Watch. (2011). *World Report 2011*. Retrieved October 23, 2013, from http://www.hrw.org/world-report-2011

Humphrey, M. (2003). International intervention, justice and national reconciliation: the role of the ICTY and ICTR in Bosnia and Rwanda. *Journal of Human Rights*, 495-505.

International Criminal Court. (2004). *Uganda*. Retrieved July 25, 2013, from http://icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/Situation%20ICC%200204/Pages/situation%20index.aspx

International Criminal Court. (2004). *Democratic Republic of Congo*. Retrieved August 15, 2013, from http://icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/Situation%20ICC%200104/Pages/situation%20index.aspx

International Criminal Court. (2005). *Central African Republic*. Retrieved September 22, 2013, from http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases /Situations/Situation%20ICC%200105/Pages/situation%20icc-0105.aspx

International Criminal Court. (2005). *Darfur, Sudan*. Retrieved October 5, 2013, from http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations /Situation%20ICC%200205/Pages/situation%20icc-0205.aspx

International Criminal Court. (2010). *Kenya*. Retrieved October 18, 2013, from http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/ Situation%20ICC%200109/Pages/situation%20index.aspx

International Criminal Court. (2011). *Côte d'Ivoire*. Retrieved October 25, 2013, from http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations/ ICC0211/Pages/situation%20index.aspx

International Criminal Court. (2011). *Libya*. Retrieved October 10, 2013, from http://www.icc-cpi.int/EN_Menus/ICC/Situations%20and%20Cases/Situations /ICC0111/Pages/situation%20index.aspx

International Criminal Court. (2011). *The Prosecutor v. Laurent Gbagbo*. Retrieved October 25, 2013, from http://www.icc-cpi.int/en_menus/icc/situations%20and%20 cases/situations/icc0211/related%20cases/icc02110111/Pages/icc02110111.aspx

International Criminal Court. (2012). *The Prosecutor v. Sylvestre Mudacumura*. Retrieved from August 22, 2013, from http://www.icc-cpi.int/en_menus/icc/situations %20and%20cases/situations/situation%20icc%200104/related%20cases/icc 01040112/Pages/icc01040112.aspx

International Criminal Court. (2012). *The Prosecutor v Mathieu Mgudjolo Chui*. http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/ situation%20icc%200104/related%20cases/ICC-01-04-02-12/ Pages/default.aspx

International Criminal Court. (2012, Feb 22). *Decision on the Prosecution's provision of further information regarding potentially relevant crimes committed between 2002 and 2010*. Retrieved October 25, 2013, from http://www.icc-cpi.int/iccdocs/doc/doc1341467.pdf

International Criminal Court. (2013). *Republic of Mali*. Retrieved September 25, 2013, from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0112/Pages/situation%20index.aspx

International Criminal Court. (2013). *The Prosecutor v Walter Osapiri Barasa*. Retrieved from October 18, 2013, from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200109/related%20cases/ICC-0109-0113/Pages/default.aspx

International Criminal Court. (2013, Jan 16). *Situation in Mali: Article 53 (1) report*. Retrieved September 28, 2013, from http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0112/Documents/SASMaliArticle53_1PublicReportENG16Jan2013.pdf

International Criminal Court. (2013, Jan 16). *The Prosecutor opens investigation into war crimes in Mali: The legal requirements have been met. We will investigate*. Retrieved September 30, 2013, from http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/news%20and%20highlights/Pages/pr869.aspx

International Crisis Group. (2007, Dec). *Central African Republic: Anatomy of a Phantom State.* Retrieved September 12, 2013, from http://www.crisisgroup.org/~/media/Files/africa/central-africa/central-african-republic/Central%20African%20Republic%20Anatomy%20of%20a%20Phantom%20State.pdf

International Justice Monitor. (2011). *Kenya Cases*. Retrieved October 18, 2013, from http://www.ijmonitor.org/kenya-cases-background/

International Law Commission. (1950, Jun 5 – Jul 29). *Principles of Nuremberg Tribunal: Document A/1316*. Retrieved from http://deoxy.org/wc/wc-nurem.htm

Jackson, R., & Sorensen, G. (2007). *Introduction to international relations* (3rd ed.). New York, NY: Oxford University Press.

Jones, A. (2011). *Genocide: a comprehensive introduction.* New York: Routledge.

Kazmi, S. Is Victor's Justice in Nuremberg Trial Justified or not?, 1-12.

