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POLICE FORCE ORGAN TO SUPPORT THE ICC'S JUDGMENTS AND ARREST WARRANTS: A *PROPOSITION TO AMEND ARTICLE* *86 OF THE ROME STATUTE*

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INTRODUCTION

Omar Al Bashir became president of Sudan in 1989. His time in office was marked by various crimes, such as war crimes and crimes against humanity.¹ Because of his conduct while in office, president Al Bashir was indicted by the International Criminal Court for committing war crimes and crimes against humanity on March, 2009.² The Court issued an arrest warrant to bring him and prosecute him before the Court. The Statute of Rome established the ICC. Article 86 of the Rome Statute requires all signatories to cooperate with the ICC by complying with the

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courts' orders including arresting those sought by a warrant. In 2010, Omar Al Bashir visited the Republic of Chad, a signatory of the Rome Statute, but was not arrested.³ In 2017, he visited the Kingdom of Saudi Arabia, another signatory of the Rome Statute. Again, nothing happened. The countries in question gave no reasons for not arresting him.⁴

The failed attempts to arrest Omar Al Bashir illustrate the limitations of the International Criminal Court (ICC) in achieving its primary goal.⁵ Although the Rome Statute stated that states parties have an obligation to cooperate with the ICC to arrest the international criminals, many states have violated it. Since Mr. Bashir was indicted, many heads of states have failed to comply, and have instead let him enter and depart their countries.⁶ Under the Rome Statute, the ICC can indict any crime perpetrator who commits the stated crimes anywhere in the world.⁷ However, issues of enforcement have continued to hinder ICC's ability to achieve its mandate since it was established. Nevertheless, cases like Mr. Al Bashir's demonstrate that the ICC has no real power to arrest and put persons it has indicted behind bars. As demonstrated, the court exclusively depends on other heads of states and governments' cooperation for arresting of indicted international criminals.⁸ Unless efforts are made to provide the court with a strong police force, powerful indictees will continue to walk scot-free.⁹ Therefore, this note proposes an amendment to Article 86 of the Rome Statute which provides for the formation of a police force system that would address the problem of law enforcement, reinforce the court's dwindling credibility, and reduce the dependence on establishing "Ad hoc" tribunals, which is tremendously expensive, and take long procedures associated with them.

Before addressing the issue with the ICC Statute and its limitations, it is appropriate to note the history of the ICC and its interpretation. Therefore, Part II of this Thesis will address a background of the International criminal court and a brief history of the attempts to arrest the Sudan's president Omar Al Bashir as an example of the recent history of the ICC's arrest warrants process. Part III will discuss why an amendment to Article 86 of the Rome Statute is necessary and the nature of this amendment. Part IV will show how the credibility of the International Criminal Court would be enhanced as a result of the

suggested amendment to Article 86 of the Rome Statute. Finally, Part V of the Thesis will argue the issue of seeking an Ad hoc tribunal, and how that, by amending Article 86, will let the states seek the International Criminal Court, instead.

I. BACKGROUND

A. *Brief History of the ICC*

In 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court adopted the Rome Statute with the primary goal of prosecuting perpetrators of crimes against humanity and genocide. ICC is governed by the Rome Statute, and the statute has structured the function of the court starting from referring the case to prosecuting the perpetrator. In article 86 of the Rome Statute, it states that the court depends solely on states cooperation in indicting international criminals. In effect, it was believed that prosecuting individuals at the highest court would not only stop such crimes, but also help to prevent their perpetration.¹⁰ Along with the history, most war criminals and perpetrators of crimes against humanity have gone without being indicted, because the court was depending on the states cooperation with the court and the court doesn't have a police force system.¹¹ However, it is logical to conclude that most of them have ascertained that their crimes would go in vain. Therefore, effective deterrence was a primary goal for those who were working to establish the international criminal court.¹² To achieve the primary goal of court, an amendment to article 86 is required to create the police force. Once the international community ascertained that there is a legal body who can, not only indict international criminals but also have the police force to arrest and implement the courts' judgments on them, then those perpetrators or even the ones who think to commit those atrocities will no longer find willing helpers.¹³

