

**INTERNATIONAL COURTS AND ATROCITIES IN
THE XXI CENTURY**

CORTES INTERNACIONALES Y ATROCIDADES EN EL SIGLO XXI

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ABSTRACT

Mass atrocities perpetrated in the last years of the last century and those committed in the XXI century have received major attention from a wide arrange of actors. Indeed, these serious violations of human rights and international humanitarian law, which are constitutive of international crimes, have led to cases before supranational courts. The law and/or practice of international courts within their respective specific mandates demonstrate that there is an increasing international judicial engagement with rendering justice in scenarios of mass atrocities. In this context, the main research question addressed in this article is to identify some of the main contributions of international courts in mass atrocity cases in the XXI century. In this context, three supranational courts are taken into account:

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the International Court of Justice, the International Criminal Court, and the Inter-American Court of Human Rights.

Keywords: International Court of Justice, International Criminal Court, Inter-American Court of Human Rights, atrocities, XXI century, serious violations of human rights and international humanitarian law, international crimes.

RESUMEN

Las atrocidades masivas perpetradas en los últimos años del siglo pasado y las cometidas en el siglo XXI han recibido gran atención por parte de una amplia variedad de actores. En efecto, estas violaciones serias de derechos humanos y del derecho internacional humanitario, que constituyen crímenes internacionales, han originado casos ante cortes supranacionales. La ley y/o la práctica de estas cortes dentro de sus respectivos mandatos específicos demuestran que existe un creciente compromiso judicial internacional con la impartición de justicia en escenarios de atrocidades masivas. En este contexto, la principal pregunta de investigación que aborda este artículo es identificar algunas de las principales contribuciones de las cortes internacionales en casos de atrocidades masivas en el siglo XXI. Para esta finalidad, se tienen en cuenta tres cortes supranacionales: la Corte Internacional de Justicia, la Corte Penal Internacional, y la Corte Interamericana de Derechos Humanos.

Palabras claves: Corte Internacional de Justicia, Corte Criminal Internacional, Corte Interamericana de Derechos Humanos, atrocidades, siglo XXI, graves violaciones de los derechos humanos y del derecho internacional humanitario, crímenes internacionales.

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1. INTRODUCTION

Mass atrocities committed in the last years of the last century and those perpetrated in the XXI century have received major attention from a wide arrange of actors worldwide. In turn, these serious violations of human rights and international humanitarian law, which are constitutive of international crimes, have been litigated before supranational courts. The law and/or practice of international courts within their respective specific mandates show that there is an increasing international judicial engagement with the provision of justice in mass atrocity scenarios. This is illustrated by the ongoing crisis resulting from the Russian invasion of Ukraine, leading to supranational judicial proceedings.

Against such a background, the main research question addressed by this article is to identify *some* of the main contributions of international courts in mass atrocity cases in the XXI century. In order to deepen the analysis, three fundamental courts are selected. First, the International Court of Justice (ICJ), which is the main judicial body of the United Nations (UN) (see UN Charter, articles 92-96). During the XXI century, the ICJ has increasingly decided on cases involving mass atrocities in inter-state litigation. Second, the International Criminal Court (ICC), which was created in 1998 through the adoption of the Rome Statute of the ICC. The ICC Statute, however, only became effective on 1 July 2002 and the ICC started its operations in 2003. The ICC determines individual criminal responsibility for international crimes under its jurisdiction (see ICC Statute, articles 5-8*bis* and 25). Finally, the Inter-American Court of Human Rights (IACtHR), which is the regional human rights court that can determine state responsibility for violations of the American Convention on Human Rights and other inter-American human rights treaties and order reparations for victims (see American Convention on Human Rights, articles 63 and 66-69). In the XXI century, the IACtHR has continued and largely expanded its robust jurisprudence on mass atrocities.

In order to unpack the main research question, the present article consists of three main sections: one per each of the three courts selected. Accordingly, section 2 corresponds to the ICJ. In turn, section 3 examines the ICC. Then, section 4 analyzes the IACtHR. In each of these sections, the

focus is the identification of the contributions of these supranational courts in mass atrocity cases, in particular their practice. Some attention is also drawn to criticism and challenges faced by these judicial institutions. The article finalizes with a general conclusion.

2. THE INTERNATIONAL COURT OF JUSTICE

As the “generalist” international court by excellence, the ICJ may eventually exercise its jurisdiction and provide important jurisprudential contributions to diverse areas of public international law (see, e.g., Chetail, 2003; Viñuales, 2008; Simma, 2012). During the previous century, however, the ICJ’s jurisprudence was mainly focused on territorial and maritime disputes between states (see, e.g., *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, 1992). The docket of the ICJ’s jurisprudence during the XXI century still and understandably has an important quota of these disputes and related case law (see, e.g., *Maritime Dispute (Peru v. Chile)*, 2014).

Yet, the XXI century has witnessed an increase in the number of ICJ cases and proceedings that concern serious violations of human rights and/or international humanitarian law. Such a trend arguably corresponds to what has been called to be a process of progressive humanization of public international law (see, e.g., Cançado Trindade, 2010). Indeed, this has been reflected in both the advisory jurisdiction and contentious jurisdiction of the ICJ. As for the former, the ICJ rendered its advisory opinion in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004), where the ICJ *inter alia* referred to the existence of serious violations of human rights and grave breaches of international humanitarian law committed in the occupied Palestinian territories. Moreover, the said advisory opinion marked the first time that the ICJ explicitly invoked findings of the UN Human Rights Committee (*Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004, paras. 109-110), which is the body that monitors the fulfillment of obligations of States Parties to the International Covenant on Civil and Political Rights.

Juan Pablo Pérez-León Acevedo

In any event, the ICJ's growing shift towards the more "human" side of international law has been more clearly displayed in its contentious jurisdiction in inter-state litigation. During this century, the ICJ has increasingly rendered important jurisprudence on and/or has managed proceedings related to the determination of state responsibility and/or related remedies in cases of serious violations of human rights and/or international humanitarian law, constitutive of international crimes. These contentious jurisdiction cases have included:

- i) *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* (2002);
- ii) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (2007);
- iii) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2012);
- iv) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)* (2015);
- v) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (pending case); and
- vi) *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation)* (pending case).

The first important point to remark on is that the ICJ has clarified the standard applicable to the attribution of an internationally wrongful act to a state in the international law of state responsibility. In other words, one of the constitutive elements of state responsibility for internationally wrongful acts (see International Law Commission, 2001, article 2). In *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (1986), the ICJ originally developed the so-called effective or strict control criterion to attribute violations of international law to a specific state for the determination of state responsibility:

“The Court has taken the view [...] that United States participation, even if preponderant or decisive, in the financing, organizing, training, supplying and equipping of the contras, the selection of its military or paramilitary targets, and the planning of the whole of its operation, is still insufficient in itself, on the basis of the evidence in the possession of the Court, for the purpose of attributing to the United States the acts committed by the contras in the course of their military or paramilitary operations in Nicaragua. All the forms of United States participation mentioned above, and even the general control by the respondent State over a force with a high degree of dependency on it, would not in themselves mean, without further evidence, that the United States directed or enforced the perpetration of the acts contrary to human rights and humanitarian law alleged by the applicant State. Such acts could well be committed by members of the contras without the control of the United States. For this conduct to give rise to legal responsibility of the United States, it would in principle have to be proved that that State had effective control of the military or paramilitary operations in the course of which the alleged violations were committed”. (*Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)* (1986), para. 115).

