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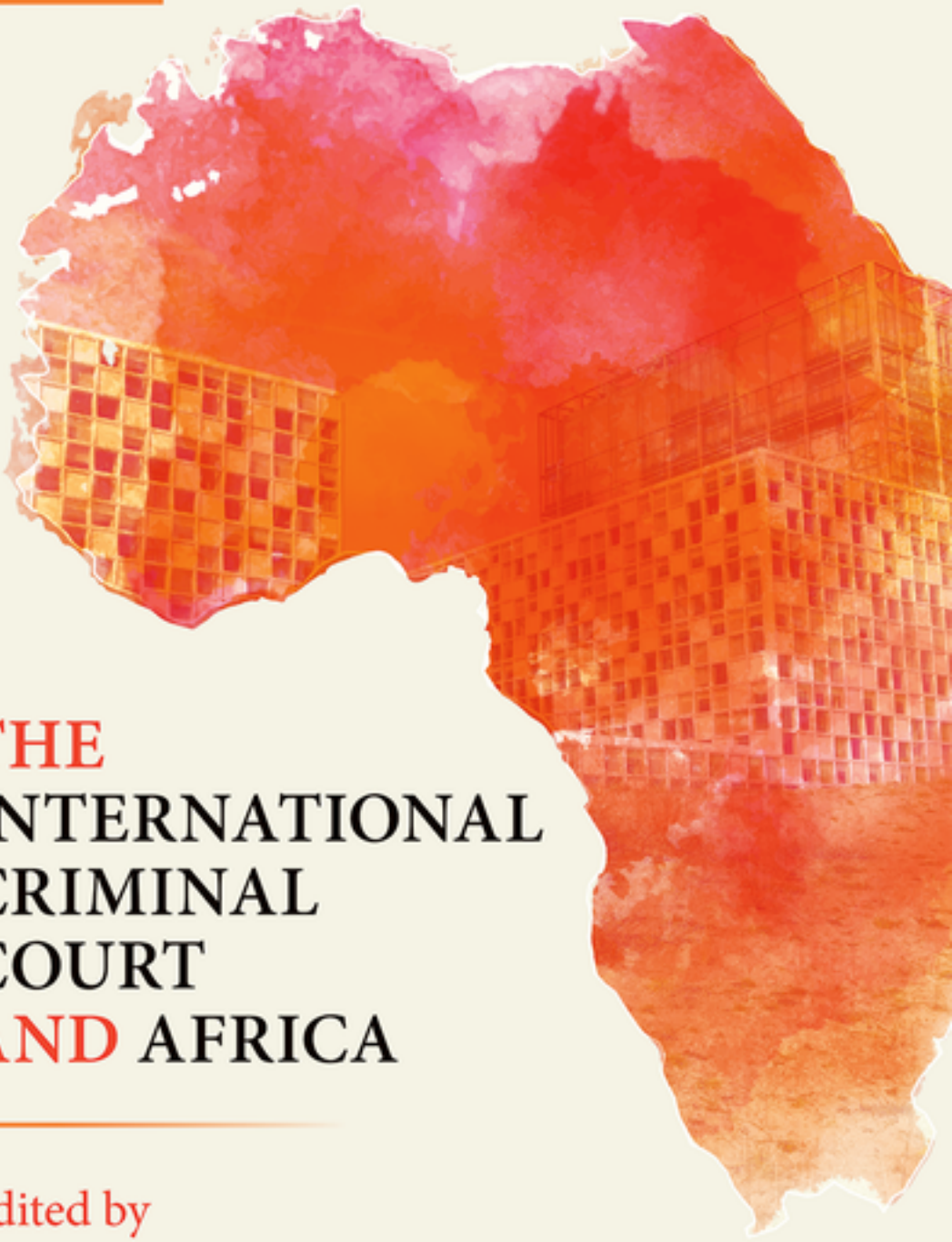

