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

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Introduction

1 The Global Regimes dealing with International Threats and Crimes

1.1 Preliminary remarks

This study debates the ways *complementary* global regimes are currently empowered and governed in the field operations, and emphasizes the constant risk of reducing the effect of their respective peace and justice efforts, if appropriate interactions are not settled and political convergence is not finally found. This study argues that the emerging regime of international criminal justice is still missing the support of regional and international organizations, which are important at the same extent of nation-states for the sake of human security. The good governance of such sensitive issues might shorten the links in the preservation of individual rights. The civilian protection measures entail additional competence, which requires further institutional design, including resources and know-how about the victims of war. Besides, the priority should be given to sensitive issues waiting for solution, offering a well-defined place of the Rome Statute regime in global governance systems dealing with individual rights in conflict and post-conflict situations. Both the States and the complementary tools at disposition of the international community need substantial reforms in order to respect, protect and fulfil the right of the victims of human rights violations to an effective civilian protection remedy. In the end, the establishment of an independent international judiciary is only a halfway step to *prevent*, *react* and *rebuild* conflict and post-conflict situations, including the range of crimes deriving from them.

This study is very cautious about the claim that nation-states would have a legal 'right' to intervene with military operations under the 'flag' of civilian protection duties. After all, the use of force is essentially prohibited under international law and this is not the only tool to stop mass atrocity crimes. But how does the emerging regime of international criminal justice falling under the Rome Statute, currently receive a place in the arrays of peace and security maintenance? How are violent internal political transitions governed at global scale? Is the international society more human, more secure, and more peaceful with the complementary tools currently at disposition? And which is its current ability to take care of serious breaches of human rights? This work approaches the distinction between the concepts of legality and power in the absence of *checks and balances* systems monitoring the 'right' of humanitarian intervention, and the paradigm shift of civilian protection duties. It offers reflections on the important role of *complementary*

global regimes to mitigate such fields when intervening with their activities in the domestic jurisdictions of 'failed' States. The advocacy expressed in this study is that statehood, sovereignty and governance deserve to remain central in the current debates dealing with the fight against international threats and crimes and the developments of human security.

In the context of *intra*-state and *inter*-state conflicts, or also referred as armed conflicts of international and non-international character, the question is how the international community develops the capacity-building to deal with both these conflict categories. In situations of war and crime the causes and the disastrous effects on civilians require reliable deterrent tools. In the past two decades most wars have taken the form of *intra*-state conflicts. Some of their causes derived from the competition to patronize resources and lands, have been triggered by political and economic transitions, by ineffective governance and by corruption and undemocratic inequalities. In broad terms, the main cause of the disintegration of the nation-states and their struggle to retain a place in the global society are not self-sufficient elements to prevent the commission of mass atrocity crimes. The majority of *intra*-state conflicts are still holding the causes and effects of the post-colonial formation of nation-states at the expenses of civilians.[1] The cruelty and brutality with which *intra*-state conflicts are fought and the difficulties to have deterrent systems in place against them are partly due to the use of child soldiers and gender crimes, the privatization of warfare, and the presence of non-state actors such as the use of paramilitary forces. The frameworks of governance in place dealing with them are characterized by a myriad of gaps. The causes rooted in societies devastated by war and crimes have as the negative effects: the regime of impunity, the unstable and unrepresentative political institutions, the poor infrastructure in domestic governance systems and the abundance of cheap weapons and porous borders.

The view expressed in this study is that violent *intra*-state transitions require models of capacity-building rather than support with military operations, which should remain neutral and focus on civilian protection duties. The military intervention in Libya represents a bad example of the practice of civilian protection measures applied collectively. Bad decisions and bad governance destabilise the tools at disposition by the international community and deserve to be challenged. The problem is not only what makes accountability more or less feasible and what strategies are deployed by *complementary* global regimes to achieve visible results on the ground. Another requirement is the recognition of the responsibility to constantly review and reform, enhancing the role of regional institutions in the formulation of peace and security policies, which still focus on State security, rather than human security. Another requisite refers to the constitutional adjustments in

1 On the legal and political distinction between tribes and races, see, M. Mamdani, *When Victims Become Killers: Colonialism, Nativism and Genocide in Rwanda*, 2001.

order to maximize the results of humanitarian interventions on the ground in conflicts and post-conflict situations, while also preserving the international legal and political order centralizing fundamental individual rights in global affairs and civilian protection measures. The UN Charter needs amendments including a democratization process of its institutions. This is a fragmentary process that still requires solutions. It has been advocated for too long and deserves at least to remain at such, particularly in the context of conflict prevention, use of force and large scale escalations of serious violations of international humanitarian law.

1.2 The determinations required by institutions, policy and law

In this study, the following issues are extensively discussed from several legal and political perspectives: the design, definition and the governance of global regimes in the post-cold war era; the international governance institutions deriving from such global regimes; the transition of international security, the preservation of human security globally, and the responses to global threats based on collective efforts; the governance of international threats, and the challenges for international criminal justice in the arrays of peace and security, namely about the measures for its maintenance and restoration. This analytical work measures the standards of effectiveness of the tools already at disposition of the international community, assessing the governance gaps and the priority to maximize their impact at domestic, regional and international levels. The approach in this study is that *complementary* global regimes fostering human security have to be prepared to respond to *a)* the abuses of fundamental individual rights and freedoms compromised by the coercions of political leaders and warlords; *b)* the exploitations of children and women in times of violence and war; *c)* the trafficking of weapons and drug trade; including *d)* all other dysfunctions of domestic governance such as abuse of power and corruption. These international threats, and the crimes deriving from them, characterize the reality in several countries in the complete absence of domestic governance systems able to respond to severe violations of international humanitarian principles and laws. With regard to the formulation of international security policies for instance, there are serious doubts about the approach of the US, as permanent members of the Security Council, and Israel, that *failed* States are the source of the most serious international threats and crimes. Such an approach by the decision-making in peace and security maintenance is contested in this study. After all, it is evident that fragile, or so-called 'failed' States are mainly a real threat for their own citizens, and that State 'failure' and international security, are not necessarily the two faces of the same coin.[2] In order to offer some background useful for the reader, and further clarify the analysis performed in the several parts of this

2 See P. M. Stewart, *Weak Links. Fragile States, Global Threats, and International Security*, Oxford University Press, May 2011.

study, both preliminary remarks and section outlines will appear in every chapter and sections. The purpose is to shed some light on the conceptual orientations expressed in the topics and the theoretical tools used in the argumentations.

In the international political circles the approach of the responsibility to protect norm diverges between the search of mechanisms of prevention and early warnings and military response, and the use of force in case of mass atrocity crimes. A wider reflection is that the Security Council would remain in charge of nearly all mechanisms of enforcement available, while from a theoretical perspective multilateral forces should be used for emerging regimes attempting to stabilize law and order in situations of mass atrocity crimes such as the Rome Statute. As far as premature it could be considered, this study debates whether there would be harmonization of such issues in the UN Charter as the constitution of the world community, and if, there would be ever a role of international criminal justice in humanitarian interventions, and if yes, how such role would be. It is important to examine the progress of *complementary* global regimes and the intersection between world politics and international law, including possible measures of human security to be found in the interaction strategies of international governance institutions. This study recalls the necessity of an appropriate strategy, combining the responsibility to protect civilians in conflict and post-conflict societies with the determination to put an end to the impunity of mass atrocity crimes. Several documents have been analysed to verify the *status quo* of such a strategy at governmental, regional and global levels especially with regard to the armed conflicts occurring in the African Great Lakes Region and the concerns of the African Union during the instability of peace and security spreading in the African continent, including the political unrest and the violence on civilians spreading in the Middle East and Asia, and further political support required by the EU and the Latin America group of States to the emerging regime of international criminal justice falling under the Rome Statute.

The empowerment and public authority of international governance institutions dealing with global threats and crimes persist to be problematic for the reasons examined in this study. Therefore, the ways global actors interact with each other deserve to be questioned. If we only consider the minimal resources allocated to them, the expectations to respond to the current breakdowns in domestic jurisdictions affected by war and crime are very high. First, the international governance institutions have to rely on the support and cooperation of governments. Second, in order to maximize the results in conflict and post-conflict situations the interaction between them is central for democratic governance, but not less problematic. A political *road map* represents an important opportunity finding suitable solutions fostering peace and justice in the context of human security. The interaction between the accountability mechanisms and the responsibilities to protect individuals require further international efforts from the relevant political actors.