Kelley, J. (2007). Who keeps international commitments and why? The international criminal court and bilateral agreements. *American Political Science Review*, 573-589.

Khong, Y. F. (2001). Human Security: A shotgun approach to alleviating human misery? *Global Governance*, 231-236.

Kirsch, P. (1999). Introduction. In H. A. Hebel, J. G. Jammers, & J. Schukking (Eds.), *Reflections on the International Criminal Court: essays in honour of Adriaan Bos* (p. 1-10). The Hague: T.M.C. Asser Press.

Kirsch, P. (1999). The development of the Rome Statute. In R. S. Lee (Ed.), *The International Criminal Court: making of the Rome Statute* (p. 451-463). New York: Martinus Nijhoff Publishers.

Langbroek, P. M. (2009). [Editorial] The ICC and the American Service Members' Protection Act. *International Journal for Court Administration*, 1.

Leanos, B. (2012). Cooperative justice: understanding the future of International Criminal court through its involvement in Libya. *Fordham Law Review*, 2267-2304.

Lee, R. S. (1999). Introduction: The Rome Conference and its contributions to International Law. In R. S. Lee (Ed.), *The International Criminal Court: the making of the Rome Statute* (p. 1-40). New York: Martinus Nijhoff Publishers.

Lilian A. Barria, S. D. (2005). How effective are international criminal tribunals? An analysis of the ICTY and the ICTR. *The International Journal of Human Rights*, 349-368.

Lindberg, E. (2013). *War in Mali: background study and annotated bibliography.* Uppsala: The Nordic Africa Institute.

Liolos, J. J. (2012). Justice for tyrants: International Criminal Court warrants for Gaddafi regime crimes. *Boston College International & Comparative Law Review*, 589-602.

Lipscomb, R. (2006). Restructuring the ICC framework to advance transitional justice: a search for a permanent solution in Sudan. *Columbia Law Review*, 182-212.

Lynch, G., & Zgonec-Rozej, M. (2013). The ICC intervention in Kenya. *Chatham House*, 1-14.

Mills, C., Lang, A., & Lunn, J. (2013). *The crisis in Mali: current military action and upholding humanitarian law.* UK Parliament: The House of Commons Library.

Miraldi, M. (2003). Overcoming obstacles of justice: the Special Court of Sierra Leone. *New York Law School Journal of Human Rights*, 849-858.

Morgan-Foster, J. (2007). ICC confirms charges against DRC militia leader. *American Society of International Law*, 1-7.

Muller, A. S. (2004). Setting up the International Criminal Court: not one moment but a series of moments. In N. B. Blokker, & R. A. Vessel (Eds.), *International Organizations Law Review* (p. 189-196). New York: Martinus Nijhoff Publishers.

Murithi, T. (2013). *The African Union and the International Criminal Court: an embattled relationship?* Cape Town: The Institute for Justice and Reconciliation, 1-12.

Mutua M. (2004, Aug 11). America and the International Criminal Court. *Daily Nation, Nairobi*. Retrieved 2014, from www.globalpolicy.org/component/content/article/164/28448.html

Neack, L. (2007). *Elusive security: States first, people last.* Maryland: Rowman & Littlefield Publishers, Inc.

Newman, E. (2001). Human security and constructivism. *International Studies Perspectives, 2 (3),* 239-251.

O'Fahey, R. S. (2006). Conflict in Darfur: historical and contemporary perspectives. *Environmental Degradation as a cause of conflict in Darfur* (p. 23-33). Bergen: United Nations.

Okuta, A. (2009). National legislation for prosecution of international crimes in Kenya. *Journal of International Criminal Justice*, 1063-1076.

Otim, M., & Wierda, M. (2010). Uganda: Impact of the Rome Statute and International Criminal Court. *The Rome Statute Review Conference* (p. 1-8). New York: International Center for Transitional Justice.

Oxforddictionaries.com. (2013). autonomous: definition of autonomous in Oxford dictionary (British & World English). Retrieved 26 March 2013, from http://www.oxforddictionaries.com/definition/english/autonomous?q=autonomous

Ovalı, Ş. A. (2006). Ütopya ile pratik arasında: Uluslararası ilişkilerde insan güvenliği kavramsallaştırılması. *Uluslararası İlişkiler, 3 (10),* 3-52.

Paris, R. (2001). Human Security: Paradigm shift or hot air? *International Security, 26 (2),* 87-102.