Nevertheless, the International Criminal Tribunal for the Former Yugoslavia (ICTY), which had jurisdiction over international crimes committed in the former Yugoslavia during the 90s, adopted a different standard in 1999, namely, the overall control criterion:

“In order to attribute the acts of a military or paramilitary group to a State, it must be proved that the State wields overall control over the group, not only by equipping and financing the group, but also by coordinating or helping in the general planning of its military activity. Only then can the State be held internationally accountable for any misconduct of the group. However, it is not necessary that, in addition, the State should also issue, either to the head or to members of the group, instructions for the commission of specific acts contrary to international law”. (*Prosecutor v. Tadić*, 1999, para. 131).

In a good deal of the first decade of the current century, there was some misunderstanding or confusion about whether these two criteria addressed the same issue, namely, the attribution of an internationally wrongful act to

a state for determination of its responsibility, which would certainly reflect or exemplify the fragmentation of international law and its institutions. Nevertheless, most (if not all) of this confusion was laid to rest by the ICJ itself in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* (2007). The ICJ clearly stated that while the strict control criterion applies to the determination of state responsibility for internationally wrongful acts, the less demanding overall control standard corresponds to the degree of state involvement to internationalize an armed conflict:

“[...] the Court observes that the ICTY was not called upon in the *Tadic* case, nor is it in general called upon, to rule on questions of State responsibility, since its jurisdiction is criminal and extends over persons only. Thus, in that Judgment the Tribunal addressed an issue which was not indispensable for the exercise of its jurisdiction [...]

[...] Insofar as the “overall control” test is employed to determine whether or not an armed conflict is international, which was the sole question which the Appeals Chamber was called upon to decide, it may well be that the test is applicable and suitable.

[...] a State’s responsibility can be incurred for acts committed by persons or groups of persons — neither State organs nor to be equated with such organs — only if, assuming those acts to be internationally wrongful, they are attributable to it [...] This is so where an organ of the State gave the instructions or provided the direction pursuant to which the perpetrators of the wrongful act acted or where it exercised effective control over the action during which the wrong was committed”. (*Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, 2007, paras. 403-404, 406).

A second important ground in which the ICJ has made meaningful contributions to the legal field of atrocities is the determination of state obligations to investigate, prosecute, try, and sanction those individuals suspects or accused of international crimes regardless of the nationality of the perpetrator or the location of the crime, namely, the exercise of universal jurisdiction. In the dawn of the XXI century, the ICJ had the opportunity to clarify what was and arguably still is the state-of-the-art international law in

cases involving the exercise of national jurisdiction on universal jurisdiction grounds over a sitting senior foreign official who holds immunities but is accused of international crimes. In the context of this (apparent) conflict between the national prosecution of international crimes and the international law principle of respect of immunities of sitting senior officers, the ICJ in *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* (2002) summarized the situation under customary international law as follows:

“[...] the immunities enjoyed under international law by an incumbent or former Minister for Foreign Affairs do not represent a bar to criminal prosecution in certain circumstances.

First, such persons enjoy no criminal immunity under international law in their own countries, and may thus be tried by those countries' courts in accordance with the relevant rules of domestic law.

Secondly, they will cease to enjoy immunity from foreign jurisdiction if the State which they represent or have represented decides to waive that immunity.

Thirdly, after a person ceases to hold the office of Minister for Foreign Affairs, he or she will no longer enjoy all of the immunities accorded by international law in other States. Provided that it has jurisdiction under international law, a court of one State may try a former Minister for Foreign Affairs of another State in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity.

Fourthly, an incumbent or former Minister for Foreign Affairs may be subject to criminal proceedings before certain international criminal courts, where they have jurisdiction. Examples include the International Criminal Tribunal for the former Yugoslavia, and the International Criminal Tribunal for Rwanda [...], and the [...] International Criminal Court [...].” (*Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, 2002, para. 61).

Despite the powerful dissenting opinion of ICJ Judge ad hoc Christine Van den Wyngaert (*Dissenting opinion of Judge ad hoc Van den Wyngaert*, 2002) and some critical commentaries (see, e.g., Wirth, 2002), this decision

has had overall an important impact (see, e.g., Wouters and De Smet, 2003, p. 15). More recently, the ICJ has examined the international obligations held by states to exercise jurisdiction over a suspect of international crimes on *inter alia* universal jurisdiction grounds or to extradite him/her to a requesting state. This took place in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)* (2012). This case involved the presence of the former Chadian dictator Hissène Habré in Senegal and the need for Senegal to exercise jurisdiction or extradite him/her to another state in accordance with Senegal's obligations as a state party to the UN Convention against Torture: Habré was accused of the commission of *inter alia* widespread and systematic torture during his term as a dictator in Chad. In this regard, the ICJ *inter alia* established that:

“[...] it notes that the performance by the State of its obligation to establish the universal jurisdiction of its courts over the crime of torture is a necessary condition for enabling a preliminary inquiry (Article 6, paragraph 2), and for submitting the case to its competent authorities for the purpose of prosecution (Article 7, paragraph 1). The purpose of all these obligations is to enable proceedings to be brought against the suspect, in the absence of his extradition, and to achieve the object and purpose of the Convention, which is to make more effective the struggle against torture by avoiding impunity for the perpetrators of such acts”. (*Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 2012, para. 74).

A third point to remark from ICJ proceedings related to atrocities committed in this century is, whether and to what extent, the international community and in particular its member states can remain inactive in the face of atrocities committed in other states. This issue is illustrated by the ongoing case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. It was brought by the Gambia under the Genocide Convention to which Myanmar is a state party (see *ibid.*, 2020), in particular, the ICJ's contentious jurisdiction clause contained in article IX of the Genocide Convention reads as follows: “Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or

for any of the other acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute”. This case importantly shows that inter-state litigation concerning atrocities may and should be triggered by any state provided that, certainly, the alleged responsible state has recognized the ICJ’s contentious jurisdiction. Moreover, this ongoing case arguably demonstrates that the protection of victims of atrocities involves or should involve all the states rather than only the state(s) that may be directly affected. Indeed, article 48 (“Invocation of responsibility by a State other than an injured State”) of the International Law Commission’s Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA) lays down that: “1. Any State other than an injured State is entitled to invoke the responsibility of another State in accordance with paragraph 2 if: (a) the obligation breached is owed to a group of States including that State, and is established for the protection of a collective interest of the group; or (b) the obligation breached is owed to the international community as a whole”.

