
*A New Hegemony: International Criminal Justice and
the Politics of International Security*

Dissertation

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Declaration

I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged. I also confirm that this thesis has not been submitted for a degree at another university.

Abstract

This study is an exploration of the logic of hegemony in one of the most significant policy areas of international relations: international security. I argue that despite huge international opposition during the Court's early years of existence as well as the fact that 3 out of 5 permanent United Nations Security Council (UNSC) members are not Parties to the Rome Statute of the International Criminal Court, UNSC decision-making between 2002 and 2010 was framed by the hegemonic Justice discourse. The result of intense lobbying by international criminal law experts, NGO human rights activists, policymakers, journalists, and state representatives acting within the United Nations Security Council, the International Criminal Court Assembly of States Parties and the media, Justice was the new ideology of international security. In order to empirically analyze this process of hegemonization, I developed a hermeneutic conceptual framework based on Ernesto Laclau and Chantal Mouffe's Poststructuralist Discourse Theory (PDT) and an inductive qualitative research strategy that can be applied to concrete international policy discourses. I defined hegemony as a process of hegemonization that takes place under specific historical circumstances in a particular international policy area. In order to reveal its workings I relied on a comprehensive list of PDT concepts operationalized as meso-level Discursive Mechanisms. Through the linking of various political demands, the creation of a collective identity, the gripping of the floating signifiers "Peace", "Security", "Sovereignty", "Protection", "Accountability", and "Rule of Law", and institution of a new political imaginary, Justice became one of the most successful discourses in early 21st century international relations. The new security ideology withstood challenges from three major counterdiscourses: the homegrown American version of "Politicization", the African Union's institutional discourse, and the ongoing normative attack from the loose network of actors defending the preeminence of Peace vs. Justice. Although hegemony is always a structurally unstable process, the empirical evidence collected between 2002 and May/June 2010 suggests that Justice is (still) shaping international security policy.

Zusammenfassung

Diese Studie erforscht die Logik der Hegemonie, eines der wichtigsten Policy-Themen in internationalen Beziehungen: Internationale Sicherheit. Ich lege in dieser Arbeit dar, dass trotz des immensen internationalen Widerstands während der ersten Jahre der Existenz des Internationalen Strafgerichtshofs und der Tatsache dass drei von fünf ständigen Mitgliedern des Sicherheitsrates der Vereinten Nationen (UNSC) keine Vertragsparteien des Römischen Statuts des Internationalen Strafgerichtshofs waren, die UNSC Entscheidungsfindung vom hegemonialen Rechtsdiskurs geframed/maßgeblich gedeutet wird. Das Ergebnis des intensiven Lobbyings von internationalen Strafrechtsexperten, Menschenrechtsorganisationen, politischen Entscheidungsträger, Journalisten, in den Vereinten Nationen agierende Regierungsvertreter, der Generalversammlung der Mitgliedsstaaten des Internationalen Strafgerichtshof und den Medien, ist Gerechtigkeit die neue Ideologie internationaler Sicherheit. Um diesen Prozess der Hegemonisierung empirisch zu analysieren habe ich ein hermeneutisch-konzeptuelles Modell, basierend auf Ernesto Laclau und Chantal Mouffe's Poststrukturalistischer Diskurs Theorie (PDT) und eine induktive qualitative Forschungsstrategie, die auf konkrete internationale Policy-Diskurse angewandt werden kann, entwickelt. Ich definiere Hegemonie als einen Prozess der Hegemonisierung, die unter spezifischen historischen Umständen in einem bestimmten internationalen Policy-Bereich stattfindet. Um ihre Funktionsweise zu verdeutlichen, habe ich mich auf eine umfangreiche Liste von PDT-Konzepten gestützt, die als meso-level

Zusammenfassung

Diskursmechanismen operationalisiert wurden. Durch die Verknüpfung verschiedener politischer Anforderungen, der Schaffung einer kollektiven Identität, das Einspannen von leeren Bezeichnern "Frieden", "Sicherheit", "Souveränität", "Schutz", "Rechtsstaatlichkeit" und als Institution einer neuen politischen Vorstellung, ist Gerechtigkeit einer der erfolgreichsten Diskurse der internationalen Beziehungen des frühen 21sten Jahrhunderts geworden. Die neue Sicherheitsideologie hat den Angriffen der drei Haupt-Gegendiskurse widerstanden: die hausgemachte amerikanische Version der "Politisierung", der institutionelle Diskurs der Afrikanischen Union und den anhaltenden Angriffen des losen Netzwerks von Akteuren die die Überlegenheit von Frieden vs. Gerechtigkeit verteidigen. Auch wenn Hegemonie immer ein strukturell instabiler Prozess ist, so deutet die empirische Datenlage, die zwischen 2002 und Mai/Juni 2010 gesammelt wurde, darauf hin, dass Gerechtigkeit die Sprache im Zusammenhang mit internationaler Sicherheit (noch immer) maßgeblich prägt.

