

**Basic Foundations of International Criminal Law :
A Search**

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ARTICLE DESCRIPTION

This article is about international criminal law and written by a Student of Amity University, Mumbai, India. This Module addresses the basic concepts underlying international criminal law (ICL). It describes how ICL is a subset of public international law, outlines the basic sources of ICL and explains how these sources are interpreted by international criminal courts. In particular, this Module discusses treaty law and customary international law. It also briefly discusses the relationship between ICL, international humanitarian law and international human rights law. The aim of the Module is to familiarise to the reader to provide comprehensive information about ICL with the essential concepts.

ARTICLE OUTCOMES

At the end of this Module, reader should understand:

- The five primary sources of international criminal law;
- The distinction between treaty law and customary law;
- How treaties are interpreted;
- How to apply customary law before national and international courts and, in particular, what evidence is required to establish the elements of customary law;
- The hierarchy between custom, treaties and *jus cogens*; and
- The relationship between ICL, human rights and humanitarian law.

Introduction

International criminal law (ICL) is a body of public international law designed to prohibit certain categories of conduct commonly viewed as serious atrocities and to make perpetrators of such conduct criminally accountable for their perpetration. The core crimes under international law are genocide, war crimes, crimes against humanity, and the crime of aggression. International criminal law also includes laws, procedures and principles relating to modes of liability, de-

fences, evidence, court procedure, sentencing, victim participation, witness protection, mutual legal assistance and cooperation issues.

WHAT IS INTERNATIONAL CRIMINAL LAW?

International criminal law is a subset of public international law, and is the main subject of these materials. While international law typically concerns inter-state relations, international criminal law concerns individuals. In particular, international criminal law places responsibility on individual persons—not states or organisations—and proscribes and punishes acts that are defined as crimes by international law.

International criminal law is the body of law that prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission. The repression of serious violations of international humanitarian law is essential for ensuring respect for this branch of law, particularly in view of the gravity of certain violations, qualified as war crimes, which it is in the interest of the international community as a whole to punish. There are several basic principles upon which international criminal law is based. Since international crimes increasingly include extraterritorial elements, requiring enhanced interaction between States, it is becoming more pressing to coordinate respect for these principles. States must uphold them while also respecting their own national principles of criminal law and any specific principles outlined in the instruments of the regional bodies to which they are party.

International criminal law comprises elements of both in that although its sources are those of international law, its consequences are penal sanctions imposed on individuals.

Background

International criminal law is best understood as an attempt by the international community to address the most grievous atrocities. It has not been an ideal instrument to make the fine and nuanced distinctions typical of national law, for these shift focus from those large scale atrocities that "shock the conscience" with which it is concerned. This creates significant differences of analysis between the legal systems, notably for the concept of legal intent.

History

Some precedents in international criminal law can be found in the time before World War I. However, it was only after the war that a truly international crime tribunal was envisaged to try perpetrators of crimes committed in this period. Thus, the Treaty of Versailles stated that an international tribunal was to be set up to try Wilhelm II of the German Empire. In the event, however, the Kaiser was granted asylum in the Netherlands. After World War II, the Allied powers set up an international tribunal to try not only war crimes, but crimes against humanity committed by Nazi Germany and Imperial Japan. The Nuremberg Tribunal held its first session in 1945 and pronounced judgments on 30 September / 1 October 1946. A similar tribunal was established for Japanese war crimes (the International Military Tribunal for the Far East). It operated from 1946 to 1948.

After the beginning of the war in Bosnia, the United Nations Security Council established the International Criminal Tribunal for the Former Yugoslavia (ICTY) in 1993 and, after the genocide in Rwanda, the International Criminal Tribunal for Rwanda in 1994. The International Law Commission had commenced preparatory work for the establishment of a permanent International Criminal Court in 1993; in 1998, at a diplomatic conference in Rome, the Rome Statute establishing the ICC was signed. The ICC issued its first arrest warrants in 2005.

There is no agreement among scholars as to when international criminal law may be said to have first come into existence. Some trace it back to ancient **Egypt**, the Hebrew prophets, and the age of classical Greece. Others hint at medieval origins. One comentator goes so far as to claim not only that the **U.S.** Constitution "assumes that international law defines certain crimes," but also that federal case law in the 1790's held that international criminal law formed part of the common law heritage." A stronger case can be made that international criminal law emerged in the first decades of thr 20th century, especially in the wake of the first World War with the Leipzig war crimes trials and the abortive Allied attempt to prosecute the German Kaiser.

