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## UNIVERSAL JUSTICE FOR A GLOBALIZED WORLD

### Abstract

*This paper focuses on the problem of international criminal justice. However, since globalization refers mainly to universality, the other aspects of international justice are also discussed. Therefore, the first part of the article addresses the main features and challenges (both promising potentials and high risks) of globalisation. The second part is devoted to the concept of universal justice and its challenges, where three basic phenomena are discussed: distributive justice, rectificatory justice, and restorative and retributive justice. The third part of the article provides some insights into the evolving international criminal law. Especially, emerging new global offences are being analyzed: „ecocide”, economic international crimes, and „patrimonicide”. In the last part, mechanisms of suppression in universal justice are being addressed, both on a national and a global level (though international criminal courts). The article argues that in order to ensure the deterrent effect of the International Criminal Court, it is thus necessary to guarantee the independence and the credibility of this Court. The article concludes that real universal justice will be realized only with the recognition of two major factors: recognition of new crimes, and universalization of the ICC. Hence, the ICC will become really a court of the 21<sup>st</sup> century, characterized itself by the phenomenon of globalization. Such a move will bring some relief to our planet, “Mother Earth” and more peace and happiness to mankind.*

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## Keywords

*globalization - international criminal law - International Criminal Court - universal jurisdiction - universal justice - ecocide - economic international crimes - Rome Treaty*

## INTRODUCTION

This paper is written in the context of the Judiciary Forum “Justice for Peace, New Proposals for the Prevention and Punishments of the Crime of Genocide” and focuses therefore on international criminal justice. However, since globalization refers mainly to universality, the other aspects of international justice are also discussed in this paper. Before elaborating further, it is necessary to agree first on the meaning of the main concepts, the subjects of our study: “universal justice” and “globalized world”.

Before going into details, some terminological explanation is necessary. As the main point of our consideration relates to universal justice, it seems proper to say something about justice as such. The term “just” as used by Aristotle, has two separate meanings. Firstly, it is principally used to describe a conduct in agreement with the “law”, as established by the authorities. Secondly, “just” refers to equal. Justice then signifies Equality or a “fair mean”. In sum, for Aristotle, justice refers to authoritative rule and Equality.<sup>1</sup> Justice could be defined as ‘the process or result of using law to fairly judge and punish crimes and criminals’.<sup>2</sup>

For evident practical reasons, this process is driven by appropriate institutions, national and international. From then on, universal justice is dedicated to such a process, advancement or result, conceived globally. Sometimes, it refers to universal jurisdiction as applied by a national tribunal or by an international court. Thus, “universal jurisdiction” refers

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<sup>1</sup> See A-H. Chroust and D. L. Osborn, *Aristotle’s Conception of Justice*, “Notre Dame Law Review” 1942, vol. 17, issue 2, pp. 129 & seq. Available at: <http://scholarship.law.nd.edu/ndlr/vol17/iss2/2>.

<sup>2</sup> *Merriam-Webster Dictionary*, Definition of Justice, available at: <https://www.merriam-webster.com/dictionary/justice>.

to the idea that a national court may prosecute individuals for any serious crime against international law – such as crimes against humanity, war crimes, genocide, and torture – based on the principle that such crimes harm the international community or international order itself, which individual States may act to protect. That means that States and relevant international organizations may claim jurisdiction over an accused, regardless of where the alleged crime was committed, of the accused's nationality or country of residence, and of the nationality of the victims or of any other relation with the prosecuting entity.<sup>3</sup>

The definition and exercise of universal jurisdiction vary around the world. They depend on the relevant sources of law and jurisdiction, such as a national legislation or an international agreement, or a decision of the United Nations Security Council (“UNSC”).<sup>4</sup> This concept of universal jurisdiction reflects the fact that our planet is already a globalized world.

Actually, this is our second crucial category which needs some explanation. This expression refers to a planet which is the subject of globalization. In sum, globalization could be understood as a process of interaction and integration among the people, companies, and governments of different nations, a process driven by international trade and investment and aided by information technology.<sup>5</sup> Hence, it is a worldwide integration and development. Globalization has effects on all aspects of human life: environment, culture, political system, economic development, and prosperity. It affects human physical well-being in societies around the world.<sup>6</sup>

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<sup>3</sup> See Wikipedia, *Universal jurisdiction*, available at: <https://wikipedia.org/wiki/universal-jurisdiction>.

<sup>4</sup> See International Justice Resource Center, *Universal Jurisdiction*, available at: <http://www.ijrcenter.org/cases-before-national-courts/domestic-exercise-of-universal-jurisdiction>. See UNSC resolutions creating different ad hoc international criminal tribunals and other international special courts.

<sup>5</sup> See Global Workforce Project, *What is Globalization?*, 2016, The Levin Institute - The State University of New York, available at [www.globalization101.org/what-is-globalization](http://www.globalization101.org/what-is-globalization).

<sup>6</sup> Ibid. See also M. B. Steger, *Globalization, A very Short Introduction*, Oxford University Press, Oxford/ New York 2003, p. 148 and P. O'Meara, M. Howard and M. Krain (eds.), *Globalization and the Challenges for a New Century*, Indiana University Press, Bloomington/ Indianapolis 2000, p. 487.

Yet, globalization is not really a new phenomenon. Great empires have had global ambitions throughout the history of mankind. For thousands of years, people and corporations have been buying from and selling to each other in foreign territories and over great distances, such as through the famed Silk Road during the Middle Ages.

But, nowadays policy and technological developments have spurred increases in trans-boundaries trade, investment, and migration. This is why it can be said that the world had entered a qualitatively new phase in its globalization<sup>7</sup>.

Globalization is unfortunately Janus-faced. It is characterized not only by advantages, because a globalized world involves both promising potentials and high risks. It has the potential to improve human wellbeing and enhance the protection of human rights worldwide. However, it also incurs risks to negatively impact the global economy and environment, forming new centres of power with limited legitimacy resulting in global inequalities. Globalization brings diseases and hunger, and poverty is intensified for those living in countries marginalized by the global marketplace.

Polarization of rich and poor citizens within individual countries is also taking place, affecting millions living in Organization for Economic Cooperation and Development (“OECD”) nations as well as in the nations of the Global South. That is why globalization is also a topic for today’s discussions about justice.<sup>8</sup>

In this part of our consideration I suggest paying firstly some attention to the challenges provoked by globalization, and secondly we will see what responses could be given judicially at a global level. A short conclusion will try to foresee the future.

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<sup>7</sup> Ibidem.

<sup>8</sup> See G. Collste, *Globalization and Global Justice a Thematic Introduction*, “De Ethica - A Journal of Philosophical, Theological and Applied Ethics” 2016, vol. 3:1, p. 5. See also R. P. Weiss, *Criminal Justice and Globalization at the New Millennium*, “Social Justice, A Journal of Crime, Conflict & World Order” 2000, vol. 27, no 2, available at: <https://www.socialjusticejournal.org/SJEdits/80Edit.html>.

## I. GLOBALIZED WORLD AND ITS CHALLENGES

A globalized world is characterized by some main features and it involves both promising potentials and high risks, as said above.

### 1. FEATURES OF GLOBALIZATION

In today's human practices, globalization is widening both in space and in scope. It refers to processes and relations in a range of spheres that transcend national borders and link distant places and peoples. Those spheres or features are economic, social, political, cultural, etc.<sup>9</sup>. Economic globalization has integrated the world economy through trade, multinational corporations, international institutions such as the World Trade Organization ("WTO"), and not least, through the explosive growth of the global financial market. Further, a central facet of globalization is the increasing power of global financial institutions, such as the International Monetary Fund ("IMF"), the World Bank, and transnational economic organizations.<sup>10</sup>

In the field of communication technology, through media and various social networks, we are now better informed about people's lives in different parts of the world, about massive human rights violations, terrorist attacks, natural disasters, the destruction of the environment, wars, etc. In social relations, globalization also implies gaps between the "globals" and the "locals", in both poor and rich countries. The globals are those who benefit from globalization: corporative executives, international politicians, academics, media people, etc. The locals are those left behind: such as for example, peasants in poor countries, unemployed workers in the North<sup>11</sup>, etc.

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<sup>9</sup> Ibidem.

<sup>10</sup> See H. Schneider, *Greek debt crisis: How the IMF reasserted its power*, The Washington Post, March 5, 2012, available at <https://www.washingtonpost.com/business/economy/how-the-imf-r>. See also W. Easterly, *The Effect of IMF and World Bank Programs on Poverty*. Mimeographed, The World Bank, Washington DC, 2000.

<sup>11</sup> See S. Bauman, *Globalization. The Human consequences*, Oxford, Polity Press 1998, pp. 8-9.

Another aspect of globalization relates to the many people migrating from the South to the North. Many are escaping wars and political oppression while others want to leave poverty behind.<sup>12</sup> And last, but not least, features of globalization are very close to culture. In the sphere of culture, connections and exchanges over cultural and religious borders intensify, and values and beliefs encounter each other. In order to avoid conflicts, globalization should promote dialogue and better understanding of the other rather than imperialism and ideological dominance, which is one of the risks of globalization.<sup>13</sup>

## 2. GREAT POTENTIALS OF A GLOBALIZED WORLD

The fluidity of the circulation of information enables the diffusion of human rights. Migrations of people and ideas are made possible by globalization, thus contributing to the improvement of human wellbeing and enhancing the protection of human rights worldwide. Massive migrations of people of different countries and fortune allow also the integration of diverse economies. Moreover, life expectancy has increased significantly and global per capita income has tripled in the last 35 years. Finally, the internet promises to put human beings in the far reaches of the globe in instant communication.<sup>14</sup>

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<sup>12</sup> See for examples publications issued by the Development Research Centre on Migration, Globalization and Poverty of the University of Sussex, Brighton, UK. See for example H. Waddington and R. Sabates-Wheeler, *How Does Poverty Affect Migration Choice? A Review of Literature*, Development Research Centre on Migration, Globalization and Poverty, Arts C - 226, University of Sussex, Brighton, December 2003, p. 20 and R. Skeldon, *Globalization, Skilled Migration and Poverty, Alleviation: Brain Drains in Context*, Development Research Centre on Migration, Globalization and Poverty, Arts C- 226, University of Sussex, Brighton, November 2015, p. 36.

