# A Review of Canadian-Nigerian Engagements in the Area of International Criminal Justice (1999-2011)

**By**

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## Abstract

This paper provides an analytical and theoretical insight into Canadian-Nigerian engagement and cooperation in the area of international criminal justice. Of the different contemporary international criminal courts and tribunals constituting the international criminal justice regime, the international criminal court (ICC), because of its nature as a multilateral instrument negotiated and entered into by members of the international community, forms the crux of possible cooperation between both countries under focus. This examination of the relationship between Canada and Nigeria in the area of international criminal justice is undertaken as part of a wider study examining, analysing and theorizing the nature, attainments, problems and prospects of Canadian and Nigerian cooperation in the area of human rights from 1999-2011. However, because the examination focuses on the international criminal court regime, in the discussion, I have moved out of these timeframes as much of the activities in this area occurred outside this convenient time line set out for the broader research. Accordingly, the paper reviews the available evidence of engagement between both countries and the international criminal court regime. This review is undertaken within the context of Finnemore and Sikkink's social constructivist theory of norm life cycle, and Antony Anghie's theory of human rights and state sovereignty. Canadian-Nigerian engagement examined from the lens of both the social constructivist and human rights and state sovereignty theories raises many questions. First, what has been the nature of Canadian-Nigerian cooperation in the area of international criminal justice and in particular how as Canada acted as a norm entrepreneur? Second to what extent, has Canada's role as a norm entrepreneur if it has impacted on Nigeria's international criminal court regime? Third, has Nigeria's behaviour led to the internalization of the norms of the international criminal court? Fourth, does, the available evidence from Canadian-Nigerian engagement in the area of international criminal justice support and justify the hypothesis underlying Antony Anghie's theory on human rights and state sovereignty. This paper also defines the nature, identifies the problems and highlight some of the prospects of Canadian-Nigerian engagement and cooperation in the area of international criminal justice.

## 1. Introduction

The international criminal justice system is made up of a number of international criminal courts and tribunals with temporal and territorial jurisdiction over different conflicts. Since the 1990s there has been renewed efforts by the United Nations and the international community at creating international criminal courts and tribunals. In the 1990s, the United Nations Security Council created two ad hoc tribunals - the International Criminal Tribunal for the Former Yugoslavia (the Yugoslavia Tribunal) and the International Criminal Tribunal for Rwanda (the Rwandan Tribunal). The former was created to address the "serious violations of international humanitarian law" that occurred in the territories of the former

Yugoslavia, while the latter was established to prosecute the genocide that occurred in Rwanda. Since, the establishment of the ad hoc tribunals, the United Nations has created a new subset of courts designed to apply a mix of international and national laws. These new waves of hybrid courts include: the East Timor Special Panel,[1] the United Nations Mission in Kosovo Regulation 2000/ 64 Courts[2], the Special Court for Sierra Leone,[3] the Extraordinary Chambers in the Courts of Cambodia[4] and the Special Tribunal for Lebanon.[5] In 1998, efforts at creating international criminal courts and tribunals reached and recorded a high water mark with the adoption of the Rome Statute of the ICC.[6] Aside from the ICC, all of these other international criminal courts and tribunals are ad hoc and expected to wind up after a certain timeline determined by their caseload. Three of the courts and tribunals have already wound up operations. These are: the East Timor Special Panel, United Nations Mission in Kosovo Regulation 2000/ 64 Courts, and the Special Court for Sierra Leone. While the Yugoslavia and Rwanda Tribunals are in the

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[1] See UNTAET Regulation 2000/11 (6 March 2000) on the Organization of Courts in East Timor and UNTAET Regulation 2000/15 (6 June 2000) on the Establishment of Panels with Exclusive Jurisdiction over Serious Criminal Offences.

[2] UNMIK Regulation 2000/6 (On the Appointment and Removal from Office of International Judges and International Prosecutors) first introduced a mixed composition of international judges and prosecutors in Kosovo. Regulation 2000/34 On the Appointment and Removal from Office of International Judges and International Prosecutors extended it throughout the courts in Kosovo. Regulation 2000/64 on Assignment of International Judges and Prosecutors empowers the Special Representative of the Secretary-General to establish Panels of mixed composition of three judges made up of at least two international Judges and these panels became known as Regulation 64 Panels.

[3] The Agreement between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, and the Statute of the Special Court for Sierra Leone, were included in the 'Report of the Planning Mission on the Establishment of the Special Court for Sierra Leone transmitted by the Secretary-General to the President of the Security Council by Letter dated 6 March 2002' (8 March 2002) UN Doc S/2002/246, Annexe, Appendix II and its Attachment. In 2002, the Sierra Leonean Parliament promulgated the Special Court Agreement (2000) Ratification Act 2002.

[4] The Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea, promulgated on 10 August 2001. See www.ridi.org/boyle/kr_law10-08-02.htm accessed 18/10/2012; For a detailed analysis and overview of internationalized criminal courts of Cambodia, East Timor Special Panels, UNMIK Regulation 64 Panels and the Special Court for Sierra Leone see, Cesare P.R. Romano et al (eds) *Internationalized Criminal Courts Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford University Press 2004).

[5] Agreement Between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon Annex to the Security Council Resolution 1757 adopted by the Security Council on 30 May 2007 S/RES/1757.

[6] Rome Statute of the International Criminal Court, July 17 1998, 2187 UNTS, 90

process of winding up their activities.[7] All of these international criminal courts and tribunals have been the subject of a vast array of literature.[8]

Despite the multiplicity in the number of contemporary international criminal courts and tribunals that constitute the international criminal justice system, in our world today, a review of the engagement between Canada and Nigeria in the sphere of international criminal justice is limited to the international criminal court regime. Of the international criminal courts and tribunals that constitute the international criminal justice system, the ICC has exerted the most influence on states. This is chiefly because of the obligations imposed by the Rome Statute, which established the ICC on State Parties, to implement its provisions within their domestic legal systems. The Rome Statute specifically obligates State Parties to the Statute "to ensure that their national laws are consistent with the provisions of the Rome Statute to allow for cooperation with the Court.[9]In particular, articles 89 and 93 of the Rome Statute sets out a number of areas wherein, the ICC may request assistance and cooperation from State Parties.[10] As a result of the specific nature of the cooperation regime, the need for a State Party to have in place an implementing legislation cuts across the traditional monist and dualist divide in international law. All State Parties to the Rome Statute are expected to implement the provisions of the Rome Statute within their respective domestic system.

Work began on the Rome Statute in 1994, with the submission of the International Law Commission's (ILC) Draft Statute of the permanent International Criminal Court to the United Nations General Assembly.[11] Following the submission of the ILC's draft, the United Nations General Assembly at its Fiftieth Session established a Preparatory Committee which met from 1996 until 1998 when an amended Statute was submitted paving the way for the Diplomatic Conference of the Plenipotentiaries in June of

[7] The recently established International Criminal Tribunal Residual Mechanism will oversee all residual issues of both Tribunals such as supervising and monitoring sentences of convicts. See International Residual Mechanism for Criminal Tribunals established UNSG Res/1966/S/RES/1966/2010.

