

**DECONSTRUCTING NEWSPAPER REPRESENTATIONS OF THE  
INTERNATIONAL CRIMINAL COURT**

Amanda Kramer

A thesis submitted to the Faculty of Graduate and Postdoctoral Studies in partial fulfillment of  
the requirements for the degree of

**MASTER OF ARTS**

In Criminology

Supervised by: Daniel Dos Santos

University of Ottawa

Ottawa, Canada

March 2012

© Amanda Kramer, Ottawa, Canada, 2012

## Abstract

This thesis explores constructions of the International Criminal Court (ICC) within four North American newspapers: *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *The Washington Post*. The Court, which came into being on July 1<sup>st</sup> 2001, was established to end the climate of impunity for grave violations of international human rights. Virtually all forms of support, including monetary and jurisdiction, rely upon nation-state's voluntary ratification of the *Rome Statute*. Since studies have shown that one of society's primary sources of information is the news media; public perceptions based on newspaper constructions of the Court could potentially have an impact on state support and cooperation. Furthermore, social constructionism tells us that news stories manufactured by the media are socially constructed portrayals of events – not a simple regurgitation of the facts, leaving room for bias, inaccuracy and misrepresentation. The main focus of the theory chapter is upon assertions made by Herman and Chomsky's propaganda model that “media serve the interests of that state ... framing their reporting and analysis in a manner supportive of established privilege and limiting debate accordingly” (Herman & Chomsky, 1998, p.32). These propositions will be considered throughout the analysis, and have informed two of the three specific research questions. Thus, the current study employs a social constructionist perspective to analyze how the Court is represented, specifically (1) if the notion of impunity is present, and if so how; (2) is any kind of critical analysis present; and (3) if a connection between state support/opposition and favourable/negative portrayals of the Court exist. A thematic qualitative content analysis and several tools of grounded theory were utilized to deconstruct 1,982 articles collected from the aforementioned newspapers. The analysis was carried out using memoing and open and closed/focused coding in order to uncover emerging trends and patterns within the data. Overall, all four newspapers contained a surprising amount of insight into debates occurring within academic literature. Some of these conversations were quite limited and/or biased; specifically, American newspapers manipulated debates in an attempt to justify American opposition to the Court. That said, some authors provided well-researched perspectives on debates surrounding the Court's legitimacy, effectiveness, and peace versus justice.

## Acknowledgements

This project would not have been possible without the help, guidance, and support of a number of people to whom I offer my sincere thanks and gratitude. First of all, I must extend heartfelt appreciation to my supervisor, Dr. Daniel Dos Santos for his guidance, input, and warm words of encouragement. I can truthfully say that without his support along the way, including often stepping outside the role of a traditional advisor, I would not have been able to fulfill the requirements of this program. His input, faith in my thesis, and encouragement to follow my own path allowed me to become a more independent thinker and produce a much more critical piece of work. Despite the relationship of student and supervisor coming to an end, I hope to maintain a friendship and I wish him all the best.

Second, I would like to thank the members of my advisory committee, Dr. Michael Kempa and Dr. Steven Bittle, for their constructive criticism and contribution to a stronger project.

I would also like to extend gratitude to my family – for a type of gratitude that cannot be expressed in words. From their love and kind words of encouragement; to their editing services; to their emotional, intellectual, and financial support; my family has been a main pillar of encouragement throughout my academic journey. Their unfaltering support has been invaluable in the completion of my thesis.

Finally, I would like to thank my friends. I appreciate all of their help and encouragement along the way. Our commiserating sessions in the lounge, long days in the library, and nights spent letting off steam allowed me to maintain my sanity and I could not have done this without each and every one of them.

## Table of Contents

<b>Abstract</b> .....	ii
<b>Acknowledgements</b> .....	iii
<b>Introduction</b> .....	vi
<b>Chapter 1: Literature Review</b>	
1.1 History and context of ICC creation.....	8
1.2 Legislation.....	19
1.3 Legal Debates.....	24
<b>Chapter 2: Literature Review and Theory</b>	
2.1 The Media.....	30
2.2 An Overview of Social Constructionism.....	32
2.3 Social Constructionism and the Media.....	36
2.3(i) News & professionalism.....	37
2.3(ii) News media, power, and social control.....	44
2.3(iii) News media and the government.....	50
Propaganda Model.....	52
2.4 Conclusion: the media and the ICC.....	56
<b>Chapter 3: Methodology</b>	
3.1 Methodology.....	59
3.2 Research Objective.....	59
3.3 Exploratory Research.....	60
3.4 Methodological Framework.....	60
3.5(i) Qualitative Research.....	60
3.5(ii) Content Analysis.....	61
3.5(iii) Data Collection.....	63
3.5 Grounded Theory.....	64
3.6(i) Coding.....	65
3.6(ii) Open Coding.....	66
3.6(iii) Closed/Focused Coding.....	68
3.6(iv) Memoing.....	68
3.6 Limitations, Benefits, & Ethical Considerations.....	69
3.7(i) Limitations.....	70
3.7(ii) Benefits.....	71

## **Chapter 4: Findings & Analysis**

4.1 Introduction.....	72
4.2 Legitimacy.....	74
4.2(i) Double Standards/Two-tiers of Justice.....	87
4.3 Purpose and Effectiveness.....	94
4.3(i) Universal Standards.....	97
4.3(ii) Complimentarity- Taking over when domestic courts fail to act.....	104
4.3(iii) Deterrence.....	108
4.3(iv) Victims.....	112
4.3(v) Impunity.....	112
4.3(vi) Challenges to ICC Effectiveness: Power of the Court.....	117
4.4 Peace Vs. Justice.....	120
4.5 Representations.....	128
4.6 Findings & Conclusions.....	131
<b>Final Thoughts.....</b>	<b>137</b>
References.....	140

## Introduction

The International Criminal Court (ICC) came into being on July 1<sup>st</sup> of 2002 to end the international culture of impunity by providing a source of accountability for grave human rights violations (International Criminal Court, 1998). The Court built upon pre-existing international justice institutions, including the International Court of Justice, Nuremberg and Tokyo military tribunals, and the International Criminal Tribunals for Rwanda and the former Yugoslavia. Ratification of the Court's governing legislation, the *Rome Statute*, is voluntary, providing nation states with the decision to allow the Court jurisdiction. Due to this, public perceptions of the Court could potentially have an effect on state support and cooperation. These possibilities gave rise to the current study.

The purpose of this project is to explore how the International Criminal Court is represented within the four newspapers included for analysis. A thematic qualitative content analysis, employing some of the tools of grounded theory, will be performed on 1,982 articles collected from four North American national newspapers published between the 1<sup>st</sup> of January, 1998 and the 31<sup>st</sup> of May, 2011. These Newspapers include, *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *The Washington Post*. The analysis will be guided by the following specific research questions,

- (1) Is the notion of impunity present within media discussions on the ICC? If so, how?
- (2) Does the media undertake a critical analysis of ICC operations? If so, how?
- (3) Is there a connection between state support/opposition of the ICC and favourable/negative media portrayals of the Court's operations?

In order to avoid researcher bias, I will search for issues and themes that emerge from the findings, including those outside of the specific research questions.

This work will begin by reviewing the history and creation of the Court, legislation, and legal debates surrounding the ICC. A discussion of the media, an overview of the theoretical orientation for this project, and connections between social constructionism and the media will follow. The fourth chapter will outline the methodological choices, data collection and analysis techniques performed on the data. Finally, an analysis of the data will be presented, summarizing the main themes and findings of the research. Recommendations for further areas and techniques of research will conclude the discussion.

## Chapter 1: Literature Review

### *History and Context of ICC Creation*

The events of United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, known as the “Rome Conference”, was held in 1998 and created the International Criminal Court. Before delving into the specifics of the ICC and its legislation, it is important to consider the context within which it was created, including the foundations of ‘justice’ upon which this system was built. Prior to the Court’s development, affected nations and the United Nations Security Council (UNSC) bore responsibility for the prosecution of any humanitarian or war crimes (Ainley, 2006; & Eiroa, n.d., p.1). This section will first briefly define ‘justice’, and then discuss the International Court of Justice (ICJ) before examining the efforts of individual nation-states and the UNSC; the ICC will be introduced, exploring its governing legislation and legal debates surrounding the Court’s creation and existence. The purpose of this chapter is to provide some context regarding the Court’s creation, explore the main themes within academic literature, and identify potential areas that could inform the analysis.

### *Justice*

Before discussing the particulars of the development of international criminal law, it is important to outline the basis of the entire system by defining ‘justice’. Many scholars agree that the origins of our current definition of justice, which has led to the creation of traditional criminal justice systems, can be found in the writings of Jean-Jacques Rousseau (Lopston, 2001, p. 104-122). Rousseau’s definition of justice originates in the ‘social contract’, which has emerged from the types of large-scale societies that people have created. Once people began

working together to develop society, freedom was exchanged by entering into contracts with others<sup>1</sup>. The idea behind this was that if everyone agreed to follow certain rules and work together, everyone would be better off (Martin, 2006, p. 70-71). Here enters the notion of rules and punishment, upon which our current justice system is based. According to Thomas Hobbes, the social contract restricts particular actions<sup>2</sup> that would only advantage the individual. Because some individuals would still attempt to engage in this type of behaviour, ‘society’ established a system to guard against this. Hence, the beginnings of our modern criminal justice system were born. To guard against violations of the contract, “society established a police force to find out who’s breaking the rules, and courts and jails to punish them” (Martin, 2006, p. 75).

Although this particular definition of justice has led to the creation of the current system, it is not the only one that exists. In fact, there is a lot of disagreement among academics regarding what the definition of justice should be. For example, those who advocate for restorative or transitional justice hold different definitions. Nils Christie argues that our current conceptions of justice have meant, “conflicts have been taken away from the parties directly involved and thereby have either disappeared or become other people’s property” (Christie, 1977, p. 1). Although Christie agrees with the need for norms within society, he argues that the central tenant of justice should not be the meting out of guilt by ‘justice professionals’, but rather a discussion between the parties directly involved as to what can be done to undo the harm caused by the act. He argues that this creates a space for forgiveness and growth, rather than the meting out of punishment by people foreign to the case (Christie 1977, p. 9). Theorists such as

---

<sup>1</sup> Agreements such as the exchange of labour for money or goods.

<sup>2</sup> Actions such as stealing, which would benefit the individual and damage another person.

Nils Christie argue that the system creates additional harms<sup>3</sup> that could be avoided if different conceptions of justice were adopted and problems within society were dealt with accordingly. However, society has been structured around these notions of justice occurring through police, courts, prisons and punishment. These ideas ultimately gave rise to international institutions designed to achieve mainstream forms of justice. For the remainder of this paper, when discussing justice, I will be referring to the definition inspired by Rousseau. Due to the dominance of this notion of justice within society, it is anticipated that it will permeate throughout media constructions of the ICC. This premise will be explored within the analysis.

### *International Justice*

The ICJ (1946) was established following the Second World War as a mechanism for settling international disputes; essentially, it has operated as a court of international relations (ICJ, 2010). The Court hears applications from nation-states regarding the behaviour of other states. An example of the types of cases brought to the ICJ would be *Australia v. Japan* (2010). In this case, Australia initiated proceedings against Japan for an alleged breach of the International Convention for the Regulation of Whaling (“ICRW”), and its other international obligations for the preservation of marine mammals and marine environment (ICJ, 2010). As evidenced by this case, the ICJ was developed as an international mechanism for states to hold other states accountable to their obligations<sup>4</sup>. Thus, the ICJ has conceptualized responsibility in

---

<sup>3</sup> These harms can be found within critical theories of criminology and justice. Some include further marginalization, particularly of already vulnerable groups within society; providing opportunities to allow powerful classes to commit more crime; and incarcerating individuals, causing them to adopt criminal identities and learn how to commit more serious forms of crimes. For more, see Linden, 2004, chapters 11, 12, & 16.

<sup>4</sup> The ICJ has jurisdiction over a range of different state obligations. These can include such things as environmental issues, failure to comply with treaties, and armed activities on another state’s territory (ICJ, 2010). Thus, the ICJ does not solely deal with non-criminal matters;

terms of state responsibility for their role in international disputes. Although, the ICJ is still an important and functioning feature of international accountability, the majority of international justice institutions<sup>5</sup> have taken a different direction. Thus, the focus of the rest of this section will be upon mechanisms aimed at individual responsibility.

Multi-state efforts towards achieving accountability have focused on holding individuals responsible for grave violations of human rights. Thus, instead of taking the same path as the ICJ, which has focused on state responsibility, most other international criminal justice institutions have focused on establishing individual accountability. This shift towards individual responsibility was developed for two main reasons. First, to help put an end to the culture of impunity by making it harder for officials to use the state as a shield behind which to commit criminal activity (Ainley, 2006, p. 143). The second reason was that holding individuals accountable helps to prevent entire communities (or countries) from being labeled responsible for inflicting massive human rights violations (Caine, 2009, p. 348). The first major developments in the area of individual responsibility were the two military tribunals<sup>6</sup> established following the human rights violations that occurred during World War II (Ehrenfreund, 2007). These watershed events, which became known as the Nuremberg and Tokyo Tribunals, marked the first multi-state effort towards achieving some form of international justice. The tribunals were set up by the allied powers in an effort to hold German and Japanese officials responsible for their crimes.

---

however, they do take a different approach to responsibility and punishment (Keith, 2010, p.895).

<sup>5</sup> Including the ICC, the Nuremberg and Tokyo Tribunals, the International Criminal Tribunal for the Former Yugoslavia, and the International Criminal Tribunal for Rwanda.

<sup>6</sup> Although both are referred to as military tribunals, the Tokyo Tribunal was much more of a military effort than Nuremberg. In Tokyo, the court was run and operated by the American military; whereas in Nuremberg, the court was organized by military personnel but made up of civilian judges.

The numerous problems created by the way these Tribunals were established have been well documented. Although these issues are important, this section will focus on the precedents set by Nuremberg and Tokyo because it was these strengths that contributed to the foundations of international criminal law. Despite their many flaws, the Nuremberg and Tokyo Tribunals were important steps towards the creation of the ICC (Ehrenfreund, 2007). By establishing the principle of individual accountability (Jallow, 2010, p.269), the tribunals helped demonstrate that government leaders would no longer be immune from prosecution and that some form of international justice was possible (Ehrenfreund, 2007, p.174). Although no significant developments were made in this area until the UNSC established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993, and the International Criminal Tribunal for Rwanda (ICTR) in 1994, Nuremberg and Tokyo set important precedents. First, following the model of implementing international military tribunals to deal with specific atrocities, the UNSC created international criminal tribunals to respond to several large-scale ethnic and national conflicts (Eiroa, n.d., p.1). Utilizing chapter VII of the UN Charter, the UNSC passed resolutions 827 (1993) and 955 (1994), which established the ICTY and ICTR respectively (Jallow, 2010, p.269).

Furthermore, the Nuremberg and Tokyo tribunals set standards with regards to ending impunity<sup>7</sup>. Similar to the aim of the Nuremberg and Tokyo tribunals, one of the most commonly stated intentions during the preparatory sessions of the ICTY and ICTR was the need to end impunity (Eiroa, n.d., p.1). In order to combat the international climate of impunity, tribunals

---

<sup>7</sup> For the purpose of this study, impunity can be defined as “failure to hold accountable those responsible for crimes considered *jus cogens*-compelling to all” (Rothe, 2010, p.4). *Jus cogens* refers to crimes that are so heinous that they are universally forbidden. Such crimes include (but are not limited to) genocide, crimes against humanity, war crimes, and torture. Essentially, impunity occurs when a person commits a crime, such as genocide, and is not held accountable for their actions.

were created that would increase opportunities to hold perpetrators accountable. Thus, the ICTY and ICTR were established following the model set by Nuremberg and Tokyo: individual responsibility (Jallow, 2010, p.269).

International tribunals, specifically criminal tribunals, have had a number of successes. Several authors argue that these successes revolve around creating an opportunity for ending impunity: including progressing the development of international law, providing a source of accountability, and setting specific legal precedents in international law. For example, Jallow (2010) argues that the Court has been a major source for combating the culture of impunity that has been a defining feature of international culture (p.270-271). Creating a mechanism that has allowed violators of international law to be brought before a court and tried for the crimes they have allegedly committed represents an important victory in the battle against impunity. First, the formation of tribunals progressed the development of international law enough to allow individual perpetrators to be tried. Substantive, procedural, evidentiary, and practical law advancements were made (Jallow, 2010, p.271). It also provided an opportunity to develop experience and techniques necessary for effective judicial functioning. Through developing all of this, high-ranking officials<sup>8</sup>, who would have previously used their positions of power to evade responsibility, can now be held accountable for their crimes for one of the first times in history (Jallow, 2010, p.271). The creation of these institutions has also set legal precedents and denounced serious violations of human rights by reinforcing behaviour that would be tolerated and behaviour that international institutions would prosecute. Overall, the creation of International tribunals demonstrates to the world that the enforcement of international criminal

---

<sup>8</sup> An example of a high-ranking official who used their position of power to evade responsibility is Augusto Pinochet, the former President of Chile. He was eventually detained in London in 1998; however, he was later released and died in 2006 without being held accountable for his crimes (Rothe, 2010, p.400-401).

law is possible and necessary, and has helped to pave the way for future development in this area.

Although criminal tribunals have had some success in the form of combating impunity, their severe limitations have also received international attention. One of the most significant problems with international criminal tribunals surrounds the notion of victor's justice/selective justice. Several authors have argued that the winning sides of conflicts have often organized tribunals that tended to punish only those on the losing side (Eiroa, n.d., p.6; Kochler, 2003, p.2). Nuremberg and Tokyo are classic examples of victor's justice. It has been contended that these tribunals were set up by the victors to promote their interests, when, in accordance with the rule of law, they should have been applied universally to prosecute anyone who perpetrated war crimes or crimes against humanity. Both the Nuremberg and Tokyo tribunals were set up by the allies (the group of nations who won WWII) to hold people from the losing side of the conflict (mainly the Germans and the Japanese) responsible. Neither of these tribunals held a single member of the allied forces accountable for the alleged war crimes or crimes against humanity that they committed (Ehrenfreund, 2007).

Furthermore, it is argued by Struett (2008, p.4) that the international climate of victor's justice was reinforced by the events of the Cold War<sup>9</sup>. Simply put, the alleged war crimes committed by the powerful, such as those allegedly committed by Americans, went unchallenged. In this case, because those involved included the most powerful nations in the world, the circumstances that had historically led to the implementation of tribunals were not present. To elaborate, powerful outsiders did not have an interest in holding perpetrators

---

<sup>9</sup> More recent examples of victor's justice include Vietnam, Afghanistan and Iraq. For more see Alvarez, J. E (2004). Trying Hussein: Between Hubris and Hegemony. *Journal of International Criminal Justice*, 4(2): 319-329.

accountable because these nations were directly involved in the conflict. Since this would have involved powerful nations prosecuting their own citizens, the interest in putting an end to impunity was not present (Struett, 2008, p.4).

Although not technically falling into the category of victor's justice, the ICTR was plagued by a similar problem (Hoare, 2010, p.201). In addition to interventionist goals of international criminals tribunals, one of their other main objectives was to recreate national justice systems (Humphrey, 2003, p.498). Thus, in Rwanda, the ICTR placed a heavy reliance on national courts and more 'traditional' procedures for the prosecution of lower level offenders (Humphrey, 2003, p.498). This situation created the application of selective justice because the Tutsi-led RPF forces have taken full power over the state. This has meant that prosecution for crimes against humanity and war crimes by Rwandan national courts and the ICTR have almost exclusively targeted Hutu peoples- despite the fact that Tutsi people were responsible for many equally as grave crimes (Humphrey, 2003, p.501). Since justice has been applied in this way, many Rwandan people have lost their confidence in the ICTR and national courts – often feeling that these institutions are too biased to achieve any kind of justice (Humphrey, 2003).

Another factor related to victor's justice/selective justice are funding problems. First, powerful nations often provide the most funding and assistance to international organizations in charge of establishing criminal tribunals (Kochler, 2003, p.2). It has been hypothesized that due to this source of funding, criminal tribunals are often not implemented in all nations where they may be warranted. Political factors are claimed to be a major source of this problem. An example of when funding could produce selective/victor's justice may occur when a nation-state threatens to revoke its financial support for the UN. In cases such as these, it may not be possible to hold

all perpetrators accountable due to the risk of losing the funding and/or support of powerful countries (Eiroa, n.d., p.7).

A problem directly linked to funding and power is whether or not powerful nations have an interest in the continuation or cessation of a conflict. For example, when a powerful nation has an interest in the continuation of a conflict, a tribunal may not be implemented. Similarly, when no powerful nations have any interest whatsoever in a conflict, a tribunal may not be established either because no one cares to spend the money or time (Hoare, 2010, p.201). It is argued that the ICTY was put in place as a substitute for action against the conflict's organizers. Despite being fully aware of the actions Serbia was taking in Bosnia, neither the United States nor the UNSC initiated any actions to intervene (Hoare, 2010). It was not until the situation received international media attention that pressure mounted on the UNSC to take some kind of action; thus, giving birth to the ICTY.

Another major problem with international criminal tribunals has been related to their efficiency<sup>10</sup> (Eiroa, n.d., p.6). Despite significant achievements (such as successful prosecutions, precedent setting, and denouncing serious violations of human rights), efficiency problems persist. In comparison to the amount of time and money invested in tribunals, relatively small numbers of offenders have been prosecuted. For example, since its inception in 1994 the ICTR has only completed 33 cases (ICTR, 2010). Compared to the millions of crimes committed throughout the genocide in Rwanda, 33 completed cases are not sufficient to achieve the goal of ending impunity.

---

<sup>10</sup> Efficiency can be defined as, a system “achieving maximum productivity with minimum wasted effort or expense” (Oxford Dictionary, 2010).

Finally, because tribunals have been developed for specific conflicts<sup>11</sup> they tend not to create permanent changes. One of the most commonly stated goals in the development of international criminal law is challenging the universal culture of impunity (Eiroa, n. d., p.1). While the creation of ad-hoc tribunals does symbolically communicate that grave human rights violations will not be tolerated, they do not have the capacity to deal with crimes outside of the specific region for which they were developed (O’Callaghan, 2008, p.542). Furthermore, it has been argued that a mechanism encouraging states to internalize the values of international criminal law is necessary if a culture of accountability<sup>12</sup> is to be created<sup>13</sup>. Since tribunals are temporary and conflict-specific, their ability to achieve this objective is quite limited (O’Callaghan, 2008, p.542-544). Based on these needs, it seems logical that a more permanent instrument (the ICC) would be sought to achieve the goals that temporary tribunals have not been able to accomplish.

It is evident that a transformation, albeit not a complete one, has taken place in the international attitude towards crimes against humanity and war crimes (O’Callaghan, 2008, p.541). The creation of both military and international criminal tribunals has demonstrated that a universal culture of impunity will no longer be tolerated. Through the creation of these tribunals,

---

<sup>11</sup> The ICTY was established to deal with the violations of humanitarian law committed in the former Yugoslavia in the 1990’s. The ICTR was established to prosecute the violations of humanitarian law during the genocide in Rwanda in 1994.

<sup>12</sup> Culture of accountability refers to the creation of a global environment where grave violations of international humanitarian law are not tolerated: all perpetrators would be held responsible through international justice mechanisms or national criminal justice systems. This culture of accountability would uphold the rule of law, which means that the laws would apply equally to all subjects.

<sup>13</sup> Returning to the discussion of justice, it is important to identify that this process has produced a certain kind of justice – one that is built upon the foundations of dominant notions of justice. This has led the international community to adopt a more ‘Western’ notion of justice at the expense of considering any alternative forms. This discussion is expanded upon within the analysis section.

an attempt was being made to communicate the need for some form of accountability for international crimes. Furthermore, the deficiencies with ad-hoc tribunals, most of which were mentioned above, established the need to look beyond the temporary solutions they provide (Ainley, 2006, p.153). It has been recognized that in order to tackle the universal culture of impunity, a permanent entity was necessary (Struett, 2008, p.3). Failing to establish the permanence of an international criminal court would permit the problems associated with ad-hoc tribunals to continue (Ainley, 2006, p.153). For example, several authors have argued that the mere permanence of a court would help to overcome victor's/selective justice, as any international crime would have the *potential* for prosecution<sup>14</sup> (Eiroa, n.d.; & Kochler, 2003). Thus, no longer would the winning side of a conflict call for a tribunal to hold the losing side responsible. Instead potentially any crimes could be reported to an international criminal court.

Accompanying this recognition of the numerous weaknesses of ad-hoc tribunals and the need for accountability was a discussion between a diverse set of actors, which included states, Non-Governmental Organizations (NGOs), and politicians. This group shared the opinion that despite previous efforts to establish accountability, perpetrators of grave human rights violations too often went unpunished<sup>15</sup> (Struett, 2008, p.43). Although the idea of an international criminal court had been raised following the end of World War II, it took the events of the 1990s<sup>16</sup> for any real progress to materialize. First, the end of the Cold War revived the discussion of the need for

---

<sup>14</sup> This potential is limited by methods for referral of cases to the ICC. Only states and the Prosecutor of the ICC are able to bring cases forth, which could reduce the possibilities of prosecution. This would be very heavily dependent on the impartiality of the ICC prosecutor. More on this topic in the section '*Legislation*'.

<sup>15</sup> Within International Humanitarian Law, punishment (such as reparations and jail time) has been conceptualized as a necessary element of holding perpetrators responsible for their actions. This is particularly relevant for the approach taken by the ICTY, ICTR and the ICC.

<sup>16</sup> With regards to the end of the Cold War and the violations of humanitarian law that occurred in the former Yugoslavia and Rwanda.

an international criminal court. A consensus emerged within the International Law Commission that a permanent global institution was required to hold perpetrators accountable for grave human rights violations (Struett, 2008, p.71). Second, the support for and successes of international criminal tribunals sparked a similar interest that the Nuremberg and Tokyo Tribunals had raised in the 1940s— namely that the backing for international measures of accountability was reemerging (Ehrenfreund, 2003). Topped off with increasing enthusiasm among NGOs at the prospect of creating an international criminal court; it seemed that conditions were ripe for laying the ground work of an international court (Struett, 2008). These circumstances merged to form widespread support for the possibility of establishing an international criminal court and negotiations began within the United Nations<sup>17</sup> to make these ideas a reality.

### ***Legislation***

The elements discussed in the previous section highlight the context surrounding the development of the International Criminal Court. It is also essential to discuss the legislation governing this newly formed entity and how it has been put into practice. As stated earlier, the International Criminal Court was established by the *Rome Statute*, which came into effect on July 17, 1999 when 120 states voted to adopt the *Statute*. The Treaty officially entered into force on July 1, 2002, following ratification by 60 nations. As of October 2010, 114 nation-states<sup>18</sup> had ratified the Court (International Criminal Court, n.d.). The make-up of state-parties includes 31

---

<sup>17</sup> Between Nation-states.

<sup>18</sup> The complete list of nations that have ratified the *Rome Statute* can be found at <http://www.icc-cpi.int>

African nations, 15 Asian states, 18 Eastern European countries, 25 Latin American states, and 25 Western European and other nations<sup>19</sup>.

As previously stated, the *Rome Statute* was developed at the Rome Conference in 1998. The Conference was attended by delegates from 160 countries, 33 intergovernmental organizations, and a coalition of 236 NGOs, that all participated in the creation of the *Statute* (Struett, 2008). The Conference took place from June 15 to July 17, 1998 where the contents of the *Statute* were negotiated. Working groups were set up to develop the provisions of the legislation. Each provision had to be adopted by ‘general agreement’ by the working group before it could be presented to the Conference (Ainley, 2006, p.151). The working groups formed the *Statute* through the approval of each provision. The *Statute* officially entered into force on July 1<sup>st</sup> 2002, when it had been ratified by 60 nations.

The *Statute* governs the operations and jurisdiction of the Court. Generally, it states that the Court has the jurisdiction to exercise its functions and powers on the territory of any state that has ratified the Treaty and by special agreement, on the territory of any other state (International Criminal Court, 1998). This means that although, as a rule, the Court can normally only exercise jurisdiction over nations that have fully ratified the *Statute*, circumstances exist where the Court may be able to intervene in nations that have not ratified. For example, the UNSC has the power to refer a case to the ICC even if the state has not ratified (International Criminal Court, 1998). Including UNSC referral, there are three ways in which the ICC can try a case: if the ICC prosecutor refers a crime committed by a state party, in accordance with Article

---

<sup>19</sup> There are also a number of countries that voted to adopt the statute, but failed to ratify it. Some of these include the United States, China, and Iran (International Criminal Court, n.d.).

15; or if a state party refers a crime to the ICC prosecutor<sup>20</sup>. If the case has been referred in one of these three ways, it must also satisfy the principle of complementarity (International Criminal Court, 1998: Article 1). This means that in order for the ICC to have jurisdiction over a case, the nation-state must be unwilling or unable to try the case themselves. Although this principle was developed as a compromise during the Rome Conference, it has been justified as way to encourage states to internalize the values of the *Statute*. Thus, in order to prevent their nationals from being tried by the ICC, a nation must align its domestic legislation with the contents of the *Rome Statute* and make a genuine effort to hold a fair trial. It is also noteworthy that the ICC is forward-looking<sup>21</sup>, as it can only hear cases that occurred following ratification (International Criminal Court, 1998).

Another important element of the *Rome Statute*, and an area of debate, is the notion of individual responsibility. The Court has jurisdiction over individuals who have committed a crime contained in the *Statute (actus reus)*. Article 25 states that these persons are “responsible and liable for punishment in accordance with this Statute” (International Criminal Court, 1998). This principle is important, because it digresses from the principle of state responsibility, thereby preventing individuals from using the state to shield themselves from criminal responsibility<sup>22</sup>. In order for these individuals to be held criminally responsible, they must also possess the requisite *mens rea* (mental element or intent). Accordingly, the individual must *mean* to engage in the

---

<sup>20</sup> Note that although the victims of these crimes are individual citizens, citizens *do not* have the power to refer cases to the ICC. The only possibility for an individual citizen to bring a case to the ICC’s attention is to inform the Prosecutor and hope for a referral.

<sup>21</sup> Or non-retroactive.

<sup>22</sup> On the other side of the debate, the notion of individual responsibility also prevents states from being held responsible, and can reinforce ‘bad apple’ theories. Individual responsibility communicates to the world that something is being done about the problem of massive human rights violations; however, this purported solution simultaneously fails to address the underlying structural factors behind these crimes. It can therefore serve to scapegoat a few individuals for problems created by the structure of society and international relations.

conduct and must *mean* to cause the consequence or must be “aware that it will occur in the ordinary course of events” (International Criminal Court, 1998: Article 30).

Even if an individual satisfies the above-mentioned criteria, there are factors that may exclude them from criminal responsibility within the ICC. First, the *Statute* excludes persons who were under the age of 18 at the time they committed the offence, from the jurisdiction of the Court (International Criminal Court, 1998: Article 26). The *Statute* also provides a number of other grounds for exclusion from criminal responsibility. These include: a mental illness or defect that prevents a person from having the capacity to understand the unlawfulness or consequences of their actions; a state of involuntary intoxication that has the same effect; the principle of self-defense; the defense of duress; a mistake of fact, if it negates the mental element; and a mistake of law, if it negates the mental element (International Criminal Court, 1998: Articles 31-32).

