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RESPONDING TO MASS ATROCITIES: TRACING THE ORIGINS AND REFLECTING ON THE EVOLVING ROLES OF THE RESPONSIBILITY TO PROTECT AND INTERNATIONAL CRIMINAL COURT

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Abstract

The Responsibility to Protect (R2P) and the International Criminal Court (ICC) share a common moral foundation rooted in the post-WWII human rights agenda. They constitute the response of the international community to mass atrocities around the world. R2P, as a political and normative framework, seeks to ensure that states uphold their duty to protect populations from genocide, crimes against humanity, war crimes and ethnic cleaning, and the ICC as an independent judicial mechanism, aims to prosecute and try those individuals alleged to have committed mass atrocity crimes.

This paper traces the historical foundations of both frameworks, shared objectives and conceptual complementarities that underpin their roles in atrocity prevention and response. It also explores the tensions that have emerged in their interaction, particularly in the face of political realities, issues of sovereignty and challenges of contested implementation. It further analyzes how the functions and relevance of R2P and ICC have evolved over time, how they have affected the response to more recent conflicts and how these developments have influenced their overall effectiveness. By situating R2P and the ICC within the broader architecture of atrocity prevention and accountability, the paper aims to offer a nuanced understanding of their interplay and propose pathways for enhancing their coherence and impact in the face of ongoing and future mass atrocities.

Keywords: *Responsibility to Protect, International Criminal Court, Prevention, Accountability, Atrocity Crimes, Justice, Peace*

Introduction

International criminal law and international criminal justice, though often considered modern legal developments, have roots stretching back centuries. The Nuremberg and Tokyo International Military Tribunals, established in the aftermath of World War II, are widely recognized as the beginning of contemporary international criminal law, marking an unprecedented initiative to prosecute individual perpetrators of mass atrocities (Johnson & Hinderaker, 2002). Despite their groundbreaking nature and generally positive legacy, they were not without criticism, particularly regarding *ex post facto* justice and victor's justice. It is also widely accepted by international criminal law scholars such as Gordon, calling it "an article of faith among transnational penal experts ", that there was a previous trial in history that shall bear the title of the first international criminal trial (sometimes regarded as international war crimes trial), the trial of Sir Peter von Hagenbach in 1474 (Gordon, 2012). This trial is not merely a predecessor to the Nuremberg and IMT, but also a legitimizing actor for the IMT, as well as basis for its judgements. Regardless of whether the trial was international or not and if it did prosecute the equivalent of war crimes of today or not, it is indisputable that it is the first trial that did not accept the defense of superior orders (Gordon, 2012). Yet, it seems that international criminal law, though somewhat recognized since 1474 with the Breisach trial of Hagenbach, is a discipline of "long breaks", as it took World War II to reinstate it, in spite of terrible atrocities happening during World War I and

its aftermath. Similarly, from Nuremberg and Tokyo to Yugoslavia and Rwanda, there was a long period of impunity for international crimes all over the globe (though this time the difference was approximately 47 years, while the previous "break" was more than 470 years). The 1970s also witnessed a tumultuous time for human rights as regimes in Southern Europe fell (the junta regimes in Spain and Greece and Estado Novo in Portugal) while new inhumane regimes were being established after violent revolutions in the Middle East (the cases of Iran, Syria and Afghanistan, among others, serve to illustrate this point), yet there was no action of the international community in the light of these atrocities.

The new regimes or new governments did not face the tasks of treating their populations humanely or prosecuting atrocities committed by previous regimes. Their "task" was the alignment with one of the two blocks of the Cold War and overwhelmingly all newly instated regimes be it in Syria, Somalia, Afghanistan, or Ethiopia, the newly formed political groupings in Greece, Portugal or Spain, all favored and were in close ties and, effectively under the command of the USSR. In the context of the cold war, there was no interference into the "zones of influence" of the other block and, in effect, the "never again" proclaimed in Nuremberg died with its and Tokyo IMT's conclusion.

The three past decades, since the beginning of the post-Cold War era, have witnessed a number of historical instances that have centered on international criminal justice as a tool but also as an aim in itself. The fall of the Berlin wall and subsequently the wave of the falls of the communist regimes throughout the world called for a number of transitional justice measures to prosecute international crimes such as genocide and albeit mostly in the national scenes[28]. This environment of seeking justice in former communist countries, the negotiations of ending the apartheid in South Africa and many other changes in the world, paired with great violent atrocities committed in former Yugoslavia and Rwanda, created the grounds for a global wide consensus to seek international justice as an ends in itself. The sentiment that has been created in the aftermath of the aforementioned developments and cultivated ever since, has the impact it has due to the remarkable similarities it shares with the state of the world following the aftermath of the Second World War and the Nuremberg and Tokyo IMTs. Like in the time of Nuremberg, both Western and Eastern powers found consensus on the need to punish impunity, or at the very least, to placate inner tensions and strive to democratization (at least during the zeal of the 1990s[29]) was at "an all time high" during the immediate aftermath of the 1989-1991 period up until the end of the decade. It was within this period that the ICTY and ICTR were established and the Statute of Rome of the ICC was adopted (to later enter into force in 2002).

