



PERMANENT MISSION
OF THE PRINCIPALITY OF LIECHTENSTEIN
TO THE UNITED NATIONS
NEW YORK



10 March 2015 | All Photo Credits: Don Pollard

High-Level Discussion: Assessing the Deterrent Effects of the International Criminal Court (ICC)

Since its establishment in 2002, the International Criminal Court (ICC) has made valuable contributions to the fight for international justice by deterring individuals, groups, and governments from committing mass atrocity crimes. Despite these achievements, however, the court still faces obstacles and widespread criticism, some of it politically motivated.

This is what emerged from a March 10th panel co-hosted by IPI and the Permanent Mission of Liechtenstein to the UN on the topic of “Can the International Criminal Court Deter Atrocity?” The panel saw the participation of international legal experts and high-level representatives from international human rights groups who discussed the deterrent effects of the Hague-based court and assessed the criticisms it has faced over the years.

“Since starting its operations in the year 2003, the court has become a fixture on the international scene and is subject to the scrutiny of the public,” said Foreign Minister Aurelia Frick of Liechtenstein in opening remarks. “It is also subject to the competing powers of politics, especially when it is investigating



H.E. Ms. Aurelia Frick,
Minister of Foreign Affairs of
the Principality of Liechtenstein;
Coordinator of the Informal
Ministerial Network for the ICC

individuals who are themselves in a position of power. That is a tough spot to be in for an institution that focuses on the law, not politics.”

Ms. Frick, who personally leads an informal network of 29 foreign affairs and justice ministers from around the world supporting the work of the ICC, said one of the best ways to address this criticism is to rely on the facts.

Beth A. Simmons, professor of International Affairs in the Department of Government at Harvard University, sought to do just that. Presenting the findings of a recent study she co-authored with Hyeran Jo of Texas A&M University, she said the answer to whether the ICC can deter mass atrocities is a “conditional yes,” arguing that the case for the ICC is stronger when scholars and practitioners can show pragmatic, fact-based reasons for supporting it. And in that regard, she said, the evidence is generally positive—albeit mixed.

There are two aspects of how the court can have a deterrent effect, Ms. Simmons said. One is direct and takes place when the court punishes an individual through prosecution, indictments, and other consequences of violating the relevant law. The second kind, which Ms. Simmons said is critical in realizing the court’s potential, is what she calls “social deterrence.” “It is extra-legal, beyond the likelihood that you will be punished. It can include damage to reputation, informal sanctions..., being excluded, being shunned,” she said.

Social deterrence can be a very powerful tool, Ms. Simmons said, but under certain conditions. “It is only going to matter to those actors who care about their reputation and who want to be part of international society,” she added.



Mr. Kenneth Roth,
Executive Director of Human Rights Watch



Professor Beth A. Simmons,
Clarence Dillon Professor of
International Affairs,
Dept. of Government,
University of Harvard

Citing a few examples, Human Rights Watch Executive Director Kenneth Roth agreed with Ms. Simmons that social deterrence can play an important role in the work of the court. Recalling a trip to Nigeria by Sudanese President Omar al-Bashir—against whom the ICC had issued an arrest warrant—Mr. Roth said that within 24 hours of having landed in the capital Abuja, Mr. Bashir had to get back on a plane for fear of arrest.

The episode not only highlighted the credibility of an ICC arrest warrant, Mr. Roth said; it also showed the court’s social effect.

“This was a disaster for legitimacy purposes. It completely undermined his

effort to show that he was a respected international leader who could hobnob with other international leaders,” he said.

Another notable example cited by Mr. Roth was the civil war in Cote d’Ivoire which shook the country a decade ago. When the UN special adviser on the prevention of genocide at the time threatened to refer the conflict to the ICC, Mr. Roth said that government-controlled radio and TV stations suddenly switched their messages. “[They] went from appeals to ethnic hatred to messages of restraint,” he said. “I don’t think this was a coincidence.”

Despite these positive achievements, the panelists also highlighted continuing obstacles to the court’s work. Simon Adams, the executive director of the Global Centre for the Responsibility to Protect, noted that there is still much to be done. He stated:



“I think that overall we have seen real success stories where the ICC has played a deterrent role preventing mass atrocity crimes ... but we cannot deny that the deterrent effect of the ICC has not been fully realized.”

Dr. Simon Adams, Executive Director of the Global Centre for the Responsibility to Protect

In that regard, Mr. Adams said the primary culprit is the often obstructive role played by the UN Security Council. “You only need to look at the whole issue of Syria and the veto of the Security Council—the blockage inside the Council—the deployment, in that case, of the veto by Russia and China,” to realize the detrimental role the body can play, he said.

If these challenges are addressed, the court could make a serious contribution to the fight against impunity and mass atrocities, the panelists agreed—though short of becoming the “silver bullet” of the international justice system.

“I’m not claiming that the ICC is a magical institution that solves all crime, that stops all war,” Ms. Simmons warned. “It does none of those things. But it does seem to... raise the risk of prosecution where it has jurisdiction, where it’s supported by national statutes, and when it takes action, not so much when it backs off from action.”

IPI Vice President and Secretary-General of the Independent Commission on Multilateralism Hardeep Puri moderated the discussion.

To access video of the event visit:
<http://youtu.be/sRrmfIQZLT8>

To access Jo, Hyeran and Simmons, Beth A., *Can the International Criminal Court Deter Atrocity?* (2014), visit:
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2552820