Chapter 1

"Isms" or the International Criminal Court and its place in the international legal order: Review of a quarter century

Péter Kovács

Abstract

This article provides an overview of the twenty-five-year existence of the International Criminal Court (ICC). The ICC has faced various challenges since its establishment. Some of these challenges were partly rooted in the work done in the final days of the Rome Diplomatic Conference, where a mutually acceptable text had to be forged on the basis of often conflicting textual proposals. Other challenges emerged with the changes in the political will of several states. The chambers of the ICC tried to establish a coherent jurisprudence able to cope with the eventual imperfections of the Rome Statute. While jurisprudential practice can help identify appropriate content for the complex formulas, which are sometimes the fruit of diplomatic ambiguity, political challenges are more difficult to overcome. Political actors cited concerns regarding "anti-Africanism", lack of efficiency, and "politicisation"—critiques often intended to conceal a lack of genuine co-operation or even animosity towards independent international control. As this article shows, an important part of the legacy of the International Criminal Tribunal for the former Yugoslavia (ICTY) lies in the autonomous development of ICC jurisprudence and the specificities of common and continental law, as well as "criminal law" and "public international law". The relevance of the ICC cannot be measured in the number of adjudicated cases

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and condemned perpetrators alone. The impact of the ICC on reparation and assistance to victims and the uniform interpretation of international criminal law at various law faculties and military academies cannot be overlooked.

Keywords: cases and situations, common law, complementarity, co-operation, continental law, human rights, ICC, ICTY, ICTR, international criminal law, international humanitarian law, jurisprudential coherence and reforms, Practice Manual, procedural guarantees, victim's reparation

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1. Introduction and explanation of the chosen title

When the conference organisers asked me to prepare an introductory study, I thought a lot about how to present the twenty-five-year history of the International Criminal Court. Logically, such a presentation can be based on the dichotomy of challenges and results, but this is a well-worn approach in analyses. When I chose the term "isms" – the meaning of which is not immediately clear – I remembered the title of a book that I saw in the window of a bookshop when I was a child: *Az Izmusok Története* ('History of the Isms'),[1] written by the Hungarian poet, painter, and left-wing activist, Lajos Kassák,[2] a member of the *avant-garde* movement. In this book, Kassák presents an overview of the great movements of the late nineteenth and early twentieth centuries, including impressionism, cubism, fauvism, futurism, constructivism, and dadaism. Although I did not understand the title at that time, it fascinated me.

I hope that the late Kassák will pardon my borrowing this term from the title of his book to guide you through the twenty-five-year history of the International Criminal Court (ICC), framing it as a story where the main issues can be characterised by expressions ending in "ism".[3] I apologise to philosophers who use these expressions in other ways and to those who consider some of these "isms" as counter to the proper use of the English language.

1 Kassák, 1972.

2 https://en.wikipedia.org/wiki/Lajos_Kassák (Accessed: July 1, 2023).

3 Specifically, (1) Idealism vs. realism?; (2) Institutionalism (institution building, jurisprudence-building with "ICTY-ism" and "independentism"); (3) Parallelism (parallel use of common law and continental law approaches); (4) "Anti-Africanism" and 'legal neo-colonialism' (unsubstantiated charges and manipulative criticism); (5) "Out of Africanism" (reaction or logical consequences?); (6) Comparatism (or how to assess efficacy); (7) "Human rights" protectionism' (to protect the rights of the accused and to protect victims and witnesses); (8) Humanism (participation of victims and assistance and reparation for victims); (9) Activism vs. textualism; (10) Criminal law centrism and international law centrism; (11) Co-operationism (cooperation with states, international organisations and entities, and NGOs); (12) Criticism (internal critics, external critics, friendly and unfriendly); (13) Adaptationism; and (14) Futurism or "long termism"?

2. The past twenty-five years through the prism of the "ism"

2.1. Idealism vs. realism?

The notion of a permanent international criminal tribunal was long dismissed as idealist fantasy. As a consequence of the fate of the plans submitted by Gustave Moynier,[4] Vespasian Pella,[5] and the Association Internationale de Droit Pénal,[6] non-entry into force of two related conventions[7] adopted under the auspices of the League of Nations in 1937, and failure to fulfil the promise stipulated in Article VI of the Convention on the Prevention and Punishment of the Crime of Genocide,[8] the world considered that such a tribunal was a noble but unrealistic pursuit, and only of interest to incurable idealists.

In 1989, the idea of establishing an international criminal court gained credence. Indeed, the initiative submitted by Trinidad and Tobago, renewed confidence of the International Law Commission that their work would receive the necessary attention and action, and developments of the Rome Diplomatic Conference and preparatory inter-governmental expert meetings signalled a decisive shift—a realisation that the work would succeed and that idealism had prevailed.

Many governmental experts were working hard to establish an institution entrusted with the task of putting an end to impunity.

However, as the old saying goes, "the devil is in the details".

Realism intertwined with "Realpolitik" did not disappear, significantly influencing the negotiations, including those on the triggering of the ICC's jurisdictional competence, the role attributed to the United Nations Security Council (UNSC), and the definition of aggression. Nobody was shocked by P5 members insisting on the role of UNSC as the third pillar in the determination of the ICC's jurisdictional competence, alongside *ratione loci* and *ratione personae* and in conjunction with the principle of *pacta tertiis nec nocent, nec pro sunt*.

The finalised form was vehemently criticised, raising concerns that (*i*) P5 members would never join the ICC and (*ii*) would not accept the prosecution of their nationals by the ICC, (*iii*) would do their best to send situations from Non-States Parties to the Prosecutor, and (*iv*) would prevent their allies from facing prosecution.

4 Moynier, 1872.

5 Pella, 1925.

6 Draft prepared by the International Association of Penal Law on adding a criminal chamber to the Permanent Court of International Justice (January 16, 1928).

7 Convention for the Prevention and Punishment of the Crime of Terrorism and Convention for the Creation of an International Criminal Court.

8 1948: Convention on the Prevention and Punishment of the Crime of Genocide: Article VI: Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.

Practice has proved these assumptions to be partly correct. While France and the United Kingdom joined the ICC, they have yet to sign the 2010 Kampala amendment on the definition of the aggression. Meanwhile, although the United States and Russia signed the Rome Statute, they later withdrew their signatures. The UNSC referred only two situations to the ICC, namely, those concerning Sudan and Libya, while likely vetoing or threatening to veto the referral of at least two other situations. Despite being a Non-State Party, Russia co-operated with the ICC for a while, including the first part of the preliminary examination of the situation in Georgia. Under Democrat presidents Barack Obama and Joe Biden, the US co-operated with the ICC concerning situations in Africa, Myanmar, and Ukraine. Neither the US nor Russia accepted the prosecution of their nationals before the ICC (e.g. Afghanistan and Ukraine) and the media have largely covered the different steps taken. Meanwhile, although the UK, as a State Party, accepted the preliminary examinations concerning British soldiers serving in Iraq, ICC action ended with the recognition of complementarity in respect to the British investigation and internal procedures over their own soldiers.

2.2. Institutionalism (institution building, jurisprudence -building with "ICTY-ism", and "independentism")

As always happens when a new judicial institution is set up, the first years of the ICC were spent preparing and adopting the necessary normative documents, namely, Elements of Crimes (2002) and the Rules of Procedure and Evidence (2002), both of which are complementary to the Rome Statute (1998). While the Rome Statute was adopted at the Rome Diplomatic Conference, Elements of Crimes and RPE were adopted during the first session of the Assembly of States Parties (ASP) during the first session, a few weeks after the Rome Statute was entered into force.

The Regulations of the Court were adopted by the judges on 26 May 2004, Regulations of Registry was approved by the Presidency of the ICC on 6 March 2006, and the Regulations of the Office of the Prosecutor was entered into force on 23 April 2009, after its adoption by the Prosecutor. The Code of Professional Conduct for Counsel was adopted by the ASP on 2 December 2005. Some of these documents have undergone minor modifications since their entry into force.

Beside normative institution-building and its human staffing aspects, one of the main issues was whether and to what extent the experiences of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) would be beneficial to the ICC. Pervasive during the first decade, this "ICTY-ism" was due to (*i*) the vocational similarity of the institutions, (*ii*) the similarity in the statutory texts, (*iii*) the developed jurisprudence, and (*iv*) the arrival of qualified experts from the ICTY staff.

Meanwhile, "independentism" can be explained by (*i*) the consideration that there are substantial organic and textual differences between the courts. For example, the ICTY had no "Pre-Trial Chamber" and some forms of individual criminal liability were presented at the ICTY as being of customary law in character. In particular, in

the Rome Statute, Article 25(3)[9] and Article 28[10] regulate the issue of liability similarly to the Joint Criminal Enterprise (JCE), which has even more complicated and criticised variants (JCE I, JCE II, JCE III), but in precise written form. Moreover, war crimes are formulated in a more detailed manner in the Rome Statute, embracing crimes with no equivalent in the ICTY Statute, and so on. (*ii*) With the emergence of the ICC's own jurisprudence, the jurisprudential reference to the ICTY and ICTR *dicta* is not necessarily inevitable. (*iii*) ICC judges and staff include diplomates and legal experts who were present at different stages of the preparation of the Rome Statute. Logically, their involvement in the negotiations and knowledge about the reasons for opting for a precise textual formula will influence their thoughts concerning the interpretation of a given disposition. (*iv*) The arrival of those who were not directly involved in either the ICTY or Rome Conference strengthened the need

9 Rome Statute, Article 25, Individual criminal responsibility:
3. In accordance with this Statute, a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court if that person:
(a) Commits such a crime, whether as an individual, jointly with another or through another person, regardless of whether that other person is criminally responsible;
(b) Orders, solicits or induces the commission of such a crime which in fact occurs or is attempted;
(c) For the purpose of facilitating the commission of such a crime, aids, abets or otherwise assists in its commission or its attempted commission, including providing the means for its commission;
(d) In any other way contributes to the commission or attempted commission of such a crime by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:
(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of a crime within the jurisdiction of the Court; or
(ii) Be made in the knowledge of the intention of the group to commit the crime.

10 Rome Statute, Article 28, Responsibility of commanders and other superiors
In addition to other grounds of criminal responsibility under this Statute for crimes within the jurisdiction of the Court:
1. A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be, as a result of his or her failure to exercise control properly over such forces, where:
(a) That military commander or person either knew or, owing to the circumstances at the time, should have known that the forces were committing or about to commit such crimes; and
(b) That military commander or person failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.
2. With respect to superior and subordinate relationships not described in paragraph (a), a superior shall be criminally responsible for crimes within the jurisdiction of the Court committed by subordinates under his or her effective authority and control, as a result of his or her failure to exercise control properly over such subordinates, where:
(a) The superior either knew, or consciously disregarded information which clearly indicated, that the subordinates were committing or about to commit such crimes;
(b) The crimes concerned activities that were within the effective responsibility and control of the superior; and
(c) The superior failed to take all necessary and reasonable measures within his or her power to prevent or repress their commission or to submit the matter to the competent authorities for investigation and prosecution.

to develop a proper jurisprudence concerning cases that are factually different from those dealt with by the ICTY and ICTR.

2.3. Parallelism (parallel use of common law and continental law approaches)

The jurisprudential practice of the ICC is based on the parallel existence of the continental and common law approaches, although outside observers may get the impression that the latter prevails. During trials, "Objection" is often raised by the parties, and it is up to the presiding judge of the trial chamber to decide whether to sustain or overrule. Common law rules can also enter through the door opened by Article 21 (1)(c) via the general principles of law.[11] This occurred, albeit not without some hesitation, in the so-called "no case to answer" motion, which allows for the defence to stop the procedure as early as the "prosecution case" in the event of weakness of the Prosecutor's evidence. Although the "no case to answer" motion was declared compatible[12] with the framework of the Rome Statute, the given chamber decides when and on what conditions it will admit such a submission.[13]

11 Rome Statute, Article 21, Applicable law:
1. The Court shall apply:
(a) In the first place, this Statute, Elements of Crimes and its Rules of Procedure and Evidence;
(b) In the second place, where appropriate, applicable treaties and the principles and rules of international law, including the established principles of the international law of armed conflict;
(c) Failing that, general principles of law derived by the Court from national laws of legal systems of the world including, as appropriate, the national laws of States that would normally exercise jurisdiction over the crime, provided that those principles are not inconsistent with this Statute and with international law and internationally recognized norms and standards.

