

International Criminal Court: Can Courts Cross Borders?

Sadhvi Mehandru

When national systems falter, where does the ultimate authority for prosecution and justice reside? The worldwide population looks towards intergovernmental organizations; unaware that such corporations are often too extensive and broad to harness a true impact upon, or effectively assist a global society. The current International Criminal Court (ICC) is a direct exhibition of a shortcoming global institution in the face of intercontinental conflict. The ICC features a lack of resources and military personnel allotted to it via nation-states (which greatly hinders the corporation's enforcement power), to inescapable accusations of bias towards certain countries/continents. Hence, the collective inquiry that arises examines whether an international organization, with a multitude of integral issues, is really more necessary or effective than a different approach, such as NGOs and private sector initiatives, in the face of global injustice. The most viable logic, after taking in the impacts, or even its lack thereof, the ICC determines that such organizations are in fact not entirely imperative nor efficient.

The ICC's prevalent bias towards and against specific national (and continental) powers stems from another inexorable flaw of intergovernmental organizations. Geopolitical interests differing within an international operation is the basis upon which all other fundamental flaws within the ICC arise. In other words, when countries or groups of them house different interests under an organization striving towards a common goal (proper justice for severe crimes, in the case of the ICC) — more politically and economically powerful nations, such as the United States, will likely exert influence over the corporation as a whole. This disproportionate influence inevitably makes way for selective enforcement or forced interest in these nations via the ICC. Not only does this spark more accusations of bias, it decreases the credibility of the

institution as a whole, and yields inaction and unprecedented foreign influence in other countries, or entire continents, specifically in the case of Africa.

African leaders have begun to speak out regarding the untoward Western influence they have been receiving as a result of the ICC's operations in their countries, as well as further exhibiting the unsuccessful nature of the Court's operations. Nine of the first ten ICC operations were held in African nations, leading African leaders to communicate that their continent as a whole is being utilized as a tool for neo-colonialism. Neo-colonialism is a term that defines the use of economic, cultural, or political issues to control/influence foreign powers founded on dependency—and is applicable in the case of African ICC missions. These neo-colonialism accusations by Africa are specifically targeted towards Western powers and influence (in relation to the aforementioned United States).

The large number of allegations and accusations that the ICC has faced construct a pathway towards another foundational issue within the cooperation—its difficulties in establishing association and collaboration among foreign powers. Because of its position as a multilateral institution, the ICC depends almost exclusively on its member states' cooperation for arrests, collection of evidence, witness protection, etc. When nations are unable or unwilling to work alongside each other due to a form of political divide, missions carried out by the ICC are a premeditated failure. One of the most renowned instances of such an investigation was the *Omar al-Bashir* case in Darfur, Sudan. This case featured the ICC's issued arrest of former Sudan president, Omar al-Bashir, under charges of genocide, war crimes, and other crimes against humanity in Darfur. However, despite the arrest warrants he faced, al-Bashir was still able to travel to numerous countries, including ICC member states. Despite his free roaming of these areas, enforcement in these member states failed to arrest him. This inaction on al-Bashir's

freedom despite his multiple arrest warrants was a clear demonstration of the ICC's inability to foster cooperation within, or properly instruct its member states.

Even beyond the external issue of evident mismanagement and lack of collaboration within the ICC, the organization's inability to yield any impact without the aid of its member states is exceedingly apparent. This reliance creates a significant area of vulnerability for the Court, which was again, largely displayed in the case of Omar al-Bashir, in which the effect of a lack of a police force dedicated to the ICC within the member states he traveled amongst was conveyed distinctly. In full, many of the ICC's key powers and strategies in carrying out investigations and halting injustice caused by internationally-recognizable criminals can only be executed after coercive collaboration amongst member states. Such key powers entail evidence collection, which requires investigations across multiple foreign lands and the acquisition of documents located in specific countries, and witness protection—which the ICC heavily relies on member states for. Witness protection is crucial because of the high-risk positions witnesses ascent to in International cases, and because of the ICC's aforesaid lack of military police officials, countries involved in cases are expected to provide proper security of these witnesses.

The Court's ineffectiveness and ultimate weakness in gaining credibility and success has also been readily displayed via the ICC's Kenyan cases. To elucidate, the Court opened investigations into the 2007-2008 post-election violence in Kenya, which had resulted in widespread displacement and fatality. During this time, high-profile individuals, most notably politicians, were charged with crimes against humanity. Within these Kenyan cases, the primary flaw that arose from the ICC's structural shortcomings was tampering and intimidation of witnesses. In direct correlation to the Court's need of member-state aid for witness protection, the Kenyan government was accused of not providing sufficient protection for witnesses during a

time of violence, hence hindering the investigation(s) in place by the ICC. In further correspondence to the Kenyan government's perceived 'inaction' during this case (the nation faced accusations of actively working to undermine the Court's mission through its inconsistency in witness protection and aid), the ICC's stark reliance on member states showed through.

Furthermore, as the ICC's Kenyan invitations continued to falter, the dire need for not only progression in general of the ICC, but also the Court's need for more fortified witness protection programs; and how a lack of them has the ability to destroy a case. Seeing as the ICC lacked not only more reliable witness protection systems, but also harbored a strong inability to successfully execute investigations without constant aid of member states, it aligns with the foundational ordinance of the ICC which has been planned out. The Rome Statute (the international treaty upon which the Court was established) has been expanded upon and revised in the ICC's publicized *International Criminal Court Strategic Plan 2023-2025*.

