Universiteit
Leiden
The Netherlands

The governance of complementary global regimes and the pursuit of human security : the interaction between the United Nations and the International Criminal Court

Marrone, A.

Citation
Marrone, A. (2015, October 28). *The governance of complementary global regimes and the pursuit of human security : the interaction between the United Nations and the International Criminal Court*. *Meijers-reeks*. s.n., S.l. Retrieved from https://hdl.handle.net/1887/36027

Version:	Corrected Publisher's Version
License:	Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden
Downloaded from:	https://hdl.handle.net/1887/36027

Note: To cite this publication please use the final published version (if applicable).

Cover Page

Universiteit Leiden

The handle http://hdl.handle.net/1887/36027 holds various files of this Leiden University dissertation.

Author: Marrone, Andrea
Title: The governance of complementary global regimes and the pursuit of human security : the interaction between the United Nations and the International Criminal Court
Issue Date: 2015-10-28

The Governance of Complementary Global Regimes and the Pursuit of Human Security

The Interaction between the United Nations and the International Criminal Court

To my mother and to all mothers

The Governance of Complementary Global Regimes and the Pursuit of Human Security

The Interaction between the United Nations and the International Criminal Court

PROEFSCHRIFT

ter verkrijging van
de graad van Doctor aan de Universiteit Leiden,
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,
volgens besluit van het College voor Promoties
te verdedigen op woensdag 28 oktober 2015
klokke 11.15 uur

door

Andrea Marrone

geboren te Aversa, Italië

in 1969

Promotiecommissie:

Promotor:	prof. dr. N.J. Schrijver
Overige leden:	prof. dr. N.M. Blokker prof. dr. D.C. Thomas prof. dr. J.H. de Wilde (Rijksuniversiteit Groningen) prof. dr. J.P. Pronk (IISS, Erasmus Universiteit Rotterdam)

Lay-out: AlphaZet prepress, Waddinxveen
Printwerk: Wöhrmann Printservice

© 2015 A. Marrone

Behoudens de in of krachtens de Auteurswet van 1912 gestelde uitzonderingen mag niets uit deze uitgave worden verveelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieen, opnamen of enige andere manier, zonder voorafgaande schriftelijke toestemming van de uitgever.

Het reprorecht wordt niet uitgeoefend.

No part of this publication may be reproduced, stored in a retrieval system, made available or communicated to the public, in any form or by any means, without the prior permission in writing of the publisher, unless this is expressly permitted by law.

Acknowledgments

I would like to thank my supervisor, Professor Nico Schrijver of Leiden University, for his dedication and for making time in his tight agenda to meet with me regularly, to read all my drafts and to give me his much appreciated guidance. I could have not asked for a better expert in the field of international law to guide me throughout this journey. My special thanks go to the respectable members of the Ph.D. Committee: Prof. dr. N.M. Blokker, Prof. dr. J.P. Pronk, Prof. dr. D.C. Thomas and Prof. dr. J.H. de Wilde, for reviewing my manuscript and providing me with their valued comments that have without any doubt enriched my manuscript.

Many thanks to my colleagues at the International Criminal Court for their support throughout this journey, including supporting my short study leaves. I particularly thank the Prosecutor Mrs. Fatou Bensouda allowing my development as a dedicated staff member of the Office and for her vision of an ICC that is fully committed to human security. I would like to thank those persons in my personal life that have also supported and encouraged me in this challenging process, like my parents, who have sponsored my academic career and who have always assured me that I could achieve great results with dedication and efforts.

Our mothers give us life and even when they leave us they still give us all they have, mine left me with no fears. Before her departure she said: “live a life without fear my son, because if there is fear there is no love and no peace”. I dedicate this book to my mother who passed away prematurely last year. She taught me how to become a humanist and I will always be grateful to her.

“We are not defeated by adversity but by the loss of the will to strive. However devastated we may feel, so long as we have the will to fight on, we can surely triumph”. To conclude, I would like to thank my spiritual mentor Daisaku Ikeda for his contribution to peace and human security worldwide.

The opinions expressed are those of the author and do not necessarily reflect the views or policy of any international organization of multilateral character or of its individual member countries.

