![HiiL — Innovating Justice]

Legal Futures
of the International Criminal Court

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Executive Summary

We live in a period that some call the Great Acceleration. Breakthrough developments in information technology, leaps in scientific knowledge, and innovations in economic and social structures are causing waves of disruption. Some developments – be they swarm weapons driven by artificial intelligence, or the implications of our ability to hack the human genetic code, or the rise of weaponized fake news – are set to fundamentally test the limits of acceptable human behaviour. Others, like the future of social cohesion in a world of vast migrations, will subtly alter the norms for resolving conflicts and the nature of national and international governance. The interconnectedness of the digital realm and the real world mean attacks on critical electronic infrastructure change one of the most fundamental rules of the conduct of hostilities: the distinction between civilian and military targets.

How will the institutions dedicated to resolving conflicts and finding justice respond to these changes? The Dutch Section of Amnesty International set out to explore the following questions:

In the face of the most relevant political, economic, and social trends likely to emerge in the next 5–10 years, what adaptive strategies might the International Criminal Court, and the civil society organizations supporting it, deploy? What strategies for change in the institution and the procedures of the court will allow the ICC to become increasingly successful in achieving its aims?

The International Criminal Court (ICC) was founded to enhance peace and security. The aim of the ICC is to bring the perpetrators of the 'most serious crimes' to justice and to provide truth, justice and reparation for victims. It takes up cases where authorities at the national level are unwilling or unable to act.

The ICC has opened 24 investigations since the entry into force of the Rome Statute in 2002, which some see as an unprecedented success for a world court. The effectiveness of the ICC organization and how stakeholders are involved is the subject of some debate, however. Some observers would like to see an ICC that is more effective, and cite many atrocities that have not (yet) been addressed, procedures that are seen as slow or costly, or using too 'Western' an approach.

The Dutch Section of Amnesty International has supported the ICC from its inception and wants the court to become increasingly successful in achieving its aims. Therefore, they set out to test how a dialogue on the future of the ICC might be organized. They commissioned the Hague Institute for Innovation of Law (HiiL), a Dutch non-profit dedicated to innovation in the justice system, to devise a consultative process.

At the core of our study is the scenario method – an exploratory tool in which a possible set of future conditions are described. These scenarios facilitate thinking about policy and structural responses. Scenarios are not predictions: they are closer to simulations in which multiple trends converge. They can provide a rich set of stimuli for thinking about consequences, impacts, and responses. An organization can thus be better prepared to meet the unforeseeable future by learning to be prepared for foreseeable variations.

HiiL interviewed leading experts and academics about political, economic, social and technological developments. We then compared them with a database of trends relevant to the justice sector. We identified more than 24 relevant trends, indicating both a complexity of impacts and a high degree of future uncertainty.

In conversations with experts through interviews and workshops, three overarching trends were identified as most relevant for the ICC:
- Fragmenting governance
- Social cohesion under stress
- Accelerating technology

These three trends became the basis for two scenarios – one in which selected current trends continue and one in which they reverse.

In the *New Tribes* scenario, a world in which the state is viewed as the primary building block of authority gives way to the emergence of a more diffused, networked, and complex form of governance. The social goods citizens want are provided through multiple agents - from corporations to localised collectives of private citizens to non-governmental organizations to virtual online communities. In this scenario there is loose social cohesion; people do not have allegiance to a 'state' but to multiple groups, objects of alternative loyalty, and sources of personal identity. We also see limited regulation of technology, and an even faster pace of innovation and change.

In the *New States* scenario, on the other hand, the state regains control as the primary expression of authority and provider of social goods. The idea of the nation-state re-emerges, with stronger social cohesion and collective identification around a set of common national goals. In this scenario we see closely regulated technology coupled with a much slower pace of innovation and change.

In effect, we built two wind-tunnels to stress test the International Criminal Court. How would the current institution and its procedures fare in the headwinds of these different futures? What would stay firmly in place? What would be blown to pieces? What design choices could be made to streamline the court?

A group of experts was asked to assume the role of "users" in a series of workshops. As victims or as the accused, what would they want the ICC to be able to do for them in each of the scenarios? What would prosecutors and judges expect from the procedure? What would states expect from the institution in this future? This resulted in a great number of user stories from which we can extract the design requirements of a future ICC.

A number of these requirements were common to both scenarios. This suggests that change in these directions would be "no regret strategies". These requirements are often related to three major challenges:

> First, the decision-making process within the ICC system and the Assembly of States Parties needs to improve. The current mechanisms for changing procedures and structures, for adapting existing rules and adopting new ones are far too cumbersome.

> Cost-effectiveness, and thus the need for innovation in existing processes, supported by new technologies, is the second challenge. Even now, it seems, States Parties are not able to provide what the ICC says it needs for investigations, trials and keeping up with technological trends.Contributions to the Trust Fund for Victims have been modest.

> The third challenge is the procedure - the core product of the ICC. The complex, adversarial procedure does not seem the most robust strategy for the future in either scenario.

In addition to the challenges common to both scenarios, specific challenges arise in both the New Tribes and New States scenarios. If the world moves toward more diffuse forms of authority, the court may need to embrace new stakeholders - both
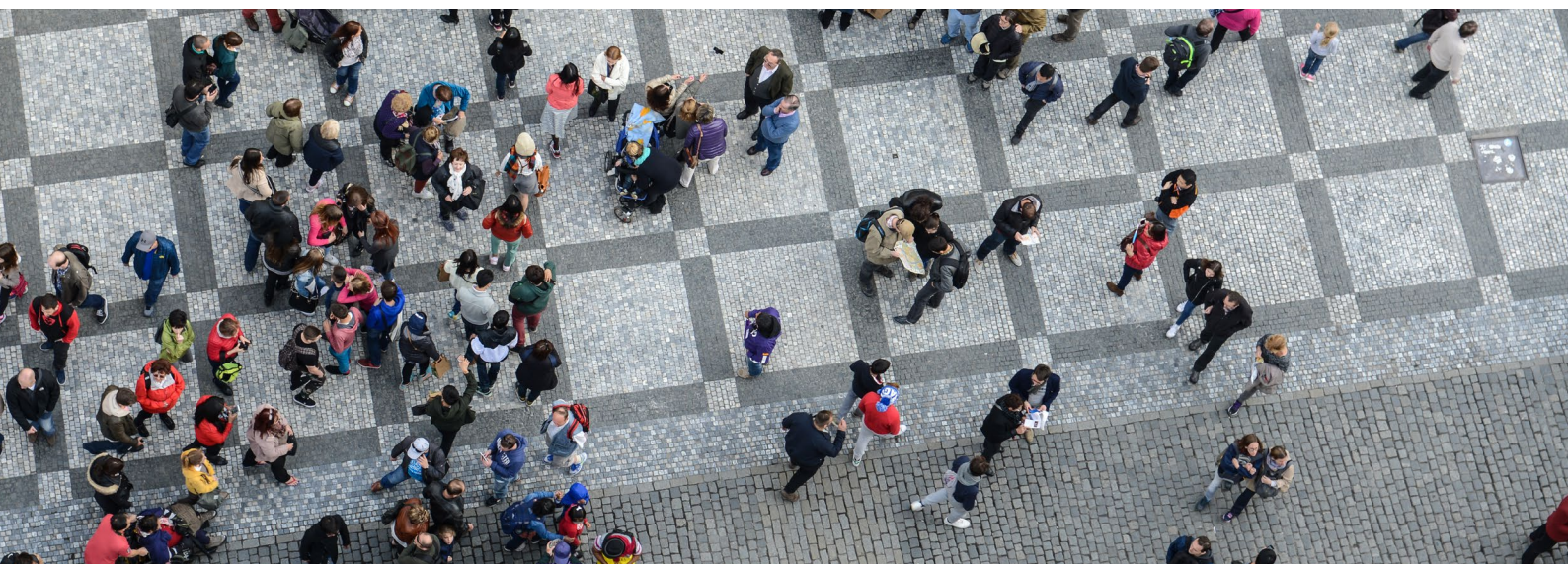
institutionally and procedurally. The court may need to address large-scale data theft, electronic attacks, and other forms of cyber activity with devastating impacts as serious crimes. The impact of new weapons systems being operated autonomously or at a distance by non-state agents, and the difficulty in tracking them through encrypted and obscured data routes, bring new challenges.

If the world instead reverts to a stronger nation-state model, resistance to the court's authority could require other forms of change. Local or regional versions of the court might be required. The ICC might simply become a provider of certification for accepted local or regional authorities. How might the ICC bolster its authority among strong states that reject it, and protect weaker states from the powerful? How does the court adapt if the idea of an international prosecutor itself becomes untenable? How can victims have a more direct access to the ICC when strong states put up greater barriers?

These are just a few of the implications, questions, and suggestions which our dialogue brought to light. The methodology proved highly effective in surfacing design suggestions for a future court. But perhaps the most basic insight is this: even in an environment in which the legitimacy of the ICC is fundamentally questioned, dialogue around improvement and change is possible. The scenario-method not only lifts important insights from the changing environment and highlights the urgent need to adapt. It de-emphasizes the internal struggles over incremental changes. It brings a generative and constructive dialogue to the table. It uncovers new opportunities in new technologies. It clarifies the need for new forms of intervention from an international criminal court-like institution. The method of defining user-stories enables each group of stakeholders to formulate its own requirements. Stakeholders can then see the big picture of what is needed for overall effectiveness. An agenda for developing the next version of the ICC can emerge based not on a view through the microscopic lens of the court's current challenges, but the big picture view of the court's essential purpose and the needs of the future.

The dialogue took place within a varied, yet limited group of experts. But there is no reason it could not take place in public, or with a broader group of stakeholders. The methodology of this project could be used to build a prototype "ICC 2022", through a dialogue with real users, combining the scenario method with the principles of user-centred design. The concrete results of the present project can be the building blocks for a next phase. The 24 trends we identified, the two scenarios based on them, and the extensive user stories for both the institution and the procedure collectively provide the terms of reference for a path that can keep the ICC relevant. The content of the dialogue suggests many potentially important and divergent future roles for the court.

Courts, as neutral third parties for delivering fairness and justice, are essential. There is no indication that such neutral third parties will not be needed in any future imaginable. They will perhaps be needed more then ever at the international level. Profound changes are taking place. We hope this dialogue serves as a first step toward a rich conversation about the future of an essential institution.

List of abbreviations

ICC – The International Criminal Court

RPE – Rules of Procedure and Evidence of the International Criminal Court

RS – Rome Statute of the International Criminal Court

1. Beyond the Rome Statute

Innovations in technology, an explosion in information, and hyper-acceleration of scientific knowledge are causing ever-larger waves of change and disruption. Some for obvious good, others are more worrying. The ability to connect across the globe, to access information, to spread ideas and falsehoods has changed phenomenally in the past 10 years. Computing power and its ability to reduce complexity is expanding exponentially. Yuval Harari calls it the *Great Decoupling*. Intelligence was once inextricably linked to consciousness; with the arrival of artificial intelligence, that is no longer the case. New platforms are emerging which fundamentally change the way we trade, share, collaborate, assess, and learn. They are disrupting value propositions that have existed for decades and even centuries. We are also peering into, and able to manipulate, the very essence of what it is to be a living being. The true impact of global warming and other forms of environmental damage are unfolding. As this is happening, ways of living together within and between communities are being affected. Economic power relations are changing, with more empowerment in some areas, and disempowerment in others. Finally, we see governance changing, with new challenges being presented to national governments and international organizations, and new power structures emerging.

How will these changes impact the ICC? Is it sufficiently prepared to meet them and if not, how might it be?

The Rome Statute for the ICC was adopted on 17 July 1998 and entered into force on 1 July 2002, after 60 ratifications of the Statute. Twelve years after this, on 19 April 2016, His Majesty King Willem Alexander of The Netherlands officially opened the new premises of the court. During these years the ICC established itself; it developed its rules and conducted investigations and trials. At the seven-year review conference in Kampala in 2010 amendments to the Statute were adopted: the crime of aggression was added to the Statute and the use of certain kinds of weapons was criminalized. In 2015, a third amendment was agreed: Article 124 of the Rome Statute was removed from the Statute, thus disallowing future States Parties to exempt their nationals from jurisdiction for seven years. In some areas the court has been successful: cases have been referred to it and important judgments have been issued. In other areas it is facing challenges, with questions about its legitimacy in Africa and the length of its proceedings at the forefront.

There have been a number of initiatives to apply lessons learned to the workings of the court. Within the Assembly of States Parties, the Study Group on Governance and the Working Group on Lessons Learnt have been convened. The efficiency and effectiveness of the ICC is also a recurring agenda item at the annual meeting of the Assembly of States Parties. Importantly, the court has started a process of developing performance indicators. These would allow the ICC to make its achievements more tangible and give stakeholders a tool with which to assess its performance in a more strategic and evidence-based manner. A working group funded by the Swiss Government has also had a thorough look at the way the court works. It published a thick report, with no less than 194 recommendations for improvement. Other initiatives to push for change have come from outside of the court, for instance from an expert group of the International Bar Association.

All this thinking, however, takes the *existing* procedures of the ICC as enshrined in the Statute and the Rules of Procedure and Evidence as a given, and looks at how the working of the ICC can be improved within those parameters. The question that emerges is whether this is enough, given the fast pace of change. We know from research that the procedure[1] is the key operating process of any court, and that it determines perhaps as much as 80% of the outcomes. Accordingly, innovation in these two areas, procedure and institutional framework, are most likely to lead to better outcomes.

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1 By 'procedure' we mean the totality of the judicial procedure that was designed to reach the justice outcomes for which the ICC was created. We are not referring to a particular document. We take as the backbone of the procedure of the ICC the Statute, the Rules of Procedure and Evidence. These have been worked out in more detail in other documents, such as Rules and Regulations and the manuals. For the purpose of this study, we focus on the core structure of the procedure. These determine most of what the procedure looks like and embody the most strategic choices made by those that created the ICC.

The Dutch section of Amnesty International wishes to stimulate thinking about the future of the ICC that breaks out of the confines of existing procedures and structures. They take the political, social, economic, and technical environment around the ICC as the point of departure. What does this environment look like now? In which directions might it develop? And what might this mean for the ability of the ICC to fulfil its role? Are there reasons to amend the ICC's procedures and way of working and if so, in which direction?

Amnesty International asked HiiL to do something that has not been done before: to distil key political, economic, social and technical trends that are relevant for the success of the ICC in the coming 5 to 10 years and, based on that, to develop scenarios that can be used to develop robust longer-term strategies for the organization and its critical mandate.

The core question of this study is:

In the face of the most relevant political, economic and social trends likely to emerge in the next 5-10 years, what adaptive strategies might the International Criminal Court, and the civil society organizations supporting it, deploy? What strategies for change in the institution and the procedures of the court will allow the ICC to become increasingly successful in achieving its aims?

2. Methodology

The methodology of this report is as follows. We first define with more precision what we mean when we speak of 'the ICC'. In *Chapter 3*, we describe the ICC in terms of goals, the organization of the *institution* and the *procedure* it runs. For this description, we used the organizational model commonly used in management organization theory, in which the state of a business is described in terms of its strategy, its structure, the way it appoints, rewards, and manages its people and the organizational processes and networks.

Chapter 4 describes the trends that may be relevant for the ICC. On the basis of earlier research, desk research and 14 interviews we identified 24 trends with potential impact. The trends were described, and then rated by a panel of experts for:

- Relevance/impact for the legal environment on the ICC
- Level of probability
- The degree of interconnectedness with other trends

On this basis three trends were selected as the most relevant for the future external environment of the ICC:

- Fragmenting governance
- Social cohesion under stress
- Accelerating technology

Chapter 5 integrates the trends in two stories about how the environment of the ICC may develop: the *New Tribes* and the *New States* scenarios. In developing the two scenarios we clustered trends on the basis of (i) the relevance and impact on ICC and (ii) their interconnectedness and degree to which they converge. The way in which governance will develop is, for example, very relevant for the ICC. If governance finds a way to overcome fragmentation, then that is most likely to converge with more social cohesion and more ability to control the development of technology. Hence these three directions where brought together in one storyline.

The storylines were subsequently developed in two opposing directions: one where the trends continue to develop and another where they reverse. The trend

towards more diffused governance may, for example, lead to a counter-movement that calls for a stronger hierarchical form of government. This allows policy maker to see where important forks in the road may be found. It also allows them to immerse the ICC in the two different worlds that can emerge from these trends. In this way it is possible to step outside what Peter Schwartz, one of the fathers of the scenario methodology, so eloquently calls 'the Official Future'. It helps gain a better insight into the question of whether current strategies will enable the ICC to withstand future trends, and what adaptations may be needed to ensure it does.

