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## HUMAN VALUES IN THE INTERNATIONAL CRIMINAL COURT (ICC)

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**Abstract :** The quintessence of the ICC in situ is to efficiently and fairly adjudicate war crimes, genocide, crimes against humanity and crimes of aggression. Innumerable people across the globe have advocated for justice to succor in curtailing the animosity and nefarious acts plagued on vulnerable and affected populations. Hence, the ICC was birthed in 2002 to campaign for justice and peace to victims of violence and crimes. Irrespective of ICC surreptitiously accepting the jurisdiction of the prosecution of crimes, the ICC has attracted intense criticisms in recent times. This paper contends the ICC and all forms of humanitarian actions are compatible in theory than in practice. The paper examined the relationship between right-based approaches, Dunantist or other forms of new humanitarianism and justice. Furthermore, major key elements such as legitimacy, credibility, realistic expectations and pacification through justice of the ICC has been highlighted as factors militating against the ICC's practical compatibility with humanitarian action.

Keyword : Human Values, International Criminal Court, ICC

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### INTRODUCTION

*“ The most serious crimes of concern to the international community as a whole must not go unpunished ”* Preamble to the Rome Statute of the International Criminal Court

The International Criminal Court (ICC) began functioning on 1<sup>st</sup> July, 2012 with a mandate to prosecute war crimes, genocide and crimes against humanity. In recent times, the activities of the ICC has come under critical criticisms questioning the ICC's compatibility

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with humanitarian action. The debates in the literature are mixed as Mills (2015) posits that there are tensions between ICC and R2P but there could be a significant cooperation between these two approaches to address atrocities, Bloomfield (2016) maintained that international systems of justice presents a dilemma for humanitarian actors. Also, the International Committee on Red Cross has presented the need for non-cooperation with the ICC to promote impartiality which however has been refuted by majority of NGOs preferring case-by-case bases with ICC to combat impunity (Weissman,2009).

This paper therefore argues that the ICC and all forms of Humanitarian action are compatible in theory than in practice. Firstly, the paper will draw on the relationship between right-based approaches(RBA),Dunantist or other forms of new humanitarianism and justice. Secondly, the paper overviews legitimacy, credibility, realistic expectation of ICC to underscore the ICC's compatibility in theory than practice, and finally presents concluding remarks.

### **LITERATURE REVIEW**

In the process of creating peace, RBA tend to involve long-transitional processes which engenders challenges in ensuring rights and justice(Philippson,1999).For instance in Sierra Leone, though transitional justice fuelled by international cooperation led to the trial of Charles Taylor, nevertheless, there have been little emphasis on the need for reparations for conflict survivors(Flannery,2014). As part of the reconciliation process, survivors do not only have the right to reparations, but also it is critical to creating lasting peace. Also, the genocide of Rwanda exposed the weaknesses of RBA in administering justice. It was recognized that the problems in Rwanda were both common to both rights and conflict concerns mainly bad governanace,exclusion and direct violence. The feature of RBA to achieve justice and expunge exclusion and violence led to the adoption of the “Do no Harm” tool for conflict sentivity(Gostelow,1999).While Urvin(2004) contend that justice is mostly compromised using RBA and explores the linkages between the field of rights and conflict sentivity, Gostelow(1999) maintained the difficulty of links between protection and rights and Valjo(1996) accentuating that there are tensions between peace and justice in the transitional context with RBA and justice in the transitional context with RBA, citing the weaknesses of RBA.With the use of RBA often invites backlash from people who lose power due to challenges of power relations.Hence in maintaining rights, justice could create increased conflicts as observed in the Syrian crisis where defense of rights has facilitated conflicts(Petrasek,2005).

Duffield(2004) underscored neutrality obstacles in dunantist approach to maintaining justice as Gassmann(2009) asserts that complexities to humanitarian principles offsets

efficient justice. As dunantist approach follows the traditional humanitarian principles, in administering justice, it becomes difficult to be neutral and independent for parties in a conflict since humanitarians have to deal and negotiate with powerful groups sometimes. Consequently, this does not only lead to compromising humanitarian principles but also security threats of humanitarians on the ground. For instance, after the 9/11, President Bush stated “either you are with us or with the terrorists”. This left little space for neutral and independent posture in administering justice(Brauman,2006).The dunantist approach is confined to work outside conflicts rather “in” or “on” conflict. Hence, the geopolitical shifts around the Cold War led to the emergence of new humanitarianism based on compassion, change and containment(Walker,2009).The new form of humanitarianism however fails to guarantee access and further a permanent concerns on the nature and content of humanitarianism due to lack of representation of humanitarian principles.The new form of humanitarianism is also likely to run into the interest of social or political groups making the maintaining of neutrality and independence difficult in achieving justice. Due to the complexities and unpredictable humanitarian operational action, new humanitarianism run a risk of creating a moral hierarchy of assistance to victims who deserve or no not deserve assistance leading to principles compromised as in the Bosnia crisis(Armino,2002:32)