However, despite the advertisement of this new plan as devised 'improvements' to the primary Rome Statute and ICC cooperation as a whole, the majority of these advancements are simply extensions of the initial outline for the Court. The goals set in place via this new plan are also arguably vague and not adequately streamline to properly implement or rationalize for a truly efficient ICC. The mass of the *Strategic Plan 2023-2025* include initiatives like "continuous improvement", "reaffirmation of the commitment of the Court", enhanced accountability, and a "renewed vision for implementing its mandate." Among these subsections of the ICC's plan (and among many others), the theme of hasty reformation, rather than more necessary efficient revision and innovation of a new approach to international crime erupts.

By way of explanation, the new plan composed by the ICC for future operations, and the plans embedded within it, are ultimately not in favor of a more effective and contemporary manner to deal with international legalities and crime. These more latter-day techniques, which take into account the current flaws and collaborative issues within existing international corporations like the ICC, are vastly necessary; and are subsequently more appropriate resolutions to the ICC's past failures. Furthermore, when examining the Court's *Strategic Plan 2023-2025*, a crucial takeaway is that while this plan highlights positive ambitions, it's inherently limited by the perpetual challenges any multilateral cooperation would face. Persistent challenges entail fundamental dependence on member-states for aforementioned witness protection, arrests, evidence gathering, etc.

Over and above continued reliance on state cooperation in spite of newly erected plans for the Court, geopolitical realities that hinder multilateral institutions still exist. The ICC's new outline cannot alter the current geopolitical landscape, which features a complicated divide of types of crime and how different nations prioritize certain offenses. Not only does this principle further highlight the importance of seeking improvements from bilateral corporations, regional partnerships, and NGOs (among other approaches to addressing global issues without the challenges of international corporations), it also sheds light on the enforcement limitations the ICC faces. The true extent of these limitations include the ICC's complete lack of an independent military or set of personnel, as well as the Court's incapacity to create a military force even if it saw fit, making way for harmful yet realistic understandings that the ICC would not hold up at times of violent emergency.

The *International Criminal Court Strategic Plan 2023-2025*'s insight on the ICC's prominent weakness in terms of military fervor and reliance expands on the already prevalent

issues established via the Court in Afghanistan. To elaborate, in the primitive/foundational years of the ICC, its Office of Prosecutor opened a preliminary examination into alleged war crimes, and crimes against humanity committed in Afghanistan since 2003. This specific operation investigated the actions of various actors, including the Taliban, Afghan security forces, and the U.S. military and intelligence personnel. This inclusion of U.S. personnel became a censorious point of contention among those involved in the operation. In regards to the United States itself (which is not a member of the ICC), the nation strongly opposed the investigation, particularly concerning allegations against its personnel.

In again displaying the daunting power that member states (and even non-member states like the United States) hold over international administrations like the ICC, the U.S. took action to zealously obstruct the investigation of Afghanistan. This included imposing sanctions on ICC officials, and intensified the Court's struggle to force collaboration among nations to execute its operations. Hence, in relevance to future international crimes and investigations, the current framework for the ICC from 2023-2025 will not suffice; especially when concerning conflict zones like Afghanistan. The ICC's most notable struggles within this operation featured the security situation, political instability among the involved countries, and the involvement of multiple actors which made it challenging for the ICC to gather evidence.

Beyond the fairly straightforward integral issues that come alongside executing an international cooperation like political violence and insufficient security of individuals, jurisdictional complexities that the Court couldn't maneuver around existed. Within this specific operation in Afghanistan alone, the Taliban taking over the nation and multiple actors present among not only member but also non-member states, were only a few of the complications that arose. The ICC's ensuing struggle with this operation raised questions about its ability to

efficiently investigate and prosecute crimes in such situations. The Court henceforth faced immense political pressure from a multitude of factors present, gatewaying into the broader foundational issues present within it.

In full, the limitations of jurisdiction, political interference, enforcement challenges, and issues regarding state sovereignty present in almost every operation the ICC has conducted highlight the broader discrepancies within international corporations and their likelihood of failure. Cases like al-Bashir, Afghanistan, and Kenya demonstrate clearly that states, whether they serve as members to the Court or not, prioritize sovereignty over legal obligations—and hold substantial power over ineffective multilateral administrations. This reveals a rudimentary flaw in a system that relies on voluntary compliance. In correlation, the early focus on African cases via the ICC severely damaged its legitimacy, a lack which the Afghanistan case further amplified; undermining the principle of universal justice. Among all of these structural flaws, enforcement deficiencies hold large relevance, with the ICC's stark lack of its own enforcement mechanisms being a crippling weakness in the face of violent zones and witness protection/arrest programs. The overall limitations of international criminal law underscore the dire need for more nuanced and context-sensitive approaches to international justice. These approaches feature exploring alternative forms of accountability and collaboration amongst countries, establishing foreign cooperation only between nations in which it is opportune and currently necessary. This international cooperation and justice will thus no longer be a product of coercion or haste, as it has been under the ICC.

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