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# The International Criminal Court (ICC) as a Mechanism for Global Justice and Rule of Law

Paolo Davide Farah\*

Throughout history, institutions have been the chosen platforms for governing and regulating society. However, in the twenty-first century, with unprecedented connectivity and interdependence, working toward multilateral solutions for global challenges, whether in climate change through the UNFCCC or in trade via the World Trade Organization, has become increasingly complex. This rise in complexity within the international landscape has not been met with proportional attention to cooperation, conflict resolution, and harmonizing human values. Only recently have global governance institutions started transcending self-restrained and narrower perspectives to offer new, holistic approaches. *Global Issues*, Palgrave Macmillan/gLAWcal - Global Law Initiatives for Sustainable Development book series, tackles the numerous, critical global challenges our society continues to confront<sup>1</sup> such as tackling climate change and promoting environmental protection,<sup>2</sup> protecting human rights,<sup>3</sup> and supporting

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<sup>1</sup> For some titles in the series dealing with global challenges, see: Oliver P Richmond, *Maintaining Order, Making Peace* (Palgrave Macmillan UK 2002) <<http://link.springer.com/10.1057/9780230289048>> accessed 26 June 2023; Svenja Gertheiss and others (eds), *Resistance and Change in World Politics* (Springer International Publishing 2017) <<http://link.springer.com/10.1007/978-3-319-50445-2>> accessed 26 June 2023; Federico Lorenzo Ramaioli, *Juridical Perspectives between Islam and the West* <<https://link.springer.com/book/9783031378430>> accessed 9 August 2023.

<sup>2</sup> B Gleeson and N Low (eds), *Governing for the Environment: Global Problems, Ethics and Democracy* (2001st edition, Palgrave Macmillan 2001); For the relationship between law and the environment, see generally: R Boardman, *Governance of Earth Systems: Science and Its Uses* (2010th edition, Palgrave Macmillan 2010).

<sup>3</sup> Kurt Mills and David Jason Karp (eds), *Human Rights Protection in Global Politics* (Palgrave Macmillan UK 2015) <<http://link.springer.com/10.1057/9781137463173>> accessed 26 June 2023.

peacebuilding.<sup>4</sup> While globalization, with its mix of positive and negative consequences and externalities, has been extensively studied, this series provides fresh perspectives on how to deal and adapt to new realities in a rapidly changing world.<sup>5</sup> The series also explores how humans and institutions engage with and attempt to manage global issues. Martin Faix and Ondřej Svaček's book on "*ICC Jurisprudence and the Development of International Humanitarian Law*" offers a detailed analysis of the intersection between the International Criminal Court (ICC) and broader questions within international humanitarian law, (IHL) its interconnections and intertwinement with International Criminal Law (ICL) and International Human Rights Law (IHRL). The ICC is a human-designed mechanism aimed at addressing and prosecuting individuals responsible for atrocities. The editors point out that, while many studies focus on how treaty law shapes commitment under public international law, the 'law-making' aspects of the ICC remain understudied. IHL is not a separated or isolated discipline within public international law. The relevance of this mutual relationship can be demonstrated and witnessed in a variety of ways, such as in the search for the definition of the term "armed conflict" as a fundamental term of IHL. Furthermore, connections between ICL and IHRL continue to expand well beyond initial conceptualization, as demonstrated in the current debates on reparations for victims of serious violations of international humanitarian law. This book underscores the ethical considerations and legal institutions to act in the best interests of global society. The ICC plays a pivotal role in shaping the understanding of international humanitarian law, guiding the incorporation of excesses and atrocities into a legal framework that seeks global justice. Faix and Svaček illustrate this through case studies that range from methodological queries about the ICC's operations and legal findings

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<sup>4</sup> Richmond (n 1); H Jeong, *Approaches To Peacebuilding* (2002nd edition, Palgrave Macmillan 2002).