Pena, M. (2005, Aug 11). *An ICC Investigation in Colombia?* AMICC. Retrieved October 30, 2013, from http://www.amicc.org/docs/Colombia.pdf

Ralph, J. (2011). *Defending the society of states: why America opposes the International Criminal Court and its visions of world society.* Oxford: Oxford University Press.

Randot, M. (2013, Aug 13). *The ICC and the Israel-Palestine Conflict: current developments, implications and future scenarios*. AMICC. Retrieved October 30, 2013, from http://www.amicc.org/docs/the_icc_and_the_israel-palestine_conflict .pdf

Reydams, L. (2005). The ICTR ten years on: Back to the Nuremberg paradigm? *Journal of International Criminal Justice*, 977-988.

Reyntjens, F. (1999). Briefing: the seond Congo war: more than a remake. *African Affairs*, 241-250.

Roberts, A. (1998). Implementation of the laws of war in late 20th century conflicts part II. *Security Dialogue*, 265-280.

Rojo, G. A. (2009, Jun 16). *The ICC's Colombia Investigation: Recent Developments*. AMICC. Retrieved October 30, 2013, from http://www.amicc.org/docs/Colombia_Update.pdf

Rothe, D., & Mullins, C. W. (2006). *Symbolic gestures and the generation of global social control: the international criminal court.* Plymouth: Rowman & Littlefield Publishers.

Rwelamira, M. R. (1999). Composition and administration of the court. In R. S. Lee (Ed.), *The International Criminal Court: making of the Rome Statute* (p. 153-175). New York: Martinus Nijhoff Publishers.

Salih, M. (2005). *Understanding the conflict in Darfur.* Copenhagen: University of Copenhagen Centre of African Studies.

Sanders, A. & Moseley, M. (2012, Jul). *A Political, Security and Humanitarian Crisis: Northern Mali*. Civil-Military Fusion Centre Mediterranean Basin Team. Retrieved September 25, 2013, from https://www.cimicweb.org/cmo/Documents/ASCOPE%20PMESII/Mali%20PMESII%20Sep%202012.pdf

Schaack, B. V. (2008). Crimen Sine Lege: Judicial Lawmaking at the Intersection of Law & Morals. *ExpressO*. Retrieved fromhttp://works.bepress.com/beth_van_schaack/1/

Schabas, W. (2004). United States hostility to the International Criminal Court. *European Journal of International Law*, 701-720.

Schabas, W. (2011). *An introduction to the International Criminal Court* (4th ed.). Cambridge, UK: Cambridge University Press.

Schiff, B. N. (2008). *Building the International Criminal Court.* Cambridge: Cambridge University Press.

Schocken, C. (2002). The Special Court for Sierra Leone: Overview and Recommendations. *Berkeley Journal of International Law*, 436-461.

Schwarzenberger, G. (1970). Breisach Revisited. C. H. Alexandrowicz (Ed.), *Studies in the History of the Law of Nations* (p. 46-51). London: Springer Netherlands.

Sewall, S. (2000). *The United States and the International Criminal Court.* Harvard University: Carr Center for Human Rights. Retrieved 2014, from www.hks.harvard.edu/cchrp/Web Working Papers/ICC.pdf

Shah A. (2005, Sept 25). United States and the International Criminal Court. *Global Issues*. Retrieved 2014, from www.globalissues.org/article/490/united-states-and-the-icc

Stahn, C. (2002). Ambiguities of Security Council Resolution 1422. *European Journal of International Law*, 85-104.

Suhrke, A. (1999). Human security and interests of states. *Security Dialogue*, 265-276.

Surlan, T. (2005). Ne bis in idem in conjunction with the principle of complementarity in the Rome Statute. *European Society of International Law*, 1-8.

Şen, E. (2009). *Uluslararası Ceza Mahkemesi.* Ankara: Seçkin Yayıncılık.

Taku, C. C. A. (2013, Mar – 2014, Jan). Has the International Criminal Court inappropriately targeted Africa? *ICC Forum: Africa question*. Retrieved from http://iccforum.com/Africa

Tanaka, Y., McCormack, T., & Simpson, G. (Eds.). (2010). *Beyond Victor's Justice? The Tokyo War Crimes Revisited.* Boston: Martinus Nijhoff Publishers.

