

Chapter One

Introduction

The International Criminal Court (ICC) was created by the Rome Statute of the International Criminal Court on 17 July 1998, when 120 States participating in the “United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court” adopted the Statute.¹ The International Criminal Court entered into force on 1 July 2002. The establishment of the ICC represents a renewed commitment of the majority of the nations around the world to achieving a goal to impunity through coordinated efforts of strengthened national judicial system and a new international criminal jurisdiction. For the first time, international law will be applicable directly to the actions of individuals on a systematic and permanent basis.² On the other hand, it shows the first permanent international judicial institution with jurisdiction over individuals who commit the most egregious violations of human rights and humanitarian law. Therefore, the creation of the ICC is a historic victory for human rights and international justice. The ICC has often been described as the “missing link” in international human rights enforcement. Despite the

¹ The Rome statute of the International Criminal Court:

<http://www.un.org/law/icc/statute/romefra.htm>;

<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>

² William Pace and Jennifer Schense, “International Lawmaking of Historic Proportions: Civil Society and the International Criminal Court,” Paul Gready ed., *Fighting for Human Rights* (New York: Routledge, 2004), p. 104.

existence of domestic legislation and several multilateral treaties dealing with some of the crimes included in the Rome Statute of the ICC (such as genocide, war crimes and crimes against humanity), no permanent enforcement mechanism with jurisdiction over individuals who commit these crimes, regardless of their official position, has ever existed at the international level.³

To sum up, this first ever permanent, treaty based, international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished is a milestone in our human history. The participants in the creation of the ICC really did a great job. To understand the making of the ICC and the role of non-governmental organizations (NGOs) in its making is the intention behind this research project.

Research Purpose and Questions

It is David Davenport's article, "The New Diplomacy⁴," that stimulates my desire to write this thesis. Davenport points out that the new diplomacy, which means "the power politics and maneuvering of a group that called itself 'like-minded' states and their collaborators, the NGOs,"⁵ has made great efforts to complete "the Ottawa

³ "Importance of the International Criminal Court: Why it Matters." in the website of the NGO Coalition for the International Criminal Court (CICC) : <http://www.iccnnow.org>

⁴ David Davenport, "The New Diplomacy," *Policy Review*, 116 (December 2002 & January 2003), pp. 17-30.

⁵ David Davenport, "The New Diplomacy," *Policy Review*, 116 (December 2002 & January 2003), p. 17.

Process,” and “the Rome Statute.” The former directed by the International Campaign to Ban Landmines (ICBL). The latter led by the NGO Coalition for the International Criminal Court are examples of the increasing strength of global grassroots movements to promote peace, human rights protection and the rule of law by seeking effective cooperation at the international level.⁶ In these two important cases, we can detect that NGOs have been starting to deeply influence global affairs, which impresses us very much. What role do these NGOs play in forcing policymakers to pay attention to their appeals? How do they maneuver for cooperating with other actors in international politics? I am curious about answers to the above questions.

The campaigns of “the Ottawa Process” and “the Rome Statute” are both structured around a diverse global network of NGOs whose collaboration with governments and the United Nations has resulted in strong international consensus on important human security issues. The experience of the ICBL taught valuable lessons to thousands of NGOs which came together under a master NGO, the NGO Coalition for the ICC (CICC). Therefore, if we can explore and apply the lessons that CICC have learned, then many more successful campaigns will be expected soon. NGOs will become a substantial force in international affairs. This thesis is born on this conviction.

⁶ Jody William (ICBL Ambassador and Nobel Peace Prize Laureate 1997). “Relevance of the International Criminal Court to Other Campaigns to Strengthen Human Security.” Internet Information in the CICC website.

What is the background of the establishment of the ICC? What is the connection between NGOs and the creation of the ICC? Have NGOs, especially the CICC, played an important role in the creation of the ICC? How and with what consequences do CICC act? Do these influences promote the making of the ICC? These are principal questions that I seek to answer in this thesis.

Literature review

This thesis covers two main topics: NGOs and the creation of the ICC, so I assess the relevant literature on these two themes.

1. The Studies of NGOs

The term, “Non-governmental Organization,” was first used by the United Nations in 1945. Then this term is becoming increasingly popular among many researchers, and turns into a general usage.⁷ NGOs with international agenda are not a new phenomenon, but in the last twenty years, and especially during the last decade, they have increased in number as well as broadened the focus of their activities and the way in which they operate.⁸ Besides, NGOs are difficult creatures to explain, but

⁷ Gerard Clark. *The Politics of NGOs in South-East Asia: Participation and Protest in the Philippines*. (London: Routledge, 1998), p. 4.