The decades that have followed, however, have not produced the same wide acceptance of international criminal law mechanisms. When the ICC was eventually established in 2002, it lacked the support of the biggest liberal democracy in the world, the US, who had played the central role in the initiation of Nuremberg IMT, Tokyo IMT, ICTY (Williamson, 2007) and ICTR (Kaufman, 2009). The handling of the situation in Somalia (in which the US intervened firstly, followed by two failed UN missions), the delay in reaction to the Rwanda genocide, as well as the United Nations Security Council's unwillingness to intervene militarily in the case of Kosovo, all contributed to the erosion of this general enthusiasm towards the "never again" sentiment. The Kosovo intervention was, however, supported by Secretary General of the UN, Kofi Annan, who drew parallels to Rwanda and Kosovo, noting that the twentieth century was once again witnessing in Kosovo all those evils that the visionaries in Hague in 1899 sought to prevent. He made the case that it is not only hope that brings the UN together but also the fear of the repetition of the bloody history of the twentieth century. By recalling the Rwandan case, Annan made the argument that the choice should never be between Council unity and inaction in the times of genocide, for the UN members prime focus would be the upholding of the Charter principles (Annan, 1999). Following Annan's challenge, the independent International

[28] Notable here are the cases of the Baltic States and their broadening of the definition of genocide and crimes against humanity to include the persecution of their nationals opposing communism and the Soviet Union by the Soviet Union during its invasion and re-acquirement of the Baltic States after Nazi occupation, reference: Liivoja, R. (2013)

[29] Reference being made specifically to Russia's first attempts to liberalisation (which has been proven by history to have been short-lived), as well as China's response to the 1989 Tiananmen square student led protests (which China crushed forcibly to maintain the dictatorship in the interior while projecting a more lenient stance on freedom to the world at large: Human Rights Watch (1991), US Department of State, Office of the Historian (no date)

Committee on Intervention and State Sovereignty developed the concept of Responsibility to Protect (R2P) in 2001 (Global Centre for the Responsibility to Protect, 2024). The principle was adopted unanimously in 2005 at the UN World Summit Outcome Document (Global Centre for the Responsibility to Protect, 2024). The new millennium found international criminal justice with two global enterprises of a permanent nature. This article will focus solely on these two enterprises with the aim of understanding whether the two have, as in the moment of writing, achieved the purpose behind their establishment and whether they aid or corrode one another's goal.

1. Establishment of the ICC as an Instrument of the Responsibility to Prosecute

The history of the ICC as an institution that is the incarnation of the responsibility to prosecute international crimes is very recent, with it beginning in 2002 with its establishment. However, the history of the making of the ICC is far longer than the mere four years between the Statute of Rome's adoption and the entry into force. The first deliberations and recognition of the need to establish an international court that would try such crimes began much earlier than 1998. Bassiouni (1998) recognizes the discussions and urging by the International Investigative Bodies sent out by the international community to investigate the aftermath of World War I for the punishment of the German Kaiser and the Turkish authorities' atrocities in Armenia, as the first acknowledgement of the need for an international criminal court. Other sources, place this "starting point" closer in time, referring to the aftermath of World War II and Resolution 260 of 9 December 1948 of the General Assembly of the Union that adopted the Convention on the Prevention and Punishment of the Crime of Genocide. This view is the one held by the publications of the ICC itself (ICC, 2025) and by the UN (UN Website, 2025). Some scholars, like Washburn (1999), start the discussion of ICC history with what Bassiouni would regard as the latest (and, effectively final) attempt: the 1995 United Nations General Assembly Resolution on the Establishment of an International Criminal Court by the Preparatory Committee. For the purpose of this paper, it is Bassiouni's view that holds the most value. As Bassiouni observes (1998), the non-compliance with the Treaty of Versailles (which foresaw the creation of tribunals to try the "supreme offense against international morality and the sanctity of treaties" committed by Kaiser Wilhelm II) by not creating the tribunals and not trying the perpetrators, was a product of the political will of the international community at the time, which chose to give precedence to maintaining good relations at the expense of justice (opinion of the author). Bassiouni's work, being the most comprehensive work in the area of studying the legislative history of the ICC, with which this section is concerned, goes on to underline in great detail all the tentatives of the international community since the League of Nations 1937 (Bassiouni & Schabas, 2016) attempt at establishing a court that would judge terrorism (which, ironically was abandoned at the wake of the Spanish war, now well-known for its atrocities and the German politics in Europe prior to the start of the Second World War) together with the progress made directly after the Second World War with the two IMTs and the stagnation that then ensued immediately with the start of the Cold War. He notes, and it is indeed to be noted that, during these times there was a separation between the norm-making aspects of international criminal law and the mechanisms through which these norms would be enforced, that is, the work for conventions that dealt with international crimes and the tentative for an international criminal code, were done separate from tentatives on how a court or other enforcement mechanism would ensure the observance of these norms. The result and trend, has been that the creation of the norms has comparatively with the enforcement mechanism, been significantly easier. Bassiouni expresses the opinion that this is due to political considerations that make it easier to accept a norm that sends the message of the state following a noble aspiration than it is to accept the jurisdiction of another entity that would decide on the lawfulness of the state's action (Bassiouni & Schabas, 2016).