If a person fulfills the aforementioned conditions, and their situation does not exclude them from criminal responsibility, they may be held responsible only if the crime they committed is contained in the *Rome Statute*. The ICC has jurisdiction over the most serious crimes threatening the ‘international community as a whole’ (International Criminal Court, 1998: Article 5). There are four types of crime considered to be ‘the most serious’: the crime of genocide, crimes against humanity<sup>23</sup>, war crimes, and the crime of aggression. Up until June 11<sup>th</sup> 2010, only the first three had formal definitions contained in the *Rome Statute*. The *Review Conference of the Rome Statute*, held in Kampala, Uganda, adopted an amendment to *The Statute*, including a definition of the crime of aggression and conditions for jurisdiction (Davis,

---

<sup>23</sup> Which includes the systematic rape of women during a time of war (International Criminal Court, 1998).

Forder, Little, & Cvek, 2011, p. 1). Aggression is defined as, “the planning, preparation, initiation or execution by a person in a leadership position of an act of aggression” (International Criminal Court, 2011). The crime of genocide applies to “acts that have been committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious groups” (International Criminal Court, 1998: Article 6). Crimes against humanity cover a range of actions that are “committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack” (International Criminal Court, 1998: Article 7). For example, forced disappearances of persons, within the larger context of systematic attacks, could be considered a crime against humanity. Lastly, war crimes occur “when committed as part of a plan or policy or as part of a large-scale commission of such crimes” (International Criminal Court, 1998: Article 8). Thus, the ICC could prosecute in a situation where, within the context of a war, attacks have intentionally targeted civilian populations.

Finally, in order to understand the purpose of the legislation, it is vital to consider the main objectives of the *Statute*. These purposes are contained in the Preamble to the *Statute* and can be summarized into the following: to codify the universal moral code; to denounce unlawful/immoral conduct; to punish offenders for grave crimes that threaten the peace of the world; to take over when national criminal justice systems are unable to act; to deter individuals from committing future atrocities; to provide victims with some form of reparation, to end conflict and bring about peace and reconciliation; to end the international culture of impunity and prevent such crimes in the future; and to contribute to the peace, security and wellbeing of the world (International Criminal Court, 1998). Overall, many authors anticipate that the enforcement of the *Rome Statute* will mean that these objectives will be fulfilled and the world will be affected by fewer atrocities.

## *Legal Debates*

As touched upon in the ‘history and context’ section, as a groundbreaking event, the creation of the ICC sparked a number of legal debates. Most of the present legal debates surrounding the ICC can be divided into three main categories, (1) ICC legitimacy and politics, (2) ICC effectiveness in terms of ending impunity, and (3) State Sovereignty.

One of the main areas of debate is the extent to which the ICC can be considered a ‘legitimate’ institution. According to Struett (2008, p.153) in this context, legitimacy can be defined as “the extent to which people<sup>24</sup> in the world perceive the ICC as legal and are prepared to accept its commands as binding”. Whether or not the ICC is judged to be a legitimate institution is extremely important for a number of reasons. First, the Court is dependent upon state cooperation for successful functioning (Demirdjian, 2010). Because the ICC does not have its own police force, nation-states are often relied upon to carry out arrests, detentions, and transfers of suspects; and to collect evidence and/or hand evidence over to the Court’s Prosecutor. It has been hypothesized that states that do not view the ICC to be legitimate<sup>25</sup> will not cooperate, therefore potentially damaging the achievements of the Court (Demirdjian, 2010).

One of the first debates regarding the legitimacy of the Court pertains to the creation of the *Rome Statute*. The *Statute* is purported to be a codification of a universal moral code that is generally agreed upon by nation-states (International Criminal Court, 1998). This statement is highly contested as authors have pointed out that the Rome Conference was a place of politics (Ainley, 2006; Wippman, 2004). These authors argue that there was not an existing universal code from which to draw upon, as a number of cultural values and norms were not included in

---

<sup>24</sup> And states.

<sup>25</sup> Or who do not view the court as a threat.

the *Statute*. Furthermore, because the laws were made and voted upon by small working groups, power and politics played a role (Wippman, 2004). This is problematic because politics are associated with the private interests of individual states, which can be quite the opposite of what is best for the international community. Overall, the debate in this area concerns whether the formation of the *Rome Statute* is legitimate when considering the way that it was created and the private interests that could have been involved. Failing to see the *Statute* as legitimate could have ramifications for state cooperation, as well as state ratification - states may not ratify the Treaty if they do not feel that their values are included.

An additional debate within this theme pertains to the shift from state to individual accountability, and whether the ICC's approach to this is legitimate too (Ainley, 2006). It has been argued that transferring the blame to individuals allows states to avoid responsibility, retain a monopoly over the legitimate use of violence, and reinforces the status quo. Consequently, it can be argued that since individual persons can now face international accountability<sup>26</sup> the authority of the state to use violence will be perpetuated (Ainley, 2006, p.145). It could also allow states to use individuals to 'do their dirty work', while keeping the hands of the state 'clean'. On the other hand, it has been argued that this move is legitimate because it decreases the likelihood that individuals will be able to use state sovereignty as a shield behind which to commit grave human rights violations (Ainley, 2006). Thus, no longer will the 'abstract' entity of the state be held responsible for crimes that individuals have clearly perpetrated. Furthermore, it is argued that people may be more supportive of individual accountability because it helps to prevent entire communities (or countries) from being labeled responsible for inflicting massive

---

<sup>26</sup>Under the ICC, states will not be held responsible.

human rights violations<sup>27</sup> (Caine, 2009, p.348). Since both sides of this debate have their merit, it would appear that a more holistic approach, combining elements of individual and state responsibility could potentially solve the problems associated with following only one approach. As stated earlier, the ICC does not do this – it only holds individuals accountable.

One of the most serious debates in this area involves the legitimacy of the Court's existence. It has been argued that the ICC, as currently conceived, is predicated on structures that promote exclusivity (Henham, 2008). Concerns have been raised as to whether the effect of the Court has been to create a standard of international law enforcement for the 'developing' world - one that does not apply to the 'developed' world (Struett, 2008, p.3). This side of the debate is enhanced by the nickname the ICC has been given as the 'Court of Africa'<sup>28</sup>. Evidence for this claim can be found on the official website of the ICC. So far, perpetrators have been brought to the ICC from the following countries, the Democratic Republic of Congo, the Central African Republic, Darfur, Sudan, Uganda, the Republic of Kenya, and Libya (International Criminal Court, n.d.). The Court's legitimacy would be severely diminished if this trend of exclusivity persists. That said, Struett (2008) has also acknowledged that the ICC exists within the context of sharp inequalities in power and resources; therefore, it is impossible for the Court to fully escape the ramifications of global inequalities. Although this does not provide a justification for the perceived trend of exclusivity, it raises the possibility that the principle of complementarity has

---

<sup>27</sup>While it is recognized that the state and communities/society are not the same thing, the general idea still holds. It is plausible that when discussing atrocities, the state and society could be bridged into one entity, thus causing communities to be blamed for state actions and vice versa.

been operating effectively. Perhaps, the nations with the ability to prosecute their citizens for the crimes contained in the *Rome Statute* are doing so, thus avoiding the jurisdiction of the Court<sup>29</sup>.

The second area of legal debate has to do with the Court's effectiveness. Effectiveness has been conceptualized in terms of the Court's ability to fulfill the objectives outlined in its mandate (International Criminal Court, 1998: Preamble). Debates in this area have tended to focus upon the Court's ability to end impunity. It is important to consider these debates because they have ramifications for not only the day-to-day operations of the Court, but also whether the ICC is perceived to be legitimate. One of the most commonly cited goals of the *Rome Statute* is the Court's capacity to end impunity (Eiroa, n. d.). A number of authors have contended that the mere existence of the Court should be enough to substantially impact the international culture of impunity (Eiroa, n.d.; Hughes, Schabas, & Thakur, 2007; Rabkin, 2007; Struett, 2008). As identified by Rabkin (2007, p. 99) without global institutions, such as the ICC, to promote minimum standards of justice: gross human rights violations will remain unpunished; perpetrators will not be deterred from committing new international law violations; and the security of victims, regions, and potentially the world will be threatened. It is argued that at a minimum, the existence of the ICC provides an outlet to address the problems created by impunity and potentially prevent future atrocities from occurring.

Authors have also presented a number of factors that have or will prevent the Court from achieving its goal of ending impunity. Mani (2007, p.31) argues that the following challenges

---

<sup>29</sup> We have seen a case of this in Canada, where “a Quebec court has found Désiré Munyaneza guilty of war crimes committed in the 1994 Rwandan genocide. This is the first conviction under a Canadian law that allows residents to be tried for crimes committed abroad”. For more, see Quebec court convicts Munyaneza of war crimes in Rwanda. (2009, May 22). *CBC News*. Retrieved June 8, 2011, from <http://www.cbc.ca/news/canada/montreal/story/2009/05/22/quebec-rwanda-war-crimes-guilty.html>

associated with ICC trials will prevent the Court from reaching this goal: the problems of political will that can prevent states from ratifying the Treaty, arresting and transferring suspects, and providing access to evidence and witnesses; the possibility of a negative response to Court intervention and the relapse into violence; and the destruction of evidence that occurs in most conflicts. Ainley (2006) argues that the ICC will not be able to end impunity because the vast majority of war crimes will remain unpunished, thus falling short of providing accountability and ultimately failing to deter future offenders. It is argued that the scale of the solution is simply inadequate to respond to the scale of the problem (Ainley, 2006, p.154). Due to the prevalence of this debate within the literature and its highly contentious nature, the first specific research question is, 'is the notion of impunity present within media discussions of the ICC? If so, how?'

The final area of debate revolves around the notion of state sovereignty and the impacts of this upon ICC operations. Prior to the Court's establishment, state sovereignty was often used as a shield behind which to commit atrocities without the risk of intervention from other nations or institutions. Perpetrators did not have to fear the possibility of punishment if they had a position of power within the state; as it was known that left to their own devices, states often failed to prosecute those responsible for atrocities (Jones, 2006; Wippman, 2004). One of the intentions of the *Rome Statutes* is to communicate to the world that perpetrators of atrocities can no longer hide behind the states that they, or the orchestrators of violence, control (Eiroa, n.d.). The Court has had successes in this area (Eiroa, n.d.; & O'Callaghan, 2008). The fact that as of 2009, 111 states had ratified the *Rome Statute* shows that the existence of the Court has started to break down the barriers of state sovereignty. Furthermore, state-parties have also begun to internalize the values promoted by the Court. Evidence of this can be found in the fact that

nations have started amending their criminal legislation to include the crimes and principles of the *Rome Statute* (O'Callaghan, 2008).

Despite these successes, the power of state sovereignty to limit the jurisdiction of international criminal justice is still a major hindrance (Jones, 2006; & Rabkin, 2007). Because ratification of the ICC is voluntary, countries can exercise their sovereignty and choose not to join. Because of this, a number of powerful (and militarily active) states have been able to shield their nationals from any form of punishment. For example, some of the world's most powerful and militarily active nation-states have refused to ratify the Court, including both the United States and India. These states claiming that the sovereignty implications of ICC membership are too great to sacrifice<sup>30</sup> (Jones, 2006; & Raghavan, 2004). State sovereignty issues are significant because they prevent the Court from achieving its goal of ending the culture of impunity by limiting the number of countries that ratify the statute. Until all countries have ratified, it will be impossible for the ICC to have the opportunity to prosecute all of the most serious violations of international law.

These debates demonstrate that although most authors recognize that the creation of the Court was a defining moment in history, it still has a long way to go before it will be seen as an effective and legitimate institution. The current project will attempt to explore how the Court is perceived based on media accounts of its legitimacy and effectiveness. It is valuable to engage in this type of research because, as demonstrated above, whether or not countries view the ICC as legitimate and effective has ramifications for ratification, state-cooperation, and ultimately the success of the Court.

---

<sup>30</sup> However, as previously articulated, the Court may still prosecute American or Indian citizens if they are arrested in another state.

## **Chapter 2: Literature Review and Theory**

As demonstrated in the previous chapter, the ICC has received considerable attention in academic literature. Authors have debated over the legitimacy of the Court and the influence of politics, the ICC's effectiveness and ability to end the culture of impunity, and the impacts of state sovereignty. These discussions are important because media constructions could greatly impact the Court's ability to function. The ICC is dependent upon state support and cooperation to function. For example, it is possible that without favourable reflections, the ICC will not be seen as a legitimate institution and state cooperation and support could diminish. Similarly, the media representations of the Court could potentially impact public opinion, state support, and ultimately the overall functioning of the Court. This section will: conceptualize and discuss the media, media text, and the news media; introduce the theoretical model underpinning the current study – social constructionism; link social constructionism with the media; and outline the reasons for and primary research question for this study.

### ***The Media***

Broadly, the mass media is a social institution made up of different outlets, such as newspapers, radio, and television. The media has been conceptualized in the literature as, “society's primary information system” (Surette, 1992, p.6), “materials used for communication” (Carrabine, 2008, p.10), and as providing “broadly shared, common knowledge in society – independent of occupation, education and social status” (Surette, 2007, p.4). These definitions all recognize the media as a form of communication that is used by society to share information.

In order to share information with and engage audiences, the media rely on tools of communication such as texts (Burton, 2005, p.46). According to Hall (1973), these texts are

“forms of representations that are commercially produced commodities, which circulate as culturally meaningful objects and are actively interpreted by audiences in diverse settings” (p.12). Thus, journalists, who are paid by media corporations, produce texts that focus on significant events to circulate to the general public. Since media corporations rely on expanding readership to attract investors and make a profit, media texts often focus on subjects that will interest the general public (Barak, 1994). Because of this, news stories are often a primary feature of media texts.

Generally, news refers to “what society tells itself about itself” (Gans, 1980, p.xi). In other words, news is the information collected by media professionals about the world, which is then communicated back to the general public. Additionally, news is often viewed as “true, current, and objective information about significant events in the world” (Surette, 2007, p.15). Due to its reputation as truthful and accurate, news is often considered a legitimate source of knowledge. This is noteworthy because, particularly in the information age, media communication is the avenue through which the average person learns of the world outside his or her immediate experience (Barak, 1994, p.3). Because the news reports on many events that occur outside first hand experiences in the world, people often use it to supplement their knowledge and perceptions of the world (Fishman, 1980, p.11).

Although using the news as a source of information is not a bad thing, as many academics have pointed out news is not the simple regurgitation of facts that it is often thought to be. The media provide information about specific events that are deemed to be significant, which ultimately “paint a portrait of society” (Chermak, 1994, p.96). This ‘picture’, despite acting as a supplement to people’s individual experiences, is “limited because of the selection decisions made based on organizational constraints” (Chermak, 1994, p.96) and political influences

(Chomsky, 1989). In this way, news can be thought of, not as the unbiased reporting of events, but as “the exercise of power over the interpretation of reality” (Gans, 1980, p.81). Journalists interpret, summarize and adjust the information available to them in a way that suits their audiences and aligns with media policies of professionalism (Gans, 1980, p.80). This can result in ‘pictures’ that do not accurately represent the event or situation; instead, potentially reflecting socially constructed viewpoints that advance the beliefs of privileged elites (Barak, 1994, p.6).

The main point to be gathered from this section is that the media do not necessarily represent truth and accuracy. News stories manufactured by the media are socially constructed portrayals of events – not a simple regurgitation of the facts. The next section will discuss the broad theories of social constructionism and how these apply to media representations, specifically to news media texts.

### ***An Overview of Social Constructionism***

Social Constructionist theories center upon the belief that one true ‘reality’ does not exist; instead, people create reality (Surette, 2007, p.31). This involves examining the ways in which social interactions, specifically communication and language, shape people’s constructions of reality and the world around them (Burr, 1995: Burr, 2003; & Surette, 2007). It is argued that social constructionists “take a critical stance towards taken for granted ways of understanding the world” (Burr, 1995, p.2). Thus, instead of accepting things ‘the way they are’, social constructionists attempt to deconstruct social interactions, language, and ‘common knowledge’ about the world. The main focus of most social constructionist research is social interactions, particularly language (Burr, 2003, p.3).

Social constructionists view all knowledge as something socially constructed by individuals (Surette, 2007, p.31) or institutions. It is argued that our understandings of the world are shaped by categories and concepts that are historically, socially, and culturally dependent (Burr, 1995, p.3). As language, norms, and power structures change, what people understand of the world changes.

Although individual knowledge is important in the process of social constructionism, social knowledge has earned a lot of attention in the literature (Surette, 2007, p.32). Social knowledge refers to “ideas, interpretations and knowledge that groups of people agree to hold in common” (Surette, 2007, p.32). Social knowledge is developed and passed on through communication and language (Burr, 1995; & Fishman, 1980). It is derived from four main sources: personal experiences, significant others, other social groups and institutions, and the media (Surette, 2007, p.32).

While it is acknowledged that knowledge of the world is gained through personal experiences, the language used to interpret and communicate these experiences is socially and culturally constrained (Burr, 1995). After an experience occurs, a person uses language to interpret it, before communicating it to another person. The language and frameworks available to them are culturally, socially and institutionally dependent. These personal experiences, which are constructed by language and discourse, only enter the realm of social knowledge once they have been passed on to others. As alluded to earlier, these experiences are more easily accepted as reality when they come from significant others, such as peers, friends, and family (Surette, 2007, p.32). People are more willing to accept the truth in statements issued by people they trust. Due to the structure of most Western nations and the confidence placed in institutions and the accuracy of information they present, individuals also accept information from social

institutions. Thus, social groups and institutions participate in the creation of social knowledge through their acts of communication. For example, educational institutions present ideas, ideological frameworks and worldviews for students to adopt (Surette, 2007). This information becomes social knowledge once it is communicated from one person to another, be it teacher to student, or student to student. Personal experiences, significant others, and other social groups and institutions act as knowledge sources, which are shaped and communicated using language and discourse.

As previously stated, language and discourse allow for the creation of knowledge. However, social constructionists do not view this process as neutral and unbiased. It is argued that discourses, which operate as a framework for allowing people to interpret their experiences, serve the purposes of social control<sup>31</sup> (Burr, 2003, p.73).<sup>32</sup> Burr (2003) cites Foucault in order to explain how this works, “power is tolerable only on condition that it masks a substantial part of itself. Its success is proportional to its ability to hide its own mechanisms” (p.73). This means that language and discourse operate as a method of social control because the public does not recognize it as such. Burr (2003) argues that “discourses ... can be seen as tied to social structures and practices in a way that masks power relations operating in society” (p.86). The perfect example of this process at work can be seen with media operations, which is also the fourth source of social knowledge.

---

<sup>31</sup> Social Control can be defined as “techniques and strategies that regulate human behaviour and lead to conformity or obedience to society’s rules”. Social control is often enforced through the implementation of belief systems. These can emanate from social institutions (such as the church, the state, the education system, etc.), laws, and any other system that attempts to illicit conformity (Adler, Mueller, Laufer, & Grekul, 2009: 158-159).

<sup>32</sup> For more, see Adler, F., Mueller, G. O. W., Laufer, W. S., & Grekul, J. (2009). *Criminology*. Toronto, ON: McGraw-Hill Ryerson.

Media provides an example of the influence of social control. The media uses language and discourse to communicate information to its audience. It is important to remember that the information shared by media texts is socially constructed through representations - in both a material and ideological sense (Burton, 2005, p.61). Ideas are produced in two ways, first ideologically texts represent ideas; second, the interaction between reader and text also produces ideas. Social control affects the type of information presented, the way this information is organized, and subsequently, the ways in which the audience can interpret it. In an ideological sense, dominant values<sup>33</sup> inform the way text is made and read. This means that only certain kinds of stories will be reported - using pre-established frameworks that are structured according to dominant values. One of the factors contributing to bias in media representations is the work of ‘claimsmakers’ (Sasson, 1995, p.2). As previously suggested, rather than focusing on the nature and causes of social problems, social constructionists prefer to examine the conditions that lead something to be considered a social problem in the first place – some of these conditions are created by ‘claimsmakers’. ‘Claimsmakers’ include “politicians, grass roots activists, journalists and other social reformers who campaign to identify particular conditions as harmful and in need of amelioration” (Sasson, 1995, p.2). These individuals contribute to the ways in which particular ideas or events are represented in the media. When the effects of ‘claimsmakers’ are combined with the factors of social control listed above, it is easy to see that media texts cannot be seen as neutral and unbiased goods – they are *ideological representations*.

Similar arguments can be made about all of the sources of social knowledge. Any information passed from one person to another is a representation that is subject to bias and

---

<sup>33</sup> Dominant values refer to those held by the dominant, or powerful groups in society. Typically, these values promote the interests of powerful groups – often with the aim of subordinating less powerful groups. For more information, see Burton, 2005: 48-51.

ideological influence. Overall, people's images of reality are made up of representations and constructions drawn from their own experiences, significant others, social groups and institutions, and the media. Since this research project is focused on media representations, the next section will concentrate on applying social construction theories to the media – specifically newspapers.

### ***Social Constructionism and the Media***

As discussed in the previous section, knowledge creation (originating from any source) is not a neutral or unbiased process. It is therefore imperative to understand the presence of bias and its contributing factors. However, before delving into media processes and the ways in which news stories are constructed, it is important to identify and explain the type of social constructionism underpinning this study. Utilizing Curran's (2002) breakdown of social constructionist theories, this section will outline that the general framing of the current study takes a radical functionalist approach. Radical functionalism's main premise is that it "stresses media's subjugation to authority" (Curran, 2002, p.137). Basically, this perspective argues that a range of outside factors (including market forces, advertising pressures, media professionalism, and government control) influence the types of constructions that media can publish. This perspective also contends that the media do not passively reflect the consensus<sup>34</sup> of society; instead, through the pressures of the outside forces listed above, they actively seek to produce consensus<sup>35</sup>. In producing consensus, the media support existing power structures in society by

---

<sup>34</sup> This is not to suggest that a consensus exists within society. Instead, the argument can be made that the media actively attempts to create a consensus - or a set of beliefs held/shared by the majority of the population - within society.

<sup>35</sup> As will be discussed later on, the type of consensus that the media seek to produce is that advocated by powerful corporate and government elites. For more on this see Curran (2002) or Herman & Chomsky (1998).

stigmatizing and dividing their opponents<sup>36</sup> (Curran, 2002). This theory views media as a powerful figure in society - having a significant influence over public knowledge and constructions of reality. It also relies on the premise that power is highly concentrated within society, arguing that the media are so powerful because other institutions (such as the government, the educational system, the market, religion, and the family) reinforce dominant values articulated by the media (Curran, 2002, p. 139). It contends that media is both shaped by, and shapes, the broader social formation.

It is important to consider the propositions of radical functionalism throughout the following discussion, as it will be imperative to the development of this study's primary research questions. Following a radical functionalist line of inquiry, this project will examine social constructionism in relation to media portrayals of the ICC. This section will illuminate the factors behind media operations and how these affect the type of information and the way that information is represented in the media. In order to accomplish this, this section will be divided into four main topics, including (1) news values & professionalism; (2) news media, power, and social control; and (3) news media and the government.

### ***(i) News values & professionalism***

It has been established that news media production is not neutral – as will be demonstrated in this chapter, particular values, agendas, and ‘codes of professionalism’ inform the behaviour and choices of news professionals (Burton, 2005; Chomsky, 1989; Carrabine, 2008; Schlesinger, 1987; Surette, 1995; and Tunstall, 1971). The very definition of ‘news’ reinforces this argument, news is the “constructed version of its source material; a kind of

---

<sup>36</sup> In this case, opponents refer to media organizations proposing alternative or radical perspectives. See Curran (2002).

narrative; a media representation; a *selective* version of events, utterances and behaviours” (Burton, 2005, p.277). As argued by Burton (2005, p.278) it is virtually impossible to view news as anything other than socially constructed ideological work, “it brings us version(s) of the world; a certain kind of understanding of the world; and what we refer to as truth and reality”. Evidence for these propositions will come to light throughout the examination of the effects of news values and professionalism (the focus of this section). This will involve discussion of ‘news making’, ‘beats’, ‘newsworthiness’, ‘professionalism’/‘professional practices’, and the editorial system.

In order to create news, news workers must put together a version of events that fulfills that medium’s needs. The structure, division of labour, and decisions made within news organizations determine which stories eventually get selected (Ericson et al., 1987). This means that media representations of society are limited because selection decisions are often made based on organizational constraints<sup>37</sup> (Chermak, 1994, p.96). ‘News making’ describes this process and the ways in which selection decisions are made. Specifically, ‘news-making’ refers to the processes by which news is created by journalists and media professionals. This involves making the production of news more manageable by routinizing tasks and putting journalists in the position to get easy access to news (Tunstall, 1971, p.97). This occurs in several ways: routine journalism, which involves the use of ‘beats’; evaluations of ‘newsworthiness’; and professional practices and codes of behaviour.

Fishman (1980) identifies two levels of news-making: ‘routine’ and ‘manipulated’ journalism. He argues that the majority of news stories are produced using ‘routine’ journalism,

---

<sup>37</sup> Decisions are often made based on organizational constraints and according to the values of professionalism and newsworthiness (Schlesinger, 1987).

which refers to standard, day-to-day news stories. These stories are usually considered to be “good, plain, solid, honest, professional news reporting” (Fishman, 1980, p.15). Conversely, ‘manipulated’ journalism is politically motivated and involves manipulation of the news media to serve particular interests (Fishman, 1980, p.15). For example, the police (or any other source agencies) strategically use their power to construct the facts of a story in their favour. This could involve a police agency insisting that a certain area is experiencing a ‘crime wave’ in order to gain public support for a budget increase. The focus of this section will be on ‘routine’ journalism because it is believed that this creates the majority of news content.

The bulk of ‘news-making’, for both ‘routine’ and ‘manipulated’ journalism, is created using ‘beats’ (Fishman, 1980, p.27). Media professionals use ‘beats’ to organize how and where information is gathered, and to ensure well-rounded newspaper coverage. A beat refers to a specialized area of subject matter, which can consist of a specific topic, such as ‘nature’; a particular institution, including city hall; or a geographic region, such as a certain neighbourhood. Editors assign specific journalists to particular beats, either for the day or for an extended period of time. While covering a specific ‘beat’, reporters often expose themselves to only a few strategic sources within their ‘beat’ territory. For example, a reporter covering city hall may have a few contacts that he/she consistently relies on for information: such as the mayor’s assistant, certain counselors, or other city officials. Since it is rare that a sufficient number of ‘newsworthy’ events will occur in a single day, news editors heavily rely upon ‘beat’ stories to fill the newspapers (Fishman, 1980, p.35).

It is important to recognize that while beats are crucial for the daily operations of the newsroom, there are some serious limitations that relate directly to bias in media reports. Depending upon ‘beats’ as the primary information gathering method creates a major problem:

only one perspective (often emanating from official, bureaucratic sources) will appear in the news media. This obfuscates any alternative constructions, interpretations, and ways of knowing about the world (Fishman, 1989, p.138)<sup>38</sup>. Beats therefore encourage events and information to be socially constructed in uniform ways, typically in accordance with the status quo, which fail to allow for diversions from the mainstream.

Another important element of ‘news-making’ (that often affects what is reported from each beat) is ‘newsworthiness’. News content, even that originating from ‘beats’, tends to be filtered according to ‘newsworthiness’ (Carrabine, 2008). The values underlying ‘newsworthiness’ are learnt as norms, which are a product of newsroom culture. Carrabine (2008, p.148) has identified a number of elements that contribute to the ‘newsworthiness’ of a story, including immediacy, dramatization, personalization, and titillation. Before an event can become news it must be new – it must spark an interest in the readers as fresh and sensational. Furthermore, if this event is visible and spectacular it will be given precedence and more space in the newspaper. Personalization refers to the fact that well-known individuals are given more attention than the context of events. Finally, titillation means that ordinary or mundane stories are given far less attention than sexually related stories.

Surette (2007, p. 35) has also outlined contributing factors revealed within his studies. He argues that the news media favour content that is dramatic, sponsored by powerful groups, and related to pre-established cultural themes. Stories that have these elements will be given precedence over stories that do not. Thus, what appears to be the most ‘newsworthy’ in a newspaper may not be the content or events that are most affecting the world – it is more likely

---

<sup>38</sup> This point will be returned to within the sections entitled ‘news media and the government’ and ‘media, news, and power’.

to be what the journalist and editor think will sell more newspapers according to the filters of ‘newsworthiness’ (Carrabine, 2008). Furthermore, this reinforces how the media can act as filters: promoting constructions advanced by powerful groups, while suppressing views outside the mainstream (Surette, 2007, p. 35).

Professional practices are “what media workers have agreed is okay to publish or not and in what ways, will in effect constrain what institutions put out and what we are allowed to have in the public domain” (Burton, 2005, p.23). Professional practices are one of the major sources of ideological constraint upon news content. They work in conjunction with ‘newsworthiness’ to control the types of stories and information presented in the news, and therefore control the picture of the world created. At the heart of ‘professional practices’ are ‘news agency values’, which are based upon the conception of ‘objective reporting’ (Schlesinger, 1987, p.15). Developed in the 19<sup>th</sup> Century, market values provided the foundation for ‘objective reporting’: in order to maximize readership, newspapers must not alienate any segment of the population by offending their political beliefs (Schlesinger, 1987, p.15). The main values associated with ‘objective reporting’ are: “impartiality, accuracy, and factuality - by claiming to produce unsullied information based on a multiplicity of sources” (Schlesinger, 1987, p.15)<sup>39</sup>.

Another aspect of professionalism, which reinforces efforts to force news workers to internalize news values, is an immersion within media culture. This requires news workers to

---

<sup>39</sup> Reporters often consider themselves to use objective reporting (specifically when the information is gathered using ‘beats’) when they use information gathered from ‘official, bureaucratic sources’ (Fishman, 1980). Bureaucratic ‘facts’ are considered the hard data of news work – information that does not require further investigation or confirmation. Yet again, the problem arising from this is that it allows one perspective to dominate the construction of an issue. This construction often emanates from powerful groups in society (such as government agencies) and tends to suppress alternative ideologies and perspectives. For more on this see Fishman, 1980.

watch television, listen to the radio, and read newspapers to stay informed with ‘what is going on in the world’ (Schlesinger, 1987, p.108). Similar to ‘news agency values’, immersion in media culture has a normative component. This feature suggests two important things, (1) that a good news worker has a general knowledge that far exceeds the average reader (implying that the news worker knows best); and (2) the committed, professional news worker essentially has no days off. News workers who view themselves as professionals acting within ‘news agency values’, use this to justify their right to exercise power in deciding which stories are ‘newsworthy’ (Schlesinger, 1987, p.108). These decisions are not neutral because acting in accordance with professionalism and ‘news agency values’ requires prioritizing information according to factors that will sell the most newspapers. Furthermore, since news workers consider themselves to be more knowledgeable than the general public, reporters can easily defend their choices regarding which stories to publish (which may be quite biased).

