



INTERNATIONAL CRIMINAL LAW SERVICES

**SUGGESTIONS FOR FUTURE LESSONS-LEARNED STUDIES:
THE EXPERIENCE OF OTHER INTERNATIONAL AND HYBRID CRIMINAL COURTS
OF RELEVANCE TO THE INTERNATIONAL CRIMINAL COURT**

**Prepared on behalf of International Criminal Law Services (ICLS) by
Gideon Boas & Gabriel Oosthuizen**

January 2010

TABLE OF CONTENTS

About the authors	ii
Acknowledgements	ii
Disclaimer	ii
Note on International Criminal Law Services	ii
Abbreviations and glossary	iii
A PURPOSE OF REPORT	1
B BACKDROP TO REPORT	1
C CONTOURS AND PARAMETERS OF REPORT	1
D INTERVIEWS, LITERATURE REVIEWED AND METHODOLOGY	2
E POTENTIAL LESSONS-LEARNED AREAS AND SELECTION CRITERIA	3
F GOVERNANCE OF THE ICC AND RELATED ISSUES	3
G CASE SELECTION BY THE OTP	5
H PLEA AND CHARGE BARGAINING	6
I DEFENCE ISSUES AND SELF-REPRESENTATION	7
J VICTIM AND WITNESS ISSUES	8
K CASE MANAGEMENT AND CONFIRMATION HEARINGS	9
L PUBLIC INFORMATION AND OUTREACH	10
M FIELD OFFICES AND INVESTIGATIONS, AND AFRICAN UNION OFFICE	11
N EXTERNAL RELATIONS, SUPPORT AND COOPERATION, IMPLEMENTING LEGISLATION, COMPLEMENTARITY AND RELATED ISSUES	12
O RESIDUAL AND LEGACY ISSUES	15
P SUMMARY AND CONCLUSION	16
ANNEX A: LIST OF INTERVIEWED EXPERTS	18
ANNEX B: LIST OF ALL SOURCES CONSULTED	19
<i>Section A: Court sources</i>	19
<i>Section B: Books, articles and reports (non-court)</i>	22

ABOUT THE AUTHORS

Gideon Boas is Senior Lecturer in the Law Faculty at Monash University in Australia and former Senior Legal Officer in Chambers at the ICTY. He is the lead International Criminal Law Services (ICLS) consultant on this project.

Gabriel Oosthuizen is ICLS' Executive Director, and former Associate Legal Officer in Chambers at the ICTY and head of a legal unit in the UN mission in Kosovo tasked with supporting international judges and prosecutors.

ACKNOWLEDGEMENTS

The interviewed experts made an invaluable contribution to the report. Those who agreed to be identified are listed in Annex A.

The authors were greatly assisted by Jed Gilbert, Research Assistant to Dr Boas; Daun Hwang, ICLS volunteer; and Jennifer Easterday, ICLS volunteer and Senior Researcher/ Trial Monitor, War Crimes Studies Center, University of California, Berkeley.

The research for the report also benefited from the input of Milbert Shin, who was a consultant for the Open Society Justice Initiative (OSJI) at the time.

The report was commissioned by and made possible with the support of the Foreign & Commonwealth Office of the United Kingdom (FCO).

DISCLAIMER

The views expressed in this report are not necessarily those of the FCO, ICLS, those who assisted in producing it, or the interviewed experts. Any errors are the responsibility of the authors.

NOTE ON INTERNATIONAL CRIMINAL LAW SERVICES

International Criminal Law Services (www.iclsfoundation.org) is an independent, not-for-profit, non-governmental organisation. Specialised in the fields of international criminal law and practice, it provides training and other services in order to help ensure accountability for war crimes, crimes against humanity and genocide.

ABBREVIATIONS AND GLOSSARY

ACABQ	Advisory Committee on Administrative and Budgetary Questions, UN General Assembly
ad hoc tribunal(s)	ICTR and/or ICTY
ADC-ICTY	Association of Defence Counsel practising before the ICTY
ASP	Assembly of States Parties, ICC
AU	African Union
CBF	Committee on Budget and Finance, ASP, ICC
Chambers	At ICC comprising Appeals Division, Trial Division and Pre-Trial Division
CICC	Coalition for the International Criminal Court
Court	The ICC court comprising four organs: Presidency; Chambers (i.e. Appeals Division, Trial Division and Pre-Trial Division); OTP; and Registry
DRC	Democratic Republic of the Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
FIDH	International Federation for Human Rights
HRW	Human Rights Watch
IBA	International Bar Association
ICC	International Criminal Court (the Court and the ASP)
ICC Statute	Rome Statute of the ICC, 1998
ICLS	International Criminal Law Services
ICTJ	International Center for Transitional Justice
ICTR	UN International Criminal Tribunal for Rwanda
ICTY	UN International Criminal Tribunal for the former Yugoslavia
JCCD	Jurisdiction, Complementarity and Cooperation Division, OTP, ICC
judiciary	Chambers and Presidency, ICC
NGO	non-governmental organisation
OPCD	Office of Public Counsel for the Defence, ICC
OPCV	Office of Public Counsel for Victims, ICC
OSCE/ODIHR	Organisation for Security and Cooperation in Europe/ Office for Democratic Institutions and Human Rights
OSJI	Open Society Justice Initiative
other courts	other international and hybrid criminal courts (in this report mainly referring to ECCC, ICTR, ICTY, SCSL and STL)
OTP	Office of the Prosecutor
Presidency	One of the four organs of the Court
Rome Statute	see <i>ICC Statute</i>
RPE	rules of procedure and evidence
rules	rules of procedure and evidence
SCSL	Special Court for Sierra Leone
states parties	states that have ratified or acceded to the ICC Statute
STL	Special Tribunal for Lebanon
UN	United Nations
UNSC	UN Security Council
UNODC	UN Office on Drugs and Crime
UNSC	UN Security Council
VWU	Victims and Witnesses Unit
WCRO	War Crimes Research Office
WGEC	Working Group on the Extraordinary Chambers in the Courts of Cambodia

A PURPOSE OF REPORT

1 The report asks whether there are lessons yet to be learned in relation to other international and hybrid criminal courts that could help the International Criminal Court (ICC) meet its key challenges more proficiently and efficiently. The conclusion is that there may be, in some areas.

2 The report briefly highlights key potentially relevant areas. It is hoped that it will spur closer scrutiny of the basic question posed above, as well as comprehensive studies learning lessons from other international and hybrid criminal courts in areas found to be of potential relevance to the ICC.

B BACKDROP TO REPORT

3 There is a growing focus on the performance of the ICC, comprising the Assembly of States Parties (ASP) and the Court. It will soon have been operating for 10 years and is settling down as an important player on the global scene. With that it is seemingly becoming more confident about public self-appraisal and with criticism from outside. Supporters are less worried that sustained public scrutiny would mortally wound it. Increased appraisal also precedes, and will follow, the ICC review conference in mid-2010, where one of the proposed agenda items is to take stock of the progress of the ICC as part of a wider international criminal justice system.¹

4 Some media reports, ICC observers and ICC insiders suggest that the ICC is currently facing a difficult combination of serious challenges, many of which flow from its coming of age and its work on African situations and cases. The ICC will be ever-evolving due to the complexity of the nature and scope of its work, its institutional set-up and the interdependent and complementary relationship between the Court and states parties and other role-players and stakeholders. The ICC's evolutionary nature means that new challenges will continue to arise, for which it occasionally may have to turn to other organisations, including national and other courts, international and regional organisations, non-governmental organisations (NGOs) and corporations for ideas on possible solutions.

5 Aspects of the ICC and its challenges are and will remain unique. But on some issues, as has happened until now, the ICC and its stakeholders will continue to look outside for possibly relevant experiences, also at other international and hybrid criminal courts. Some of them – particularly the Hague-based UN International Criminal Tribunal for the former Yugoslavia (ICTY), the Tanzania-based UN International Criminal Tribunal for Rwanda (ICTR) and the Sierra Leone-based Special Court for Sierra Leone (SCSL) – are winding down at an increasing pace as they near the end of their current mandates. The window of opportunity is closing for learning lessons from these other courts; experienced staff with the necessary institutional memory are departing in greater numbers.

C CONTOURS AND PARAMETERS OF REPORT

6 The purpose of the report is modest, as noted above. Its underpinnings will have to be analysed more rigorously by others. It is not a lessons-learned study itself. The report is brief, written for experts, watchers, policymakers and scholars of the ICC. It is presumed that readers have a certain basic knowledge and understanding of the ICC and the other courts. References to the courts' governing instruments are therefore sparse.

7 For practical and other reasons, the report focuses on the ICTY, the ICTR, the SCSL, the Cambodia-based Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Hague-based Special Tribunal for Lebanon (STL). This is not to suggest that other hybrid courts such as those in Bosnia & Herzegovina and Kosovo do not hold lessons of potential relevance to the ICC; quite the contrary. The report does not suggest that other courts – or outsiders studying them – have learned or will learn all relevant lessons, or that those courts necessarily are models for the ICC.² The authors sought to distinguish between issues susceptible to lessons-learned analyses and those that are not. The report specifically excludes lessons-learned areas that would require amendments to

¹ ICC ASP 15 September 2009. All cited ICC sources can be found at the website of the ICC. The same applies to sources of other courts and other organisations, including NGOs.

² In several areas, the ICC holds lessons for other courts.

the ICC Statute and other governing instruments with similarly onerous amendment procedures. Issues regarding which there seems to be settled jurisprudence, are also avoided.

8 The report was completed in mid-November 2009.

D INTERVIEWS, LITERATURE REVIEWED AND METHODOLOGY

9 The authors generally approached the question at the heart of this report as follows. They first sought to identify and understand the current and potential key challenges of the ICC. Interviews with ICC officials and outside ICC experts were held and a comprehensive literature review was undertaken for this purpose. Given their insider knowledge, also about planned internal reviews of practices and procedures, some weight was attached to information and views provided by ICC insiders, while being mindful of the attendant risks. With the identified challenges in mind, the literature was reviewed to see whether it includes relevant lessons-learned studies, and if so, whether those studies are up to date and sufficiently detailed and related to ICC specificities. Interviewees were also asked for references to any such studies. A secondary purpose of the report is to determine whether there are any such studies in relation to other courts that the ICC could turn to regardless of whether those studies were written with the ICC's specificities in mind – this question is addressed below. Some interviewees also offered views on which ICC-relevant areas could be explored through comprehensive lessons-learned studies.

10 Most interviews – almost all of which were held in person – were of limited duration. Interviewees were informed that the overall purpose of the interview was to identify possible areas for comprehensive lessons-learned studies as described above. They were not asked to list or describe previous instances where the ICC turned to other courts for lessons learned, though several interviewees gave past examples. Though not explored with interviewees, it would seem as if most such earlier lessons-learned efforts were ad hoc, informal or personal in nature. For example, ICC officers who used to work at other courts would share their experiences with ICC colleagues; and ICC officials would raise challenges with counterparts at on other courts in the course of public and other meetings. The Prosecutor's Colloquium was mentioned as example of a regular forum for the informal exchange of lessons learned. However, accounts differed on how fruitful these meetings are. Various ICC experts noted that the ICC is increasingly starting to learn lessons from its own experiences rather than looking outside and that this trend is likely to become fixed. The basic suggestion underlying the report – that the ICC could still learn lessons from other courts – is sensitive, and may have coloured some interviews at the ICC and elsewhere.

11 Annex A lists the experts interviewed for the report and who agreed to be identified. Interviews were conducted on the basis that no specific attribution would be made to any individual. Some interviewees did not want to be identified. In The Hague, interviews had to be conducted during a specific week. Several people could not be interviewed at the time. At the Court, every attempt was made to interview representatives of relevant sections of the OTP, Registry and Judiciary (comprising the Presidency and Chambers); unfortunately, it is only in relation to the OTP that this mostly succeeded. Attempts to meet with or telephonically interview current ICTR and SCSL representatives in the time available failed; this is unfortunate given the challenges faced by the ICC in relation to aspects of its work on African situations. However, the literature review, interviews with outside experts and former staff members of the various courts, and the personal experience of the authors and other ICLS associates pointed to issues that staff who could not be interviewed may well have spoken to.

12 Annex B lists the more than 200 written sources consulted. The list is not exhaustive, but it includes a significant body of relevant writings, mainly up to early October 2009. The sources reflect a vast array of views and perspectives. Many of them, scholarly pieces included, suggest a range of potential areas for relevant lessons-learned studies. Many of the sources deal with specific issues in varying detail, or with a range of issues in general terms,³ from a lessons learned, 'best practice' or similar practice-oriented perspective. None comprehensively identifies and dissects

³ See e.g. Vincent; and ICTY manual.

lessons learned, in one or more areas, and seeks to relate them to the specificities of the ICC. However, together they provide a valuable account of different issues and perspectives more or less relevant to the crucial work of the ICC.

E POTENTIAL LESSONS-LEARNED AREAS AND SELECTION CRITERIA

13 The literature and interviewed experts suggest many potential lessons-learned areas. This report covers only those considered by the authors and interviewees to be of potential notable practical consequence for the ICC. General criteria for determining possible areas to cover include their likelihood to result in major cost savings, managerial-efficiency and productivity-efficiency gains, significant legitimacy gains, the more effective fulfilment of the Court's core mandate and protection of human rights, and their likelihood to help planning for important future challenges.

