



The Road to the International Criminal Court: The Establishment, Composition, and Administration of the Court

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Abstract:

In this article, I evoked the establishment, composition and administration of the court, I touched the bases of the establishment: The Court, Relationship of the Court with the United Nations, Seat of the Court, Legal status and powers of the Court, Official and working languages.

Also, this article includes the composition and the administration of the court: Organs of the Court, Service of judges, qualifications, nomination and election of judges, Judicial vacancies, the Presidency, chambers and I evoked the independence, excusing and disqualification of judges.

thus, I have discussed the office of the Prosecutor and the Registry, the Staff, the staff and the removal from office, disciplinary measures, privileges and immunities, so the salaries, allowances and expenses.

Keywords : court. criminal court. Establishment. Composition. Administration. Service of judges.

1- THE INTERNATIONAL CRIMINAL COURT: HISTORY AND ROLE

In 1998, a group of countries signed a treaty with the goal of ending impunity for the world's most serious crimes by establishing a permanent international criminal tribunal, the International Criminal Court (ICC or the Court). The Rome Statute of the International Criminal Court (Rome Statute) marked a milestone in the development of international criminal law as states recognized the need to reach beyond the ad hoc solutions that preceded the ICC and build a court with broad jurisdiction to investigate, try and punish perpetrators of atrocities around the world. Officially created in 2002, the ICC has now become an established, if controversial, feature of the international landscape.

After two decades, the ICC has seemingly proven both its harshest critics and its most enthusiastic supporters wrong. The Court's record demonstrates that prosecuting people responsible for international crimes is possible, but it is a complex, time-consuming endeavour. Although its successful conviction of even a small number of may assuage

doubts about the ICC's viability, its lofty goals of ending impunity and deterring atrocities remain unattained.

1-1- The Concept of International Crime

During the first decades of the twentieth century, legal scholars did not take a conceptual approach to the term 'international crime'. The Second Protocol to the Geneva Convention for the Pacific Settlement of International Disputes of 2 October 1924 is a key example of this trend: it defines aggressive war as a war crime without elaborating on what exactly the term 'war crime' means¹. As can be expected, the lack of definition of such a crucial legal term did not make a positive contribution to the evolution of international criminal law. Moreover, the fact that even during the Nuremberg trials no definition of this term was introduced speaks for itself. The first definition was eventually introduced a few years later in *USA v. Wilhelm List, et. al.* (commonly known as the Hostages Trial), where the United States Military Tribunal at Nuremberg² defined the term 'international crime' for the first time in contemporary international case law: "An international crime is such an act universally recognised as criminal³, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstances"⁴.

The above definition established the following three cumulative characteristics of international crime:

(a) The universal recognition of an act as an offence. Thus, for example, the prohibition of alcohol in the United States of America (USA) in the 1930s could never be considered an international crime, because in the vast majority of States worldwide alcohol consumption was fully liberalised and not subject to any legal restrictions, nor, of course, was it considered an offence.

(b) The exceptionally grave nature of the crime in relation to the damage caused by it, its widespread commission or the existence of other characteristics which render it an important problem for a significant number of States and, consequently, a great issue of international interest. For instance, the crime of piracy is a distinctive and timeless example of a crime of great international interest.

(c) The existence of a valid reason which would justify why the offence could not be left within the exclusive jurisdiction of one specific State, which would under normal circumstances have the legal authority to prosecute its commission, bring it to trial and punish its perpetrator(s).

This third characteristic applies when the special circumstances of a crime, which may be connected to the commission of the crime itself, the identity of the perpetrator(s) or other elements of the crime, obstruct the prosecution of the crime by the State that would normally have jurisdiction over it. The best solution is thus for the prosecution of the crime and the trial to take place at an international level. For instance, this would theoretically be the case for crimes committed by a State's elected government representatives during their tenure with the complicity of another State's officials, as may occur today in cases of embezzlement of European subsidies, to name but one example⁵.

In addition, it is noteworthy that the aforementioned criterion indirectly promoted the primacy of an international criminal court, which would exercise its jurisdiction over international crimes in lieu of the State, because evidently, it would not be appropriate for the State itself or a national court of the State to determine whether a crime fulfilled the criteria set by the ‘Hostages Trial’ and could not therefore “be left within the exclusive jurisdiction of the state that would have control over it under ordinary circumstances”⁶. Despite its weaknesses—most notably, the prerequisite of the three criteria to be cumulatively met in order for an act to constitute an international crime—the first official definition of the term can be considered exceptionally positive in retrospect. That is because the term ‘international crime’, despite being included in earlier international texts and conventions, otherwise remained undefined. Hence the first definition given in the ‘Hostages Trial’ not only provided the foundations for an international discourse on the term, but also guided the evolution of international criminal law, which has reached a peak now that the International Criminal Court exercises jurisdiction over war crimes, crimes against humanity, genocide and, most recently, the crime of aggression. In contemporary international criminal law theory, various views have been supported regarding the meaning of the term ‘international crime’, its elements and the criteria defining its relevance to the case at hand⁷. Certainly, this discussion had begun immediately after the Nuremberg Trials and the Hostages Trial. Already in 1950, George Schwarzenberger argued in his monumental essay on international criminal law that “an international crime [...] requires the existence of international criminal law. Such a discipline of legal studies does not exist.”⁸ Almost four decades later in 1989, the International Association of Criminal Law in Vienna attempted to define international crimes by dividing them into two vast categories:

(a) international crimes *stricto sensu*, i.e., international crimes recognised as such by the international community pursuant to the generally recognised principles of international law, which threaten international legal interests (such as the peace and security of the international community)⁹ and imply individual criminal liability¹⁰.

(b) international crimes *lato sensu*, i.e., actions which, though criminalised under a State’s domestic law, cannot be efficiently dealt with solely through unilateral actions¹¹.

Regarding the above categorisation, Fotini Pazartzi correctly points out that the main distinguishing criterion is the fact that in the first case (the category of international crimes *stricto sensu*), individual criminal liability is directly established at an international level; while in the second case (the category of international crimes *lato sensu*) the criminalisation requirement concerning individual conduct only arises at the level of the states parties¹², which assume indirectly via international conventions the obligation to criminally prosecute the perpetrators at a national level. Consequently, nowadays, it is exclusively international crimes *stricto sensu* that are the core crimes of the ICC’s Rome Statute (ICCRSt), i.e. war crimes.