Interestingly, the issue of an international criminal court did not reappear in the agenda of the UN due to a particular incident of atrocities but due to a 1989 proposal by Trinidad and Tobago to establish an international criminal court that would deal with the, then-deemed, international crime of drug trafficking. The UN asked the ILC to draft the statute of such a court. In this sense, it was the ILC that pushed forward the creation of the ICC as we know it, inside the limits of its mandate by the UN that originated in the drug trafficking area. In 1994, the draft was ready and the 49th General Assembly session decided to consider the proposal via an ad hoc committee and to have it in the agenda of the 50th General Assembly session (Bassiouni & Schabas, 2016) in 1995. The ad hoc committee decoupled

the draft statute on the International Criminal Court from the draft Code of Crimes Against the Peace and Security of Mankind, again following a trend of separating the legal norm from the legal entity that will enforce it.

The report of the 1995 Ad Hoc Committee was then succeeded by the Preparatory Committee on the Establishment of an International Criminal Court by a General Assembly Resolution (A/RES/50/46). It should be noted that the newfound impetus was a result of the events in Bosnia and Rwanda being in the eye of the public globally. The period of working of this PrepCom was marked by periods of higher consensus and lower consensus, purposeful delays and genuine delays, steps forward and steps back (Bassiouni & Schabas, 2016; Zimmermann, 1998), but ultimately the draft Statute of the ICC was ready by May 1998 and on 17 July 1998 history was made by its adoption in the Conference of Rome. It entered into force, pursuant to its Article 126, on "the first day of the month after the 60th day following the deposit by such State of its instrument of ratification, acceptance, approval or accession" (Rome Statute of the ICC, 1998) which corresponded with 1 July 2002.

2. The emergence of the Responsibility to Protect: Sovereignty as a Duty to Prevent Mass Atrocities

That the ICTY and ICTR hold massive weight and contribution in the pursuit of international criminal justice, that does not change the fact that thousands of people died in Yugoslavia, with the Srebrenica massacre being a blatant act of genocide, and that an estimate of 800 000 people died during the Rwandan genocide (Britannica, 2025). Perhaps, the worst stings for the international community were Srebrenica, being an immense failure, and the great delay of reaction in the Rwandan genocide. To understand the massive failure in Rwanda that is central to understanding the failure of the international community, one has to understand the context created after the Somalia (Dayal, 2018) intervention of the UN peacekeeping missions.

Somalia emerged from colonialism in a unique position for an African state: it was one nation (Somali people) with one ethnic identity, united by one language and one religion. Somali territory, however, was divided into 5 different territories controlled by different colonial powers under different cultures of governance during colonialism and when the Republic of Somalia proclaimed independence only two of those territories were united (which would then comprise the North, once controlled by England and the South, once controlled by Italy) (Prunier, 1995). In the 1970s, like other states[30] in the developing world, Somalia had a communist regime installed that had initially close ties with the USSR (which waned when the USSR favored and helped Ethiopia during the Somali military campaign of annexing the part of Ethiopia's territory that had been Somali). With the loss of the national cause of "unification", the regime needed a new enemy, which, customary to these regimes, was the enemy from within. Thus, in Somalia, there were privileged and prosecuted family clans. Tensions only continued to rise until, as with the rest of the world, 1990 came around and the regime was overthrown by the gathering of quasi-political organizations composed of family clans. The breakout of the government, however, proved to be very violent, as the different family clans turned upon one another in acts of extermination under the accusation that one or another clan had been closer to the regime or collaborated with it. The humanitarian crisis that ensued was catastrophic and amidst the weak measure by the UN in response to the crisis (UN Security Council Resolution 733; UN Security Council Resolution 775) the numbers of the dead and refugees continued to skyrocket. The timing was such that the US had a new president-elect (Clinton), so when President Bush decided to intervene in Somalia in a humanitarian mission with the UN, (United Nations International Task Force (UNITAF) the aim was to be out of the country by the time the new president would be inaugurated. The international community was optimistic of the success of the mission and US allies were quick to join the initiative. Looking back, it was lack of knowledge of the history-socio-cultural context of Somalia that led to the events that unfolded. The assumption was that the operation would be swift and its humanitarian results were indeed satisfactory. The issue, though, was that there was no proper consensus on the way the mission would continue and how long it would last. The UN continued to try and negotiate with the family clan warlords, while the US grew impatient with the mission and drastically reduced the number