[8] See generally, Bassiouni M.C. (ed) *Post-Conflict Justice*, (Transnational Publishers, Inc. 2002); Beigbeder Yves, *International Justice against Impunity*, (Martinus Nijhoff Publishers 2005) ; Carsten Stahn & Larissa van den Herik (eds) *Future Perspectives on International Criminal Justice*, (T.M.C. Asser Press, 2010); Stromseth Jane, (ed) *Accountability for Atrocities: National and International Responses* (International and Comparative Criminal Law Series Transnational Publishers 2003). Martha Minow, *Between Vengeance and Forgiveness: Facing History After Genocide and Mass Violence* (Beacon 1998); Mark Osiel, *Mass Atrocity, Collective Memory, and the Law* (Transaction 1997); William A. Schabas, *The UN International Criminal Tribunals: Former Yugoslavia, Rwanda and Sierra Leone* (Cambridge University Press 2006) for a general overview of the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone.

[9] Rome Statute of the ICC, Article 88

[10] Ibid, Articles 89 and 93, for the areas such as arrests and surrender; taking of evidence; service of documents; execution of searches and seizure; victims and witnesses protection and asset tracking and freezing in which the Court requires cooperation from State Parties.

[11] (International Law Commission, Draft Statute for an International Criminal court, UN G.A OR, 49th Session, Supp No. 10, U.N. DOC. A/49/10(1994).

1998 in Rome.[12] As the work of the Preparatory Committee got under way, states emerged into three blocs with a vision of the court they wanted to establish. One of the foremost bloc of states that emerged at the time was the like-minded group which in the beginning was led by Canada. The like-minded group was made up of states spanning different geo political zones across the north and south of the globe. [13]The United Kingdom one of the five permanent members (otherwise known as P-5) of the Security Council joined the group shortly before the Diplomatic Conference in Rome. The second bloc comprised of permanent members of the Security Council who wanted an active role for the Security Council in the operation of the Court.[14] The third group, the non-aligned bloc was made up of states such as Egypt, India, Mexico and Nigeria who opposed the permanent members of the Security Council's position of excluding nuclear weapons from the Statute but shared similar views in relation to the operation of the Court on other issues such as the powers of the prosecutor. From these clearly divergent positions, the Bureau of the Committee of the Whole made up of representatives from Argentina, Canada, Romania, Lesotho and Japan prepared a compromise document for adoption by the conference in July 1998.

In the intervening years since signing the Rome Statute in 1998 and its entry into force on 1 July 2002, 123 states from Africa, Europe, Latin America and the Caribbean, Asia and Pacific, Middle East and North America have become parties to the Rome Statute. The ICC regime has given states, intergovernmental and nongovernmental organisations the organisational platform to cooperate and engage with each other at a global level in the area of international criminal justice because of the multilateral nature of the treaty regime.

This paper appraises incidences of both direct and indirect engagement and cooperation between Canada and Nigeria in the area of international criminal justice by evaluating evidence adduced from both countries actions and practices in relation to the ICC. It also examines statements credited to the delegates of both states at the Rome Conference in 1998 to distil views and positions on issues central to the ICC regime. A preliminary examination of the primary and secondary data generated from field research undertaken in Canada and Nigeria do not reveal any linkages or provide information on the engagement of both countries with the international criminal court regime, accordingly, these documents have not been analysed or referenced in this paper. The paper is divided into five sections. The first part is the

[12] United Nations General Assembly Resolution, Res 50/46 199

[13] Nicole Deitelhoff, 'The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case, International Organization', (2009), 63, Winter, 33-65, 38.

[14] Philip Kirsch and John T. Holmes, 'The Rome Conference on an International Criminal Court: The Negotiating Process', (1999), American Journal of International Law, Vol. 93, 3; For a general insight into the drafting process see, 'Philippe Kirsch, Q.C., 'The International Criminal Court: Current Issues and Perspectives', (2001) 64, Law and Contemporary Problems 3, 5-8.

introduction. Part II appraises the nature and interface of Canadian-Nigerian engagement by adducing evidence of states interaction with the international criminal justice system. Part III assesses the evidence of Canadian-Nigerian engagement with the international criminal justice system in light of both the social constructivist theory of norm life cycle and Antony Anghie's theory on human rights and state sovereignty. Part IV provides an overview of the problems inhibiting Canadian-Nigerian engagement and cooperation in the area of international criminal justice and attempts to chart a way forward. Finally Part V sums up the paper and provides concluding thoughts and remarks.

## 2. Nature and Interface of Canadian-Nigerian Engagement in International Criminal Justice

During negotiations at Rome, Canada and Nigeria belonged to two of the three different blocs of states formations that had arisen. Nigeria belonged to the non-aligned bloc while Canada was one of the leading forces behind the like-minded group of states. Both blocs had different issues which they tenuously canvassed and held on to at Rome. The like-minded group wanted a strong and independent court as well as a prosecutor with powers to initiate proceedings. Nigeria was of the view that granting the prosecutor powers to initiate proceedings at the court would lead to an abuse. So during proceedings at Rome, Nigeria consistently maintained its opposition to the vesting of the Prosecutor with *proprio motu* powers a similar position taken by the United States and the permanent members of the Security Council. In addition, the non-aligned bloc wanted the crime of aggression included in the subject-matter jurisdiction of the Statute which was opposed by the permanent members of the Security Council. Canada neither opposed nor supported the inclusion of the crime of aggression in the subject matter jurisdiction of the court at Rome. It was only at the insistence of the non-aligned bloc that a compromise solution was found with a definition of the crime of aggression and the grounds for triggering the jurisdiction of the Court with regards to the crime deferred until an amendment at a later date under articles 121 and 123 of the Statute.[15]

Canada's contribution to the global transposition and internalization of the norms of the ICC across states has been significant. There is no available evidence of direct engagement between Canada and Nigeria in the sphere of international criminal justice. However, in successive paragraphs, I will reiterate each country's specific contribution and incidences of engagement with the system. Canada has interacted and

[15] William A. Schabas, *An Introduction to the International Criminal Court*, 2nd edn. (Cambridge: Cambridge University Press, 2004) at 31.

engaged largely with the Court as an institution and supported the system. Canada and Canadians have very much been part of the international criminal court regime's formative years. In the period leading up to the negotiation, adoption and ratification of the Rome Statute establishing the ICC, Canada played a key role with its citizens and delegates at Rome being instrumental to the success of the Rome Conference. The Conference elected by acclamation Mr. Philippe Kirsch as Chairman of the Committee of the Whole on 15th June 1998.[16] After the adoption of the Rome Statute on July 17 1998, Philippe Kirsch was again selected as chair of the Preparatory Commission tasked with the drafting of the ancillary documents of the Court such as the Elements of Crime and the Agreement on Immunities and Privileges of the ICC. Aside from Canadian delegates providing a vital role in the negotiating process, Canada also facilitated the process. It was amongst a handful of states who contributed to the least developed countries trust fund established by the United Nations Secretary General in pursuant of United Nations resolution.[17] The fund facilitated the participation of delegates from developing countries at the Diplomatic Conference in Rome. The Rome Conference had in attendance over 160 countries and several hundreds of Non-governmental Organisations.