Table of Contents

Acknowledgments V

List of Abbreviations XIII

Preface XVII

Thesis Outlook XXI

Introduction 1

1 The Global Regimes dealing with International Threats and Crimes 3
1.2 The determinations required by institutions, policy and law 5
1.3 Conflict governance, humanitarianism and global justice 8
1.4 Integrated or disconnected global architecture of governance? 10
1.5 Statement of the problem 13
1.6 Research Questions 17
1.7 Purpose of the research 22
1.8 The topics selected/proposed 26
1.8 Methodology 28

Part I The Quest of Complementarity and the Dilemma of Human Security 35

2 The Legal and Political Frameworks Fostering Human Security 37
Preliminary remarks 37
2.1 International Criminal Justice: The Evolution of Human Security? 40
Section Outline 40
2.1.1 The historical background of multilevel criminal jurisdictions 41
2.1.2 The UN judicial activity and international criminal justice 42
2.1.3 A universal or a customized jurisdiction? 45
2.2 The transition of global regulatory frameworks 46
Section Outline 46
2.2.1 The path of universality and integrity: from Rome to Kampala 47
2.2.2 Legalizing aggression from threat to crime 48

2.2.3 The triggering mechanisms of jurisdiction 53
2.2.4 The impact and progress of the Review Conference 56
2.3 The Normative and Policy Orientations 59
Section Outline 59
2.3.1 The missing priorities 59
2.3.2 Human security and international law 61
2.3.3 Human security and world politics 62
2.4 The paradigm shift of global 'complementarity' 64
Section Outline 64
2.4.1 The challenges in global regimes 65
2.4.2 The challenges in policy and law 66
2.5 The Political Impasse of Multilateralism 68
Section Outline 68
2.5.1 Engaging in relationships and partnerships? 69
2.5.2 International governance institutions and the rule of law 70
2.5.3 International humanitarian policies, norms and principles 72
2.5.4 Conclusions 75
2.6 The paradigms in the making of human security 76
Section Outline 76
2.6.1 National, regional and international approaches 78
2.6.2 The governance of international threats and crimes 81
2.6.3 The conceptualization of human security 83
2.6.4 The applicability of human security 85
2.6.5 The critics to the human security doctrine 87

3 The Governance of Peace and Justice as Tools of Human Security 89
Preliminary remarks 89
3.1 Renewed responsibilities to respond to Mass Atrocity Crimes? 90
Section outline 90
3.1.1 The ongoing debate 91
3.1.2 The rule of law advocates 93
3.1.3 The gaps of the globalist approach 94
3.1.4 The practice of delivering justice 95
3.2 The Prospects of Peace and Justice 97
Section outline 97
3.2.1 The quest of civilian protection 97
3.2.2 Challenges 99
3.2.3 Obstacles 101
3.2.4 Matters of international mutual concern 104
3.2.5 The unresolved governance issues 105
3.3 Peace and Justice: The Lasting Debate 107
Section outline 107
3.3.1 The centralization of individuals in global affairs 108

3.3.2 Accountability vs. conflict stabilization? 109
3.3.3 The international responses 110
3.3.4 The concept of global justice 111
3.4 The Governance of Peace and Justice 112
Section outline 112
3.4.1 Governance of justice and world politics 113
3.4.2 Governance of justice and peace and security 115
3.4.3 Governance of justice and human rights 116
3.4.4 The rule of law and international cooperation 117
3.4.5 Political determinations and legal frameworks 118
3.5 An integrated approach of governance 120
Section outline 120
3.5.1 The search of models of governance 121
3.5.2 The reformist approach 122
3.5.3 The principles 123
3.5.4 The requirements 125
3.5.5 The model of governance proposed 126
3.6 Concluding remarks 128

Part II The Governance of Complementary Global Regimes: Challenges, Obstacles and Concerns 135

4 The challenges in the governance of complementary global regimes 137
Preliminary remarks 137
4.1 The reach of 'universality' 139
Section Outline 139
4.1.1 The limitations of civilian protection 140
4.1.2 The practice of humanitarian escalations 142
4.1.3 The first generation of referrals from the Security Council: Sudan and Libya 146
4.1.4 The international military engagement in Libya 148
4.1.5 The absence of civilian protection measures in Libya and Syria 150
4.2 The globalist approaches of governance systems 153
Section Outline 153
4.2.1 The global concerns 155
4.2.2 The global responsibilities 156
4.2.3 The unresolved statehood issues 158
4.3 The transition of global security systems 161
Section outline 161
4.3.1 What kind of civilian protection measures? 162
4.3.2 The politics of transition in conflict zones 164
4.3.3 Collective security and human security 165
4.3.4 The risks in the policy formulations 166
4.3.5 Protecting civilians 167

4.4 The requirement of political consensus 169
Section Outline 169
4.4.1 The required actions to 'prevent' 'react' and 'rebuild' in mass atrocity situations 171
4.4.2 The important requirement of political convergence 172
4.4.3 Summary of the recommendations 173