14 The potential areas for lessons-learned studies covered in this report relate to: (a) governance of the ICC and related issues (p 3); (b) case selection by the OTP (p 5); (c) plea and charge bargaining (p 6); (d) defence issues and self-representation (p 7); (e) victim and witness issues (p 8); (f) case management and confirmation hearings (p 9); (g) public information and outreach (p 10); (h) field offices and investigations, and African Union office (p 11); (i) external relations, support and cooperation, implementing legislation, complementarity and related issues (p 12); and (j) residual and legacy issues (p 15).⁴

F GOVERNANCE OF THE ICC AND RELATED ISSUES⁵

15 Especially in interviews, the governance of the ICC featured prominently as an area of considerable concern. Aspects raised broadly concern the following:

- (a) The leadership and management of the OTP, Presidency and Registry.
- (b) Inter-organ coordination at the Court, and a lack of clarity regarding the organs' respective roles, notwithstanding the progress having been made in this regard.⁶
- (c) The leadership of the ASP.
- (d) The relationship between and capacity of the The Hague working group and New York working group of the Bureau, created to facilitate substantive discussions on issues between ASP sessions.
- (e) States parties' degree and level of participation in the ASP and its subsidiary bodies.
- (f) The governance role of the ASP and individual states parties vis-à-vis the Court. According to the ICC Statute, the ASP inter alia provides management oversight to the president, the prosecutor and the registrar regarding the administration of the Court, and considers and decides the Court's budget.
- (g) The relationship between the ASP and Court. Under the ICC Statute the judges are independent in performing their functions, the OTP acts independently as a separate organ, and the Registry exercises its functions neutrally under the president's authority.

⁴ Issues raised in relation to one area often also relate to other areas; these links are not highlighted in all instances.

⁵ In addition to interviewed experts, sources consulted for this section include: the governing instruments of the ICC and other courts, incl ICC Statute arts 36, 38, 40, 42, 43, 112, ICTY RPE rules 23, 23bis (on Coordination Council) and 23ter, SCSL-establishment agreement, and STL RPE rule 38 (on Senior Management Board); ICC strategic plan; ICC performance report; ICC CBF report 2009; ICC Bureau family-visits report; ICC Bureau oversight-mechanism report and ICC Bureau oversight-mechanism report addendum; ICC Bureau decisions September 2009; ICC ASP November 2008 resolution; ICC OTP 2009 draft strategy; ICC November 2009 efficiency report; ICC Bureau strategic planning report 2007; ICC Bureau strategic planning report 2009; SCSL 1st annual report; Boas 2002; Cassese 2006; Dieckmann & Kerll; Donlon; IBA 2008; ICTJ STL handbook pp 15-16 (on Management Committee of STL); ICTY manual; Møse; Mundis; Vincent.

⁶ This concern is set against background of the "One-Court" principle or approach, whereby the interrelated and interdependent activities of the Court's various organs are coordinated while respecting the independence of relevant organs: see e.g. ICC strategic plan pp 2-3, 9; ICC Bureau strategic planning report 2007 p 6; ICC ASP November 2008 resolution par 24 (in which ASP encourages Court to "undertake all necessary efforts to fully implement the One Court principle, inter alia, with a view to ensure full transparency, good governance, and sound management"); and ICC Bureau strategic planning report 2009.

16 More specific issues mentioned include:

- (a) OTP inefficiencies resulting from what is perceived by some as over-centralisation in and micro-management by the OTP's executive committee.⁷
- (b) The relatively passive leadership role of the ASP's Bureau, statutorily tasked with assisting the ASP in the discharge of its responsibilities, and a lack of proper substantive support for members of the informal The Hague and New York working groups.
- (c) Challenges faced by, for example, most African states-party members of The Hague working group to fully contribute to its work.
- (d) What is perceived by some as inefficient micro-management of some administrative affairs of the Court by the ASP and individual states parties.
- (e) What is perceived by some as the overstepping by the ASP of the proper boundary between its statutory powers and those of the Court. It is seen as interfering with the independence of the Court at times, the live example being the sensitive issue about the funding of family visits for indigent detainees.

17 The Court and ASP face complex governance challenges impacting on the ICC's operations, legitimacy and success. Important aspects of the ICC's governance arrangements are unique when compared to other courts. Moreover, apparent advances in the governance of other courts may also be due to the occupants of top management positions rather than lessons learned and the development of formal governance structures and procedures. Nevertheless, in relation to some governance areas other courts may hold relevant lessons for the ICC.

18 An example is the financial oversight role of the Advisory Committee on Administrative and Budgetary Questions (ACABQ) of the UN General Assembly in relation to the ICTY and ICTR. Questions about the proper exercise of the ACABQ's role vis-à-vis the independence of the judicial and prosecutorial functions of the two courts – with independence closely tied up to budgetary and administrative control, as in any justice system – may have arisen at some stage. A lessons-learned consideration of key donors' proper direct role – due to and via their voluntary contributions – and indirect role – due to and via their assessed contributions – in the operation of other courts, and the effect, if any, of such influence on the courts' independence, may also be useful.

19 The ASP has the statutory power to “establish such subsidiary bodies as may be necessary, including an independent oversight mechanism for inspection, evaluation and investigation of the Court, in order to enhance its efficiency and economy.”⁸ The independent oversight body which the ASP is seemingly about to establish has a much narrower, staff-misconduct-related mandate,⁹ though it has left open the door to establish a mechanism with a broader mandate in future. The propriety and nature of the UN Security Council's general oversight role and its role in the speedier completion of the current mandates of the ICTY and ICTR, ad hoc organs created under Chapter VII of the UN Charter, may hold relevant lessons. Any lessons-learned comparison of, for example, the roles of the UN Security Council and the UN General Assembly vis-à-vis the two ad hoc tribunals – or the role of bodies such as the Management Committee of the SCSL, a court wholly funded via voluntary contributions¹⁰ – with the related roles of the ASP vis-à-vis the Court will have to be undertaken with caution, given the differences between these arrangements and the set-up of the courts generally. This note applies to all references to the ASP's role.

⁷ The OTP is in the process of completing a comprehensive operational manual for all its activities, which it has been suggested would remove what is perceived to be a current need for the executive committee to be aware of and involved in the day-to-day activities of the various units of the OTP.

⁸ ICC Statute art 112(2)(4).

⁹ As does the premises-oversight committee.

¹⁰ See e.g. SCSL-establishment agreement art 7 (“... interested States will establish a management committee to assist the [UN] Secretary-General in obtaining adequate funding, and provide advice and policy direction on all non-judicial aspects of the operation of the Court, including questions of efficiency, and to perform other functions as agreed by interested States. The [committee] shall consist of important contributors to the [SCSL]. The Government of Sierra Leone and the Secretary-General will also participate in the management committee.”); SCSL 1st annual report, p 30; and Cassese 2006.

20 Whether relevant management experience of senior leaders at other courts was factored in at their nomination and selection could be a governance-related issue worth considering. The ASP has varying roles in the choosing of the ICC judges (who elect the president and vice-presidents among themselves), and the prosecutor and registrar and their deputies, with the ASP's role being most direct in relation to judges and the prosecutor.

G CASE SELECTION BY THE OTP¹¹

21 The legitimacy and success of the Court and especially the OTP, the cost-effective operation of the Court, and the ability of accused to defend themselves properly, depend in part on the situations, cases and charges (cases) selected and prioritised (selected) for investigation and prosecution by the OTP,¹² and on how this is done. Limited resources will often require the prosecutor to pick among possible cases. Much hinges not only on the publication and nature of selection criteria, but also on them being applied consistently, independently, impartially and transparently, and on related decisions being properly publicised to the extent possible. Similar considerations apply to some extent to the prosecutor's decisions in relation to admissibility and jurisdictional issues. Such issues have law and policy dimensions. In a different way, the foregoing also applies to some extent to Chambers, variously responsible for authorising investigations by the prosecutor, issuing warrants of arrest and summons to appear, confirming charges, and determining issues of admissibility and jurisdiction.

22 This section focuses mainly on the OTP. It seems as if the ICC OTP generally could benefit more from case-selection lessons than from admissibility and jurisdiction lessons at other courts. The ECCC may offer some pertinent lessons on admissibility and jurisdiction-related issues, and for Chambers too, the ECCC, perhaps more so than any other court, may hold some relevant lessons.

23 The law on OTP case (including charge) selection is not yet settled and may not be for some time. The tough issues seem to revolve around policy dimensions, including the prosecutor's identification, publication and interpretation of related criteria and their proper application. It is understood that the OTP is likely to publish a final case-selection policy before the end of 2009, replacing earlier related documents.¹³ Assuming that the final selection policy will tick boxes such

¹¹ See e.g. ICC Statute arts 15, 17-19, 53, 58 and 61 on respective roles of OTP and different Chambers. Most aspects of the law relating to case selection remain to be tested in jurisprudence; but see DRC warrant judgment by ICC Appeals Chamber. In addition to interviewed experts, sources consulted for this section include ICC OTP regulations; ICC OTP 2003; ICC OTP June 2006; ICC OTP September 2006; ICC OTP 2007; ICC OTP 2009 draft strategy; governing instruments of the ECCC, ICTR, ICTY (see e.g. its rule 28(A) adding a review procedure to the indictment process) and SCSL; ICTY manual pp 14-15 and Angermaier (on ICTY OTP's investigative guidelines and selection criteria); UNSC resolutions 1503 and 1534; Obote-Odora (on case selection at ICTR); Ahmed & Margaux (on selection criteria at ECCC); Bergsmo et al 2007; Bergsmo et al 2009; Bergsmo criteria; Danner; de Smet; FIDH 2006; Hall in Bergsmo criteria; Jorda; Lampell; Seils; Schabas; Sluiter 2009; WCRO March 2008; Zappala in Cassese companion. See also sources linked from ICC OTP second public hearing. The Bergsmo criteria publication is particularly useful and could serve as starting point for a comprehensive ICC-focused cross-court lessons-learned analysis. "Prosecutorial discretion" is often used to describe a prosecutor's power to decide who, when, etc to prosecute.

¹² The ASP can influence case selection, through its control of the Court's budget, for example; see section F on independence-related concerns.

¹³ See e.g. ICC OTP draft strategy p 11. The OTP issued a policy paper in 2003 (ICC OTP 2003) which included its thinking at the time on issues relating to case selection (e.g. id p 7). It circulated a draft policy on criteria for selection of situation and cases for discussion in 2006 (ICC OTP June 2006); this is now being finalised. A 2006 report on prosecutorial strategy (ICC OTP September 2006), which draws from both ICC OTP 2003 and ICC OTP June 2006, notes at pp 5-6: "Based on the Statute, the Office adopted a policy of focusing its efforts on the most serious crimes and on those who bear the greatest responsibility for these crimes. Determining which individuals bear the greatest responsibility for these crimes is done according to, and dependent on, the evidence that emerges in the course of an investigation... The Office also adopted a "sequenced" approach to selection, whereby cases inside the situation are selected according to their gravity. Although any crime falling within the jurisdiction of the Court is a serious matter, the Statute clearly foresees and requires an additional consideration of "gravity" whereby the Office must determine that a case is of sufficient gravity to justify further action by the Court. In the view of the Office, factors relevant in assessing gravity include: the scale of the crimes; the nature of the crimes; the manner of commission of the crimes; and the impact of the crimes. The policy also means that the Office selects a limited number of incidents and as few witnesses as possible are called to testify. This allows the Office to carry out short investigations and propose

as legality, independence, impartiality, clarity, coherency, objectivity, non-discrimination, publicity and necessary flexibility, lessons-learned studies on the related experiences at the other courts being of possible use to the ICC OTP may be limited to issues of application, appropriate communication of reasoned selection decisions, and resisting political and other pressure to influence the actual exercise of prosecutorial discretion beyond the manner foreseen in the ICC Statute.

24 As in the case of other areas covered in this report, any ICC-relevant lessons-learned study will have to consider the differences between the law of the compared courts and other variable factors. Some of these differences are significant. The primacy over national jurisdictions of, and the ad hoc nature of and completion strategies at, for example, the ICTY and SCSL, are notable related factors. The focus on higher-level accused of the ICTY and ICTR came years after their creation, in response to the UN Security Council signalling the need for the two courts to wrap up their work. The very different related roles of the chambers/judges of other courts in comparison to the ICC are also notable. At the ICTR, ICTY and SCSL there were and remain questions about prosecuting suspects from ‘all sides’. The ICC OTP is also likely to face frequent demands to target ‘all sides’ of a conflict and allegations of selective justice. An assessment of whether the other courts’ experiences would offer useful lessons could be useful. There may also be issues to explore around prioritising prosecutions of the most senior leaders before lower-ranking ones, or vice versa, and about the possible role of practical considerations such as the potential for arrest.¹⁴

H PLEA AND CHARGE BARGAINING¹⁵

25 Plea and charge bargaining are controversial issues. When it arises at the Court, as it is likely to, it may be useful for the Court to already have given related issues preliminary consideration.

26 The following illustrates what plea and charge bargaining means. Generally, views differ between common and civil law traditions about the use and propriety of plea bargaining. In the former, negotiated justice takes the form of guilty pleas or confessions to crimes charged and is often accompanied by sentencing discounts. In the latter, negotiation results only in defendants leading incriminating evidence, such as confessions, leaving courts to base their decisions on the evidence. In general, while common law negotiation “dispenses with the need to go to trial, [civil law negotiations] only shorten it.”¹⁶ Charge bargaining entails prosecutors agreeing to drop the prosecution of some crimes in order to obtain the confession in relation to other crimes.

27 As in national legal systems, a wide range of arguments for and against plea and charge bargaining in international criminal courts can be raised. The primary question at the ICC is whether such bargaining is permitted under the Statute.¹⁷ Furthermore, such bargaining may, for example, result in significant cost-savings and free up staff to work on other cases due to abbreviated proceedings, and depending on the context and how it is done, may also further goals such as truth-telling, peace-building and national healing, and could help secure convictions of higher-ranking accused. But it could also, for example, compromise the interests and rights of victims and witnesses, undercut placing on the record a fuller historical record, damage transparency and the legitimacy of the Court in the eyes of the public and, if coupled with notable sentence reductions, compromise sentencing aims and damage the fight against impunity.

expeditious trials while aiming to represent the entire range of criminality. In principle, incidents will be selected to provide a sample that is reflective of the gravest incidents and the main types of victimization. Sometimes there are conflicting interests which force the Office to focus on only one part of the criminality in a particular conflict. The approach used in the selection of incidents and charges is one of the measures taken to address the security challenge and assists the Court in operating cost efficiently. Finally, it is part of this policy to request arrest warrants or summons to appear only when a case is nearly trial-ready in order to facilitate the expeditiousness of the judicial proceedings.” See also ICC OTP regulations, incl regulation no 29.

