

**The American University in Cairo**  
**School of Global Affairs and Public Policy**

**ASSESSING THE INTERNATIONAL CRIMINAL COURT WITH  
THE ORGANIZATIONAL EFFECTIVNESS APPROACHES**

**A Thesis Submitted to the  
Department of Law**

**in partial fulfillment of the requirements for  
the LL.M. Degree in International and Comparative Law**

**By**

**Heba Yehia Abdel Megeed**

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The American University in Cairo  
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## DEDICATION

This dissertation is dedicated to My Father Minister Yehia Abdel Megeed, who has been always serving the State in a highly respectful positions. I have worked harder in this dissertation to provide an innovative project that can contribute to knowledge in the international law domain, to make him proud of his only daughter.

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School of Global Affairs and Public  
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Heba Yehia Abdel Megeed

Supervised by Professor Thomas Skouteris

ABSTRACT

The International Criminal Court ('the ICC'), located in the Hague, Netherlands, the first permanent court tasked with prosecuting the most severe crimes happening internationally. It is critical to assess the effectiveness of the ICC while in reality, there is no consensus on the criteria that should be employed to that end. There are no standards that its stakeholders and observers can refer or agree to in order to assess the Court's effectiveness. The purpose of this research is to develop a new approach to this issue. It proposes to use the approaches of Organizational Effectiveness Theory in order to gain a much firmer grasp of the issue. The research analyses the ICC through the prism of international governmental organizations, merely one monograph has attempted to use this theory in assessing the effectiveness of international courts. This research utilizes the four main approaches of Organizational Effectiveness Theory, namely the Goal Approach, the System Recourse Approach, the Strategic Consistency Approach and the Contradiction Approach. However, this is not an empirical study of the ICC, but rather an evaluation the relevance of each approach in assessing the effectiveness of the ICC.

According to the current analysis, not all of the main organizational effectiveness theory approaches are sufficiently relevant. It concludes that the contradictions approach is the most relevant since it offers the possibility to overcome the main limitations of the other approaches. The research contends that observers can best assess the ICC by evaluating its ability to maintain the required balance among its contradicting interests that guarantees its survival. The conclusion that the contradictions approach should be employed in assessing the ICC as soon as there is an agreement in relation to the Court's basic performance indicator.

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## I. Introduction:

Over the past years world has watched the emergence of numerous international tribunals and courts.<sup>1</sup> Where it has had significant impact on the international domains of Law. This is due to the fact that judicial institutions at the international level, interpret international treaties, resolve international disputes and enforce the international commitments. These international judicial bodies predominantly address serious issues of global concern such as armed conflict, human rights violations, economic and commercial issues. International courts are institutions that are established by means of public international law and are empowered to enforce a set of international legal rules. These have become an important legal tool that acts as a cornerstone for peace, security and justice internationally. Naturally, their mandate's performance assessment is of critical importance.<sup>2</sup>

Although, there are numerous international courts and tribunals, this research is focused on attempting to use different approaches for the effectiveness assessment of International Criminal Court ('the ICC'), as a case study. The ICC is particularly chosen for its purpose to end impunity for international crimes, widespread human rights violations and individual criminal responsibility. These are major concerns for the international community and civilian victims worldwide.

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<sup>1</sup>JENNY S. MARTINEZ, TOWARDS AN INTERNATIONAL JUDICIAL SYSTEM, 56 STAN. L. REV. 429 (2003), <http://www.jstor.org/stable/1229613>.

<sup>2</sup> CESARE P.R. ROMANO, THE PROLIFERATION of INTERNATIONAL JUDICIAL BODIES: The PIECES of The PUZZLE, 31 N.Y.U. J. Int'l L. & Pol.709 712 (1999), [http://www.pict-pecti.org/publications/PICT\\_articles/JILP/Romano.pdf](http://www.pict-pecti.org/publications/PICT_articles/JILP/Romano.pdf).



### A. The Importance of Assessing the ICC 'effectiveness

Instituting an international criminal court to serve justice globally, with the consent of the majority of the international community, is one of the most notable achievements in the history of the world; specifically, in the reform of international law. The international effort to convey criminals to justice started with the Nuremberg trials after the Second World War and has been ongoing ever then. Since the beginning of the 1990's, there has been heightened activism following the armed conflicts in Rwanda and the former Yugoslavia. These ad-hoc tribunals were created to deal with the horrible large-scale crimes committed during these conflicts. What the most distinguishes that makes the ICC such an interesting apt organization for this research is that, it is the first permanent criminal court of its kind with jurisdiction over a large number of territories. Unlike its counterparts, the Nuremberg and Tokyo Tribunals and the International Criminal Tribunals Yugoslavia, Rwanda, that is not limited to a specific subject matter situation.<sup>3</sup> Moreover, the Court is different than these ad hoc tribunals in its treatment to victims. It is not uncommon for victims to participate in international proceedings as witnesses but in addition to that, the ICC has the authority to award reparation to victims including the rehabilitation and compensation.<sup>4</sup>

In short, the ICC was established by the Rome Statute, in adopted on the 17th of July 1988, it is a multilateral treaty that outlines the legal procedural and substantive framework in which the Court operates. The ICC has started its work in July 2002 when its Statute came into force.<sup>5</sup> It is located in Hague, Netherlands. In particular, the Court has jurisdiction to prosecute perpetrators of war crimes, crimes against humanity and the crime of genocide.<sup>6</sup>

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<sup>3</sup> KATHERINE, *Supra* note 3.

<sup>4</sup> Philippe Kirsch, *The Role of the International Criminal Court in Enforcing International Criminal Law*, 22 AM. U. INT'L L. REV. 4 539-547 (2007).

<sup>5</sup> ROBERT CRYER, THE OBJECTIVES OF INTERNATIONAL CRIMINAL LAW, [http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international\\_law/users/vessier9/public/Cryer%20-%20The%20Objectives%20of%20International%20Criminal%20Law.pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_law/users/vessier9/public/Cryer%20-%20The%20Objectives%20of%20International%20Criminal%20Law.pdf)

<sup>6</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html>

The Court's founding state-members have sought a system to ensure that all individuals will be protected from the grave crimes over which the Court has jurisdiction and they hope to act and to promote deterrence from committing such crimes in the future.<sup>7</sup> The court jurisdiction is based on the principle of complementarity which means that the Court will only exercise it and intervene in cases where a state itself is unable to investigate and prosecute a crime over which the ICC has jurisdiction.<sup>8</sup> A case may be brought either by a referral from a state-party or from the UN Security Council.<sup>9</sup>

ICC's overall mandate and a mission is to address and deal with the most severe crimes that concern the international community and its security. Therefore, ICC's ambitious mission obviates the need to fine-tune its legal processes and jurisprudence so that, policy makers and observers are able to assess its effectiveness against its goals and objectives. The mission statement of ICC can be found in the Rome Statute which establishes the Court to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes. However, in reality there are some perpetrators who have not been caught and brought to justice and those who defy the international justice system and continue to commit heinous crimes.

As according to Kofi Annan, the former Secretary General of the United Nations,

*"Today, we live in a world where a man has more chances to be judged if he kills only one person than if he kills 100 000."*<sup>10</sup>

This quote raises a particular question: How has the ICC been assessed so far? In other words, how effective has it been against its mandate? Although it is somewhat difficult to evaluate the performance of such a relatively young institution but it is critical importance to assess how the ICC's effectiveness is viewed and to further make an

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<sup>7</sup> Rome Statute, *Supra* note 6.

<sup>8</sup> See Article 17 of the Rome Statute.

<sup>9</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html>

<sup>10</sup> Katherine Snitzer, *PEACE THROUGH JUSTICE? Evaluating the International Criminal Court*, (Apr. 2012), available at [http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1015&context=intlstudies\\_honors](http://digitalcommons.macalester.edu/cgi/viewcontent.cgi?article=1015&context=intlstudies_honors)

attempt in finding different ways that provoke assessing the ICC's effectiveness even at this early stage.

B. How the ICC has been assessed so far?

1. Support and praise for the ICC

To some extent the ICC assessment has been praised and successful for its facilitation of global peace and security by bringing serious criminals to justice. Prior to the establishment of the ICC, the world has not seen a leader being held accountable as we see now.<sup>11</sup> For instance, the *Lubanga* Case delivered the first verdict and sentence by the Court which featured 14 years of imprisonment.<sup>12</sup> In addition to the creation of the ICC's Trust Fund for Victims play an important role that cannot be compared to the previous situation. Currently, victims are supported by compensation funds and are also assisted in their repatriation.<sup>13</sup>

Scholars, for example Koller assessed the ICC as it brought investigations that in turn was able to bring international attention to serious crimes perpetrated from individuals around the world that have so far been neglected for political reasons. Also, the arrest warrants that ICC issues oblige the states parties to be cooperative and with the pressure of the UN Security Council, criminals no longer circumvent prosecution so easily. The ICC has been assessed positively for the effort by the international community to bring peace and security to the world.<sup>14</sup> Other scholars as Schabas, assessed the ICC as it is encouraging the national judicial system to conduct its duties under the international law.<sup>15</sup> However,

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<sup>11</sup> 11 Janine Natalya Clark, *Peace, Justice and the International Criminal Court Limitations and Possibilities*, 9 JICJ 521-545 (2011).

<sup>12</sup> Democratic Republic of Congo (DRC), this case has been referred by the DRC government to the ICC since it's a state party to the ICC. Arrest warrants were issued against Katanga and Ngudjolo Chui for being suspected of having jointly and indirectly committed war crimes, and against Lubanga for committing war crimes and use children under 15 years old in the arm conflict. In 2012, To date, Lubanga is sentenced for 14 years imprisoned; Katanga is convicted; Chui is acquitted

<sup>13</sup> DAVID S. KOLLER, *THE FAITH of the INTERNATIONAL CRIMINAL LAWYER*, 40INT'L L. & POL. 1031 (2008). <http://nyujilp.org/wp-content/uploads/2013/02/40.4-Koller.pdf>

<sup>14</sup> *Id.*, at 1049.