5 The Governance Structure of Complementary Global Regimes and their Competence 177
Preliminary remarks 177
5.1 The Role of the Assembly of States Parties and the Trust Fund for Victims 180
Section Outline 180
5.1.1 Global interactions and political determinations 182
5.1.2 The Trust Fund for Victims and a Strategy for their rights 188
5.1.3 An effective system of criminal justice 190
5.2 The Institutional Liaison and the Relationship Agreement between the Court and the United Nations 191
Section Outline 191
5.2.1 The inter-institutional liaison 192
5.2.2 The ICC-UN Relationship Agreement 193
5.3 The United Nations and the pursuit of complementarity 196
Section Outline 196
5.3.1 The background of peace operations 198
5.3.2 Peacekeeping reforms and the accountability on the ground 203
5.3.3 Peacekeepers and the Court 205
5.3.4 The challenges and opportunities 206
5.3.5 Relationship and partnership implementation 207
5.3.6 Peace building and post-conflict justice 208
5.3.7 The concept of restorative justice 209
5.4 Preserving the Rule of Law towards pluralistic jurisdictions 210
Section Outline 210
5.4.1 The Rule of Law and Justice 213
5.4.2 The sectors of the rule of law 216
5.4.3 The Coordination of the Rule of Law Activities in the UN System 217
5.4.4 Criminal accountability of United Nations officials and experts on mission 219
5.4.5 Conclusions 221
5.5 Conclusive observations 223
Section Outline 223
5.5.1 The challenges and opportunities of governance systems 225
5.5.2 The global effort of interactions 225

5.5.3 The advocacy of systemic change 228
5.5.4 International criminal justice: shifting or balancing power? 229
5.5.5 The features of justice governance: the cooperation pillar of the Rome Statute 230

Part III The Humanitarian Escalations of Last Resort and their Governance in the Field Operations 235

6 The International Responses to Mass Atrocities in Africa and the Criminal Regime in the Sudan 237
Preliminary remarks 237
6.1 The place of Justice in the arrays of Peace and Security 239
Section outline 239
6.1.1 The risk analysis of international responses 241
6.1.2 The case studies assessment 242
6.1.3 The outline of the chapters 245
6.2 The International Humanitarian Escalations of Mass Atrocities 246
Section Outline 246
6.2.1 The international engagements in mass atrocities 248
6.2.2 The formulation of governance frameworks 249
6.2.3 The role of complementary global regimes 252
6.2.4 The prerequisites of implementation and harmonization 254
6.3 The International, Regional and Bilateral Actors in the Sudan 256
Section Outline 256
6.3.1 The Failure of the Promise of 'Never Again' in Darfur 258
6.3.2 What kind of law enforcement strategy? 260
6.3.3 The international, regional and bilateral actors 261
6.3.4 Conclusions 265
6.4 The Management of the intra-State Conflict in the Sudan 267
Section Outline 267
6.4.1 The background of the UN-AU conflict management 268
6.4.2 Failed UN handover of peacekeeping operations 269
6.4.3 Darfur and the failure of the responsibility to protect 272
6.5 The Lessons learned 274
6.5.1 Solving the gaps in the working methods 274

7 Multidimensional Operations and the Issue of Cooperation in the Democratic Republic of Congo (DRC) 277
Preliminary remarks 277
7.1 The Case Study Objective: what kind of configurations in the field operations? 279
Section Outline 279
7.1.1 The Background 281

7.1.2 The Analysis 284
7.1.3 The Issues 286
7.1.4 The Purpose 288
7.2 The Problem of Operational Coherence and Cooperation 289
Section Outline 289
7.2.1 The prospect of coherence 290
7.2.2 The standards of cooperation 292
7.2.3 The UN Mission in the DRC 294
7.2.4 The ICC presence in the DRC 295
7.2.5 Conclusions 295
7.3 Fighting the Impunity at International and Domestic levels 297
Section Outline 297
7.3.1 The impact of the Rome Statute 301
7.3.2 The limits and critics of the ICC 303
7.3.3 The alternatives to the ICC 305
7.3.4 The gender crimes 307
7.3.5 The international assistance 308
7.3.6 Conclusions 310
7.4 The absence of coordination, coherence and law enforcement 312
7.5 The necessity of strengthening partnerships on the ground 314

8 Concluding Assessment 317
Preliminary remarks 317
8.1 The long way ahead of complementary global regimes 318
Section Outline 318
8.1.1 The *last resort* option of justice 320
8.1.2 The configurations of international mandates 322
8.1.3 The Court's support to maximize the results 324
8.2 An integrated approach of governance 326
Section Outline 326
8.2.1 The intersection between policy, law and institutions 327
8.2.2 The current interaction strategies 329
8.2.3 The lessons learnt 331
8.3 Conclusions 332