In addition to the aforementioned efforts to engrain the values of professionalism into individual news workers (therefore allowing them to make the right kinds of decisions regarding the ‘newsworthiness’ of a story) it is essential to also understand the institutional factors that prevent journalists from truly deciding what to report on. To illustrate, editorial policies originating from media institutions determine the appropriate selection of stories, angles and modes of presentation (Schlesinger, 1987, p.135). Journalists are expected to follow these policies, and editors are required to enforce them.

Various features of these editorial systems act, usually unnoticed, to ensure broad conformity with the desired approach to the news. First, the reviewing function of the editorial system, which involves the continuous assessment of journalists’ performance by higher ranking editors, enforces a hierarchy of power and status in the newsroom (Schlesinger, 1987, p.135). No

story goes to press without approval from the editor, which ensures that all stories meet the standards of professionalism and news agency values.

In addition to the reviewing function of the editorial system, media corporations also employ systems of rewards and punishments to promote conformity. Promotions to superior positions, such as editors, are used as rewards for the most professional news workers. It is well known within the industry that journalists who employ the elements of professionalism and embody the values of the newspaper are those who are most likely to be promoted into editor positions. Thus, due to the amount of control they can exercise, editors are selected very carefully. Promotions are usually only given to those who are considered responsible enough to occupy the editor position – this entails selecting people who have been so thoroughly socialized by prolonged exposure to the values and mores of the media institution<sup>40</sup> that “they will instinctively make the right decisions” (Schlesinger, 1987, p.147). Conversely, media workers who challenge the values of ‘professionalism’ and ‘newsworthiness’ (such as providing a radical perspective on a particular issue) can be denied benefits, demoted, or fired (Schlesinger, 1987). This demonstrates that it is in the best interests of news worker to adopt news agency values and professional norms – standards that have been proven to bias the information presented in the media.

There are two important conclusions to be drawn from this section. First, news workers invoke ‘professional’ practices and ‘newsworthiness filters’ to endorse news values (to maintain the status quo) and therefore justify their selections of news material. When we consider Surette’s (2007, p.35) proposition that the media act as filters, which dismisses perspectives

---

<sup>40</sup> Or corporation in control of that media institution.

outside the mainstream – it is evident that certain perspectives (those maintaining the status quo) often receive more credibility, coverage and legitimacy.

The second conclusion (that builds upon the first) is that the reviewing function and reward and punishment features of the editorial system ensure the commitment to professionalism and news values by all news workers. Policies of editorial review ensure that all works produced by journalists are evaluated by editors and will not be published if they fail to conform. Conversely, journalists are also made aware that conformity heeds promotions, pay raises, and access to more desirable stories. Thus, if the attractiveness of professionalism and news values fail, the editorial system virtually ensures that only stories fitting the desired ‘reality construction’ of the newspaper will be published.

### ***(ii) News Media, Power, and Social Control***

This section will expand upon some of the conclusions drawn in the previous segment – specifically those relating to the factors affecting what newspapers consider to be ‘publishable’. It will begin by returning to the definition of the ‘news’ and how power and social control are implicated in this; then Carrabine’s (2008, p.142) perspective on media and economic organization will be discussed and expanded upon; following this will be an examination of ‘bureaucratic routine’; finally, this section will end with an attempt to answer the question, ‘why control the media?’

Again it is important to begin with the definition of the ‘news’. According to Gans (1980) news is chiefly a reflection of “the exercise of power over the interpretation of reality” (p.81). In other words, news can only be created when a person uses their power to find meaning in a phenomenon and put it into words. Building upon this definition, Barak (1994) argues that the

creation of news is not a neutral, conflict free process; instead “news emerges from struggles that are ultimately resolved, at least momentarily, by prevailing but not necessarily dominant relations of power” (p.6). This implies that news is not just the product of an individual exercising power over the interpretation of reality; it is also a product of larger social conflict and the processes of social control. Researchers have identified a number of sources of social conflict that influence media production, one of the largest being economics.

Carrabine (2008) also maintains that media constructions are not neutral and unbiased. He demonstrates this by outlining a number of perspectives thought to influence media production, most significantly economic pressures. It has been argued by a number of authors that economic factors are largely responsible for the environment in which mediated communication takes place (Burton, 2005; Carrabine, 2008; Chomsky, 1989; Curran 2002; and Potter & Kappeler, 1998). The major issue here is how the economic organization of media industries influences the production and construction of meaning. In order to understand the extent of economic influence, it is important to begin with Curran’s (2002) concept of the ‘commercialization of the popular press’. This process began with ‘technological innovation’ and was perpetuated by the role of advertising. Prior to the invention of the rotary printing press, the cost required to print a newspaper was quite minimal. The Hoe printing press allowed for the production of small-scale newspapers at a reasonable cost to the producers. This allowed for the dissemination of a wide breadth of ideas, perspectives, and political ideologies to the public. Arguably, the Hoe printing press allowed for a great deal of diversity in the content and types of newspapers available. Curran (2002) contends that ‘technological innovation’ and the switch to rotary machines lead to a sharp increase in the cost of producing a newspaper, and largely restricted production access to the wealthy.

On its own, technological innovation did not completely limit the production of newspapers to wealthy capitalists (Curran, 2002, p.93). These barriers were not insurmountable, as determined editors could find ways to publish their newspapers. For example, some wealthy capitalists rented printing time on their presses. This substantially decreased printing costs because newspaper owners no longer had to purchase their own press. However, major obstacles arose when advertising began to play a major role in financing newspapers. According to Curran (2002), “all national newspapers in the mass market cost more to produce and distribute than the net price at which they were sold, therefore without support of advertisers, newspapers ceased to be economically viable” (p.96). Thus, even though some innovative editors were able to rent printing time at a local press, without the support of advertisers it was impossible to keep the paper alive.

Several key authors have argued that advertisers were extremely biased in the types of papers they chose to support. Curran (2002) maintains that some advertisers withheld support from papers on political grounds. Evidence showed that working class and radical newspapers, which often denounced Parliamentary practices during the 19<sup>th</sup> Century, rarely received advertiser backing. Chomsky (1989) argues that advertising is a business; therefore, support decisions would be based on profitability. This means that advertisers would be more likely to support newspapers with wide circulations and wealthier audiences– as these are the people with the ability to purchase their products (Chomsky, 1989, p.7-8). Radical newspapers were typically associated with the working-class; therefore, these papers would have had a hard time procuring advertising support. Since advertising distribution largely determined the structure of the press, it

is easy to see why most radical newspapers<sup>41</sup> went out of circulation by the 1920's (Curran, 2002, p.100).

Many argue that this trend has continued to present day. The 'commercialization of the press' has created an environment where major corporations control segments of the media that reach the largest audience (Chomsky, 1989). Furthermore, the concentration of media ownership by major corporations has created a situation where particular ideologies and constructions dominate (Carrabine, 2008; Chomsky, 1989; and Curran, 2002). It is argued that these processes have pushed superficial news formats to the forefront, while subsequently diminishing any spaces for meaningful debate on controversial issues (Carrabine, 2008; Chomsky, 1989). Because news media are controlled by corporations, they are expected to respond to the 'desires of those who own and control them' (Potter & Kappeler, 1998, p. 20).

As demonstrated above, the 'commercialization of the press' and the role of the market has heavily influenced the type of news, ideologies and constructions permitted in the 'mainstream media'. As will be expanded upon in the following section, this could mean that media discussions of the ICC will be limited to dominant constructions, and potentially fail to engage in any sort of critical analysis. This discussion informed the second specific research question, 'does the media undertake a critical analysis of ICC operations? If so, how?'. The level of control over the media, and the origins of this research question, will become even more evident when the state influence is discussed in the third section, entitled *News Media and the Government*.

---

<sup>41</sup> Curran (2002) discusses radical newspapers in Britain specifically; however, the same processes were taking place in all Western nations so these conclusions are generalizable.

In addition to economic organization, ‘bureaucratic routine’<sup>42</sup> is another major source of control over the media (Carrabine, 2008). This perspective emphasizes the ‘bureaucratic necessity of routine’ as the main influence. It is argued that social institutions and a need to maintain bureaucratic legitimacy (as institutions of social control) drive the social construction of the news (Carrabine, 2008; and Fishman, 1980).

As discussed in previous section, entitled *News Values and Professionalism*, the “institutionally driven social constructions of the news are facilitated by a number of strategies devised to build certainty into the production process” (Carrabine, 2008, p.147). The most important aspect of this control process, is maintaining stable relationships with official sources. As previously mentioned, information provided by official sources are considered to be ‘hard facts’ that do not require additional investigation by news workers (Fishman, 1980). Journalists regard agency officials as having a special vantage point from which they can observe events, and as “socially authorized and socially sanctioned knowers” (Fishman, 1980, p.95). Thus, news workers consider agency officials to have a special knowledge available to them by their position in a social institution.

This reliance on bureaucratic accounts has several key consequences for social control. First, basing a media account solely on bureaucratic ‘facts’ renders any alternative perspectives invisible in the newspaper (Fishman, 1980). This means that social constructions dominating newspapers would be ‘official, bureaucratic accounts’ – anything that challenges or violates these ‘facts’ effectively disappear. Furthermore, this type of news “ends up legitimating

---

<sup>42</sup> Carrabine (2008) identifies ‘social routine’ as another source of control over media production. However, for the purposes of this section this concept will be instead referred to as ‘bureaucratic routine’. This concept is more suited because the focus of this section will be upon the need to maintain bureaucratic legitimacy as a method of social control.

institutions of social control by disseminating to the public institutional rationales as facts of the world” (Fishman, 1980, p.138). Social institutions have a vested interest in maintaining public support for their existence and activities. Challenges to these institutions would cause huge problems for the prevailing system. Thus, providing journalists with bureaucratic accounts of events prevents dominant perspectives from being challenged and maintains the legitimacy of these institutions and their decisions. Along with Noam Chomsky’s propaganda model, which will be outlined in the next section, these conclusion helped create the third research question, ‘Is there a connection between state support/opposition of the ICC and favourable/negative media portrayals of the Court’s operations?’. Due to the reliance on official bureaucratic accounts, and the prevalence of government as a source organization, it is plausible that representations of the ICC will be in line with official government policy towards the Court. This discussion will be expanded upon in the following section.

Overall, this section has demonstrated that economic organization and bureaucratic routine are forces used to constrain and control what newspapers are able to publish. The competition of the market system has been used to diminish the presence of radical or non-mainstream perspectives within the media. Furthermore, media reliance on bureaucracy and bureaucratic routine ensure that radical perspectives are filtered out of the mainstream media by heavily relying on ‘data’ provided by official bureaucratic sources. This is significant because of the reliance upon dominant constructions. Because media serves as a source of social knowledge, failure to challenge any of the dominant constructions surrounding the Court could paint a very biased picture. The following section will expand upon these ideas by examining the role of the government in the power and control over media content.

### ***(iii) News Media and the Government***

From the discussion above, it is evident that the state may also have an interest in shaping the media. This section will argue that the government has a rich history of efforts aimed at shaping and/or controlling the media. Some of these measures include the use of the law through taxation, licensing and regulation; source relationships; and instilling fear in media workers. Furthermore, in order to expand the understanding of state influence and its justifications for control, Chomsky's (1989) propaganda model will be explained. This section will form the basis of the theory used for this study and will inform the primary research questions.

Throughout history, the state has used the law to apply measures of control to the media (Burton, 2005). These systems of control have included taxation, licensing, and regulations (Burton, 2005; and Herman & Chomsky, 1998). Although currently a less popular method of control, the state often employed taxation to weed out undesirable newspapers by discouraging their financial support. For example, until the second half of the 19<sup>th</sup> Century, the British government levied taxes against the press, which were designed to control the types of information available to the public (Curran, 2002). These taxes took the form of an 'advertising duty', which prevented most newspapers from acquiring corporate funding. During these times, a newspaper's success was highly dependent on the individual wealth of the owner(s) and their ability to pay duties imposed on their newspaper. This created a situation where 'mainstream' newspapers owned by the upper classes were more likely to survive than radical newspapers with less funding. Although the successes of these taxes were questionable, the fact that the government attempted to use taxation as a control mechanism remains (Curran, 2002).

Beyond taxation, the government has also used the law to create regulatory and licensing guidelines (Herman & Chomsky, 1998). Because most media corporations require state licenses and franchises, they are potentially open to government harassment. These mechanisms can be used to control who can enter the industry, and potentially prevent radical newspapers from acquiring the authority to publish. They can also be used to sanction those who do publish undesirable or non-mainstream constructions by threatening to take away or suspend a license. Although these regulations have become increasingly lax, they still provide an effective avenue for government control (Herman & Chomsky, 1998).

The government also uses its power to instill fear in media workers. Frequently, the fear of government intervention, such as official legal action or license suspension, or the withdrawal of government support for a particular newspaper is enough to prevent the media from publishing anything they please (Burton, 2005). The state has a number of avenues for reprisal at its disposal. Media corporations are aware that, for example, state accusations of libel could significantly impact a newspaper's credibility (Burton, 2005).

Furthermore, the potential damage to source relationships may be enough to deter the media from publishing unfavourable perspectives (Burton, 2005; & Fishman 1980). When it comes to gathering information for news stories, it is important to remember that the media rely on the government as a consistent and reliable source (Burton, 2005; Chomsky 1989). The state provides easy and reliable access to news stories. This is typically accomplished through 'official sources', which are provided by the government to feed stories and information to media workers (Fishman, 1980). As previously discussed, the structure of the news media creates a dependency on 'source information' to fill the newspapers on a daily basis (Fishman, 1980). Often times the government will even provide press releases that are structured using the exact

style of news stories (McCombs, 2004, p.102). This guarantees that the story is constructed in a way favourable to the government, while also ensuring minimal work for media workers (McCombs, 2004). Losing the support of the government and the ‘official sources’ they make available could be detrimental to the day-to-day operations of a newspaper (as these sources tend to supply the majority of information filling the newspapers). Thus, offending a particular source by publishing an alternative perspective to the one they presented, or publishing content that goes against the status quo could result in the loss of government support and a significant source of information. The media therefore have an interest in maintaining a good relationship with the government to avoid sanctions, penalties and retain their main source of information.

The government uses the media to “disseminate policy, promote initiatives, release information into the public domain, to test reactions to new laws, and present in the public sphere a favourable view of the government” (Burton, 2005, p.20). The evidence so far reveals that oftentimes, the media obliges. After all, as much as they claim to serve the public, in practice they ultimately serve the interests the government (and corporations). As a source of public knowledge, the government has an interest in controlling the news media because they can prevent the dissemination of unfavourable perspectives and promote the status quo. Benefits of controlling the media are even more evident when the propositions of Chomsky’s (1980) propaganda model are considered.

### **Propaganda Model**

Chomsky’s (1989) ‘propaganda model’ is a useful tool to examine these conclusions in more detail. The main premise of this model is that “the media serve the interests of state (and corporate power), which are closely interlinked, framing their reporting and analysis in a manner

supportive of established privilege and limiting debate accordingly” (Chomsky, 1989, p.10). In order to arrive at this conclusion, the model examines the inequality of wealth and power and the subsequent effects on media constructions (Herman & Chomsky, 1998, p.2). Many of these elements have been discussed in the sections entitled *News values and professionalism* and *News media, power, and social control* so they will be omitted from this discussion. The elements affecting media constructions are laid out as a set of news filters, including:

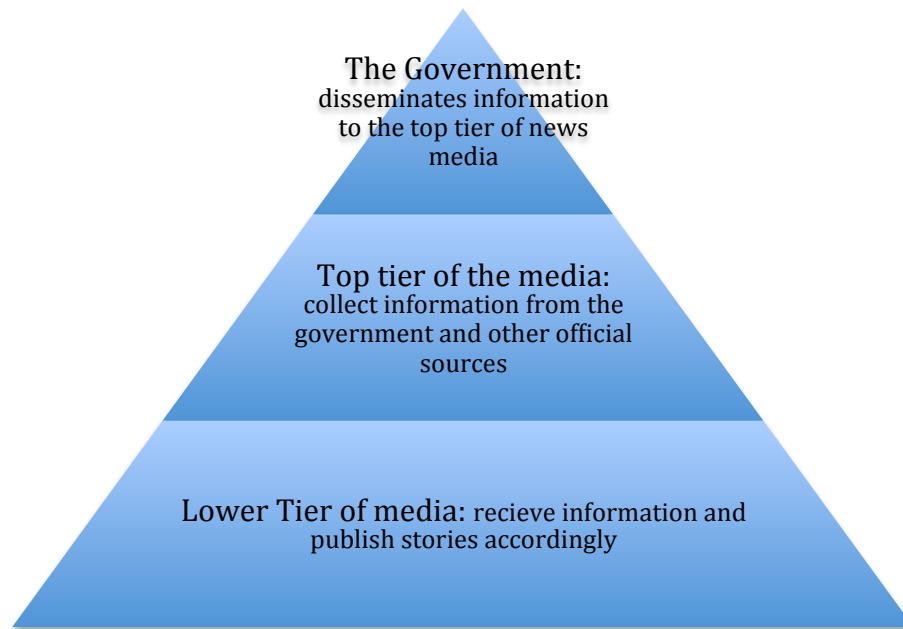
(1) size, concentrated ownership, owner wealth, and profit orientation of dominant mass-media firms; (2) advertising as the primary income source of mass media; (3) media reliance on information provided by the government, business, and ‘experts’ funded and approved by primary sources and agents of power; (4) ‘flak’ as a means of disciplining the media; (5) ‘anticommunism’ as national religion and control mechanism<sup>43</sup>; (6) the raw material of news must pass through successive filters, leaving only cleansed residue fit to print. (Herman & Chomsky, 1998: 2)

First, it is important to understand that the media is tiered. The top tier (in the United States) includes *The New York Times*, *The Washington Post*, and *The Wall Street Journal*. Together, these papers and the government, define the stories and perspectives that will dominate the news each day, and often provide lower tiered papers with pre-packaged information. This process can

---

<sup>43</sup> Herman and Chomsky (1998) wrote in the 1990’s when anti-communism was one of the most powerful national sentiments in the United States. Although it is still be a factor, this element has less relevance for the present study. Perhaps more relevant for the current study would be dominant class values.

be illustrated with the following diagram:



This demonstrates that the government and powerful elites in control of the top ranking newspapers most often control the construction of information. Therefore, ‘mainstream’ perspectives that support government and corporate ideologies will be favoured over any alternative constructions.

Another element outlined by Chomsky & Herman (1998) is the cooperation between corporations and the state to implement effective methods of control. It is argued that in areas where government efforts have largely failed to regulate the media, states and corporations have worked together to devise strategies of control. For example, although they had some successes, advertising duties and government harassment were largely deemed to be ineffective (Herman & Chomsky, 1998, p.14). This led the government to take a different approach: using deregulation and market forces to control media activity; and acting as a consistent, reliable source of information to the media. Deregulation, and the media’s subsequent reliance on advertising revenue for survival created an environment where “advertiser’s choices influence media

prosperity and survival” (Herman & Chomsky, 1998, p.14). In this world, working class and radical newspapers are at a disadvantage because they have always tended to maintain a readership base of less prosperous individuals. Because advertisers are interested in profits (by advertising to people who will buy their products), support will be concentrated on newspapers with affluent audiences (Herman & Chomsky, 1998, p. 15). This process serves the interest of advertisers and the government. Advertisers benefit from both profit and media support for the status quo (i.e. the market system). Governments benefit because only ‘mainstream’ media, which just so happens to support the status quo, can survive in the market. This allows constructions favourable to government ideologies to dominate, and consequently subjugates any alternative perspectives (Herman & Chomsky, 1998).

Finally, because of their merit as sources, and their consistent provision of news stories, the government holds a great degree of power over media constructions. This point has already been discussed at great length in this chapter; however, evidence of how this plays out in newspaper constructions is worth considering. Herman & Chomsky (1998) found that newspaper stories are often determined based on usefulness to government elites. For example, their study revealed that the media tends to “concentrate on victims of enemy powers and forgets about victims of friends” (Herman & Chomsky, 1998, p.32). The same can be said of crime: newspapers will often highlight atrocities perpetrated by enemy nations, while ignoring those of allied states. Herman & Chomsky (1998) also found that propaganda campaigns supported by the media tend to be closely attuned to the interests of government elites. They discovered numerous examples of media campaigns designed to garner public support for “official positions” on various wars, including for example Vietnam, the Gulf War, and the Cold War (Herman & Chomsky, 1998). It is argued that government power (due in part to their role as source

organizations) allows them to control the construction of stories and helps to preserve or build popular support for their actions.

The propaganda model helps illustrate the main argument of this section: research shows that the government does make a consistent effort to control media content and ultimately, the media has a vested interest in catering news story constructions to approved perspectives<sup>44</sup>. This was demonstrated through numerous examples of state implemented measures of control, including laws, taxes, licensing, and regulations; promoting a fear of the law/state reprisal among media workers; and perpetuating media reliance on the government as source organizations. These conclusions were furthered by Herman & Chomsky's (1998) propaganda model, which revealed the level of control ultimately possessed by the state, and why 'mainstream media' accepts it. This model would predict that newspaper representations of the ICC would align with official government policies in each of the countries included for analysis. Thus, the model helped to inform the third specific research question: 'is there a connection between state support/opposition of the ICC and favourable/negative media portrayals of the Court's operations?' The model would therefore predict that American newspapers would portray the ICC negatively, while Canadian newspapers would take a more positive approach. These assertions will be explored further within throughout the analysis.

### **Conclusion: The Media and the ICC**

The purpose of this chapter has been to provide the reader with an understanding of the role of the news media, an overview of social constructionism theory, explore the links between

---

<sup>44</sup> This does not completely remove room for dissent. Media institutions do have opportunities to publish perspectives that may run counter to common constructions, particularly in the opinion sections.

the media and social constructionism, and demonstrate the need for a social constructionist analysis of media representations of the ICC. Due to assertions by some of the theorists included within this study, of particular interest will be the influence of the government in media constructions of the ICC. As outlined in the third research question, for the case of the ICC media representation are important because they can potentially impact support and cooperation, public opinion, and the Court's legitimacy.

First, as illustrated in '*History and Context of the ICC*', functioning of the Court is dependent upon state support and cooperation because ratification of the Treaty is voluntary (Rome Statute, 2002). Without state support and cooperation, the Court does not have jurisdiction over cases, funding, or the provision of staff. Furthermore, since the Court lacks a police force, nation states are responsible for evidence gathering, and the capture, detention, and transfer of alleged perpetrators (Demirdjian, 2010). Due to this dependence upon nation states, it is important to examine how the ICC is being constructed in national newspapers to determine what kinds of constructions are being put forth.

The government is a primary source of information for the news media. If, for example, a government does not support the existence/operations of the Court, they could provide extremely biased information to the media aiming to diminish the ICC's credibility. This could be done with the intention of garnering public support against ratifying the Treaty, and towards undermining the Court's effectiveness. This is particularly important because we know that when people lack experience with a particular phenomenon, their primary source of knowledge on that subject becomes the media (Barak, 1994; Surette, 1992). Because the public does not have direct experience with the Court and uses the media as a primary information source, this may cause them to blindly support the government's perspective.

It is possible that without favourable reflections, the ICC will not be seen as a legitimate institution and state cooperation and support could diminish. For example, nations may utilize information provided by powerful states to inform their own stance on the ICC – and to decide whether to support or oppose the Court’s efforts. When considering this proposition in relation to Herman and Chomsky’s (1998) propaganda model, it seems quite plausible that this could occur. Since powerful governments provide information to the most powerful newspapers, which disseminate this material to all lower level papers – it is plausible that the media of other nations may also use this information. Thus, for example, the government of the United States could provide *The Times* with an extremely biased, negative view of the ICC – subsequently, this information could be used to inform newspaper coverage in another nation. These coloured representations could ultimately be used to chip away at the Court’s legitimacy and state-support.

Due to the factors listed above it is important to examine media representations of the ICC. Thus, the primary research question for this study will be, according to the four newspapers analyzed, how is the ICC represented? As we will see in the next chapter, this question will be examined using a qualitative, thematic content analysis of newspaper coverage of the ICC to deconstruct media representations.

## **Chapter 3: Methodology**

The purpose of this chapter is to provide a detailed methodological overview of the current research project. This chapter will briefly outline the methodology of this thesis, discuss exploratory research, define content analysis and how it will be employed for this project, provide an overview of grounded theory, and review the study's limitations and benefits.

### **Methodology**

Methodology may be described as “the science of finding out” (Babbie & Benaquisto, 2002, p.7). According to Schensul, (2008: Methodology) methodology “consists of assumptions, postulates, rules, and methods – the blueprint or roadmap – that researchers employ to render their work open to analysis, critique, replication, repetition, and/or adaptation and to choose research methods”. Methodology involves a number of choices that the researcher must make in order to create a sound, valid, and reliable project (Schensul, 2008). Some of these include selecting a conceptual framework, subjects, data, and analysis techniques. The purpose of this chapter will be to explain and justify the methodological choices made for the current project, as well as outlining the processes of data collection.

### **Research Objective**

The main purpose of this project is to examine how the International Criminal Court is constructed within four North American newspapers. Thus, the primary research question is, according to the four newspapers examined within this study, how is the International Criminal Court represented? In order to answer this question, I have developed a number of preliminary specific research questions, which are as follows. Is the notion of impunity present within media discussions on the ICC? If so, how? Does the media undertake a critical analysis of ICC

operations? If so, how? Is there a connection between state support/opposition of the ICC and favourable/negative media portrayals of the Court's operations?

### **Exploratory Research**

Due to the nature of this project, an exploratory approach was used. The aim of this type of research is to study a particular issue about which little is known (Maxfield & Babbie, 2009, p.19). The aim of this type of research tends to be upon 'how' questions and identifying potential links that could be tested in further research. Thus, rather than attempting to explain why a particular phenomena occurs, exploratory research tends to point out what may be occurring and how this happens. Thus, the current study aims to examine how the Court is represented and some of the ways this is happening (as informed by the literature review and theory chapter).

Furthermore, exploratory research typically acts as a preliminary inquiry into a particular subject area to base future research on. As this is the first study to explore media representations of the International Criminal Court, it is important to perform a broad inquiry into the topic, identify themes, and open up areas for future research.

### **Methodological Framework**

This project will employ a qualitative content analysis, using some of the tools of the grounded theory method, in order to answer the central research question: according to the four newspapers examined within this study, how is the International Criminal Court represented?

### ***Qualitative Research***

Qualitative research "refers to the meanings, concepts, definitions, characteristics, metaphors, symbols, and descriptions of things" (Berg, 2007, p.3) and "tends to assess the

quality of things using words, images and descriptions” (Berg, 2007, p. 4). Others have defined it in opposition to quantitative research: “any kind of research that produces findings not arrived at by statistical procedures or other means of quantification” (Strauss & Corbin, 1990, p.17). Qualitative research can be very helpful for exploring a phenomenon about which little is known. Performing this type of analysis provides depth to a project, by allowing the researcher to uncover and understand intricate details about the phenomenon (Strauss & Corbin, 1990, p.18-19). Qualitative research can be helpful to understand ‘how’ and ‘why’ questions, and to analyze perceptions (Julien, 2008: Content Analysis). In other words, qualitative analysis is well suited to projects searching for latent<sup>45</sup> content (Maxfield & Babbie, 2009, p.244-245).

The current project takes a qualitative approach to content analysis for several reasons. First, as stated above, qualitative research is well suited to subjects about which little is known. Since this project will be the first to examine media representations of the ICC, it will allow for a deep and meaningful exploration of the subject. Second, the research questions are best suited to a qualitative approach. Because I will be looking at *how* the ICC is represented within the newspapers I have selected, a qualitative approach will provide more detailed answers to this question. Instead of counting words, I will be able to thoroughly analyze themes emanating from both manifest and latent content, with the end result of developing hypotheses and explanations. This will become clearer with a discussion of content analysis.

### ***Content Analysis***

Generally, content analysis is a method of analyzing written, verbal or visual sources of communication (Elo & Kyngäs, 2007). It allows the researcher to analyze the symbolic content

---

<sup>45</sup> Or content that is below the surface, hidden or concealed.

of the literature (Singleton, Straits, Straits & McAllister, 1988). Maxfield & Babbie (2009) define content analysis as the “systematic study of messages and meaning those messages convey” (p. 244). Similarly, Krippendorff (2004) states that content analysts, “examine data, printed matter, images, sounds, or texts, in order to understand what they mean to people, what they enable or prevent, and what the information conveyed to them does” (p. xviii). This project uses a content analysis to examine constructions of the ICC within four newspapers: *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *The Washington Post*. As previously mentioned, the analysis is primarily performed upon the latent content within the newspaper articles. Latent content involves greater depth than manifest content and permits for the development of interpretive theory. Thus, latent content allows the analysis to be extended to an ‘interpretive reading of symbolism’ beyond the superficial level of surface content. It permits the researcher to explore the deeper structural meaning of the document (Berg, 2007). In order to deconstruct representations of the ICC within the newspaper articles, I had to look to the latent content to get at the underlying meanings of constructions.

As a method, content analysis can be used to make replicable and valid inferences from text when it is performed systematically. Replicability occurs when the same techniques are applied to the same data<sup>46</sup> and yields the same results (Krippendorff, 2004, p.18). Replicability and validity are important because they ensure that the analysis is grounded in the data. In order to achieve this, a basic framework must be set out. First, a body of text, or the data, must be identified and collected. Second, the researcher must identify a primary research question that will be answered through the analysis. Then the analysis is performed, in this case using some of the tools of grounded theory and an open coding scheme, with the ultimate goal of answering the

---

<sup>46</sup> By a different researcher at different points in time.

research question and validating the evidence (Krippendorff, 2004: 29-30). I will first outline the data that will be used for this project; reiterate the research question; and then explain how, using a grounded theory approach, the data was analyzed using an open coding scheme.

### ***Data Collection***

For the current project, the data was collected from the four newspapers: *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *the Washington Post*. These newspapers were selected for several reasons. Only Canadian and American sources have been considered because of time, language, and resource constraints. Because I performed the analysis on my own, including more than two countries for consideration was not possible. Also, because the national newspapers I selected are published in English, I was able to perform the analysis myself, without the help of translators<sup>47</sup>. The effects of these constraints are lessened by the differences between Canada and the United States. The most important difference is that Canada has ratified the Treaty and fully supports the ICC. The United States, on the other hand, had not ratified the Treaty, and has taken a number of measures to undermine the Court's effectiveness. Due to the dissimilarities between these countries, a diverse data set should emerge. Overall, I believe that these fundamental differences could affect media constructions and generate a more interesting analysis. Second, they are all national newspapers, which is important because these newspapers should have a substantial amount of international coverage<sup>48</sup>. In order to draw valid and reliable conclusions from the data it is important to have a large enough sample (Krippendorff, 2004, p.18). Analyzing national newspapers provides a large collection of data for inclusion.

---

<sup>47</sup> Thus, because newspapers from Quebec are published in French, I was not able to include any for analysis.

<sup>48</sup> Thus providing more data to be analyzed.

