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From Insanity To Sanity In Governance: The International Criminal Court A Sign Post Against Impunity, Threat To National Peace And Security.

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Abstract

The establishment of the International Criminal Court (ICC) was borne out of the quest to ensure the end of impunity and threat to national peace and security. Interestingly, African situations dominate the situations before the court. This paper seeks to interrogate the opportunities and challenges that face the ICC. The prime challenge examined will be that of political conspiracy against the ICC by some acclaimed ‘Africanist’ and the African Union, while the opportunities examined are as captured in the words of Luis Moreno Ocampo, when he stated that “perpetrators’ of crimes against humanity shall no longer go unpunished; no matter how long they run and evade us, justice will surely catch up with them. One successful situation is a deterrent to several others so it is clear that we are making an impact”.¹ Against the back drop of the recent acts of terrorism and threat to national security it becomes imperative to examine if the above statement by the prosecutor of the ICC impacts positively on the leaders and perpetrators of these crimes. Consequently, this paper interrogates the options the establishment and strengthening of international judicial bodies provides to Nigeria’s governance and fight against impunity. This is achieved by structuring the paper in four major aspects. Part 1 deals with the concept of impunity, peace and security Part 2 conceptualises the role and establishment of international judicial bodies. Part 3 looks at the ICC and African situations. Part 4 examines international judicial bodies as a sign post to end impunity Part 5 makes conclusion. Finally, the paper posits that the presence of the ICC and other international judicial institutions as a watch dog is indeed ensuring the paradigm shift from insanity to sanity in governance and national integration in Nigeria.

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1 L, Moreno Ocampo, International Criminal Court Prosecutor in an interview during the premier of the movie, the battle for the sole of the international criminal court.

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How could a man as uneducated, uncultured, unfettered and especially unskilled in governance have succeeded in making us see less of ourselves and fail to rise above the depths he sent us? Because we allowed him to do this to us, he deserves the Mantle of Greatness.²

O Allah! The only thing I can promise my army and my nation is the sincerity, honesty, integrity and unflinching loyalty. You give me the vision to see and perceive the truth from the false. The wisdom to comprehend the problem, find solutions; the courage to speak, project and the clarity to express the right and the chance to serve the Nation as I deserve.³

1.1 Introduction

The issue of governance in Africa has remained pathetic over the years. Since the departure of the colonial masters in early 1960's, most African countries experienced turbulent governance. Governance and democracy are both an expression and expansion of man's freedom. It has become synonymous to man's progress.⁴ Most governments in African post colonialism era have interestingly employed several means of keeping up appearances to meet the world standard of good governance.⁵

The travails of democratisation heralded in Africa with the insatiable desire of the military to take over and continue in power.⁶ Military coups and counter coups and emergence of dictatorship began in most of the countries, starting with Togo in 1963 and by 1985; more than half of African states were under one kind of dictatorship or another.⁷

² <http://dennismatanda.blogspot.com/2007/06/why-idi-amin-is-greatest-uganda-part.html> (accessed 31 October 2008).

³ <http://www.thehotspotonline.com/blahblah/articles/IdivMush.htm> (accessed 31 October 2008).

⁴ J Linz and A Valenzuela 'The Failure of Presidential Democracy' IX.

⁵ The concept of putting up appearances is based on the fact that media and press are subdued and independent press freedom is not encouraged. Government media thus portray the activities of the government in good light to the international community's notwithstanding the prevalent situations in the country.

⁶ O Pinkney 'Democracy in the third world' 2nd ed 10.

⁷ 'Democracy and Pluralism in Africa' ed by D Ronen.

The history of the establishment of the International Criminal Court (ICC) spans over more than a century. The “road to Rome” was a long and often contentious one. While efforts to create a global criminal court can be traced back to the early 19th century, the story began in earnest in 1872 with Gustav Moynier – one of the founders of the International Committee of the Red Cross – who proposed a permanent court in response to the crimes of the Franco-Prussian War.⁸ The next serious call for an internationalized system of justice came from the drafters of the 1919 Treaty of Versailles, who envisaged an ad hoc international court to try the Kaiser and German war criminals of World War I. Following World War II, the Allies set up the Nuremberg and Tokyo tribunals to try Axis war criminals.⁹