⁸ Marina Ottaway. “Corporatism Goes Global: International Organizations, Nongovernmental Organization Networks, and Transnational Business.” *Global Governance* 7 (July-September 2001), p. 271.

some authors provide some useful insights.⁹ In those articles, we can find the answers to why NGOs matter. However, there is very little published information about the most important NGO to my thesis, the CICC, except that posted in the CICC website. Therefore, how to discuss the role of the CICC completely is a big problem for my case study. I have to overcome this difficulty during the research.

As for the treatment of NGOs in international relations theory, there are multiple strands of theory and empirical research, such as: pluralism, transnationalism, collective social action, international regimes, interdependence, and global governance, etc. However, to a certain extent, these paradigms overlap.¹⁰ There seems no uniform in international relation theory for NGOs. Thus, I would like to focus attention on Transnationalism and Global Governance to illustrate the phenomenon of striking roles of NGOs in international relations theory. Moreover, the

⁹ For a discussion of the re-sorting of roles among states and nonstate actors, see Jessica Mathews' "Power Shift." *Foreign Affairs* 76 (January-February 1997), pp. 50-66. For an overview of NGO activities and methods of influence on global affairs, see Ann Marie Clark's "Non-Governmental Organizations and their Influence on International Society." *Journal of International Affairs* 48 (Winter 1995), pp. 507-525. And also see P. J. Simmons' "Learning to Live with NGOs." *Foreign Policy* 112 (Fall 1998), pp. 82-96. David Hulme, and Michael Edwards, eds. *NGOs, States and Donors: Too Close for Comfort?* (New York: St. Martin's, 1997). John Boil, and George M. Thomas, eds. *Constructing World Culture: International Nongovernmental Organizations Since 1875* (Stanford: Stanford University Press, 1999). Karsten Ronit, and Volker Schneider, eds. *Private Organizations in Global Politics* (London: Routledge, 2000).

¹⁰ Bob Reinalda suggests three major paradigms related to NGOs: pluralism, transnationalism, and collective social action. In Bob Reinalda, "Private in Form, Public in Purpose: NGOs in International Relations Theory," Bas Arts, Math Noortmann, and Bob Reinalda, eds., *Non-States Actors in International Relations* (Aldershot: Ashgate, 2001), pp. 11-40. From James N. Rosenau, *The Study of Global Interdependence: Essays on the Transnationalisation of World Affairs* (New York: Nichols, 1980), pp. 1-7; Stephen D. Krasner ed., *International Regimes* (Ithaca, New York: Cornell University Press, 1983), p. 2; Robert O. Keohane and Joseph S. Nye, *Power and Interdependence*, 3rd ed (New York: Longman, 2001), p. 18. James N. Rosenau, "Governance, Order and Change in World Politics," James N. Rosenau and Ernst O. Czempiel eds., *Governance without Government: Order and Change in World Politics* (Cambridge: Cambridge University Press, 1992), p. 4, we can have some clues to explain all these mentioned theories associated with NGOs have relationships with each other. More detailed discussion you will see in the Chapter Two.

four sets of dimensions for analyzing NGOs suggested by Thomas G. Weiss and Leon Gordenker are a proper approach to detect NGOs in practice.

2. *The creation of the International Criminal Court*

The other topic that I pay more attention to in this research is the making of the ICC. This part starts by summarizing the background of the making of the ICC, then examining the participants in the establishment of the ICC, including States and NGOs. There are some studies related to the issue of the International Criminal Court.¹¹ However, *The International Criminal Court – the Making of the Rome Statute*¹² is the most relevant source to my thesis. Besides, there are some additional evidences to enhance this part of discussion.

As in the literature mentioned above, we can understand that to connect NGOs with the making of the ICC is not very easy. However, Davenport's "The New Diplomacy"¹³ gives us a clue to make the linkage. The main purpose of Davenport's

¹¹ Christoph J. M. Safferling. *Towards an International Criminal Procedure* (New York: Oxford University Press, 2001). Cherif Bassiouni M. "The Time Has Come for an International Criminal Court." *Indiana International and Comparative Law Review* 1 (March 1991), pp. 1-43. Spyros Economides. "The International Criminal Court: Reforming the Politics of International Justice." *Government and Opposition* 38 (January 2003), pp. 29-51. Giulio M. Gallarotti, and Preis, Arik Y. "Toward Universal Human Rights and the Rule of Law: The Permanent International Criminal Court." *Australian Journal of International Affairs* 53 (June 1999), pp. 95-111. Edoardo Greppi. "The Evolution of Individual Criminal Responsibility under International Law." *International Review of the Red Cross*, no. 835 (September 1999), pp. 531-553. Darryl Robinson. "Defining Crimes against Humanity at the Rome Conference." *American Journal of International Law* 93 (January 1999), pp. 43-57.

