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# Review of *Rough Justice: The International Criminal Court in a World of Power Politics* by David Bosco

Anna Mathew\*

## INTRODUCTION

The International Criminal Court (ICC) came into existence almost twelve years ago as the world's first permanent court for the prosecution of international crimes. Its creation was the direct culmination of a decade-long resurgence of international criminal law and, more broadly, of a process that had begun sixty years previously at Nuremberg.<sup>1</sup> The project of an international criminal court was the subject of extensive academic scrutiny long before the current ICC took shape. As the Rome Statute came into being in 1998, and the court opened its doors in 2002, this scrutiny deepened, spawning an extensive and ever-expanding literature on the court from diverse commentators. The literature has been based both in international law, assessing the legal instruments, decisions, and first judgments of the court, and in international relations theory, assessing the court as an institution—both object and subject—in the world of international politics.

David Bosco's new book, *Rough Justice: The International Criminal Court in a World of Power Politics*, provides additional perspective to the conversation. As the book's subtitle suggests, *Rough Justice* fits into the second of those schools of commentary, focused on the court as an institution, albeit with a good understanding of the legal significance of the developments it analyzes. Bosco's background as a qualified lawyer and political analyst enables him to tell the "international law" and "international relations" stories of the ICC in a united narrative. In particular, his depth of knowledge on the UN Security Council is displayed in his nuanced elucidation of the intricacies of the permanent members' (P5) maneuvering in relation to the ICC.<sup>2</sup> Bosco also

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1. DAVID BOSCO, *ROUGH JUSTICE: THE INTERNATIONAL CRIMINAL COURT IN A WORLD OF POWER POLITICS* 2–3 (2014) (noting the post-Nazi era Nuremberg trials, which are widely regarded as the first modern emphasis on prosecution of crimes against humanity).

2. See DAVID BOSCO, *FIVE TO RULE THEM ALL: THE UN SECURITY COUNCIL AND THE*

brings his dual roles as academic and blogger to bear on this book, creating a rigorously researched and credible piece of work with the readability and up-to-date feeling of a blog, making a compelling case for the continued importance of in-depth work for a broad readership, and its potential style, in an age of 24/7 international criminal law (ICL) commentary across various media and social media platforms.

The book's "theoretical ambition is modest,"<sup>3</sup> using existing concepts to provide a chronological analysis of the court's first eleven years. It draws on a variety of documentary sources, from official court and state records to NGO reports and previous scholarship. However, its foundation is the author's frank personal interviews with key court actors and diplomats, such as former Chief Prosecutor Luis Moreno-Ocampo, as well as ICC Judges Philippe Kirsch and Hans-Peter Kaul.<sup>4</sup> Bosco uses these sources as evidence for the conceptual framework he sets up of potential patterns of behavior by major-power states<sup>5</sup> and the ICC Prosecutor,<sup>6</sup> a framework which he explicitly revisits in the book's conclusion. However, the bulk of the book provides a "narrative and historical"<sup>7</sup> account that gently suggests to the reader, rather than telling her outright, where different events might be located within that conceptual framework. Bosco makes his overarching argument clear from the start: "the interaction of major-power and prosecutorial behavior has resulted in mutual accommodation" of each other's interests.<sup>8</sup> It is a deceptively simple argument, the complex bases of which are revealed to the reader in the sprawling, twisted history of the court that then unfolds.

## I. SUMMARY

Before introducing the conceptual framework in chapter one and gradually drawing the reader through the chronology of the ICC, Bosco begins the book in the middle of the court's story, with ICC Chief Prosecutor Luis Moreno-Ocampo's announcement of charges against Muammar Gaddafi in the midst of the violence in Libya in May 2011. Within paragraphs, the seeming importance of this moment's "reject[ion of] the idea that power or political influence should influence the course of justice" is undercut by reference to the concurrent NATO intervention and its clash with ICC aims in Libya.<sup>9</sup> With a brief sketch of that moment in the court's history, its central conflicts—between international

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MAKING OF THE MODERN WORLD (2009).