The international Criminal Court (ICC) emerged during the Rome Conference to prosecute crimes classified in the Rome Statute of the ICC as war crimes, crimes against humanity, terrorism and the crime of aggression.¹⁰ The Rome Statute came into force on the 12th of July 2002 and thus only crimes committed after this period fall within the jurisdiction of the court. It is agreed that it was against the backdrop of the Nuremberg trial and several other grave crimes as witnessed in Yugoslavia, Rwanda, Sierra Leone etc that the world further sought the establishment of a permanent court to prosecute international offences.¹¹

⁸ <http://www.iccnw.org/?mod=icchistory>

⁹ <http://www.iccnw.org/?mod=icchistory> (accessed October 13, 2012).

¹⁰ The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression.

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

¹¹ Andreas Zimmermann, ‘The Creation of a permanent International Criminal Court’ available at http://www.mpil.de/shared/data/pdf/pdfmpunyb/zimmermann_2.pdf (accessed October 13, 2012)

2.1 Impunity, Security, Governance and Peace

At the bedrock of the above concepts is the issue of justice. Thus, for security and peace to exist, the concept of justice must be satisfied and met to a large extent. While it is agreed that what is just to one does not necessarily mean the same to another, acts of impunity most times are clear and easily identifiable. It is therefore imperative that the concept of justice, security and peace be briefly analysed so as to enable a better grasp.

Justice is viewed from the perspective of doing things lawfully and legally. It is however, a concept that is void of certainty as justice to one may be injustice to another. It has however, become a settled maxim in law that justice must not only be done but seen to be done.¹² Thus, in the modern State, justice is said to be guaranteed by constitutionalism.¹³

In tracing the emergence of impunity in African states, it is sadly observed that, the legacy of colonialism is frequently offered as an explanation for African current ills and western criticism of Africa's development performance is often branded as neo- colonialist.¹⁴ In all sectors of governance in Africa, accountability remains a core phenomenon especially in the electoral processes.

The neglect of security as a concept is reflected in various surveys of security affairs as an academic field. In 1965 one such study lamented that 'thus far there have been very few attempts to define the concept.'¹⁵ Security is an important concept, which has been used to justify suspending civil liberties, making war, and massively reallocating resources during the last fifty years. Security, according to Wolfers, is a value 'of which a nation can have more or

¹² *Macfoy V UAC* (1961) 3 W.L.R. 1405.

¹³ Hansungule M, Paper delivered at a conference 'Constitutionalism under threat in Africa', at University of Pretoria December 9, 2009.

¹⁴ P Chabal, The Quest for good governance in Constitutional governance: the lessons from Southern and eastern experience in comparative constitutionalism and good governance in the Common Wealth. eds. J Hatchard, M Ndulo and Slinn (2004) 311.

¹⁵ http://estudijas.lu.lv/pluginfile.php/221794/mod_resource/content/0/Baldwin_concept_of_security.pdf

less and which it can aspire to have in greater or lesser measure'. National security is a condition which cannot be qualified. We shall either be secure, or we shall be insecure. We cannot have partial security. If we are only half secure, we are not secure at all.¹⁶ Security is valued by individuals, families, states, and other actors. Security, however, is not the only thing they value; and the pursuit of security necessitates the sacrifice of other values.

The concept of "governance" is not new. It is as old as human civilization. Simply put "governance" means: the process of decision-making and the process by which decisions are implemented or not implemented.¹⁷ Good governance has 8 major characteristics. It is participatory, consensus oriented, accountable, transparent, responsive, effective and efficient, equitable and inclusive and follows the rule of law. It assures that corruption is minimized, the views of minorities are taken into account and that the voices of the most vulnerable in society are heard in decision-making. It is also responsive to the present and future needs of society.¹⁸



The above diagram graphically represents the components of good governance.

¹⁶ Bernard Brodie, *National Security Policy and Economic Stability*, Yale Institute for International Studies Memorandum No. 33 (New Haven, CT, 1950), p. 5.

¹⁷ John-Mary Kauzya Chief of Governance and Public Administration Branch Division for Public Administration and Development Management Department of Economic and Social Affairs United Nations New York Kauzya@un.org available at <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN028411.pdf>.

¹⁸ <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp> (accessed 20 October 2008).