<sup>15</sup> William A. Schabas, *Complementarity In Practice': Some Uncomplimentary Thoughts*, 19 CRIM. L. F. 1-33 (2008)

scholars as Cryer, argued that assessing the ICC, whether or not it is causing conflicts or deterrence, might be early to say if optimistic or pessimistic views are correct.<sup>16</sup>

## 2. Criticism towards the ICC

The ICC has been subject to a number of criticism since its inception. For example, the institution is perceived to embody western imperialism and an entity that holds neocolonial perspective that aims to undermine Africa.<sup>17</sup> Also, the Security Council is a position to defer prosecutions or investigations concerning the threat of peace and security and three of the most powerful countries in the Security Council have never ratified the Rome Statute such as USA, Russian and China. This suggest to assess the ICC as political tool employed by the most powerful states in the world in which its selection of investigations is based more on political rather than legal considerations.<sup>18</sup>

In particular the Court has been assessed as it is not very strong in relation to the promotion of the international security agenda as a whole. At times it may lead to poor compromises in regards to its final objective in securing global justice by making perpetrators accountable for their wrongdoing and providing valuable remedies to those who are affected by such conflict.<sup>19</sup> Moreover, the ICC has been criticized for its eighteenth years of existence and so many of its arrest warrants have not been executed. For instance, it has issued warrants against five commanders of a rebel group, the Lord's Resistance Army

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<sup>16</sup> ROBERT CRYER, THE OBJECTIVES OF INTERNATIONAL CRIMINAL LAW, [http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international\\_law/users/vessier9/public/Cryer%20-%20The%20Objectives%20of%20International%20Criminal%20Law.pdf](http://graduateinstitute.ch/files/live/sites/iheid/files/sites/international_law/users/vessier9/public/Cryer%20-%20The%20Objectives%20of%20International%20Criminal%20Law.pdf)

<sup>17</sup> WAR CRIMES RESEARCH OFFICE, International Criminal Court Legal Analysis and Education Project, 2011, <https://www.wcl.american.edu/warcrimes/icc/documents/1106report.pdf> (last visited Mar 5, 2016)

<sup>18</sup> The ICC and the Yugoslav Tribunal: Upholding International Criminal Law?, [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/20140402ICCYugoslavTribunal\\_0.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/20140402ICCYugoslavTribunal_0.pdf)

<sup>19</sup> LAUREN MARIE BALASCO, *THE INTERNATIONAL CRIMINAL COURT As a HUMAN SECURITY AGENT*, [XXVIII] THE FLETCHER J. OF HUM. SECURITY 52 (2013). [http://fletcher.tufts.edu/Praxis/~media/Fletcher/Microsites/praxis/xxviii/article3\\_Balasco\\_ICC.pdf](http://fletcher.tufts.edu/Praxis/~media/Fletcher/Microsites/praxis/xxviii/article3_Balasco_ICC.pdf)

(LRA) in Uganda but none of them have been arrest to-date. Also in the situation of Darfur, the investigation process has been slow and unsatisfactory.<sup>20</sup>

Another assessment criticism towards the ICC is that it has not yet define its strategies and functional role with regards to domestic judiciaries, governments, general public populations and other stakeholders.<sup>21</sup> Scholars for example, Rakin has criticized the global justice that the ICC is seeking to serve has to been seen as a utopia since there is no true global authority that exists to hold criminals accountable.<sup>22</sup> Also, scholars as Schabas has assessed the ICC efforts as they are limited to attracting cases to start prosecution rather than to convince states to fulfill their obligations under the Rome Statute.<sup>23</sup>

### 3. The issue under research: Lack of Consensus of ICC's Effectiveness

To-date, there is no consensus in assessing ICC's effectiveness. As seen above, there are different views with no clear indicators of the ICC's effectiveness. There are no standards that its stakeholders could can refer to in order to assess its activities, and not much information available on how to use their own assessment of its performance.<sup>24</sup>

Apart from the assessment of ICC's effectiveness, generally speaking, defining international judicial effectiveness is not a straightforward task. This is due in part, the courts have various mandates and their success in all of these is what needs to be examined. This in turn, about brings complexity. There is no clear, agreed criteria that define judicial effectiveness, indeed, there is a lack of understanding on what form an effective international court.<sup>25</sup> Actually, the theoretical and practical difficulties related to

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<sup>20</sup> MAKOKHA RONALD WALALA, A CRITICAL ASSESSMENT OF THE INTERNATIONAL CRIMINAL COURT'S PERFORMANCE (2009), <https://ssrn.com/abstract=1752887>.

<sup>21</sup> UNTITLED - 1106REPORT.PDF, <https://www.wcl.american.edu/warcrimes/icc/documents/1106report.pdf> (last visited Mar 5, 2016)

<sup>22</sup> Jeremy Rabkin t, *Global Criminal Justice: An Idea Whose Time Has Passed*, 38 CORNELL INT'L L.J. 753-777 (2005)

<sup>23</sup> Schabas, *supra* note 15

<sup>24</sup> Harvard Kennedy School Program in Criminal Justice Policy and Management, PJC Toolkit: Indicator Development in Justice and Safety, <http://www.hks.harvard.edu/content/download/67440/1242570/version/1/file/PCJToolkit.pdf> (last visited: Oct 26, 2015).

<sup>25</sup> *Id.*

measuring such criteria in the real sense, may lead to unsatisfactory results and misunderstandings about the effectiveness of international courts.<sup>26</sup>

In addition, there is lack of a clear effectiveness definition since, its meaning depends on the different perspective of people that are different by demographic, culture et al. There is no one criteria to measure the effectiveness since, there is no consensus on its meaning and indicators.<sup>27</sup> This illustrates that there is a methodology problem in assessing the effectiveness of international courts. However, Organizational Effectiveness Theory, offers a number of potential solutions to this issue.

### C. Objectives and Importance for employing Organizational Effectiveness Theory

In general, there are numerous studies evaluating organizational effectiveness that have sought to understand the meaning of effectiveness.<sup>28</sup> As according to Kim, Cameron & David has demonstrated the concept of organizational effectiveness is based on to the organization ability in acquiring the needed resources to achieve its objectives.<sup>29</sup> Also, McCann argued that since the organizational effectiveness is based on fulfilling its objectives, it has to be based on main strategies and such strategies are to be the main criteria to assess its success towards accomplishing its objectives.<sup>30</sup>

Love, Peter E.D. and Skitmore, Martin, illustrated that over time, organizational effectiveness theory has been focused on investigating the organizational structure, process and outcome. However, a final consensus on the concept of effectiveness does not seem to have

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<sup>26</sup> SHAI DOTHAN, HOW INTERNATIONAL COURTS ENHANCE THEIR LEGITIMACY, 14 THEORETICAL INQUIRIES IN L.491 (2013), <http://www7.tau.ac.il/ojs/index.php/til/article/viewFile/142/119>.

<sup>27</sup> Yuval Shany, *Assessing the Effectiveness of International Courts: Can the Unquantifiable be Quantified?*, <https://ssrn.com/abstract=1669954>

<sup>28</sup> Peter Love & Martin Skitmore, *APPROACHES to ORGANISATIONAL EFFECTIVENESS and THEIR APPLICATION to CONSTRUCTION ORGANISATIONS*, (1996), <http://eprints.qut.edu.au/4524/1/4524.pdf>

<sup>29</sup> Kim S. Cameron & David A. Whetten, *Organizational Effectiveness and Quality: The Second Generation*, 5 HANDBOOK OF THEORY & RES.265-305 (1996).

<sup>30</sup>JOSEPH E. MCCANN, *DEVELOPING "STRATEGIC SUPPORT SYSTEMS" FOR ELECTRIC UTILITY STRATEGIC PLANNING*. (1986), [http://warrington.ufl.edu/centers/purc/purcdocs/papers/8610\\_Mccann\\_Developing\\_Strategic\\_Support.pdf](http://warrington.ufl.edu/centers/purc/purcdocs/papers/8610_Mccann_Developing_Strategic_Support.pdf)

materialized.<sup>31</sup> The organizational effectiveness is a concept that is based on personal judgments so since it has different stakeholders with different views, this make it difficult to reach an agreed measurable criteria on it.<sup>32</sup> Despite the fact that this concept has as subjective bent that cannot be easily measured; nonetheless, any organization should seek to develop measures that represent its effectiveness such as core competencies, performance and efficiency.<sup>33</sup>

Although organizational effectiveness has been heavily researched in academia.<sup>34</sup> Nonetheless, there is no consensus on its definition and measurability also there is inconsistency on its practice by practitioners and academics.<sup>35</sup> There is a vagueness in defining organizational effectiveness, and there is no definitive theories have placed to overcome such a vagueness. Put simply there is no organizational effectiveness model to suit all types of organizations.<sup>36</sup> Nevertheless, what this research proposes is a solution to this methodological problem underpinned by employing the four main approaches of organizational effectiveness theory to assess the ICC effectiveness.<sup>37</sup>

This research has borrowed the assessment approaches from the studies of Organizational Effectiveness. For the purposes to provide a novel approach for assessing the ICC effectiveness, this could one day lead to reach agreed criteria and establish measurable indicators for assessing the effectiveness of the ICC.

This research is not an empirical study, it does not aim to go through organizational effectiveness approaches application technical methodologies or to provide measurable

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<sup>31</sup> PETER, *Supra* note 37.

<sup>32</sup> The Lewin Group “Organizational Effectiveness Literature Review” (2000), <https://folio.iupui.edu/bitstream/handle/10244/34/oe%20literature%20review%202000.pdf?sequence=1>  
SCOTT ALISON ET AL., *ASSESSING MULTILATERAL ORGANISATION EFFECTIVENESS*, <https://www.oecd.org/derec/denmark/42211723.pdf>

<sup>33</sup> JOHN A. YANKEY & AMY MCCLELLAN., *THE NONPROFIT BOARD’S ROLE IN PLANNING AND EVALUATION*, <http://kronkosky.org/Research/Foundation-Research/DownloadResearch?f=259>

<sup>34</sup> ROJAS, A REVIEW OF MODELS FOR MEASURING ORGANIZATIONAL EFFECTIVENESS AMONG FOR- PROFIT AND NONPROFIT ORGANIZATIONS.", <http://www.ccsenet.org/journal/index.php/ies/article/viewFile/12729/10623>

<sup>35</sup> PETER, *Supra* note 37.

<sup>36</sup> ROBBINS, S. P., *ORGANIZATION THEORY: THE STRUCTURE AND DESIGN OF ORGANIZATIONS*. ENGLEWOOD CLIFFS, NEW JERSEY, PRENTICE-HALL INC., 1983.

<sup>37</sup> Neely, A., M. Gregory & K. Platts, *Performance Measurement System Design: A Literature Review and Research Agenda*, 15 Int’l J. of Operations & Production Mgmt. 80-116 (1995)

indicators for assessment rather to introduce a different notion that can be a potential tool that might help in assessing the ICC effectiveness. Due to the fact, examining the approaches technicalities and process of establishing measurable indicators should be driven by the Court itself. It is a daunting task that requires consideration of different factors that affect courts' activities in every aspect of its operation. Consequently, it needs to have access to more data, such a process requires not only the internal participation from the court but also to involve external participation such as expert opinions from national judiciaries and actors in civil society that can provide critical observations on the impact of the Court activities. Also, such a process requires an overall agreement amongst various court organs on performance criteria and indicators such as how and what to measure.<sup>38</sup>

Regardless reviewing the legal aspects of the Court as envisaged in the Rome Statute, the research purposes is not to make a judgment on these. The research's objective is to seek for the best form of assessment possible rather than to take a substantial position on the effectiveness of the ICC itself. The research focuses does not serve to question the court judgments, the productivity of judges, the duration of trial proceedings and compliance rate. Also, the legal validity is not serving the research question; in addition to, the ICC is already recognized as an international legal entity.<sup>39</sup> The research focuses is determined on finding the best way to assess the overall Court's effectiveness in general, by adopting the approaches of Organizational Effectiveness Theory. Accordingly, the assessment criteria is based on each organizational effectiveness approach.

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<sup>38</sup> See Harvard Kennedy School Program in Criminal Justice Policy and Management, PJC Toolkit: Indicator Development in Justice and Safety, <http://www.hks.harvard.edu/content/download/67440/1242570/version/1/file/PCJToolkit.pdf> (last visited: Oct 26, 2015).

<sup>39</sup> International criminal court, art. 4, "Legal status and powers of the Court: "The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State".