¹⁴ Which is one of the ICTY OTP’s investigative guidelines. ICC OTP June 2006 suggests that such considerations may compromise the guiding principle of independence (at pp 1-2).

¹⁵ Sources consulted for this section include: Black’s Law Dictionary; Boas 2007; Bosly; Cook; Damaška; Daqun; Lampell; Mackenzie; Neier; Scharf 2004; ICTY *Nikolic* sentencing judgment; ICTY *Plavšić* sentencing judgment.

¹⁶ Damaška, p 1026.

¹⁷ The ICC Statute does not expressly prohibit it. See e.g. ICC Statute art 65 and in particular art 65(5).

28 The ICTY and ICTR, for example, have accepted almost 30 plea bargains and charge bargains among them. Comprehensive ICC-focused lessons-learned studies on cross-court related law, practice and policy considerations may be useful to the ICC. Such studies will have to consider how such practices, assuming they are permitted under the ICC Statute, would fit into the various stages of proceedings and what the respective roles of all parties would be.

I DEFENCE ISSUES AND SELF-REPRESENTATION¹⁸

29 Ensuring that accused can properly raise a defence is an often neglected dimension of international and hybrid criminal courts, just like in national courts. That is notwithstanding the negative impact of any such neglect on defendants' human rights, on courts' legitimacy and efficacy and on the equality-of-arms principle. A primary concern, regularly raised, is the cost of defence-related activities. Even if equally regularly misplaced, at atrocity-crime courts like the ICC cost concerns are amplified by the sheer volume and complexity of most cases when compared to national cases, which result in longer trials.

30 Much of the related literature and interviews – also regarding the ICC – pivots on such issues. Following these sources, other courts may hold some ICC-relevant lessons, despite differences between the various courts in relation to the defence. Which one or more of the other courts may still hold such lessons would depend on the specific issue. In relation to some issues the STL (where the defence office is a fourth organ of the court, though its budget falls under the Registry), ECCC and SCSL may be of more potential relevance than the others.

31 Additional questions raised include: (a) The role of the Registry-based though independent Office of Public Counsel for the Defence (OPCD), also vis-à-vis external counsel. (b) The relationship between and relative funding of the OPCD and other Registry-based units, particularly the Defence Support Section and the independent Office of Public Counsel for Victims (OPCV), and ensuring the professional independence of defence counsel and their proper involvement in all decisions affecting the defence. (c) Whether defence issues are, and could be, given the attention they deserve via the registrar, who forms the Coordination Council with the president and prosecutor, and whether the defence should not be represented separately on the council. (d) The need for an ICC-focused association of defence counsel that could, for example, assist external counsel represent their interests at the ICC. (e) The need for defence-specific trainings, including on case-management and ICC information-technology tools. (f) The identification of relevantly qualified defence counsel – also for suspects prior to the confirmation of charges – and the testing of their language, legal and advocacy skills. (g) Exploring avenues to shore up defence-related states-parties obligations, such as summoning witnesses to appear on behalf of the defence and disclosing exculpatory and other materials to the defence. (h) Exploring ways of avoiding inefficiencies resulting from piecemeal disclosure of materials to the defence by the OTP. (i) The relative underfunding of defence-related activities (including vis-à-vis legal aid to investigators and counsel for indigent defendants). (j) In the light of the experience at the ICTR and at the ICC itself in the *Bemba* case, the need to put in place, in good time, agreements with states willing to host provisionally-released and acquitted persons.

¹⁸ In addition to interviewed experts, sources consulted for this section include: the governing instruments of ICC and other courts, incl ICC RPE rules 20-22, regulations 67 et seq of regulations of Court, regulations 143 et seq of ICC Registry regulations, and STL Statute arts 7, 13, 17, 25; ICC CBF report 2009; ICC report October 2008 (incl pars 49-54); ICC report October 2009, incl its annex III; ICTY manual; de Bertodano; Heinsch; HRW 2008; IBA 2009; Lampell; Dubuisson et al; MacCarrick; Nsereko; Simpson. Despite its SCSL focus, a useful study touching on various defence issues is Thompson & Staggs. In relation to self-representation, consulted sources include interviewed experts; governing instruments of various courts; ICTY *Seselj* judgment summary; ICTY *Milosevic* 2004 decision; ICTR *Barayagwiza* decision; SCSL *Norman* decision; ICTY manual; Boas 2007; Heinsch p 492-494 citing Nowak; HRW 2006; Lampell; MacCarrick; Meisenberg; Scharf 2004; Tuinstra. See in particular recent study by Wald, incl at p 62: "...some cases are simply too complex and potentially too unmanageable to allow the defendant's choice to represent himself to be absolute. The interests of witnesses and of the court and the public in a fair and manageable trial are worthy of consideration."

32 At some stage the Court is likely to have to deal with accused who want to represent themselves in a way which subverts justice. The ICC's governing instruments do not deal with self-representation – a fair-trial right – in any detail, stating that the registrar must provide “appropriate assistance” to someone wanting to self-represent.¹⁹ The authors have not inquired whether the OTP and Registry have policies in place for dealing with challenges accompanying self-representation. Judges will be called upon to pronounce on the law in the context of the ICC, but there may be room for preliminary evaluation of policy dimensions. If not already done, it may be useful for the ICC to consider lessons learned – or yet to be learned – at other courts, particularly the ICTY, on how to prevent, manage and resolve – particularly via pro-active judicial control – subversive self-representation, especially by high-level accused. Self-representation could lengthen trials and add to logistical, security and evidentiary challenges, resulting in higher costs and impacting on other priorities. Security risks for protected and other witnesses contacted via privileged communications may also increase. Subversive self-representation could significantly obstruct proceedings, undermine the interests of justice and rights of victims, and damage the reputation of the Court.

J VICTIM AND WITNESS ISSUES²⁰

33 The list of important issues raised in the literature and by interviewees in relation to witnesses and victims is long. They range widely, touch on the roles of the Registry, OTP, Chambers, the ASP and individual states parties, impact on the long-term success, legitimacy and efficacy of the Court, and have crucial implications for fundamental human rights and the budget. It is not apparent that other courts may hold lessons for the ICC on all such issues. Much of the ICC's related framework and practice are unique when compared to other courts. Judging by interviews and some of the literature the ICC has already learned or is still purposefully learning what it could from other courts on at least some issues. The ECCC and STL in particular may hold some lessons on some matters, such as the mechanics of enabling effective victim participation and representation (ECCC) and seeking more local and less overt solutions to witness and victim protection (STL). Some issues are also covered in some detail from a practical perspective in other sources.

34 Focusing mainly on concerns raised in interviews, it could be useful to explore the possible usefulness to the ICC of lessons-learned studies on the following issues, in addition to those suggested above. Despite the often significant differences in frameworks and contexts,²¹ other courts are likely to have grappled and still grapple with at least some of them.

35 (a) Various issues centring on the role, neutral status and relationships vis-à-vis the ICC's Registry-based Victims and Witnesses Unit (VWU), including a lack of understanding of and respect for the unit's role, and of sufficient financial, staff and managerial support (also before the ASP). (b) Unresolved issues about the respective roles of the VWU and the OTP, from pre-investigation to post-trial stages, including understandable differences in risk assessment and management, with the latter more often desiring protective measures or more serious such measures than the former. (c) Ideal and realistic roles of the Court vis-à-vis, for example, states, the UN Office on Drugs and Crime (UNODC) and NGOs, in relation to protection and support activities

¹⁹ ICC Registry regulations, regulation no 119(2). See also ICC RPE rule 21(4) and ICC Statute art 63(2).

²⁰ In addition to interviewed experts, sources consulted for this section include: ICC governing instruments and jurisprudence incl ICC Statute arts 43(6), 68 and 75, ICC RPE rules 85-99, relevant ICC regulations of Court, Registry, and OTP; ICC Bureau cooperation report; ICC legal aid report 2009; ICC CBF report 2009; ICC VWU round table 2009; Arbia briefing; Arbia plans; ICC Appeals Chamber victims' participation decision July 2008; ICTY manual; websites of ECCC, SCSL, ICTR and ICTY; del Ponte; HRW 2008 (incl issues and cases cited at pp 168-172); IBA 2009; OSCE/ODIHR May 2009; Kwende; Heinsch; Ivanišević 2007; Lampell; Massidda & Pellet; REDRESS; Schrag; Sluiter 2005; Sluiter 2009; Vasiliev; ICTY *Milosevic* decision 2002; *Werner v Austria* judgment (European Court of Human Rights). The SCSL publication by Charters et al and the publication by the Working Group on the Extraordinary Chambers & OSJI cover certain practical victim and witness issues in considerable detail.

²¹ For example, there are some differences between the set-up and roles of the victims and witnesses units of the various courts; and being headquartered in the country in issue (e.g. SCSL and ECCC) or some distance away (e.g. ICTY and ICC), and working in an unstable country with very few functioning state institutions and a weak permanent civil society or in a country still at war are bound to impact on some victim and witness-related activities.

generally and in relation to building and enhancing the capacity of domestic protection and support authorities, including the judiciary, police and specialised protection and support units.²² (d) The – late – stage at which protection (if approved) for potential though already-at-risk witnesses can be activated and the still complicated, lengthy and strict related protection-application process. (e) Issues about protecting victim participants; the aid to and background and roles of external victims’ representatives; and the role of the ICC’s OPCV. (g) Post-trial protection and support.

K CASE MANAGEMENT AND CONFIRMATION HEARINGS²³

36 Managing cases well benefits defendants – their trials are more expeditious and fairer. It benefits victims and witnesses – they are not exposed to drawn-out twists and turns of judicial processes. The OTP, like Chambers and the Registry, can focus more resources on other work. It benefits the ICC generally – it is cheaper, and enhanced efficiencies translate into greater legitimacy and public confidence. Proper, hands-on, pro-active judicial case management is critical to such an end, but the potential of the OTP, defence and victims’ counsel and Registry to make a significant contribution to the optimum management of proceedings in various ways – regardless of the quality of judicial management – should not be underestimated. More focused and smaller cases are generally easier to handle. Good management is also made easier by having judges and parties skilled at or properly briefed on relevant management techniques involved.

37 Good case management is also dependent on the available tools and formal parameters. At courts such as the ICTY the statute says relatively little about the procedures to be followed; judges are given the power to fill in the details, and to sharpen case-management tools through fairly simple rule-amendment procedures. This is very different at the ICC. Both its Statute and Rules are more constraining in the case-management framework that they establish: there are more stages involving more parties where substantive issues are to be determined than at courts such as the ICTR and SCSL. This means that case management in general is more challenging at the ICC, and that finding room for improvements in the existing parameters set by the ICC Statute and Rules, neither of which can be easily amended, is also more challenging.

38 Interviewees and the reviewed literature suggest that, as they are, the ICC Statute and Rules do leave some room for new and sharpened case-management tools and techniques. An example given of inventive improvement relates to the ever-problematic set of issues around disclosure of incriminating and exculpatory materials by the OTP. In the *Bemba* case the Pre-Trial Chamber sought to make the case more manageable and to offset issues of inequality of arms for the defence when compared to other pre-trial cases by, for example, requiring the OTP to draft an in-depth analysis chart linking how each piece of disclosed evidence related to the charges.²⁴

39 The extent to which the current ICC Statute and Rules, and the Court’s governing instruments generally, may allow for enhanced case management, especially by but not limited to pro-active judges, is beyond the scope of this report. Comprehensive lessons-learned studies in relation to other courts – which, as regards other issues, have themselves not necessarily mastered the challenges – may assist to help identify both possible tools with which to enhance case management and ways of giving content to or adapting existing tools for greater efficiency. Issues to be considered could include: procedures relating to disclosure, including technical, information-technology aspects; appropriate and detailed work plans; the use of more progress-assessment and preparation meetings between all parties, some of which could involve senior Chambers staff other than judges; and purposeful control of the presentation of evidence. Regular case-management

²² See section N on issues related to capacity-building.

²³ In addition to interviewed experts, sources consulted for this section include: ICC governing instruments and jurisprudence incl ICC Statute arts 52, 56, 57, 61, 64(8)(b), 71, 112(4), ICC RPE rules 9 and 14, 63-84; ICC CBF report 2008; ICC May 2009 efficiency report; ICC November 2009 efficiency report; ICTY RPE rules 61, 73bis and 73 ter; Bekou; Boas 2004; Boas 2007; Bonomy; CICC Japanese proposal; De Smet; Dubuisson et al; Gallmetzer; Heinsch; HRW 2006; IBA 2009; ICTY manual; Jorda; Kwon; Mettraux; Scharf 2004; Scheffer; Stahn & Sluiter; Taylor 2009; Trendafilova; WCRO October 2008.

²⁴ IBA 2009 (see e.g. pp 54 & 56).

training, also on technical aspects, could also be considered. To what extent such issues of case-management enhancement are considered by the organs of the Court in the context of the current efficiency-measures review,²⁵ is not clear.

40 A particular concern raised in interviews and in the literature relates to ICC confirmation hearings,²⁶ conducted under the law relating to article 61 of the ICC Statute. A view was expressed that they have turned into resource-intensive mini-trials and that this was neither the intention behind confirmation hearings nor the only reasonable outcome of an interpretation of the provisions of the Statute and Rules. Of relevance here are case-management and policy rather than legal issues. It is not obvious what related lessons other courts may hold for the ICC, given the differences in the relevant law and arrangements. Rather, it may be that general case-management tools could also be considered for application in confirmation hearings.