THE INTERNATIONAL CRIMINAL COURT AND AFRICA

Edited by
Charles Chernor Jalloh
and Ilias Bantekas

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Abbreviations

AC	Appeals Chamber
ACHPR	African Court on Human and Peoples' Rights
ACJPS	African Centre for Justice and Peace Studies
ADF	Allied Democratic Forces
Afr Sec Rev	*African Security Review*
African YBIL	*African Yearbook of International Law*
A-G	Attorney-General
AHRLJ	*African Human Rights Law Journal*
AI	Amnesty International
AJCJS	*African Journal of Criminology and Justice Studies*
AJCR	*African Journal on Conflict Resolution*
AJICL	*African Journal of International and Comparative Law*
AJIL	*American Journal of International Law*
AJLS	*African Journal of Legal Studies*
Am J Comp L	*American Journal of Comparative Law*
Am U Intl L Rev	*American University International Law Review*
ASP	Assembly of States Parties of the International Criminal Court
AU	African Union
AUPD	African Union High-Level Panel on Darfur
BC Intl & Comp L Rev	*Boston College International & Comparative Law Review*
BCLR	*Butterworth's Constitutional Law Reports* [South Africa]
Brook J Intl L	*Brooklyn Journal of International Law*
Cal L Rev	*California Law Review*
Camb Rev Int Aff	*Cambridge Review of International Affairs*
CAR	Central African Republic
Case W Res J Intl L	*Case Western Reserve Journal of International Law*
CAT	Committee Against Torture
CGPCS	Contact Group on Piracy off the Coast of Somalia
Chi J Intl L	*Chicago Journal of International Law*
Chinese JIL	*Chinese Journal of International Law*
CIPEV	Commission of Inquiry on Post-Electoral Violence
CJEU	Court of Justice of the European Union
CJM	Community-based Justice Mechanism
CLB	*Commonwealth Law Bulletin*
Colum J Transnatl L	*Columbia Journal of Transnational Law*
COMESA	Common Market for Eastern and Southern Africa
Conn J Intl L	*Connecticut Journal of International Law*
Contemp Justice Rev	*Contemporary Justice Review*
Cornell Intl LJ	*Cornell International Law Journal*
Crim LF	*Criminal Law Forum*

Dal LJ	*Dalhousie Law Journal*
DRC	Democratic Republic of the Congo
Duke J Comp & Intl L	*Duke Journal of Comparative and International Law*
EAC	Extraordinary African Chambers
EACC	Ethics and Anti-Corruption Commission [of Kenya]
EACJ	East African Court of Justice
ECOWAS	Economic Community of West African States
ECR	European Court [of Justice] Reports
ECtHR	European Court of Human Rights
EEZ	Exclusive Economic Zone
EJIL	*European Journal of International Law*
Ethics & Intl Aff	*Ethics and International Affairs*
EU	European Union
EUCAP	European Union Capacity Building
EUNAVFOR	European Union Naval Force
FDLR	Democratic Forces for the Liberation of Rwanda
Fordham Intl LJ	*Fordham International Law Journal*
GA	General Assembly of the United Nations
Geo LJ	*Georgetown Law Journal*
GYIL	*German Yearbook of International Law*
Harv Hum Rts J	*Harvard Human Rights Law Journal*
Harv Intl LJ	*Harvard International Law Journal*
HRLR	*Human Rights Law Review*
HRQ	*Human Rights Quarterly*
Hum Rts Br	*Human Rights Brief*
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICE	*International Commentary on Evidence*
ICJ	International Court of Justice
ICJ Rep	*International Court of Justice Reports*
ICL	International Criminal Law
ICLQ	*International & Comparative Law Quarterly*
ICLR	*International Criminal Law Review*
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDEA	International Institute for Democracy and Electoral Assistance
IELR	*International Enforcement Law Reporter*
IGAD	Inter-Governmental Authority on Development
IHRLR	*International Human Rights Law Review*
IJMCL	*International Journal of Marine and Coastal Law*
ILC	International Law Commission
ILM	International Legal Materials
ILR	International Law Reports
ILSA J Intl & Comp L	*ILSA Journal of International & Comparative Law*