¹² Roy S. Lee, ed. *The International Criminal Court – The Making of the Rome Statute* (Hague: Kluwer Law International, 2002).

¹³ David Davenport, "The New Diplomacy," *Policy Review*, 116 (December 2002 & January 2003), pp. 17-30.

article is to warn the United States government that it is not wise to neglect the powers of NGOs, which have resulted in “the Ottawa Process,” and “the Rome Statute.” He calls this kind of achievement of NGOs “the new diplomacy.” Therefore, I decide to complete my thesis by following his recommendation: taking the influence of NGOs seriously. I try my best to evaluate NGOs in the case of the creation of the ICC.

Scope of Research

This thesis focuses on two main subjects: NGOs and the making of the ICC.

There are about a thousand of NGOs involved in the case of the making of the ICC, and more than two hundreds NGOs joined the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court held on from 15 June to 17 July, in 1998, in Rome, Italy.¹⁴ It is less possible for me to discuss all the NGOs individually. In this case, I emphasize the role of a master NGO, the NGO Coalition for the ICC (CICC),¹⁵ which has been steadily growing since its establishment in 1995.¹⁶ Thus, this part of research is concentrated

¹⁴ Rome statute of the International Criminal Court : <http://www.un.org/law/icc/statute/romefra.htm>;
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp>

¹⁵ Founded in 1995, the NGO Coalition for the International Criminal Court (CICC) has played a key role in the establishment of the International Criminal Court (ICC). The CICC secretariat coordinates the work of its more than 2000 global members with that of governments, international organizations, and the UN Secretariat.

¹⁶ CICC website: <http://www.iccnw.org>

on the adoption of the treaty in Rome and the launch of the campaign for signature and ratification from the establishment of the CICC in 1995 to the Statute entered into force on 1 July 2002. In short, CICC's efforts in the process of negotiations for the Rome Statute from 1995 to 1998, and that in the process of ratifications from 1998 to 2002 are provided in this thesis.

As to the making of the ICC, I have to emphasize that this research does not deal with the field of the international criminal law or the authority and functions of the ICC, i.e., no problems of international law, but problems of international politics.

Research Design

The methods of historical analysis, case study, and data inquiry are applied in this research.

1. Historical Analysis

I pay attention to the related data, especially on the importance of NGOs, and the background of the making of the ICC. Thus, readers can have succinct ideas on this thesis.

2. Case Study

I choose the establishment of the ICC to be my case for assessing my central idea: NGOs is the key factor. Moreover, how do NGOs play a crucial role in the making of

the ICC? How do they maneuver for cooperating with other actors in the international society? I am highly interested in the answers to these questions.

3. Data Search

There are quite a few studies on NGOs, but very little published information about the most important NGO, CICC in my thesis. Therefore most sources may only be gathered from related websites. How to select useful sources from any amount of internet information is really a challenging task. Besides, some specific questions are answered by press releases of CICC. The information posted in the websites of United Nations, ICC, and CICC is my primary sources. Moreover, trying to get into contact with representatives of these organizations is also a good way.

Organization of the Thesis

The thesis has five chapters.

Chapter One, "Introduction," gives the indication of the research purpose and question, the literature review, the scope of the research, the research design, and the structure of the thesis.

Chapter Two, "The Emerging Roles of NGOs in International Relations," proceeds as follows: giving an introduction of NGOs, including definitions and

functions of NGOs, and discussing their roles in theory and practice in the field of international relations.

Chapter Three, “The Creation of the International Criminal Court,” is to review the background of the making of the International Criminal Court. Moreover, the rest parts address the progress made in the establishment of the ICC, participation of states and participation of NGOs are also discussed.

Chapter Four, “The NGO Coalition for the ICC in the Making of the ICC” focuses on the role of the CICC in the procedures of the making of the ICC. In addition, I analyze four dimensions of the CICC to understand how CICC maneuvers for cooperating with other actors in international politics. The roles of the CICC in the process of negotiations and ratifications are also discussed. Moreover, lessons from CICC in the creation of the ICC are also a very important subject.

Chapter Five, “Conclusion,” provides the summary of the thesis, and exploring what I have learned from the research. After self-evaluation, my suggestions to the prospects of NGOs in the ICC are shown.