



UNIVERSITÀ DEGLI STUDI DI MILANO

THE IMPACT OF INTERNATIONAL CRIMINAL ACCOUNTABILITY AND OF TRANSITIONAL JUSTICE ON CONFLICT MEDIATION

Chiara Ragni, Full Professor of International Law

Department of International, Legal, Historical and Political Studies

chiara.ragni@unimi.it

CONFLICTS AND INTERNATIONAL CRIMES



Armed conflicts are characterized by the commission of war crimes

War crimes are violations of international humanitarian law (whose perpetrators incur individual criminal responsibility under international law). War crimes take place in the context of an armed conflict, whether international or not.

INTERNATIONAL CRIMINAL ACCOUNTABILITY

- Criminal Accountability refers to the processes, norms, and structures that hold the authors of the crimes legally responsible for their actions and that impose sanctions

TRANSITIONAL JUSTICE

- ‘TRANSITIONAL justice’ has been defined as ‘a response to systematic or widespread violations of human rights [...] [it] is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse’. The term encompasses a number of different judicial and non-judicial mechanisms designed to assist the affected population in addressing large-scale violations of human rights and international humanitarian law (IHL), and in ‘transitioning’ towards national reconciliation, and in some cases, in the establishment of democracy (OUP)

MEDIATION

Mediation provides a voluntary process by which a third-party helps warring sides reach settlements that they might otherwise be unable to reach without assistance.

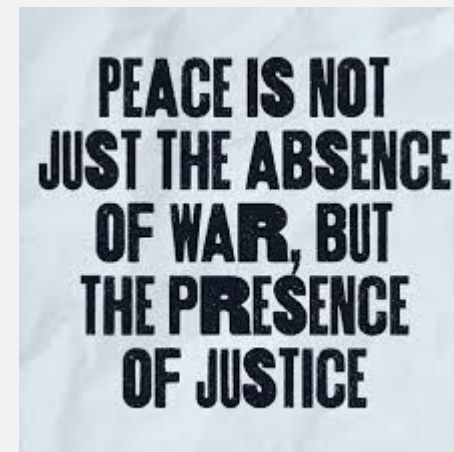
Barriers to civil war mediation → fear of the parties that overture through dialogue may be perceived as a sign of weakness by the other side. Moreover, governments may prefer to avoid mediation with rebels seeking to avoid legitimatizing them (but → sometimes recognizing rebels as subjects of international law may be in the interest of governments).

BUT... what is the impact of international criminal justice on mediation?

PEACE AND JUSTICE

«There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance».

Benjamin Ferencz [prosecutor/Nurumberg].



JUSTICE

Restorative justice: Restorative justice is focused on the **involvement of all the actors concerned by a crime in a process of relations re-building**. It is a response to criminal offences **focused on repairing the harm caused by the crime and encouraging both reconciliation between the victim and the perpetrator and reintegration in the society of the offender**. Restorative justice considers **crime as harm for the victim and more broadly for the community** where it was committed.

Retributive Justice: retributive justice conceives the **criminal offence as a lawbreaking, mainly focusing on the perpetrator and on punishment**. It reflects the following principles: that **those who commit** certain kinds of wrongful acts, paradigmatically **serious crimes, morally deserve to suffer a proportionate punishment**; that it is intrinsically morally good if some legitimate punisher gives them the punishment they deserve.

HOW TO DEAL WITH INTERNATIONAL CRIMES?

Judicial Mechanisms
International Courts

Truth and
Reconciliation
Commissions?



Judicial Mechanisms
National Courts

Others?

... NUREMBERG TRIBUNAL (1945-1946)

Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.



