INTERNATIONAL CRIMINAL COURT WITHIN GLOBAL REALITIES, AND DESIRES BEYOND THE CUFF MOUNTAIN: "IS THE ICC A PROPER INTERNATIONAL INSTITUTION?"

Arş. Gör. Sercan TOKDEMİR*

ABSTRACT

This paper covers a review of the article written by Damaska[1] which contains a great deal of critical analysis on the desired legal foundation of the International Criminal Court and doings of the court in reality since 2002. Our aim is to try to pay our attention to the real International Criminal Court and to answer the question of what the Court did so far. As will be seen through the paper, the role of the court in restorative justice discipline mentioning the retributive and/or restorative character of this permanent international criminal court will be discussed. It is, of course, not so far away to release the complementarity principle labelled in the Rome Statute. In this regard, the associations between the complementarity and the sovereignty will be explored giving example from reality such as Libya and Syria, and the principle will be also seen as a stabilizer-mechanism and a well-balanced tool between the sovereignty and universal jurisdiction. As a consequence, it can be said that regarding all points posted below, *"just being in existence is not enough."*

Key Words: International Criminal Court, Rome Statute, Global realities, Paradoxical ICC

---

* Research Assistant at Erzincan University, Law Faculty: Criminal Law and Criminal Procedural Law; graduated from the University of Sussex in October 2013, L.L.M (Master of Laws) in International Criminal Law.

1 Damaska, M. (2009). "International Criminal Court between Aspiration and Achievement". University of California Los Angeles Journal of International Law and Foreign Affairs. 14(1): pp.19-35. Faculty Scholarship Series. *http://digitalcommons.law. yale.edu/ fss_papers/1572.*

I. INTRODUCTION

Damaska, M. (2009). *International Criminal Court between Aspiration and Achievement.* University of California Los Angeles Journal of International Law and Foreign Affairs. 14(1): pp.19-36.[2]

Given essay is addressed to the review of a journal article published by Damaska[3]: *International Criminal Court between Aspiration and Achievement*. The paper of the auther corresponding to paradoxical points in relation to International Criminal Court[4] is a both welcoming and very informative source to international criminal law literature. Noting that, it is highly recommended to read for anybody with an interest in international criminal law as well as humanitarian law through a broad context consisted of much useful information. When one has a general overview through full article, one can realise the main point of his study which was to build his argument, mostly, on his concerns in relation to the participation of victims. In this attractive issue for a permanent international criminal court is a worth-while one to consider for a full performance; however, the position of the defendant cannot be regarded for this new international criminal institution. Reaching a result that, to what extent can be said that the ICC has met fundamental rights at the pre-trial and trial phases in this sense. Although this was written nearly four years ago, more information on defendant's rights issue in due process would help us to establish a greater degree of perception of the international entity and entirety of the ICC. Yet, I would say that to date, a little attention and awareness to the paradox between theoretical ICC and the ICC in practice has been drawn since 2002[5]. A fixed look at the "paradoxical ICC" can form the basis for forward studies upon the ICC in reality

---

2 The article published at University of California Los Angeles Journal of International Law and Foreign Affairs at 1.1.2009 in U.S. Yale Law School Legal Scholarship Repository:*http://digitalcommons.law.yale.edu/fss_papers/1572/?utm_source=digitalcommons.law.yale.edu%2Ffss_papers%2F1572&utm_medium=PDF&utm_campaign=PDFCoverPages* [accessed: 26 February 2014].

3 Mirjan Damaška is Sterling Professor Emeritus of Law and Professorial Lecturer in Law at Yale Law School. He teaches and writes in the fields of comparative and foreign law, procedural law, evidence, international criminal law, and continental legal history.' Available at: *http://www.law.yale.edu/faculty/damaskabio.htm* [accessed: 02 March 2013].

4 The International Criminal Court Available at: *http://www.hrw.org/topic/international-justice/international-criminal-court* [accessed: 4 February 2013]. The Court was established in 1998, and after four years, the legal foundation of the Court named Rome Statute came into force***. Hereinafter: 'the ICC and 'the Statute'***.

