

Victims of the Gravest Crimes: The Role of Victims in Legal Proceedings Before the International Criminal Court

Abstract

This thesis analyzes the role of victims in the proceedings before the International Criminal Court, or the so-called *victims' mandate* of the ICC. The purpose is to comprehensively introduce their rights as well as the way in which this regulation is being applied. Therefore, the research question has two parts. The first part inquires into the current design of the victim's rights before the Court, while the second asks about the results of its application to the present day. Answers offered by the author of the thesis appear respectively in the second and the third chapter. The first chapter is focused on a historical development of the position of victims in the system of international criminal justice. It is of introductory nature and serves to highlight the historically unprecedented character of the role of victims before the ICC.

Regarding the research method, the thesis analyzes the role of victims of crimes prosecuted by the ICC from both, theoretical as well as empirical angle. The purpose is to practically and comprehensively describe the regulation of victims before the ICC but also go beyond the "letter of the law" to see the legal regulation within its material context - to identify its benefits as well as detriments for the rightsholders. The primary assumption of the thesis is that law is not a self-sufficient, self-serving tool. Especially international criminal law, which is for many reasons perceived as controversial, cannot afford to ignore the consequences of its application to remain legitimate. Concerning sources, the thesis is based on an analysis of primary sources such as legal texts and case law, but also works extensively with secondary sources, especially peer-reviewed articles and books. In addition, it utilizes wide range of documents and reports of international organizations and media news especially when researching very recent events.

This thesis comes to several conclusions, most importantly to the conclusion that the restorative "package of victims' rights has not been utilized to their great benefit so far. The most important rights in this package are the right to participate and the right to reparations. The victims have clearly an interest in the prosecution and conviction of the perpetrators, hence the primary, retributive function of the Court. From the restorative rights they value the right to reparations as an important aspect of justice. However, the right to participate is often used due to misinformation or lack of information. It then unnecessarily burdens the Court. The

thesis hence deliberates on the question whether the merge of retributive and restorative justice is desirable and whether this part of the Court's restorative agenda could not be possibly replaced by a more sensitive work of the Office of the Prosecutor. As regards the right to reparations, Judge's Wyngaert proposal of an independent body authorized to deal exclusively with reparations, is deliberated upon. The reasons are mainly the unfitting design of criminal law to deal with such issue and overload of the Court. Moreover, the thesis stresses the situations when this retributive and restorative mixture may lead to paradoxical situations. For example, a perpetrator who is simultaneously a victim could once participate in the proceedings and seek reparations from the very same Court by which he was prosecuted.

Given the secondary victimization of the victims of the previous international criminal institutions described in the first chapter (esp. International Military Tribunals in Nuremberg and Tokyo and the *ad hoc* Tribunals for the former Yugoslavia and Rwanda), it is not desirable to return to the previous state of affairs. A new, creative solutions of this "victim problem" of the ICC are needed. It is important to bear in mind that an unmanaged victim's mandate may seriously damage the Court's tender legitimacy, credibility as well as efficiency.

Keywords: International Criminal Court, Rome Statute, victims, right to participation, reparations, restorative justice