Sources of international criminal law

International criminal law is a subset of international law. As such, its sources are the same as those that comprise international law. The classical enumeration of those sources is in Article 38(1) of the 1946 Statute of the International Court of Justice and comprise: treaties, customary international law, general principles of law (and as a subsidiary measure judicial decisions and the most highly qualified juristic writings). The Rome Statute governing the International Criminal Court contains an analogous, though not identical, set of sources that the court may rely on. As international criminal law is a subset of public international law, the sources of ICL are largely the same as those of public international law. The five sources of ICL used by international and hybrid criminal courts generally are:

1. treaty law;
2. customary international law (custom, customary law);
3. general principles of law;
4. judicial decisions (subsidiary source); and
5. learned writings (subsidiary source).

The sources of law can sometimes overlap and have a dynamic relationship. For example, a treaty can reflect, become or influence the development of customary international law and vice versa. A judgement of an international court may influence the development of treaty and customary international law. Generally, international and hybrid courts use treaties and custom as the main sources of international criminal law, in addition to their own governing instruments (which may include treaties).

The five sources of ICL roughly correlate with the classic expression of the sources of international law contained in Article 38(1) of the Statute of the International Court of Justice (ICJ):

- (a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting States;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of law recognized by civilized nations;
- (d) judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

The relevance and importance of these sources in national criminal jurisdictions differ between countries. For example, in some jurisdictions, the direct source of international criminal law is national legislation incorporating ICL. In this instance, treaty and customary international law cannot be used as a direct source. Conversely, some courts can apply treaty law but not customary international law, while in others, custom can be applied as well. Moreover, even if national

legislation is the direct source of the applicable law, international criminal law treaties, commentaries on them and international judicial decisions are often used as aids to interpret the national law and are sometimes considered persuasive (not binding) precedent.

TREATY LAW

Treaties are agreements (usually in written form) creating rights and obligations, usually between states. Some treaties also create duties and provide for the protection of individuals.

ICL has many treaty sources. These range from obvious examples such as the Genocide Convention and the grave breaches provisions of the four 1949 Geneva Conventions to relevant human rights treaties and treaties that are not as widely ratified as the Geneva Conventions, including the:

- Rome Statute of the International Criminal Court;
- 1977 Additional Protocol II to the Geneva Conventions (AP II);
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights);
- Pact on Security, Stability and Development in the Great Lakes Region (2006) and its Protocol on the Prevention and the Punishment of the Crime of Genocide, War Crimes and Crimes against Humanity and all forms of Discrimination (Great Lakes Pact and Protocol); and
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Depending on the jurisdiction, in-force treaties that have been ratified (or acceded to) by the relevant state can be a direct source of applicable law. In jurisdictions where treaties cannot be a direct source of law, they often can serve as aids to interpretation of other applicable law.

CUSTOMARY INTERNATIONAL LAW

Custom is generally understood as consisting of:

- state practice and
- *opinio juris*.

The state practice must be consistent, uniform and general among the relevant states, although it does not have to be universal. *Opinio juris* can be defined as a general belief or acceptance among states that a certain practice is required by law. This sense of legal obligation, coupled with state practice, differentiates custom from acts of courtesy, fairness or mere usage. Treaties only bind states that are parties to them, whereas general customary law binds all states and “local” custom binds as few as two states only. Much of the content of substantive ICL exists in customary law, whether or not the same rules simultaneously exist in treaty law. However, it is generally more difficult to determine the content of custom than that of treaty law. In general, and depending on the circumstances, evidence of state practice and *opinio juris* may include:

- diplomatic correspondence;
- official policy statements and press releases by governments;
- executive decisions and practices;
- opinions of government legal advisers;
- military manuals;
- comments on draft statements on international law by the International Law Commission;
- authoritative commentaries on treaties;
- national legislation;
- national and international judicial decisions;
- contents of treaties; and
- the practice of international organisations and their organs, including, for example, UN General Assembly and Security Council resolutions relating to legal questions

Custom can originate in treaties, and treaties can constitute evidence of custom. Treaties can also be an aid to interpreting custom. The same rule can exist simultaneously in treaty law and custom; the definition of genocide and the grave breaches provisions of the Geneva Conventions are examples. Treaties sometimes codify customary law existing at the time. The Rome Statute of the ICC does so to a certain degree, but some of its provisions are more restrictive than custom, while others are less restrictive than custom. Likewise, some elements of the definition of crimes in the ICTY and ICTR Statutes go beyond what was customary law at the time.