3. BOSCO, *supra* note 1, at 8.
4. *Id.* at 9.
5. *Id.* at 12, tbl.1.1.
6. *Id.* at 20, tbl.1.2.
7. *Id.* at 8.
8. *Id.* at 20.
9. *Id.* at 1.

justice and power politics, and between abstract support for ICL and concrete limitations—are set up. Bosco frequently uses this technique, setting up one apparent legal truth only to add a political lens through which the nature of that truth is skewed. This unsettles the reader, who is left unable to take refuge in either a purely legalist<sup>10</sup> or realist<sup>11</sup> perspective while reading this account of an “independent *and* interdependent” ICC.<sup>12</sup>

The technique also reflects a tension running throughout the book, and left unresolved at its end. On the one hand, there is a grand narrative of the inexorable progress of international justice, as reflected in chapter titles from “Origins” to a “Phantom Court” to “Caution and Consensus” and even “Breakthrough,” all the while accompanied by a pressing weight of moral authority. On the other hand stands the troubling idea, also introduced early on, that the progress of ICL has from its origins essentially been “accomplish[ed] by fiat,”<sup>13</sup> by luck, “bizarre” coincidence, and combinations of events.<sup>14</sup> As the book’s chronology moves towards the present day, the sense of a coherent narrative breaks down. The final chapter, titled “Power Plays,” considers events too recent for the author to authoritatively state that they draw the moral arc of ICL in one direction or the other. To his credit, Bosco neither adopts a simplistic moral narrative nor dismisses strong evidence of the peculiarly strong moral momentum of ICL, choosing instead to inhabit the midst of that tension and thus force his reader into that space with him.

In addition to these central tensions, the introduction highlights the book’s other main theme, tied to its analysis of power-state behavior—the shifting position of great powers in the international landscape<sup>15</sup>—and a specific focus within that theme on the relationship between the court and the United States.<sup>16</sup>

#### A. Framework

Having introduced the main themes, the book goes on to set up the conceptual framework for their analysis.<sup>17</sup> First, Bosco considers potential behavior patterns of major-power states towards the ICC, dividing them into three alternative strategies: (1) marginalization (active or passive), (2) control, and (3) acceptance.<sup>18</sup> Marginalization entails states working to keep the ICC weak and irrelevant, and could be the strategy of member states of the ICC as well as non-members. Control, on the other hand, covers efforts to keep the court within its mandate and to stop it from interfering with important political

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10. *Id.* at 3–4.

11. *Id.* at 11.

12. *Id.* at 4 (emphasis added).

13. *Id.* at 27.

14. *Id.* at 44.

15. *Id.* at 5.

16. *Id.* at 9.

17. *Id.* at 11–22.

18. *Id.* at 12, tbl.1.1.

or diplomatic concerns of states. Acceptance suggests embracing the court, and could be prompted by a range of factors, from a cost-benefit analysis to the influence of the “norm cascade” underway in ICL.<sup>19</sup> Each of these potential behaviors, if observable from the empirical evidence, has implications for theory and policy. Marginalization and control behaviors would vindicate a realist view of international law and put the viability of the ICC as an independent and effective institution in doubt. Evidence of acceptance would support effectiveness and suggest that the realist model does not fully explain the facts.<sup>20</sup>

The analysis then moves on to the second, and most original, part of the conceptual framework, shifting focus to the behavior of the court. Bosco points to the fact that international relations scholars have generally not analyzed international organizations’ behavior as having any meaningful impact. He departs from this general trend to scrutinize the behavior of the court’s officials and their potential ability to set the court’s course even in opposition to the desires of states.<sup>21</sup> Within the wider institution of the ICC, Bosco focuses specifically on the Office of the Prosecutor (OTP) as the court’s key discretionary authority, given its power to open investigations and request arrest warrants. This area of prosecutorial discretion is also identified as under-studied in international relations scholarship.<sup>22</sup>