B. The Issue with Article 86 of the Rome Statute.

The ICC wanted to try Omar Al Bashir, Sudan's president, for crimes against humanity, war crimes and genocide in Darfur since 2005.¹⁴ The ICC issued two arrest warrants in 2009 and 2010, Al Bashir became the first ever sitting head of state to be wanted by an international court.¹⁵ Many state parties to the ICC such as Chad, let him enter and depart their countries without complying with the Rome Statute it had ratified.¹⁶ The UN Security Council referred Mr. Al Bashir's case to the ICC, but has also failed to achieve its goal by wanting Al Bashir to be tried under the jurisdiction of ICC regarding his atrocities in Darfur.¹⁷

Another tragic of not having a police force system along with the International criminal court is the failed attempts to arrest Muammar Al Gaddafi, the Libyan President as well. This case showed the weakness of the International Criminal Court in enforcing its powers to arrest. In 2011, the International Criminal Court Issued an arrest warrant to the former president of Libya, Muammar Al Gaddafi for committing crimes against humanity in Benghazi, Libya.¹⁸ Although Libya is not a state party to the Rome Statute, the Security Council issued Resolution 1970 which refers the case of Muammar Al Gaddafi's atrocities to the ICC to prosecute him. Since that date of the issuance of the arrest warrant, Al Gaddafi visited many states parties and departed without arresting him although those states were parties to the Rome Statute such as Egypt.¹⁹ This example also shows the failure of Article 86 of the Rome Statute to achieve its primary goal.

As long as the ICC does not have the police force system, it will not overcome the issue of implementing its judgments and its arrest warrants.²⁰ Article 86 from the Rome Statute states: "States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court."²¹ The interpretation of article 86 is that the states parties to Rome Statute "ICC" are obligated to "cooperate" with the courts'

investigation and prosecution of the crimes stated in its constitution. In other words, the state parties have the obligation in only cooperation, and the court does not have the authority to, physically, arrest and indict the international criminals as long as the states parties are not cooperating. If the member states fail to cooperate with the court, however, the Rome Statute is silent on the outcome, and that explains the necessity of having the police force system along with the ICC. Thus, the sole solution to that issue is by amending article 86 from the Rome Statute, and by that amendment, the court will have the authority to establish a police force system along with the court which will eliminate the issue of the sole cooperation with the states parties. Also, it will add a credibility to the legal body of the international criminal court and will cut down the seeking of establishing Ad hoc tribunals.

II. DISCOURAGING THE STATES' OPPOSITION TO THE POLICE FORCE SYSTEM

There was a dispute in the proposal of a police force system along with the International Criminal Court. The debate on creating the police force to help arrest international criminals led to fears and risks that the opposition of the states will create a hurdle in establishing the police force system. The police force system might not eliminate the sole cooperation of the states, and it will conflict with the State Sovereignty doctrine. However, the answer to those hurdles is possible. As discussed in part I of the paper, amending article 86 to include the establishment of an independent police force would provide the court with a mechanism through which it can instantly enforce its judgments without exclusively depending on members' collaboration, and therefore, eliminate the only cooperation issue. In addition, such a move would address the dilemma surrounding the sovereignty through complementarity and universal jurisdiction.

A. *Elimination of the Sole Cooperation on the States Parties.*

Revising Article 86 to introduce a police force system can eliminate the sole dependence on states parties' cooperation to enforce its