<sup>13</sup> See W. Stevens, *The Risks and Opportunities from Globalization*, New Zealand Treasury Working Paper 07/05, July 2007. New Zealand Treasury. Wellington, p. 1 and 28.

<sup>14</sup> See Bauman, *supra* note 11, pp. 8-9. See also L. Yueh (ed.), *The Law and Economics of Globalization, New Challenges for a World in Flux*, Edward Elgar Publishing Limited, Cheltenham/Massachusetts 2009. See also N. Crafts, *Globalization and Growth in the Twentieth Century*, IMF Working Paper, WP/00/44, Washington DC, April 2000. See also Weiss, *supra* note 8.

### 3. HIGH RISKS OF A GLOBALIZED WORLD

However, globalization certainly implies new risks, such as global environmental risks (global warming, greenhouse gas, etc.), global political difficulties (creation of new centres of power with limited legitimacy), global financial issues (such as options for tax evasions ruining the poor in the global South, but resourcing rich countries in the global North), etc.

Thus, the polarization of wealth and income has widened the gap between rich and poor countries. For those industrialized countries, mainly in the North, on the winning side of the global divide, per capita consumption has risen at a rate of 2.3 percent over the last 25 years, and in East Asia, more than an enormous six percent annually. Consequently, globalization implies also a “race to the bottom” regarding workers’ safety and rights, as exemplified by the tragic Rana Plaza catastrophe in Bangladesh in 2013. Moreover, globalization incurs risky journeys on the part of thousands of migrants over the Mediterranean Sea and elsewhere on the planet, as they attempt to reach the North. Indeed, during their journeys, migrants are very often victims of crimes (slavery, torture, human trafficking, sexual violence, etc.) and other migrant-related crimes and injustices.

To sum up, globalization incurs growing global inequalities,<sup>15</sup> thus exposing the world to serious challenges.<sup>16</sup>

### 4. CHALLENGES OF A GLOBALIZED WORLD

Globalization poses a number of challenges to be addressed such as, global poverty, global social justice, environment destruction, and migration issues among others.

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<sup>15</sup> See Bauman, *supra* note 11. See also Weiss, *supra* note 8.

<sup>16</sup> See International Monetary Fund, *Globalisation: Threat or Opportunity?* Washington DC, 2002, available at: [www.imf.org/external/np/exr/ib/2000/041200to.htm](http://www.imf.org/external/np/exr/ib/2000/041200to.htm). See also P. Gangopadhyay and M. Chatterji (eds.), *Economics of Globalization*, Ashgate Publishing Limited, Hants/Burlington 2005, p. 309.

Indeed, economic globalization affects how wealth and power are distributed globally. It is obvious that the gap between the global rich and the global poor is widening. Therefore, the challenge is to discuss the social ethics in a global context and to develop principles of global social justice. In other words, how can we share fairly the products incurred by the global economy?

Global social justice is needed since our global village is, at present, characterized by deep injustices. Although, the UN-governed development project, the Millennium Development Goals (“MDG”), has been a success, implying for example that from 1995 to 2015, extreme poverty rates are reduced by half, enrolment in primary education in developing regions reached 91 per cent in 2015, and the global under-five mortality rate declined by more than half, dropping from 90 to 43 deaths per 1000 live births, global poverty is still challenging. However, one billion people still lack clean water, 795 million people are estimated to be undernourished, 896 million people live on less than \$ 1.90 a day, and 19.000 children die per day from avoidable illness, etc.<sup>17</sup>

One could easily argue that the UN and NGOs do run several humanitarian assistance programmes to address these issues. Helping children and poor people is a moral obligation.<sup>18</sup> However, such assistance has the potential to negatively impact poor people in the North and, in the South, to represent them only as vulnerable receivers of aid. It thus fails to put global poverty in a historical context and it misdirects the world’s attention to the individual level, instead of seeing poverty as a structural and institutional problem.<sup>19</sup>

Since morality is not strong enough to overcome injustice, the recourse to laws appears as an appropriate and necessary tool to reach the end of inequalities or to achieve justice.<sup>20</sup>

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<sup>17</sup> See World Bank, *Poverty* (2013), available online at [www.worldbank.org/en/topic/poverty](http://www.worldbank.org/en/topic/poverty). See also UNICEF, *The Millennium Development Goals*, available online at <http://www.unicef.org/ndg/indez-childrenmortality.htm>.

<sup>18</sup> See P. Singer, *Famine, Affluence, and Morality*, “Philosophy & Public Affairs” 1972, vol. 1:3, pp.229-243.

<sup>19</sup> See S. Wisor, *Against Shallow Ponds: An argument against Singer’s Approach to Global Poverty*, “Journal of Global Ethics” 2011, vol. 7:1, pp. 19-32.

<sup>20</sup> See T. Ahmad, *Law and Justice in Globalised World*, College of Legal Studies, University of Petroleum & Energy Studies, Dehradun, 2014, p. 58.



Globalization poses a number of challenges to be addressed, such as global poverty, global social justice, environment destruction, and migration issues among others.

The idea of a global justice is not only a legal issue, but also a political and philosophical issue. It arises from the concern that the world is unjust. However, as members of our community, we have obligations towards our fellows: indeed, it is accepted worldwide that “social and economic inequalities are to be arranged so that they are [...] to the greatest benefit of the least advantaged”.<sup>21</sup> Since there are global institutions that influence the global distribution of income and wealth, there is no valid reason to not subject this global structure to global justice.<sup>22</sup>

However, in our quest for justice, we should be very careful and bear in mind the fundamental difference between the principles of global justice which question the given institutional structure, and a duty of assistance which accepts the present conditions and – in our opinion – even makes the poor dependent on the good will of the wealthy, be it in the North or in the South.

Indeed, as pointed out by Thomas Pogge, “the huge gap between the global rich and the global poor” is linked to what he calls a “global institutional order”.<sup>23</sup> This order is sustained by an alliance of powerful governments in the North, authoritarian and corrupt rulers in the global South, in developing countries and global business interests. The “international resource privilege” makes it possible for corrupt and authoritarian leaders in developing nations, to control and sell out their countries’ resources to unscrupulous multinational corporations.

In so doing, the global rich contribute to the global poor’s suffering for a lesser benefit, which is materialized by millions of deaths, due to poverty and curable diseases.<sup>24</sup> Therefore, world structures must be revisited.

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<sup>21</sup> J. Mandle, *Globalization and Justice*, “The Annals of the American Academy of Political Science” 2000, vol. 57, Dimensions of Globalization, pp. 126-139. See also J. Rawls, *A Theory of Justice*, Cambridge: Harvard University Press 1971, p. 303.

<sup>22</sup> See Ch. Beitz, *Political Theory and International Relations*, Princeton: Princeton University Press 1979, p. 152.

<sup>23</sup> T. Pogge, *World Poverty and Human Rights*, Cambridge: Polity Press 2002, p.199.

<sup>24</sup> See Collste, *supra* note 8, p. 11.

Indeed, there is a need to reform the present global institutions like the Bretton Woods Institutions (the IMF, the World Bank) and the WTO, to make them “more responsive” to the goals of global justice.<sup>25</sup> The recent financial crisis in Greece and endemic financial sufferings in the global South, especially in Africa, are eloquent in this regard.

Our globalized world raises issues linked with natural resources in particular, and with the environment in general. As we know, many multinational corporations in complicity with corrupt leaders in the South, seize large resources and land to the detriment of the global poor of developing countries. In the same vein, many of those corporations inflict great damage to the global environment and to global sustainability, bringing global warming and other environmental catastrophes.

As of now, we can say that the so far positive results of the MDG – the United Nations project – and the new ambitious agenda of the Sustainable Development Goals give reasons for hope for the future<sup>26</sup>, even though many in the global South want to emigrate to the global North.

As things stand now, wealthy countries in the North apply restricted migration policies, as they are the receiving wealthy nations. Cosmopolitans, who take the individual as the basic unit of moral concern (as opposed to statist), tend to favour generous immigration rules.<sup>27</sup> They make an analogy between birth rights in the wealthy countries in Europe and the US, and the birth rights of the nobility in the Middle Ages. These rights are not earned by merit but just by coincidence, as a result of a sort of natural lottery. Therefore, why should these inherited rights justify the privilege to live in wealthy countries in the North and to keep out the refugees and migrants from poor countries?<sup>28</sup>

This is why, in our opinion, generous migration policies are required in our globalized world, on the ground that each human being has a right to “membership”, which is more general and fundamental than specific

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<sup>25</sup> See G. Brock, *Global Justice, A Cosmopolitan Account*, Oxford: Oxford University Press, 2009, p. 332. See also CNBC, *Pope calls for new economic order, criticizes capitalism*, 10 July 2015, available at: <http://www/enbc.com/2015/07/10/pope-calls-for-new-economic-order>.

<sup>26</sup> See Collste, *supra* note 8, p. 11.

<sup>27</sup> See Y. Yuksekdag, *Moral Cosmopolitanism and the Right to Immigration*, “Public Reason” 2012, vol. 4 (1-2), p. 262-272.

<sup>28</sup> See J. H. Carens, *The Ethics of Immigration*, Oxford: Oxford University Press 2013.

political or citizen's rights. Finally, this right to membership, without putting in jeopardy individual countries, needs to be anchored in global institutions with a strong mandate.

Hence, the disaggregation of citizenship is "an inescapable aspect of contemporary globalization".<sup>29</sup> Of course, this could be achieved through legal texts both at national and international levels. That is really a challenge, which should be addressed if we want to achieve global justice,<sup>30</sup> in other words, universal justice.

## II. UNIVERSAL JUSTICE AND ITS CHALLENGES

As a matter of logic, a globalized world must be regulated by universal justice which is both a moral quest and a legal framework. This evolving universal justice derives from the great idea of global justice and it must be enforced by appropriate mechanisms.

While discussing universal justice, it is important to establish why it is necessary to obey certain rules in our global village. What could be the basis of such a requirement and what is eventually the purpose of this universal justice. Let us start with the moral and legal obligation.