When the International Commission on Intervention and State Sovereignty (ICISS) defined the responsibility to protect, identified a responsibility to '*prevent*'; a responsibility to '*react*'; and a responsibility to '*rebuild*'. Thus, specific responsibilities before, during, and after the humanitarian escalations would occur.[3] Unfortunately, the interaction between complementary global regimes does not reflect sustainable model of prevention, international assistance and capacity-building applicable during *intra*-state conflict. The political forces engaged in the implementation of the regime of international justice are still delaying to prioritize the law enforcement of judicial decisions and the civilian protection duties in the field. The ability to '*prevent*', '*react*' and '*rebuild*' situations affected by war and crime requires comprehensive programs of reconstruction, support of electoral systems, rule of law and justice sector reforms (army, police and judiciary). Therefore, all possible donors have to be mobilized as well as academics and civil society.

The occurrence of the emerging regime of justice in the context of peace and security and the potential, whether still latent, to stimulate the modernization of the tools (and mechanisms) at disposition by the world community, such as the UN system, will need further investigation. It is too soon to speculate on these sensitive governance issues of the international society and their transition. At this moment in time, however, the initiation of the public administration of international criminal justice simply struggles to find its place in the arrays of peace and security. The outcome deriving from such initial struggle should not be delayed any longer and receive visibility through primary (UN Charter, Rome Statute) and secondary law (UN-ASP legislation) including arrangements and agreements in the field missions. This study indicates that the current political discussions are characterized by some degree of theoretical shortcomings, constraints and speculations at national level, including *ultra vires* interpretation of the treaty-law, which received extensive legal research since the establishment of the Rome Statute. The global governance issues which are at the core of these arguments do not receive any progress if we also consider the weak shift and decentralization of the treaty-based bodies preserving human rights under the UN umbrella and their liaison with the Rome Statute regime. It is agreed that the UN Charter represents the crystallization of an era that does not apply well to the contemporary international society. Its institutions reflect such dissoluteness instead of evaluating the needs of the time and responding to them.

3 In 2005 the political imperatives of the UN World Summit Outcome declared that "each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. *We accept* that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability". See the Report of the UN Secretary-General, *Implementing the responsibility to protect*, UN doc. A/63/677, (2009).

In any case, the UN democratization should be considered as a process that would in the first place enhance its capacities, tasks, duties and responsibilities.[4] The purpose of such process should avoid any possibility for some of its members to profit or acting far away, or shaping at their own advantage universal premises fostering peace, justice and human security. In this way, the interaction between complementary global actors would bring innovation in their competence, duty and knowledge sharing.

1.3 Conflict governance, humanitarianism and global justice

The responsibility of the international community to intervene in domestic jurisdictions of *failed* States, unable or unwilling to fight against the impunity of serious crimes, has been established by the Rome Statute in accordance with the Charter of the United Nations. Such important accomplishment is absolutely not an end to itself. Much more needs to be done. Of primary importance is the search of a *complementary* place such regime would receive within the international legal and political order. The legal and political challenges of global humanitarianism need the attention by the decision-making enforcing *complementary* global regimes and their international governance institutions.[5] The main assumption is that the relationship between *complementary* global regimes should have been settled by primary law (UN Charter and Rome Statute) and not by separate 'relationship' agreements which limit the necessary implementation of governance at global level of sensitive humanitarian issues. The evolution of the human security doctrine will need to solve such limitations in the years to come. The effectiveness of the Court remains to be determined and may well be hampered by having just slightly more than half of the members of the United Nations as signatories. The fact that such a tribunal was established is in itself a major accomplishment. Hopefully, its presence will bring the States and the world community closer to prosecuting international crimes and closer to the preservation of victim rights. There are valid reasons to explore the meaning of global regimes intended to be the governance tools of the international society and the evolution of international law for the sake of individuals. In other words, the progress achieved and achievable by concrete human security measures and human rights law. For the first time in the history of an international tribunal the Rome Statute centralizes the roles of victims and witnesses in the judicial proceedings. The security concerns of investigation and prosecu-

4 See J. Muravchik, The Future of the United Nations: Understanding the Past to Chart a Way Forward, 2005. See also N.J. Schrijver, "The Future of the Charter of the United Nations", Max Planck Yearbook of United Nations Law, 2006, 10: 1-34.

5 For the debate see the book review by T. M. Shaw of *Fragile Peace: State Failure, Violence and Development in Crisis Regions*, T. Debiel, A. Klein (eds.), 2002. The book review is to be found in T. M. Shaw, *Journal of Contingencies and Crisis Management*, 2005, Volume 12, Issue 3, at 128-135, accessible at: http://www.politicalreviewnet.com/polrev/reviews/JCCM/R_0966_0879_077_1004614.asp

tion still remain and especially in the field operations. The fight against international threats and crime deserve the support by the UN presence on the ground and by the political circles sponsoring it. The deployment of peace operations should complement the investigative activity on the ground and engage in civilian protection duties. But this is not the case.

This study requires multidisciplinary assessments and preliminary analysis before formulating pragmatic recommendations. It highlights the necessity to clarify the meaning of complementary duties particularly in the configurations of mandates and multidimensional operations in the field in extreme conflict situations, and in case of serious violations of international humanitarian law. It focuses on the verification of global strategies of relationships and partnerships in order to raise a democratic architecture fostering human security, using the 'old' and the 'new' established global tools such as the United Nations and the Rome Statute institutions. This chapter clarifies further the main theoretical approach characterizing this work, before the study embarks on the respective analytical assessments dealing with the intersection between international law and global politics. It clarifies the unresolved issues in the construction of a global architecture of governance dealing with *intra-* and *inter*-state conflicts and with serious violations of international humanitarian law. Moreover, it contains the statement of the problem, the research questions, the purpose of the research, the topics to be debated and the methodology used, including a summary of the multidisciplinary approach performed in this study. It also offers further clarification of the meaning of *complementary* global regimes fostering peace and justice and the possible progress in their governance. It discusses the investigation required in order to formulate conclusions and recommendations to be addressed to the political organs enforcing *complementary* global regimes dealing with *intra-* and *inter*-state armed conflicts.

The fundamental rights of individuals in situations of war and crime deserve to be central. The emerging regime of international criminal justice is in need of a consolidated strategy of engagements at political, institutional and normative levels, not only vis-à-vis the States but also with regional and international stakeholders. There are no doubts that the efforts undertaken by the States must build up an acceptable law enforcement strategy that would improve the regime of justice and human rights protection in their own domestic reality. Besides, international governance institutions of universal character need to be modernized according to the challenges of the time. Another argument is whether individual rights, specifically victim rights, are at the centre of such sensitive systemic issues, or the interests of the States are exclusively central. In other words, the attempt of this study is to verify whether the rule of law functions as a principle of governance in modern societies in both constitutional and pluralistic approaches. This study also underscores the political convergence required fostering peace and justice in the current transition of the world order.

1.4 Integrated or disconnected global architecture of governance?

With the end of the cold war *intra*-state conflicts, regional instability and serious breaches of human rights have received significant international attention. This has strengthened the promotion of *complementary* global regimes as preventive tools of war and crime. The *inter*-state conflicts are concerned with regional competition and distribution of natural resources, among other reasons of nation-state formation, while the *intra*-state conflicts are the result of civil wars rooted in ethnic, religious, and violent political transitions, including bad governance, autocracy and corruption. Every conflict situation has a particularly history and background. However, they share some of the same causes generating war and crime. The constant risk is that the devastating effects in such situations would spread at larger scale, if not properly dealt with. In Sub-Saharan Africa the quest for nation-building occurred during the independence explosion of the 1960s aimed at developing nation-states, was followed by the neo-liberal reforms of the 1980s and 1990s, which left behind significant capacity gaps at the domestic level, where civic engagement in public governance had been inexistent and civil wars were spreading all over the continent.[6] During the past two decades, governance has become a key concept in the international development debate and policy discourse over these countries. In Africa, there has been an historical record of bad governance and improving it must place the African continent on a path of sustainable development encompassing good governance and prosperity with a consolidation of peace, security, and stability.[7]

In both cases of *inter*- and *intra*-state conflicts the lasting process of militarization has been the cause of armed conflicts in the majority of such domestic regimes. The militarization in underdeveloped countries became the substitute of possible progress of domestic governance institutions other than army.[8] So said, which are the opportunities to recur to the rule of law in such life-threatening situations for civilians during armed conflicts? Which are the models of governance proposed in this particular moment of short-

6 See M. Mamdani, 'Political Violence and State Formation in Post-Colonial Africa', International Development Centre Working Paper Series, Paper No.1, October 2007 accessible at: http://idc.open.ac.uk/files/Resource/20090911_031601_2192.pdf