mandate.²² The case of Al Bashir exposes serious weakness in article 86 of the Rome Statute insofar as the prosecution of the international criminals is concerned. It states “States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.”²³ Together with other related articles, it provides the prosecutor of the ICC with the authority to indict a citizen of a member state believed to have committed a crime on the territory of a member state. Also, and with that revision, a national of non-member country may be referred by the UN Security Council to the prosecutor.²⁴ These provisions limit the ICC’s power to prosecute criminal suspects. For instance, the UN Security Council referred Al Bashir case to the prosecutor, which subsequently led to his indictment for war crimes, crimes against humanity, and committing genocide.²⁵ The ICC would not have a jurisdiction over him because Sudan is not a state party to the Rome Statute. Therefore, the ICC does not have the capability to bring President Al Bashir to The Hague for prosecution without the cooperation of member states to extradite him.²⁶ This limitation is further worsened by the fact that some countries are not member states to the ICC. For instance, the fact that Sudan is not a state party to the Rome Statute makes it difficult for the ICC to bring Al Bashir to The Hague for prosecution. Under the Rome Statute, the ICC has the authority to arrest Al Bashir when he travels to member states because they are obliged to cooperate with its requests.²⁷ Therefore, the creation of an ICC police force would minimize or even eliminate the current dependence on member states for cooperation.

B. *Preservation of State Sovereignty through Complementarity and Universal Jurisdiction.*

Introducing a police force system, by amending Article 86, will benefit the ICC. However, this idea is unlikely to gain acceptance from various countries because of concerns relating to state independency and the impact such a force will have.²⁸ For many states, establishing an

international police force is a non-starter. The issue of state sovereignty has elicited heated debates since the ICC was established. Critics of this court argue that it does not respect national policy even if it upholds state security. The United States, which was among the first states to oversee the creation of the ICC, subsequently opted to go against it due to sovereignty issues.²⁹ Other states, such as India, have also opposed the mandate of the ICC because they view it as an infringement on national independency by rich countries keen on using the institution as an avenue to advance their selfish interests.³⁰ Based on these concerns, it is likely that some states, if not all, will oppose the creation of an independent international police to oversee the ICC's law enforcement duties.

However, these concerns can be alleviated if the creation of such a force will be founded on the principle of complementarity and universal jurisdiction. In principle, the ICC does not get involved in cases where a member state is not willing to take action.³¹ Therefore, the court usually works closely with member states to ensure crime suspects are prosecuted.³² Adopting the complementarity principle and the concept of universal jurisdiction in developing an independent force will help preserve a country's sovereignty and assist the ICC to address the issue of non-compliance by certain indicted suspects.

The complementarity idea upon which the ICC is founded provides that the court can only investigate and prosecute criminal elements when local jurisdictions are unable or unwilling to do so genuinely.³³ The principle rests on the realization that it is important to respect state sovereignty, hence the need to allow crimes to be investigated and prosecuted in the countries where they were allegedly committed.³⁴ On the other hand, the concept of universal jurisdiction was adopted as a last resort in instances where it is hard to investigate and prosecute internal crimes on the basis of national territory.³⁵ Furthermore, this principle allows the prosecution of major domestic crimes perpetrated in foreign countries by foreigners against foreign citizens, especially when neither of them have no personal connections to the forum states.³⁶

Under these principles, an independent international police force along with the ICC should be a heavily armed unit that is strong enough

to thwart powerful armed non-governmental groups but incapable of engaging even a weak government. Therefore, such a force will have the power to capture a criminal suspect who is being protected under the state sovereignty doctrine. At the same time, it will be applying the principle of complementarity and universal jurisdiction equally. The objective and mandate of such a force would be to intervene, if requested by either the ICC or the Security Council, to pursue war criminals across borders.³⁷ If established, therefore, this force would help the ICC to undertake its law enforcement duties efficiently without depending exclusively on state compliance to do so. This would be of great help in cases where the states are unwilling or unable to bring suspected criminals for investigations and prosecuting. For example, the Ugandan government has been unable to surrender to the ICC Joseph Kony, a rebel leader indicted for crimes against humanity, to The Hague due to its inability issues.³⁸ With highly qualified security agents, the international police force would tackle such a problem by tracking the inductees and arrest them.

This law-enforcement function of the ICC would build on the precedent set by Interpol, which is the second largest intergovernmental organization in the world after the UN.³⁹ With 190 member states, Interpol is regarded as an international police force, even though it does not have the powers to arrest criminal suspects.⁴⁰ This force functions as an information-sharing network among its member states by offering certain critical information that may result in the arrest of criminal elements.⁴¹ As is the case with Interpol, an independent international police working under the ICC can establish close relations with member states to apply law enforcement.