The core elements of the two scenarios are set out below:

1 Scenario 1: New Tribes

More complex, networked governance, the social goods citizens want are provided through many different groups, private institutions, organizations and diffuse authorities

People not having allegiance to a 'state' but to multiple sources of self-identity, more localised entities, ad-hoc and virtual communities. Loose social cohesion

Limited regulation of technology, fast pace innovation and change

2 Scenario 2: New States

Governance adapts to new control modes via the state and is able to provide the social goods citizens want in that way.

The idea of a 'nation' state re-emerges. Stronger social cohesion within the 'nation'.

Closely regulated technology, slower pace of innovation and change

In *Chapter 6*, the institution and procedure of the ICC are tested in the two scenarios. This was done on the basis of a Lab Session in which experts with knowledge of different parts of the ICC ecosystem participated. We gave the participants the description of the ICC institution and the ICC procedure and asked them to test these in one of the two scenarios. Where it was felt that the institution and procedure were robust, that was noted. Where it was felt that the strategic assumptions were not robust and needed to be adapted, note was made of why along with strategies for adaptations that could be advised. The results of the Lab Sessions were analysed and strategies were further enriched with results from the interviews. We indicated what would need to change in either the institution or the procedure and, where possible, what NGOs that support the court might usefully do to affect that change. This leads to recommendations for strategies that can make the ICC more future-proof.

This provides the first foundation for what Peter Schwartz calls the 'strategic conversations that must perennially challenge the Official Future'. In line with the scenario method these conversations can and should continue, building on this report with new input, and defining the next steps in assuring a more robust and future-proof ICC.

Chapter 7 lists some of the key implications of what has come out of the wind tunnelling that was done in Chapter 6. More details provided in an overview in Annex 1. We end with some reflections about what this process has taught us and how the method that was used can be expanded and built upon to benefit the ICC and its supremely important mandate.

3. The ICC: goals, institution and procedure

Goals

For the sake of this study we consider the goals for which the ICC was set up a given. We see three of them (the Preamble and Articles 1, 5, 13, and 17 and 79 of the Rome Statute):

1. To bring the perpetrators of the 'most serious crimes' to justice. This is done through a 'complementarity' regime that assumes jurisdiction at the national level but with an international level that can override in cases where the national level is unwilling or unable genuinely to exercise that jurisdiction.

2. To provide for truth, justice and reparation for victims of those most serious crimes.

3. To use this whole justice structure (both the bringing to justice and truth, justice and reparation for victims) as a foundation for peace and security in the countries/regions where it works.

The States Parties set up the ICC in a certain way, given a certain set of circumstances, to achieve the three-abovementioned goals. They created an international court with a specifically defined jurisdiction and inserted that into the international peace and security mechanism that had hitherto been largely an exclusively political domain. If the circumstances change, the States Parties could, in theory at least, change the ICC so that, given these changed circumstances, it can still achieve the goals it was created for. What is that 'court', then? Like any other court, it consists essentially of two things:

- An institution
- A procedure, run by that institution

Below, the key elements of both are briefly recollected.

International Criminal Court: The Institution
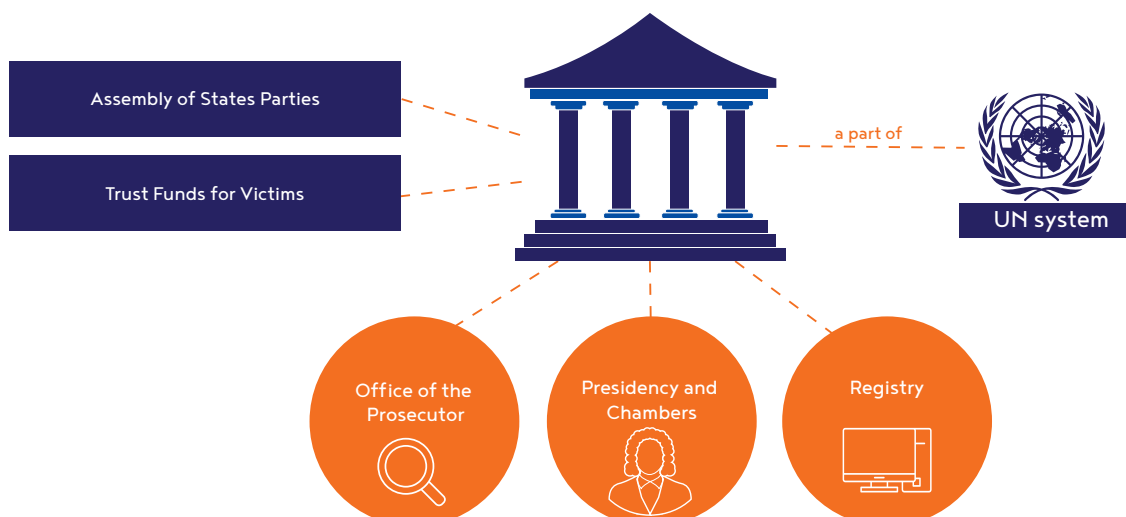
The Institution

Institutionally, the ICC can be defined as follows:

- It is organized as an international organization, with member states (Articles 1 and 3 RS).

- That organization is based in The Hague (Article 3 RS), operating mainly from The Hague, but with a global reach.

- It is part of the wider UN system (Article 2 RS)

- It is made up of three 'criminal justice' components (Article 34 RS):

  - An investigation and prosecution branch:
    - The Office of the Prosecutor (OTP; Article 42 RS - independent)

  - A judicial branch (independent; Article 40 RS):
    - A Presidency (Article 38 RS)
    - Chambers (Article 39 RS), which has three Divisions (Article 34(b) RS): a pre-Trial Division, a Trial Division, and an Appeals Division.
  - A court administration branch (Article 43 RS):
    - The Registry, for "non-judicial aspects of the administration and servicing of the court".

- A 'political' component: the Assembly of States Parties (Article 112 and further, RS) made up of all states that have signed and ratified the Rome Statute and that have paid their financial contributions. The Assembly supervises the working of the court and adopts its annual budget.

- A separate Trust Fund for Victims Article 79 RS and Rule 98 RPE), set up to handle reparations and assistance to victims.

- The ICC as an organization creates a specially defined internationalized jurisdiction, which combines its own, international jurisdiction with national jurisdiction to investigate, prosecute, and adjudicate.

- In that jurisdiction, the ICC is the pinnacle institution: only when national bodies are unwilling or unable genuinely to carry out the investigation or prosecution, can the ICC take jurisdiction (Article 13 RS; Article 17 RS)

- Substance-wise, that jurisdiction is potentially only for four core crimes (Article 5 RS):
  - Genocide (Article 6 RS)
  - Crimes against humanity (Article 7 RS)
  - War crimes (Article 8 RS)
  - Aggression (Article 8bis RS)

- Only member states that have signed and ratified or acceded the Rome Statute or that have made an ad hoc declaration accepting the jurisdiction of the court are subject to that jurisdiction (Article 12 RS). There is only one exception: if the Security Council refers a situation to the Prosecutor acting under Chapter VII of the UN Charter (Article 13 RS). Two other aspects of jurisdiction are important:
  - There is only jurisdiction for crimes committed after entry into force of the Rome Statute or, for states that ratify after the entry into force, only in respect of crimes committed after the Statute entered into force for that particular state (Article 11 RS)
  - The jurisdiction is limited to natural persons (Article 25 RS)

- States have different, potentially conflicting roles in the system of the court:
  - They are the enforcement arm of the court: the court does not have a police force and needs the States Parties for arrests, seizures, and matters such as witness relocation, enforcement of sentences, and other forms of cooperation (Part 9 and 10 RS).

  - They provide management oversight, decide on the budget, and can decide on amendments to the Statute, the RPE, and other rules it has adopted, like the Financial and the Staff Regulations.

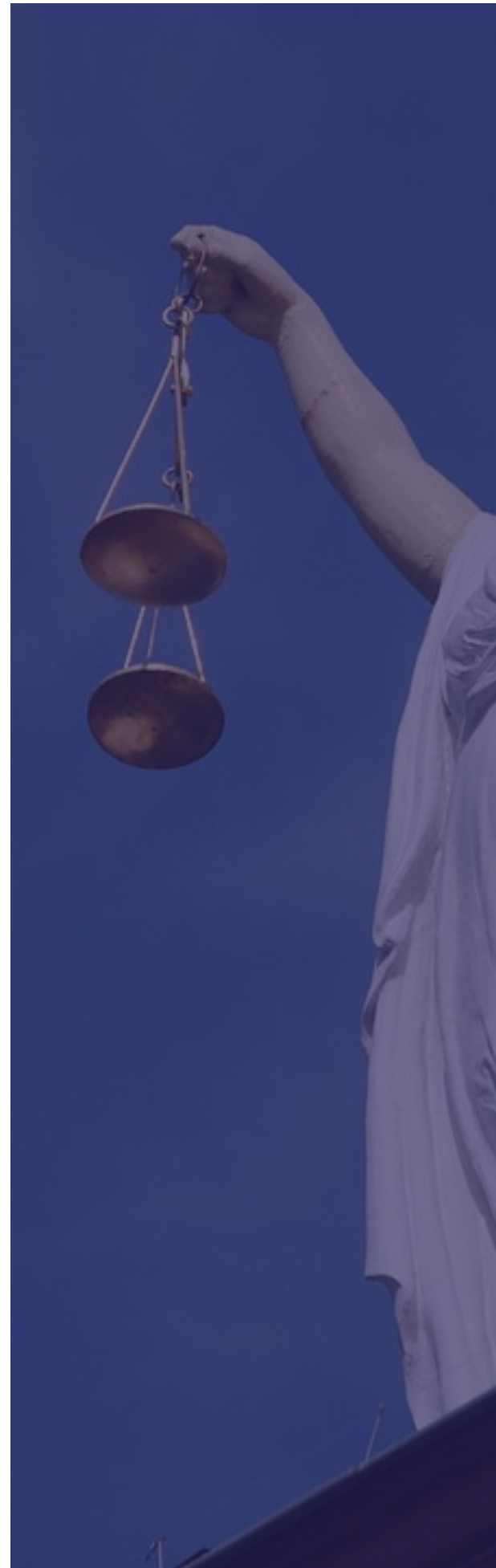 - They can be the recipients of orders of the court, which they then have to carry out.

The Procedure

We now define the core elements of the second element of the court, the procedure that is run by the institution described above:
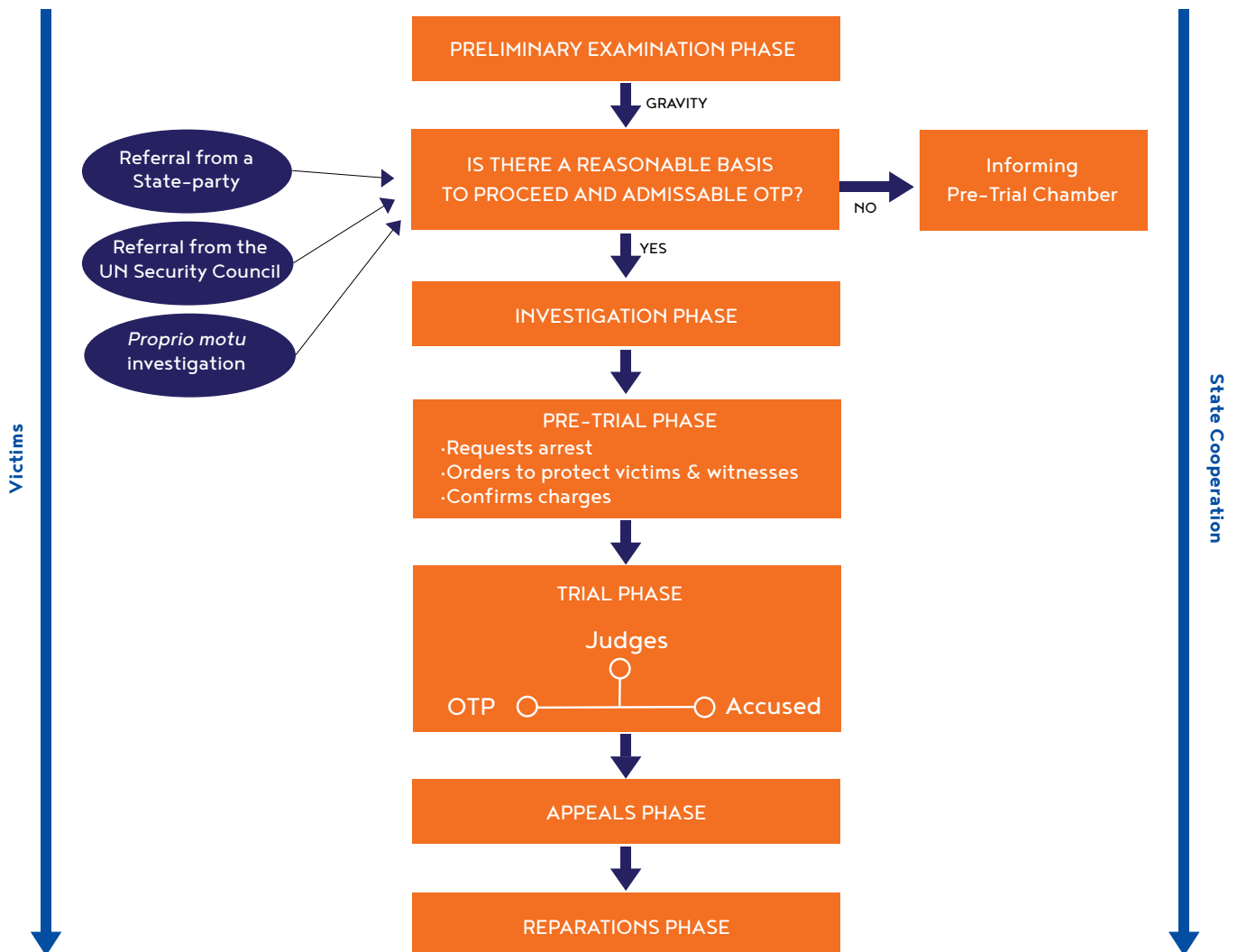
- Based on Article 13 RS, the court can exercise jurisdiction over the crimes referred to in Article 5 RS (see above) if:

  ‣ A situation in which one of the crimes appears to have been committed is referred to the Prosecutor by a State Party

  ‣ A situation in which one of the crimes appears to have been committed is referred to the Prosecutor by the UN Security Council, acting under Chapter VII of the UN Charter.

  ‣ The Prosecutor decides *proprio motu* that potentially such crimes have been committed (art 15 RS).

- The Prosecutor may then start a preliminary examination to assess whether such crimes have indeed been committed.

- Once the Prosecutor, as a result of that, decided that there is a reasonable basis to proceed (Article 53 RS) and that the case is admissible (Article 17 RS), she asks the Pre-Trial Chamber whether she can start with a formal investigation.

- The case is admissible if:

  ‣ The state on whose territory the crime was committed is "unwilling or unable genuinely to carry out the investigation or prosecution";

  ‣ The ne bis in idem rule does not apply (Article 20(3) RS) or a state has investigated, and decided not to prosecute but this is assessed to have been done because the state was unwilling or unable to genuinely prosecute (Article 17(b) RS); and

  ‣ The case is of sufficient gravity.

- In conducting her investigation, the Prosecutor needs to investigate the whole truth - incriminating and exonerating circumstances (Article 54(1) RS).

- As part of the investigation, the Prosecutor collects evidence, talks to indictees, witnesses, victims, asks states to cooperate, works with other international organizations (Article 54 RS)

- If the Prosecutor concludes that a trial is warranted because there is a reasonable ground to believe that a crime within the jurisdiction of the court has been committed, she needs to ask the Pre-Trial Chamber for a warrant of arrest, order for persons to appear, orders to states to cooperate, orders to protect victims and witnesses, orders on forfeiture (Article 56, 57, 58 RS)

- Once an indictee has been arrested and surrendered to the court, he /she will appear before the Pre-Trial Chamber to be informed of his/her rights and the crimes they are alleged to have committed. The Pre-Trial Chamber conducts the Initial Hearing and confirmation of charges (Articles 60 and 61 RS). Decisions of the Pre-Trial Chamber may be appealed before the Appeals Chamber (Article 82 RS). The Prosecutor can amend or add charges.