Abbreviations

A.U.: African Union

AUPD: African Union High Level Panel on Darfur

AMIS: African Union Mission in Sudan

ASPA: American Servicemembers Protection Act

B.I.A.: Bilateral Immunity Agreements

CAP: Comprehensive Peace Agreement between the Government of the Sudan and the Sudan Liberation Army (South Sudan rebel group)

EU: European Union

DPA: Darfur Peace Agreement between the Government of the Sudan and the Sudan Liberation Army-Minni Minawi faction

GoS: Government of the Sudan

ICC: International Criminal Court

ICC ASP: International Criminal Court Assembly of States Parties

IDPs: Internally Displaced Persons

ICISS: International Commission on Intervention and State Sovereignty

ICI: International Commission of Inquiry on Darfur

JEM: the Justice and Equality Movement (Darfur rebel group)

L.A.S.: League of Arab States

NAM: the Non-Aligned Movement

NCP: Sudan National Congress Party (Party of President Omar al-Bashir)

OIS: Organization of Islamic States

PCT1: International Criminal Court Pre-Trial Chamber 1

UNDP HDR: United Nations Development Programme Human Development Report

UNHRC: United Nations Human Rights Council

Abbreviations

UNMIBH: United Nations Mission in Bosnia-Herzegovina

UNAMID: African Union-United Nations Hybrid Mission in Darfur

UNMIS: United Nations Mission in Sudan

UNSC: United Nations Security Council

U.N. SG: United Nations Secretary-General

SLM/A: Sudan Liberation Movement/Army (Darfur rebel group)

Concepts

ISS: International Security Studies

ICJ: International criminal justice

PDT: Poststructuralist Discourse Theory

PDA: Poststructuralist Discourse Analysis

Peace/Justice: The “Peace vs. Justice” Counterdiscourse

POL-I: The U.S. “Politicization” Counterdiscourse

POL-II: The African Union “Politicization” Counterdiscourse

R2P: Responsibility to Protect

ROL: Rule of Law

Chapter 1. Introduction

Security is one of the most dynamic policy fields in post-Cold War international relations. By comparison to our recent history and its apparent stability, the beginning of the 21st century is marked by a series of unprecedented phenomena: the resurgence of United Nations Security Council (UNSC) activism¹ in response to the diversification of threats to international peace and security as well as the multiplication of international non-state actors.

International security policy refers to the actions taken by the United Nations Security Council for the protection of international peace and security. Chapter VII U.N. Charter covers the provisions on the use of force and represents the legal framework guiding legitimate international action². Since 1989, the UNSC has employed these powers selectively in a way that signaled a break with Cold War practices and furthered the development of international law³. Significant among these developments are the expansion of international criminal justice concepts in Security Council debates and the emergence of a security practice based on new standards of behaviour such as the Responsibility to Protect (R2P) and individual criminal responsibility⁴.

¹In 2000, Tono Eitel argued that the Council adopted Resolutions with ever-increasing frequency and gave a conservative estimate of 50 such acts as a future annual number: Eitel, Tono. 2000. *The UN Security Council and Its Future Contribution in the Field of International Law*. Max Planck Yearbook of United Nations law 4:53-71. For the most recent overview of United Nations Security Council practice see: Simma, Bruno, Georg Nolte, Daniel-Erasmus Khan and Andreas Paulus eds. 2012. *The Charter of the United Nations. A Commentary* Oxford, UK: Oxford University Press, and Lowe, Vaughan, Adam Roberts, Jennifer Welsh and Dominik Zaum Eds. 2010. *The United Nations Security Council and War. The Evolution of Thought and Practice Since 1945*. Oxford, UK: Oxford University Press;

²Krisch, Nico. 2012. Chapter VII Powers: The General Framework, Articles 39 to 43. In Simma, Bruno, Georg Nolte, Daniel-Erasmus Khan and Andreas Paulus, Eds., *The Charter of the United Nations. A Commentary*. Oxford, UK: Oxford University Press.

³Talmon, Stefan. 2005. *The Security Council as World Legislative*. *The American Journal of International Law* 99:175-193.

⁴Bothe, Michael. 2008. *Security Council's Targeted Sanctions Against Presumed Terrorists: The Need to Comply With Human Rights Standards*. *Journal of international criminal justice* 6:541-555; Brunnée, Jutta and Stephen Toope. 2005. *Norms, Institutions and UN Reform: The Responsibility to Protect*. *Journal of international law & international relations* 2:121-137; Condorelli, Luigi and Annalisa Ciampi. 2005. *Comments on the Security Council Referral of the Situation in Darfur to the ICC*. *Journal of international criminal justice* 3:590-599; Miller, David. 2007. *The Responsibility to Protect*

This return to law in the language and practice of international security policy signals shifts in the international balance of power, but in a different way than most bipolarity-to-unipolarity-to-multipolarity Neorealist studies might suggest. I argue that the growing political clout of international criminal law at the UNSC marks the beginning of a new ideology in international security, whose policy prescriptions are meant to overcome the humanitarian intervention dilemma and legitimize the substitution of U.N. military deployment in situations of civil conflicts with a preventive criminal justice mechanism. The background of this return to international law in high politics is an empirically observable change in international discourse and the rise of a new hegemonic discursive formation: the Justice discourse (or Justice).