1-2-the influence of Versailles treaty(1919)

Many histories of international criminal law begin with the unsuccessful attempt to establish an international tribunal after World War I through the Treaty of Versailles. In the end no such tribunal was established, nevertheless these halting attempts at international justice remain central to the field, both legally and historiographically. Legally, judges at Nuremberg relied on them as precedent to overcome claims of retrospective lawmaking, or worse ‘Victor’s justice’, using Versailles to show that procedurally and substantively the Tribunal was ‘the expression of International Law existing at the time of its creation’.⁸ Similarly, while few histories of international criminal law dwell on Versailles, it does often set in motion progress narratives: stories of struggle—of law over politics, reason over vengeance, the international over the national/local—in which the project’s initial failings are corrected, first imperfectly at Nuremberg in 1945 and then definitively at Rome in 1998. Before there was ‘Nuremberg, 1945’ or ‘Rome, 1998’ however, James Morgan Read wrote a very different account of the international justice attempted at Versailles, one that was well-received at the time.

Rather than the 1919 Commission on the Responsibility of the Authors of the War, Read’s account focused on the so-called ‘atrocities stories’ published by Allied Powers during the war, arguing that these made the attempts to try Germans before an international tribunal at its conclusion ‘inevitable’. According to Read, ‘the statesmen at Paris in 1919 were largely the prisoners of their own machinations’, as the ‘picture of the enemy...painted during the war’ by these atrocity stories ‘led to the overpowering demand for punishment of the war criminals’¹³.

1-3-The International Military Tribunal at Nuremberg

The International Military Tribunal-IMT- at Nuremberg is often cited as a cornerstone of international humanitarian law. Through the IMT, norms regarding treatment of civilians during conflict were more precisely defined, and the accused were held individually accountable for violation of these principles. Among the crimes prosecuted at Nuremberg, those pertaining to genocide tend to dominate public perception of the court’s historical legacy. Yet, as Bass has argued, “One of the great ironies of Nuremberg’s legacy is that the tribunal is remembered as a product of Allied horror at the Holocaust, when in fact America and Britain, the liberal countries that played major roles in deciding what Nuremberg would be, actually focused far more on the criminality of Nazi aggression than on the Holocaust.” Understanding this irony requires that we unpack the politics that surrounded the origins of the IMT and the role that power played in the development of international humanitarian law. How did power shape the pursuit of justice at Nuremberg after World War II? First and foremost, realpolitik determined whether a court would be created at all, and subsequently, who would face trial. Military leadership on both sides of the war recognized that whether you would stand trial was entirely dependent on your relative power at the conclusion of the war. Those lacking power—the defeated forces—must face judgment by those holding power—the victorious. Hermann Goering, the highest-ranking Nazi prosecuted during the Nuremberg trials, pointed out that “the victor will always be the judge, and the vanquished the accused.

On the American side, General Curtis LeMay famously remarked, “I suppose if I had lost the war, I would have been tried as a war criminal. Fortunately, we were on the winning side.” It was the Allied leadership that would determine the type of justice their defeated foes would face. In other words, justice was first and foremost a function of power.

Leaders of the Allied powers met several times in the latter stages of World War II to discuss an endgame strategy for the war and the postwar international order. An important part of these discussions involved the question of what to do about their defeated enemies at the conclusion of the war. Initially, discussions reflected a notion of justice in terms of “eye- for- an- eye” retribution against the defeated Axis powers¹⁴.

Still in the heat of battle, conversations about the Axis powers tended to be more about victory and vengeance rather than justice in the way that term is used in contemporary international humanitarian law. At the conclusion of the Moscow Conference in November 1943, participants drafted the Moscow Declaration, which stated that the Nazis would be “judged and punished” for their actions during the war. However, the form and process of judgment and punishment remained ambiguous. A similar statement was issued by FDR, Churchill, and Chiang Kai-shek in what became known as the Potsdam Declaration, issued in July 1945. In the Potsdam Declaration, Allied leaders promised the Japanese that “stern justice shall be meted out to all war criminals.” While there was consensus among the Allied leaders that the Nazis should face judgment for their actions, there were differing views on the purpose of justice as well as what role a court should play in the process of producing justice. At the subsequent meeting held in Tehran from November 28 through December 1, 1943, Stalin argued that justice should take the form of mass executions from which few should be spared. Stalin’s proposal would entail the execution of 50,000 to 100,000 Germans. Though taken aback by the severity of Soviet sentiment, both FDR and Churchill were subject to public demands that defined justice along similar lines. As noted by Gary Bass, calls for justice largely came in the form of a hue and cry for revenge “of the swift and certain kind.” In Britain, public opinion polls showed that a majority of respondents preferred execution of Nazi leadership, reflecting that Britons showed a far greater interest in punishment than due process. Neither the British nor the Soviets initially showed much interest in pursuing formal trials. Ultimately, it was U.S. president Franklin Delano Roosevelt who saw the appeal of creating a court and who convinced British prime minister Winston Churchill and Soviet Union leader Joseph Stalin to support the idea. Particularly for the Americans and the Soviets, the appeal of creating a court was rooted in a desire to hold the Nazis accountable for the war itself¹⁵.

1-4-from Slobodan Milosevic to icc establishment

from Slobodan Milosevic, from the docket in The Hague. Milosevic considered the ICTY both illegal and illegitimate. In his view, presented in his opening statement at his trial at the ICTY,²⁵ Milosevic maintained that: there is a fundamental historical fact that one should proceed from when seeking to understand what happened and which led to everything that happened in the territory of Yugoslavia from 1991 until the present day, and that is the violent destruction of a European state, Yugoslavia... It is not only that a

state was destroyed. The United Nations system was destroyed. Also, the corpus of principles upon which the world civilisation was based has been destroyed. Milosevic went on to also directly criticize the ICTY: I will not dwell on the lack of the legal basis for the establishment of this Tribunal. I would just like to recall that the source of judicial power can only come from international treaties and not resolutions, as stated by the UN Secretary-General himself in a statement to the Security Council on May 3rd, 1993. However, you owe a response to the international community of where does the right of the Security Council come to suspend legal treaties? We have the legal the Geneva Conventions from 1949 as well as Additional Protocols to punish war crimes which place the responsibility for a trial of such cases on national courts. An international court can have authority only if it was created by a lege artis act and if it is of a general nature. This Tribunal lacks both elements. The act of the establishment of this Tribunal is of an individual nature. It's a political nature. In later years, similar arguments have been voiced by several African leaders who found themselves, or are afraid to find themselves, in the cross-hairs of an atrocity's investigation. Initially, such claims of principled opposition surfaced after the ICC issued summonses to appear against six prominent Kenyan politicians in March 2011. More recently, the principled opposition to atrocities investigations led Burundi, Gambia and South Africa to withdraw from the ICC in late 2016 – early 2017. The African Union leaders agreed to follow suit. Gambia and South Africa subsequently reversed their decisions to withdraw and the government of Burundi is suspected of committing atrocities, indicating that a principled opposition to atrocities may be more a matter of self-interest than principle. Yet, the idea that the ICC is a neo-colonial institution has picked up strength to such a degree that it has spurred rigorous academic debates and has led to repeated public questioning of the ICC's prosecutor Fatou Bensouda on the targeting of the investigations ¹⁶.

1-5-Limits of the Four Categories.