In the aftermath of the Conference, Canada continued to play a prominent role in the drive for implementation and ratification of the Rome Statute of the ICC supporting initiatives across the globe while its closest neighbour the United States played the devil's advocate with the United States launching its opposition against the court immediately after the adoption of the Rome Statute. One of its onslaughts against the Court was the American President signing into law in August 2002 the American Service Protection Act (ASPA) restricting cooperation with the ICC. Following the law, the government entered into bilateral immunity agreements (BIAs) with states not to surrender Americans to the ICC. The United States government denied aids to states that refused to sign.[18] Canada refused to sign the BIA demonstrating its willingness to be bound to the norms of the ICC to which it has circumscribed. Nigeria on the other hand, bowed under pressure and signed the agreement with the United States. Amendments

[16] Report of the Committee of the Whole Document A/CONF.183/8, Para 1 and 2 P. 93

[17] United Nations General Assembly Resolution A/RES/51/207, 17 December 1996, para 7 called for the Secretary General to establish a special fund for the participation of the least developed countries in the work of the Preparatory Committee and Diplomatic Conference of Plenipotentiaries

[18] Irfan Nooruddin and Autumn Lockwood Payton, 'Dynamics of Influence in International Politics: The ICC, BIAS, and Economic Sanctions (2010) Journal of Peace Research 47(6) 711. See also, Letta Tayler, "U.S. at Odds Over World Tribunal: Bush Administration Suspends Aids to Nations that Refuse to Shield Americans from War-Crimes Court," Newsday 16 October 2004.

were made in 2006 and 2008 to the ASPA lifting restrictions on foreign military assistance to countries that had not signed the agreements and waivers were issued. [19]

The emergence of Canada as a norm entrepreneur has led to accelerated strengthening of the international criminal court regime with Canada expending money on the ICC, helping to promote its universality through hosting of conferences and seminars to promoting ratification and implementation across different regions of the world. Canada has gone on to provide technical support to countries to aid their ratification of the Rome Statute. In 2000, Canada provided funding for two Canadian based centres, the International Centre for Criminal Law Reform and Criminal Justice Policy and Rights and Democracy for the production of manuals to assist states in drafting their national implementing legislation. Canada has also provided support to other states in the implementation of the Rome Statute through its Global Peace and Security Fund, Rule of Law and Accountability Program and worked with partners to strengthen national criminal justice systems to enable them give effect to the principle of complementarity.[20] Aside, from assessed contributions payable by State Parties to the ICC, Canada has over the years financially supported the ICC and its programmes. An examination of the ICC financial statements, reveal that it is one of the highest contributors to the purse of the ICC.[21]

Nigeria on the other hand has also been involved with the ICC at a much less intense level as Canada. It participated at the Diplomatic Conference in Rome and was elected as one of the Vice Presidents of the Conference.[22] Nigeria is one of the highest contributors to the purse of the Court from the African continent. Nigeria is presently a situation country undergoing preliminary examination by the Office of the Prosecutor (OTP) of the ICC. The OTP made its examination of the situation in Nigeria public on 18 November 2010.[23] The ICC's preliminary examination of the situation in Nigeria has moved to the last stage of the preliminary examination process, the admissibility stage. The Prosecutor is presently examining whether genuine national proceedings are taking place in respect of detained Boko Haram

[19] See, Yvonne Dutton, *Rules, Politics and the International Criminal Court* (Routledge 2013) 47-60; Adrian L. Jones, 'Continental Divide and the Politics of Sovereignty: Canada, The United States and the International Criminal Court,' Canadian Journal of Political Science, Vol. 39, June 2006).

[20] See General Debate Statement by Canada Delivered by Alan H. Kessel, The Legal Adviser at the Review Conference of the Rome Statute of the International Criminal Court 31 May- June 11 2010. See Statement on behalf of Canada, Australia and New Zealand at the Ninth Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court by H.E. Jim McLay, Permanent Representative of New Zealand on Monday 6 December 2010, 2.

[21] The following figures in Euros represent the assessed contributions of the following states to the purse of the ICC in 2013; United Kingdom 9,222,092; Australia 3,693,161; Canada 5,313,478; Spain 5,293,983; Japan 19,290,082; Germany 12,715,82; France 9,959, 312 ; International Criminal Court, Assembly of States Parties ICC/ASP 13/12 Financial Statements for the period 1 January to 31st December 2013Schedule 1 International Criminal Court Status of Contributions as at 31st December 2013(in Euros).

[22] Report of the Preparatory Committee on the Establishment of an International Criminal Court Document A/CONF.183/2. 14 April 1998

[23] Seventh Report of the International Criminal Court, to the United Nations ( 2010/2011) A/66/309 Para 83.

suspects in Nigeria.[24] The OTP in its 2012 preliminary report noted that the acts of the terrorist group, Boko Haram amounted to crimes against humanity of murder and persecution.[25] The OTP has gone further in its 2013 preliminary report to make a finding of the existence of a non-international armed conflict between Boko Haram and Nigeria.[26] For Nigeria, the stakes are high. It is important that she takes steps to establish domestic mechanisms to try the alleged crimes resulting from Boko Haram's activities in Northern Nigeria and Abuja following the OTP categorization of the crimes as crimes against humanity and the on-going conflict between the Nigerian government and Boko Haram as a non-international armed conflict. Establishing domestic mechanisms in line with the principle of positive complementarity would forestall a repeat of the Kenyan situation; where the ICC had to intervene.

Although Nigeria is yet to internalize the norms of the ICC into its domestic system, it is expected as a State Party to comply with the decisions of the court as well as fulfil its obligations. One such obligation imposed on State Parties to the Statute, is the duty to cooperate with the Court. Following the issuance of arrest warrant against President Al Bashir in 2009, by the then Prosecutor of the ICC, all State Parties had been enjoined to help enforce the warrants by arresting and surrendering him to the Court whenever he was in their territory. [27] On 15th July, 2013 the ICC Trial Chamber received a notification from the Prosecutor of the ICC that President Al Bashir of Sudan was in Nigeria for a Special African Union Summit.[28] That same day the chamber issued a decision requesting Nigeria to arrest him and surrender him to the court.[29] On 15th July 2013, the Nigerian Coalition for the International Criminal Court (NCICC) called for the arrest and surrender of President Al Bashir to the ICC.[30] Following calls for his arrest, President Al Bashir left Nigeria on Monday afternoon, less than 24 hours after he arrived in the middle of a two-day summit.

On the heels of this visit of President Al Bashir to Nigeria, the President of the Assembly of State Parties (ASP) in a letter to Nigeria's Minister for Foreign Affairs, reminded Nigeria of its commitment as a State Party to cooperate with the Court and called on Nigeria to comply with its obligations.[31] Nigeria in her

[24] International Criminal Court Report on Preliminary Examinations Activities 2012, November 2012, Para 96; see also Ninth Report of the International Criminal Court for 2012/2013 13 August 2013 A/68/314 Para 95.
[25]International Criminal Court Report on Preliminary Examinations Activities 2012, November 2012, Para 89.
[26] International Criminal Court Report on Preliminary Examination Activities 2013, Para 224.
[27] ICC Office of the Prosecutor, Press Release, ICC Issues a Warrant of Arrest for Omar Al Bashir, President of Sudan,' 4 March 2009; Situation in Darfur, Sudan (ICC-02/05-157) Public Redacted Version of Prosecutor's Application under article 58 filed on 28 July 2008.
[28]See the *Prosecutor v Omar Hassan Ahmad Al Bashir*, on the Decision Regarding Omar Al Bashir's visit to the Federal Republic of Nigeria No. ICC-02/05-01/09 15 July 2013, Para 5
[29] In the Prosecutor v Omar Hassan Ahmad Al Bashir, Decision Regarding Omar Al Bashir's visit to the Federal Republic of Nigeria No. ICC-02/05-01/09 15 July 2013, Para 8
[30] NCICC Press Statement, NCICC Calls for Immediate Arrest and Surrender to ICC of President Al Bashir
[31] Press Release 16/07/2013 ICC-ASP-20130716- PR933

defence before the ICC, stated that President Al Bashir had not been invited by the Nigerian government, but had attended. Nigeria maintained further, that President Al Bashir left the country as the authorities were contemplating the actions to take having regard to the country's obligations.[32] The ICC found Nigeria's defence satisfactory and took no further steps.