The Poststructuralist concept of hegemony and the redefinition of “security” in the broader field of International Security Studies (ISS)⁵ are key to the critical explanation of change in UNSC policymaking practices⁶. This thesis follows the Poststructuralist research program in ISS, but steers it in a different direction: by operationalizing the main concept of the Poststructuralist Discourse Theory (PDT) developed by Ernesto Laclau and Chantal Mouffe⁷, I investigate the discursive mechanisms which constitute the causal arrow linking (hegemonic) discourses and changes in security policy practices.

(Hegemonic) Discourse → Policy (change)

Human Rights. Center for the Study of Social Justice, Oxford University. Working Paper Series May 2007:1 - 13.

⁵Buzan, Barry and Lene Hansen. 2009. *The Evolution of International Security Studies*. Cambridge, UK: Cambridge University Press, p. 1-8.

⁶Howarth, David. 2010. Power, Discourse, and Policy: Articulating a Hegemony Approach to Critical Policy Studies. *Critical Policy Studies* 3:309-355.

⁷Laclau, Ernesto and Chantal Mouffe. 2001. *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics*. London and New York: Verso.

My focus is both theoretical and methodological. Similar to Lene Hansen's Poststructuralist theory of identity, which relied on a non-Humean understanding of causality and explained foreign policies by reference to constitutive discourses and identities, I associate policy change with a period of discursive contestation. Because this contestation takes place publicly, competing discourses and their respective policies can be empirically identified in the deliberations of the United Nations Security Council. Interventions in favour or against criminal justice on the other hand pertain to the broader virtual space created by international bodies such as the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC ASP) and the media. State actors, regional and non-governmental organizations (NGOs) as well as international policymakers and experts are the producers and challengers of Justice, making their voices heard within this new institutional topography.

In order to analyze empirically this process of hegemonization, I have developed a conceptual framework based on PDT and a research strategy that can be applied to concrete international policy discourses. I understand hegemony as a process of hegemonization that takes place under specific historical circumstances in a particular international policy area. In order to reveal its workings I relied on a comprehensive list of PDT concepts operationalized as meso-level Discursive Mechanisms (Chapter 2). This approach draws on previous Poststructuralist research, but offers primarily an alternative research design. Although concepts such as empty signifiers, nodal points⁸ and more recently identity⁹ have been employed in empirical analyses of international politics and, to a lesser extent, international policies, a

⁸Diez, Thomas. 2001. Europe as a Discursive Battleground: Discourse Analysis and European Integration Studies. *Cooperation and Conflict* 36:5-38.

⁹Diez, Thomas. 2010. Europe's Others and the Return of Geopolitics. *Cambridge Review of International Affairs* 17:319-335; Herschinger, Eva. 2012. 'Hell is the Other': Conceptualizing Hegemony and Identity Through Discourse Theory. *Millennium: Journal of International Studies* 41:66-90: 66; Solomon, Ty. 2009. Social Logics and Normalisation in the War on Terror. *Millennium: Journal of International Studies* 38:269-294.

comprehensive application of the entire PDT theoretical framework does not exist in the literature.

This research project focuses on a specific time frame. I analyze the international criminal justice debate between approx. 2002, when the International Criminal Court (ICC) was created, and 2010, the year of the First Review Conference of the ICC Rome Statute. This choice is justified by two empirical observations.

First, since 2002 the Court has gradually acquired legitimacy as an international security actor. Despite the fact that 3 out of 5 UNSC Permanent Members are not parties to the Rome Statute, the Court's Foundational Act, and have even opposed the tribunal as well as its institutional design, the UNSC has referred two difficult situations to the ICC and has been generally supportive of a victims-based approach to conflict resolution. In 2005 and, respectively, 2011, the U.N. Council exercised simultaneously its powers under the Rome Statute and Chapter VII U.N. Charter by referring Darfur and Libya to the Court. These acts signaled the beginning of a new era in the relationship between the Council's Permanent Members and the ICC, proving that cooperation in security matters between criminal justice lawyers and the U.N.'s political organ was possible¹⁰.