The four categories described above are seldom used exclusively in the creation of an atrocity's investigation. Collectively, these four categories stand for the proposition that an atrocities investigation is likely to be created when a state (i) wants to target specific opponents, (ii) feels a strong normative demand for justice, (iii) wants to strengthen its identity, and (iv) is liberal, gripped by a principled idea, and wants to target crimes committed against its soldiers without risking the lives of its troops. Blending elements from all four of these categories, Rudolph argues that a combination of real-politik with domestic interests, bureaucratic prerogatives and idealism play an important role in the creation of such investigations. He also documents how these various factors have influenced the creation of the ICTY and the ICTR¹⁷,

1-6-The case law of the ICTR and ICTY has contributed considerably to clarifying thesevarious elements.

As we shall see, these two Tribunals have taken a stand on these matters, The importance of Akayesu in particular needs to be stressed. In this case, an ICTRTrial Chamber not only emphasized that genocide is the gravest international crime or, as it put it, 'the crime of crimes' but also, and more importantly, made a significant contribution to the elaboration

of the notion of genocide, elucidating a number of points that deserve to be briefly underlined¹⁸.

in 1999, in the case of genocide the perpetrators do not target a person 'in his capacity as an individual; they do not see the victim as a human being but only as a member of the persecuted group.

This intent amounts to *dolus specialis* that is, to an aggravated criminal intention, required in addition to the criminal intent accompanying the underlying offence (killing; causing serious bodily or mental harm; inflicting conditions of life calculated to physically destroy the group; imposing measures designed to prevent births within the group; forcibly transferring children). It logically follows that other categories of mental element are excluded: recklessness (or *dolus eventualis*) and gross negligence.

The ICTR Trial Chambers have contributed greatly to elucidating the subjective element of genocide, In *Akayesu*, an ICTR Trial Chamber held that the commission of genocide required 'a special intent or *dolus specialis*. 'Special intent' is defined by the ICTR as 'the specific intention, required as a constitutive element of the crime, which demands that the perpetrator clearly seeks to produce the act charged (498). The Trial Chamber added that intent 'is a mental factor which is difficult, even impossible to determine. This is the reason why, in the absence of a confession from the accused, his intent can be inferred from a certain number of presumptions of fact'¹⁹ Truth, therefore, is a second important element in measuring the ICTY's impact on reconciliation, and three indicators can be used in conjunction with it. The first is truth acceptance. It is not sufficient simply for a court such as the ICTY to establish the truth, because '...the truth will not necessarily be believed...'²⁰

Kosovo has been heavily neglected, and indeed this was highlighted during the ICTY legacy conference in The Hague in 2010. Reflecting on this event, the then President of the Tribunal recalled that, one issue that was noted in the conference as a failing was the absence of Kosovo, resulting from a variety of factors, including the low turnout of Kosovo-based participants invited to the conference. This absence was pointed out by international participants on more than one occasion.... Many asked how the Tribunal could consider its legacy vision in the region without hearing the voice of Kosovo. The Tribunal shares the concern...²¹

for Rwanda of the commission of Human Rights in his first report of 28 June 1994 indicated that large-scale massacres of Tutsi had occurred and was organised by the Hutu militia for which the transitional Government of Rwanda bore responsibility. Before the Commission of Experts for Rwanda was established, in May 1994, the Commission of Experts for the former Yugoslavia issued its Final Report. Its Report was timely in considering the modern definition of crimes against humanity in the context of the atrocities in Rwanda. Unlike in the former Yugoslavia, it was unclear whether there was any armed conflict taking place in Rwanda at all. In its Report, the Commission of Experts stated that 'crimes against humanity apply to all contexts' and are 'no longer dependent upon their linkage to crimes against peace or war crimes'.

To support its view, the Commission took a somewhat strained view of the Nuremberg²² Judgment. It said the Nuremberg Tribunal ascertained that there are ‘elementary dictates of humanity’ to be recognised under all circumstances and that crimes against humanity in the London Charter were ‘conceived to redress crimes of an equally serious character [to war crimes] and on a vast scale, organized and systematic, and most ruthlessly carried out’. The Nuremberg Tribunal did refer to the charged conduct, on the facts before it, in these terms, but the Tribunal did not suggest they were legal requirements. The Tribunal certainly did not suggest that the ‘dictates of humanity’ gave rise to recognised crimes under international law in all circumstances. While not requiring a connection with war or armed conflict, the Commission of Experts concluded that crimes against humanity ‘must be part of a policy of persecution or discrimination’²³

In 1994, the ilc submitted its Draft Statute for an International Criminal Court (which merely referred to ‘crimes against humanity’ without definition). The General Assembly then established an Ad Hoc Committee to review the Draft Statute. The Committee expressed the view that the elements of the offence needed to be specified in the Statute. When it came to debating the Draft Statute’s definition of crimes against humanity, some delegations wanted to keep a nexus to armed conflict, others thought customary law was ‘questionable’ on this issue; some emphasised that ‘usually’ a ‘widespread or systematic’ attack was required, and others said the need for a discriminatory motive was ‘questionable and unnecessary’. In the end, the Ad Hoc Committee ‘discussed’ but did not draft a statute. The General Assembly then established the Preparatory Committee which met five times between 1995 and 1998. As Schabas explains, both the Ad Hoc Committee and the Preparatory Committee were ‘vexed’ by the contextual²⁴.

The Prosecution asserted, and the Defence did not challenge, the proposition that the actor may be a ‘terrorist group or organization’ but the Trial Chamber, somewhat guardedly, said the assertion ‘conforms with recent statements regarding crimes against humanity’. Finally, two further findings of note were made in relation to the chapeau aspect of crimes against humanity. First, that the defendant must act out of discriminatory motives (relying on the statements of the members of the Security Council at the time). Secondly, the defendant must know both that there is an attack on the civilian population and that his acts fit in with the attack (described as being by way of either actual or constructive knowledge). The Trial Chamber in the result found that Tadić was guilty of crimes against humanity for his acts against non-Serbians. It found there was an armed conflict in the territory of Prijedor in Bosnia which involved both a widespread and systematic attack against the non-Serb population pursuant to a discriminatory policy by the Serbian Autonomous Regions in Bosnia and their armed forces in order to bring about a Greater Serbia and Tadić was knowingly involved.

1-7-The Rome Conference It was seen as the ‘latest word’ on the crimes’ customary law definition.

The Tadić decisions up to 1998, the time of the Rome Conference, are important. On the face of the texts, the definition of Article 5 of the icty Statute is vastly different from Article 3 of the ictr Statute. Nevertheless, by resort to its view of customary law, the

Tribunals in The Tadić decisions were able to bring them together. It held that the war nexus had been abandoned by states and instead the ‘true’ definition was that of a widespread or systematic attack of a collective, discriminatory nature against a targeted population pursuant to a policy of a state or de facto power (or possibly even a less defined ‘organisation’ or ‘group’) to commit such acts. It branded such a norm as customary on very limited material, particularly as at 1991. The ictr Trial Chamber in Semanza noted that the case-law did not ‘fully articulate’ the basis of state custom in support of the ‘widespread or systematic’ test, saying the Trial Chamber in Tadić had reviewed the ‘limited practice’ on this issue.