Articles were selected for inclusion using two filters. First, I only considered articles published between January 1, 1998 and May 31, 2011 for the sample. January 1, 1998 was selected as a start date because this provided a sense of what was said during the Court's construction<sup>49</sup>. May 31, 2011 marks the end because I began collecting my data on June 1, 2011. In order to refine the number of articles I analyzed, I have only included articles containing the "International Criminal Court" as a keyword. Articles were collected from two search engines accessed through the University of Ottawa's library website: Factiva and Canadian Newsstand. Factiva was used to gather articles from *The Toronto Star*, *The New York Times*, and *The Washington Post*. These searches yielded 439 articles from *The Toronto Star*, 838 articles from *The New York Times*, and 619 articles from *The Washington Post*. Canadian newsstand was used to gather 86 *Globe and Mail* articles for analysis. This search yielded a sample of 1,982 articles to deconstruct.

## **Grounded Theory**

I used some of the tools of grounded theory<sup>50</sup> to complete my analysis of the relevant newspaper articles and provide explanations for my findings. Strauss and Corbin (1990) define grounded theory as, "theory that is inductively derived from the study of the phenomenon it represents" (p. 23). In other words, it is theory that is discovered and developed by analyzing the

---

<sup>49</sup> Which began in 1998.

<sup>50</sup> For the purposes of this project, theory refers to "a set of well-developed categories (e.g. themes, concepts) that is systematically interrelated through statements of relationship to form a theoretical framework that explains some relevant social, psychological, educational, nursing or other phenomenon. The statements of relationship explain who, what, when, where, why, how and with what consequences an event occurs. Once concepts are related by statements of relationship into an explanatory theoretical framework, the research findings move beyond conceptual ordering to theory" (Strauss & Corbin, 1998, p. 22). Thus, theory involves the identification of concepts and categories, and statements of relationships between them.

data. Rather than setting out to test a particular theory<sup>51</sup>, grounded theory begins with the data and attempts to uncover explanations for the emerging patterns and trends. This type of theoretical development is considered ‘grounded’ because concepts and hypothesis are constantly checked against the data to see if they hold up (Babbie & Benaquisto, 2002, p.378). The ultimate goal of grounded theory is to make sure that conceptualization (and the subsequent theoretical development through categorization) holds true to the data (Babbie & Benaquisto, 2002, p. 378). Because I entered the analysis with a broad theoretical framework and some specific research questions, it was not possible to perform a true grounded theory analysis. However, because this study is exploratory and aimed at uncovering themes of representations within the data, the tools of grounded theory were useful. The key instrument for developing grounded theory is coding (Babbie & Benaquisto, 2002; Berg, 2007; and Strauss & Corbin, 1990).

### ***Coding***

Coding procedures are tools employed by grounded theorists to identify, develop, and relate concepts. It is “the process of transforming raw data into a standardized form” (Babbie & Benaquisto, 2002, p.290). Coding involves the creation of concepts and categories, with the end goal of uncovering patterns and themes within the data (Babbie & Benaquisto, 2002, p. 290-291). Most importantly, coding is “the central process by which theories are built from data” (Strauss & Corbin, 1990, p. 57). The current research project began with open coding, and once the point of saturation<sup>52</sup> was reached, I switched to a closed/focused coding scheme.

---

<sup>51</sup> Or taking a deductive approach.

<sup>52</sup> The point of saturation refers to the point at which the same concepts and categories are emerging over and over, and new concepts are no longer appearing.

## *Open Coding*

Babbie and Benaquisto (2002) define open coding as:

the process of closely examining data in the initial stages of qualitative data analysis with the aim of identifying and labeling as many ideas, concepts, and themes as the researcher can, without concern for how these ideas or concepts are related or how they will be used. (p. 495)

In other words, open coding is “the process of breaking down, examining, comparing, conceptualizing<sup>53</sup> and categorizing<sup>54</sup> the data” (Strauss & Corbin, 1990, p. 61). When a researcher has a mass of data to sift through, open coding is often the most effective method of making sense of it all (Babbie & Benaquisto, 2002, p. 382). Thus, the central purpose of open coding is to “open inquiry widely” to provide “the most thorough analysis” (Berg, 2007, p.317). The first step of open coding is an initial read through the documents to get a sense of general themes and areas that may be of interest. The next step involves a more thorough reading and conceptualization (Strauss & Corbin, 1990, p. 63). Once phenomena have been identified and named (or conceptualized) the process of categorization begins. This allows for concepts to be grouped together and initial hypotheses to emerge. Conceptualization and categorization continued throughout the entire analysis. As analysis reveals different phenomena, concepts and categories may change (Strauss & Corbin, 1990, p. 67-69). This type of flexibility is what allows researchers to develop theory that is truly grounded in the data (Strauss & Corbin, 1990, p. 42).

---

<sup>53</sup> Concepts are labels that are developed to describe a particular phenomenon. They allow the researcher to organize and make sense of what they see in the data. For more see Strauss and Corbin, 2002, p. 61.

<sup>54</sup> Categories are the “classification of concepts” (Strauss & Corbin, 1990, p. 61). Categories allows concepts to be grouped together by comparing them against one another. This process assists in the organization of data and the development of preliminary hypothesis - once the data has been conceptualized.

Although grounded theory and open coding are designed to facilitate inductive theoretical development, experts recommend beginning with a set of questions to guide the initial reading (Strauss & Corbin, 1990, p. 77). I used the following questions to guide my inquiry:

- (1) Is the notion of impunity present within media discussions on the ICC? If so, how?
- (2) Does the media undertake a critical analysis of ICC operations? If so, how?
- (3) Is there a connection between state support/opposition of the ICC and favourable/negative media portrayals of the Court's operations?

I began the coding process by reading through my entire data set and recording themes and patterns on separate sheets of paper. Some of these themes and concepts were informed by my research questions and literature review; however, I also recorded a number of themes outside these topic areas to avoid biasing my analysis. I recorded exact quotes from the newspaper articles (including citation information) with hand written notes expanding on concepts and themes that were emerging. These definitions and themes were constantly changing as I read through more of the articles. Once I reached the point of saturation, I switched over to closed/focused coding for the remainder of my analysis. This occurred approximately  $\frac{3}{4}$  of the way through my first round of coding. I believe this transpired because of the different stages of development that the Court was at during the course of my data set.

While completing my first round of coding I noticed that many articles, despite containing the phrase 'International Criminal Court', were not relevant to this topic area. Many seemed to have included this phrase in articles that were on completely different subjects. Due to this lack of relevant information, I was unable to draw any concepts or themes from these pieces. Following this finding I decided to eliminate these articles from my analysis. After reading through all 1, 982 articles, this led to the elimination of 1, 348 articles, leaving 634 articles to inform the bulk of my analysis.

### ***Closed/Focused Coding***

As previously stated, once open coding reached the point of saturation, I switched to a closed/focused coding scheme. Focused coding is the process of “winnowing out less productive and useful codes and focusing in on a select few” (Babbie & Benaquisto, 2002, p. 383). The initial codes developed using open coding were elaborated, collapsed, or dropped. These decisions were informed by the prevalence of these themes throughout each of the newspapers. The themes and concepts that endured this process were those discussed most often. In order to allow for comparison of the coverage between all newspapers, themes that were dominant in one or two newspapers, but lacked coverage in the others, were still included in the analysis. The select few codes that endured were then applied to the remainder of the data. As the analysis progressed, some of these codes assumed a more prominent status and overarching themes began to emerge. Many of the smaller themes were then collapsed and became ‘sub-themes’ within the analysis.

### ***Memoing***

During the coding process I used memos to record and organize my data. Memos are “written records of analysis related to the formation of theory” (Strauss & Corbin, 1990, p.197). Memoing involves “writing down ideas and insights during the coding process and elaborating on them” (Babbie & Benaquisto, 2002, p. 384). The process of memoing changed as I switched from conceptualization to categorization, and from open to closed/focused coding. Initially the memos contained thoughts, interpretations and questions that emerged as I read through my data. As concepts begin to emerge, the memos contained tentative concept names and elaborations. Each concept was recorded on a separate sheet of paper so that the concepts could be more easily

grouped into categories. Separate memos were also used to write down emerging themes and potential relationships between concepts.

Once I completed the open coding process, I changed my method of memoing. During open coding, separate sheets of paper were used to record ideas, insights, concepts and emerging themes. Once I reached the point of saturation, I used a chart style of memoing. This chart contained the semi-finalized codes that emerged. It looked like this:

Variable of Interest	Article	Article	Article	Article
Concept #1 (elaboration)				
Concept #2 (elaboration)				

The concepts were recorded along the left side of the chart with an elaboration of their meaning and relevance. Relevant quotes from the articles were entered into the boxes beside the concept. This helped to both organize the data and prove/disprove initial hypotheses. I was also able to track the development of concepts, categories and hypothesis throughout my analysis, which was important to ensure validity and reliability.

### **Benefits and Limitations**

This section will provide an overview of the benefits and limitations for the current study.

## *Limitations*

The first limitation of this project is that a non-random sample is used. Due to time, language and resource constraints, it was not possible to collect a random sample from all newspaper articles about the International Criminal Court. Thus, the findings are not generalizable to ‘newspaper representations’ or ‘media representations’. In order to overcome this, I speak of my results strictly in relation to the newspapers I reviewed in this study. Furthermore, since this study is the first of its kind, it should be viewed as an exploration into the topic (which could be expanded at a later date) – not as an all-encompassing study of media representations.

The second limitation of this study also relates to the sample. As discussed earlier, I selected four North American newspapers for examination. These are not necessarily representative of North American newspapers in general. This limitation also constrains generalizability. They were selected based on their status as national newspapers and for their potential ideological differences<sup>55</sup>. I overcame this limitation by limiting my conclusions to the four newspapers and by being open about the reasons for which they were selected.

The final limitation of this study is the data source I am using. According to the social constructionist perspectives, documents develop meaning when someone interprets them. These interpretations vary depending on a number of factors, including personal experience and biases (Krippendorff, 2004, p.19). I plan to surmount this obstacle by performing a systematic analysis utilizing the tools of grounded theory, such as open and focused/closed coding. Although these

---

<sup>55</sup> It was anticipated that these newspapers would differ ideologically, mainly in terms of their political orientation. For example, *The Toronto Star* and *The New York Times* have reputations for having a more liberal orientation, while *The Globe and Mail* and *Washington Post* tend to be thought of as more conservative.

interpretations may still differ from someone else's, completing a systematic analysis should exclude most bias, allow for a comprehensive study, and ensure that someone else could repeat my research and findings.

### ***Benefits***

One of the main benefits of this study is that I am able to assess large volumes of data that many other methods cannot because I am performing a content analysis (Krippendorff, 2004, p. 42). Thus, I can examine all of the articles (from the selected newspapers) during the specified time period, instead of having to focus on only a few.

The most important benefit of this study is that it is the first study exploring media representations of the ICC. This is a valuable area of inquiry because of the potential impacts that unfavourable constructions could have for the Court's funding, state cooperation, and legitimacy as an international institution.

## Chapter 4: Findings & Analysis

### Introduction

Using the methods outlined in the previous chapter, a thematic, qualitative content analysis was performed on 1,982 articles: 86 from *The Globe and Mail*, 439 from *The Toronto Star*, 838 from *The New York Times*, and 619 from *The Washington Post*. Three rounds of coding were completed to ensure replicability and validity, and that all significant themes were uncovered.

Of the 1,982 articles included in the data set, very few had enough substance to perform any meaningful analysis<sup>56</sup>. Less than half of the articles from *The Washington Post* and *The Globe and Mail*, and approximately one quarter of the pieces from *The New York Times* and *The Toronto Star* had enough substance to gather themes from. Specifically, articles with enough substance to be included for analysis from each newspaper were: 38 (of 86) from *The Globe and Mail*, 91 (of 439) from *The Toronto Star*, 239 (of 838) from *The New York Times*, and 266 (of 619) from *The Washington Post*. When referring to the data set from this point on, it will include only the 634 articles outlined above. The excluded articles often mentioned the Court in passing, without providing many details about the ICC, its work, or debates surrounding the Court's existence or effectiveness. It seemed as though the authors of these articles inserted the words 'International Criminal Court' into articles on completely different subjects. This is significant because this lack of coverage and information could create confusion surrounding the Court's purpose, current activities, legitimacy and effectiveness.

---

<sup>56</sup> When referring to a 'lack of substance', it means that these articles mentioned the ICC in passing, as though the term was simply placed into the article without any context, elaboration, or information about the Court. These articles were therefore excluded from the remainder of the analysis because there was not enough information to draw themes from.

That being said, articles that had enough substance did provide a number of interesting and unexpected themes surrounding constructions of the Court. These themes touched upon a number of areas of discussions within academic literature, including the Court's legitimacy; its effectiveness, in terms of meeting the objectives outlined in the *Rome Statute*; and peace versus justice. Despite the fact that many papers failed to engage in well rounded, balanced discussions of these themes and debates – unexpectedly, some were well researched and touched upon points made by academics. The final theme, 'representations', arose out of the differences between Canadian and American coverage, and one-sided, biased constructions of the Court. These were often used by American newspapers to justify their government's opposition to the ICC, and can be easily disproven by examining the *Rome Statute*. A notable observation, that will become apparent when considering each of the debates discussed below, is that constructions of justice largely fail to diverge from the mainstream definition. Achieving justice almost always refers to meting out punishment through institutions, including the police, courts and corrections. With the exception of 'peace versus justice', in which some authors question the effectiveness of criminal justice institutions, in favour of alternative<sup>57</sup> forms of justice: these discussions serve to reinforce dominant constructions and the legitimacy of the Court.

The following is a discussion the main themes uncovered during the analysis of newspaper articles from *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *The Washington Post*. Four main themes were discovered, but newspaper constructions were mostly focused on the Court's effectiveness (determined by its ability to obtain the objectives outlined in the *Rome Statute*).

---

<sup>57</sup> Some of the alternate forms of justice put forth include truth commissions, holistic victim-centered approaches, and amnesty in exchange for peace negotiations. For more, see the Peace versus Justice debate on page 115-121.

## Legitimacy

One of the most prevalent themes found within academic literature discussing the ICC is the degree to which the Court can be considered a 'legitimate' institution. Struett (2008) defines legitimacy as, "the extent to which people<sup>58</sup> in the world perceive the ICC as legal and are prepared to accept its commands as binding" (p.153). Although not always discussed in terms of legitimacy, this concept was present in many of the newspapers articles included for analysis.

Despite touching on a few of the areas discussed within the literature review, on the whole, the newspaper's discussions of legitimacy lack depth and substance and paints a limited 'portrait of society' (Chermak, 1994, p.96). Academic research focuses on a number of debates regarding the Court's legitimacy, including the legitimacy of how the Court came into being during the creation of the *Rome Statute*; the shift from state to individual accountability; and the legitimacy of the Court's existence - regarding exclusivity and double standards of law. These debates do not entirely reinforce the Court's legitimacy. Many authors question the legality of the Court because the Rome Conference was a place of politics, where a *Statute* was created that was heavily influenced by Western standards of law (Ainley, 2006; & Wippman, 2004). Furthermore, claims that are detrimental to the Court's legitimacy are that it enforces double standards of law and its reputation as the 'Court of Africa' (Henham, 2008; & Struett, 2008, p.3). This challenges the Court's legality as an institution enforcing international standards of law, instead demonstrating that the Court targets non-Western nations for prosecutions. This could potentially diminish support for Court decisions, particularly from non-Western nations. Overall, academic literature challenges the Court's legitimacy based on whether it is a truly international

---

<sup>58</sup> And in this case, states.

and representative system – as will be demonstrated below, this is not as clear within newspaper constructions.

Within the newspapers, legitimacy most often appeared in terms of support for the ICC, specifically, support during the development of the Court; general support for process and procedures; suggesting potential cases for the Court to consider; and the value/necessity of the ICC. Potential cases that could and should be brought to the Court were recommended largely without questioning the legality of the Court. The most significant theme questioning the Court's legitimacy pertained to the creation of double standards/two-tiers of justice. Interestingly, this argument was often quoted directly from the leaders of nations who have been indicted by the ICC, who used it as an attempt to undermine the Court's legitimacy and foster support for their opposition.

#### *The Globe and Mail: Legitimacy*

The theme of legitimacy appeared within 25 of the 38 articles included for analysis. Articles within *The Globe and Mail* mainly discuss the ways in which the ICC should or is currently delivering justice, its legitimacy as an institution for delivering justice, and general support for the Court. For example, many articles present the ICC as a legal institution and as a valid method for obtaining justice for violations of international humanitarian law. This is mainly discussed within the context of international humanitarian law violations that have taken place in Afghanistan, Kenya and Israel. Authors of these articles discuss how the ICC could deliver justice to nations that refused to or have not been able to provide victims with justice.

Some of the articles even emphasize the ICC as a more legitimate legal institution than their own domestic justice system. When referring to the war crimes and gang rapes that took

place in Kenya during post-election violence, one victim states, “Our faith in the [Kenyan] justice system is gone. They should all go to The Hague. They should pay for what they did. We want to see justice done” (York, 2009, p. A13). This quote demonstrates faith<sup>59</sup> in the ICC’s capacity to deliver justice. Because the Kenyan justice system had largely failed victims, this person viewed the ICC as the only legitimate option for achieving justice. There has also been significant attention given to potential international humanitarian law violations committed by Canada and the United States in the war in Afghanistan, “There are growing calls in Canada and internationally into whether Canada has violated the Rome Statute of the International Criminal Court by knowingly turning over civilians to torture” (Barlow, 2010, p. A15). The article also went on to highlight violations perpetrated by the United States and the necessity of an ICC intervention. These authors’ faith in the ability of the ICC to provide justice is an indicator of their faith in the ICC more generally. Particularly in these cases, where people are calling for the indictment of heads of Western nations, the provision of justice is unlikely to come from these nations themselves; thus, authors suggest the international court as the only logical institution to achieve justice.

*The Globe and Mail* also discussed legitimacy in terms of general support for the ICC. A state’s willingness to support the ICC is an indicator of the court’s legitimacy. These nation-states have submitted themselves to the jurisdiction of the Court, and are prepared to accept any decision of the ICC<sup>60</sup> to intervene as a binding and legitimate one. Many of the articles portray Canada’s support for the ICC both in terms of the provision of funding and in the operations of the Court. For example, Koring demonstrated Canada’s continued commitment to the ICC by quoting the Harper government, “Canada continues to support the ICC in its efforts to ensure that

---

<sup>59</sup> In particular, faith of the Kenyan victim.

<sup>60</sup> At least in theory.

justice is served and to show the world that crimes perpetrated by the Gadhafi regime will not be tolerated” (Koring, 2011, p. A17). This quote demonstrates Canada’s faith in the Court’s provision of justice and disseminating the broader message that, with the advent of the ICC, the international community will no longer tolerate atrocities. The following quote also demonstrates Canada’s support for the ICC as part of the solution to impunity, “Mr. Harper delivered a far more forceful condemnation Friday night, calling the Gadhafi regime’s actions ‘atrocities,’ and insisting the world must hold those responsible for them accountable, including referring them to the International Criminal Court” (Clark, 2011, p. A12). In terms of supporting the legality of the institution, many articles also point out how Canada was the first nation to align its laws with the *Rome Statute*; “Canada will become the first nation in the world to introduce crucial legislation paving the way for membership in a permanent international court aimed at prosecuting war criminals” (Laghi, 1999, p. A4). In this case the ICC is legitimized through the perceived legality of the Court: nations have changed their domestic criminal legislation to line up with the statute governing the Court.

### *The Toronto Star: Legitimacy*

Within *The Toronto Star*, the theme of legitimacy appeared in 38 of the 91 articles with sufficient substance to analyze. *The Toronto Star* also primarily constructs legitimacy in terms of cases that are currently or should be referred to the Court, and support for the ICC more generally. During the creation of the Court, many of the articles problematized U.S. opposition and their attempts to undermine the ICC. For example,

The United States has clearly voiced its concerns about the International Criminal Court. We respectfully disagree with the U.S. on those concerns because of the numerous safeguards written into the Rome Statute, including extensive input into devising checks

and balances, precisely in order to preclude politically-motivated prosecutions.  
("Fundamental principles," 2002, p. A26)

This article identifies areas that the United States objects to and provides a critical explanation of why these concerns are illegitimate. Although these explanations are critical, they remain quite surface-level by failing to identify the specific safeguards built into the *Rome Statute* and how these actually address American concerns. Some articles did provide a deeper analysis of U.S. opposition to the Court. For instance, several pieces examine how American opposition has failed to harm the operations and legitimacy of the ICC. The following quotation illustrates this, "In spite of U.S. opposition, the court has scored some surprising successes, gaining cooperation from African countries who have asked it to open cases against their suspected war criminals (Ward, 2005 November 20, p. D01)." This excerpt demonstrates that the legitimacy of the ICC does not depend on American support – in fact active opposition has not hindered the Court's progress<sup>61</sup>.

Nearly half of these articles<sup>62</sup> also discuss Canada's support for the Court more generally and emphasize the Court's legitimacy in terms of progress made so far. A statement made by Marie-Christine Lilkoff, a Foreign Affairs spokesperson, reinforces this point, "The ICC is working to build a reliable and responsible system of justice to the world's worst criminals and protect victims. Canada supports the court's work in this regard" (Ward, 2005 October 15, p. A03). Other articles examine how Canada has supported the creation of the Court, work it is currently supporting, and why the court is necessary. The focus of these articles is, Canada's involvement at the Rome Conference as an advocate for a strong and independent international court (Ward, 2005, October 15, p. A03); Canadian efforts to align domestic criminal justice

---

<sup>61</sup> Also see "U.N. raps," 2002, p. A16; & "Bush wins," 2004, p. A24

<sup>62</sup> Approximately 17 of the 38 articles included within the theme of legitimacy.

legislation with the *Rome Statute* (“A brutal,” 1999, p. 1); support for the Court’s work, particularly in Sudan (Ward, 2009 March 5, p. A1; Ward, 2005 February 10, p. A16,) and Libya (Ward, 2011, p. A16); and why the ICC is beneficial and necessary, including “strengthening the idea of universal human rights” (“The spice,” 2007, p. A18), and building a reliable international system of justice (Ward, 2005 October 15, p. A03; Anonymous, 2008, p. AA.4). One of the strongest arguments supporting the existence of the Court is that,

If no permanent and independent body has the authority to deal with this sort of crime, then it will be politics that decides who is punished and who gets off. The International Criminal Court was designed to move the world on from that primitive system (Dyer, 2003, p. A13).

These topics highlight the Court’s legitimacy because of the strong arguments made in favour of the Court’s existence and successes.

#### *The New York Times: Legitimacy*

*The New York Times* goes much further than either Canadian newspaper in discussions of the Court’s legitimacy. Although many of the same topics are covered, more detail and examples are present within this newspaper. This theme is present within 100 of the 239 articles with enough substance to perform an analysis. Legitimacy is discussed mainly in terms of general support for the Court, suggested cases where the ICC should intervene, American opposition to the ICC, and the value and necessity of the Court. General support was typically discussed in terms of the number of ratifications the Court has received (Simons, 2010; The Associated Press, 2009; Cohen, 2008; Forero, 2005). This is often used to emphasize the Court’s legitimacy by highlighting broad international support and faith in the ICC. Some articles go further, by portraying support in terms of specific acts by states reaffirming their belief in the

Court. Two excerpts highlight this; the first legitimizes the Court by demonstrating the willingness of states to enforce ICC arrest warrants,

The French police on Tuesday handed over a Rwandan rebel leader to the International Criminal Court in The Hague, which wanted him on charges of rape, murder, torture and other atrocities committed during a terror campaign against civilians in the Democratic Republic of Congo's Kivu region. The rebel, Callixte Mbarushimana, who fled Rwanda, was living in Paris as a political refugee until he French police arrested him in October. (Simons, 2011, p.6)

The second provides an example of a state's willingness to accept the ICC as a legal and binding institution,

Mr. Ouattara has promised a South African-style 'dialogue, truth and reconciliation' commission to look into the conflict, and he has asked the International Criminal Court to investigate crimes committed 'since Nov. 28,' the date of the election whose result Mr. Gbagbo refused to acknowledge. (Nossiter, 2011, p. 14)

These articles construct the ICC as a legal institution with broad support from the international community – who are largely prepared to accept its decisions as binding.

Approximately one third<sup>63</sup> of *The New York Times* articles included within 'legitimacy' emphasize the Court's legitimacy by presenting faith in the Court as a legal institution that should intervene in current humanitarian crises to provide accountability and justice.

Specifically, recommendations were made to refer situations in Syria ("President Assad," 2011), Afghanistan (Nordland, 2011), Gaza (both Palestine and Israel) (Simons, 2009), Libya (Wyatt, 2011; & Cooper & Landler, 2011), and Sudan (Kristof, 2009; MacFarquhar, 2008 December 4; & MacFarquhar, 2008 June 17) for prosecution at the international court. One of the strongest messages communicating the necessity of an ICC intervention was with regard to Libya,

---

<sup>63</sup> Specifically, 36 of the 100 articles with the theme of legitimacy present faith in the Court as a legal institution.

The United Nations Security Council voted unanimously on Saturday night to impose sanctions on Libya's leader, Col. Moammar el-Qaddafi, and his inner circle of advisers, and called for an international war crimes investigation into 'widespread and systematic attacks' against Libyan citizens who have protested against the government over the last two weeks. The vote, only the second time the Security Council has referred a member state to the International Criminal Court, comes after a week of bloody crackdowns on Libya in which Colonel Qaddafi's security forces have fired on protesters, killing hundreds. (Wyatt, E., 2011, p.14)

The overall message behind many of these referrals is that these countries are incapable of providing justice on their own; therefore, the ICC provides the only possible avenue for a legitimate trial. This faith in the ICC as the only legitimate mechanism for achieving justice serves to underline the legality and strength of the Court.

Several<sup>64</sup> articles within the *New York Times* also reinforce the United States' refusal to join the Court - and its attempts to secure bilateral treaties with every state party to the ICC to prevent any American from ever being tried there - serve to enhance rather than detract from the Court's legitimacy (Rubin, 2006; & Brinkley, 2006). There are two layers to this argument. First, it is maintained that by opposing the Court so vehemently, the United States brings more international attention to the ICC. Furthermore, this fear of American citizens being tried by the Court communicates how powerful the Court is as an international legal institution (Rubin, 2006; Brinkley, 2006; Simons, 2005; & Power, 2005). Overall, these articles argue that instead of achieving their goal of detracting from the legitimacy of the Court, the United States has enhanced the power and legitimacy of the ICC.

Finally, the majority of articles<sup>65</sup> refer to the Court's legitimacy in terms of the need for an international court, both generally and in regard to specific cases. Value is placed upon the

---

<sup>64</sup> Ten of the 100 'legitimacy' articles included this theme.

<sup>65</sup> 51 articles highlight general support for the Court in terms of a global need for this kind of intervention.

Court because it addresses issues that would otherwise not be confronted. For example, Maina Kiai, a former Kenyan human rights official wrote, “Finally we have our day. This is the first time we have high-ranking people facing the law where they have no control and they can’t bribe their way out of it” (2010, p. 2). This statement puts faith in the Court to deliver justice and binding decisions on a country that has failed to provide accountability. The ICC is seen as the only legitimate institution to provide this service to the country. Another articles reinforces this point, the ICC is described as “the only game in town for bringing accountability for the atrocities in Darfur” (MacFarquhar, June 6 2008, p. 10). Support for the Court continues to be represented in this way. Article after article constructs the ICC as the only option for achieving justice and accountability when nations fail to prosecute their own citizens for atrocities<sup>66</sup>.

#### *The Washington Post: Legitimacy*

The *Washington Post* takes a slightly different approach to discussions of the Court’s legitimacy. Overall, 108 of the 266 articles analyzes, contains the theme of legitimacy. The majority of these articles (51) focus upon general support for the ICC, a few of these detail how the Court has maintained its legitimacy and support despite American opposition; several identify the need for the existence of the Court; and a small number identify situations that warrant an investigation by the international court.

Articles portray support for the Court in a number of different ways. Some review efforts of individual states to back the ICC, “ The International Criminal Court said this month that Ouattara has asked it to investigate all allegations of serious abuses during the post-election

---

<sup>66</sup> See Kia, 2010, p.2; Gettleman, 2009, p. 6; “Congo Ex-Official,” 2008, p.13; “Taking Genocide,” 2007, p. 18; Hoge, 2005, p. 6; Hoge, 2005, p.8; Rosenberg, 2000, p.20; Crossette, 2000, p.6, Crossette, 2000, p.1; & Stanley, 1998, p.1).

crisis. Ouattara's forces are also accused of abuses, such as looting, rape and killing civilians" (Reuters, 2011 May 22, p. A09). While others construct support in relation to international cooperation, "An arrest warrant would limit Gaddafi's options if he went into exile, analysts said, since most countries are signatories to the treaty that established the court" (Birnbaum, 2011 May 16, p. A09). Both of these articles construct the Court as a legitimate institution. Ouattara's expression of interest in an ICC intervention, despite the fact that his forces are also accused of committing atrocities, demonstrates faith in the legality of the Court as an impartial arbitrator. The second quotation also reinforces legitimacy as it highlights broad international support and a willingness to enforce the Court's commands – regarding arrest warrants.

Another main focus of articles portraying the legitimacy of the ICC is the strong support for the Court despite American opposition. Many authors discussed the view that, as a superpower, the United States plays a central role in determining which international institutions are legitimate and effective; however, a number of articles refute this position, citing evidence of the Court's legitimacy and effectiveness, and the illegitimacy of the American position. The following excerpt provides evidence for this claim,

Despite U.S. opposition support for the International Criminal Court is strong throughout most of the world, and it is widely seen as a way to bring the world's worst human rights violators to justice. The idea has grown popular enough in Africa that national leaders, who traditionally have jealously guarded their sovereignty, have turned to the international court for help. (Timberg, 2006, p. A16)

This article paints the American position as illegitimate, and explains why the Court is supported despite U.S. opposition. Many other articles take a similar stance; problematizing American opposition, while simultaneously spelling out why the Court is supported and should continue to be supported (Timberg, 2006, p.A16; Lynch, 2004, A02; Drozdiak, 2002, p. B03; & "From the," 2001, p.A3). Some of these reasons include, the numerous safeguards built into the treaty that

promote impartiality (Lynch, 2004, p. A02); support of the American public, despite the official government stance of fierce opposition (Drozdiak, 2002, p.B03); and the description of the ICC as an impartial and effective international institution promoting accountability for atrocities that would otherwise go unpunished (“From the,” 2001, p. A3).

Beyond these articles, there are also a number that detail the value and necessity of the ICC more generally. The majority of these pieces focus on politics and the fact that without an ICC to intervene, states may never prosecute violators of international humanitarian law, reinforcing the cycle of impunity;

In the absence of an international criminal court with a clear mandate, an explicit set of rules and the ability to enforce its jurisdiction. Without such a universal system of justice, national courts will be at liberty to pick and choose laws and interpret them as they please (“A look at,” 1998, p. C03).

Along the same line, another article states that “the court is the only game in town right now to bring accountability for the Darfur genocide, and we don’t want to let Bashir off the hook quite so easily” (Abramowitz & Lynch, 2008, p.A09). That these articles construct the Court as the only legitimate option for accountability and justice, which establishes the ICC as a legal institution; and shows that states are willing to accept its commands as binding.