GENERAL PRINCIPLES OF LAW

Where no rule in custom or treaty law could be found, the ICTY has on occasion—and usually with some circumspection—considered general principles of law in search of an applicable ICL rule. These principles are formulated through the process of examining the national laws and practices of principal legal systems of the world in order to determine whether the court could deduce a common approach. If a common approach exists, the court could derive a general principle of law that could be applied in the ICL context.

Not every nation's practices need to be reviewed—only enough to show that most nations within the various systems of law (*e.g.*, common law and civil law) recognise a principle of law. Where a principle “is found to have been accepted generally as a fundamental rule of justice by most nations in their municipal law, its declaration as a rule of international law would seem to be fully justified”. Where national approaches are too divergent, such a finding is precluded.

JUDICIAL DECISIONS AND LEARNED WRITINGS

The ICTY and ICTR refer to and generally follow their earlier jurisprudence, although they are not always bound to do so. Trial chambers are not obligated to follow the decisions of other trial chambers, but they must follow the decisions of the appeals chamber. The appeals chamber may

depart from its own prior decisions, but only in exceptional situations when it is in the interests of justice to do so.

The ICTY and ICTR have also referred to judicial decisions of national courts and other international courts, including the ICJ, the International Military Tribunal at Nuremberg (Nuremberg tribunal), other post-World War II courts, the European Court of Human Rights (ECtHR). They have usually done so when looking for evidence of custom. They have similarly considered the publications of international authorities, including scholarly writings and reports of relevant bodies such as the International Law Commission and International Committee of the Red Cross (ICRC).

Other international, hybrid and national courts often adopt the same approach. They do not apply ICTY or ICTR decisions as law. But they often consider, for example, ICTY and ICTR findings on customary law or general principles of law, what meaning the ICTY and ICTR gave to a particular treaty provision, or the relevance and persuasiveness of ICTY and ICTR reasoning when interpreting their own law.

PRINCIPLES AND MODES OF INTERPRETATION OF ICL

A primary method of interpreting international criminal law, as stated in Article 31(1) of the Vienna Convention on the Law of Treaties, is that a treaty should be interpreted in good faith and according to ordinary meaning to be given to the terms of a treaty in their context and in light of their object and purpose. The ICTY applies this principle in interpreting its Statute and treaties.

ICTY chambers have therefore relied on the primary object of establishing the tribunal—to punish serious violations of international humanitarian law committed in the former Yugoslavia and thereby contribute to national reconciliation and the restoration and maintenance of peace—in interpreting its Statute. The trial chamber in *Delalid* stated, “The interpretation of the provisions

must, therefore, take into consideration the objects of the Statute and the social and political considerations which gave rise to their creation”.

The ICTY, like many other international and national courts, determines the purpose of treaties through a teleological approach. It will apply a contextual, rather than rigid or literal, approach to interpretation. Interpreting the purpose of the ICTY Statute requires taking into account “the fundamental purpose of the Statute, to ensure fair and expeditious trials of persons charged so as to contribute to the restoration and maintenance of peace in the former Yugoslavia” .

Examples of methods used to interpret provisions of international treaties and other international documents are listed below. Some of these methods are similar to those employed by national courts to interpret national legislation. The extent to which the principles cited below may be relied upon in domestic courts to apply and interpret international treaties and other international documents may vary from country to country.