The framework of potential prosecutorial behavior set out here is a sliding scale of four different approaches.<sup>23</sup> First, the apolitical prosecutor only considers politics where it directly concerns the law she is applying, such as in establishing genocidal intent in a given case. Second, the pragmatic prosecutor looks to assess the likelihood of state support prior to launching investigations, since such support is necessary for a feasible investigation to occur. Third, the strategic prosecutor seeks to actively build support among major-power states, albeit doing so in order to meet an “ultimate goal” of gathering enough support for the court that it could “eventually pursue its mandate independently” of political considerations. Lastly, the captured prosecutor is effectively controlled entirely by major-power states, either directly or indirectly.<sup>24</sup>

Bosco then suggests that the combined interaction of major-power states and prosecutor has led to “mutual accommodation” through a “dynamic and interactive” approach.<sup>25</sup> A conciliatory use of prosecutorial discretion has apparently undermined early marginalization strategies against the court, positioning it as an institution that will avoid possible tensions with major powers and can thus be tolerated and even supported by them. This support will

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19. *Id.* at 15.

20. *Id.* at 13–16.

21. *Id.* at 17.

22. *Id.* at 18.

23. *Id.* at 20–22, tbl.1.2, fig.1.1.

24. *Id.* at 18–19.

25. *Id.* at 20–22, fig.1.1.

be especially evident where ostensible support for some investigations (through Security Council referrals) can double as a guide away from other, less politically desirable ones. Having constructed the framework, Bosco sets out in broad terms which of the potential behaviors will be observed in the subsequent account: control on the part of the states, and a strategic approach on the part of the prosecutor. He is especially careful to state that the prosecutor, while working in a “broadly conciliatory framework,” has not been “captured.”<sup>26</sup>

### *B. History*

Chapter two tells the story of the “origins” of ICL in a historical and conceptual sense. On the face of it, the chapter provides a historical account of developments at Nuremberg and beyond; embedded within this account are various quotations that point to the conceptual origins of many present-day issues in ICL. It begins with Hitler, celebrating his last birthday in the infamous bunker, and then moves on to Justice Jackson’s arrival in Nuremberg months later to begin the seminal trials. The chapter moves through Nuremberg, then Tokyo, recounting the post-World War failure to build a permanent international criminal court. It then skips forward naturally to the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda, then to the details of the Rome Conference on the establishment of the ICC, ending with the celebrations at the birth of the ICC’s Rome Statute in July 1998. On the bare factual details of these events, it offers little that is new. However, the value in this chapter lies not in the plain facts themselves, but in the way the author positions them so as to trigger reflection on recurring themes and issues in ICL. Also significant is his rich and informed perspective on the activities of the UN Security Council, which allows him to provide a clear and detailed account of the various intricacies of P5 members’ shifting stances on ICL courts over a period of years. The chapter also sets up some interesting comparisons between the Rome Conference process and later years at the court. For example, at the Rome Conference, NGOs directed diplomats on the correct course to take while drafting, which was a highly unusual procedure since diplomats normally took the lead on such occasions as the designated representatives of their states.<sup>27</sup> But once the court was up and running, it was the diplomats who were, strangely, arranging personal meetings to provide guidance for the (ostensibly apolitical) court.<sup>28</sup>

Where chapter two traces a broad history of fifty years, chapter three zooms in on the four years between the signature of the Rome Statute and the creation, with sufficient ratifications, of the institution of the court. It traces how the political and diplomatic support for the court, the structures and details of

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26. *Id.* at 20–22.

27. *Id.* at 46.