Without going into details, we can affirm that the principle of justice, as said above, could be described as the moral obligation to act on the basis of fair adjudication between competing claims. In law, it is a legal obligation. As such, it is linked to fairness, entitlement, and equality.<sup>31</sup> Ultimately, justice is the legal or philosophical theory by which fairness is administered.

Our contemporary perception of global justice derives from the early natural law theorizing teaching, centred around the idea of a "*ius naturale*", *i.e.*, a system of rights which is natural. Of course, such a system

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<sup>29</sup> S. Benhabib, *The Rights of Others, Aliens, Residents and Citizens*, Cambridge: Cambridge University Press 2004, p. 173.

<sup>30</sup> See M. Richey, *Towards a Non-Positivist Approach to Cosmopolitan Immigration: A Critique of the Inclusion/Exclusion Dialectic and an Analysis of Selected European (Im) migration Policies*, "Journal of International and Area Studies" 2010, vol. 17, no 1, pp. 55-74.

<sup>31</sup> See M. Maiese, *Principles of Justice and Fairness*, [in:] G. Burgess and H. Burgess (eds.), *Beyond Intractability*, Conflict Information Consortium, University of Colorado, Boulder 2003.

is common to all people and is available to them as a measuring stick of right and wrong. This perception of natural law tradition goes back to the Classical times of the Middle Stoa and Cicero, and the early Christian philosophers Ambrose and Augustine.<sup>32</sup> Today, the idea that as human beings, we have reciprocal obligations to each other is not in dispute, in reality, whether among cosmopolitans or statistas.

In law, when we talk about universal justice, we refer to the implementation and the advancement of justice conceived globally. Hence, in our global economy, global and universal ethics and justice are consequently also a legal necessity, as implied by the Latin maxim "*ubi societas, ibi jus*".<sup>33</sup>

The idea of Justice in a globalized world refers to universal legal values. It reflects the philosophical idea of global justice, cosmopolitanism, social justice or global distributive justice. It commands judicial process and the administration of justice at a global level. Therefore, universal justice implies the requirement of a worldwide legal obligation to adhere to international law, especially to international criminal justice, which covers several aspects

Discussing the characteristics of universal justice one should bear in mind three basic phenomena:

- a) **Distributive justice.** Universal justice presents specific features. The first aspect is distribution. Nowadays, academic discussions on global justice have been rightly focused on global distribution justice. As we know, the present world order is characterized by huge gaps between rich and poor. Therefore, one challenge for ethicists engaging in the discussions of global justice is to find criteria for the fair - or at least fairer - sharing of resources.<sup>34</sup>

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<sup>32</sup> See H. Syse, *From Natural Law to Human Rights – Some Reflections on Thomas Pogge and Global Justice*, [in:] A. Follesdal and T. Pogge (eds.), *Real World Justice: Grounds, Principles, Human Rights, and Social Institutions*, Dordrecht: Springer 2005, p. 408.

<sup>33</sup> See H. Owada, *Some Reflections on Justice in a Globalizing World*, [in:] H. Owada and T. Meron, "Proceedings of the Annual Meeting (American Society of International Law)", April 2-5, 2000, vol. 97, pp. 181-192.

<sup>34</sup> See Ch. Armstrong, *Global Distributive Justice. An introduction*, Cambridge: Cambridge University Press 2012. See also J. E. Roemer, *Theories of Distributive Justice*, Cambridge/Massachusetts/London: Harvard University Press 1998, p. 331.

- b) **Rectificatory justice.** Rectificatory justice is reflected by the claim that the “polluter should pay”. It argues for example, the nations that, for centuries have disseminated greenhouse gases to a point that the future of humanity is now at stake, should make recompense for the harm they have caused, and in particular for harming the poor and vulnerable nations in the South; since the latter have not contributed to the climate change, but today are the primary victims.<sup>35</sup>

An example of claims for rectificatory justice is the declaration made in 2013, by the governments of the Caribbean Community demanding reparations for the genocide of indigenous populations during colonization, and the slavery and slave trade in its aftermath.<sup>36</sup> However, sometimes rectificatory justice is linked to other aspects of justice such as restoration and retribution, and

- c) **Restorative and retributive justice.** If restorative justice places a primary emphasis on rehabilitating the offender, the victim, and the community, retributive justice insists on punishment of the wrong action committed. These aspects are also parts of global justice.

Thus, the present global economic and political order is characterized by inequalities: poverty in some parts and affluence in other parts, and unequal power relations, visible especially in the structures of global institutions of the Bretton Woods (IMF and World Bank) and the WTO. This order is to a large extent the result of colonialism. It is well known that most of the former colonies are still, many decades after their independence, suppliers of raw materials or of basic industrial products for markets dominated by the global elite, represented mainly by former colonial powers.

Accordingly, new rules and practices should be adopted in order to restore all, especially the victims, while keeping an eye in the direction of retribution, in accordance with the rule of law. This applies naturally to economic and other new emerging and challenging issues.

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<sup>35</sup> See P. Singer, *One World, The Ethics of Globalization*, New Haven: Yale University Press 2004, 2nd ed.

<sup>36</sup> See G. Collste, *Global Rectificatory Justice*, Basingstoke: Palgrave, 2015.

## 1. CHALLENGES OF UNIVERSAL JUSTICE

As in most of such complicated processes it is necessary to think about the real or potential challenges.

A universal justice is required in a globalized world facing important global challenges such as: land-grabbing, diseases, transnational economic crimes, tax evasions, illegal exploitation of resources by private or governmental companies, corruption by political leaders, massive robbery of mineral resources, etc. These conducts are increasingly recognized as transnational issues and pose new legal challenges which must be addressed globally.<sup>37</sup>

Now, another threat to global peace and justice could be the world growing population and the struggle for resources, for a good human life (having one's capabilities realized). The growing number of frustrated people or nations impoverished by the negative effects of globalization<sup>38</sup> or of the World Bank adjustment programmes,<sup>39</sup> could lead to global wars. This constitutes another challenge and a *raison-d'être* for a universal justice ensuring the respect of human rights.

Respect for human rights law as well as that of the international humanitarian law are indeed essential. In this context, international law, and especially criminal law, constitute a necessary tool for the enforcement of the global order and justice. It is the fervent hope that human rights and fundamental freedoms may be extended to all the peoples. This is an important challenge for universal justice.

It seems more than obvious, that in our globalized world characterized by inequalities, the rule of law is ultimately a necessity as a moral obligation as well as a means of preventing globalized wars. The rule of law is the principle that all people and institutions are subject to and

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<sup>37</sup> See D. V. Abdullah, H. Askari, and A. Mirakhor, *The Moral Foundation of Collective Action Against Economic Crimes*, "PSL Quarterly Review" 2015, vol. 68, no 272, p. 9-39.

<sup>38</sup> See M. G. Chunakara, *Globalization and its Impact on Human Rights*, Christian Conference of Asia, Hong Kong, 2000.

<sup>39</sup> See S. Fujita, *The Challenges of Mainstreaming Human Rights in the World Bank*, "The International Journal of Human Rights" 2011, vol.15, issue 3, pp. 374-396.

accountable to the law, which is fairly applied and enforced. Obviously, in a globalized world, these principles of law are also universal or global.<sup>40</sup>

Indeed, the behaviour of States and the relations between them should be governed by one law, equal and applicable to all. It is commitment to the peaceful, negotiated settlement of disputes, and respect for human rights.<sup>41</sup> This issue is crucial; it should be addressed in the framework of universal justice and requires global action.

If one thinks seriously about global action, the response of these common challenges must be not only global, but also unified. Through the United Nations, Member States have coordinated legal measures and established lasting norms for State behaviour and inter-State relations.<sup>42</sup> The international effort to develop global legislation has started, and a new substantive law is growing, especially in criminal matters.

Indeed, international criminal law is the main vehicle which allows both the enforcement of international legislation and the suppression of international crimes. This evolving new branch of international law is precisely the international criminal law. However, this second part devoted to the evolving international criminal law will be published in the next yearbook.

### III. EVOLVING INTERNATIONAL CRIMINAL LAW

#### 1. POSITIVE SUBSTANTIVE LAW

Usually, for the adjudication of cases, in terms of international crimes, both national and international courts limit themselves to dealing with violent offences such as genocide, crimes against humanity, and war

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<sup>40</sup> See J. Sachs, *Globalization and the Rule of Law*, Occasional Papers 1998, Paper 2, Yale Law School Legal Scholarship Repository, available at: [http://digitalcommons.law.yale.edu/ylosop\\_papers/2/](http://digitalcommons.law.yale.edu/ylosop_papers/2/).

<sup>41</sup> Regarding, this necessity of respect of human rights, see J. Ballesteros, E. Fernandez Ruis-Galvez and P. Talavera (eds.), *Globalization and Human Rights, Challenges and Answers from European Perspective*, Dordrecht/Heidelberg/New York and London: Springer 2012, p. 250.

<sup>42</sup> See United Nations Press Release, SG/SM/6257 of 12 June 1997 - *International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association*.

crimes, and depending on the relevant legal instruments, terrorism, piracy, narcotics, human trafficking, etc.<sup>43</sup>

However, our globalized world faces the increase of well-known crimes such as drug trafficking, terrorist attacks, etc. In addition, new phenomenon or new crimes have appeared.<sup>44</sup>

## 2. EMERGING NEW GLOBAL OFFENCES

New crimes have emerged as a consequence of globalization, such as environmental destruction, land grabs, illegal exploitation of natural resources, illegal dispossession of land, flattening of rainforests, poisoning water sources, etc.

Nowadays, land-grabbing has become increasingly common worldwide, with national and local governments allocating private companies tens of millions of hectares of land in the past 10 years.<sup>45</sup> In the global South, land-grabbing has led to many forced evictions, the cultural genocide of indigenous people, malnutrition and environmental destruction.<sup>46</sup>

Moreover, land-grabbing and illegal exploitations of resources have allegedly also led to climate change and global warming, since deforestation is very often a result of that conduct.<sup>47</sup> Illegal or excessive exploitation of national resources by multinational corporations or by other private or public businesses has very often led equally to planet contamination as well as dangerous diseases. It is needless to say that those

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<sup>43</sup> For some of these transnational crimes, specific treaties or conventions dealing with their prevention and punishment exist. But they could be improved. In terms of punishment for example, they have not yet set up a global criminal jurisdiction.