[30] Ethiopia, Iran, Afghanistan, Syria among others

of troops in Somalia after the inauguration. Meanwhile the UN and US allies continued to keep their troops and try to "broker" a peace agreement with the clan family warlords, albeit the lack of understanding of the context under which Somali society operated hindered their work towards the reinstatement of a Somali state. In 1993, UNOSOM 2 began. The local political scene had understood that there was money that could be made by "pandering" to the UN and unknowingly, the UN became a full-on political player in Somalia itself by favoring one group that was more compliant to other more "unruly groups" and thus built resentment in factions of the local population. When Clinton sent troops to Somalia again, three months after their departure, it was thought that the situation would change for the better. However, tensions between local groupings and anger towards the UN resulted in an intensification of violence until 3 October 1993, termed as the Black Hawk Down incident, in which an American helicopter was shot down. One crew member was taken as a prisoner, while another was executed and his body was dragged around the Somali capital. The US withdrew. In a dragged out manner, all major powers started to reduce their presence in the mission and UNOSOM slowly degenerated as only third world troops were left in Somalia. These troops sold UN property left in Somali soil, while the situation seemed to come to a calming of fights similar to pre-intervention levels (UN Security Council Resolution 733 ; UN Security Council Resolution 775). By 1994, it was voiced by many that the UN had failed and should leave Somalia.

It is exactly under this situation that the calls of UN officials to increase UN troops in Rwanda prior to the onset of the genocide, were ignored. The UNAMIR, UN mission in Rwanda, was authorized in the Security Council only three days after the Black Hawk Down incident, which resulted in the drastic withdrawal of the five permanent members of the Security Council from peacekeeping, reflected in the limited mandate of the UNAMIR (Dayal, 2018). This resulted in peacekeeper forces that were unable to stop the genocide from happening. In January of 1994, commander Roméo Dallaire of UNAMIR informed the UN of the genocide in the making but officials, including Kofi Annan, Secretary General of the UN, himself, rejected Dallaire's request for enforcement. Annan would reveal in his memoir that his primary concern at the time was that peacekeeping operations were in a fragile state and that another failure like Somalia would prove fatal for peacekeeping itself. Moreover, the view of top diplomats, such as Annan and Albright, was that the situation in Rwanda was an easier case than that in Somalia or the rising issue in Bosnia, as in Rwanda the civil war had ceased and a peace agreement had been achieved (Dayal, 2018). Three months later genocide engulfed the country and the killing of 10 Belgian peacekeeping troops proved to be a successful tactic by the genocidal locals to "get rid of" the UNAMIR. The killing of the peacekeeper troops resulted in the complete withdrawal of the mission and the hundreds of thousands of deaths by genocide in the days that followed.

The massacre of Srebrenica, which was considered a safe zone by the international community to which the Bosnian Muslim population fled for protection and were turned away by the Dutch peacekeepers to later face their deaths at the hands of Serban troops, continues to be an unresolved historical moment to this day. Several applications have been made to the European Court of Human Rights by relatives of victims and survivors alike, seeking to hold the Dutch and UN peacekeepers at least partially accountable for the massacre (ECtHR Mustafić-Mujić and Others v. the Netherlands (application no. 49037/15) ; ECtHR Stichting Mothers of Srebrenica and Others v. the Netherlands (application no. 65542/12)), yet by and large no such accountability has been recognized by the ECtHR, though it has been by the Dutch Supreme Court (Deutsche Welle, 2019), albeit in a way that has disappointed the plaintiffs (Deutsche Welle, 2019) and legal opinionists (Dannenbaum, 2019) alike.

These terrible events contributed to the emergence of the Responsibility to Protect as a political and normative principle. The idea was articulated by Kofi Annan during the Kosovo War, where he drew parallels with Rwanda and called for a new norm that would allow the international community to react timely and decisively to situations that could lead to international crimes. The International Committee on Intervention and State Sovereignty worked on this concept and in 2001 had prepared the report "A Responsibility to Protect" (Australian Red Cross, 2011). The idea gained support gradually and in 2005, UN member states agreed on it by including in the Resolution of the General Assembly on 16 September 2005 60/1, the 2005 World Summit Outcome (UN Website, 2025).

The part of the resolution that makes up R2P is named "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity" and is comprised of paragraphs 138, 139 and 140. R2P is set out to do was protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, whether ongoing or in the preventative stage, whether by their governments as the perpetrators or not and whether peacefully or by the use of force when need be.

3. Addressing Mass Atrocities and Armed Conflicts in the Post-ICC and R2P Era: The Evolving Role in Ukraine and Gaza

As mentioned previously, the new millennium found the world equipped with new tools in the international criminal justice toolbox. As the ICC's mandate started on atrocities committed from 1 July 2002 onwards and within states that had ratified it, a number of ad hoc tribunals that are not the subject of this paper, were established in the first decade after the creation of both ICC and R2P[31].