A fourth point to highlight is the increasing judicial cross-fertilization identified in the ICJ’s case law on atrocities. Such a trend can be considered one of the most distinctive features of the said jurisprudence during this century. This is actually justified because the same atrocities may lead to both international state responsibility and individual criminal liability. Article 58 of the ARSIWA establishes that: “These articles are without prejudice to any question of the individual responsibility under international law of any person acting on behalf of a State”. Thus, the ICJ in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* and *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* has respectively invoked findings of the ICTY and the ICC. Concerning the ICJ cases on the Genocide Convention, the ICTY’s jurisprudence has also been particularly useful for the ICJ in terms of the definition of the legal elements of the crime of genocide as such. Furthermore, judicial cross-fertilization in atrocity cases in the XXI century at the ICJ has not been restricted to references to the jurisprudence of other supranational courts but it has also included references to the case law of quasi-judicial international bodies. This is illustrated in, for example, *Questions relating to the Obligation to*

Juan Pablo Pérez-León Acevedo

Prosecute or Extradite (Belgium v. Senegal) in which the Court invoked case law of the UN Committee against Torture (see para. 101).

A fifth point to highlight is the ICJ's emerging compensation/reparation jurisprudence in cases involving serious violations of human rights and humanitarian law, which was non-existent in the XX century. While the compensation judgment in *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (2012) was the first time in which the ICJ ordered compensation against a state for violations of human rights of an individual (Mr. Diallo), it is in the recent reparations judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2022) where the ICJ ordered compensation against a state for several and serious violations of human rights and humanitarian law against large numbers of victims. This emerging jurisprudence on compensation to redress harm as a result of atrocities is a welcome and indeed necessary development. Moreover, scholars have increasingly paid attention to the law and practice of the ICJ on the said issue (see, e.g., McCarthy, 2020), which precisely began this century.

It has therefore been illustrated how the ICJ has meaningfully engaged with a series of matters concerning justice for atrocities leading to important developments during the last two decades. Furthermore, the following points should be mentioned. First, the ICJ's engagement with settling inter-state disputes and construing related jurisprudence on atrocities is particularly pressing and indeed necessary in those regions where there is no regional human rights court that can establish state responsibility for gross abuses. Already two decades into the XXI century, Asia and Oceania lack regional human rights courts and there is no clear indication that this situation would substantially change in the near future. Although some scholars have proposed the advisability of or the need for a UN/international human rights court (see Kozma, Nowak, and Scheinin, 2010; Nowak, 2018), the prospects for the materialization of such a project do not seem to be realistic in years to come. In this scenario, the ICJ to some extent and within its jurisdictional constraints may act as a sort of international "human rights" court.

Second, in terms of legitimacy and effectiveness, the ICJ's handling of cases on atrocities may potentially have comparative advantages *vis-à-*

vis other supranational courts. The ICJ's jurisprudence as the UN's main judicial body and embedded in the UN Charter arguably carries an aura of legitimacy and scope that is not necessarily present in regional (human rights) courts or courts created via much more recent multilateral treaties such as the ICC. Also, the ICJ may rely on the UN Security Council and the UN General Assembly to enforce its decisions or (at least) to put UN pressure (normally heavier than that of regional organizations) on states that defy the international rule of law by not observing the ICJ's binding decisions. Article 94(2) of the UN Charter establishes that: "If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment".

Third, the ICJ's jurisprudence can have an important impact on the case law of other supranational courts and even the existence of some supranational mechanisms. The process of creation (2013) and later jurisprudence of the Extraordinary African Chambers in the Senegalese Courts, which convicted the former Chadian dictator Habré, exemplifies this. A key ground for establishing this hybrid criminal court (via an agreement between the African Union and Senegal) was precisely the ICJ's substantive and procedural law findings in *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. The Extraordinary African Chambers (2016-2017) referred to *inter alia* the ICJ's jurisprudence in connection with the establishment of this hybrid criminal court (see *Le Procureur Général c. Habré*, 2016; *Le Procureur Général c. Habré*, 2017). More generally, supranational bodies within their respective mandates have paid close attention to and have invoked the ICJ's jurisprudence concerning crucial categories of international law such as the attribution of state responsibility in atrocity cases. Furthermore, supranational courts have invoked ICJ's findings where both the ICJ and another international court have exercised their respective jurisdictions over the same or overlapping contexts (the ICC in *Prosecutor v. Lubanga*, *Prosecutor v. Katanga*, and *Prosecutor v. Ntaganda*).

Notwithstanding the contributions of the ICJ's jurisprudence on atrocities, there are limitations and challenges. First, like other supranational

Juan Pablo Pérez-León Acevedo

courts, the tools that the ICJ has at hand to get internationally responsible states to implement its decisions on atrocity cases are limited. This depends on several factors that exceed international law analyses. Yet, this relatively limited range of enforcement mechanisms of the ICJ and other supranational courts may negatively impact their effectiveness and legitimacy. In terms of effectiveness, authors have employed different criteria as applied to *inter alia* the ICJ such as goal-based assessments (see, e.g., Shany, 2014). In turn, other scholars have focused their analyses on the legitimacy of *inter alia* the ICJ (see, e.g., Grossman et al. (eds.), 2018).

Second, by definition, cases of mass atrocities have or should have individuals as the center of attention in international judicial proceedings. This is or should be a reflection of the increasing and progressive recognition of the human being as a proper subject of international law both in an active dimension to claim rights before supranational fora or in a passive dimension to potentially be found criminally responsible for international crimes by international or hybrid criminal courts (see, e.g., Cassese, 2005, pp. 142-152). Nevertheless, the ICJ by nature and mandate is a court that decides on inter-state litigation. Such a feature is certainly necessary to peacefully settle international disputes among two or more states. On the one hand, unlike the more “traditional” kind of ICJ cases such as territorial/maritime disputes or even environmental damages, mass atrocities first and foremost violate non-derogable rights of individuals. On the other hand, this conception and design of the ICJ as only dealing with inter-state disputes may plausibly be related to a more “classical” international law that was notoriously state-centric. This pre-dated what some scholars have referred to as the process of humanization of international law (see, e.g., Cançado Trindade, 2010). Thus, even in atrocity cases at the ICJ, the individuals lack the procedural status of a party.

Finally, that the ICJ’s compensation awards can be only ordered in favor of the complainant state (against the internationally responsible state) is correct within the ICJ’s mandate and framework. However, it leads to the outcome in which the most affected subjects of international law (the ones primarily affected), who are the individuals in mass atrocity cases, are not (at least formally speaking) the beneficiaries of the said award. Thus,

the ICJ in its reparation judgment in *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* (2022) ordered compensation against Uganda (respondent state) in favor of the Democratic Republic of Congo (complainant state) although an important deal of the damages found and calculated corresponded to harm inflicted on large numbers of individuals.

3. THE INTERNATIONAL CRIMINAL COURT

By definition, the ICC is a judicial institution specialized in dealing with atrocities. Although the Rome Statute of the ICC was adopted in 1998, this multilateral treaty came into force on 1 July 2002 and the ICC has been operative since 2003. Thus, the ICC can be considered as a XXI century institution that delivers justice for atrocities at a global or international level.

An important contribution of the ICC as an institution is that the ICC Statute has meant the multilateral codification of substantive and procedural international criminal law and, crucially, the ICC has developed related jurisprudence in over 15 years now. In terms of the law of international crimes over which the ICC has jurisdiction (genocide, crimes against humanity, war crimes, and the crime of aggression), the ICC consolidates and expands the law and practice of previous international criminal tribunals as well as relevant customary and treaty international law sources (see, e.g., Cassese, 2103, pp. 105-108).