<sup>44</sup> See for example R. Ellefsen, R. Sollund and G. Larsen (eds.), *Eco-global Crimes: Contemporary Problems and Future Challenges*, London/New York: Routledge 2016, p. 332.

<sup>45</sup> J. Vidal and O. Bowcott, *ICC widens remit to include environment destruction cases*, available at [www.theguardian.com/global/2016/sep/15/hague-court-wide](http://www.theguardian.com/global/2016/sep/15/hague-court-wide). See also M. E. Margulis, N. McKeon and S. M. Borrás Jr, *Land Grabbing and Global Governance: Critical Perspectives*, *Globalizations* 2013, vol. 10, issue 1; *Land Grabbing and Global Governance*.

<sup>46</sup> See for example D. Ehrenfeld, *Globalization: Effects on Biodiversity, Environment and Society*, "Conservation and Society" 2003, vol.1, issue 1, pp. 99-111.

<sup>47</sup> Vidal and Bowcott, *supra* note 45.



conducts are not only harmful to inhabitants, but are also constitutive of what can be called “offences against the Mother Earth”.<sup>48</sup>

Indeed, until now, in our economic systems the human relationship with the natural world has been one of exploitation and domination. Therefore, environmental destructions and abuses have been accepted worldwide as collateral damage in the pursuit of profit. Global justice requires, however, the challenging of the view of nature as a lifeless “object” for human use, drawing a clear line beyond which is massive anthropogenic damage to ecosystems is a crime.<sup>49</sup> A new approach is ultimately required.

### 3. NEW APPROACH OF THE ICC AND “ECOCIDE”

Further to the insistence of the civil societies such as Global Witness, or law firms like Global Diligence, the Office of the Prosecutor of the International Criminal Court (“ICC”), in its “Office of the Prosecutor Policy Paper on Case Selection and Prioritization”, has decided to prioritize crimes that result in the “destruction of the environment”, “exploitation of natural resources”, and the “illegal dispossession” of land or land grabbing.<sup>50</sup> Because, many of these systemic crimes committed for “development” purposes are no less damaging to victims than many wartime’s atrocities.<sup>51</sup>

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<sup>48</sup> See for example A. C. Armstrong, *Ethics and Justice for the Environment*, Oxon: Rutledge 2012, p. 153. About the destruction of Mother Earth, see also C. Wooden, *Pope to activists: defend the earth, demand economic reform*, Prairie Messenger, Catholic Journal 07/15/2015, available at: [www.prairiemessenger.ca/15\\_07\\_15/inews\\_15\\_07\\_15\\_1.html](http://www.prairiemessenger.ca/15_07_15/inews_15_07_15_1.html); see also Human Rights Council, *Human Rights Council adopts outcomes of Universal Periodic Review of Thailand and Ireland*, 23/09/2016, available at: [www.ohchr.org/ru/NewsEvents/Pages/DisplayNews.aspx](http://www.ohchr.org/ru/NewsEvents/Pages/DisplayNews.aspx).

<sup>49</sup> See F. Wijdekop, *Against Ecocide: Legal Protection for Earth*, Mother Pelican, A Journal of Solidarity and Sustainability 2016, vol. 12, no 9, pp. 1-4.

<sup>50</sup> See the Office of the Prosecutor of the ICC, Office of the Prosecutor Paper on Case Selection and Prioritization, dated 15 September 2016.

<sup>51</sup> See A. Taylor, *Is environmental destruction a crime against humanity? The ICC may be about to find out*, available at: <https://www.washingtonpost.com/news/worldviews/wp/2016/09/16/>.

Therefore, heads of companies and politicians who are accomplices in the violent seizing of land, the razing of tropical forests or poisoning of water sources, could soon find themselves standing trial in The Hague alongside war criminals, warlords, and other dictators<sup>52</sup>, responsible for international crimes.

In fact, the ICC Prosecutor has not changed the definitions of crimes and she has not created a new category of offences. She has decided just to pay particular attention to crimes which have a huge impact on the environment and on communities. She has only expanded her understanding of certain provisions of the Rome Statute. Thus, under the label of crimes against humanity, the ICC Prosecutor may prosecute land-grabbing and other environmental destructions.

These activities, undertaken in the name of profit, may indeed result in mass human rights violations, even though committed during peacetime, and could be just as serious as traditional crimes against humanity or war crimes. Hence, the forcible transfer of people may already be a crime against humanity; and so if it is committed by land-grabbing, whether as a result or a precursor, the latter conduct can be considered also as a crime against humanity.<sup>53</sup>

Furthermore, the “Office of the Prosecutor Policy Paper on Case Selection and Prioritization” lists other crimes such as arms trafficking, human trafficking, terrorism, and financial crimes, in which it intends to provide more help to individual States to carry out national prosecutions.<sup>54</sup> In so doing, a way is paved for the recognition of new crimes, including “ecocide”.

## 4. A NEW CRIME OF “ECOCIDE”

### 4.1. HISTORICAL BACKGROUND

There is a call from civil societies worldwide for the adoption of specific legal provisions regarding the crime of “ecocide”. The term “ecocide”

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<sup>52</sup> Ibidem.

<sup>53</sup> See Vidal and Bowcott, *supra* note 45.

<sup>54</sup> See The Office of the Prosecutor of the ICC, Office of the Prosecutor Paper..., *supra* note 51. See also Vidal and Bowcott, *supra* note 45.

deriving from the Greek “oikos”, house, and the Latin “caedere”, to kill, was coined in 1970 by the American biologist Arthur Galston, at the Conference on War and National Responsibility, to label the massive damage and destruction of ecosystems.<sup>55</sup>

In 1972, Swedish Prime Minister Olof Palme explicitly characterized the Vietnam War as ecocide in his opening speech for the UN Conference on the Human Environment. That conference adopted the Stockholm Declaration, the first international legal document recognizing the right to a healthy environment.

In 1985, the official Whitaker Report recommended the inclusion of ecocide in the draft Code of Offences Against Peace and Security of Mankind, the precursor to the 1998 Rome Statute of the ICC. The idea was supported by most members of the UN’s International Law Commission. However, ecocide was never included in the Rome Statute.<sup>56</sup> A few decades later, in 2010, the proposal to amend the Rome Statute in order to include an international crime of “ecocide” was submitted by Polly Higgins at the International Law Commission (“ILC”). The proposed amendment says:

“Ecocide is the extensive damage to, destruction of, or loss of ecosystem(s) of a given territory, whether by human agency or by other causes, to such an extent that peaceful enjoyment by the inhabitants of the territory has been or will be severely diminished”.<sup>57</sup>

Since then, there has been an emerging social movement in favour of such legislation, even though until today the legal situation is still blocked.

#### 4.2. CURRENT SITUATION

To date, there is no comprehensive international convention dealing with the environment as a whole, and the existing conventions deal only with certain aspects of damage to the environment. However, the right to a healthy and safe environment was recognized in a number of

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<sup>55</sup> See Wijdekop, *supra* note 49.

<sup>56</sup> *Ibidem*.

<sup>57</sup> See P. Higgins, *What is ecocide*, Eradicating Ecocide, 2015.

UN and international fora and principal documents, such as the 1948 Universal Declaration of Human Rights, the UN Conference on the Human Environment (Stockholm, 1972), the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Final Report (1985) of the World Expert Group on Environmental Law to the Brundtland Commission, the UN Conference on Environment and Development (Rio de Janeiro, 1992), etc.

Some aspect of crimes against the Environment and Sustainable Development have emerged and have been covered by some regional and international conventions. It is the case for example, for the transboundary pollution, marine pollution, dumping of hazardous waste, pollution of soil and water, etc. These concerns have been discussed recently by the Monsanto Tribunal.

#### 4.3. THE INTERNATIONAL MONSANTO TRIBUNAL

The International Monsanto Tribunal is an informal people's tribunal headed by five professional international Judges,<sup>58</sup> which sat in The Hague from 15 to 16 October 2016, to assess allegations made against a US seeds firm, Monsanto, headquartered in St-Louis, Missouri, accused of harming the environment and possible "ecocide".<sup>59</sup> In their advisory opinion rendered on Tuesday 18 April 2017, the Judges concluded that Monsanto has engaged in practices that have infringed on the basic human right to a healthy environment, the right to food and the right to health.

The Tribunal also concluded in its advisory opinion, that if ecocide was formally recognized as a crime in international criminal law, the activities of Monsanto could possibly constitute the crime of ecocide. It is worth noting that the Judges expressed themselves both on the conduct of Monsanto and on the need for important changes to international laws governing multinational corporations. They concluded that

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<sup>58</sup> Judges Dior Fall Sow (Senegal), Jorge Fernandez Souza (Mexico), Eleonora Lamn (Argentina), Steven Shrybman (Canada), and Françoise Tulkens (Belgium).

<sup>59</sup> See Monsanto Tribunal Judges Release Opinion; Monsanto Activities Violate Basic Human Rights, by Organic Consumers Association (OAC), available at: [www.commondreams.org/newswire/2017/04/18/monsanto-tribunal-judges-release-opinion-monsanto-activities-violate-basic-human](http://www.commondreams.org/newswire/2017/04/18/monsanto-tribunal-judges-release-opinion-monsanto-activities-violate-basic-human).

international law should now precisely and clearly, assert the protection of the environment, and establish the crime of ecocide. They emphasized the widening gap between international human rights and corporate accountability.