Based on the above trajectory it is important that we examine the role of international judicial bodies in several other conflicts with a view of ascertaining if they made any positive impacts in curbing the growth of impunity and insecurity while paving way for national integration.

2.2 The role and establishment of international judicial bodies.

With the above concepts in mind, it is important at this point to examine events that led to the creation of certain international tribunals. To be examined, here would be the establishment of the International Criminal Tribunal for Rwanda (ICTR), International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Court for Sierra Leone. This paper does not delve into the full history of the situation that led to the conflicts in the above mentioned which occasioned the establishment of the tribunals. However, it is important to note that the basis of the establishment of each of the above international tribunals where issues of security, peace and conflict management.

The ICTY came into place as a result of the conflict between Serbia, Bosnia and Croatia. The Conflict escalated into an international war and witnessed the commission of several heinous crimes.¹⁹ The ICTR was established after a domestic conflict resulted in the world's known greatest massacre in the country of Rwanda. It is estimated that over one million people were massacred in the genocide. Apparently, a conflict between the Tusti and Hutu, the UN had to establish the tribunal to try people found to liable for the most grievous offences. The Special Court for Sierra Leone came into place as a result of the war in Sierra Leone that involved several deals in diamond. This Civil war led to the death of civilians with Charles Taylor the president of Liberia being convicted and finally sentenced to 20years imprisonment for his role in the conflict.

¹⁹ Lilian A Bariria and Steven D Ropper, 'How Effective are International Tribunals? An Analysis of ICTY and ICTY' International Journal of Human Rights (2005) Vol. 9 No 3 p 349.

The Gacaca court procedures in the Rwanda situation sometimes is testified to have caused some healing and fostering of national unity among the hurting. While same may not be held of ICTY, the SCSL also provides same effect as acclaimed by the ICTR. It is therefore, submitted herein that the establishments of the above international tribunals have to some great extent encouraged national integration.

3.1 The ICC and African Situations

Africa contributes all the current situations before the ICC to date. Among the cases include situations in Uganda, Central African Republic, Sudan, and Democratic Republic of Congo (DRC) and of recent Kenya and Ivory Coast. In the case of Uganda, a state referral situation has an arrest warrant still hanging over the leader of the Lord's Resistance Army Leader, Joseph Kony, Vincent Otti, Okot Odhiambo, Dominic Ongwen, and Raska Lukwiya. 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.

The DRC has remained under conflict majorly because of the abundance of natural resources. Of all the situations before the court, the DRC situation remains the case in which a final judgment has been issued. Sometime before the 17 of July, 2012, the Trial Chamber sentenced Thomas Lubanga Dyilo to 14 years imprisonment for conscripting child soldiers into his rebel group. Other persons standing trial in the DRC are Germain Katanga and Mathieu Ngudjolo Chui.

The Sudan situation represents the very first time a serving head of state has an arrest warrant hanging over him. While the case presents the greatest challenges as will be discussed later in this paper as African heads of government remain divided over the legality and enforceability of the arrest warrant; it remains the greatest hope for the end of impunity and establishment

of national integration. The Sudan situation, was referred to the court by the the UN Security Council in 2009, the ICC issued a warrant of arrest for President Al-Bashir for war crimes and crimes against humanity.

The last situations in Kenya and Ivory Coast are identical in nature as both stem from electoral violence. It is noteworthy that the Kenyan situation represents the suo moto investigation of crime by the prosecutor of the ICC.

With the above situation before the ICC, it is submitted that the relevance of international judicial bodies cannot be wished away. For example, leaders of various African countries today act with a knowledge of the fact that they are no longer above the law and for the fact that there is no more immunity shielding acts of impunity they may be held liable for crimes falling within the jurisdiction of the ICC.

Several African heads of States championed by late Col. Gadaffi of Libya never accepted the potentiality of the ICC ending impunity in the African continent. The relationship between Africa and the ICC have grown sour especially with the establishing of the criminal chambers in the African Court to try crimes which are also akin to the same that fall within the jurisdiction of the ICC. The AU would rather not have an independent Court to monitor their activities and potentially hold them to account in deserving situations. The AU has come out one time too many to criticise the Court for its activities in Africa, particularly in Darfur and Kenya. However, the victims have a completely different story to tell. They have always welcomed the Court's intervention, highlighting the gaping disconnect between African leaders and its citizenry.²⁰

²⁰ Akingbolahan Adeniran, 'the tyrant caged or curtailed an extrapolation of the gains of international criminal justice in Africa' Keynote address presented at the International Criminal Justice Day Celebration, University of Ilorin, July 17, 2012.