12 *'39. Finally, the Chamber considers it appropriate to note that the decision to, in principle, allow "no case to answer" motions is not intended to in any way pre-judge whether or not a motion of that kind should actually be pursued in this case. Bearing in mind that the purpose of permitting such motions is to promote the rights of an accused by providing a means to create a shorter, more focused and streamlined trial, the Defence should carefully consider—in light of the legal standard which will be applied, as specified above, and the evidence actually presented by the Prosecution at trial—whether or not a "no case to answer" motion is warranted in the circumstances. Such motions should not be pursued on a merely speculative basis or as a means of raising credibility challenges that are to be considered at the time of final deliberations. Nor should they be filed merely to shape the Chamber view as to the strength of the Prosecution case thus far presented'.*
The Prosecutor v. Ruto and Sang, Decision No. 5 on the Conduct of Trial Proceedings (Principles and Procedure on 'No Case to Answer' Motions), ICC-01/09-01/11-1334 03-06-2014, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2014_04595.PDF, (Accessed: July 1, 2023) § 39, p. 19.

13 *'1. While the Court's legal texts do not explicitly provide for a 'no case to answer' procedure in the trial proceedings before the Court, it nevertheless is permissible. A Trial Chamber may, in principle, decide to conduct or decline to conduct such a procedure in the exercise of its discretion.*
2. The discretion of the Trial Chamber as to whether or not to conduct a "no case to answer" procedure was not limited by internationally recognised human rights or as a result of the adoption of an adversarial trial structure'.
Judgment on the appeal of Mr Bosco Ntaganda against the 'Decision on Defence request for leave to file a "no case to answer" motion', ICC-01/04-02/06-2026 05-09-2017, https://www.icc-cpi.int/court-record/icc-01/04-02/06-2026, Key findings, (Accessed: July 1, 2023), §§ 1, 2, p. 3.
See also: The Prosecutor v. Gbagbo and Blé Goudé, Judgment in the appeal of the Prosecutor against

Another impact of common law can be observed in the more liberal approach vis-à-vis the individual opinions of judges, inserted into a judgement at different points and not necessarily in a distinct work appended to a common text approved by clear majority.[14]

Regarding the presence of continental law, consider the role played by the presiding judge during a trial, which is much stronger than that of a "tennis umpire" type judge of the Anglo-Saxon world and has the right to question the witness directly, reformulate the parties' questions, or reject their questions if they deem them repetitive or inappropriate (e.g. leading, insulting, or irrelevant). The institution of the pre-trial chamber and its attributes vis-à-vis the Prosecutor bears similarities to those of the *juge d'instruction*, albeit without direct investigative competences.

While the importance of jurisprudential "precedents" is a characteristic phenomenon of common law, it is present in the European constitutional jurisprudence of continental law countries.

The fact that the pertinence of a given piece of evidence may only be assessed in the judgement and not an interlocutory decision reflects similarities to the continental law approach. Incidentally, as the "may" in the foregoing sentence indicates, the opposite approach is also compatible with the Rome Statute and the Rules of Procedure and Evidence. The fact that evidence is formally submitted by parties is subject to the written decision of the given chamber.

In a trial, it is crucial (*i*) that the procedural issues not regulated in the Rules of Procedure and Evidence are clearly settled before the trial begins and (*ii*) that these "sub-rules" are observed throughout the trial. It goes without saying that the different trial chambers do not need to take a stance on whether to refer to the chosen rules and sub-rules of the trial as "common law" or of "continental law" rules.

Lastly, a number of the technical terms reflect common law terminology, including "calling party", "pre-trial brief", "appeal brief", "prosecutor's case", and "defence's case", among others.

Trial Chamber I's decision on the no case to answer motions, ICC-02/11-01/15-1400 01-04-2021, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_03218.PDF, (Accessed: July 1, 2023) §§ 5–7, p. 9.

14 *See: '202. […] The Appeals Chamber finds that the arguments made as to possible disagreements between the two majority judges do not affect the legal requirement for "one decision." This is because article 74(5) concerns a procedural formality in the requirement to issue one decision and does not relate to the substance of what is issued. The judges left no room for doubt in this case, stressing their full agreement with and support for the decision. The Appeals Chamber therefore rejects the Prosecutor's argument that the requirement to provide one decision was breached because "Judge Henderson provided his own full and reasoned statement and made his own findings on the evidence while Judge Tarfusser only agreed in part, and afterwards, with his findings."'*
The prosecutor v. Gbagbo and Blé Goudé, judgment in the appeal of the prosecutor against Trial Chamber I's decision on the no case to answer motions, (referred *supra*) § 202, p. 89.

2.4. "Anti-Africanism" and "legal neo-colonialism" (unsubstantiated charges and manipulative criticisms)

ICC practice[15] has often been criticised for alleged bias, "anti-Africanism", and "legal neo-colonialism", among a number of similar labels invented and attached to it with the thinly veiled objective of discrediting it. Such critiques note that the first situations referred to the Court were in Africa, with people at the top of the given national constitutional hierarchy "targeted" by the Prosecutor. The first arrest warrant concerned Omar el Bashir,[16] the president of Sudan at the time. This was followed by the investigation of the Kenyan situation linked with large-scale post-electoral violence, which led to charges against the new head of state, Uhuru Muigai Kenyatta,[17] his deputy, William Samoei Ruto,[18] and some of their close collaborators. In Côte d'Ivoire, the resigned head of state, Laurent Gbagbo,[19] his spouse,[20] and one of his ministers[21] were investigated, resulting in Gbagbo and his minister being transferred to The Hague, charged, and brought to trial. In the media, these cases were presented as a "proof" of alleged bias. The highly mediatised and manipulative image was reinforced by the fact that the indictees (or people under investigation) in other cases were also from Africa. (Indictees included, in alphabetical order, Al Hassan,[22] Al Mahdi,[23] Bemba,[24] Gaddafi,[25] Katanga,[26] Lubanga,[27] Ngudjulo,[28] Ntaganda,[29] Ongwen,[30] Yekatom, and Ngaïssona,[31] among others.)

The consecutive repetition of the pure legal fact that nearly all of these "situations" were referred to the ICC by the governments of the concerned states themselves, with the exception of the situations in Sudan and Libya, which were initiated by the UNSC. The only situation emanating from the *proprio motu* action of the

15 As this article aims to provide a short introduction to the -year practice of the ICC and aid readers unfamiliar with the documentation system of the ICC, I do not refer to the adopted legal document but to the ICC press releases, which contain functioning hyperlinks to the given judgments, reports, and decisions. Exception is made where *verbatim* citation is necessary.
16 https://www.icc-cpi.int/darfur/albashir, (Accessed: July 1, 2023).
17 https://www.icc-cpi.int/kenya/kenyatta, (Accessed: July 1, 2023).
18 https://www.icc-cpi.int/kenya/rutosang, (Accessed: July 1, 2023).
19 https://www.icc-cpi.int/cdi/gbagbo-goude, (Accessed: July 1, 2023).
20 https://www.icc-cpi.int/cdi/simone-gbagbo, (Accessed: July 1, 2023).
21 https://www.icc-cpi.int/cdi/gbagbo-goude, (Accessed: July 1, 2023).
22 https://www.icc-cpi.int/mali/al-hassan, (Accessed: July 1, 2023).
23 https://www.icc-cpi.int/mali/al-mahdi, (Accessed: July 1, 2023).
24 https://www.icc-cpi.int/car/bemba, (Accessed: July 1, 2023).
25 https://www.icc-cpi.int/libya/gaddafi, (Accessed: July 1, 2023).
26 https://www.icc-cpi.int/drc/katanga, (Accessed: July 1, 2023).
27 https://www.icc-cpi.int/drc/lubanga, (Accessed: July 1, 2023).
28 https://www.icc-cpi.int/drc/ngudjolo, (Accessed: July 1, 2023).
29 https://www.icc-cpi.int/drc/ntaganda, (Accessed: July 1, 2023).
30 https://www.icc-cpi.int/uganda/ongwen, (Accessed: July 1, 2023).
31 https://www.icc-cpi.int/carII/yekatom-ngaïssona, (Accessed: July 1, 2023).

Prosecutor was the Kenyan situation. However, this did not change the view of locally influential papers and journalists.

As a result of geographical proximity, the permeability of state boundaries, and the transboundary manoeuvring capacity of different military and paramilitary units, there was an undeniable overlap between armed actions and crimes perpetrated in the context of the situations in Sudan, Uganda, the Democratic Republic of Congo (DRC), and the Central African Republic. This fact did not prevent journalists and politicians from going ahead with their preconceptions.

Similarly, the official and public reference of the Office of the Prosecutor (OTP) on engaged preliminary examinations in the situation in Afghanistan (2007), Colombia (2006), Georgia (2008), and Honduras (2010),[32] which also appeared in numerous statements and press releases, did little to convince those who were interested in propagating these stereotypes.

Media close to the victims of these undeniable atrocities were more proactive in their following of the procedures, criticising the ICC for the length of the procedure and the eventual acquittals (or stay of proceedings) pronounced in the cases concerning Kenyan and Ivorian politicians. The "Demonstration Corner" beside the ICC compound was often used for gatherings calling on the ICC to take greater action against war crimes or crimes against humanity committed in Africa.

Several Member States pushed the African Union to convince the General Assembly of the United Nations (UNGA) to ask the International Court of Justice (ICJ) for an advisory opinion regarding the immunity of heads of states in international law with special regard to procedures before the ICC.[33] The UNGA has yet to seize the ICJ and it would appear that with the stay of proceedings (i.e. *de facto* acquittals) ordered in the Kenyatta, Ruto, Gbagbo, and Blé Goude cases, as well as Al Bashir's destitution and imprisonment in Sudan, African states no longer insist on the adoption of such a resolution.

2.5. "Out of Africanism" (reaction or logical consequences?)

As mentioned in the previous point, anti-Africanism is an unjust and unsubstantiated allegation. Nevertheless, it has undoubtedly had a significant impact on public opinion.

Although already present under the first prosecutor, Luis Moreno Ocampo, the enhanced attention paid to non-African situations became much more perceptible under his successors, Fatou Bensouda and Karim Khan. As a result of the advancement of analysis and steps taken in non-African countries and the emergence of new armed conflicts with all their inhumane consequences, the OTP's agenda

32 See, for example, Report on Preliminary Examination Activities (2011), https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/63682F4E-49C8-445D-8C13-F310A4F3AEC2/284116/OTPReportonPreliminaryExaminations13December2011.pdf, (Accessed: July 1, 2023) pp. 6, 9, 14, 18.

33 Pillai 2023.

concerning preliminary examinations[34]and investigations[35] came to include ten "situation countries" from other continents, while the nationality of the alleged perpetrators pointed to even more non-African states. New self-referrals have also been submitted.[36]

Certainly, in some "situations", the Prosecutor concluded that he/she would not open an investigation for reasons like lack of gravity (e.g. when the Israeli Navy used force to prevent the Mavi Marmara and other steamships from breaching the large, contested, and unilaterally imposed maritime blockade on the Mediterranean coast of the Gaza strip of Palestine),[37] or on the basis of recognising the satisfaction of the criteria of complementarity (e.g. the preliminary examination concerning war crimes committed by British soldiers in Iraq[38] and the situation in Colombia[39]).