A few articles also identify situations that warrant a Court investigation. These are identified by the failure of states to take action against their own perpetrators and end atrocities being committed within their jurisdiction. Within the *Washington Post*, the ICC is constructed as part of the solution to crimes committed in Sudan (Clooney & Prendergast, 2011, p. A17; & Lynch, 2005, p. A01), Libya (Birnbaum, 2011 May 17, p. A10; & Lynch, 2011 February 27, p. A10), the Ivory Coast (“35 killed,” 2011, p. A08), Gaza (Diehl, 2009, p. A19), Burma (Bush, 2009, p. A17), and Venezuela (Reel, 2008, p. A15). Most of the articles describe the

humanitarian crises occurring in these areas, the lack of national response, and the necessity of an ICC intervention. They highlight the legitimacy of the ICC by naming it as the only institution capable of providing justice and accountability. Faith in the Court's ability to provide binding proclamations of guilt provides it with the support of the international community.

Overall, much of the newspaper coverage does mention debates articulated in academic literature; however, this coverage is often quite superficial and lacking in evidence. In line with arguments presented by Chermak (1994) in the theory chapter, this lack of depth serves to create a slanted portrait of events. Thus rather than presenting enough information to create a broader picture, detailing only part of the story created a highly selective, non-representative construction. This theme in particular serves to reinforce Chermak's conclusions that selection decisions can constrain the constructions available to reporters and leaves the readers without the 'full picture' of an event or phenomena.

Generally, support for the Court's legitimacy tends to encompass broad state and NGO support during the creation of the Court; the recommendation of potential cases for the Court to consider; and the value and necessity of the ICC. Within the *Globe and Mail* the Court's legitimacy is predicated on its ability to provide justice in situations where impunity has reigned. In these cases, justice is conceptualized as processing the alleged offender through a traditional criminal court and determining an appropriate prison sentence for the crime committed. As evidenced by the definition provided, *The Globe and Mail* has employed the dominant construction of justice, while marginalizing any alternative perspectives. This may provide evidence of social control, as this definition of justice reinforces the interests of dominant groups, who benefit from the justice system remaining how it is – predicated on punishment (Adler, Mueller, Laufer, & Grekul, 2009, p.158-159).

The *Toronto Star* conceptualizes legitimacy in a very different way; here legitimacy is grounded in general and specific support for the Court. The two main themes of articles supporting the Court's legitimacy are problematizing American opposition, and glorifying Canadian support for the Court. The *New York Times* portrays legitimacy as faith in the international court to achieve justice and end impunity. This is demonstrated through two types of support for the Court; the number of ratifications and instances of broad support the Court has received from nation-states. Finally, *The Washington Post* conceptualizes legitimacy as broad support for the Court. This takes a number of forms including backing the Court despite fierce American opposition, outlining the specific value of the Court, and referring specific case for consideration. Even though discussions of legitimacy generally support the Court, within American newspapers this support is more symbolic - without challenging official government positions. Support is expressed in a way that sees value in a court like the ICC, but does not fully support the Court. This differs slightly, but does support Herman and Chomsky's assertions within the propaganda model. Within American newspapers, the theme of legitimacy quite often supports the government's position towards the Court. Direct statements of support virtually never appear; instead the U.S. maintains an air of general support within the media, while utilizing any method possible to avoid its jurisdiction.

Furthermore, as stated earlier, the majority of these discussions gloss over the issues and provide a one-sided look at legitimacy. A critical perspective is taken with regard to the creation of two-tiers of justice.

### *Double standards/Two-tiers of Justice*

Another major, but often overlooked theme, surrounds the notion of double standards and the creation of two-tiers of justice. Henham (2008) asserts that, as currently conceived, the ICC is predicated on structures that promote exclusivity (Henham, 2008). This assertion challenges the legitimacy of the ICC by questioning the legality of an institution established to enforce universal standards of justice – that, in reality, perpetuates two-tiers of justice. The Court reinforces one standard of justice for the ‘West’ and another standard of justice for ‘Non-Western’ nations.

#### *The Globe and Mail: Double Standards/Two-tiers of Justice*

*The Globe and Mail* touched on this subject, in 5 of the 25 articles discussing the Court’s legitimacy, without delving into these notions of legitimacy and inequality. The most critical statements came from an article published on 17 May 2011, stating that,

Rights groups hailed the move but warned against a double standard. ‘The request for arrest warrants is a step forward for international justice and accountability in the region,’ Amnesty International’s Michael Bochenek said. But while the Libyan despot has long been an international pariah, major powers including the United States have tread more carefully with respect to Syria, a more important and pivotal player in the Middle East. (Koring, 2011, p. A17)

Thus, while the article praises the Court’s indictments of Libya’s former ruler, Moammar Gadhafi, it is careful to point out that similar violations of international humanitarian law cannot be ignored – especially for political reasons. Although the Court does operate within, and cannot escape, a world full of inequalities in both power and resources, allowing politics to factor into the decision-making process of the ICC decreases its legitimacy as an impartial legal institution (Struett, 2008). Another article discusses these imbalances, but aims criticism towards the international community instead of the international court;

What made the Libyan intervention a priority of the UN and the U.S., France and Canada, way ahead of the Ivory Coast, a war-torn nation that's descended into chaos since November's presidential election? What made the world suddenly intervene in Libya, a country not far from Sudan, where another despot became the first sitting head of state to be indicted for crimes against humanity by the International Criminal Court? ... If protecting the afflicted is a value of the civilized world, why don't we give as much weight to the pain of all who are oppressed? (Musabende, 2011, p. A23)

This author is critical of decisions to intervene (primarily military intervention) in humanitarian crises, without questioning the Court's legitimacy. But these same arguments could have<sup>67</sup> been raised about the ICC indictments. For example, why Sudan and not the Ivory Coast? Overall, although a few *Globe and Mail* articles do raise the notion of two-tiers of justice, these kinds of discussions are largely missing and when they are present, quite superficial. Furthermore, coverage fails to consider the double standard between 'Western' and 'Non-Western' nations. Although it highlights double standards for ICC indictments, it does not ask why these nations and not 'non-Western' allied nations? This trend also aligns with Herman and Chomsky's propaganda model, that governments will push newspaper stories that highlight atrocities committed by enemies, at the expense of those committed by 'friends' (Chomsky & Herman, 1998, p.32).

#### *The Toronto Star: Double Standards/ Two-tiers of Justice*

*The Toronto Star* goes beyond the *Globe and Mail*, *New York Times*, and *Washington Post* in examining double standards within international law<sup>68</sup>. Instead of focusing solely upon the ICC as the 'Court of Africa' and how American resistance has perpetuated two-tiers of justice, the *Toronto Star* also delves into larger differences between the 'West' and the rest of the World, and how power differentials can determine who is eligible to be tried in front of the

---

<sup>67</sup> And will be highlighted later on; have been discussed by other newspapers.

<sup>68</sup> 15 of the 38 articles containing the theme of legitimacy discussed the notion of double standards/two-tiers of justice.

Court. Although the *Toronto Star* does not discuss the fact that the leaders of three African nations have referred their own cases to the Court (International Criminal Court, n.d.), it does problematize the reputation of ‘Court of Africa’. One article cites the ICTY as evidence that international justice does not target Africa;

They are raising red herrings about the ICC, which Sudan has dubbed a ‘white man’s court’ because so many prosecutions have targeted black Africans. But there have already been high-profile prosecutions of the likes of former Serbian dictator Slobodan Milosevic in The Hague, albeit by temporary international courts that predate the ICC (Anonymous, 2009 March 6, p. A18).

Another article raises the argument that because many non-African nations, responsible for committing atrocities, have failed to ratify the *Rome Statute* they have been able to evade international justice. Since the U.N. Security Council is the only other method for referral to the Court, these nations have maintained impunity as either permanent members or having permanent members as close allies<sup>69</sup> (Anonymous, 2009 November 8, p. A15).

Instead of discussing two-tiers of justice created by American opposition exclusively, the *Toronto Star* coverage examines this within the broader context of power differentials and the implications of this. For example, “America’s immunity has drawn criticism from right’s advocates, who say its exemption from international justice goes against its aim of ending impunity, and will result in the rich meting out justice on the poor” (Ward, 2005, p. A16). These articles are critical of U.S. opposition generally; and that despite efforts of the international community to avoid politics influencing the operations of the ICC, they have still found a way in through the United States and the U.N. Security Council. Another article, entitled *And justice for all... or none*, encapsulates this discussion quite well,

---

<sup>69</sup> The article identifies Israel, Sri Lanka, Russia (in Chechnya) and the United States (in Afghanistan) as nations responsible for committing grave human rights violations, but evading justice through the U.N. Security Council (Anonymous, 2009 November 8, p. A15).

I have no problem with the International Criminal Court's indictment of Omar al-Bashir, provided the court has jurisdiction over everyone. It should be able to indict perpetrators of Abu Ghraib, Guantanamo and Gaza as well. But conveniently, the U.S. and Israel are not signatories so Bush, Cheney, Rumsfeld and Netanyahu cannot be touched. Britain is a signatory, but it is inconceivable that Blair would be charged for launching a war by misrepresenting the threat from Iraq. The International Criminal Court will become just another lever of control over the Third World; Canada and Europe will do the moral posturing and finger pointing without allowing anyone to shine light on the real perpetrators. (Anonymous, 2009 March 7, p. IN.7)

These articles challenge the Court's legitimacy based on the idea that it is supposed to create international standards of justice for everyone, but without universal ratification, it seems that less powerful nations will be the only ones held to account.

Although this theme does not account for a high proportion of coverage, it does provide some evidence that does not align with theories presented in this thesis. These constructions would likely be outside of the Canadian government's position, as it criticizes the government and its failure to act.

#### *New York Times: Double Standards/Two-tiers of Justice*

*The New York Times* constructs a more well rounded picture of double standards than *The Globe and Mail* and *Toronto Star*, both in relation to the Court's reputation as the 'Court of Africa' and the American position of a two-tiered system of international justice<sup>70</sup>. This paper covers both how these standards have been created or constructed, and engages in a critical examination of whether or not they exist and why. Criticism of the ICC for becoming a 'Court of Africa' does exist,

Mr. Moreno-Ocampo has been criticized for solely prosecuting Africans and for being overzealous, particularly in his dogged pursuit of genocide charges against President

---

<sup>70</sup> *The New York Times* contained 13 articles that touched upon the theme of double standards/two-tiers of justice.

Omar Hassan al-Bashir of Sudan. The effort to arrest has proved very difficult and alienated some African countries. (Gettleman & Simons, 2010, p.6)

Other articles refer to the ICC as the ‘white man’s court’ (Gettleman, 2009, p. 6), and further the perception that international justice is ‘racist’ (MacFarquhar, 2009, p.11). To combat these perceptions, the *New York Times* also published pieces that challenge this ‘Court of Africa’ reputation. For example,

Critics, particularly in Africa, have questioned the validity of the court for singling out African leaders. But its defenders point out that three of the court’s four criminal investigations, involving Congo, the Central African Republic and Uganda, were brought by the governments of those countries themselves. (Kristof, 2009 March 5, p.31)

Another article raises the same point of opposition, arguing that this reputation is not valid because the leaders of these African countries asked for an ICC intervention.

Coverage of two-tiers of justice created by American opposition to the Court is also fairly balanced. Most of the articles problematize U.S. resistance to the ICC as an attempt to undermine the Court’s legitimacy and put itself above international standards of law; “the greater fear was that American opposition would undermine the court. Justice isn’t one set of rules for the world’s only superpower and another set for the rest of the countries” (p. Becker, 2002, p.4). This theme also reinforces conclusions made about *The Toronto Star*’s coverage. This does not align with assertions made in the theory chapter, as some of the articles are critical of the government’s actions against the Court, and critical of its official position.

Furthermore, some articles use this discussion to introduce the notion of exceptionalism, and how instead of weakening the Court’s legitimacy, the United States is actually diminishing its own reputation:

American exceptionalism, the idea that America could use its power in instances where others could not because it was more virtuous than other countries ... The United States

was seeking to pass judgment on others while being unwilling to have its own conduct questioned in places like the International Criminal Court. (Fukuyama, 2006, p.62)

Instead of just identifying these as double standards, some articles have questioned how this happens, the motivations behind it, and the implications. In comparison to the *Globe and Mail*, *Toronto Star*, and *Washington Post*, the *New York Times* presents a much more balanced and critical representation of how double standards affect the Court's legitimacy.

#### *The Washington Post: Double Standards/Two-tiers of Justice*

The *Washington Post's* coverage of double standards also fails to paint a well-rounded picture<sup>71</sup>, instead often reinforcing the official government position. While the paper does identify some of the main themes surrounding the creation of two-tiers of justice, it mainly focuses on the Court's reputation as a 'Court of Africa', and the American enforcement of double standards. Most of these articles<sup>72</sup> consider only one side of the arguments, without questioning if these standards really exist, or how these reputations are created. This is most prevalent within pieces identifying the Court's bias towards African nations. Most take a stance similar to the one outlined in the following excerpt,

The International Criminal Court, inaugurated in 2002, has investigated people in Uganda, Congo, and Sudan, but so far has not investigated, let alone indicted, anyone from a Western country. This apparent double-standard has led to resentment among African leaders, many of whom defended Sudanese President Omar al-Bashir when the ICC charged him in March with crimes against humanity. 'This tribunal is only there to judge Africans,' complained Senegalese President Abdoulaye Wade. ("The Inquisition," 2009, p. B02).

Although it is true that, before indictments were issued against Libya's former dictator Moammar Gadhafi, only nationals from African countries were called before the Court, these

---

<sup>71</sup> 15 of the 108 articles discussing the Court's legitimacy also highlights the theme of double standards/two-tiers of justice.

<sup>72</sup> 12 of the 15 articles analyzed.

articles fail to investigate an important part of ICC operations. With the exception of Sudan, which was brought to the Court through a UN Security Council referral, all African nations have asked the ICC to prosecute their nationals (International Criminal Court, n.d.).

When double standards created by the U.S. were the topic, articles were slightly more critical. Most introduced the concept in the following way, “the United States adheres to a double standard in which Americans, Israelis and other crucial U.S. allies have been shielded from prosecution by the international courts” (Lynch, 2009, p. A03). Two of the articles are quite critical of this, one article contains a quote by Richard Dicker of Human Rights Watch, who argues that “The real objective is to try to undermine the legitimacy of the court by creating a two-tiered standard of justice – one for Americans and foreign nationals working in the United States, and another for everyone else” (Richburg, 2003, p. A18). This article introduces the idea that the creation of double standards could be the intention of Americans, as it could help detract from the Court’s legitimacy by causing nations to question the impartiality of the Court. While many articles do introduce the idea that the U.S. has pursued policies that create double standards in international law<sup>73</sup>, with the exception of the aforementioned excerpt, many fail to perform any sort of critical analysis.

As stated above, despite the fact that all of the newspapers included for analysis identified this theme, with the exception of *The New York Times*, many one-sided constructions were created – that failed to consider alternative perspectives. *The Globe and Mail* virtually fails to discuss the notion of two-tiers/double standards of justice. The closest this newspaper comes to questioning the Court’s legitimacy are statements regarding why certain conflicts warranted

---

<sup>73</sup> See Lynch, 2009, p. A03; “World Digest,” 2009, p. A17; “Clinton regrets,” 2009, p. A09; Bazelon, 2005, p. T04; Richburg, 2003, p. A18; Adams, 2003, p. T06, Boustany, 2002, p. A16; & Kettle, 2001, p. B4

intervention and not others. *The Toronto Star* provided a more in-depth analysis of power differentials and how these determine who is eligible for trial at the ICC. The main theme within these representations is that without universal ratification, less powerful nations will be the only ones held to account. *The Star* cites politics and power differentials for this pattern. *The New York Times* supplies a critical perspective to the debate, examining both how double standards have been created or constructed, and whether or not these tiers of justice actually exist. This is accomplished by exploring the origin of ICC indictments and problematizing American resistance to the Court. Finally, the *Washington Post* provides an extremely one-sided construction of the debate, which is focused on detailing the Court's reputation as the 'Court of Africa' and how the U.S. has created two-tiers of justice. Thus, three of the four newspapers included for analysis unapologetically fail to portray both sides of these debates; instead favouring to detract from the Court's legitimacy by adopting the rhetoric of double standards/two-tiers of justice. Similar findings are present within discussions of the Court's purpose and effectiveness. Many of these constructions are superficial and quite one-sided.

### **Purpose and Effectiveness of the ICC**

The International Criminal Court was created following the events of the United Nations Conference of Plenipotentiaries on the Establishment of an International Criminal Court, known as the "Rome Conference", which was held in 1998. The main objectives of the *Statute* are contained in the Preamble and can be summarized into the following: to codify the universal moral code; to denounce unlawful/immoral conduct; to punish offenders for grave crimes that threaten the peace of the world; to take over when national criminal justice systems are unable to act; to deter individuals from committing future atrocities; to provide victims with some form of reparation, to end conflict- and bring about peace and reconciliation; to end the international

culture of impunity– and prevent such crimes in the future; and to contribute to the peace, security and wellbeing of the world (International Criminal Court, 1998). The Court’s effectiveness can be determined, in part, by its ability to meet objectives set out in the mandate. Many of the newspaper articles engage in a discussion of the purpose of the court<sup>74</sup> and its effectiveness in meeting certain elements of the mandate; however, as will be demonstrated below, these conversations are often superficial by failing to fully explore the issues at any great depth.

#### *The Globe and Mail: Purpose and Effectiveness*

The *Globe and Mail* outlines the following objectives of the ICC within 19 articles discussing this theme: contributing to the creation of international standards of justice and law, taking over when domestic courts fail to act, deterring future or further atrocities, and the Court’s contribution to ending the international culture of impunity. Overall, these constructions are quite positive, demonstrating faith in the Court’s ability to meet the four of the objectives outlined in the *Rome Statute*. The Court’s effectiveness is only questioned twice, in relation to its ability to arrest alleged perpetrators.

#### *The Toronto Star: Purpose and Effectiveness*

*The Toronto Star*’s coverage of the purpose and effectiveness of the ICC is much more extensive than the *Globe and Mail*<sup>75</sup>. *The Toronto Star* engages in a thoughtful discussion of the creation of universal standards of justice; introduces the notion of complementarity; examines the meaning of deterrence; touches on the provision of justice and reparations to victims; and the Court’s ability to end impunity. The majority of this coverage is quite supportive of the Court’s

---

<sup>74</sup> The purpose of the ICC can be found in the objectives outlined above.

<sup>75</sup> 36 of the 91 articles analyzed include the theme of purpose and effectiveness.

ability to achieve these five objectives; critical analysis and alternative perspectives are often ignored. For example, *The Star* is optimistic regarding the Court's ability to achieve deterrence for genocide, crimes against humanity and war crimes; however, the effectiveness of deterrence as an established principle is not questioned and a critical analysis does not follow. The most critical discussion is contained within coverage of the Court's prospects for enforcement. Seven of these articles state that prospects look weak due to the ICC's dependence upon state-cooperation.

#### *The New York Times: Purpose and Effectiveness*

Of the 239 articles with enough substance to perform an analysis, 89 of them contain the theme of purpose and effectiveness. The main focus of these *New York Times* articles is on the purpose of the Court. The ways in which the ICC has established universal standards of law and justice, with particular regard to providing definitional clarity and encouraging domestic prosecution, accounts for the majority of coverage. Many articles give credit to the Court for clarifying and challenging concepts of international law that remained vague until outlined in the *Rome Statute*. This paper also highlights the principle of complementarity and the Court's duty to take over where national systems have failed, the ICC's ability to provide an effective source of deterrence, and their capacity to end impunity. The majority of these portrayals are quite positive and supportive of the Court's power to meet objectives outlined within its mandate. The most critical constructions of the ICC's effectiveness surround its ability to enforce warrants due to the lack of police force and state cooperation<sup>76</sup>.

---

<sup>76</sup> Fourteen of the 89 articles containing the theme of purpose and effectiveness questioned the Court's power of enforcement.

### *The Washington Post: Purpose and Effectiveness*

A large portion of articles included for analysis concern defining the purposes of the Court and evaluating how effective it has been in meeting these objectives<sup>77</sup>. Unlike *The New York Times*, *The Washington Post* does not focus on the creation of international standards. It does highlight a few areas where the Court has produced universal principles, such as defining genocide, crimes against humanity and war crimes; setting precedents regarding the testimony of journalists and protecting peacekeepers; enshrining human rights standards; and establishing due process guidelines. *The Washington Post* does, however, contain a fairly balanced discussion of complementarity and whether the ICC has taken over when domestic systems fail to act. It also includes the most informed coverage of deterrence, even touching upon some of the issues discussed in academic literature surrounding conditions necessary for deterrence to occur. Finally, the ability of the ICC to end impunity is also a central theme. Articles consider both how the mere creation of the Court is a statement against impunity, and given the current limitations (particularly, the failure to achieve universal ratification) if it will be able to put an end to impunity. The most critical debates that appear concern the power of the Court to achieve the level of support required to end impunity and access alleged perpetrators.

### *The Globe and Mail: Universal Standards*

The *Globe and Mail's* discussion of international standards of justice primarily center on Canadian efforts to incorporate genocide, crimes against humanity and war crimes into domestic legislation. For example Paris wrote,

---

<sup>77</sup> Of the 266 *Washington Post* articles, 81 of them discuss the theme of purpose and effectiveness.

Last Thursday, a Canadian judge sentenced Desiré Munyaneza, a Rwandan who had failed to obtain refugee status in Canada, to 25 years without parole for his participation in the 1994 genocide... Mr. Munyaneza is the first person to be tried under Canada's Crimes Against Humanity and War Crimes Act, a piece of legislation enacted in 2000 that redirected our sorry record on this file. (Paris, 2009 November 4, p. A23)

Another article stressed the importance of creating international standards, and that bringing national legislation in line with the international court is a necessary prerequisite; "Nations participating in the world court must first bring their own laws into compliance with the international body" (Laghi, 1999, p. A4). Although the importance of creating international standards is not questioned, *Globe and Mail* articles did not explore why this must be done or how it directly impacts the effectiveness of the Court.

#### *Toronto Star: Universal Standards*

*The Toronto Star* goes beyond *The Globe and Mail's* conception of universal standards of justice, which primarily explains how nation states are aligning their domestic legislation with the *Rome Statute*. *The Toronto Star* details the purpose behind creating international standards, how the Court has contributed to the principle of universal jurisdiction, how nations have changed their domestic legislation, and specific norms that the ICC has helped to legitimize. The most balanced presentation of the purpose of the Court can be found when examining portrayals of universal standards. Six articles cite the creation of universal standards as the main purpose behind the creation of the Court,

This is what the international court is about. It represents an attempt to extend the rule of law across international boundaries on the principle that 'human security,' or the rights and needs of all individuals no matter where they happen to live, matter more than 'national security,' or the interests, and values, of a particular nation-state. ("U.S. missing," 1998, p. 1)

This excerpt also highlights the Court's goal of promoting universal jurisdiction for the crimes under its jurisdiction. Since a number of states have failed to ratify the *Rome Statute* it becomes

even more important that states accept the notion of universal jurisdiction for grave violations of human rights; otherwise, these crimes would likely go unpunished.

In order for states to exercise universal jurisdiction, they have to alter their domestic criminal justice legislation to include crimes against humanity, war crimes, and genocide. A number of articles discuss these topics; the following excerpt details Canadian efforts to do this,

We have that indictment in hand today, and we will exercise that indictment against Mr. Mugabe if he sets foot in Canada ... It will send a very clear message internationally that Canada is prepared to stand up and prosecute this individual ... for crimes against humanity within the context of our legal system. He [former Prime Minister Paul Martin] said he hoped this would encourage other countries to do the same. Cotler, who is an expert in international human rights law, noted that Mugabe could not be indicted by the International Criminal Court, because Zimbabwe is not a signatory to the international treaty that created the world court. But Canada passed war crimes and crimes against humanity legislation. (Fraser, 2003, p. A17)

This quotation details the signatories' obligations to the Court, not only in aligning their domestic legislation, but also carrying out prosecutions if perpetrators (from any nation) come within their jurisdiction. There is also a very interesting and controversial debate that examines whether Canada is obliged to arrest President George W. Bush of the U.S. for crimes committed under his command in Afghanistan (Walkom, 2004, p. A25). This article cites both the *Rome Statute* and Canada's *Crimes against Humanity and War Crimes Act* as to why Bush should be prosecuted in Canada. Furthermore, because the United States is not a state party to the *Statute*, there is no chance that he will ever face prosecution at The Hague. It is the hope of Court supporters that the creation of international standards of justice, combined with universal jurisdiction, will help to end the culture of impunity (Goar, 2003, p. A26).

*The Toronto Star* also highlights a number of areas where the Court has helped define specific international standards of justice/law. These include defining acts as criminal, (Arbour, 2008, p. AA.4, "War crimes," 2007, p. A15) ruling on the legitimacy of particular criminal

defenses, (Mendes, 2009, p. A25) and standards of due process and impartiality (Gorrie, 2003, p. A15; Ward, 2002, p. B02). One of the ways in which the *Toronto Star* gives credit to the Court for defining particular acts as criminal, has to do with the recognition of ‘sexual crimes’,

Thus, International Criminal Court action is gearing up to bolster the cumulative experience of international justice mechanisms that have brought to light specific types and patterns of sexual crimes targeting mainly women and girls in war-torn zones, as well as identified individuals responsible in their commission. (“War crimes,” 2007, p. A15)

This article recognizes the role played by the ICC in highlighting elements of mass atrocities that were previously suppressed. The *Star* also gives credit to the ICC for validating the principle of individual responsibility, particularly in relation to holding perpetrators responsible for their involvement in genocide (Arbour, 2008, p. AA.4). Despite these acknowledgments, surprisingly, the paper does not give the Court credit for codifying legal standards that vaguely existed since Nuremberg. It does, however, acknowledge the Court’s authority to outline acceptable defenses,

The jurisprudence from the International Criminal Tribunal for the Former Yugoslavia and, most importantly, a recent decision from the International Criminal Court itself, has ruled that even if it is established that military and civilian commanders did not have actual knowledge, that is no defense to a charge of complicity in a war crime. The standard that has been established is that persons in command must take all reasonable steps to acquire such knowledge and then to take all further necessary and reasonable steps to prevent the continuation of the war crimes or to punish the perpetrators. (Mendes, 2009, p. A25)

Thus, even though the ICTY had made a decision regarding the admissibility of this defense, it took a ruling by the ICC before being recognized as a standard of international law.

Finally, *The Toronto Star* attributes the ICC with asserting standards of impartiality and due process that are expected within any justice system<sup>78</sup>. For example, “The rules of the ICC also provide for a fair trial and do not allow suspects to be held without charges or legal counsel, as some countries now do routinely, or may do under anti-terror laws” (Ward, 2002, p. B02).

---

<sup>78</sup> Within any justice system based upon common law.

This article constructs the standards of due process built into the Court as standards to be met universally. The same can be said of the requirement for impartiality and freedom from political interference. It is argued that the Court was designed as an ‘impartial judicial institution’, a requirement that is expected from any nation pursuing violations of international humanitarian law.

*The New York Times: Universal Standards*

Many journalists writing for *The New York Times* demonstrate faith in the Court’s power to define universal standards of law and justice. Twenty-four articles identify particular areas of international law that have been either developed or legitimized by definitions included in the *Rome Statute* or by rulings made by the ICC. These include constructing a gender-neutral definition of sexual assault (Stemple, 2011, p. 25); challenging the legitimacy of the death penalty (Simons, 2006, p. 11); ordering reporters to appear as witnesses before the Court (Simons, 2002, 10); establishing individual responsibility (Crossette, 2000 November 24, p. 9); codifying genocide, crimes against humanity, and war crimes (Crossette, 2000 June 30, p. 6); the protection of children by defining the recruitment and use of child soldiers as a crime (“An accord,” 2000, p.24, and Miller & Lewis, 1999, p.14); and establishing rape as a war crime (Crossette, 1998 June 14, p. 14; & Crossette, 1998 March 27, p. 9). The Court is praised for the way that rape and sexual assault has been codified as a war crime. For example,

The International Criminal Court, nearly all American states and many countries use a sex-neutral definition of sexual assault. The United Nations and the White House must likewise move beyond the shortcomings of Resolution 1325 and commit to ending wartime sexual violence against everyone. (Stemple, 2011, p. 25)

This article cites the definition of sexual assault included in the *Rome Statute* as evidence that gender-neutrality has become a universal standard of justice because anyone could be sexually

victimized. Similar approval can be found for the Court's efforts to protect children from being victimized,

In another effort to shield children from the effects of war, Mr. Otunnu has helped persuade advocates of the planned international criminal court to expand the list of recognized war crimes to include several affecting children. Since the court would have the authority to seek the arrest of accused war criminals, children's advocates consider it an essential tool to enforce the child rights convention and other treaties. (Crossette, 2001, p. 15)

Beyond these specific examples, the ICC is constructed as an institution that has created a solid body of international law, with specific definitions that have already been adopted and employed by nation-states.

*The New York Times* provides several examples of situations where standards created by the international court have been employed by nation-states; including Belgium (Crossette, 2002, p.3), the Netherlands (Simons, 2006, p.3), and Britain (Cowell, 2005, p.9)<sup>79</sup>. The domestic legislation of these countries was adapted before ratifying the international court, to allow these nations jurisdiction over international humanitarian crimes committed by their citizens. The Court is credited with providing the standards and pressure to encourage this type of prosecution; for example,

The British attorney general announced Tuesday that three British soldiers would be tried on war crimes charges for the abuse of Iraqi detainees, one of whom died ... The charges were said to be the first against British troops in Iraq on war crimes offenses, defined under legislation approved here in 2001, committing Britain to joining the International Criminal Court. (Cowell, 2005, p. 9)

Similar statements were made about the prosecutions that have taken place in the Netherlands and in Belgium.

---

<sup>79</sup> Interestingly, Canada's prosecution of Desiré Munyaneza that featured prominently in Canadian newspapers was not included anywhere within *The New York Times*' coverage.

Finally, *The New York Times* also touches upon standards of due process and impartiality that are reinforced by the Court. The focal point of these discussions surrounds ICC efforts to ensure that alleged perpetrators receive fair trials, and that due process procedures outlined in the *Rome Statute* are followed. Most articles mention either the case of Thomas Lubunga (who is a Congolese rebel militia leader accused of conscripting child soldiers in the Democratic Republic of Congo during 2002 and 2003) or Bahr Idriss Abu Garda (a former leader of the United Resistance Front accused of perpetrating war crimes in Darfur, Sudan) in these pieces,

Tracey Gurd, senior advocacy officer for the Open Society Justice Initiative, a legal rights advocacy group, said in an appraisal of the case last January that the court's effort to protect Mr. Lubunga's rights had helped build confidence that the I.C.C. is an institution determined to be fair. (Simons, 2010 November 22, p. 12)

After allegations that the prosecutor's office had mishandled evidence, the Court ordered the release of Mr. Lubunga (The Associated Press, 2008, p. 14). This decision to uphold the standards of due process received praise from human rights groups and journalists, who also expressed hope that nations would follow these precedents as well.