The Tribunal reiterated that multinational enterprises as well as non-state actors should be recognized as responsible actors, and should be subjected to ICC jurisdiction, in the case of an infringement of fundamental rights, because today, questions of human and environmental rights violation are resolved by private tribunals operating entirely outside the UN framework.<sup>60</sup>

Therefore, the Tribunal, which based its legal opinion on international law and the UN Guiding Principles on Business and Human Rights, encouraged authoritative bodies to protect the effectiveness of international human rights and environmental law against the conduct of multinational corporations.<sup>61</sup>

The adoption of an international legal instrument dealing with this environmental issue will help avoid different approaches adopted currently by different states. Hence, the accountability of corporations could be adopted worldwide, as is not the case yet, because, many countries and even the ICC apply the presumption of "*societas delinquere non potest*".<sup>62</sup>

Nevertheless, recognizing "ecocide" as an international crime,<sup>63</sup> even during peacetime could help catalyze a transition to a green economy keen on sustainability and on a more peaceful global civilization. Furthermore, the ecological catastrophe is closely linked to the social and humanitarian crisis, in this 21<sup>st</sup> century. It is then expected that this new ecologic offence will be formalized quickly at the international level within the positive international law, together with new economic crimes.

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<sup>60</sup> Ibidem.

<sup>61</sup> Ibidem. See also UN Guiding Principles on Business and Human Rights. *Implementing the United Nations "Protection, Respect and Remedy"*, Framework, United Nations, New York/Geneva, 2011.

<sup>62</sup> Corporations cannot be criminally responsible.

<sup>63</sup> About this possible international crime, see also M. A. Gray, *The International Crime of Ecocide*, "California Western International Law Journal" 1996, vol. 26, p. 215.

## 5. NEW ECONOMIC INTERNATIONAL CRIMES

### 5.1. MEANING

Another expectation of global justice is about international economic crimes. This expression refers to illegal economic acts committed by an individual, a group of individuals, or by corporations in order to obtain a financial or professional advantage. In committing such crimes, the offender's principal motive is economic gain.<sup>64</sup>

Thus, economic crimes cover a wide range of offences, from financial crimes committed by banks, tax evasions, illicit capital heavens, money laundering, economic crimes committed by public officials (like bribery, embezzlement, traffic of influences, indigenous spoliation, etc.), and massive exits of capital among others.<sup>65</sup> They also cover offences perpetrated by transnational criminal organizations.<sup>66</sup>

Still in this category, other actions that could be considered criminal include the so-called vulture funds that undermine countries' debt restructuring, or companies that turn a blind eye to the abusive exploitation of natural resources such as coltan, used in mobile phones, digital cameras, computers and various satellites.<sup>67</sup> That is the case in the Democratic Republic of Congo ("DRC"), where children are used in the mines by armed groups, whose the flourishing income allows the acquisition of new weaponry, fueling in turn devastating wars, which cause millions of deaths and great despair.

These offences, committed in a high scale resulting in massive corruption, massive robbery of mineral resources, and massive tax evasions like those reported recently in the "Panama Papers", very

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<sup>64</sup> See Economic Crime Law and Legal Definition, US Legal Inc. available at: <https://search.uslegal.com/economic>.

<sup>65</sup> See Cipce, *What is economic crime?*, available at: [www.cipce.org.ar-what-is-economic-crisis](http://www.cipce.org.ar-what-is-economic-crisis).

<sup>66</sup> See C. L. Donigan Guymon, *International Legal Mechanism for combating Transnational Organized Crime: The Need for a Multinational Convention*, "Berkeley Journal of International Law" 2000, vol. 18, issue1, pp. 51-101, available at: <http://scholarship.law.berkeley.edu/bjil/vol18/iss1/2>.

<sup>67</sup> See A. Kassam, *Spain's campaigning Judge seeks change in law to prosecute global corporations*, available at: [www.theguardian.com/world/2015/aug/20spain-judge-baltas](http://www.theguardian.com/world/2015/aug/20spain-judge-baltas).

often lead to hunger and deaths among the global poor, victims of these behaviours.<sup>68</sup> Nevertheless, beyond this expectation of a new legal order, what is the current situation?

## 5.2. CURRENT SITUATION

To date, some international legal instruments exist to cover some forms of conduct related to economic and financial activities, in particular corruption. This offence is covered by the 1996 Organization of American States Convention, the 2002 African Union Convention, and the 2004 UN Convention against corruption. Moreover, other instruments need to be mentioned: the UN Convention Against Illicit Traffic in Narcotics Drugs and Psychotropic Substances, Conventions on Money Laundering, Anti-Corruption Agreements, etc.<sup>69</sup>

In practice, these existing legal instruments do not establish a universal international framework on international economic crime. In addition, they do not establish a global mechanism for the suppression of those reprehensible conducts, which cause economic disaster to people, especially in the Global South and in Africa.

## 5.3. REASONS FOR CHANGE

The need to establish an international economic criminal offence which includes corruption, particularly in the form of indigenous spoliation, is obvious for the following reasons. Contrary to past depredations, the modern context of spoliation is characterized by great mobility of wealth and the capacity to hide it away from the victims.

Another reason is the fact that the bulk of stolen national assets is never reinvested in productive enterprises in their countries of origin. Moreover, the quantum of assets involved is huge and is quoted usually in terms of millions and billions of dollars.

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<sup>68</sup> About this “Panama Papers” issue, see for example R. Neate and D. Smith, *Obama calls for international tax reform amid Panama Papers revelations*, “The Guardian”, 5 April 2016, available at: [www.theguardian.com/news/2016/apr/05/justice-department](http://www.theguardian.com/news/2016/apr/05/justice-department).

<sup>69</sup> See Donigan Guymon, *supra* note 66.

Finally, those most implicated in systematic spoliation of national wealth come from a particular class of people who hold public trust.<sup>70</sup>

Indeed, this contemporary indigenous spoliation is the social economic devastation, which reduces economic growth and discourages investments; it decreases and diverts government's revenues, misallocates scarce resources, breeds impunity and dilutes public integrity, violates human rights, and encourages political instability leading to rebellions, wars, and deaths for huge groups of people and many nations.<sup>71</sup> That is why writers consider now that those economic crimes amount to international crimes and even to genocide.<sup>72</sup>

Since a new crime deserves a new name,<sup>73</sup> a new name characterizing these new economic crimes has been proposed; it is the crime of "patrimonicide".<sup>74</sup> Therefore, many civil societies advocate to the crystallization of these crimes as such in positive international criminal law. However, do these new crimes amount really to genocide or to crimes against humanity?

## 6. „PATRIMONICIDE AND "ECOCIDE": GENOCIDE, CRIME AGAINST HUMANITY OR CRIME AGAINST PEACE?

### 6.1. WHAT IS GENOCIDE?

The definition of genocide is contained in the relevant statutes of different international (and special) criminal tribunals. All these statutes refer

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<sup>70</sup> See N. Kofele-Kale, *Change or the Illusion of Change: The War Against Official Corruption in Africa*, "George Washington International Law Review" 2005-2006, vol. 38, pp. 697-747.

<sup>71</sup> Ibidem.

<sup>72</sup> See D. Saxon, *Robbery against Humanity: The Treatment in International Humanitarian Law of Economic Crime as a Basis for Persecution and Genocide*, "Forum on Crime and Society" 2002, vol. 2, issue 1, pp. 101-108. See also P. Koenig, *India, Death by Demonetization: "Financial Genocide", The crime of the Century'*, "Global Research", 20 January 2017, available at: [www.globalresearch.com/india-death-by-demonetization-financi](http://www.globalresearch.com/india-death-by-demonetization-financi).

<sup>73</sup> See R. Lemkin, *Genocide - A modern Crime*, FREEWORLD 1945, p. 39 et seq. and R. Lemkin, *Genocide as a Crime under International Law*, "American Journal of International Law" 1947, vol. 41(1), pp. 145-151.

<sup>74</sup> See N. Kofele-Kale, "Patrimonicide": *The international Economic Crime of Indigenous Spoliation*, "Vanderbilt Journal of Transnational Law" 1995, vol. 28, no. 1, pp. 45-118. See



basically to the definition provided with by the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the General Assembly of the United Nations on 9 December 1948. According to this article II:

“In the present Convention, genocide means any of the following acts committed with intent to destroy in whole or in part, a national, ethnical, racial or religious group, as such:

- a) Killing members of the group;
- b) Causing serious bodily or mental harm to members of the group;
- c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d) Imposing measures intended to prevent births within the group;
- e) Forcibly transferring children of the group to another group.”

According to this Convention and also to the Statutes of international criminal tribunals, only four groups are protected: national, ethnic, racial, and religious groups. Of course, many people, including civil societies, have advocated for the protection of other groups such as political and cultural groups.

The jurisprudence of the *ad hoc* International Criminal Tribunals (ICTY and ICTR), has developed this notion of “protected groups” in a creative way, in order to enlarge its understanding. Thus, it has introduced the “concepts of stable and permanent groups [...] as well as the concepts of positive/negative and objective/subjective notions of the targeted group”<sup>75</sup>. However that may be, the best way to address this issue and to avoid confusion is to amend those international instruments accordingly.

The above-mentioned definition also shows that in the commission of the crime of genocide, the perpetrator should realize a material element and two mental elements.

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also N. Kofele-Kale, *The International Law of Responsibility for Economic Crimes: Holding State Officials Individually Liable for Acts of Fraudulent Enrichment*, London/New York 2016: Routledge, 2nd ed.

<sup>75</sup> A. Szpak, *National, Ethnic, Racial, and Religious Groups Protected against Genocide in the Jurisprudence of the ad hoc International Criminal Tribunals*, “The European Journal of International Law” 2012, vol. 23, no. 1, p. 155.

Indeed, the material element, "*actus reus*", rests in the realization of one of the underlying acts such as killing members of the group, in other words, the murder of individuals. The first mental element is the intention to kill those people, the "*animus necandi*". The second mental element is the intention to destroy in whole or in part. This is the special or specific intent, the "*dolus specialis*",<sup>76</sup> essential to the crime of genocide.

As such, genocide has been dubbed the "crime of all crimes" and for some scholars, should require the highest form of intent. This specific intent required is what separates the crime of genocide from other international crimes such as the crimes against humanity.<sup>77</sup>

However, let us recall that recently, many writers have argued that "*dolus specialis*" as widely understood at present, is too strict and that a knowledge-based approach should be adopted. The latter is more closely related to the "*mens rea*", the intent required in a common-law legal system.<sup>78</sup> Despite this divergence, one can argue that genocide is graver than crimes against humanity, all other things being equal.