IMO	International Maritime Organisation
Ind LJ	*Indiana Law Journal*
INTERPOL	International Criminal Police Organization
Int J Comp App Crim Justice	*International Journal of Comparative and Applied Criminal Justice*
Int Security	*International Security*
IOLR	*International Organizations Law Review*
IOM	Independent Oversight Mechanism
IRRC	*International Review of the Red Cross*
ISLJ	*Indian Socio-Legal Journal*
J Afr Law	*Journal of African Law*
J Afr Stud	*Journal of African Studies*
J Crim L Criminol	*Journal of Criminal Law and Criminology*
JICJ	*Journal of International Criminal Justice*
JIML	*Journal of International Maritime Law*
JLB	Jordan, Liechtenstein, and Botswana [proposal]
JLP	*Journal of Legal Pluralism*
J Legal Plur Unoff Law	*Journal of Legal Pluralism and Unofficial Law*
J Mod Afr Stud	*Journal of Modern African Studies*
J South Afr Stud	*Journal of Southern Africa Studies*
JYIL	*Japanese Yearbook of International Law*
KACC	Kenyan Anti-Corruption Commission
KLR	Kenya Law Reports
LCC	Local Council Courts (Uganda)
LJIL	*Leiden Journal of International Law*
LOSC	UN Law of the Sea Convention
LRA	Lord's Resistance Army
Melb J Intl L	*Melbourne Journal of International Law*
Mich St Intl L Rev	*Michigan State International Law Review*
MINUSCA	Multidimensional Integrated Stabilization Mission in the Central African Republic
MLJ	*Malaysia Law Journal*
MoU	Memorandum of Understanding
NATO	North Atlantic Treaty Organization
NCLR	New Criminal Law Review
NGO	Non-Governmental Organization
NIAC	Non-international armed conflict
Nig LJ	*Nigerian Law Journal*
NILR	*Netherlands International Law Review*
NJHR	*Nordic Journal on Human Rights*
NY Law Rev	*New York Law Review*
NYU L Rev	*New York University Law Review*
OAU	Organisation of African Unity

ODM	Orange Democratic Movement
OTP	Office of the Prosecutor
PALU	Pan African Lawyers Union
Penn St L Rev	*Penn State Law Review*
PNU	Party of National Unity
PSC	African Union Peace and Security Council
PTC	Pre-Trial Chamber
Punishm Soc	*Punishment and Society*
Queen's LJ	*Queen's Law Journal*
RPE	Rules of Procedure and Evidence
RT	*Round Table* [Journal]
SA	*South African Law Reports*
SADC	Southern Africa Development Community
SAJCJ	*South African Journal of Criminal Justice*
SALJ	*South Africa Law Journal*
SAYIL	*South African Yearbook of International Law*
Santa Clara J Intl L	*Santa Clara Journal of International Law*
SCCED	Special Criminal Court on the Events in Darfur
SCSL	Special Court for Sierra Leone
SEN	*Studies in Ethnicity and Nationalism*
SPLM	Sudan Peoples' Liberation Movement
SPO	Special Prosecutor's Office
STK	Special Tribunal for Kenya
St Louis ULJ	*St Louis University Law Journal*
SUA	Convention for the Suppression of Unlawful Acts against the Safety of Navigation
SUR Intl J on Hum Rts	*SUR International Journal on Human Rights*
TEU	Treaty on European Union
Tex Intl LJ	*Texas International Law Journal*
TNA	National Alliance Party
TRC	Truth and Reconciliation Commission
Tul L Rev	*Tulane Law Review*
UNDP	United Nations Development Programme
UNGA	United Nations General Assembly
UNODC	United Nations Office for Drugs and Crime
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNTS	United Nations Treaty Series
URP	United Republican Party
US	United States of America
Va J Intl L	*Virginia Journal of International Law*
Vand J Transnatl L	*Vanderbilt Journal of Transnational Law*

Wash U Global Stud L Rev	*Washington University Global Studies Law Review*
WG	Working Group
Wisc Intl LJ	*Wisconsin International Law Journal*
WMU	World Maritime University
YBILC	*Yearbook of the International Law Commission*
ZACC	Constitutional Court of South Africa Reports
ZASCA	Supreme Court of Appeal of South Africa
ZIS	*Zeitschrift für Internationale Strafrechtsdogmatik*

Editor Biographies

Charles Chernor Jalloh is Professor of Law at Florida International University (FIU), Miami, USA and a member of the United Nations International Law Commission. Before joining FIU, he taught at the University of Pittsburgh School of Law, where he was named the Buchanan Ingersoll and Rooney Faculty Scholar for 2013–14. He has practised law in the Canadian Department of Justice, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone—where he was duty counsel in the trial of former Liberian President Charles Taylor—and, as a visiting professional, the International Criminal Court. Professor Jalloh, who has published widely on aspects of international law in and with leading journals and academic presses in the field, is the founding editor-in-chief of the *African Journal of Legal Studies* and the *African Journal of International Criminal Justice*. He received an FIU Top Scholar award for 2015. A renowned expert on the relationship between Africa and the International Criminal Court, Professor Jalloh represented the African Union as its first Amicus Counsel in proceedings before the ICC Appeals Chamber. He holds degrees from Guelph, McGill, and Oxford, where he studied as a Chevening Scholar, and a PhD in International Law from the University of Amsterdam.