- The Trial and Appeals phase is set up as an adversarial contestation between two parties: the Prosecutor and the Accused (or in Appeal, the Convicted person).

- If the investigation is concluded and the accused has been transferred to the court, and after numerous status hearings and a large amount of pre-trial disclosure, the Trial starts (Article 62 and further, RS).

- The court does not undertake *in absentia* trials or hearings.

- Victims can participate throughout the trial proceedings (Article 68 (3) RS) and during the reparations phase (Article 75 RS)

- The Trial Chamber renders a decision (Article 74 RS) and in the event of a conviction may impose a sentence (Article 76 RS). As part of that decision, it can order reparations for victims (Article 75 RS)

- The Prosecutor and the convicted person can appeal the decision before the Appeals Chamber (Article 81 and further RS) on the basis of a "procedural error, error of fact, or error of law"). The convicted person or the Prosecutor on his/her behalf can also appeal on any other ground that affects the fairness or reliability of the proceedings or decision.

- That appeal process ends with a decision by the Appeals Chamber: reverse or amend a decision of the Pre-Trial or Trial Chamber, order a new trial before the Trial Chamber, or vary the sentence (Article 83 RS).

- State Cooperation is essential for the whole process, given the complementarity regime and the fact that the ICC does not have its own police force: (Part 9 and 10 RS; Articles 86 and further.

- The court can make requests for the cooperation to states (Article 87 RS) in matters such as evidence, questioning, service of documents, search & seizure, and the protection of victims and witnesses (Article 93 RS)

- The court can make requests for arrest or surrender of persons (Article 91 RS). States Parties must have national procedures in place to deal with such requests (Article 88 RS)

International Criminal Court: The Procedure

Victims

State Cooperation

Referral from a State-party

Referral from the UN Security Council

Proprio motu investigation

PRELIMINARY EXAMINATION PHASE

↓ GRAVITY

IS THERE A REASONABLE BASIS TO PROCEED AND ADMISSABLE OTP? — NO → Informing Pre-Trial Chamber

↓ YES

INVESTIGATION PHASE

PRE-TRIAL PHASE
·Requests arrest
·Orders to protect victims & witnesses
·Confirms charges

TRIAL PHASE

Judges

OTP ○———○ Accused

APPEALS PHASE

REPARATIONS PHASE

In order to provide a solid object of analysis (i.e. the 'organization' we want to assess for its future readiness), we translated these elements into the core elements that are often used in organizational management to assess the state of an organization. These generally consist of the following elements: the strategy, the structure, the way people who staff the organization are recruited, appointed, managed, appointed, and rewarded, and the organizational processes and networks.

We plotted these elements in the two core elements of the ICC we defined: the institution and the procedure in the table below:

The Institution

- AA treaty-based, international organization, based on the model of executive power, supervised by an assembly of states parties, who allocate the budget.
- A single legal person at the international at national level that combines the Office of the Prosecutor, the Presidency, Chambers, the Registry, and the Assembly of States Parties and its secretariat.
- An organization based in The Hague and that works mainly from The Hague. Field offices in some places and a liaison office in New York.
- An organization that is part of the wider UN system.
- The official languages are the five official working languages of the UN: English, French, Chinese, Russian, Spanish. The working languages are English and French.
- A Trust Fund for Victims set up by decision of the Assembly of States Parties, to handle reparations and assistance to victims.
- Jurisdiction limited to genocide, crimes against humanity, war crimes, and aggression
- Admissibility only for core crimes and if crime is grave and state is unwilling or unable genuinely to investigate/prosecute.
- Enforcement powers only via states
- Hierarchically organized – top down structure and work methods
- Staff appointed as international officials, with functional diplomatic immunity and the remuneration systems of the UN system.
- Three organs
  - Presidency (an organ): is responsible for the proper administration of the court
  - Registrar works under authority of the Presidency
  - Prosecutor runs the Office of the Prosecutor
- High officials appointed:
  - Judges elected by the Assembly of States Parties. Must have criminal law and international law expertise. Equitable geographical and gender distribution.
  - Registrar elected by the judges
  - Prosecutor and deputy prosecutor elected by the Assembly of States Parties.
- Rewards system:
- Fixed salaries for staff not directly linked to performance.
- ICC budget linked to 3-year strategic plan and annual budget, assessed by Assembly of States Parties.

The Procedure

- Adversarial judicial procedure of two opposing parties
- Mix common-law and civil law – predominantly from the 'Western' legal tradition
- Prosecutor looks at both culpatory and exculpatory evidence
- Four stages of the procedure:
  - Preliminary examination: is there a potential case?
  - Pre-trial phase: permission from the Pre-Trial chamber to start a formal investigation
  - Trial phase: the trial, leading to a decision
  - If decided: appeals and reparations phase
- Arrests, seizures, and other enforcement action take place through cooperation with states.
- Victims can take part in the procedure and can apply for reparations.
- Cooperation between the court and the Trust Fund for Victims
- Cooperation through international agreements on enforcement of sentences, witness protection, judicial cooperation, and privileges and immunities.
- Network with the Assembly of States Parties.
- Network through the UN system.
- ICC Strategic Plan 2013-2017:
  - Fair, transparent and expeditious judicial proceedings, refining legal standards, standardized processes. E-Court system.
  - Guarantee rights of the defence, with good legal aid system
  - Meaningful participation and reparations for victims
  - Increasing awareness of the court amongst victims
- OTP Strategic Plan 2016-2018:
  - Collect more and increasingly diverse evidence
  - Open-ended, iterative investigations
  - Building upwards, from mid- to high level perpetrators
  - Victims responsive approach
  - Making cooperation work better – work with partners
  - Higher level of coordination and complementarity
  - Look at connection ICC crimes and other crimes
  - Better use and understanding of technology
  - OTP is not a development agency
- Assumptions budget OTP per year: 9 Preliminary examinations, 1 new situation under investigations, 6 active investigations, 9 hibernated investigations, 5 cases in pre-trial phase, 5 cases in trial phase, 2 cases in final appeals phase. Budget: 60.9 million euros p/y
- Assumptions budget overall court based on Budget 2017:
  - Enhancing judicial efficiency: Running and supporting proceedings in three trials
  - Ensuring high-quality investigations: conducting and supporting six active investigations

4. Trends

We define a trend as "a general direction in which something is developing or changing"[2].

To find which trends might be relevant for the ICC for the next 5 to 10 years we conducted desk research and interviews[3]. We used the PEST criteria – political, economic, social and technological macro-environmental factors – to focus our research and guide our selection of experts. Our research looked into each of these areas and selected elements relevant to the court.

More specifically:

- We used the legal trends database that HiiL has built up over the past years[4].
- We used the Trend Reports that HiiL has published.
- We read 20 books, 43 articles, and 67 reports from leading authors, international organizations, businesses and civil society organizations.
- We conducted conversations with key experts, in particular through the World Economic Forum network and the membership of HiiL CEO, Sam Muller, of the WEF's Global Future Council on Technology, Values and Policy.
- We conducted interviews with a group 14 carefully selected experts:
  - **Adelbert Bronkhorst, Principal Scientist, the Netherlands Organisation for applied scientific research TNO**
  - **Anton du Plessis, Executive Director, Institute for Security Studies**
  - **Antony Pemberton, Professor, Tilburg University**
  - **Barbora Hola, Assistant Professor, VU University Amsterdam**
  - **Carla Ferstman, Director, REDRESS**
  - **Catrien Bijleveld, Director, the Netherlands Institute for the Study of Crime and Law Enforcement**
  - **Jonathan O'Donohue, Legal Adviser, Amnesty International**
  - **Joris van Wijk, Associate Professor, VU University Amsterdam**
  - **Motoo Noguchi, Chair of the Board of Directors, The Trust Fund for Victims, ICC**
  - **Ngaire Woods, Dean of the Blavatnik School of Government, University of Oxford**
  - **Silvia Fernández de Gurmendi, President, ICC**
  - **Stephen Smith Cody, Visiting Assistant Professor of Law, University of the Pacific**
  - **Stuart Russell, Professor, University of California, Berkeley**
  - **Willy Mutunga, former Chief Justice, Supreme Court of Kenya**

To allow them to think and speak more freely, the experts were interviewed under the Chatham House Rule: their conversations may be used but not attributed.

The first scoping of the trends focussed on all four PEST areas:

Politics | Changes in governance: becoming more networked, more multi-stakeholder, with more regional rivalry, and the question arising whether governance will become more diffused and networked or not.

Economics | Changes in economics: rise of the digital economy, more economic nationalism, and the question arising whether borders will become more or less relevant in economics.

Social | Changing social cohesion: inequality, urbanisation, migration and the question arising whether social cohesion as we have known it will continue to exist.

Technology | Exponential innovation, growing connectivity and data flows, new weapons, and the question arising whether it will be possible to adequately regulate developing technology to avoid its misuse.

Consequently, a Lab Session was held to validate these trends with four external experts:

  - **Marieke Wierda, Principal Rule of Law Adviser, Dutch Ministry of Foreign Affairs**
  - **Professor Barthel van der Walle, Professor of Policy Analysis, Technical University Delft**
  - **Martin Witteveen, Appeals Prosecutor, International Crimes and Human Trafficking, Prosecution Service Netherlands**
  - **Arne Muis, Strategic Studies Analyst, Amnesty International**

At that session the trends were assessed using the following three criteria:

- *Relevance/impact* for the legal environment on the ICC: high, medium or low, where we focussed on higher relevance.
- Level of *probability*: unlikely, possible, probable, or fairly, where we focussed on the more probable and certain.

- The degree of *interconnectedness* with other trends: low, medium, high – per connection, where we focussed on the more interconnected trends.

The assessment during the Lab Session led to:

Politics | Validation of the trends highlighted, with the addition that there may be a trend of increasing resistance to internationalism.

Economics | Dropping the Economic trends – they scored low on each of these criteria, in particular the relevance to the ICC.

Social | Validation of the trends, with a rephrasing of the 'inequality' trend to add increasing calls for fairness, which are occurring in many shapes and forms.

Technology | Validation of the trends, with a high rating for the 'new weapons' and 'exponential innovation' aspects.

Accordingly, three core trends were developed and described in more detail, the outcome of which is described below. These trends are subsequently developed into two opposing scenarios, after which the possible implications for the ICC are assessed.

1. Accelerating technology

Technology as a driving force for change will, by all expectations, accelerate exponentially: from the vastly increasing possibilities to connect across the globe, store, share and crunch data, to all kinds of collaboration platforms and new weapons. The core question in all this is for the ICC is: who will own and use these technologies, and under which rule regimes?

All trends in the area of technology point towards big advances in what one of our interviewees called 'the scalability of death and destruction'. Smaller groups and even individuals will be able to destroy and kill on ever larger scales. Robots are now being used for military purposes on the land, the sea, in the air and space. Their use is forecasted to grow. They will also proliferate in size: from full-scale airplanes, submarines, and space ships, to tiny nanorobots that operate individually or in swarms. An arms race amongst the major powers – the US, China, and Russia, appears to be heating up in this area, which could lead to operational swarm weapons in the next 5 years, according to some experts. Further sophistication will come from the degree to which these robots are autonomous. One expert labelled the autonomous car challenge a more complex problem than the one of autonomous weapons.

> Artificial intelligence technology has reached a point where the deployment of such systems [autonomous weapons] is – practically if not legally – feasible within years, not decades, and the stakes are high: autonomous weapons have been described as the third revolution in warfare, after gunpowder and nuclear arms.

Future of Life Institute, *Autonomous weapons: An open letter from AI & robotics researchers* (2015).

With unmanned weapons systems something huge is changing. As Peter Singer says: "... unmanned systems don't just affect the "how" of war-fighting, they affect the "who" of fighting at its most fundamental level. That is, every previous revolution in war, be it the machine gun, be it the atomic bomb, was about a system that either shot faster, went further or had a bigger boom. That's certainly the case with robotics, but [unmanned systems] also change the experience of the warrior and even the very identity of the warrior." That last aspect is important: if robots grow more autonomous – and technology will not be a limiting factor in that – then the human component of war becomes blurrier. It may even disappear entirely. The level of autonomy for robots can be very high. Instructions they receive can be hidden and encrypted. So who gave the order?

" ... unlike humans, the AlphaGo program [an artificial intelligence tool created by Google's DeepMind division] aims to maximize the probability of winning rather than optimizing margins". If this binary logic – in which the only thing that matters is winning while the margin of victory is irrelevant – were built into an autonomous weapons system, it would lead to the violation of the principle of proportionality, because the algorithm would see no difference between victories that required it to kill one adversary or 1,000.

Jean-Marc Rickli, Artificial Intelligence and the Future of Warfare, in World Economic Forum, *The Global Risks Report 2017* (2017) at p.49.

Three other new kinds of weapons stand out. Electromagnetic pulse weapons that can knock out power grids, electrical systems, and computer systems without an explosion and without killing or wounding humans. These weapons do their damage to humans indirectly by knocking out critical infrastructure, including life-support and crisis-response systems.

Bio-weapons that spread are a second category. Genome engineering has revolutionised biomedical research. With the development of the CRISPR/ Cas technology the ability to tinker with the very substance of life itself – DNA – is becoming easier and cheaper. It is conceivable that in the not-so- distant future, through so-called gene drives, genetically modified insects can be produced. Such technology could be used to design mosquitoes that cannot carry malaria. Or it could be used to weaponize mosquitos to carry a deadly virus.

The third category of weapons is already visible in our daily lives and will proliferate further: cyber weapons. Countries increasingly rely on networked technology in all areas of government, business, and society, and this has brought significant benefits. But they are increasingly vulnerable to attacks on parts of networks that are essential for the day-to-day running of society and the economy. So far, states have mostly engaged in cyber attacks related to misinformation, sabotage or espionage. The volume and complexity of cyber attacks are rising sharply and it is becoming easier to put together an advanced attack, with software readily available on the black market. Reliable and consistent cyber defence requires advanced skills and substantial resources. Growing numbers of states, with state-level funding, are already developing advanced capabilities that are deployable in conflicts. This will continue in

accelerated form. And non-state actors, including terrorists and cyber criminals, can also use available cyber tools and technology for destructive purposes – with the added complication that traceability technology can easily obscure who might be behind such an attack.

The interconnectedness between cyberspace and the real world poses a challenge to one of the most fundamental rules on the conduct of hostilities, namely that civilian and military objects must be distinguished at all times.

The development of 3D printing is also very relevant for the spread of weapons. The technology is developing fast and is expected to move to mainstream industry processes in the next 5 to 10 years. Already now one can Google "3D printed pistol" and find examples, plans, and data files. In 2014, the first 3D printed object in space was manufactured.

The development of the technologies concerning these weapons has consequences at three levels. Firstly, the focus and scale that one could apply to death and destruction. Secondly, the challenges they pose to assign responsibility to a person or a group of persons because of the remoteness between a decision and their use. And finally, the technical challenges of tracing culpability.

The second element of accelerating technology is information technology. There is widespread consensus amongst experts that the current breakneck speed of proliferation will continue. This means: accelerating computing power (Moore's Law, quantum computing), accelerating development of software that significantly reduces complexity, accelerating data storage capacity, accelerating connectivity and accelerating connected computer nodes (the Internet of Things), all happening at the same time.

In 2004 Facebook did not exist, Twitter was still a sound, the cloud was still in the sky, 4G was a parking space, 'applications' were what you sent to college, LinkedIn was barely known and most people thought it was a prison, Big data was a good name for a rap star, and Skype, for most people, was a typographical error. "

Thomas Friedman, *Thank You for Being Late* (2016) at p.25.