L PUBLIC INFORMATION AND OUTREACH²⁷

41 Public information and outreach²⁸ are as much core functions as are investigations, trials and the like – unless public information and outreach are done properly, the ICC, based far from situation areas, will fail in several of its statutory objectives, and securing the necessary support from, for example, witnesses and effecting redress, will be placed at risk. Interviewees, ICC documents and other sources note the complex challenges faced by the ICC in relation to public information²⁹ and outreach, as well as the progress that continues to be made in putting appropriately flexible strategies, plans and mechanisms in place, including in relation to some of the issues flagged below. Mention is also made of past efforts to learn lessons from the ICC’s own experience and from other courts.³⁰

42 Interviewees and up-to-date literature point to several public information and outreach areas which may benefit from lessons-learned studies. In broad terms, they include the following.

- (a) The respective roles and responsibilities of the Registry (including the formally independent OPCD and OPCV), Chambers and OTP, as well as, importantly, the Trust

²⁵ See e.g. ICC May 2009 efficiency report; and ICC November 2009 efficiency report. For example, in the process a “Court-wide working group on efficiencies, comprising representatives of the Judiciary, OTP and the Registry, was set up by the Court’s Coordination Council. The working group analyzed possible measures and focused on determining how structure and processes could best work in line with the Court’s strategy, to increase the Court’s efficiency and effectiveness” (ICC November 2009 efficiency report par 6); it is undertaking a process and structural review (id pars 7 et seq). Each organ is also conducting a review; for example, a judge is leading an informal judicial working group reviewing possibilities for increased efficiency within current legal framework; financial implications of judicial decisions, in consultation with the registrar; and the need, if any, for possible amendments to the Court’s constitutive texts (ICC May 2009 efficiency report par 14). In relation to the judicial review in particular, “Several judicial related activities, such as length of proceedings, protection of witnesses and victims or participation of victims have been identified by the [CBF] as potential areas of efficiency improvement. The [CBF] “encouraged the Court and the [ASP] to ensure that considerations of efficiency and cost figured appropriately”. These issues are under active consideration by the judges. Given the complex, substantive nature of the issues, progress will take time” (id par 26).

²⁶ See e.g. CICC Japanese proposal.

²⁷ In addition to interviewed experts, sources consulted for this section include: the governing instruments of the ICC and other courts; Court’s communications strategy; ICC strategic outreach plan; ICC OTP 2009 draft strategy; ICC Registry outreach report 2008; ICC report 2008; ICC Bureau strategic planning report 2009 pars 24-26; Arbia plans; Bell; Easterday; FIDH 2009; HRW 2005; HRW 2008 especially pp 116-148 which includes lessons learned; IBA 2008; IBA 2009; ICTY manual; Ivanišević 2007; Ivanišević 2008; Lampell; OSJI 2008; OSCE/ODIHR May 2009; Peskin; Randall & Pulano; REDRESS; Schrag; Verfass; Vincent; Working Group on ECCC & OSJI. See other sections on related issues, such as sections M and N.

²⁸ The definitions of public information and outreach in the Court’s communications strategy serve as starting points. On p 3 these definitions are provided (emphases removed): “Public information is a process of delivering accurate and timely information about the principles, objectives and activities of the Court to the public at large and target audiences, through different channels of communication, including media, presentations, and the web site. Outreach is a process of establishing sustainable, two-way communication between the Court and communities affected by situations that are the subject of investigations or proceedings. It aims to provide information, promote understanding and support for the Court’s work, and to provide access to judicial proceedings.”

²⁹ The Court is busy developing a comprehensive Court-wide public information strategy.

³⁰ See e.g. ICC strategic outreach plan par 6.

Fund for Victims, and the ASP as collective and individual states parties. There is formal recognition of the need for coordination between separate and independent organs and offices and of the lead role of the Registry in outreach. However, in reality it seems as if concerns of especially the OTP about its independence and specific interests translate into challenges, with it being reticent to have non-OTP Court staff performing certain representational functions relating to prosecutorial work. Also see section M.

- (b) Effectively reaching rural affected communities.
- (c) Effectively engaging and working with NGOs, other civil-society groups and the media, especially in situation countries. This touches on questions about the related core role of the Court, including to what extent it should perform functions itself or play a mainly supporting or facilitating role vis-à-vis third parties.
- (d) Exploring ways of avoiding compromising the security of individuals, NGOs and others with which the Court engages and work on public information and outreach.
- (e) Launching appropriate public information and outreach efforts, especially in situation countries, at the time of the announcement of an investigation, or if possible, earlier.
- (f) How best to counter deliberate and active misinformation about the ICC, especially by powerful leaders and other opinion-makers.
- (g) Developing and communicating general and situation-specific policies on how the work of the Court fits with or can fit with other domestic accountability processes, including non-prosecutorial accountability mechanisms.
- (h) Having in-country (*in situ*) hearings.
- (i) Placing funding for outreach and public information on a more sustainable footing.

43 Any lessons of other courts would be of varying relevance. For example, in some respects, the public information and outreach challenges faced by the ICTR and ICTY are more akin to those faced by the ICC because they too are based outside their situation countries. With some variation, most other courts have faced serious challenges stemming from active and deliberate misinformation in various fora by especially the powerful about their work. Issues about the respective roles of different organs in public information and outreach have also had to be addressed at other courts. Differences to be borne in mind when undertaking any such lessons-learned studies would include the following. The security environment in some situation countries would be considerably worse for the ICC than it was or is for other courts. The ICC works on manifold and varied situation countries, over time translating into more challenging public information and outreach issues than at other courts. Unlike some of the other courts, the ICC would generally also be active far shorter in a situation country, which means that it has less time to design and implement a comprehensive, high-impact public information and outreach plan for each country. Funding arrangements for public information and outreach would also differ markedly between the ICC, and, for example, the ICTY, whose outreach functions are funded via voluntary contributions rather.

M FIELD OFFICES AND INVESTIGATIONS, AND AFRICAN UNION OFFICE³¹

44 The field presence of the Court – including at field offices – and the establishment of a Court liaison office at the African Union (AU) headquarters in Ethiopia raise several issues. Most of them are linked to areas highlighted elsewhere in this report. Behind these issues is a concern with ensuring that the ICC functions optimally and achieves its objectives.

45 The focus of this section is limited. In several interviews, the role, size, composition, structure and funding of the Court's field presence, and in particular field offices, and an AU liaison

³¹ In addition to interviewed experts, sources consulted for this section include: the governing instruments of the ICC and other courts, incl ICC regulations of Registry, regulation no 8; ICC Registry outreach report 2008; ICC CBF report 2009 pars 81 et seq; Arbia plans; ICC ASP November 2008 resolution pars 13 and 21; ICC field-offices report; ICC AU-office report; HRW 2008; IBA 2009; ICTY manual. For an introduction to issues concerning field offices and an AU-liaison office see ICC AU-office report; ICC field-offices report; and HRW 2008 incl pp 55-58; 100-115 and 161.

office, were raised, in tandem with questions about the nature and management of the relationship between the ICC headquarters in The Hague and such offices. Whether the staff of such offices should be drawn from the OTP and Registry, their seniority, their decision-making authority, and whether there should be heads of office and whether they should be OTP or Registry officers, seem to be particularly sensitive questions.

46 The answer to the fundamental question of the exact purposes of such offices should help address size, composition, structure and funding issues. For example, if an AU liaison office is primarily meant to support external relations and cooperation missions by senior staff from the Court in The Hague, it could be staffed by relatively junior Registry officers generally directed and coordinated from afar. However, a field office may need to be sizable and comprise both senior and junior OTP and Registry staffers that are granted more discretionary power were the office to: be the fixed investigation base; be tasked with building and maintaining, through public and private channels, high-level support among national authorities for the Court's investigations, prosecutions, and victim and witness participation, protection and support; be the primary point of contact with the Court for victims, witnesses and affected communities; develop and implement tailored outreach plans; and play a key role in shaping other country policies and plans for the Registry and OTP, including complementarity-related policies. The need for, role of, and – mainly due to OTP concerns about its independence and promotion of its primary investigation and prosecution mandate – OTP or Registry background of a head of office would then become a question.

47 To varying degrees other courts have had to and are still wrestling with such questions. Especially the ICTY and ICTR, operating from outside their situation countries, may hold some lessons of possible relevance for the ICC. Of interest is, for example, that some ICTR investigators are based in Rwanda, but that the ICTY OTP deliberately chose not to have investigators based in field offices. Whether investigators should generally seek to be based in-country is an important question. It touches on a wide range of issues, including the Court's budget, its image in situation countries and among affected communities, the efficacy of investigations, and opportunities for domestic capacity-building and skills transfer. The ICC's practice of not basing investigators in-country is questioned in some circles. The security environment in situation countries is a key factor in decisions concerning field offices – the Court's security challenges will often be worse than that faced by the other courts.

N EXTERNAL RELATIONS, SUPPORT AND COOPERATION, IMPLEMENTING LEGISLATION, COMPLEMENTARITY AND RELATED ISSUES³²

48 The Court could not function without support and cooperation of the ASP and its 110 states parties, as well as third parties, including non-states-parties, the UN and NGOs. Without support and cooperation of third parties the ASP too would falter. Establishing and maintaining good external relations to ensure support and cooperation is therefore vital for the ICC. Some forms of states-parties support and cooperation extended to the Court – such as the execution of arrest warrants and protection of witnesses and evidence – require national legislation giving effect to

³² In addition to interviewed experts, sources consulted for this section include: governing instruments of the ICC, incl ICC Statute arts 1, 2, 4, 17-19, 54(3), 70, part IX (arts 86-102) on international cooperation and judicial assistance, part X (arts 103-111) on enforcement and art 112 (on ASP), as well as ICC privileges agreement; governing instruments of other courts; ICC Bureau cooperation report 2007; ICC ASP resolution 2007; ICC ASP November 2008 resolution; ICC Bureau 2009 report on universality and implementation; ICC ASP implementation 2009; Arbia briefing; Arbia plans; ICC president address; ICC OTP 2003; ICC OTP September 2006; ICC OTP September 2007; ICC OTP 2009 draft strategy; ICC OTP 9th report 2009; Court's communications strategy; ICC-EU agreement; Ocampo; Aptel; Blattmann; Bos; Brammertz; Burke-White; Burke-White & Kaplan; Cadman; Carolan; Cassese 2009; Cohen 2003; Cohen 2007; De Greiff; del Ponte; DOMAC; Donlon; Engels; FIDH 2009; Fithen; Grotius complementarity; Hall in Stahn & Sluiter eds; Hirst; HRW 2008; HRW 2009; IBA 2009; IBA press release; ICTY manual; Iontcheva; Ivanišević 2007; Ivanišević 2008; Kaul; Kirsch 2007; Kirsch 2009; Lampell; Lipscomb; Méndez; Møse; O'Brien; OSCE 2005; OSCE/ODIHR May 2009; Perriello & Wierda; Rastan; Reiger & Wierda; Rikhof; Stahn; Tolbert & Kontić/ICLS; Tolbert, David & Kontić in Stahn & Sluiter eds; Vincent; Wenaweser; Wierda et al; Wierda 2008; Wilkinson; Yav Katshung; Zhou.

provisions of the ICC Statute and ICC privileges agreement. (Only about 40 of the 110 states parties have such legislation.) The Statute expressly obliges states parties to give legal effect to some provisions, and expressly imposes a general duty to cooperate fully with the Court in its investigations and prosecutions. States parties and non-states-parties who want to benefit from the complementarity principle and help close the impunity gap for atrocity crimes³³ – or who want to avoid losing any admissibility challenge before the Court – have to have in place the requisite legislative framework and expertise required to properly investigate, prosecute, try and punish atrocity crimes nationally. Some states committed to such domestic incorporation of ICC law and proceedings lack the technical and other capacity to do so and may require outside expert assistance.

49 The Court and ASP are gearing up to meet the challenges suggested by the fragmentary sketch above. Sources such as the 2007 Bureau report on cooperation, the 2009 Bureau reports on universality and implementation, the OTP's current and draft prosecutorial strategy, and speeches by the president and registrar bear this out. They clearly frame most of the related challenges.

50 Comprehensive lessons-learned studies on some of these challenges could be useful to the ICC. A few examples follow.

51 Leaving aside the external relations of the ASP, generally, none of the other courts will be familiar with external-relations challenges similar in scale, complexity and nature to those faced by the Court. That is due in part to the multilateral-treaty basis of the Court, its permanency and its global scope. However, the other Courts have considerable experience in establishing and maintaining good relations with a wide range of pivotal actors. Not least of them are the UN Security Council and its key member states for the ICTY and ICTR. But they also include other key sections of the UN (including the Secretariat); governments and other national authorities of states in which they operate and are based; states and international organisations assisting or having influence over the states in which they operate; key state and non-governmental donors; states hosting relocated witnesses and convicts; and NGOs.

52 How the other courts conduct such diplomacy privately and publicly in ever-fluid environments, how their presidents, prosecutors and registrars contend with and coordinate the organs' different and overlapping interests when doing so, and what mix of statutory, policy, procedural, organisational, personal and other tools they employ, may hold some lessons for the ICC. Any such lessons-learned study will be set against the background of the Court's growing need for support and cooperation, and the ASP's growing role in helping to secure the ICC Statute's universality, ratification/accession and implementation, and states parties' cooperation.

53 Another area in which the experience of other courts may hold lessons for the Court is the identification and navigation of the often purely political interests that key actors – such as the UN Security Council and some of its member states in the case of the ICTY and ICTR – have in their – judicial – work. The Court and ASP are bound together, but the political aims of the ASP or individual states parties will not always square with the judicial aims of the Court. That will impact on the Court's work in different ways and in different settings. How to deal with such a conundrum without interfering with the Court's independence and violating statutory obligations of support and cooperation is a potentially useful lessons-learned area for the ASP.