7 For an overview of the UN projects and research findings see K. R. Hope, *The UNECA and Good Governance in Africa*, Harvard International Development Conference: Governance and Development in a Dynamic Global Environment, 2003, Boston, accessible at: http://www.uneca.org/dpmd/Hope_Harvard.doc For an overview of participation in public governance, civic engagement, and decentralization of government in the process of policy development, service delivery, and public accountability of institutions in Sub-Saharan Africa see E. Armstrong, "Integrity, Transparency and Accountability in Public Administration:", in *Ethics, Transparency and Accountability*, United Nations source: DESA, UN Department of Economic and Social Affairs, 2005, accessible at: http://unpan1.un.org/intradoc/groups/public/documents/un/unpan020955.pdf

8 See R. Luckham, 'The Military, Militarization and Democratization in Africa: A Survey of Literature and Issues', in *African Studies Review*, Vol. 37, No. 2 (Sep., 1994), at 13-75.

comings and failure of monitoring systems of war and crime at domestic, regional and international levels? Are the actual 'paradigms in the making' of *complementary* governance combined with the 'work in progress' of global values (such as the rule of law, multilateralism, collective responsibility, global solidarity and mutual accountability), contributing further to the development of the international society dealing with global threats and crimes? Besides, how should a universal jurisdiction be enforced, in order to have an impact simultaneously on the causes and effects of mass atrocity crimes in domestic and regional realities? And last but not least, how are the current humanitarian escalations dealt with by international governance institutions of universal character? Obviously, finding the responses to such sensitive questions requires looking at the transition of the institutional contours of international law, including the political convergence required by the formulation of a *road map* of governance fostering peace diplomacy, justice and human rights. This study performs such a task, among other tasks.[9]

The political agenda to fight against international threats and crimes reflects a couple of important aspects which may influence the current international legal and political order according to the challenges of the time. Such an agenda would primarily depend on the determination of the political organs enforcing *complementary* global regimes fostering peace, justice and security, and secondly depend on the implementation of norms universally recognized in domestic jurisdictions and national constitutions, including the important role of regional political entities and civil society. The fight against threats and crimes needs further implementation in domestic, regional and international frameworks, which require assistance by international governance institutions in accordance with the politics of transition in conflict and post-conflict societies. The problem is that the governance of global threats, such as the *intra*-state warfare, the spreading of regional conflicts and mass atrocity crimes, the military exploitation of humans and resources, the bad governance and corruption, the drug trafficking, the terrorism and the use of weapons of mass destruction, suffers from systemic breakdowns at social, economic and political levels, including the shortcomings of nation-states to comply with international law and multilateral approaches. Besides, some of these global threats do not receive any crime definition and are still in the way of being digested by global politics. It is required to look at the ways international regimes have been enforced and are currently governed, focusing on the meaning of their *complementary* role and their possible evolutions in the fight against international threats and crimes. Now that serious violations of international humanitarian law

9 For relevant studies providing some conceptual definition of governance see M. Bevir, *Key Concepts in Governance*, 2009. See T. Weiss, "Governance, good governance and global governance: Conceptual and actual challenges", *Third World Quaterly*, Volume 21, Issue 5, 2000, at 795. See also R. Falk, *On Humane Governance: Toward a New Global Politics: The World Order Models Project Report of the Global Civilization Initiative*, 1995.

are categorized as disturbing international peace and security, they require further responsibilities at domestic, regional and international levels. Further legal research is also required on common and shared responsibilities of intergovernmental entities, their competence and know-how, including the transition of the responsibilities of international organizations and the implementation of new fields of law such as international administrative law.

In theory, the governance of international regimes fighting against war and crime is based on the principles of the rule of law, multilateralism, collective responsibility, global solidarity and mutual accountability. There are no doubts that these principles of governance promote social progress, human rights, and the achievement of world peace. Within the current international legal and political order urgent solutions are required in the short, middle and long term balancing the 'right' of humanitarian intervention and its transition to the 'responsibility' to protect civilians with every means. Legal frameworks are required preserving fundamental individual rights, while extending the criminal accountabilities equally when dealing with the international crimes characterizing conflict and post-conflict situations. The preservation of the rule of law has the potential to impact order and stability in transition societies, while also retaining universal values shared by the world community. However, the ways international humanitarian law and human rights law may provide a relevant legal framework applicable in situations not qualifying as an armed conflict is still not clear, including the accountability mechanisms, law enforcement, and civilian protection measures in conflict and post-conflict situations. The historical, political and legal factors of such lacuna are extensively examined in the struggle to achieve a democratic architecture based on human security. In order to measure the aspects of democratic governance, further research would still be required per situation, keeping in mind that a perfect analytical formula does not exist, while the theory offers valuable principles for the policy formulation to *prevent*, *react* and *rebuild* in conflict and post-conflict situations.[10]

10 According to the Secretary-General Ban Ki Moon and the report released by the International Commission of on Intervention and State Sovereignty (ICISS), these are the three pillars of the R2P. The responsibility to protect (R2P or RtoP) is a UN initiative established in 2005. It consists of an emerging norm, or set of principles, based on the idea that sovereignty is not a right, but a responsibility. R2P focuses on preventing and halting four crimes: genocide, war crimes, crimes against humanity, and ethnic cleansing, which it places under the generic umbrella term of, *Mass Atrocity Crimes*. The Responsibility to Protect has three pillars. 1. A State has a responsibility to protect its population from mass atrocities; 2.The international community has a responsibility to assist the State to fulfil its primary responsibility; 3. If the State fails to protect its citizens from mass atrocities and peaceful measures have failed, the international community has the responsibility to intervene through coercive measures such as economic sanctions. Military intervention would be considered as the last resort option. See the *Report of the ICISS and State Sovereignty*, 2001, accessible at: http://responsibilitytoprotect.org/ICISS%20Report.pdf For relevant positions in this debate see also T. Weiss, 'The Sunset of Humanitarian Intervention: The Responsibility to Protect in a Unipolar Era', *Security Dialogue*, 2004, Vol. 35, issue 2.

1.5 Statement of the problem

The establishment of an international judicial institution responsible to verify on a case by-case basis when serious international humanitarian crimes committed by individuals would fall within the competence of domestic judicial authorities, and when an international judiciary would be required, is a visible accomplishment advocated for ages. The important paradigm shift refers to governing the transitional challenges characterizing massive humanitarian escalations in conflict and post-conflict situations, between the responsibility to protect civilians and the fight against the impunity of international crimes. In the current legislation of the United Nations, the civilian protection duties are associated to the maintenance of peace and security and to the right of intervention in the domestic affairs of sovereign States for humanitarian reasons, extending further the reach of a criminal jurisdiction to punish the perpetrators of serious crimes of common concern. The shift throughout the humanitarian intervention doctrine, including the *ex-post* capacity of international judicial institutions and *ad hoc* tribunals established by the Security Council, and the transition to the notion of the responsibility to protect and human security doctrine, including the *ex-ante* capacity of the International Criminal Court using its *proprio motu* powers, requires reliable models of governance. Empirical verifications indicate that the humanitarian intervention by States or military coalitions, if not occasionally illegal, was often attributable to political or economic interests, rather than human rights, or based on global solidarity. The political responsibilities and the legal accountabilities of such actors wait to be further fulfilled. This explicitly means that the architecture of governance of *complementary* global regimes simply depends on the political convergence of several important issues which are discussed in this study. The most important of which is the extension of accountabilities when fundamental individual rights are violated, including the implementation of civilian protection duties.

The legal frameworks based on cooperation are characterized by several shortcomings of compliance and require responsibilities in the political configurations of mandates deployed in the field operations including their legal accountabilities. The *complementarity* principle intended to delimit domestic and international responsibilities is not applied in the delimitation of competence between international public authorities involved in the humanitarian escalations of so-called *'last resort'*. The international responsibilities and the forms of accountabilities of non-state actors are not yet defined when intervention in mass atrocities occurs and since international crimes are committed. In many situations, the political configuration of mandates on the ground takes in consideration, on the one hand, only the compromised position of the local government without even verifying whether the peace negotiations are taking place with the individuals most responsible of the crimes. On the other hand, the judicial activity in the field should not be paralyzed by peace processes and negotiations. In the major-

ity of these situations the right timing and the unity of intents of such global actors involved in mass atrocities are seriously compromised. Moreover, victim rights and civilian protection duties are still waiting for reliable models applicable on the ground. Another issue, which is not considered a marginal one, refers to the internal regime of accountabilities in the UN when peace forces deployed would also commit unlawful acts. Thus, international political responsibilities and legal accountabilities are in transition and require both legal and political debate based on accurate findings provided by research projects in the field of international law, international relations and peace and security studies.