It is expected that in 2025 90% of the global population will be using smartphones and thus carry around a small computer that connects them to the rest of the world. The McKinsey Institute reports that the amount of cross border bandwidth that is used has grown 45 times larger since 2005 and is expected to growth another nine times in the next five years. Every day, we produce on average 2.5 quintillion bytes of data. This is so much that 90% of the data in the world today has been created in the last two years alone. Here's how 800 executives and experts from the IT sector ranked the probability of a range of developments for the World Economic Forum:

Table: Tipping Points Expected to Occur by 2025

	%
10% of people wearing clothes connected to the internet	91.2
90% of people having unlimited and free (advertising-supported) storage	91.0
1 trillion sensors connected to the internet	89.2
The first robotic pharmacist in the US	86.5
10% of reading glasses connected to the internet	85.5
80% of people with a digital presence on the internet	84.4
The first 3D-printed car in production	84.1
The first government to replace its census with big-data sources	82.9
The first implantable mobile phone available commercially	81.7
5% of consumer products printed in 3D	81.1
90% of the population using smartphones	80.7
90% of the population with regular access to the internet	78.8
Driverless cars equalling 10% of all cars on US roads	78.2
The first transplant of a 3D-printed liver	76.4
30% of corporate audits performed by AI	75.4
Tax collected for the first time by a government via a blockchain	73.1
Over 50% of internet traffic to homes for appliances and devices	69.9
Globally more trips/journeys via car sharing than in private cars	67.2
The first city with more than 500,000 people and no traffic lights	63.7
10 % of global gross domestic product stored on blockchain technology	57.9
The first AI machine on a corporate board of directors	45.2

Source: Survey

Source: World Economic Forum, Global Agenda Council on the Future of Software and Society,
Deep Shifts – Technology Tipping Points and Societal Impact (2015) at p.7.

This continued acceleration in information technology will have effects in many areas – but a few stand out as relating to the ICC's mandate. Firstly, we will see even bigger data flows. With a growing amount of data, the need to navigate smartly will become an even higher priority than it is now. The ability to analyse and manage this data will vastly increase. This will, in turn, change the nature of investigating crimes and perhaps even affect the scope of modes of liability under criminal law. Data and data analysis will make it possible to see social, economic and political developments at a much more granular level as they happen or are about to happen. Knowing with more certainty what bad things may happen will also create more pressure to stop these things from happening. Predictive policing has fast become a feature of crime fighting in some cities. Will it be possible to predict the commission of mass atrocities with more accuracy, up to a level of who might become perpetrators? If this develops, the emphasis on dealing with crime, including the commission of mass atrocities, will move towards prevention.

The growing amount of data is likely to create even more dependencies on the private sector, which will hold much of that data and which will develop the tools needed to mine it. Other data will be in the hands of states that have not ratified the Rome Statute and that may not be ready to share it. This may have an impact on efforts to prevent, investigate, and adjudicate crimes. But there are also opportunities for partnerships among smart technology companies, public law enforcement bodies, and international courts.

> Blockchain and distributed-ledger concepts are gaining traction because they hold the promise to transform industry operating models. While the current hype is around the financial services industry, there are many possible applications including music distribution, identity verification, title registry and supply chain.

Gartner, *Gartner Identifies the Top 10 Strategic Technology Trends for 2017* (2016)

A potential large-scale disruptor is blockchain technology, which is attracting tremendous interest in the financial world as the code behind crypto currencies like Bitcoin. Bitcoin's focus on exploiting one aspect of the blockchain – the ability to create anonymous transactions – has made it the currency of choice for illegal activity. But the blockchain has profoundly farther-reaching potential. Blockchain contracts promise two features of interest to any legal system. The first is an entirely transparent and virtually unforgeable record of every transaction – an open ledger available for anyone to inspect. The second is a complete diffusion of the authority that verifies a transaction. Truth is determined on the blockchain by tens of thousands of "computer witnesses" rather than a single central authority. Many experts see it as having as profound an effect on society as the internet. Any transaction that now requires trusted third-parties like notaries, registries, and banks could potentially be executed by blockchain applications. "Smart contracts" can be written and execute themselves autonomously as computer code.

We are also likely to see the rapid development of many more types of collaborative platforms where people share, produce, sell, and buy. Today we have Facebook, AirBnB, Uber, Amazon, WeChat and Alibaba. The Eyewitness to Atrocities App created by the International Bar Association is an example of an information-sharing platform that is directly relevant for the ICC and national jurisdictions dealing with the core crimes of the Rome Statute. Such platforms potentially turn all citizens into investigators. While many of these platforms are beneficial, there is also a darker side: in its 2016 Internet Organised Crime Threat Assessment, Europol warns of an increased use of forums connected with terrorism on the so-called Darknet, in which crime and tools to conduct illegal activities are offered as a service. One of the experts we interviewed suggested we'll someday see a platform where a killer can order a murder with an autonomous weapon simply by uploading a target's photograph.

Information technology will increasingly alter geography and affect our sense of time and place. The IT industry is investing heavily in all kinds of virtual and augmented reality interfaces. This technology is being called the next frontier, which will blur the lines between the virtual and the real world even more. Already there have been reports of 'crimes' committed in the virtual world. This technology will allow people to be 'virtually present' in far-away places in ways that

go beyond a mobile phone or a Skype call. Judges, prosecutors, and defence counsel will be able to move around in immersive virtual environments in which they can interact. This type of technology will be highly relevant for an international court such as the ICC in areas as diverse as witness interviews to presentation of evidence to the ability to visit the scene of a crime.

Two directions

These developments in the area of technology lead to one overarching question of huge relevance to the ICC: who will own and use these new technologies, and how will it be regulated, if at all?

There are two broad paths we follow from here.

On one path, governance systems remain behind the curve and are unable to effectively control or regulate the use of new weapons and information technologies. In some areas regulation works, but it's usually too late and ineffective. There is a patchwork of rules covering various challenges and geographical areas. Non-state actors and private parties operate with relative freedom. In this scenario, it will become easier to threaten and kill on a large scale – unregulated development will mean deadlier weapons and unregulated control will mean easy access. There will be many ways in which potential perpetrators can collaborate and coordinate, anonymously and untraceably. The environment in which the ICC operates will be unstable and unpredictable. It will require significant capacity to be on top of technological developments, to adapt investigative methods, to suddenly scale-up, and perhaps even to include new crimes within its mandate.

In another direction, governance systems of the world adapt to the disruptions caused by weapons and information technology and develop new ways to control and regulate their use. They set the basic frameworks through laws and treaties that are effectively enforced. If things develop in this direction, the fast pace of technological development is generally calibrated with the overall public interest. This scenario would provide a more stable technology environment for the ICC to operate in. But the court would still be required to make significant adaptations to technological change.

2. Social cohesion under stress

The past decades have been the stage for rapid societal change that seems to be accelerating. These changes are marked by demographic changes, globalisation, increased migration, new forms of connecting, and citizens' rising expectations – all influenced by big technological developments. The core question in all of this for the ICC is: will the social cohesion that is a prerequisite for the support and trust in international justice continue to exist?

Social cohesion is a prerequisite for an effective international justice system. The OECD has demonstrated that institutions which ignore questions of social cohesion risk social instability and ineffective policy interventions. A lack of social cohesion is likely to result in more conflicts, less agreement on norms and moral standards and a declined legitimacy of both national and international institutions, including judicial ones, in the eyes of the citizenry. The ICC's complementarity principle demands strong national prosecution mechanisms, which in turn depend heavily on the support and respect by their citizens. The legitimacy of the ICC depends on how it is respected and supported by the international community and by a prevailing sense of solidarity with victims of international crimes.

"We have moved beyond the point of trust being simply a key factor in product purchase or selection of employment opportunity; it is now the deciding factor in whether a society can function. As trust in institutions erodes, the basic assumptions of fairness, shared values and equal opportunity traditionally upheld by "the system" are no longer taken for granted. We observe deep disillusion on both the left and the right, who share opposition to globalization, innovation, deregulation, and multinational institutions. There is growing despair about the future, a lack of confidence in the possibility of a better life for one's family. The 2017 Edelman Trust Barometer finds that only 15 percent of the general population believe the present system is working, while 53 percent do not and 32 percent are uncertain."

2017 Edelman Trust Barometer *(2017) at p.2.*

The 1990s and early years of this century were marked by a wide consensus about living together as a global community. It was a time of major international peacekeeping operations, significant development aid budgets, large numbers of NGOs participating in international affairs around all manner of social goals, the creation of the ICC, and the reform of the UN human rights machinery. It was, in short, a time with a general sense of optimism about global cooperation. These are reasons to question whether this sense will prevail.

Worldwide, and between countries, inequality is increasing. The OECD concludes this to be true in most countries in a 2012 report. In a study on global inequality by Oxfam recent work by economist Thomas Piketty "shows that over the last 30 years the growth in the incomes of the bottom 50% has been zero, whereas incomes of the top 1% have grown 300%." That same study tells us that the richest man in Vietnam earns more a day than the poorest person earns in 10 years and that, globally, in the past 25 years the top 1% have gained more income than the bottom 50% put together. According to a 2016 report by McKinsey and Company, for two-thirds of households in 25 advanced economies wages were equal or lower in 2014 than they had been in 2005.

A 2015 OECD Study concludes that the gap between rich and poor is at its highest level in 30 years. Not only has the top percentile of rich people become richer; the bottom 40% has become poorer or has not advanced. It should be obvious that such disparity will impact social cohesion.

The second factor affecting social cohesion is changing demographics. A number of key shifts are occurring: overall population growth, youth bulges, and urbanisation. According to the UN's most recently adjusted figures, the world population is expected to grow from current 7,3 billion to 8,5 billion by 2030. Half of that growth is expected to be concentrated in nine countries: India, Nigeria, Pakistan, Democratic Republic of the Congo, Ethiopia, United Republic of Tanzania, United States of America (USA), Indonesia and Uganda. In Africa, a specific demographic trend is the so-called youth bulge: the current and projected portion of 15-24 years olds in the population.

This trend is most visible in Angola, Burkina Faso, Chad, Mali, Nigeria, Tanzania and Zambia. A fourth of humanity is now between 10 and 24 years old.
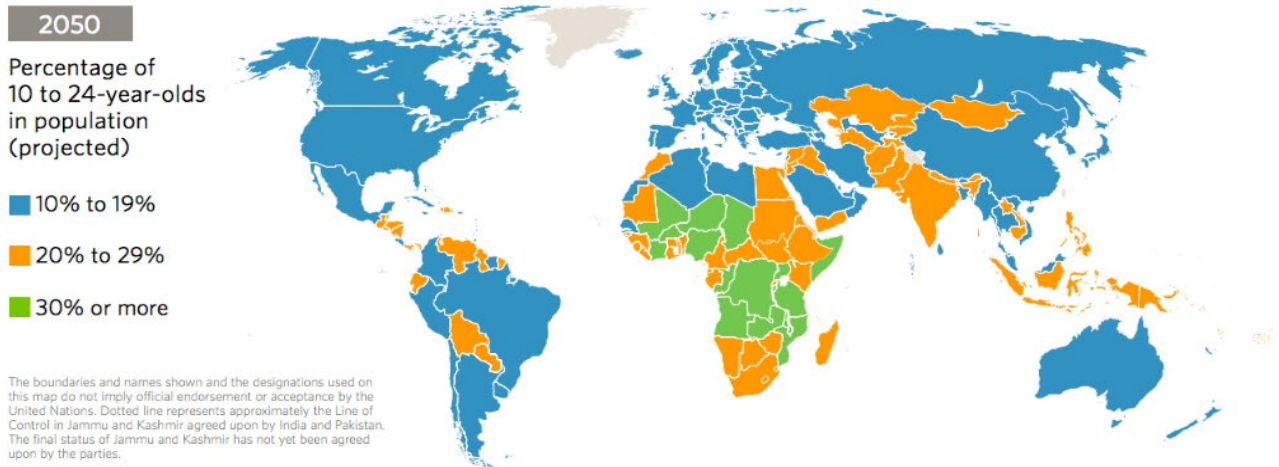

Figure 1. Youth aged 15-24 years, by region, 1950-2060
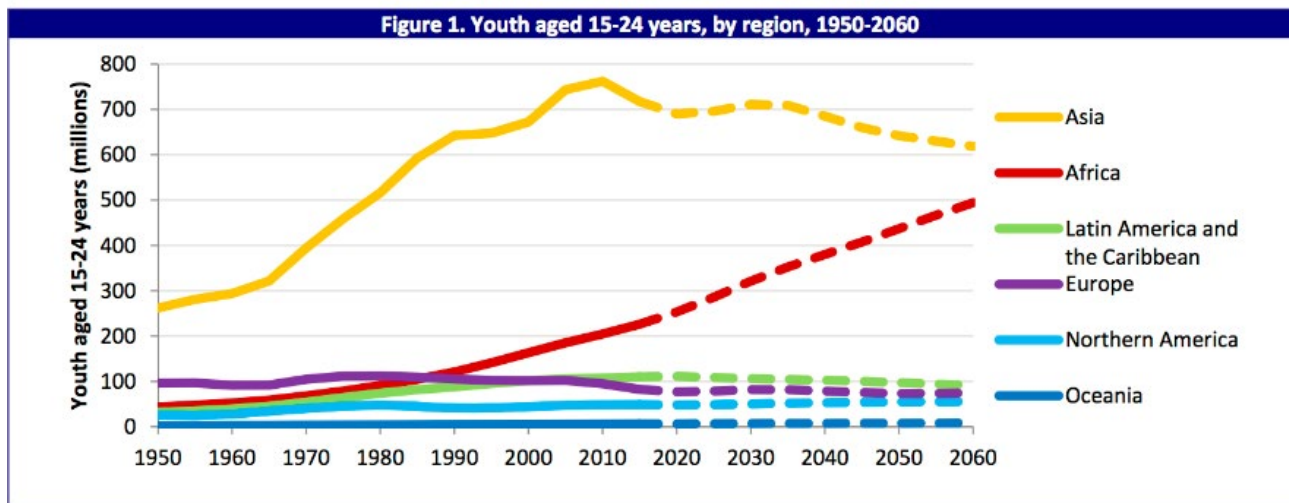
Data source: United Nations (2013) *World Population Prospects: The 2012 Revision.*

Source: UN, *Population Facts No. 2015/1* (2015) at p.1.

Much of this growth is focussed in low-income countries where the education capacity and economic opportunity is limited, with the risk that large portions of people will be left behind. This can be a serious source of instability. The table of population projections provided below shows that much of it is concentrated in what are now considered lower income countries and countries that are categorized in the 'warning' and 'alert' cohort in the 2016 Fragile State Index.

2050

Percentage of 10 to 24-year-olds in population (projected)

■ 10% to 19%

■ 20% to 29%

■ 30% or more

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations. Dotted line represents approximately the Line of Control in Jammu and Kashmir agreed upon by India and Pakistan. The final status of Jammu and Kashmir has not yet been agreed upon by the parties.

Source: UNFPA, State of World Population 2014 (2014) at p.4.

If countries struggle with educating and employing their youth, the chances of dissatisfaction, polarization and instability increase, especially in a digitally connected world.

A further demographic trend is urbanisation. It is predicted by the UN that in 2050, three-quarters of the world's inhabitants will be living in cities. This increase in urbanisation will not be spread evenly. According to that same UN report, "Africa and Asia are urbanizing faster than the other regions and are projected to become 56 and 64 per cent urban, respectively, by 2050." The greatest growth in urban population will be in China, India, the USA and sub-Saharan Africa.

Contribution to the increase in urban population by country, 2014 to 2050
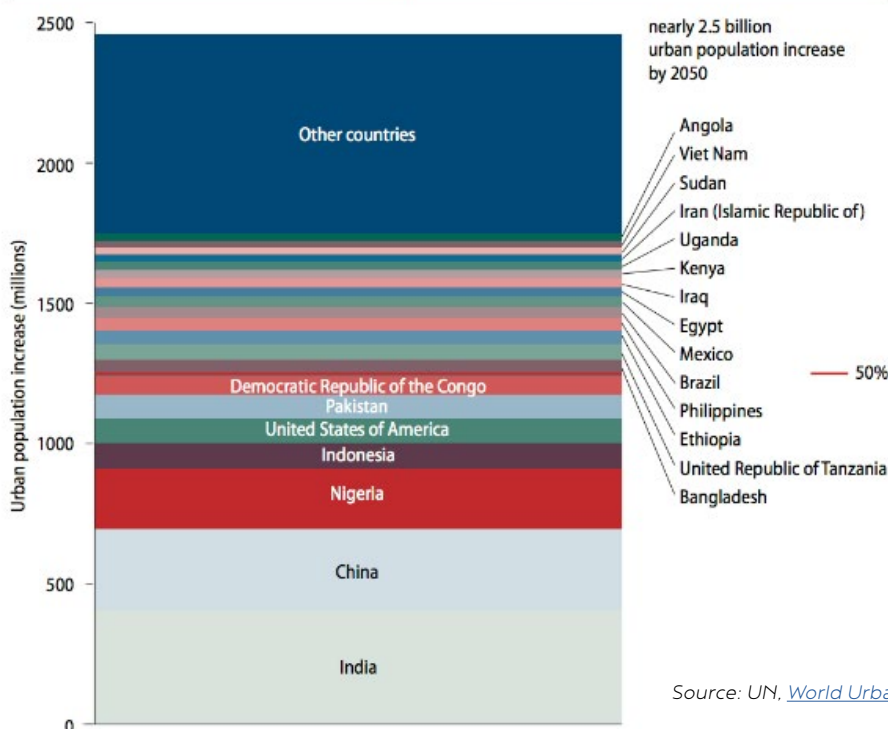
Source: UN, World Urbanization Prospects (2014) at p.12.