Put simply, this thesis proposes to evaluate the Court's effectiveness through the four most-popular approaches in Organizational Effectiveness, namely:

- Goal Attainment Approach
- Systems Resource Approach
- Strategic Constituencies Approach
- Contradiction Approach

This research focuses on the notion of each approach and evaluate their suitability to be applied in assessing the ICC effectiveness. This in turn will shed the light on different ways for observers to assess ICC effectiveness. The varied idea of this research comes from that the studies of organizational effectiveness have been not only used in business organizations but also have been mobilized in non-profit organizations for the purpose to assess and improve their action and management. Actually organizational effectiveness is one of the topics that have received greater attention in recent years in non-profit and business management research.<sup>40</sup> Although this concept has been applied in business and non-profit domains but it has not been widely applied in legal domain. Consequently, this research can be considered to certain extent as innovative project, since it addresses the possibility of applying organizational effectiveness approaches to the assessment of the ICC as international court.

Improving the assessment method of the ICC is deemed crucial, because the fact that the ICC has an important mandate that cannot be ignored, its performance has been highly criticized. This is shown in the current situation where Burundi, South Africa, and Gambia, the ICCs' State parties who have expressed their intention for withdrawal from the Rome Statute due their dissatisfaction with the ICCs' performance.<sup>41</sup> Thus, improving the ICC

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<sup>40</sup> JESSICA E. SOWA, ET AL, NFFECTIVENESSO LONGER UNMEASURABLE? AMULTIDIMENSIONAL INTEGRATED MODEL OF NONPROFIT ORGANIZATIONAL E, 717, <http://nvs.sagepub.com/content/33/4/711.full.pdf>

<sup>41</sup> The Global Centre for the Responsibility, *Statement on Recent Withdrawals from the International Criminal Court*, RALPH BUNCHE INSTITUTE FOR INTERNATIONAL STUDIES (2016):Also see Associated Press, "ICC Oversight Chief Calls on South Africa, Burundi to Remain", *New York Times*, 24 October 2016,

performance is needed but it cannot be made without appropriate tool of assessment. In fact, there are numerous benefits in the ability to measure the ICCs' performance key amongst these are, aiding to visualize its opportunities and challenges, identifying and highlighting ICCs' internal operational issues and conduct and, of enabling a window of insight into ICC. For example, it can establish an accountability framework to determine whether the ICC has fulfilled its promises that are stated in the Rome Statue and this can lead the Court to improve its performance.

#### D. Adapting Organizational Effectiveness Theory as a Meaningful Tool for Analysis of the ICC

Actually, only one monograph namely Yuval, who has been published in relation to using organizational effectiveness theory to assess the effectiveness of international courts, Yuval states that his purpose is not to introduce conclusions on international courts in general, or specific ones are effective. His objective was is to provide a research agenda that could advance interdisciplinary and sophisticated approach towards addressing the question of international court effectiveness. He has focused his work primarily on one of the four main approaches of organizational effectiveness, namely the Goal Approach. He argued that this approach carries some ambiguities and difficulties. Accordingly, it is difficult to have precise outcome measurement in assessing the effectiveness of international courts but still it can provide likely outcome that can lead to better understanding of the performance of international courts in general and will led us to look at the key aspects of international courts such as the judicial structures, procedures and outcomes because assessing the judicial performance cannot be separated from analyzing goal-based effectiveness of international court.<sup>42</sup>

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<<http://www.nytimes.com/aponline/2016/10/24/world/africa/ap-af-senegal-iccwithdrawals.html>>, last accessed 7 November 2016.

<sup>42</sup> YUVAL, *supra* note 18.

Although this research is close to Yuval reasoning regarding employing organizational effectiveness theory in assessing the international judiciary. Still it differentiates because it is focused on evaluating various organizational effectiveness approaches, in assessing the ICC effectiveness while in Yuval's research is focused on evaluating one of the organizational effectiveness approaches in assessing the international courts effectiveness as general notion not on particular court as this research. However, this thesis agrees with Yuval's argument that adopting the Goal Approach in assessing the effectiveness of the ICC can lead to a better understanding of the Court but this approach has a number of limitations that are discussed in detail in the subsequent chapters.

The research suitability is shown in questioning, Can the ICC qualify as 'organization? Or in other words why organizational effectiveness theory is relevant in assessing the ICC effectiveness? First of all, the definition of organization should be clarified. There are many theorists suggested different definitions for organization; however, this research refers to the most definitions that serve the research purposes. Organizational theorists define organization as mechanism that is created to conduct certain duties, it obliges to have member's cooperation to clarify objectives, assign responsibilities and implement plans.<sup>43</sup> According to the known weberian organizational theory, defined the organization by term named as "legal rationality organization", it means that all organizational members have to understand the organizational authority and bind themselves to follow the rule-based of organizational prescription.<sup>44</sup>

Consequently, the definition of organization in general can lead to view the court as organization, looking at the Court in general, seeing its whole setup, structure and governance. The Court is a socially structured mechanism that has a group of people who work in a system based on applying rules to achieve shared goals. However, It is debatable whether a traditional court can be considered as 'an organization' or not. Courts are very distinct establishments. They possess certain structural characteristics that set them apart

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<sup>43</sup> Christopher Balding & Daniel Wehrenfennig, *Organization Matters to Institutions: The Structural Design of the United Nations and World Trade Organization*, (2016), [http://journal-iostudies.org/sites/journal-iostudies.org/files/JIOS201121final\\_3.pdf](http://journal-iostudies.org/sites/journal-iostudies.org/files/JIOS201121final_3.pdf) (last visited Nov 5, 2016).

<sup>44</sup> *Id.*

from other man-made organizations. Courts must apply the law, they are bound by procedural rules, they have the obligation to conduct fair trials and they are supposed to be independent and impartial. Such characteristics define the character of courts in general and pose limitations to their conduct. Thus, courts in general are very specific establishments and probably that is why there has not yet been an attempt to use Organizational Effectiveness Theory in assessing their performance.

However, the particular case of the ICC is different due to the fact, it is an international governmental organization. As according to general international law, defining the legal personality of international governmental organization characteristics requires to have such criteria.<sup>45</sup>:

“A lasting association of States; an organic structure; a sufficiently clear distinction between the organization and its member States; the existence of legal powers exercisable on the international level; and lawful purposes”.<sup>46</sup>

ICC meets such a criteria. Since it is established by an inter-State treaty and it is permanent institution. It consists of organs: the presidency, a trial division, pre-trial division, an appeals division, the office of register and the prosecutors. These organs are not a subject to the states parties’ instruction but will work independently in their actions. From this perspective, the ICC can be considered as international governmental organization.<sup>47</sup> Therefore, attempting to assess the ICC effectiveness by Organizational effectiveness theory can become a meaningful tool for analysis.

This research explores the extent in which organizational effectiveness approaches are relevant in assessing the effectiveness of the International Criminal Court. In order to reach a logical conclusion, thoroughly the analysis is built on studying the concept of organizational effectiveness approaches and the ICC relevance area, according to each

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<sup>45</sup> SASCHA ROLF LÜDER, THE LEGAL NATURE OF THE INTERNATIONAL CRIMINAL COURT AND THE EMERGENCE OF SUPRANATIONAL ELEMENTS IN INTERNATIONAL CRIMINAL JUSTICE, 84 (2002). [https://www.icrc.org/eng/assets/files/other/079-092\\_luder.pdf](https://www.icrc.org/eng/assets/files/other/079-092_luder.pdf)

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

approach. The research methodology is based on primary and secondary sources, the Rome Statute, official reports and academic writing.

## II. Goal Organization Effectiveness' Goal Approach

The purpose of this chapter to analyze the extent in which the concept of Goal Approach is relevant in assessing ICC's effectiveness. This chapter consists of two parts. In part A, it seeks to define the usefulness of the Goal Approach while noting its limitations. In part B, it seeks to apply the goal approach in assessing the ICC's effectiveness.

### A. Defining the Goal Approach:

The Goal approach is one of the most widely used in organizational effectiveness. It assumes that organizations are established to achieve one or more particular goals. It defines effectiveness by organizational objectives. The organizational effectiveness criteria is based on the accomplishment of outcomes or in other word the goals; thus, it focuses on accomplishment ends rather than the means. Organizational goals can be categorized as either official or operative goals.<sup>48</sup> According to Perrow, a leading organization studies theorist, the official goals are publicly stated and they seek to reflect the objectives of organization; they are mostly open-ended and not very specific. Conversely, the operative goals are policies or strategies that are prioritized and adhered to throughout the organization. Despite clear differences between official and operative goals, it may not be clear from the outset and often overlap.<sup>49</sup>

This Approach is focused on the organization's vision to establish rational arrangements to achieve its stated goals.<sup>50</sup> It only operates under the assumption that there should be an overall consensus and definition of an organization's goals and the individuals who will be

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<sup>48</sup> Charles Perrow, *The Analysis of Goals in Complex Organizations*, 26 AM. SOC. REV. 854-866 (1961).

<sup>49</sup> *Id.*

<sup>50</sup> AMITIA ETZIONI, *TWO APPROACHES to ORGANIZATIONAL ANALYSIS: A Critique and Suggestion*, 5 ADMIN. SCI. Q. 257-278 (1960)..

participating in achieving such goals. Therefore, for the Goal Approach to work there has to be a general agreement on its goals and the capability to measure them.<sup>51</sup>

There are classifications that might facilitate clarifying the different types of organizational goals. There are external goals that are placed by external stakeholders and the internal goals set by the organization itself. There are ultimate and intermediate ends, together with goals that represent independent ends in themselves. There are also explicit goals that are clear, objective, easy to report, that are in the public domain and the implicit goals that are not publicized. Finally, there are unstated goals that might reflect the belief of stakeholders.<sup>52</sup>

Nevertheless, the Goal Approach has limitations. For example, it assumes that the organization should accomplish its final goals and objectives since, they are defined, managed and identified to begin with which is not always the case.<sup>53</sup> The Goal Approach's weakness in the organization effectiveness assessment is particularly evident in the correct and obvious clear outcomes measurement. Therefore, the more clearly stated the goals are, the more relevant this approach is.<sup>54</sup> Goals are dynamic and likely to change overtime, due to a variety of factors such as the political issues; especially for organizations such as the ICC. This is problematic in relation to identifying the degree to which an organization is achieving its goals. Another issue is the statement of the goals itself, the actual wording statement of the goals may be deceptive since they might be misrepresent the real organizational objective.<sup>55</sup>

Also, it is difficult to identify and measure all goals because they are intangible, transitional and multiple even short term goals are always dissimilar from their long term goals. Whenever there are multiple goals and competing interests, it is hard to have clear

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<sup>51</sup> ROBBINS, *Supra* note 47.

<sup>52</sup> Yuval, *Supra* note 18.

<sup>53</sup> Kim S. Cameron & David A. Whetten, *Organizational Effectiveness and Quality: The Second Generation*, 5 HANDBOOK OF THEORY & RES.265-305 (1996).