- (1) *Like cases are treated alike*: Similar cases should be treated the same and ideally with the same reasoning.
- (2) *Declarations/advisory opinions are not given*: Tribunals do not indicate in advance how it will interpret rules and provisions.
- (3) *In dubio pro reo*: The version of a statute or rule that is more favourable to the defendant should be applied.
- (4) Policy considerations to aid interpretation: Policy provisions may shed light on the purpose behind a particular provision, but their use at the ICTY has been contested.
- (5) *Conflict in two or more official texts*: Under Article 22 of the Vienna Convention, if there is a difference between two authentic texts (*e.g.* between English and Spanish),

unless the treaty specifies which text should prevail, the version which best reconciles the text in view of their object and purpose should be followed. This principle is also reflected in Rule 7 of the ICTY RPE.

- (6) *Principle of effectiveness* : A word should not be interpreted so as to make it redundant. Also, rules should not be made meaningless by restrictively interpreting other provisions of the same instrument.
- (7) *Presumption against lacunae*: Gaps in international customary or treaty law can be filled by reference to general principles of criminal law. However, words that appear to have been deliberately left out of a provision by the legislating or treaty-making authority cannot be read into the provision.
- (8) *Ejusdem generis*: Meaning “of the same kind”, this is used to interpret loosely written statutes or legislation. This aid of statutory interpretation should be used carefully, and only after precise legal definitions for provisions have been established. This will avoid violating the specificity requirements of the principle of legality.
- (9) *Expressio unius est exclusio alterius*: Meaning “to express one thing is to exclude another”, this generally means that if something is omitted from a statute or legislation, it is understood to be excluded. This aid of statutory interpretation should also be used carefully, especially when interpreting international criminal law provisions where the inclusion of some fundamental rights could be interpreted as the exclusion of other rights.
- (10) *Lex specialis derogat generali*: If conduct is regulated by a general provision and a specific provision, the specific provision should prevail.

- (11) *Lura novit curia*: This principle provides that it is for the court to determine the law and the parties to prove the facts. However, in the international criminal law setting, where an accused's rights are at stake, this principle should not be applied and the court can intervene when necessary to protect the rights of the accused.
- (12) *Mandatory or Directory construction*: Even when a provision seems to be drafted in mandatory language, it can be interpreted as directory when that approach will best reflect the intent of the drafters.

RELATIONSHIP BETWEEN INTERNATIONAL HUMANITARIAN LAW, HUMAN RIGHTS LAW AND ICL

International criminal law is related to other areas of international law, including humanitarian law and human rights law. Indeed, both international humanitarian law and human rights law helped develop ICL and continue to contribute to its interpretation and application (and the reverse is also true).

The major distinction between international criminal law and these other bodies of law is the fact that ICL deals with individual criminal responsibility for violations of international law. Conversely, humanitarian or human rights laws primarily focus on the actions and obligations of states, governments or parties to a conflict.

International human rights law and humanitarian law are also related to each other. For example, the International Court of Justice has held that:

" The protection offered by human rights conventions does not cease in case of arme conflict, save through the effect of provisions for derogation of the kind to be found in Article 4 of the International Covenant on Civil and Political Rights."

The laws and customs of war, or international humanitarian law, were created to protect citizens during armed conflicts. Under ICL, many violations of international humanitarian law are now considered war crimes. However, the two bodies of law have distinct modes of interpretation and application, and while international humanitarian law can be useful in interpreting ICL, the two should not be conflated.

In particular, international humanitarian law is broader than ICL—not all violations of international humanitarian law constitute war crimes. In addition, not all international humanitarian law treaties criminalise violations, although the violations may be classified as war crimes through customary law. Moreover, international humanitarian law is primarily addressed to states and parties to conflicts. International criminal law, on the other hand, is addressed to individuals, involves only the most serious crimes and violations can result in criminal liability and penalties such as imprisonment.

International human rights law is designed to protect the basic rights and freedoms of all persons and is based primarily on treaty law. To a large degree, international criminal law developed as a response to mass violations of human rights by states against citizens and persons within their territory. The prosecution of genocide and crimes against humanity developed from human rights standards. Indeed, human rights law influenced the drafting of the statutes of international criminal tribunals and judges at these courts have used human rights law to interpret substantive international criminal laws and procedures. However, International human rights obligations are primarily imposed upon states—not individuals. States must decide for themselves how to enforce human rights obligations and deal with human rights violations by state agents. Moreover, not all human rights are protected by international criminal law. International criminal law can be seen as an alternative to when This section deals with complex and important issues, and is only

meant to give an overview of the topic. The general approach by international courts is to harmonise these branches of states do not abide by their human rights obligations.