34 In 2020: Bolivia, Colombia, Palestine, Iraq/UK, Philippines, Ukraine, Venezuela
Report on Preliminary Examination Activities 2020, https://www.icc-cpi.int/sites/default/files/itemsDocuments/2020-PE/2020-pe-report-eng.pdf, (Accessed: July 1, 2023) pp. 21, 24, 27, 28, 45, 55, 59, 68.

35 Concerning regions outside Africa, in 2023, there were investigations of perpetrators in situations concerning Afghanistan, Georgia, Myanmar, Palestine, and the Philippines.
https://www.icc-cpi.int/ (Accessed: July 1, 2023) (See under: Situations and cases).

36 Statement of the Prosecutor of the International Criminal Court, Mrs Fatou Bensouda, on the referral by Bolivia regarding the situation in its own territory, https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-mrs-fatou-bensouda-referral-bolivia, (Accessed: July 1, 2023).

37 Registered Vessels of Comoros, Greece and Cambodia, ICC-01/13, https://www.icc-cpi.int/comoros (Accessed: July 1, 2023); ICC Pre-Trial Chamber I rejects Comoros' request for judicial review of the Prosecutor's decision not to open an investigation, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rejects-comoros-request-judicial-review-prosecutors-decision-not-open, (Accessed: July 1, 2023); Situation on the Registered Vessels of Comoros, Greece and Cambodia: ICC Appeals Chamber rejects the Prosecutor's appeal, https://www.icc-cpi.int/news/situation-registered-vessels-comoros-greece-and-cambodia-icc-appeals-chamber-rejects, (Accessed: July 1, 2023); ICC Pre-Trial Chamber I requests Prosecutor to reconsider decision not to investigate situation referred by Union of Comoros, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-requests-prosecutor-reconsider-decision-not-investigate-situation, (Accessed: July 1, 2023).

38 Report on Preliminary Examination Activities (2020)—Iraq/UK, https://www.icc-cpi.int/news/report-preliminary-examination-activities-2020-iraq/uk, (Accessed: July 1, 2023); Statement of the Prosecutor, Fatou Bensouda, on the conclusion of the preliminary examination of the situation in Iraq/United Kingdom, https://www.icc-cpi.int/news/statement-prosecutor-fatou-bensouda-conclusion-preliminary-examination-situation-iraq/united, (Accessed: July 1, 2023).

39 ICC Prosecutor, Mr Karim A. A. Khan QC, concludes the preliminary examination of the Situation in Colombia with a Cooperation Agreement with the Government charting the next stage in support of domestic efforts to advance transitional justice, https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-khan-qc-concludes-preliminary-examination-situation-colombia, (Accessed: July 1, 2023); Statement of ICC Prosecutor Karim A. A. Khan KC on conclusion of technical visit of the Office of the Prosecutor to Colombia, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-conclusion-technical-visit-office-prosecutor, (Accessed: July 1, 2023).

However, other preliminary examinations led to the opening an investigation, including the situations in Afghanistan,[40] Bangladesh/Myanmar,[41] Georgia,[42] Palestine,[43] the Philippines,[44] Ukraine,[45] and Venezuela.[46]

40 ICC judges authorise Prosecution to resume investigation in Afghanistan, https://www.icc-cpi.int/news/icc-judges-authorise-prosecution-resume-investigation-afghanistan, (Accessed: July 1, 2023); Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, following the application for an expedited order under article 18(2) seeking authorisation to resume investigations in the Situation in Afghanistan, https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-following-application, (Accessed: July 1, 2023); Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan QC, on the escalating violence in the Situation in Afghanistan, https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-qc-escalating-violence-situation, (Accessed: July 1, 2023); Afghanistan: ICC Appeals Chamber authorises the opening of an investigation, https://www.icc-cpi.int/news/afghanistan-icc-appeals-chamber-authorises-opening-investigation, (Accessed: July 1, 2023); ICC judges reject opening of an investigation regarding Afghanistan situation, https://www.icc-cpi.int/news/icc-judges-reject-opening-investigation-regarding-afghanistan-situation, (Accessed: July 1, 2023).

41 ICC Pre-Trial Chamber I rules that the Court may exercise jurisdiction over the alleged deportation of the Rohingya people from Myanmar to Bangladesh, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rules-court-may-exercise-jurisdiction-over-alleged-deportation, (Accessed: July 1, 2023); ICC judges authorise opening of an investigation into the situation in Bangladesh/Myanmar, https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar, (Accessed: July 1, 2023).

42 ICC Pre-Trial Chamber I authorises the Prosecutor to open an investigation into the situation in Georgia, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-authorises-prosecutor-open-investigation-situation-georgia, (Accessed: July 1, 2023); Situation in Georgia: ICC Pre-Trial Chamber delivers three arrest warrants, https://www.icc-cpi.int/news/situation-georgia-icc-pre-trial-chamber-delivers-three-arrest-warrants, (Accessed: July 1, 2023).

43 https://www.icc-cpi.int/palestine; Statement of ICC Prosecutor, Fatou Bensouda, respecting an investigation of the Situation in Palestine, https://www.icc-cpi.int/news/statement-icc-prosecutor-fatou-bensouda-respecting-investigation-situation-palestine, (Accessed: July 1, 2023); ICC Pre-Trial Chamber I issues its decision on the Prosecutor's request related to territorial jurisdiction over Palestine, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-issues-its-decision-prosecutors-request-related-territorial, (Accessed: July 1, 2023).

44 Situation in the Philippines: ICC Pre-Trial Chamber I authorises the opening of an investigation, https://www.icc-cpi.int/news/situation-philippines-icc-pre-trial-chamber-i-authorises-opening-investigation, (Accessed: July 1, 2023); ICC Pre-Trial Chamber I authorises Prosecutor to resume investigation in the Philippines, https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-authorises-prosecutor-resume-investigation-philippines, (Accessed: July 1, 2023).

45 Situation in Ukraine: ICC judges issue arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova, https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and, (Accessed: July 1, 2023); Statement by Prosecutor Karim A. A. Khan KC on the issuance of arrest warrants against President Vladimir Putin and Ms Maria Lvova-Belova, https://www.icc-cpi.int/news/statement-prosecutor-karim-khan-kc-issuance-arrest-warrants-against-president-vladimir-putin, (Accessed: July 1, 2023); Statement of ICC Prosecutor, Karim A. A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation, https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukraine-receipt-referrals-39-states, (Accessed: July 1, 2023).

46 Statement of the Prosecutor of the International Criminal Court, Karim A. A. Khan KC, following the application for an order under article 18(2) seeking authorisation to resume investigations

Despite the easy media accessibility of the ICC's press releases briefly explaining the actual issues, a large proportion of the African press continued to advance allegations concerning the ICC's "biased" approach and "legal colonialism". However, the purpose of continuing with other dockets is not to please the media, but to perform the ICC's legal duties in accordance with the statute.

2.6. Comparatism (or how to assess efficacy)

During the first two decades, the ICC received plenty of both professional and constructive criticism and unfriendly, politically-oriented criticism. Procedures were deemed lengthy, costly, and inefficient, and as targeting only low-level perpetrators and third world countries (i.e. 'cherry picking from the lowest branches of the tree'). The Court was also criticised for using "legal English" and "*français juridique*", language that can only be understood by academics and professionals of international criminal law.

What institution can the ICC be compared to in this respect?

Comparing the ICC to national criminal tribunals would be *ab ovo* incorrect for several reasons. (*i*) Generally speaking, national criminal tribunals operate in different legal and factual circumstances, in co-operation with the national police, and already possess data and facts about similar crimes. (*ii*) Doing so would raise the question of which tribunals should be chosen and from which country. (*iii*) Choosing a tribunal from a "situation country" collide with the principle of complementarity. After all, the reason for the ICC's involvement is that the national prosecution did not function properly in respect to crimes falling under Article 5 of the Rome Statute in the given country. (*iv*) If we choose a tribunal in a state far from the conflict situations, what type of cases should be chosen for comparison? Simple cases, complicated cases, or only cases—if any—adjudicated on the basis of the exercise of universal jurisdiction, linked with facts that occurred far away, and in a state using another language? (*v*) If we choose the example of "small Nuremberg tribunals", that is, American military tribunals, it is not guaranteed that their jurisprudence would be as appreciated in all cases as that of the International Military Tribunal. Remember, for example, the case of Edmund Veesenmayer,[47] who was arrested in 1945, and charged with crimes against humanity, slavery, and membership to a

in the Situation in Venezuela I, https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-khan-kc-following-application-order, (Accessed: July 1, 2023); ICC Prosecutor, Karim A. A. Khan QC, notifies Pre-Trial Chamber I of a request from the Bolivarian Republic of Venezuela to defer his investigation under article 18(2) of Rome Statute and confirms intention to apply for authority to resume investigations, https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-notifies-pre-trial-chamber-i-request-bolivarian-republic, (Accessed: July 1, 2023); ICC Prosecutor, Mr Karim A. A. Khan QC, opens an investigation into the Situation in Venezuela and concludes Memorandum of Understanding with the Government, https://www.icc-cpi.int/news/icc-prosecutor-mr-karim-aa-khan-qc-opens-investigation-situation-venezuela-and-concludes, (Accessed: July 1, 2023).

47 https://en.wikipedia.org/wiki/Edmund_Veesenmayer, (Accessed: July 1, 2023).

criminal organisation. Although condemned to twenty years imprisonment in 1949, his sentence was subsequently reduced to ten years and he was released in 1951. In other words, he served only six years for masterminding the 1944 deportation of the Hungarian Jewry together with Adolf Eichman, knowing that the "Final Solution" meant their extermination.

Comparing the ICC to other international tribunals and courts would provide a different picture depending on the given international judicial institution. (*i*) Concerning their "objective" importance, of the many issues brought before the ICJ, only a few cases qualify. (*ii*) If we compare the ICC to regional human rights tribunals, other challenges emerge, such as the fact that procedures are rather lengthy. Consider the European Court of Human Rights (ECHR), which, a victim of its earlier success, is swamped by applications that cannot be adjudged as expeditiously as in the 1970s and 1980s. Although the experiences concerning the execution of ECHR judgments are generally highly favourable, some judgments have yet to be executed and some former Member States have denounced the European Convention on Human Rights and left the Council of Europe (e.g. Greece between 1967 and 1974, and Russia in 2022).

Comparing the ICC's performance to that of other international criminal tribunals may be more appropriate, although several facts should be borne in mind, including (*i*) the special historical circumstances at the end of Second World War, the unconditional surrender of the Axis powers, the allied occupation of Germany and Japan, and so on. It is also worth considering (*ii*) the fact that the ICTY and ICTR examined cases in countries where international military intervention was needed for pacification; where the UNSC and the P5 were "surprisingly" unanimous in the necessity of executing the decisions; where the European Union could also exert influence on the Serbia, Croatia, Bosnia-Herzegovina to co-operate; where the situations under examination were interrelated; and where issues concerning translation and transcription were important, particularly in respect to the written form of the Serbian and Croatian languages using the Cyrillic or Latin alphabet. Even in the case of the ICTY, the capture and condemnation of those most responsible, namely, Radovan Karadžić and Ratko Mladić, happened much later[48] than the original establishment of the ICTY in 1993 (Another top official was Slobodan Milošević, who was arrested in 2001, but died during his trial in 2006.)

Nevertheless, comparing the ICC and the ICTY and ICTR is a legitimate approach in terms of the legal reasoning and the similarity of the legal notions in their judgments and decisions.