28. *Id.* at 92.

which were left vague by the Rome Statute,<sup>29</sup> began to develop, and the concurrent US efforts to stymie the idea of the court (not as yet a concrete institution). The court's Assembly of States Parties (ASP) entered the scene as the conduit for the ICC's political power and authority.<sup>30</sup> Ratifications proceeded at a pace far quicker than that expected.<sup>31</sup> With its marginalization strategy threatened, the United States also sought to carry out control strategies from the early meetings of the ICC's Preparatory Committee onwards.<sup>32</sup>

Moving away from specific administrative issues with the Rome Statute, the book considers the wider context of other developments in transitional justice at that time. The Pinochet incident, also in 1998, helped to entrench US opposition to the ICC as an institution which would be bent on eroding state sovereignty.<sup>33</sup> Meanwhile, direct challenges by ICTY Prosecutor Louise Arbour to the moral failures of states began to reap rewards in terms of the number of arrests of persons wanted by the ICTY.<sup>34</sup> In addition, the NATO bombing of Kosovo and the capture and transfer of Milošević to the ICTY took place.<sup>35</sup> In the book, this coupled ICL process and Western allied military campaign becomes part of a continuous series of similar events in history, preceded by the Allies in Nuremberg and followed (as outlined in the introduction) by joint NATO intervention and UN Security Council ICC referral in Libya.

In 2000, President Clinton signed the Rome Statute just before he left office, while other major-power signatories ratified the Statute and regional divergences led to high rates of ratification in Latin American and African countries particularly.<sup>36</sup> Using the leverage afforded by this step, Clinton asserted the United States' "tradition of moral leadership" while gaining access to meetings and deliberations that would allow the extension of a control strategy.<sup>37</sup> However, with the change of administration and the events of September 2001, a U.S. marginalization strategy re-emerged.<sup>38</sup> The United States initially tried to marginalize the court's moral legitimacy, pointing to the potentially unfettered discretion the ICC Prosecutor would have, and asserting state sovereignty as essential since governments should be able to choose between prosecution and national reconciliation. This moral argument failed

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29. *Id.* at 56.

30. *Id.* at 54.

31. *Id.* at 56.

32. *Id.* at 60.

33. *Id.* at 61.

34. *Id.* at 63.

35. *Id.* at 64.

36. *Id.* at 69–70. President Clinton apparently only signed the Rome Statute because a government staffer interested in human rights happened to find that the President had scribbled "I suppose there's nothing we can do about this?" in a news article on the ICC, and then worked to persuade the president that signing was still possible. This detail is another little piece in the account of ICL as a series of "bizarre" coincidences, rather than an inevitable narrative.

37. *Id.* at 70–71.

38. *Id.* at 72–73.

mostly for hypocrisy, given the strong U.S. precedent of humanitarian intervention throughout the 1990s and the United States' participation in setting up tribunals in the former Yugoslavia and Rwanda that did not allow states to choose their own methods. Coupled with the rhetorical attacks, the United States advanced a strategy of bilateral immunity agreements; but this, too, met obstacles from states whose support was by then necessary in the emerging "war on terror." While it largely won the immunity agreements it wanted, even with states that were parties to the ICC, the United States lost the "battle of ideas," and its allies kept joining the court.<sup>39</sup>

### *C. Development*

Having drawn in detail the historical backdrop and immediate lead-up to the establishment of the ICC as a permanent institution, the book goes on in chapters four through six to outline the trajectory of the court in its first eleven years of operation, detailing various developments which illuminate the evolving relationship of the ICC and major-power states in that time. The court began its work in a post-9/11 world of increased Western military intervention and, conversely, a decrease of violence in the world's weakest states.<sup>40</sup> As the personnel of the institution began to be chosen, the first election of judges took place<sup>41</sup> and the search for the court's first prosecutor began. While the United States apparently sat out the negotiations of this latter choice, all those involved acknowledged that prior U.S. approval of the eventual candidate, Luis Moreno-Ocampo, "played very much in his favor."<sup>42</sup>

That prior approval appeared well placed when Moreno-Ocampo took up his position shortly after the outbreak of the Iraq War. The ICC's first Chief Prosecutor made his disinterest in investigating Iraq (and thus the United States and other major powers) felt as widely as he could, even before officially beginning his job.<sup>43</sup> In the conceptual framework, Moreno-Ocampo began as a "pragmatic," potentially even "captured," Prosecutor in his behavior towards states. He was joined in this signaling effort towards the United States by other key figures, such as the court's first Registrar.<sup>44</sup> With his subsequent announcement of the Congo as his first area of investigation, Moreno-Ocampo set into place the pattern of OTP discretion in initiating investigations: a focus on "internal violence in a part of the world where these [major] powers had few direct interests and where the United Nations was already heavily engaged."<sup>45</sup>

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39. *Id.* at 73–75.