Concerning procedural criminal law, the ICC's procedural law and practice constitute a *sui generis* or mixed system that results from the amalgamation of the two major legal traditions and their respective procedural defining typologies, namely the common law tradition/adversarial system and the civil law tradition/inquisitorial system (see, e.g., Zappala, 2013, pp. 49-52). Moreover, the ICC Statute as complemented by the ICC Rules of Procedure and Evidence provides a very comprehensive regulation of the rights of the suspects (ICC Statute, article 55), the rights of the accused (ICC Statute, article 67), and the protection of the witnesses (ICC Statute, article 68). There is important related practice which has been studied by

authors (see, e.g., Schabas and McDermott, 2016, pp.1650-1680; Pérez-León-Acevedo, 2014, pp. 487-523).

In terms of its jurisprudence, the ICC has built on previous international criminal law sources and fleshed them out in a diverse range of matters, including among others:

- i) war crimes of enlistment, recruitment, and direct use of child soldiers in hostilities (e.g., *Prosecutor v. Lubanga*, 2012; *Prosecutor v. Katanga*, 2014; *Prosecutor v. Ongwen*, 2021);
- ii) war crimes of intentional destruction of historical and religious buildings and monuments (*Prosecutor v. Al Mahdi*, 2016);
- iii) discussion of the chapeaux or contextual legal elements of crimes against humanity (e.g., *Prosecutor v. Katanga*, 2014);
- iv) crimes against humanity of deportation and persecution (*Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, 2019);
- v) discussion of the legal elements of the crime of genocide (*Prosecutor v. Al Bashir*, 2009);
- vi) discussion of the legal elements of sexual violence crimes (e.g., *Prosecutor v. Bemba*, 2016);
- vii) adoption of the doctrine of control over an apparatus of power for attribution of individual criminal responsibility to senior leaders (e.g., *Prosecutor v. Katanga and Ngudjolo Chui*, 2008);
- viii) development of the doctrine of command or superior responsibility (e.g., *Prosecutor v. Bemba*, 2016);
- ix) the relationship between domestic amnesties and the admissibility of cases at the ICC (e.g., *Prosecutor v. Gaddafi*, 2020);
- x) analysis of the immunities of a sitting head of a state versus state obligations to prosecute international crimes (*Prosecutor v. Al Bashir*, 2009); and

- xi) discussion of mental illness and duress as potential grounds for exoneration of individual criminal liability (*Prosecutor v. Ongwen*, 2021).

A second important feature and contribution of the ICC is its relationship with domestic jurisdictions. Unlike previous international criminal tribunals such as the ICTY and ICTR, the relationship between the ICC and national jurisdiction is of complementarity rather than primacy (see International Law Association, 2018, p. 1). The so-called principle of complementarity of the ICC *vis-à-vis* domestic jurisdictions is contained in article 17 of the ICC Statute which *inter alia* lays down that: “1. [...] the Court shall determine that a case is inadmissible where: (a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is *unwilling* or *unable genuinely* to carry out the investigation or prosecution [emphasis added]”.

Moreover, both inside and outside the ICC, diverse actors have considered that domestic accountability needs to be promoted in a direct manner, which has been known as “positive complementarity” (see International Law Association, 2018, p. 4). Indeed, the ICC’s Office of the Prosecutor originally adopted the positive complementarity approach in order to encourage states to undertake proceedings concerning investigation, prosecution, and trials of international crimes (see ICC’s Office of the Prosecutor, 2006) as well as providing assistance for this (see International Law Association, 2018, p. 4). Although the ICC’s Assembly of States Parties later endorsed positive complementarity, it emphasized that states should be the ones assisting each other (see ICC’s Assembly of States Parties, 2010). Thus, the principle of complementarity developed in the law and practice of the ICC has been overall considered to be a catalyst for the compliance of international criminal law around the world (see De Vos, 2020).

A third important contribution of the law and practice of the ICC is the status of victims of atrocities in international (criminal) law. At other international criminal tribunals that preceded the ICC, the procedural role of victims was limited to that of mere witnesses. Nevertheless, article 68(3) of the ICC Statute explicitly recognizes that:

Juan Pablo Pérez-León Acevedo

“Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence”.

This means that victims can be participants to express their own views and concerns and not only be witnesses that render testimony upon the call of one of the parties (normally the Prosecutor). Moreover, in the post-conviction reparation stage, victims are properly speaking parties to the reparation proceedings and, thus, can claim reparations against the convicted person to redress the harm inflicted on them (see *Prosecutor v. Lubanga*, 2012, para. 67; Pérez-León-Acevedo, 2014, pp. 678-693; Safferling and Petrossian, 2021, p. 269). Under, Article 75(2) (“Reparations to victims”) of the ICC Statute: “The Court may make an order directly against a convicted person specifying appropriate reparations to, or in respect of, victims, including restitution, compensation and rehabilitation”. As examined by diverse authors (see, e.g., Pena and Carayon, 2013), the procedural status of victims of mass atrocities as participants and reparation claimants at the ICC adds an important restorative justice dimension to criminal proceedings which are primarily driven by retributive and deterrent justice paradigms.

A fourth aspect to consider is the impact of the ICC’s law and practice on the jurisprudence of diverse supranational courts. In terms of both substantive and procedural law, the ICC law has been taken into account to a larger or lesser extent when the instruments of hybrid criminal courts such as the Extraordinary African Chambers in the Senegalese Courts, the Special Tribunal for Lebanon, and the Special Central-African Republic Chambers have been adopted in this century as well as the law of the prospective African Court of Justice and Human and Peoples’ Rights. Furthermore, the jurisprudence of the ICC has been considered by *inter alia* the ICJ (*Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda*, 2022) as well as international hybrid criminal tribunals such as the Extraordinary African Chambers in the Senegalese Courts (e.g., *Le*

Procureur Général c. Habré, 2016), the Extraordinary Chambers in the Courts of Cambodia (e.g., *Case 001*, 2012), and the Special Tribunal for Lebanon (e.g., *Prosecutor v. Ayyash et al.*, 2020).

Notwithstanding the ICC's important contributions to justice for mass atrocities worldwide, it has also faced several challenges and received criticism. Major global powers, namely, the United States, Russia, and China, are not parties to the ICC Statute. Indeed, they have overall shown skepticism about the ICC, even they have been hostile towards the Court. Authors have examined how global and regional powers have interacted with or opposed the ICC (see, e.g., Becker, 2010; Bais, 2016). The complex and tense relationship between the United States and the ICC illustrates this as several academics have examined (see, e.g., Rhea, 2012; Sadat and Drumbl, 2016; Robb and Patel, 2020). Fewer scholars have explored the involvement of major powers in international criminal law beyond the ICC (see, e.g., Esakov, 2017; Zhu, 2017). At a more general level, the relationship between the ICC and major powers is related to the concept of "power" and international criminal courts and tribunals, which has been studied by diverse authors (see, e.g., Bergsmo et al. (eds.), 2020).