Hence, all things being equal, genocide is more serious than crime against humanity. However, it is worth noting that the issue of hierarchy between genocide and crime against humanity could be controversial, if we consider some acts underlying those crimes. Thus, for example, an act "causing serious bodily or mental harm to members of the group" in the context of a genocide, may be less serious than a murder committed in the context of a crime against humanity. In contrast, a murder constituting genocide could be regarded as more serious than that perpetrated in the context of a crime against humanity.

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<sup>76</sup> See for example M. Notaras, *Should Ecocide Be Deemed a Crime against Peace?*, Our World, United Nations University, 2010.05.03, p. 3, available at: <https://ourworld.unu.edu/en/should-ecocide-be-deemed-a-crime-aga>.

<sup>77</sup> See K. Goldsmith, *The Issue of Intent in the Genocide Convention and Its Effect on the Prevention and Punishment of the Crime of Genocide: Toward a Knowledge-Based Approach*, "Genocide Studies and Prevention: An International Journal" 2010, vol. 5, issue 3, p. 241.

<sup>78</sup> *Ibidem*.

## 6.2. WHAT IS CRIME AGAINST HUMANITY?

According to article 7 of the Rome Statute of the ICC,<sup>79</sup> “crime against humanity” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- a) Murder;
- b) Extermination;
- c) Other inhuman acts of a similar character intentionally causing great suffering, or serious injuring to body or to mental or physical health;

Hence, crimes against humanity are certain underlying acts cited in that Statute that are deliberately committed as part of a widespread or systematic attack or individual attack directed against any civilian or an identifiable part of a civilian population.<sup>80</sup>

Thus, killing someone simply because he or she exists is a crime against humanity; it goes to the very essence of what is to be human. It is not an elimination of individuals because they are potential adversaries for example. Moreover, according to Judges Mc Donald and Vohrah in *Erdemovic*:

“crimes against humanity (...) constitute egregious attacks on human dignity [and] consequently affect each and every member of mankind”.<sup>81</sup>

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<sup>79</sup> According to Article 5 of the Statute of the International Criminal Tribunal for the former Yugoslavia (ICTY), the underlying acts should have been committed in an armed conflict.

<sup>80</sup> Unlike the UN Convention on Genocide, there is not yet an international general instrument about crimes against humanity. A draft Convention on the Prevention and Punishment of Crimes Against Humanity has been proposed by Whitney R. Harris World Law Institute and Washington University School of Law in St. Louis under the directory of Professor Leila Nadya Sadat. See L. N. Sadat and D. J. Pivnichny, *Towards a New Global Treaty on Crimes Against Humanity*, “European Journal of International Law” 2014, available at: [www.ejiltalk.org/towards-a-new-global-treaty-on-crimes-against-humanity/](http://www.ejiltalk.org/towards-a-new-global-treaty-on-crimes-against-humanity/). See also S. Murphy, *Towards a Convention on Crimes against Humanity*, “La Revue Des Droits de l’Homme, Revue du Centre de Recherches et d’études sur les droits fondamentaux” 2015, available at: <https://revdh.revues.org/1185>.

<sup>81</sup> *Prosecutor v. Erdemović*, Case No IT-96-22-A, Joint Separate Opinion of Judge McDonald and Judge Vohrah, para. 21 (Appeals Chamber, Oct. 7, 1997). See also

Genocide in contrast, is a crime on a different scale to all other crimes against humanity and implies an intention to exterminate the chosen groups.<sup>82</sup> Genocide could be considered therefore both the gravest and the greatest of the crimes against humanity.<sup>83</sup>

In any case, is a crime against humanity ever more serious than another international crime such as a war crime? At least, the issue of hierarchy between crimes against humanity and war crimes has been solved by the ICC jurisprudence, with regard to the applicable sentence concerning acts underlying those crimes. Thus, both in the Katanga Case and the Bemba Case, the Chambers implicitly decided that there was no hierarchy between these international crimes<sup>84</sup>. Such a determination could be also applicable to crimes against peace.

### 6.3. WHAT IS CRIME AGAINST PEACE?

This crime was first incorporated into the Nuremberg Principles<sup>85</sup>; it was affirmed in the Charter of the International Military Tribunal of Nuremberg ("IMT") and in that of the International Military Tribunal for the Far East of Tokyo ("IMTFE"), and later, it was included in the UN Charter<sup>86</sup>. According to Article 6 (a) of the IMT Charter, crime against peace is:

“...planning, preparation, initiation or waging of a war of aggression, or a war in violation of international treaties, agreements or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;”

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L. N. Sadat, *Putting Peacetime First: Crimes Against Humanity and the Civilian Population Requirement*, “Emory International Law Review” 2017, vol. 31.

<sup>82</sup> See A. Destexhe, *Rwanda and Genocide in the Twentieth Century*, Special Reports 1995, New York University Press and Pluto Press/UK, p. 2, available at: [www.pbs.org/wgbh/pages/fronline/shows/rwanda/reports/dse](http://www.pbs.org/wgbh/pages/fronline/shows/rwanda/reports/dse).

<sup>83</sup> Ibidem.

<sup>84</sup> See *Prosecutor v. Germain Katanga*, case No ICC-01/04-01/07-3484-tENG, Decision on Sentence Pursuant to Article 76 of the Statute, 23 May 2014, Trial Chamber II, paragraph 146, and *Prosecutor v. Jean-Pierre Bemba Gombo*, Case No ICC-01/05-01./08-3399, Decision on Sentence Pursuant to Article 76 of the Statute, 21 June 2016, Trial Chamber II, paragraph 94.

<sup>85</sup> See Nuremberg Principles, Principle VI (a) (i) & (ii).

<sup>86</sup> See UN Charter, Articles 1 & 2.

In 1945, a crime against peace was essentially a war of aggression which, according to the Nuremberg Tribunal, "is not only an international crime; it is the supreme international crime", for "it contains within itself the accumulated evil of the whole"<sup>87</sup>. Hence, in support of the charges of "crime against Peace", the Prosecutor of the IMT submitted that the accused planned and initiated the chain of events leading to the Second World War, by seizing Austria and Czechoslovakia<sup>88</sup>. This definition was used in characterizing aggression as a crime against peace in the ICC Statute<sup>89</sup>.

However, crimes against peace may also refer to the core international crimes set out in the Rome Statute of the ICC (genocide, crimes against humanity, war crimes, and the crime of aggression), which adopted crimes negotiated previously in the Draft Code of crimes against the peace and security of mankind. In this case, we may assume that, " *lato sensu*", those international crimes are crimes against peace.

It remains clear that within the IMT Charter, the three categories of crimes prosecuted are: crimes against peace, war crimes, and crimes against humanity. Surprisingly, while the terms "war crimes" and "crimes against humanity" have remained in the usual vocabulary, the term "crimes against peace" has not. Maybe, because the idea of "crimes against peace" or that of "aggression" was still lacking any solid ethical or legal foundation, until recently, in 2010, with the ICC Review Conference of Kampala.

Nevertheless, nowadays, crime against peace, refers to military aggression<sup>90</sup>. So the question is: can we consider in this condition that "patrimonicide" and "ecocide" are legally speaking crimes against peace, "*stricto sensu*"? The answer is negative, even though the general public may think that they are also crimes against peace. What is undisputed, is that these new offences must be considered as international crimes.

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<sup>87</sup> Cited by A. Ferguson, *Crimes Against Peace*, CrimesAgainstPeace.org, available at: [www.crimesagainstepace.org/crimes-against-peace-article](http://www.crimesagainstepace.org/crimes-against-peace-article).

<sup>88</sup> See F. B. Schick, *Crimes Against Peace*, "Journal of Criminal Law and Criminology" 1948, vol. 38, issue 5, p. 447.

<sup>89</sup> See Rome Statute, Article 8 *bis* as amended at the Review Conference in Kampala, in 2010.

<sup>90</sup> In the same vein, see L. May, *Aggression and Crimes Against Peace*, Cambridge University Press 2008.

#### 6.4. LEGAL NATURE OF "PATRIMONICIDE" AND "ECOCIDE"

We have already studied the meaning of these two possible new crimes. For some militants, they could account up to the crime of genocide. Indeed, nowadays, the term "genocide" has progressively lost its initial meaning and is becoming dangerously commonplace. Thus, in order to shock people for example, and gain their attention to contemporary situations of massive violence or injustice, genocide is used to characterize systematic massacres, massive economic crimes or large destruction of environment leading to thousands of deaths.<sup>91</sup>

It is true that many writers share this spirit of condemnation against those called "eco-destroyers" as well as against economic criminals, and highlight the need to ensure that the perpetrators are held accountable.<sup>92</sup> However, at the same time, they argue that genocide is a result of criminal intent, planning, and execution, whereas "ecocide" is a result of greed and negligence that can also be criminalized, but in a different legal process, not under the international humanitarian law that applies in armed conflicts.<sup>93</sup>

This is why many scholars are advocating for those economic and environmental crimes to be classified as crimes against peace<sup>94</sup> or crimes against humanity<sup>95</sup>, as accepted by the ICC Prosecutor recently.<sup>96</sup> That brings us back to the special intent issue.

The issue of special intent, "*dolus specialis*", is a difficult question in qualifying economic and environmental crimes, and in determining their

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<sup>91</sup> See A. Destexhe, *Rwanda and Genocide in the Twentieth Century*, Special Reports 1995, New York University Press and Pluto Press/ UK, p. 4, available at: [www.pbs.org/wgbh/pages/frontline/shhows/rwanda/reports/dsc](http://www.pbs.org/wgbh/pages/frontline/shhows/rwanda/reports/dsc).

<sup>92</sup> See N. Kofele-Kale, *Change or Illusion of Change: The War Against Official Corruption in Africa*, "George Washington International Law Review" 2006, vol. 38, no 4 (SMU Dedman School of Law Legal Research Paper No 232, available at: <https://ssrn.com/abstract:2723545>); see also N. Kofele-Kale, *Economic Crimes and International Justice: Elevating Corruption to the Status of a Crime in Positive International Law*, A Keynote Address, Symposium on Corruption and its Implications for Human Rights, Centre for Human Rights and Democracy in Africa, Alliance Franco-Camerounaise Center Buea, 25 June 2009.