## RESULT AND DISCUSSION

### **Why Humanitarian action and ICC are compatible in theory than in practice:**

#### **Legitimacy**

The legitimacy of the ICC makes it compatible with dunantist humanitarian action in theory than in practice. The legitimacy of the ICC consists of the mandate to investigate cases without interference, the power to issue arrest warrants and the right to prosecute crimes by following the principles of a due process. The selective prosecution of the ICC has undermined its legitimacy in practice. The ICC is dependent on power states for financial support, and intelligence gathering of information in conflict zones. As the ICC depends on these supports, this impedes its ability to carry out investigations or prosecutions independently without these assistance. Also, member and non-member states tend to offer support to the ICC with their vested interests or interests of allies. The US for instance, offered support to the ICC for the prosecutor’s indictment of President Charles Taylor, President Basheer of Sudan and Kony of Uganda (Zwier,2013). Prosecutors mostly tend to be plagued with significant agitations that in the event of no support from one of the major powers, there will be little or no hope in collecting evidence from prosecution(Lamont,2016). This has created a situation of inherent bias in the court in the

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process of investigations which tend to undermine the humanitarian principles of neutrality and impartiality. For instance, the ICC failed to investigate President Bush for the Iraq invasion in 2003, though Iraq voted against the Rome Statue in July,1998(Stewart,2015).In recent times, the ICC has been criticized as being a political process and neo-colonialist tool to interfere in powerless countries by the African Human Rights Court(Kariuki,2015).The ICC tend to investigate parties which are not major world powers even though they are not parties to the treaty. It is in no doubt that the impartiality of the court in administering justice has been questioned as it tends to focus on crimes in Africa and fails to act against the US (Allen, 2006). Furthermore, the people of Uganda in 2009 at the outreach unit of the ICC, questioned the ICC concerning why the US, Russia and China are excluded from the Rome Statue and whether the ICC is a tool for western imperialism in Africa (ICC Report, 2009).

### **ICC's credibility**

Moreover, the ICC's credibility makes it incompatible with pragmatic RBA humanitarian action. The ICC's ability to perform its functions effectively while adhering to its legal framework and statutes has been subjected to vehement debates. The establishment of the ICC by means of a treaty of an international community and its capacity to apply the laws of that community has been tagged as "political tool". In line with this, major powers like the US, have not ratified the treaty and are not subject to the jurisdiction of the court unless they commit crimes in the territories of member countries, making US citizens immune to potential indictments. Some of these powers which have not ratified the treaty have engaged in in aggressive crimes or there exists warrants for their investigations but the ICC has failed to investigate or prosecute some of these crimes which in turn is a setback to the realization of proportionate equality. An example is when US invaded Iraq in March 2003 causing mass atrocities (Abdulai, 2010).Also, the international community actions with the ICC seem to indicate that it has major interests in the crimes the ICC pursues which tend to undermine the independence and interferences with the courts operations. In line with the jurisdiction of the ICC, the Security Council can refer matters to the ICC. These cases which are referred to the ICC sometimes tend to occur in the territories of non-states parties and may be against the nationals of such states. Furthermore, the principles of complementarity, gives states the right of duty to prosecute most international crimes and the ICC could step in only if states fail in their duties. However, the ICC has undermined its credibility by interfering with prosecutions of non-states which challenges principles of impartiality. This can be examined in March 31, 2005 during the Security Council Resolution 1593 where the situation in Darfur was referred to the Prosecutor in ICC

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(Resolutions& Decisions of Security Council, 2005:131-132).Also, if states prosecute crimes, the ICC cannot preside over such crimes, but up to date Uganda, DRC and Central African Republic which are parties to the Rome Statute have referred cases on their territory to the ICC (Waddel et at, 2008).