As a matter of state practice, the most persuasive conclusion is that a new norm was emerging during the period 1991–1998 to replace the war nexus as the international or contextual aspect of crimes against humanity with the new test of a state or de facto power inspired widespread or systematic attack against a targeted population. It was still being ‘crystallised’, particularly the requirement for a discriminatory animus. Nevertheless, as discussed further below, the decision of the ictr Trial Chamber in Tadić was very influential in the minds of the delegates and drafters at the Rome Conference. It was seen as the ‘latest word’ on the crimes’ customary law definition. It would seem that the ‘rules laid down by judges have generated custom, rather than custom [which has] generated the rules’²⁵

1-8-The International Criminal Tribunal for Rwanda:

A Victors’ Court The International Criminal Tribunal for Rwanda was created by the Security Council acting under Chapter VII of the UN Charter by Resolution 955 (1994) at its 3454rd meeting on November 8, 1994.⁶ The Resolution established that the crimes of “genocide and other systematic, widespread and flagrant violations of international humanitarian law” were committed within the territory of Rwanda, which continued to constitute a threat to international peace and security and that the “particular circumstances of Rwanda” warranted “the prosecution of persons responsible for serious violations of international humanitarian law” in order to “achieve and contribute to the process of national reconciliation and to the restoration and maintenance of peace.” This mandate of the ICTR specified in the Security Council Resolution is spelled out in Article 1 of the statute of the ICTR ²⁶.

The establishment of an International Residual Mechanism for International Criminal Tribunals on July 1, 2012 by the Security Council, which put an end to new indictments at the ICTR, has deprived the Rwandan Patriotic Front of a significant tool it relied on to intimidate and blackmail political opponents and adversaries. This has at long last exposed the fragility of the RPF and led the government of Rwanda to seek a new security corridor through sponsoring armed groups in the East of the Democratic Republic of the Congo. While the ICTR exists, the RPF’s political opponents, who include reneged Tutsi intellectuals and leaders, live with the fear of being denounced and arrested for their alleged participation in the genocide. Through state cooperation it was always possible for Rwanda to seek the assistance of the ICTR to provide it with information gathered by its investigators to use against any persons it targeted for prosecution. With the end of the

prosecutorial mandate of the ICTR, the RPF has lost a valued ally in its effort to silence political dissent, its fight against impunity, and the security of its political system²⁷.

2- ESTABLISHMENT OF THE COURT

2-1- The Court

An International Criminal Court ("the Court") is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute²⁸. The Rome Statute of the ICC is arguably the most important treaty in contemporary international criminal law, owing to its relative comprehensiveness and to the fact that it was agreed upon by a large body of states²⁹.

2-2- Relationship of the Court with the United Nations

The Court shall be brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf³⁰.

The Rome Statute balances the costs by the principle of complementarity and by giving the UNSC certain powers vis-à-vis the ICC³¹.

The Commission felt that such a provision was necessary in order to enable the Council to make use of the court, as an alternative to establishing ad hoc tribunals and as a response to crimes which affront the conscience of mankind. On the other hand, it did not intend in any way to add to or increase the powers of the Council as defined in the Charter, as distinct from making available to it the jurisdiction mechanism created by the statute³².

participating states as well as patterns of interdependence shape their functions. This means that states cannot calculate the exact costs and benefits of alternative solutions, the decision to create regimes at first place is based on anticipations, and the violation of established rules will likely be punished, because states fear precedents³³.

2-3- Seat of the Court

The seat of the Court shall be established at The Hague in the Netherlands ("the host State"). So, The Court shall enter into a headquarters agreement with the host State, to be approved by the Assembly of States Parties³⁴ and thereafter concluded by the President of the Court on its behalf³⁵

The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute.

2-4- Legal status and powers of the Court

The Court shall have international legal personality. It shall also have such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. so, The Court may exercise its functions and powers, as provided in this Statute, on the territory of any State Party and, by special agreement, on the territory of any other State³⁶.

2-5- Official and working languages

The official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish. The judgements of the Court, as well as other decisions resolving

fundamental issues before the Court, shall be published in the official languages. The Presidency shall, in accordance with the criteria established by the Rules of Procedure and Evidence, determine which decisions may be considered as resolving fundamental issues for the purposes of this paragraph.

The working languages of the Court shall be English and French. The Rules of Procedure and Evidence shall determine the cases in which other official languages may be used as working languages. But at the request of any party to a proceeding or a State allowed to intervene in a proceeding, the Court shall authorize a language other than English or French to be used by such a party or State, provided that the Court considers such authorization to be adequately justified³⁷.

3- COMPOSITION AND ADMINISTRATION OF THE COURT

3-1- Organs of the Court

The Court shall be composed of the following organs³⁸:

- 1- The Presidency;
- 2- An Appeals Division, a Trial Division and a Pre-Trial Division;
- 3- The Office of the Prosecutor;
- 4- The Registry.

3-2- Service of judges

All judges shall be elected as full-time members of the Court and shall be available to serve on that basis from the commencement of their terms of office. and composing the Presidency shall serve on a full-time basis as soon as they are elected.

The Presidency may, on the basis of the workload of the Court and in consultation with its members, decide from time to time to what extent the remaining judges shall be required to serve on a full-time basis. Any such arrangement shall be without prejudice to the provisions of article 40.

so, the financial arrangements for judges not required to serve on a full-time basis shall be made in accordance with article 49 39.

The presence of these judges on the bench, providing a ‘critical mass’ of persons particularly versed in human rights law, has contributed, I believe, to human rights being viewed as in the centre of what the Court does, not at the margin⁴⁰. to demonstrate, we may refer to the symbolism and rhetoric of war crimes tribunals like Nuremburg and Tokyo. Similarly, the establishment of the ICTY and the International Criminal Court (ICC)⁴¹

3-3- Qualifications, nomination and election of judges

Subject to the provisions of paragraph 2, there shall be 18 judges of the Court. the Presidency, acting on behalf of the Court, may propose an increase in the number of judges specified in paragraph 1, indicating the reasons why this is considered necessary and appropriate. The Registrar shall promptly circulate any such proposal to all States Parties. But any such proposal shall then be considered at a meeting of the Assembly of States Parties to be convened in accordance with article 112. The proposal shall be considered adopted if approved at the meeting by a vote of two thirds of the members of the Assembly

of States Parties and shall enter into force at such time as decided by the Assembly of States Parties. once a proposal for an increase in the number of judges has been adopted under subparagraph (b), the election of the additional judges shall take place at the next session of the Assembly of States Parties in accordance with paragraphs 3 to 8, and article 37, paragraph 2; and once a proposal for an increase in the number of judges has been adopted and brought into effect under subparagraphs (b) and (c) (i), it shall be open to the Presidency at any time thereafter, if the workload of the Court justifies it, to propose a reduction in the number of judges, provided that the number of judges shall not be reduced below that specified in paragraph 1. The proposal shall be dealt with in accordance with the procedure laid down in subparagraphs (a) and (b). In the event that the proposal is adopted, the number of judges shall be progressively decreased as the terms of office of serving Judges expire, until the necessary number has been reached.