While this might seem apologetic coming from me, the most useful approach is to compare the ICC to itself, taking into account how a prior judgment (or even an acquittal) can enhance the understanding and management of a new case related to

48 Radovan Karadžić was arrested in 2008, and condemned at first instance in 2016 and at appeal in 2018. Ratko Mladić was arrested in 2011, and condemned at first instance in 2017 and at appeal in 2021.

the same situation. Examples include the Lubanga and Ntaganda cases and Katanga and Ngudjulo cases in the Ituri Province of the Democratic Republic of Congo; the Al Mahdi and Al Hassan cases in Mali; and the Bemba, Yekatom and Ngaïssona, Maxim Mokom, and Kani cases in the Central African Republic.

2.7. "Human rights' protectionism" (to protect the rights of the accused and to protect victims and witnesses)

The protection of human rights is a *sine qua non* for courts and their judges, including the ICC. Criminal law procedures should be led with due respect to the fair trial principle, the precise sub-rules of which are enumerated in detail in the Rome Statute and related documents mentioned earlier, particularly the Rules of Procedure and Evidence.

Complementary is underpinned by the *ne bis idem principle* and the presumption of innocence has the same consequence as it does in national systems. If the pre-trial chamber is not convinced that the submitted evidence reaches the threshold of having "substantial grounds to believe" that the prosecutor's charges can be confirmed, the procedure cannot continue to trial. During the trial, if the prosecutor fails to prove "beyond any reasonable doubt" that the indictee has committed the crime with which they are charged, the judge cannot pronounce condemnation.

These rules are obvious to every lawyer.

The challenges facing the ICC were interrelated with issues concerning the collection of evidence, including a lack of genuine co-operation from states and security issues, where direct or indirect pressure was applied and witnesses disappeared, died, or significantly altered their testimony compared to their previous encounters with the OTP. Elapsed time, faded memory, error, or lack of attention when checking the reliability of witnesses in due course can contribute to a successful "no case to answer" motion, presented *supra*.

On the other side of the coin is the imperative to protect witnesses, who are often victims of the crimes charged. They should be protected from re-traumatisation and from potential social rejection and stigmatisation, such as in cases of forced marriage and childbearing.

Witness protection is justified when witnesses they are threatened by the accused's sympathisers acting for political or sometimes clan related reasons. Moreover, many witnesses are so-called "insiders" giving testimony against their former superior and thus often have a reasonable fear of retaliation.

As a consequence of the different witness protection measures, the "open trial" principle encounters difficulties in the gallery of the trial room and internet-based video transmissions due to the frequently ordered "private sessions" and the corresponding redactions in the publicly accessible transcripts.

2.8. Humanism (participation of victims and assistance and reparation for victims)

As it is often emphasised, one of the novelties of the judicial system of the ICC is granting victims procedural status at an international level, namely, a *sui generis* status during pre-trial and trial proceedings and full party status during the reparation proceedings. Institutionalised participation in the pre-trial and trial phase, where the parties are the Prosecutor and the charged person assisted by his/her defence, involves the right to submit views, question witnesses, and call their own witnesses if needed. During the reparation procedure, the parties are the victims and the condemned person.

The ICC's victim-oriented approach is particularly overt in reparation and assistance proceedings. While the direct addressee of the reparation is the condemned person, it falls on the international community to provide financial help if the condemned is indigent, which is often the case. Here, the most important actors are the given trial chamber rendering reparation orders and the Trust Fund for Victims, which enjoys considerable statutory autonomy in managing the implementation of reparation and assistance. The latter can also reach those who were victims of the situation but not of the case (e.g. *inter alia* because the case has very concrete material, geographical, temporal, or personal parameters according to the confirmed charges and the sentencing judgment).

Despite their different legal nature, reparation and assistance are realised in a very similar manner in the field. They are primarily realised through medical, psychological, educational or professional training services, coupled with useful kits to launch small artisanal or agricultural businesses, and aid finding a job on the local labour market. The main challenge in this respect is the undeniable length of the decision-making procedure and the budgetary considerations of the state, which limit its generosity.[49] It is worth noting that while the United Nations Educational,

49 Regarding aspects of the reparation, see: Realising reparative programmes in challenging times, https://www.trustfundforvictims.org/sites/default/files/inline-files/TFV Annual Report 2021.pdf, (Accessed: July 1, 2023); Trust Fund for Victims Management Brief—October 2020, https://www.trustfundforvictims.org/sites/default/files/reports/TFV Management Brief - October 2020_2.pdf, (Accessed: July 1, 2023); Rauxloh Regina E.: Good intentions and bad consequences: The general assistance mandate of the Trust Fund for Victims of the ICC, Published online by Cambridge University Press: 19 October 2020, https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/good-intentions-and-bad-consequences-the-general-assistance-mandate-of-the-trust-fund-for-victims-of-the-icc/F4831BF9DBB0C617AB1FD8DE70B5D7DB, (Accessed: July 1, 2023); Brodney, Marissa and Regué, Meritxell: Formal, Functional, and Intermediate Approaches to Reparations Liability: Situating the ICC's 15 December 2017 Lubanga Reparations Decision, EJIL: Talk! January 4, 2018, https://www.ejiltalk.org/formal-functional-and-intermediate-approaches-to-reparations-liability-situating-the-iccs-15-december-2017-lubanga-reparations-decision/, (Accessed: July 1, 2023); Brodney, Marissa and Regué, Meritxell: Five Procedural Takeaways from the ICC's 18 July 2019 Lubanga Second Reparations Judgment, EJIL: Talk! September 13, 2019, https://www.ejiltalk.org/author/mregue/, (Accessed: July 1, 2023); Kovács Péter: Victims' Right to Reparation in Light of Institutional and Financial Challenges: The International Criminal Court and the

Scientific and Cultural Organisation (UNESCO) realised the reconstruction of the destroyed World Heritage historical monuments in Timbuktu within a short time, the fragility of the security situation in Mali hampers the revival of international tourism, which used to be the main source of the population's income.

2.9. Activism vs. textualism

Like other international tribunals and national constitutional courts, the jurisprudence of the ICC can be analysed using to the dichotomy of activism and textualism. It goes without saying that as an international tribunal, the ICC needs the support of States based on their understanding of and confidence in this organisation and its objectives. States will have difficulties understanding and trusting the ICC if the jurisprudence is contradictory, unclear, unsubstantiated, and cannot be calculated in advance with relative certainty.

However, the text of the Rome Statute is admittedly difficult to read. Varying interpretations may arise from the conjunction of different articles relatively far from one another or the position of a given disposition in the framework of an article having a special title sometimes used to refer to another issue altogether. This occurred *inter alia* in the case of Article 19(3), where the judges consented to the Prosecutor's interpretation of it as a possible preliminary ruling, although it is not necessarily related to a challenge, despite the title of the article.[50] In the "Myanmar decision", the Pre-Trial Chamber felt that the Prosecutor's question could be answered on another basis without making a decision about the interpretation of Article 19(3); however, in the "Palestine decision", it concluded that the submitted interpretation of the applicability of Article 19(3) was correct. The review of the jurisdictional competence in Article 19(1) is clearly the duty of the Court, regardless of whether there is no formal challenge, and Article 19(3) can be interpreted similarly. Moreover, neither paragraph contains the word "challenge".[51]

Reparation for the Victims of the Bogoro Massacre, East European Yearbook on Human Rights 2018 (1), pp. 100–124.

50 Rome Statute, Article 19, Challenges to the jurisdiction of the Court or the admissibility of a case: *The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.*
Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by: (a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58; (b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or (c) A State from which acceptance of jurisdiction is required under article 12.
The Prosecutor may seek a ruling from the Court regarding a question of jurisdiction or admissibility. In proceedings with respect to jurisdiction or admissibility, those who have referred the situation under article 13, as well as victims, may also submit observations to the Court.

51 See: https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rules-court-may-exercise-jurisdiction-over-alleged-deportation, (Accessed: July 1, 2023); Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-37 06-09-2018, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF, (Accessed: July 1, 2023),

As noted, the "no case to answer" procedure was recognised by the Court as belonging to the general principles of law. The recognition of a special form of complicity ("indirect co-perpetration") also resulted from a jurisprudential decision.[52]

On the other hand, the need for or ability of activism has been curbed by the scrupulous observation of fair trial guarantees, formulated according to the text of the International Covenant on Civil and Political Rights, wherein the delegations in Rome sought to reflect the common elements of their criminal procedural legal systems. Other key examples of textualism include the verbatim analogy of the different forms of genocide in the Rome Statute and Convention on the Prevention and Punishment of the Crime of Genocide (1948), the transposition of basic rules of the Geneva Conventions (1949), the development of the additional protocols (1977) with special regard to what these instruments qualify as "grave breaches" of international humanitarian law, and the transposition of core elements of different conventions regarding crimes against humanity or the prohibition of some special types of weapons and methods of warfare. Adopted by the ASP, Elements of Crimes, an interpretative document enjoying a statutory priority,[53] was conceived as means of ensuring governments that judges are limited in their sympathy towards activism.

As the institution of the *amicus curiae* is recognised in the Rules of Procedure and Evidence, several non-governmental organisations (NGOs) working in the field of human rights, having received permission to contribute, have been gently pushing the ICC chambers to be more open or to follow a certain type of jurisdictional interpretation as developed by other international tribunals. These proposals often suggest an enhanced activism on behalf of conservative judges.

2.10. Criminal law centrism and international law centrism

According to the Rome Statute, the ICC is both an international and a criminal court. This dual character is reflected in the composition of the judiciary.[54] While

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pp. 10–15, §§ 26–33; https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-issues-its-decision-prosecutors-request-related-territorial, (Accessed: July 1, 2023); Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143 05-02-2021, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF, (Accessed: July 1, 2023), pp. 30–36, §§ 63–82.

52 On the history of 'indirect co-perpetration' in ICC jurisprudence, see, for example, Sliedregt, Elies van: The ICC Ntaganda Appeals Judgment: The End of Indirect Co-perpetration? https://www.justsecurity.org/76136/the-icc-ntaganda-appeals-judgment-the-end-of-indirect-co-perpetration/, (Accessed: July 1, 2023).

53 See the hierarchy in Article 21 of the Rome Statute (precited).

54 Rome Statute, Article 36, Qualifications, nomination and election of judges:
3. (a) The judges shall be chosen from among persons of high moral character, impartiality and integrity who possess the qualifications required in their respective States for appointment to the highest judicial offices.
(b) Every candidate for election to the Court shall:
(i) Have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate or in other similar capacity, in criminal proceedings; or

most of the day-to-day activities and decisions are related to criminal law, international law with all its problems emerges regularly. For example, international law was in focus in (*i*) the litigation on the legal basis of the effect of the arrest warrant against Omar Al Bashir on non-States-Parties, (*ii*) the situation in Myanmar, and (*iii*) the decision on the situation in Palestine.

In the series of decisions on the impact of the arrest warrant issued against Al Bashir, then the head of state of Sudan, a non-State Party to the Statute, two jurisprudential approaches explained the applicability of the arrest warrant despite the immunity of heads of states, a traditional rule of customary law. In order to resolve the *prima facie* conflict between Article 27[55] and Article 98[56] of the Rome Statute and find a harmonising interpretation, one of the pre-trial chambers issued the so-called "Malawi decision"[57] (followed by the "Chad decision"[58] the next day),

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(ii) Have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;
[…]
For the purposes of the election, there shall be two lists of candidates:
List A containing the names of candidates with the qualifications specified in paragraph 3 (b) (i); and
List B containing the names of candidates with the qualifications specified in paragraph 3 (b) (ii).
A candidate with sufficient qualifications for both lists may choose on which list to appear. At the first election to the Court, at least nine judges shall be elected from list A and at least five judges from list B. Subsequent elections shall be so organized as to maintain the equivalent proportion on the Court of judges qualified on the
two lists.