This process of institutional *détente* reached another climax in 2010. Between 31 May and 11 June 2010 the national Delegations taking part in the First Review Conference of the Rome Statute negotiated successfully an outstanding international issue: the codification of the Crime of Aggression (Art. 8*bis* and Art. 9 ICC Statute). Despite decades of irresolution and mutual suspicion, at Kampala this decision was adopted by consensus. Only eight years after the ICC's controversial beginnings, the Review Conference was welcomed as a "remarkable breakthrough

¹⁰For an overview of the ICC's relationship to the United Nations Security Council see: White, Nigel and Robert Cryer. 2009. *The ICC and the Security Council: An Uncomfortable Relationship*. In Doria, Jose, Hans-Peter Gasser and Cherif M. Bassiouni, Eds., *The Legal Regime of the International Criminal Court. Essays in Honour of Professor Igor Blishchenko*. Leiden and Boston: Martinus Nijhoff.

towards further consolidating the emerging international criminal justice system¹¹ and the culmination of the “near-century-long debate¹² on the crime of aggression. The United States Delegation, a vocal critic of the Court’s role in international affairs, conceded that the Conference outcome had “accommodated some of its key concerns¹³. This conciliatory American position is itself remarkable, given that in 2001 John R. Bolton, U.S. Under-Secretary of State for Arms Control and International Security, had portrayed the ICC and its Prosecutor as illegitimate and a threat to his country’s national interest¹⁴.

The Court’s actions and impact in international politics did not fulfill these negative expectations. Although its actions have at times courted controversy¹⁵, the International Criminal Court is today a legitimate international institution¹⁶. There are currently eight situations and 21 cases brought before the Court: four self-referrals by the governments of Uganda, the Democratic Republic of the Congo, the Central African Republic and Mali (Art.14 ICC St.), two investigations initiated by the Office of the Prosecutor in the exercise of his *propriu motu* powers (Art.15 ICC St.) and authorized by the Pre-Trial Chambers in the cases of Ivory Coast and Kenya, and the two referrals by the U.N. Security Council acting under its Chapter VII powers (Art.13(b) ICC St.)¹⁷. The ICC has successfully undergone a process of institutional change, with its President and Prosecutor replaced at the end of their mandates in 2009¹⁸ and 2012¹⁹. The number

¹¹Kress, Claus and Leonie Holtzendorff. 2010. The Kampala Compromise on the Crime of Aggression. *Journal of International Criminal Justice* 8:1179-1217, p. 1180.

¹²Ibid.

¹³Ibid.

¹⁴Bolton, John R. 2001. The Risks and Weaknesses of the International Criminal Court From America's Perspective. *Law and Contemporary Problems* 64:167 - 181.

¹⁵Roach, Steven C. 2006. *Politicizing the International Criminal Court. The Convergence of Politics, Ethics, and Law*. Lanham, Boulder, New York et al: Rowman & Littlefield Publishers.

¹⁶Roach, Steven C. 2009. *Governance, Order, and the International Criminal Court* Oxford: Oxford University Press.

¹⁷International Criminal Court website, Overview of situations and cases, retrieved at: http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/Pages/situations%20and%20cases.aspx. Accessed: May 13, 2014.

¹⁸President Song Sang-Hyun (Republic of Korea), was first elected as a judge at the International Criminal Court on March 11, 2003. He is President of the Court as of 11 March 2009, replacing the first President of the ICC, Philippe Kirsch (Canada).

of situations brought to its attention is also growing. The Office of the Prosecutor is currently conducting preliminary examinations in several countries including Afghanistan, Georgia, and the Ukraine²⁰.

The second empirical observation concerns the proliferation of international criminal justice norms and principles in UNSC security policy. This phenomenon, emerging in the mid'1990s, gained strength after 2002. Although the ICC's institutional development is a notable achievement in human history given the previous long and unsuccessful struggles to create an international criminal tribunal, the Court is only the pinnacle of a far broader ideological shift. Kenneth Anderson, an American academic and security expert, has described the emergence of international criminal law as one of the most remarkable features in the development of post-Cold War international legal order, comparable only to the creation of a global trading regime and of the World Trade Organization²¹. This "atrocities regime"²² or, alternatively, "regime of altruism"²³ covers a heterogeneous array of criminal justice principles, norms, and institutions, with the Rome Statute offering the most comprehensive codifications of individual criminal responsibility and international crimes²⁴.

The effects of this evolving regime can be traced back to the UNSC's changing security practice. The Council gradually adopted, beginning with the

¹⁹Fatou Bensouda (The Gambia), took office on 15 June 2012, replacing the Court's first Prosecutor Luis Moreno-Ocampo. Ms. Bensouda, the former Deputy Prosecuty under Mr. Moreno-Ocampo, was elected by the Assembly of States Parties for a term of nine years.

²⁰International Criminal Court website, Preliminary examinations, retrieved at: http://www.icc-cpi.int/en_menus/icc/structure%20of%20the%20court/office%20of%20the%20prosecutor/comm%20and%20ref/Pages/communications%20and%20referrals.aspx. Accessed: May 13, 2014. The complete list of "situations" under review by the Office of the Prosecutor includes: Afghanistan, Central African Republic, Colombia, Comoros, Georgia, Guinea, Honduras, the Republic of Korea, Nigeria and Ukraine.

