BRATISLAVA INTERNATIONAL SCHOOL OF LIBERAL ARTS

IS INTERNATIONAL CRIMINAL COURT BIASED AGAINST AFRICA?

BACHELOR THESIS

Katarína Mrvová **Bratislava, 2013**

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Declaration of Originality

I hereby declare that the bachelor thesis was entirely my own work, with the help of my tutor and I have identified sources and citations that have been used in the text properly. All the sources that have been used can be found in Bibliography, which is attached, at the end of this work.

Katarína Mrvová

In Bratislava, 30 April 2013 signed …..……

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ABSTRACT

Is International Criminal Court Biased Against Africa?

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This bachelor thesis *Is International Criminal Court Biased Against Africa?* will focus on the decade of existence of the International Criminal Court, a permanent tribunal based in the Hague, the Netherlands. ICC, as an independent international institution, was established to prosecute individuals for the crimes against humanity, crimes of genocide, and war crimes. The Court was founded to fight against impunity of these crimes and to help maintain security in terms of international society. This bachelor thesis will discuss the Court's relevance and its international impact. The purpose of this thesis is to defend the Court's focus on Africa so far, to give a deeper insight to the topic and to refute the critical opinions on the Court's activities.

This paper's concern is also to recapitulate the decade of the Court's existence and to discuss its successes and failures from various points of view. In the course of its existence, the ICC dealt with 7 situations altogether (+ the most recent one from Mali in progress), all of which were the criminal cases from Africa. As was already mentioned, ICC is an international judicial body, but its international impact is

questioned by many, given that it did not investigate a case other than from Africa. This thesis will therefore try to prove that the Court has an international significance and that criticisms are often unfounded.

The theoretical background of this thesis is the principle of sovereignty, which is the concern of the first chapter. The description of the Court's jurisdiction and cases will be given in the second chapter. In the course of its existence, the Court went through many criticisms which will be discussed in the third chapter. The fourth chapter's concern is the justification and defense of the ICC and Africa will be observed from the perspective of sovereignty, environment and a notion of a *failed state*. In the concluding chapter of the thesis there will be a discussion about the ICC's overall purpose and the previous chapters will be summarized briefly. Also, it will try to give a suggestion for the Court's future, considering many different aspects such as a fact, that the Court has a new Chief Prosecutor. The thesis statement will also be debated and the bachelor thesis will come to the conclusion.

ABSTRAKT

Je medzinárodný trestný tribunál zaujatý voči Afrike?

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Kľúčové slová: Medzinárodný Trestný Tribunál, MTT, Afrika, obžalovať, páchateľ, relevantnosť, suverenita, zaujatosť, zločin, zlyhaný štát, medzinárodné právo

Táto bakalárska práca *Je Medzinárodný Trestný Tribunál Zaujatý Voči Afrike?* sa zameriava na desaťročie existencie Medzinárodného Trestného Tribunálu, permanentného súdu so sídlom v Haagu, v Holandsku. MTT, ako nezávislá medzinárodná inštitúcia, bol založený, aby súdil jednotlivcov za zločiny proti ľudskosti, zločiny genocídy a vojnové zločiny. Súd bol tiež založený, aby bojoval proti beztrestnosti týchto zločinov a aby pomohol udržať bezpečnosť z hľadiska medzinárodnej spoločnosti. Táto bakalárska práca sa bude zaoberať relevantnosťou súdu a jeho medzinárodného dopadu na spoločnosť. Účelom tejto práce je obhájiť doterajšiu zameranosť MTT na Afriku, ponúknuť hlbší pohľad do problému a vyvrátiť kritické názory na aktivity súdu.

Táto práca sa tiež zaoberá rekapituláciou desaťročia existencie súdu a diskusiou o jeho úspechoch a zlyhaniach z rôznych perspektív. Počas jeho fungovania, MTT riešil spolu 7 situácií (+ ďalšia z Mali, ktorá je momentálne v procese skúmania), z ktorých všetky boli kriminálne prípady z Afrického kontinentu. Ako už bolo spomenuté, MTT

je medzinárodné súdne teleso, ale jeho medzinárodný vplyv je mnohými spochybňovaný, hlavne preto, že doteraz neotvoril iný prípad ako z Afriky. Táto bakalárska práca sa teda bude snažiť dokázať, že súd má medzinárodný význam, a že kritiky na jeho adresu sú často neopodstatnené.

Teoretický základ tejto práce je princíp suverenity, ktorý bude vysvetlený v prvej kapitole. Opis súdnej právomoci Medzinárodného Trestného Tribunálu a situácie, ktoré doteraz riešil budú záujmom druhej kapitoly. V priebehu rokov jeho existencie, súd neobišli mnohé kritiky, z ktorých niektoré budú diskutované v tretej kapitole. Štvrtá kapitola sa bude týkať obhajoby súdu a zdôvodnenia jeho záujmu o Afriku. V tejto kapitole bude tiež Afrika posudzovaná z hľadiska suverenity, životného prostredia a pojmu *zlyhaný štát*. V záverečnej kapitole tejto bakalárskej práce bude diskutovaný účel MTT z medzinárodného hľadiska a stručne zhrnuté budú aj predošlé kapitoly. Taktiež bude ponúknutý návrh, aké by mali byť nasledovné kroky súdu do budúcnosti, pričom budú do úvahy brané mnohé aspekty, ako napríklad fakt, že má súd novú hlavnú prokurátorku. Na konci táto práca zhodnotí úvodnú hypotézu a pokúsi sa prísť k záveru.

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INTRODUCTION

Looking back on the history of the 20th century, it was a period of constant changes. Summarizing the whole era, we can look back at numerous historical milestones that formed the world as it is today. Whether it is the fall of the Habsburg monarchy, World War I, process of democratization, the Great Depression in the United States, World War II, bipolarization of the world, the Cold War, or the fall of Communism, all of these occurrences represent the significant development of modern history. In terms of international relations the approach of states towards other state's matters also changed notably. Not only there is greater openness when it comes to international cooperation, but the continual process of globalization made the world more united and the borders between states less important. This is due to the evolving concept of sovereignty and the gradual changes in its understanding during the 20th century. With the progressive liberalization there is more emphasis on the individual, and the citizenship in terms of international relations is not that significant. In terms of justice, a great step ahead has been made as well. After the massive atrocities during the Second World War, the world called for justice and the peacekeeping forces. Therefore, the second half of the century met with several attempts to secure peace and justice all over the world. The states were not their own policy makers anymore, for there a new idea emerged – the idea of United Nations. With the Second World War the violence against particular groups of people did not come to an end, and with occurrence of some grave crimes against humanity in different parts of the world there was a need of establishing a permanent international judicial body, that would punish the perpetrators of such crimes and provide security to the victims. When the International Criminal Court was established, these goals were among its main purposes. Having the word international in its name, it is supposed to have a truly international reach. And yet, the International Criminal Court prosecutes only the individuals from Africa. This fact was met with many criticisms towards the Court, questioning its relevance and international impact. Are African criminal cases more serious and threatening than others? Or are there no other situations to deal with? There is nothing specific about crimes themselves in terms of geography. The

crimes against humanity, genocide and war crimes are unacceptable no matter where they take place.

Most of the countries in Africa are weak in terms of international impact on politics or economy and that's why it is an unwritten rule, that the western countries are obliged to help them solving their issues. Above all, the infrastructure of most of the countries on the African continent is insufficient, governments are incapable or unwilling to intervene in case of a conflict, and the judiciary is often corrupt or powerless. In the past years people witnessed serious criminal cases that happened in Africa, and many initiatives were made to help solve them. The International Criminal Court's activity in the course of its existence concentrates on the situations from this continent exclusively not because there are not other criminal cases to deal with in other parts of the world, but there are circumstances that have to be taken into consideration before accusing the ICC of anti-African bias, or passivity.

This bachelor thesis tries to figure out why the International Criminal Court, established to prosecute individuals for crimes all over the world, deals with cases from Africa only. It will try to be as objective as possible, but still taking into account viewpoints of various scholars and journalists. It is a topic that many people have different perspectives on. There are human rights defenders and ICC supporters that think the Court is doing its job properly and also the ICC skeptics that criticise this institution for various reasons. This bachelor thesis is trying to look at the problem from both sides finding the compromise between the two poles and to justify the Court's relevance. The theoretical background of the thesis is the principle of sovereignty and how is this concept connected to the establishment of the ICC. The thesis will also look at sovereignty from an African perspective and will work with the term *failed states*, that African states are often labeled as. The thesis will therefore focus on defending the ICC taking all these facts into consideration.

In the first chapter of the thesis, the explanation of the principle of sovereignty is given, to introduce the topic from the theoretical background and to give base for the further examination of the problem. Also, the historical milestones that led to the establishment of the ICC are being discussed in this chapter. To discuss the topic of the relevance of the Court, it is necessary to be familiar with the Court's brief history,

its jurisdiction and to date cases investigated, which is the content of the second chapter. The thesis will then proceed in the third chapter by the overlook of various criticisms of the Court, stated by several scholars and journalists. The next chapter will be concerned with defending the ICC's activities in Africa. The defense will be grounded on three terms: sovereignty, environment, and failed states, which is a term that will be further examined. Also, there will be a defense based on the jurisdiction of the Court. To conclude the thesis, the last chapter will try to bring a solution to the studied topic by stating possibilities on how to demonstrate the Court's relevance in international terms, summarizing of previous chapters, suggestions for the Court's future steps, and will support the thesis statement with confirmation.