From the foregoing, Canada has had strong engagement with the international criminal justice system, and Nigeria to a lesser degree, both states have had little or no incidence of direct engagement with each other in the area of international criminal justice as Canada's contributions and engagement have been mostly with the Court and the system. The Official Records of the Rome Conference (Travaux préparatoires) do not shed light on any engagement or meetings that might have taken place between Canada and Nigeria at some point under their different informal blocs, because though they essentially belonged to different blocs, at the end of the day, the Rome Statute was the result of a series of negotiated compromise between states and Nigeria despite her opposition to the inclusion of the proprio motu powers of the prosecutor voted to adopt the Rome Statute of the Court.

### 3. Theorising the Transposition of the Norms of the International Criminal Court

The discussion in the preceding section has highlighted the engagement of both Canada and Nigeria with the international criminal justice system. This section examines the foregoing evidence in light of both the norm life cycle and human rights and state sovereignty theories.

#### 3.1. Reviewing Canadian-Nigerian Cooperation from the Lens of the Social-Constructive Theory

The social constructive theory of the norm life cycle is one of the many available optics from which states behaviour can be rationalised and assessed. Although most of the literature on the social constructive theory are based on states ratification of human rights treaties, they however can be extended to the Rome Statute of the ICC. Finnemore and Sikkink's theory of norm life cycle rationalises states behaviour with respect to the transposition of international norms. Finnemore's theory of norm life cycle outlines three stages which a norm undergoes before it assumes universal acceptance. According to the theory of the norm life cycle, the first stage is the norm emergence. In the first stage, the norm entrepreneur creates a general consciousness about the norm and brings same to the notice of the relevant stakeholders. Often "norm entrepreneurs" are non-governmental organisations conveying awareness on norms. The "norm entrepreneur" encourages a "critical mass of states" to receive the new norms. In between the first and second stage of the norm life cycle is the "tipping point", which is the stage at which the norm is actually

[32] The Prosecutor V. Omar Hassan Ahmad Al Bashir, Decision on the Cooperation of the Federal Republic of Nigeria Regarding Omar Al Bashir's Arrest and Surrender to the Court, No. ICC-02/05-01/09 (5 September 2013) Para 12

received by a number of states. The second stage is the "norm cascade" and at this stage, a "critical mass of states" on the prodding of norm leaders accept the norms leading the way for the final stage which is the internalization. The third stage is marked by implementation of the norms in the domestic legal system.[33]

In situating the above theory within the framework of the Rome Statute of the ICC, negotiations prior to and at Rome were very divisive with the like-minded group and the CICC reaching out to states through different fora to support the establishment of an independent and effective Court. Canada (its overarching role within the like-minded group has been iterated severally in this paper) in concert with other non-governmental organisations has played the role of norm leaders. Canada played the role of a "norm entrepreneur" encouraging states including Nigeria (critical mass of states) to receive the new norms. The period in the 1990s in the aftermath of the establishment of both ad hoc tribunals (for the former Yugoslavia and Rwanda) and the establishment of the Preparatory Committee in 1995 to its submission of a draft in 1998 leading the way for the 5 week Diplomatic Conference in June 1998 can be considered as the period of the emergence of the norms of the Rome Statute. The period between the adoption of the Rome Statute in 1998, its opening for signature and its entering into force in 2002 when it received 60 ratifications can be regarded as the tipping point. The norms of the Rome Statute experienced a norm cascade in the period following the widespread ratification of the Rome Statute by over 100 states, culminating in 2010 when the Review Conference was held with over 4,600 delegates in attendance. And in several states including Canada the norms of the Rome Statute have become internalized.

Canada's path to internalization of the norms of the Rome Statute began with its signing of the Rome Statute of the ICC on 18th December, 1998 as the 14th country. On 29th June, 2000 Canada's Parliament passed the Crimes Against Humanity and War Crimes Act (CAHWCA) becoming the first country in the world to adopt an implementing legislation incorporating its obligations under the Rome Statute into its national laws. Following this, on 7th July 2000, Canada ratified the Rome Statute of the ICC.[34] The enactment of the CAHWCA and the amendment of three other legislation led to the internalization of the ICC regime in Canada. [35]The norms of the Rome Statute of the ICC has received judicial recognition

[33] Martha Finnemore and Kathryn Sikkink, "International Norm Dynamics and Political Change", International Organization, 52 No. 4 (1998) 891, 895.

[34] Canada played an active role in the negotiation of the treaty of the Rome Statute of the International Criminal Court and was the first state in the world to enact an implementing legislation within its domestic legal system. For a general insight into the drafting process see, 'Philippe Kirsch, Q.C., 'The International Criminal Court: Current Issues and Perspectives', (2001) 64, Law and Contemporary Problems 3, 5-8; see also Statement by Canada at the General debate of the Review Conference of the Rome Statute of the ICC Kampala, Uganda (May 31-June 11, 2010) delivered by Alan H. Kessel, the Legal Adviser.

[35] Extradition Act 1999, C. 18; Mutual Legal Assistance in Criminal Matters Act 1988 C.37 and Canada's Witness Protection Programme Act.

within Canada. Two cases have proceeded in Canadian courts under the Crimes Against Humanity and War Crimes Act leading to one conviction and an acquittal for crimes that occurred in Rwanda in 1994.[36] The norms of the ICC have also been articulated under its immigration procedure, embracing exclusion cases to determine the exclusion of persons from the protection of the Refugee Convention[37] and the denaturalization process.[38]

In applying the social constructivist theory to Nigeria, the norms of the Rome Statute of the ICC are yet to be internalized. And in the case of Nigeria it has not been for want of trying. Nigeria signed the Rome Statute on 1st June 2000 and ratified same on 27th September 2001. In 2005, Nigeria first made an attempt to internalize the Rome Statute of the ICC with the introduction of a Bill in the National Assembly. Unfortunately progress stalled on this Bill before the end of the life of that particular Assembly in 2007.[39] The failure to pass that Bill into law in that particular Assembly meant that the process had to begin afresh. On 17th July, 2012 the Federal Government submitted a differently entitled Bill into the National Assembly, the "Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill 2012. The second Bill which had been before the National Assembly, since it was submitted in 2012, lapsed, yet again, at the end of the life of the legislature in May 2015. [40]

In addition, to the foregoing attempts at internalization of the norms of the Rome statute of the ICC, Nigeria has also taken advantage of its status as a State Party to the Rome Statute of the ICC, by fielding its citizen for appointment at the Court. In 2011, Nigeria put forward the candidature of Judge Chile Eboe Osuji and was elected by the Assembly of State Parties to serve a nine years term as a judge at the ICC.