III. PROMOTING THE ICC'S CREDIBILITY

The establishment of a police force will help the ICC achieve greater credibility. Any criminal justice system anywhere in the world needs to be perceived credible for the people to have faith in it and for potential criminals to be deterred by it. Achieving credibility requires a demonstration of not only fairness in judgments, but also effective law enforcement.

However, if there is any criminal justice system that requires credibility the more, then it's the ICC. This is the court that is entrusted with the responsibility to discharge justice to several member states throughout the world. For the ICC to play its central role in promoting justice by prosecuting criminal elements, it requires full support from the member states. Notwithstanding, this support cannot be achieved without the member states throughout the world without having the confidence in it. The establishment of police force will, absolutely, help, not only ICC, but every criminal legal body to achieve credibility.

A. *Eliminating Hurdles to Law Enforcement*

Following the countless fruitless attempts to arrest Al Bashir and bring him to The Hague to answer to the charges against him, many observers have consistently questioned the ICC's credibility.⁴² As already noted, without any established police system, the ICC depends on member states for law enforcement following its issuance of orders. Some indictees, such as Al Bashir and Joseph Kony of Uganda, have failed to appear before the court due to the failure of member states to comply with the ICC.⁴³ Consequently, many have been left to question the authority of the ICC as part of the international system of criminal justice.⁴⁴ Countries like Uganda, Chad, Jordan, and South Africa have allowed Al Bashir to enter and leave their countries, although the Rome Statute requires these member states to arrest him.⁴⁵

For instance, South Africa was a strong supporter of the ICC and one of the leading founding members. However, the decision to allow Al Bashir to visit and leave South Africa without arresting him suggests how ineffective the ICC is when it comes to enforcing its mandate.⁴⁶ According to some observers, Al Bashir and other indictees can only be arrested and prosecuted if powerful countries like the US and the UN Security Council combine forces prioritize the court's core mandate.⁴⁷ While the US has the capability to assist the ICC to enforce its responsibility, it faces a major credibility problem of its own. Alongside the countries, such as Russia, India, and China, the US is not member of

the ICC.⁴⁸ In 2011, Al Bashir visited China, and was welcomed by the Chinese president Hu Jintao.⁴⁹ In sum, Al Bashir drama demonstrates the ineptness of the ICC in matters related to arresting and prosecuting crime suspects.⁵⁰

Recently, Fatou Bensouda, the Chief Prosecutor at the ICC, criticized the UN Security Council and its member states for failing to take action against indictees who have failed to present themselves in the court for trial.⁵¹ According to her, the failure of ICC members to apprehend criminal suspects sought by the tribunal is a clear violation of the Rome Statute that established the court.⁵² In particular, the failure to apprehend and surrender crime suspects to the ICC undermines the requirements of the Rome Statute. However, the customary law that provides heads of states immunity does not prevent the ICC from issuing warrants of arrest.⁵³ Therefore, all member states have a duty to play a role when it comes to ensuring total compliance with the Rome Statute. The ICC has since referred various non-compliant countries to the UN Security Council for action; however, no decisive steps have been taken.⁵⁴ This has led the ICC Chief Prosecutor to blame the UN Security Council by arguing that its reluctance to take action against non-compliant states has significantly dented the court's credibility.⁵⁵

B. *Improving the Structure of the Rome Statute*

A critical assessment of the cooperation regime under the Rome Statute reveals that the current credibility problems faced by the court are due to the Statute's structural weakness.⁵⁶ According to the Statute, the ICC does not have the competences and means to enforce its own decisions.⁵⁷ In other words, it does not have any executive authority, independent police force, or any other executive unit to allow it to exclusively execute its duties. Instead, it is totally reliant on predictable cooperation from state parties.⁵⁸ Arguably, this weakness was foreseen, and was intentionally planned for by the founders.⁵⁹