THESIS STATEMENT

By linking the actual work of the ICC to the new approach of the international community to the concept of sovereignty I will try to demonstrate that the accusation of an "African bias" is unfounded. Africa is the continent where problems like the breakdown of authority structures, failing states, warlords, violation of human rights, cross-border ethnic conflict etc. were most present in the last decade. There are objective reasons why Africa is the region where the application of the new understanding of sovereignty (putting more importance on the individual and on the ability and readiness of states to protect their individuals) has practical consequences as, for example, the activities of the ICC.

CHAPTER 1: The Evolving Concept of Sovereignty in Terms of International Law

The notion of state sovereignty was changing gradually over the course of the 20th Century and its concept keeps evolving until present times. Changes in the idea of sovereignty can be considered as a natural response to the events that took place in past decades and each historical occurrence left a trace on its classical concept. This chapter will concentrate on the period of events after the Second World War, therefore after the year 1945, and will observe how the concept of sovereignty changed in respect to this historical milestone, which World War II undoubtedly was. This chapter will at first explain the classical concept of sovereignty by clarification of its meaning and its continual evolution. It will then proceed by questioning the role of the individual in terms of international law and how this role changed in the modern era, when the idea of absolute state sovereignty is slowly diminishing. This change will be depicted by means of Nuremberg Tribunal, which was a crucial event for international law and individual accountability. The following establishment of the United Nations only confirmed the significant modification of classical idea of sovereignty. Finally, this chapter will conclude with a remark on two ad hoc tribunals, ICTY (International Criminal Tribunal for the former Yugoslavia) and ICTR (International Criminal Tribunal for Rwanda), established by the UN Security Council, and how these contributed to the change of the principle of sovereignty and how their existence affected the creation of the first permanent International Criminal Court.

The English word sovereignty originates in the French term *souverain* and can be translated as “a supreme ruler not accountable to anyone, except perhaps to God” (McKeon, 1997, p. 5). The principle of sovereignty developed in two separate dimensions: the external and the internal aspects of sovereignty. The internal sovereignty is based on a premise, that “a person, or a political body, established as sovereign rightly exercises the “supreme command” over a particular society. Government – whether monarchical, aristocratic, or democratic – must enjoy the

"final and absolute authority within a given territory" (Held, 2003, p. 162). The external sovereignty concerns the claim that in terms of international relations, the state is an independent and free unit with a right to manage its own affairs of internal politics without interference or intervention from another sovereign state (Held, 2003, p. 162). This classical idea of sovereignty, also known as the "Westphalian regime", emerged in the seventeenth century after the peace treaties of Westphalia (1648) and created a new world order consisting of a society of independent states. This regime, that changed the conception of international law and international relations as such, was present up to the early twentieth century (Held, 2003, p. 162). "Sovereignty has come to signify, in the Westphalian concept, the legal identity of a state in international law. It is a concept, which provides order, stability and predictability in international relations since sovereign states are regarded as equal, regardless of comparative size or wealth" (Evans & Sahnoun, 2001, p. 12). As McKeon (1997) puts it: "Sovereignty has long been considered the most fundamental right a nation can possess" (p. 2). It is as well a quality, that enhances a "state's sense of dignity" and it does not only have a purpose to manifest a state's position in terms of international relations, but is also important in protecting its citizens and providing them security (McKeon, 1997, p. 6).

The Second World War and the crimes that were committed during its course represent a new chapter in the notion of international law. "Until the end of World War II, international law was concerned solely with relations between sovereign states. The manner in which governments treated or mistreated their own citizens or citizens of other states was not the concern of international law" (Ellis & Goldstone, 2008, p. 1). In the aftermath of the war, in the process of reconciliation with the consequences, the idea of international justice and international security changed radically. The states do not act solely as closed sovereign units with their own specific policies, but rather as units within the international society willing to interfere and cooperate with each other. Also, citizens are not observed as being parts of that specific sovereign state, but rather as an individual who is a part of an international society. The individual's deeds are not considered being the matter of his or her home state only, but are looked upon in terms of impact on a society as such. State citizenship is not as important as it was before the Second World War. This is a

consequence of the Holocaust, the inhumane Nazi genocide, when millions of people died because of the insane idea of a clear race raised in the minds of a few individuals. These events have not left international society ignorant and there was an instant need to prosecute and punish those, who are responsible for these crimes. In this case, when consequences of a Holocaust affected many, the task to punish the perpetrators did not remain only in the hands of German law, even if the perpetrators were German nationals. This is when the perception of individual accountability changes and there is not that much importance placed upon state citizenship anymore. An important and crucial milestone in the question of individual accountability is the Nuremberg Tribunal. The special tribunal held in Nuremberg was the first international tribunal of its kind, sometimes labeled as: "the mother of all international criminal tribunals" (Malcontent, 2004, p. 2). "The tribunal laid down, for the first time in history, that when international rules that protect basic humanitarian values are in conflict with state laws, every individual must transgress the state laws (except where there is no room for "moral choice," i.e., when a gun is being held to someone's head)" (Held, 2003, p. 165). As Held (2003) further puts it: "Since the Nuremberg Trials, it has been acknowledged that war criminals cannot relieve themselves of criminal responsibility by citing official position or superior orders. Even obedience to explicit national legislation provides no protection against international law" (p. 166). The Nuremberg trials led to the recognition of a new category of crime: "crimes against humanity". For the first time, certain crimes were considered so egregious that a failure to investigate and prosecute would itself be a moral and legal affront. It thus became the business of all nations to seek justice for grave "international crimes" (Ellis & Goldstone, 2008, p. 1). As McKeon (1997) further states: "By establishing individual accountability, the Nuremberg judgments explicitly rejected the argument that state sovereignty could be used as a defense for unconscionable acts" (p. 3).

Immediately after World War II, on October 24, 1945, in San Francisco, the Charter of the United Nations entered into force and the United Nations as an international organization, supported by 51 member states committed to maintaining world peace,

was established (UN, UN at a Glance). It was an immediate response to the grave violation of human rights and threatening of world peace. Apart from the goal of keeping the peace and international security, the United Nations' purpose is to enhance friendly relations among states and nations; to help nations to cooperate with each other; to fight against poverty, diseases and illiteracy; to protect human rights and freedoms; etc (UN, UN t a Glance). Up until these days, the UN has 193 member states, and various bodies and committees, such as the General Assembly, the Security Council, the Economic and Social Council, etc. That makes the UN a very powerful and wide-ranging organization that reaches a very broad scale of global issues, such as peacekeeping, humanitarian help in third world countries, conflict prevention, environmental problems, protection of refugees, protection of national heritage, promoting gender equality, human rights and freedoms, and many more (UN, UN at a Glance). Subsequently after the establishment of the UN, the Security Council was established with five other main organs drafted in the UN Charter, with its first meeting in January 17, 1946 (UN, UN at a Glance). "Under the Charter, the Security Council has primary responsibility for the maintenance of international peace and security. It has 15 Members, and each Member has one vote. Under the Charter, all Member States are obligated to comply with Council decisions" (UN, The Security Council).

The question of establishment of a permanent international criminal tribunal, which was widely debated after the Nuremberg trials, was left unanswered until May 1993 when the UN Security Council established the first international criminal court – the International Criminal Tribunal for the Former Yugoslavia (ICTY) followed by the International Criminal Tribunal for Rwanda (ICTR) in November 1994. These two ad hoc tribunals were the sudden response of the Security Council to the horrors that happened in these two countries. The vast ethnic cleansing of Muslims in Bosnia and Herzegovina and of the Tutsi minority in Rwanda could not be left unpunished and that forced the Security Council to make such a significant step in peacekeeping efforts (Ellis & Goldstone, 2008, p. 2 – 3). As David Held (2003) puts it: "Although neither the Rwandan tribunal nor the Yugoslav tribunal have had the ability to detain

and try more than a small fraction of those engaged in atrocities, both have taken important steps toward implementing the law governing war crimes and, thereby, reducing the credibility gap between the promises of such law, on the one hand, and the weakness of its application, on the other" (p. 166). In addition, the two tribunals "demonstrated that an international criminal court could work and that trials before such a body could be fair and just by international standards" (Ellis & Goldstone, 2008, p. 3). The relative success of the two ad hoc tribunals was crucial in the development of an idea of establishment of the first permanent international criminal court. It was a motivation for then Secretary-General of the UN Kofi Annan to organize a diplomatic conference in Rome in June 1998 (Ellis & Goldstone, 2008, p. 3). "Over 160 nations attended the conference to consider a statute for a permanent International Criminal Court (ICC). After nearly two full months of intensive debate and negotiation, a statute emerged and 120 nations voted in favor of it" (Ellis & Goldstone, 2008, p. 3).

The International Criminal Court's establishment was a decades long process and the initiators of its creation had to face many obstacles, sovereignty being one of the gravest one. Since the principle of sovereignty does not allow states to exercise the jurisdiction over another independent state, it might have seemed impossible at first for the ICC to be established because that is its chief purpose. Above all, the ICC erodes the principle of sovereignty as such, and deprives states of this fundamental right (McKeon, 1997, p. 2). As McKeon (1997) puts it: "While no longer considered an absolute right, the principle of sovereignty still thrives in international law and appears to be incompatible with the aspirations of a permanent court" (p. 4). However, the principle of sovereignty is evolving still and achieving international justice would not be possible if this right is not eroded. The principle of sovereignty will not be diminished, but "there must be a shift in the balance between the sovereign rights of the states and the authority of the larger international community" (McKeon, 1997, p. 4) for the ICC to function well. "Thus, by transcending national sovereignty, only an international criminal court endowed with effective power and composed of

judges independent from States, can ensure the punishment of those guilty of crimes against humanity" (Ellis & Goldstone, 2008, p. 18).