The move to cities can lead to migration streams and a tremendous pressure on resources if they are not managed well. According to some experts, tensions between the youth bulge and population-dense areas can lead to higher crime rates and political violence. These could be exacerbated by limited options for onward movement.

Connected with this is the migration factor, by which we mean both international (between states) and internal (within a state) migration as a result of disaster or instability and violence. Migration pressures are expected to at least remain at current levels or, more likely, to increase. The mixed bag of contributing factors include: economic growth, lack of economic opportunity, changing labour markets, increased ease of travel, instability, climate change and the fact that the evidence of 'a better life' elsewhere is increasingly visible through enhanced connectivity. In the next 10 years climate change is expected to be a cause of larger migration streams, with drought, flooding, and extreme weather events driving people away from where they lived – both within their country and across borders. A report by the World Economic Forum anticipates continuing migration pressure on Europe caused by two factors. One is instability, primarily in Syria, Iraq, and Afghanistan. The other is the rising population in Africa in combination with failed governance and lack of opportunity. Migration streams affect the world globally and are likely to have an impact on social cohesion. Pro- and anti-migration divisions can arise in communities when migrants are perceived as costing too much, taking jobs away, and changing the environment and culture of a place.

The UN Secretary-General notes in his 2016 report on refugees and displacement "that xenophobic and racist responses to refugees and migrants seem to be reaching new levels of stridency, frequency and public acceptance." He notes the importance of efforts to enhance social cohesion, as in many cases refugees and migrants fleeing war or disaster stay for longer periods of time than anticipated when they flee.

> Social media and the internet are fuelling xenophobia and populism...

From an interview – on record with authors.

It is difficult to make detailed forecasts on international migration, but an increase seems likely. The 2015 UN International migrant stock shows a steady increase. UNHCR reports that global forced displacement reached a record high in 2015: 65,3 million people. It reports that forced displacement has been on the rise in the past five years.

Fig.1   Trend of global displacement & proportion displaced | 1996 - 2015 (end-year)
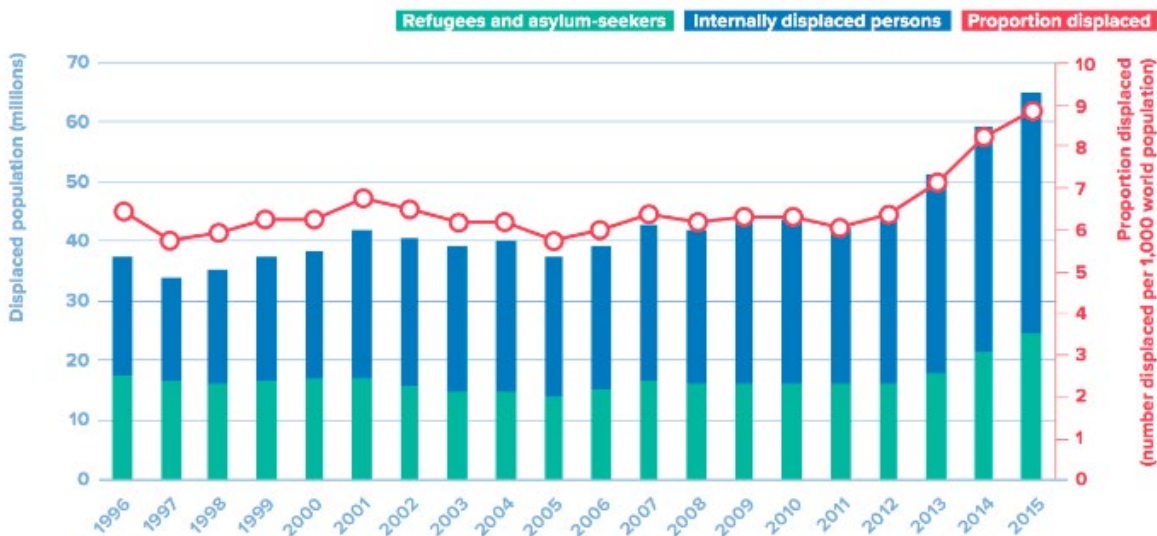
Source: UNHCR, _Global Trends – Forced Displacement in 2015_ (2016) at p.6.

The Internal Displacement Monitoring Centre states that of that group, 27,8 million were internally displaced persons as a result of conflict, violence and disasters. At the end of 2015, there were 40,8 million internally displaced persons – the highest number ever recorded. 8,6 million people in 28 countries were displaced by violence in 2015, with the Middle East and North Africa as the main areas where this is happening. The same report concludes that 19,2 million people were internally displaced as a result of disasters in 113 countries, with South and East Asia bearing the brunt.

The changing demographics in Africa and the Middle East, climate change, and state fragility all make for an explosive mix that could drive large-scale movements of people, with, at least in the short run, negative impacts on social cohesion.

"

The main trend, and a potentially more worrying one, is the '4G Challenge'. Over the coming years millions and millions of young people in Africa will get access to the internet. They will then see directly what they are deprived of, what they don't have. They will see why they should be angry, and whom they should be angry at, and they will be presented with options to do something. Become a terrorist, join an insurgency group, or migrate.

From an interview – on record with authors.

New forms of connecting will also affect social cohesion. As indicated in the technology trend described above, the ability to connect and communicate is expected to continue to rise. A number of interviews highlighted the increasing danger of the 'echo chamber': people sharing news and information between like-minded groups only, thus isolating themselves from different opinions and viewpoints. This effect seems to be increasing with the spread of social media. If this trend continues, citizens will increasingly organize themselves around themes, causes and ideologies they identify with across different nations, languages and cultures. It may spawn coalitions for social goals such as the empowerment of women, eradication of child marriage, or sustainable farming, but could also give rise to nationalist groups and extremist networks such as so-called Islamic State. For the latter type of organizations, the character of extremist acts is not changing, but their coordination is; we see an increasing diffusion of how acts are being prepared, incited, committed and by whom.

One of the experts we interviewed emphasised the positive side of these new forms of connection, by pointing out that they also build new and stronger forms of solidarity around social goods, for example in areas such as open and transparent government.
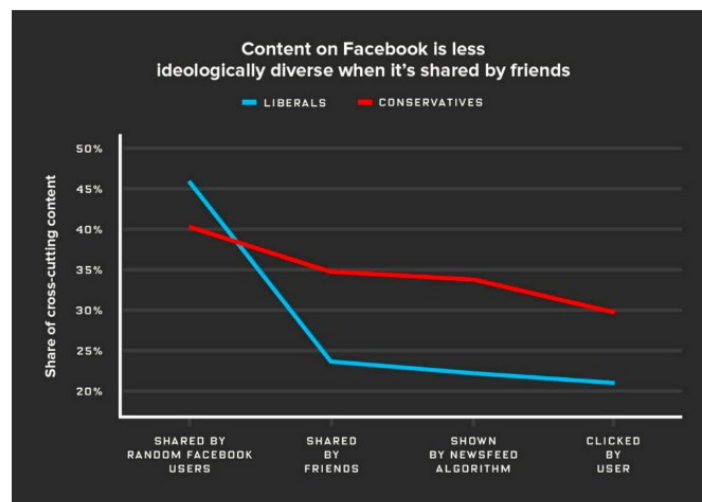
Source: "Exposure to ideologically diverse news and opinion on Facebook," *Science*, 5 June 2015. WIRED

"
Social media builds global solidarity between regional groups. It becomes very clear that some of the violations of young people's rights and issues are not necessarily unique or regional: in fact, they happen everywhere. In case of Africa, we are going to see a lot of East Africans joining anti-corruption movements because this is already happening in other parts of Africa.

From an interview - on record with authors.

Two directions

These factors will significantly affect the degree of social cohesion, both at the national and international levels. The trends point in some potentially worrying directions which may result in a more fragmented, polarized world. This may not be the easiest world for the ICC to function in. The position of the court in this regard is interesting: it is both an outside actor that has to deal with the consequences of eroded social cohesion, and an actor that can contribute to more social cohesion by providing fair and effective justice. In one direction, global social cohesion continues to decline and is replaced by local, diffused, and closed communities, which affects the mechanisms for delivering international justice. In another direction, global social cohesion simply becomes more complex but it does not undermine support for international justice mechanisms.

3. Fragmenting governance

Governance is under strain in many respects, both at the national and the international levels. Traditional modes of governance are being challenged; for many they no longer seem fit for purpose. Once widely held views about the basic rules governments should respect are being challenged and contested. In many areas states no longer rule the roost and need to contend with other nodes of governance at many levels: mega cities, business collaborations, civil society groups, cities, and mixtures of these. While this is happening we also see that the threats and challenges that governance needs to deal with have changed -- and change comes faster than ever. The ICC is an international organization based on international law that is built on top of a foundation of what should be good national governance, in which states are the dominant actors, and in which there is a certain consensus on the rules that govern governance. Will this continue to exist?

We define 'governance' using the general definition used in Wikipedia: "all of the processes of governing, whether undertaken by a government, market or network, whether over a family, tribe, formal or informal organization or territory and whether through the laws, norms, power or language." 'Governing' means many things, but the literature generally includes exercising some form of authority, convening, ordering, reaching decisions on behalf of a larger group, and implementing and enforcing them.

Governance is becoming more diffused and questioned. Increasingly, governments and businesses face challenges that require an attitude that reaches across borders and sectors. Take, for instance, the area of security. In the first six decades after the creation of the UN, global security was firmly a matter for states, who had armies to protect their interests. With the development and proliferation of technology, that may be changing rapidly. Technology and knowledge with which to dominate, threaten, cause harm is becoming more widespread, and harder to control by states. More than 70 nations are operating Earth-orbiting satellites today. Encryption, drones, artificial intelligence, and genomics are all examples of dual-purpose technologies, i.e. technologies that can be used for civilian purposes, but which also have military applications. The private sector has more resources to invest in research and development and much of the infrastructure critical to security is also in private hands[5]. The fast pace and intensity

of innovation make exercising oversight difficult. Some governments have already started adapting to this trend. The 2015 French National Digital Security Strategy, for example, is built around three 'communities': IT developers, government, and the users of IT services. The 2016 White Paper on German Security Policy states that "power is shifting between states and non-state actors", and continues with "transnational non-state networks are becoming particularly important". The 2014 Global Strategic Trends - Out to 2045 of the UK Ministry of Defense notes that "Private companies and non-governmental organizations could grow in power, providing services that used to be the responsibility of the state." Pauwelyn, Wessel, and Wouters conclude that traditional international law is stagnating in terms of quantity and quality. They show that other forms of international coordination are replacing it. A 2016 report concludes that of the 100 biggest economies in the world, 31 are countries and 69 are corporations.

The 2017 Global Trends report of the US National Intelligence Council sees country-, ministry-, or industry-based approaches being replaced by multi-level, multi-stakeholder, cross-sector, and networked approaches. Besides international bodies, cities are also emerging as serious governance nodes and this is predicted to continue. Already, the challenge of 'failed cities' has emerged as a term. With this, governance is becoming more private, informal, and international. This private, informal and international governance is likely to raise tensions with solely national, public and formal governance. To stay relevant, governments and international organizations are challenged to incorporate governance and enforcement mechanisms from sources beyond the authority of national public power.

> The multinational corporation, non-governmental organisations (NGOs) and other transnational organisations are gaining power if only because they move faster across borders and can make decisions more rapidly than governments.

Wilton Park, *The Future of Power: Implications for Global Actors by 2040* (2014) at p.1.

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5 As the US Deputy Secretary of Defence Bob Work noted: "... almost all of the technology that is of importance in the future is coming from the commercial sector, and all of the technology base is global. So that means any competitor and any adversary is going to have access to these types of technologies, and they can quickly mimic even the most powerful state".

Multilateralism is getting more difficult as a result of these shifts. To be truly multilateral requires more actors than in 1945 when the UN system was set up: there are more states, more states that compete for power, and now non-state actors are also important players. This is compounded by the fact that geo-politics is becoming increasingly dominated by the competition for spheres of influence between the US, Russia, China, and, to a lesser degree, the EU. New, emerging regional and sub-regional powers also demand their sphere of influence. This competition increases the areas of potential conflict, as we can see around Ukraine, Iraq and Syria, Yemen, and the South China Sea. It is also a fact that not all the governments in these different spheres of influence consider themselves bound by the same set of governance rules, for example those relating to rule of law and human rights.

We also see more contestation about governance. National political and legal orders increasingly contest international decisions. This is already happening in the area of investment law, human rights, the law of regional organizations, trade, and even to the ICC itself. This increased contestation does not necessarily have to be to the detriment of the international legal order; it is also a reflection of its strength and relevance that citizens and governments contest the exercise of power and the applicability and interpretation of rules. It does, however, require that international bodies are sensitive to new voices arising at the national level and are able to respond effectively. There are also risks. As we have seen with the ICC in relation to Africa, the Trans-Pacific partnership, Brexit and the Paris agreement, sudden fundamental challenges to the legitimacy of international regimes and bodies can arise unexpectedly. A second risk was expressed by one of the experts we interviewed: international rules simply being ignored as being "irrelevant". This is something to watch for in respect to all international rule regimes.

The other form of contestation that is on the rise relates to participation in governance – at whatever level it takes place. We see increasing citizens' demands for more responsiveness from and serious participation in governance and, in various forms, increasing calls for fairness, defined in different ways. If those calls are not responded to, trust in government is likely to fall. This has a direct knock-on effect on international organizations, whose legitimacy largely comes from national governments. A range of studies shows that protests and demonstrations have been globally on the rise since 2011. According to the conclusion of an extensive study examining the complexities of global protests, "The current surge of protests is

more global than the wave that occurred during the late 1980s and early 1990s, reaches every region of the world, and affects the full range of political systems–authoritarian, semi-authoritarian, and democratic alike." Moreover, the dissent and protest that took place in recent years was considerably more pluralist (ranging from workers, to students and environmentalists) compared to protest peaks in the 1980s. In the 2016 Global Risks Report of the World Economic Forum the term '(dis)empowered citizen' is introduced; citizens who are on the one hand empowered by technology but who, in spite of that, can't really participate in governance. The consequence of this mismatch can be feelings of disenfranchisement and dissatisfaction that ultimately undermine governance. The call for fairness is expressed in various ways: fairness as an expression of equality in opportunity and wealth, fairness as an expression of a more equally secure environment to live in, and fairness as a way of demanding justice for abuses and violence. Victims of crimes have indirectly demanded more fairness, as is reflected in the rising recognition of victims as an active participant of criminal procedures. The number of countries allowing for victim impact statements in court procedures has steadily risen in the past years. We see frequent headlines about big corporations having to pay their fair share of taxes, calls for more fairness in wealth and wage distribution and the need for compensation for victims of crime, war and disaster – nationally and internationally. Governments and international organizations are increasingly asked to openly share their policy goals and effectiveness evaluation criteria, which citizens can check themselves. The call for participation and fairness is reinforced by the connectivity through social media: people see events from all over the world, they perceive injustices, and they can, at least in theory, raise their voice and organize themselves. It represents a special challenge for international organizations. They have a diverse constituency and are subject to different political pressures. Staying 'in touch' with all the different strands of that constituency will be increasingly challenging.

Two directions

If these trends continue, we will see more diffused, complex, and networked governance, with more contestation and demands for responsiveness. The social goods citizens want are provided through many different governance nodes: from states and mega cities to businesses and all kinds of public private partnerships. This will be tremendously challenging for the ICC, which is already finding it challenging to be seen relevant, legitimate, and effective by is own membership, the wider state community, victims of atrocities, and broader civil society. As one of the interviewees said: when the court was created it was much clearer than now which diplomatic levers to pull to get something done. On the other hand, we may see a reaction to this, either through demand from citizens or driven by crises. That could drive governance to adapt to new control modes via the state – probably a slightly different state than we have now, to provide the social good citizens want in that way. If the trend develops in this direction, the state-based governance will be much more locally focussed and far less open to international modes over which the state has little control.