Samenvatting (Summary in Dutch) 349

Appendices 361

Bibliography 397

Curriculum Vitae 421

List of Abbreviations

ADT	Darfur Atrocities Documentation Team
AJIL	American Journal of International Law
AMIS	African Union Mission in Sudan
ASIL	American Society of International Law
ASP	Assembly of States Parties to the Rome Statute
ASP Res.	Assembly of States Parties to the Rome Statute Resolution
AU	African Union
AU Dec.	African Union Decision
AUPD	African Union Panel on Darfur
AUO	African Union Organization
BYIL	British Yearbook of International Law
CARICOM	Caribbean Community and Common Market
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CIA	Central Intelligence Agency
CICC	Coalition for an International Criminal Court
CPA	Comprehensive Peace Agreement in the Sudan
CPPCG	Convention on the Prevention and Punishment of the Crime of Genocide
EJIL	European Journal of International Law
EU	European Union
ESIR	English School of International Relations
GA Res.	General Assembly Resolution
HRQ	Human Rights Quarterly
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICISS	International Commission on Intervention and State Sovereignty
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
ICRtoP	International Coalition for the Responsibility to Protect
ICTY	International Criminal Tribunal for the Former Yugoslavia
ICTR	International Criminal Tribunal for Rwanda

ICG	International Convention on Genocide
IHL	International Humanitarian Law
ILC	International Law Commission
IMTFE	International Military Tribunal for the Far East
IRF	International Refugee Law
IR	International Relations
ISAF	International Security Assistance Force in Afghanistan
JPR	Journal of Peace Research
LAS	League of Arab States
LJIL	Leiden Journal of International Law
LRA	Ugandan Rebel Lord's Resistance Army
NILR	Netherlands International Law Review
MINURCAT	United Nations Mission in the Central African Republic and Chad
MoU	Memorandum of understanding
MONUC	United Nations Organization Mission in the Democratic Republic of Congo
MONUSCO	United Nations Organization Stabilization Mission in the Democratic Republic of Congo
NATO	North Atlantic Treaty Organization
NGO	Non-governmental organization
ONUC	United Nations Operation in the Congo
POC	Protection of Civilians
PRIO	Peace Research Institute Oslo
RtoP	Responsibility to protect
R2P	Responsibility to protect
SC Res.	Security Council Resolution
SCSR	Special Court for Sierra Leone
SIPRI	Stockholm International Peace Research Institute
STL	Special Tribunal for Lebanon
SWGCA	Special Working Group on the Crime of Aggression
SRSG	Special Representative of the Secretary-General
SSR	Security Sector Reform
TAL	Transitional Administrative Law
TFV	Trust Fund for Victims
TI	Transcend International
TRI	Transcend Research Institute

UN	United Nations
UNAMID	African Union/UN Hybrid operation in Darfur
UNCOI	United Nations Commission of Inquiry
UNDP	United Nations Development Programme
UNDPKO	United Nations Department of Peacekeeping Operations
UNGA	United Nations General Assembly
UNHRC	United Nations Human Rights Council
UNMIS	United Nations Mission in the Sudan
UNMIC	United Nations Interim Administration Mission in Kosovo
UNOCHR	United Nations Office of the Commissioner of Human Rights
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
VRS	Army of the Republika Srpska
WW	World War
YIHL	Yearbook of International Humanitarian Law

Preface

> "I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human. It is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes". *Hugo Grotius, On The Law of War and Peace, 1625*

In 1998 the State Parties to the Rome Statute established a treaty-based organization of universal character dealing with humanitarian crimes of international concern committed against civilians in conflict and post-conflict situations. The Rome Statute institutions are complementary to the United Nations system but independent from such an established international regime, whose aims are to facilitate the cooperation in the field of international security, international law and human rights. The emerging regime of international criminal justice constitutes arguably the most significant reform of international law, but there is still a long way ahead for systemic changes in the governance of humanitarian affairs centralizing individual rights in *intra*-state conflict and post-conflict situations. It remains to be seen how the concept of human security would have an impact *a)* on the transition of international law and international security; *b)* on the measures applied on the ground by complementary international mandates; *c)* on the role of the Security Council, State sovereignty and the international governance of humanitarian escalations; and *d)* on the creation of new norms and the place of non-state actors in international law. Moreover, it is also important to assess the evolution of universal jurisdiction, including the policy formulations of global threats and further definitions of serious crimes of common concern such as the crime of aggression, including their controversial governance and the application of double standards in the selection of *inter*-state conflict situations resulting from acts of aggression. Another aspect requiring attention is to avoid the use of the emerging regime of international criminal justice as an instrument of coercive diplomacy in the context of peace and security maintenance by those permanent members of the UN Security Council (China, Russia and the US), which so far rejected the Rome Statute partnership, but still use it occasionally when this favors their own political interests. In other words, we will look at the ingredients required and the recipe wished, if any, while advocating for democratic governance systems based on the principles of *global justice* and the role of public international law and its institutions consolidating human security. In this study the intersection between politics, law and institutions complementary in their nature, receives an accurate analysis proposing integrated governance models of peace, justice and security to be applied globally.