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.

Every candidate for election to the Court shall 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 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.

Every candidate for election to the Court shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. but the nominations of candidates for election to the Court may be made by any State Party to this Statute, and shall be made either by the procedure for the nomination of candidates for appointment to the highest judicial offices in the State in question; or by the procedure provided for the nomination of candidates for the International Court of Justice in the Statute of that Court. the nominations shall be accompanied by a statement in the necessary detail specifying how the candidate fulfils the requirements of paragraph 3. Each State Party may put forward one candidate for any given election who need not necessarily be a national of that State Party but shall in any case be a national of a State Party⁴².

The Assembly of States Parties may decide to establish, if appropriate, an Advisory Committee on nominations. In that event, the Committee's composition and mandate shall be established by the Assembly of States Parties.

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.

The judges shall be elected by secret ballot at a meeting of the Assembly of States Parties convened for that purpose under article 112. Subject to paragraph 7, the persons elected to the Court shall be the 18 candidates who obtain the highest number of votes and a two-thirds majority of the States Parties present and voting. In the event that a sufficient number of judges is not elected on the first ballot, successive ballots shall be held in accordance with the procedures laid down in subparagraph (a) until the remaining places have been filled. but no two judges may be nationals of the same State. A person who, for the purposes of membership of the Court, could be regarded as a national of more than one State shall be deemed to be a national of the State in which that person ordinarily exercises civil and political rights.

The States Parties shall, in the selection of judges, take into account the need, within the membership of the Court, for the representation of the principal legal systems of the world; equitable geographical representation; and a fair representation of female and male judges. and- the States Parties shall also take into account the need to include judges with legal expertise on specific issues including, but not limited to, violence against women or children.

the subject to subparagraph (b), judges shall hold office for a term of nine years and, subject to subparagraph (c) and to article 37, paragraph 2, shall not be eligible for re-election. at the first election, one third of the judges elected shall be selected by lot to serve for a term of three years; one third of the judges elected shall be selected by lot to serve for a term of six years; and the remainder shall serve for a term of nine years. a judge who is selected to serve for a term of three years under subparagraph (b) shall be eligible for re-election for a full term. but not with standing paragraph 9, a judge assigned to a Trial or Appeals Chamber in accordance with article 39 shall continue in office to complete any trial or appeal the hearing of which has already commenced before that Chamber.

3-4- Judicial vacancies

In the event of a vacancy, an election shall be held in accordance with article 36 to fill the vacancy.

A judge elected to fill a vacancy shall serve for the remainder of the predecessor's term and, if that period is three years or less, shall be eligible for re-election for a full term under article 36⁴⁴.

For example, ICC trial judges have authority to determine the proper method for organizing the production of evidence. More broadly, criminal procedure at ICC trials can assume more of a common law or more of a civil law form, depending on the judges and the case⁴⁵.

3-5- The Presidency

The President and the First and Second Vice-Presidents shall be elected by an absolute majority of the judges. They shall each serve for a term of three years or until the end of their respective terms of office as judges, whichever expires earlier. They shall be eligible for re-election once.

The First Vice-President shall act in place of the President in the event that the President is unavailable or disqualified. The Second Vice-President shall act in place of the President in the event that both the President and the First Vice-President are unavailable or disqualified.

The President, together with the First and Second Vice-Presidents, shall constitute the Presidency, which shall be responsible for the proper administration of the Court, with the exception of the Office of the Prosecutor; and the other functions conferred upon it in accordance with this Statute.

In discharging its responsibility under paragraph 3 (a), the Presidency shall coordinate with and seek the concurrence of the Prosecutor on all matters of mutual concern⁴⁶.

3-6- Chambers

As soon as possible after the election of the judges, the Court shall organize itself into the divisions specified in article 34, paragraph (b). The Appeals Division shall be composed of the President and four other judges, the Trial Division of not less than six judges and the Pre-Trial Division of not less than six judges. The assignment of judges to divisions shall be based on the nature of the functions to be performed by each division and the qualifications and experience of the judges elected to the Court, in such a way that each division shall contain an appropriate combination of expertise in criminal law and procedure and in international law. The Trial and Pre-Trial Divisions shall be composed predominantly of judges with criminal trial experience.

The judicial functions of the Court shall be carried out in each division by Chambers. The Appeals Chamber shall be composed of all the judges of the Appeals Division; the functions of the Trial Chamber shall be carried out by three judges of the Trial Division; the functions of the Pre-Trial Chamber shall be carried out either by three judges of the Pre-Trial Division or by a single judge of that division in accordance with this Statute and the Rules of Procedure and Evidence. Nothing in this paragraph shall preclude the simultaneous constitution of more than one Trial Chamber or Pre-Trial Chamber when the efficient management of the Court's workload so requires.

the Judges assigned to the Trial and Pre-Trial Divisions shall serve in those divisions for a period of three years, and thereafter until the completion of any case the hearing of which has already commenced in the division concerned. And assigned to the Appeals Division shall serve in that division for their entire term of office. So, the judges assigned to the Appeals Division shall serve only in that division. Nothing in this article shall, however, preclude the temporary attachment of judges from the Trial Division to the Pre-Trial Division or vice versa, if the Presidency considers that the efficient management of the Court's workload so requires, provided that under no circumstances shall a judge who has participated in the pre-trial phase of a case be eligible to sit on the Trial Chamber hearing that case⁴⁷.

4-Independence. Excusing and disqualification of judges

4-1 - Independence of the judges

The judges shall be independent in the performance of their functions. And shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.

Judges required to serve on a full-time basis at the seat of the Court shall not engage in any other occupation of a professional nature. but Any question regarding the application of paragraphs 2 and 3 shall be decided by an absolute majority of the judges. Where any such question concerns an individual judge that judge shall not take part in the decision⁴⁸.

4-2- Excusing and disqualification of judges

The Presidency may, at the request of a judge, excuse that judge from the exercise of a function under this Statute, in accordance with the Rules of Procedure and Evidence.

A judge shall not participate in any case in which his or her impartiality might reasonably be doubted on any ground. A judge shall be disqualified from a case in accordance with this paragraph if, inter alia, that judge has previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. A judge shall also be disqualified on such other grounds as may be provided for in the Rules of Procedure and Evidence.