54 Other courts employ various strategies and mechanisms other than direct diplomacy to secure the necessary support and cooperation of recalcitrant states. Court orders and requests, naming and shaming, applying indirect pressure using the UN General Assembly and UN Security Council, EU, AU and other states are examples. The relevance of all such tools in the specific framework of the ICC may be open to question. Article 87(7) of the ICC Statute enables the Court to refer non-compliance by states parties with requests to cooperate to the ASP, or to the UN Security Council

³³ See e.g. ICC ASP November 2008 resolution par 40 (the ASP “*Encourages States, particularly in view of the fundamental principle of complementarity, to include the [ICC crimes] as punishable offences under their national laws and to ensure effective enforcement of those laws...*”).

where that body referred the matter to the Court. The experience of especially the ICTR and ICTY with non-compliance referrals may hold some lessons for both the Court and ASP, also in relation to the pitfalls and advantages of establishing a state-non-compliance mechanism in the ASP.

55 Other courts give direct and indirect advisory, technical and capacity-building assistance of various kinds – and for various reasons – to authorities and other partners of the states in relation to which they operate, or facilitate the provision by others of such assistance. Such assistance range from general advice on draft national legislation, and technical assistance on the establishment of specialised national courts and victim and witness protection services, to various forms of knowledge-transfer, training and mentoring assistance to legal practitioners inside courts and at the national level.³⁴ The track records of the other courts vary – and are varyingly criticised – when it comes to such assistance.³⁵ Nevertheless, other courts seemingly consider various factors when deciding whether to provide assistance, which forms of assistance to choose and related questions. These include: whether the assistance was requested; the source of the request for assistance; the relative need for and urgency of the assistance; the capacity and commitment of the relevant authorities or other partners to take such assistance forward;³⁶ the mandate of not only the specific court in general but also of the specific organ or unit considering to provide or facilitate the assistance; related past and future assistance plans of other organs as well as of third parties; the availability of funding and the capacity to raise or facilitate the raising of funding; the existence of internal expertise to organise and provide or facilitate such assistance; the availability of third-party expertise to do so; the need to avoid duplication and to coordinate assistance efforts; and conflicts-of-interest and other policy considerations.

56 Comprehensive lessons-learned studies on how other courts approach assistance-provision related challenges could be useful to the ICC as the Court and ASP have had to and will continue to face similar questions.³⁷ General considerations that will help shape the ICC's response include the following. (a) The necessary core content and scope of, and practical implications of the principle of – positive – complementarity.³⁸ (b) The respective and core roles of the Court and its organs, the ASP, and third parties such as other states, international organisations, NGOs and expert individuals in realising that principle and other features of the ICC framework. (c) Conflicts-of-interest and

³⁴ Several aspects of the noteworthy OSCE/ODIHR May 2009 report, which relates to an extent to knowledge-and skills-transfer assistance involving the ICTY in the countries of the former Yugoslavia, would apply equally to the ICC.

³⁵ That some of the increase in and specific forms of technical, capacity-building and other assistance provided to national authorities of the states in relation to which the ICTR, ICTY and SCSL operate is due to the completion strategies of those courts is neither here nor there for the purposes of this report.

³⁶ As some other courts have discovered, requests for technical assistance and the like by national authorities may mask a lack of political will, and neither the provision of such assistance nor follow-up assistance necessarily translate into meaningful action. Another dimension is inability – for example, the authorities and civil-society groups in a situation country may be too weak to benefit from the kind of assistance that the ICC can provide at the time.

³⁷ Technical, capacity-building and similar assistance is relevant to some issues raised in various other sections of this report, incl sections I, J and L. Assistance-related questions arise in a various guises and circumstances. For example, at stake is not only direct capacity-building assistance (e.g. by VWU staffers training a small group of local protection and support helpers in order to meet the Court's immediate protection needs in a specific locality with which it may not be familiar), but also indirect forms of skills transfer (e.g. via the appointment of external victims' counsel from situation countries, or working with less experienced local investigators in the field and creating special opportunities for prosecutors from situation countries to work alongside ICC prosecutors in The Hague, if possible).

³⁸ For example, positive complementarity is one of three essential principles of the OTP. In a 2006 document the OTP stated the following on complementarity and positive complementarity: "With regard to complementarity, the Office emphasizes that according to the Statute national states have the primary responsibility for preventing and punishing atrocities in their own territories. In this design, intervention by the Office must be exceptional – it will only step in when States fail to conduct investigations and prosecutions, or where they purport to do so but in reality are unwilling or unable to genuinely carry out proceedings. A Court based on the principle of complementarity ensures the international rule of law by creating an interdependent, mutually reinforcing international system of justice. With this in mind, the Office has adopted a *positive approach* to complementarity, meaning that it encourages genuine national proceedings where possible; relies on national and international networks; and participates in a system of international cooperation" (ICC OTP September 2006; bold emphasis removed). The ICC OTP 2009 draft strategy includes similar language.

other policy considerations surrounding, for example, the proper role of the OTP in providing assistance to national authorities in situations in relation to which the OTP may later have to argue against the same state for jurisdiction and admissibility.³⁹

57 Related to the second consideration is the degree to which and how the Court should interact with situation-country authorities working on atrocity crime that would not meet the criteria for opening an ICC investigation. The ICTY's various roles in creating and supporting national proceedings in the countries of the former Yugoslavia, including the nurturing of a horizontal partnership between the ICTY OTP and national prosecutors, may hold useful lessons for the ICC in the pursuit of its positive complementarity aims. The role of other courts in a broader transitional-justice, rule-of-law and development framework may also hold relevant lessons. For example, the ICC may be requested for access to confidential materials that would assist the work of national truth-telling commissions or of agencies tasked with vetting the backgrounds of police and security-force candidates in situation countries and on which the OTP holds information that may not be available nationally. Whether and how to grant access such as that suggested above is not only a matter of law, but also of policy and practicality.

O RESIDUAL AND LEGACY ISSUES⁴⁰

58 The first ICC cases will be completed in the near future. By then, plans on how to deal with a range of 'post-case', or so-called residual and legacy issues, will have to be in place and activated. There are myriad 'post-case' issues that will have to be considered.⁴¹

59 Residual and legacy issues concern a variety of interests.⁴² They range from the legitimacy of the Court and the ICC more generally, its budget and effective human-resource management (e.g. redeploying staff to other work or terminating their contracts in time⁴³), to the safety of victims and witnesses and the protection of fundamental rights of convicted people.

60 Decision-makers vis-à-vis other courts that are in the process of 'closing down' are grappling with such questions. Not all residual and legacy issues relevant to them would be of concern at the Court. Differences that would suggest different residual and legacy planning considerations and outcomes for the Court include its permanent status. The political and economic prospects of

³⁹ Rephrased these three considerations could read: What is the job of the ICC vis-à-vis others', including states parties? Why does the ICC need to do something which others can do and have been doing? How to help yet keep a proper distance?

⁴⁰ For an introduction to residual and legacy issues see Oosthuizen 2008; Oosthuizen & Marlowe; UNSC 2009; Reiger; and relevant parts of Vincent and OSCE/ODIHR May 2009 and September 2009. In addition to the interviewed experts, other sources consulted for this section include: Bickford et al; ICC Bureau 12 October 2009; ICC Turin conference report; ICTR 2006; ICTY manual; Møse; UNSC resolutions 1503 and 1534; Simpson; SCSL completion strategy; Wierda 2008; Zinzius.

⁴¹ Examples of such issues are illustrated by these questions. After the completion of trials and appeals, should the Court keep in The Hague the originals of Registry-registered written evidence and other materials such as physical exhibits that may be used again in other cases or in post-case proceedings such as reviews? Would the public have physical access to the non-confidential archive in The Hague, and under what procedure, and would online web-based access be generally provided? Or should the Court retain copies of public materials with their originals being transferred to the relevant authorities in the situation country for archiving and public-memory-related purposes, for example? How and where would the Court store the originals or copies, as the case may be? Who would be authorised to declassify Registry-held confidential materials? To which national prosecuting authorities and other bodies may and should the OTP provide access to OTP-held confidential materials, and for what purpose and under which procedure? What would be the situation in relation to materials collected for preliminary investigations that did not result in Pre-Trial Chamber-authorized investigations? Who would be responsible for contacting victims and witnesses for whom protected measures were ordered – in some instances many years earlier – by judges about the possible lifting of those measures? What procedures would the Court have to follow in relation to reports that someone convicted or acquitted by it is being tried again for the same conduct at national level? How would the role of the Court change in relation to other legacy issues such as countering misinformation about completed cases and helping to ensure a positive and lasting impact on national healing, truth and justice efforts and justice-sector reform efforts?

⁴² Some residual and legacy issues also touch on other sections of this report, incl sections F and N.

⁴³ Technically, as with some other residual and legacy functions, certain resource-related activities such as case-staff downsizing and redeployment will commence before and possibly even be over by the time that a case is 'completed'.

situation countries at the end of cases will also have a bearing on residual and legacy activities. For example, at present the UN can consider residual and legacy options for the ICTR and ICTY which the ICC would probably not have been able to in relation to the eastern DRC, because the political and economic prospects there are generally more uncertain than Rwanda's and Bosnia & Herzegovina's. Regarding the ICTR and ICTY, the UN Security Council plays a key role in the speed and nature of the completion process. Whether the ASP could apply similar pressure on the Court to complete its work on a specific situation country and the consequences for residual and legacy activities – among other things – of that, may be worth considering.

61 There seemingly are no comprehensive lessons-learned studies of residual and legacy issues produced with the ICC in mind. Notwithstanding the relevant differences between the various courts, such studies may be useful to the ICC. In the coming months, further important decisions on these issues will be made in relation to the ICTY, ICTR and SCSL. The input of the relevant 'situation' countries in those decisions, the respective roles of the UN, 'situation' countries, NGOs and what will remain of those courts in the decision's implementation, as well as the mechanics and challenges of implementation over time, may be worth considering.

62 Some ICC interviewees and other ICC sources indicate that the Court has started planning for some residual and legacy issues.⁴⁴ Lessons-learned studies ought to consider any such plans.

P SUMMARY AND CONCLUSION

63 The ICC system – its law, structures and procedures, the growing number of different, dynamic and sometimes very difficult environments in which it operates in the field, and the intricate web of state and non-state role-players and stakeholders of which it forms part – is more complex than those of the ECCC, ICTR, ICTY, SCSL and STL. Overall, the challenges arising from the Court's difficult work in relation to a growing number of situations are quite unlike those faced over the same period of time by any of the other courts. Seen in that light, and considering the formal framework within which the ICC has to operate, its achievements are remarkable in several respects.

64 Like any similar organisation, the ICC will always have to prepare for new challenges, and there will always be room for improving its performance in one or other area. While it is increasingly starting to learn from its own experience, it will continue to look for and consider lessons learned by various other organisations. This report is concerned with the general question whether there are lessons yet to be learned in relation to other international and hybrid criminal courts that could help the ICC meet its key challenges more confidently. The focus fell on the ECCC, ICTR, ICTY, SCSL and STL.⁴⁵

65 As far as these courts are concerned, both the literature reviewed and experts – including ICC staffers and outside ICC experts – interviewed for this report point to several areas where those courts may still hold lessons for the ICC. The report groups selected issues of potentially notable practical consequence and import for the ICC under broad headings. They are among the areas in which other courts may still hold lessons for it,⁴⁶ and are as follows. Governance and related issues (p 3). Case selection by the OTP (p 5). Plea and charge bargaining (p 6). Defence issues and self-representation (p 7). Victim and witness issues (p 8). Case management and confirmation hearings (p 9). Public information and outreach (p 10). Field offices and investigations, and African Union

⁴⁴ For example, the Registry has outlined plans for allowing digital and remote access to archives subject to security restrictions and ensuring local access to archives (see e.g. Arbia plans).

⁴⁵ Experiences of organisations and systems other than the ECCC, ICTR, ICTY, SCSL and STL could also be usefully considered on some areas. For example, national witness-protection systems, hybrid and national atrocity-crime criminal courts such as those in Bosnia & Herzegovina and Kosovo, multi-pronged transitional-justice initiatives combining prosecutorial and non-prosecutorial mechanisms or formal and 'informal' accountability processes, and the field of management science may all hold relevant lessons depending on the specific issue.

⁴⁶ Even if ICC-focused, such studies in relation to the other courts may also be of use to existing and future international and hybrid criminal courts, as well as to those pursuing justice for atrocity crimes in national fora, whether the relevant countries are ICC states parties or not.

office (p 11). External relations, support and cooperation, implementing legislation, complementarity and related issues (p 12). Residual and legacy issues (p 15).

66 Unsurprisingly for an organisation as complex and ambitious as the ICC, a catalogue of relatively minor and major issues, complaints and misgivings could be listed. However, to do so is not the purpose of the report, nor is it to convey and describe the depth of grave concerns voiced about several practices of the ICC.

67 It is hoped that the report will spur closer scrutiny – by the Court, the ASP, individual states parties and other supporters and observers of the ICC – of the question at the heart of the report. It is also hoped that it will spur useful, comprehensive lessons-learned studies in areas confirmed to be of potential relevance and significance for the ICC, both in the run-up to the review conference and later.