Concerning the issue of cooperation, the founders were persuaded by the need to preserve national sovereignty. In fact, without the guarantee of independency, most states would have objected to the idea of becoming members. Therefore, the drafters saw the importance of including certain measures to appeal to prospective member states.⁶⁰ Part Nine of the statute stipulates the minimum and guaranteed obligations that states must agree to before becoming members.⁶¹ Notably, state parties do not have any obligation to cooperate except only when the UN Security Council has referred the case to the ICC, effectively obliging non-member states to collaborate with the court.⁶² Overall, the system of cooperation as conceived by the Rome Statute can be described as one that calls for compromising between the court and the member states. On the one hand, member states are required to collaborate fully with the court in matters of prosecution.⁶³ However, issues of discretion sometimes arise when a request is considered to be in conflict with national security policies.⁶⁴ Consequently, states are not under absolute obligation to prioritize the ICC's requests for help or surrender of crime suspects over their national security obligations.⁶⁵ In view of this weakness, the ICC is largely embroiled in the struggle to gain credibility among member states, some of whom have blatantly declined to assist it in enforcing a number of its resolutions and judgments.

C. Expedited Law Enforcement

To gain credibility, there is a need to amend the Rome Statute, especially Article 86, needs to be amended to allow for the establishment of an independent police unit. With this police force in place, the court will no longer be exclusively dependent on cooperation from member states. Instead, this force will facilitate the smooth issuance of warrants of arrests as well as the eventual apprehension of criminal suspects.⁶⁶ Besides, allowing for efficient law enforcement, the established independent international police force will promote credibility and reliability of the court among member states.⁶⁷ Since its establishment, the ICC has consistently been criticized for only targeting the less

powerful criminal suspects. Out of the total cases the court has handled so far, it has only managed to prosecute less powerful individuals, mostly from Africa.⁶⁸ Meanwhile, it has failed to prosecute government leaders, including the Sudan's president Omar Al Bashir.⁶⁹ This inability is largely attributed to the court's dependence on state cooperation for law enforcement. Therefore, amending Article 86 of the Rome Statute to include a police force system will provide the court with arrest and prosecutorial powers, which, in their turn, minimize dependence on member states for law enforcement.⁷⁰ Ultimately, this will allow the court to prosecute even the more powerful crime suspects, thus, gaining the plenty needs of credibility.

IV. DECREASING DEPENDENCE ON 'AD HOC' TRIBUNALS

Amending article 86 of the Rome Statute and, therefore, establishing a police force system will also decrease the desire of the member states to seek Ad hoc tribunals. After the end of the Second World War, it was believed that the world would live peacefully without any threat of aggression among states. While this was achieved to a large extent, atrocities against the citizens by political leaders in some states emerged as a new source of threat to global peace. In response to these crimes, the UN formed special Ad hoc tribunals to prosecute those alleged to have committed crime against humanity. The first internal criminal tribunal of such nature was established in the 1990s to address the war crimes that were committed during the war in the former Yugoslavia and Rwanda.⁷¹ Since then, many other special tribunals have been established to prosecute local and international crimes.⁷² These tribunals include the ones for Sierra Leone, Lebanon, and Cambodia.⁷³ The development of these legal mechanisms was believed to be critical in fostering the process towards achieving lasting peace in the world.⁷⁴ Besides, these tribunals gave an impetus to the formation of the ICC, which was finally ratified in 2003. However, unlike these tribunals, the ICC has a broad jurisdiction and poses the risk of prosecuting leaders or citizens of powerful countries like the US.⁷⁵

In fact, the ICC does not represent merely another global criminal tribunal system but is something qualitatively different from the Ad hoc tribunals. Evidence from the previously constituted tribunals shows that they were expensive to establish and took a long period to conclude their mandate.⁷⁶ Therefore, the formation of the ICC was seen, by the international community, as a step in the right direction, as it promised the cut down the expenses and prosecution period associated with the Ad hoc special tribunals.

Although the ICC has the potential to achieve these goals, the absence of a police force at its disposal implies that it is more or less the same as the Ad hoc special tribunals.⁷⁷ As evidenced by the Al Bashir case, the lack of a police force has meant that the ICC takes long to prosecute him.⁷⁸ For this reason, amending article 86 of the Rome Statute to establish an independent police force would help the ICC assume a greater importance than the Ad hoc tribunals.