5 *Ibid.*

regarding new cases, such as Syria and so on. Thus, the purpose of our paper is to explore the success of the ICC in theory. However, the failure of the ICC within practice will be given to our attentions in the light of Damaska's opinions[6]. The first section of this paper will examine paradoxical ICC regarding his mind challenging scrutiny on the term of paradox[7] with regard to the ICC. This is the best way for further evaluations upon the ICC amongst its short history, whilst the concept of paradox stands on the line between *"aspirations"* and *"achievements".* From those paradoxical approaches to the ICC; before analysing some internal points linked to the study of Damaska[8], the paper will be pushed upon some external points. After a glimpse of methodological review in the context of external points, some core issues will be discussed within the latter step. However, particularly far too little attention has been paid to the complementarity issue. Throughout the following pages, more explanations will be integrated into the aspect of Damaska[9] with the eye of the legal task (the Statute) as it is one of the most significant current discussions in legal forms. In this regard, further work needs to be done to discuss, to a large extent, the jurisdictional issues. Finally, this review paper concludes with my observations that on the one hand, the existence of a desired permanent international criminal tribunal is not sufficient and saying so that this court must revise its current position to shorten the distance between its promises and achievements; on the other hand, establishing an international criminal institution (the ICC) is not just one way and the best method to enter international criminal rules into force and it would be marked as a second but remarkable resort to apply.

II. PARADOXICAL ICC

The piece of the author seeks a significant *"paradox"* between the desire which was noted in the Statute as follows: *"an end to impunity for the perpetrators of grave crimes and thus to contribute to the prevention of such crimes"*[10]- even promises to millions of victims during twenty century- and the achievements of the Court after entering into force of the Statute. One thing would be that both promoting justice and bringing minimum fair trial

---

6 Regarding the whole study of the author in a general sense, pp.19-35.

7 See the term of paradox in Damaska, *ibid*, p.21-23.

8 Such as the principle of the complementarity, the article 17 of the Statute and Damaska *ibid*, p.23, 24; the participation of victims at ICC, Damaska *ibid*, p.26.

9 *Ibid*, pp.23-27.

10 The 'preamble' of the Rome Statute, paragraph 2 and 5.

standards[11] are two significant goals for the ICC. Before elaborating the "paradoxical situations" linked to the ICC, he clearly describes a paradox in the general perception of international criminal law. When one goes ahead reading this part based on terminological aspect, the issue of *"law enforcement"* is a worth-while subject but beyond the scope of this study. As highlighted by Damaska, the impotence of international criminal courts and tribunals[12] due to "the absence of internal power" is at the heart of understanding of indigenous paradoxical situations, as well as external ones. It seems that the writer interprets the law enforcement as deficiency of legal power and has mercy for the Court herein. If any international criminal court (Here, the ICC upon which Damaska has interesting thoughts[13]) is unable to give effect to a command for sentences practically regarding its permanence in the future for *"interests of international peace and security"* [14], it purports an absent power because of having no prisons to impose those. These explanations can be concealed as being rooted in an interesting idiomatic expression that is stated within the piece in question: *"What was good for the goose was not good for the gander."* Worse still, the destiny of law enforcement for sentences, fines, and forfeitures is in the hand of *"outside assistance"*. When the writer rightly points out this issue, it is identified by Cryer and Friman *et al* as *"a voluntary undertaking"* for states[15]; and also acknowledged by Schabas (2011, p.339) in his own words referring to article 103[16] of the Statute: *"The Court has no prison, and must rely upon state-parties for the enforcement of sentences of imprisonment"*[17]. Putting another way, local enforcement is required to perform the decisions in order to support the ICC[18]. Setting aside the issue, which the author considers in relation to law

---

11 Nmaju, M. C. (2009). "Violence in Kenya: Any Role for the ICC in the Quest for Accountability?" African Journal of Legal Studies 3(1): p.94.

12 Damaska, o*p cit, p.20.*

13 *Ibid*, p.19; especially regard the terms of aspiration and achievement in the title of the article.

14 By Amal Alamuddin who is former adviser to Kofi Annan on Syria. Available at : *http://ilawyerblog.com/will-syria-go-to-the-icc* [accessed: 6 February 2013].

15 Cryer, R. Friman, H., Robinson, D. & Wilmshurst (2010). "An Introduction to International Criminal Law and Procedure ". New York, Cambridge University Press, p.504.