<sup>54</sup> ALTSCHULD, J. W., & ZHENG, H. Y., ASSESSING THE EFFECTIVENESS OF RESEARCH ORGANIZATIONS. EVALUATION REVIEW, 19(2), 197-216, 1995. <http://dx.doi.org/10.1177/0193841X9501900205>

<sup>55</sup> Kim ,Cameron & Whetten, *Supra* note 52.

consensus unless the goals are expressly stated. Otherwise, vagueness may permit different interest groups to interpret them in manner that is to their benefit.<sup>56</sup>

Another limitation of the Approach is goal ambiguity. This is connected to the difficulty of understanding the main purpose of organization.<sup>57</sup> However, Yuval has categorized the goal ambiguity into these four categories.<sup>58</sup>

1. “Mission comprehension ambiguity” – sometimes the official goals are stated in vague language that is prone to creating conflicts in interpreting their meaning; thus, the actual goals might be contested.
2. “Operative goal ambiguity” – some of the official goals have lack of clarity in relation to translating them into operational goals.
3. “Evaluative goal ambiguity” – some goals are less open to measurement which leads to use of unclear indicators to measure effectiveness.
4. “Priority goal ambiguity” – some organizations struggle to list many goals without clear hierarchy among them. This may produce the difficulty of prioritizing the goals and the resources allocated to each of them.

#### B. Applying Goal Approach In assessing The ICC Effectiveness:

As outlined in the preceding section, the usage of goal approach has some drawbacks. This would necessitates ICC goals to be clearly identified, this step should be carried out prior analyzing this Approach’ suitability in assessing ICC’s effectiveness

The main goals of International Criminal Court are clearly stated in the Rome Statute. These are: achieving justice for all, ending impunity, helping to end conflicts, remedying

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<sup>56</sup> PETER, *Supra* note 37.

<sup>57</sup> CHAN SU JUNG, *GOALS, AMBIGUITY, and PERFORMANCE in U.S. FEDERAL PROGRAMS and AGENCIES*, (2009), [https://getd.libs.uga.edu/pdfs/jung\\_chan\\_s\\_200905\\_phd.pdf](https://getd.libs.uga.edu/pdfs/jung_chan_s_200905_phd.pdf)

<sup>58</sup> Yuval, *Supra* note 18.



the deficiencies of *ad hoc* tribunals, taking over when national criminal justice institutions are unwilling or unable to act, and deterring future war criminals.<sup>59</sup>

As discussed above, identifying the goals of an organization may be a cumbersome task, especially when it comes to complex institutions such as the ICC. Despite this complexity, Yuval has attempted to categorize the ICC goals into ultimate and intermediate goals. These are

- Ultimate goals: Inducing compliance with International Criminal Law (deterrence), ending impunity, satisfying victim needs including by reparation, promoting peace and security/reconciliation, conveying a message of international condemnation of atrocious crime, developing international criminal law, legitimizing the application of international criminal law.<sup>60</sup>
- Intermediate goals: Encouraging local proceedings against International Criminal Law violators (inter alia through capacity building), seeking accountability for greatest responsibility (investigating, putting on trial, convicting the guilty expeditiously), promoting an image of fairness and legitimacy, and developing a historical record of events.<sup>61</sup>

At this moment, the ICC goals have been outlined, as consequent analysis on the extent in which the concept of Goal Approach is relevant in assessing ICC's effectiveness can be made. Therefore, applying the Goal Approach to a judicial institution such as the ICC is more difficult than applying it to the non-governmental or the business sectors. For instance, if the approach is used to assess the effectiveness of a company the criteria would relate to mainly commercial goals. For example, the goals would most often be tied to

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<sup>59</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://legal.un.org/icc/general/overview.htm>

<sup>60</sup> Yuval, *Supra* note 18.

<sup>61</sup> Yuval, *Supra* note 18.

increasing profit and market share. These two indicators are possibly most illustrative in relation to a commercial undertaking achieving its goal.

Also, the Goal Approach may be easily applied to non-profit organizations. Usually their goals are clear and most often include social development reducing the poverty or some other socially important cause. In such a case, the effectiveness assessment criteria will be based on the measurable success of this goal attainment in a given section of the population. This can illustrate the degree to which an NGO has reached its goals but such approach requires the goals to be well defined and measurable.

Applying the Goal Approach to assessing the ICC effectiveness is somewhat more difficult. However, some of the ICC goals that could be assessed by this approach. For example, the Court's staff (judges, prosecutors, others) where one can assess whether or not they have achieved their internal planned goals or not. Also, few of the external goals of ICC can be assessed by this approach such the seeking of accountability for international criminal responsibility (investigating, putting on trial, convicting the guilty expeditiously), conducting fair trials and developing a historical record of events. These kind of goals can be assessed by the Goal Approach where the effectiveness assessment criteria will be based on reaching these goals. The assessment criteria will be based on indicators such as increasing the number of criminals held accountable for their crimes, or increasing the number of trials that have been conducted in a manner of fairness based on the stated procedures. As a matter of fact, it can help observers understand the degree to which the Court is achieving its goals.

However, not all ICC goals can be assessed by such an indicator, due to the fact that not all ICC goals are so straightforward. In my contention, this approach is insufficiently convincing for assessing the ICC effectiveness for at least three reasons that are discussed below:

The first issue is involves the necessity to identify all different goals of ICC and to understand their operational priorities in order to establish the assessment indicators. This

task can easily create a dilemma for observers because there are different types of goal such as implicit and explicit goals and there are also the Court's unstated goals, Especially the latter goals are extremely difficult to identify or to agree upon because everyone has different personal perception about unstated goals that is not necessarily shared equally within the judicial bench.

The unstated goals might be different from the official goals but this is hard to tell. It is seen in the ICC where its official goals relate to ending impunity and delivering justice while at the same time, some might see that there are unstated goals for the Court to have politically motivated prosecutions. For example, there are some countries such as Syria that are amid an armed conflict but the Security Council has not referred the case due to political considerations.<sup>62</sup> This shows that there are constraints that might make some of ICC goals to look unstated. Another example that supports the same argument is when the Security Council actually refers cases to the ICC. To-date, all investigations so far have only been against Africans and this implies some unstated goals. This makes the Goal Approach application superficial where it's the official goals might differ from the stated goals.

The second issue with the Goal Approach is that identifying and measuring the goals of the ICC is a complex task that does not lead to convincing results, especially considering the intangible goals in particular. The effectiveness criteria of the Goal Approach is to measure the ends only and to measure whether the organization is reaching these ends. However, the condition to use this approach is that goals have to be measurable, clear and time.<sup>63</sup> This does not correspond with the nature of the ICC. For instance, not all goals are measurable. For instance, justice, or deterrence, or changes in any state behavior or satisfying victims are almost impossible to quantify, qualify or measure.

The third issue of using the Goal Approach in assessing the ICC relates to the ambiguity and confusion of its goals. As discussed above, there are some goals that maybe interpreted

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<sup>62</sup> Alexander K.A. Greenawalt, Justice Without Politics? Prosecutorial Discretion and the International Criminal Court, 39 N.Y.U. J. Int'l L. & Pol. 583 (2007), available at <http://digitalcommons.pace.edu/lawfaculty/340/>

<sup>63</sup> Kim, Cameron & Whetten, *Supra* note 52.

in different ways and some may lack of clarity. This makes it hard to build an effective assessment. For example, the ICC has for a goal to end impunity but there is lack of clarity regarding what operative policies the Court should adopt in order to attain that impunity. In addition to some of the ICC goals creates confusions and questions such as whether the ICC will look to compensate victims for moral/psychological damages generated by mass crime and if so then how they would be identified with and what kind of criteria to use for such an assessment.

The ICCs' goals are causing confusion due the fact that they are symbolic. They are idealistic and possibly unachievable by nature so adopting the Goal Approach for assessment does not seem to be very suitable. The ICC should be capable of achieving its goals related to generating a reliable historical record in the international criminal context, representing all victims of international crimes, spreading the values of human rights, helping to achieve peace and security in conflicts, delivering justice to the large number of victims and families that have suffered in mass atrocities. On the other hand, it is fair to say the ICC is too small and constrained to end impunity of international crimes completely on its own, Prosecutions will not be able to succeed as investigations will leave many suspected perpetrators untouched due to lack of capacity. The massive nature of the crimes over which the Court has jurisdiction makes it impossible to fully reach the organizational goals.

Indeed, fulfilling all these goals and completely eradicating impunity is a truly a massive undertaking that the Court cannot be capable to handle alone due to its limited capacity and lack of enforcement power. As a consequence it seems Organizational Effectiveness Theory's Goal Approach is not the best suited approach for assessing the effectiveness of International Criminal Court.

### III. Organizational Effectiveness' System Resource Approach

The purpose of this chapter so analyze the extent in which the concept of System Resource Approach is relevant in assessing ICC's effectiveness. This chapter consists of two parts. In the part A, it seeks to define the usefulness of the System Resource Approach while noting its limitations. In part B, it seeks to apply the system resource approach in assessing the ICC effectiveness.

#### A. Defining system resource approach:

According to the System Resource Approach of organizational effectiveness, the main criteria for assessment is based on an organization's ability to exploit its environment in the process of acquisition of necessary resources and scarce resources in particular. The use of this approach is only suitable when there is a direct relation between the organization receiving resources and the services it provides.<sup>64</sup> This approach is based on inputs, process transformation and output.<sup>65</sup>

The System Resource Approach perceives the organization as a network of subsystems whose effectiveness is assessed to the extent where the subsystems are well coordinated together in coherence. This approach seeks an optimal distribution of resources among an organization's subsystems based on these subsystems' needs. The assessment with this approach is based on the organizational ability to observe environmental resources, to

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<sup>64</sup> Kim S. Cameron, *Domains of Organizational Effectiveness in Colleges and Universities*, 24 THE ACAD. OF MGMT. J. 25-47 (1981).

<sup>65</sup> Ephraim Yuchtman & Stanley E. Seashore, *A System Resource Approach to Organizational Effectiveness*, 32 THE ACAD. OF MGMT. J. 891-903 (1967)..

produce certain output, to handle daily internal activities, to coordinate with its various subsystems and respond to environment feedback.<sup>66</sup>

This approach was created in reaction to the Goal Approach, as it seeks to remedy some of its deficiencies. Its primary focus is on the inputs, as opposed to the outputs. The means to achieve goals in contrast to the goals themselves.<sup>67</sup> This system resource approach is seen by some as a more ‘rational’ version of the Goal Approach because it focuses on the essential means to reach organizational goals.<sup>68</sup>

Nevertheless, the System resources approach has some limitations. For example, the greater obtaining of resources does not necessarily imply an effective usage of those resources. In addition to that, it is difficult to identify the optimal level of obtaining resources across different organizations. It may also be hard to define all necessary resources for organizational survival. Using this approach can be more useful for organizations whose output is more difficult to assess while accurate data in relation to their input is available. This is often the case with NGO’s.<sup>69</sup>

#### B. Applying the System Resource Approach in assessing the ICC effectiveness

Since the effectiveness criteria is based on the collaboration among sub-systems and the ability to acquire the required resources, ICC’s System must be underlined in order to highlight the Court’s sub-systems and the ways it acquires the necessary resources. This step should be carried out prior to analyzing this Approach’ suitability in assessing ICC’s effectiveness

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<sup>66</sup> J. B. Cunningham, *A Systems-Resource Approach for Evaluating Organizational Effectiveness*, 31 HUMAN RELATIONS 631–656, 631-656 (1978), <http://hum.sagepub.com/content/31/7/631.full.pdf.html>.