The Commission of Inquiry into Post-election Violence. (2008). *Waki Report*. Retrieved October 16, 2013, from http://www.kenyalaw.org/Downloads/Reports/ Commission_of_Inquiry_into_Post_Election_Violence.pdf

The Lawyers Committee for Human Rights. (2004). The United States and the International Criminal Court. In W. Driscoll, J. P. Zompetti, & S. Zompetti, *International Criminal Court: global politics and the quest for justice* (p. 177-182). New York: The International Debate Education Association.

Tull, D. M. (2009). Peacekeeping in the Democratic Republic of Congo: waging peace and fighting war. *International Peacekeeping*, 215-230.

Ulusoy, O. (2008). *Uluslararası Ceza Mahkemesi.* Izmir: Insan Hakları Gündemi Derneği.

UN General Assembly. (1995). *Resolution 50/46: Establishment of an international criminal court.* Retrieved April 15, 2013 from http://www.un.org/documents/ga/res/50/a50r046.htm

UN International Criminal Tribunal for Rwanda. *General Information about the ICTR*. Retrieved April 10, 2013, from http://www.unictr.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx

UN International Criminal Tribunal for the former Yugoslavia. *About the ICTY*. Retrieved March 20, 2013, from http://icty.org/sections/AbouttheICTY

United Nations. (1994). *Human Development Report*. Retrieved January 11, 2013, from http://hdr.undp.org/sites/default/files/reports/255/hdr_1994_en_complete_nostats.pdf

United Nations. (1995). *The Report of the Ad hoc Committee on the Establishment of an International Criminal Court, GAOR, Supplement No. 22, UN Doc. A/50/22 of 1995*. Retrieved April 15, 2013 from http://www1.umn.edu/humanrts/resolutions/50/46GA1995.html

United Nations. (1998). *Rome Statute of the International Criminal Court*. Retrieved April 15, 2013, from http://legal.un.org/icc/statute/romefra.htm

United Nations. (1998). *United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court*. Retrieved April 20, 2013 from http://legal.un.org/icc/rome/proceedings/E/Rome%20Proceedings_v1_e.pdf

United Nations. (2002). *Preparatory Commission for the International Criminal Court.* Retrieved April 15, 2013, from http://legal.un.org/icc/prepcomm/prepfra.htm

United Nations. (2009). *Updated Statute of the International Criminal Tribunal for the former Yugoslavia.* Retrieved April 1, 2013, from http://icty.org/x/file/Legal%20Library/Statute/statute_sept09_en.pdf

United Nations. (2009). *The Special Court for Sierra Leone cases.* Retrieved April 10, 2013, from http://www.rscsl.org/

UN Security Council. (2000). *Resolution 1315*. United Nations.

UN Security Council. (2002). *Seventh annual report of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States between 1 January and 31 December 1994*. Retrieved 2013, from http://www.unictr.org/Portals/0/English%5CAnnualReports%5C163e.pdf

UN Security Council. (2002). *Statute of the Special Court for Sierra Leone*. Retrieved 2013, from http://www1.umn.edu/humanrts/instree/SCSL/statute-sierraleone.html

UN Security Council. (2004). *Resolution 1564*. United Nations.

UN Security Council. (2005). *Resolution 1593*. United Nations.

UN Security Council. (2011). *Resolution 1970*. United Nations.

US Department of State. (2002, May 6). *International Criminal Court: Letter to UN Secretary General Kofi Annan*. Retrieved 2013, from http://2001-2009.state.gov/r/pa/prs/ps/2002/9968.htm

Vandewalle, D. (2006). *A history of modern Libya.* Cambridge: Cambridge University Press.

Vinck, P., & Pham, P. N. (2010). Outreach evaluation: the International Criminal Court in the Central African Republic. *International Journal of Transitional Justice*, 421-442.

Vinck, P., Pham, P., Baldo, S., & Shigekane, R. (2008). *Living with fear: a population-based survey on attitudes about peace, justice and social construction in Eastern Democratic Republic of Congo.* Berkeley: Human Rights Center UC.

Wadlow, R. (2005). Book Review [Review of the book *Darfur: Short Story of a Long War*, written by Julie Flint and Alex De Waal]. London: Zed Books

Weller, M. (2002). Undoing the global constitution: UN Security Council action on the International Criminal Court. *International Affairs*, 693-712.

Zacklin, R. (2004). The failings of *ad hoc* international tribunals. *Journal of International Criminal Justice*, 514-545.