40. *Id.* at 80–81.

41. *Id.* at 82–83, tbl.4.1 (showing how seven out of nine key ICC funders—that is, the major-power states actively participating in the process—managed to elect judges in the first round).

42. *Id.* at 85.

43. *Id.* at 87.

44. *Id.* at 90.

45. *Id.* at 91.

Importantly, the book draws attention to a key, but little-mentioned, part of the OTP in which this pattern of discretion is carried out: the Jurisdiction, Complementarity, and Cooperation Division (JCCD).<sup>46</sup> JCCD's function of openly reviewing the political context of potential investigations incurred suspicion from the outset from those within the OTP who viewed it as an essentially political organ in a legal office.<sup>47</sup> This structure of a political office within a legal one mirrored the blurred legal and political relationship OTP officials were trying to establish with states: working in partnership, constructively, but not too closely,<sup>48</sup> while insisting that their investigation decisions all resulted from purely legal assessments of the locations of the gravest crimes.<sup>49</sup> The office strove for an outwardly apolitical appearance even though this was out of step with the reality even prior to the office's official establishment. By 2005, a compliant and docile ICC working in step with American interests had paved the way for a U.S. change of heart from prior Bush-era marginalization.<sup>50</sup>

From 2005 to 2008, the ICC experienced a conceptual breakthrough in its relations with the United States in the abstract, but this was not matched by concrete support in specific situations. Having domestically condemned the situation in Darfur as genocide, the United States was trapped by its own moral rhetoric when the possibility of referring the situation to the ICC through the UN Security Council was raised. Some U.S. actors openly highlighted the possible benefits in the form of increased control over the ICC's investigations that might accrue to the United States through such a referral. Indeed, the P5 went on to tailor-make a Sudan referral that set limits on the scope of investigation and its funding. U.S. and ICC personnel began to meet publicly, and not unhappily.<sup>51</sup> While the battle deaths increased in the U.S. battlefields of Iraq and Afghanistan, the OTP steadfastly focused on the Democratic Republic of the Congo and Uganda, and the United States continued to warm to the ICC.<sup>52</sup>

At this point in time, the first instances of harsh OTP rhetoric against major-power states took place. Facing a lack of state support to pursue the state(s)-initiated investigation in Sudan, the Prosecutor spoke out strongly against the possibility of political compromise and accused states that did not actively support the ICC of actively undermining it.<sup>53</sup> He repeated this rhetoric at the UN.<sup>54</sup> Importantly, he was speaking against all states, not differentiating between members and non-members, because the reality by this point was that

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46. *Id.* at 94.

47. *Id.* at 95.

48. *Id.* at 98.

49. *Id.* at 101.

50. *Id.* at 107.

51. *Id.* at 110–14.

52. *Id.* at 122–23.

53. *Id.* at 131.

54. *Id.* at 137.

support for the ICC was accruing on an ad hoc basis, rather than along membership lines, enabled by the flexibility and weakness of cooperation obligations in the Rome Statute.<sup>55</sup> By 2008, the court had established itself as an institution, shored up a level of support, and even cultivated an open relationship with the United States; but its actual ability to influence the behavior of major-power states remained unclear, at best, and minimal, at worst.<sup>56</sup>