The ICC has also been challenged by both African states as such or by the African Union, ending up in some (attempted) withdrawals or threats of withdrawals from the ICC Statute and the creation of the International Criminal Law Section within the prospective African Court of Justice and Human Peoples' Rights, which is related to claims of alleged neocolonialism levied against the ICC due to its almost exclusive focus on Africa (see, e.g., Werle et al., 2014; Ssenyonjo, 2017; Jalloh and Bantekas, 2017). Other critical remarks have to do with allegedly poor prosecutorial discretion choices, delayed or lengthy ICC proceedings, closure of ICC trials due to several evidentiary problems, limited mechanisms to enforce the ICC's decisions, and issues to fully respect the rights of the defendants at the ICC (see, *inter alia*, Cryer et al., 2019, pp. 169-171). All of this has had a negative impact on the legitimacy of the ICC among different stakeholders ranging from States Parties to the ICC Statute to victims and their communities.

4. THE INTER-AMERICAN COURT OF HUMAN RIGHTS

As authors have examined (see, e.g., Goldman, 2009), Latin America endured mass atrocities committed in the context of dictatorships and/or internal armed conflicts that affected several countries in South and Central America such as Chile, Argentina, Brazil, Honduras, Colombia, Peru, Nicaragua, Guatemala, El Salvador, and Uruguay mainly during the last decades of the last century. The XXI century meant the transition or continuation of transitional processes from the contexts of armed and/or dictatorial violence and saw the end of the extensively protracted armed conflict in Colombia. However, the last years have also seen an increase in serious violations of human rights in Venezuela. In this challenging regional context, a common feature that has characterized the IACtHR is its progressive jurisprudence on different substantive and procedural law matters related to mass atrocity cases, starting all the way back to its very first judgment in *Velásquez Rodríguez v. Honduras* (1987). In the first two decades of the current century, the IACtHR has developed seminal jurisprudential contributions in cases involving atrocities committed during the last century or the present one as illustrated in the following paragraphs.

During this century, the IACtHR's first fundamental jurisprudential development concerning justice for atrocities arguably took place in *Barrios Altos v. Peru* (2001) in which the IACtHR was the first supranational court that declared null and void two self-amnesty laws adopted during Fujimori's autocratic regime to block investigations and prosecutions of those suspects or accused of serious violations of human rights constitutive of international crimes. In the IACtHR's own words:

"This Court considers that all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitrary execution and forced disappearance, all of them prohibited because they violate non-derogable rights recognized by international human rights law". (*Barrios Altos v. Peru*, 2001, para. 41).

Barrios Altos v. Peru set a sort of precedent which paved the way to subsequent decisions of the IACtHR concerning amnesties or other similar exception measures such as pardons or statutes of limitations in cases of mass atrocities. The IACtHR has not explicitly declared again amnesties laws completely void since *Barrios Altos v. Peru*. Nevertheless, the IACtHR has still remained very skeptical about the compatibility of amnesties and other similar measures such as pardons and statutes of limitations with state obligations to investigate, prosecute, try, and punish serious violations of human rights. The IACtHR has generally found international state responsibility for violations of the American Convention on Human Rights and other inter-American human rights treaties as well as it has ordered reparations in favor of victims of atrocities. The amnesty/pardon jurisprudence of the IACtHR has included:

- i) *La Cantuta v. Peru* (2006), concerning the same self-amnesties laws applied in *Barrios Altos v. Peru*;
- ii) *Almonacid Arellano v. Chile* (2006) and *García Lucero et al. v. Chile* (2013), concerning blanket amnesty laws adopted during the Pinochet's dictatorship;
- iii) *Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil* (2010), regarding amnesty legislation adopted during the Brazilian dictatorship; and
- iv) *Gelman v. Uruguay* (2011), regarding amnesty legislation applicable to atrocities committed during the Uruguayan dictatorship.

In the last decade, the IACtHR arguably has to some extent relaxed or nuanced its strict approach to amnesties provided that *inter alia* they are necessary to transition towards peace and democratic regimes rather than be used as impunity instruments (see, e.g., *El Mozote and surrounding areas v. El Salvador*, Concurring Opinion of Judge Diego García-Sayán, 2012). Indeed, the IACtHR has seemingly expanded the margin of state discretion when national authorities have to decide on the compatibility of amnesties with international state obligations as long as domestic authorities closely follow the IACtHR's jurisprudence and guidelines (see *Barrios Altos and La Cantuta v. Peru*, 2018).

Some scholars have critically referred to the IACtHR's approach to amnesties and pardons as being interventionist or exercising excessive control (see, e.g., Contesse, 2019), especially when amnesties are adopted by democratic regimes following referenda as happened in *Gelman v. Uruguay* (see, Gargarella, 2013; Gargarella, 2015). In this context, some scholarship has positively evaluated the more nuanced or calibrated approaches to amnesties and pardons adopted by the IACtHR in recent years (see, Contesse, 2019; Cornejo Chavez, Pérez-León-Acevedo, and García-Godos, 2019, 348; Pérez-León-Acevedo, 2020, 685).

Be that as it may, authors have overall welcomed the IACtHR's jurisprudence on amnesties and pardons (see Binder, 2011; Mallinder, 2016). Furthermore, the IACtHR's case law on amnesties and pardons has proven to be very influential and it has been well received by a number of (the) high(est) national courts across Latin America, with some exceptions (see Mallinder, 2016).

A second important element is how the IACtHR has conceived the relationship between supranational courts such as the IACtHR and domestic systems (principle of subsidiarity) and, more generally, the relationship between international human rights law and domestic law in mass atrocity cases and the IACtHR's jurisprudence in general. In this regard, the IACtHR has developed its control of conventionality doctrine, in particular during the XXI century. In *Almonacid Arellano v. Chile* (2006), which concerned amnesties for serious violations of human rights committed during Pinochet's dictatorial regime, the IACtHR indeed explicitly crafted the control of conventionality in the following terms:

“The Court is aware that domestic judges and courts are bound to respect the rule of law, and therefore, they are bound to apply the provisions in force within the legal system. But when a State has ratified an international treaty such as the American Convention, its judges, as part of the State, are also bound by such Convention. This forces them to see that all the effects of the provisions embodied in the Convention are not adversely affected by the enforcement of laws which are contrary to its purpose and that have not had any legal effects since their inception. In other words, the Judiciary must exercise a sort of “conventionality

control” between the domestic legal provisions which are applied to specific cases and the American Convention on Human Rights. To perform this task, the Judiciary has to take into account not only the treaty, but also the interpretation thereof made by the Inter-American Court, which is the ultimate interpreter of the American Convention”. (*Almonacid Arellano v. Chile*, 2006, para. 124).

Although the control of conventionality doctrine explicitly was first formulated in a mass atrocity case, the IACtHR has applied such doctrine in its general jurisprudence. Moreover, as the IACtHR itself has later clarified, the control of conventionality is expected to be conducted not only by domestic judges but also by all national authorities (see, e.g., *Gelman v. Uruguay*, 2013, para. 66). Scholars have extensively studied the control of conventionality doctrine. Some have adopted a critical approach to it (e.g., Contesse, 2017). However, others have welcomed such doctrine (e.g., Cançado Trindade, 2001, pp. 386-387). The IACtHR’s control of conventionality doctrine, especially but not only in mass atrocity cases, differs from the approach adopted by the European Court of Human Rights.