### **The Realistic expectations of the ICC**

The realistic expectations of the ICC has also precipitated the courts incompatibility with new forms of humanitarianism. The ICC advocates for the creation of a universal moral and judicial community by depending on NGOs and victims to subject states to the rule of law (Koskenniemi, 2002). The court is thus envisioned to be a world governing body to promote justice in humanitarian law and human rights. However, the adoption of the Rome Statutes in July, 1988 fall short of these expectations as the ICC's jurisdiction tend not to be universal. The ICC tend to initiate proceedings in only situations when the crimes committed is found on the territory of states that have committed is found on the territory of states that have committed to the Rome Statutes. Also, in some cases the ICC can only engage in inquiries only when the Security Council has passed a resolution. The ICC's autonomy was compromised when the Security Council imposed the court's jurisdiction which was evident in the 2005 Darfur situation being referred to the ICC(Peskin,2008). The Security Council has the authority to suspend ongoing proceedings of the ICC for one year only to be renewed indefinitely. The ICC's relationship with States governments as well as the Security Council in pursuit of justice has obstructed its ability to execute justice that is devoid of impartiality and independence.The Libya,2011 case referrals to the ICC by the security council for instance without financial support led to undermine ICC's independence(Bromhall,2004). Furthermore, the expectations of the ICC is high not only with relevant local populations but with the international community. The ICC has outlined its visions and purposes but have not been communicated blatantly and consistently. In view of this, states and the international community tend to have in some cases unrealistic demands. Where these expectations are inadequately addressed, the perceptions of the ICC tend to be ravaged as a panacea to future problems. The ICC is "caught up between an idealistic vision of a global court designed to prosecute cases that domestic jurisdictions cannot or will not prosecute and the pragmatic concerns of a new institution seeking judicial results to secure its legitimacy"(Clark,2010).

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**Pacification through justice**

Pacification through justice is another direction through which the ICC becomes practically incompatible with new forms of humanitarianism. First, the ICC is a super power court that has few checks and balances. In line with this, the ICC sometimes exercises its mandates to interfere with states sovereignty which undermine states capacity thereby impugning principles of impartiality and neutrality. For instance in March, 2005 the UN Security Council referred the Darfur crisis to the ICC and in 2007, the ICC indicted two government ministers of Sudan using pressure though there was non-cooperation by Sudan's government (DeWaal, 2008). Coupled with the ICC's super power, the ICC's expression of "no peace without justice" does not work in reality. The ICC's theory of peace through justice sometimes tends to be a theory of war. The ICC in some circumstances have considered certain leaders as not parties for peace which in effect means they suggest waging war with them. A clear case is when the ICC activists promised Mr. Bashir the same fate as Charles Taylor or Slobodan Milosevic. The ICC succeeded in bringing Charles Taylor and Milosevic before the court only through the assistance of military operations which drove them power. Hence, the peace through justice can tend to be war in reality (Jezequel, 2004). Also, during wartime, the ICC exercise of justice has high tendency to exacerbate conflicts than pacify them. This can be said to be the case when the ICC designated President Bashir as an "enemy of humanity" justifying the intransigence of the armed opposition to negotiate or sign a peace deal with Mr. Bashir. In an attempt to dispense justice, the ICC with its advocates are authorized to designate which political leaders should be considered partners of peace and which ones should be fought with weapons and condemned as enemies of peace. This in effect weakens principles of neutrality and impartiality (Goldstone, 1998).

**CONCLUSION**

The ICC has been viewed as a beacon of international justice through which crimes can be prosecuted. In the ICC's pursuit of justice, the court's statutes, purpose and principles has been severely criticized by active stakeholders. Also, in the ICC quest to execute justice brings into its confrontation with some humanitarian actions and principles. This paper has argued the ICC and all forms of humanitarian actions are compatible in theory than in practice. The paper examined the relationship between right-based approaches, Dunantist or other forms of new humanitarianism and justice. Furthermore, major key elements such as legitimacy, credibility, realistic expectations and pacification through justice of the ICC has been highlighted as factors challenging the ICC's practical compatibility with humanitarian action. The ICC therefore needs to rectify and update its statutes to be in

tandem with humanitarian principles while being wary that its activities in practice does not conflict humanitarian principles. Given the ICC as a global force to curbing humanitarian crisis, the existence of the ICC has also triggered new quandaries in the field. The ICC is plagued with fundamental challenges not only in its structure but its punitive measures it has adopted. There should be justice and transparency education of the ICC to conscientize people on ICC adjudication procedures. In view of this, the ICC with its carte blanche to administer justice, it is germane to consolidate its institutions and relations to bolster humanitarian action. It will also be compos mentis for the ICC to encompass protection and environmental support into its legal action procedures to humanitarian needs.

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