From an empirical perspective, it is still not verified whether international criminal justice would have an impact on the maintenance and restoration of international peace and security, while its complementary role with political global regimes is in transition and deserves attention. It is important to provide assessments of the peacekeeping operations and the configuration of security mandates on the ground, considering the presence of complementary global actors which are responsible at the same extent to preserve acceptable standards of human security, such as the United Nations and the Rome Statute institutions. Another aspect relates to the challenges of peace enforcement, collective security and humanitarian interventions, including their accountabilities in democratic governance systems. In order to govern such issues substantive reforms are required, if not, such governance would only be based on legal controversy and political *impasse*. This study looks at the political dilemma deriving from the past, which shaped the formulation of the legal frameworks visible in the present. Policy formulation and legal issues characterize the governance of *complementary* global regimes which still function without international governance institutions updated to the challenges of the time, while acting in a decentralized system of governance. Many analysts, throughout the verification of empirical data, proved that "democracy is the form of government least likely to kill its citizens, and that democracies do not wage war against each other".[11] Thus, in which ways are *complementary* global regimes able to contribute to the theory of democratization of societies, at domestic, regional, and international levels?

In the last decade, the inquiries of legality of the '*right*' of humanitarian intervention in international law received valuable and extensive scholarly analysis. The risk of 'unilateral' humanitarian intervention for instance, derived from the failure of the collective security system established after the WWII and was characterized by the delegating role of the UN Security Council to military *ad hoc* coalitions as the only alternative to the inaction in case of mass atrocity crimes. In the post-cold war era and with the adoption of the Rome Statute, the shift of civilian protection duties deserves dis-

11 R. J. Rummel, *Power Kills: Democracy as a Method of Nonviolence*, 1997, at 11.

cussion in order to centralize individuals in conflict and post-conflict situations, extending the accountabilities of the criminal leaderships and major perpetrators, while monitoring the impunity regime of domestic jurisdictions in the conflict and post-conflict phases. The paradigm shift between the concept of international security and human security is in transition and deserves attention, including the serious shortcomings of law enforcement after the judicial outcomes based on supranational rules. The practice of the responsibility to protect civilians on the ground deserves assessments, not only for the military responses authorized and for the forces deployed in the field such as peacekeepers, but also for other *complementary* actors of the United Nations such as the International Criminal Court, which also struggles with protection measures of witnesses and victims of serious humanitarian breaches of international law. For the International Criminal Court, and in accordance with its *ex-ante* character, the ideal would be receiving support before, during, and after the human security concerns would arise in violent conflict and post-conflict situations. But this is an idea not realised, and probably it will never do. If we look at the political distance taken by some relevant States and regional entities from the Rome Statute, it would be accurate to refer to an *impasse* in the design of a governance structure of complementary character. This study analyzes the strengths and weaknesses of *complementary* international regimes and proposes reforms in order to respond to the spreading of *intra*-state conflicts, and the commission of serious crimes deriving from them, including the international responses in *inter*-state armed conflicts which governance is still in a state of uncertainty (e.g. aggression).

There are no doubts that national jurisdictions have the first responsibility fighting against the impunity of mass atrocity crimes. If we only consider the first decade of existence of the Rome Statute and the outcomes of its first review, the concern is not only related to finding remedies of cooperation by implementing national legislations, but also on the way the Rome Statute institutions and the UN interact and work together. In order to clarify the obstacles in the interaction between the United Nations and the International Criminal Court, this study also reports *a)* on the institutional and normative decentralization and fragmentation of the international legal order; *b)* on the current status of the governance of international criminal justice complementing the maintenance of peace and security at global level; and *c)* on the multidimensional character of international mandates, including the operational gaps on the ground, where both organizations are involved. In theory, when intervening in the domestic affairs of 'failed' States the collective effort to implement the effectiveness of *complementary* global regimes refers to the nexus between politics and law in the field of human security and humanitarian protection. The concept of *complementary* global regimes, one based on the evolution of world politics and the other exclusively legal based on its judicial character, deserves analysis and discussion. The legal and political analysis of their interaction offers valid considerations for the

governance of peace and justice and threats and crimes. In other words, the opportunities for further progress of international law, finding applicable measures of human security and law enforcement cooperation in case of serious violations of international humanitarian law during armed conflicts all of them require debate. With the advent of the Rome Statute it is acknowledgeable that there is the opportunity for States without armed forces to rely on the rule of law contributing to the transition of security in their domestic governance, which undeniably requires a deeper humanitarian perspective. The regime of justice falling under the Rome Statute is a vital component of this transition. However, considering the political standpoints of relevant States opting out from such multilateral regime, there seems to be hardly any determination to design a system of governance based on the accountabilities of the States and individuals at the same extent. At structural level and for the purpose of capacity-building, it would be important to establish a ministerial network of support for the Court either linked at domestic or at regional and international levels with specific institutional liaisons. The networks already in place should receive appropriate implementation. Another aspect is that in the current reality of its governance a capacity-building model for the emerging regime falling under the Rome Statute is still under construction.

While especially less powerful States enlarged the emerging regime of justice, giving the impression of the success of the Rome Statute campaign, its place within the regional and international realities is characterized by shortcomings of political convergence, and by a serious political *impasse* undermining its credibility. If the political support by the EU and Latin America to the Rome Statute system requires further political determinations, other regional entities such as the AU, Asian groups of nation-states and the League of Arab States take political distance from important interactions in the governance of political instability, violence against civilians and the commission of mass atrocity crimes. The non-parties to the Rome Statute system such as the US, China and Russia do not show the political willingness to finally becoming part of it. The fact that the Court obtains requests from the Security Council, for instance, does not mean receiving appropriate operational support during its operations on the ground. Furthermore, the outcomes of the inquires of serious breaches of human rights by the UN Human Rights Council should also engage the Security Council to *refer* dangerous situations for civilians to the Court, providing support on the ground with the configuration of its mandates. The Rome Statute regime simply struggles to find its *complementary* role within established international governance systems. The question is whether its existence and activities would stimulate the political convergence required for the democratization process of international governance institutions fostering peace, justice and security.

1.6 Research Questions

This study examines the emerging architecture fostering peace, justice and security looking at *complementary* global regimes, including the decision-making of intergovernmental organizations and the political forces responsible of their empowerment. It recalls the unresolved issues in the sequence of peace and justice between international governance institutions. This is the case of the interaction between the UN Security Council and the International Criminal Court (ICC) as an outsider from, but not stronger then to the UN system. Such interaction represents the opportunity for further implementation of international law and for the progress in the politics of justice. In several situations the so-called 'interests of peace' and 'interests of justice' do not coincide, even if they represent in theory the two faces of the same coin. The cooperation of the Security Council with the Court is not compulsory. It is exclusively based on political engagements not able to guarantee sustainable peace on the ground in situations of war and crime. The Security Council should consider law enforcement measures to support further the concept of accountability, thus strengthening the role of the International Criminal Court in the current international legal and political order. The Rome Statute institutions should be part of the peace-building process, especially with regard to the victims and witnesses undertaking their protection, relocation and rehabilitation. In order to promote the domestic autonomy of judicial proceedings *in situ*, the emerging regime of international criminal justice should receive resources to rehabilitate domestic judicial systems in the post-conflict phase, with the UN supporting the reform of security sectors and rule of law of domestic institutions (police, army and judiciary). From a wider perspective, democratic interaction strategies are required to contribute to the transition of international law dealing with different legal systems and traditions. The analysis performed in this study concentrates on political, legal and institutional frameworks respectively dealing with international threats and crimes in conflict and post-conflict situations, and the way those frameworks interact with each other. This study attempts to verify their *complementary* roles dealing with the political responsibility of the States and the legal accountability of the individuals committing international humanitarian crimes, and the efforts to maximize the results to prevent and reduce them while making sure they are not left unpunished. This study explores the advent of global humanitarianism and the international interventions under the flag of the responsibility to protect civilians and the possible links with the emerging regime of international criminal justice fighting against the impunity of genocide, crimes of war, crimes against humanity, and possibly at a later stage, of the crime of aggression, under the treaty-based 'opt-out' clauses based on the nation-state consent. This study advocates for interactions developing the role of *complementary* global regimes in the establishment of an 'open' society where the domestic, regional and international realities would contribute in the governance of international threats and crimes.