²¹Anderson, Kenneth. 2009. The Rise of International Criminal Law: Intended and Unintended Consequences. *European Journal of International Law* 20:331-358.

²²Abbott, Kenneth W. 1999. International Relations Theory, International Law, and the Regime Governing Atrocities in Internal Conflict. *American Journal of International Law* 93: 361-379.

²³Anderson, 2009, p. 332.

²⁴Article 5 of the Rome Statute lists four types of international crimes falling under the jurisdiction of the Court: the crime of genocide, crimes against humanity, war crimes, and the crime of aggression. The latter was codified during the negotiations of the first Review Conference of the ICC Rome Statute, which took place in May/June 2010 in Kampala, Uganda.

mid'1990s, a more legalistic approach to conflict resolution by prioritizing criminal justice mechanisms, domestic institution building and changes in U.N. peacekeeping practice. Truth commissions, hybrid tribunals, and special chambers became core elements of comprehensive peace building strategies²⁵. Security Council Member States and U.N. officials increasingly endorsed the main arguments of criminal justice supporters, namely that enforcement of international criminal law helps stabilize peace agreements through the removal of rogue leaders, and supports fledgling states by encouraging judicial reforms.

Between 2000 and 2010, in parallel to international efforts to establish a working ICC, the Security Council deployed in zones of conflict U.N. missions authorized to use force for the protection of civilians. Their so-called “robust“ mandates were gradually expanded to include rule of law elements and provisions for the consolidation of state authority through support programs in the areas of security and justice reform²⁶. Such changes reflect the expansion of UNSC practice which, in particular after 2002, increasingly accommodated new criminal justice concepts and standards of international behaviour. These shifts had a strong impact in a controversial policy area: international military interventions in situations of (intrastate) armed conflicts.

Intervention is a troubled field in international policymaking. Christian Reus-Smit argues that because the practice and concept of intervention are two distinct

²⁵For an overview of the most significant international criminal justice courts and domestic mechanisms see: Roper, Steven D. and Lilian A. Barria. 2006. *Designing Criminal Tribunals. Sovereignty and International Concerns in the Protection of Human Rights*. Ashgate. The list includes: the International Criminal Tribunal for the Former Yugoslavia (1993), the International Criminal Tribunal for Rwanda (1994), the Special Court for Sierra Leone (2002), the Extraordinary Chambers in the Courts of Cambodia (2001), the Special Crimes Panel for East Timor (2000) as well as the Indonesian Ad Hoc Human Rights Court (2000).

²⁶Doyle, Michael W. and Nicholas Sambanis. 2006. *United Nations Peace Operations: Making War and Building Peace*. Princeton, New Jersey: Princeton University Press. An appraisal of the legal basis and Security Council peacekeeping practice can be found in: Nasu, Hitoshi. 2009. *International Law on Peacekeeping. A Study of Article 40 of the UN Charter*. Leiden: Nijhoff. For an assessment of the effectiveness of these new generation peacekeeping missions see: Lamp, Nicolas and Dana Trif. 2009. *United Nations Peacekeeping Forces and the Protection of Civilians in Armed Conflict*. Hertie School of Governance Working Papers 47.

elements, we do not have a clear historical record of such actions. Framing intervention in sovereignty terms obscures other definitions and similar types of action that avoid this label because they belong to alternative configurations of international power²⁷. UNSC practice and the academic studies researching this field are also beset by other problems. Despite a substantial literature on this topic, the contemporary practice of intervention has been analyzed mostly as the effect of changes in the international balance of power, rather than a dynamic policy field²⁸.

The academics grappling with these normative dilemmas have relatively few practical suggestions for policymakers, endorsing either an ad hoc approach to intervention²⁹, or the development of a more pragmatic policy standard for UNSC decisions³⁰. Unfortunately, such theoretical debates have been matched by brutal examples of the effects of non-intervention on the ground. The Rwandan genocide in 1994 and the Yugoslav war in 1993 brought back with a vengeance the deadly reality of civil wars to the attention of an increasingly global audience and rekindled this political, legal, and moral debate³¹. Rwanda in particular proved to what extent interventions are controversial both when they do and when they fail to happen³².

²⁷Reus-Smit, Christian. 2013. The Concept of Intervention. *Review of International Studies* 39:1057-1076.

²⁸Cairo, Heriberto. 2006. The Duty of the Benevolent Master: From Sovereignty to Suzerainty and the Biopolitics of Intervention. *Alternatives: Global, Local, Political* 31:285-311.

²⁹Baker, Gideon. 2010. The 'Double Law' of Hospitality: Rethinking Cosmopolitan Ethics in Humanitarian Intervention. *International Relations* 24:87-103; Moore, Thomas. 2013. Saving Friends Or Saving Strangers? Critical Humanitarianism and the Geopolitics of International War. *Review of International Studies* 39:925-947; Roach, Steven C. 2005. Decisionism and Humanitarian Intervention: Reinterpreting Carl Schmitt and the Global Political Order. *Alternatives: Global, Local, Political* 30:443-460.

