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The local impact of a global court : assessing the impact of the International Criminal Court in situation countries

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Propositions relating to the dissertation

“Local Impact of a Global Court: Assessing the Impact of the International Criminal Court in Situation Countries”

by Marieke I. Wierda

1. Confusion reigns among supporters and founders of the International Criminal Court about its “identity” and what it is meant to achieve. Evidence that the Court is deterring international crimes is not yet conclusive, although it has an important expressive function. It is necessary to devise a custom-made assessment framework for the ICC.
2. A framework for assessing the impact of the ICC can be derived from the founding documents and policy statements of the Assembly of States Parties and the Court’s principles. Areas for assessment include systemic effect, transformative effect, reparative effect and demonstration effect.
3. Systemic effect is not the equivalent of complementarity. Complementarity has developed into a court-centric concept, and resulted in competition between the ICC and national authorities. Complementarity cannot address broader rule of law challenges and has other flaws, such as a blindness vis-à-vis due process. In fact, the relationship of the Court with national jurisdictions is often better described as “parallelism” rather than complementarity.
4. The impact of the Court on domestic legal systems could be more usefully described as internalization. Internalization can be demonstrated through the adoption of national legislation; through the creation of specialized domestic capacities; or through conducting genuine domestic proceedings.
5. The Rome Statute and the Court are having systemic effect in situation countries. Although the genuineness of proceedings remains very difficult to demonstrate, it is possible to identify indicators that help to assess genuineness.
6. Transformative effect is reflected in the content of peace agreements (including the scope of prosecutions or punishments); the process of peace negotiations (including the views of victims); or whether it has resulted in fewer amnesties.

7. The coming into force of the Rome Statute has not yet resulted in a paradigm shift away from amnesties and towards accountability in all situations. However, the interests of victims were considered as part of the peace processes in Uganda and Colombia, and the agreements allowed for criminal prosecution, albeit with alternative penalties.
8. Reparative effect can be measured through meaningful participation in ICC proceedings; through empowerment of victims in the Court's strategies; and through victims receiving assistance or reparations through the ICC or the Trust Fund for Victims.
9. The reparative effect of the Court in terms of its impact on victims is limited. While victim participation has led to increased recognition of the rights of victims, so far the realization of remedies through victim participation or reparations is minimal. In the situation in Kenya, even the do no harm principle was not respected.
10. Demonstration effect can be measured in part through perceptions. Perceptions of the ICC suffer from similar challenges in different contexts, including the fact that the Court is not necessarily viewed as impartial; its interventions do not necessarily align with local justice priorities; and it is sometimes seen to advance a foreign or Western agenda.
11. While the Rome Statute and the ICC are having normative impact, in the form of systemic and transformative impact, this impact is undermined by a lack of societal impact, in terms of impact on victims and negative perceptions.
12. Some changes to improve the impact of the ICC can take place within the current legal framework of the Rome Statute. However, in order to maximize respect for Rome Statute norms, more context-specific approaches to dealing with international crimes are needed and should be explored alongside the ICC.