The multidisciplinary approach of important fields such as law and globalization, the politics of justice and international law, including the developments in the field of human security, are absolutely required when exploring the construction of a global society. Much more important then is to preserve what remains of the concept of the nation-state, its sovereignty and governance, in the turmoil of regimes and sub-regimes led by criminal groups and conflicting political factions. The undemocratic and violent political transitions and the complete absence of law and order characterize the disintegration of many domestic systems unwilling or unable to carry out genuinely their duties towards their citizens. The shorter distance between the concept of the nation-state, its domestic governance systems, and the international community monitoring internal affairs during civil wars, becomes for many stakeholders problematic, but it still represents an important opportunity to preserve fundamental individual rights. The efforts to safeguard universal values on the side with individuals and communities devastated by war and crime through governance structures fostering international peace, justice and security are absolutely worth it. The advocacy of human security measures, including monitoring, reporting and fact finding activities to reveal severe violations of international humanitarian law, represents a paradigm shift challenging international relations. Such an advocacy is contrary to state-centric security policy including governance models keeping the impunity regime of international crimes unchanged in several situations.

In general terms human security measures prioritize the needs of individuals and communities as important guarantors of sustainable peace, development and stability. Unfortunately, in multiple and inter-linked situations, the failure of preventive strategies of mass atrocity crimes severely compromised the safety of civilians, including their fundamental individual rights. In several countries, such as in Libya, Syria, Sudan, Democratic Republic of Congo, Uganda, Kenya, Central African Republic, Ivory Coast and Mali, civilians have severely paid the consequences of such failure. The costs of human lives after the humanitarian disaster in Rwanda, Sierra Leone, Somalia and Cambodia are well known and indicate serious problems dealing with the causes and effects of war and crime. Besides, the sometimes claimed *right* of humanitarian intervention of the international community is challenged now and qualified by the responsibility to protect civilians in situations of mass atrocity crimes. Such an international norm represents an unfinished business in global politics and is considered by many far from capable of preserving the rule of international law. The current practice of governing the international order deserves analysis between the *liberal* vision of normative frameworks in the view of pluralism and its theories, and a *supranational* capacity from the perspective of constitutionalism. The preservation of the rule of law as a principle of governance in a world of multilevel jurisdictions requires discussions, as well as the advocacy of global values in international relations, such as multilateralism, collective responsibility, global solidarity and mutual account-

ability.[1] As clearly described by Delmas-Marty, "complementarity does not separate national from international criminal jurisdiction, nor does it put them in conflict with each other…".[2] The grey-zones of the complementarity principle, however, clearly arise in the governance of justice functioning outside the arrays of peace and security maintenance in conflict and post-conflict situations. This study deals with the impact, challenges and possible solutions in such governance. It proposes other options rather then the use of military means or military coalitions when intervening in situations of war and crime.

This study offers an overview of the challenges occurring in the emerging regime of international criminal justice as a tool of sustainable peace. It illustrates the impact of such regime in international relations focusing on the obstacles and concerns of its governance in the context of the maintenance and restoration of international peace and security. It advocates for an appropriate interaction strategy between the United Nations and the Rome Statute institutions as a matter of international mutual concern and for the sake of human security. The responsibility to protect cannot be considered as the evolution of human security. Further progress is required in the frameworks of governance dealing with it. In accordance with this study the political compromise reached in Rome contains the same controversial issues not yet resolved in the international legal and political order. The review conference of the Rome Statute in Kampala (Uganda) confirmed the challenges for such emerging regime to find a place in the arrays of peace and security. The political selectivity of the Security Council responding to mass atrocity crimes, the political criteria to reach the resolutions of international criminal justice, and the application of double standards when dealing with them, are the main factors undermining the credibility of the so-called "narrowed" international responses during *intra*-state conflicts. Some would even consider the use of international legal processes to replace or complement acts of war mandated by the Security Council. With the Rome Statute, such limitations confronting the pursuit of peace and justice are not completely alleviated. In accordance with a broad and idealistic interpretation of the Rome Statute, however, the governance of international criminal justice could be defined as the response to safeguard individuals and communities in extreme conflict situations through the rule of law, multilateralism, collective responsibility, global solidarity and accountability, fighting against the regime of impunity of serious crimes at local, regional and international levels.