16 It is the core article herein in part 10-entitled 'enforcement'.

17 Schabas, W. A. (2011). An Introduction to the International Criminal Court, New York, Cambridge University Press.

18 Cryer and Friman , *op cit*, p.170.

enforcement, it has become one of the central and much-disputed subjects within the field of international criminal law on a large-scale. In that sense, the author draws our attention to the paradox under discussion in the challenges of the ICC with regard to the *"indigenous powerlessness"*[19]. Thus, last but not least, his contribution sheds light on a resolution titled *"Strengthening the enforcement of Sentences"* which was accepted by 2010 Review Conference[20].

III. EXTERNAL POINTS

While it is becoming difficult to ignore the foregoing issue (*law enforcement*), it is needed to look at the "methodological approaches". In fact, in that regard, it is a well-written piece based on a good-systematically-method as can be seen easily from the first glance to the pace of contents. First, the introduction of the paper, including the structure of the essay gives some general ideas to reach a conclusion. As less mentioned above, before analysing the paradox between *"aspirations"* and *"achievements"* of the ICC in details; the meaning of the paradox in the sense of international criminal law is explained. The paper then is pushed upon problems and solutions related to discrepancies. After a mind challenging scrutiny of those "disparities", the last stage gives a summary. Nevertheless, Damaska[21] still has some concerns about this division of the desire and promises of the Court for the proponents. It is important that the author clarifies his actual intention to keep away from misunderstandings; beyond that he motivates his readers for further-reading on the issues elaborated in his paper even if his argument is rooted in the perspective of victims, concluding with a rhetorical question: *"Was it not Burke who said dreams that only creep in some places can soar in others?"*

IV. INTERNAL POINTS

Having looked at the methodological basis, one may claim that there is far more to be learned from this systematic approach. It is not valid purely for methodology, but (also) the paper contains striking insights into the thinking of core issues ascribed to the ICC, which the author engages extensively on the basement of international criminal law. Another prominent point

---

19 Damaska, *op cit*, p.20.

20 The first review Conference is held in Uganda as of 31 May to 11 June 2010; Schabas, *op cit*, pp.340, 390.

21 *Op cit*, p.34-35.

is that his essay includes an illustrative account of how the international community has dealt with the protection of human rights taking into consideration of "gravity" of more serious offences. In other words, both subject-matter and method-matter complete each other. If the latter is feasible, the former of course does make sense and *vice versa.* Otherwise, they are seen as *"giants without arms and legs".* It is now clear that as every coin has two sides, let us turn our attention to the internal points. Some principal issues can be easily determined from the systematic text. Complementarity *"fashion"* ascribed to jurisdiction issue, procedural entanglements (such as, admissibility of a case or situation, evidences' pertinence and admissibility, the cooperation regime) can be exampled. The *"reparation issue"* exacerbated by the reality of *"victim participation"* has been an important task that will be discussed below specifically because of its importance within the ICC's regime. Whilst it is meant as a hiatus between *"aspirations"* and *"achievement",* Damaska[22] gives us a chance to identify the *"retributive"* or *"restorative"* character of the Court in modern criminal justice whispering *"transitional justice"* concept. In addition, in that sense, the relationship between ICC and "regime change" should be evaluated not only from procedural aspects; but also from the issue relevant which is quite intriguing could be usefully explored in practice. This direction may drive us to make some points towards the role of the ICC in the current circumstances such as ongoing and prospective post-conflicts in Syria and reply to central concerns whether the ICC is a proper international court utilizing the materials of restorative justice[23] in the paradoxical situations (or not). Given that, this captivating article again would be putting down on paper; one observer wonders, can it be mentioned about the same paradox as of the establishment of the Court?

When turning to subject matters it will be begun by taking a closer look at complementarity principle[24] that Damaska infers article 17(a) of the Statute as follows:

Treaty of Rome leaves substantially more room for governments to refuse, delay, or manipulate assistance with the court than the ICC regimes. One reason is that the ICC is authorized only in a "complementary" fashion-that

---

22 *Ibid,* p.26.