Ilias Bantekas is Professor of International Law at Brunel University School of Law. He acts as consultant to various international organizations, including the UN, Council of Europe, and EU, as well as government entities, and regularly advises law firms and private parties on a range of international law issues, such as general international law, arbitration, foreign investment, and human rights. He has published more than 120 articles in peer-reviewed journals. Key books include: *International Criminal Law* (4th edn, Hart 2010); *Criminological Perspectives to International Criminal Law* (Cambridge University Press 2014); *International Human Rights Law and Practice* (2nd edn, Cambridge University Press 2016, with L Oette); *International Law* (3rd edn, Oxford University Press 2017, with E Papastavridis); *Introduction to International Arbitration* (Cambridge University Press 2015); *Sovereign Debt and Human Rights* (Oxford University Press 2017, with C Lumina); *Commentary on the UN Disabilities Convention* (Oxford University Press 2018, with M Stein and D Anastasiou); and *Commentary on the UNCITRAL Model Law on International Commercial Arbitration* (Cambridge University Press 2018, with T Cole and P Ortolani).

Contributor Biographies

Olympia Bekou is Professor of Public International Law and Head of the International Criminal Justice Unit, University of Nottingham Human Rights Law Centre. A qualified lawyer, she specializes in international criminal law. Olympia has undertaken numerous capacity-building missions, including in post-conflict situations (such as Uganda, the DRC, and Sierra Leone), has provided legislation drafting assistance to Samoa (with legislation enacted in November 2007) and Jamaica, and has been involved in training the Thai judiciary. She is Deputy Director of the Case Matrix Network and a member of the Advisory Board and Editor of the Forum of International Criminal and Humanitarian Law. She is also a member of the Board of Civitas Maxima. Olympia is responsible for the National Implementing Legislation Database (NILD) of the ICC Legal Tools Project and has taught extensively worldwide. In 2014, she was awarded the University of Nottingham Knowledge Exchange and Innovation Award for Societal Impact in Social Sciences for her work and in 2015–16 she was recognized as an Impact Leader as part of ESRC's impact leaders programme.

Paola Gaeta was from 1998 to 2007 consecutively Assistant Professor, Associate Professor, and Professor of International Law at the University of Florence. In 2007, she became Professor of International Criminal Law at the University of Geneva and Director of the LLM in International Humanitarian Law at the Geneva Academy of International Humanitarian Law and Human Rights. She then joined the Graduate Institute in February 2010 as Adjunct Professor, and led the Geneva Academy from 2010 to 2014. Her principal areas of expertise include, among others, international criminal law, international immunity law, and conflicts of jurisdiction in criminal matters. Paola Gaeta is currently Member of the Editorial Board of the *Journal of International Criminal Justice* and previously served on the board of the *European Journal of International Law*. Her recent publications include *The 1949 Geneva Conventions: A Commentary* (Oxford University Press 2015, co-editor, with Andrew Clapham and Marco Sassòli); *The Oxford Handbook of International Law in Armed Conflict* (Oxford University Press 2014, co-editor, with Andrew Clapham); the third and updated edition of *Cassese's International Criminal Law* (Oxford University Press 2013, with Antonio Cassese and others); *The UN Genocide Convention: A Commentary* (Oxford University Press 2009, editor); and *The Statute of the International Criminal Court: A Commentary* (Oxford University Press 2001, co-editor with A Cassese and JRWD Jones).

Patryk I Labuda is a PhD candidate at the Graduate Institute of International and Development Studies in Geneva and a teaching assistant at the Geneva Academy of International Humanitarian Law and Human Rights. He holds an LLM from Columbia Law School, a Certificate of Transnational Law from the University of Geneva, and degrees in law (Magister iuris) and history (Licencjat) from Adam Mickiewicz University.