For the final part of the book, covering 2008 to 2013, that hazy picture of court-state power dynamics drawn by Bosco's narrative persists. Major-power states accommodated the court's existing operations, but the full effect of this accommodation on the court's independence is not known.<sup>57</sup> Those five years entrenched earlier patterns of a largely deferential OTP, but power plays between various actors complicated the picture. The arrests of progressively more powerful actors provided a series of incremental successes for the ICC.<sup>58</sup> Moreno-Ocampo's determination to issue an arrest warrant against Omar Al-Bashir, President of Sudan, despite all major-power states advising against this, was an outward shift further away from "captured" to "pragmatic" prosecutorial behavior, and his harnessing of moral weight to effect support for the arrest warrant was an encouraging example of the rhetorical moral authority of the ICC being brought to bear on a concrete situation.<sup>59</sup> Meanwhile, however, the established deferential prosecutorial trend continued, as Bosco shows through a comparison of Russia-Georgia, Gaza, and Kenya. Only the last of these three situations received ICC scrutiny and then the first ever *proprio motu* investigation (that is, an investigation instigated by the Prosecutor, rather than by the state party under investigation or through the UN Security Council), despite similar crimes, timelines, and death tolls in all three.<sup>60</sup> Meanwhile, the all-African docket and the transparency of political motivations behind investigation decisions, while supported by major-power states, had begun to catalyze large regional dissatisfaction with the ICC, most sharply from the African Union.<sup>61</sup>

Being pragmatic towards some states ensured results that would deeply anger others, and when the major-power states refused to accommodate the OTP as it had accommodated them, the Prosecutor finally publicly expressed frustration and directed it at specific major-power states.<sup>62</sup> This expression of frustration did not yield results in Sudan,<sup>63</sup> and the pattern of events was set to

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55. *Id.* at 136.

56. *Id.* at 137–38.

57. *Id.* at 139.

58. *Id.* at 141.

59. *Id.* at 142–48.

60. *Id.* at 148–51.

61. *Id.* at 151.

62. *Id.* at 156 (chiding the United Kingdom's "complex agenda" in Sudan).

63. *Id.* at 158, tbl.6.2 (showing President Al-Bashir's travels abroad after the ICC issued its arrest warrant).

repeat itself again from 2011 onwards, this time in relation to Libya. Bosco returns, at the end of his narrative, to the place where it began and the ICC's brief moment as a key part of the strategy in Libya, which was quickly overshadowed by NATO's military and political involvement in the country.<sup>64</sup> In the meantime, a new Chief Prosecutor was appointed, Fatou Bensouda, who cleaved to the deferential strategy of her predecessor, whose deputy she had been for many years.<sup>65</sup> Going into 2013, the Libya and Sudan investigations remained stalled, without major-power interest in enforcing arrest warrants. Meanwhile, the United States willingly handed over Bosco Ntaganda of the Democratic Republic of the Congo, yet another defendant who safely fit the deferential prosecutorial blueprint established ten years previously, to the ICC.<sup>66</sup> The book concludes its narrative inconclusively; as physical ground is broken for the ICC's headquarters, its alterations to the political landscape appear "less clear."

## II.

### DISCUSSION

#### *A. Bosco's Conceptual Framework*

The conceptual framework is simple enough to be understood by the casual reader while yielding a lot of insight for all readers into how best to understand the actions of states and the ICC. While Bosco makes clear his answers as to where states and the ICC currently fall within that framework, there is a debate to be had both on whether the concepts as defined are sufficiently distinct and on whether the facts fit the framework in the way Bosco argues they do. On the model for states' behavior towards the ICC, the line drawn between "marginalization" behavior and "control" behavior blurs when applied to empirical examples. Bosco states that Security Council referrals with P5 consent are an example of control behavior, particularly of the United States' shift from marginalization to control during the eleven years of the court's existence thus far. However, such referrals could equally be drawn as marginalization techniques on Bosco's own definition of the term.<sup>67</sup> By creating these referrals but then failing to fund them, drawing them more narrowly than the court's mandate should extend, and standing by while the court fails to apprehend any of the suspects, P5 states like the United States could be said to be actively marginalizing the court, making it appear weak, toothless, and ineffective as a tool for international justice while also attempting to control it.

In addition, Bosco does not go too deeply into what the third option, "acceptance," could mean. Unlike marginalization or control, there is not much

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64. *Id.* at 171.

65. *Id.* at 174.

66. *Id.* at 175.