In the scholarly debates the principles and visions of 'internationalism' favoring the policy of cooperation among nation-states have been argued between several approaches in the context of balance of power, democratic governance, and institutional reforms of universal premises. Current areas of discussion include national and ethnic conflict regulation in *intra*-state warfare, the fight against the impunity of serious breaches of human rights, and civilian protection measures during large scale humanitarian escalations. The common element in the current debates is the relevance of international regimes and their *complementary* roles. From a legalistic perspective the cooperation between them is still devoid of any compulsory character. The paradigm shift dealt with in this study is about the ways these regimes are *complementary* to each other, particularly considering the necessity of a global architecture fostering peace, justice and security and its governance. The question is: at which extent such architecture is feasible and desired in the current break downs of governance systems at domestic, regional and international levels? Are *complementary* global regimes developing legal frameworks based on further international political responsibilities and legal accountabilities? Is there a chance to centralize human security concerns and the fundamental rights of individuals affected by war and crime? Moreover, is the political convergence required possible, without the consent of relevant stakeholders such as some of the permanent members of the Security Council? And last but not least, does the pessimistic view that underscores the risks of conflicting international regimes, including conflicting laws, conflicting mandates and multilevel jurisdictions represent a real threat for the preservation of the rule of international law and the progress of an 'open' global society able to monitor human security measures internationally? The sensitive challenges in the international legal order are characterized by competing conceptual approaches dealing with them. There is disagreement between the views to control power politics towards a legal order of supranational character and the alternatives of dealing with normative conflicts between multiple legal frameworks based on pluralism. The several issues dealt by constitutionalism and pluralism represent the current politics of international law dealing with the disintegrations of the nation-states and their failure towards their own citizens. The concern behind relates to the political will of a constitution of the world community retaining such sensitive issues or just relying on multiple legal frameworks dealing with several approaches of governance.[12]

In our globalized world the question is whether international governance institutions, or so defined 'sister' organizations, are able to interact according to the principle of interdependence between peace, justice and security, or the idea of such 'relationships' and 'partnerships' are left in doubt by several overlaps at structural, normative and functional levels. After all, the

12 See the suggestions of M. Delmas-Marty, *Ordering Pluralism. A Conceptual Framework for Understanding the Transnational Legal World,* 2009.

threats to peace and security and the commission of international crimes in conflicts and post-conflict societies are strictly interrelated, if we look at the current legislation of the Security Council. But how is such principle of interdependence translated in the practice? How are the international responses to threats and crimes taking shape in multilateral political engagements? Are such responses governed in accordance with the rule of law as a tool of governance and in accordance with the challenges of the post-cold war era, or political realism simply prevails? For some observers it seems that the Court would constantly be jeopardized in extreme conflict situations in the context of *peace v. justice* including several human security issues. In any case, granted amnesties neutralizing the accountability of serious humanitarian breaches need to be out-of-the-way from peace talks and negotiations, while coercive diplomacy needs to find back the preventive approach of international threats and crimes. As eminent commentators would suggest on such controversial issues, amnesties for mass atrocity crimes, whether explicit or *de facto*, have no legal validity at international level. Now that there is an independent international judiciary it should be allowed to the application of the law impartially, targeting alleged crimes by warlords, as well as any potential unlawful act committed by military alliances or other non-state actors. In other words, all global players involved have to feel responsible for their actions.[13] But is this really the case?

In order to find responses this study assesses the current interaction between *complementary* global regimes including the requirement of an accountability system that would retain political responsibilities and legal accountabilities at the same extent for all parties involved in conflict and post-conflict situations. Emphasis is given to finding measures to maximize the results in the preservation of law and order at global level and in the field operations. The issues are addressed through the following questions:

Do we witness the emergence of an international architecture of governance fostering peace and justice, including measures of human security applicable in conflict and post-conflict situations?

What kind of challenges, obstacles and concerns characterize the governance of complementary global regimes?

How do the referrals to the International Criminal Court and their governance in the field operations currently work?

13 See C. Bassiouni, "Advancing the Responsibility to Protect through International Criminal Justice", in H. Cooper and J. Voïnov Kohler (eds), *Responsibility To Protect. The Global Moral Compact for the 21st Century*, 2009 at 31.

A global architecture fostering peace, justice and security embodies the idea that the rule of international law as a principle of governance and its institutions, would focus on the accountabilities of individuals, nation-states and non-state actors in case of severe violations of common concern. In the current 'testing' environment visible in the responses to peace and security threats the application of this idea of the rule of law present several issues which nearly neutralize the enthusiasm about the enforcement of a global architecture of governance dealing with international threats and crimes. The political configuration of *complementary* global mandates fostering peace, justice and security on the ground present serious shortcomings in the civilian protection duties, including the engagement of law enforcement against criminal perpetrators, once the judicial outcomes have been released by the Court (see the case of Uganda and Democratic Republic of Congo, Kenya, Sudan, Libya and Mali).[14] The concern would be whether the persuasion of the permanent members of the Security Council in support of the referrals to the Court represents only the means of political pressure marginalizing respectively the criminal regime in the Sudan, or neutralizing the totalitarian Libyan regime, or even protecting the aggressive regime in Syria, rather than a real political determination to raise human security and civilian protection duties on the ground. As several observers emphasize, the contradiction in such positions undermines the pursuit of international criminal justice falling under the Rome Statute and the UN Charter. The main concern is the expression of militarization ignoring the basic principle of neutrality when intervening in the hostilities, including a weak system of accountability vis-à-vis non-state actors. Another concern refers to the double standard characterizing the international humanitarian escalations with the last situation left ignored being Syria.

These are only some of the aspects characterizing the international political divisions to intervene in transition societies and domestic security systems during massive humanitarian crisis deriving from *intra*-state conflicts. Complementary global regimes should prioritize a strategy of interaction in the field operations and also at global level, in order to marginalize the non-cooperation of a criminal regime such as the government of the Sudan. The analysis of the 'situation' in the Sudan, as referred by the Security Council to the Court, and the judicial 'case' as initiated by the Court after the referral by the Security Council S/RES/1593 (2005), require attention on the breakdowns of the peace enforcement configurations by the Security Council,

14 In 2013, the Office of the Prosecutor opened an investigation into alleged crimes committed on the territory of Mali since January 2012 after the referral coming from the Government. The United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) takes over the authority from the African-led International Support Mission in Mali (AFISMA). The robust peacekeeping mandate in Mali is not configured to support the quest of justice in the country. French forces deployed in Mali have been authorized to intervene in support of MINUSMA when under imminent and serious threat upon request of the Secretary-General, see UN doc. S/RES/2100 (2013).

including the involvement in mass atrocities by other actors in Africa, such as the African Union and civil society organizations. In other words, the negative political repercussions received by the emerging regime of international criminal justice established under the Rome Statute. The same view is valid in the case of the tribal structure and the complete absence of the State in Libya, and the sensitive governance issues for the Libyan transitional council, which is dealing with the challenges of the vacuum of power after the regime of its tyrant, including the reconstruction of domestic security sectors still in transition, and which deserve to be further monitored by international governance institutions. In regard to Syria, the absence of any international response and civilian protection measures so far is a matter of serious concern considering the outcome of the UN commission of inquiry on the serious breaches of human rights committed in the country. The double standards in the selection of situations by the Security Council are once more confirmed. The regime of international criminal justice falling under the Rome Statute does not have any jurisdiction in Syria. The political pressure of the Arab League on the Syrian authorities should be result-oriented. The presence of its observers on the ground is still a weak action considering the extreme violence on civilians protesting against the totalitarian regime. Thus, how is the doctrine of civilian protection duties currently working in such extreme situations?

A principal question addressed in this study is whether the Court is marginalized in its tasks to fight against the impunity of serious crimes, or if there is the political will to implement relations with the United Nations mandates in the field operations. The main concern is whether there is sufficient cooperation to monitor domestic channels while respecting the *complementarity* principle and State sovereignty. It also needs to be verified whether the current legal status of international cooperation is sufficient to destabilize criminal regimes compromising sustainable peace. The Rome Statute institutions need to be prepared to influence the rule of law with the jurisprudence of its Court. There are no doubts about the importance of such role. The problem is still the resistance of the Court's decisions by powerful States, domestic jurisdictions, and the lack of multilateral cooperation in respect to the 'interests of justice'. These obstacles, combined with the UN negotiations and political involvements in peace-talks with criminal regimes, characterize at the present the humanitarian crisis escalated to the Court as the *last resort* option (see the case of the Sudan and Libya). The main assumption expressed in this study is that multilateral institutions, and the complementary regimes deriving from them, should not miss the opportunity to centralize individuals in international affairs. Models of governance of international threats and crimes are required at domestic, regional and international levels. The Rome Statute explicitly declares the need to bring its institutions into relationship with the United Nations. In this phase of its existence the Court needs to build up a strong identity becoming a result oriented judicial institution, responding positively to

the critics, rejections and huge expectations, delivering best standards of public administration of international criminal justice. The Court however, cannot do this alone. The presence of the UN in the field where the Court is involved needs collective efforts in the conflict and post-conflict phases. The Court's role is to bring justice into the ex-colonial reality of remote communities with possible proceedings on the ground, to restore the regime of terror and the suffering of victims of severe human rights offences contributing to sustainable peace and stability. In the first phase of its existence the Court focused on the mass atrocity crimes as a priority to bring justice in some regimes of terror prosecuting the perpetrators. This is common to the DRC, CAR, Uganda, Kenya, and Ivory Coast, Libya and Darfur investigations and prosecutions, where some of its judicial outcomes are still waiting to be enforced. The next important duty of the Court's judiciary is to repair the pain of the victims by providing justice. The overview of the lesson learned by the UN *ad hoc* tribunals, including the evolutionary path of international criminal law, is complemented by the substantial and very extensive literature of scholars and practitioners noted in this study. The findings of this study verify that the implementation of human security measures between *complementary* global regimes would allow the universality of supranational rules, enhancing their credibility as international governance institutions fostering peace, justice and security at domestic, regional and international levels.