As the ICC was established a few years prior to the R2P, it is firstly the work of the ICC that ought to be examined. The very first referral to the court came in 2004, in the light of the situation in Uganda (ICC Website, 2025). The first case of arrest in the ICC (and later, the first case of conviction) was that of Lubanga (ICC Website, 2025), a Congolese warlord that had recruited children under the age of 15 as military personnel in the civil war in the Democratic Republic of Congo. From its beginning to present day, the ICC has initiated 32 cases that have dealt with the atrocities committed in Darfur, Sudan, the Democratic Republic of the Congo, Kenya, Central African Republic, Libya, Mali, Central African Republic, Côte d'Ivoire and Uganda. Out of all these 32 cases there have been only 8 convictions. In 10 of these cases, the defendants are not in custody of the ICC and have not been for years while 2 cases have been closed due to the passing of the defendants. In the vast majority of cases, the charges have been dismissed. The 8 convictions are comprised of 4 convictions of individuals that have committed international crimes in the territory and context of the DRC, only one (Abd-Al-Rahman) in the context of the conflict in Sudan, only one (Ogenwen) in the context of Uganda's civil war (The Prosecutor v. Dominic Ongwen) and two (al Mahdi and al Hassan) in relation to international crimes in the context of the Mali civil war (ICC Website, 2025). Meanwhile, December of 2024 saw the end of the presentation of evidence and the start of deliberations for the case of Abd-Al-Rahman, accused of war crimes and crimes against humanity in Darfur, Sudan (ICC-02/05-01/20), who is, as of now, convicted/found guilty. The Court has investigated the situations in Uganda, Central African Republic (which was referred twice), Kenya, Congo, Sudan, Côte d'Ivoire, Libya, Mali, Burundi, Bangladesh/Myanmar, Afghanistan, Republic of the Philippines, State of Palestine, Venezuela, Georgia, and Ukraine (ICC Investigations, 2025). Moreover, the Court has conducted (or is in the process of conducting) 11 preliminary examinations. So far, 8 have been closed with the decision to not proceed to investigation and 3 are ongoing (Belarus referral by Lithuania, Venezuela and Nigeria (nearing the investigative phase)). By this data, it is safe to conclude that the ICC has been involved in the majority of cases of atrocities that have taken place globally since the beginning of its mandate (with Syria being the glaringly obvious absence in the list). The impact of the court is yet to be felt in the brunt of the cases brought before it. The majority of the cases refer to conflicts that have taken place more than 20 years ago. In many of those countries or territories, such as Libya (Global Conflict Tracker, 2025a), the State of Palestine (Global Conflict Tracker, 2025b), Central African Republic (Global Conflict Tracker, 2025c), Sudan (Global Conflict Tracker, 2025d), Afghanistan (Global Conflict Tracker, 2025e), Venezuela (Global Conflict Tracker, 2025f), Ukraine (Global Conflict Tracker, 2025g), Myanmar (Global Conflict Tracker, 2025h), the tense situations, war and civil war (or civil war-like environment) have continued since or have experienced passive periods and "re-ignition" periods. Naturally, the question of the effectiveness of the Court in deterring atrocities arises.

When compared with its effective predecessors, and the catalysts to its existence, ICTY and ICTR, how does the ICC hold up? Recalling the ICC's purpose it seeks to "dispense justice, even retributive justice; provide redress to the victims of atrocities, keep a just record of history, reinforce social values, educate generations to come on the historical reality, and deter and prevent future

[31] By which are referred the following, but not only,: Special Tribunal for Lebanon, Kosovo Specialist Chambers, The Extraordinary Chambers in the Courts of Cambodia

atrocities". These objectives have largely been the objectives of both the ICTY (ICTY Website, 2025) and ICTR (Scharf, 2008) with regards to their mandate.

Taking a look at them one by one, starting with dispensing justice, it is a hard case to convince the general public (and probably even the legal one) that the ICC with its 8 convictions in the 23 years that have followed its establishment, has fully achieved its aspirations. The long time that has passed since the cases have been referred to the ICC and the taking of the decision is not necessarily an indicator of poor performance in itself, as the ICTY, the ICTR and all other ad hoc tribunals of the twentieth century onwards (that is, initiatives post the Tokyo IMT), have taken a long time to dispense their judgments, and have, much like the ICC, lost the opportunity to serve justice with regards to key perpetrators that have passed away or not been able to be arrested/extradited. It is not only on the basis of time passed or the number of cases that have been "dropped" that the author of this paper supports the opinion that the ICC has failed to dispense justice, rather it is on the basis of the general low yield of cases (only 32 in 23 years) in decades filled with atrocity after atrocity. Looking at the case record of the ICC, it is apparent that it has not tackled the main perpetrators and that its work is largely hindered by its inability to take suspects into custody. The ICTR, during its 21 year existence, tried more than 100 cases (ICTR Website, 2019). The figure is even greater for the ICTY (ICTY Website, 2023) during its 24 years. The serious lack in performance of the ICC is baffling considering its sizable number of state parties. Although the global nature of the court accounts for an amount of delay between investigation and trial (as the cases do not share the same "environment"/conflict as did the cases of ICTY and ICTR), the ICC case figures still indicate a failure in its dispensing of justice since its formation. Redress to the victims is not necessarily at a better state, as the proceedings for compensation from the designated fund take years in themselves and are held only after the finalization of a "guilty" verdict. Lastly, the keeping of a record of history has been very limited as the number of cases tried has been limited, while reinforcing social values and deterring further atrocities, as seen by the state of matters in the countries discussed, has not been achieved at all. The situation in Congo, which is the country with the most cases of convictions (3 cases) remains dire and escalating till today. The ethnic tensions between the Hutu and Tutsi populations in Congo and by extension, Congo's deteriorated relationship with Rwanda have brought it into an ongoing violent crisis that has been, reportedly, worsening in the past few years (CFR Website, 2025).