CHAPTER 2: The International Criminal Court's Jurisdiction and Cases

In the course of its decade long history, the International Criminal Court was involved in seven situations from Africa and opened cases against perpetrators from this continent only. Globally, there is a dense concentration of crimes against humanity or war crimes committed in Africa, which might reflect the Court's activity in this respect. Ten years is not a long term from the point of seeking international justice and it is hard to anticipate what the Court's next steps would be. In 2012, the term of Louis Moreno-Ocampo ended and as the chief prosecutor of the Court Mrs. Fatou Bensouda was elected (ICC, Office Of The Prosecutor). She may bring a new wind of change to the ICC and her approach, being an African native, might in this respect be a slightly different than Ocampo's, considering the fact that there is surely a personal insight involved. This chapter aims first at defining the ICC's jurisdiction and will explain briefly the Court's structure. It will proceed by the concise overview of the ICC's activity in Africa and will conclude with the description of situations in particular African states the Court deals with to familiarize with the Court's history.

The International Criminal Court is the first permanent treaty based international criminal body, governed by the Rome Statute, which is a treaty adopted to date by 122 countries all around the world on an international conference in Rome in 1998. The statute came into force on 1 July 2002, which is the date of the official establishment of the ICC and also the date, from which the ICC's jurisdiction is valid. The International Criminal Court is based in The Hague, the Netherlands, but might as well be seated elsewhere due to the need (ICC, About The Court). According to the preamble of the Rome Statute, the states parties to this statute recognize that the most grave crimes that occurred during the course of the 20th century must not go unpunished, because they threaten the world peace and security and the ICC's purpose is to "put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes" (The Rome Statute…, 2002). The ICC is an independent organization, it is not part of the United Nations, although the two

institutions have a cooperative relationship. The Court's structure is composed of four organs: "the Presidency, which is responsible for the overall administration of the Court; the Judicial Divisions, consisting of 18 judges; the Office of the Prosecutor, which receives referrals, conducts investigations, and leads prosecutions before the Court; and the Registry, which is responsible for the non-judicial aspects of administering the Court" (Ellis & Goldstone, 2008, p. 27).

The ICC's Jurisdiction

The Court has jurisdiction only over individuals that committed a particular crime. According to the Article 5 of the Rome Statute, the ICC can exercise its jurisdiction only in the most serious crimes with influence on the whole international community. The Court's jurisdiction is limited on the following crimes: the crime of genocide; crimes against humanity; war crimes; the crime of aggression (although the crime of aggression has to be specifically defined and the conditions have to be set under which the Court can exercise its jurisdiction over such crime) (The Rome Statute…, 2002). There is a specific definition of each type of crime later in the statute. The Court may exercise its jurisdiction under these three conditions:

1. The accused is a national of a State Party or a State otherwise accepting the jurisdiction of the Court;

2. The crime took place on the territory of a State Party or a State otherwise accepting the jurisdiction of the Court; or

3. The United Nations Security Council has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime (Ellis & Goldstone, 2008, p. 32).

According to the Article 13 of the Rome Statute, situations may be referred to the Court in one of three ways:

1. By a State Party which refer the situation to the Prosecutor;

2. By the UN Security Council which refer the situation to the Prosecutor; or

3. The Prosecutor has initiated an investigation in respect of such a crime (The Rome Statute…, 2002).

"The ICC is considered a court of last resort—it will only investigate or prosecute cases of the most serious crimes perpetrated by individuals (not organizations or governments), and then, only when national judicial systems are unwilling or unable to handle them. This principle of admissibility before the Court is known as "complementarity" (Arieff, Margesson, Browne & Weed, 2011, p. 2). The Court may not act retrospectively, its jurisdiction is "limited to events taking place since 1 July 2002" (Ellis & Goldstone, 2008, p. 32). The ICC's chief prosecutor is Mrs. Fatou Bensouda, the Gambian lawyer who, before being elected by the States Parties as a head of the Office of the Prosecutor, was the ICC's deputy prosecutor. Bensouda, after being elected for a term of nine years, took office on 16 June 1012 replacing Louis Moreno-Ocampo, who served in this position from the beginning of the ICC's existence (ICC, Office Of The Prosecutor).

ICC Cases and Investigations in Africa

To date, the International Criminal Court has opened cases against the individuals from African continent exclusively. To this date, the Court opened investigations in eight situations altogether: the situations in Democratic Republic of the Congo, Central African Republic, Uganda, Darfur – Sudan, the Republic of Kenya, Libya, the Republic of Cote d'Ivoire, and Mali (this situation is in pre-trial phase, the Office of the Prosecutor received a referral from the Government of Mali). The Court so far opened 18 cases, with 26 individuals prosecuted (ICC, Situations and Cases). "Twenty-five of these remain open; the 26th, against Darfur rebel leader Bahar Idriss Abu Garda, was dismissed by judges, though the prosecutor may attempt to submit new evidence in an attempt to re-open it" (Arieff, Margesson, Browne & Weed, 2011, p. 6). Democratic Republic of the Congo, Central African Republic, Uganda, Kenya and Mali are states parties to the Rome Statute of the ICC, and except Kenya, governments of these countries referred the situations to the Court themselves. The

ICC itself initiated the opening of the investigation into the situation of Kenya. Sudan, Libya and the Republic of Cote d'Ivoire are not states parties to the Statute. The situations in the first two states mentioned were referred to the ICC by the UN Security Council and the situation in Cote d'Ivoire was initiated by the Court itself, for the Ivorian Government accepted the jurisdiction of the Court by ratifying the Rome Statute, although is still not a state party officially (Arieff, Margesson, Browne & Weed, 2011, p. 6, 7).

Table 1. Overview of the ICC's situations and cases (ICC, Situations and Cases)

Situation	Case	Status
The Democratic Republic of Congo	Thomas Lubanga Dyilo	Found guilty, sentenced, 14 years of imprisonment
	Germain Katanga	Severed of the charges
	Bosco Ntaganda	Arrest warrant issued, at large
	Callixte Mbarushimana	Released from custody, severed of the charges
	Sylvestre Mudacumura	Arrest warrant issued, at large
	Mathieu Ngudjolo Chui	Severed of the charges
Central African Republic	Jean-Pierre Bemba Gombo	In the trial process
Uganda	Joseph Kony	At large
	Vincent Otti	At large
	Okot Odhiambo	At large

Uganda	Joseph Kony	At large
	Vincent Otti	At large
	Okot Odhiambo	At large
	Dominic Ongwen	At large
	Raska Lukwyia	Deceased
Darfur, Sudan	Ahmad Muhammad Harun	At large
	Ali Kushayb	At large
	Omar Hassan Ahmad Al Bashir	At large
	Bahar Idriss Abu Garda	Refusal of confirmation of the charges by the Pre-trial Chamber
	Abdallah Banda Abakaer Nourain	Pre-trial phase
	Saleh Mohammed Jerbo Jamus	Pre-trial phase
	Abdel Raheem Muhammad Hussein	The execution of the arrest warrant is pending
Republic of Kenya	William Samoei Ruto	Pre-trial phase
	Joshua Arap Sang	Pre-trial phase
	Henry Kiprono Kosgey	Refusal of confirmation of the charges by the Pre-trial Chamber
	Uhuru Muigai Kenyatta	Pre-trial phase
	Francis Kirimi Muthaura	Charges withdrawn

Libya	Saif Al-Islam Gaddafi Abdullah Al-Senussi Muammar Gaddafi	Arrest warrant issued Arrest warrant issued Deceased
Cote d'Ivoire	Laurent Gbagbo Simone Gbagbo	In custody Arrest warrant issued
Mali	-	Referral being received by the Office of the Prosecutor

Democratic Republic of Congo

The situation was referred to the ICC in 2004 by the DRC government and it was signed by the president of the DRC (ICC, Situations and Cases). The conflict in the DRC was still present even after the Congolese civil war ended after five years. The most affected was the Ituri and Kivu region where fighting between the major rebel movements and massive killings continued regardless of several peace agreements (Human Rights Watch, 2003, p. 1). The accused in this situation are the leaders, commanders, or chief members of these rebel movements, responsible for crimes against humanity, murders, using child soldiers, or sexual violence (ICC, Situations and Cases). The most known case in this situation is that of Thomas Lubanga Dyilo, who "as the alleged leader of the Union of Congolese Patriots (UPC) and the commander-in-chief of its military wing, the Forces patriotiques pour la libération du Congo (FPLC), Lubanga is accused of enlisting and conscripting children under the age of fifteen and using them to participate actively in hostilities, from September 2002 to 13 August 2003" (Coalition for the International Criminal Court, n.d.). Lubanga is the first individual ever to be convicted by the ICC sentenced to 14 years of imprisonment (Smith, 2012).