<sup>67</sup> Yuchtman, *Supra* note 64.

<sup>68</sup> CELESTE PM WILDEROM, ORGANIZATIONAL EFFECTIVENESS = CORPORATE PERFORMANCE? WHY AND HOW TWO RESEARCH TRADITIONS NEED TO BE MERGED, 1996, [https://www.researchgate.net/profile/Celeste\\_Wilderom/publication/228919175\\_Organizational\\_Effectiveness\\_Corporate\\_Performance\\_Why\\_and\\_How\\_Two\\_Research\\_Traditions\\_Need\\_to\\_be\\_Merged/links/0deec5187b96807533000000.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Celeste_Wilderom/publication/228919175_Organizational_Effectiveness_Corporate_Performance_Why_and_How_Two_Research_Traditions_Need_to_be_Merged/links/0deec5187b96807533000000.pdf?origin=publication_detail)

<sup>69</sup> *Id.*

The ICC's internal functioning system is outlined in the founding document, the Rome Statute and the Rules of Procedure and Evidence which are an instrument for the application of the Statute.<sup>70</sup> According to these, the Court consists of a Presidency, that is the head of the Court, the Chambers division of magistrates that ensures fair trials, the Prosecutor's office that conducts investigations and prosecutions and the Registry who support the Court.<sup>71</sup> Independence and legitimacy are key considerations embedded in the Rome Statute, as the ICC prosecutor must independently investigate state-parties on his own motion after Court's approval or state referral.<sup>72</sup> In general, the Court may impose a fine or imprisonment, depending on the nature of the case and crime.<sup>73</sup>

As discussed above, The ICC is based on complementarity principle that is stated in the Preamble of the Rome Statute, the ICC will only take a case when it is admissible and the state is unable or unwilling to prosecute the defendants for committing crimes under the international criminal law, it is complementary to national criminal jurisdictions.<sup>74</sup> In that, the Court is not meant to replace national judicial authorities but rather, to complement them and to exercise jurisdiction when the national courts are unwilling or unable to investigate a certain case. Despite the wide-ranging jurisdiction that the Court has resources are rather limited. In fact, the Statute has not empowered the Court with a viable mechanism to execute its arrest warrants.<sup>75</sup>

This means that the Court does not have enforcement capacity and it has to depend on the cooperation of national authorities to enforce its referrals and to bring suspects to the premises of the Court.<sup>76</sup> Thus, the Rome Statute obliges all state parties to cooperate with

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<sup>70</sup> Rules of Procedure and Evidence, Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002 (ICC-ASP/1/3 and Corr.1), part II.A

<sup>71</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html>

<sup>72</sup> See Article 42 of Rome Statute; Also see, Yvonne M. Dutton, *Explaining State Commitment to the International Criminal Court: Strong Enforcement Mechanisms As a Credible Threat*, 10 Wash. U. Global Stud. L. Rev. 477 (2011),

<sup>73</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html>

<sup>74</sup> See Article 1 of Rome Statute.

<sup>75</sup> Stevens L. LYN, *Towards a Permanent International Criminal Court*, 6 EUROPEAN JOURNAL OF CRIME, CRIMINAL LAW AND CRIMINAL JUSTICE 236–251, 236-251 (1998), [www.lib.uchicago.edu/~llou/icc.html](http://www.lib.uchicago.edu/~llou/icc.html).

<sup>76</sup> Beatrice Pisani, *The System of the International Criminal Court: Complementarity in International Criminal Justice*, 2012, [http://eprints-phd.biblio.unitn.it/744/1/Thesis\\_Complementarity\\_Pisani.pdf](http://eprints-phd.biblio.unitn.it/744/1/Thesis_Complementarity_Pisani.pdf)

the Court in investigations and prosecutions as well as in collecting evidence.<sup>77</sup> Also, the Statute clarifies the important role of civil society in assisting the ICC to deliver real international criminal justice. In the main, NGO's often assist the Court with collection of evidence and mobilization of victims<sup>78</sup>

The Court's budget is managed and approved by state party's assembly. This assembly is also responsible for electing Court officials and for adopting amendments to the Statute. The Court is funded by contributions from the state-parties and by voluntary contributions from international organizations, governments, corporations, individuals, and other entities. The financial contribution of each state is based on its capacity to pay considering factors such as its population and national income.<sup>79</sup> The ICC introduces justified budget requests that have to be transparent and provoke scalability and efficiency. The Court has to request the resources it needs in an effective manner as to avoid overspending.<sup>80</sup>

In short, the ICC's functioning system to fund, investigation and arrest enforcement depends completely on State cooperation. That nature of the Court produces an intrinsic limitation to measuring its own effectiveness. With this, the short description of the 'system' of the ICC is outlined, analysis on the suitability of this approach in assessing the effectiveness of the ICC can be made.

As result, the Application of the Systems Resource Approach must be carried out in light of the good coordination of all Court subsystems and their possibility to acquire the recourses they need. If it was in a commercial context, a company can be seen as a system composed of sub-systems such as department of marketing, production, finance, accounting and so on. Thus, this approach would assess a company firstly by the degree in which these sub-systems are coordinated and secondly by the degree in which the company

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<sup>77</sup> See Article 86 of Rome Statute.

<sup>78</sup> NGOs seek for ways to ensure that justice is delivered for victims of the gravest crimes. Also they have an important role in assisting victim participation in the ICC.

<sup>79</sup> Rome Statute, Article 112: Also see, NINA HUYGEN, TOWARDS A PERMANENT INTERNATIONAL CRIMINAL COURT, 29 292-308 (1996), [HTTP://WWW2.LIB.UCHICAGO.EDU/~LLOU/ICC.HTML](http://www2.lib.uchicago.edu/~lloou/icc.html)

<sup>80</sup> LUKE MOFFETT, REALISING JUSTICE FOR VICTIMS BEFORE THE INTERNATIONAL CRIMINAL COURT, 2016, <http://www.internationalcrimesdatabase.org/upload/documents/20140916T170017-ICD%20Brief%20-%20Moffett.pdf>



is able to exploit its environment to get the necessary resources. That would include, for example, the company's ability to hire the best qualified staff and to make good profit from its market.

Examining a judicial institution such as the ICC is rather more complex than examining a commercial establishment. The Court is a complex organization with a number of different inter-dependent systems that can be affected not only internally but also externally, as explained above with influence of state parties. Broadly, the ICC sub-systems may be given the following categorization:

- The Court itself, and its internal divisions
- The state-parties: as the Court's jurisdiction is complementary, state-parties remain the first actors in the struggle against impunity – so they are clearly subsystems, which have to be effective.
- NGOs and civil society, who assist the ICC in the cases.

Consequently, this approach has a number of advantages such as that it can provide general perspective on the degree of coordination between the ICC's internal structure outlined above and between the ICC and the state parties. In addition, it can be useful in identifying the extent to which the Court is acquiring the resources in order to reach its goals. For instance, as discussed above, the ICC is funded by state-parties and it does not have a police force, it relies on cooperation of state-parties to deliver suspected persons, evidence and other information. If this approach is used in the Kenya situation for example, the result would be that the ICC is not reaching its aims. This would be due to the lack of cooperation from the state government. The Defendants and their followers did not allow any individuals to cooperate with the Court. Even witnesses have dropped out every time near the trial date which forced the Court to look for others. It was reported that the cases cannot meet the standard of evidence that is required.<sup>81</sup>

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<sup>81</sup>Susanne D. Mueller, ~~*Kenya and the International Criminal Court (ICC): Politics, the Election and the Law*~~, 8 J. OF E. AFR. STUD. 25-42 (2014). See, Prosecutor v. WILLIAM SAMOEI RUTO and JOSHUA ARAP, Case No. ICC-01/09-01/11- 670, Warrant of Arrest ¶ 22 (10 May, 2013), [https://www.icc-cpi.int/CourtRecords/CR2013\\_03499.PDF](https://www.icc-cpi.int/CourtRecords/CR2013_03499.PDF)

In my contention, the advantage of employing this approach, though, lies in the opportunity to help in predicting future outcomes as well as evaluating these, such as the Court's capability of arresting criminals. Also, there is a published report that illustrates the same point, saying that examining court system with the evaluation on acquiring certain variables such the budget can be helpful in predicting court effectiveness.<sup>82</sup> In addition to that, the same criteria can highlight the limitations of the Court's systems which is an essential step in conducting such effectiveness assessment. This related to Caron suggestions that in order to define the boundaries of the system of the international courts, the actors of the system should be defined first.<sup>83</sup>

Although employing the Systems Resource Approach to assess the ICC effectiveness has certain advantages it still appears weak in assessing the ICC effectiveness for at least three reasons. The first reason lies in the core of the complementarity mechanism itself. Specifically under Article 17 of the Rome Statute, the case will be inadmissible before the ICC in circumstances where a state is genuinely willing and able to prosecute nationally.<sup>84</sup> The Court has to and always will interact with failing and/or ineffective States as for example in the situation of the Central African Republic (CAR): opened because the State was perceived as unable to prosecute.<sup>85</sup> Therefore, how can observers assess the ICC effectiveness by such a failing sub-system?

On the other hand, one could argue that Situation in the Democratic Republic of the Congo (DRC) featured an unwilling state to arrest *Lubanga* and that's why the ICC has interfered. In that case the state has collaborated well with the ICC and *Lubanga* has not escaped justice. Nevertheless, this argument remains weak, as it does not cure the inherent difficulty in the concept of complementarity. The ICC having by principle to work with failing sub-systems, and furthermore, procedures in the Congolese situation have been achieved but

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<sup>82</sup> PIM ALBERS, PERFORMANCE INDICATORS AND EVALUATION FOR JUDGES AND COURTS, [www.coe.int/t/dghl/.../MoscowPA250507\\_en.pdf](http://www.coe.int/t/dghl/.../MoscowPA250507_en.pdf).

<sup>83</sup> David D. Caron, *Towards a Political Theory of International Courts and Tribunals*, 24 *Berkeley J. Int'l L.* 401 (2006), <http://scholarship.law.berkeley.edu/facpubs/536>.