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Pacifique Manirakiza has been an Associate Professor at the Faculty of Law (Common Law Section) of the University of Ottawa since 2004, where he teaches Canadian Criminal Law and International Criminal Law. Mr Manirakiza has also been a law professor at the University of Burundi and at Hope University in Kenya. He was elected to the African Commission of Human and Peoples' Rights in 2011. Apart from teaching and research, Professor Manirakiza has been Deputy Prosecutor of the Republic of Burundi in the provinces of Rutana and Ngozi. He has been a member of a defence team before the International Criminal Tribunal for Rwanda (2000–4), where he previously served as a legal intern in 1999. He has also been a member of a consultation group of African experts on the possibility of extending criminal jurisdiction to the African Court of Human and Peoples' Rights.

Martin Mennecke is Associate Professor of International Law at the University of Southern Denmark. His research focuses on transitional justice and the ICC, legal issues in the Arctic, responsibility to protect, and the use of force under international law. In addition to his academic work, for the past ten years he has acted as adviser to the International Law Department at the Danish Ministry of Foreign Affairs. In that capacity, he regularly participates in international meetings and negotiations, including at the European Union, the United Nations, the International Whaling Commission, and the International Criminal Court. Key books include *International Criminal Court: The Politics and Practices of Prosecuting Atrocity Crimes* (Routledge 2017).

Gino Naldi, LLM, PhD (Birmingham), is currently an independent scholar specializing in public international law and international human rights. He spent thirty years as an academic in higher education in the United Kingdom. Dr Naldi has established an expertise in international law as it relates to Africa, focusing on the Organisation of African Unity/African Union. He is author of *The Organization of African Unity: An Analysis of Its Role* (2nd edn, Mansell 1999) and co-author, with Professor Konstantin Magliveras, of *The African Union: Institutions and Activities* (Kluwer Law International 2014). He has published widely in learned journals such as the *African Human Rights Law Journal*, the *African Yearbook of International Law*, the *Indian Journal of International Law*, the *International & Comparative Law Quarterly*, the *Leiden Journal of International Law*, the *Nordic Journal of International Law*, and the *Zeitschrift für auslandisches öffentliches Recht und Volkerrecht.*

Benson Chinedu Olugbuo holds a PhD in Public Law from the University of Cape Town, South Africa. He is currently the Executive Director of CLEEN Foundation, Abuja, and a solicitor and advocate of the Supreme Court of Nigeria, with more than fifteen years' post-call experience in international criminal justice. He was a Fox International Fellow and Visiting Assistant in Research at the Whitney and Betty MacMillan Centre for International and Area Studies at Yale University, United States of America (2011–12) and the Anglophone Africa Coordinator for the NGO Coalition for the International Criminal Court (2004–9). He has published widely on justice sector reform, international criminal justice, and human rights in Africa.

Efthymios Papastavridis, LLB (Athens), LLM (UCL), PhD (UCL), is a postdoctoral research assistant in International Law of the Sea at the Faculty of Law of Oxford University. He is also a part-time lecturer in Public International Law at the Democritus University of Thrace, a research fellow at the Academy of Athens, and a fellow of Athens Public International Law Center, University of Athens. He has also been a post-doctoral fellow at the University of Athens and a visiting fellow at the Refugee Law Initiative of the School of Advanced Study, University of London. He has taught international law

at University College London, Westminster University, the University of Athens, and the University of Oxford. He has acted as a consultant for the Hellenic Ministry of Foreign Affairs on the law of the sea, as well as the UN Office on Drugs and Crime on transnational organized crime at sea and the UNHCR on questions concerning rescue at sea. In 2012, Dr Papastavridis was appointed Director of the Centre for Research Studies of The Hague Academy of International Law.

Manisuli Ssenyonjo is Professor of International Law and Human Rights at Brunel University London. His current research is primarily in the area of public international law, including various aspects of international criminal law issues (such as International Criminal Court investigations and prosecutions) and international human rights law. He has worked extensively on the theory and practice of international criminal law and human rights, principally in Africa. He has published widely on these areas, and has assisted governments, corporations, international/regional organizations, non-governmental organizations, and peoples concerning various aspects of international law, including international criminal law and human rights as well as challenges of pursuing accountability and justice.