55 Rome Statute, Article 27, Irrelevance of official capacity:
1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.
2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

56 Rome Statute, Article 98, Cooperation with respect to waiver of immunity and consent to surrender:
1. The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

57 *'43. For the above reasons and the jurisprudence cited earlier in this decision, the Chamber finds that customary international law creates an exception to Head of State immunity when international courts seek a Head of State's arrest for the commission of international crimes. There is no conflict between Malawi's obligations towards the Court and its obligations under customary international law; therefore, article 98(1) of the Statute does not apply'.* Decision Pursuant to Article 87(7) of the Rome Statute on the Failure by the Republic of Malawi to Comply with the Cooperation Requests Issued by the Court with Respect to the Arrest and Surrender of Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-139 12-12-2011, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_21722.PDF, (Accessed: July 1, 2023), § 43, p. 20.

58 Decision pursuant to article 87(7) of the Rome Statute on the refusal of the Republic of Chad to comply with the cooperation requests issued by the Court with respect to the arrest and surrender of Omar Hassan Ahmad Al Bashir, ICC-02/05-01/09-140-tENG 23-03-2012, https://www.icc-cpi.int/

well-substantiated with jurisprudential references to the ICJ and international criminal tribunals of the twentieth century. The two decisions postulated the clear emergence of a customary law denying the existence of immunity when crimes against humanity and war crimes are alleged against the given person. However, in the "DRC decision", another pre-trial chamber emphasised the legal impact of the UNSC referral issued under Chapter VII of the UN Charter, which "implicitly lifted" Al Bashir's immunity.[59]

The Appeals Chamber had to deal with the problem of Al Bashir's arrest warrant vs. immunity in the Jordan appeal decision concerning another pre-trial chamber's decision, which also founded its argumentation on the impact of a UNSC resolution.[60] It decided in favour of the customary law approach,[61] adding that the UNSC referring resolution duly considered the special rules of the Rome Statute.[62]

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sites/default/files/CourtRecords/CR2012_04203.PDF, (Accessed: July 1, 2023), §§ 13, 14, pp. 7–8

59 '31. Further, according to article 103 of the UN Charter "[i]n the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the […] Charter shall prevail." Considering that the SC, acting under Chapter VII, has implicitly lifted the immunities of Omar Al Bashir by virtue of Resolution 1593(2005), the DRC cannot invoke any other decision, including that of the African Union, providing for any obligation to the contrary.
32. *In view of the foregoing, the Chamber considers that the DRC not only disregarded the 2009 and 2010 Requests related to its obligation to cooperate in the arrest and surrender of Omar Al Bashir, pursuant to articles 86 and 89 of the Statute, but also SC Resolution 1593(2005). This course of action calls upon the SC and the Assembly of States Parties to take the necessary measures they deem appropriate'.*
Decision on the Cooperation of the Democratic Republic of the Congo Regarding Omar Al Bashir's Arrest and Surrender to the Court, ICC-02/05-01/09-195 09-04-2014, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2014_03452.PDF, (Accessed: July 1, 2023), §§ 31,32, p. 15.

60 Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender or Omar Al-Bashir, ICC-02/05-01/09-309 11-12-2017, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2017_07156.PDF, (Accessed: July 1, 2023), §§ 38–39, p. 15.

61 *'1. There is neither State practice nor opinio juris that would support the existence of Head of State immunity under customary international law vis-à-vis an international court. To the contrary, such immunity has never been recognised in international law as a bar to the jurisdiction of an international court.*
2. The absence of a rule of customary international law recognising Head of State immunity vis-à-vis international courts is relevant not only to the question of whether an international court may issue a warrant for the arrest of a Head of State and conduct proceedings against him or her, but also for the horizontal relationship between States when a State is requested by an international court to arrest and surrender the Head of State of another State. No immunities under customary international law operate in such a situation to bar an international court in its exercise of its own jurisdiction'.
Judgment in the Jordan Referral re Al-Bashir Appeal, ICC-02/05-01/09-397 06-05-2019, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_02593.PDF, (Accessed: July 1, 2023), Key findings, §§ 1, 2, p. 5.

62 *'7. Resolution 1593 gives the Court power to exercise its jurisdiction over the situation in Darfur, Sudan, which it must exercise "in accordance with [the] Statute." This includes article 27(2), which provides that immunities are not a bar to the exercise of jurisdiction. As Sudan is obliged to "cooperate fully" with the Court, the effect of article 27(2) arises also in the horizontal relationship—Sudan cannot invoke Head of State immunity if a State Party is requested to arrest and surrender Mr Al-Bashir. Therefore, there was no Head of State immunity that Sudan could invoke in relation to Jordan, had the latter arrested Mr*

In case of Al Bashir, both approaches lead to the same conclusion, namely, immunity is not opposable. The Appeals Chamber's preference for the "customary law" approach is important because of the impact of the reasoning on situations where the referral does not come from the UNSC.

Important questions of public international law appeared in the decisions concerning the situation in Myanmar (the so-called "Rohingya decisions"),[63] where one of the pre-trial chambers concluded on the objective legal personality of the ICC,[64] closely following the ICJ's *dictum* in the advisory opinion on Reparation for Injuries Suffered in the Service of the United Nations. It also emphasised that although Myanmar is not a State Party and the situation was not referred to the ICC by the UNSC, the ICC is competent because:

> *[P]reconditions for the exercise of the Court's jurisdiction pursuant to article 12(2)(a) of the Statute are, as a minimum, fulfilled if at least one legal element of a crime within the jurisdiction of the Court or part of such a crime is committed on the territory of a State Party.*[65]
> *Consequently,*
> *[A]cts of deportation initiated in a State not Party to the Statute (through expulsion or other coercive acts) and completed in a State Party to the Statute (by virtue of victims crossing the border to a State) fall within the parameters of article 12(2)(a) of the Statute. It follows that, in the circumstances identified in the Request, the Court has jurisdiction over the alleged deportation of members*

Al-Bashir on the basis of an arrest warrant issued by the Court. Accordingly, there was also no immunity that Jordan would have been required to "disregard" by executing the Court's arrest warrant. And there was no need for a waiver by Sudan of Head of State immunity'.
Judgment in the Jordan Referral re Al-Bashir Appeal, Key findings, § 7, p. 5.

63 https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-rules-court-may-exercise-jurisdiction-over-alleged-deportation, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/icc-judges-authorise-opening-investigation-situation-bangladesh/myanmar, (Accessed: July 1, 2023).

64 *'48. In the light of the foregoing, it is the view of the Chamber that more than 120 States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity called the "International Criminal Court," possessing objective international personality, and not merely personality recognized by them alone, together with the capacity to act against impunity for the most serious crimes of concern to the international community as a whole and which is complementary to national criminal jurisdictions. Thus, the existence of the ICC is an objective fact. In other words, it is a legal-judicial-institutional entity which has engaged and cooperated not only with States Parties, but with a large number of States not Party to the Statute as well, whether signatories or not.*
49. Having said that, the objective legal personality of the Court does not imply either automatic or unconditional erga omnes jurisdiction. The conditions for the exercise of the Court's jurisdiction are set out, first and foremost, in articles 11, 12, 13, 4 and 15 of the Statute. […]' Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', ICC-RoC46(3)-01/18-37 06-09-2018, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_04203.PDF, (Accessed: July 1, 2023), §§ 48, 49, p. 29.

65 Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', § 64, p. 36.

of the Rohingya people from Myanmar to Bangladesh, provided that such allegations are established to the required threshold.[66]

The other pre-trial chamber gave the Prosecutor—acting *proprio motu*—the authorisation to investigate.[67]

Highly complex international law questions were involved in the situation in Palestine,[68] where the pre-trial chamber concluded by majority on the existence of its jurisdictional competence.[69] To this, I appended a dissent because I felt that the truly important international law parameters were not examined in the decision, and that their proper analysis would have led to the conclusion that the ICC had no jurisdictional competence in the matter. Examples of international law parameters that should have been examined include (*i*) the differences between a full state and a *nasciturus* state; (*ii*) the nature and constitutive elements of the "state-territory" and the "territory of a state"; (*iii*) the impact of unilateral and parallel commitments vis-à-vis the "Quartet" mediating between Israel and the Palestinians; (*iv*) differences between the value of resolutions if adopted by the General Assembly and if adopted by the UNSC, and whether according to Chapter VI or Chapter VII; and (*v*) the legal relevance of the Oslo agreements.[70]

2.11. Co-operationism (co-operation with states, international organisations and entities, and NGOs)

As we tell our students at least once a week, international law is based on state co-operation. The ICC also needs enhanced co-operation, with a special chapter of the Rome Statute (Part 9) devoted to this end. Articles 86–102 regulate the co-operation with States Parties and, if they are open to it, non-States Parties. Where co-operation is mandatory for States Parties, it is based on special agreement for non-States Parties.[71] As noted above, some form of co-operation with non-States Parties can be derived from a UNSC referral adopted under Chapter VII, mandatory *erga omnes*.

66 Decision on the 'Prosecution's Request for a Ruling on Jurisdiction under Article 19(3) of the Statute', § 73, p. 42.

67 Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-27 14-11-2019, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2019_06955.PDF, (Accessed: July 1, 2023), § 125, pp. 54, 58.

68 https://www.icc-cpi.int/news/icc-pre-trial-chamber-i-issues-its-decision-prosecutors-request-related-territorial, (Accessed: July 1, 2023).

69 Decision on the 'Prosecution request pursuant to article 19(3) for a ruling on the Court's territorial jurisdiction in Palestine', ICC-01/18-143 05-02-2021, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF, (Accessed: July 1, 2023).

70 Judge Péter Kovács' Partly Dissenting Opinion, ICC-01/18-143-Anx1 05-02-2021, https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2021_01167.PDF, (Accessed: July 1, 2023).

71 Rome Statute, Article 87, Requests for cooperation: General provisions:
[…]

Co-operation can take multiple forms, including (*i*) the different forms of assistance and co-operation that The Netherlands, as a host State, grants the ICC on the basis of the headquarters agreement;[72] (*ii*) securitisation of the ICC activity in the field;[73] (*iii*) judicial co-operation in the transmission of documents and information, particularly that involving teledata from phone- or internet-based contact managing companies; (*iv*) co-operation in some forensic matters;[74] (*v*) co-operation in the execution of arrest warrants; (*vi*) co-operation in tracing and freezing the assets of a person under arrest warrant; (*vii*) co-operation in witness protection;[75] (*viii*) co-operation concerning the admission of a condemned person from the ICC detention centre in Scheveningen to a national prison;[76] (*ix*) co-operation in the framework of the assessment of the complementarity criteria; (*ix*) co-operation in the reparation and assistance to which victims are entitled;[77] and (*xi*) a special form of co-operation assisting States in building up or transforming their judicial system in order to be able to prosecute those responsible for crimes against humanity and war crimes.[78]

However, co-operation can be hindered by a number of factors. Problems can arise due to security issues in situation countries, which can affect the local functioning of the state administration (e.g. Afghanistan, DRC, and Mali). There is generally little to no co-operation when a "situation country" or State whose nationals

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5..The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.

72 https://www.icc-cpi.int/news/headquarters-agreement-between-international-criminal-court-and-host-state, (Accessed: July 1, 2023).

73 https://www.icc-cpi.int/news/ukraine-and-international-criminal-court-sign-agreement-establishment-country-offic, (Accessed: July 1, 2023).

74 https://www.icc-cpi.int/news/office-prosecutor-international-criminal-court-partners-national-authorities-and-international, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-deployment-forensics-and-investigative-team-ukraine, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-office-prosecutor-joins-national-authorities-joint, (Accessed: July 1, 2023).

75 https://www.icc-cpi.int/news/czech-republic-and-international-criminal-court-sign-agreement-witnesses-protection, (Accessed: July 1, 2023).

76 https://www.icc-cpi.int/news/bosco-ntaganda-transferred-belgian-prison-facility-serve-sentence, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/icc-and-spain-conclude-agreement-enforcement-sentences, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/agreement-between-republic-slovenia-and-international-criminal-court-enforcement-sentences, (Accessed: July 1, 2023).