1.7 Purpose of the research

In this study the complementary role of the Rome Statute institutions to the United Nations system is explored not exclusively with regard to the important interaction between the judicial organ, the International Criminal Court and the UN bodies, but between all actors involved in building networks in the emerging treaty-based architecture: the Assembly of the States Parties to the ICC and the UN political organs, as well as the UN specialized agencies, regional intergovernmental and non-governmental organizations. This includes the important role of academics and civil society offering their recommendations, guidelines and fact-findings of human rights violations addressed to such international governance institutions of universal character. The determination of this work is to examine the debate around the governance of complementary global regimes and the dilemma of human security. This study questions the place of the emerging regime of international criminal justice in the arrays of peace and security maintenance and restoration. It attempts to define their complementary roles and the idea of a global architecture dealing with peace and justice in the context of human security centralizing and serving the rights of individuals in times of war and crime. Unfortunately, this study cannot be considered exhaustive. The topics and the issues examined will need further multidisciplinary research.

Against the backdrop of the peace and justice debates, many have questioned the impact of the Rome Statute in real terms against an international judicial institution not ready for a performance appraisal, instead, prepared for more jurisdiction, authority and resources. The aim of this study wants to fill the gap in existing literature on the creation of a global architecture towards the interaction of universal organizations mandated of fostering peace, justice and security through complementary judicial and political mechanisms, involving the domestic, regional and international realities. It focuses on the interaction between the United Nations system and the Rome Statute institutions responsible of democratic governance in their complementary field of expertise arguing on the current status of their cooperation. The subjects of such interaction also include the promotion of the universality of the Rome Statute, the status of implementing national legislations, and various aspects of law enforcement, cooperation and operational assistance to the Court. The legislative history of the Rome Statute institutions since their establishment, and the UN longstanding presence in enduring conflicts, have been extensively analysed in order to detect global strategies and concrete objectives fostering peace, justice and security towards their interaction. This study considers the reasons of the delay and the obstacles in finding remedies implementing a system of international criminal justice, which can be found *a)* in the conflicting ideas of peace and justice in conflict and post-conflict situations; *b)* in the *impasse* of the reforms of the UN peace operations incorporating justice in the peace-building phase; *c)* in the international responses of law enforcement following judicial decisions in on-going conflicts; and *d)* in the search of civilians protection duties. In order to empower the system of international criminal justice, national implementation and judicial reforms at domestic level are important in the same way as for global actor reforms such as the UN and the Rome Statute institutions.

As underlined by Köchler "only a multipolar international system with a fair distribution of power and resources can credibly serve the causes of world peace, justice and human rights as proclaimed in the UN Charter. It is for this reason that a democratic reform of the United Nations, and in particular of the Security Council, has come to be urgently required in this transitory phase of a post-cold war order, where the paradigm of power politics still prevails".[15] The main theoretical assumption motivating this study is that democratic governance of international threats and crimes must also include less or non-democratic States. Such integrative approach will act as a strong stimulus to their ongoing or future democratization process of domestic governance, and also preserve their basic right of self-determina-

15 For the debate see H. Köchler, 'Summary: A "New World Order" of Transnational Democracy versus the "Old World Order" of Superpower Rule', in *The United Nations and International Democracy: The Quest for UN Reform*, IPO Research Papers, 1996, accessible at: http://www.hanskoechler.com/unid.htm See also H. Köchler, *Global Justice or Global Revenge? International Criminal Justice at the Crossroad*, 2003.

tion and autonomy. After all, the policy approach generating political fracture between categories and sub-categories of States needs to be neutralized with all means as it may cause conflict.

This study offers an assessment of the impact of the Rome Statute institutions in the global order, emphasising the importance of an interaction strategy between relevant complementary actors. It analyses the evolution of the rule of law, multilateralism, collective responsibility, global solidarity and mutual accountability as principles of global governance in the international society, and their impact on the ground in conflict and post-conflict situations.[16] This study debates the current transition of *complementary* global regimes and their interaction for the sake of peace diplomacy and negotiations offering sustainable stability, combined with the fight against the impunity of crimes of common concern, upholding human rights standards, including the search of measures of human security applicable on the ground in the field operations. In other words, it offers an assessment of the necessary measures applicable in situations of war and crime in accordance with universal values. It promotes the link between international criminal justice and the concept of sustainable peace in conflict and post-conflict situations towards the configuration of mandates on the ground. This study recalls the legal aspects regulating peace enforcement operations, the UN institutional reforms expected and not yet performed, including the legal and political determinations enforcing treaty-based organizations and their public links necessary for an international architecture dealing with global threats and crimes. This study measures the level of public authority of the Court as new international institution considering its jurisdictional reach in domestic realities, and the need of support from relevant actors involved on the ground in enduring conflicts. Attention is given to the judicial institution dealing with supranational criminal proceedings for the most responsible individuals of mass atrocity crimes centralizing human security measures. This study, which cannot be considered as exhaustive, also examines the interaction between the Rome Statute institutions (Assembly of States Parties, Trust Fund for Victims and the Court) and the United Nations system on sensitive governance issues. It considers the importance of their independence and delimitation of competence on one side, and the necessary cooperation, resource and knowledge sharing, on the other.

16 The intent is also to contribute to the theoretical debate on global governance issues between global politics, international law and international relations, see L. S. Finkelstein, 'What is Global Governance?, in *Global Governance* 1 (1995), at 367. See also F. Nuscheler, 'Global Governance, Development, and Peace: On the interdependence of Global Regulative Structures', in P. Kennedy, D. Messner, F. Nuscheler (eds.), *Global Trends and Global Governance*, 2002, accessible at: http://www.sef-bonn.org/download/publikationen/sonderbaende/sb-12-Feb-2000_zusammenfassung_en.pdf

The purpose of this study is to fill a gap in the existing literature about the interaction of universal organizations mandated of fostering human security through political and judicial mechanisms, namely the United Nations system and the Rome Statute institutions. The interaction of such complementary global regimes in conflict and post-conflict situations, including the implementation of strategies supporting their partnership and relationship is the main object of this study. Moreover, the motivation is to offer an analysis of the emerging regime of international criminal justice towards the implementation of multilateral institutions and their consolidation. After all, the interaction between the United Nations and the Rome Statute institutions takes place at several levels, but most importantly it represents the nexus of global politics and the rule of law, interacting with several branches of international law, respectively humanitarian, criminal and the emerging law of human rights. The idea to promote the rule of law as a principle of global governance in the international society, receives assessment on the ways it currently works and eventually evolves. This study debates the current humanitarian escalations of last resort between *complementary* global regimes and their impact in the field operations. It measures the *status quo* of human security between theory and practice. By way of case studies it examines the multidimensional operations fostering peace and justice, the issue of cooperation in the Democratic Republic of Congo (DRC) and the humanitarian escalation of severe violations in the Sudan referred by the UN Security Council to the International Criminal Court. In other words, this study discusses the meaning of complementary roles of international regimes dealing with human security in conflict and post-conflict societies and the opportunity of an integrated approach of governance.

The evolving concept of universal jurisdiction and international criminal law; the modern doctrine of humanitarian intervention and protection duties of civilians; the challenges faced by the legal theory in addressing issues on the sovereignty of nation-states and the responsibilities of global actors including the governance of complementary global regimes in the international society require further research. These contested concepts represent the central dilemmas facing governments, international organizations, civil society and civilians. The meaning of complementary global regimes fostering human security such as the United Nations system and the Rome Statute institutions needs clarification. It is fundamental to build up consensus on further international efforts to manage international humanitarian escalations of *last resort*. The delimitation between sovereignty and international governance, the concept of nation-state and its self-determination, and the international responsibilities centralizing fundamental individual rights deserve constant attention by legal and political theorists. The search of governance systems centralizing human security and its challenges, obstacles and concerns are the main parameters used to explore the current humanitarian escalations between global institutions of complementary character.