Dire D Tladi is Professor of International Law at the University of Pretoria. He is also a member of the UN International Law Commission and its Special Rapporteur on the topic of *jus cogens*. He is the co-editor in chief of the *South African Yearbook of International Law*. Tladi also serves as Special Advisor to the Minister of International Relations and Cooperation of South Africa. He previously served as Principal State Law Adviser in the South African Department of International Relations and Cooperation and the legal counsellor of the South African Permanent Mission to the United Nations in New York.

Kebreab Isaac Weldesellasie, born in Hebo (Eritrea), is an established researcher and international institutional law and conflict transformation academic. He has extensive experience in conducting research projects in peace-building and human, refugees, and prisoners' rights. He holds a PhD in international institutional law and conflict resolution/early warning and response mechanisms from the University of Westminster. He also holds an MSc in Sociology: Social Education, Deviance and Crimes, and a BA in Theology & Philosophy. He acts as a consultant for government entities and international organizations on the law of international organizations, human rights, governance, and conflict transformation, with a particular focus on the Greater Horn of Africa. Weldesellasie is a justice and peace activist and a respected author in Eritrea and the Horn of Africa.

Introduction

I.1 The International Criminal Court and Africa

The Statute establishing the International Criminal Court (ICC or the Court), adopted in Rome in 1998, entered into force on 1 July 2002. The ICC Statute, which reflected the outcome of years of deliberation by states, established the Court as an independent permanent tribunal and empowered it to investigate and prosecute the most egregious international crimes. As of September 2016, 124 states had ratified the Rome Statute, although not all of them have implemented it within their national legal systems. Situations in nine states (twice in the Central African Republic (CAR)) have been referred to the ICC through various trigger mechanisms, while the Prosecutor is currently undertaking preliminary investigations in several other situations. The Court held its first review conference in Uganda in July 2010, a decade after its establishment, as was contemplated by the Rome Statute.

The relationship between the ICC and African states came under tremendous tension with the Prosecutor's announcement of the intention to seek the issuance of the Court's first arrest warrant against a sitting head of state, President Omar Al Bashir of Sudan, in 2008, in respect of genocidal crimes he had allegedly committed in Darfur. The tension mounted when the Pre-Trial Chamber actually issued the warrant, albeit for crimes against humanity, in March 2009. On 27 June 2011, the ICC issued a second arrest warrant against a different leader, concerning a different situation: Libya's then (now late) president Muammar Gaddafi, as well as his son and one other official in his government. In so acting, the Court was apparently fulfilling its very *raison d'être*—helping to end impunity by purporting to hold accountable those leaders who allegedly bore greatest responsibility for perpetrating (as well as perpetuating) war crimes, crimes against humanity, and genocide.

Before the issuance of the arrest warrant against Al Bashir, Uganda, the Democratic Republic of Congo (DRC), and the Central African Republic—and later Mali—had all referred the situations occurring within their territories to the ICC. Darfur in Sudan was the first situation for which the United Nations Security Council had exercised its power to refer situations to the Court under article 13 of the Rome Statute; Libya was the second. Unlike the other jurisdictional bases in the ICC Statute, which are predicated on the prior consent of the concerned state party, the exercise of the referral power is not contingent on the state in question's membership of the ICC: article 13 gives the Security Council a blank cheque vis-à-vis *any* situation it wishes to refer to the Court. The main limitation is that such

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a referral must be pursuant to a resolution adopted to ensure the maintenance of international peace and security under Chapter VII of the Charter of the United Nations (UN Charter). This, of course, assumes that the referred state is itself a member of the United Nations.

I.2 The Peace versus Justice Debacle and the Question of Immunity

While Uganda's, DRC's, and CAR's so-called self-referrals of their situations to the ICC met with general approval, especially in Africa, the issuance of an arrest warrant against a sitting head of state—worse still, of a country in which internationally supported regional efforts towards a peaceful resolution of a brutal conflict were underway—provoked a different kind of reaction. The issue which we can expect will confront the ICC in other situations around the world is how best to sequence justice with peace. Several African states began to perceive the Court not as a court *for* Africa, but one *against* it. Virulent opposition and sharp criticisms surged from individual African states, such as Sudan and Libya, as well as from the regional body known as the African Union (AU). With Morocco's recent re-entry after a long absence, the AU is now composed of all African countries.