23 The author stressed the 'proof-taking activity' by victims or their agents, p.30.

24 Consider 'preamble': paragraph 10 of the Statue which says: *"Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions"*; and article 1 of the Statute which says: *"…and shall be complementary to national criminal jurisdictions…"*

is, only if States fail to institute proceedings with respect to the same conduct, or fair to proceed genuinely and fairly, may the ICC then have jurisdiction to prosecute.[25]

In sum, the author believes that this jurisdictional mode has engendered an embankment between the provisions, which desire in order for promoting justice[26], and practice (considering global realities) of the Statute. Bearing in mind, the sentence of Schabas that *"States own courts get the first bite at the apple"*[27] if the State in question does not want to work with the ICC and rejects demand after an announcement from the Prosecutor Office to investigate international crimes, in that respect the mechanism does not work. It is not far that means the absence of legal power *("not lack"*). Consequently, from the Damaska' point of view[28], complementarity principle used in the lieu of universal jurisdiction is the failure of *"Rome Treaty"* on the conduct of the ICC's judicial process. He attempts to explain that 'the complementarity nature of the ICC's jurisdiction is in itself a source of considerable difficulties with a *"cumbersome"* and *"delay-prone"* mechanism.

Leonardo then defines it as a *"transitional authority"* and new-structured sovereignty with a constructive approach. Leonardo believes that *"we cannot think of sovereignty, or any order defining concept of world politics, as a static institution or discourse-the world is socially constructed."*[29] Furthermore, both Sifris[30] and Olsson[31] have contended that the

---

25 Damaska *op cit*, p.23.

26 See: *"The ICC must consider fair trial concerns in determining Libya's application to prosecute Saif al-Islam' published by Jonathan O'Donohue &Sophie Rigney on 8 June 2012 concludes that 'the ICC was established to bring the hope of justice where impunity exists. The court is intended to not only investigate and prosecute crimes under its jurisdiction but to act as a catalyst for genuine national justice by applying the principle of complementarity"; http://www.ejiltalk.org/the-icc-must-consider-fair-trial-concerns-in-determining-libyas-application-to-prosecute-saif-al-islam-gaddafi-nationally* [accessed on 7 February 2013].

27 Schabas, *op cit*, p.64.

28 Damaska *op cit*, p.24.

29 Leonard, E. K. (2005). "Discovering the new face of sovereignty: Complementarity and the International Criminal Court." New Political Science 27(1): p.89.

30 Sifris, R. (2008). "Weighing Judicial Independence Against Judicial Accountability: Do the Scales of the International Criminal Court Balance?" Chi.-Kent J. International & Comparative Law. 8 (88): p.109.

complementarity may be a stabilizer-mechanism and a well-balanced tool between sovereignty principle and universal (criminal) jurisdiction. Those optimistic arguments which are well-grounded by Leonard, Sifris and Olsson might be true that absolute authority of a state has been subjected to global realities socially and politically "*because of nature of the world"*, yet the fact remains that the idea by Clark[32], *"we need to have justice in order to have peace".* Specifically, Libya can be taken as a striking example for the principle regarding the cooperation regime. A rejection came from Libya to collaborate with the ICC. However, the ICC forced Libya to surrender the accused[33]. According to Kersten the context of complementarity is important in order for a good perception of the role of ICC in Post-Gaddafi Libya. He states in terms of a head of state the ICC acts politically implicating in regime change in conflicts[34]. UN Security Council adopted Resolution 1970, which is the second basis that UNSC has requested the ICC to open an investigation for a situation, and 1973 under Chapter VII of the UN Charter. The latter is about the R2P (*the responsibility to protect*) that has a large scope rather than *"a muscular interventionism"* in 1980s. The current UN Secretary-General, Ban Ki-Moon classifies the doctrine into three pillars which are *"protection responsibility of sovereign states", "international assistance and capacity-building"* and *"timely and decisive international responses to actual and potential atrocity crimes"* However, in this regard a *"humanitarian intervention"*[35] was required because Libya failed in *"pillar 1"* responsibility[36].

---

31 Olsson, A. (2003). "The principle of complementarity of the International Criminal Court and the Principle of Universal Jurisdiction." Thesis of Master, University of Lund: Law Faculty p.22.