<sup>84</sup> Rome Statute of the International Criminal Court (*last amended 2010*), 17 July 1998, available at: <http://www.refworld.org/docid/3ae6b3a84.html>

<sup>85</sup> Prosecutor v. Jean-Pierre Bemba Gombo, Case No. ICC-01/05-01/08, Warrant of Arrest ¶ 22 (21 March, 2010), <https://www.icc-cpi.int/car>

took very long and have been much criticized for not being effective. The reason that the *Lubanga* trial took such a long time is because of the pre-trial proceedings that lasted longer than expected. Also, judges had demanded to stay the proceeding due to the inability of the prosecution to disclose some vital evidence.<sup>86</sup>

The second issue with employing the Systems Resource Approach in assessing effectiveness of the ICC is that there are States which have not ratified the Statute and are not even sub-systems of the ICC, even if their (in-)action plays an important role in international criminal justice. For instance, the participation of the USA and the other permanent members of the Security Council is essential to the effectiveness of the Court. The permanent member states that have not joined the ICC have veto power to defer cases, thus if any indictment is contradictory to their national interest, they can veto the indictment and allow the crimes and the perpetrator to go on. In the same time, non-state-parties are forced to be part of the international criminal justice system even if they have not signed/ratified the Rome Statute such as in Sudan for example.<sup>87</sup>

Thus, it would be incorrect to analyze those in a systemic perspective since they cannot be identified as an ICC subsystem despite having been forced to be part of it. In support to the same point, Caron illustrates how legal writers seek to isolate courts from political matters as they study the system and jurisprudence of courts and tribunals in an artificial manner. Nevertheless, the political functions that are served by the Court should not be ignored and it needs to be highlighted how these functions engage with the institution.<sup>88</sup>

The last issue with the System Resources Approach in assessing the ICC effectiveness is related to the degree of acquiring necessary resources. There is not guarantee that after acquiring the necessary resources the Court will be effective. In the Congolese situation for example, the outcome can be assessed, since the Court reached its aims because the state government and civil society were cooperating. *Lubanga* is now in jail, however, effectiveness can still be debated since despite the ICC having acquired the necessary

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<sup>86</sup> Prosecutor vs. Thomas Lubanga Dyilo, Case No. ICC-01/04-01/06, Warrant of Arrest ¶ 22(10 February 2006), <https://www.icc-cpi.int/drc>

<sup>87</sup> CARON, *Supra* note 79.

<sup>88</sup> *Id.*

resources, the cases have been much criticized for not being effective due to the extremely long periods they take to be resolved. As a consequence it seems this approach is not the best suited approach for assessing the ICC effectiveness.

#### IV. Organizational Effectiveness' Strategic Constituencies Approach

The purpose of this chapter to analyze the extent in which the concept of Strategic Constituencies approach is relevant in assessing ICC's effectiveness. This chapter consists of two parts. Part A, it seeks to define the Strategic Constituencies Approach with its limitations. Part B, it seeks to apply the strategic constituencies approach in assessing the ICC effectiveness.

##### A. Defining strategic constituencies approach:

The strategic constituencies approach expands on the two other approaches discussed above by adding various interest groups who have influence over the organization, together with and their expectations. Thus, the effectiveness of an organization is assessed with this approach through the internal and external constituencies that influence the constraints and goals of organization.<sup>89</sup>

According to Cameron, this approach assesses the effectiveness by referring to the minimum satisfaction of all of the organization's strategic constituencies. It captures all entities that are closely linked to the organization. These entities might have various roles such as the user of organizational service, the resource provider, or the organizations' facilitators, and so on.<sup>90</sup>

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<sup>89</sup> Peter Love & Martin Skitmore, *APPROACHES to ORGANISATIONAL EFFECTIVENESS and THEIR APPLICATION to CONSTRUCTION ORGANISATIONS*, (1996), <http://eprints.qut.edu.au/4524/1/4524.pdf>

<sup>90</sup> CAMERON, *Supra* note at 54.

This approach also takes into account aims to target public expectations on the outcomes that an organization delivers.<sup>91</sup> It assumes that the organization has many constituencies that have different powers and it seeks to identify the satisfaction of any constituency that may threaten the survival of the organization. Accordingly, effectiveness is defined by the degree to which the expectations of strategic constituencies are achieved by a given organization.<sup>92</sup>

Nevertheless, the strategic constituencies approach has limitations, such as ranking the constituencies of an organization according to their importance to its survival. This may be a difficult task because the environment might change rapidly and the important goal of today might not be so important tomorrow.<sup>93</sup> Also, to reach effectiveness, there is a need to be a balance between the interests. However, there may be some stakeholders who are more powerful than others and their interests may be different and also sometimes contradictory. This potentially produces a difficulty to satisfy all by consensus.<sup>94</sup>

Another problem is that sometimes it is difficult and impractical to satisfy all the expectations and needs of all the interested parties. This is especially true when there are different stakeholders, such as internal stakeholders who are parties participating in the management of an organization, and external stakeholders who are not a part of the organization's management but are affected by the organization's performance.<sup>95</sup>

It is also difficult to establish who the exact stakeholders are. There are constituencies who either involuntarily or voluntarily make contributions to the organization; therefore they are risk-bearers or potential beneficiaries.<sup>96</sup> It is not always easy to identify the strategic constituencies, especially if the organization operates in a large and complex environment.

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<sup>91</sup> THOMAS C. DALTON & LINDA C. DALTON, *THE POLITICS OF MEASURING PUBLIC SECTOR PERFORMANCE: PRODUCTIVITY AND THE PUBLIC ORGANIZATION*, 1988, <http://www.tandfonline.com/doi/pdf/10.1080/17531055.2013.874142?needAccess=true>

<sup>92</sup> *Id.*

<sup>93</sup> PETER, *Supra* note 37.

<sup>94</sup> Oghojafor, Et Al, *ORGANISATIONAL EFFECTIVENESS: WHOM AND WHAT DO WE BELIEVE?*, [http://www.scienpress.com/Upload/AMAE/Vol%202\\_4\\_6.pdf](http://www.scienpress.com/Upload/AMAE/Vol%202_4_6.pdf)

<sup>95</sup> *Id.*

<sup>96</sup> Åsa Wikberg Nilsson & Ylva Fältholm, *The Future Gap: Exploring a Critical Reflective Stakeholder Approach*, *JOURNAL OF MANAGEMENT AND SUSTAINABILITY* (2011), [www.ccsenet.org](http://www.ccsenet.org) > home > vol 1, no 1 (2011) > wikberg nilsson

Also, some groups might be overlooked but then suddenly become threats in the organization's existence. Due to the fact that it is hard to satisfy all interested groups, it is important to prioritize them as far as this is possible.<sup>97</sup>

#### B. Apply Strategic consistencies approach in assessing the ICC's effectiveness

As outlined, in order to examine the suitability of this approach, the constituencies of the ICC need to be outlined as much as far as feasible. This preliminary step must be done before analysing the relevance of this approach in assessing the ICC effectiveness. However, identifying the ICC's stakeholders might create subjective issues. The Rome Statute, alongside other official documents, helps academics to list the most explicit influential stakeholders.

The staff of the ICC can be considered as the ICCs' main internal stakeholders since they are involved in the daily Court operations. The Rome Statute has clarified that the court consists of four organs: the presidency, the chambers, the office of the prosecutor, and the registry. Each of these organs has a specific role and mandate.<sup>98</sup> In general, their expectations can include personal subjects such as the appraisal of the work of every employee. On the other hand, as regards to the staff's external expectations it can be anticipated that the employees need to elaborate incentives for states to take part in investigations and to comply with the complementarity mechanism. They can also expect that all state actors, including government and military forces, will be deterred from committing international crimes by ratifying the Rome Statute. In addition, the court expects to obtain sufficient resources to meet all of its stakeholders' expectations and this cooperation is expected to be on time.<sup>99</sup>

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<sup>97</sup>PETER, *Supra* note 37.

<sup>98</sup> *International Criminal Court Strategic Plan*, [https://www.icc-cpi.int/iccdocs/registry/Strategic\\_Plan\\_2013-2017\\_update\\_Jul\\_2015.pdf](https://www.icc-cpi.int/iccdocs/registry/Strategic_Plan_2013-2017_update_Jul_2015.pdf).

<sup>99</sup> *Coalition for the International Criminal Court*, <http://www.iccnw.org/?mod=rio>.

The ‘international community’ or ‘humanity’ which is addressed in the Preamble of the Rome Statute, should be considered as an external stakeholder of the ICC. This is due to the fact that governments and civil society together have established the ICC for the purpose of strengthening the rule of law for the entire international community.<sup>100</sup> Since the members of the international community are often so different from each other, it might be difficult to consider the community as a single unit. In general, the international community expects the Court to have a deterrent effect; however, deterrence has been a debatable issue that is hard to quantify.<sup>101</sup>

Civil society can also be considered as an external stakeholder of the ICC since they played a significant role in its establishment. According to the Rome Statute, the regional and international organizations are essential in supporting the ICC.<sup>102</sup> Actually, the role of civil society is important in promoting awareness among ICC officials and provokes them to adopt resolutions and declarations.<sup>103</sup> In addition to this, the Court may allow civil society organizations to submit an issue for observation when the ICC deems it to be appropriate.<sup>104</sup> For instance, war crimes often hurt the relationship between local communities and governments or rebel groups so civil societies are needed to support the ICC to promote justice. In general, civil society would usually expect the ICC to interfere and deliver justice whenever the national courts are unwilling or unable to hold perpetrators accountable.<sup>105</sup>

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<sup>100</sup> Press Release SG/SM/7133, *SECRETARY-GENERAL EXAMINES 'MEANING OF INTERNATIONAL COMMUNITY' IN ADDRESS TO DPI/NGO CONFERENCE*, SECRETARY-GENERAL > 20–26, 20-26 (1999), <http://www.un.org/press/en/1999/19990915.sgsm7133.doc.html>.

<sup>101</sup> FATOU BENSOUDA, *THE ICC AND THE YUGOSLAV TRIBUNAL: UPHOLDING INTERNATIONAL CRIMINAL LAW* 2014, [https://www.chathamhouse.org/sites/files/chathamhouse/field/field\\_document/2014\\_0402ICCYugoslavTribunal\\_0.pdf](https://www.chathamhouse.org/sites/files/chathamhouse/field/field_document/2014_0402ICCYugoslavTribunal_0.pdf)

<sup>102</sup> See Rome Statute, articles 87(6) and 54(3) (c) and (d) states “contemplate the ability of the Court and the Office of the Prosecutor respectively to enter into arrangements or agreements with intergovernmental organizations for assistance or cooperation.”

<sup>103</sup> Claude E. Welch & Ashley F. Watkins, <http://journal.ru/wp-content/uploads/2016/08/d-2016-154.pdf>, WWW.CORTEIDH.OR.CR/TABLAS/R2269.PDF (2016).

<sup>104</sup> *Id.*

<sup>105</sup> BENSOUDA, *Supra* note 100.



State-parties can also be considered as an external stakeholder of the ICC. As the ICC does not have a police force and it relies on international cooperation, state-parties must protect investigators, arrest suspects, and enforce decisions.<sup>106</sup> In general, states expect the ICC to be impartial and to conduct fair trials. States will need the ICC to be a legitimate institution so they can comply with its judgments and criticize it if any state fails to comply.<sup>107</sup>

The Security Council can also be considered as an external stakeholder of the ICC. Since it has competence under Chapter VII of the UN Charter for referring cases; it is legal and binding and it is enforceable on all UN member states.<sup>108</sup> A state's consent to the binding jurisdiction of the Court as soon as they ratify the Rome Statute, but no ratification is required for cases that are referred by the Security Council. Therefore, the Security Council expects the ICC to bring justice to any referred cases.<sup>109</sup>

Victims can also be considered as an external stakeholder of the ICC, as Rome Statute has demonstrates that ICC works for two forms of justice, first one is the procedural justice, a part of which is to involve victims in the proceedings and to improve victims' levels of satisfaction. Second one is the substantive justice, which includes the victim's right to reparation and other remedial measures to reduce the harm done to them.<sup>110</sup> Therefore, victims can expect the ICC to bring justice to them and fulfil their emotional and practical needs.<sup>111</sup>

In short, The ICC Strategic Constituencies may be summarised as follows: states, whether they are parties to the Rome Statute or not, victims and the 'international community' or 'humanity', as the Preamble of the Statute. Consequently, after the list of constituencies has been outlined, analysis on the suitability of this approach in assessing the effectiveness of the ICC can be made.