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[36] *Her Majesty the Queen V. Désiré Munyaneza*, (2009) QCCS 2201; R v. Jacques Mungwarere, 2013 ONCS 4594; See also, See, Fannie Lafontaine, 'Canada's Crimes Against Humanity and War Crimes Act on trial: an analysis of the Munyaneza case', (2010) Journal of International Criminal Justice, Vol. 8(1), 269.

[37] Convention Relating to the Status of Refugees Can. T.S. 1969 No. 6 (Refugee Convention)

[38] *Mugesera v. Canada (Minister of Citizenship and Immigration)* (2005) 2 S.C.R. 100, 2005 SCC 40; *Ezokola v Canada (Citizen and Immigration)* 2013 SCC 40. For a detailed analysis of the practice and jurisprudence of domestic courts in exclusion proceedings see Joseph Rikhof, The Criminal Refugee: *The Treatment of Asylum Seekers with a Criminal Background in International and Domestic Law* (Republic of Letters Publishing 2012) Chapter 3; See Harb v Canada (Minister of Citizenship and Immigration) 2003 FCA 39;Ventocilla v Canada (Citizenship and Immigration) 2007 FC 575, other cases decided under Article 1F where the jurisprudence and norms of contemporary international criminal courts and tribunals were iterated; see generally M. Kingsley Nyinah, 'Exclusion Under Article 1F, 12 International Journal of Refugee Law 12, Special Supplementary Issue (2000) 306

[39] Rome Statute of the ICC (Ratification and Jurisdiction) Bill 2005 which is 'A Bill for an Act to enable effect to be given in the Federal Republic of Nigeria to the Rome Statute of the ICC and for purposes connected with'. The House of Representatives passed the Bill on June 1st 2004. The Senate passed the Bill on the 19th of May, 2005. The Bill never got passed the harmonization stage when the term of the Assembly ended, which meant the process had to begin afresh with a new assembly.

[40] See generally, A.O. Enabulele, 'Implementation of treaties in Nigeria and the status question: whither Nigerian courts', (2009) African Journal of International and Comparative Law 326; Chilenye Nwapi, 'International treaties in Nigerian and Canadian courts', (2011) African Journal of International and Comparative Law, 38

This was the first time Nigeria was having its citizen elected as a judge of the ICC after failing to have the same candidate elected by the Assembly of State Parties in 2009.

From the above, Canada's role as a norm entrepreneur important and constructive as it has been to the process of norm transposition has been aided by other agents of norm socialization. It has been argued that the social constructivist use of "metaphorical abstractions" such as "norm diffusion" and "norm cascade" to describe the process of norm socialization often overlooks the role of other agents of socialization.[41] Specifically, the ICC owes a lot to the dynamism and effort of agents of norm socialization who prior to the adoption and post ratification phases of the Statute have been instrumental to its success and internalization. Pertaining to Nigeria, as earlier stated there are no available incidence of direct engagement between Nigeria and Canada in the transposition of the norms of the Rome Statute of the ICC, but evidence abound of the direct engagement between Nigeria and other agents of norm socialization such as non-governmental organisations and institutions who have served as a vital conduit through which the norms of the Rome Statute of the ICC has percolated within Nigeria's domestic legal system.

Two NGOs that have been quite active in this area are the Coalition for the International Criminal Court (CICC)[42] and Parliamentarians for Global Action.[43] The CICC operates globally through national coalitions in different countries helping to advocate for the ratification or accession and implementation of the Rome Statute of the ICC. The organisation Parliamentarians for Global Action campaigns for the universal implementation of the Rome Statute of the ICC across the globe by working with national parliamentarians and encouraging them to take action within their national parliaments. In Nigeria, the Parliamentarians for Global Action provided technical assistance on the drafting of the 2012 Crimes Against Humanity, War Crimes, Genocide and Related Offences Bill to implement the Rome Statute into law using the Commonwealth Model Law as a guide.[44] The Commonwealth Secretariat has played a vital role as an agent of norm socialization in Nigeria. Aside from hosting of training programmes for legal professionals aimed at strengthening of domestic legal systems and providing states with assistance in legislative drafting in the Commonwealth, the Commonwealth Secretariat has also drafted a Model Law

[41] Bernd Bucher, "Acting abstractions: Metaphors, narrative structures, and the eclipse of agency", European Journal of International Relations (2014), Vol 20(3) 742-765. For a critique of the social constructive theory in eclipsing agency by using metaphors such as norm diffusion, cascade to describe the process of norm change at the international level. The use of these language ascribe features to norms and in the process, eclipsing the role of individuals in the emergence of norms and socialization processes.
[42] Coalition for the International Criminal Court available at http://www.iccnow.org accessed 10/08/2014.
[43] Parliamentarians for Global Action available at http://www.pgaction.org/ accessed 10/08/2014.
[44] http://www.pgaction.org/campaigns/africa/nigeria.html accessed 10/08/2014.

on the ICC to assist Commonwealth States in fashioning out their own draft legislation.[45] The Commonwealth Model Law on the ICC served as a guide in the drafting of Nigeria's 2012 Draft Bill on Crimes Against Humanity and War Crimes.

### 3.2. Reviewing Canadian-Nigerian Engagement from the Optics of Human Rights and State Sovereignty

Antony Anghie posits in his theory of human rights and state sovereignty that, international law and its basic principle such as the doctrine of sovereignty grew out of the necessity to provide a basis for a legal system that would cater for Europeans and non-Europeans. And in post-colonial societies, Anghie maintains that sovereignty is a partial and skewed tool of imperialism.[46] The ICC is the first permanent international criminal court with subject-matter jurisdiction over serious international crimes which has a bearing on state sovereignty. Flowing from Anghie's theory, non-European states should have been wary in ratifying the Rome Statute of the ICC. However, the reverse was the case. An African state Senegal was the first state to ratify the ICC Statute, which now has 34 African State Parties. Despite the underlying hypothesis in Anghie's theory and a general reticence in the past on the part of states to allow an erosion of their territorial sovereignty, states did just that when they voluntarily became State Parties to the Rome Statute of the ICC. States willingly ceded their sole prerogative to prosecute their citizens or individuals who commit heinous crimes within their territories to the ICC.

The establishment of the ICC which has been hailed as "the most innovative and exciting development in international law since the creation of the UN"[47] marked a poignant moment in history and humanity's attempt at ending impunity. The Rome Statute of the ICC was negotiated against the background of the heinous atrocities that had taken place in the former Yugoslavia and Rwanda. Accordingly, there was a lot of support for the establishment of a permanent ICC to address grave crimes such as those that had occurred across the former Yugoslavia and Rwanda to which the world was coming to terms with. This support provided negotiators at Rome the impetus with which to advocate and push for a strong Court which encroached traditionally held territories that belonged to states- the right to try violations occurring

[45] Commonwealth Model Law, Promotion of International Humanitarian Law within the Commonwealth', (2008) 34 Commonwealth Law Bulletin 663;see also British Red Cross and the United Kingdom Foreign and Commonwealth Office , Promotion of International Humanitarian Law Within the Commonwealth', (2004) 30 Commonwealth Law Bulletin 665.

[46] Antony Anghie, "The Evolution of International Law: colonial and post-colonial realities", (2006)Third World quarterly, Vol. 27, No. 5, 739-753, 740-742.