Box 3.1.1: The (Dis) Empowered Citizen: A Definition

The term "(dis)empowered citizen" describes the dynamic that is emerging from the interplay of two trends: one empowering, one disempowering. Individuals feel empowered by changes in technology that make it easier for them to gather information, communicate and organize. At the same time, individuals, civil society groups, social movements and local communities feel increasingly excluded from meaningful participation in traditional decision-making processes and disempowered in terms of their ability to influence and be heard by institutions and sources of power.

Source: WEF, The Global Risks Report 2016 (2016) at p.40.

5. Two scenarios

We constructed one scenario in which these three trends continue along their current paths. In another, these trends give rise to a counter-reaction. The two scenarios were developed as opposing analytical frameworks. They were intended to prompt strategic conversations that challenge what Peter Schwartz calls the Official Future. As indicated in Chapter 2 we focussed on trends that are most relevant and have the most impact on ICC, and that have a higher degree of convergence in the sense that they reinforce each other. From that, we built opposing storylines that make different futures visible. A reminder of the core elements of the opposing directions that were selected is set out once more below:

1

Scenario 1: New Tribes
More complex, networked governance, the social goods citizens want are provided through mega-cities, a wide variety of civil society groups, states, states within states, public-private collaborations and other governance nodes
People not having allegiance to a 'state' but to multiple shared interest groups. Loose social cohesion
Limited regulation of technology, fast pace innovation and change

2

Scenario 2: New States
Governance adapts to new control mode via the state and is able to provide the social good citizens want in that way
The idea of a 'nation' state re-emerges. Stronger social cohesion within the 'nation'
Closely regulated technology, slower pace of innovation and change

If the dominant trends highlighted above continue, governance will become an even more diffused and complex matter than it is now. It will have to take place on more chess boards at the same time, will have to deal with more complexity and change, and will be subject to a wider array of expectations. The social goods citizens want will be provided through many different governance nodes. We will also see a more loose and multi-layered way in which people are connected. The idea that large groups of people can be bound together by a widely shared identity as a 'nation' will wane. People will increasingly belong to alternative tribes: their family, their neighbourhood, the country whose passport they carry, the shared interest groups they belong to, the workplace they are connected to, and more. Technology and scientific discovery will continue to drive change at an accelerated pace, bringing both good things like cures and connectivity and bad things like more devastating

weapons. The innovations it brings are barely regulated, mainly because governance is too diffuse to do so. The main mode is 'regulation by disaster'. We describe this world, which we call New Tribes, in the scenario below.

New Tribes

The Annual Meeting of the World Economic Forum of January 2027 was considered by both the Wall Street Journal and the China Daily to have been a circus with too little substance and no capacity to get to meaningful results. Asked why they attended at all, the US and Chinese presidents both more or less admitted that they came because not being here is even worse. "At least it's a place where we can get some international agreement done - however basic", an unnamed source close to the Chinese delegation said.

The 80th anniversary of the United Nations, celebrated two years before, was a rather sad affair that got even worse press. Poorly attended, it was more obvious than ever that the organizational principle of bringing together 193 states that are all 'equal sovereigns' had become a farce. Yes, there were 193 representatives of states, but what they represented was not one type of entity but a hugely diverse group; in some cases even a glaring fiction. At one end of the spectrum a state like China, still largely centrally controlled despite all kinds of internal forces that were challenging that control. At the other end of the spectrum the so-called Nogov Areas: areas of the world with no real single authority in power, no monopoly of violence, and no fixed borders. These areas in the central part of Africa, the former Ukraine, the area to the East up to the Caspian Sea all the way down to Saudi Arabia, Southern Mexico up to former Panama, and the area around former Afghanistan could not be considered to contain 'states' in the traditional sense. Being Nogov did not mean that all these areas are caught up in violence; some, like the area of Ukraine around the Black Sea and what was once Israel, are the source of high-level IT technology. In addition, cities are also important governance nodes; particularly the 58 so-called global mega cities (cities with more than 10 million inhabitants, which, all together, encompass 85% of the world population, of which some were in Nogov areas). Around 40 of these mega cities are part of the Global City Council, which meets annually in Singapore to coordinate and share best practices on governance and service provision.

The brief surge in 'statism' that occurred between 2016 and 2022 already seems far away. As it turned out, states in the Trumpian or Putinian sense simply could not produce the goods citizens wanted most: safety, opportunity, voice, and health. In 2027 governance is more local than it ever was; in more different places, around more different topics, and in more different ways. Making all those local nodes work together in some form of overarching governance – national, regional or even international – is a hugely complex affair and in many cases seemingly impossible. With that waning of the Westphalian idea of the state, the spheres of influence of the most powerful states of old – China, the US and Russia – which were once so relevant, also declined.

A prime topic at this year's Forum was the Great Health & Tax Hack: a massive cyber attack on the health and tax systems in just over 20 countries. Massive amounts of personal data were taken. Privacy was grossly violated and personal data was held hostage. The initial financial losses, mainly for governmental organizations, were

tremendous. The fall-out of this is still not fully clear; many citizens, government agencies, and businesses involved live with an uneasy sense of anticipation that more harm will emerge. Many years of lawsuits are anticipated. Citizens massively took to the streets. They felt that they had not been sufficiently protected by the state and businesses. It is still unclear who was behind the attacks. Increasingly, the consensus amongst experts is that there was not one single mastermind but rather a loose grouping of entities and people that saw an opportunity and grabbed it, much like a swarm of flies that coalesce around something edible on the ground. This conclusion only fuels more anger towards governments and large businesses. Massive demonstrations were held all over the world demanding health and safety. However, these demonstrations and expressions of global solidarity could not be translated into any serious form of meaningful coordinated governmental action. The only real visible measure for many was the meeting between the representatives of the 25 Regional Leadership Governments of Asia, the Americas, Europe, Africa, the Arab world and the 20 largest data storage- and cyber security firms, and 22 civil society organizations, most of which had significant shares in the companies in question, to agree to better security measures. The reported outcome was launched as the Global Data Safety Initiative: an enhanced internationalized rule regime verified by the sharing of security protocols and the creation of a Security Fund with which to occasionally recruit some of the world's best hackers to make periodical break-in attempts so security holes might be found in time. More importantly: it was anticipated that the hack would cause more citizens to pull out of state systems and to organize things themselves, more locally.

The massive migration movements of the past 10 years have created areas which focus on technology and which take a more global perspective. Other areas resist change, reject new technology, and choose to be more closed to the world. Both attract different inhabitants. At the extreme tech side we see the towns of the super-rich: walled city-states like Singapore, Dubai, Cape Town, Sydney, Rio de Janeiro, and Nice. It is in places like these that the first Enhanced Human Beings, or EHB's, were born. A number of variations were developed: the

most important of which were the A-EHB's, whose enhancement was mainly focussed on intelligence and analytical capacity and the P-EHB's, whose enhancement focussed on physical capacity. The A's where created to design, analyse, and innovate better. The B's were the super-soldiers and crime fighters. The latest technology makes these areas impenetrable to non-residents. This includes physical security provided by enhanced soldiers, robots, and nano-swarms, as well as the most sophisticated cyber security measures. At the other end of the spectrum you find the No-Tech Areas, or NTA's. Here, technology is heavily regulated and mostly kept away. The NTA way of living is particularly connected to various religious groups - some of which conduct occasional violent campaigns against technology.

The connection people have with the state or city they live in is loose and characterized by pragmatism. People are generally linked to like-minded people, based on beliefs, the sports they like, music, sexual orientation, and many more fringe distinctions. With the 7G-communication network given almost global coverage, they can interact in 3D with like-minded people without having to travel. As the ability to connect across borders became easier, the sense of being an 'international community' also receded. The global climate is really the only area where there is a sense that a focussed international effort is needed. This is partly due to the significance of the mega cities, where climate change has its most direct effect.

The Ferrari Flyer, whose Cerebrum pilot system outsmarted all other cars, won the 2027 Abu Dhabi Grand Prix. Four tech firms basically run the market for such high-end forms of Artificial Intelligence, or AI: the US-UK-Germany-based firm BMW-Robotinc, the China based company Jīqìrén, the Russian-Belarus conglomerate Zhelezo, and, with a smaller but growing market share: the Kenya - Rwandan based venture Akili. Without these, no state is able to develop a serious AI military capacity. Around these four main units, hundreds of thousands of smaller high-tech businesses sell their products and services. It is impossible to fully gauge to whom these companies sell what. The somewhat chaotic market place is the only thing that prevents all or most AI power from being too concentrated. AI is everywhere; not only in racing cars. It has become firmly rooted in education, health, justice delivery, the financial system, and, most of all, in the area of safety and security.

It is now obvious that the mysterious death of twenty thousand young men in Cairo was the result of a swarm weapon; thousands of nano's that were programmed to kill their targets in their sleep. The swarm was traced back to a cruiser parked in a residential neighbourhood. Beyond that, no links to any perpetrator was ever found. Some theories trace it back to the US, Russia or China; which one depending on the expert. Others blame one of the many Middle Eastern warring factions fighting in the still-raging Second Middle East War. Access to nano-AI technology can always be bought.

New States

On the other hand, these trends may not continue; in fact, they could be reversed. In this scenario states adapt and take back the ground they seemed to be losing as successful providers of security, stability, and welfare. We see the state re-establishing itself as the main governance node to provide the social goods citizens' want. Using technology, governance is organized through new models that allow it to control, direct, and project power in a focused way around the issues that matter. Tired of uncontrollable forces of globalisation, people reconnect within the idea of the nation state built around a defined heritage, history, language, and culture. Technology and science continue to develop at great speed. However, its use is carefully regulated. Labour markets, certain values, and the safety of citizens: all are carefully protected through a system of rules. However, most of these rules are national, some are regional, and only a very limited number of them are international.

In January 2027 the second annual meeting of the United Regions (UR) takes place at its HQ in Singapore. As a counter reaction to the Trump administration's attempt to unify the US with 'America First' nationalism, the US saw a significant loosening up of its federation. This different and more diverse US did not want to host international bodies anymore. By measure of its contribution to global GDP Asia was widely considered the most suitable region in which to host it.

The UR has replaced the UN. After some initial IT

hick-ups in the first year, its new governance platform e-Resolve, seems to be working to everybody's satisfaction. Only a few of the government leaders are actually physically present: most of them participate through 3D telepresence. The Annual Meeting is a lot shorter than the old UN General Assembly: it lasts five working days and takes place at the level of heads of state or government. The days in which each of the 193 leaders held speeches are remembered with laughter. Based on the UR Framework Rules and supported by e-Resolve the meeting is prepared well in advance, based on AI-guided big data sharing around the key agenda items. On that basis, leaders of the regions, who also take with them the mayors of the 44 global mega cities, get presented the areas where policy coordination is needed and guided towards taking the necessary decisions. Two days are for the political leaders, who take primacy. On the third day the leaders of the fifty largest business and civil society organizations join.

The UR Framework Rules were not built around a process of polarising negotiations. With hindsight, the Paris COP21 summit of 2016 changed the rules of international governance. Building on that remarkable achievement, a governance model emerged based on fast and constant information sharing, in which participating parties indicate how they can contribute to the required solutions, rather than publicly declaring so-called red lines. The creation of the UR was accompanied with a lot of creative destruction. For one, about 75% of the UN agenda was scrapped; it was felt these matters are better taken care of at the national or regional levels. The UR no longer does anything on health, education, culture, crime, labour, telecommunication, food and agriculture, intellectual property, human rights, international justice, or humanitarian relief. These are predominantly national, and sometimes regional issues. Compared to the old UN, it has a much-reduced role in peace and security. The regional blocks have divided their spheres of influence well and generally these delineations are respected. If tensions arise, as they periodically do, for instance in the Levant where Russia, the US and the EU claim influence, the UR system is used as a neutral venue and as a place to let off steam. The rest of the UR agenda is modest: the global climate implementation plan and some global economic matters.

In December reports started to surface of large-scale killings of young men in the Sahel region as part of an anti-terrorist operation coordinated by China, the Southern European Consultative Assembly, and the ten countries of the Arab Defence Sura. It is as

yet unclear why and how so many men under the age of 30 died so suddenly. Most experts suspect a bio-attack of some sort. The states of the Northern European Alliance consider these reports, if true, a potential violation of international humanitarian law. No other state or state grouping has been willing to say that. The Alliance tried again in vain to get weapons control on the UR's agenda. But the pushback from other states and regional groupings was too strong. For most, weapons control remains a national state issue with, at best, some regional coordination. There is agreement on one more issue: territories that are not subject to some form of strong state authority exercising a monopoly on violence are not tolerated; they are immediately brought under some form of government control. Nobody wants another Sahel Insurgency like the one that occurred between 2019 and 2021.

The state is back. A quick data analysis search on Google shows that the two most commonly used words in the names of the multitude of political parties in the world are 'first' and 'united': a united group that comes first. This is yet again evidence that a clear majority of citizens of the world have let go of the idea of global citizenship under a banner of universally shared values. For most, this type of thinking brought nothing but disaster: uncontrollable migration, unacceptable income inequality, lack of economic independence, destruction of cultural heritage, proliferation of transnational crime, and erosion of democracy, to name a few things often mentioned. Memories of sudden and widespread unemployment, disenfranchisement, religious tensions, currency collapse, large-scale cyber hacks, and terrorist attacks, are fresh. That's not a place anybody wants to go again. Yes, people have a multitude of cross-border friends and contacts through the many IT platforms on offer, but this is done from a general grounding in local, and at best regional language, values, and policies. Political scientists like to say that the world has 'Switzerized': the different valleys with their own specific cultures and needs are represented by the 215 countries the world now counts. Citizenship and community is bound to them. International cooperation is shunned and, in the unlikely event that there is really no way to avoid it (the global climate is one area where this is clearly deemed the case), it is organized bottom-up and heavily controlled so it does not spiral out of control again.

Information technology has also localised. A big driver of this was the so-called Great Health & Tax

Hack that took place in 2020. These hacks by criminals – some supposedly edged on by states – toppled governments in a little over 20 countries. After that, being able to safeguard data became one of the key pillars of government legitimacy. The crisis was also used by some state-centred strongmen and women to assert control and to curb once heralded freedoms. Considerable resources are spent to safeguard data; the huge amounts of data that new technologies were producing have become heavily regulated. Fringe oppositional groups occasionally object to this 'dictatorship of data', but as long as huge scandals are not happening and positive effects of cleverly using data keep being shown, the general consensus of the public is that governments are in a better position to control data than private entities. Instrumentalizing data for prevention and nudging of behaviour became the cornerstone of governmental policy in all regions. The discussion about privacy has entered a new phase. The free-surfing World Wide Web is dead. Every user of the Internet has an e-passport and without it one cannot get a visa to access the Internet of other states or regions. The way this is organized differs widely: the citizens of countries that fall within some regional groupings, for example the Northern European Alliance, the Central American Coalition and the Southern African Comradeship have quite a lot of internet travel freedom within their region. Others do not: in Russia and many of the Arab speaking states for instance, citizens require an e-visa for any Internet activity outside the country. The localized Internet is built up of heavily fortified cyber walls that are highly secured.

There is a constant form of warfare ongoing with regard to these cyber walls, specifically between regions where spheres of influence are contested. Technology and weapons industries have been nationalised, with some regional cooperation where that was deemed safe. Transnational trade in technology that can in any way be used by rival states or criminals to threaten is heavily regulated and subject to strict permits. Defence spending in most states has significantly gone up since 2017. The US, China, Russia and to a lesser degree, the Northern European Alliance and the Arab Defence Sura have invested heavily in new weaponry in the past decade. Where once the Mutually Assured Destruction between two superpower states – Russia and the US – captivated the world, these five states/blocks now occupy that chessboard. Each of them project the promise of being able to inflict serious damage and massively destroy and kill through a variety of high tech weapons. It is not known with any degree of precision the exact nature and number of these weapons, but experts agree that they range from autonomous swarms of nanorobots that can both kill and disburse disease, and satellite-based electromagnetic pulse weapons that can massively disrupt and destroy electronic circuitry. The once-so-sacred laws of war seem of a distant past.

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6. Recommendations for strategies

Scenario-based, targeted innovation

The dialogue continues. Let us now go back to the core question of this study: *In the face of the most relevant political, economic and social trends likely to emerge in the next 5-10 years, what adaptive strategies might the International Criminal Court, and the civil society organizations supporting it, deploy? What strategies for change in the institution and the procedures of the court will allow the ICC to become increasingly successful in achieving its aims?*

It is now possible to immerse the ICC in entirely different worlds, one in which the dominant trends continue, and one in which they are reversed. This helps highlight what can withstand the storms of the future and what cannot. In turn, that provides the building blocks for a more future-proof strategy.