<sup>5</sup> On the needs of crisscrossing between academic disciplines and adopt an interdisciplinary approach see, John N Clarke and Geoffrey R Edwards (eds), *Global Governance in the Twenty-First Century* (Palgrave Macmillan UK 2004) <<http://link.springer.com/10.1057/9780230518698>> accessed 26 June 2023; M Verweij and M Thompson (eds), *Clumsy Solutions for a Complex World: Governance, Politics and Plural Perceptions* (Palgrave Macmillan 2006).

mechanisms to substantive matters like child soldiers and armed conflicts. Faix and Svaček highlight how the ICC's practices serve as an additional means of defining the rule of law, its implications, and its scope. While not initially intended as a law-making body, the ICC increasingly assumes this role in practice. This book focuses on the ICC, but its reasoning applies to other international courts, especially those with adjudicative functions, which are integral to the evolution and reform of international humanitarian law. The ICC's enforcement and interpretation influence IHL development, adapting legal principles to societal transformations and needs. Although the ICC's enforcement is limited to the Rome Statute parties or those accepting its jurisdiction, its impact transcends state boundaries, significantly influencing IHL development, particularly in relation to war crimes. Faix and Svaček emphasize the often-overlooked symbiotic relationship between the ICC and IHL. Even within the constraints of non-party jurisdiction, the ICC has positively contributed to the development of IHL and the clarification of customary principles in international law. Notably, the ICC's influence is pronounced in cases involving war crimes and child soldiers, enhancing clarity and adapting definitions to the evolving nature of conflict, especially those involving non-state actors and asymmetrical warfare. This comprehensive analysis of the ICC sheds light on the intricate interplay between ethical considerations, global challenges, the rule of law, and the role of law and institutions. Bridging divergent worldviews within the global community is arduous, particularly with the growing criticism of Eurocentrism directed at global institutions. Nonetheless, the ICC has demonstrated its adequacy as a capable forum, albeit with limitations, to intersect and expand its boundaries in the pursuit of coexistence in the international community.

This book is a great addition to the *Global Issues*, Palgrave MacMillan/gLAWcal - Global Law Initiatives for Sustainable Development book series. gLAWcal - Global Law Initiatives for

Sustainable Development is an independent non-profit research organization and think tank (<http://www.glawcal.org.uk/>) that attempts to shed new light on Global Issues and Non-Trade Concerns through research, policy analysis, and advocacy. Non-Trade Concerns include good and global governance, human rights, the right to water, the right to food, social, economic rights, cultural rights, labor rights, access to knowledge, public health, social welfare, consumer interests, animal welfare, climate change, energy, environmental protection and sustainable development, product safety, food safety, and security. All of these values are directly affected by the global expansion of world trade and should be protected to balance the excesses of globalization. *Global Issues*, Palgrave MacMillan/gLAWcal – the Global Law Initiatives for Sustainable Development book series aims to develop and analyze innovative, balanced, and sustainable solutions for addressing global challenges, exploring many other relevant matters, and providing insight into the complex interaction of human and natural systems; modes of cooperation and conflict; and the ways and degrees to which human values can be reconciled and more effectively enacted. The focus throughout is on an integration of existing disciplines toward the clarification of political opportunities as well as impending crises. The rapid pace of globalization and its consequent dynamics has brought in its wake a proliferation of crises, governance challenges, and large-scale stresses, unprecedented in their range, seriousness, and urgency. These emerging conditions and relations are varied, global in their range, inclusiveness, and impacts; and many of them are outpacing our legal, political, and ethical systems of deliberation and control. Climate change, the ravages of contagious diseases, and financial turmoil are all ideal examples. Similarly, the transformative implications of new scientific and technological developments, from Big Data to gene editing, are already upon us and rapidly scaling in impact.

Martin Faix and Ondřej Svaček's book on "*ICC Jurisprudence and the Development of International Humanitarian Law*" fits within this broader discussion on how to relate and engage in dialogue with divergent worldviews and transnational issues; whether there can be an effective global instrument to guarantee peace and security within such a fragmented, multilayered, and multiscalar world that, more broadly, should address and deliver new ways to reach rule of law and global justice, in particular when atrocities and reparations for victims of serious violations of international humanitarian law, armed conflicts, or child soldiers are concerned. This edited collection by Faix and Svaček makes for a timely and necessary addition to this effort. It also highlights how institutions evolve over time, adapting swiftly to the evolving sensitivities of civil society. While the prevalent paradigm has been a matter of cooperation versus conflict in addressing global challenges, this book emphasizes the need to transcend this dichotomy for enduring, sustainable solutions in the pursuit of global justice. Addressing global challenges typically occurs within specific disciplinary contexts, neglecting the fact that the transnational and transboundary nature of these issues demands a breadth of perspectives. The legal phenomenon here is not limited to the mere letter of the law and treaties but is complemented by a rich analysis of how individuals perceive, frame, and explain the law in a context where atrocity and violence is dominant. Interpretation, and the evolution of the ICC's practices, brings the reader closer to the social aspects of law and to how, in this rapidly changing context, core ethical questions are co-shaped and subsumed within the legal but also political system.

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