ANNEX A: LIST OF INTERVIEWED EXPERTS

ICLS interviewed numerous experts for this study. Most of them agreed to be identified. They are:

- Serge Brammertz, Prosecutor, ICTY; former Deputy Prosecutor (Investigations), ICC
- Norman Farrell, Deputy Prosecutor, ICTY; former Head, Appeals Section, ICTR & ICTY
- Beatrice Le Fraper du Hellen, Head, Jurisdiction, Complementarity and Cooperation Division (JCCD), OTP, ICC
- Martina Fuchs, Special Assistant to the Registrar, ICC
- Yves Haesendonck, Ambassador, Permanent Representative of Belgium to the International Institutions in The Hague, and focal point for cooperation in The Hague Working group of ASP/ICC
- Matias Hellman, Legacy Officer, Office of the President, ICTY
- John Hocking, Registrar, ICTY
- Reinhold Gallmetzer, Appeals Counsel, OTP, ICC
- Fabricio Guariglia, Senior Appeals Counsel, OTP, ICC
- Catherine Marchi-Uhel, Head of Chambers, ICTY
- Gabrielle McIntyre, Chef de Cabinet, ICTY
- Cecilia Nilsson-Kleffner, Hague Director - Head of Legal Section, Coalition for the International Criminal Court (CICC)
- Eugene O'Sullivan, Defence Counsel, ICTY
- Maria Pena, Permanent Representative to the ICC, FIDH (International Federation for Human Rights)
- Martin Petrov, Head, Office of Legal Aid and Detention Matters, Registry, ICTY
- John H Ralston, Executive Director, IICI (Institute for International Criminal Investigations); former Chief of Investigations, ICTY
- Rod Rastan, Legal Officer, JCCD, OTP, ICC
- Ken Roberts, Deputy Registrar, ICTY
- Michel de Smedt, Head, Investigation Division, OTP, ICC
- Chris Staker, former Deputy Prosecutor, SCSL
- Olivia Swaak-Goldman, International Cooperation Adviser, JCCD, OTP, ICC
- Frederick Swinnen, Special Advisor to the Prosecutor, ICTY
- Melinda Taylor, Deputy Head, Office of Public Counsel for the Defence, ICC
- David Tolbert, Registrar, STL; former Chef de Cabinet, Deputy Prosecutor & Deputy Registrar, ICTY; former Assistant Secretary-General on United Nations Assistance to the Khmer Rouge Trials
- Simo Väätäinen, Chief, Victims and Witnesses Section, STL; former Chief, Victims and Witnesses Unit, ICC (2004-2009)
- Marieke Wierda, Director of the Prosecutions Program, ICTJ (International Center for Transitional Justice)

ANNEX B: LIST OF ALL SOURCES CONSULTED⁴⁷**A COURT SOURCES*****ECCC***

www.eccc.gov.kh

Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea, 6 June 2003

Law on the Establishment of the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed during the Period of Democratic Kampuchea, as amended, and promulgated on 27 October 2004

Internal Rules

Practice Direction on victim participation

ICC⁴⁸

www.icc-cpi.int

RPE

Regulations of Court

Regulations of OTP

Regulations of Registry

Statute

Cases/situations

Situation in Democratic Republic of the Congo, Case No. ICC-01/04-169 (Appeals Chamber), Judgment on the Prosecutor's Appeal Against the Decision of the Pre-Trial Chamber Entitled "Decision on the Prosecutor's Application for Warrants of Arrest, Article 58", issued under seal 13 July 2006, reclassified as public on 23 September 2008.

Situation in Democratic Republic of the Congo in the Case of the Prosecutor v Thomas Lubanga Dyilo, Case No ICC-01/04-01/06-1432 (Appeals Chamber), Judgment on the appeals of The Prosecutor and The Defence against Trial Chamber I's Decision on Victims' Participation of 18 January 2008, 11 July 2008.

Other sources (Primarily arranged alphabetically according to designations assigned to sources by authors)⁴⁹

Arbia: see Arbia in section B (Annex B)

[Court's communications strategy] *Integrated Strategy for External Relations, Public Information and Outreach*, http://www.icc-cpi.int/NR/rdonlyres/425E80BA-1EBC-4423-85C6-D4F2B93C7506/185049/ICCPIDSWBOR0307070402_IS_En.pdf

[ICC ASP 15 September 2009] *Review Conference 31 May - 11 June 2010, Draft provisional agenda*, 15 September 2009

[ICC ASP implementation 2009] *Achieving universality and full implementation of the Rome Statute of the International Criminal Court*, ICC-ASP/8/S/PA/19, 2009

[ICC ASP resolution 2007] *Strengthening the International Criminal Court and the Assembly of States Parties*, Resolution ICC-ASP/6/Res.2, 14 December 2007

[ICC ASP November 2008 resolution] *Strengthening the International Criminal Court and the Assembly of States Parties*, Resolution ICC-ASP/7/Res.3, 21 November 2008

[ICC AU-office report] *Report of the Court on the establishment of an office for the International Criminal Court at the African Union Headquarters in Addis Ababa*, ICC-ASP/8/35, 4 November 2009

[ICC Bureau 2009 report on universality and implementation] *Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court*, ICC-ASP/8/23, 9 September 2009

[ICC Bureau cooperation report 2007] *Report of the Bureau on cooperation*, ICC-ASP/6/21, 19 October 2007

[ICC Bureau 12 October 2009] *Bureau, Thirteenth ICC-ASP Bureau Meeting, Agenda and Decisions*, 12 October 2009

[ICC Bureau decisions September 2009] *Bureau, Twelfth ICC-ASP Bureau Meeting, Agenda and Decisions*, 9 September 2009

⁴⁷ A few of these sources were reviewed but not referenced.

⁴⁸ Addresses and articles by ICC staff are listed in section B of Annex B, with the exception of address to UN General Assembly by current Court president.

⁴⁹ Includes documents marked as ASP sources and hosted on ASP website.

- [ICC Bureau family-visits report] *Report of the Bureau on family visits for detainees*, ICC-ASP/8/42, 29 October 2009
- [ICC Bureau oversight-mechanism report] *Report of the Bureau on the establishment of an independent oversight mechanism*, ICC-ASP/8/2, 15 April 2009
- [ICC Bureau oversight-mechanism report addendum] *Report of the Bureau on the establishment of an independent oversight mechanism, Addendum*, ICC-ASP/8/2/Add.3, 4 November 2009
- [ICC Bureau strategic planning report 2007] *Report of the Bureau on the Strategic Plan of the International Criminal Court*, ICC-ASP/6/26, 22 November 2007
- [ICC Bureau strategic planning report 2009] *Report of the Bureau on the strategic planning process of the International Criminal Court*, ICC-ASP/8/46, 4 November 2009
- [ICC CBF report 2008] *Report of the Committee on Budget and Finance on the work of its eleventh session*, ICC-ASP/7/15, 31 October 2008
- [ICC CBF report 2009] *Report of the Committee on Budget and Finance on the work of its thirteenth session, Advance Version*, ICC-ASP/8/15, 15 September 2009
- [ICC-EU agreement] *Agreement between the International Criminal Court and the European Union on Cooperation and Assistance*, 2002
- [ICC field-offices report] *Report of the Court on the enhancement of the Registry's field operations for 2010*, ICC-ASP/8/33, 4 November 2009
- [ICC legal aid report 2009] *Interim report of the Court on legal aid: Legal and financial aspects for funding victims' legal representation before the Court*, ICC/ASP/8/3, 6 May 2009
- [ICC May 2009 efficiency report] *Status report on the Court's investigations into efficiency measures for 2010*, ICC-ASP/8/6, 6 May 2009
- [ICC OTP 2003] *Paper on some policy issues before the Office of the Prosecutor*, September 2003
- [ICC OTP 2007] *Policy Paper on the Interests of Justice*, September 2007
- [ICC OTP 2009 draft strategy] *Prosecutorial Strategy 2009-2012, Draft subject to change after consultations*, 18 August 2009
- [ICC OTP June 2006] *Draft for discussion: Policy document on Criteria for selection of situations and cases*, June 2006
- [ICC OTP second public hearing] *Second public hearing of the Office of the Prosecutor*, The Hague, 25 and 26 September 2006, New York, 17 and 18 October 2006, <http://www.icc-cpi.int/Menu/ICC/Structure+of+the+Court/Office+of+the+Prosecutor/Network+with+Partners/Public+Hearings/Second+Public+Hearing/Second+public+hearing.htm>
- [ICC OTP September 2006] *Report on Prosecutorial Strategy*, 14 September 2006
- [ICC OTP 9th report 2009] *Ninth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005)*, 2009
- [ICC performance report] *Report on programme performance of the International Criminal Court for the year 2008*, ICC-ASP/8/7, 6 May 2009
- [ICC president address] Judge Sang-Hyun Song, *Address to the United Nations General Assembly*, 29 October 2009
- [ICC privileges agreement] *Agreement on the Privileges and Immunities of the International Criminal Court*, 9 September 2002
- [ICC Registry outreach report 2008] Registrar Public Information and Documentation Section, Outreach Unit, *Outreach Report 2008*, 2008
- [ICC report 2008] *Report of the International Criminal Court to UN General Assembly*, A/63/323, 22 August 2008
- [ICC report October 2008] *Report on different legal aid mechanisms before international criminal jurisdictions*, ICC-ASP/7/23, 31 October 2008
- [ICC report October 2009] *Report of the Court on legal aid: Alternative models for assessment of indigence*, ICC-ASP/8/24, 5 October 2009
- [ICC strategic outreach plan] *Strategic Plan for Outreach of the International Criminal Court*, ICC-ASP/5/12, 29 September 2006
- [ICC strategic plan] *Strategic Plan of the International Criminal Court*, ICC-ASP/5/6, 4 August 2006
- [ICC Turin conference report] *Report on Outcome from Conference in Turin, Italy, on International Criminal Justice, 14 to 18 May 2007, Advance Copy*, 21 August 2007
- [ICC November 2009 efficiency report] *Second status report on the Court's investigations into efficiency measures*, ICC-ASP/8/30, 4 November 2009
- [ICC VWU round table 2009] Victims and Witnesses Unit, *Summary Report on the Round Table on the Protection of Victims and Witnesses Appearing Before the International Criminal Court*, 29 - 30 January 2009
- Kirsch: see Kirsch in section B (Annex B)
- Ocampo: see Ocampo in section B (Annex B)
- Report on the activities of the Oversight Committee*, ICC-ASP/8/11, 6 May 2009

ICTR

www.icttr.org

Newsletters

[ICTR 2006] *Revised completion strategy*, S/2006/358, 29 May 2006

RPE
Statute

Case

Prosecutor v Barayagwiza, Case No.: ICTR-97-19-T, Decision on Defence Counsel Motion to Withdraw, 2 November 2000

ICTY

www.icty.org

[ICTY manual] ICTY and UNICRI, *ICTY Manual on Developed Practices*, 2009

RPE
Statute

Cases

Prosecutor v Blaskić, Case No IT-95-14-T, Decision on the Application of the Prosecutor Dated 17 October 1996 Requesting Protective Measures for Victims and Witnesses, 5 November 1996

Prosecutor v Milošević. Case No. IT-02-54-T, ‘Decision On Prosecution Motion For Trial Related Protective Measures For Witnesses’ (Bosnia), 30 July 2002

Prosecutor v Milošević. Case No. IT-02-54-T, Reasons for Decision on Assignment of Defense Counsel, September 2004, quoting Transcript of 2 September 2004

Prosecutor v Nikolic, Case No. IT-02-60/1-S, Sentencing Judgement, 2 December 2003

Prosecutor v Plavšić, Case No. IT-00-39&40/1-S, Sentencing Judgement, 27 February 2003

Prosecutor v Šešelj, Case No IT-03-67-R77.2, Judgement Summary, 24 July 2009

Prosecutor v Radovan Stanković, Case No. IT-96-23/2-PT, Decision on Referral of Case Pursuant to Rule 11bis, Referral (Partly Confidential and Ex Parte), 17 May 2005, pars 49-50

Prosecutor v Tadić, Case No. IT-94-1-T, Decision on the Prosecutor’s Motion Requesting Protective Measures for Victims and Witnesses, 10 August 1995

SCSL

www.sc-sl.org

RPE
Statute

[SCSL completion strategy] Special Court for Sierra Leone, *Completion strategy*, 18 May 2005

[SCSL 1st annual report] *First Annual Report of the President of the Special Court for Sierra Leone for the Period 2 December 2002 to 1 December 2003*

Case

Prosecutor v Norman, Case No SCSL-04-14-T, Decision on the Application of Samuel Hinga Norman for Self Representation Under Article 17(4)(d) of the Statute of the Special Court, 8 June 2004

STL

www.stl-tsl.org

Agreement between the United Nations and the Lebanese Republic on the establishment of a Special Tribunal for Lebanon, 2007

RPE
Statute

B BOOKS, ARTICLES AND REPORTS (NON-COURT)