In the scenario method, the goal is to test whether the current strategy is robust and to identify 'branching points' where new strategies will need to be developed because the current strategy is not fit for achieving the strategic objectives of the organization. For a car manufacturer, a strategy built on being the number one automotive in the diesel engine segment is not robust if one of the scenarios is that diesel engines will be criticised for their environmental impact and no new technologies can drastically reduce this environmental impact. If the strategy is not robust in one or more scenarios, the scenario analysis may suggest elements of a new strategy.

The testing of the strategy in the two scenarios was done in a Lab Session with a group of experts who have in-depth knowledge of the different elements of the ICC ecosystem; daily practitioners working with the ICC. The analysis was enriched with the desk research and interviews conducted. The three goals of the ICC

highlighted at the start of this report remained the point of departure:

1. To bring the perpetrators of the 'most serious crimes' to justice through a 'complementarity' regime.

2. To provide for truth, justice and reparation for victims of those most serious crimes.

3. To use this whole justice structure as a foundation for peace and security in the countries/regions in question.

We asked the participants to assume the role of different 'users'. As victims, accused, judge, prosecutor, or State Party, what would you want the ICC to be able to do for you to achieve these three goals in this particular future? This resulted in a large number of 'user stories' and terms of reference. Some of these requirements emerged from both scenarios. Some of them are specifically related to only one of them. Together, they can be seen as requirements for next versions of the ICC.
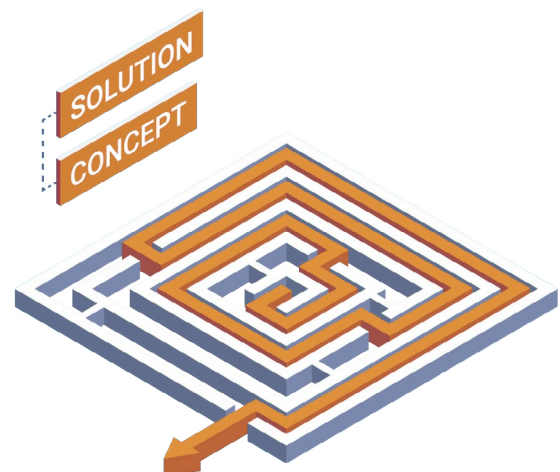
In managing change, courts need to maintain their independence while at the same time engaging a multitude of stakeholders. The innovation processes currently used by most tend to quickly lead to paralysis, with each internal justice-stakeholder (judges, court administration, prosecution, lawyers, ministries of justice, ministries of finance and others) working to maximize their own 'benefits' within the existing system. In this way they all persist in fighting for their own role rather than the common good: better justice delivery for the users of the system.

Deriving the common good in a structured way, adding all legitimate wishes of the stakeholders in an interactive process, is a better way forward that can work. This is done by constantly working on the goals and requirements that reflect the needs of the different users. On that basis experts and interdisciplinary teams can design improvements, adaptations and prototypes for subsequent versions that more optimally achieve these goals and requirements. The requirements can be defined from a general perspective of what the procedure needs to achieve (timely resolution, closure, 99% accuracy, for example). The perspective can also be that of a particular user of the procedure (in the case of the ICC, for instance: the victim, the accused, the witness, the registrar or the judge). Working from terms of reference and user stories and then regularly further designing the institution and procedure with a view to achieving all requirements according to priority, is the essence of modern innovation methods.

Institution and procedure change in both scenarios

Some of the requirements that emerged for the institution and the procedure were similar in both scenarios. The participants felt that these changes are most likely to be needed to achieve the goals of the ICC in both scenarios. These could be called "no regrets" change requirements.

The institution

- The 'business case' for the ICC must be communicated more clearly, many said: what is its concrete added value in relation to the costs? In both *New Tribes* and *New States* more forces are visible that question the usefulness of the ICC and present forms of competition. In *New Tribes* other, more local, non-state, and networked ways of achieving the three strategic goals are likely to emerge. In *New States* one can expect the emergence of national or regional alternatives to the ICC, with less interest in complementarity. A worry emerged: these may even be based on standards that some would consider lower than those now enshrined in the Rome Statute and subsequent rules based on it.

- With complexity rising in both scenarios, participants felt that there will be a greater need to have a good overview of what the court is doing and achieving (or not) and to prioritize on that basis.

The ICC must focus on what it can do best, what is most important, what it can afford, and, what it can bring to a good result. How can the court make sure it always has the best thought-through strategies for pursuing specific persons, entities, themes and regions/countries?

- ICC will have to be there for many stakeholders, direct and indirect, from the international down to the very local, and at many levels of governance. How, many asked, will the ICC be able to deal with that effectively?

- Could other entities become member of ICC? Cities? Regions? And perhaps even provide new funding?

- It seems that it will be necessary to develop new pathways to keep up and adapt to change. Creating flexibility could consist of working more with principles and framework rules and giving more discretion to the ICC institution.

- The workforce and its organization is likely to also

need adaptation. If there is a need to have an organization that has more room at the lower levels to respond to sudden local, regional and other developments, would it not have to be organized less hierarchically? And how will the workforce, including the judges, be able to stay on top of technological development? Some observed that there will also be a need for more mediation within the institution.

- There are some dependencies. The ICC is part of the wider UN system; if that institution does not change, that may present challenges for the ICC.

- More offices? Other forms of presence? The ICC would most likely have to be much more present in the different regions of the world – both physically and virtually.

- Like the court, the Trust Fund for Victims will also need an enhanced capacity to cooperate and engage with many different stakeholders, at different levels at the same time.

The procedure

- What about the 'business case' for the procedure? What exactly would the ICC want the procedure to achieve for whom, and by when? It seems that being clear on priorities will be essential in respect to the procedure as well: simplifying, specializing, cutting out the elements that are not a high priority and increasing capacity in areas that have the highest priority for achieving the goals of the ICC. Expectations and perceptions of the ICC will be influenced by many more stakeholders and voices than now, it seems.

- Bridging emerged as an important word. Given the diversity in both worlds, should the procedure not have to be less adversarial, with more of a focus on harmonising community relations, relations between regions, and bridging variations in value and norm-systems?

- Perhaps this way of thinking can replace the common law – civil law procedural divide that so often seems to dominate: a dialogue on how to deal with different value systems.

- Technology is a key factor now; both the technical and non-technical experts in the dialogue seemed sure this will accelerate. The procedure will have to adapt to new technological realities: investigation methods, evidence, security and even new types of crimes. Technological developments around data – collecting it, storing it and analysing it for value and relevance – are likely to require changes to the rules concerning evidence. Investigation and analysis methods will be influenced if crowd-sourced investigation tools like the IBA Eyewitness to Atrocities app develop and proliferate, and will be countered by initiatives to prevent the truth about atrocities to come to light. Can Artificial Intelligence become a 'witness' to atrocities? The concept of 'security' will radically change, it seems: it will be less a matter of physical security for staff and buildings and more a matter of security of the information technology that is used, the virtual presence of the ICC, its communication and its stored information. What about the concept of being 'present'? Many concluded that virtual reality technology will change that concept, both for the court and its officials and for witness and victims. This can have a tremendous impact on the procedure. These new forms of presence must be secure. Will they not create pressure for more participation for victims and others? It also presents an opportunity: the ICC will also be able to connect more directly to its key constituencies.

- The experts on weapons were worried. New weapons and their proliferation are likely to significantly scale the ability to commit atrocity crimes: bio-weapons, nano swarm weapons, electromagnetic pulse weapons, the use of artificial intelligence and new forms of cybercrime that we cannot yet name. And how do we find those that used them? Many of these weapons also present significant challenges in terms of traceability to a particular user or perpetrator. Are the skillsets to confront these challenges present in the current ICC ecosystem? It may also become apparent that existing rules do not provide sufficient basis to investigate and prosecute crimes in which these new technologies are used.

- Big data collection and analysis will increasingly enable the ability to see atrocity violence coming. That raises new questions. Can it become a criminal act not to have stopped a foreseen atrocity? If so, who would then be the suspect? Particular individuals? Particular organizations? We can certainly expect more focus on measures to prevent atrocities. The Lab Session participants offered that prevention might also be organized through built-in algorithms designed to protect civilians.

- The process of cooperation (parts 9 and 10 RS) is also likely to be different. In New Tribes the court will have to cooperate with many more different actors: cities, a wide variety of civil society groups, states, states within states, public-private governance nodes and the like. In New States national and regional governments and jurisdictions will want more precedence and control.

- Some asked if the scope of jurisdiction would remain the same? Will it have to change with more regional conflicts, different crimes (new forms of cybercrime may need to be included), and more of an emphasis on investigating and prosecuting groups instead of individuals?

- It seems that witnesses, groups that function as watchdogs and victims are likely to be subject to more threats to their safety, from more angles, and in ways not really conceivable now. They will require even more attention. What can be done to ensure the essential protection they need?

- The procedure to start a case may even need revision: could it become necessary or possible to allow victims groups or entities such as cities to bring cases?

The ICC in the New Tribes scenario

In this scenario, the trends move towards:

- More complex, networked governance, the social goods citizens want are provided through many different groups, private institutions, organizations and diffuse authorities

- People not having allegiance to a 'state' but to multiple sources of self-identity, more localised entities, ad-hoc and virtual communities. Loose social cohesion

- Limited regulation of technology, fast pace innovation and change

The institution

- Most experts found it challenging to envisage an ICC in its current form as fit for purpose in this scenario. Some participants suggested that it might have to become more of an organization like the ICRC, focussed primarily on prevention and education, with other entities doing the investigations and prosecutions.

- If the ICC has to be more attuned to local needs and political economies in very different places at the same time, a 'universal' approach will be next to impossible. How to keep trust in such a world? How to have real impact?

- There will be many new actors in the ICC's orbit, many of the participants noted. States will be only one of them, and will only have powers in some areas. Is the institution structured, staffed and organized to deal with that? That pressure

will probably also be linked to funding: it is not expected that the ICC will get sufficient funding from states only in this scenario. What then?

- The most serious crimes concept may need to be reassessed. The Lab Session participants concluded that, for instance, in a decade, large-scale data theft might be considered as one of these crimes and in need of protection by the ICC. Other possibilities mentioned were crimes against the climate or the environment, which may become more visible and traceable because of developing technology. The many ICC constituents will probably push for such crimes and other crimes that particularly matter to them to be included.

The procedure

- If the *New Tribes* scenario comes to pass, the dialogue suggested that the procedure would need to be understood and seen as legitimate by many more different stakeholders: institutional, non-institutional, public, private, international, regional, local, very local and so forth.

- If there is an intensification of transnational and technical threats, the need and the call for the protection of victims and witnesses will also increase. This is not only something that will need to be done; it must also be seen to be done, some noted. The ICC must show relevance in these areas and spread it wisely, using effective marketing and outreach strategies.

- If these new actors all emerge, it seems that new cooperation and enforcement powers will be required. Can the ICC have cooperation agreements with cities or non-state police forces?

- Stepping out of the Official Future entirely, the participants of the Lab Session even asked whether perhaps the goals of the ICC might need to be changed. It may, for example, have to ask whether the full-fledged victims mandate is tenable. Or look at other aspects of the procedure. One could opt for a smaller sphere of influence and leave other areas to other, more local actors.

The ICC in the New States scenario

In the *New States* scenario, the trends at the core of the *New Tribes* scenario do not continue and, in fact, reverse:

- Governance adapts to a new control mode via the state and is able to provide the social goods citizens want in that way.
- The idea of a 'nation' state re-emerges
- Technology is closely regulated, with a slower pace of innovation and change

The institution

- For many participants this was an uncomfortable scenario. It felt like going back in time and was quickly associated with extreme nationalism. Methodologically it is however important to point out that this scenario is not inherently 'bad' – just as the *New Tribes* scenario is not inherently 'good'. A reinvention of the state as the core organizational building block within which communities live together does not have to be the same as extreme nationalism.

- If there is likelihood of there being a wider diversity of laws, rules and conflicts regarding jurisdiction, then the ICC will have to be very good at connecting to diverse regional and national needs and values. Is the institution structured, staffed and organized to deal with that?

- The ICC is likely to have to be much more explicit about having regional branches, perhaps even with regional judges, and prosecutors. In the Central African Republic, a form of cooperation with a new, hybrid, national-international tribunal emerged. Will that become the rule rather than the exception? And which role will the ICC take in that?

- In some areas, some asked, the court may have to abandon the idea of doing investigations and prosecutions altogether and function as a strong platform that sets standards, leaving actual trials to the regional or national state level. Will the ICC grow to be the provider of 'ICC Certification' of regional and local institutions and procedures that enforce the laws that deal with mass atrocities and the protection, participation and reparation for victims?

- Strong state actors will have ample means at their disposal to stymie investigations and prosecutions. What about weaker states? The ICC must also be able to protect those who come from states that are not part of the 'strongest and powerful'. How can it ensure that it is able to do that?

- An opportunity was also spotted: providing the ICC is very good at communicating its effectiveness, it can position itself as the bulwark against the threat or commission of large-scale violence against civilians by powerful states.

- The role of the Security Council will be minimal, it seems. Therefore, some said, connecting the 'justice' for which the ICC is responsible to the 'politics' of a body that works on international and regional peace and security will probably have to be organized differently. Regional and sub-regional 'security councils' may emerge, which will require a different way of conducting effective justice diplomacy to support the court's work.

- Assistance to victims will need to be done more regionally and locally.

The procedure

- The international-local divide, it seems, is sharper if the New States world emerges. It seems, some noted, that the procedure of the ICC will have to cater for a capacity to adapt itself according to individual state or regional preferences and rules. This might relate to different crimes, standards and rights. A degree of universality and equal application will have to be maintained, while at the same time catering for local interpretations of rules. Maybe jurisdiction has to be agreed upon on a case-by-case basis?

- The idea of an international prosecutor may not be viable. Perhaps the Office of the Prosecutor will need to transform into a facilitator of cross-border cooperation focused on international crimes.

- The ICC will have to connect even more strongly to regional and national judicial decision-making. Will there be capacity at the level of the Office of the Prosecutor and the Presidency do this? Will the Assembly of States Party have the means to connect more to regional and national politics?

- Victims will require even more direct access to the ICC.

7. Reflection: A Way Forward

Major challenges

The dialogue that was conducted resulted in a number of requirements for next versions of the ICC. Those requirements are listed above and in Annex 1 below. Some are safe-track or "no regrets" needs that emerge from both scenarios. Others are specific to each scenario. The requirements also differ for different users. Looking at the overall picture they present, we see three major challenges.

First is the decision-making process within the ICC system, and particularly in the Assembly of States Parties. If the ICC is to adapt to the changes that emerged from this dialogue, the strategic decision-making processes of the court need to improve. Changing structures and adapting rules is cumbersome under current frameworks. This concerns in particular the non-judicial decision-making on institutional structures, management, and processes. While some have said that an advantage of cumbersome procedures is that it is difficult for 'spoilers' to dismantle parts of the ICC structure that displease them, it also presents a problem. Participants felt that current decision making structures and processes are also an impediment to innovation and adaptation. The participants also found it particularly difficult to envisage how this challenge can be addressed.

Cost-effectiveness, and thus the need for innovation in existing processes, supported by new technologies, is the second challenge. Even now, it seems, States Parties are not able to provide what the ICC says it needs for investigations, trials and keeping up with technological trends. Contributions to the Trust Fund for Victims have been modest.

The third challenge for many is the procedure – the core product of the ICC. The complex, adversarial procedure does not seem the most robust strategy for the future in either scenario. Both scenarios point to worlds with even more diversity, in which value and norm systems diverge. In both scenarios it was

concluded that the ICC might have to focus more on non-state groups. Against this background, the complex, adversarial procedure seemed ill-suited to the new situations in both scenarios.

It was remarked by some of the participants that the dialogue might have paid more attention to the internal governance and running of the ICC: how it should be led and managed, by which kind of people, with which kind of skills, in each scenario. This is a level of detail beyond what we were able explore.