³⁰For more recent work on the adjustment of R2P as a legitimate standard for international military interventions see: Scheid, Don E. ed. 2014. *The Ethics of Armed Humanitarian Intervention* Cambridge, United Kingdom: Cambridge University Press and Pape, Robert A. 2012. *When Duty Calls. A Pragmatic Standard of Humanitarian Intervention.* *International Security* 37:41-80. On the related topic of cosmopolitan guidelines for intervention see: Archibugi, Daniele. 2004. *Cosmopolitan Guidelines for Humanitarian Intervention.* *Alternatives: Global, Local, Political* 29:1-21.

³¹Recchio, Stefano and Jennifer M. Welsh eds. 2013. *Just and Unjust Military Intervention.* European Thinkers From Vitoria to Mill Cambridge, United Kingdom: Cambridge University Press. For a review of the humanitarian intervention debate see also: Krisch, Nico. 2002. Review Essay Legality, Morality, and the Dilemma of Humanitarian Intervention After Kosovo. *European Journal of International Law* 13:323 – 335;

³²Jones, Bruce D. 1995. 'Intervention Without Border': Humanitarian Intervention in Rwanda, 1990-94. *Millennium: Journal of International Studies* 24:225-248.

A more daring alternative to the impasse of intervention came from rather unexpected quarters. In several reports published before the 2005 World Summit policymakers and experts began to advocate the need for broader conceptual changes (Chapter 3, Part 2).³³ These documents focused rather unexpectedly on language and endorsed reformulations of key international security concepts. This list includes the redefinitions of „sovereignty“ (ICISS Report 2001), „security“ (A More Secure World 2004 and In Larger Freedom 2005) and „justice“ (The Rule of Law and Transitional Justice 2004). The International Commission on Intervention and State Responsibility even argued that „shifting the terms of the debate“ was necessary for effective action³⁴. By changing the meaning of key concepts, international security experts sought to avoid the normative clash between the U.N. Charter principle of equal sovereignty and provisions concerning the UNSC’s role as the guarantor of international peace and security. Framing military interventions in this way had only served to reinforce lines of political contestation, rather than facilitate action. The new definitions on the other hand were meant to surpass this deadlock and offer concrete guidelines for legitimate Council actions.

Although these mid’ 2000 policy debates failed to generate a new doctrine of intervention, they had long-lasting discursive effects. I agree with David Campbell that in exploring “intervention” the problem is not the absence of an adequate normative framework, but rather a lack of engagement with what he calls the discursive resources of IR and their “radical problematisation”³⁵. From this perspective, the

³³International Commission on Intervention and State Sovereignty (ICISS). "The Responsibility to Protect." Edited by Gareth Evans and Mohamed Sahnoun. Ottawa, Canada: The International Development Research Center, 2001; United Nations High Level Panel on Threats, Challenges, and Change, A More Secure World: Our Shared Responsibility: United Nations 2004; United Nations Secretary General. "In Larger Freedom: Towards Development, Security, and Human Rights for All". Report of the Secretary-General, A/59/2005, 21 March 2005; United Nations Secretary General. "The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies", Report of the Secretary General, S/2004/616, 23 August 2004.

³⁴ICISS Report, §2.4 and §2.5.

³⁵Campbell, David. 1998. Why Fight: Humanitarianism, Principles, and Post-Structuralism. Millennium: Journal of International Studies 27:497-521, p. 497.

“humanitarianism” embedded in the “humanitarian intervention(s)” dilemma is not idealism separated from politics³⁶, but a discourse. Rather than looking at such situations of political disagreement as a clash over norms, we can switch the interpretive lense and recast this dilemma as the impossibility of reconciling competing discourses. From this perspective, the Reports’ key reformulations are not only an attempt to construct new international norms³⁷. They are discursive interventions in a field of social practice that have paved the way for a successful process of hegemonization and a coherent policy option (Chapter 3). My research question interrogates this process and asks: *How did the Justice discourse hegemonize the social space of international security policy?* By operationalizing the Poststructuralist concept of hegemony and incorporating the methodological guidelines and analytical tools developed by the Essex School of PDT, I show how the workings of several meso-level Discursive Mechanisms legitimized between 2002 and 2010 the ICC’s security role of and ensured the supremacy of Justice at the UNSC.

Hegemony in International Relations

Why should we engage with the Poststructuralist concept of hegemony when analyzing change in a particular international policy field? There are several arguments in favour of a Poststructuralist approach. One of the main critical points I raise however, which lays out the ground for my advocacy of a discursive definition of hegemony, is the embeddedness of the concept’s classic definition in a particular Cold War worldview. I believe this worldview still dominates representations of international relations and justifies a materialist definition of hegemony. The concept’s historical contingency is the most important reason why a Poststructuralist discourse theoretical

³⁶Warner, Daniel. 2013. Henry Dunant's Imagined Community: Humanitarianism and the Tragic. *Alternatives: Global, Local, Political* 38:3-28.