The Prosecutor or the person being investigated or prosecuted may request the disqualification of a judge under this first paragraph. but Any question as to the disqualification of a judge shall be decided by an absolute majority of the judges. The challenged judge shall be entitled to present his or her comments on the matter, but shall not take part in the decision⁴⁹.

5- The Office of the Prosecutor and the Registry

5-1- The Office of the Prosecutor

The Office of the Prosecutor shall act independently as a separate organ of the Court. It shall be responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court.

A member of the Office shall not seek or act on instructions from any external source. and shall be headed by the Prosecutor. The Prosecutor shall have full authority over the management and administration of the Office, including the staff, facilities and other resources thereof. The Prosecutor shall be assisted by one or more Deputy Prosecutors, who shall be entitled to carry out any of the acts required of the Prosecutor under this Statute. The Prosecutor and the Deputy Prosecutors shall be of different nationalities. They shall serve on a full-time basis.

The Prosecutor and the Deputy Prosecutors shall be persons of high moral character, be highly competent in and have extensive practical experience in the prosecution or trial of criminal cases. They shall have an excellent knowledge of and be fluent in at least one of the working languages of the Court. But The Prosecutor shall be elected by secret ballot by an absolute majority of the members of the Assembly of States Parties. The Deputy Prosecutors shall be elected in the same way from a list of candidates provided by the

Prosecutor. The Prosecutor shall nominate three candidates for each position of Deputy Prosecutor to be filled. Unless a shorter term is decided upon at the time of their election, the Prosecutor and the Deputy Prosecutors shall hold office for a term of nine years and shall not be eligible for re-election.

Neither the Prosecutor nor a Deputy Prosecutor shall engage in any activity which is likely to interfere with his or her prosecutorial functions or to affect confidence in his or her independence. They shall not engage in any other occupation of a professional nature. but The Presidency may excuse the Prosecutor or a Deputy Prosecutor, at his or her request, from acting in a particular case.

ICC is a per man ent institution with potentially global reach. Within the Court's ordinary territorial and personal jurisdictional limits, the prosecutor can initiate investigations without needing the authorization of any particular state or set of states ⁵⁰.

Neither the Prosecutor nor a Deputy Prosecutor shall participate in any matter in which their impartiality might reasonably be doubted on any ground. They shall be disqualified from a case in accordance with this paragraph if, inter alias, they have previously been involved in any capacity in that case before the Court or in a related criminal case at the national level involving the person being investigated or prosecuted. but Any question as to the disqualification of the Prosecutor or a Deputy Prosecutor shall be decided by the Appeals Chamber- The person being investigated or prosecuted may at any time request the disqualification of the Prosecutor or a Deputy Prosecutor on the grounds set out in this article; The Prosecutor or the Deputy Prosecutor, as appropriate, shall be entitled to present his or her comments on the matter.

The Prosecutor shall appoint advisers with legal expertise on specific issues, including, but not limited to, sexual and gender violence and violence against children⁵¹.

5-2- The Registry

The Registry shall be responsible for the non-judicial aspects of the administration and servicing of the Court, without prejudice to the functions and powers of the Prosecutor in accordance with article 42. and shall be headed by the Registrar, who shall be the principal administrative officer of the Court.

The Registrar shall exercise his or her functions under the authority of the President of the Court.

The Registrar and the Deputy Registrar shall be persons of high moral character, be highly competent and have an excellent knowledge of and be fluent in at least one of the working languages of the Court⁵².

The judges shall elect the Registrar by an absolute majority by secret ballot, taking into account any recommendation by the Assembly of States Parties. If the need arises and upon the recommendation of the Registrar, the judges shall elect, in the same manner, a Deputy Registrar. But The Registrar shall hold office for a term of five years shall be eligible for re-election once and shall serve on a full-time basis. The Deputy Registrar shall hold office for a term of five years or such shorter term as may be decided upon by an absolute majority of the judges, and may be elected on the basis that the Deputy Registrar shall be called upon to serve as required.

The Registrar shall set up a Victims and Witnesses Unit within the Registry. This Unit shall provide, in consultation with the office of the Prosecutor, protective measures and security arrangements, counselling and other appropriate assistance for witnesses, victims who appear before the Court, and others who are at risk on account of testimony given by such witnesses. The Unit shall include staff with expertise in trauma, including trauma related to crimes of sexual violence⁵³.

5-3- The Staff

The Prosecutor and the Registrar shall appoint such qualified staff as may be required to their respective offices. In the case of the Prosecutor, this shall include the appointment of investigators.

In the employment of staff, the Prosecutor and the Registrar shall ensure the highest standards of efficiency, competency and integrity, and shall have regard to the criteria set forth in article 36, paragraph 8.

The Registrar, with the agreement of the Presidency and the Prosecutor, shall propose Staff Regulations which include the terms and conditions upon which the staff of the Court shall be appointed, remunerated and dismissed. The Staff Regulations shall be approved by the Assembly of States Parties.

The Court may, in exceptional circumstances, employ the expertise of gratis personnel offered by States Parties, intergovernmental organizations or non-governmental organizations to assist with the work of any of the organs of the Court. The Prosecutor may accept any such offer on behalf of the Office of the Prosecutor. Such gratis personnel shall be employed in accordance with guidelines to be established by the Assembly of States Parties⁵⁴.

6- Removal. Disciplinary and Privileges of the judges

6-1- Removal from office

A judge, the Prosecutor, a Deputy Prosecutor, the Registrar or the Deputy Registrar shall be removed from office if a decision to this effect is made in accordance with paragraph 2, in cases where that person is found to have committed serious misconduct or a serious breach of his or her duties under this Statute, as provided for in the Rules of Procedure and Evidence; or is unable to exercise the functions required by this Statute.

A decision as to the removal from office of a judge, the Prosecutor or a Deputy Prosecutor under paragraph 1 shall be made by the Assembly of States Parties, by secret ballot: In the case of a judge, by a two-thirds majority of the States Parties upon a recommendation adopted by a two-thirds majority of the other judges; In the case of the Prosecutor, by an absolute majority of the States Parties; or In the case of a Deputy Prosecutor, by an absolute majority of the States Parties upon the recommendation of the Prosecutor.

A decision as to the removal from office of the Registrar or Deputy Registrar shall be made by an absolute majority of the judges.

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar whose conduct or ability to exercise the functions of the office as required by this Statute is challenged under this article shall have full opportunity to present and receive evidence and to make

submissions in accordance with the Rules of Procedure and Evidence. The person in question shall not otherwise participate in the consideration of the matter⁵⁵.

6-2-Disciplinary measures

A judge, Prosecutor, Deputy Prosecutor, Registrar or Deputy Registrar who has committed misconduct of a less serious nature than that set out in article 46, paragraph 1, shall be subject to disciplinary measures, in accordance with the Rules of Procedure and Evidence⁵⁶.