[47] William A. Schabas, *An Introduction to the International Criminal Court*, 2nd edn. (Cambridge: Cambridge University Press, 2004) at 25.

within their geographical territories.[48] This had been viewed from the start as a potential threat to the efficacy of the Statute.[49]

The like-minded group of states and non-governmental organisations have been credited for successfully pushing for the creation of a Court that was strong and largely independent of the Security Council.[50] The initial draft submitted by the ILC in 1994 to the United Nations General Assembly, provided the Court with a restrictive jurisdiction which required the consent of the custodial or territorial state except in the case of genocide before the Court's jurisdiction could be triggered.[51] With states hitherto reticent in allowing an encroachment of their sovereignty many found it hard pressed that states voluntarily surrendered their sovereignty and committed themselves to an international institution such as the ICC where both the state and an independent prosecutor had been given powers to trigger the jurisdiction of the Court? What then accounts for this shift one might ask? The answer is not far-fetched. During negotiations at Rome, states were keen on ensuring that the principle of complementarity remained in the Statute. Irrespective of the bloc, and the vision of the court, a re-curing theme in states speeches both in the general debates and working groups' sessions was the need to ensure that the Statute was based on the principle of complementarity.

The principle of complementarity is one of the cornerstones of the ICC. States see the principle of complementarity as a safeguard to the erosion of national sovereignty as traditionally understood and explains why the Court has been successful in its ratification campaign.[52] The ICC's relationship with national judicial systems is premised on the principle of complementarity[53]a marked departure from the

[48] Bruce Broomhall, *International Criminal Justice and the International Criminal Court: Between Sovereignty and the Rule of Law* (Oxford: Oxford University Press 2003) 1.

[49] Manuela Melandri ,'The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay', (2009) 9 International Criminal Law Review 531-545, 532; see also, James Meernik and Rosa Aloisi, 'I Do Declare: Politics, Declarations and the International Criminal Court', (2009) 9 International Criminal Law Review 253-273, 254; The ICC was established as a permanent international criminal court with wide ranging jurisdiction to prosecute the most serious international crimes and has posed new challenges to the notions of sovereignty.

[50] Nicole Deitelhoff, 'The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case, International Organization', (2009) , 63, Winter, 33-65,49 -61.

[51] Article 21 of the Draft Statute for an International Criminal Court, Yearbook of the International Law Commission, 1994, vol. II

[52] Manuela Melandri , "The Relationship between State Sovereignty and the Enforcement of International Criminal Law under the Rome Statute (1998): A Complex Interplay", (2009) 9 International Criminal Law Review 531-545, 541-543.

[53] On complementarity, see generally, Claus Kreb, 'Penalties, Enforcement and Cooperation in the International Criminal Court' (1998)6 European Journal of Crime, Criminal Law and Criminal Justice 442;J.K. Kleffner, The Impact of Complementarity on National Implementation of Substantive International Criminal Law, (2003)1 Journal of International Criminal Justice 86-113; M. Neuner (ed.) , *National Approaches to the Implementation of International Criminal Law in Domestic Law* (Berlin: Berliner Wissenschafts Verlag, 2003);Benjamin Perrin, 'Making Sense of Complementarity the Relationship Between the ICC and National Jurisdictions' (2006) Vol 18, No. 2 Sri Lanka Journal of International Law, 311-318; See Kevin Jon Heller, 'The shadow side of

prior principle and practice of primacy under the law governing the ad hoc tribunals that tried the alleged perpetrators of the atrocities that occurred during the conflicts in former Yugoslavia and Rwanda.[54] Passing references to the principle of complementarity are made in the Preamble of the Rome Statute and Article 1[55] which puts it thus: "the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions". Whilst complementarity is not expressly defined in the Rome Statute it is operationalized in Article 17 of that treaty which governs the admissibility of cases before the Court. Article 17 envisages instances where the Court may be able to exercise jurisdiction in line with its complementary role in relation to national courts. Flowing from the provisions of article 17, the Court may exercise jurisdiction where states are unwilling or unable to carry out genuine investigations or prosecutions; the person has not already being tried for conduct which is the subject of the complaint and the case is of sufficient gravity to justify action by the Court.[56]

The Rome Statute provides guidelines for determining "unwillingness" and "inability" on the part of a state to investigate or prosecute alleged serious international crimes. In determining "unwillingness", the Court shall consider the existence of the following: were or are the proceedings being undertaken to shield the persons from criminal responsibility for crimes within the jurisdiction of the Court; has there been an unjustified delay in the proceedings which in the circumstances is inconsistent with an intent to bring the person concerned to justice and are the proceedings being conducted in a manner that impugns its independence or impartiality. In determining "inability" the Court shall consider whether due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings.[57] The principle of complementarity nonetheless has not produced the expected reaction from states.[58] States have not tended to launch prosecutions in their national courts. Rather there has been a small flood of referrals from states to the ICC. It is only with respect to Kenya, where the Prosecutor exercised his *proprio motu* powers did the authorities, who had previously failed to prosecute those behind the post-

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complementarity: the effect of article 17 of the Rome Statute on national due process', (2006) Criminal Law Forum, 255; Carsten Stahn, 'Complementarity: a tale of two notions', (2008) Criminal Law Forum 87; Rod Rastan, 'Testing Co-operation: The International Criminal Court and National Authorities', (2008) 21 Leiden Journal of International Law, 431;Carsten Stahn and Mohammed M. El Zeidy, *The International Criminal Court and Complementarity: From Theory to Practice* (Cambridge University Press 2011).

[54] Article 8 Statute of the International Criminal Tribunal for Rwanda, Annex to Security Council Resolution 955, U.N.Doc. S/Res/955 (Nov.8 1994) and Article 9 Statute of the International Criminal Tribunal for the former Yugoslavia, Annex to Security Council Resolution 827, U.N.Doc. S/Res/827 (May 25 1993). See generally, Mohammed M. El Zeidy, 'From primacy to complementarity and backwards: re-visiting rule 11 bis of the ad hoc tribunals', (2008) International and Comparative Quarterly, 403.

[55] Paragraph 10 and Article 1 Rome Statute of the International Criminal Court.

[56] Article 17 (1) Rome Statute of the International Criminal Court.

[57] Rome Statute of the International Criminal Court, Article 17(3).

[58] Mark Ellis, 'The ICC and its Implications for Domestic Law and National Capacity Building', (2002) 15 Florida Journal of International Law, 215.

election violence, challenge the admissibility of the case before the ICC and begin to at least appear to be making effort to launch domestic prosecutions .

### 3.3. Why did States like Canada and Nigeria Ratify the Rome Statute of the ICC

The theories of norm life cycle and human rights and state sovereignty, like most theories do not provide a full insight into why states such as Canada and Nigeria chose to ratify the Rome Statute of the ICC. While the theory of the norm life cycle provides a theoretical basis for the transposition of the norms of the ICC through its three stage process, it does not provide an insight into why states commit to the treaty regime in the first instance. The widespread ratification by states to the Rome Statute of the ICC defies logic in light of Antony Anghie's theory of human rights and state sovereignty. According to Antony Anghie's theory, an institution such as the ICC is only a tool of imperialism as its conception of sovereignty is skewed. Indeed, the ICC Statute's institutional design from the outset impinges on states sovereignty. Yet, states have voluntarily submitted their jurisdiction to this supranational body. The question of why states obey international law is the subject of an expansive body of literature. Several scholars from both the legal and international relations disciplines have tried to find an answer to this question particularly considering human rights treaties.[59]

A number of theories have been proffered as to why states ratified the Rome Statute of the ICC. Simmons and Danner in promoting the credible commitments theory advances the argument that the two main groups of states most likely to commit to the ICC are those states with strong and credible domestic mechanisms and states with a recent history of conflict and weak domestic institutions to address the conflicts.[60] A number of writers have undertaken studies and tested the veracity of the assertions made by the proponents of this theory in relation to the Rome Statute of the ICC. Commentators have used empirical evidence of states ratification pattern of the Rome Statute to pick holes in the limb of their postulation that states that have a lot to fear usually autocratic regimes will ratify the Rome Statute.