The latter has adopted the so-called margin of appreciation or discretion doctrine, which comparatively and very broadly speaking provides more room to a state when taking its decisions (see e.g., Arai-Takahashi, 2002). Be that as it may, the IACtHR’s control of conventionality doctrine is a defining jurisprudential feature of the IACtHR mainly developed in the XXI century first in mass atrocity cases but then quickly used in the whole IACtHR’s case law. Furthermore, this doctrine has had a major impact across Latin American courts and legal systems (see generally, e.g., von Bogdandy et al., 2017).

As a third dimension in the field of mass atrocities, the remarkable contribution of the IACtHR to international jurisprudence on reparations needs to be noted. Since its early jurisprudence, which has been largely consolidated in the XXI century, the IACtHR has developed robust case law on reparations in atrocity cases. As extensively studied by authors (see, e.g., Rubio-Martin and Sandoval, 2011; Pérez-León-Acevedo, 2016), the IACtHR’s reparation jurisprudence in mass atrocity cases has been pivotal in terms of: i) expanding the scope of claimants and beneficiaries

of reparations; ii) the provision of not only individual but also collective awards; iii) criteria for the determination and calculation of material, physical, and psychological damages; and iv) the development of a series of reparation measures that go well beyond compensation to include measures such as symbolic reparations, comprehensive rehabilitation measures, and broad guarantees of non-repetition.

As a specific feature of the IACtHR's jurisprudence reparations in atrocity cases during this century, it is possible to identify a sort of judicial review or assessment of domestic reparation programs or national reparative measures when the IACtHR has to decide on the scope of beneficiaries and types of reparation measures. As some scholars have examined (see, e.g., Sandoval, 2020; Ochoa Sánchez, 2021; Salmón and Pérez-León-Acevedo, 2022, pp. 1332-1336), the IACtHR has calibrated the contents of its reparation awards depending on *inter alia* the degree of implementation of the respective domestic reparation programs or national reparation measures involving victims of atrocities (see, *inter alia*, *Operation Genesis v. Colombia*, 2013, paras. 465-471).

Last but not least, the IACtHR's atrocity jurisprudence has influenced the practice of diverse supranational courts that also deal with mass atrocities in both substantive and procedural matters in the first two decades of the XXI century. The following examples illustrate such an impact. The IACtHR's case law on amnesties and similar measures has been referred to by the European Court of Human Rights (e.g., *Lexa v. Slovakia*, 2008) and the Special Court for Sierra Leone (see *Prosecutor v. Kallon and Kamara*, 2004), a hybrid criminal tribunal established via an agreement between the UN and Sierra Leone.

In turn, the IACtHR's solid reparation jurisprudence has been invoked by the ICC (e.g., *Prosecutor v. Lubanga*, 2015) and the Extraordinary Chambers in the Courts of Cambodia (e.g., *Case 001*, 2012). On the other hand, the IACtHR's jurisprudence has relied on international humanitarian law and international criminal law sources as interpretative sources for a better application of the American Convention on Human Rights (and other inter-American human rights treaties) in mass atrocity cases (see, e.g., Pérez-León-Acevedo, 2008; Salmón, 2020).

Despite its important jurisprudence on mass atrocities, the IACtHR and the inter-American system of human rights protection as a whole have faced noticeable challenges. For different reasons, some actors and groups within the Latin American region have opposed the practice or findings of the IACtHR. Moreover, states or governments with poor democratic and human rights records have been hostile toward the IACtHR. Venezuela indeed withdrew from the IACtHR's contentious jurisdiction. At the other end of the spectrum, two of the largest democracies in the Americas, namely, the United States and Canada, are not parties to the American Convention on Human Rights and they do not recognize the IACtHR's contentious jurisdiction. Actually, out of the 35 states that are members of the Organization of American States, 23 states are parties to the American Convention, and only 20 currently recognize the IACtHR's contentious jurisdiction. All of this limits the IACtHR's scope to potentially deal with cases involving serious violations of human rights.

5. CONCLUSION

This article has arguably demonstrated that international courts have been very significant institutions that provide legal answers to mass atrocities in the XXI century. Within their respective specific mandates, the practices of the ICJ, the ICC, and the IACtHR have produced truly meaningful contributions to the development of what may be called the international law of mass atrocities in the last two decades. Despite the important challenges and limitations that these supranational judicial institutions have faced, these three courts overall speaking have proven their credentials in addressing and deciding on a number of substantive, procedural, and institutional matters related to the international law that tackles atrocities, especially in the current century. In order to continue and potentially enhance their work, it would be advisable that there is an increasing cross-fertilization and judicial dialogue among these three international courts as well as other supranational courts.

Furthermore, in those scenarios of mass atrocities that have led to proceedings before two or more of these international courts, it is advisable or arguably even necessary institutional synergies, which are somehow so far missing totally or partially. Scenarios of mass atrocities that are litigated

and examined by more than one supranational court, within the respective mandate of the court in question, have been increasing in recent years as the protracted scenario of armed conflicts in the Democratic Republic of Congo or the humanitarian crisis affecting the Rohingya people in Myanmar/Bangladesh illustrate, both of which leading to respective cases and/or decisions at the ICJ and the ICC. The Russian invasion of Ukraine has also triggered proceedings at more than one supranational court, namely, the ICJ, the ICC, and the European Court of Human Rights, within the respective mandate of each international judicial institution. Moreover, the potential creation of a special tribunal with jurisdiction over the crime of aggression related to the said Russian invasion has been proposed, sparking debate about the pros and cons of such an institutional project (see Heller, 2022; McDougall, 2022). Thus, more comprehensive and integrated approaches to the work of international courts as judicial mechanisms dealing with mass atrocities are necessary.

BIBLIOGRAPHY

- Arai-Takahashi, Y. (2002). *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*. Intersentia.
- Bais, D. (2016). India and the International Criminal Court. *Policy Brief Series* No. 54, Torkel Opsahl Academic EPublisher. <https://www.toaep.org/pbs-pdf/54-bais/>
- Becker, S. (2010). The objections of Larger Nations to the International Criminal Court. *Revue Internationale de Droit Pénal*, 81(1-2), 47-64.
- Bergsmo, M. et al. (Eds.). (2020). *Power in International Criminal Justice*. Torkel Opsahl Academic EPublisher.
- Binder, C. (2011). The Prohibition of Amnesties by the Inter-American Court of Human Rights. *German Law Journal*, 12(5), 1203-1229.
- Cançado Trindade, A. (2001). *El Derecho Internacional de los Derechos Humanos en el Siglo XXI*. Editorial Jurídica de Chile.

Cançado Trindade, A. (2010). *International Law for Humankind: Towards a New Jus Gentium*. Martinus Nijhoff Publishers.

Cassese, A. (2005). *International Law* (2nd ed.). Oxford University Press.

Cassese, A. (2013). *International Criminal Law* (3rd ed.). Oxford University Press.

Chetail, V. (2003). The Contribution of the International Court of Justice to International Humanitarian Law. *International Review of the Red Cross*, 85, 235-269.

Contesse, J. (2017). The international authority of the Inter-American Court of Human Rights: A critique of the conventionality control doctrine. *The International Journal of Human Rights*, 22(9), 1168-1191.

Contesse, J. (2019). Case of Barrios Altos and La Cantuta v. Peru. *American Journal of International Law*, 113(3), 568-574.