<sup>93</sup> See Notaras, *supra* note 76.

<sup>94</sup> *Ibidem*.

<sup>95</sup> See Kofele-Kale, *supra* note 92, p. 10.

<sup>96</sup> See the Office of the Prosecutor of the ICC, Office of the Prosecutor Paper on Case Selection..., *supra* note 50.

legal nature, as genocide, crime against humanity or as crime against peace. In this matter, what intent is required? It is enough to be recklessly negligent? Should the perpetrator have at least the knowledge of the harm that the potential victims may suffer? Or should the economic or the ecologic offender have the “*dolus specialis*” to destroy the people concerned<sup>97</sup>?

If we consider that difficulty, it is not possible, at present, in the absence of a positive international legal instrument, to classify all those new crimes as genocide. On a case by case basis, Judges should determine whether we are facing a genocide or a crime against humanity. But for sure, those conducts are criminal and are international crimes and possible crimes against peace. However, in order to adjudicate them properly, we still need a clear legal framework as well as appropriate mechanism for their suppression.

#### **IV. MECHANISMS OF SUPPRESSION IN UNIVERSAL JUSTICE: ADDRESSING GLOBAL CRIMES AT A GLOBAL LEVEL**

In this globalized world, there is no justice if such justice is not universal, especially in the matter of criminal justice. Therefore, it is essential to enforce the same global legislation worldwide. That can be done through both national and international courts.

##### **1. NATIONAL CRIMINAL JUSTICE: NATIONAL COURTS**

###### **1.1. NATIONAL COMPETENCE (TERRITORIALITY)**

In contemporary international criminal law, there is no single universal court to prosecute all international crimes such as terrorism, piracy, narcotics-dealing, economic, and environmental crimes. According to the relevant treaties criminalizing those conducts, it is left to every national jurisdiction to prosecute or to extradite the offenders in accordance with

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<sup>97</sup> See Notaras, *supra* note 76.

the “*aut dedere aut judicare*” principle. That is the case for the crime of genocide, torture, piracy, etc.<sup>98</sup>

However, in respect of the new economic and environmental crimes of a transnational nature, it is worth noting that not only is there no international positive legislation<sup>99</sup>, but also many national jurisdictions do not seem to be interested in prosecuting them, in the absence of a clear legislation on universal jurisdiction.

## 1.2. UNIVERSAL JURISDICTION

The way out is the generalization of the principle of universal jurisdiction. As said above, this implies the idea that national Judges or international organizations be allowed to try cases of human rights abuses committed in other countries, regardless of where the alleged crimes were committed. This doctrine would be particularly helpful in going after government officials and managers of large corporations, as it would allow the law to equally pursue perpetrators regardless of where their headquarters were located.<sup>100</sup>

The universal jurisdiction agreed upon in treaties, such as those on genocide and torture, seem to work even though sometimes States are reluctant to try their own nationals and even foreigners, for crimes committed abroad. On the other hand, the universal jurisdiction principle applied by individual States, like Spain and Belgium, over foreigners for crimes committed abroad, is not yet applied by the majority of countries.<sup>101</sup> For the uniformity of jurisprudence worldwide and in order

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<sup>98</sup> See Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, Articles VI and VII; and Convention against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment (commonly known as the United Nations Convention against Torture of 10 December 1984, Article 2. See also the United Nations Convention on the Law of the Sea (UNCLOS) of 10 December 1982, Articles 100 to 105 regarding the repression of piracy under international law.

<sup>99</sup> We acknowledge that the international environment law exists and it is evolving. Still new crimes must be added. See for example R. M. Pereira, *Environmental Criminal Liability and Enforcement in European and International Law*, Leiden/Boston: Brill/Nijhoff 2015.

<sup>100</sup> See A. Kassam, *supra* note 67.

<sup>101</sup> Even in Spain and Belgium, further to the success of such legislation and in the increase of claims, the Governments were obliged to modify the laws in order to reduce



to apply equally international criminal law, it is better to have recourse to international courts.

## 2. INTERNATIONAL CRIMINAL JUSTICE

### 2.1. INTERNATIONAL CRIMINAL COURTS AND SIMILAR INSTITUTIONS

The need to suppress international crimes goes back far into the past. In ancient times and the Middle Ages, attempts were made to punish those responsible of crimes shocking the conscience of the mankind.<sup>102</sup> Since States were reluctant or unwilling to try their own nationals or leaders, some trials were organized by a coalition of nations. Thus, after World War I, it was decided to try the German Emperor, Kaiser Wilhelm II. In the same vein, after World War II, the International Military Tribunal was set up in Nuremberg and the International Military Tribunal for the Far East in Tokyo, to try the major war criminals.<sup>103</sup>

Many decades later, there was still no international court for adjudicating international crimes, with a competence worldwide. That is why, in order to try those responsible for massive violations of human rights and international humanitarian law, the UN had to create a tribunal for every particular situation.

Hence, in response to the war and massive human rights abuses in the former Yugoslavia, the UN created *durante bello* the International

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their scope and applicability. See for example Loi du 16 juin 1993 de compétence universelle replaced by Loi du 5 août 2003 in Belgium and R. A. Fernandez, *The 2014 Reform of Universal Jurisdiction in Spain*, available at: 215-online.com.

<sup>102</sup> Thus, for example in 1268 in Naples, Conradin Von Hohenstauffer stood trial and was sentenced to death for having engaged in unjust war. In 1474, while occupying the town of Brisach, the troops of Peter Von Hagenbach pillaged the town and murdered civilians. Von Hagenbach was accused of crimes against the laws of God and humanity and tried before a tribunal which included Judges from countries of the Holy Roman Empire. Moreover, Napoleon was condemned to a forced exile by the decision of Aachen in 1813, by his enemies (Prussia, England and Austria) for having broken world peace. See A. K-M. Mindua, *The Immunity of Heads of State and Government in International Criminal Law*, [in:] Chile Eboe-Osuji (ed), *Protection, Humanity, Essays in International Law and Policy in Honour of Navanethem Pillay*, Leiden/Boston: Martinus Nijhoff Publishers 2010, p. 731.

<sup>103</sup> See Charter of the International Military Tribunal, London 8 August 1945, and Charter of the International Military Tribunal for the Far East, 19 January 1946.

Criminal Tribunal for the former Yugoslavia (“ICTY”) in 1993.<sup>104</sup> In the same vein, after the Rwandan genocide and massacres, the UN created the International Criminal Tribunal for Rwanda (“ICTR”) in 1994.<sup>105</sup> Both tribunals are *ad hoc* jurisdiction set up by a UN Security Council resolution, in accordance with Chapter VII of the UN Charter.

However, further to the massive violations of human rights in Cambodia, Sierra Leone, Lebanon, or recently, in the Central African Republic, the UN decided to set up special, mixed or hybrid tribunals or courts following an agreement with the concerned States. Furthermore, in the case of East-Timor and Kosovo, the UN alone, through regulations, decided to create courts in order to adjudicate crimes of concern to mankind.<sup>106</sup>

All these courts and tribunals have been useful in advancing the idea of international justice. But they were not universal or global since they were still limited geographically (*ratione loci* jurisdiction). In order to symbolize or to achieve global justice, there was the need of a universal court. The attempt has been done with the International Criminal Court (ICC).

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<sup>104</sup> See UNSC Resolution 827 (1993) of 25 May 1993.

<sup>105</sup> See UNSC Resolution 955 (1994) of 8 November 1994.

<sup>106</sup> See 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 (ECCC Agreement) of 6 June 2003 and Law on the Establishment of the Extraordinary Chambers as amended of 27 October 2004; See Agreement between the United Nations and the Government of Sierra Leone on the Establishment of the Special Court for Sierra Leone, signed on 16 January 2002; See UNSC Resolution, 1757, Agreement between the United Nations and the Lebanese Republic on the Establishment of a Special Tribunal for Lebanon, UN Doc.S/RES/1757 (2007), 30 May 2007; See also the UN Transitional Administration in East-Timor’s Decision 2000/11 of 6 March 2000 on the Organisation of Courts in East-Timor, and also the UN Authority in Kosovo’s Decision MINUK 2000/34 and MINUK 2000/64 establishing international panels. For the Central African Republic, see Loi organique portant création, organisation et fonctionnement de la Cour pénale spéciale, Loi No 15/003 du 3 juin 2015; and see also P. Labuda, *The Special Criminal Court in the Central African Republic: Failure or Vindication of Complementarity?*, “Journal of International Criminal Justice” 2017, vol. 17(1).

## 2.2. INTERNATIONAL CRIMINAL COURT (“ICC”)

### 2.2.1. BIG ACHIEVEMENT, BUT AFFECTED BY “SCHIZOPHRENIA”

Until the creation of the ICC, there had never been a universal criminal court dealing with individual criminal responsibility in the history of mankind. That is why the adoption by the UN Conference of Plenipotentiaries, on 17 July 1998, of the Statute of Rome creating the ICC is considered as a benchmark in international criminal law. That Statute entered into force on 1 July 2002.<sup>107</sup>

Certainly, the ICC is a great achievement, since it is the first real universal jurisdiction. However, this Court suffered *ab ovo* from a congenital disease: “schizophrenia”.<sup>108</sup> Because the Rome Statute results from a treaty and as such, complies with Article 34 of the Vienna Convention on the Law of Treaties, according to which “*Pacta tertiis nec nocent nec prosunt*”, i.e., agreements do not benefit and do not harm third parties.<sup>109</sup> At the same time, the Rome Statute organizes a sort of supranational Government since the UNSC can refer and defer cases to or from the ICC.<sup>110</sup>

Hence, amazingly, even States which are not parties to the Rome Statute can participate, through the UNSC, in deciding a referral or a deferral of leaders of other non-States Parties to the Rome Statute of the ICC.<sup>111</sup>

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<sup>107</sup> In accordance with Article 126 of the Rome Statute, the ICC entered into force the first day of the month following the sixtieth day after the notification of the ratification by the sixtieth State Party, which actually was the Democratic Republic of Congo (DRC), and which deposited its instrument with the UN Secretary-General on 11 April 2002.