---

1 For an overview of the debate and the extensive literature on the issue of legal pluralism and globalization see R. Michaels, 'Global Legal Pluralism', *Duke Law School Faculty Scholarship Series*, Paper 185, 2009, accessible at: http://lsr.nellco.org/duke_fs/185 See also A. S. Sweet, 'Constitutionalism, Legal Pluralism, and International Regimes', *Yale Law School Faculty Scholarship Series*, Paper 1295, 2009, accessible at: http://digitalcommons.law.yale.edu/fss_papers/1295

2 See M. Delmas-Marty, "Interactions between National and International Criminal Law in the Preliminary Phase of Trial at the ICC", *Oxford Journal of International Criminal Justice*, Volume 4, Issue 1, March 2006, at 2-11.

Since 1945 the discourse around the international legal order has been dominated by the political role of the United Nations and its institutions. It needs to be noted that while the UN has been the object of significant criticism, it has nevertheless played a remarkable role both in the progressive development and codification of international law. The Preamble of the UN Charter reads in part: "We the peoples of the United Nations determined to save succeeding generations from the scourge of war [...] and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom […]". Although the Preamble is an integral part of the UN Charter, it does not set out any of the rights or obligations for its member States. Rather, its purpose is to serve as an interpretative guide for the provisions of the UN Charter through the highlighting of some of the core motives of the founders enforcing the organization.[3] In 2005 the member States of the UN General Assembly embraced the responsibility to protect civilians in paragraphs 138-139 of the Outcome Document of the so-called World Summit. In the historic gathering of world leaders in New York for the High-level Plenary Meeting of the General Assembly, the heads of States and governments reached consensus on the formulation of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. When States are 'manifestly failing' to protect their population from mass atrocity crimes and peaceful means are inadequate, the international community would take collective action in a 'timely and decisive manner' through the Security Council and in accordance with the UN Charter and with the cooperation of regional organizations as appropriate.[4] The emerging regime of international justice and leadership accountabilities, the preservation of human rights and international inquiries and the rehabilitation of victimized civilians are important tools to establish the truth and create the premises to *protect*, *react* and *rebuild* in situations of war and crime. The good governance of such tools contributes to sustainable peace. Obviously, such an important shift in the international politics of mass atrocies deserves attention at the present and in the years to come. The governance of global regimes of complementary character and the dilemma of human security are concepts requiring analysis and debate.

3 For an illuminating overview of such an approach see the Report of the Rapporteur of Commission I/1 UNICO VI, 1945, at 446-7, Doc. 944 I/1/34(1). See also L. Gross, 'The Charter of the United Nations and the Lodge Reservations', 41 *AJIL* 3, 1947, at 531.

4 UN General Assembly, Sixtieth Session, 2005 World Summit Outcome, UN Doc. A/RES/60/1, 2005, para. 138 and 139.

Thesis Outlook

This thesis explores the governance of global regimes fostering peace, justice and security in extreme situations of war and crime. It examines the quest of *complementarity* between international frameworks of governance and the dilemma of human security measures applied in the practice on the ground in conflict and post-conflict situations. It debates the challenges, obstacles and concerns in the governance of peace operations, law enforcement and civilian protection duties. It argues about the meaning of international humanitarian escalations of *last resort* under the flag of civilian protection duties. It debates the requirement of a political *road map* centralizing civilian protection duties in collapsed societies. It examines the governance of international mandates in the field operations not being appropriately integrated between them, and which obviously lose part of their effectiveness. The analysis of the humanitarian escalations of *last resort* between complementary global regimes and their impact in the field operations is central for new policy orientations. The presence of both the United Nations and the International Criminal Court; the configuration of international mandates on the ground; the deployment of peace enforcement operations; the investigations and prosecutions of mass atrocity crimes are interdependent resources. They deserve accurate risk assessments for the sake of civilians in multiple situations. These global tools have the potential to improve human security expectations in situations of war and crime. There is, however, a long way ahead. After a decade of the Court's existence and activity the practice demonstrates the needs for integration, harmonization and consolidation between the two global regimes of complementary character.

