Who’s Afraid of the Big Bad Wolf? The International Criminal Court as a Weapon of Asymmetric Warfare

W. Chadwick Austin∗
Antony Barone Kolenc**

ABSTRACT

The United States is engaged in a war on terror against enemies who wage “asymmetric war” through terrorism, media manipulation, and “law-fare”—exploiting judicial processes to achieve political or military objectives.

This Article explores whether the fledgling International Criminal Court (ICC) could eventually be exploited by these groups as a tool of asymmetric “law-fare.” It briefly traces the history of the ICC and recounts why the United States opposes the Court. Examining the methods of asymmetric war, the Authors then explore whether the ICC could be exploited by future asymmetric warriors.

∗ W. Chadwick Austin, Associate Professor, United States Air Force Academy, is also a Lieutenant Commander in the U.S. Navy Reserves (J.D., University of Cincinnati College of Law). Antony Barone Kolenc, Assistant Professor, United States Air Force Academy, is also an active-duty Major in the U.S. Air Force (J.D., University of Florida College of Law). Professor Austin thanks his wife, Major Erica Austin, United States Air Force, for her love and insight. Major Kolenc thanks his wife, Alisa, for her loving support while writing this Article. The Authors also thank Miss Eryceerla Willie for her research on this Article while a legal intern at the U.S. Air Force Academy. The views expressed in this Article are those of the Authors and do not reflect the official policy or position of the U.S. Air Force, Department of Defense, or the U.S. Government.
** Major, U.S. Air Force.
The Authors describe three asymmetric methods that could be used to exploit the Court: (1) misusing the Court’s investigative processes, (2) filing questionable or fraudulent complaints, and (3) manipulating mass media. They then discuss three terrorist objectives that could be obtained through asymmetric tactics.

The Authors conclude that, at its current stage, the Court does not pose a large threat from this exploitation. A future, more stable ICC, however, could pose a greater danger—especially if the United States ratifies the Rome Treaty.

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