<sup>108</sup> See A. K-M. Mindua, *Article 16 of the Rome Statute and its Impact on the Independence and Autonomy of the International Criminal Court*, Embajada De Activistas Por La Paz, CUMIPAZ 2016, available at: <http://embajadamundialdeactivistasporlapaz.com/es/pensa/article-1>.

<sup>109</sup> See A. K-M. Mindua, *Statehood of Palestine, the United Nations and the International Criminal Court*, L’Observateur des Nations Unies, “Revue de L’Association Française pour les Nations Unies”, Aix-en-Provence 2016, vol. 40, p. 122.

<sup>110</sup> See A. K-M. Mindua, *supra* note 102, p. 744.

<sup>111</sup> See A. K-M. Mindua, *supra* note 108. See also J. Trahan, *The relationship between the International Criminal Court and the UN Security Council: Parameters and best practices*, “Criminal Law Forum” 2003, vol. 24, p. 455; see also S. Sur, *Le droit international pénal entre*

It is easy to understand thus, why for many African Heads of State, the ICC is an instrument in the hands of the globalized powers<sup>112</sup>. Nevertheless, in the prospect of an International Criminal Court lies the promise of universal justice, and we know, peace and justice are indivisible.

Ultimately, the ICC is the symbol of our highest hopes for this unity of peace, justice, and happiness. It is a vital part of an emerging system of international human rights protection, and of respect for international humanitarian law. International criminal law as applied at the IC is thus a guard against massive human rights violations worldwide. As a Court of last resort, the ICC establishes principles and standards to be followed by all States, in accordance with the principle of complementarity. These principles are related also to economic and environmental crimes as stated recently by the ICC Office of the Prosecutor (“ICC OTP”).<sup>113</sup>

## 2.2.2. URGENCY OF FORMALIZATION OF NEW CRIMES

This new stance by the ICC OTP is in line with the process of globalization, taking into account the global factors that accelerate the process of wars, resulting from a growing population, climate change, damage to the environment, global warming, and planet contamination.<sup>114</sup> This could be an interim measure while waiting for a complete and universal recognition of new international crimes like “ecocide”, “patrimonicide” and other crimes of the same rank as genocide or crime against humanity.<sup>115</sup>

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*l'Etat et la société internationale*, Actualité et Droit International 2001; see also J. Flint and A. De Wall, *Case Closed: “A prosecutor Without Borders”*, *World Affairs*, A Journal of Ideas and Debate, Spring 2009, p. 1.

<sup>112</sup> See K. Mills, *Bashir is Dividing Us: Africa and the International Criminal Court*, “Human Rights Quarterly” 2012, vol. 34, pp. 404-447.

<sup>113</sup> See the Office of the Prosecutor of the ICC, Office of the Prosecutor Paper on case Selection..., supra note 50.

<sup>114</sup> About planet contamination or pollution and other catastrophes affecting our environment, and related law, see V. Röben, *Air Pollution, Transboundary Aspects*, Max Planck Encyclopedia of Public International Law, July 2015, available at: <http://opil.ouplaw.com/view/10.1093/law/epi/9780199231690/law>. See also J.F.C. Dimento, *The Global Environment and International Law*, Austin: University of Texas Press 2010.

<sup>115</sup> See R. M. Pereira, *Environmental Criminal Liability and Enforcement in European and International Law*, Brill/Nijhoff 2015.

Indeed, as it stands now, the international crimes within the jurisdiction of the ICC, as stipulated in Article 5 of the Rome Statute, are related specifically to massive or gross violations of the human rights of the first generation. In other words, the crimes addressed are those related to the civil and political rights. But, the human rights of the second and third generation are not directly taken into account.

Hence, it appears that the ICC responds to the neoliberal ideology that economic, social, and cultural rights are of lesser importance.<sup>116</sup> Thus, economic and environmental crimes are not really sanctioned by the ICC, as are the other above-mentioned crimes, which prioritize peace and security.<sup>117</sup>

### 2.2.3. NECESSITY OF A REAL UNIVERSALITY

However, it should be recognized that the mechanisms used to respond to the global security threats in the actual environment, are slow or unable to implement policies. One of the main difficulties is the fact that the ICC lacks the full legitimacy linked to universality. As a treaty, the Rome Statute is binding only on those States which are parties to it, and countries such as US, China, Russia, India, Israel, Soudan, etc., are not parties and therefore are not answerable to the ICC in principle.<sup>118</sup>

Hence, the next challenge would be to get the ratifications of those countries, especially the remaining members of the UNSC. If the Rome Treaty was universally accepted the ICC could become really global and serve a universal justice.<sup>119</sup>

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<sup>116</sup> See R. Charvin, *Evaluation critique de la Cour Pénale Internationale (1998-2002-2016)*, Investig'Action, 18 April 2016, available at: [www.investigaction.net/evaluation-critique-de-la-cour-penale](http://www.investigaction.net/evaluation-critique-de-la-cour-penale).

<sup>117</sup> Economic and social crimes have very often more massive, though looser or duller, human cost than war crimes, genocide, and other international crimes resulting from physically violent actions.

<sup>118</sup> On this principle, see I. Brownlie, *Principles of Public International Law*, 7<sup>th</sup> ed., Oxford/New York: Oxford University Press 2008.

<sup>119</sup> See United Nations Press Release SG/SM/6257, "International Criminal Court Promises Universal Justice, Secretary-General Tells International Bar Association", supra note 42; see also F. Wijdekop, supra note 49. The US Government is reluctant to join the ICC mainly because it fears having US officials or military officers appearing before foreign Judges in The Hague. Maybe a way out, to help the USA ratify the Rome Statute

## CONCLUSIONS

As the only global international criminal jurisdiction pursuing the advancement of a global justice, the ICC deals primarily with the suppression of international crimes, as recognized in the Rome Statute.<sup>120</sup> Moreover, by the deterrent effect of its judgments, it also plays a role in the prevention of the commission of crimes. This aspect is also important in our globalized world.

In order to ensure the deterrent effect of the ICC, it is thus necessary to guarantee the independence and the credibility of this Court. Both could be at risk owing to the lack of real universality of the ICC and to the role or even the political interference of the UNSC in the Court's work.<sup>121</sup> Indeed, by virtue of Articles 13 and 16 of the Rome Statute, the UNSC may refer cases to or defer them from the ICC. Therefore, the relationship between the ICC and the UNSC should be clarified promptly.<sup>122</sup>

With regard to the ICC membership, there is still the need of a real universality, which will be obtained through the ratification of the Rome Statute by all other States, especially the major powers sitting in the UNSC, and holding a *veto* right.<sup>123</sup> Indeed, some permanent members of the

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is to introduce the system of *ad hoc* Judges of the nationality of the defendants, as it is the case at the International Court of Justice (ICJ). That would encourage the USA and other hesitating countries to ratify the Rome Treaty of the ICC. Thus, we will achieve the real universality and the ICC will become a global court. But, this way is quite complicated because the Rome Treaty has to be amended accordingly.

<sup>120</sup> See Rome Statute of the ICC, Article 5 regarding the ICC's *ratione materiae* jurisdiction.

<sup>121</sup> About this UNSC's role, see for example L. N. Sadat, *The International Criminal Court and the Transformation of International Law: Justice for the New Millennium*, Ardsley/New York: Transnational Publishers, Inc. 2002, p. 81.

<sup>122</sup> See A. K-M. Mindua, *supra* note 108.

<sup>123</sup> *Ibidem*; see also Parliamentarians for Global Action, *Rabat Plan of Action on the Prevention of Atrocities, The Rule of Law and the International Criminal Court*, Chamber of Representatives, Rabat, Morocco, 5 December 2013, available at: [www.un.org/apps/news/story.asp?NewsID=46550#.WOyy72](http://www.un.org/apps/news/story.asp?NewsID=46550#.WOyy72). See also C. Stahn (ed), *The Law and Practice of the International Criminal Court*, Oxford: Oxford University Press 2015, p. 1279. See also N. Chazal, *The International Criminal Court and Global Social Control: International Criminal Justice in Late Modernity*, Abingdon Oxon/New York: Routledge 2015.

UNSC (USA, Russia and China) are even not State Parties to the Rome Statute but they are in a position to refer or defer cases to the ICC. Such an absurdity<sup>124</sup> will be corrected when the ICC achieves full universality.

In the same vein, there is a need to formalize the recognition of new globalized offences, such as “ecocide”, “patrimonicide”, and other economic crimes, as explained above.<sup>125</sup> These new crimes must be recognized quickly, through appropriate mechanisms such as, international conventions or treaties, in order to raise awareness in the general public and to ensure their enforcement by the ICC and other Courts. It is our hope that this will be realized in the years to come.

Meanwhile, the new approach adopted by the ICC OTP in expanding the definition and the scope of existing offences, in order to encompass environmental and economic crimes, is to be encouraged. This is paving the path for the recognition worldwide of new international crimes in positive public international law.

To sum up, real universal justice will be realized only with the recognition of two major factors: recognition of new crimes, and universalization of the ICC. Hence, the ICC will become really a court of the 21<sup>st</sup> century, characterized itself by the phenomenon of globalization. Such a move will bring some relief to our planet, “Mother Earth” and more peace and happiness to mankind.<sup>126</sup>

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<sup>124</sup> This “absurdity” is understandable considering the “schizophrenia disease” which affects the Rome Statute.

<sup>125</sup> See Section 2§3.

<sup>126</sup> To “work towards the improvement, welfare, happiness, and peace of the human family and Mother Earth” is also the main mission of the Global Embassy of Activists for Peace, a global non-profit corporation located in Cayey, Puerto Rico, which was created in October 2012 by Dr William Soto Santiago, available at: <http://embajadamundialdeactivistasporlapaz.com/en>; see also W. Soto Santiago, *Humanity's Commitment with the Rights of our Mother Earth*, Global Embassy of Activists for Peace, available at: <http://embajadamundialdeactivistasporlapaz.com/en/press/humanitys-commitment-rights-our-mother-earth>; see also CNBC, *Pope calls for new economic order, criticizes capitalism*, supra note 25.