#### *The Washington Post: Universal Standards*

*The Washington Post's* coverage of universal standards is notably lacking, only eight articles contain this theme. As mentioned previously it does identify a couple of standards that the Court has created/contributed to, but fails to mention how countries have altered their domestic legislation to contain the principles enshrined in the *Rome Statute*. The main standards represented are, reversing trends of impunity and asylum; the protection of peacekeepers; defining genocide, crimes against humanity, and war crimes; reinforcing the international

commitment to human rights; and setting precedents regarding journalists' testimony in court.

The following quote highlights the Court's power to change previous universal norms,

In the past decade, international criminal justice has evolved rapidly, with new courts (some international, others of mixed character) designed to bring the leading perpetrators of genocide and other atrocity crimes to justice. The masterminds of atrocities in the Balkans, Rwanda, East Timor, Sierra Leone and soon even Cambodia are or will be under intense scrutiny in courts supported by the international community. The International Criminal Court ... embodies the long-term vision of a more structured approach to prosecutions of atrocity crimes. The foundation of these endeavours is that there will be no asylum for indicted war criminals (p. Scheffer, 2003, p. A23).

This excerpt shows how the creation of international justice institutions has challenged international norms. Previously, those who committed atrocities tended to be granted asylum by a friendly nation, without ever facing the prospect of a prosecution. However, this article states that the creation of international criminal tribunals and the ICC have changed this practice; now emphasizing responsibility and prosecution for crimes instead of asylum and immunity.

As outlined above, *The Washington Post* also points out several specific examples of standards created by the ICC. These include the realization of human rights in international law (Kessler, 2003, p. A26), providing concrete definitions of previously vague concepts (Bass, 2004, p. B03), and setting precedents regarding due process (Boustany, 2008 July 3, p. A11; & "Congo suspect," 2008, p. A13) and the use of reporters (Frankel, 2002, p. A40). Compared to other newspapers included for analysis, particularly *The New York Times*, *The Washington Post's* coverage of this theme is lacking. Many important achievements of the ICC are not included; instead, the newspapers focus on the Court's more minor accomplishments.

*The Globe and Mail: Complimentarity – Taking over when domestic courts fail to act*

The importance of taking over when domestic courts fail to act, or the principle of complimentary was also touched upon in five *Globe and Mail* pieces. Most of this discussion

placed value upon complementarity in terms of ending the culture of impunity, and more-or-less failed to examine how this affects the court on its own. The following quotation summarizes the discussion of complementarity within the *Globe and Mail*,

The ICC is the first permanent international criminal court. It is a transnational institution with a mandate to prosecute the perpetrators of crimes against humanity and war crimes whenever the suspect's country of origin either refuses to do so, or lack the necessary structural capacity (Paris, 2010, p. A17).

The effectiveness of this principle is largely ignored: one article discussed how this principle could lead to the end of impunity; and another article refuted this, arguing that the trials must take place domestically. The first piece examined the situation in Kenya and how complementarity – and referral to the ICC – was the country's only option for ending impunity;

It was a moment Kenyans have been awaiting for decades: the first sign that their powerful political elite are no longer above the law. When the prosecutor of the International Criminal Court announces that he will seek to indict six of Kenya's top politicians and officials for crimes against humanity, it was a major blow to the climate of impunity and corruption that has plagued Kenya for many years ... The six suspects, who are among the most powerful men in Kenya, had seemed untouchable until now (York, 2010, p. A19).

The authors maintain that because the alleged perpetrators have political power, they could override any domestic efforts to hold them accountable. Thus, the only option in this case for justice is through international prosecution by the ICC. Conversely, another author states that the best way to end the culture of impunity is not the ICC, "they should face justice in the jurisdiction where the crimes took place, because that is the best way to end the sense of impunity that helped begin the genocide" ("Far from," 2009, p. A26). Accordingly, for the author of this article, justice is not effective unless the crimes are addressed on the soil in which they took place.

*The Toronto Star: Complimentarity*

*The Star* also touches on the notion of complimentarity and the role of the ICC to take over when domestic courts fail to act in five articles; however, coverage remains quite surface-level.

The goal is to create a single standard and a single authority for dealing with genocide, war crimes, and crimes against humanity when local governments are unable or unwilling to act. Ten years from now we will probably be a lot closer to that goal. (Dyer, 2003, p. A13)

*The Star* does not present alternatives to the principle of complimentarity, or problematize any aspects of international versus domestic trials.

*The New York Times: Complimentarity*

In addition to providing universal standards regarding international humanitarian law for nation states to abide by, the ICC is also expected to prosecute when domestic courts fail to act<sup>80</sup> (Rome Statute, 1998). *The New York Times* has largely affirmed that the Court has been fulfilling this purpose, citing the cases of Kenya (Simons, 2011 April 9, p. 5; & Gettleman, 2009 March 1, p. 6), the Central African Republic (Polgreen & Simons, 2007, p. 6), and Sudan (Hoge, 2005, p. 3) as evidence. For example, Polgreen and Simons (2007) wrote, “In late 2004, the Supreme Court of Central African Republic referred the case to the International Criminal Court because it said it did not have the means to prosecute those responsible for attacks on civilians” (p. 6). Discussion of this principle implies support for the Court because jurisdiction remains with nation-states until it is proven that they are unwilling or unable to prosecute. This support

---

<sup>80</sup> Nine articles discuss the theme of complimentarity and the Court’s ability to take over when domestic courts fail to act.

may result from a combination of broad international support for ending the culture of impunity<sup>81</sup> and the long history of nations-states that have failed to prosecute those responsible for atrocities.

*The Washington Post- Complimentarity*

*The Washington Post* engages in a fairly well rounded discussion of the Court's duty to intervene when national systems fail to act. Ten articles identify this purpose of the Court, "By statute, the ICC is supposed to intervene only when national courts are 'unable' or 'unwilling' to prosecute (Gerson, 2007, p. A17)." Many of these pieces express support for this principle, arguing that it is logical for an international court to have jurisdiction when a national court fails to provide any form of justice" (Bass, 2005, p. B03). One article goes further by examining the reasoning underlying this principle,

The deeper issue here is the fundamental presumption underlying the International Criminal Court that the court of first resort for any perpetrators of genocide, crimes against humanity and serious and systematic war crimes should be the defendant's own country. It is a premise born of the belief that the first, best option for justice, healing, and long-term political stability is for people to try their own (Slaughter, 2003, p. B07).

This article recognizes that in terms of meeting other objectives outlined in the *Rome Statute* - such as peace, reconciliation, and bringing the conflict to an end - the ICC may not be the best place for this; however, where countries are unwilling or unable to prosecute, to have justice on an international level is better than no accountability at all. Reaffirming this point with a specific example, one article in *The Post* states,

The Iraqi government is as likely to prosecute Saddam Hussein for crimes against humanity as the Nazis were to prosecute Adolf Hitler. That is why the world needs a system for dealing with genocide and war crimes. A permanent International Criminal

---

<sup>81</sup> As evidenced by the number of countries that have ratified the *Rome Statute*.

Court was brought into existence on July 1 at The Hague to fulfill this purpose. (Morris, 2002, p. A19)

#### *The Globe and Mail: Deterrence*

*The Globe and Mail* contains five articles that discuss deterrence, which identify the Court's ability to deter future episodes of violence and/or future perpetrators from committing similar acts as its symbolic value. Referring to the development of the ICC, one article stated that, "It marks a significant step in the deterrence of the most serious violations of international humanitarian law, and in putting a stop to impunity for the most heinous crimes" (Laghi, 1999, p. A4). Two other articles (Boesveld, 2010, p. A4; & Paris, 2011, p. A13) make similar points, highlighting the Court's ability to send powerful messages to both 'would-be perpetrators' and 'criminals holding office in Africa' that the mere existence of the ICC threatens their freedom and may cause them to 'think twice' before committing atrocities. Other authors are not as confident in the Court's deterrent effects. One article stated that, "it is not clear that the threat of prosecution acts as a deterrent to future atrocities" (Saunders, 2011, p. A10). The overall tone of articles referring to the ICC's deterrent powers seems to be supportive, authors are confident that at the very least, the Court will send a message to some perpetrators and some atrocities will be prevented.

#### *The Toronto Star: Deterrence*

The seven articles within the *Toronto Star* containing the theme of deterrence, deal primarily with the symbolic value of the Court: putting perpetrators on notice that an international court could hold them accountable. One article stated, "A prosecution backed by hard evidence shines a spotlight on the perpetrator, turning him into a liability for a regime in power. It puts other dictators and war criminals on notice that they can be held to account"

(Anonymous, 2009 March 6, p. A18). Another author uses the specific example of Sudan's president Omar Hassan al-Bashir, arguing, "it's sent a message that there is a price to be paid for using ethnic cleansing and genocide of instruments of power" (Ward, 2009 March 5, p. A1). The main idea here is that prosecutions will act as a deterrent for people who are contemplating whether to commit atrocities, or commit further violations of human rights. The problem is that despite extensive academic literature questioning the effectiveness of deterrence, none of the *Toronto Star* pieces problematize this. Instead, they tend to assume that deterrence is an established principle.

#### *The New York Times: Deterrence*

*The New York Times* presents some strong arguments in favour of the Court's deterrent effect. The most convincing is summed up in a quotation of an interview with Luis Moreno-Ocampo,

Genocides are planned ... They are not passion crimes. These people think in the cost. The I.C.C. is intended to raise the cost. Moreno-Ocampo holds up Carlos Castano, one of Colombia's paramilitary commanders, as an example of the court's potential reach. After Colombia ratified the I.C.C. treaty, Castano laid down his weapons because, according to his brother, he realized that he might become vulnerable to I.C.C. prosecution (Rubin, 2006, p.42).

Many studies, particularly in the field of criminology, have shown deterrent effects only when a degree of rationality is involved in the crime. It is argued that deterrence can only occur when a person weighs the costs and benefits before committing a crime (Marsh, Cochrane, & Melville, 2004, p.8-12).

Seven other articles review specific examples where the Court has or will contribute to deterrence, and/or link the Court's symbolic value with deterrence. A number of articles follow this line of reasoning, "Yet short of the international military interventions that never seem to

come in time, the incremental enforcement of international law is one of the most important tools available for establishing accountability and deterring future genocides” (“Taking genocide,” 2007, p. 18). Related articles seem to stress that the existence of the Court, and the possibility that perpetrators may be held accountable for their actions, causes them to ‘think twice’ before committing (further) atrocities (Kristof, 2011, p.10; “Taking genocide,” 2007, p.18; “Armies of,” 2006, p. 28).

There are also three articles that question the Court’s deterrent powers. These pieces reference situations that have taken place in Sudan (The Associated Press, 2010, p.6; Kristof, 2008, p. 21) and Libya (Simons, 2011 May 17, p.4). Journalists have presented the ICC intervention in Sudan as the potential cause of retaliation rather than as a source of deterrence. *The New York Times* also published a story questioning the Court’s deterrent effect in Libya, “Although the threat of pending criminal charges has been well known in Tripoli for weeks, there has been little evidence that it has been a deterrent to Colonel Qaddafi or those around him” (Simons, 2011 May 17, p. 4). These articles do not explore reasons that may determine the capacity of the Court to achieve deterrence. With the exception of the article quoted previously that explored the role of rationality within deterrence, all other articles failed to move beyond a surface level analysis – providing examples of situations with perceived deterrent/non-deterrent effects.

#### *The Washington Post: Deterrence*

*The Washington Post’s* constructions of deterrence are the most balanced of all the newspapers included for analysis<sup>82</sup>. Journalists engage in a critical discussion regarding the

---

<sup>82</sup> Fifteen articles discuss the notion of deterrence.

Court's ability to act as a deterrent, both generally and according to factors uncovered in academic research. Articles frequently state that one of the main hopes during the creation of the ICC is that its existence would deter future atrocities and current perpetrators from committing further atrocities<sup>83</sup>. Very few articles take the next step and examine whether the Court will have the power to deter offenders. Those that do question this, often fail to come to any conclusions. For example,

Scholars debate whether courts such as the ICC are good at deterring dictators from committing their worst crimes. Do some regimes think twice about brutalizing their population because they fear being brought to justice? Or are tyrants like Col. Moammar Gaddafi willing to fight until the last man precisely because they want to avoid a lifetime in prison? ... The answer is unclear. But here is something we do now. No one predicted that Mubarak and his cronies would ever be forced to talk. And certainly no one ever believed that Egypt – that safe, stable, reliable Middle Eastern ally – would seek to join the ICC of its own accord (Dobson, 2011, p. A13).

This article questions whether dictators even factor the Court's existence into their line of thinking before committing a crime. Other pieces examine if the ICC can be a deterrent without universal support<sup>84</sup> (Ki-Moon, 2010, p. A19); whether rulings will be consistent enough to provide a legitimate deterrent (Cooper, 2009, p. B02); whether genocide and other atrocity crimes are products of rational calculation (Jolie, 2007, p. A19); and if the only way to provide an effective deterrent is if the world, including the ICC, can create a history of accountability ("For the triumph," 2005, p. A24). Although most of these articles lack the level of analysis and detail required to prove these points, it is noteworthy that journalists have begun to ask these types of questions; questions similar to those appearing in academic literature on the topic.

---

<sup>83</sup> See Dobson, 2011, p. A13; Ki-moon, 2010, p. A19; Cooper, 2009, p. B02; Diehl, 2003, p. A25; Richburg, 2003, p. A18; & "A worldwide," 1998, p. A26.

<sup>84</sup> It is argued that without universal support, the ICC is not viewed as a legitimate source of justice because nations are potentially able to commit atrocities and evade the Court's jurisdiction (Ki-Moon, 2010, p. A19).

## *Victims*

An area that *The Toronto Star* addresses within five articles, which is ignored by *The Globe and Mail*, *The New York Times*, and *The Washington Post*, regards the provision of reparation to victims. These articles have conceptualized reparations as providing justice to victims by holding perpetrators accountable. The following two excerpts summarize the arguments made for the necessity of justice,

Refugees in this crowded camp – where mass graves hold the victims of Sudanese government attacks against them – see little hope in the latest [domestic] effort to end the war in Darfur. What they want is justice. And for many, getting justice means putting Sudanese President Omar al-Bashir on trial for genocide. (El Deeb, 2008, p. AA.2)

The second article confirms this desire for an international trial, the author portrays the indictment of war criminals as ‘invaluable to victims’, stating that “when they appear in court, and when they see those who have committed terrible crimes on trial, it means that the world has recognized their suffering ... This is the best affirmation they could have” (Ward, 2005 November 20, p. A16). Although it is important to provide victims with the type of reparations they desire, *The Star* does not provide alternative constructions of reparations. The only reparation discussed is the provision of justice in the form of accountability, which serves to enhance the Court’s legitimacy.

## *Impunity*

One of the most commonly stated goals in the development of international criminal law is challenging the universal culture of impunity (Eiroa, n. d., p. 1). Thus, whether or not the ICC will contribute to ending the culture of impunity, features prominently in academic literature discussing the Court. Struett (2008, p. 3) asserts that temporary international criminal tribunals failed to tackle the culture of impunity because they were conflict-specific and temporary. He

argues that the ICC addressed these problems through its status as a permanent international institution developed to deal with violations of international humanitarian law more generally (Struett, 2008, p. 3). Furthermore, a number of authors contend that the mere existence of the ICC should be enough to substantially impact the international culture of impunity (Eiroa, n.d.; Hughes, Schabas, & Thakur, 2007; Rabkin, 2007; Struett, 2008). They argue that at a minimum, the Court's existence provides an outlet to address the problems created by impunity and potentially prevent future atrocities from occurring.

### *The Globe and Mail: Impunity*

The notion of impunity, specifically the Court's ability to end the international culture of impunity, accounts for ten of the thirty-eight *Globe and Mail* articles included for analysis. The Court is often judged based on its perceived ability to end impunity and provide a source of accountability. Seven pieces were hopeful that the Court could help to end impunity, especially in regards to cases that have already been referred there. One article stated that, "by breaking the cycle of impunity for massive crimes, victims and their families can have justice. And Kenyans can pave the way to peaceful elections in 2012" (York, 2010, p. A19). Similarly, three articles discussed how, although the Court cannot achieve an end to impunity on its own, with the support of the international community, the world is taking a significant step towards accountability and ending impunity. One article claimed that permanence of the Court, as an international institution, might be enough to 'destroy the atmosphere of impunity' (Straus, 1998, p. A13). Another piece discussed how broad support for the Court will help end impunity, "the hard struggle for accountability in the case of major human rights abuses is still in its infancy, but the trend is unmistakable. Almost every democracy in the world supports the precepts of international justice" (Paris, 2009 September 18, p. A19).

Only one article questioned the ability of the Court to end impunity. This article followed the same logic as Ainley (2006), who maintains that ending impunity can only occur when the vast majority of war crimes are punished. Because the international court can only punish a small portion of perpetrators, accountability will not be achieved. It is argued that the scale of the solution is simply inadequate to respond to the problem (Ainley, 2006: 154). Along the same vein, a *Globe and Mail* article touches on this issue. The author argues that, “Trials will not end impunity until all perpetrators are brought to justice” (“Far from,” 2009, p. A26). This argument does not go into the same depth as what is discussed by academics, but it does introduce readers to the debate – on a superficial level. Overall, faith in the Court to end the culture of impunity is quite strong. Not all authors are convinced that the ICC will be able to accomplish this, but most see the Court’s potential to achieve this objective.

#### *The Toronto Star: Impunity*

Like *The Globe and Mail*, the focus of *The Toronto Star*’s discussion of the purpose and effectiveness of the Court tends to centre on its ability to end impunity. Seventeen of the Thirty-six articles related to purpose and effectiveness contain the theme of impunity. For example, Llyod Axworthy, a former Canadian Minister of Foreign Affairs, describes the ICC’s function as helping “to end the culture of impunity that has allowed gross abusers of human rights to escape justice” (“A brutal,” 1999, p. 1). Notions of impunity even permeate discussions of universal standards,

In the prospect of an international criminal court lies the promise of universal justice ... Our hope is that by punishing the guilty, the International Criminal Court will bring some comfort to the surviving victims and to the communities that have been targeted. More important, we hope it will bring nearer the day when no ruler, no state, no junta and no army anywhere will be able to abuse human rights with impunity (Goar, 2003, p. A26).

Thus, beyond any other goals/purposes of the Court, impunity reigns supreme. These authors argue that abolishing impunity will facilitate the realization of other goals such as deterrence, reparations to victims, and bringing about peace and reconciliation.

Furthermore, former ICC President Philip Kirsch argues that the creation of the ICC has meant, “the culture of impunity has been replaced by a culture of accountability” (Ward, 2002, p. B02). This argument follows the logic of a number of authors discussed above, arguing that the Court’s permanence will be enough to substantially impact the culture of impunity (Eiroa, n.d.; Hughes, Schabas, & Thakur, 2007; Rabkin, 2007; Struett, 2008). Kirsch goes on to argue,

The court will, first of all, be permanent. It’s not created for a limited period of time in a limited territory. It’s not under the Security Council or limited in mandate. And it’s created by a treaty to which any state can adhere. (Ward, 2002, p. B02)

He argues that these factors combine to bring an end the culture of impunity. The *Star* did however fail to detail the weaknesses of the Court that limit its ability to end impunity. For example, the fact that a number of militarily powerful and active nations have not ratified the *Rome Statute* and therefore remain outside the Court’s jurisdiction allows the culture of impunity to persist. This is another example of an unbalanced construction put forth by the newspapers examined in this study.

### *The New York Times: Impunity*

Impunity is a prominent theme within *The New York Times*, as twenty-two articles contain discussions around this topic. Articles are generally quite supportive of the Court’s ability to end the international culture of impunity. Nine articles state that the main purpose of the Court is to end impunity by providing an alternate source of accountability to traditional domestic systems; “The whole reason for the court, which is to have international law trump the

impunity international thugs win by force” (“Undermining an,” 1998, p. 18). Others have stated that the Court has been the missing link in a gradual move away from impunity and towards a culture of accountability and justice<sup>85</sup>. For example, Schmemmann argues,

We have just emerged from a century that witnessed Pol Pot, Idi Amin, and the Holocaust, the Rwandan genocide, and ethnic cleansing in the former Yugoslavia ... Surely we have all learned the fundamental lesson of this bloodiest of centuries, which is that impunity from prosecution for grievous crimes must end (Schmemmann, 2002, p. 1).

The article goes on to state that the ICC represents a step towards achieving this goal. Further evidence for the Court’s power to end impunity can be found in the following excerpt,

The war crimes trial of the Congolese politician, Jean-Pierre Bemba opened on Monday at the International Criminal Court in The Hague, with prosecutors building the case that a million under his command conducted a devastating campaign of rape, murder and torture in the Central African Republic in 2002 and 2003 ... Mr. Bemba’s case has caused considerable commotion in Congo. Many Congolese had regarded him as untouchable and were shocked when he was arrested in 2008 during a visit to Belgium. (Simons, 2010 November 23, p. 8)

Similar to discussions of deterrence, *The New York Times* does not address all aspects of the debate surrounding impunity. It does include the argument that the existence of the Court, and fact that it has successfully begun prosecutions against alleged perpetrators, has contributed to ending the culture of impunity. It does not, however, detail how the ICC may have a better chance of addressing this culture than its predecessors due to the fact that it is permanent and not conflict-specific.

### *The Washington Post: Impunity*

The final central theme, within the purpose and effectiveness of the ICC, is the Court’s ability to end impunity. Within this topic, there is a strong debate within twenty-one *Washington*

---

<sup>85</sup> See The Associated Press, 2009, p.8; Lacey, 2004, p.13; Schmemmann, 2002, p. 1; Crossette, 2001 July 1, p. 8; & Crossette, 2000 May 13, p. 1.

*Post* articles about whether the ICC's existence will be enough to put an end to impunity, or without universal support, the Court will fail to accomplish this goal. Eighteen articles agree that the prevailing international trend has been a culture of impunity<sup>86</sup>. Disagreement enters when journalists begin to evaluate whether the Court will contribute/has contributed to ending this culture of impunity. Ten articles include statements to the effect that with the creation of the ICC, "Impunity has been dealt a decisive blow" (Lynch, 2002, p. A20). Others argue that perpetuating the cycle of impunity, by failing to hold perpetrators to account, will result in worse atrocities because offenders will know what they can get away with (Boustany, 2008 March 19, p. A12). Specific examples are provided regarding the situations in the Congo (Boustany, 2007 January 30, p. A10; & Shattuck, 2003, p. A19), Sudan – particularly in the Darfur region (Boustany & McCrummen, 2007, p. A13), and Libya (Fam, Derhally, & Alkhalisi, 2011; & "Atrocities in," 2011, p. A12).

#### *Challenges to ICC effectiveness: Power of the Court*

Articles questioning the Court's effectiveness tend to focus on its ability to enforce rulings, both generally and in relation to specific cases. The only reference contained within *The Globe and Mail* concerned arrest warrants issued for Col. Gadhafi and Sudan's President, Omar Hassan al-Bashir. Whereas, *The Toronto Star* focused on general state-cooperation, particularly with capturing and handing over suspects to the Court. *The New York Times* addressed general state-cooperation, particularly with regard to the Court's lack of police to enforce its rulings; and state-specific efforts to block access to perpetrators by Sudan, Kenya, Libya, and Uganda. *The*

---

<sup>86</sup> See Lynch, 2011 May 27, p. A01; Fam, Derhally & Alkhalisi, 2011; Ki-Moon, 2010, p. A19; Cooper, 2009, p. B02; Boustany, 2008 March 19, p. A12; Boustany & McCrummen, 2007, p. A13; Jolie, 2007, p. A19; Bengali, 2006, p. A18; Shattuck, 2003, p. A19; Diehl, 2003, p. A25; Lynch, 2002, p. A20; Roth, 2000, p. A23; Annan, 1990, p. B07; & Boustany, 1998, p. A24.

*Washington Post* presents a hybrid of *The Globe and Mail* and *The Toronto Star* coverage. It emphasizes both general state-cooperation, and specific countries that refuse to cooperate by handing over suspects (mainly Sudan and Uganda).

*The Globe and Mail: Challenges to Court's Effectiveness*

This paper does not contain an extensive discussion of the Court's power. It questions the Court's effectiveness twice, in relation to Libya and Sudan. Both of these articles point to the fact that neither Gadhafi nor al-Bashir has been arrested, and likely will not, because the Court does not have the power to enforce its own arrest warrants,

But an ICC arrest warrant carries little sway in many places. Sudan's president Omar al-Bashir facing charges of war crimes and genocide in Darfur since 2008 after a five-year probe, travels relatively freely and has been welcomed at Arab and African summits ... a spokesperson for Col. Gadhafi laughed off the accusations, noting that Libya – like the United States – wasn't a signatory to the ICC and pointing to the toothlessness of the warrants issued for the Sudanese President's arrest (Koring, 2011, p. A17).

The piece about Sudan follows the same pattern. It states that no attempts have been made to arrest al-Bashir, despite the arrest warrant, and that the warrant has failed even to restrict his movement – he still travels quite freely (Paris, 2010, p. A17).

*The Toronto Star: Challenges to Court's Effectiveness*

*The Toronto Star* emphasizes the role that state-cooperation plays in the Court's effectiveness within five relevant articles. Several articles state that the “prospects for enforcement look weak” (Megret, 2009, p. A19) and that without state cooperation with the

arrest and transfer of suspects, the Court will not be able to prosecute any cases<sup>87</sup>. To reinforce these points, one piece uses Sudan as an example,

“Although any country in which Bashir travels could arrest him now – even if they haven’t signed onto the International Criminal Court (ICC) – the odds that he would be seized are small, and experts say it’s unlikely he’d be turned over quickly” (Ward, 2009, p. A1).

These articles do not demonstrate much faith in either the Court’s ability to enforce its own warrants, or that states will assist with arresting and extraditing suspects.

*The New York Times: Challenges to the Court’s Effectiveness*

The thirteen relevant *New York Times* articles tend to emphasize the fact that the ICC does not have a police force to enforce arrest warrants, which severely hinders its effectiveness. The power of the Court is restricted even further because, as many articles state, nations have shown a lack of will to cooperate with ICC warrants. To reinforce these points, examples of Sudan, Kenya, Libya and Congo are provided<sup>88</sup>. The following excerpt demonstrates all of these propositions,

President Omar Hassan al-Bashir arrived in Kenya on Friday to participate in a ceremony inaugurating the country’s newly minted constitution, flouting international demands for his arrest on genocide charges ... Under the Rome Statute establishing the court in 2002, which Kenya has ratified, member states are supposed to cooperate with the court, which has no means of enforcing its warrants. Mr. Bashir traveled last month to Chad – also a member state of the international court – without being arrested. (Cowell, 2010)

---

<sup>87</sup> See Megret, 2009, p. A19; Ward, 2009, p. A1; Ward, 2005 December 3, p. A16; & Ward, 2005 October 15, p. A03.

<sup>88</sup> See Simons, 2011 May 17, p. 4; Reuters May 13, 2011, 8; Simons, 2010 December 15, p. 12; Cowell, 2010; Otterman, 2009; Simons & MacFarquhar, 2009, p. 6; Simons, Polgreen, & Gettleman, 2008, p. 1; & Simons, 2007, p. 3.

Pieces that are critical of the Court's enforcement powers seem to all follow the same line of reasoning. The same arguments are made as to why suspects from Libya, Congo and Uganda have not been arrested.

### *The Washington Post: Challenges to the Court's Effectiveness*

Finally, *The Washington Post* draws attention to people who remain at large despite the ICC arrest warrants issued against them. Sudan and Uganda are provided as examples of the perceived failures of the Court to fulfill its purpose and arrest alleged war criminals. It even goes as far as stating on 30 December 2010, "Most of the suspects it has charged are still at large, notably Sudanese President Omar al-Bashir" ("Justice for," 2010, p. A14). Similar to *The New York Times*, thirteen articles in *The Washington Post* are especially critical of the ICC, and doubt the Court's ability to achieve the objectives outlined in the *Rome Statute* by bringing perpetrators to justice.

### **Peace vs. Justice**

Another central theme found within the newspaper articles concerns the Court's ability to achieve both peace and justice through prosecutions. Many argue that ICC indictments are designed to provide justice, which has served as a detriment to peace efforts - particularly in Darfur and Uganda (Clark, 2010; Hine, 2009; & Babiker, 2010). Examples are produced of situations where ICC indictments have been blamed for the cessation of peace negotiations, such as with Joseph Kony in Uganda (Clark, 2010; Hine, 2009). Despite these claims, authors come to the conclusion that peace and justice are not mutually exclusive. In fact, they argue that without some form of justice, peace can never be realized because "accumulated injustices eventually lead to violence" (Hine, 2009, p. 136). Furthermore, Clark (2010) states, "the focus shouldn't be

on whether peace should come before justice, but rather how justice and peace can be combined to the maximum benefit of Uganda's people" (p. 148). He goes on to state that the ICC must be part of this process, as it is often the only avenue for justice in atrocity crimes (Clark, 2010, p. 148).

Overall, 71 of the 101 relevant newspaper articles use this topic as an argument against the Court and as an excuse not to intervene in atrocities. Coverage is particularly slanted as many articles fail to present both sides of the debate, using it solely as an argument against the Court's effectiveness and legitimacy. Governments, particularly Sudan and Uganda, have used peace as an excuse to evade cooperation with the Court, and many of the newspapers seem to unquestioningly adopt these arguments as their own. *The Globe and Mail* and *The Washington Post* present particularly negative constructions of the Court's work to achieve peace and justice, while *The Toronto Star* and *The New York Times* present a slightly more balanced picture of the debate. Overall, this debate is highly biased, constructing justice as an impediment to peace, without the inclusion of sound evidence to back up these claims.

#### *Globe and Mail: Peace vs. Justice*

A prominent theme within the *Globe and Mail* concerns the international court's ability to balance the interests of peace and justice<sup>89</sup>. The following quote sums up how this theme is constructed, "Prosecuting crimes against humanity may work in theory, but in practice, particularly in cases of domestic strife, many countries have preferred the more pragmatic goal of reconciliation" ("Peace and," 1998, p. A14). The underlying message here is that justice stands in the way of achieving peace, and that the primary goal should be ending atrocities and

---

<sup>89</sup> Of the eight articles discussing this theme, seven construct justice as an impediment to peace.

attaining peace. These representations construct the ICC in a negative way – challenging the effectiveness and legitimacy of the institution. The following quote criticizes the Court's involvement in a number of atrocities, including Libya, Zimbabwe, Congo, Sudan, and Uganda.

But it creates a dilemma that has become tragically familiar in recent years: by applying the pressure of justice to a savage leader, the ICC may have perpetuated, rather than ended, his crimes. Col. Gadhafi and his sons and generals dare not end their campaign of violence if it means spending more years in a Dutch cell ... We've seen this before. In 2008, it appeared as though Robert Mugabe was ready to step down as President of Zimbabwe, after fairsing poorly in an election and facing international condemnation for his abuses. But his generals, terrified of facing a certain ICC indictment out of power, turned on him and persuaded him to stay... This is an unfortunate pattern. Atrocities are committed, the ICC steps in and begins investigating, and prospects for a quick surrender or retirement disappear. This happened in the Congo, in Sudan, and most tragically in Uganda, where an ICC prosecution provoked the horrific Lord's Resistance Army to abandon a ceasefire and continue killing – and the government to launch a bloody campaign of reprisals. (Saunders, 2011, p. F9)

The argument here is the ICC promotes justice at the expense of achieving peace. These authors seem to claim that allowing leaders to go into exile, without the possibility of being held accountable for their crimes, would be preferable to an ICC intervention and the potential continuation of the conflict. Overall, *The Globe and Mail* only presents one side of this debate. Can peace and reconciliation really be achieved without accountability and some form of justice? It is hard to imagine a situation where revenge and reprisals would not be on the agenda of victims and their supporters without some form of accountability.