- Ahmed, Anees & Day, Margaux, “Prosecution criteria at the Khmer Rouge Tribunal”, in Bergsmo criteria
- Ambos, Kai, “‘Witness proofing’ before the ICC: Neither legally admissible nor necessary”, in Stahn & Sluiter eds
- Angermaier, Claudia, “Case selection and prioritization criteria in the work of the International Criminal Tribunal for the Former Yugoslavia”, in Bergsmo criteria
- Aptel, Cecile, *Transitional Justice and Domestic Justice Systems, Domestic Justice Systems and the Impact of the Rome Statute*, ICTJ, Consultative Conference on International Criminal Justice, 9-11 September 2009
- Arbia, Silvana, *16th Diplomatic Briefing of the International Criminal Court*, International Criminal Court, 2009 [Arbia briefing]
- Arbia, Silvana, *Plans of the Registrar of the ICC, The Three Year Plans & Strategies of the Registry in respect of complementarity for an effective Rome statute system of international criminal justice*, Consultative Conference on International Criminal Justice, 9-11 September 2009 [Arbia plans]
- Baig, Laurel, “International Criminal Law and Legal Ethics: The need for shared expectations”, *Challenges of Transnational Legal Practice: Advocacy and Ethics*, moderator: Catherine Rogers, Proceedings of the Annual Meeting of the American Society of International Law, 27 March 2009
- Bekou, Olympia, *Pre-Trial Procedures before the International Criminal Court*, 20th International Conference of the International Society for the Reform of Criminal Law, 2 July - 6 July 2006
- Bell, Peter D., *International Relief and Development NGOs and the International Justice System*, Consultative Conference on International Criminal Justice, 9-11 September 2009
- Bergsmo, Morten; Hayashi, Nobuo & Harlem, Mads (eds), “Importing Core International Crimes into National Criminal Law”, *Forum for International Criminal and Humanitarian Law Publication Series No. 1* (2007), International Peace Research Institute, Oslo [Bergsmo et al 2007]
- Bergsmo, Morten; Helvig, Kjetil; Utmelidze, Ilia & Žagovec, Gorana (eds), “The Backlog of Core International Crimes Case Files in Bosnia and Herzegovina”, *Forum for International Criminal and Humanitarian Law Publication Series No. 3* (2009), International Peace Research Institute, Oslo [Bergsmo et al 2009]
- Bergsmo, Morten (ed), “Criteria for Prioritizing and Selecting Core International Crimes Cases”, *Forum for International Criminal and Humanitarian Law Publication Series No. 4* (2009), International Peace Research Institute, Oslo [Bergsmo criteria]
- Bickford, Louis; Karam, Patricia; Mneimneh, Hassan & Pierce, Patrick, *Documenting Truth*, ICTJ, 2009
- Black’s Law Dictionary*, West Thomson, 8th ed, 2004
- Blattmann, René, *The establishment of a permanent international criminal court: scope and role of the International Criminal Court*, speech summary, in ICC Turin conference report
- Blattmann, René & Bowman, Kirsten, “Achievements and Problems of the International Criminal Court: A View From Within”, 6 *Journal of International Criminal Justice* 711, 2008
- Boas, Gideon, “A Code of Evidence and Procedure for International Criminal Law? The Rules of the ICTY” in Boas, Gideon and Schabas, William A. (eds), *International Criminal Law Developments in the Case Law of the ICTY*, Martinus Nijhoff Publishers, Leiden, 2003
- Boas, Gideon, “Comparing the ICTY and the ICC: Some Procedural and Substantive Issues”, 47 *Netherlands International Law Review* 273, 2000
- Boas, Gideon, *The Milosevic Trial: Lessons for the Conduct of Complex International Criminal Proceedings*, Cambridge University Press, Cambridge, 2007
- Bonomy, Iain, “The Reality of Conducting a War Crimes Trial”, 5 *Journal of International Criminal Justice* 348, 2007
- Bos, Adriaan, “Foreword”, in Stahn & Sluiter eds
- Bosly, Henri-D, “Admission of Guilt before the ICC and in Continental Systems”, 2 *Journal of International Criminal Justice* 1040, 2004
- Brammertz, Serge, “The interaction between international and national criminal jurisdictions: developments at the ICTY”, in Bergsmo criteria
- Burke-White, William, “Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice”, 49 *Harvard International Law Journal* 53, 2008
- Burke-White, William & Kaplan, Scott, “Shaping the contours of domestic justice: The International Criminal Court and an admissibility challenge in the Uganda situation”, in Stahn & Sluiter eds
- Cadman, Toby, *The Experience of international criminal jurisdictions and their contribution to the development of international criminal law - Investigation on International Crimes*, speech summary, in ICC Turin conference report
- Carolan, Robert, “An Examination of the Role of Hybrid International Tribunals in Prosecuting War Crimes and Developing Independent Domestic Courts Systems: the Kosovo Experiment”, 17 *Transnational Law and Contemporary Problems* 9, 2008
- Cassese, Antonio, *Report on the Special Court for Sierra Leone*, Submitted to the SCSL, 2006 [Cassese 2006]
- Cassese, Antonio, “The International Criminal Court five years on: *Andante* or *Moderato*?”, in Stahn & Sluiter eds [Cassese 2009]
- Cassese, Antonio (editor-in-chief), *The Oxford Companion to International Criminal Justice*, Oxford University Press, Oxford, 2009 [Cassese companion]

- Charters, Simon; Horn, Rebecca & Vahidy, Saleem, *Best-Practice Recommendations for the Protection & Support of Witnesses*, Special Court for Sierra Leone, 2008
- CICC, *Review Conference of the Rome Statute, The Japanese Proposal*, 2009, available at <http://www.iccnw.org/?mod=japanproposal>
- Cohen, David, *Intended to Fail: The Trials Before the Ad hoc Human Rights Court in Jakarta*, ICTJ, 2003
- Cohen, David, “‘Hybrid’ Justice in East Timor, Sierra Leone, and Cambodia: ‘Lessons Learned’ and Prospects for the Future”, 43 *Stanford Journal of International Law* 38, 2007
- Cook, Julian A., “Plea bargaining at The Hague”, 30 *Yale Journal of International Law* 473, 2005
- Cruvellier, Thierry & Sierra Leone Court Monitoring Programme, *From the Taylor Trial to a Lasting Legacy: Putting the Special Court Model to the Test*, ICTJ, 2009
- D’Ascoli, Silvia, “Sentencing Contempt of Court in International Criminal Justice, An Unforeseen Problem Concerning Sentencing and Penalties”, 5 *Journal of International Criminal Justice* 735, 2007
- Damaška, Mirjan, “Negotiated Justice in International Criminal Courts”, 2 *Journal of International Criminal Justice* 1018, 2004
- Danner, A.M., “Enhancing the legitimacy and accountability of prosecutorial discretion at the International Criminal Court”, 97 *American Journal of International Law* 3, 2003
- Daqun, Liu, “Guilty Plea”, in Cassese companion
- de Bertodano, Sylvia, “What Price Defence? Resourcing the Defence at the ICTY”, 2 *Journal of International Criminal Justice* 503, 2004
- del Ponte, Carla, *The Experience of international criminal jurisdictions and their contribution to the development of international criminal law - Investigation on International Crimes*, speech summary, in ICC Turin conference report
- De Greiff, Pablo, *Rule of Law Tools for Post Conflict States: Reparations Programmes*, HR/PUB/08/1, Office of the United Nations High Commissioner of Human Rights, Geneva, 2008
- De Smet, Simon, “A structural analysis of the role of the Pre-Trial Chamber in the fact-finding process of the ICC”, in Stahn & Sluiter eds
- Dermody, John, “Beyond Good Intentions: Can Hybrid Tribunals Work After Unilateral Intervention?” 30 *Hastings International and Comparative Law Review* 77, 2006
- Dieckmann, Jens & Kerll, Christina, “UN Ad hoc Tribunals under Time Pressure - Completion Strategy and Referral Practice of the ICTY and ICTR from the Perspective of the Defence”, 8 *International Criminal Law Review* 87, 2008
- DOMAC - Impact of International Courts on Domestic Criminal Procedures in Mass Atrocity Cases & Amsterdam Center for International Law, “Panel Three: The International Criminal Court and the Trust Fund for Victims: claims and complementarity”, Report of Workshop I ‘The interactions between Mass Claims Processes and Cases in Domestic Courts’. *Work Package 7 on Reparations*, 4 December 2008
- Donlon, Fidelma, *Completion or Creation: Is the closure of international courts promoting the creation of domestic courts to enforce international criminal law?*, 22nd International Conference of the International Society for the Reform of Criminal Law, 11 - 15 July, 2008
- Dubuisson, Marc; Bertrand, Anne-Aurore & Schauder, Natacha, “Contribution of the Registry to greater respect for the principles of fairness and expeditious proceedings before the International Criminal Court”, in Stahn & Sluiter eds
- Easterday, Jennifer, *Prosecuting Persons who Bear the Greatest Responsibility: The Trial of Charles Taylor*, Part I, UC Berkeley War Crimes Studies Center, 2009, forthcoming
- Eckelmans, Franziska C., “The First Jurisprudence of the Appeals Chamber of the ICC”, in Stahn & Sluiter eds
- El Zeidy, Mohamed M., “The legitimacy of withdrawing State Party referrals and ad hoc declarations under the Statute of the International Criminal Court”, in Stahn & Sluiter eds
- Engels, Chris, *National jurisdictions and international assistance: rule of law and defence perspectives*, speech summary, in ICC Turin conference report
- European Stability Initiative 2002: see Independent Judicial Commission
- European Stability Initiative, *On Mount Olympus: How the UN violated human rights in Bosnia and Herzegovina, and why nothing has been done to correct it*, 10 February 2007
- FIDH, *Comments on the Office of the Prosecutor's draft policy paper on ‘Criteria for selection of situations and cases’*, 15 September 2006
- FIDH, ICC, *The International Criminal Court's First Years*, March 2009
- Fithen, Caspar, *The Legacy of Four Vetting Programs: An Empirical Review*, ICTJ, 2009
- Gallmetzer, Reinhold, “The Trial Chamber’s discretionary power to devise the proceedings before it and its exercise in the trial of Thomas Lubanga Dyilo”, in Stahn & Sluiter eds
- Grotius Centre for International Legal Studies, *The ICC and Complementarity: Conference Summary, International Research Conference on the ICC and Complementarity: from Theory to Practice*, University of Leiden, October 2009 [Grotius complementarity]
- Happold, M., “Prosecutor v Thomas Lubanga, Decision of Pre-Trial Chamber I of the International Criminal Court”, 56 *International and Comparative Law Quarterly* 713, 2007
- Hall, Christopher Keith, “Criteria for Prioritizing and Selecting Core International Crimes Cases”, in Bergsmo criteria
- Hall, Christopher Keith, “Developing and implementing an effective positive complementarity prosecution strategy”, in Stahn & Sluiter eds

- Harmon, Mark B. & Gaynor, Fergal, “Ordinary Sentences for Extraordinary Crimes”, 5 *Journal of International Criminal Justice* 683, 2007
- Heinsch, Robert, “How to achieve fair and expeditious trial proceedings before the ICC: Is it time for a more judge-dominated approach?”, in Stahn & Sluiter eds
- Henham, Ralph, “Developing Contextualized Rationales for Sentencing in International Criminal Trials. A Plea for Empirical Research”, 5 *Journal of International Criminal Justice* 757, 2007
- Hirst, Megan, *Too Much Friendship, Too Little Truth: Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste, Monitoring Report on the Commission of Truth and Friendship in Indonesia and Timor-Leste*, ICTJ, January 2008
- HRW, *Justice In Motion: The Trial Phase of the Special Court for Sierra Leone*, 2 November 2005 [HRW 2005]
- HRW, *Weighing the Evidence: Lessons from the Slobodan Milosevic Trial*, 13 December 2006 [HRW 2006]
- HRW, *Courting History: The Landmark International Criminal Court’s First Years*, 11 July 2008 [HRW 2008]
- HRW, *The case against Hissène Habré, an ‘African Pinochet’*: Case Summary, 11 February 2009 [HRW 2009]
- Human Rights Watch: see HRW
- IBA, Human Rights Institute, “ICC Outreach Report”, *Beyond the Hague: Forging linkages between the International Criminal Court and Key Jurisdictions*, September 2008 [IBA 2008]
- IBA, Human Rights Institute, “ICC Outreach Report”, *First Challenges: An examination of recent landmark developments at the International Criminal Court*, June 2009 [IBA 2009]
- IBA, *IBA encouraged by the progress of ICC’s first case but says Court still faced with many obstacles*, Press Release, 11 June 2009 [IBA press release]
- ICC Turin conference report: see *ICC Turin conference report* in ICC/ASP sources of section A (Annex B)
- ICTY 2009: see under ICTY sources in section on court sources above
- ICTJ, *Handbook on the Special Tribunal for Lebanon*, 10 April 2008 [ICTJ STL handbook]
- Iontcheva, Jenia, *Nationalizing International Criminal Law*, 18th International Conference of the International Society for the Reform of Criminal Law, August 8 - 12, 2004
- Independent Judicial Commission, *Restructuring the Court System, Report and Proposal*, European Stability Initiative, October 2002
- International Bar Association: see IBA
- International Center for Transitional Justice: see ICTJ
- Ivanišević, Bogdan, *Against the Current - War Crimes Prosecutions in Serbia*, ICTJ, 2007
- Ivanišević, Bogdan, *The War Crimes Chamber in Bosnia and Herzegovina: From Hybrid to Domestic Court*, ICTJ, 2008
- Jackson, John, *Towards an International Code of Criminal Procedure and Evidence?*, 22nd International Conference of the International Society for the Reform of Criminal Law, 11 - 15 July, 2008
- Jorda, Claude, “The Major Hurdles and Accomplishments of the ICTY: what the ICC can learn from them”, 2 *Journal of International Criminal Justice* 572, 2004
- Kamara, Joseph F., *Preserving the legacy of the Special Court for Sierra Leone: Challenges and Lessons Learned in Prosecuting Grave Crimes in Sierra Leone*, Supranational Criminal Law Lectures series, CICC
- Karemaker, Ruben; Taylor, B Don III & Pittman, Thomas Wayde, “Witness Proofing in International Criminal Tribunals: A Critical Analysis of Widening Procedural Divergence”, 21 *Leiden Journal of International Law* 683, 2008
- Kaul, Judge Hans-Peter, “The International Criminal Court – Its relationship to domestic jurisdictions”, in Stahn & Sluiter eds
- Kirsch, Philippe, *Address to the Assembly of States Parties*, 30 November 2007
- Kirsch, Philippe, “ICC marks five years since entry into force of Rome Statute”, in Stahn & Sluiter eds
- Kleffner, Jann K., “Auto-referrals and the complementary nature of the ICC”, in Stahn & Sluiter eds
- Kurth, Michael E., “Anonymous witnesses before the International Criminal Court: Due process in dire straits”, in Stahn & Sluiter eds
- Kwende, Alfred, *The Experience of international criminal jurisdictions and their contribution to the development of international criminal law - Investigation on International Crimes*, speech summary, in ICC Turin conference report
- Kwon, O-Gon, “The Challenge of an International Criminal Trial as Seen from the Bench”, 5 *Journal of International Criminal Justice* 360, 2007
- Lampell, Zachery, *Handbook on Establishing an International War Crimes Tribunal*, The Public International Law & Policy Group, 2007
- Leanza, Umberto Leanza, *The Rome Statute process, from its adoption to the Assembly of States Parties*, speech summary, in ICC Turin conference report
- Lipscomb, Rosanna, “Restructuring the ICC Framework to Advance Transitional Justice: A Search for a Permanent Solution in Sudan”, 106 *Columbia Law Review* 182, 2006
- MacCarrick, Gwynn, *The Right to a Fair Trial in International Criminal Law (Rules of Procedure and Evidence in Transition from Nuremberg to East Timor)*, 20th International Conference of the International Society for the Reform of Criminal Law, 2 - 6 July 2006
- Mackenzie, Geraldine, *Consistency in sentencing and discounts for guilty pleas*, 20th International Conference of the International Society for the Reform of Criminal Law, 2 - 6 July 2006