³⁷Finnemore, Martha. 2008. Paradoxes in Humanitarian Intervention. In Price, Richard M., ed., *Moral Limit and Possibility in World Politics*. Cambridge: Cambridge University Press. A seminal discussion on this topic is also: Finnemore, Martha. 1996. *Constructing Norms of Humanitarian Intervention*. In Katzenstein, Peter, ed., *The Culture of National Security: Norms and Identity in World Politics*. New York: Columbia University Press.

approach will benefit IR research. Despite the deconstruction of many central IR concepts following the introduction of Poststructuralism to the discipline during the 1980s³⁸, contemporary explorations of hegemony are still biased in favour of this classic materialist definition. Among its less desirable effects are theoretical constraints on innovative empirical studies of power in contemporary international politics, a blind spot for international sociopolitical phenomena and difficulties in explaining macrolevel historical change. PDT on the other hand rejects the dichotomy between materialist and ideational factors. The theory's focus on language and history offers as well an empirically rich entry point for analyses of IR structural change. Because language is ubiquitous, particular policy areas can be investigated as fields of discursivity in their own right. Rather than limiting the possibilities of researching power, PDT opens up new avenues for understanding its mechanisms and international effects. While policy changes before and after 1989 might be observable empirically, the operationalization of a discursive definition of hegemony can help unpack both the *how* and the *why* behind this transition.

Hegemony is a core concept of international relations theory. There are three classic schools which have approached this problematique in IR theory - Neorealism, the English School, NeoGramscianism - and a relatively new contender: Discourse³⁹. The three schools share a similar view of the international system as a political space populated by state actors and define power as (mostly) constituted by material rather than ideational factors. When discussing a powerful state, capabilities, economic and military, take precedence over ideas, a broad category covering concepts

³⁸Two classic texts of early IR Poststructuralism are: Der Derian, James and Michael J. Shapiro eds. 1989. *International/Intertextual Relations. Postmodern Readings of World Politics* New York, NY: Lexington Books and Walker, R.B.J. 1993. *Inside/Outside: International Relations as Political Theory*. Cambridge: Cambridge University Press. For an overview of the disciplinary debate following this intervention see: Lapid, Yosef. 1989. *The Third Debate: On the Prospects of International Theory in a Post-Positivist Era*. *International studies quarterly* 33:235-254 and Weaver, Ole. 1996. *The Rise and Fall of the Interparadigm Debate*. In Smith, Steve, Kenneth Booth and Marysia Zalewski, eds., *International Theory: Positivism and Beyond*. Cambridge: Cambridge University Press.

³⁹Herschinger, Eva. 2012. 'Hell is the Other': Conceptualizing Hegemony and Identity Through Discourse Theory. *Millennium: Journal of International Studies* 41:66-90: 66.

such as norms, values and beliefs. These assumptions are markers of the concept's historical contingency and their persistence in the literature shows a lack of theoretical development. In its turn, this situation has generated some regrettable gaps in the current research on international hegemony. Ted Hopf, for example, complains in his analysis of Russian domestic politics that although hegemony has received a significant amount of attention in the scholarly literature, few studies explored the combination of material and ideational power.⁴⁰

All schools, with NeoGramscianism offering a variant interpretation, converge on the representation of international relations as a state-centric political system. On a hypothetical scale of materialist/ideational factors combinations, the most materialist of all definitions can be found in Neorealist and hegemonic stability theories. Both offspring of Realism employ Kenneth Waltz' powerful reconceptualization of hegemony as the domination of a state-centric international system by the most powerful actor, endowed with the most extensive military and domestic capabilities⁴¹. Such a definition of power is logically clear and therefore scientifically compelling. It suffers however from a well-known conservative bias towards explaining the status quo rather than engaging with the structural changes in post-Cold War international relations.

Contemporary debates about polarity have continued to rely on this understanding of hegemony. Recent studies have tried however to shed its conservative bias and engage with history. Students of Neorealism have analyzed the changing

⁴⁰Hopf, Ted. 2013. Common-Sense Constructivism and Hegemony in World Politics. *International Organization* 67:317-354. A similar view was defended by Beyer: Beyer, Cornelia. 2009. Hegemony, Equilibrium and Counterpower: A Synthetic Approach. *International Relations* 23:411-427.