At the beginning of July 2012, six ECOWAS leaders called on the Court to investigate war crimes in Northern Mali. Around the same time, the Attorney-General of the Federation sought the Court's support on the Boko Haram issue. You may also recall that in April 2012, ECOWAS threatened Guinea Bissau with the spectre of the ICC after the coup d'état that nearly sent the country into turmoil.²¹

4.1 A sign post to end impunity- International Judicial bodies and Nigeria

Nigeria does not have any case presently against it in any international judicial bodies as it relates to the any of its leaders. However, the recent bombing, terror attacks and possible incitements are all potential situations that may land any body found wanting in the net of the ICC. A major area of concern before the court before now was the place of the definition of the crime of aggression. However, with the review of the Rome Statute in Kampala in 2010, things may be handled differently. Discussed in this section albeit briefly, are issues of criminalisation of incitement and aggression.

The Rome Diplomatic Conference of 1998 included the Crime of Aggression into the Rome Statute as one of the four core crimes within the court's jurisdiction.²² However, the ICC was restrained from exercising jurisdiction over the crime of aggression because notwithstanding its inclusion in the court's jurisdiction, it lacked a definition and a properly-articulated element of crime.

"The Princeton Process on the Crime of Aggression," was set up to prepare proposals for amendments of the Rome Statute, which if accepted would create mechanisms for the court

²¹ Akingbolahan Adeniran, 'the tyrant caged or curtailed an extrapolation of the gains of international criminal justice in Africa' Keynote address presented at the International Criminal Justice Day Celebration, University of Ilorin, July 17, 2012.

²² Rome Statute, Art 5.

to have jurisdiction over the crime.²³ During the conference a definition of the crime of aggression was adopted.²⁴ The International Criminal Court (ICC) will have jurisdiction over the crime of aggression subject to a decision to be taken after 1 January 2017 by the same majority of states parties as is required for the adoption of an amendment to the statute.²⁵

According to the Review Conference, the definition of aggression focuses solely on state actors, providing in part that the crime of aggression means

*...the planning, preparation, initiation or execution by a person in a position effectively to exercise control over or to direct the military actions of a state of an act of aggression which by its character, gravity and scale constitutes a manifest violation of the Charter of the United Nations...*²⁶

This definition is deficient in some respects. Its exclusive focus on state behaviour creates an overly restricted conception of the crime that cannot be applied to the present reality of international armed conflict which often centres on non-state actors. Manifestations of aggression are increasingly perpetrated by non-state actors whose nature and characteristics do not conform to the widely accepted definition of a state. Even if the traditional conception of statehood is abandoned for a more constructive interpretation, it cannot assure that the definition will encompass all relevant non-state actors. If a constructive interpretation extends statehood to a non-state group in the limited context of the Rome Statute, it would create an uncertain international environment in which an ordinary political entity or a rebellious group can be simultaneously a state and a non-state.

²³ J. Nyamuya Maogoto, 'Aggression: Supreme International Offence still in Search of Definition', 6 Southern Cross University Law Review (2002).

²⁴ Regarding the definition of an act of aggression, states debated whether it should be defined in a generic manner or a specific manner with an illustrative list. A mixture was chosen based on the definition in General Assembly Resolution 3314 (XXIX), with a generic definition in the first sentence, followed by a specific, non-exhaustive list of possible acts of aggression in the second.

²⁵ See Assembly of States Parties (ASP) resolution RC/Res.6 adopted at the 13th plenary meeting, on 11 June 2010, available at <http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf> (accessed November 20, 2010)

²⁶ Article 8 bis, Resolution RC/Res.6 Adopted at the 13th plenary meeting, on 11 June 2010.