- Mascarenhas, Viren, *Challenges of Transnational Legal Practice: Advocacy and Ethics*, moderator: Catherine Rogers, Proceedings of the Annual Meeting of the American Society of International Law, 27 March 2009
- Massidda, Paolina, & Pellet, Sarah, "Role and practice of the Office of Public Counsel for Victims", in Stahn & Sluiter eds
- Meierhenrich, Jens & Ko, Keiko, "How Do States Join the International Criminal Court? The Implementation of the Rome Statute in Japan", 7 *Journal of International Criminal Justice* 233, 2009
- Meisenberg, Simon, *The Right to Self Representation Before the Special Court for Sierra Leone*, 19 June 2004
- Méndez, Juan, *Background Paper for Panel on Regional Organs of Protection*, Consultative Conference on International Criminal Justice, 9-11 September 2009
- Mettraux, Guénaél, *The Cost of Justice – Is the ICC living beyond its means?*, <http://www.internationallawbureau.com/blog/?p=503>, 2009
- Møse, Erik, "The ICTR's Completion Strategy - Challenges and Possible Solutions", 6 *Journal of International Criminal Justice* 667, 2008
- Mundis, Daryl A., "The Judicial Effects of the 'Completion Strategies' on the *Ad hoc* International Criminal Tribunals", 99 *American Journal of International Law* 142, 2005
- Neier, Aryeh, "Lessons Learned: Building on the Success of the Current International Tribunal Framework to Develop the Next Era of War Crimes Tribunals," 21 *American University International Law Review* 517, 2006
- Nerlich, Volker, "The status of ICTY and ICTR precedent in proceedings before the ICC", in Stahn & Sluiter eds
- Nowak, Manfred, *UN Covenant on Civil and Political Rights: CCPR Commentary*, NP Engel, 1993
- Nsereko, Daniel D. Ntanda, *The Right to Legal Representation before the International Criminal Tribunal for the Former Yugoslavia*, 17th International Conference of the International Society for the Reform of Criminal Law, 24 - 28 August 2003
- O'Brien, Patricia, *An International Criminal Code: The Rome Statute, the International Criminal Court and the Ad hoc International Tribunals*, 22nd International Conference of the International Society for the Reform of Criminal Law, 11 - 15 July, 2008
- Obote-Odora, Alex, "Case selection and prioritization criteria at the International Criminal Tribunal for Rwanda", in Bergsmo criteria
- Ocampo, Luis Moreno, "The International Criminal Court in motion", in Stahn & Sluiter eds
- Olásolo, Héctor, "Developments in the distinction between principal and accessory liability in light of the first case-law of the ICC", in Stahn & Sluiter eds
- Oosthuizen, Gabriel, *The residual functions of the UN international criminal tribunals of the former Yugoslavia and Rwanda and the Special Court for Sierra Leone: the potential role of the International Criminal Court*, Briefing paper (marked "Draft"), OSJI, September 2008, available at <http://www.iclsfoundation.org/projects> [Oosthuizen]
- Oosthuizen, Gabriel & Marlowe, Andrea, *The residual functions of the UN international criminal tribunals of the former Yugoslavia and Rwanda and the Special Court for Sierra Leone and potential mechanisms to address them*, Briefing paper (marked "Draft"), ICLS & OSJI, January 2008, available at <http://www.iclsfoundation.org/projects> [Oosthuizen & Marlowe]
- OSCE, *War Crimes Trials before National Courts of Bosnia and Herzegovina: Progress and Obstacles*, March 2005 [OSCE 2005]
- OSCE/ODIHR, "Draft Interim Report of the Project", *Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer*, OSCE/ODIHR, ICTY & UNICRI, 13 May 2009 [OSCE/ODIHR May 2009] [NB: Interim report referenced in this report, but see OSCE/ODIHR September 2009 for final report which is largely the same.]
- OSCE/ODIHR, *Supporting the Transition Process: Lessons Learned and Best Practices in Knowledge Transfer*, OSCE/ODIHR, ICTY & UNICRI, September 2009 [OSCE/ODIHR September 2009]
- OSJI, *Priority issues for interested states concerning the Extraordinary Chambers*, April 2006
- OSJI, *Lessons Learned: Start-up Phase of Extraordinary Chambers for Prosecution under Cambodian Law of Crimes Committed during the Khmer Rouge Period*, 2008
- Pace, William, *CICC Three Year Strategy & Plan, as of July 7, 2009*, Consultative Conference on International Criminal Justice, 9-11 September 2009
- Perriello, Tom & Wierda, Marieke, *Lessons from the Deployment of International Judges and Prosecutors in Kosovo*, ICTJ, March 2006
- Peskin, Victor, "Courting Rwanda, The Promises and Pitfalls of the ICTR Outreach Programme", 3 *Journal of International Criminal Justice* 950, 2005
- Pocar, Fausto, *The experience of the ad hoc Tribunals and their Completion Strategies*, speech summary, in ICC Turin conference report
- Preira, Didier, *Defence and Victims basic issues and representation*, speech summary, in ICC Turin conference report
- Randall, Lawrence & Pulano, Cosme R. Jr., *A Review of Media Coverage of the Truth and Reconciliation Process in Liberia*, Transitional Justice Reporting Audit, UNESCO & ICTJ, 2008
- Rastan, Rod, "The responsibility to enforce – Connecting justice with unity", in Stahn & Sluiter eds
- REDRESS, *Victims and the ICC: still room for improvement*, November 2008
- Reiger, Caitlin, *Where to From Here for International Tribunals?*, ICTJ Briefing, September 2009
- Reiger, Caitlin & Wierda, Marieke, *The Serious Crimes Process in Timor-Leste: In Retrospect*, ICTJ, 2006

- Rikhof, Joseph, *Fewer Places to Hide? The Impact of Domestic War Crimes Prosecutions on International Impunity*, 22nd International Conference of the International Society for the Reform of Criminal Law, 11 - 15 July, 2008
- Schabas, William, "Prosecutorial Discretion v. Judicial Activism at the International Criminal Court", 6 *Journal of International Criminal Justice* 731, 2008
- Scharf, Michael P., "Trading Justice for Efficiency, Plea-Bargaining and International Tribunals", 2 *Journal of International Criminal Justice* 1070, 2004
- Scharf, Michael P., "Self-Representation versus Assignment of Defence Counsel before International Criminal Tribunals", 4 *Journal of International Criminal Justice* 31, 2006
- Scheffer, David, "A review of the experience of the Pre-Trial and Appeals Chambers of the International Criminal Court regarding the disclosure of evidence", in Stahn & Sluiter eds
- Schrag, Minna, "Lessons Learned from ICTY Experience", 2 *Journal of International Criminal Justice* 427, 2004
- Seils, Paul, *The selection and prioritization of cases by the Office of the Prosecutor of the International Criminal Court*, in Bergsmo criteria
- Shany, Yuval, "Preliminary Report on case studies", *Work Package 5, Impact of International Courts on Domestic Criminal Procedures in Mass Atrocity Cases (DOMAC)*, 2009
- Simpson, Gerry J., "War Crimes: A Critical Introduction", in McCormack, Timothy L.H. & Simpson, Gerry J (eds), *The Law Of War Crimes*, Kluwer Law International, The Hague, 1997
- Sloane, Robert D., "Sentencing for the 'Crime of Crimes': The Evolving 'Common Law' of Sentencing of the International Criminal Tribunal for Rwanda", 5 *Journal of International Criminal Justice* 713, 2007
- Sluiter, Göran, "ICTY and offences against the Administration of Justice", 2 *Journal of International Criminal Justice* 631, 2004
- Sluiter, Göran, "The ICTR and the Protection of Witnesses", 3 *Journal of International Criminal Justice* 962, 2005 [Sluiter 2005]
- Sluiter, Göran, "Human rights protection in the ICC pre-trial phase", in Stahn & Sluiter eds [Sluiter 2009]
- Smith, William, *The Experience of international criminal jurisdictions and their contribution to the development of international criminal law - International Prosecutions*, speech summary, in ICC Turin conference report
- Stahn, Carsten, "Complementarity: A Tale of Two Notions", 19 *Criminal Law Forum* 87, 2008
- Stahn, Carsten & Sluiter, Göran, "Introduction: From 'infancy' to emancipation? – A review of the Court's first practice", in Stahn & Sluiter eds [Stahn & Sluiter]
- Stahn, Carsten & Sluiter, Göran (eds), *The Emerging Practice of the International Criminal Court, Legal Aspects of International Organisation*, vol. 48, Martinus Nijhoff Publishers, Leiden, 2009 [Stahn & Sluiter eds]
- Taylor, B. Don III, *Witness Proofing in International Criminal Law: Is Widening Procedural Divergence in International Criminal Tribunals a Cause for Concern?*, 22nd International Conference of the International Society for the Reform of Criminal Law, 11 - 15 July, 2008
- Taylor, B. Don III, "Demystifying the procedural framework of the International Criminal Court: A modest proposal for radical revision", in Stahn & Sluiter eds [Taylor 2009]
- Terry, Laurel, S., *Challenges of Transnational Legal Practice: Advocacy and Ethics*, moderator: Catherine Rogers, Proceedings of the Annual Meeting of the American Society of International Law, 27 March 2009
- Thompson, Allison & Staggs, Michelle, "The Defence Office at the Special Court for Sierra Leone: A Critical Perspective," War Crimes Studies Center, 2007
- Tolbert, David & Kontić, Aleksandar, *Final Report of the International Criminal Law Services (ICLS) Experts on the Sustainable Transition of the Registry and International Donor Support to the Court of Bosnia and Herzegovina and the Prosecutor's Office of Bosnia and Herzegovina in 2009*, ICLS, 15 December 2008, available at <http://www.iclsfoundation.org/wp-content/uploads/2009/05/icls-bih-finalreportwebsitecorrected.pdf> [Tolbert, David & Kontić/ICLS]
- Tolbert, David & Kontić, Aleksandar, "The International Criminal Tribunal for the former Yugoslavia: Transitional Justice, the Transfer of Cases to National Courts, and Lessons for the ICC", in Stahn & Sluiter eds [Tolbert, David & Kontić in Stahn & Sluiter eds]
- Trendafilova, Ekaterina, "Fairness and expeditiousness in the International Criminal Court's pre-trial proceedings", in Stahn & Sluiter eds
- Tuinstra, Jarinde Temminck, "Assisting an Accused to Represent Himself Appointment of Amici Curiae as the Most Appropriate Option", 4 *Journal of International Criminal Justice* 47, 2006
- UN Mission in Bosnia & Herzegovina, *Judicial Assessment Programme (JASP): Thematic Report X - Serving the public: The Delivery of Justice in Bosnia and Herzegovina*, November 2000
- UNSC, *Report of the Secretary-General on the administrative and budgetary aspects of the options for possible locations for the archives of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda and the seat of the residual mechanism(s) for the Tribunals*, S/2009/258, 21 May 2009 [UN Security Council 2009]
- UNSC resolution 1503 (2003)
- UNSC resolution 1534 (2004)
- Vasiliev, Sergey, "Article 68(3) and personal interests of victims in the emerging practice of the ICC", in Stahn & Sluiter eds

- Verfuss, Thomas, “Trying Poor Countries’ Crimes in a Rich City: The Problem of the Press in the Former Yugoslavia”, 2 *Journal of International Criminal Justice* 509, 2004
- Vincent, Robin, *An Administrative Practices Manual for Internationally Assisted Criminal Justice Institutions*, ICTJ, 2007
- Wald, Patricia M., *Tyrants on Trial: Keeping Order in the Courtroom*, OSJI, 2009
- WCRO, *The Gravity Threshold of the International Criminal Court*, March 2008 [WCRO March 2008]
- WCRO, *The Confirmation of Charges Process at the International Criminal Court*, October 2008 [WCRO October 2008]
- Wenaweser, Christian, *The Assembly of States Parties of the Rome Statute: Perspectives on the Years Ahead, 2009 – 2011*, Consultative Conference on International Criminal Justice, 9-11 September 2009
- Wierda, Marieke, Hayner, Priscilla & van Zyl, Paul, *Exploring The Relationship Between the Special Court and the Truth and Reconciliation Commission of Sierra Leone*, ICTJ, 24 June 2002
- Wierda, Marieke, *Rule of Law Tools for Post Conflict States: Maximizing the Legacy of Hybrid Tribunals*, HR/PUB/08/2, Office of the United Nations High Commissioner of Human Rights, Geneva, 2008
- Wilkinson, Deborah, *International Prosecutions*, speech summary, in ICC Turin conference report
- Working Group on the Extraordinary Chambers & OSJI, *International standards for the treatment of victims and witnesses in proceedings before the Extraordinary Chambers in the Courts of Cambodia for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea*, May 2004
- Yav Katshung, Joseph, *Relationship between the International Criminal Court and Truth Commissions: Some Thoughts on how to build a bridge across Retributive and Restorative Justices*, Centre for Human Rights and Democracy Studies, Lubumbashi, DRC, 2005
- Zappalà, Salvatore, “Prosecutorial Discretion”, in Cassese companion
- Zappalà, Salvatore, “Prosecutor’s Duty to Disclose Exculpatory Materials and the Recent Amendment to Rule 68 ICTY RPE”, 2 *Journal of International Criminal Justice* 620, 2004
- Zhou, Han-Ru, “The Enforcement of Arrest Warrants by International Forces from the ICTY to the ICC”, 4 *Journal of International Criminal Justice* 202, 2006
- Zinzius, Amelie, *The experience of the ad hoc Tribunals and their Completion Strategies*, speech summary, in ICC Turin conference report

Cases

- Werner v Austria*, European Court of Human Rights, Judgment of 24 November 24 1997