Central African Republic

"The government of CAR, a party to the ICC, referred "the situation of crimes within the jurisdiction of the Court committed anywhere on [CAR] territory" to the ICC Prosecutor in January 2005" (Arieff, Margesson, Browne & Weed, 2011, p. 24). There is one individual accused in the case of Central African Republic – Jean-Pierre Bemba Gombo. Even though he is a Congolese national, he is prosecuted by the crimes he allegedly committed in the territory of the CAR. As a military commander, he is criminally responsible for the crimes two crimes against humanity (murder, rape) and three war crimes (murder, rape, and pillaging) (ICC, Situations and Cases). Bemba Gombo is the "leader of the Movement for the Liberation of Congo (MLC), a Congolese political party that emerged from a militia group of the same name" (Open Society Justice Initiative, n.d.). He is responsible for the atrocities MLC committed under his leadership in neighboring Central African Republic after CAR's President Ange-Félix Patassé invited Bemba's rebel movement to the country to help him put down a coup attempt against his government (Open Society Justice Initiative, n.d.).

Uganda

The situation in Uganda was referred to the ICC by the Ugandan Government in 2003. The referral concerned the Lord's Resistance Army (LRA), the rebel group led by Joseph Kony, which fought in northern part of Uganda for over two decades. In October 2005 the Court issued arrest warrants for Kony and commanders of the LRA Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya (Arieff, Margesson, Browne & Weed, 2011, p. 21) "The LRA is accused of establishing "a pattern of brutalization of civilians," including murder, forced abduction, sexual enslavement, and mutilation, amounting to crimes against humanity and war crimes. None of the suspects are in custody. Lukwiya and Otti have reportedly been killed since the warrants were issued, while other LRA commanders are thought to be in neighboring countries. Ugandan military operations, supported by the United States, to kill or capture senior LRA leaders in Congo, South Sudan, and Central African

Republic are ongoing. The Prosecutor is also reportedly investigating actions by the Ugandan military in northern Uganda" (Arieff, Margesson, Browne & Weed, 2011, p. 21)

All three suspects – Kony, Odhiambo, and Ongwen – are at large (ICC, Situations and Cases).

Darfur, Sudan

The situation in Sudan, Darfur was referred to the Prosecutor by the UN Security Council. "The Office of the Prosecutor initiated its own investigation in June 2005. The Sudanese government also created its own special courts for Darfur in an apparent effort to stave off the ICC's jurisdiction; however, the courts' efforts were widely criticized as insufficient" (Arieff, Margesson, Browne & Weed, 2011, p. 12).

The conflict in Sudan's western Darfur region started in early 2003, when two rebel groups (SLA/M – the Sudan Liberation Army/Movement and JEM – Justice and Equality Movement) started to attack the government, because of their conviction that the government favors the Arabs over other ethnicities and tribes in the region of Darfur (Taha, 2011, p. 49). "The Sudanese government was accused of drawing the Janjaweed militia from Arab tribes in the region and arming them in order to fight the rebel groups. The Janjaweed are blamed for killing and widespread rape and abductions" (Taha, 2011, p. 49)

Republic of Kenya

The investigation in Kenya was initiated by the Prosecutor and approved by the ICC judges in March 2010. The situation Kenya, being a state party to the ICC, is the first instance in which the Prosecutor of the ICC recommended the situation to the ICC judges since all other situations were either referred to the Court by the states themselves or by the UN Security Council. In 2007 – 2008, a post-election violence took place in Kenya, with result of over 1000 people being killed, thousands of people being displaced, sexual violence, and any other abuses of human rights. After the

elections, a government of national unity was formed in which high-ranking government officials planned and encouraged the extensive abuses (Arieff, Margesson, Browne & Weed, 2011, p. 9). "The prosecutions, which have targeted the upper echelons of political power, are an extremely sensitive issue in Kenya with potential implications for the country's stability" (Arieff, Margesson, Browne & Weed, 2011, p. 10).

"On December 15, 2010, the Prosecutor presented two cases, against a total of six individuals, for alleged crimes against humanity. Judges issued the summonses in March 2011, and in April the six suspects appeared voluntarily before the court, where they each denied the accusations against them" (Arieff, Margesson, Browne & Weed, 2011, p. 9). The individuals accused in both cases are: William Samoei Ruto, Former Minister of Higher Education, Science and technology of the Republic of Kenya; Joshua Arap Sang, Head of operations at Kass FM in Nairobi, the Republic of Kenya; Henry Kiprono Kosgey, Member of the Parliament and Chairman of the ODM; Uhuru Muigai Kenyatta, Deputy Prime Minister and former Minister for Finance of the Republic of Kenya; Francis Kirimi Muthaura, Former Head of the Public Service and Secretary to the Cabinet of the Republic of Kenya; Mohammed Hussein Ali, currently holding the position of Chief Executive of the Postal Corporation of Kenya, all of them are charged with crimes of murder, deportation and persecution. All of these cases are in pre-trial phase, trials being already scheduled (ICC, Situations and Cases).

Libya

The ICC judges released an arrest warrant for Libyan leader Muammar al Qadhafi, his son Sayf al Islam al Qadhafi, and intelligence chief Abdullah al Senussi. Muammar al Qadhafi was according to the Court responsible for crimes against humanity and persecution in order to preserve his absolute authority in the country, while his son and an intelligence chief being persons closest to him helped him to implement his cruel plans. His authoritarian rule included murders, acts of persecution, and systematic attacks against civilians performed by the Libyan Security Forces. The

Libyan Government has denied these accusations (Arieff, Margesson, Browne & Weed, 2011, p. 8).

The UN Security Council referred the situation in Libya to the ICC on 26 February 2011, even though Libya is not a state party to the Rome Statute. The United States supported this resolution for the first time in the ICC history. The investigation in Libya significantly pressured the ICC's budget, which could inhibit the Court in moving other cases and investigations forward (Arieff, Margesson, Browne & Weed, 2011, p. 9).

Arrest warrants on all three Libyan perpetrators were issued 27 June 2011. Sayf al Islam al Qadhafi and Abdullah al Senussi as indirect perpetrators were held responsible for crimes against humanity and charged with murder and persecution. The case of Muammar al Qadhafi, commander of the Armed Forces of Libya and the Libyan Head of State, was terminated on 22 November 2011 following his death a month before (ICC, Situations and Cases).

Republic of Cote d'Ivoire

In 2002 the Civil war started in Cote d'Ivoire after long lasting conflicts within the country between Muslims, who felt discriminated against by the Ivorian government, and Ivoirians and it "split country between rebel-held north and government-controlled south" (Ivory Coast Profile, 2012). Although the situation calmed down in next years, the country remained tense and the relations between north and south were still complicated (Ivory Coast Profile, 2012). In 2010 the elections took place in the country and the former president Laurent Gbagbo refused to give up his position to his rival and official winner of elections Alassane Ouattara, which caused massive post-electoral violence (Human Rights Watch). Gbagbo refused to resign to the new winner and by several dubious maneuvers with the election results, he, with the support of the Ivoirian Constitutional Council, proclaimed himself a president (Cook, 2011, p. 1). "The electoral standoff has caused a sharp rise in political tension and violence, resulting in many deaths and human rights abuses, and provoked attacks on U.N. peacekeepers. The international community has broadly rejected Gbagbo's electoral victory claim and endorsed Ouattara as the legally elected president" (Cook,

2011, p. 1). Gbagbo is criminally responsible as indirect co-perpetrator for murder, rape and sexual violence, persecution, and other inhumane acts (ICC, Situations and Cases).

CHAPTER 3: Criticisms of the International Criminal Court

There were various criticisms of the International Criminal court connected with its focus on Africa exclusively, therefore on the perpetrators or warlords from this continent. During the course of more than 10 years of the ICC's existence, the Court indeed tackled cases only from Africa. Due to this fact, it is no big surprise that many criticisms occurred in media, or printed sources. All the criticisms that arose, somehow eroded the credibility and relevance of the ICC in the eyes of the wide public. Of course the ICC, having the word international in its name, is supposed to act in international terms. Human rights and peace is not violated only in Africa, that is why a question arises whether the Court really serves its purpose. This chapter will discuss several problems that the Court encounters and will try to give a deeper insight to the problem of the ICC's relevance.

As was already mentioned, the International Criminal Court cannot act retrospectively so to begin with, let us remind that the Court is able to handle only those situations that appeared after the 1 July 2002. That is a very important fact to commence with, because it allows the Court to focus only on contemporary cases. Another thing to revise from the previous chapter is, that the system of referring cases to the Court is divided between three actors: the ICC, the UN Security Council and the government of a respective state, party to the Rome Statute. Both three subjects can refer cases to the Court so it significantly broadens its reach. Also, the ICC is a court of last resort, meaning that it can intervene only when the domestic judiciary is unwilling or unable to act. These reasons are often being overlooked by the critics and the Court's failures are being considered as the evidence for its uselessness.

The first important fact that should be mentioned is, that "33 African states comprise nearly 30 per cent of the court's membership, or over 60 per cent of the continent's states" (Nyabola, 2012). That means, that 60 per cent of the African states subscribed to the Court themselves, so they practically gave permission to the ICC to intervene in their situations. Not only they are willing for the Court to intervene but also they initiate the interventions themselves. Four governments referred the situations to the

ICC, as it was in the case of Uganda, the Democratic Republic of Congo, Central African Republic and Mali.