Cornejo Chavez, L., Pérez-León-Acevedo, J.P., and García-Godos, J. (2019). The Presidential Pardon of Fujimori: Political Struggles in Peru and the Subsidiary Role of the Inter-American Court of Human Rights. *International Journal of Transitional Justice*, 13(2), 328-348.

Cryer, R. et al. (Eds.). (2019). *An Introduction to International Criminal Law and Procedure* (4th ed.). Cambridge University Press.

De Vos, C. (2020). *Complementarity, Catalysts, Compliance: The International Criminal Court in Uganda, Kenya, and the Democratic Republic of Congo*. Cambridge University Press.

Esakov, G. (2017). International Criminal Law in Russia: Missed Crimes Waiting for a Revival. *Journal of International Criminal Justice*, 15(2), 371-392.

Gargarella, R. (2013). No Place for Popular Sovereignty? Democracy, Rights, and Punishment in Gelman v. Uruguay. SELA papers https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=1123&context=yls_sela

Gargarella, R. (2015). The Constitutionalization of International Law in Latin America Democracy and Rights in Gelman v. Uruguay. *American Journal of International Law Unbound*, 109, 115-119.

Goldman, R. (2009). History and Action: the Inter-American Human Rights System and the Role of the Inter-American Commission on Human Rights. *Human Rights Quarterly*, 31(4), 856-887.

Grossman, N. et al. (Eds.). (2018). *Legitimacy and International Courts*. Cambridge University Press.

Heller, K. (2022, March 7). Creating a Special Tribunal for Aggression Against Ukraine Is a Bad Idea. *Opinio Juris*, <https://opiniojuris.org/2022/03/07/creating-a-special-tribunal-for-aggression-against-ukraine-is-a-bad-idea/>

Jalloh, C. and Bantekas, I. (Eds.). (2017). Introduction. In C. Jalloh and I. Bantekas (Eds.), *The International Criminal Court and Africa* (pp. 1-9). Oxford University Press.

Kozma, J., Nowak, M., and Scheinin, M. (2010). *A World Court of Human Rights: consolidated draft statute and commentary*. Neuer Wissenschaftlicher Verlag, Recht, Studienreihe des Ludwig Boltzmann Instituts für Menschenrechte.

Mallinder, L. (2016). The End of Amnesty or Regional Overreach?: Interpreting the Erosion of South America's Amnesty Law. *International and Comparative Law Quarterly*, 65(3), 645-680.

McCarthy, C. (2020). Reparation for Gross Violations of Human Rights Law and International Humanitarian Law at the International Court of Justice. In C. Ferstman and M. Goetz (Eds.), *Reparations for Victims of Genocide, War Crimes and Crimes against Humanity: Systems in Place and Systems in the Making* (2nd ed.) (pp. 350-378). Brill.

McDougall, C. (2022, March 15). Why Creating a Special Tribunal for Aggression Against Ukraine is the Best Available Option: A Reply to Kevin Jon Heller and Other Critics. *Opinio Juris*, <https://opiniojuris.org/2022/03/15/why-creating-a-special-tribunal-for-aggression-against-ukraine-is-the-best-available-option-a-reply-to-kevin-jon-heller-and-other-critics/>

Nowak, M (2018). A World Court of Human Rights. In G. Oberleitner (Ed.), *International Human Rights Institutions, Tribunals, and Courts* (pp. 271-290). Springer.

Ochoa Sánchez, J. (2021). Review by the Inter-American Court of Human Rights and Domestic Reparation Programmes. *International Journal of Human Rights*, 25(6), 895-924.

Pena, M. and Carayon, G. (2013). Is the ICC Making the Most of Victim Participation?. *International Journal of Transitional Justice*, 7(3), 518-535.

Pérez-León-Acevedo, J.P. (2008). International criminal law sources in the jurisprudence of the Inter-American Court of Human Rights. Some Comparative Considerations. Center for Human Rights of Nuremberg. http://www.menschenrechte.org/wp-content/uploads/2009/12/Inter_am_syst_paper.pdf

Pérez-León-Acevedo, J.P. (2014). *Victims' Status at International and Hybrid Criminal Courts: Victims' Status as Witnesses, Victim Participants / Civil Parties and Reparations Claimants*. Abo Akademi University Press.

Pérez-León-Acevedo, J.P. (2016). The Situation of Reparations in the Inter-American Human Rights System and Other International Regimes. *American Society of International Law Insights*, 20. <https://www.asil.org/insights/volume/20/issue/15/situation-reparations-inter-american-human-rights-system-analysis-and>

Pérez-León-Acevedo, J.P. (2020). The Control of the Inter-American Court of Human Rights over Amnesty Laws and Other Exemption Measures: Legitimacy Assessment. *Leiden Journal of International Law*, 33(3), 667-687.

Rhea, H. (2012). *The United States and International Criminal Tribunals*. Intersentia.

Robb, K. and Patel, S. (2020). The United States, the International Criminal Court, and Afghanistan. *International Criminal Law Review*, 20(6), 1068-1107.

Rubio-Martin, R. and Sandoval, C. (2011). Engendering the reparations jurisprudence of the Inter-American Court of Human Rights: The promise of the Cotton Field judgment. *Human Rights Quarterly*, 33(4), 1062-1091.

Sadat, L. and Drumbl, M. (2016). The United States and the International Criminal Court: A Complicated, Uneasy, Yet at Times Engaging Relationship.

Juan Pablo Pérez-León Acevedo

St. Louis Legal Studies Research Paper Series. <https://scholarlycommons.law.wlu.edu/cgi/viewcontent.cgi?article=1504&context=wlufac>

Safferling, C. and Petrossian, G. (2021). *Victims Before the International Criminal Court: Definition, Participation, Reparation*. Springer.

Salmón, E. (2014). Institutional approach between IHL and IHRL: Current Trends in the Jurisprudence of the Inter-American Court of Human Rights. *Journal of International Humanitarian Legal Studies*, 5(1-2), 152-185.

Salmón, E. and Pérez-León Acevedo, J.P. (2022). Reparations for Victims of Grave Violations of International Humanitarian Law: New Developments. *International Review of the Red Cross*, 104, 1315-1343

Sandoval, C. (2020). International Human Rights Adjudication, Subsidiarity, and Reparation for victims of Armed Conflicts. In C. Correa et al. (Eds.), *Reparation for Victims of Armed Conflict* (179-264). Cambridge University Press.

Schabas, W. and McDermott, Y. (2016). Article 67. Rights of the Accused. In O. Triffterer and K. Ambos (Eds.). *Rome Statute of the International Criminal Court: A Commentary* (3rd ed.) (pp. 1650-1680) C.H. Beck / Hart / Nomos.

Shany, Y. (2014). *Assessing the Effectiveness of International Courts*. Oxford University Press.

Simma, B. (2012). Mainstreaming Human Rights: The Contribution of the International Court of Justice. *Journal of International Dispute Settlement*, 3 (1), 7-29.

Ssenyonjo, M. (2017). African States Failed Withdrawal from the Rome Statute of the International Criminal Court: From Withdrawal Notifications to Constructive Engagement. *International Criminal Law Review*, 17(5), 749-802.