A. Long Periods of Enforcing the Law

While Ad hoc tribunals promise to be a great alternative to the ICC, their mandate has been hampered by the period in which they take for criminals to be prosecuted. This limitation is evidenced in the previously established tribunals across the world.⁷⁹ For example, the UN mission in Kosovo was to resolve serious crimes that were committed during the 1999-armed conflict through the Ad hoc tribunal process.⁸⁰ Contrary to the prior expectations, the tribunal took a long period to restore peace and bring justice to the victims.⁸¹ This limitation was as a result of the limited amount of resources that were allocated to the tribunals. Besides, the UN initially appointed a limited number of international judges to sit on the panels with a majority of Kosovar judges.⁸² To handle effectively the vast number of crimes that had been committed in the country, the tribunal need a significant number of international judges.⁸³ Consequently, the limited number of those judges meant that the tribunal was unable to execute its mandate within the shortest time possible.

By providing the ICC with an independent police force, this goal of enforcing the law within the shortest time possible can be achieved. Until such a progress is made, the ICC has to face -in the area of prosecuting criminal cases- the same challenges most tribunals have faced. The ICC was founded on the assumption that it would help mitigate the challenge of forming a tribunal and the pace of executing cases.⁸⁴ Being a permanent court, the existence of the ICC means that there is no time required for the formation of a special Ad hoc tribunal to handle criminal cases anywhere in the world.⁸⁵ Instead, it requires the dispatching court officials to investigate and prosecute the cases. However, meeting this achievement has consistently remained elusive for the ICC because of the inability to enforce law.⁸⁶ In particular, it continues to face difficulties in issuing arrest warrants to those implicated with the responsibility of committing crime against humanity.⁸⁷ The court faces this challenge because it has no option but to depend entirely on state parties for the implementation of arrests.⁸⁸

Getting the suspects arrested is problematic even when the Security Council refers a situation to the ICC, because in case of such a referral, the target state may not necessarily agree to cooperate with the ICC for the implementation of the arrests.⁸⁹ Therefore, it is very important that the Security Council intervene to ensure that states cooperate with the ICC. However, there is no evidence showing the Security Council intervention was successful in forcing a State to collaborate with the ICC.⁹⁰

For example, since the issuance of a warrant of arrest against Al Bashir, he has since visited several countries without being arrested.⁹¹ This lack of cooperation has been at the backdrop of numerous calls from the ICC for the intervention of the Council to force State members to take action against Al Bashir. As a result, the prosecution process has been ineffective and time-consuming like is the case for Ad hoc tribunals.⁹² From this limitation, it is apparent that by amending Article 86 of the Rome Statute to provide the ICC with a police force would significantly reduce the time required to execute prosecutions.

B. *Eliminating the Need to Spend Resources on Establishing the Ad Hoc Tribunals*

Establishing of a police force will also be critical when it comes to avoiding the huge amounts of resources required to constitute an Ad hoc tribunal to prosecute criminal cases. Evidence from the previous tribunals indicate that in most cases, they are expensive and tend to outspend the original estimates.⁹³ This problem has been one of the reasons given against them. It has consistently been argued that those countries that have gone through genocide or civil war should channel the vast amount of resources spent in establishing Ad hoc tribunals in building strong political and internal judicial systems.⁹⁴

In 2000, the UN Ad hoc tribunals consumed in excess of \$250 million per year. These figures translate into 15 percent of UN's total budget per year.⁹⁵ In fact, the expensive nature of the tribunals has received much criticism because it is not clear whether the results of those legal institutions are positive. For example, although the high costs of the Rwanda tribunal, it has not been easy to confirm whether the victims of the genocide ever received the justice they longed for.⁹⁶ In most cases, the genocide survivors have not been repatriated nor given financial support to kick start their lives.⁹⁷ The Rwanda case, therefore, demonstrates that tribunals do not necessarily result injustice for the crime victims in spite of the vast amount of resources required to establish and run them.