77 https://www.icc-cpi.int/news/icc-and-ireland-sign-memorandum-understanding-voluntary-contributions-three-important-trust, (Accessed: July 1, 2023).

78 https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-conclusion-technical-visit-office-prosecutor; https://www.icc-cpi.int/sites/default/files/itemsDocuments/20211028-OTP-COL-Cooperation-Agreement-ENG.pdf; https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-kc-regarding-opening-trial-related-events-28-september, (Accessed: July 1, 2023).

may be potential perpetrators of crimes under investigation do not recognise the jurisdictional competence of the ICC. Co-operation may also cease after the ICC renders a decision considered unacceptable by the given country.

That said, refusal to co-operate and the issuing of sanctions concerning a given case does not necessarily exclude co-operation in other matters. Consider, for instance, the attitude of the US government under George W. Bush with what the media dubbed "The Hague Invasion Act"[79] and Donald Trump's sanctioning of Fatou Bensouda, the ICC Prosecutor, and one of her collaborators.[80] In contrast, the US exhibited a highly co-operative attitude under Barack Obama and Joe Biden (who revoked Trump's sanctions[81]), as reflected in official statements.[82] Certainly, the US

79 American Service-Members' Protection Act (ASPA, Title 2 of Pub. L. 107–206), https://www.govinfo.gov/content/pkg/PLAW-107publ206/pdf/PLAW-107publ206.pdf ; https://2001-2009.state.gov/t/pm/rls/othr/misc/23425.htm, (Accessed: July 1, 2023).

80 Executive Order 13928 on 'Blocking Property of Certain Persons Associated with the International Criminal Court (ICC)', https://www.govinfo.gov/content/pkg/FR-2020-06-15/pdf/2020-12953.pdf, (Accessed: July 1, 2023).

81 Joe Biden revoked this executive order. See: Ending Sanctions and Visa Restrictions against Personnel of the International Criminal Court, Press Statement, Anthony J. Blinken, Secretary of State, April 2, 2021, https://www.state.gov/ending-sanctions-and-visa-restrictions-against-personnel-of-the-international-criminal-court/

82 *i.* https://il.usembassy.gov/the-united-states-opposes-the-icc-investigation-into-the-palestinian-situation/, (Accessed: July 1, 2023).
ii. Remarks at the UN General Assembly Annual Debate on the International Criminal Court, Ambassador Richard Mills Deputy U.S. Representative to the United Nations, 10 November 2021:
'As noted in the Court's report on developments between August 2020 and August 2021, this has been a year of significant change and activity at the Court. The United States would like to commend the ICC for a number of achievements in some of the longest-running situations before the Court—situations involving national governments that invited the ICC to act because they were unable to do so. [...]
We are pleased to have assisted in facilitating the voluntary surrender of Ongwen and the transfer of Ntaganda to the ICC. [...] Turning back to the ICC, we would also like to take note of the important effort underway relating to reform as the Court approaches its twentieth birthday. All organs of the Court and States Parties, working with other states, civil society, and victims, have engaged over the past year in consideration of a broad range of reforms, including those identified in the Independent Expert Review of the ICC.
Although, as this Assembly knows, the United States is not a State Party, we welcome these ongoing efforts to identify and implement reforms that will help the Court better achieve its core mission of serving as a court of last resort in punishing and deterring atrocity crimes. While we maintain our longstanding objection to the Court's efforts to assert jurisdiction over personnel of non-States Parties absent a Security Council referral or the consent of the state, we believe that our concerns are best addressed through engagement with all stakeholders. Where domestic systems are unable or unwilling to genuinely pursue the justice that victims deserve, and that societies require to sustain peace, international courts such as the ICC can have a meaningful role. [...]'
https://usun.usmission.gov/remarks-at-the-un-general-assembly-annual-debate-on-the-international-criminal-court/, (Accessed: July 1, 2023).
iii. Secretary Antony J. Blinken on the Genocide and Crimes Against Humanity in Burma, 21 March 2022:
'Efforts are moving forward, not only at the International Court of Justice, but also through the International Criminal Court and through the domestic courts of Argentina, in a case brought under universal jurisdiction.

The day will come when those responsible for these appalling acts will have to answer for them. […]' https://www.state.gov/secretary-antony-j-blinken-at-the-united-states-holocaust-memorial-museum/, (Accessed: July 1, 2023)

iv. S.RES. 531:

'[…] the Senate—

(1) Strongly condemns the ongoing violence, war crimes, crimes against humanity, and systematic human rights abuses continually being carried out by the Russian Armed Forces and their proxies and President Putin's military commanders, at the direction of President Vladimir Putin;

(2) Encourages member states to petition the ICC and the ICJ to authorize any and all pending investigations into war crimes and crimes against humanity committed by the Russian Armed Forces and their proxies and President Putin's military commanders, at the direction of President Vladimir Putin;

(3) Supports any investigation into war crimes, crimes against humanity, and systematic human rights abuses levied by President Vladimir Putin, the Russian Security Council, the Russian Armed Forces and their proxies, and President Putin's military commanders; […]'

https://www.congress.gov/bill/117th-congress/senate-resolution/531, (Accessed: July 1, 2023).

v. 8948th meeting, SC/14766, 17 January 2022—Briefing Security Council on Darfur, Prosecutor Urges Sudan Government Provide International Criminal Court Safe Access to Crime Scenes, Witnesses:

'Richard M. Mills, JR., (United States) said his country has participated in assemblies of States Parties to the Rome Statute as an observer and stands ready to engage with the Court to bring accountability to the most serious crimes. His delegation welcomes the strengthening of the Office of Prosecutor and the Court and the Prosecutor's position on prioritizing the Council's referral of Sudan to the Court. He also welcomed the Prosecutor's visit to Darfur in August and the appointment of a Special Adviser. […]' https://press.un.org/en/2022/sc14766.doc.htm, (Accessed: July 1, 2023).

vi. Remarks at a UN Security Council Arria-Formula Meeting on Ensuring Accountability for Atrocities Committed by Russia in Ukraine. Ambassador Beth Van Schaack, Ambassador-at-Large for Global Criminal Justice:

'The United States is supporting a range of international investigations into atrocities in Ukraine. This includes those conducted by the International Criminal Court, the United Nations, and the Organization for Security and Cooperation in Europe. The United States welcomes the opening of the investigation by the ICC into atrocity crimes committed in Ukraine, and we intend to engage with all stakeholders to achieve our common objectives in ensuring justice. […]'

https://usun.usmission.gov/remarks-at-a-un-security-council-arria-formula-meeting-on-ensuring-accountability-for-atrocities-committed-by-russia-in-ukraine/, (Accessed: July 1, 2023).

vii. Remarks by US Ambassador Beth Van Schaack, OAS Committee on Juridical and Political Affairs Technical Working Meeting to Strengthen Cooperation with the International Criminal Court, 16 June 2022:

'Over the past year and a half, the United States has worked hard to improve and reset our relationship with the ICC—through the lifting of sanctions that should never have been issued; a return to engagement with the Court and the Assembly of States Parties; and identifying specific areas where we can support ICC investigations and prosecutions, including steps to support the Court's work in Darfur and assistance on locating and apprehending ICC fugitives, including LRA leader Joseph Kony. We are looking to build on this foundation and identify areas where the US is well-positioned to help the Court succeed in carrying out its core mandate.

Over the past year, there have been significant developments by the ICC in this hemisphere, marking a cooperative and collaborative relationship with states, and a welcome respect for the varied approaches by national authorities to deliver justice and accountability in a manner consistent with national law and their obligations under the Rome Statute'.

https://usoas.usmission.gov/remarks-by-u-s-ambassador-beth-van-schaack-on-strengthening-the-icc/, (Accessed: July 1, 2023).

viii. Readout of Attorney General Merrick B. Garland's Trip to Ukraine, March 3, 2023:

'In addition, the United States became the first country to sign a memorandum of understanding (MOU)

position is of broad interest to the international press. The US made an important point at the Summit for Democracy (2023), asserting that '[w]e acknowledge the important role played by the ICC as a permanent and impartial tribunal complementary to national jurisdictions in advancing accountability for the most serious crimes under international law'.[83] Within the framework of the so-called G7, the US agreed to 'reiterate our commitment to holding those responsible to account consistent with international law, including by supporting the efforts of international mechanisms, in particular the International Criminal Court'.[84]

Regarding international organisations, co-operation with the UN is pre-eminent. Such co-operation is founded on documents like Negotiated Relationship Agreement between the International Criminal Court and the United Nations (2004),[85] which serves as the basis for a soft law paper entitled, Best Practices Manual for United

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with the seven-member Joint Investigative Team (JIT) that is investigating Russian atrocities in Ukraine. The MOU, signed by the Attorney General, will facilitate the United States' cooperation and coordination with the JIT members as we collect evidence and investigate Russia's atrocity crimes. It also signals our resolve that Russia's invasion will not undermine our collective commitment to uphold human rights and preserve a free and democratic society'.
https://www.justice.gov/opa/pr/readout-attorney-general-merrick-b-garland-s-trip-ukraine, (Accessed: July 1, 2023)
(*Nota bene:* In addition to Ukraine, Poland, Lithuania, and Eurojust, the JIT includes the ICC as a member.)

83 The full text of § 4 is as follows: *'Fourth, support civilian control of the military and hold accountable those responsible for human rights violations and abuses, including those committed by non-state actors. We demand that all parties to armed conflict fully comply with their obligations under international humanitarian law including those regarding the protection of civilians, with particular consideration of populations in marginalized or vulnerable situations. We commit to fight against impunity and promote accountability for violations of international law, particularly genocide, war crimes, the crime of aggression and crimes against humanity, including where such crimes involve sexual and gender-based violence. We acknowledge the important role played by the ICC as a permanent and impartial tribunal complementary to national jurisdictions in advancing accountability for the most serious crimes under international law'.*
Declaration of the Summit for Democracy, 29 March 2023, https://www.state.gov/declaration-of-the-summit-for-democracy-2023/, (Accessed: July 1, 2023).

84 See: II. Promoting peace and security:
1. Russia's war of aggression against Ukraine
'There can be no impunity for war crimes and other atrocities such as Russia's attacks against civilians and critical civilian infrastructure. We further condemn the unlawful transfer and deportation of Ukrainians, including children, and conflict-related sexual violence against Ukrainians. We reiterate our commitment to holding those responsible to account consistent with international law, including by supporting the efforts of international mechanisms, in particular the International Criminal Court. We support exploring the creation of an internationalized tribunal based in Ukraine's judicial system to prosecute the crime of aggression against Ukraine. In addition, we underscore the importance of the protection and preservation of Ukrainian cultural properties and heritage damaged and threatened by the war of aggression. […]'
G7 Japan 2023—Foreign Ministers' Communiqué (18 April 2023), https://www.diplomatie.gouv.fr/en/french-foreign-policy/global-challenges/news/article/g7-japan-2023-foreign-ministers-communique-april-18-2023, (Accessed: July 1, 2023).

85 https://legal.un.org/ola/media/UN-ICC_Cooperation/UN-ICC Relationship Agreement.pdf, (Accessed: July 1, 2023).

Nations—International Criminal Court Cooperation.[86] The latter enumerates and hyperlinks to the memoranda of understanding contracted with some UN peacekeeping missions, such as those sent to the DRC,[87] Côte d'Ivoire,[88] Mali,[89] and the Central African Republic.[90] There is also a framework agreement signed by the ICC and the United Nations Development Program.[91]

Enhanced co-operation has been established with two intergovernmental police organisations, namely, Interpol[92] and Europol,[93] which work together with the European Union Agency for Criminal Justice Cooperation (Eurojust).[94] There ICC also has a co-operation and assistance agreement with the European Union (EU).[95] As a fervent promoter of the fight against impunity, the EU is also very active in the framework of the Common Foreign and Security Policy and of Police and Judicial Co-operation in Criminal Matters (PJCCM), the former Justice and Home Affairs (JHA) Council.[96]

86 https://legal.un.org/ola/media/UN-ICC_Cooperation/Best Practice Guidance for UN-ICC cooperation -public.docx.pdf, (Accessed: July 1, 2023).