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[59] HAROLD HONGJU KOH , "Why do Nations Obey International Law?", 106 Yale L.J. 2599-2659 (1996-1997); Oona Hathaway, "DO HUMAN RIGHTS TREATIES MAKE A DIFFERENCE",(2001-2002) 111 Yale L.J.1935 ; See Douglass Cassel , Does International Human Rights Law Make a Difference? (2001)2 Chi. J. INT'L. L 121 ;Beth A. Simmons, "International Law and State Behaviour: Commitment and Compliance in International Monetary Affairs", 94 AM. POL. SCI.REV. 819 (2000).

[60] Beth A. Simmons and Allison Danner, 'Credible Commitments and the International Criminal Court', (2010) International Organization 64 Spring, 225-56, 235-236. See also, Jay Goodliffe, Darren Hawkins, Christine Horne and Daniel L. Nielson, 'Dependence Networks and the International Criminal Court',(2012) International Studies Quarterly 56, 131-147, at 131, They posit that states ratify treaties based on their network of dependence. They draw analogy in the relationship between Australia and its partners in trade and security. They state "that government support (or fail to support) international institutions because they care about the potential reactions of the international partners on whom they depend for a diverse set of goods that range from trade and security to votes."

Chapman and Chaudoin[61] in disputing the veracity of the credible commitment theory notes that ratification is a precarious situation for states for whom the possibility exists of breaching the norms of the Rome Statute of the ICC. Consequently, in their view such states were most likely to refrain from ratifying the Rome Statute while states for whom the costs of ratification are considerably lower due to the fact that the ICC poses no threat to its domestic systems are more likely to ratify the Statute. They however go on to add, the ratification pattern in sub-Saharan Africa is an exception to the general trend that states that have a lot to fear from the ICC will not commit to it.[62] Ginsburg in disputing the conclusion drawn by the credible commitment theory notes that, the possibility of having the ICC as a forum to try domestic opponents is the reason for the widespread ratification of the Rome Statute in Africa.[63] There is some justification for this assertion when the cases on the ICC docket are closely examined. Of all the cases at the Court from different situations in different countries, a common thread that emerges is that the "intervention" of the ICC has turned out to be a one sided affair (sometimes not necessarily because of anything the ICC has done). In a number of the cases, the ICC has wittingly or unwittingly "intervened" or been made to "intervene" in some sense on the side of one group in situations involving intense contestation for power amongst different factions within the given country. In such situations, the ICC has been more or less deployed by a victorious domestic group to deal with and suppress its main opponents producing situations in which the ICC has tacitly acquiesced to victor's justice.[64] Again, this reason does not answer the question of why a state such as Nigeria in sub-Saharan Africa in the absence of a visible opponent in 2001 ratified the Rome Statute of the ICC.

States behaviour and its response to international norms are determined by a number of factors and it is often inconceivable to rationalise such behaviour. For instance, Canada's early support for the Rome Statute and its emergence as a norm entrepreneur prior to and in the aftermath of the adoption of the Rome Statute in 1998, is gradually been eclipsed by its recent ambivalence towards the ratification of the amendments made to the crime of aggression in Kampala in 2010. From the foregoing, both the social constructive theory of the norm life cycle and the theory of human rights and state sovereignty are partial optics which provide an insight into the transposition of the norms of the Rome Statute of the ICC or why states (Canada and Nigeria inclusive) chose to ratify the treaty in the first instance.

## 4. Reviewing the Challenges and Charting a way forward

[61] Terrence L. Chapman and Stephen Chaudoin, 'Ratification Patterns and the International Criminal Court', (2013) 57 International Studies Quarterly, 400.
[62] Ibid, 404-405
[63] Tom Ginsburg, 'The Clash of Commitments at the International Criminal Court', (2008-2009) 9 Chi J. Int'l . L 499, 506.
[64] William A. Schabas, 'Complementarity in practice: some uncomplimentary thoughts', (2008) Criminal Law Forum, 5 at 9.

This section provides an overview of the factors inhibiting the direct engagement and cooperation between Canada and Nigeria in the area of international criminal justice. The section also highlights the prospects and grounds for future engagement and cooperation in the area of international criminal justice.

### 4.1. Problems

A major problem in the engagement between Canada and Nigeria in the area of international criminal justice is the lack of a direct engagement between both countries. A review of the evidence of engagement of both countries with the international criminal court regime, revealed a gap as no incidence of direct engagement between both states could be teased out. Unsurprisingly, an examination of the Official Records of the Rome Conference does not reveal incidences of engagement between both countries in the negotiations leading up to the adoption of the Rome Statute of the ICC. The very many informal meetings and consultations usually associated with multi-lateral treaty making (the making of the Rome Statute was no exception, with proceedings and negotiations replete with different position papers and informal meetings by states delegates) are not captured in the Official Records of the Rome Conference. And as stated earlier, Canada's contributions to the international criminal court regime significant as they have been, have largely been to the system, the Court and other states. This has left a void. There is an overwhelming need to bridge the gap between both countries in this area by creating links and avenues such as direct engagement with both political and judicial organs of both states through sensitisation and capacity development programmes.

The response of Canada to the crime of aggression is at variance with her role in leading the campaign for the adoption and ratification of the Rome Statute which has been duly referenced severally in this paper. This palpable silence provides sufficient grounds to make a claim of double standards against her in relation to the ICC regime. However, its obvious silence with respect to the ratification or adoption of the amendments made at Kampala in 2010 on the crime of aggression are indicative of its position on the treaty crime of aggression. It is significant that more than four years after amendments were made to the Rome Statute at Kampala, neither Canada nor any of the two of the State Parties to the Rome Statute who are permanent members of the Security Council (France and United Kingdom) have ratified the amendments to the crime of aggression.[65] By its nature, the crime of aggression can only be committed by super and middle powers states. While Canada has remained silent on ratification or adoption of the Kampala amendments, New Zealand, which also was one of the like-minded group of states in Rome has continued to provide assistance and support to states in the Asia –Pacific Region towards ratification and

[65] Article 8, Para 2 (e) United Nations Reference: C.N.533. 2010. Treaties-6, and Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression in article 8 bis United Nations Reference: C.N.651. 2010. Treaties-8

implementation of the Rome Statute and its amendments. In 2014, it organised a workshop for the Universality of the Rome Statute of the ICC and the Kampala Amendments on the Crime of Aggression in the Pacific Region (although New Zealand is taking steps within its domestic system with a view to ratifying the amendments).[66]

The non-ratification of the amendments on the crime of aggression by Canada along with other super and middle powers such as Australia, the United Kingdom and France on the issue demonstrate two things. First, it indicates that the countries are weighing the cost implications of ratification. Second, it shows that the ratification cost for the amendment to the crime of aggression in relation to the other treaty crimes are significantly higher for these countries despite having relatively good democratic practices. The likelihood of their being dragged before the ICC in relation to the crime of aggression is significantly higher. As a result of Canada's silence on the 2010 Kampala amendments, she has been largely silent in urging states to ratify the amendments.