1.8 The topics selected / proposed

The analysis of global matters challenging the international legal and political order includes often the risk of being merely abstract, if it does not offer pragmatic recommendations on specific problems. This study wants to avoid such a risk. It explores the asymmetry of international legal and political relations manifested in the governance of complementary global regimes fostering peace, justice and security at global scale. The purpose of this work is to find solutions using appropriately the knowledge acquired in the field of study proposed, setting the priorities in the governance of threats and crimes between complementary global regimes. The first priority is finding applicable measures of human security in situations of serious violations of international humanitarian law. The findings of this study provide recommendations to policy makers on global governance issues, enhancing the ability of the international society to respond to large scale humanitarian crisis during internal civil wars, and eventually in armed conflicts of international character. The purpose is to preserve the rule of law in a globalized world and multilevel jurisdictions. This is only possible through substantial progress of political convergence, institutional reforms, and systemic changes in the governance of international threats and crimes. After all, only through such actions there would be the contribution of complementary global regimes to the principles of open society and further definition of *global justice*.

This study offers a clarification of the limited statutory provisions regulating the ICC and the UN interaction; it considers the complementary duty of the Rome Statute with the UN Charter; the Court's independence from the UN framework; the controversial relationship with the Security Council and the political agenda of the conference review of the Rome Statute still far from solving the several issues of cooperation between States Parties and international organizations of complementary character. With regard to the Rome Statute the political impasse between the signature and the ratification of key players is well known and needs solutions for the substantive support the Court needs from States Parties and non-States Parties and with regard to the cooperation with the Security Council. This study also approaches the debate on the amendment proposals of the Rome Statute and the impasse of further jurisdictional progress of the judicial institution. It also analyses the cooperation between the United Nations and the Assembly of States Parties to the Rome Statute in the formulation of legal and political frameworks of governance. It attempts to verify the potential of the rule of law among other values and principles of governance, sustaining the human security doctrine among international governance institutions dealing with war and crime. The emphasis is given to developments programs, social equality, and capacity-building activities at domestic, regional and international levels. After all, in order to retain models of governance for devastated domestic realities by war, crime and famine, the feasible interactions between global actors require political convergence of expectations, which are emphasised

in this study. The Rome Statute system is based on important aspects of human security, such as the interests of victims and witnesses. Their protection, relocation and rehabilitation require deeper responsibilities upholding such human security measures. The interaction between the United Nations and the Rome Statute institutions is extremely important. It gives rise to the protective, reparative and retributive meanings of *global justice* throughout measures for peace, justice and security to restore individual rights, and the dignity of human lives offended in situations of war and crime.

This study offers an analysis of the nexus between humanitarian protection and justice with an integrated and comprehensive approach towards conflict prevention, stabilization and reconstruction. Complementary global regimes have the function to balance the distribution of powers in international relations throughout compliance of international law. For the sake of the principles of accountability and compliance, the International Criminal Court and the United Nations have a central role to play. The purpose of their interaction is to end the impunity regime of severe violations of human rights, towards global deterrent mandates, getting closer to the real concerns of civilians in fragile and disintegrated States not able or unwilling to bring sustainable peace and justice on their own ground. In the field of human rights and for their preservation once treaty-based organizations, including the bodies deriving from the UN Charter, would prove a lack of compliance by their States parties, the Security Council and other political organs should immediately open inquiries and also referrals about individual criminal accountabilities. In these situations, the cooperation with the Rome Statute system should be mandatory. The case studies selected and proposed offer an overview of the practice applied in the field operations where complementary international mandates are involved. The findings of this study demonstrate that a normative harmonization is necessary if the vision of constitutionalism would be materialized. The functional implementation of relationship agreements advocated by the theoretical approach of pluralism is only a timid instrument of cooperation. Further evolution of international law would mean to focus on governance at multilateral scale, finding appropriate adjustments in the normative and institutional tools of the international community as a whole, or the so defined community obligations. The rules of cooperation between complementary global mandates are having an impact on the lives of individuals, while public power will need further implementation of legal techniques in new fields of public international law, regulating global governance and administration, according to the principles of transparency and accountability. The international community needs a model replacing progressively old methods of peace and security maintenance at global scale. The interaction between human security and transnational justice at national, regional and global levels needs the attention by the decision-making either from the perspective of constitutionalism or pluralism. Human security and the preservation of human rights should be the priorities in both these approaches involved in the design of global governance frameworks.

1.8 Methodology

The research methods applied in this study refer in summary respectively to: *a)* the multidisciplinary approach of the theories of international regimes based on human security and complementing with each other, and *b)* the legal and political solutions required to fill the gaps of governance fostering peace and justice. These research methods emphasise the institutional, normative and functional analysis of *complementary* global regimes and the legal and political sources to verify their *status quo*. From a theoretical perspective the approach in this study tries to bring some light on the difficulties to reinforce the doctrine of human security which has been lost in the academic discourse. The interaction between complementary global regimes fostering peace, justice and security would preserve the idea of human security in international society.

a) Multidisciplinary approach
This study brings together an assessment made from the perspective of international law, international relations, political science and legal philosophy. It attempts to verify the governance of justice and the transition of international peace and security in conflict and post-conflict situations characterized by mass atrocity crimes. It provides an extensive analysis of the new trends in modern international relations between mutual responsibilities of States combined with the individual accountabilities of criminal perpetrators. It offers an analytical tool about legal and political ramifications of the Rome Statute and its role in the emerging regime of justice vis-à-vis the States, the United Nations and the international community as a whole. It contains explanatory, qualitative and constructive research methods applied for an implementation of the basic principles of international relations and international law. These principles represent interdependent targets to govern peace, justice and security and symbolize the tools for setting the global priorities of democratic international regimes dealing with:

1) *Rule of law*
2) *Multilateralism*
3) *Collective responsibility*
4) *Global solidarity*
5) *Mutual accountability*

This study will extensively approach the first three, the international rule of law, multilateralism, and collective responsibility, but it will still refer to all basic principles of international relations regulated by the UN and recently by the Rome Statute system. Sharing knowledge to develop global values in the international society is the function of public international organizations and this is common either to the United Nations and the Rome Statute institutions as multilateral tools of governance. The scope is the protection of human rights, the promotion of human security, combining political con-

sensus to an appropriate lawmaking process for the implementation of more democratic international regimes of complementary character. An extensive literature review has been performed considering both policy and legal aspects in the field of international criminal justice, and the ways new crimes would be considered for future reviews of the Rome Statute. In order to propose a consolidation model between the United Nations and the Court's regimes, the UN missions from peacekeeping to peace building, especially in the African Great Lakes Region where the Court is involved since the beginning of its investigative and prosecutorial activities, have been extensively examined. The intent is to promote democratic standards of interactions only achievable throughout concrete institutional reforms, which would also allow the extension of a universal jurisdiction to other serious crimes of common concern and wider design of an architecture governing international threats and crimes.

b) The theories of emerging international regimes based on human security

This study navigates the main international regime theories focusing on a variety of theoretical and methodological approaches used to explain and analyse the content, formation and effectiveness of international law and its institutions and to suggest improvements. The most common definition of international regimes found in the literature comes from eminent scholars as "institutions possessing norms, decisions, rules and procedures facilitating a convergence of expectations".[17] The liberal view of regime theory argues that international regimes are instances of international cooperation and that international governance institutions are regimes which affect the behaviour of States. On the one hand, for liberal scholars cooperation is indeed possible despite anarchy. The realists on the other hand, do not mean that cooperation never happens, but that it is not the norm in the global order. The realist view of regime theory assumes that cooperation makes a difference of degree between anarchy and conflict in international relations. The question of the idealists is whether international cooperation can be better matched by a corresponding system of international responsibility, shared responsibility, and compliance, as the main issues characterizing the emerging regime of international criminal justice. The main argument is whether the current interaction between the United Nations and the Rome Statute institutions creates the prerequisite of a global democratic 'system', or a global 'architecture' fostering international criminal justice in the context of human security in conflict and post-conflict situations.

17 See S. D. Krasner, *International Regimes,* Cornell University Press, 1983. S. Haggard, "Theories of International Regimes", 41 *International Organizations*, 1987, at 491. See also A. Hasenclever, P. Mayer, V. Rittberger, *Theories of International Regimes*, 1997, at 2.