Considering the role non state actors play in enthroneing insecurity and lack of peace which affects national integration, the ICC is paramount. As a novel justice institution in the sense that it operates on the principle of complementarity, that makes it the obligation of every state to exercise its criminal jurisdiction over those responsible for international crimes, unlike the International Criminal Tribunal for Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and the Special Court for Sierra Leone (SCSL). The ad hoc tribunals have primacy over national jurisdictions on the prosecution of international crimes.²⁷

It is agreeable that it is important to include non state actors in the definition of aggression in order to strengthen the court's jurisdiction over organisations that commit crimes of aggression. The definition cannot be given proper effect because most terrorist organisations lack the characteristics necessary for classification as a state. It is opined that definition of aggression would be more effective if it includes expressly both state and non-state groups. This is important because in most of the situations before the ICC presently, majority are crimes perpetrated by individuals and belligerent groups.²⁸

Presently, the ICC exercises jurisdiction through referrals to the ICC Prosecutor by the Security Council, a State party to the Rome Statute, or when the Prosecutor initiates an investigation *pro prio motu*. Under this intricate arrangement, the ICC's ability to try acts of aggression is limited by a central question: When may the Court exercise jurisdiction over aggression? First, a state that is not party to the Rome Statute may not make a referral and the ICC Prosecutor may not investigate on his/her own initiative alleged crimes of aggression committed in that non-state party. Secondly, a state party to the Rome Statute may not refer

²⁷ Olugbo B.C, 'positive complementarity and the lord's resistance army conflict in northern Uganda' in UCICC, the forum, issue No 1, 2010.

²⁸ The case of the Lords Resistance Army (LRA) in Uganda is a good example. Also the terror cause in the Kivu region of Great Lakes by Thomas Nkunda and his war Lord's is another. This situation may be contrasted with the cases of Bosco Ntaganda and Thoma Lubanga Dyilo where the doctrine of state responsibility can be invoked to hold the state responsible.

and the Prosecutor may not investigate *pro prio motu* alleged crimes of aggression committed by nationals of a non-party state.²⁹ Sarah Nouwen³⁰ is of the opinion however that this is no obstacle as another state can actually refer the case to the ICC.

Presently, many targets of International terrorism³¹ (USA, Russia, India, and Israel) are not parties to the Rome Statute. The first jurisdictional limitation would hinder these states and others such as Indonesia, Iraq, Pakistan, Afghanistan, etc, that have been targets of large-scale terrorist attacks from referring potential cases of aggression to the ICC prosecutor. This will also prevent the ICC Prosecutor from initiating investigations *proprio motu*. However, because some major target states such as Afghanistan and the United Kingdom are party to the Rome Statute, and are likely to adopt the new definition of aggression, the constraints imposed by the first limitation is ineffective here. Unfortunately, the effects of the second jurisdictional limitation will be much more restrictive.

Even if terrorist organisations are recognised as persons or entities capable of being bound by the ICC, the implication is that such groups would have to accede to the Rome Statute and accept the new definition of aggression before a state party can refer cases to the ICC Prosecutor. It is inconceivable that a terrorist organisation would take this risk. Moreover, if granted recognition, terrorist organisations might escape prosecution by the ICC by targeting non-state parties to the Rome Statute. Consequently, it is opined that individuals or group who show sufficient responsibility in a command line of perpetrating the crime of aggression can

²⁹ This position on the face value looks like a weak link to the strength of the court, however, it is a needed compromise as the campaign to get more states to ratify the Rome Statute seem to be succeeding.

³⁰ Mayer Brown Research Fellow in Public International Law Lauterpacht Centre for International Law UK, Cambridge.

³¹ We draw a direct correlation to aggression as a tool for terrorism.

be held liable, however, it is believed that this position will in the long run encourage non state parties to ratify the Rome Statute.³²

Recognising the negative effect of these two limitations over the ability of the ICC to exercise its jurisdiction as regards the crime of aggression regarding terrorist groups, amended Article 15 of the Rome Statute expands the Court's jurisdiction under two alternative conditions. The ICC Prosecutor may initiate a case involving any act of transnational violence committed by any state if the Security Council declares the violence an act of aggression.³³ Regrettably, this provision is still restrictive as the Security Council has referred only one case to the ICC Prosecutor since the Rome Statute entered into the force in 2002. It is therefore uncertain how often the court's jurisdictional limitations will be circumvented by this means.