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<sup>106</sup>*Id.*

<sup>107</sup> Shai Dothan, *How International Courts Enhance Their Legitimacy*, 14 THEORETICAL INQUIRIES IN L.(2013).

<sup>108</sup> See Article 17 of the Rome Statute.

<sup>109</sup> Tom Buitelaar, *The ICC and the Prevention of Atrocities: Criminological Perspectives*, 17 HUMAN RIGHTS REVIEW 285–302, 285-302 (2016).

<sup>110</sup>See Article 75 (Reparations for Victims ) and Article 79 (Trust Fund) of Rome Statute.

<sup>111</sup> LUKA, *Supra* note, at 72.

As a result, the Application of the Strategic Constituencies Approach must be carried out in light of the the organization's ability to satisfy the various stakeholders inside and outside the organization. If it was a company that was to be assessed by this approach it would be necessary to examine its board member, employees, suppliers and clients and then their satisfaction. However, assessing a judicial institution might be more difficult than that. However, the possible best use of the Strategic Constituencies Approach is to help observers and policy makers to assess whether the ICC is meeting its stakeholders' expectations. For instance, using such criteria can shed light on the achievement of common expectations. Although the ICC has multiple stakeholders with various expectations, there are certain common expectations are expectations related to fair trials, holding criminals accountable and responding to victim needs.

However, this research does not intend to dwell into an empirical research into the satisfaction of all possible stakeholders. It simply seeks to assess the extent in which this approach is relevant in assessing the ICC's effectiveness. In my contention, although this approach might provide a general perspective on how well the ICC is meeting its stakeholders' expectations, still it is an insufficiently convincing approach to assessing the ICC's effectiveness for at least three issues. These issues are discussed further as follows:

- First issue, International Criminal Law (ICL) crimes are mass atrocities. It is impossible to judge every alleged perpetrator and hear every alleged victim, which makes it impossible to completely satisfy everyone. For example, Luke Moffett illustrates that the number of victims can be in the thousands, as in the Bemba case where they numbered 5,229. There is a rising concern that, due to the large number of victims, the cost connected to their participation may be extremely high. There must also be a huge effort to ensure that collectivizing victims' opinions does not filter the voice of more vulnerable groups such as children and those who have suffered sexual violence, for example.<sup>112</sup>

- Second issue is that, by definition, unwilling states will not be satisfied whether they are parties to the Statute or not. An example of this situation can be seen in the case of both Kenya and Darfur; in addition, the mission of the Court is not to satisfy these.

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<sup>112</sup> LUKA, *Supra* note, at 72.

Furthermore, not every part of society can be satisfied, due to political divisions. This comment applies to national 'internal societies' as has been demonstrated in the Kenyan case. As referring to Stahn, it is clear that the ICC is likely to disappoint one constituency or other. Where they act, they may be criticized for interfering with political priorities, such as negotiations or political settlements. Where they are absent, such as in Syria or North Korea, their absence is condemned.<sup>113</sup>

- Third issue, in relation to the international community as a stakeholder, it is arguable that as such it is impossible to identify and assess, so it seems impossible to know if this immaterial stakeholder is satisfied. From a neutral perspective, the international community is immaterial, it is impossible to measure; from a more critical perspective, it is politicisation that makes 'satisfaction' even harder to assess. In general, what weakens using this approach is measuring the satisfaction is hard; it is difficult to ensure that all victims are satisfied since you are homogenous as their needs might change over time and can cause conflict with others. Some might prefer peace over accountability or reparation instead of goods in kind. Even violations impact is not the same for all victims because of their different personal characteristics. There are even psychological damages that are immeasurable by nature.

In addition to, there are stakeholders who are powerful than other stakeholders such as the US is powerful enough to threaten the survival of the ICC while victims, their satisfaction might be considered secondary constituency, as they could not threaten the survival of the ICC compared to the US. The interests of these different stakeholders may be different and sometimes contradictory. Thus, it is hard to conduct an effective assessment on such measures as a result, this approach is not the best suited approach for assessing the ICC effectiveness

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<sup>113</sup> Carsten Stahn, *Arrest and Surrender Under the ICC Statute: A Contextual Reading*, FUTURE PERSPECTIVES ON INTERNATIONAL CRIMINAL JUSTICE 659–685, 659-685 (2010).

## V. Organizational Effectiveness' contradictions Approach

The purpose of this chapter to analyze the extent in which the concept of contradictions Approach is relevant in assessing ICC's effectiveness. This chapter consists of two parts. In part A, it seeks to define the contradiction approach with its limitations. In part B, it seeks to apply the contradictions Approach in assessing the ICC effectiveness.

### A. Defining Contradiction Approach:

The contradiction approach is also known as the competing values or interests approach. The effectiveness assessment criteria of the approach is based on assessing the organization's effectiveness are based on the organization's ability to balance the contradicting interests. For an organization to be effective under this approach, it would be required to balance the internal and external issues at the same time, such as focusing on people development and organizational development simultaneously. That would include paying consideration to both feelings and needs of an organization's employees, while at the same time giving importance to high productivity and achievements. The satisfaction of both variables may cause conflicts in organizational structure.<sup>114</sup>

Another important consideration for the Contradictions Approach is measuring an organization's stability. This entails a balance between control and flexibility. That requires balancing between innovation, adaption and change on one hand and stability, order and predictability, on another.<sup>115</sup> Additionally, an effective organization according to the Contradictions Approach would require a balance between its internal processes and between short term and long term goals.<sup>116</sup>

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<sup>114</sup> Robert E. Quinn & John Rohrbaugh, *A Spatial Model of Effectiveness Criteria: Towards a Competing Values Approach to Organizational Analysis*, *Mgmt. Sci.* 29, 363- 377, 1983.

<sup>115</sup> *Id.*

<sup>116</sup> *Id.*

The Contradictions Approach expands on the three approaches discussed above. The logic of the approach is to obtain a comprehensive view of all correlated factors. It seeks to overcome the limitations of the goal, systems and strategic consistencies approaches. The goal-attainment approach focuses on the ends while the systems resource approach focuses on the means while the strategic consistencies approach focuses on the stakeholder's satisfaction while the Contradictions Approach assesses the organization's effectiveness by assessing its ability to balance contradicting interests that have the potential to create conflicts.<sup>117</sup> Since this approach comprises comprehensive view, it could cover and solve some of the limits that have been previously discussed in relation to the three others approaches

Nevertheless, the Contradictions Approach has some limitations. For example, when a complex organization has too many competing values it may be impossible to group them into a single reliable variable. In addition, considering which value or interest should take priority might not be clear. Also, not all organizations would necessarily have a clear-cut list of competing values and interests. Last but not least, the combination of multiple interest to measure might lead to inaccuracies.<sup>118</sup>

#### B. Applying the contradiction approach in assessing the ICC effectiveness:

As mentioned above, the effectiveness criteria are based on balancing the contradicting interests within an organization. The greatest limitation of this approach, is derived from the fact that the criteria to identify appropriate contradicting interests may not be clear enough, Still, scholars can illustrate the most renowned contradicting interests that ICC might be facing, which are also shown in the previous chapters. This preliminary step

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<sup>117</sup> *Id.*

<sup>118</sup> Bluedorn, A. C., *Cutting the Gordian Knot: A Critique of the Effectiveness Tradition in Organizational Research*, 64 *Soc. & Soc. RES.*477-496 (1980).

must be done before analyzing the suitability of this approach in assessing the ICC effectiveness

The ICC has a number of complex, contradicting interests or in other words competing interests. One of these is peace versus justice. For instance, tension raised from the desire to stop ongoing conflicts and to bring suspected leaders to justice. Leaders will hold power and continue to fight in stubborn manner. The desire to enforce international criminal law always begins with a clash with sensitive calculations, such as how many lives will be lost in order to attain justice.<sup>119</sup> Another example, in the context of Uganda, scholars such as Hayner portrays the ICC as an obstacle to peace for stating that peace should exist before justice. Specifically, Ugandans have their own indigenous forms of justice consequently the ICC's intervention has been criticized also in so far as it goes against indigenous justice practices which resulted to more clash.<sup>120</sup> This post-conflict illustrates the tension between peace and justice while the two concepts may be complementary, in states in conflict these may become incompatible. Thus, both peace and justice need to be seen from a holistic point of view.<sup>121</sup>

Other scholars, including Juan, argue that a choice between justice and peace may only be artificial, since if one is chosen over the other, none would be actually reached. Arguably, though, justice and peace are equally valuable.<sup>122</sup> Even the Kampala Declaration asserts that the Court was persuaded that there could be no lasting peace without justice; thus these are considered as complementary requirements.<sup>123</sup> However, the issue is that achieving peace and justice at the same time may be controversial. For instance, providing causality

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<sup>119</sup> REVIEW ICC-ASP/14/38 FOURTEENTH SESSION, THE HAGUE, 18-26 NOVEMBER 2015

<sup>120</sup> PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS, 2011, [https://www.mcgill.ca/isid/files/isid/priscilla\\_b.\\_hayner\\_unspeakable\\_truths\\_transititbookzz.org\\_.pdf](https://www.mcgill.ca/isid/files/isid/priscilla_b._hayner_unspeakable_truths_transititbookzz.org_.pdf).

<sup>121</sup> Katherine Southwick, *Investigating War in Northern Uganda: Dilemmas for the International Criminal Court*, YALE L. SCH. (2005), <http://yalejournal.org/wp-content/uploads/2011/01/051110southwick.pdf>

<sup>122</sup> Juan E. Méndez, *Speeches: Transitional Justice, Peace, and Prevention: University of Baltimore Law School* October 26, 2010, 40 Balt. L. REV. (2011), <http://scholarworks.law.ubalt.edu/cgi/viewcontent.cgi?article=1888&context=ublr>

<sup>123</sup> REVIEW CONFERENCE OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT, 2010.

between an individual's actions and a horrible event by administering justice in the chaos of political, economic and social deprivation might be a cumbersome task.<sup>124</sup>

Another contradicting interest of the ICC that may be considered is striking the balance between law and politics. Scholars such as David considers that the ICC's pursuit for justice is shaped by international politics. As stated above, the ICC neither has a police force nor an effective means to oblige states to cooperate. This issue has obliged the ICC to seek assistance from the Security Council, as there is no better international institution that can assist the Court, however this institution is highly politicized and it often cannot strike consensus. The Kenyan situation also demonstrates the role of politics in shaping the effectiveness of the ICC. The case collapsed due to the political engagement of the African Union.<sup>125</sup> Also, as outlined above, many states criticize the Court for being politically biased in relation to conducting prosecutions only against African leaders.