Credibility questioned

A big dispute might arise when it comes to the Court's authority as an international institution. As David Kaye (2011) puts it: "The ICC's authority is inherently fragile – a big problem given that its effectiveness depends on the help of governments" (p. 2). The ICC's activity depends on the help of governments not only in terms of referring the cases to the Court, but also in terms of funding. The Court is partially donated by the governments of states parties and „the dozens of governments that have contributed close to $1 billion to its budget since 2003" (Kaye, 2011, p. 1) surely want to see the Court serving its purpose.

At the beginning of the ICC's existence some doubts occurred connected with the international impact of the Court. When compared to the United Nations with its current 193 Member States (UN, UN at a Glance), the ICC with 122 states that ratified the Rome Statute (ICC, ICC at a Glance) may seem like a weak organization. Taking into account the facts that: "the bar for approval of the Rome Statute was set remarkably low, with the court to be approved upon ratification of only 60 nations out of 189 in the United Nations" (Hoile, 2012) and that "its members only represent 27% of the world's population" (Hoile, 2012). Moreover when considering a truth that some of the most powerful countries did not support the Court. „The vote on whether to proceed with the statute was 120 in favor to 7 against, with 21 countries abstaining" (Legal Information Institute, n.d.). The seven countries that voted against the Court were: Iraq, Israel, Libya, China, Qatar, USA and Yemen. In addition, other great powers such as India, Japan and Russia were absent (Hoile, 2012). As was already mentioned, nearly 30 per cent of the ICC's membership is composed of African states and the total number of ratifications is "padded with small states that traditionally play little part in international affairs" (Hoile, 2012). It is likely that the biggest powers of the world do not want to fall within the jurisdiction of the Court. According to Kaye (2011): "China, Russia, and the United States have chosen not to

join it, for instance, for fear that it might one day take aim at their own nationals" (p. 3).

A Kenyan writer and a political analyst Nanjala Nyabola (2012) even thinks that the ICC's "largest constituency seems to have little or no confidence in the ability of the court to deliver the kind of protections it was designed to deliver, in an equitable way" (Nyabola, 2012). She is implying that the Court's member states have all different views of international justice and therefore it is difficult to set a goal for the Court when all member states have a different viewpoint of what type of situation the Court ought to tackle. She suggests that various African supreme or high courts in smaller states, whose judiciaries are confirmed by confidence of their citizens, would implement a universal jurisdiction permitting them to try perpetrators of most serious violations from a different country on the African Continent (Nyabola, 2012). That would let Africa deal with the situation itself without needing any intervention from western countries and this solution might have been acceptable for many Africans who criticize the court of being biased against Africa.

Modern colonialism? African Bias?

Looking back at the history of the Court one cannot overlook one-sidedness of the ICC. The Court that was originally meant to cover situations from all around the world and is issuing arrest warrants only for African nationals is the object of criticism for many who dedicate themselves to the topic of international justice. To allow the Court to cover territory beyond the member states, the ICC cooperates with the UN Security Council, as was already brought up. However, this cooperation was also objected to criticism because of the fact that „three of the five permanent members are not even members of the ICC" (Hoile, 2012). The five permanent members are: China, France, Russian Federation, the United Kingdom, and the United States, so as was already alluded only France and the United Kingdom ratified the Rome Statute (UN, Current Members). This reality might indicate that the United States, Russian Federation, China and countries in which the governments of these

three superpowers have particular interests, are beyond ICC's reach. "The Court has courageously gone after only those people it has seen as being weak and unprotected by the UN Security Council. The ICC, for example, has turned a blind eye to self-evident human rights abuses in Iraq, Afghanistan and Gaza. It has instead chosen to indict 27 Africans" (Hoile, 2012).

Due to the history of colonialism in Africa when western countries colonized African states for centuries and exercised power over them, the opinions emerged that the activities of the ICC is a modern type of this kind of exploitation. "The Court's focus on Africa has stirred African sensitivities about sovereignty and self-determination – not least because of the continent's history of colonization and a pattern of decisions made for Africa by outsiders" (Waddell & Clark, 2008, p. 8). Although African states are internationally acknowledged as sovereign for decades now, they are still politically and economically weak and the focus of the ICC might give the impression that it confirms its weakness.

CHAPTER 4 : Justification of the ICC's Activities in Africa

It was January 2000 in Harare, Zimbabwe. Master of Ceremonies Fallot Chawawa was in charge of drawing the winning ticket for the national lottery organized by a partly state-owned bank, the Zimbabwe Banking Corporation (Zimbank). The lottery was open to all clients who had kept five thousand or more Zimbabwe dollars in their accounts during December 1999. When Chawawa drew the ticket, he was dumfounded. As the public statement of Zimbank put it, "Master of Ceremonies Fallot Chawawa could hardly believe his eyes when the ticket drawn for the Z$100,000 prize was handed to him and he saw His Excellency RG Mugabe written on it." President Robert Mugabe, who had ruled Zimbabwe by hook or by crook, and usually with an iron fist, since 1980, had won the lottery, which was worth a hundred thousand Zimbabwe dollars, about five times the annual per capita income of the country. Zimbank claimed that Mr. Mugabe's name had been drawn from among thousands of eligible customers. What a lucky man!

(Acemoglu & Robinson, Why Nations Fail, 2012, p. 409)

Despite the widespread criticism on the activities of the International Criminal Court and doubtful reactions on its existence, the Court's focus is justified. To date, almost eleven years after the Rome Statute came into force, it dealt with the most appalling criminal cases of the present era. As it was already discussed, the cases relate to the African continent only, which is the feature that bothers the critics the most. Yet, before accusing the ICC of bias, it is necessary to state possible reasons, why the Court cannot act otherwise and therefore to justify its activities. The first part of this chapter examines various rationales for Africa to be more prone to need external interference from international organizations. The reasons are divided into three main sections – sovereignty, environment, and failed states – within which the possibilities will be discussed finding an answer on the question why Africa is in the epicenter of interest. The second part of the fourth chapter will be dedicated to the justification of the Court's focus on Africa from the point of view of the ICC's jurisdiction and its relatively limited reach. This chapter's purpose is to penetrate deeper into African

matters, to look at the problem considering the theoretical background of sovereignty, and to gain a complex insight to the subject.

Africa is without doubt a continent where the external interference is needed the most compared to the other parts of the world. Not that there are no other issues to deal with elsewhere, but by the clash of various circumstances, Africa always comes first. The truth is that problems within African countries are considered being the most egregious and appalling ones by the general public, considering a constant violation of human rights that takes place anywhere in Africa. When the International Criminal Court was established, African states themselves seemed to welcome this initiative because most of the states of Africa ratified the Rome statute, therefore gave the Court the permission to intervene and enabled the future cooperation. Many African states face serious problems within their public administration and institutions and there is a very high corruption rate. Citizens often cannot rely on the state organs of justice, police, or other authorities and the impunity thrives in such environment. Leaders of states are often rulers of iron fist, threatening autocrats, warlords, or unprosecuted criminals at large. It is almost impossible to go against them when they usually have all the country under their thumb. The initial quotation represents it all. Even though the issues in Zimbabwe are not the concern of this bachelor thesis, the example of Robert Mugabe speaks for itself.

Sovereignty

The change in the understanding of sovereignty remarkably altered the character of international relations. If sovereignty was still a great principle until present times, the situation in Africa could have been much worse. Behind closed borders, the leaders could have felt even more invincible and untraceable. The international intervention would not have been possible, since no other state was able to touch the state's fundamental right. The historical development of the twentieth century however proved that state sovereignty should be limited for the sake of the higher principle: international justice and security.

When the former Secretary General of the United Nations Kofi Annan gave his speech in front of the UN General Assembly on 20 September 1999, he referred to the change in the principle of sovereignty as the open doors to the international cooperation and the protection of people. As he put it: "State sovereignty is being redefined by the forces of globalization and international cooperation. The state is now widely understood to be the servant of its people, not vice versa. At the same time, individual sovereignty --the human rights and fundamental freedoms of each and every individual as enshrined in our Charter-- has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny" (Annan, 1999). He was in favor of the external intervention in the areas that are not able or willing to handle the situation themselves and was praising this historical development for giving the world the chance to provide protection to civilians from continual violations of their human rights and dignity. According to his own words: "Any such evolution in our understanding of state sovereignty will, in some quarters, be met with distrust, skepticism, even hostility. But, at the end of the Twentieth Century, it is an evolution that we should welcome" (Annan, 1999).

In the case of Africa and sovereignty, the development went quickly ahead. The African continent went through centuries of colonization until at last the states of Africa were decolonized, gained independence, and therefore were considered being sovereign and generally acknowledged units. Africa was exploited by European colonizers for decades, the indigenous peoples oppressed and their natural resources taken advantage of. The European colonizers wanted to run a business in Africa and as Anghie (2012) mentions, "civilization and commerce" and trading with the natural resources were supposed to be the projects Europeans planned to fulfill. He later states: "A proper system of organisation and governance had to be established in order to enable the flourishing of commerce. Since African societies were incapable of providing such governance, Western intervention in the form of colonialism was viewed as essential" (Anghie, 2012). Looking back to the history, the colonization did not have any positive impact on African people at all. The continent only provided a land full of natural resources to make the Western powers even richer.