Viñuales, J. (2008). The Contribution of the International Court of Justice to the Development of International Environmental Law: A Contemporary Assessment. *Fordham International Law Journal*, 32 (1), 232-258.

Von Bogdandy, A. et al. (Eds.) (2017). *Transformative Constitutionalism in Latin America: The Emergence of a New Ius Commune*. Oxford University Press.

Werle, G. et al. (2014). Introduction. In G. Werle et al. (Eds.) *Africa and the International Criminal Court* (pp. 1-12). Springer.

Wirth, S. (2002). Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case. *European Journal of International Law*, 13(4), 877-893.

Wouters, J. and De Smet, L. (2003). The ICJ's Judgment in the Case Concerning the Arrest Warrant of 11 April 2000: Some Critical Observations. Institute for International Law Working Paper No. 27, K.U. Leuven Faculty of Law. <https://www.law.kuleuven.be/iir/nl/onderzoek/working-papers/WP27ed2e.pdf>

Zappala, S. (2013). Comparative Models and the Enduring Relevance of the Accusatorial-Inquisitorial Dichotomy. In G. Sluiter et al. (Eds.). *International Criminal Procedure: Principles and Rules* (pp. 44-54). Oxford University Press.

Zhu, D. (2017). China, Crimes Against Humanity and the International Criminal Court. *Journal of International Criminal Justice*, 16(5), 1021-1041.

Jurisprudence and legal documents

European Court of Human Rights, *Lexa v. Slovakia*, Judgment, Application 54334/00, Judgment, 23 September 2008.

Extraordinary African Chambers, *Le Procureur Général c. Habré*, Arrêt, Trial Chamber, 30 May 2016.

Extraordinary African Chambers, *Le Procureur Général c. Habré*, Arrêt, Appeals Chamber, 27 April 2017.

Extraordinary Chambers in the Courts of Cambodia, *Case 001*, Appeal Judgment, Appeals Chamber, 3 February 2012.

Juan Pablo Pérez-León Acevedo

IACtHR, *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1.

IACtHR, *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75.

IACtHR, *Case of Almonacid Arellano et al. v. Chile*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154.

IACtHR, *Case of La Cantuta v. Peru*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162.

IACtHR, *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 24, 2010. Series C No. 219.

IACtHR, *Case Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011 Series C No. 221.

IACtHR, *Case of the Massacres of El Mozote and surrounding areas v. El Salvador*. Merits, Reparations and Costs. Judgment of October 25, 2012. Series C No. 252, Concurring Opinion of Judge Diego García-Sayán.

IACtHR, *Case of Gelman v. Uruguay*, Monitoring Compliance with Judgment, Order of March 20, 2013.

IACtHR, *Case of García Lucero et al. v. Chile*. Preliminary Objection, Merits and Reparations. Judgment of August 28, 2013. Series C No. 267.

IACtHR, *Case of the Afro-descendant Communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270.

IACtHR, *Case of Barrios Altos and La Cantuta v. Peru*, Resolución de la Corte Interamericana de Derechos Humanos, Supervisión de cumplimiento de sentencia – Obligación de investigar, juzgar y, de ser el caso, sancionar, 30 de mayo de 2018.

ICC's Assembly of States Parties, Resolution ICC-ASP/8/Res.9, adopted at the 10th plenary meeting, on 25 March 2010, by consensus, Annex 4 'Stocktaking of International Criminal Justice: Complementarity', Appendix: Report of the Bureau on Stocktaking: Complementarity: Taking Stock of the Principle of Complementarity: Bridging the Impunity Gap.

ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-717, Decision on the confirmation of charges, Pre-Trial Chamber I, 14 October 2008.

ICC, *Prosecutor v. Al Bashir*, ICC-02/05-01/09-3, Decision on the Prosecution's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir, Pre-Trial Chamber I, 4 March 2009.

ICC, *Prosecutor v. Lubanga*, Judgment pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, Trial Chamber I, 5 April 2012.

ICC, *Prosecutor v. Katanga*, ICC-01/04-01/07-3436-tENG, Judgment pursuant to article 74 of the Statute, Trial Chamber II, 7 March 2014.

ICC, *Prosecutor v. Lubanga*, Order for Reparations, ICC-01/04-01/06-3129-AnxA, Appeals Chamber, 3 March 2015.

ICC, *Prosecutor v. Ongwen*, ICC-01/05-01/08-3343, Judgment pursuant to Article 74 of the Statute, Trial Chamber III, 21 March 2016.

ICC, *Prosecutor v. Al Mahdi*, ICC-01/12-01/15-171, Judgment and Sentence, Trial Chamber VIII, 27 September 2016.

ICC, *Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar*, ICC-01/19-27, 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, Pre-Trial Chamber III, 14 November 2019.

ICC, *Prosecutor v. Gaddafi*, ICC-01/11-01/11-695, Judgment on the appeal of Mr Saif Al-Islam Gaddafi against the decision of Pre-Trial Chamber I entitled 'Decision on the "Admissibility Challenge by Dr. Saif Al-Islam Gaddafi pursuant to Articles 17(1)(c), 19 and 20(3) of the Rome Statute"' of 5 April, Appeals Chamber, 9 March 2020.

Juan Pablo Pérez-León Acevedo

ICC, *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment, Trial Chamber IX, 4 February 2021.

ICC's Office of the Prosecutor, "Report on Prosecutorial Strategy", 14 September 2006, at https://www.iccpi.int/NR/rdonlyres/D673DD8C-D427-4547-BC69-2D363E07274B/143708/ProsecutorialStrategy20060914_English.pdf

ICJ, *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Merits, Judgment, 11 September 1992.

ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, 14 February 2002.

ICJ, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, *Dissenting opinion of Judge ad hoc Van den Wyngaert*, 14 February 2002.

ICJ, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004.

ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Merits, Judgment, 26 February 2007.

ICJ, *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Compensation Judgment, 19 June 2012.

ICJ, *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, 20 July 2012.

ICJ, *Maritime Dispute (Peru v. Chile)*, Merits, Judgment, 27 January 2014.

ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia)*, Merits, Judgment, 3 February 2015.

ICJ, *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*, Order, 23 January 2020.

ICJ, *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Reparations Judgment, 9 February 2022.

ICTY, *Prosecutor v. Tadić*, IT-94-1-A, Appeals Chamber, Judgment, 15 July 1999.

International Law Commission, “Draft Articles on Responsibility of States for Internationally Wrongful Acts, 2001”, Report on the work of its fifty-third session (23 April-1 June and 2 July-10 August 2001), General Assembly Official Records, Fifty-fifth Session, Supplement No. 10 (A/56/10).

International Law Association, “Complementarity in International Criminal Law”, Sidney Conference, 2018, at: <https://www.ila-hq.org/index.php/committees>

Special Court for Sierra Leone, *Prosecutor v. Kallon and Kamara*, Decisions on Challenge to Jurisdiction: Lomé Accord Amnesty, Appeals Chamber, 13 March 2004.

Special Tribunal for Lebanon, *Prosecutor v. Ayyash et al.*, STL-11-01/T/TC, Judgment, Trial Chamber, 18 August 2020.

UN General Assembly, “Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law”, Resolution 60/147 of 16 December 2005.