The preliminary part of this study addresses serious concerns in the institutional and normative decentralization characterizing the emerging regime of justice falling under the Rome Statute. It also emphasizes the theories of 'statehood', 'sovereignty' and 'governance' and the urgent requirement of political convergence on sensitive issues. The introduction argues that due to the absence of a *supranational* organization for the implementation of the emerging regime of justice at domestic, regional and international levels the harmonization between so defined multilateral, global, universal, complementary international governance institutions involved in conflict and post-conflict situations is fundamental. The global interactions based on the rule of law, multilateralism, collective responsibility, global solidarity and mutual accountability wait to be translated in governance mechanisms at disposition of the international community, finding remedies for a consistent evolution of international relations in the post-cold war. In order to reach democratic standards in such interactions the independence and authority

of justice is a basic requirement for human security. It should be time for the nation-states to choose between maintaining the Charter of the United Nations as drafted after WWII, or to consider radical changes regulating human security issues. The main challenge is whether consensus can be found on a *road map* fostering peace, justice and security dealing with the criminal accountability of States and individuals during armed conflicts. The aspects of *protective*, *retributive* and *restitutive* justice require further application at domestic, regional and international levels. In order to verify the current evolution or devolution of these aspects, the first part of this thesis debates the quest of *complementarity* and the dilemma of human security in conflict and post-conflict situations. The second part elucidates some of the challenges, obstacles and concerns in the governance of complementary global regimes and the necessity of political convergence. The third part deals with the humanitarian escalations of last resort and their governance in the field operations and offers the concluding assessment deriving from the case studies selected.

The introduction of this thesis clarifies the statement of the problem, the research questions, the purpose of the research and the methodology used. It debates on the nature of the current architecture of governance and the limits of complementary global regimes dealing with international threats and crimes. It is of fundamental importance to question the impact of international humanitarian escalations and the role of the United Nations and the International Criminal Court responding to mass atrocities and crime prevention, firstly verifying theories, principles, current practice, and secondly, finalizing recommendations useful to maximize the results with defined mechanisms upholding the human security doctrine. The principles and theories upholding the expectations of human security characterize the journey of this thesis. However, this work does not solve the grey-zones still prevailing in the conceptualization of human security. This concept requires policy implementations and governance models between global regimes of complementary character. The theoretical uncertainties in the concept of human security could be solved by concrete actions in the governance of complementary global regimes. For such governance it is important to remind the background information of the causes of war and crime which have devastating consequences on nation-states, regional and international organizations, communities and individuals. The complementary character of the UN and the Rome Statute institutions should be based on the human security doctrine. In order to clarify the meaning of this concept the thesis examines the Rome Statute institutional framework and the interaction background between the United Nations and the International Criminal Court, answering questions related to the interdependence of peace, justice and security in the field operations, and the necessity to improve measures of human security such as protection, relocation, reparation and rehabilitation of civilians victimized by serious crimes of common concern. This study demonstrates that further efforts are required by decision-makers for the

conceptualization of human security and its expectations. Political convergence is further required about jurisdictional extensions and complementarity for the governance of international threats and crimes destabilizing peace and security.

There is a significant amount of evidence to suggest that both internal instability and State fragility significantly increase the commission of atrocity crimes such as genocide, war crimes and crimes against humanity, including the flight of refugees spreading from single to multiple States, causing regional and large scale instability. However, the policy approach about international humanitarian interventions in fragile States are fragmented, decentralized and the priorities not harmonized with early warning and early action. Obviously, the current international legal frameworks reflect such discrepancies and need to be challenged with political convergence. Besides, the global governance of war and crime requires reliable models, systems and institutions updated to the challenges of the time. The judicial outcomes pointing out crimes and perpetrators are not used for the configuration of international mandates of law enforcement on the ground. The accountability system of international crimes does not receive sufficient support in order to strengthen its deterrent effect in conflict and post-conflict situations. In situations of conflict breaking out since the end of the bipolar world order, which left unresolved the main causes in the majority of such conflicts, civilians have been the greatest victims of warfare. In particular women and children, who are often the targets in times of violence and have been severely used as a weapon of war. In such context, law enforcement and civilian protection duties wait to receive a place in the fight against the impunity of international crimes and within the arrays of peace and security maintenance keeping alive the links of reconstruction and development.

The country-situations in Sub-Saharan Africa, Middle East and East Asia are impressive examples where ethno-political conflicts show dramatic statistics. In the African Great Lakes Region for instance, the political crisis and the continuing violence between different factions involved in political transitions, the establishment of a war economy and militarized regimes and the impunity of serious crimes of common concern are the only realities identified through reliable empirical data. The analysis of such data demonstrates that global regimes are not yet entirely able to cure the causes of warfare. However, they can have an impact at least on the effects in the short and middle terms, while developing the capacity to act on the causes in the long term. In order to accomplish such a model of governance an expansion of *complementarity* between established and emerging global regimes is absolutely required for the sake of the human security doctrine. The UN deployment of robust peacekeeping in the field operations for instance, should perform civilian protection duties hosting and complementing the investigative activities of the International Criminal Court in both referrals and non-referrals activities of the Security Council. The States non-parties to the Rome

Statute should be bound and be engaged through their UN membership. In the current reality of humanitarian escalations the regime of international criminal justice falling under the Rome Statute functions without any power of police and law enforcement on its own, but depends from the cooperation from its States Parties and relevant stakeholders, such as the United Nations. Therefore, global strategies are absolutely required to *prevent*, *react* and *rebuild* situations of war and crime in accordance with the rule of law, multilateralism, collective responsibility, global solidarity and mutual accountability. This thesis approaches the politics of international law and the views of future law, or *de lege ferenda,* as opposed to *de lege lata,* or the law as it currently exists. It examines the controversial debate between the consolidation of global values in the constitution of the world community against pluralistic legal frameworks based on decentralized laws and institutions far from offering sustainable peace in situations of war and crime.