Although the states of Africa gained their sovereign status at last, the actual understanding of sovereignty is questionable. The credit might be assigned to globalization of today's world and the increased focus on human rights by the international organization. As it was already mentioned, the principle of sovereignty changed in the course of the last decades and with many alarming events happening in Africa (e.g. Apartheid in South Africa, Rwandan genocide, diamond mining in Liberia or Sierra Leone), the international community started the massive interference. The atrocities could not be overlooked by the international society, taking into account the dreadful violations of human rights and basic freedoms that many in Africa were deprived of, the initiatives had to be done.

The new norm that emerged in the field of international security and human rights is the "Responsibility to protect", which also addresses the changed principle of sovereignty. "The basic argument is that sovereignty, rather than being seen in traditional terms as a "right" should be seen as a "responsibility" - a responsibility of the sovereign to protect the well-being of its people (Anghie, 2012). According to the United Nations: "Sovereignty no longer exclusively protects States from foreign interference; it is a charge of responsibility where States are accountable for the welfare of their people" (UN, The Responsibility to Protect). This initiative is based on a principle that when the sovereign/authority of each state is not able or willing to protect its citizens, then the international community is legitimized with interference to stop the crimes against humanity, genocides, war crimes, or ethnic cleansing. "Responsibility to protect" that goes by the abbreviation R2P or RtoP, started as an alliance of NGOs from all over the world to bring the theory of R2P into praxis. In 2005 however, the UN General Assembly recognized this principle officially in the Outcome Document of the 2005 United Nations World Summit (International Coalition for the Responsibility To Protect, n.d.). The definition of R2P's competences and goals is in way very similar to the principles of the International Criminal Court, with the exception that the R2P is viewed as a new norm within understanding of sovereignty, the ICC is an official body, with given structure, jurisdiction, official employees, and so forth.

Not only that international community understands sovereignty differently, but also within Africa is the sovereignty often disputable. This is caused by the fact that the national borders dividing two states themselves are sometimes disputable. As Kaplan (1994) in his article *The Coming Anarchy* says: "national borders will mean less, even as more power will fall into the hands of less educated, less sophisticated groups. In the eyes of these uneducated but newly empowered millions, the real borders are the most tangible and intractable ones: those of culture and tribe" (p. 10). He refers to the people leaving their country of origin and finding refuge in the neighboring country and also to the clash of different societies and tribes. He implies that for people the borders as such are not that important than the imaginative borders of culture or tribe (Kaplan, 1994, p. 10). On the other hand, given that there is an interstate conflict between two or more states, the borders do play an important role and the authorities protect their sovereignty passionately. As Kaplan (1994) puts it: "The more fictitious the actual sovereignty, the more severe border authorities seem to be in trying to prove otherwise" (p. 5). In the case of conflicts, state boundaries play an important role. Behind closed borders, the violence thrives and the perpetrators have no reason to feel vulnerable, since the international interference is not to be expected. As Minow (2002) put it: "A conception of inviolable boundaries used to shield both the intimate violence and the intergroup violence from public scrutiny and intervention. For conflicting ethnic and religious groups, it was the boundary of the state; no one outside could be heard on matters occurring within without triggering claims that the nation's own sovereignty was at stake. The triumph of individual rights, at least as rhetoric, broke through these boundaries over the past several decades" (p. 57).

Environment

One of the potential reasons why African continent's economic situation is very poor might be the environmental problems Africa went through in last decades. Geography certainly plays an important role in this matter since majority of the continent's area is spread between the tropics of Cancer and Capricorn, which means its climate is extremely hot and dry. As Acemoglu and Robinson (2012) put it: "One widely accepted theory of the causes of world inequality is the geography hypothesis, which

claims that the great divide between rich and poor countries is created by geographical differences" (p. 62). This theory emerges from the general overview of the world that most of the countries that tend to be rich are situated in temperate latitudes, while countries between the two tropics are the ones the most poor. Even though this theory might be considered true, it is not relevant in broader sense for it is not accurate to make connection of poverty and prosperity to geographical position of a particular state. Moreover when there are several exceptions that do not fit to this theory.

What should be considered nevertheless is the impact the environment has on African prosperity. The environmental issues vastly influence life of people in Africa, given that for instance soil erosion causes a lack of harvest, that further causes a spread of famine, that causes the general despair which might further cause various conflicts or tendency to be recruited to arms. Kaplan (1994), who discussed the problem of environment in Africa implies that the situation gets gradually worse: "In Sierra Leone, as in Guinea, as in the Ivory Coast, as in Ghana, most of the primary rain forest and the secondary bush is being destroyed at an alarming rate. When Sierra Leone achieved its independence, in 1961, as much as 60 percent of the country was primary rain forest. Now six percent is. In the Ivory Coast the proportion has fallen from 38 percent to eight percent. The deforestation has led to soil erosion, which has led to more flooding and more mosquitoes. Virtually everyone in the West African interior has some form of malaria" (p. 3). The problem of environment is very complex and has serious consequences on events happening in states. It is an issue of the modern era which affects many countries all around the world. Kaplan (1994) even suggests that it is „the national-security issue of the early twenty-first century" (p. 7), because it hugely increases tension in societies, causes conflicts and therefore creates conditions for criminal activity. As he further states: "Environmental scarcity will inflame existing hatreds and affect power relationships, at which we now look" (Kaplan, 1994, p. 10).

An example of such environmental failure is Rwanda, where according to Diamond (2005), "forest clearance led to drying-up of streams, and more irregular rainfall. By

the late 1980s famines began to reappear. In 1989 there were more severe food shortages resulting from a drought, brought on by a combination of regional or global climate change plus local effects of deforestation" (p. 330). The poor economic situation that was spreading all over Rwanda was the factor that might have influenced the massive violence in the country and potentially provided the conditions for genocide in the 90s. As stated by Diamond (2005) this was the factor that led the people from the Hutu tribe to participate personally on killings of their fellow Tutsi citizens: "Young men and children, particularly ones from impoverished backgrounds, were driven by desperation to enlist in the warring militias and proceeded to kill each other" (p. 335).

When it comes to natural resources African continent is one of the richest places in the world. How is it possible then, that Africa is so poor? Natural resources do not necessarily mean a country's wealth. Despite the historical fact that colonialism radically impeded African development, there is another viewpoint brought in by Fareed Zakaria (2007), who thinks that "wealth in natural resources hinders both political modernization and economic growth" (p. 74). According to him, countries that are endowed with rich natural resources, tend to be poorer than countries which do not have any natural resource wealth. He believes that in a country with no natural wealth the society has to get rich otherwise, by creating effective system of education, job opportunities, institutions, so that the state can develop by its own means. Then the state can tax its citizens, who in return get social and other benefits from the state. This creates an effective and functioning system, which is very distant from an average African model. Zakaria (2007) holds a theory, that when a country has access to "easy money" (such as revenues from natural resources or foreign aid – as in many African countries), it remains economically and politically underdeveloped (p. 75).

Failed states

As it was already implied, situation in most of African states does not contribute to the development of African continent. Many countries are economically and politically very weak, termed "failed". According to the definition: "Failed states can

no longer perform basic functions such as education, security, or governance, usually due to fractious violence or extreme poverty. Within this power vacuum, people fall victim to competing factions and crime, and sometimes the United Nations or neighboring states intervene to prevent a humanitarian disaster. However, states fail not only because of internal factors. Foreign governments can also knowingly destabilize a state by fueling ethnic warfare or supporting rebel forces, causing it to collapse" (Global Policy Forum, n.d.).

According to the Failed States Index 2012, annually presented by Foreign Policy and Fund For Peace, none of the African states is stable. Only three African states - Botswana, Ghana, and South Africa - are on the borderline between "stable" and "in danger", but all the other states are either labeled "in danger" or "critical" (Foreign Policy, 2012). Of 20 countries appearing on top of the list as the most critical, 15 are African states. According to Foreign Policy: "Every one of the 20 countries atop this year's index has been there before: Chad, the Democratic Republic of the Congo, and Iraq have never made it out of the top 10, and Somalia takes the unwanted No. 1 spot for the fifth straight year" (Foreign Policy, 2012).

Table 2. First 20 Countries of Failed States Index 2012 (Foreign Policy, 2012)

Rank	Country	Total
1.	Somalia	114.9
2.	Congo (D.R.)	111.2
3.	Sudan	109.4
4.	Chad	107.6
5.	Zimbabwe	106.3
6.	Afghanistan	106.0
7.	Haiti	104.9

8.	Yemen	104.8
9.	Iraq	104.3
10.	Central African Republic	103.8
11.	Cote d'Ivoire	103.6
12.	Guinea	101.9
13.	Pakistan	101.6
14.	Nigeria	101.1
15.	Guinea Bissau	99.2
16.	Kenya	98.4
17.	Ethiopia	97.9
18.	Burundi	97.5
19.	Niger	96.9
20.	Uganda	96.5

This table shows the total scores the countries obtained in twelve categories: mounting demographic pressures; massive movement of refugees or internally displaced persons; vengeance-seeking group grievance; chronic and sustained human flight; uneven economic development; poverty, sharp, or severe economic decline; legitimacy of the state; progressive deterioration of public services; violation of human rights and rule of law; security apparatus; rise of factionalized elites; intervention of external actors. In each category, a maximum of 10 points can be obtained, the more points, the more failed the particular state is (The Fund For Peace, n.d.).

Why African states fail?