Limitations

International criminal law does not, at present, apply to armed opposition groups.

Article 9 of the Nuremberg Charter states:

"At the trial of any individual member of any group of organization the Tribunal may declare (in connection with any act of which the individual may be convicted) that the group or organization of which the individual was a member was a criminal organization".

Article 9, which was used to prosecute membership in the Schutzstaffel (SS), allows the criminalization of certain organizations (presumably state-supported) and prosecution for membership by allowing individuals to be prosecuted where evidence was otherwise insufficient. It also has some implications concerning asset seizures, reparations and other payments for damages caused by violations of international law, but does not impose criminal responsibility on organizations in their capacity as organizations. Under Article 9, the SS and several Nazi other organizations were criminalized, including the Leadership Corps of the Nazi Party.

Human rights standards have been applied to these groups in some cases, as the Inter-American Commission on Human Rights in Colombia until 1999. The application of human rights treaties to these groups remains the exception, rather than the rule. Human rights are usually understood conceptually as those rights individuals hold against the state, and some scholars argue that they are poorly suited to the task of resolving disputes that arise in the course of armed conflict between the state and armed opposition groups.

Institutions of international criminal law

Today, the most important institution is the International Criminal Court (ICC), as well as several *ad hoc* tribunals:

- International Criminal Tribunal for the former Yugoslavia
- International Criminal Tribunal for Rwanda

Apart from these institutions, some "hybrid" courts and tribunals exist—judicial bodies with both international and national judges:

- Special Court for Sierra Leone (investigating the crimes committed the Sierra Leone Civil War)
- Extraordinary Chambers in the Courts of Cambodia (investigating the crimes of the Red Khmer era)
- Special Tribunal for Lebanon (investigating the assassination of Rafik Hariri)
- Special Panels of the Dili District Court
- War Crimes Chamber of the Court of Bosnia and Herzegovina
- Kosovo Specialist Chambers and Specialist Prosecutor's Office

Some domestic courts have also been established to hear international crimes, such as the International Crimes Tribunal (Bangladesh).

International Criminal Court

The International Criminal Court (French: *Cour Pénale Internationale*; commonly referred to as the ICC or ICCT) is a permanent tribunal to prosecute individuals for genocide, crimes against humanity, war crimes, and the crime of aggression (although it cannot currently exercise jurisdiction over the crime of aggression).

The court's creation perhaps constitutes the most significant reform of international law since 1945. It gives authority to the two bodies of international law that deal with treatment of individuals: human rights and humanitarian law.

Bases of jurisdiction

A State exercises jurisdiction within its own territory. Such jurisdiction includes the power to make law, to interpret or apply the law, and to take action to enforce the law. While enforcement jurisdiction is generally limited to national territory, international law recognizes that in certain circumstances a State may legislate for, or adjudicate on, events occurring outside its territory.

A number of principles have been invoked as the basis for extraterritorial jurisdiction. These include:

- the nationality or active personality principle (acts committed by persons having the nationality of the forum State);
- the passive personality principle (acts committed against nationals of the forum State); or
- the protective principle (acts affecting the security of the State).

While these principles enjoy varying levels of support in State practice and opinion, they all require some link between the act committed and the State asserting jurisdiction. Universal jurisdiction, a further basis for asserting extraterritorial jurisdiction, requires no such link.

Universal jurisdiction is the assertion of jurisdiction over offences regardless of the place where they were committed and the nationalities of the perpetrator or of the victims. Universal jurisdiction is held to apply to the core international crimes, namely war crimes, crimes against humanity and genocide, whose repression by all States is justified or required as a matter of international public policy and by certain international treaties.

Forms of criminal responsibility

Individual criminal responsibility

International criminal law allows for individuals to be held criminally responsible not only for committing war crimes, crimes against humanity and genocide, but also for attempting, assisting in, facilitating or aiding and abetting the commission of such crimes. Individuals may also be held criminally responsible for planning and even instigating the commission of such crimes.

Command responsibility

Violations of international criminal law can also result from a failure to act. Armed forces or groups are generally placed under a command that is responsible for the conduct of its subordinates. As a result, in order to make the system effective, hierarchical superiors should be held to account when they fail to take proper measures to prevent their subordinates from committing serious violations of international humanitarian law. They may therefore be held to be criminally responsible for criminal activities to which they made no personal contribution.