67. "Actively work[ing] against the institution, seeking to limit its reach and delegitimize it through formal and informal means." *Id.* at 13.

evidence of it in practice in the first eleven years of the state relations with the ICC, although increasing “acceptance” for the court would seem to be vital to its viability as an independent legal institution. Just as marginalization and control can be difficult to distinguish, acceptance appears to overlap with control behavior, at least in terms of what is empirically observable. In most situations, how can acceptance on the part of states, either due to norm-acceptance or a favorable cost-benefit analysis, be distinguished from the sort of control behavior that appears outwardly pro-ICC but is actually carried out with the *intent* to control the court? Bosco is often able to distinguish these behaviors because of his access to high-level interviewees. Such interviews are invaluable in constructing a historical account of the ICC. However, it would most likely not be possible to elicit similarly frank analysis from key figures closer in time to events. This means that it will be difficult to build on Bosco’s work by analyzing future events within his conceptual framework as they occur, since stated or apparent motives for actions at the time of events may differ greatly from motives revealed in hindsight.

When analyzing the Prosecutor’s behavior towards states, Bosco says that the Prosecutor is strategic, not captured, within the fourfold definition of potential prosecutorial behavior. Whether this is the best description of the Prosecutor’s position is highly debatable. None of the events in the book really explain why the Prosecutor is not captured. The first Prosecutor seemed, even prior to his tenure, to have been “self”-captured and then caught up by the captured patterns he had established. To make the argument for the strategic prosecutor, Bosco distinguishes between the Prosecutor’s relative deference at the “initiation” of prosecution stage, for example in not protesting the limited terms of the UN Security Council’s referral of Sudan to the ICC,<sup>68</sup> and relative independence at the “investigation” of prosecution stage, such as the Prosecutor’s behavior later in the Sudanese investigation in pressing for an arrest warrant against Sudanese President Al-Bashir despite P5 resistance.<sup>69</sup> However, if the deference or constraint at the initiation stage is so great as to effectively amount to the Prosecutor’s capture, how meaningful, if it all, is his transition to a more strategic role in the investigation phase? The strategic role taken by the Prosecutor in the investigation phase has such a narrow scope of independent action, since all he can do is push against the specific terms of the capture at the initiation stage, that it does not seem worthwhile to describe the Prosecutor as not-captured. If Bosco wishes to show that there is something more than capture to be seen in the Prosecutor’s behavior towards states, stronger evidence would be desirable.

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68. *Id.* at 112–13.

69. *Id.* at 163.

*B. Chronology and Individual Figures in Bosco's Narrative*

The chronological structure of the book, following a narrative of ICL rather than specific case studies, works very well in the first four chapters. Bosco makes clever use of this structure. For example, chapter two, a very good introduction to the origins of ICL for those new to the field, may feel like a reread of familiar history for experienced readers, but it actually sets the reader up to reflect on how the same themes have endured throughout the story of ICL. As Bosco says, he is highlighting the “twists” in the overarching narrative.<sup>70</sup> Some examples of such “twists” merit highlighting, although the entire chapter is interwoven with various other parallels between ICL at its inception and ICL now. In the account of Nuremberg, the severe destruction wrought by the Allied forces is listed before the book turns to the account of the prosecution of German and Japanese citizens and the complete absence of trials of Allied forces.<sup>71</sup> Thus, Bosco subtly structures his narrative to keep the reality of victors’ justice at the inception of modern ICL foremost in the minds of the reader.

A few pages on in chapter two, US Secretary of War Henry Stimson is quoted as advocating for trials as part of the advance of civilization, as a truth-recording exercise, and as a present and future deterrent to such actions.<sup>72</sup> Later in the book, and fifty-to-sixty years on, these same rationales would be raised by various people as the central goals and benefits of ICL. Regarding the ICTY’s first suspect, Duško Tadić, it is said that “pursuing the case was almost perverse” given the defendant’s minor role, but the Prosecutor “was desperate to show that the tribunal was in motion.”<sup>73</sup> Without mentioning the ICC’s first defendant Thomas Lubanga specifically, the book vividly echoes the criticisms that his trial would later face.