Yet, perhaps, instead of the number of policy and human rights centers hung up on own ethnic bias (Baker, 2019; Erol, 2023; Kuttab, 2023) regarding the stance of the Court towards the conflict between Israel and Palestine, the biggest acceptance of failure comes from the heralders of the Court's "achievements". To sum up what has been noted as the Court's achievements one could say: its existence, the number of parties, the potential in paper (Erol, 2023). Put quite "poetically" by the second president of the ICC (Judge Sang-Hyun Song, 2018), the Court's deterring power was felt because some African ministers had told him that fear of prosecution by ICC was a "crucial factor that helped prevent large-scale violence surrounding elections in those countries". It is poetic indeed as the most affected countries in Africa have had violence following elections or have not had elections at all. The measure of success of the ICC is so small that the president himself used vague language to gain a sense of success, as the prevention was of "large-scale" (by which is meant what magnitude of violence we cannot know) violence but not of violence as a whole.

And the R2P? A speech by Gareth Evans Chair, International Advisory Board, Global Centre for the Responsibility to Protect in 2020 succinctly says all there is to say, in the opinion of this paper. As many commentators note, the make and break of the R2P was the response in Libya in 2011 following the start of the Arab Spring. While initially successful in protecting the population of Libya (Gholiagha, 2013; CFR, 2023) failures in Syria, Sudan, Yemen and Myanmar are glaring examples of the "fall" of R2P. Evans, when counting the successes counts Kenya, Cote d'Ivoire and Libya, yet in all three there were international crimes that were committed on a grand scale, enough for the cases to reach the ICC. Kenya, Sierra Leone, Guinea, The Gambia, Côte d'Ivoire, Liberia, and Kyrgyzstan are quoted as "preventative" successes. Yet, it is obvious that Russia and China going sour towards R2P after the regime change in Libya and their vow to veto any such upcoming tentative has paralysed R2P.

Most of the literature that focuses on the dynamics between the ICC and R2P focuses on their different natures on paper and whether or not this difference hinders the other's actions. ICC's judicial nature and R2P's political one are seen as at odds (Ralph, 2015). Moreover, there is a notion that the ICC propagates "justice" while the R2P propagates "peace". The reality is that both enterprises in actual

cases have propagated both peace and justice or injustice and ongoing violence (usually due to their inability to react in an adequate manner) due to lack of political will. In all of the cases that are deemed as failures, political interests or meddling by China through acquisition of assets and Russia through direct military operation by Wagner group, or other regional powers such as Turkey, are the decisive factors of whether or not international community enterprises have any positive impact. The situations in Ukraine, Gaza and Syria today being possibly different than yesterday's does not depend on the increased effectiveness of the ICC or the R2P but that one of the greatest propagators of war, instability and crimes against humanity, Russia, while being itself involved in a conflict, has started to lose influence.

This moment in time and the war in Ukraine might be the new 1990 in terms of support for international criminal justice rising again worldwide. The question of ICC and R2P should not be whether or not they are political mechanisms (as they are, just as inherently as the justice system domestically is always under the risk of being politicized), but what political goal is being followed. There was no reason to paralyse R2P because of the regime change in Libya. It was the regime that was acting as a state that failed to protect its citizens and fighting that regime as an actor of evil was a justified and moreover, just, course of action.

The future of international criminal justice, like all of its history, is dependent on the political will of the big powers to turn themselves towards justice and humanity. No institution can achieve something which the political will does not allow. If it was that easy for institutions to uphold peace and justice then there would be no international crimes as the domestic institutions would adequately administer justice. Yet, institutions are always dependent on politics but the political system should be a humane system enough to make place for the administration of justice. The reality of the twentieth century, is that more people have been killed by their own governments, through a phenomenon coined as democide that engulfs international crimes as genocide, crimes against humanity and war crimes, than in the two world wars combined. The total of deaths is estimated to have been equal to a nuclear war drawn out through the century (Rummel, 1997). When the biggest perpetrators of crimes are governments and governmental organizations, it is hard to believe that the issue can be treated in a politically-sterile way.

Conclusions

To reiterate, the paper concludes that the dynamic between the ICC and R2P in real life situations is not one of opposition in which the efforts of one harm the other. On the contrary where one has been successful, only there has the other been successful as well. Thus, the paper keeps the stance that the question that is commonly referred to as peace versus justice is more akin to political alliance for impunity versus justice and peace. The correlation of mass atrocities with despotic and illiberal governance is undoubtable and any effort to international criminal justice has to come with efforts to liberalize governance. The end of World War II saw one such liberalization as the Allies had freed societies during the war, yet allowing the illiberal east to continue its illiberal governance through the Cold War brought about a decades long hiatus in international criminal justice as more and more mass atrocities took place. The 1989-1991 period, with the toppling of numerous undemocratic regimes saw a turn in international justice as Russia's Yeltsin administration was pro-westerner and China, too, attempted to appear more free market-directed. The following decade saw strides in criminal international justice because the world at that moment was more liberal in governance than ever before. Yet, as Putin's Russia became more and more authoritarian and Xi's China followed suit, international criminal justice has been halted. A historical perspective seems to tell us that it is only global liberalisation of governance and politics that can reopen that "faucet" and bring forth both peace and justice.