From a theoretical perspective this study considered the several approaches in the global governance of international humanitarian escalations. The *realists* complain that States pursuing utopian moral visions through intervention and humanitarian aid do their subjects harm and destabilize the international system. The majority of such interventions have been based on economic or political interests and not in the domain of human rights. The *particularists* object the destruction of traditional cultures by cultural colonialism under the guise of economic liberalism or defense of human rights. The *nationalists* deplore the fact that so many people are stateless or live under inefficient and tyrannical regimes that monitoring them at international level represent only utopia. The advocacy of the society of States, or *cosmopolitans* is concerned about the disintegration of nation-states and about the imperial ambitions of the powerful. The *cosmopolitans* believe that the contemporary world badly fails to guarantee equal social, economic, and political standards. Such equal standards would require considerable changes in the actions of wealthy individuals and States. They might, for instance, require the transfer of capacity-building with every means in fragile States. They might require building international institutions able to limit, or even replace, the self-interested action of powerful States and corporations. They might require global governance systems based on collective responsibility, global solidarity and mutual accountability.[18]

The meaning of *complementary* international regimes is explored focusing on the effectiveness of the policy trend of 'institutionalism' emerging in the current world order, including the intersection of the three schools of thought within the study of international regimes, such as: the *realists*, focusing on power relationships; the *neoliberals*, analysing the constellation of interests; and the *cognitivists*, emphasizing knowledge dynamics, communications, and interactions.[19] The emerging regime of international criminal justice represents the determination to harmonize legal systems around the preservation of human rights and universal principles and norms, fighting against the impunity and inaction of serious crimes of common concern. The methods applied in this study verify whether such regime finds its place in global governance issues of peace and security, while focusing on the intersec-

18 See M. Griffiths, *Fifty Key Thinkers in International Relations,* 1999. See also I. B. Neumann, O. Waever (eds), *The Future of international Relations: Masters in the Making,* 1997. J. Kruzel, J. N. Rosenau (eds), *Journeys Through World Politics: Autobiographical Reflections of Thirty-four Academic Travellers, 1989.* M. Smith, *Realist Thought from Weber to Kissinger,* 1986. D. Thürer, The "failed State" and international law, *Revue Internationale de la Croix-Rouge/ International Review of the Red Cross*, Volume 81, Issue 836 / December 1999, at 731-761. See T. M. Franck, *Fairness in International Law and Institutions, 1995.* N.J. Schrijver et als, *The United Nations of the Future. Globalisation with a Humane Face,* 2006. See also O. Spijkers, *The United Nations, the Evolution of Global Values and International Law*, 2011.

19 For inspiring theoretical approaches on the creation of global values in the international legal and political order see M. Griffiths, N.J. Schrijver, O. Spijkers, *supra.*

tion between international humanitarian law, human rights law and international criminal law. The methods applied also focus on the verification of governance and capacity-building of such complementary global mandates in conflict and post-conflict situations. Furthermore, these methods (normative, structural and functional) verify whether complementary roles of international governance institutions offer political and legal inputs for the definition of crimes internationally recognized, contributing to further progress of an *ex-ante* jurisdiction dealing with serious recognized international crimes. The methodology applied also clarifies to a certain extent the implementation required in the immediate, middle and long terms in order to enhance the relationship and partnership between complementary global governance institutions. The legislative history of these organizations is extensively analysed, including the inputs of all relevant stakeholders. The poor arrangements and agreements in the field operations where complementary mandates are currently deployed receive analysis and critics. The suggestion is to overcome the lacuna in protection, relocation and rehabilitation of victims and witnesses with an institution cooperating with the Court and other relevant stakeholders.

c) Legal and policy sources

The main primary sources used for this research are the treaties and the legislative history, respectively of the United Nations and the Assembly of the States Parties of the International Criminal Court. The Rome Statute and the declarations of interpretation by its States Parties, the UN Charter, the Vienna Convention on the Law of Treaties; the relationship agreement between the UN and the ICC and the cooperation agreements with regional organizations, most notably the EU, the AU, the League of Arab States and with the specialized agencies of the UN family, in particular the agreements with the UN peace operations in situations where the Court is involved, all of them receive appropriate analysis. The institutional 'contours' of international law are debated between 'old' and 'new' tools of governance fostering peace, justice and security. It needs to be noted that since this study deals mainly with relatively new concepts in international law, customary international law is hardly relevant to it.

In order to offer an overview of the legal environment of the International Criminal Court, the general principles of international law, the principles of fairness and justice, which are applied universally in legal systems around the world (e.g. good faith, *res judicata*, impartiality of judges), have been found in decisions of international tribunals and national courts and in references in writings and teachings of eminent scholars. These conceptual sources frequently involve procedural matters and the international tribunals rely on these principles when they cannot find authority in other sources of international law. Another category of sources are related to the policy formulations at national and regional levels and the intersection between peace, justice and security applied globally. Apart from the treaties the judi-

cial decisions of the ICJ on immunities[20] and its extensive jurisprudence have been consulted, such as its judgment on the Application of the Convention on the Prevention and Punishment of the Crime of Genocide which provided authoritative guidance on the concept of genocide and the duty of States Parties to prevent genocide.[21] Other primary materials include: the Security Council and General Assembly resolutions, such as the Security Council referrals; the referrals from the States parties (DRC, Uganda, CAR and Ivory Coast) and non-parties to the Rome Statute (e.g. Occupied Palestinian Territories); the autonomous judicial activity of the Court in Kenya; and the official reports of the UN Commission of Inquiry on Darfur.[22] The dynamics of peace enforcement and the international duty to protect civilians have been examined in situations where both the UN and the ICC are involved (DRC and Sudan). Of particular importance for this research are also the ASP resolutions concerning the Special Working Group on the Crime of Aggression (SWGCA) including also the outcomes of the working group on cooperation which settles the main channels of cooperation and the main problems thereof between the Rome Statute institutions and the States, and between the Rome Statute institutions and the United Nations.[23] The controversial issue of the definition of aggression will be approached using primary sources as the results of the meetings of the Special Working Group on the crime of aggression.[24] Furthermore, important sources are: the work of the Preparatory Commission for the ICC,[25] the institutional documents and outcomes of reports and studies of working groups of the ASP

20 For the debate over the immunity see S. Wirth, "Immunity for Core Crimes? The ICJ's Judgment in the Congo v. Belgium Case", 4 *European Journal of International Law* 13, 2002, at 877.

21 Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Bosnia and Herzegovina v. Serbia and Montenegro*) *(Judgment)* [2007] ICJ at 18 October 2007 ('*Application of the Convention on Genocide*') http://www.icj-cij.org For the background of the case, genocide and State responsibility and the ICJ jurisprudence see D. Turns, "The Court's Judgment on the Merits: The Jurisdictional Question" in "Application of the Convention on the Prevention and Punishment of the Crime of Genocide: Bosnia and Herzegovina vs. Serbia and Montenegro", (2007) in 398 *Melbourne Journal of International Law* 8(2), accessible at: http://www.austlii.edu.au/au/journals/MelbJIL/2007/22.html

22 Available at: http://www.un.org/News/dh/sudan/com_inq_darfur.pdf

23 Available at: http://www.icc-cpi.int/library/asp/ICC-ASP-4-SWGCA-1-_FINAL_English.pdf

24 The complete overviews of the ASP sessions and the latest Report of the SWGCA are accessible at: http://www.icc-cpi.int/asp/aspaggression.html

25 As with the Rome Conference, all States were invited to participate in the Preparatory Commission. Among its achievements, the Preparatory Commission reached consensus on the Rules of Procedure and Evidence and the Elements of Crimes. These two texts were subsequently adopted by the Assembly of States Parties. Together with the Rome Statute and the Regulations of the Court adopted by the judges, the two documents comprise the Court's basic legal texts, setting out its structure, jurisdiction and functions.

and the UN.[26] The negotiated relationship agreement[27] and the ICC-UN interaction[28] have been extensively analyzed, taking in consideration the latest developments. The so called *Dutch Proposal* pursuant to "Resolution E", adopted at the Rome Conference in 1998, seeking to codify a definition of the crime of terrorism in the Rome Statute has been reported, including the proposals of States according to Article 124 of the Rome Statute and the amendments and debates approached during the review conference of the Rome Statute in Kampala.

26 For an overview of the Complete Report of the Preparatory Commission to the Assembly of States Parties and the resolutions of the General Assembly see list of document available at: http://www.un.org/law/icc/prepcomm/prepfra.htm

27 The Relationship Agreement, concluded on 4 October 2004 by the President of the Court and the Secretary-General of the United Nations on behalf of their respective institutions, affirms the independence of the Court while establishing a framework for cooperation. See the *Negotiated Relationship Agreement between the UN and the ICC*, accessible at: http://www.icc-cpi.int/library/asp/ICC-ASP-3-Res1_English.pdf

28 See the CICC Team on the UN-ICC Relationship Agreement and ICC liaison office at the UN, ICC-ASP/4/6, accessible at: http://www.iccnow.org/documents/NYoffice_TeamPaper.pdf