87 Memorandum of Understanding concerning cooperation between MONUC (now MONUSCO) and the ICC (2005) https://www.icc-cpi.int/court-record/icc-01/04-01/06-1267-anx2, (Accessed: July 1, 2023).

88 Memorandum of Understanding concerning cooperation between UNOCI and the ICC (2012, 2013).

89 Memorandum of Understanding concerning cooperation between MINUSMA and the ICC (2014).

90 Memorandum of Understanding concerning cooperation between MINUSCA and the ICC (2014).

91 https://www.undp.org/news/undp-and-international-criminal-court-sign-new-partnership-agreement

92 Cooperation agreement between the Office of the Prosecutor and Interpol (2014), https://www.icc-cpi.int/news/icc-cooperation-agreement-between-office-prosecutor-and-interpol, (Accessed: July 1, 2023); https://www.interpol.int/Who-we-are/Legal-framework/Cooperation-agreements/Cooperation-agreements-Global-international-organizations, (Accessed: July 1, 2023).

93 https://www.eurojust.europa.eu/news/eurojust-and-icc-prosecutor-launch-practical-guidelines-documenting-and-preserving-information, (Accessed: July 1, 2023); https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations, (Accessed: July 1, 2023); ICC and Europol conclude Working Arrangement to enhance cooperation, https://www.europol.europa.eu/media-press/newsroom/news/icc-and-europol-conclude-working-arrangement-to-enhance-cooperation, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/icc-and-europol-conclude-working-arrangement-enhance-cooperation, (Accessed: July 1, 2023);

94 https://www.eurojust.europa.eu/news/icc-participates-joint-investigation-team-supported-eurojust-alleged-core-international-crimes, (Accessed: July 1, 2023); https://www.icc-cpi.int/news/press-conference-icc-prosecutor-and-eurojust-joint-investigation-team-alleged-core, (Accessed: July 1, 2023); https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations, (Accessed: July 1, 2023).

95 https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/6EB80CC1-D717-4284-9B5C-03CA028E155B/140157/ICCPRES010106_English.pdf, (Accessed: July 1, 2023).

96 For further detail, see: Kovács, Péter: La Cour pénale internationale et l'Union européenne: un partenariat éprouvé pour la bonne cause, in: Barbato, Jean-Christophe; Barbou, des Places Ségolène; Dubuy, Mélanie; Moine, André (sous la dir.) Transformations et résilience de l'Etat. Entre mondialisation et intégration: Liber Amicorum en hommage à Jean-Denis Mouton, Paris, Éditions Pedone (2020) pp. 311–326.

The ICC also has a formalised relationship with the International Commission on Missing Persons.[97]

The International Committee of the Red Cross (ICRC), a legally non-intergovernmental organisation that plays a special role in armed conflicts and related matters, entered into a contractual relationship with the ICC through the Agreement on Visits to Persons deprived of Liberty Pursuant to the Jurisdiction of the International Criminal Court.[98] The ICRC also contributes to the analysis and outreach of issues and activities under the purview of the ICC.[99]

Finally, the ICC has various relationships with different NGOs and civil societies. The umbrella organisation known as the Coalition for the International Criminal Court[100] embraces dozens of NGOs ready to promote the ICC's aims. Several of these organisations participated in the side events of the Rome Diplomatic Conference and the sessions of the ASP. Some NGOs or their leaders stepped up as *amici curie* during various trial and pre-trial affairs or served as legal counsels or representatives of victims. Some pro-NGO lawyers are currently acting on the side of the defence in a given case, which is the correct thing to do. Co-operation with NGOs, whether international or national, primarily manifests in the outreach of the ICC, where they facilitate the understanding of local situations, access to victims and potential witnesses, as well as reparation and assistance matters. Some have scholarly ambitions and provide analytical, critical, or easily understandable local coverage about the practices of the ICC.

2.12. Criticism (internal critics, external critics, friendly and unfriendly)

'Nothing is perfect', Saint-Exupéry's fox told the Petit Prince. This is particularly true of international law in general and the ICC in particular. Like all human

97 Memorandum of Understanding between the International Commission on Missing Persons and the Office of the Prosecutor of the International Criminal Court (2016), https://www.icc-cpi.int/sites/default/files/itemsDocuments/ICC_ICMP.pdf, (Accessed: July 1, 2023).

98 https://www.icc-cpi.int/sites/default/files/NR/rdonlyres/A542057C-FB5F-4729-8DD4-8C0699DDE0A3/140159/ICCPRES020106_English.pdf, (Accessed: July 1, 2023).

99 https://www.icrc.org/en/war-and-law/international-criminal-jurisdiction/international-criminal-court, (Accessed: July 1, 2023). The International Committee of the Red Cross provides a number of useful resources. See, for example: 'Cooperation in extradition and judicial assistance in criminal matters—Factsheet'; 'International criminal justice: The institutions—Factsheet'; 'War crimes under the Rome Statute of the International Criminal Court and their source in international humanitarian law—Table'; 'International Criminal Court'; 'Issues raised regarding the Rome Statute of the ICC by national Constitutional Courts, Supreme Courts and Councils of State'; 'ICRC and ICC: Two separate but complementary approaches to ensuring respect for international humanitarian law'; 'Aspects of victim participation in the proceedings of the International Criminal Court'; 'Transitional justice and the International Criminal Court—in "the interests of justice"?'; and 'The International Committee of the Red Cross and the International Criminal Court: Turning international humanitarian law into a two-headed snake?'

100 https://www.coalitionfortheicc.org/, (Accessed: July 1, 2023).

creations, no international tribunal or international jurisprudence can be perfect and are subject to criticism.

Internal criticism takes the form of separate and dissenting opinions, quashing of appeal, or a new jurisprudential approach. The latter generally avoids openly criticising the previously followed line, instead emphasising the need to "distinguish" between the factual or legal context of the given decision. For example, consider the reparation decisions in the Lubanga, Katanga, Al Mahdi, and Ntaganda cases.[101] This form of internal criticism can also be observed in the issue of how precise a confirmation of charges decision should be, such as in the Bemba appeal, Ntaganda appeal, and intermediary appeal decision in the Yekatom and Ngaïssona case, for example.[102]

A special form of internal criticism may come from the ASP, which can call the judiciary and OTP to accelerate and get rid of alleged unnecessary elements during the procedure and in the decisions or submissions. A good example of this is the Independent Expert Review,[103] commissioned by the Assembly of the States Parties,[104] which took stock and proposed suggestions to the OTP, the Registry, and the Judiciary, respectively. The ICC is currently exploring how to realise suggestions, which

101 Judgment on the appeals against the 'Decision establishing the principles and procedures to be applied to reparations' of 7 August 2012, ICC-01/04-01/06-3129, 3 March 2015, https://www.icc-cpi.int/court-record/icc-01/04-01/06-3129, (Accessed: July 1, 2023); Judgment on the appeals against Trial Chamber II's 'Decision Setting the Size of the Reparations Award for which Thomas Lubanga Dyilo is Liable', ICC-01/04-01/06-3466-Red, 18 July 2019, https://www.icc-cpi.int/court-record/icc-01/04-01/06-3466-red, (Accessed: July 1, 2023); Public redacted Judgment on the appeals against the order of Trial Chamber II of 24 March 2017 entitled 'Order for Reparations pursuant to Article 75 of the Statute', ICC-01/04-01/07-3778-Red, 9 March 2018, https://www.icc-cpi.int/court-record/icc-01/04-01/07-3778-red, (Accessed: July 1, 2023); Public redacted Judgment on the appeal of the victims against the 'Reparations Order', ICC-01/12-01/15-259-Red2, 8 March 2018, https://www.icc-cpi.int/court-record/icc-01/12-01/15-259-red2, (Accessed: July 1, 2023); Judgment on the appeals against the decision of Trial Chamber VI of 8 March 2021 entitled 'Reparations Order', ICC-01/04-02/06-2782, 15 September 2022, https://www.icc-cpi.int/court-record/icc-01/04-02/06-2782; https://www.icc-cpi.int/court-record/icc-01/05-01/08-3636-red, (Accessed: July 1, 2023).

102 Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against Trial Chamber III's 'Judgment pursuant to Article 74 of the Statute', ICC-01/05-01/08-3636-Red, 8 June 2018, https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2018_02984.PDF, (Accessed: July 1, 2023), §§ 110, 115, pp. 38–39, 41–42; Public redacted version of Judgment on the appeals of Mr Bosco Ntaganda and the Prosecutor against the decision of Trial Chamber VI of 8 July 2019 entitled 'Judgment', ICC-01/04-02/06-2666-Red, 30 March 2021, https://www.icc-cpi.int/court-record/icc-01/04-02/06-2666-red, (Accessed: July 1, 2023), §§ 327–327, pp. 107–19; Judgment on the appeal of Mr Alfred Yekatom against the decision of Trial Chamber V of 29 October 2020 entitled 'Decision on motions on the Scope of the Charges and the Scope of Evidence at Trial', ICC-01/14-01/18-874 05-02-2021, https://www.icc-cpi.int/CourtRecords/CR2021_01142.PDF, (Accessed: July 1, 2023), §§ 39, 44, 54, pp. 16, 20, 25.

103 Independent Expert Review of the International Criminal Court and the Rome Statute System Final Report, 30 September 2020, https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf, (Accessed: July 1, 2023).

104 https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-Res7-ENG.pdf, (Accessed: July 1, 2023).

were largely formulated on the assumption that States are not ready to amend or change the text of the Statute. As such, it is the practice that should be modified if necessary, alongside small changes to the Rules of Procedure and Evidence and other non-statutory documents.

External criticism can be bipartite or hostile. Regardless, such criticism can be scholarly in nature or superficial and politically motivated.

Authors in both States Parties and non-States Parties have provided comprehensive and professional analyses. Those who are or were involved in conflictual situations in as NGO-affiliated persons, legal counsel, or governmental experts cover the different phases of an ICC proceeding according to the opinion of the represented or favoured side. However, the quality of articles or reports in printed and audio-visual media is very different, even within a given state, and pro-oppositional or pro-governmental media often give diametrically opposing pictures of the ICC.

In general, criticism is to be followed and understood, at least in order to realise where and how the ICC's outreach activity should be amplified or changed, if truly necessary.

2.13. Adaptationism

The Rome Statute contains three lengthy articles concerning different forms of eventual amendments.[105] In spite of the adoption of the definition of aggression at the Kampala Conference as well as amendments concerning the criminalisation and punishment of certain weapons and means of warfare, most of the States Parties to the Rome Statute appear to feel that no minor, major, or comprehensive review is appropriate at present. There is an impression that negotiations resulting from such reviews could open Pandora's box, potentially reducing the number of States Parties and diminishing the strength of the ICC.

This means that the necessary adaptation in answer to the experienced challenges will not be done through conventional, statutory revision, but via the modification of the legal and sometimes metalegal soft law instruments. This will be achieved through resolutions passed by the ASP[106] or by the decisions of the judiciary.

The Independent Expert Review proposed partly technical, partly procedural reforms that do not require modification to the treaty law of the Rome Statute.

105 Rome Statute, Article 121 Amendments, Article 122, Amendments to provisions of an institutional nature and Article 123 Review of the Statute.