The state failure is one of the reasons why violence and criminality thrives in Africa and at the same time violence and criminality is one of the reasons that cause the state failure. It is a vicious circle which many African states are stuck in and without external involvement would not be able to improve. There is not one clear explanation on why the states fail and particularly why there is not a single African state that is politically and economically stable. From the Failed States Index it is obvious that Africa as a continent is more prone to failure than any other continent. There are various reasons why it is so.

According to Robert Rotberg (2004): "Nation-states fail when they are consumed by internal violence and cease delivering positive political goods to their inhabitants. Their governments lose credibility, and the continuing nature of the particular nation-state itself becomes questionable and illegitimate in the hearts and minds of its citizens" (p. 1). Rotberg (2004) thinks that strength or weakness of a state depends on how much the state is able to deliver political or public goods to its citizens. The political or public "goods" according to him can be understood as a set of asserts, expectations, and living conditions citizens require from a state. By the way the state performs its duties, and by the content of its citizens, the strong state can be distinguished from a weak state (p. 2 – 3). Among many different goods a state is obliged to provide to its citizens (such as human and civil rights, freedoms, education, health care, infrastructure, judiciary…), he further says the state's "prime function is to provide that political good of security" (Rotberg, 2004, p. 3). As it was already mentioned, to provide security and protection is one of the main roles a sovereign has towards citizens.

Another possible explanation is that of Alberto Pecoraro (2012) who thinks that there are two major reasons why African states fail: the first one is the colonial past of Africa and the second is the state elites who only pursue their own interests and wealth (p. 1). In fact, there is a connection between those two reasons, because as before the colonizers were exploiting Africa for their own interests, now the African

elites are exploiting their own people for the sake of their own enrichment. As Pecoraro (2012) puts it: “The colonial state was a military and administrative entity, aimed nearly exclusively at extracting resources for the economic development of the metropolitan area” (p. 1). He suggests that the colonial period has a deep impact on today’s African tendency to fail, because the states only experienced the authoritarian rule and domination of colonizers achieved by means of violence, or corruption. These tools of achieving power and control over the citizens were still used by the new leaders in Africa even after the states gained independence. “Those leaders would, after the independence, keep intact the structures of coercion and administration inherited by the colonizers” (Pecoraro, 2012, p. 1).

Another viewpoint was brought by Acemoglu and Robinson (2012), who claim that: “Nations fail today because their extractive economic institutions do not create the incentives needed for people to save, invest, and innovate. Extractive political institutions support these economic institutions by cementing the power of those who benefit from the extraction. Extractive economic and political institutions, though their details vary under different circumstances, are always at the root of this failure” (p. 413). According to their theory the extractive institutions are the major contributor to the state failure because they are destructive for the economy of the country. The country stagnates economically and the results are often severe (e.g. civil wars, displacements, diseases, starvation), which is a cause of poverty, instability, or failure of the state (Acemoglu & Robinson, 2012, p. 413).

Acemoglu and Robinson (2012) also refer to the elites in African countries, suggesting that the authorities are often the contributors to the collapse of a state. Extractive institutions, as stated by the authors, “concentrate power and wealth in the hands of those controlling the state, opening the way for unrest, strife, and civil war” (Acemoglu & Robinson, 2012, p. 417). Authors say that it is very common in Africa that rulers, while making themselves rich, under the extractive institutions impoverish people and ruin the economic development of a country, which leads to the state failure (Acemoglu & Robinson, 2012, p. 417).

From the Perspective of Jurisdiction

Although the International Criminal Court is an international organization, its reach is relatively limited. The initial ideas of the Court were that it will be a judicial body that will try perpetrators from all around the world and will deal with the most appalling current cases. And yet, the Court has no influence in some cases at all. As was already discussed, owing to the fact that it focused solely on African perpetrators so far, many perceive the ICC as weak and irrelevant. This chapter's purpose is however, to justify the Court from various points of view. From the perspective of jurisdiction, there are rationales and explanations for the ICC's activities being the way they are and not being otherwise.

1. The ICC can exercise jurisdiction only over crimes against humanity, war crimes and crimes of genocide, therefore it covers only crimes belonging to these categories. Other crimes are beyond its reach.

2. The ICC can exercise jurisdiction only over an individual who is a citizen of a state party to the Rome Statute, or an individual who committed a crime on an area of a state party to the Rome Statute, or has a right to consider a case referred to the ICC by the UN Security Council, irrespective of their citizenship, or a state where the crime took place. Referring the cases to the Court is possible either by the government of a particular state party to the Rome Statute, or the Chief Prosecutor of the ICC, or the UN Security Council. The ICC has therefore limited reach from the point of view of jurisdiction, for it simply cannot cover any case there is.

3. The Democratic Republic of Congo, Uganda, Central African Republic and Mali are the countries that referred the situation to the Court themselves which shows the judiciaries of these countries were unable or unwilling to deal with the situation themselves, and they welcomed the external intervention. The situations in Cote d'Ivoire and Kenya were referred to the Court by the Prosecutor, and Libya and Sudan were referred by the UN Security Council. These facts do support the thesis that the Court is not biased, because of all situations the ICC investigated only two have been initiated by the Court itself.

4. The ICC consists of 18 judges from various nationalities, which secures the Court's neutrality and impartiality (ICC, Structure of the Court)

5. The ICC cannot act retrospectively, therefore it can exercise jurisdiction only over cases committed after the July 1, 2002, the date when the Rome Statute came into force. Cases committed before this date are beyond its reach.

6. Among countries that did not ratify the Rome Statute are many powerful countries such as USA, China, Russian Federation, Israel, India, Pakistan and others. Consequently it is not possible for the ICC to try individuals from these countries and initiate the referral, which also limits its reach.

7. The ICC is a court of last resort, not the first, so it can try the individuals only when judiciaries of their home countries were not able or willing to try them alone. The countries should anyway deal with the situation themselves first, before the ICC's intervention, and that also limits the court's spectrum of situations over which it can exercise its jurisdiction.

CHAPTER 5: Conclusion

This bachelor thesis aims at linking the new understanding of the concept of sovereignty to the activities of the International Criminal Court. At the same time, the thesis' purpose is to defend the Court's activities on the African continent by discussing the most important reasons for the necessity of external interference. The extent of this bachelor thesis however, is not sufficient to penetrate deeper into the problem, but the facts analyzed in this paper give adequate response to the thesis statement given at the beginning. The content of the bachelor thesis provide as well the answer to the question – Is the International Criminal Court biased against Africa? – posed in the title of this study. The conclusion will then include a brief summary of the matters inquired earlier with the focus on confirming the thesis statement and answering the question posed, later on it will discuss the ICC's overall relevance, and finally it will debate the ICC's goals to the future.

Firstly, let us summarize how the sovereignty is connected to the phenomenon of establishing international criminal courts such as Nuremberg Tribunal, International Criminal Tribunal for the former Yugoslavia, or Rwanda, and subsequently to the establishment of the ICC. As it was already indicated, the classical principle of sovereignty started to change radically after the Second World War when the civil society witnessed the egregious Nazi genocide, the Holocaust, as it was later named. The international community was shocked and the crimes had a worldwide impact on understanding individual's accountability for their deeds. The nationality of a perpetrator started to be less significant and the demand for international justice started to rise. The notion of state sovereignty became less strict and the international intervention, interference, and cooperation made the borders between states more open. The external interference of one state into the matters of another state that was not possible before is now approved and often welcomed. When it comes to the International Criminal Court, establishing a permanent judicial international body was the last step on the journey of the international justice. Its establishment gave emphasis on the individual as a part of the international community rather than a citizen of a specific state and it highlighted the individual's accountability in international terms. The ICC in some sense eroded the classical principle of

sovereignty but actually it just gave it a new meaning. The sovereignty nowadays does not entirely mean that the citizen of a certain state is accountable to the sovereign, but to the international society and their deeds are not exclusively the matters of their home state but are considered in respect to the international society. As a matter of fact, the ICC in some sense even strengthened one aspect of sovereignty, which is an aspect of protection. The sovereign, obliged to protect its citizens is now viewed as the international judicial body, established to protect people and fight against impunity of the most serious crimes.

Secondly, the criticisms that occurred during the course of the ICC's existence should be reminded. Even though the Court faced a lot of criticism, this bachelor thesis contributed to the demonstration of them being unfounded and showed there are various justifications to the Court's alleged bias against Africa. Critics and the ICC skeptics question the international relevance of the Court mostly because all cases the Court investigated were against African perpetrators. They label the ICC biased, or talk about modern colonialism, or racial stereotyping. The facts however, speak for themselves. The Court is not biased against Africa for various different reasons. One of the main reasons is, that four African countries referred the case to the Court themselves, for their governments could not handle the situation themselves. The other two were suggested to the Court by the UN Security Council and only the last two initiated by the Court itself. The other fact that confirms that Africa welcomes international intervention is its support to the Court by ratifying the Rome Statute by most of the African states. Also, Africa is a continent with the most dense concentration of criminal activity, and as was shown in the Failed States Index table, among the 20 most failed states of the 2012, 15 are countries of Africa, and the interactive map presented by Foreign Policy shows that none of the African states is labeled as stable. Another reason why Africa is a place that needs external interference the most is its history. Decades of Western Colonialism and hostile environmental conditions did not contribute to the African wellbeing at all. Further important detail is that the ICC has a limited jurisdiction, which means it does not have all the criminal cases in its reach. Many powerful countries did not ratify the Rome Statute and therefore prevented the ICC from interference. Also, the ICC is a court of last resort which also justifies the focus on countries of Africa, where the

judicial system is often corrupt, collapsed, unwilling, or unable to try those responsible for atrocities. One more detail, which should be mentioned is that the Court consists of 18 judges from many different countries all over the world which secures neutrality and impartiality of the ICC. Moreover, the new Chief Prosecutor Fatou Bensouda is from Africa herself, so there is no point for labeling the Court Africa biased. The reasons mentioned above discussed in this bachelor thesis give ground to the claim that the criticisms of the ICC are unfounded and superficial. These reasons also respond to the question posed in the title of this paper, with the answer being no.