32 Clark, J. N. (2011). "Peace, Justice and the International Criminal Court Limitations and Possibilities." Journal of International Criminal Justice 9(3): pp.521-545.

33 Charney, J. (2001). "International Criminal Court and the Role of Domestic Courts." American Society of International Law. 95 (1): p. 123.

34 The ICC and Regime Change: Some Thoughts but Mostly Questions. *Available at: http://justiceinconflict.org/2013/01/31/the-icc-and-regime-change-some-thoughts-but-mostly-questions* [accesed: on 12 February 2013].

35 Dunne, T. and J. Gifkins (2011). "Libya and the state of intervention." Australian Journal of International Affairs 65(5): pp.515-529.

36 *Ibid, p.515* cited in Habermas 1999: "*The terroristic use of state power turns a classic civil war into mass murder. If there is no other way out, democratic neighbour states have to intervene in an emergency based on a legitimisation by international law".*

While the international reaction to Libya tests the complementarity and cooperation policies under the Statute, the ICC has not taken any action for Syria yet. Accordingly, the extent to which a parallel can be drawn between the current ICC particularly within ongoing post-conflicts and the proper ICC as *"a potential facilitator of peace"* through complementarity pattern- Stahn pronounces *"complementarity dilemmas"*- within jurisdictional concerns[37]. Even beyond that, Clark propounds that if peace is not delivered by means of justice and both are "in conflict"; the ICC can be an obstacle to peace. Meanwhile, as if the paper of the author, *Damaska* has been disregarded in the course of the thought-provoking debates on complementarity principle, but it is not quite contrary, but it is true. If the debate is to be moved forward, a better understanding of jurisdiction issue needs to be developed. His inspiring approach against to complementarity with the eye of (also) precedents of international tribunals, namely ICTY and ICTR, *albeit*, not much deals with this topic in the piece, opens a gate in order to avoid the paradox under consideration. At the fourth segment entitled "reducing the disparity", suggestion to this problem smiles from the whole part: "an independent enforcement capacity" for the Court. Moreover, this regime based on a full capacity that might be an alternative to make the ICC a proper institute on supra-territorial scale cannot be ignored: it is believed that this well-founded argument feels the need to tackle the paradox between *"aspirations"* and *"achievements"*.

In respect of reparation issues particularly the participation of victims, which are seen as *"time-consuming"* and *"labor-intensive"* by the author[38], it can be said that a significant amendment linked to participation of this stakeholder happened.[39] The involvement of the victims at international scale was seen by Schabas as *'one of the great innovations of the [the Statute]'*.[40] Vogler also indicated that '…in many senses [here, for example the participation of the victims] they[41] reflect a basic dynamic of the contempo-

---

37 Stahn, C. (2012). "Libya, the International Criminal Court and Complementarity A Test for 'Shared Responsibility'." Journal of International Criminal Justice 10(2): p.336.

38 Damaska *op cit*, p.25.

39 Crayer and Friman *et al*, *op cit*, p.479; Tochilovsky, V. (2002). "Proceedings in the International Criminal Court: Some Lessons to Learn from ICTY Experience." European-journal Crime Criminal Law & Criminal Justice. 10: pp.268-275.

40 Schabas, *op cit*, p.342.

41 The word of 'they' refers to *Ad hoc* tribunals which are International Tribunal for Yugoslavia (ICTY was established in 1991) and International Tribunal for Rwanda (ICTR was established in 1994); and International Criminal Court (ICC was established in 1998).