At the peak of its opposition, the AU instructed its member states, through a formal July 2009 decision of the Assembly of Heads of State and Government—its supreme policy-making organ—not to cooperate with the ICC in the arrest and surrender of the Sudanese leader. So far, Al Bashir has travelled to a few African countries, parties and non-parties to the Court alike, with none implementing the arrest warrant—although, as will be discussed in one of the chapters to this volume, the courts of South Africa were clearly displeased with this state of affairs.[1] Matters have since become more complicated with the decision of the South African government's executive branch to seek to withdraw from the Rome Statute—the first African country to formally do so (though, in a disturbing development, this precedent was quickly followed by two other African states from opposite sides of the continent: Burundi, in East Africa, and The Gambia, in West Africa). It remains to be seen whether diplomatic, judicial, or other domestic and international pressures will successfully be brought to bear on those states in the hope that they will rescind their withdrawal decisions.[2]

However, rather than being discouraged by Africa's growing governmental opposition, the ICC has stepped up its efforts to hold some African leaders accountable for their alleged roles in fomenting the commission of international crimes. Following the three months of violence that occurred in Kenya in the aftermath of the disputed elections held in December 2007, the Court's Prosecutor sought judicial permission to open a *proprio motu* investigation into the situation in Kenya, which was granted by the Pre-Trial Chamber in March 2010. Afterwards, five high-ranking Kenyan government officials and one of their associates—the

[1] See Chapter 6 in this volume, by Gaeta and Labuda.
[2] See Chapter 9 in this volume, by Ssenyonjo.

so-called Ocampo Six—were summoned to the ICC to answer charges for their alleged roles in various crimes against humanity which culminated in the killings of more than 1,200 people.[3] Charges were later dropped, as each of the cases fell, one after the other, like dominoes—albeit for different reasons. The Court's later arrest warrant against Libya's President Gaddafi for his alleged crimes committed in the ongoing civil war in that country, alongside his son and chief of intelligence, had recently been criticized by some African leaders, and further hardened the region's anti-ICC stance.

Again, the uneasy intersection between peace and justice came to the fore, as African states insisted that they would have preferred to negotiate some kind of exit with Gaddafi before he was pursued using criminal justice, rather than risk having Libya as a failed state in North Africa. In a continuation of the ICC's focus on Africa, on 3 October 2011, Pre-Trial Chamber III granted the Prosecutor's request for authorization to open investigations *proprio motu* into the situation in Côte d'Ivoire. In addition, at the time of writing the Prosecutor is currently carrying out preliminary investigations in several African countries, most notably Guinea and Nigeria, alongside Burundi—the precursor, in the practice of the Office of the Prosecutor (OTP), to a possible formal opening of investigations and prosecutions.

The sour turn of the relation between the Court and Africa, centred around the peace versus justice question and the controversies concerning immunity of sitting senior government officials, raises a plethora of questions. With 34 of the ICC's 124 states parties, Africa remains the largest regional bloc to have ratified the Rome Statute. Of the ten situations currently before the ICC, nine emanated from Africa (the odd one out is Georgia); it was from an African country (Uganda) that the first so-called 'self-referral' came to the OTP—this, ironically, being the country that then subsequently hosted the first review conference in the capital, Kampala, in the summer of 2010. Of course, the additional situations currently being investigated by the Prosecutor include several African states. While all these revelations clearly indicate a fraternity between the Court and Africa—what one of the editors has elsewhere described as a possible 'win–win',[4] given the mutual interests of each of the two sides—the continent's nascent opposition to the ICC has thrown a major spanner in the works with regard to progress between Africa and the Hague-based permanent court. It is no exaggeration to say that it has even raised big questions about the viability of the international criminal justice project.

The negative reaction of some African states and the AU to what they regard as the Court's undue preoccupation with African leaders has provoked responses from those who believe that, rather than opposing the ICC, Africans should be grateful to it for holding their dictators accountable. Some dismiss the AU's claims that the Court is being used to harass and humiliate *only* African leaders, while having done nothing to bring to account leaders of other regions of the world, as grossly unfounded. Critics, including African civil society organizations, describe as wolf-crying Africa's claim that the nascent permanent tribunal has become an

[3] For an overview and analysis of the Kenya situation, see Chapter 3 in this volume, by Olugbuo.
[4] Charles C Jalloh, *Regionalizing International Criminal Law?* (2009) 9 ICLR 445.