*The Toronto Star: Peace vs. Justice*

Coverage of this debate is slightly more balanced within *The Toronto Star* than *The Globe and Mail*; however, references to Sudan and Uganda often emphasize the need to achieve

peace over justice<sup>90</sup>. For instance, articles constructing the situation in Sudan blame the ICC for Bashir's decision to expel thirteen of the largest aid groups<sup>91</sup>, attacks on international peacekeepers (Ward, 2009 March 5, p. A1), and ending a fragile peace agreement between the two sides of the conflict. One piece states,

For weeks, Bashir's regime has threatened to retaliate against international peacekeepers and aid workers if a warrant were issued, and the head of Sudanese intelligence called for 'amputation of hands and slitting of throats' of anyone who 'badmouths' Bashir or supports the court's allegations. (Ward, 2009 March 5, p. A1)

One article even presents Bashir as indispensable for peace, arguing that his support is needed for any hope of peace in Sudan. Many of these constructions are quite negative and portray the Court as an opponent to peace, without responsabilizing Bashir for his behaviour.

That said, four pieces construct justice as indispensable to peace. One article attempts to summarize the debate and comes to the conclusion that the ICC is not to blame for violence that erupts after indictments are issued,

The argument taken from peace negotiations can be overdone. No one is irreplaceable, and heads of state who are suspected of having blood on their hands are eminently replaceable. Any violence that erupts as part of a knee jerk reaction of the Sudanese government to the indictments will be its full responsibility. (Megret, 2009, p. A19)

This article responsabilizes the perpetrator, rather than placing the blame on the ICC indictment. Several other articles construct justice as a necessary part of the process in order for victims to heal and be a part of the peace process;

Khalthoum Adam, a 50-year-old woman in Kalma Camp, says even if a peace deal is reached, she will not return to her home village near Kalma unless there is a trial. She

---

<sup>90</sup> *The Toronto Star* contains sixteen relevant articles, with ten identifying the Court as a detriment to peace, four stating that achieving justice is a necessary part of the peace process, and two presenting both sides of the debate while maintaining fairly neutral.

<sup>91</sup> See Anonymous, 2009 June 12, p. A22; Ward, 2009 April 5, p. A14; Sanders, 2009, p. A9; & Anonymous, 2009 March 6, p. A18.

fears violence by Arab camel herders she says are holding the land she and her family were driven out of by an attack plane and government militia five years ago. (El Deeb, 2008, p. AA2)

Several articles emphasize this point, that the capacity for peace is limited because without justice, it will be hard for survivors to begin the healing process<sup>92</sup>. By presenting two sides of the debate, these constructions are much more balanced than those contained in *The Globe and Mail*. Overall though articles still heavily favour one side of the debate, perpetuating constructions of the Court as an impediment to peace.

*The New York Times: Peace vs. Justice*

Slightly over sixty percent of discussions in *The New York Times* construct justice in opposition to peace without providing any real evidence to back this claim<sup>93</sup>. Articles pertaining to atrocities committed in Uganda and Sudan are particularly negative. The ICC is blamed for the abduction of foreign aid workers (Reuters, 2010; Gootman, 2008, p. 8, & Kristof, 2008, p. 21), Bashir's decision to expel international aid organizations<sup>94</sup>, and destabilizing peace talks in Sudan<sup>95</sup>. Articles focusing on Uganda tend to emphasize that Joseph Kony will not surrender or disband the LRA until ICC indictments are dropped; because the ICC refuses to drop the indictments, attacks will continue and peace will not occur (Gettleman & Okeowo, 2008, p. 10; & Yoo, 2006, p. 15). This gets at one of the main arguments in academic literature pertaining to the necessity of peace over justice, that "the more such leaders fear prosecution by an international criminal court, the more they will resist leaving" (Krasner, 2001, p. 15). This

---

<sup>92</sup> See Ward, 2009 March 5, p. A1; "War crimes," 2007, p. A15; Deutsch, 2003, p. A04; & Ward, 2002, p. B02.

<sup>93</sup> Twenty of the Thirty-three relevant articles.

<sup>94</sup> See The Associated Press, 2010, p. 6; Thompson, 2009, p. 12; MacFarquhar, 2009 June 12, p. 8; Baker, 2009, p.12; & MacFarquhar & Gettleman, 2009, p. 12.

<sup>95</sup> See Otterman, 2009; MacFarquhar, 2009 March 18, p. 11; MacFarquhar & Otterman, 2009, p. 8; Graham, 2009, p. 27; Gootman, 2008, p. 8; & Reuters, 2008, p. 9.

implies that further atrocities will be committed because leaders will use any means necessary to hold onto whatever power they have left. This argument is not present within discussions of Sudan. These articles focus on Bashir's attempts to further undermine peace in opposition to ICC indictments;

The latest crisis in the long-troubled Darfur region stems from the International Criminal Court's indictment this month of President Omar Hassan al-Bashir of Sudan for crimes against humanity in connection with the deaths of 300, 000 people. Mr. Bashir responded by expelling 13 nongovernmental agencies, accusing them of collaborating with the court, and leaving more than one million people without help. (Slackman & Worth, 2009, p. 5)

These articles blame the Court's involvement for Bashir's actions, as opposed to responsabilizing leaders for their crimes.

Although the majority of articles are quite negative, seven do construct justice as a necessary prerequisite to peace, and emphasize the Court's role in achieving this. These pieces refer to the situations in Libya (Simons, 2011 May 17, p. 4), Gaza (Cumming-Bruce, 2009), and Sudan<sup>96</sup> to highlight how the ICC is an essential part of attaining peace. Within these discussions authors also express hope that nations states will provide support to the ICC and justice processes;

African leaders argue that the court's actions will impede efforts to promote peace in Darfur. However, there can be no real peace and security until justice is enjoyed by the inhabitants of the land. There is no real peace precisely because there has been no real justice. (Tutu, 2009, p. 27)

These articles stress that although dropping ICC indictments may create short-term peace, lasting peace cannot occur without some form of justice. Another article supporting the Court's ability to provide both peace and justice argues that President Bashir's government has a long history of

---

<sup>96</sup> See Kristof, 2009 March 8, p. 11; Tutu, 2009, p.27; "Mocking the," 2007, p. 18; Flint, 2006, p. 13; & Hoge, 2005 February 17, p. 9.

obstructing peace – even before the ICC issued arrest warrants – and that responsibility for any retaliatory actions taken after the indictments lies with the leaders themselves; “If Khartoum retaliates against the arrest warrant by attacking refugees, aid workers, or peacekeepers, the responsibility will lie solely with the leaders who issue the orders” (Goldstone, 2008, p. 19). Although there are a few balanced discussions of this debate, as demonstrated above, the majority tends to argue that the ICC promotes justice at the expense of peace.

### *The Washington Post: Peace vs. Justice*

Coverage of peace versus justice within *The Washington Post* is overwhelmingly negative. Of the 44 relevant articles, 36 pieces represent the Court as a detriment to the goal of peace and reconciliation. Similar to the other newspapers considered, articles within *The Washington Post* spend the most time constructing the situations in Uganda and Sudan. They blame the ICC for Bashir’s expulsion of aid groups and increasing their vulnerability<sup>97</sup>, leaving leaders with no option but fighting to remain in power<sup>98</sup>, and breaking down peace negotiations/opportunities for peace<sup>99</sup>. Besides generally affecting peace negotiations and opportunities to achieve peace, the main argument presented with regard to why the ICC should drop indictments is that it “puts a thug in a corner” (Gerson, 2009, p. A17). This aligns with a claim found in academic literature, that ICC indictments push leaders to commit further atrocities

---

<sup>97</sup> See Hamilton, 2011, p. A05; Gerson, 2009 March 25, p. A15; McCrummen & Lynch, 2009, p. A01; “Around the,” 2008 July 23, p. A11; & Kessler, 2005, p. A19.

<sup>98</sup> See Rademaker, 2011, p. A15; “Engineering Passivity,” 2011, p. A22; “Hold the,” 2009, p. A18; Gerson, 2009 February 13, p. A17; Flint & de Waal, 2008, p. A15; Jolie, 2007, p. A19; Rademaker, 2007, p. A25; & “Don’t move”, 2005, p. B05.

<sup>99</sup> Lynch, 2011 February 27, p. A10; Thiessen, 2011; “Justice for,” 2010, p. A14; “U.S. official,” 2010, p. A05; Sheridan, 2010, p. A07; Lynch & Hamilton, 2010, p. A07; “A wager,” 2010, p. A16; Lynch, 2009, A07; Labbe-DeBose & Wagner, 2009, p. B04; Kamen, 2009, p. A13; “Around the,” 2008 October 3, p. A19; “War crimes,” 2008, p. B06; McCrummen & Boustany, 2008, p. A13; Timberg, 2008, p. A11; Boustany, 2008 March 19, p. A12; Boustany, 2007 July 12, p. A18; Bengali, 2006, p. A18; “A World,” 2006, p. A19

in order to hold onto their power and avoid international accountability (Clark, 2010; Hine, 2009; & Babiker, 2010). This argument is presented time and again within *The Washington Post*, appearing in discussions of Sudan, Uganda, Libya and Kenya. Referencing the situation in Libya, Rademaker states,

The real message to Gaddafi of the ICC referral is that Libya will not be afforded this option. Instead, he and his lieutenants are left with two choices: surrender to international justice or fight it out in Tripoli. Clearly they have no interest in surrendering, so Libya is now locked into a civil war that will rage until one side wins. (Rademaker, 2011, p. A15)

Thus, instead of putting the onus on leaders who commit atrocities, the burden is shifted to the international court for issuing indictments.

Despite all of the negative representations, there are six articles highlighting some advantages to ICC prosecutions and the Court's ability to foster peace and pursue justice. These articles illuminate an inextricable link between peace and justice, arguing that neither is possible without the other;

Any victim would understandably yearn to stop such horror, even at the cost of granting immunity to those who have wronged them. But this is a truce at gunpoint, one without dignity, justice or hope for a better future. The time has passed when we might talk of peace vs. justice. One cannot exist without the other. Our challenge is to pursue them both, hand in hand. In this the International Criminal Court is key. (Ki-moon, 2010, p. A19)

Other pieces construct justice as a way to move peace forward, either by using it as leverage or as a way to facilitate peace and reconciliation negotiations<sup>100</sup>. Articles considering both sides of this debate are virtually non-existent. Overall, *The Washington Post's* portrayal of this debate is particularly skewed, and often used as an excuse against the Court.

---

<sup>100</sup> See Prendergast, 2009, p. B03; MrCrummen & Boustany, 2008, p. A13; Boustany, 2007 July 12, p. A18; Jolie, 2007, p. A19; & Rubenstein, 2002, p. A17.

As demonstrated above, newspapers have often employed this debate as an argument against the Court's invention in atrocities. These discussions are often quite biased; failing to present both sides of the debate. Interestingly, newspapers, particularly *The Globe and Mail* and *The Washington Post*, have reproduced arguments presented by the leaders of nations like Sudan and Uganda, who have used peace as a method to evade responsibility for atrocities or as a bargaining chip for asylum. *The Toronto Star* and *The New York Times* present a slightly more balanced picture of the debate, at times considering the link between peace and justice, or the necessity of resolving conflicts according to the victim's desires. Despite these few exceptions, justice is often constructed as an impediment to peace, without the backing of sound evidence or the consideration of alternate perspectives.

## **Representations**

As anticipated, there were several major differences between American and Canadian constructions of the ICC. Overall, representations of the ICC within Canadian newspapers were fairly positive and portrayed Canada's support for the Court favourably. Even individual articles that highlighted weaknesses or constructed the Court negatively virtually never questioned Canadian support for the ICC<sup>101</sup>. Furthermore, Canadian newspapers often discussed the Court without referencing Canada or Canadian involvement. Instead articles often focused on the Court itself, the support of other nation-states, or cases that should be referred to the Court.

American newspapers did not adopt the same constructions; however, similar patterns did emerge. First, a large majority of discussions surrounding the ICC were American-centered. In

---

<sup>101</sup> Negative constructions of the Court most often appeared within *The Globe and Mail*; however, authors were careful to point out that Canada *should* support the Court generally despite any criticism they presented.

other words, as opposed to Canadian newspapers that often mentioned the Court without referencing Canada or Canadians, American newspapers rarely referenced the Court without discussing the involvement of the United States or Americans in some way. Regardless of how relevant these discussions were, authors almost always related conversations back to America. Second, a larger proportion of American newspapers constructed the Court negatively as compared to Canadian newspapers; however, in line with Canadian papers, these constructions were often used to justify the government's position towards the Court. Because the American government is largely opposed to the existence of the ICC, many articles attempted to justify this by presenting criticisms<sup>102</sup> of the Court. There were numerous examples where misrepresentations and misconceptions were used to criticize the Court and defend American opposition. Thus, the final theme found within the newspaper articles are misconceptions and misrepresentations that are never corrected. As outlined in the theory chapter, due to most people's lack of personal experience with the ICC, it is plausible that they would rely on the media for their constructions. Thus, when misinformation is printed, it could prove detrimental for the Court's reputation. *The Washington Post* contained the most examples with thirteen articles containing misinformation and misrepresentation, while *The New York Times* came in at a close second with seven articles. The American newspapers often employed false information/false claims to support their government's opposition to the Court. For example, one article full of misinformation states,

The agreements empowers a global court to arrest, try and imprison American, Israeli and other citizens of democracies for an undefined crime of 'aggression'. With no Security Council veto to restrain the I.C.C., its prosecutor would surely accede to an Arab League request to indict Israeli soldiers, and tomorrow indict any U.S. officeholder or servicemember who dared to offend a local dictator. An international prosecutor, answerable to no nation and unrestrained by any Bill of Rights, is the rest of the world's

---

<sup>102</sup> However truthful they were.

weapon to bring the too-sovereign superpower to heel. Were we to subject ourselves to the rule of the lawless, no U.S. sailor or president could ever travel abroad without becoming vulnerable to arrest by a politically motivated prosecutor. (Safire, 2001, p. 17)

This excerpt taken from *The New York Times* provides the perfect exemplar of misrepresentations found within American newspapers, that the Court can prosecute crimes of aggression; that the Court can hold any American responsible, even for insignificant/frivolous crimes (Eviatar, 2003, p. 7; Alvarez, 2001, p.9; & “America on,”2001, p. 16); and that the ICC is above any form of accountability<sup>103</sup>. Some of the other false claims found within the documents include, that domestic courts do not have the first opportunity to try their own crimes (Tyler & Barringer, 2003, p. 10), and that Americans could be held accountable for crimes committed prior to 2002 (Bernstein, 2001, p. 7).

None of these claims have any merit. First, crimes of aggression were not defined within the *Rome Statute* until June 11<sup>th</sup> 2010, during the *Review Conference* (Davis, et al. 2011, p.1). Second, the claim that the Court can hold any American responsible is highly unlikely. The United States has not ratified the *Statute* and has signed bilateral treaties preventing signatories from handing over any Americans to the Court. The principle of complementarity further restricts the Court’s ability to prosecute Americans, because it gives the U.S. the first opportunity to prosecute crimes committed by its citizens (Rome Statute, 2002). Further, the Court only deals with the most significant and serious violations of international criminal law. The claim that “no U.S. sailor or president could ever travel abroad without becoming vulnerable to arrest by a politically motivated prosecutor” (Safire, 2001, p. 17) is simply untrue.

The argument that the Court is above any form of accountability is also inaccurate. ICC judges and prosecutors are subject to an assembly of state parties made up of representatives

---

<sup>103</sup> See also, Will, 2002, p. A21; Slevin, 2002, p. A01; Hiatt, 2000, p. A17; Hiatt, 1998, p. C07.

from nations that ratified the *Statute* (Rome Statute, 2002). Action can be taken in situations that merit an intervention. The *Rome Statute* also outlines the principle of complementarity, which gives the ICC jurisdiction only when nation states are unwilling or unable to intervene (Rome Statute, 2002). The principle allows nations to try their own atrocity crimes before the international court could take jurisdiction; thus, negating the claim that the ICC does not allow states to try their own crimes.

Finally the claim that Americans, such as Henry Kissinger, could be held responsible for alleged crimes they committed prior to the Court's enactment in 2002 (Bernstein, 2001, p. 7), is simply untrue. The *Rome Statute* does not allow for retroactive jurisdiction; the Court can only try cases that occurred after the Court received 60 ratifications on July 1, 2002. People like Mr. Kissinger could not be held responsible by the Court because the alleged crimes were committed before the Court's jurisdiction entered into effect.

As previously stated, these misrepresentations and misinformation are dangerous because of the faith people have in truthful reporting. Someone relying on these newspapers for information on the Court could be misled, which could significantly affect their feelings of support towards an institution reliant on voluntary support to function.

## **Findings and Conclusions**

All four newspapers provided a surprising amount of insight into themes that have been occurring within academic literature. Although, as discussed above, many of these conversations are superficial and heavily favour one perspective, the depth of coverage was not anticipated. Some of the articles provided well-researched perspectives on debates surrounding the Court's legitimacy, effectiveness, and peace versus justice.

Overall, the newspaper coverage provided a lot of support for the theoretical perspectives outlined for this thesis, specifically Herman and Chomsky's propaganda model. As evidenced throughout the analysis, newspaper constructions quite often favoured the positions put forth by their respective governments. Within Canadian coverage, virtually all of the themes, with the exception of peace versus justice, portrayed overwhelming support for the Court. This support was communicated through the positive constructions of the Court and belief in its legality and effectiveness. Even themes that were critical of the Court, such as its prospects for enforcement, were not critical to a level that would undermine the government's support for the Court.

Similar findings arose from American newspaper coverage. American newspapers were much more critical of the ICC than Canadian newspapers. U.S. coverage was less optimistic that the Court would be able to achieve the objectives outlined in its mandate and operate as a legitimate international institution. When these constructions were positive, support for the Court was communicated symbolically. For example, American newspapers were quite positive about the Court's achievements in reinforcing universal standards of human rights; however, this support was offered in a way that did not undermine the government's efforts to avoid the Court's jurisdiction. Instead it communicated a message along the lines of 'we (as a government) can see value in a court like this', while working behind the scenes to undermine its effectiveness. This analysis provides support for Herman and Chomsky's assertions that "media serve the interests of the state ... framing their reporting and analysis in a manner supportive of established privilege and limiting debate accordingly" (Chomsky, 1989, p.10). Although it is impossible to know how these constructions came to dominate the media, the themes of legitimacy, purpose and effectiveness, and representations provide support for Herman and Chomsky's conclusions.

Many articles focused on the Court's legitimacy were quite positive and constructed the ICC as a legitimate institution with fairly broad support from the international community, particularly within Canadian newspapers. Discussions of legitimacy were typically grounded in support for the Court, both generally, and in terms of cooperation with specific cases and suggestions of cases for referral. Articles often unquestioningly accepted both the legality of the Court as an international institution for justice, and the traditional definition of justice (as inspired by Rousseau) underlying the Court's legitimacy. That said, American newspapers were usually careful to avoid direct statements of support for the Court. Instead they preferred communicating a general symbolic support for a court such as the ICC, while leaving specific areas open to opposition. The ICC's legitimacy tended only to be questioned with regard to the creation of double standards/two-tiers of justice. However, as mentioned above, this argument was often quoted directly from the leaders of nations who have been indicted by the ICC, in an attempt to undermine the Court's legitimacy and foster support for their opposition.

Throughout coverage of legitimacy, within all four newspapers, dominant constructions of justice prevailed. As stated within the literature review chapter, this definition of justice, which is based on punishment and retribution, dominates 'Western' society's institutions of justice. It follows from dominant values, which are "those held by dominant or powerful groups in society – typically, these values promote the interests of powerful groups – often with the aim of subordinating less powerful groups" (Burton, 2005, p.48-51). The dominance of this conception of justice was quite noticeable throughout the entire analysis. The only area that allowed for alternative constructions was *The Toronto Star's* discussion of victims and the debate of peace versus justice. Even within these themes, dominant constructions of justice prevailed, leaving very little room for critical analysis. This point is significant because it

highlights the processes of social control operating within newspaper constructions. It demonstrates the lack of opportunity to engage in critical analysis or present alternate conceptions. It helps to reinforce many points made within the theory chapter of this thesis: that elements of control operate to determine what can be published and which perspectives will dominate, ultimately subordinating any alternative constructions or ways of thinking (Adler, et al, 2009, p.158-159; Burton, 2005, p.48-51; Chomsky, 1989; Curran, 2002, p.137; & Surette, 2007, p.35).

Pieces discussing the Court's effectiveness did not have the same level of consensus. The Court's effectiveness as a deterrent and its ability to end impunity were quite often doubted; with many authors unconvinced that the ICC will ever be able to achieve these goals. The main reasons cited for this uncertainty is the Court's power, and its reliance upon state cooperation for success. Again, there were differences between Canadian and American coverage. Criticisms of the Court were much harsher within U.S. newspapers than those contained in Canadian articles. Similar to constructions contained within the theme of legitimacy, Canadian newspaper portrayals that were critical of the ICC communicated this in a way that did not undermine the government's support for the Court. American newspapers did not do this; instead, the Court's effectiveness was used to cast doubt on the Court's ability to achieve its objectives and provide more reasons for the government's opposition. Again, these findings are significant because they provide further support for the propaganda model. Constructions of the Court's effectiveness tend to favour and reinforce the legitimacy of each state's official government position.

The peace versus justice theme significantly diverges from all of the other findings. Both Canadian and American newspapers were very critical of the Court's ability to provide both justice and peace. Authors frequently questioned whether the Court's existence promotes justice

at the expense of peace, and if these two objectives can ever be attained simultaneously. The propaganda model is again supported by American newspaper constructions. Following the logic of this model, it would predict that American newspapers would question the Court's ability to provide both peace and justice, and potentially use this to further its opposition to the Court. This is exactly what happened. However, Canadian newspaper portrayals do not support the propaganda model, as this model would predict that Canadian newspapers would present more optimistic coverage of the Court's ability to provide justice and peace. This theme could imply that the government's control over the media, within Canada specifically, is not as absolute as the propaganda model would suggest. This theme could provide an interesting area for further inquiry, as it significantly diverged from all other findings and could highlight some weaknesses in the propaganda model.

Despite the somewhat balanced debates discussed above, many articles did present one-sided constructions that were not well researched, or provided false information. The fourth theme of 'representations' arose out of these discussions. Articles that provided biased representations frequently contained misinformation as evidence for their claims. Interestingly, this theme was most often associated with pieces from U.S. newspapers religiously defending American opposition to the Court. These constructions are significant because they provide support for Fishman's concept of 'manipulated journalism' (Fishman, 1980, p.15), and further reinforce the propaganda model's main conclusions (Herman & Chomsky, 1998, p.32). Manipulated journalism is "politically motivated and involves manipulation of news media to serve particular interests" (Fishman, 1980, p.15). Analysis demonstrated that facts have been misrepresented and information was invented with the sole purpose of supporting U.S. opposition to the ICC. This level of misinformation provides evidence that information was

manipulated to serve the interests of the government (to garner public support against the ICC).

This also reinforces the main premise of the propaganda model that the media cater to the interests of the state; in this case manipulating information to support the government's position.

## Chapter 5: Final Thoughts

This study set out to explore how the International Criminal Court has been constructed within several national North American newspapers. The significance of performing this type of research primarily lies within the necessity of state support for the Court's survival and success. As previously mentioned, the Court relies upon the voluntary support of states for all aspects of its operations, from funding, to staffing, to the enforcement of arrest warrants and collection of evidence. Because of this level of dependence, public and state support is imperative for the proper functioning of the Court.

Overall, the analysis of 1,982 articles from *The Globe and Mail*, *The Toronto Star*, *The New York Times*, and *The Washington Post* produced several notable findings with regard to the Court's portrayal. First, the lack of articles with enough substance to perform any meaningful analysis was noteworthy. Many articles mentioned the Court in passing without providing any relevant information about the ICC. Because most people do not have first-hand experience with the Court, it is plausible that their information would come from the media. Thus, it is problematic that on average well over half of the articles included for analysis did not provide enough information on the Court to conduct a significant analysis.

Another important finding surrounds the definition of justice and the fact that only a handful of the articles conceptualized justice outside the mainstream definition inspired by Rousseau. Principally constructing justice in these terms reinforces the current system's legitimacy and fails to provide any critical perspectives to the readers. It is concerning that the majority of authors did not think to question this perspective. This may also provide an interesting area for further research.

The extent to which debates in the newspaper touched upon conversations occurring within academic literature was also significant. Quite contrary to what I anticipated, there were several discussions within the newspapers that presented well-researched, evidenced-based constructions of current academic debates. These included articles pertaining to the Court's legitimacy and the creation of double standards/two-tiers of justice; the Court's effectiveness as a deterrent and in setting international standards; and debates regarding the Court's ability to provide peace and justice. Although many articles were superficial and portrayals remained quite surface-level, it is worth recognizing that some pieces contained a surprising level of insight and thoughtfulness.

Furthermore, because the current study is exploratory and the first of its kind to be performed with regard to the ICC, it has opened up a number of areas for further research. In addition to the question of how justice is constructed within media representations of international criminal law, misrepresentation within American newspapers warrants further investigation. The number of articles that contained blatantly false claims (that can be easily disproved by examination the *Rome Statute*) is quite significant; particularly when we consider that these arguments are often used to justify the government's decisions to oppose the Court. It would be interesting to investigate how extensive these examples of misinformation are, and if they have entered into public discourse (perhaps using a survey of the American public).

Finally, the level of support for the theoretical perspectives informing this study is also quite significant. Evidence of social control, specifically the prevalence of dominant values and lack of alternative perspectives, was quite prominent. This not only applied to constructions of justice, but also to general support for positions pushed by each government. The main assertions of Herman and Chomsky's propaganda model were also supported. With the exception of

Canadian coverage of the peace versus justice theme, Canadian newspapers largely supported the ICC, while American newspapers were more careful to avoid statements of direct support, instead favouring symbolic support and critical positions. Both of these findings would make interesting areas for further inquiry. It would be particularly valuable to conduct a study of Canadian coverage of the peace versus justice theme, as it was the only theme that did not support the propaganda model.

It may also be worthwhile to perform a similar analysis using a broader diversity of sources. These sources could differ in terms of ideological stance, national versus local, or print versus television media. Overall, many of the major themes presented within the current analysis may also make for interesting subject matter when analyzed in more depth or from a variety of different media sources.

## References

- 35 killed in attack on NATO project Report; U.S. troops' morale has sagged Queen, on visit, tours framed horse region. (2011, May 20). *The Washington Post*, p. A08.
- A brutal century ends with hope. (1999, December 30). *The Toronto Star*, p. 1.
- A wager on Sudan; Omar al-Bashir, reelected by fraud, says he'll allow a fair vote on dividing the country. (2010, May 2). *The Washington Post*, p. A16.
- A world in brief. (2006, October 12). *The Washington Post*, p. A19.
- Abramowitz, M., & Lynch, C. (2008, October 12). Darfur killings soften Bush's opposition to international court. *The Washington Post*, p. A09.
- Adams, L. (2003, February 23). Role reversal. *The Washington Post*, p. T06.
- Ainley, K. (2006). Responsibility for atrocity: Individual criminal agency and the International Criminal Court. In J. T. Perry (Ed.), *Evil, law and the state: Perspectives on state power and violence*. New York, NY: Rodopi.
- America on trial? (2001, January 8). *The New York Times*, p. 16.
- An accord on child soldiers. (2000, January 21). *The New York Times*, p. 1.
- Annan, K. A. (1999, August 1). Africa: The horror ... *The Washington Post*, p. B07.
- Anonymous. (2008, December 19). For Rwanda, justice. *The Toronto Star*, p. AA.4.
- Anonymous. (2009, March 6). Bring justice to Sudan. *The Toronto Star*, p. A18.
- Anonymous. (2009, March 7). And justice for all ... or none. *The Toronto Star*, p. IN.7.
- Anonymous. (2009, June 12). Brief. *The Toronto Star*, p. A22.
- Anonymous. (2009, November 8). Same rights standards must apply to all nations. *The Toronto Star*, p. A15.
- Arbour, L. (2008, April 8). Working to prevent genocide. *The Toronto Star*, p. AA.4.
- Armies of children. (2006, October 12). *The New York Times*, p. 28.
- Around the world. (2008, July 23). *The Washington Post*, p. A11.
- Around the world. (2008, October 3). *The Washington Post*, p. A19.
- Atrocities in Libya. (2011, February 22). *The Washington Post*, p. A12.
- A worldwide criminal court? (1998, June 12). *The Washington Post*, p. A26.

- Babbie, E., & Benaquisto, L. (2002). *Fundamentals of social research*. Scarborough, Canada: Nelson.
- Baker, P. (2009, March 31). Obama urges Sudan to allow aid groups back into the country. *The New York Times*, p. 12.
- Barak, G. (1994). *Media, process, and the social construction of crime: Studies in newsmaking criminology*. New York: Garland Publishing, Inc.
- Barlow, M. (2010, January 5). Ashamed to wear the maple leaf; Harper has hurt Canada's reputation. *The Globe and Mail*, p. A15.
- Bass, G. J. (2004, January 18). At Saddam's trial, the law is just part of the picture. *The Washington Post*, p. B03.
- Bass, G. J. (2005, October 30). Does the U.N. understand what it's getting itself into? *The Washington Post*, p. B03.
- Bazelon, E. (2005, September 25). Justice for all; A British barrister sheds light on the evolution of how justice is served. *The Washington Post*, p. T04.
- Becker, E. (2002, September 7). On world court, U.S. focus shifts to shielding officials. *The New York Times*, p. 4.
- Bengali, S. (2006, October 15). War- Weary Ugandans blame court for impasse; Rebels refuse amnesty, citing Hague warrants. *The Washington Post*, p. A18.
- Berg, B. L. (2007). *Qualitative research methods for the social sciences* (6<sup>th</sup> Edition). Long Beach, CA: Pearson.
- Bernstein, R. (2001, August 4). To butt in or not in human rights: The gap narrows. *The New York Times*, p. 7.
- Birnbaum, M. (2011, May 16). NATO seeks more strikes to put squeeze on Gaddafi. *The Washington Post*, p. A09.
- Birnbaum, M. (2011, May 17). Court action increases pressure on Gaddafi. *The Washington Post*, A10.
- Boesveld, S. (2010, August 2). Ian Smillie. *The Globe and Mail*, p. A4.
- Boustany, N. (1998, May 13). Pakistani sees worries about India vindicated now. *The Washington Post*, p. A24.
- Boustany, N. (2002, July 12). Departing Irishman mulls 'glory of America'. *The Washington Post*, A16.
- Boustany, N. (2007, July 12). For Ugandan rebel, a question of justice; Fate of Lord's Resistance army chief at centre of talks to end 21-year war. *The Washington Post*, p. A18.