In light of the recognition of the significant expenses generated by Ad hoc tribunals, the ICC can be the best alternative to execute crime cases without spending a lot of resources. This is mainly the case because unlike tribunals, the ICC is an already established permanent criminal justice system, full- staffed with judges and support staff.⁹⁸ Therefore, there would be no need for any additional expenditures concerning the establishment of a tribunal that will be tasked with the hearing of a criminal proceeding. In other words, fewer expenses are required to prosecute criminal elements as is the case for Ad hoc tribunals.⁹⁹ The ICC can result in further reductions of the expenses if it is provided with

a provision of having its own independent police force. This force will not only eliminate the need to exclusively dependent on member states cooperation but it will also make the prosecution process more efficient. Ultimately, an efficient prosecution process will cut down the expenses of having an endless process.

CONCLUSION

The absence of a police force has been the major impediment to the ICC because it undermined the credibility of the court and fostered a reliance on expensive and ineffective ad hoc tribunals. The court was established with the responsibility to investigate and prosecute individuals alleged to have committed high-profile crimes against humanity. However, the court has consistently failed to live up to this expectation due to its dependence on states cooperation for the implementation of their its decisions. The inability to arrest Al Bashir demonstrates how the ICC as the world's supreme criminal court struggles to prosecute criminal suspects, particularly, those holding powerful positions in their countries.

Providing the court with the necessary incentive to overcome this limitation by amending Article 86 of the Rome Statute to establish a special police force is required. This force would address the problem of law enforcement, reinforce the court's credibility, and provide a powerful antidote against states parties seeking costly and ineffective ad hoc special tribunals.

¹ See Gwen P. Barnes, *The International Criminal Court's Ineffective Enforcement Mechanisms: The Indictment of President Omar Al Bashir*, 34 *FORDHAM INT'L L.J.* 1584, 1619 (2011).

² *Id.* at 584.

³ *Id.*

⁴ *Id.*

⁵ See Sang-Hyun Song, *International Criminal Court-Centered International Criminal Justice and Its Challenges*, 17 *MJIL*, 1.13 (2016).

⁶ *Id.* at 7.

⁷ *Id.*

⁸ For a detailed account of the Gaddafi case, see Vijay Prashad, *Gaddafi and the Failure of the International Criminal Court*, NEWARAB (July 29, 2015), <https://www.alaraby.co.uk/english/comment/2015/7/29/gaddafi-and-the-failure-of-the-international-criminal-court>.

⁹ *Id.* at 7.

¹⁰ See Barnes, *supra* note 1, at 1619.

¹¹ *Establishment of an International Criminal Court—Overview*, UNITED NATIONS, legal.un.org/icc/general/overview.htm (last visited Apr. 17, 2018).

¹² *Id.*

¹³ *Id.*

¹⁴ *Omar al-Bashir*, COALITION FOR THE INT’L CRIM. CT., www.coalitionfortheicc.org/cases/omar-albashir (last visited Apr. 17, 2018).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Barnes, *supra* note 1, at 1586.

¹⁸ See *ICC Issues Arrest Warrant for Al-Gaddafi*, AMNESTY INT’L USA (June 27, 2011), www.amnestyusa.org/press-releases/icc-issues-arrest-warrant-for-al-gaddafi/.

¹⁹ *Id.*

²⁰ See Song, *supra* note 5, at 318.

²¹ See Rome Conference, *Rome Statute of the International Criminal Court*, art. 86, U.N. Doc. A/CONF.

183/9* (1998), https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf [hereinafter *Rome Statute*].

²² See Song, *supra* note 5, at 7.

²³ *Rome Statute*, *supra* note 17, art. 86.

²⁴ See Simon Young, *Surrendering the Accused to the International Criminal Court*, 71 BR YEARBOOK OF INTN'L. LAW 318, 323.

²⁵ *Id.* at 333.

²⁶ See Prosecutor v. Al Bashir, ICC-02/05-01/09.

²⁷ See Barness, *supra* note 1, at 586.

²⁸ See Barness, *supra* note 1, at 588.