On the 10th Anniversary of the establishment of the International Criminal Court, the President of the ICC, the judge Sang-Hyun Song, gave a speech in the Hague in front of her majesty the Queen of the Netherlands and the group of delegates and representatives, summarizing the decade of the Court's existence, pointing out its achievements, showing gratitude to all its supporters and expressing hopes for the future. The President specifically highlighted the fairness, justice, and humanity, as a common virtue of all the States Parties to the Rome Statute, as well as of all the supporters of the ICC, who believe in fighting the impunity of severe crimes. He dedicated a part of his speech to the victims of those crimes. Victims and people personally affected by the crimes against humanity, genocide, and war crimes are the ones that should be taken into account in the first place. To prosecute a perpetrator above all means the satisfaction to the victims and to give them protection to the future as well as hope for their life to get better. As Song put it: „Justice is not only about punishing the perpetrators; it is also about providing redress to those who have been harmed by their acts. The Rome Statute's focus on victims gives the ICC unprecedented potential to bridge the gap between retributive and restorative justice" (Sang-Hyun Song's speech, 2012). Behind every single case the ICC was dealing with there were countless people who demanded justice for those who threatened them. Those people are the ones that perceive the Court's purpose the most. For them, and for the future generations, the ICC has a symbolic function as well, for it serves also as a symbol for international justice and security. As he stated: "The ICC's activities are having an enormous impact, not just on individuals prosecuted before the Court, but on the tens of thousands of direct victims, millions of people in the

affected communities and societies, and indeed several billion people under the legal protection of the Rome Statute system" (Sang-Hyun Song's speech, 2012).

As implied in the Preamble of the Rome Statute, the ICC's intention is not only to prosecute the perpetrators for already committed crimes, but also to prevent crimes from happening (The Rome Statute, 2002). From this point of view, the relevance of the Court cannot be doubted. In this respect, perpetrators will not be overlooked by the international society, as they were often before.

The fact that has to be taken into account is that the Court only exists a little more than a decade, which is not very much from the long-term perspective. Many critics also point out the fact that the Court to date completed only one trial and convicted only one person – Thomas Lubanga Dyilo. However, the process of convicting the suspect is long, and requires collecting many evidence and cooperation of other states. As Leicher (2012) says, one of the biggest complications the Court has in the process of arresting the suspects is that it does not have any police force. The Court therefore has to rely on the help from the States Parties and others sympathizing with the ICC (Leicher, 2012). Nevertheless the relevance of the International Criminal Court is immense, since there is no other permanent international judicial body which intention is to stop and prevent impunity of the crimes most threatening to the principle of humanity.

As was already mentioned, the new hope for the Court's better reputation is the new Chief Prosecutor Fatou Bensouda, a Gambian lawyer, who replaced Luis Moreno-Ocampo on 16 June 2012 and was elected for the term of nine years (ICC, Office of the Prosecutor). She, as an African herself, has a chance to change the negative viewpoints of the Court by the ICC skeptics, for it is not likely she would head an office which is Africa biased. Another thing is that she so far makes a good impression on people for her special interest in victims. Having experienced violence while growing up herself, she knows best how important it is to punish the perpetrators of crimes and to protect the victims of such crimes. As she stated in an interview: "I am a victim-oriented person, I like to see that the victims know that they have a voice" (Gladstone, 2013).

Another way how to strengthen the Court's worldwide relevance would definitely be, if it investigated a non-African situation in the future. That would prove the ICC's international character and halt the debates about African bias. According to the ICC's website: "The OTP is currently conducting preliminary examination in a number of situations including Afghanistan, Georgia, Guinea, Colombia, Honduras, Korea and Nigeria" (ICC, Situations and Cases).

It would also be beneficial, if the big powers such as USA, China, or Russian Federation changed their attitude towards the Court and started to cooperate with it. That is however a utopia, because it is not very likely to happen. In the case of The United States especially, it does not seem that their attitude is going to change. As claimed by the Global Policy Forum: "Washington, however, has no intention to join the ICC, due to its concern about possible charges against US nationals" (Global Policy Forum, n.d.).

Despite the negative attitude of these super-powers towards the International Criminal Court, it can still manage to achieve satisfactory results in the field of international justice. Even though collecting of evidence, prosecuting, arresting, or hearing processes take a lot of time until a suspect may be sentenced, the ICC is active and wants to attain what was its initial purpose. Now, after a decade of its existence, it is hard to predict, what development awaits this institution. After long-term discussions since the Second World War, the establishment of the first permanent international criminal court means a lot for international justice.

RESUMÉ

Bakalárska práca *Je Medzinárodný Trestný Tribunál Zaujatý Voči Afrike?* sa začína úvodom, v ktorom je ponúknutý stručný prehľad témy, ktorou sa bakalárska práca zaoberá. Na začiatku úvodu je krátky prehľad dejín, ktoré viedli k založeniu Medzinárodného Trestného Tribunálu v Haagu a jeho hlavný účel. Ďalej úvod prinesie uvedenie do problematiky Afriky v spojení s MTT a vysvetlí, čo je hlavným poslaním tejto práce. Na konci úvodu je postavená hypotéza, ktorá pozostáva z výroku, ktorý sa táto bakalárska práca bude snažiť potvrdiť.

V prvej kapitole tejto práce je ako teoretický základ použitý princíp suverenity, ktorý významne súvisí s danou problematikou, keďže aj Medzinárodný Trestný Tribunál sa výraznou mierou podpisuje na zmene v chápaní tohto princípu. Na začiatku tejto kapitoly je stručný prehľad dejín od Druhej Svetovej Vojny až po založenie MTT z hľadiska medzinárodnej justície. Princíp suverenity úzko súvisí práve s medzinárodným právom, ktoré by totiž nemohlo byť aplikované, keby bola suverenita stale chápaná ako právo, ktorým štát disponuje a vyhradzuje si absolútnu moc nad svojimi občanmi bez toho, aby do jeho záležitostí zasahoval iný štát. Suverenita je preto v tejto kapitole najprv vysvetlená ako pojem, a neskôr diskutovaná z hľadiska zmeny jej chápania po významných historických míľnikoch.

Druhá kapitola sa zaoberá prehľadom Medzinárodného Trestného Tribunálu ako medzinárodnej inštitúcie, jeho krátkej histórie, jeho štruktúry a jurisdikcie. Táto kapitola vysvetlí, ako a za akých podmienok môže MTT aplikovať svoju jurisdikciu, aké sú jej limity a akým spôsobom sa podávajú návrhy na začatie súdneho vyšetrovania. Ďalej sa táto kapitola venuje MTT v spojení s Afrikou a stručne opíše jeho pôsobenie na tomto kontinente. V tabuľke, ktorá je zahrnutá v tejto kapitole je prehľad prípadov, ktoré Súd vyšetroval, jednotlivci, ktorí boli na Súde vyšetrovaní a momentálny stav, v ktorom sa prípad nachádza.

Tretia kapitola je zameraná na kritiky, ktoré sa objavili počas dekády existencie Medzinárodného Trestného Tribunálu. Z hľadiska úspešnosti je MTT terčom kritiky, pretože doteraz vyriešil len jeden prípad, ktorý sa skončil finálnym verdiktom pre

Thomasa Lubanga Dyilo z Demokratickej Republiky Kongo. Všetky ostatné prípady sú buď v procese vyšetrovania, alebo boli z nejakého dôvodu zamietnuté. Tak isto fakt, že sa MTT zameriava na Afriku mnohí označujú za zaujatie voči Afrike, alebo moderný kolonializmus. Táto kapitola teda prináša prehľad rôznych kritík, ktorým Medzinárodný Trestný Tribunál počas dekády existencie čelil.

V štvrtej kapitole táto práca nadviaže na predošlú kapitolu a snaží sa ukázať rôzne dôvody, prečo sú kritiky Súdu neopodstatnené a povrchné. Táto kapitola sa pozerá na problém Afriky a prečo je práve tento kontinent vystavený toľkému násiliu a kriminalite. Túto teóriu práca podporí z rôznych pohľadov, a to konkrétne z pohľadu naštrbenej suverenity štátov, zlých podmienok životného prostredia a teóriou zlyhaných štátov. Na konci tejto kapitoly sa nachádza obhajoba Súdu z pohľadu jeho limitovanej jurisdikcie.

Bakalársku prácu ukončuje záverečná piata kapitola, ktorá ponúka stručné zhrnutie toho, čím sa táto práca doteraz zaoberala a taktiež venuje krátku časť relevantnosti Súdu, ktorá je často spochybňovaná. Piata kapitola tiež potvrdí výskumnú otázku stanovenú na začiatku práce. Na záver kapitola ponúkne stručný návrh toho, ako by mala budúcnosť súdu vyzerať, aby sa vyhol kritike.

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