Immunity

Immunities flow from the idea of State sovereignty. Traditionally, State representatives were granted immunity from foreign jurisdiction. The purpose of immunity is to allow State representatives to effectively exercise their official functions and represent the State in international relations. Two types of immunity have emerged.

- Personal immunity protects the acts of persons essential to a State's administration, whether in their personal or official capacity, for the duration of their term in office.
- Functional immunity protects official acts of State representatives carrying out their functions for the State and continues to protect those acts after the end of their term in office.

Immunity thus acts as a procedural bar to the initiation of proceedings against protected persons by foreign jurisdictions; the official's State of nationality may nevertheless waive the immunity.

The ICTY, ICTR and ICC Statutes explicitly exclude the availability of functional immunities in cases of international crimes (Art. 7(2), ICTY Statute; Art. 6(2), ICTR Statute; Art. 27(1), ICC Statute). Only the ICC Statute expressly excludes the availability of personal immunities in cases of international crimes (Art. 27(2)).

Indeed, the ICC Statute goes so far as to require States to remove immunities regarding the perpetration of international crimes by enacting appropriate legislation in their national law (Arts 27 and 88). In practice, the ICTY indicted two sitting Heads of State although the court's jurisdiction was only effectively exercised once they had left office. The waiver of immunity is qualified in Article 98(1) of the ICC Statute with respect to non-party States.

CONCLUSIONS

International criminal law is a relatively young area of law that has developed rapidly since the ICTY was created in 1994. Looking ahead, it is likely that the law, practice and institutions of international criminal law will continue to develop well into the future. No particular result, however, is inevitable. It is possible that the ICC will evolve into a stronger, more independent and effective institution of international justice; less beholden to states, and to the UN Security Council, than international criminal tribunals have proved to be so far. It is also possible that the ICC will fail to survive as a viable and credible institution.

The dynamic development and continuing uncertainty that together characterize the present state of international criminal law present both challenges and opportunities for individuals, NGOs and states. The opportunity lies in the chance to participate in shaping a key aspect of the future international order and hopefully in making it better. The challenge is to do so in a principled way consistent not only with the requirements of criminal justice, but also with agreed limits on international authority.

The ICC Statute has been accepted by more than 114 countries, and thus its legitimacy extends to over half the states in the international community. But what of the many states not accepting the ICC Statute, a group including the United States, China, India and Russia? These countries represent most of the world's population, possess most of its military force and hold three vetoes within the UN Security Council as presently constituted. Their reluctance to endorse the ICC is significant and cannot be ignored. The ICC was established based on a broad but limited consensus of states. It must now operate within the jurisdictional constraints that result from these limits.

The ICC Statute establishes an institution with extremely restricted jurisdiction, limited only to specified criminal acts committed on the territory of, or by a national of, a state party and in situations where there is no state willing or able genuinely to prosecute the case. IN many situations, such as that involving the atrocities in Darfur, this will not be enough jurisdiction to permit effective action. The UN Council ultimately referred the situation in Darfur to the ICC, thereby granting it extraordinary jurisdiction based on the Council's authority under Chapter VII of the UN Charter.

But while international judges may rightly promote more effective international institutions, it is important for international judges, prosecutors and other officials to act within the agreed limits of their authority. This is another aspect of the principle of legality discussed above. Respect for this principle does not preclude judges from occasionally advancing the development of international law through 'teleological interpretation' of treaties in the light of their object and purpose. Inevitably, however, there must be limits on the discretion of judges, especially when used to extend their own authority. In fact, recent developments regarding the ICC Statute demonstrate that teleological interpretation may sometimes require a more restrictive, rather than a more expansive, interpretation of a treaty text. The ICC's radical redefinition of its own complementary jurisdiction is a case in point.

The text of the Rome Statute of the ICC was agreed only after extended negotiations involving a careful balance between the jurisdiction of the ICC and the national criminal jurisdiction of states. If the practice of the ICC does not scrupulously respect this balance, the ability to reach compromise in future international negotiations will be undermined. There is ample reason for concern in this regard.

2.7. FURTHER READING

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