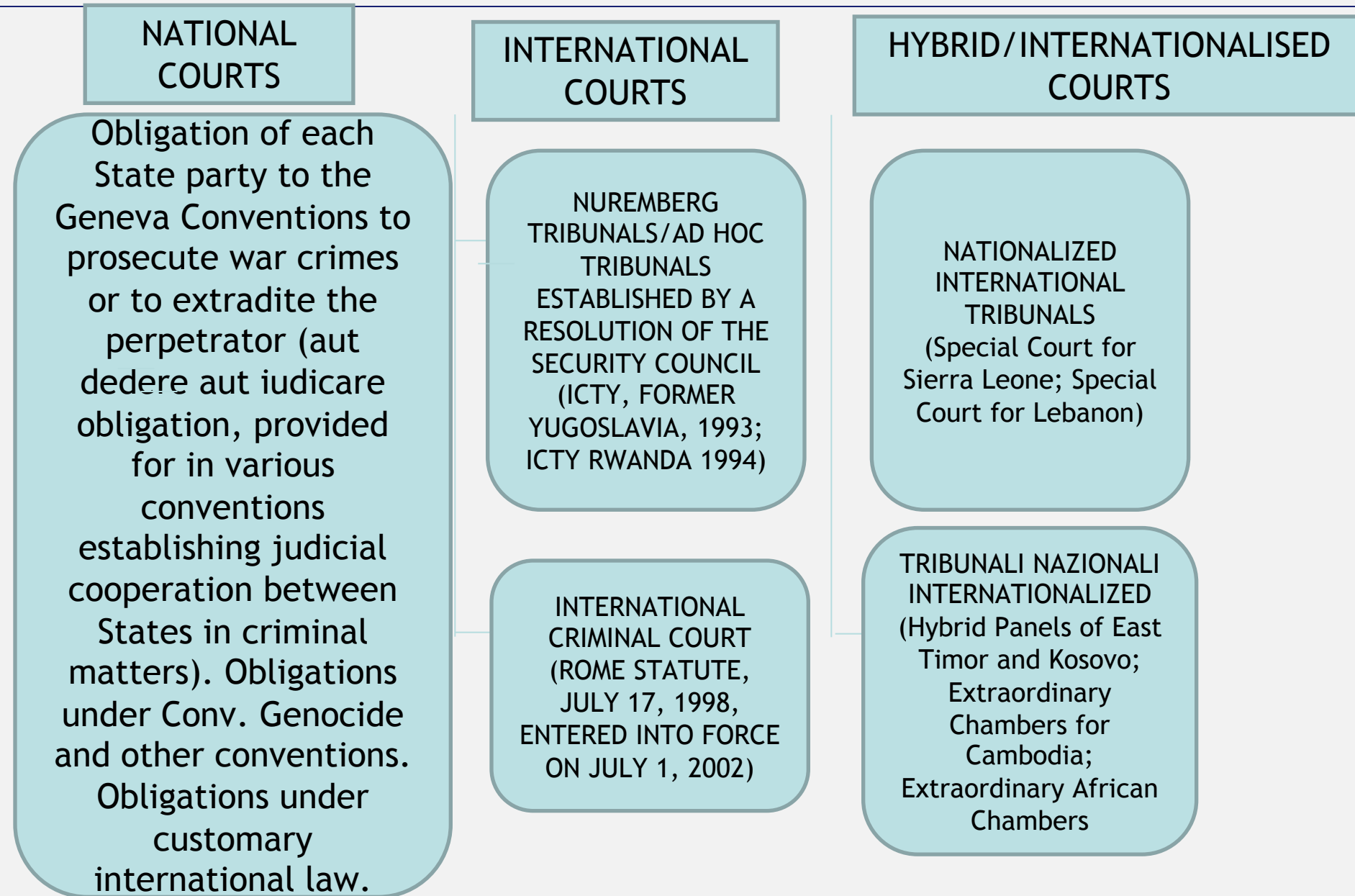
WHAT «INTERNATIONAL CRIMINAL JUSTICE» REFERS TO?

- The essence of international criminal law is that **some crimes are perceived as so serious** that they must be viewed as a **matter for the international community to redress**.
- The **collective response to the massive commission of international crimes** is represented by **international justice**, whose institutional aspect is the establishment of international criminal tribunals (starting from Nuremberg and Tokyo Military Tribunals).
- The **establishment of International Criminal Tribunals was also inspired by the conviction that the commission of international crimes on a large scale amounts to a threat** (or even to a violation) **of peace** and security and that the prosecution of major international crimes represents a means to the maintenance of international peace and security.