rary law reform process.' For instance, Pre-trial of ICC enabled victims to take part in the court directly in January 2006.[42] The issue of victims' involvement in proceedings has grown in importance in light of "Restorative Justice Discipline", which is very new for international criminal justice as regards restorative approaches by the ICC inspired by *"restorative and therapeutic forms"* (for example victim-offender mediations) in European domestic jurisdictions. From his point of view, "the reparation of harm" to victims can be seen as a brand in this discipline[43]. Accordingly, article 68(3)[44] of the Statute speaks generally about the victims' protection and their involvement in judicial process. The article is built on two prominent concepts related to their participation: the *"views"* and *"concerns".* This provision seems to be saying that the judges render the most important roles of such kind of stakeholders, as well as witnesses. Nonetheless, the judge regarding every case's circumstances evaluates the participation of the victims, and ultimately a decision by the ICC is called for an absolute participation to the proceeding. A Trial Chamber ruled it in the Situation of Democratic Republic Congo in 2006. Subsequently, just after two years, the ICC Appeals also decided in the Lubanga case as follows: *"Under certain conditions, victims may offer and examine ('lead') evidence relating to the guilt of the accused, and challenge the evidence's admissibility and relevance"*. In that respect, the author nailed the difficulties related to *"proof-taking activity"* by victims as well as by their representatives. What is to the point, he then emphasises long-due process at trial phase rather than pre-trial stage and indicates that victims do not have any guarantee for a real implication in due process. The proceedings in the first cases of the ICC have been deferred because of more than hundred applications had been received from the victims. The author clearly explains the relationships between the situation of victims and due process taking an instrumental view. An admissibility of application by a victim takes one year or more (cited in Chung 2008). In that context, it would be interesting to compare practices of *ad hoc* tribunals (here ICTY) and the ICC

---

42 Vogler, R. (2005). A World View of Criminal Justice, England, Ashgate Publishing Company, p.315.

43 Freiberg, A. (2011). "Post-adversarial and post-inquisitorial justice: Transcending traditional penological paradigms." European Journal of Criminology 8(1): pp.93-95.

44 *"Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented and considered at stages of the proceedings determined to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial. Such views and concerns may be presented by the legal representatives of the victims where the Court considers it appropriate, in accordance with the Rules of Procedure and Evidence."*

amongst their experiences. For example, pre-trail stage in the case, *Dusko Tadic* in the ICTY had been completed in 360 days whereas the *Lubanga case* lasted more than 800 days in the ICC. All those issues in relation to reparation can be summarised as a rise of victims' participation in criminal proceedings and repairing of the harm to victims. Awards of compensation can be exampled in this context. As it seems to Damaska[45] that a reasonable approach to tackle reparation issues could be to take into account other stakeholders like defendants, not only to provide an actual participation of the victims. The interests of victims and defendants should be balanced in a *"liberal-democratic justice"* as equality of arms entails this kind of balance. As for the second title, within the subject of the *"harm reparation",* a very logical and problems-solving aspect can be easily interfered. He claims[46] that to struggle with difficulties (such as time-consuming) in the involvement of victims, financial issues, and restorative programmes must be taken out of the task of the ICC and passed to *"Trust Fund"*. To the point, this claim also includes that judges must not be involved in the exercise of restorative tasks. Otherwise, it might damage the character of an international proceeding. It is important to realize that while international criminal courts have a pragmatic function, the reparation issues are based on *moral* principles. From these philosophies, questions have been raised about reparation functions. One of the central questions might be about the entirety of the ICC at international-scale. Is the ICC a proper international institution? It is thought that as it is highly recommended by the author [47], the ICC should have a limited role in the reparation tasks. For example, The ICC can provide for "compensation payments" from the convictions' "*captured"* financial sources.

V. CONCLUSION

As a conclusion, "*just being in existence is not enough [for ICC]"* while people's demands and expectations are rising around talking related to justice. All statements given above prove that there is an apparent gap between theoretical promises and achievements of the ICC in reality. A great deal can be written about the function of the ICC. Should it be retributive or non-retributive (restorative)? The study of Damaska[48], herein, serves as a win-

45 Damaska *op cit,* p.28.

46 *Ibid,* p.30-32.

47 *Ibid,* pp.24-27.

48 *Op cit,* pp.19-35.

dow to an understanding of the process of the integrity with local legal powers. Hence, the reparative role of the ICC has been a controversial and much-disputed issue within the field of ending up impunity of the international serious offences. In the history of experiences of the ICC, living up to expectations of victims and fair trial standards for defendants have been thought of key factors in the duties of the ICC. In the new global, political, and legal developments, on one hand the ICC has a big role in the (post)-conflicts on the other hand, it is now becoming very difficult to bridge the gap between its desires and achievements. Nevertheless, those views stated below respectively by Chaney[49] and Cryer & Friman *et al*[50] should be considered that:

> A single international court can accomplish little, especially if its fundamental purpose is to promote international mores that discourage impunity.
>
> An international court is only one way to enforce international criminal law and it may not be every instance the best one. The ICC is a court of last resort and intended to supplement, not to supplant.