106 See, for example, minor reforms as to electoral matters: i. Advisory Committee on nominations of judges of the International Criminal Court, https://asp.icc-cpi.int/ACN, (Accessed: July 1, 2023); ii. Due diligence process, Adopted by the Bureau pursuant to resolution ICC-ASP/21/Res.2, https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-EJ2023-DueDiligence-ENG.pdf, (Accessed: July 1, 2023); iii. https://asp.icc-cpi.int/elections/Registrar/ER2022, (Accessed: July 1, 2023). Regarding the review, see: i. https://asp.icc-cpi.int/Review-Court, (Accessed: July 1, 2023); ii. https://asp.icc-cpi.int/Review-Court/Review-Mechanism, (Accessed: July 1, 2023). For the Working Group on Amendments, see: https://asp.icc-cpi.int/WGA. Finally, regarding experiences of and problems surrounding complementarity, see: https://asp.icc-cpi.int/complementarity.

Such reforms have been realised in the past, including the Rules of Procedure and Evidence,[107] where Rule 68 on Prior Recorded Testimony was expanded to cope with challenges, such as cases where witnesses—presumably under duress or threat—refused to testify or were unable to recall what they had told the OTP previously. News about witnesses killed in road accidents or mysteriously disappearing also contributed to the unwillingness to be heard by judges. The ASP significantly amended the Rules of Procedure and Evidence, but emphasised the importance of the threat, the interest of justice, and the condition that 'the prior recorded testimony has sufficient indicia of reliability'.

The Chambers Practice Manual[108] is a non-binding tool intended to facilitate a coherent and transparent jurisprudence. In 2015, the Pre-Trial Division prepared a Manual[109] based on the "best practices approach", placing emphasis on different procedural time limits and suggesting a structure of different decisions, particularly those concerning the confirmation of charges. It was subsequently amended with a chapter concerning Trial chambers, and the first version of the Chambers Practice Manual was published in 2016. Since then, several addenda and changes have been introduced. The sixth version is currently applied.

The Manual, which is non-binding in nature, is generally considered a useful instrument, especially for trial lawyers working on actual cases and situations within the ICC. It is only adopted by the judiciary—that is, the common session comprising all the eighteen judges—without the need for the consent of the ASP.

It is important to mention a special institution called the Advisory Committee on Legal Texts[110] (ACLT), which consists of (*i*) three judges, representing the three different judicial divisions; (*ii*) the representatives of the defence counsels; (*iii*) a senior lawyer or head of the Legal Coordination Section of the OTP and a high-ranking representative of the Registry. This body is entrusted with the technical preparation and prior analysis of the harmony of draft reforms, whether they are adopted by the judges alone (e.g. the Manual and the Regulations of the Court) or require an ASP decision according to the Rome Statute (e.g. Rules of Procedure and Evidence).

2.14. Futurism or "long termism"?

Is the creation of the ICC futuristic? In the previous points, I noted a good number of statutory, structural, and procedural factors that serve the aim of "putting an end

107 https://www.icc-cpi.int/sites/default/files/2023-02/Rules-of-Procedure-and-Evidence-Dec-2022.pdf, (Accessed: July 1, 2023).

108 https://www.icc-cpi.int/about/judicial-divisions/chambers-practice-manual, (Accessed: July 1, 2023).

109 https://www.icc-cpi.int/sites/default/files/iccdocs/other/Pre-Trial_practice_manual_(September_2015).pdf, (Accessed: July 1, 2023).

110 https://www.icc-cpi.int/news/presidency-announces-new-composition-icc-advisory-committee-legal-texts, (Accessed: July 1, 2023).

to impunity", through which creators and judicial managers – whether judges, internal advisors or prosecutors – endeavour to realise the purpose and expectations of the ICC.

However, it is not possible to fully satisfy expectations.

Using the ICJ as an analogy, the ICJ has not become the unavoidable dispute setting forum of interstate litigation. It is often said that mainly small or relatively weak states have brought their cases before the ICJ, while great powers have tended to neglect it or tried to avoid its jurisdictional competences through the wisely formulated sub-conditions of their unilateral declarations recognising the jurisdiction of the Court as compulsory. Nevertheless, even the greatest countries are occasionally litigants and the ICJ has pronounced judgments obliging them to act in conformity with international law commitments. However, the main and incontestable output of the ICJ is their role in the uniform interpretation of international law in university teaching and scholarly analysis, which helps governments act accordingly.

Something similar can be said about the ICC.

The jurisprudence regarding international criminal law as developed by the international military tribunals of Nuremberg and Tokyo, the ICTY and ICTR, the hybrid tribunals, and the ICC has been integrated into the curriculum of law faculties and military and police academies. Even if they result in a relatively low number of investigated, charged, and finally condemned people, the ICC's activities and selection of cases demonstrate how national prosecution could act in time to prevent atrocities and, should they occur, how to investigate and punish the perpetrators and secure reparation and assistance to the victims.

States were absolutely right when they decided on its establishment and despite the difficulties and challenges it faces, the ICC will fulfil its mandate. The ICC is the long-term realisation of a common aim, the pursuit of which does not preclude necessary continuous adaptation through reforms and amendments formulated following careful review.

The ICC is serving the present and the future. It is not futuristic, it is realistic. It is equipped with high level technical facilities, which is not only useful in its day-to-day work but also helps the outside world, national ministries, the judiciary, academia, law firms, and the media in keeping apprised of and following its work. The transparency of judicial cases at the pre-trial and trial level facilitates the understanding of the functioning of the ICC and its institutions. It serves the long-term interests of mankind.

3. Conclusions

As the recently-deceased Benjamin Ferencz[111] told the Hague,

> *The ICC, as the court of last resort in a state-dependent system of international justice, offers hope to many who have no hope that their voices will be heard—that they have not been forgotten, and that they are not alone. [... The] protection of human rights demands deterrence of human wrongs, and all nations should strongly support the Court's efforts in helping to end impunity for crimes of the gravest concern to all humankind. [...] Now approaching my 102nd year, I have cherished the goals for which the ICC stands throughout my entire adult life and I give thanks for the torch-bearers who will carry the dream of a more humane world under the rule of law forward, lest we perish from the folly of our failure to do so.112*

It would be difficult to find a better way to express how the interrelationship between endeavours, challenges, state obligations, and so many individuals' devoted professional work characterises the ICC, which is sailing not between Scylla and Charybdis, but between aims and realities.

111 Statement of the International Criminal Court on the passing of Benjamin B. Ferencz, https://www.icc-cpi.int/news/statement-international-criminal-court-passing-benjamin-b-ferencz, (Accessed: July 1, 2023).

112 Benjamin B. Ferencz receives Distinguished Honorary Fellowship of the International Criminal Court, https://www.icc-cpi.int/news/benjamin-b-ferencz-receives-distinguished-honorary-fellowship-international-criminal-court, (Accessed: July 1, 2023).

References[113]

Ambos, K. (Ed.). (2022). *Rome Statute of the International Criminal Court: Article-by-Article commentary* (4th ed.). Beck, Hart, Nomos.

Ascensio, H., Decaux, E., & Pellet, A. (Eds.). (2012). *Droit international pénal* (2nd ed.). Pedone.

Bassiouni, C. (2011). *Crimes against humanity: Historical evolution and contemporary application*. Cambridge University Press.

Beauvallet, O. (Ed.). (2017). *Dictionnaire encyclopédique de la justice pénale internationale*. Berger-Levrault.

Brodney, M., & Regué, M. (2018, January 4). Formal, functional, and intermediate approaches to reparations liability: Situating the ICC's 15 December 2017 Lubanga reparations decision. *EJIL:Talk!*. [Online]. Available at: https://www.ejiltalk.org/formal-functional-and-intermediate-approaches-to-reparations-liability-situating-the-iccs-15-december-2017-lubanga-reparations-decision/ (Accessed July 1, 2023)

Brodney, M., & Regué, M. (2019, September 13). Five procedural takeaways from the ICC's 18 July 2019 Lubanga second reparations judgment. *EJIL:Talk!*. [Online]. Available at: https://www.ejiltalk.org/author/mregue/ (Accessed July 1, 2023)

Cassese, A., Gaeta, P., & Jones, W. D. (Eds.). (2002). *The Rome Statute of the International Criminal Court: A commentary* (Vols. I–II). Oxford University Press.

Dittrich, V. E., & Heinze, A. (Eds.). (2021). *The past, present and future of the International Criminal Court*. Torkel Opsahl Academic EPublisher. [Online]. Available at: https://www.toaep.org/nas-pdf/5-dittrich-heinze (Accessed July 1, 2023)

El Zeidy, M. M. (2008). *The principle of complementarity in international criminal law*. Brill.

Fernandez, J., Pacreau, X., & Ubeda-Saillard, M. (Eds.). (2019). *Statut de Rome de la Cour pénale internationale: Commentaire article par article* (2nd ed.). Pedone.

Kassák, L. (1972). *Az izmusok története*. Magvető.

Kovács, P. (2018). Victims' right to reparation in light of institutional and financial challenges: The ICC and the reparation for the victims of the Bogoro Massacre. *East European Yearbook on Human Rights, 1*, 100–124.

Kovács, P. (2020). La Cour pénale internationale et l'Union européenne: Un partenariat éprouvé pour la bonne cause. In J.-C. Barbato, S. Barbou des Places, M. Dubuy, & A. Moine (Eds.), *Transformations et résilience de l'État: Liber Amicorum en hommage à Jean-Denis Mouton* (pp. 311–326). Éditions Pedone.

Kovács, P. (2023). L'individu et sa position devant la Cour pénale internationale. *Recueil des Cours de l'Académie de Droit international de La Haye, 432*, 87–421. Brill–Nijhoff.

McGonigle Leyh, B. N. (2011). *Procedural justice? Victim participation in international criminal proceedings*. Intersentia. [Online]. Available at: https://dspace.library.uu.nl/handle/1874/208649 (Accessed July 1, 2023)

Moynier, G. (1872). *Note sur la création d'une institution judiciaire internationale propre à prévenir et à réprimer les infractions à la Convention de Genève*. CICR.

Pella, V. (1925). *La criminalité collective des États et le droit pénal de l'avenir*. Imprimerie de l'État.

113 Paying attention to the page limit the Bibliography does not repeat the title and accessibility of the different judgments, decisions, official reports, press releases and outreach documents of the International Criminal Court mentioned in the present article.

Picker, C. B. (2008). International law's mixed heritage: A common/civil law jurisdiction. *Vanderbilt Journal of Transnational Law, 41*, 1083–1140. [Online]. Available at: https://wp0.vanderbilt.edu/wp-content/uploads/sites/78/Picker_final_7.pdf (Accessed July 1, 2023)

Pillai, P. (2018). The African Union, the International Criminal Court, and the International Court of Justice: At the fault lines of international accountability. *ASIL Insights, 22*(10). [Online]. Available at: https://www.asil.org/insights/volume/22/issue/10/african-union-international-criminal-court-and-international-court (Accessed July 1, 2023)

Rauxloh, R. E. (2020). Good intentions and bad consequences: The general assistance mandate of the Trust Fund for Victims of the ICC. *Leiden Journal of International Law*. [Online]. Available at: https://www.cambridge.org/core/journals/leiden-journal-of-international-law/article/good-intentions-and-bad-consequences-the-general-assistance-mandate-of-the-trust-fund-for-victims-of-the-icc/F4831BF9DBB0C617AB1FD8DE70B5D7DB (Accessed July 1, 2023)

Sadat, L. N. (2002). *The International Criminal Court and the transformation of international law: Justice for the new millennium*. Transnational.

Schabas, W. A. (2016). *The International Criminal Court: A commentary on the Rome Statute* (2nd ed.). Oxford University Press.

Sliedregt, E. (2021). The ICC Ntaganda appeals judgment: The end of indirect co-perpetration? *Just Security*. [Online]. Available at: https://www.justsecurity.org/76136/the-icc-ntaganda-appeals-judgment-the-end-of-indirect-co-perpetration/ (Accessed July 1, 2023)

Stahn, C. (2019). *A critical introduction to international criminal law*. Cambridge University Press.