6-3- Privileges and immunities

The Court shall enjoy in the territory of each State Party such privileges and immunities as are necessary for the fulfillment of its purposes. The judges, the Prosecutor, the Deputy Prosecutors and the Registrar shall, when engaged on or with respect to the business of the Court, enjoy the same privileges and immunities as are accorded to heads of diplomatic missions and shall, after the expiry of their terms of office, continue to be accorded immunity from legal process of every kind in respect of words spoken or written and acts performed by them in their official capacity.

The Deputy Registrar, the staff of the Office of the Prosecutor and the staff of the Registry shall enjoy the privileges and immunities and facilities necessary for the performance of their functions, in accordance with the agreement on the privileges and immunities of the Court.

Counsel, experts, witnesses or any other person required to be present at the seat of the Court shall be accorded such treatment as is necessary for the proper functioning of the Court, in accordance with the agreement on the privileges and immunities of the Court.

The privileges and immunities of: A judge or the Prosecutor may be waived by an absolute majority of the judges; The Registrar may be waived by the Presidency; The Deputy Prosecutors and staff of the Office of the Prosecutor may be waived by the Prosecutor; or The Deputy Registrar and staff of the Registry may be waived by the Registrar⁵⁷.

The immunity issue. The Scope of the Immunity of State officials in View of Individual Responsibility for Crimes against International Law. this study it was explained that there is considerable confusion as regards the act of state concept that controls the rule of functional immunity. It was argued that state officials enjoy functional immunity from the jurisdiction of foreign courts in respect of acts committed as the arm or mouthpiece of their home state⁵⁸.

In order to ascertain the precedent value of the Pinochet case it is therefore necessary to closely scrutinize each individual opinion. The scope of the refusal of immunity can only be grasped when the personal parameters of functional immunity and international criminal law of each Lord are revealed. Lord Goff of Chieveley delivered the only dissent on the immunity issue. As to the nature of the protection available to Pinochet, Lord Goff agreed with Watts that the 'critical question' in the application of the rule of functional immunity is 'whether the conduct was engaged in under colour of or in ostensible exercise of the Head of State's public authority'. He added that 'in this context, the contrast is drawn between governmental acts, which are functions of the head of state, and private acts, which are not. He asserted that any exclusion of 'state immunity' in respect of crimes

of torture should be derived from the Torture Convention, since the principle of irrelevance of official capacity is only ‘concerned with international responsibility before international tribunals, and not with the exclusion of state immunity in criminal proceedings before national courts. Article 1.1 of the Torture Convention defines torture as any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in or incidental to lawful sanctions. According to Lord Goff the argument on the influence of the Torture Convention runs as follows: since torture contrary to the convention can only be committed by a public official or other person acting in an official capacity, and since it is in respect of the acts of these very persons that states can assert state immunity *ratione materiae*, it would be inconsistent with the obligations of state parties under the convention for them to be able to invoke state immunity *ratione materiae* in cases of torture contrary to the convention⁵⁹.

He did not accept that argument. In the first place, he held that a waiver of state immunity by treaty must always be express. The Immunity of States rejection of the argument that the Convention removes immunity by implication. Because treaties are the result of extensive negotiations, compromise, and even horse-trading, the text of the treaty itself, and the travaux préparatoires are the only safe guide to its terms. In other words, Lord Goff rejected the idea that the terms of a treaty must necessarily be ‘logical’ or ‘effective’. Moreover, he argued that ‘state immunity’ is not inconsistent with the obligations of state parties to the Convention. He asserted that in the majority of cases which may arise under the convention, no question of state immunity will arise at all, because the public official concerned is likely to be present in his own country⁶⁰.

Criminal proceedings that regard the personal responsibility of the individual. As regards the second principle he developed the following argument: No established rule of international law requires state immunity *ratione materiae* to be accorded in respect of prosecution for an international crime. International crimes and extra-territorial jurisdiction in relation to them are both new arrivals in the field of public international law. I do not believe that state immunity *ratione materiae* can co-exist with them. The exercise of extra-territorial jurisdiction overrides the principle that one state will not intervene in the internal affairs of another. It does so because, where international crime is concerned, that principle cannot prevail. An international crime is as offensive, if not more offensive, to the international community when committed under colour of office. Once extra-territorial jurisdiction is established, it makes no sense to exclude from it acts done in an official capacity⁶¹.

6-4- Salaries, allowances and expenses

The judges, the Prosecutor, the Deputy Prosecutors, the Registrar and the Deputy Registrar shall receive such salaries, allowances and expenses as may be decided upon by the Assembly of States Parties. These salaries and allowances shall not be reduced during their terms of office ⁶².

References

- 1-League of Nations, 'Arbitration, Security and Reduction of Armaments: Protocol for the Pacific Settlement of International Disputes' (25 June 1925) <<http://digital.library.northwestern.edu/league/le000016.pdf>> (last accessed 7 January 2019).
- 2-Apart from NMT, military tribunals were also created to adjudicate cases of minor significance in the areas under the control of the Allied Forces. The most important of those was the Military Tribunal of the United States of America in Nuremberg, which during the three years following the end of the Nuremberg Trials adjudicated twelve cases in the exact same courtrooms. The USA MT conducted trials according to Article 10 of Allied Control Council Statute, which was similar, but not identical to the NMT Statute. For example, the provision of crimes against peace was broader than the one the Nuremberg Trials were based on, as "initiating intrusions into other countries and aggressive wars against the provisions of International law and Treaties" was added to the existing definition. Intrusion into countries which offered no resistance such as Austria and Czechoslovakia became a crime after this addition. Nonetheless, because the trials were conducted exclusively with the participation of American judges, the international character of these trials has been disputed by some authors. Robert K. Woetzel, *The Nuremberg Trials in International Law*, (2nd edn, Stevens & Sons Limited, Plymouth 1962) 218-222.
- 3-Hostages Trial, US Military Tribunal at Nuremberg (19 February 1948)
- 4- Ann. Dig. (1953) 632, 636. 15 An indication of the timelessness of this definition is that the renowned Geneva Academy of International Humanitarian Law and Human Rights has adopted it and to this day considers it appropriate for the definition of the term 'international crime', Geneva Academy, Rule of Law in Armed Conflicts Project <http://www.geneva-academy.ch/RULAC/international_criminal_law.php> (last accessed 7 January 2019).
- 5-Victor Tsilonis. *The Jurisdiction of the International Criminal Court*. Springer Nature Switzerland 2019. pp.4-6
- 6-Hostages Trial, US Military Tribunal at Nuremberg (19 February 1948) 15 Ann. Dig. (1953) 632, 636.
- 7-The extensive review of the international bibliography found in Athanasios Chouliaras's book is considered quite important for Greek bibliography, although it does not eventually offer a specific view on the definition of an international crime de lege ferenda. A. Chouliaras, *Η Ανάδυση του Διεθνούς Πινικού Συστήματος* [The Rise of International Criminal Justice] (Sakkoulas, Athens 2013), 15, 324-386.
- 8-George Schwarzenberger, 'The Problem of an International Criminal Law' (1950) 3 *Curr. Leg. Probs*, 263, reprinted in G. Mueller & E. Wise (eds), *International Criminal Law* (1965) 3-36.
- 9- As analysed in more detail below, the term 'international community' does not have the meaning one would expect, i.e. the representation of the majority of States;

on the contrary, the term skilfully implies the representation of the interests of the most powerful states.