49 Charney, *op cit*, pp.123-124.

50 Cryer & Friman *et al*, *op cit*, p.153.

BIBLIOGRAPHY

BOOKS AND ARTICLES

Charney, J. (2001). "International Criminal Court and the Role of Domestic Courts." American Society of International Law. 95 (1): pp.120-124.

Clark, J. N. (2011). "Peace, Justice and the International Criminal Court Limitations and Possibilities." Journal of International Criminal Justice 9(3)., pp.521-545.

Cryer, R. Friman, H., Robinson, D. & Wilmshurst (2010). An Introduction to International Criminal Law and Procedure. New York, Cmabridge University Press

Damaska, M. (2009). "International Criminal Court between Aspiration and Achievement." University of California Los Angeles Journal of International Law and Foreign Affairs. 14(1) : pp.19-36.

Dunne, T. and J. Gifkins (2011). "Libya And The State Of İntervention." Australian Journal of International Affairs 65(5): pp.515-529.

Freiberg, A. (2011). "Post-Adversarial And Post-İnquisitorial Justice: Transcending traditional penological paradigms." European Journal of Criminology 8(1): pp. 82-101.

Kersten, M., 2012. Justice After the War: The ICC and Post-Conflict Libya. In: Kirsten Fisher and Robert Stewart, ed. Transtional Justice and the Arab Spring. London., pp.1-36.

Leonard, E. K. (2005). "Discovering The New Face Of Sovereignty: Complementarity and the International Criminal Court." New Political Science **27**(1): pp. 87-104.

Nmaju, M. C. (2009). "Violence in Kenya: Any Role for the ICC in the Quest for Accountability?"African Journal of Legal Studies **3**(1): pp.78-95.

Olsson, A. (2003). *The principle of complementarity of the International*

Criminal Court and the Principle of Universal Jurisdiction. Thesis of Master, University of Lund: Law Faculty, pp.1-69.

Sifris, R. (2008). "Weighing Judicial Independence Against Judicial Accountability: Do the Scales of the International Criminal Court Balance?" Chi.-Kent J. International & Comparative Law. 8(88): pp.88-166.

Schabas, W. A. (2011). An İntroduction To The İnternational Criminal Court, New York, Cambridge University Press.

Stahn, C. (2012). "Libya, the International Criminal Court and Complementarity A Test for 'Shared Responsibility'". Journal of International Criminal Justice 10(2): pp.325-349.

Tochilovsky, V. (2002). "Proceedings in the International Criminal Court: Some Lessons to Learn from ICTY Experience." Europeanjournal Crime Criminal Law & Criminal Justice. 10: pp.268-275.

Vogler, R. (2005). A World View Of Criminal Justice, England, Ashgate Publishing Company.

INTERNET SOURCES

The International Criminal Court Available at:

http://www.hrw.org/topic/international-justice/international-criminal-court [accessed: 4 February 2013].

The ICC must consider fair trial concerns in determining Libya's application to prosecute Saif al-Islam Available at*: http://www.ejiltalk.org/the-icc-must-consider-fair-trial-concerns-in-determining-libyas-application-to-prosecute-saif-al-islam-gaddafi-nationally* [accessed on 7 February 2013].

The ICC and Regime Change: Some Thoughts but Mostly Questions. Available at: *http://justiceinconflict.org/2013/01/31/the-icc-and-regime-change-some-thoughts-but-mostly-questions* [accesed: on 12 February 2013].

Will Syria go to the ICC Available at: *http://ilawyerblog.com/will-syria-go-to-the-icc* [accessed: 6 February 2013].

Yale Law School Available at: *http://www.law.yale.edu/faculty/damaskabio.htm* [accessed: 02 March 2013].

Yale Law School Legal Scholarship Repository Available at: *http://digitalcommons.law.yale.edu/fss_papers/1572/?utm_source=digitalcommons.law.yale.edu%2Ffss_papers%2F1572&utm_medium=PDF&utm_campaign=PDFCoverPages* [accessed: 26 February 2014].

LEGISLATIONS

The Rome Statute of the International Criminal Court (17th July 1998).