²⁹ See Ambos Kai & Ignaz Stegmeier, *Prosecuting International Crimes at the International Criminal Court: Is There a Coherent and Comprehensive Prosecution Strategy?*, 58 CRIME L. & SOC. CHANGE 391, 397 (2012).

³⁰ *Id.* at 401.

³¹ *Id.* at 401.

³² *Rome Statute*, *supra* note 17, art. 82.

³³ See Young, *supra* note 20, at 356.

³⁴ *Id.* at 325.

³⁵ *Id.*

³⁶ See Barness, *supra* note 1, at 589.

³⁷ See Rod Rastan, *Testing Co-Operation: The International Criminal Court and National Authorities*, 21 LEIDEN J. INT'L L. 431, 456 (2008).

³⁸ *Id.* at 438.

³⁹ *Id.* at 438.

⁴⁰ *Id.* at 340.

⁴¹ See Barness, *supra* note 1, at 589.

42 *Id.*

43 *Id.*

44 *Id.*

45 *Id.*

46 *See* Barnes, *supra* note 1, at 590.

47 *Id.* at, 781.

48 *Id.* at, 784.

49 *See* Young, *supra* note 20, at 370.

50 *Id.* at, 787.

51 *See* Vladimir Tochilovsky, *Globalizing Criminal Justice: Challenges for the International Criminal Court*, 9 GLOBAL GOVERNANCE 291, 291 (2003).

52 *Id.* at, 291.

53 *Id.*

54 *Id.* at 292.

55 *Id.* at 291.

56 *See* Young, *supra* note 20, at 333.

57 *See* Young, *supra* note 20, at 334.

58 *Id.*

59 *See* Konstantinos Magliveras & Gino J. Naldi, *The International Criminal Court's Involvement with Africa: Evaluation of a Fractious Relationship*, 82 NORDIC J. INT'L L. 417, 446 (2013).

60 *Id.* at 443.

61 *Id.*

62 *Rome Statute*, *supra* note 17, art. 93.

63 *Id.* at 443.

64 *Id.*

65 *Id.* at 444.

66 See Hyeran Jo & Beth A. Simmons, *Can the International Criminal Court Deter Atrocity?*, 70 INT'L ORG. 443, 475 (2016).

67 *Id.* at 466.

68 *Id.*

69 *Id.*

70 *Id.*

71 Stephen C. Neff, *Past and Future Lessons from the Ad Hoc Tribunals for the Former Yugoslavia and Rwanda*, in CRIME SANS FRONTIÈRES: INTERNATIONAL AND EUROPEAN LEGAL APPROACHES 58, 58 (Peter J.

Cullen ed., 1998).

72 *Id.* at 59.

73 *Id.*

74 See Neff, *supra* note 46 at 58.

75 See Gilles Renaud, *Book Review*, 17 DEAKIN L. REV. 453, 455 (2012) (reviewing SILVIA D'ASCOLI, SENTENCING IN INTERNATIONAL CRIMINAL LAW: THE UN AD HOC TRIBUNALS AND FUTURE PERSPECTIVES FOR THE ICC (2011)).

76 *Id.* at 452.

77 *Id.*

78 See Kirsten Ainley, *The International Criminal Court on Trial*, 24 CAMBRIDGE REV. INT'L AFF. 309, 333 (2011).

79 *Id.* at 310.

80 *Id.*

81 See Renaud, *supra* note 66, at 454.

82 *Id.*

83 *Id.*

84 See Ainley, *supra* note 69, at 310.

85 *Id.* at 311.

86 *Id.*

87 *See* Young, *supra* note 20, at 320.

88 *Id.*

89 *Id.*

90 *Id.*

91 *Id.* at 321.

92 *See* Daryl A. Mundis, *The Legal Character and Status of the Rules of Procedure and Evidence of the Ad Hoc International Criminal Tribunals*. 1 INT'L CRIM. L. REV. 191, 229 (2001).

93 *Id.*

94 *Id.* at 229.

95 *Id.* at 239.

96 *Id.* at 238.

97 *Id.* at 230.

98 *See* Renaud, *supra* note 66, 452.

99 *Id.* at 453.