Bibliography

Johnson, S. W., & Hinderaker, J. H. (2002). Guidelines for cross-examination: The cross-examination of Hermann Goering. *Bench & Bar of Minnesota, 59*(October), 22.

Gordon, G. S. (2012). *The trial of Peter Von Hagenbach: Reconciling history, historiography, and international criminal law*. https://ssrn.com/abstract=2006370

Liivoja, R. (2013). *Competing histories: Soviet war crimes in the Baltic States*. ResearchGate. https://www.researchgate.net/publication/299783415_Competing_Histories_Soviet_War_Crimes_in_the_Baltic_States

Human Rights Watch. (1991). *Human Rights Watch World Report 1990 - China*. United Nations High Commissioner for Refugees. https://www.refworld.org/reference/annualreport/hrw/1991/en/94437

U.S. Department of State, Office of the Historian. (n.d.). *Tiananmen Square, 1989*. U.S. Department of State. https://history.state.gov/milestones/1989-1992/tiananmen-square

Williamson, C. (2007). The role of the United States in international criminal justice. *Penn State International Law Review, 25*(4), Article 7. http://elibrary.law.psu.edu/psilr/vol25/iss4/7

Kaufman, Z. D. (2009). The United States' role in the establishment of the United Nations International Criminal Tribunal for Rwanda. In P. Clark & Z. D. Kaufman (Eds.), *After genocide: Transitional justice, post-conflict reconstruction, and reconciliation in Rwanda and beyond* (pp. 229–260). Columbia University Press. https://ssrn.com/abstract=1916775

Secretary-General, & Annan, K. (1999). *The effectiveness of the international rule of law in maintaining international peace and security*. United Nations.

Global Centre for the Responsibility to Protect. (2024). *What is R2P?* https://www.globalr2p.org/what-is-r2p/

Bassiouni, M. C. (1998). *The statute of the International Criminal Court*. Transnational Publishers.

International Criminal Court. (n.d.). *Understanding the International Criminal Court*. https://www.icc-cpi.int/sites/default/files/iccdocs/PIDS/docs/UICCGeneralENG.pdf

United Nations. (1998–1999). *Establishment of an International Criminal Court—Overview*. https://legal.un.org/icc/general/overview.htm

Washburn, J. (1999). The negotiation of the Rome Statute for the International Criminal Court and international lawmaking in the 21st century. *Pace International Law Review, 11*(2), 361. https://doi.org/10.58948/2331-3536.1238

Bassiouni, M. C., & Schabas, W. A. (2016). *The legislative history of the International Criminal Court* (Vol. 9). Brill-Nijhoff.

United Nations General Assembly. (1995). G.A. Res. 50/46, U.N. Doc. A/RES/50/46.

Zimmermann, A. (1998). *The creation of a permanent International Criminal Court*. https://www.mpil.de/files/pdf2/mpunyb_zimmermann_2.pdf

United Nations. (1998). *Rome Statute of the International Criminal Court*.

Britannica. (n.d.). *Rwanda genocide of 1994*. https://www.britannica.com/event/Rwanda-genocide-of-1994

Dayal, A. (2018, October). Beyond ‘do something’: Revisiting the international community’s role in the Rwandan genocide. *War on the Rocks*. https://warontherocks.com/2018/10/beyond-do-something-revisiting-the-international-communitys-role-in-the-rwandan-genocide/

Prunier, G. (1995). *Somalia: Civil war, intervention and withdrawal 1990–1995*. WRITENET. https://www.refworld.org/reference/countryrep/writenet/1995/en/54273

United Nations Security Council. (1992). *Resolution 733 (S/RES/733)*.

United Nations Security Council. (1992). *Resolution 775 (S/RES/775)*.

European Court of Human Rights. (n.d.). *Mustafić-Mujić and Others v. the Netherlands (Application No. 49037/15)*.

European Court of Human Rights. (n.d.). *Stichting Mothers of Srebrenica and Others v. the Netherlands (Application No. 65542/12)*.