MAIN GOALS OF INTERNATIONAL CRIMINAL JUSTICE

- **Achieving justice** for all (both the victims and the societies manly affected by the crimes).
- **Ending impunity for core crimes** («A person stands a better chance of being tried and judged for killing one human being than for killing 100,000». José Ayala Lasso, former United Nations High Commissioner for Human Rights).
- **Restoring international peace and security** («There can be no peace without justice, no justice without law and no meaningful law without a Court to decide what is just and lawful under any given circumstance». Benjamin Ferencz, former Nüremberg prosecutor). .
- **Promoting the development of criminal rules and principles at the international level.**

JUDICIAL MECHANISMS



INTERNATIONAL CRIMINAL TRIBUNALS

International
Military Tribunals

Nuremberg / Tokyo

‘Success’ (Nuremberg Principles)

... followed by long period of impunity
... until

Ad Hoc Tribunals
established by
United Nations
Security Council

ICTY / ICTR => (1993/1994)

Lebanon (2007)

‘Hybrid’ /
‘Internationalized’
Courts established
by Agreement
between the UN and
the relevant country

Sierra Leone / Cambodia /
East Timor (2002)

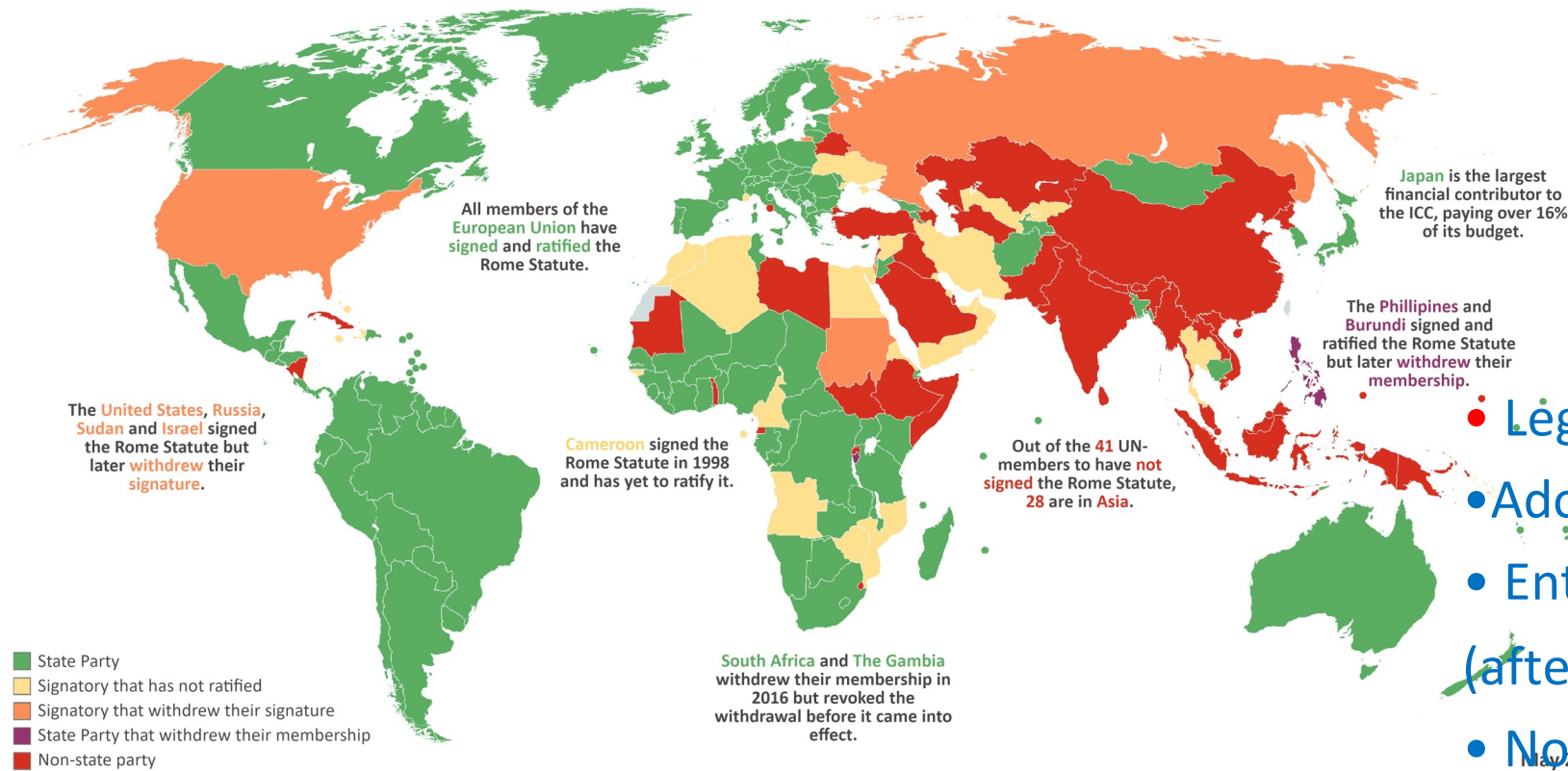
Permanent
Court
established by
Treaty

International Criminal
Court (1998)

THE INTERNATIONAL CRIMINAL COURT

Which countries accept the International Criminal Court?

countries that have signed the Rome Statute



- Legal basis: Rome Statute
- Adopted in Rome on 17 July 1998
- Entered into force on 1 July 2002 (after 60 ratifications)
- Now 128 States parties
- Independent body (also from the UN)

JURISDICTION OF THE ICC

Ratione temporis: crimes committed after the entry into force of the ICC (Rome) Statute (1 July 2002)

Ratione personae:

➤ Natural persons over the age of eighteen years.

➤ **Nationals of State Parties if:**

- The crimes were committed on the territory of a State which is not Party to the Statute;

➤ **Nationals of State Not Parties if:**

- The crimes were committed on the territory of a State which is not Party to the Statute;
- The State whose the accused is national has otherwise accepted the jurisdiction of the Court
- The proceeding was triggered by the UN Security Council

Ratione materiae: genocide, crimes against humanity, war crimes and aggression

EXERCISE OF JURISDICTION

ICC Statute, Art. 13

The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:

- (a) **A situation** in which one or more of such crimes appears to have been committed **is referred to the Prosecutor by a State Party** in accordance with article 14;