Another example is President Omar al-Bashir of Sudan who is subject to an ICC arrest warrant, for committing atrocities in Darfur that was never enforced. The Security Council did not assist the Court despite the former referred the case itself.<sup>126</sup> That being said, it is a separate issue that some of the permanent Security Council members have not ratified the Rome Statute for political reasons Thus, there is a lack of support from influential countries such the USA, China and Russia – more than half of the permanent members.<sup>127</sup>

Another major contradicting interest that needs balancing in the ICC has to do with the rule of law on hand and state sovereignty, on the other. For instance, the Rome Statute obliges state-parties to enforce the ICC's decisions but it does not provide any specific way for that enforcement. This entails the ICC system to rely on the order of state sovereignty. Thus, it is arguable whether or not state sovereignty enables or restricts the ICC's capacity to bring

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<sup>124</sup> Tallgren, *supra* note 50

<sup>125</sup> David Kaye & Kal Raustiala, *The Council and the Court: Law and Politics in the Rise of the International Criminal Court*, 94 TEX. L. REV.(2005), <https://ssrn.com/abstract=2752682>.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

justice. The Court adheres to the international system but at the same time this may lead to limitations of enforceability and independence.<sup>128</sup>

Another set of contradicting interests in the ICC lies in the Court's limited resources and time in light of its enormous mandate. The ICC is a Court of last resort where it exercises jurisdiction only when national courts are unwilling or unable to act. This may cause extreme confusion because the ICC works whenever the national judiciary fails, but at the same time the ICC cannot function without the assistance of the national judiciary.<sup>129</sup> This means that the complementarity principle creates a dilemma because the states can discharge the Court's role in prosecuting crimes, which will make it harder for the Court to fulfil its role. The complementarity principle creates competing interests because if states discharge the Court's role in prosecuting crimes, that may make it harder for the Court to fulfil its role.

This illustrates the weakness in the Court's structure, such as the complexity in collecting evidence during investigations regarding mass crimes that are committed in places that are too far from the Court.<sup>130</sup> The prosecution will be challenged because, for instance in Sudan, there is no government cooperation as the investigation target was at a high level in the government. Consequently, the prosecution depended on international support, while the international community did not provide any substantive pressure. This demonstrates the lack of political will in dealing with the Khartoum.<sup>131</sup>

This demonstrates that the ICC has to do little when states breach their obligations to fully cooperate with the Court in relation to arrest warrants.<sup>132</sup> This means that if states do not comply with evidence requests, this will lead to the defendant not having a fair trial. In fact, there will be no trials at all if the indictments are not transferred to the Court.<sup>133</sup>

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<sup>128</sup> KATHERINE, *Supra* note 3.

<sup>129</sup> *Id.*

<sup>130</sup> Hans-Peter Kaul, *the International Criminal Court: Current Challenges and Perspectives*, 6 WASH. U. GLOBAL STUD. L. REV. 575-582 (2007).

<sup>131</sup> Prosecutor vs. Omar Hassan Ahmad Al Bashi , Case No. ICC-02/05-01/09, Warrant of Arrest ¶ 22(26 March 2015), <https://www.icc-cpi.int/darfur/albashir/Documents/AlBashirEng.pdf>

<sup>132</sup> Philippe Kirsch, *The Role of the International Criminal Court in Enforcing International Criminal Law*, 22 AM. U. INT'L L. REV. 539-547 (2007).

<sup>133</sup> Stevens, *supra* note 76



According to Antonio, the ICC is like a giant with no legs and arms, since it is fighting against impunity and heavily relies on state cooperation.<sup>134</sup> The ICC hopes to end impunity but until now it has not demonstrated effective movement towards achieving its goals due to the statutory, political and financial restrictions.

The ICC also has contradicting interests in its goals. For example, to reach the goal of historical record can be difficult for judges due to their capacity, as it is illogical that they ignore the time constraints in making their decisions. There should be no rush in making decisions and, at the same time, they need to reach their goal in achieving historical record.<sup>135</sup> In addition to the complex relationship between the procedure's rights and victims' rights, it is vital to make victims express their sufferings but, at the same time, in the mass atrocities it delays the proceedings.<sup>136</sup> In addition to ranking ICC goals creates a dilemma. Weighting the competing goals and agreeing on a clear set of prioritized goals is essential to overcoming the ICC's challenges to achieve its goals. However, in reality there is no set of goal priorities, because some of goals resist the gradation.<sup>137</sup>

In short, the literature and previous chapters can illustrate that the major competing interests of the ICC can be summarized within a complex balance to be made among peace and justice, politics and law, goals and Court capability. Consequently, after the list of ICCs' contradicting interests have been outlined my analysis can be made.

As result, the Application of the contradiction Approach must be carried out in light of the organization's ability to acquire the required balance among contradicting interests. If a commercial company had to be assessed, that would be an appraisal of, for example, the production outputs per year to cover costs and gain profit. In the same time there might

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<sup>134</sup> ANTONIO CASSESE, *International Criminal Law*, Oxford, Oxford University Press, 2003, pp. 472., 14 THE ITALIAN YEARBOOK OF INTERNATIONAL LAW ONLINE 497–501, 497-501 (2004).

<sup>135</sup> Mirjan R. Damaska, *What Is the Point of International Criminal Justice?*, 83 CHI.-KENT L. REV. 329-365 (2008).

<sup>136</sup> Shane Darcy, *Imputed Criminal Liability and the Goals of International Justice*, 20 LEIDEN J. OF INT'L L., <https://www.wcl.american.edu/warcrimes/icc/documents/1106report.pdf>

<sup>137</sup> CHRIS TENOVE, THE INTERNATIONAL CRIMINAL COURT: CHALLENGES OF VICTIM ASSISTANCE, PARTICIPATION AND REPARATIONS, <http://dspace.africaportal.org/jspui/bitstream/123456789/33510/1/Backgrounder%20No%20%2052%20-%20The%20International%20Criminal%20Court%20Challenges%20of%20Victim%20Assistance%20Participation%20and%20Reparations.pdf?1>

be, for example, a shortage in the raw materials. Using the approach's effectiveness criteria, the organization is assessed on its ability to find alternative solutions to balance between the need to produce more and the shortage of raw materials.

On the other hand, if an NGO, for example, fighting for public education, had to be assessed, that would be an appraisal of, the possibility of training numerous teachers in a particular poor area where there is a shortage in the funds. Using the Contradictions Approach would entail an assessment based on the organization's ability to create alternative solutions and to balance between the need to train many teachers and the funding shortage. However, assessing a judicial establishment would require different, somewhat more complex considerations. The Contradictions Approach may be relevant to that end due to at least three reasons:

1. The ICC has conflicting goals and functions;
2. The ICC faces a complex environment;
3. The ICC faces multiple internal and external stakeholders or constituent groups that make competing or conflicting demands.

As discussed above, the ICC has many numerous conflicting interests that create issues that might be causing the Court to be ineffective. Thus, the logical solution might be, instead of focusing on goals or systemic interactions or stakeholders' satisfaction, to focus on combining all three approaches into one by focusing on the required balances that the Court has to strike between opposed actors and contradictory contingencies. This appears to be the most suitable approach for assessing the ICC's effectiveness because it has a comprehensive view. It focuses on balancing competing interests to be able to highlight the strengths versus the weaknesses.

Using such criteria can provide alternative solutions to acquire the required balance. It enables observers to recommend different solutions for the ICC to be more effective and to have realistic expectations. This is related to Bassiouni suggestions, it is essential to examine the Court's limitations in light of its potential in delivering peace and justice.

There is a need to provide critical insight into the weaknesses and strengths of post conflict international criminal trials and to have realistic expectations.<sup>138</sup>

The Contradictions Approach could help to assess the various actions of the Court, within the complex balance that must be made between peace and justice, politics and law. It could help to assess the Court's ability to manage politically delicate situations, for instance: sometimes, it might be better to wait before launching procedures in order to let a state stabilise or, on the contrary, it might be crucial to strongly condemn crimes in order to ensure justice by enacting the implicit 'expressive' function of international trials.

Assessing the ICC by its ability to cope with its competing tension and acquiring the required balance is the most suitable way to assess its effectiveness. This is related to Stahns' statement that "tensions might not be always negative still they can be positive." Some of these tensions are positive, such as the peace versus justice debate in post conflict areas. What needs attention is risk evaluation, timing, modalities and sequencing of court action.<sup>139</sup>

In short, my contention that the Contradictions Approach could cover and solve some of the limits that have been previously discussed in relation to the three others approaches (see Chapters II to IV). The ICC can only be effective if it is balancing good relations with states with asserting jurisdiction, reparations for victims with deterrence; and politics with the justice. This also relates to balancing insufficient and unsatisfactory reparations and the symbolic impact of material and symbolic functions. The symbolic role of the Court needs to be acknowledged – it cannot serve justice to the whole world. In this context, the Contradictions Approach organization effectiveness is not only the most accurate, but could even generate a solid path towards new practices and analyses. The only limitation of this approach would stem from the lack of clarity in identifying the ICC's competing interests. However, using the previous three organizational effectiveness approaches and the relevant literature can support in identifying them. Further research is still needed in

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<sup>138</sup> Cherif Bassiouni, *The ICC — Quo Vadis?*, 4 J. OF INT'L CRIM. JUST. ( 2006).

<sup>139</sup> Carsten Stahn, *Arrest and Surrender Under the ICC Statute: A Contextual Reading*, FUTURE PERSPECTIVES ON INTERNATIONAL CRIMINAL JUSTICE 659–685, 659-685 (2010).

order to address the exact criteria but surely, there must be a way to assess the International Criminal Court.

## VI. Conclusion

It is a real challenge to define what counts as a success for international courts. Coming up with a clear answer on how to measure the effectiveness or the success of international courts such as the ICC is by no means straightforward. There is hardly any consensus on the clear criteria needed to assess the Court. Consequently, it is useful to try and look for different, non-traditional ways of assessment. This research proposed borrowing the Organizational Effectiveness Theory from the field of Social Science as a new way to assess the Court. It sought to establish the most suitable approach, rather than to conduct the assessment. The latter would not be possible without input from the Court itself. In any case, such assessment would require an examination of the necessary balances that need to be observed in this complex environment. Yuval rightfully acknowledges that the use of social science can improve the analytical understanding of international courts with respect to their social functions and it can provoke a beneficial dialogue about the role of international courts.

The Goal Approach may be useful to assess the degree to which the ICC has reached its stated goals but it is insufficiently convincing in relation to the unstated and intangible goals of the organization. The Systems Resource Approach may be suitable to assess the necessary resources of the Court and the correlation among its sub-systems, however such examination falls short of considering external factors which may also affect the organizations' survival. The Strategic Constituencies Approach is helpful to the extent that it can be assessed whether the Court is meeting its stakeholders' expectations or not, but the main limitation is connected to the impossibility to measure and satisfy all possible constituents.

Finally, although the analysis of the Contradictions Approach illustrates that it may be hard to identify all contradicting interests of the Court, this approach may still be the most suitable. It brings together all approaches previously discussed and seeks to overcome their limitations. The utilization of this approach would be helpful to observe the weaknesses and strengths of the Court in light of striking the right balance among all competing interests that could eventually translate to formulating policy recommendations related to increasing effectiveness. In that respect, the way forward is to develop specific indicators in relation to the most pertinent competing interests of the International Criminal Court. Going back to the research question on whether Organizational Effectiveness Theory is suitable to be used as a tool to assess the International Criminal Court, it may be noted that at first glance, organizational effectiveness might appear irrelevant to the extent that all approaches have some limitations. Nonetheless, organizational effectiveness theory draws the attention to less commented, social aspects of the ICC.