Deutsche Welle. (2019). *Netherlands partially responsible for Srebrenica massacre, court rules*. https://www.dw.com/en/netherlands-partially-responsible-for-srebrenica-massacre-court-rules/a-49646038

Dannenbaum, T. (2019). A disappointing end of the road for the Mothers of Srebrenica litigation in the Netherlands. *European Journal of International Law: EJIL: Talk!*. https://www.ejiltalk.org/a-disappointing-end-of-the-road-for-the-mothers-of-srebrenica-litigation-in-the-netherlands/

Australian Red Cross. (2011). *International humanitarian law and the responsibility to protect handbook*. https://www.redcross.org.au/globalassets/cms-assets/documents/about-us/ihl-r2p-responsibility-to-protect.pdf

United Nations. (n.d.). *About the responsibility to protect*. https://www.un.org/en/genocide-prevention/responsibility-protect/about
International Criminal Court. (2006). *ICC – First arrest for the International Criminal Court*. https://www.icc-cpi.int/news/icc-first-arrest-international-criminal-court
International Criminal Court. (2025). *Darfur, Sudan*. https://www.icc-cpi.int/darfur
International Criminal Court. (2025). *Ongwen case: The Prosecutor v. Dominic Ongwen (ICC-02/04-01/15)*. https://www.icc-cpi.int/uganda/ongwen
Council on Foreign Relations. (2025). *Conflict in Syria*. https://www.cfr.org/global-conflict-tracker/conflict/conflict-syria
International Criminal Court. (2025). *Cases*. https://www.icc-cpi.int/cases?f%5B0%5D=accused_states_cases%3A358
International Criminal Court. (n.d.). *The Prosecutor v. Ali Muhammad Ali Abd-Al-Rahman (ICC-02/05-01/20)*.
International Criminal Court. (2025). *Investigations*. https://www.icc-cpi.int
Council on Foreign Relations. (2025a). *Civil conflict in Libya*. https://www.cfr.org/global-conflict-tracker/conflict/civil-war-libya
Council on Foreign Relations. (2025b). *Israeli–Palestinian conflict*. https://www.cfr.org/global-conflict-tracker/conflict/israeli-palestinian-conflict
Council on Foreign Relations. (2025c). *Conflict in the Central African Republic*. https://www.cfr.org/global-conflict-tracker/conflict/violence-central-african-republic
Council on Foreign Relations. (2025d). *Civil war in Sudan*. https://www.cfr.org/global-conflict-tracker/conflict/power-struggle-sudan
Council on Foreign Relations. (2025e). *Instability in Afghanistan*. https://www.cfr.org/global-conflict-tracker/conflict/war-afghanistan
Council on Foreign Relations. (2025f). *Venezuela crisis*. https://www.cfr.org/global-conflict-tracker/conflict/instability-venezuela
Council on Foreign Relations. (2025g). *War in Ukraine*. https://www.cfr.org/global-conflict-tracker/conflict/conflict-ukraine
Council on Foreign Relations. (2025h). *Civil war in Myanmar*. https://www.cfr.org/global-conflict-tracker/conflict/rohingya-crisis-myanmar
International Criminal Tribunal for the Former Yugoslavia. (2025). *About the ICTY*. https://www.icty.org/en/about
Scharf, M. (2008). *Statute of the International Criminal Tribunal for Rwanda*. United Nations Office of Legal Affairs. https://legal.un.org/avl/pdf/ha/ictr/ictr_e.pdf
United Nations. (2019). *International Residual Mechanism for Criminal Tribunals – The cases*. https://unictr.irmct.org/en/cases
International Criminal Tribunal for the Former Yugoslavia. (2023). *Key figures of the cases*. https://www.icty.org/en/cases/key-figures-cases
Council on Foreign Relations. (2025). *Conflict in the Democratic Republic of Congo*. https://www.cfr.org/global-conflict-tracker/conflict/violence-democratic-republic-congo
Erol, A. (2023, August 25). The International Criminal Court: The effectiveness vs criticisms. *Istanbul Center for International Law*. https://icil.org.tr/the-international-criminal-court-the-effectiveness-vs-criticisms/
Kuttab, J. (2023, September 12). The International Criminal Court's failure to hold Israel accountable. *Arab Center Washington DC*. https://arabcenterdc.org/resource/the-international-criminal-courts-failure-to-hold-israel-accountable/
Baker, A. (2019, November 18). The failure of the International Criminal Court (ICC). *Jerusalem Center for Security and Foreign Affairs*. https://jcpa.org/article/the-failure-of-the-international-criminal-court-icc/
Song, S.-H. (2018, July 17). Past achievements and future challenges of the ICC. *International Criminal Court*. https://www.icc-cpi.int/sites/default/files/itemsDocuments/20a-ceremony/20180717-sang-speech.pdf
Evans, G. (2020, November 26). R2P: The dream and the reality. *Global Centre for the Responsibility to Protect*. https://www.globalr2p.org/publications/r2p-the-dream-and-the-reality/

Gholiagha, S. (2013, September 7). From Kosovo to Syria – Why R2P is of no use if the UN Security Council is unable to act together. *Verfassungsblog*. https://verfassungsblog.de/from-kosovo-to-syria-why-r2p-is-of-no-use-if-the-un-security-council-is-unable-to-act-together/

Council on Foreign Relations. (2023, April 20). *The rise and fall of the Responsibility to Protect*. https://education.cfr.org/learn/timeline/rise-and-fall-responsibility-protect

Ralph, J. (2015). Symposium: International criminal justice and the Responsibility to Protect. *Criminal Law Forum, 26*(1), 1–12. https://doi.org/10.1007/s10609-015-9255-0

Rummel, R. J. (1997). *Statistics of democide*. Center for National Security Law, School of Law, University of Virginia; Transaction Publishers.