- (b) **A situation** in which one or more of such crimes appears to have been committed **is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations**; or
- (c) in respect of such a crime **in** **The Prosecutor has initiated an investigation** accordance with article 15 [proprio motu]



ROME STATUTE ICC/PREAMBLE

The States Parties to this Statute,

Recognizing that such grave crimes threaten the peace, security and well-being of the world, (...)

Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes, (...)

Determined to these ends and for the sake of present and future generations, to establish an independent permanent International Criminal Court (...) with jurisdiction over the most serious crimes of concern to the international community as a whole, (...)

Resolved to guarantee lasting respect for and the enforcement of international justice (...)

(RESTORATIVE) JUSTICE AT THE ICC

Complementarity

Victims-oriented approach

Both the Prosecutor and the Court shall consider «the interest of justice» before proceeding

Referral and deferral of the SC

CASE STUDY 1/BASHIR



CASE STUDY 2/PUTIN



Fonti: Liveuamap e autori di Limes aggiornata al 7 settembre 2022 ore 12



[Ukraine | International Criminal Court \(icc-cpi.int\)](http://icc-cpi.int)



CASE STUDY 3/PALESTINE



WHAT ABOUT CHILDREN?

- Children may be both the victims and the authors of international crimes.
- Ensuring the restoration of peace and the possibility for them to exercise of their rights should be a priority for all the parties involved in the conflict.
- In the case where they are the perpetrators, would you suggest that justice is the best means of addressing their crimes? When addressing cases where children are both victims and perpetrators of international crimes, the approach must balance accountability with a strong emphasis on rehabilitation and protection of their rights. Traditional justice mechanisms alone may not be the most effective solution.

ICC STATUTE



↓18

Article 26 of the Rome Statute defines the age limit of defendants:

"The Court shall have **no jurisdiction over any person who was **under** the age of **eighteen** at the time of the alleged commission of a crime."**

.....

Article 8 (B) (xxvi) of the Rome Statute criminalizes the conscription or recruitment of children as a war crime.

↓15

"Conscripting or enlisting children **under the age of **fifteen** years into the national armed forces or using them to participate actively in hostilities."**

 Justice Hub

Source: <http://www.icc-cpi.int> 100215

THANK YOU FOR YOUR ATTENTION!!



Question
&
Answer