The ICC currently faces a huge image problem in sub-Saharan Africa including Nigeria. The Africanized nature of the ICC docket has been the subject of a lot of negative press within the continent. It has been castigated and derided as a tool of neo-colonialism because of its focus on sub-Saharan Africa. The reaction, acceptance and subsequent internalization of the norms of an institution are to a great deal dependent on peoples' perception and misgivings towards the institution. And the ICC is no exception. Within sub-Saharan Africa, there is a high level of mistrust for the ICC. The drive towards the formal establishment of the Court enjoyed tremendous support not just globally[67] but even from within the African continent. In recent times, however, Africa's support for the court has, as we have seen, waned in intensity as virtually every single situation before the court are from the African continent. There are 22 cases presently before the court drawn from 9 situations, all of them from the African continent. A number of critics have expressed serious reservations about this practice and voiced fears of bias against the ICC. This has given rise to a growing opposition to the ICC regime from many African leaders and scholars'.[68] Consequently, efforts aimed at internalizing the norms of the Rome Statute are going to be

[66] See Address by Honourable Judith Collins New Zealand Minister of Justice delivered at the Workshop for the Universality of the Rome Statute of the International Criminal Court and the Kampala Amendments on the Crime of Aggression in the Pacific Region delivered 06 March 2014 at https://www.national.org.nz/news/media-releases/detail/2014/03/06address-to-the-workshop-for-the-universality-of-the-rome-statute-of-the-international-criminal-court accessed 07/08/2014.

[67] M. Cherif Bassiouni, 'Negotiating the Treaty of Rome for an International Criminal Court', (1999) 32 Cornell International Law Journal.

[68] His Excellency Paul Kagame, President of the Republic of Rwanda (D. Kezio-Musoke, 'Kagame tells why he is against ICC charging Bashir', Daily Nation, 3 August 2008, online at www.//allafrica.com/stories /200808 /20/57.html ; See also M. Mamdani, 'Darfur, ICC and the New Humanitarian Order: How the ICC Responsibility to Protect" is being turned into an assertion of neo-colonial domination', Pambazuka News (2008) 09-17, Issue 396 (English edn) at http://pambazuka.org/en/category/features/50568 last accessed 10/10/2013. For a balanced

met with stiff opposition except a lot of outreach is undertaken within the domestic system to counteract the effect of the negative press the ICC has been subject to as a result of its focus on cases from the African continent.

**2. Prospects**

The following grounds may foster future engagement and cooperation between Canada and Nigeria in the area of international criminal justice.

The Bi-national Commission established in 2012, between Canada and Nigeria provides an avenue to deepen ties between both countries in the area of international criminal justice. There is latitude within the terms of the Bi-national Commission to increase the scope of the Commission's activities into strengthening of domestic criminal justice systems.[69] The Bi-national Commission currently focuses on strengthening domestic and international cooperation between both countries in the areas of political and, economic relations and, security and development cooperation.[70] Engaging with Nigeria by helping to strengthen its national criminal justice system offers an opportunity to bridge the gap that currently exists between Nigeria and Canada in the area of international criminal justice. Canada has had several years of investigating and prosecuting serious crimes it could offer technical and specialist assistance to Nigeria in the investigation and prosecution of crimes attributed to the terrorist group, Boko Haram by the OTP of the ICC. For Canada, an obvious benefit in helping to ensure that Nigeria has a stable polity and an effective domestic mechanism that can support national prosecutions of serious crimes are the immense trade benefits accruing to it . Nigeria is one of Canada's largest trading partners in Africa. In 2011, the value of the trade between Canada and Nigeria stood at 2.7 billion dollars for which exports to Canada, totalled 2.5 billion dollars. While Canadian imports to Nigeria amounted to 199 million dollars. [71]

Canada must continue to lead by example in its role as a norm entrepreneur. Ratification of the Kampala amendments will reinforce Canada's commitment to the norms of the Rome Statute and also allow it play an active role in a post-Kampala Court as it had done following the adoption of the Rome Statute in 1998. Currently, the Principality of Liechtenstein who proposed the amendment to the crime of aggression and

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treatment of the issue, see, Charles Chernor Jalloh, 'Africa and the International Criminal Court: Collision Course or Cooperation?' 34 North Carolina Central Law Review 203, 209-211 (2011-2012) assessing the veracity of the assertions that the ICC is targeting weak African States; Charles C. Jalloh, Dapo Akande and Max du Plessis Assessing the African Union Concerns about Article 16 of the Rome Statute of the International Criminal Court (2011) African Journal of Legal Studies , Vol. 4, 5

[69] Memorandum of Understanding Between the Ministry of Foreign Affairs of the Federal Republic of Nigeria and the Department of Foreign Affairs and International Trade of Canada on the Establishment of a Bi-national Commission, Para 2.

[70] Ibid, Para 4.

[71] See: THISDAY LIVE 10 April 2013 Aganga: Nigeria-Canada-Trade Set to Increase.

was the first state to ratify the amendments is heading a global campaign encouraging states to ratify the amendments which requires ratification by 30 State Parties before the amendments can come into effect after January 1st 2017.

Until the ICC shakes off its perceived image within Africa, as a tool of imperialism it is in doubt if it will make much progress amongst the people in the region. The ability of the ICC to shed or counteract any of such negative press against its image would go a long way to ensure the successful diffusion of the norms of the Court across the region and bolster the work of agents of norm socialization in the region. To do this, the ICC will have to ensure that there is a diversification of the cases on its docket from different regions in the world and not just from sub-Saharan Africa. The ICC should be seen as addressing the conflicts taking place in other geo-political regions of the world, only then can it shed its toga of being an African Court.

## 5. Conclusion

This paper has undertaken an assessment and discussion of the available evidence relating to the engagement and cooperation between Canada and Nigeria in the area of international criminal justice. The objective of the evaluation undertaken was to determine if there had been incidences of engagement between Canada and Nigeria in international criminal justice. The above assessments were carried out by identifying the contributions and incidences of engagement of both countries to the international criminal justice system. The paper noted that while both states had interacted with the ICC, there were no discernible evidence of state to state engagement between Canada and Nigeria in the area of international criminal justice.

The paper also sought to theorise Canada and Nigeria's engagement and cooperation in the area of international criminal justice from the optics of the social constructive theory of the norm life cycle and human rights and state sovereignty. Norm emergence in international criminal justice is no different from other areas of international law and treaty making which are fraught with complexities and political interplay between different states. A number of factors seen and unseen come into play when states enter into treaties. And as seen from the paper a number of possible explanations beyond the social constructivist and human rights and sovereignty lens which frames the overall project can be proffered in understanding the behaviour of Canada and Nigeria in the area of international criminal justice. It is in doubt if a plausible explanation can be offered for why states enter into treaties and subsequently comply or refuse to comply with them by the various theoretical basis of state practice in international relations or

in the fields of law. What is clear is that states will often act to protect their perceived interest at a given point in time.