This study focuses on the longstanding debate to manage, maintain and restore peace and justice centralizing the protection of civilians in situations of war and crime. It advocates for solutions in the shortcomings of interaction between complementary global regimes fighting against the impunity of crimes of international concern, while offering sustainable peace in extremely violent conflict zones, before, during and after civil wars. It emphasizes the priority of implementing measures of human security in conflict and post-conflict situations with an integrated approach of governance of peace and justice. It clarifies the concept of global justice and its *retributive*, *protective* and *restitutive* aspects which are undermined by the shortcomings of political engagements, international responsibilities and constitutional adjustments reflecting international, regional and national realities. This study explores the nexus between law and politics in the emerging regime of justice debating models of governance to secure the rule of law in a system of multilevel jurisdictions. It emphasizes the international political convergence required, and still missed, and the role of international law promoting the consolidation between complementary global regimes based on cooperation. It proposes an insight of international criminal justice and the role of public international law to promote it. It debates feasible solutions on structural, normative and operational issues implementing the governance of justice in conflict and post-conflict societies in accordance with the human security doctrine. The more general purpose of this study is to verify the progress of public international law and its multilateral premises dealing with war and crime according to the challenges of the time. It offers an extensive analysis of the paradigms in the making of complementary international governance institutions fostering human security in multiple situations, providing some direction on the way to formulate *de lege ferenda*.

The rise of the Rome Statute system represented a shift from State-centric political positions to the claims coming from civil society organizations. However, it still struggles to find its place in the system for the maintenance

or restoration of international peace and security. The establishment of a permanent International Criminal Court was pressured by civil society to decision-makers in order to centralize the role of the victims during judicial proceedings fighting against the impunity of serious crimes. The political compromise that has been reached so far in regard to the Court's position in peace and security mandates still characterizes its limits. The governance of international criminal justice requires risk assessments which cannot be limited only to the Court's activities. Such governance requires global considerations on the ways international regimes would become complementary. The main considerations are listed and examined in this work. From a broader perspective this study clarifies the main challenges and opportunities of regulatory frameworks fostering human security. The interaction between complementary global regimes is seen as an important tool in order to build up the basic premises of *global justice* for the advancement of sustainable peace, human development and for the protection of human rights. It is fundamental to define preventive measures between global regimes of complementary character before mass atrocity crimes would occur. It is important to reflect on reliable response mechanisms applicable during the humanitarian escalations of *last resort* characterized by extreme violence and violations falling under international law, including measures applicable in the context of rehabilitation, reparation and humanitarian assistance to the victims of war and crime.

The human security doctrine which has developed in the last couple of decades deserves further application of its concept even with the difficulties incurred in our globalized world. The rule of international law would profit from such an approach evolving in the centralization of individuals. It is important to measure the standards of complementary interactions between the relevant actors centralizing individuals in global matters. The member States of multilateral treaties have still the *protective* responsibility towards civilians in their own territories and jurisdictions, while the international community is in charge of *preventing*, *reacting*, and *rebuilding* situations of war and crime. Models of capacity-building are required in the absence of the nation-state and its disintegration, including the nation-state formation moved by political oppositions based on violence and controversial domestic governance such as corruption, autocracy and armed conflicts and the constant risk that the perpetrators of serious crimes would offend the dignity of human lives. Besides, that the basic rights of civilians would be violated, or they would be taken as the hostage during violent political transitions, and with the range of crimes committed by the perpetrators simply remaining unpunished. The governance of peace, justice and security is examined in the three parts of this study providing an assessment of law enforcement, civilian protection and other urgent issues waiting for solutions. This study attempts to define the meaning of complementary global regimes in accordance with the UN Charter and the Rome Statute. The progress of international law and its institutions centralizing fundamental individual rights

requires with no doubts further political convergence and advocacy. The many and real challenges to reach sustainable peace in situations of war and crime demonstrate the necessity of a political *road map* to define, design and manage global regimes of complementary character. In this study the search and formulation of political convergence on these issues is considered a very good opportunity for decision-makers.