The dialogue shows that the ICC already has many stakeholders and that in both scenarios that number will increase and require more in-depth engagement. There are a lot of groups with an interest in the three goals that form the foundation of the ICC. With each stakeholder comes tremendous commitment and expectations. In both scenarios stakeholder management will be a core strategic challenge. The diversity of stakeholders in *New Tribes*. The many states and regions with differing value systems and norms in *New States*. Are there perhaps too many stakeholders to engage with? Should the ICC clarify and simplify its role even more so that it has fewer expectations to manage? Or is a limit on engagement more an organizational and management issue?

One thing is clear from the dialogue process: doing nothing creates a high risk of stalemate, stagnation, regression and, as one of the interviewees said, **"even worse: irrelevance".**

An emerging agenda for a next version of the ICC

What more does this dialogue demonstrate? Perhaps the most basic insight is this: even in an environment in which the legitimacy of the ICC is fundamentally questioned, dialogue around improvement and change is possible. The scenario-method not only lifts important insights from the changing environment and highlights the urgent need to adapt. It de-emphasizes the internal struggles over incremental changes. It brings a generative and constructive dialogue to the table. It uncovers new opportunities in new technologies. Future needs for new forms of interventions from an international criminal court-like institution become clearer. The method of defining user stories enables each group of stakeholders to formulate its own requirements. Stakeholders can then see the big picture of what is needed for overall effectiveness. An agenda for developing the next version of the ICC can emerge based not on a view through the microscopic lens of the court's current challenges, but the big picture view of the court's essential purpose and the needs of the future.

The dialogue took place within a varied, yet limited group of experts. But there is no reason it could not take place in public, or with a broader group of stakeholders. The methodology of this project could be used to build a prototype "ICC 2022", through a dialogue with real users, combining the scenario method with the principles of user-centred design.

The concrete results of the present project can be the building blocks for a next phase. The trends we identified, the two scenarios based on them, and the extensive user stories for both the institution and the procedure collectively provide the terms of reference for a path that can keep the ICC relevant. The content of the dialogue suggests many potentially important and divergent future roles for the court.

Courts, as neutral third parties for delivering fairness and justice, are essential. There is no indication that such neutral third parties will not be needed in any future imaginable. They will perhaps be needed more then ever at the international level. Profound changes are taking place. These make it necessary to question the Official Future frequently and in a structured way and, where needed, to adapt to remain relevant. We hope this dialogue serves as a first step toward a rich conversation about the future of an essential institution.

Annex 1: Recommendations for strategies based on Lab Session

	Current	New Tribes	New States
Elements of institution	A treaty-based, international organisation, based on the model of executive power, supervised by an assembly of states parties who allocate the budget.	ASP and its decision making process must change. Less cohesive ASP will reduce the Court's ability to change. The current governance structure which is extremely dependent on States, which will not work. In this scenario States are no longer the main, primary actors. Others, like cities, companies, and all manner of civil society groupings, are as important in areas such as, for example, finance, lelgitimacy, and enforcement powers. More non-state/private powers need to be included in the decision making process. It is likely that one annual meeting a year will not work in this new structure.	ASP and its decision making process must change. ASP must reflect speaking as one body even though it consists of separate states, which are more reluctant than ever to transfer large powers to an international body. ASP must reflect regionalism and the 'Switzerization' of the international landscape. Strong states but only regional cooperation (a hugely diminished universal/international sphere).
	A single legal person at the international at national level that combines the Office of the Prosecutor, the Presidency, Chambers, the Registry, and the Assembly of States Parties and its secretariat.		The ICC still exists in this scenario, but faces pressures from states like never before.
	An organisation based in The Hague and that works mainly from The Hague. Field offices in some places and a liaison office in New York.	No longer one central body that does it. Regional courts needed.	The ICC to become a more general perspective/platform that sets standards, but trials are regional. In this scenario, it also needs to adapt to regional needs/standards. Works either as a single entity or with more regional courts. The ICC is not mainly located in The Hague anymore but works in regional hubs, overseeing regional offices.
	An organisation that is part of the wider UN system.	Change (legal) structure to create participation/governance by non-state actors. ICC able to exist only if it can communicate justice as a transversal value across silos. Privacy is an example of a changing value.	The ICC to stand as a strong central institution but trials left to branches. It might lead to fragmentation of international standards. It must deal with diversity of laws/rules/case law/conflicts of jurisdiction. Be able to connect deeply to needs/values of the region/sub-region and to show its value.
	The official languages are the five official working languages of the UN: English, French, Chinese, Russian, Spanish. The working languages are English and French.		
	Current	**New Tribes**	**New States**

Current	New Tribes	New States
A Trust Fund for Victims set up by decision of the Assembly of States Parties, to handle reparations to victims and assistance to victims through other resources.	More direct conversations between the ICC and victims – not only via states	More direct conversations between the ICC and victims – not only via states
Jurisdiction limited to genocide, crimes against humanity, war crimes, and aggression.	Subject matter jurisdiction has to change. Climate change and cyber attack need to be included. The ICC must also take account of new weapons the death and destruction they can cause.	Deal with conflicts between regions/states within regions. For those states that are not part of the 'top strongest and powerful', the ICC must be able to protect, even more than in the New Tribes scenario. ICC makes sure justice is done at regional level in an efficient way. The ICC provides capacity building ('ICC Certification' of regional/local institutions and procedures to enforce international humanitarian law, rules of warfare (Geneva Conventions).
Admissibility only for core crimes and if crime is grave and state is unwilling or unable genuinely to investigate/prosecute.	Current procedure has the state as referral mechanism – the ICC works with states as entities to start cases and work. We need to have a system that facilitates cooperation from new diverse bodies that are not only longer sovereign states; and that system needs to be able to mandate new bodies of the court to do things. Article 15 of the Rome Statute needs to be re-envisaged. The UN SC trigger mechanism will is also likely to become redundant and proprio motu action by the Prosecutor more challenging.	Case-by-case agreement to accept jurisdiction. Security Council not likely to start cases.
Enforcement powers only via states.	New enforcement powers needed, if an arrest warrant needs to be enforced in one of the mega cities, for example. Do you need the court to have its own police force if it's not possible to work anymore with local/international police forces? What is the solution if states no longer cooperate: 1) make new agreements with existing bodies that have power 2) make your own legal bodies to execute the mandate of the court?	How will the ICC exist in the world where the rule of law that is assumed under the Rome Statute is not accepted at universal level? How will the ICC work if information flows limited to regions? Even more room than now for unwilling states to resist the ICC powers.
Hierarchically organised – top down structure.	Be agile, adapt-respond. New decision-making models (need to change structures). Even though this feels in general like a negative scenario, you can imagine a more agile Court capable of embracing all these developments.	The ICC to create regional branches, but still of general nature (general but geographically relevant).
Staff appointed as international officials, with functional diplomatic immunity and the remuneration systems of the UN system.		

Current	New Tribes	New States

Current	New Tribes	New States
Three organs – internal organisation is based on clear hierarchy – top down way of working.	This will not be tenable. The internal organisational structure must be able to support the managing of many stakeholders (at speed), allowing more freedom and discretion lower down.	All components (defence, registry, prosecution) become regional components. The ICC as appeals place to regional decisions. The ICC becoming a hybrid tribunal. Complementarity becomes central in this scenario. The organisation is less, centrally controlled from The Hague.
Presidency (the organ): is responsible for the proper administration of the court		
Registrar works under authority of the Presidency		
Prosecutor runs the Office of the Prosecutor		
Judges elected by the Assembly of States Parties. Must have criminal law and international law expertise. Equitable geographical distribution.		
Registrar elected by the judges		
Prosecutor and deputy prosecutor elected by the Assembly of States Parties.		
Fixed salaries for staff not directly linked to performance.		
ICC budget linked to 3-year strategic plan and annual budget, assessed by Assembly of States Parties.	Being able to incorporate new resource needs (financial, human, technology) fast.	More work needed to make a good business case. Top diplomacy.
User stories Victims want the ICC to provide … because …	They want protection from a wide array of perpetrators	Like the ICJ, it provides assistance only if states wish. Victims much more regional/local.
	The ICC to be accessible	Victim's justice at stake – would it be an option to give victims the right to bring a case?
	Provide fast repatriation; forms of repatriations that work	Want to have voice. Better contextualise notion of justice to them. In absence of the UN, it would be for the ICC to share the justice (norm setting).
	What in case of non-human victims?	
Suspects want the ICC to provide … because …	What in case of companies that make protective robots/AI?	Insurgent groups want to have voice & fair handling.
	Some of them want the court to fail, to be under resourced and illegitimate.	
	To be protected, well-treated.	
	Sentence to be fair and ethical; the court to be well funded; trials must be fair – how to assure fair trials?	
Current	New Tribes	New States

Current	New Tribes	New States
	Reliable, for them challenging to let the court determine what really happened (esp. In a post-truth era).	
Justices want the ICC to provide … because …	Legitimacy and fairness in a post truth era	
States want the ICC to provide … because …		The ICC must reaffirm/protect my state.
		Fill a gap that states fail to fill – crimes, conflicts resolution, conflicts or jurisdiction.
		The ICC provides judicial support and advice on evolution plan.
Interest Groups want the ICC to provide … because …	Around ideas and values, let go of geography. The ICC to be objective. To find the truth in a 'post-truth' environment.	They want to have voice.
	They want to be relevant for the ICC	
	The ICC to talk to them	
	The ICC to assert their values; the ICC to be relevant to their values	
	Accessible; consumable; understandable.	
New entities (megacities, regional authorities/courts)	They want the ICC to recognise them, to affirm their authority. The ICC should perhaps be open to anyone who wants to buy into it (a church in America can ratify the Rome Statute as well as a military group in the Sahel). The ICC should be open to any group that wants to buy into the goals and obligations of the Rome Statute. Since the assumption is that states no longer have the capacity or authority to meet the obligations and mandates of the court.	They expect the ICC not to compete with them. Instead, the ICC should promote them – act as a unifier. Also respect for region's value system. The ICC seen as a provider of justice services. Periodic hybrid tribunal.
Companies want the ICC to provide … because …	Will want to consult the ICC in order to be legal; e.g. 'ICC certified'	
Local justice providers want the ICC to provide … because …	The ICC to provide the standards of justice; to keep up with things; guidance.	Support and advice.
		Respect our laws, customs and judicial decisions, e.g. national supreme court decision would have more values/power than the one of the ICC.
		Become certified: ICC approved.
Media want the ICC to provide … because …	The social media platform/other media (as consumers of information): interesting information that attracts attention	The ICC must be a trusted provider of truth. That would be possible only if the ICC has legitimacy.
The ICC leadership want the ICC to provide … because …	Capacity building	The ICC needs to convince states to join and stay. Otherwise it has weak power.
	Legitimacy	Crimes that are relevant to all states, Climate change is generally supported by all states. Aggression as well. If it can include these in its agenda, it could gain more support/participation.
Intellectuals, academics		
Current	**New Tribes**	**New States**

	Current	In New Tribes scenario	In New States scenario
Elements of procedure	Adversarial judicial procedure of two opposing parties	Explore other kinds of justice (other models of justice). Procedure should be less adversarial, but more bridging.	Change the justice model of the ICC: less confrontational/adversarial, less combative
	Mix common-law and civil law – predominantly from the 'Western' legal tradition.		Change priorities according to individual state preferences (or regional): per region/countries other types of crimes/rights could be prioritized. Without international rules, in order to be effective, the court has to respect national values/cultures/human rights – diversified approach to sentencing/trials.
	Prosecutor looks at both culpatory and exculpatory evidence	More cooperation with technology companies to gather evidence and conduct investigation, i.e. hire certified providers of evidence.	Prove it's raison d'etre. If international cooperation is shunned, then there can't be any ICC activities (like investigations and prosecutions) the way we know it now really.
	Four stages of the procedure:		
	Preliminary investigation: is there a potential case?	Prosecutor – increasing analytical capacity and investigation capacity.	Bring the procedure/court into its state/region (split up) ICC should refer adjudication of crimes to states/regions and support those national/regional 'mini ICC's', become more of a think thank/facilitator.
	Pre-trial phase: permission from the Pre Trial chamber to start a formal investigation	Redefine complementarity. Guaranteed forms of funding of the procedure.	Go after abuses by very strong states. Start a case on its own initiatve.
	Trial phase: the trial, leading to a decision		
	If decided: appeals and reparations phase		
	Arrests, seizures, and other enforcement action take place through cooperation with states.		
	Victims can take part in the procedure and can apply for reparations		
	Cooperation between the Court and the Trust Fund for Victims		
	Cooperation through international agreements on enforcement of sentences, witness protection, judicial cooperation, and privileges and immunities.	Work with new actors for prosecution. Redefinition of the defence rights (for groups), and defence counsel.	
	Network with the Assembly of States Parties.		
	Network through the UN system.		
	Current	**In New Tribes scenario**	**In New States scenario**

Current	In New Tribes scenario	In New States scenario
ICC Strategic Plan 2013-2017:		
Fair, transparent and expeditious judicial proceedings, refining legal standards, standardized processes. E-Court system.	Raise awareness about how the procedure works. To manage expectations and communicate alternative jurisdictions; increase ability of the court to involve stakeholders; more transparent outreach. Cope with accusation of bias.	
Guarantee rights of the defence, with good legal aid system		
Meaningful participation and reparations for victims		
Increasing awareness of the Court amongst victims	Increase capacity to cooperate (and execute all the above)	Enforce international humanitarian law, rules of warfare (Geneva Conventions)
OTP Strategic Plan 2016-2018:		
Collect more and increasingly diverse evidence	Include right to data/confidentiality as protected	
Open-ended, iterative investigations		
Building upwards, from mid- to high level perpetrators		Support conflict resolution between states. Solve inter-state conflicts more like the ICJ currently does. Change who you are prosecuting/group
Victims responsive approach	More participation of victims than is currently the case - because they won't have a national voice anymore	Set norms by itself and sell them, disseminate. Protect itself from interference by states
Making cooperation work better - work with partners	Capacity to deal with communities (better communication)	Monitor how states perform in their territory, between neighbours.
Higher level of coordination and complementarity		
Look at connection ICC crimes and other crimes		Support groups that are victimized in new ways (not by adjudicating criminals, but at least by providing some other form of support, truth and reconciliation, reparation)
Better use and understanding of technology		
OTP is not a development agency		Becoming a facilitator of cooperation and cross-border cooperatives
Current	**In New Tribes scenario**	**In New States scenario**

	Current	In New Tribes scenario	In New States scenario
	Assumptions budget OTP per year: 9 Preliminary examinations, 1 new situation under investigations, 6 active investigations, 9 hibernated investigations, 5 cases in pre-trial phase, 5 cases in trial phase, 2 cases in final appeals phase. Budget: 60.9 million euros p/y		
	Assumptions budget overall Court based on Budget 2017:		
	Enhancing judicial efficiency: Running and supporting proceedings in three trials		
	Ensuring high-quality investigations: Conducting and supporting six active investigations		Specialization for crimes that states are willing to cooperate on (i.e. cybercrime issues)
User stories	As a victim I want the ICC procedure to provide … because …	Victims – being heard in their own place, stronger demand for reparations/individual compensation	Victims – truth, recognition, direct access to the court (not via the state)
		Perspective of the victim: voice being heard, more reparations, individual compensation (vs group?)	
		Affected community – information, participation in court processes (open gallery and in situ cases), guarantee of security/protection	
	Suspects want the ICC to provide … because …	Accused groups/individuals – defence rights	Accused – clear and high standards
	Justices want the ICC to provide … because …	Judges – new rules and tools, diversity reflected in qualification and new skillset, local proceedings	Judges – mediator
	States want the ICC to provide … because …	Separate parts of the government having different roles/input	
	Interest Groups want the ICC to provide … because …	Watch dogs (along with regional organisations and media) – information, participation in court processes (open gallery and in situ cases), guarantee of security/protection	Community – minimize/repair any damage not remedied, reconciliation on a communal/national level, information about the truth
		Deal with group (incl. corporations) responsibility	Watch dogs – more effective protection (against the state)
	New entities (megacities, regional authorities/courts)		Governmental bodies – being able to voice my preference, strong regional groups (arrest), bring other states before the courts, enforce against non-cooperating states
	Current	**In New Tribes scenario**	**In New States scenario**

Current	In New Tribes scenario	In New States scenario
Companies want the ICC to provide … because …		Partners in investigation – access to information and a lot of wikileaks, and a lot of protection
Local justice providers want the ICC to provide … because …	Partners in investigation – clear predictable contract and types of protection	
Media want the ICC to provide … because …		
ICC leadership want the ICC to provide … because …		Prosecutor – listen to victims needs, give them voice, help against power
Intellectuals, academics		

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