To set a high standard for the definition of the crime of aggression would come very close to simply giving up on the project of defining that crime. If a more realistic yardstick is chosen, it is possible to recognize how much has been achieved. The narrow definition of the crime is in line with the general approach of the drafters of the ICC Statute to confine ICC jurisdiction to conduct that clearly warrants a collective judicial intervention.

On the other hand to give full effectiveness of the criminalization of incitement is threatened by the Rome Statute of the International Criminal Court, which reduces the status of incitement from a crime in its own right to a mode of criminal participation in genocide. Unlike the Rome Statute, the Genocide Convention and the Statutes of the International Criminal Tribunals for Rwanda and the former Yugoslavia all treat incitement as a separate crime. The status of incitement as a separate crime has several important effects. First, it

³² USA, China, RUSSIA et al will necessarily be moved into ratifying the Rome Statute if they see it as protection from terrorists.

³³ Article 15(c) of the amended Rome Statute.

makes the task of proving that a defendant has committed incitement comparatively straightforward, in that it is unnecessary for the prosecutor to perform the sometimes difficult task of showing a causal link between the incitement and a subsequent act of genocide. Second, in combination with the modes of criminal participation listed in the tribunals' statutes, it makes it possible to charge a defendant with aiding and abetting the incitement of genocide. Third, it allows prosecutors to charge individuals with incitement to genocide even when it may not be possible to prove that the atrocities that were subsequently committed amounted to genocide rather than crimes against humanity or war crimes. Finally, it makes it possible to try to prevent genocide when it has not yet occurred by indicting and prosecuting individuals who incite genocide before the incitement comes to fruition.³⁴

5.1 CONCLUSIONS

The ICC does not attribute to itself efficiency and ability to restore man from human wrongs to human rights. The ICC has been the subject of criticisms and attempts to circumvent or even undermine it has continued to linger.³⁵ However, it operates on the principle that the prosecution of an individual who is most responsible for a crime creates awareness in other world leaders in a command order that no matter how long they run justice will catch up with them.³⁶ While the numerous challenges that face the functionality of the ICC have been highlighted, it is concluded that the inclusion of the crime of aggression in the court's jurisdiction is a reasonable step in the right direction in fighting impunity.

³⁴ <http://harvardhrj.com/wp-content/uploads/2009/09/davies.pdf>

³⁵ Aptel, C & Mwangi W, 'Developments in international criminal justice in Africa during 2009' in African Human Rights Law Journal, Vol 10 No 1 2010.

³⁶ Ocampo L. M, in the movie, The Reckoning: The Epic story of the battle for the International criminal court. A documentary that x-rays the establishment of the court, its goals and aspirations.

It is also opined that if adopted the “green-light” provision, which requires the Security Council to give the Prosecutor permission to proceed with an investigation be encouraged. If the position is accepted then the Security Council must not toy with thoughts of permanently stopping an investigation where it disagrees with the Prosecutor. Interestingly, this provision does not require the Council to make a determination of an act of aggression and thus embraces the idea that the Council may wish to give the ‘green light’ to an investigation without making the strongest determination available under Article 39 of the UN Charter.

The judges of the ICC have been given the tools they need to make sure that the Court will not be overburdened by the task of deciding major controversies about contemporary international security law through the backdoor of the international criminal justice.

Finally, it is opined that the ICC needs the Security Council for effective operations without allowing the functionality of the court to be submerged in the political will of its members.³⁷ Invariably, while the inclusion of the crime of aggression within the jurisdiction of the ICC has several short comings it is a step in the positive direction.³⁸ Thus, a bold step was taken at the review conference and over the years, it is expected that the ICC being a permanent criminal court will take a concrete structure improving its resolve to end impunity and foster national integration.

³⁷ Sakyibea Ofei P,G, ‘The International Criminal Court and the principle of complementarity: A comparison of the situation in the Democratic Republic of the Congo and the situation in Darfur’ unpublished LLM dissertation submitted to Faculty of Law University of Pretoria.

³⁸ Until then, the ICC can and must prepare for the new challenge. The Court will have the opportunity to demonstrate that it is capable of exercising its jurisdiction over the crime of aggression in a manner that is politicized as little as in cases concerning the other crimes within its jurisdiction.