10- See also Konstantinos Antonopoulos, *Individual Criminal Liability in International Law* Ant. N. Sakkoulas, Athens 2003. 23.

11- Otto Triffterer, 'Efforts to Recognise and Codify International Crimes' in *Rapport General au Colloque Preparatoire du XIV Congres International de Droit Penal, Les Crimes Internationaux et le Droit Penal Interne*, Hammamet (Tunisie) (6-8 June 1987) 1989 (60) R.I.D.P. 29, 40.

12- It must be noted that the term "States Parties" is included 86 times in the Rome Statute of the International Criminal Court (ICCRSt). The same term is often found in many other international conventions, although it is not grammatically correct; Party is an adjective which comes after the noun State in a rather unusual fashion, most probably being a relic of French legal terminology. Thus, the correct plural of the term should be States Party, following similar post-noun adjectives in English like "Governor General" and "Notary Public". Nonetheless, because of the fact that it is a widely established term the author has eventually decided to retain the usage of this term.

13- Kevin Jon Heller, Frédéric Mégret, Sarah MH Nouwen, Jens David Ohlin, and Darryl INTERNATIONAL CRIMINAL LAW. Robinson. First Edition published. 2020. pp. 156-157

14- Christopher Rudolph. *Power and Principle - The Politics of International Criminal Courts*- First published Cornell University Press. London. 2017. p20

15- *ibid.* p21

16- Christodoulos Kaoutzanis. *The UN Security Council and International Criminal Tribunals: Procedure Matters* Springer Nature Switzerland. 2020. p42

17- *Ibid.* p43

18- ANTONIO CASSESE. *INTERNATIONAL CRIMINAL LAW*. Published in the United States by Oxford University Press Inc., New York. 2011. p 100

19- *ibid.* p 103

20- Janine Natalya Clark. *International Trials and Reconciliation Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia Transitional Justice, Judicial Accountability and the Rule of Law* Hakeem. first published Routledge Park Square, New York . 2014. p55.

21- *Ibid.* 156.

22- criminal tribunals, a validation of the principle that international criminal tribunals ought to be created (tribunals are created because they legally ought to be created). We have every reason to believe, however, that the Allies created the Nuremberg and Tokyo tribunals with extremely little thought about consolidating a movement of international criminal justice, let alone a sense of normative obligation to create international criminal jurisdictions. Both tribunals were possibilities among many that were chosen based on a range of goals that the Allies had set themselves during after the war; not— except in hindsight and with significant violence to what happened— the first steps towards universal international criminal justice. It is thus important not to read too much law into

opportunistic moments. A somewhat similar fallacy resurfaced on the occasion of the creation of the ad hoc international criminal tribunals in the early 1990s. Although international lawyers repeat without a fault that the tribunals were created to remedy ‘a breach of international peace and security’, this confuses the formal modality of their creation for the actual reasons why they were created. A Chapter VII resolution by the Security Council was one opportune way to set up the tribunals whose creation was decided for other reasons that need to be prodded independently and in all their complexity. There was certainly no compulsion to create the ad hoc international criminal tribunals merely because a threat to international peace and security had been found to exist in the relevant contexts. That every international criminal tribunal has sought to reinvent itself as more than the crass political compromises that led to it is understandable but good history does not make. see IMMI TALLGREN and THOMAS SKOUTERIS. *The New Histories of International Criminal Law*. First Edition published. 2019. p76

23-Robert Dubler SC Matthew Kalyk. *Crimes against Humanity in the 21st Century Law, Practice and Threats to International Peace and Security*. Description: Leiden; Brill/Nijhoff, Boston. 2018.p41.

24-ibid. p73

25-ibid.pp.100-101

26-Sébastien Chartrand and John Philpot. *Justice Belied the Unbalanced Scales of International Criminal Justice*, Published by Baraka Books of Montreal. Published by Baraka Books of Montreal. Canada. 2014.

27-Ibid.p 28.

28- text of the Rome statute circulated as document A/CONF.183/9 of 17 july 1996 and corrected by proces-verbaux of 10 november1998.12 july .30novomber1998.8may -2000, january2002.the statute intred into force on july 2002.

29 -GIDEON BOAS JAMES L. BISCHOFF NATALIE L. REID.ELEMENTS OF CRIMES UNDER INTERNATIONAL LAW- *International Criminal Law -VOLUME II*. Cambridge University Press. 2008.p4

30-Rome statute of the international criminal court: p.3.

31-Salla Huikuri. *The Institutionalization of the International Criminal Court*.Palgrave Macmillan.london. 2019.p34.

32-ibid. p25

33-Ibid.36.

34-Rome statute of the international criminal court, ibid: p4.

35-R Ibid. p4.

36- Ibid. p4.

37- Ibid. p4.

38- Ibid.p19.

39-Rome statute of the international criminal court, ibid p19.

40-Avidan Kent, Nikos Skoutaris and Jamie Trinidad.*The Future of International Courts Regional, Institutional and Procedural Challenges*.First published. Routledge 2 Park Square, Milton Park, Abingdon, Oxon OX14 4RN and by Routledge. 2019.p92

- 41-ibid. p104
42- Ibid.p19.
43- Ibid.pp19-21.
44- Ibid.p21.
45-THERESA SQUATRITO. ORAN R. YOUNG. Santa Barbara. GEIR ULFSTEIN. THE PERFORMANCE OF INTERNATIONAL COURTS AND TRIBUNALS.First published. Cambridge University Press. United Kingdom. 2018.p167
46- Ibid.pp.20-21.
47- Ibid.p.22.
48- , Ibid.p22.
49- Ibid.pp.22-23.
50-Kevin Jon Heller, Frédéric Mégret, Sarah MH Nouwen, Jens David Ohlin, and Darryl Robinso.INTERNATIONAL CRIMINAL LAW. The Oxford Handbook. 2020.p136
51-52-Rome statute of the international criminal court, Ibid. pp.23-24.
53- Ibid. p24.
54- Ibid. p25.
55- Ibid. p25.
56- Ibid. p26.
57- Ibid. p26.
58- ROSANNE VAN ALEBEEK. Th e Immunity of States and Th eir Officials in International Criminal Law and International Human Rights Law. First published. Oxford University Press (maker). 2008.p222
59- Ibid.p227
60- Ibid.p 228
61-ibid. p233
62- Rome statute of the international criminal. p26.