- Boustany, N. (2007, January 30). Court orders trial for Congolese warlord accused of conscripting children. *The Washington Post*, p. A10.
- Boustany, N. (2008, March 19). Ugandan rebel reaches out to International Court; Kony's legal team explores an exit that could seal peace pact. *The Washington Post*, p. A12.
- Boustany, N. (2008, July 3). Congolese accused of recruiting child soldiers ordered set free. *The Washington Post*, p. A11.
- Boustany, N., & McCrummen, S. (2007, February 28). Sudanese pair accused of war crimes; International Court names member of President's inner circle, Darfur militia leader. *The Washington Post*, p. A13.
- Brinkley, J. (2006, February 9). Bush budget would slash Bolivia military aid. *The New York Times*, p. 10.
- Bush, L. (2009, June 28). Do not forget Burma. *The Washington Post*, p. A17.
- Bush win tests Canada's resolve. (2004, November 16). *The Toronto Star*, p. A25.
- Burr, V. (1995). *Introduction to social constructionism*. London: Routledge.
- Burr, V. (2003). *Social constructionism*. London: Routledge.
- Burton, G. (2005). *Media and society: Critical perspectives*. New York: Open University Press McGraw-Hill Education.
- Caine, P. (2009). The International Criminal Tribunal for the Former Yugoslavia: Planners and instigators or foot soldiers? *International Journal of Police Science and Management*, 11(3): 345-357.
- Carrabine, E. (2008). *Crime, culture and the media*. Cambridge, UK: Polity Press.
- Chermak, S. (1994). *Crime in the news media: a refined understanding of how crimes become news*. In G. Barak (Ed.) *Media, process, and the social construction of crime*. New York: Garland Publishing.
- Chomsky, N. (1989). *Necessary illusions*. Toronto, Canada: CBC Enterprises.
- Clark, C. (2011, February 26). Canada prepared to impose its own sanctions against Libya, PM says. *The Globe and Mail*, p. A12.
- Clinton regrets U.S. not part of court. (2009, August 7). *The Washington Post*, p. A09.
- Clooney, G., & Prendergast, J. (2011, May 28). Avoiding the next Darfur. *The Washington Post*, p. A17.
- Cohen, R. (2008, December 4). A court for a new America. *The New York Times*.
- Congo ex-official is held in Belgium on war crimes charges. (2008, May 25). *The New York Times*, p. 13.

- Congo suspect may be freed ... (2008, June 17). *The Washington Post*, p. A13.
- Cooper, B. (2009, December 6). 5 Myths about putting the world's worst on trial. *The Washington Post*, p. B02.
- Cooper, H. & Landler, M. (2011, February 27). Following U.S. sanctions, U.N. Security Council to meet on Libya. *The New York Times*.
- Cowell, A. (2005, July 20). 3 British soldiers face abuse trials. *The New York Times*, p. 9.
- Cowell, A. (2010, August 28). Sudan leader travels despite warrant. *The New York Times*.
- Crossette, B. (1998, March 27). Helms vow to make war on U.N. court. *The New York Times*, p. 9.
- Crossette, B. (1998, June 14). An old scourge of war becomes its latest crime. *The New York Times*, p. 1.
- Crossette, B. (2000, May 13). U.N. Chief faults reluctance of U.S. to help in Africa. *The New York Times*, p. 1.
- Crossette, B. (2000, June 30). U.S. gains a compromise on war crimes tribunal. *The New York Times*, p. 6.
- Crossette, B. (2000, August 20). U.N. reform group assesses U.S. candidates. *The New York Times*, p. 15.
- Crossette, B. (2000, November 24). Time is short for U.S. to join the International Criminal Court. *The New York Times*, p. 9.
- Crossette, B. (2001, February 15). Powell pledges strong support for wide spectrum of U.N. activities. *The New York Times*, p. 15.
- Crossette, B. (2001, July 1). Long-range justice raises fears for sovereignty. *The New York Times*, p. 8.
- Crossette, B. (2002, February 17). At the Hague, it's a leader on trial, not a people. *The New York Times*, p. 3.
- Cumming-Bruce, N. (2009, September 30). U.N. Investigator presents report on Gaza war. *The New York Times*.
- Curran, J. (2002). *Media and power*. New York, NY: Routledge.
- Davis, C., Forder, S., Little, T., & Cvek, D. (2011). The crime of aggression and the International Criminal Court. *The National Legal Eagle*, 17 (1).
- Demirdijian, A. (2010). Armless giants: Cooperation, state responsibility and suggestions for the ICC Review Conference. *International Criminal Law Review*, 10: 181-208.

- Deutsch, A. (2003, March 12). Canadian envoy to head world war-crimes court; First permanent body of its kind but faces major opposition. *The Toronto Star*, p. A04.
- Diehl, J. (2003, September 1). Revolutionist justice in Argentina. *The Washington Post*, p. A25.
- Diehl, J. (2009, September 21). Israel's Gaza vindication. *The Washington Post*, p. A19.
- Dobson, W. J. (2011, April 23). What the dictators could say. *The Washington Post*, p. A13.
- Don't move on. (2005, March 27). *The Washington Post*, p. B06.
- Drozdiak, W. (2002, September 8). Divided allies? Only at the top. *The Washington Post*, p. B03.
- Dyer, G. (2003, August 10). In dire need of international court. *The Toronto Star*, p. A13.
- Ehrenfreund, N. (2007). *The Nuremburg Legacy*. New York, NY: Palgrave Macmillan.
- Eiroa, P. D. (n.d.). Justice, reconciliation, peace: If and why punish through International Criminal Tribunals. Retrieved November 1, 2009, from [http://www.fondazionefeltrinelli.it/dm\\_0/FF/FeltrinelliCmsPortale/0078.pdf](http://www.fondazionefeltrinelli.it/dm_0/FF/FeltrinelliCmsPortale/0078.pdf)
- El Deeb, S. (2008, November 17). War-weary refugees demand Sudan's president face genocide trial. *The Toronto Star*, p. AA.2.
- Elo, S., & Kyngäs, H. (2007). *The qualitative content analysis process*. Blackwell Publishing Ltd.: Oulo, Finland
- Engineering Passivity. (2011, March 10). *The Washington Post*, p. A22.
- Fam, M., Derhally, M. A., & Alkhalisi, Z. (2011, March 4). Gaddafi strikes rebels in west as battles rage in oil ports. *The Washington Post*.
- Far from the scene of the crimes. (2009, October 31). *The Globe and Mail*, p. A26.
- Fishman, M. (1980). *Manufacturing the news*. Austin, Texas: University of Texas Press.
- Flint, J. (2006, June 17). Dealing with the devil in Darfur. *The New York Times*, p. 13.
- Flint, J., & de Waal, A. (2008, June 28). Justice off course in Darfur. *The Washington Post*, p. A15.
- For the triumph of evil. (2005, January 29). *The Washington Post*, p. A24.
- Forero, J. (2005, August 19). Bush's aid cuts on court issue roil neighbours. *The New York Times*, p.1.
- Frankel, G. (2002). Reporter wins tribunal appeal; Judges back journalist's refusal to testify in war crimes trial. *The Washington Post*, p. A40.
- Fraser, G. (2003, October 9). MPs back motion to indict Zimbabwe's Mugabe. *The Toronto Star*, p. A17.

- From the Washington Post. (2001, January 7). *The Washington Post*, p. A3.
- Fukuyama, F. (2006, February 19). After neoconservatism. *The New York Times*, p. 62.
- Fundamental principles are at stake. (2002, July 11). *The Toronto Star*, p. A26.
- Gans, H. J. (1980). *Deciding what's news: A study of the CBC Evening News, the NBC Nightly News, Newsweek, and Time*. New York: Vintage Books.
- Gerson, M. (2007, October 17). To end a nightmare; Balancing peace and justice in Central Africa. *The Washington Post*, p. A17.
- Gerson, M. (2009, February 13). A chance to sway Sudan. *The Washington Post*, p. A17.
- Gerson, M. (2009, March 25). A killer forces a choice in Darfur. *The Washington Post*, p. A15.
- Gettleman, J. (2009, March 1). Starvation and strife menace torn Kenya. *The New York Times*, p. 6.
- Gettleman, J. (2009, November 6). International Court prosecutor to seek inquiry into Kenya election violence. *The New York Times*, p. 6.
- Gettleman, J., & Okeowo, A. (2008, April 11). Rebels delay landmark peace deal in Uganda. *The New York Times*, p. 10.
- Gettleman, J., & Simons, M. (2010, December 15). Kenyans' indictment for postelection violence is sought. *The New York Times*, p. 6.
- Goar, C. (2003, March 21). Seeking an alternative to war. *The Toronto Star*, p. A26.
- Goldstone, R. (2008, July 15). Catching a war criminal in the Act. *The New York Times*, p.19.
- Gootman, E. (2008, July 26). U.N. Debates court efforts to prosecute Sudan chief. *The New York Times*, p. 8.
- Gorrie, P. (2003, March 11). Canadian envoy has his day in court; One of 18 judges on international criminal tribunal Philippe Kirsch calls new body 'unprecedented'. *The Toronto Star*, p. A15.
- Graham, F. (2009, March 3). Put peace before justice. *The New York Times*, p. 27.
- Hall, S. (1980). *Encoding/Decoding*. In S.Hall, D.Hobson, A.Lowe, & P.Willis (Eds.) *Culture, media, language* (128–138). London : Hutchinson.
- Hiatt, F. (1998, July 26). The trouble with the war-crimes court. *The Washington Post*, p. C07.
- Hiatt, F. (2000, June 19). Justice best served; Internationally; War crimes sanctimony. *The Washington Post*, p. A17.
- Henham, (2008). Punishment and the role of the prosecutor in international criminal trials. *Criminal Law Forum*, 19: 395-429.

- Hoare, M. A. (2010). Bosnia-Herzegovina and International Justice. *East European Politics and Societies*, 24(2): 191-205.
- Hoge, W. (2005, April 1). U.N. votes to send any Sudan war crime suspects to world court. *The New York Times*, p. 6.
- Hoge, W. (2005, February 1). U.N. fins crimes, not genocide in Darfur. *The New York Times*, p. 3.
- Hoge, W. (2005, February 15). 10, 000 peacekeepers sought by U.S. for southern Sudan. *The New York Times*, p. 8.
- Hoge, W. (2005, February 17). Human Rights Commissioner urges U.N. to act quickly on Darfur. *The New York Times*, p. 9.
- Hold the handcuffs; Will an international arrest warrant for Sudan's president help the people of Darfur? (2009, March 5). *The Washington Post*, p. A18.
- Humphrey, M. (2003). International intervention, justice, national reconciliation: The role of the ICTY and ICTR in Bosnia and Rwanda. *Journal of Human Rights*, 2(4): 495- 505.
- International Criminal Court. (1998). *The Rome Statute of the International Criminal Court*. Retrieved November 1, 2009, from <http://untreaty.un.org/cod/icc/index.html>
- International Criminal Court. (2011). *Review Conference of the Rome Statute – Crime of aggression*. Retrieved September 1, 2011, from <http://www.icc-cpi.int/Menus/ASP/Crime+of+Aggression/>
- International Criminal Court. (n.d.). *Situations and cases*. Retrieved February 1, 2010, from <http://www.icc-cpi.int/Menus/ICC/Situations+and+Cases/>
- International Court of Justice. (2010). *The Court*. Retrieved February 1, 2010, from <http://www.icj-cij.org/homepage/index.php?lang=en>
- International Criminal Tribunal for Rwanda. (2010). *About ICTR: General information*. Retrieved February 1, 2010, from <http://www.unictr.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx>
- International Criminal Tribunal for Rwanda. (2010). *Cases: Completed cases*. Retrieved February 1, 2010, from <http://www.unictr.org/Cases/tabid/77/Default.aspx?id=4&mnid=4>
- International Criminal Tribunal for the former Yugoslavia. (2010). *About the ICTY*. Retrieved February 1, 2010, from <http://www.icty.org/sections/AbouttheICTY>
- Jallow, H. B. (2010). International criminal justice reflections on the past and future. *Commonwealth Law Bulletin*, 36(2), 269-280.
- Jolie, A. (2007, February 28). Justice for Darfur. *The Washington Post*, p. A19.
- Julien, H. (2008). Content Analysis. In L. M. Given (Ed.) Sage encyclopedia of qualitative research methods. Thousand Oaks, CA: Sage Publications.

- Justice for Kenya. (2010, December 30). *The Washington Post*, p. A14.
- Kamen, L. (2009, March 25). An especially special diplomatic corps. *The Washington Post*, p. A13.
- Keith, K. J. (2010). The International Court of Justice and criminal justice. *International and Comparative Law Quarterly*, 59: 895-910.
- Kessler, G. (2003, November 18). Blair's wife faults Bush's opposition to international court. *The Washington Post*, p. A26.
- Kessler, G. (2005, July 21). Rice defends U.S. response to ethnic violence in Sudan; Secretary says actions have prevented further crisis in Darfur. *The Washington Post*, p. A19.
- Kettle, M. (2001, January 7). It's all the rage in Europe. *The Washington Post*, p. B4.
- Kia, M. (2010, December 15). Quotation of the day. *The New York Times*, p.2.
- Ki-Moon, B. (2010, May 29). Ushering in a new age of accountability. *The Washington Post*, p. A19.
- Kochler, H. (2003). *Global justice or global revenge? International criminal justice at the crossroads*. New York, Ny: Springer Wien.
- Koring, P. (2011, May 17). Gadhafi warrants could mar exile deals. *The Globe and Mail*, p. A17.
- Krasner, S. D. (2001, January 15). A world court that could backfire. *The New York Times*, p. 15.
- Krippendorff, K. (2004). *Content analysis (2<sup>nd</sup> Edition)*. Thousand Oaks, CA: Sage Publications.
- Kristof, N. D. (2008, July 17). Prosecuting genocide. *The New York Times*, p. 21.
- Kristof, N. D. (2009, February 19). Trailing George Clooney. *The New York Times*, p. 27.
- Kristof, N. D. (2009, March 5). A president, a boy and genocide. *The New York Times*, p. 31.
- Kristof, N. D. (2009, March 8). Watching Darfuris die. *The New York Times*, p. 11.
- Kristof, N. D. (2011, February 13). What Egypt can teach America. *The New York Times*, p. 10.
- Labbe-DeBose, T., & Wagner, J. (2009, April 28). More than 100 arrested in series of protests. *The Washington Post*, p. B04.
- Lacey, M. (2004, December 24). Novelty in Congo: U.N. Investigates a massacre. *The New York Times*, p. 13.
- Laghi, B. (1999, December 10). Ottawa prepares to blaze trail for world body Legislation to make Canada first to comply with International Criminal Court mandate. *The Globe and Mail*, p. A4.

- Linden, R. (2004). *Criminology: A Canadian Perspective* (5th Ed.). Manitoba: Nelson Education Inc.
- Loptson, P. (2001). *Theories of human nature*. Orchard Park, NY: Broadview.
- Lynch, C. (2002, April 12). War crimes court created over fierce U.S. objections. *The Washington Post*, p. A20.
- Lynch, C. (2004, November 26). Congress seeks to curb international court; Measure would threaten overseas aid cuts to push immunity for U.S. Troops. *The Washington Post*, p. A02.
- Lynch, C. (2005, February 1). U.N. Panel finds no genocide in Darfur but urges tribunals. *The Washington Post*, p. A01.
- Lynch, C. (2009, June 30). International court under unusual fire; Africans defend Sudan's indicted leader. *The Washington Post*, p. A07.
- Lynch, C. (2009, November 27). War crimes envoy has personal touch; U.S. ambassador at large knows victimization and is a 'champion' of the brutalized. *The Washington Post*, p. A03.
- Lynch, C. (2011, February 27). Security Council sanctions Gaddafi, authorizes probe. *The Washington Post*, p. A10.
- Lynch, C. (2011, May 27). Mladic's capture removes 16-year old 'stain'. *The Washington Post*, p. A01.
- Lynch, C., & Hamilton, R. (2010, July 13). Sudan's Bashir charged with genocide; Violence in Darfur first sitting head of state to face such counts. *The Washington Post*, p. A07.
- MacFarquhar, N. (2008, June 6). Security Council members push to condemn Sudan. *The New York Times*, p. 10.
- MacFarquhar, N. (2009, June 12). Sudan again allows aid groups. *The New York Times*, p. 8.
- MacFarquhar, N. (2008, June 17). Sudan: Security Council rebuke. *The New York Times*, p. 7.
- MacFarquhar, N. (2008, December 4). Council backs idea to indict Sudan leader. *The New York Times*, p. 24.
- MacFarquhar, N. (2009, March 18). U.N. official attacks western policies on Iran and Sudan. *The New York Times*, p. 11.
- MacFarquhar, N., & Gettleman, J. (2009, March 25). U.N. Official calls Darfur aid tenuous. *The New York Times*, p. 12.
- MacFarquhar, N., & Otterman, S. (2009, March 7). U.N. Panel deadlocks over taking any action in Sudan. *The New York Times*, p. 8.
- MacKinnon, M. (2011, May 30). Life on the links with the hero of Thailand's poor. *The Globe and Mail*, p. A1.

- Martin, R. M. (2006). *Philosophical conversations*. Orchard Park, NY: Broadview.
- Marsh, I., Cochrane, J., & Melville, G. (2004). *Criminal justice: An introduction to philosophies, theories and practice*. Florence, KY: Routledge.
- Maxfield, M. G., & Babbie, E. (2009). *Basics of research methods for criminal justice and criminology* (2<sup>nd</sup> Edition). Belmont, CA: Wadsworth.
- McCombs, M. (2004). *Setting the Agenda*. Cambridge: Polity Press.
- McCrummen, S., & Boustany, N. (2008, July 15). Sudan vows to fight charges of genocide against its leader; Move by court brings cheers in Darfur camps. *The Washington Post*, p. A13.
- McCrummen, S., & Lynch, C. (2009, March 5). Sudan ousts aid groups after court pursues president. *The Washington Post*, p. A01.
- Megret, F. (2009, March 6). Bashir case signals hope for justice. *The Toronto Star*, p. A19.
- Mendes, E. P. (2009, November 25). Ignorance is no defense when the subject is torture; Law puts onus on leaders to make every effort to learn about and prevent war crimes. *The Toronto Star*, p. A25.
- Miller, J., & Lewis, P. (1999, August 8). Fighting to save children from battle. *The New York Times*, p. 14.
- Mocking the powerless and the powerful. (2007, September 21). *The New York Times*, p. 18.
- Morris, M. (2002, July 24). Judgment without democracy. *The Washington Post*, p. A19.
- Nordland, R. (2011, February 10). Rights groups press for war crimes investigation of the Taliban. *The New York Times*, p.6.
- Nossiter, A. (2011, May 22). In belated inauguration, Ivory Coast's President urges unity. *The New York Times*, p. 14.
- O'Callaghan, D. (2008). Is the International Criminal Court the way ahead? *International Criminal Law Review*, 8: 533-556.
- Otterman, S. (2009, March 27). Sudanese President reportedly visits Libya. *The New York Times*.
- Paris, E. (2009, September 18). Israel, Hamas both given fair shot on Gaza trials. *The Globe and Mail*, p. A19.
- Paris, E. (2009, November 4). The Munyaneza trial signals we are not a safe haven for war criminals. *The Globe and Mail*, p. A23.
- Paris, E. (2010). A tribunal with influence. *The Globe and Mail*, p. A17.

- Paris, E. (2011, February 28). Why the Gadhafi case had to go to The Hague. *The Globe and Mail*, p. A13.
- Peace and justice Can a world court provide both? (1998, July 14). *The Globe and Mail*, p. A14.
- Polgreen, L., & Simons, M. (2007, May 23). Hague court inquiry focuses on rapes. *The New York Times*, p. 6.
- Potter, G. W., & Kappeler, V. E. (1998). *Constructing crime: Perspectives on making news and social problems*. Illinois: Waveland Press, Inc.
- Power, S. (2005, February 10). Court of first report. *The New York Times*, p. 23.
- Prendergast, J. (2009, December 20). 5 Myths about Darfur. *The Washington Post*, p. B03.
- President Assad's crackdown: Too much of the world is mute as Syria's president slaughters those who dare protest. (2011, April 29). *The New York Times*, p. 26.
- Rademaker, S. (2007, January 11). Unwitting party to genocide; The International Criminal Court is complicating efforts to save Darfur. *The Washington Post*, p. A25.
- Rademaker, S. (2011, March 11). First do no harm in Libya. *The Washington Post*, p. A15.
- Reel, M. (2008, March 5). Heated words in wake of Colombian raid; Ecuador's Correa warns of danger to region; Uribe to strike genocide charges against Chavez. *The Washington Post*, p. A15.
- Reuters. (2008, July 16). China: Sudan prosecution opposed. *The New York Times*, p. 9.
- Reuters. (2010, August 15). 2 U.N. peacekeepers kidnapped in Darfur. *The New York Times*.
- Reuters. (2011, May 13). Netherlands: Court asks U.N. to take action against Djibouti. *The New York Times*, p. 8.
- Reuters. (2011, May 22). Ivory coast inaugurates president. *The Washington Post*, p. A09.
- Richburg, K. B. (2003, March 12). International war crimes court is inaugurated, but without U.S. *The Washington Post*, p. A18.
- Rosenberg, T. (2000, August 22). In Chile, the balance tips toward the victims. *The New York Times*, p. 20.
- Roth, K. (2000, June 27). Yes, a world court. *The Washington Post*, p. A23.
- Rothe, D. L. (2010). Shedding the blanket of immunity: a commentary on the global principle of ending impunity, realpolitik, and legal precedent. *Crime, Law, and Social Change*, 53(4): 397-412.
- Rubin, E. (2006, April 2). If not peace, then justice. *The New York Times*, p. 42.
- Rubenstein, L. S. (2002, August 21). Seeking the truth in Afghan graves. *The Washington Post*, p. A17.

- Sacco, V., & Kennedy, L. W. (1998). *Crime victims in context*. Los Angeles, CA: Roxbury Publishing.
- Safire, W. (2001, April 9). The purloined treaty. *The New York Times*, p. 17.
- Sanders, E. (2009, March 9). Rock-star president on a roll; Sudanese leader takes road show to Darfur in defiant response to war-crimes charges. *The Toronto Star*, p. A9.
- Sasson, T. (1995). *Crime talk*. New York: Aldine de Gruyter.
- Saunders, D. (2011, April 2). When justice stands in the way of a dictator's departure. *The Globe and Mail*, p. F9.
- Saunders, D. (2011, May 13). Folio: The Nazi legacy. *The Globe and Mail*, p. A10.
- Scheffer, D. J. (2003, July 10). No asylum for atrocity lords. *The Washington Post*, p. A23.
- Schensul, J. J. (2008). *Methodology*. In L. M. Given (Ed.) *Sage Encyclopedia of qualitative research methods*. Thousand Oaks, CA: Sage Publications.
- Schmemmann, S. (2002, July 11). U.S. Backs off immunity fight involving court. *The New York Times*, p. 1.
- Shattuck, J. (2003, September 10). A chance for peace in Congo. *The Washington Post*, p. A19.
- Sheridan, M. B. (2010, August 30). Obama administration intensifies efforts in Sudan. *The Washington Post*, p. A07.
- Simons, M. (2002, December 12). U.N. court grants special legal protection to war reporters. *The New York Times*, p. 10.
- Simons, M. (2005, April 29). Sudan poses first big trial for world criminal court. *The New York Times*, p. 12.
- Simons, M. (2006, December 31). Hussein's case won't bolster international human rights law, experts fear. *The New York Times*, p. 11.
- Simons, M. (2006, May 3). The Dutch try one of their own over links to Liberia. *The New York Times*, p. 3.
- Simons, M. (2007, February 28). 2 Face trials at The Hague over atrocities in Darfur. *The New York Times*, p. 3.
- Simons, M. (2009, February 14). The Netherlands: Palestinians press for Gaza inquiry. *The New York Times*, p.8.
- Simons, M. (2010, November 22). For International Criminal Court, frustration and missteps in its first trial. *The New York Times*, p. 12.
- Simons, M. (2010, November 23). Trial of Congolese politician opens at International Court. *The New York Times*, p. 8.

- Simons, M. (2010, December 15). Sudan: President cancels Zambian trip. *The New York Times*, p. 12.
- Simons, M. (2011, January 26). Rwandan rebel handed over to court. *The New York Times*, p. 6.
- Simons, M. (2011, April 9). The Netherlands: Kenyans charged. *The New York Times*, p. 5.
- Simons, M. (2011, May 17). Hague prosecutor seeks warrant for Qaddafi in attacks on civilians. *The New York Times*, p. 4.
- Simons, M., & MacFarquhar, N. (2009, March 5). Warrant issued for Sudanese leader over Darfur war crimes. *The New York Times*, p. 6.
- Simons, M., Polgreen, L., & Gettleman, J. (2008, July 15). Arrest is sought of Sudan leader in genocide case. *The New York Times*, p. 1.
- Singleton, R. S., Straits, B. C., Straits, M. M., & McAllister, R. J. (1988). *Approaches to social learning*. Oxford University Press: Oxford, NY
- Slackman, M., & Worth, R. F. (2009, March 31). Setting aside divisions, Arab leaders rally behind Sudan's president at a meeting. *The New York Times*, p. 5.
- Slaughter, A. (2003, December 21). Not the court of first resort. *The Washington Post*, p. B07.
- Slevin, P. (2002, May 7). U.S. Renounces support of new tribunal for war crimes. *The Washington Post*, p. A01.
- Stanley, A. (1998, June 15). Conference opens on creating court to try war crimes. *The New York Times*, p. 1.
- Stemple, L. (2011, March 2). The hidden victims of wartime rape. *The New York Times*, p. 25.
- Stone, L. (2008). *Epistemology*. In L. M. Givens (Ed.) *Sage encyclopedia of qualitative research methods*. Thousand Oaks, CA: Sage Publications.
- Straus, S. (1998, March 2). Rwanda genocide tribunal treads historic but bumpy road ultimately, war crimes hearings could provide precedent for first-ever permanent international criminal court. *The Globe and Mail*, p. A13.
- Strauss, A., & Corbin, J. (1990). *Basics of qualitative research*. California: Sage Publications, Inc.
- Struett, M. J. (2008). *The politics of constructing the International Criminal Court: Non-governmental Organizations, discourse and agency*. New York, NY: Palgrave Macmillan.
- Surette, R. (1992). *Media, Crime, and Criminal Justice: Images and Realities*. Pacific Grove, CA: Brooks/Cole Publishing Company.
- Surette, R. (2007). *Media, Crime, and Criminal Justice*. Belmont, CA: Thomson Wadsworth.

Taking genocide to court. (2007, March 5). *The New York Times*, p. 18.

The Associated Press. (2008, July 1). Congo: Court orders release of former militia leader. *The New York Times*, p. 14.

The Associated Press. (2009, June 16). The Hague: Congolese to face trial. *The New York Times*, p. 8.

The Associated Press. (2010, July 16). Sudan: 2 foreign workers expelled. *The New York Times*, p. 6.

The inquisition, Part II? (2009, May 24). *The Washington Post*, p. B02.

The spice trail comes to an end. (2002, October 7). *The Toronto Star*, p. A18.

Thiessen, M. (2011, January 4). Thiessen: Channeling Jesse Helms at The Post. *The Washington Post*.

Thompson, G. (2009, October 20). White House's new Sudan strategy fist envoy's pragmatic style. *The New York Times*, p. 12.

Timberg, C. (2006, May 2). Impunity on trial in Africa; in cases of ex-leaders, justice shifts from soldiers to courts. *The Washington Post*, p. A16.

Timberg, C. (2008, March 26). Sierra Leone Special Court's narrow focus; Well-funded but selective war crimes probe draws resentment of impoverished victims. *The Washington Post*, p. A11.

Tunstall, J. (1971). *Journalists at work; specialist correspondents: their news organizations, news sources, and competitor-colleagues*. Beverly Hills, CA: Sage Publications.

Tutu, D. (2009, March 5). Will Africa let Sudan off the hook? *The New York Times*, p. 27.

Tyler, P. E., & Barringer, F. (2003, March 11). Annan says U.S. will violate Charter if it acts without approval. *The New York Times*, p. 10.

Undermining an international court. (1998, July 15). *The New York Times*, p. 18.

U.N. raps American rejection of court. (2002, May 8). *The Toronto Star*, p. A16.

U.S. missing out on building a new world order. (1998, July 22). *The Toronto Star*, p. 1.

U.S. official decries post-vote violence Paper claims to have all WikiLeaks cables. (2010, December 24). *The Washington Post*, p. A05.

Walkom, T. (2004, November 16). Should Canada indict Bush? *The Toronto Star*, p. A25.

War crimes against women go on with impunity; Louise Arbour says rendering justice to the victims is a precondition for reconciliation and peace to take hold. (2007, March 11). *The Toronto Star*, p. A15.

- War crimes leverage; International court charges against Sudan's president might be used to win some relief for Darfur. (2008, July 20). *The Washington Post*, p. B06.
- Ward, O. (2002, June 30). World ready to see justice done; U.S. objections on a sour note as International Criminal Court comes into being. *The Toronto Star*, p. B02.
- Ward, O. (2005, February 10). World 'indifferent' to genocide; Nations willing to intervene Caplan Little sign Darfur will get aid, he says. *The Toronto Star*, p. A16.
- Ward, O. (2005, October 15). A victory for justice; Canada fought to bring the International Criminal Court into being- and war criminals to justice. *The Toronto Star*, p. A03.
- Ward, O. (2005, November 20). Justice finds its place 'There is hope for justice'; War crimes tribunals see success, despite U.S. opposition. *The Toronto Star*, p. D01.
- Ward, O. (2005, December 3). Canadian builds seat for war criminals; Hague court launched in 1998 still empty 'We feel positive,' despite U.S. pull-out. *The Toronto Star*, p. A16.
- Ward, O. (2009, March 5). Sudan's president wanted for war crimes. *The Toronto Star*, p. A1.
- Ward, O. (2009, April 5). West scrambles to find Darfur strategy; International court's war-crimes warrant is having little effect on Sudanese president. *The Toronto Star*, p. A14.
- Ward, O. (2011, March 4). International court on tyrant's trail; Gadhafi being probed over attacks on civilians. *The Toronto Star*, p. A16.
- Will, G. F. (2002, July 11). 'Up from' accountability. *The Washington Post*, p. A21.
- World Digest. (2009, September 18). *The Washington Post*, p. A17.
- Wyatt, E. (2011, February 27). Security Council refers Libya to Criminal Court. *The New York Times*, p.14.
- Yoo, J. (2006, September 17). How the presidency regained its balance. *The New York Times*, p. 15.
- York, G. (2009, September 28). Almost 20 months later, Kenyans waiting for justice. *The Globe and Mail*, p. A13.
- York, G. (2010, December 16). Six elite Kenyans accused of crimes against humanity. *The Globe and Mail*, p. A19.