While the narrative structure works well for most of the book, it becomes increasingly strained through chapters five and six. As the story develops and the court’s mandate and number of cases expands, the narrative becomes more complex. The story of the court’s early years could be told succinctly, narrowly focused as it was on just Uganda and the Democratic Republic of the Congo at that time. By chapter five, the book has to trace the facts of a growing number of situations and the related maneuvers of ICC and state actors, leading to a narrative that moves from one facet of one case to a discrete part of another in sometimes seemingly unconnected ways. To his credit, Bosco is able to keep the plotting tight and the story compelling for almost the entire book despite having to cover a disparate set of persons and events from around the world. However, chapter six, in particular, suffers from a discernibly less coherent narrative than the preceding chapters.

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70. *Id.* at 23.

71. *Id.* at 22.

72. *Id.* at 25.

73. *Id.* at 37.

Of Bosco's disparate cast of characters, some become vivid and individualized to the reader over the course of the book, while others remain shadowy figures, not easily separable from their institutions. This is because many of the author interviews, which are the key source utilized by the book, are anonymized. Bosco presumably does this to encourage people to speak candidly, but it leads to an unevenness in the narrative. The reader develops a clear sense of the individual aims, personal commitment to the project of ICL, and level of influence carried by people like Luis Moreno-Ocampo and John Bolton, but is less sure about the force of what, for example, "a senior UN official"<sup>74</sup> has to say, since that official's background and biases are unknown.

More worryingly, where Bosco's interview subjects are named, the reader may question whether Bosco's methodology has at times made him beholden to narrating their version of events. This is an important question to consider when debating whether the Prosecutor is really strategic rather than captured, as discussed above, but it is actually in a separate part of the analysis that evidence of Bosco's potential personal bias leads him to strike the one emphatically wrong note in his book. In a section entitled "The Prosecutor and His Critics," Bosco discusses, amongst other "criticisms," the fact that Luis Moreno-Ocampo was accused of rape at one point in his tenure as Prosecutor.<sup>75</sup> Disappointingly, Bosco follows the common journalistic tactic of reporting rape allegations as salacious news, introducing the incident as "a hint of scandal" which, he goes on to describe, "roil[ed] the court."<sup>76</sup> Furthermore, when describing Moreno-Ocampo's strenuous opposition to an independent prosecutorial oversight mechanism just ten pages later, Bosco fails to mention the role that the rape allegations might have played in Moreno-Ocampo's position on the issue.<sup>77</sup> While this section does not overshadow the importance and value of this book, it is jarring to the reader and demands explanation.

### III.

#### CONCLUSION

*Rough Justice* is an excellent work on the recent history of the ICC, succinct and subtle in its analysis of the court's first eleven years and the preceding half-century that led to its creation. Bosco's narrative uses the framework of international relations theory to structure a compelling analysis of the various legal and political developments in the court's first decade of work. Its innovative focus on the role, motivations, and political influence of the Prosecutor yields valuable insights. The account of US-ICC relations provides much-needed nuance, going past the usual characterization of the United States

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74. *Id.* at 91.

75. *Id.* at 152–53.

76. *Id.* at 152.

77. *Id.* at 163.

as a staunch opponent of the court and showing how it has moved gradually from marginalization tactics towards greater engagement with the court.

*Rough Justice* is rich with analysis for future scholarship to both build on and counter. Using Bosco's analytical framework, a counter-narrative of the ICC's history, which places major-power states and the Prosecutor in a relationship other than "mutual accommodation," could be presented. New or alternative frameworks could be developed for analysis of the ICC and its Prosecutor as subjects in international relations theory and used to show the court's development in yet another light. The ICC is often viewed and analyzed in historical accounts of ICL as the culmination of the past events at Nuremberg and the ad hoc tribunals. Bosco has paved the way for analysis of the court as a present institution in its own right, one meriting rigorous analysis of its history thus far, a treatment which in turn elucidates its viable policy options going forward. For future authors writing on the history and politics of the ICC, *Rough Justice* sets the bar high.