⁴¹Waltz, Kenneth N. 1979. *Theory of International Politics*. Reading, MA: Addison-Wesley Publishing Company. For a critical appraisal of Waltz' theory see also: Waever, Ole. 2009. Waltz's Theory of Theory. *International Relations* 23:201-222. In a classic article, Duncan Snidal discusses the limits of hegemonic stability theory, but endorses the definition of hegemony as systemic domination. See: Snidal, Duncan. 1985. The Limits of Hegemonic Stability Theory. *International Organization* 39:579-614.

structure of international order⁴² and the strategy adopted by the United States, an economic and military superpower, to consolidate its global status⁴³ against rising hegemonic challengers such as China, India or the European Union⁴⁴. In his study of post-Cold War international relations, John Ikenberry has even attempted to accommodate theoretically the power of ideas. His interesting thesis challenged Neorealist predictions about the end of American hegemony and the emergence of a multipolar world by contending that this new configuration of power would still be shaped by liberal ideology⁴⁵.

Neorealism has therefore successfully dominated academic discussions and even generated fruitful research in neighbouring disciplines such as international law⁴⁶. On the downside, apart from its state-centric worldview of IR and difficult engagement with history, the school has also ignored one of the most dynamic fields in contemporary international politics: international law. In her most recent discussion of the compliance gap Xinhuan Dai complains that, despite considerable academic work on the causal mechanisms linking international institutions and domestic politics, IR scholarship still questions whether such institutions matter at all and if compliance is a good indicator for measuring the effect of international law⁴⁷.

⁴²Sørensen, Georg. 2006. What Kind of World Order? The International System in the New Millennium. *Cooperation and Conflict* 41:343-363. For a similar attempt to theorize change in structural realism see: Gunitsky, Seva. 2013. Complexity and Theories of Change in International Politics. *International Theory* 5:35-63.

⁴³Layne, Christopher. 2009. The Waning of U.S. Hegemony - Myth Or Reality? A Review Essay. *International Security* 34:142 – 172. See also an earlier article: Layne, Christopher. 1993. The Unipolar Illusion: Why New Great Powers Will Rise. *International Security* 17:5-51;

⁴⁴Beckley, Michael. 2011. China's Century? Why America's Edge Will Endure. *International security* 36:41-78; Buzan, Barry. 2011. The Inaugural Kenneth N. Waltz Annual Lecture a World Order Without Superpowers: Decentred Globalism. *International Relations* 25:3-25; Monteiro, Nuno P. 2011. Unrest Assured: Why Unipolarity is Not Peaceful. *International Security* 36:9-40;

⁴⁵Ikenberry, G. John. 2010. The Liberal International Order and Its Discontents. *Millennium - Journal of International Studies* Millennium - *Journal of International Studies* 38: 509-521.

⁴⁶Krisch, Nico. 2005. International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order. *The European Journal of International Law* 16:369-408.

⁴⁷Dai, Xinyuan. 2013. The Compliance Gap and the Efficacy of International Human Rights Institutions. In Risse, Thomas, Stephen C. Ropp and Kathryn Sikkink, Eds., *The Persistent Power of Human Rights: From Commitment to Compliance*. Cambridge, UK: Cambridge University Press.

Further along the materialist/ideational factors scale are the English School and some Constructivists, most famously represented by Alexander Wendt⁴⁸. These scholars work with the assumption of an anarchic international system whose main units, states, are characterized by their material capabilities⁴⁹. They attribute however, to varying degrees, a bigger role and influence to international society (English School) and social norms (Constructivism) in sustaining hegemonic periods. An influential trend in Constructivism even looks beyond the “state” in IR research and acknowledges the political significance of transnational networks of social entrepreneurs. In the international norms literature non-state actors are portrayed not only as international power brokers, but also as the origin of macrolevel ideational change⁵⁰.

The English School in particular has been equally keen to bring history back into the study of IR⁵¹. After the events of September 11, 2001, the increasing unilateralism of the Bush Administration pushed some scholars to question whether the U.S. could maintain its hegemonic position based on its military capabilities alone⁵² and whether a complex international order had the ability to “tame” the most powerful state⁵³. The ultimate effect of these inquiries was the renewed problematization of the

⁴⁸Wendt, Alexander. 1992. Anarchy is What States Make of it: The Social Construction of Power Politics. *International organization* 46:391 - 425. For a seminal book on Constructivism see also: Wendt, Alexander. 1999. *Social Theory of International Politics*. Cambridge: Cambridge University Press.

⁴⁹Dunne, Tim. 2010. The English School. In Dunne, Tim, Milja Kurki and Steve Smith, eds., *International Relations Theories*. Oxford: Oxford University Press. Ian Clark criticizes Neorealism and international society approaches for failing to deal with unusual concentrations of power, despite their joint commitment to anarchy. He also argues that hegemony is a practice of international legitimacy. See: Clark, Ian. 2009. How Hierarchical Can International Society be? *International Relations* 23: 464.

⁵⁰Risse-Kappen, Thomas. 1994. Ideas Do Not Float Freely: Transnational Coalitions, Domestic Structures, and the End of the Cold War. *International Organization* 48:185-214. There is a large and growing body of literature on international norms. One classic edition which covers the different theoretical and empirical applications of this approach to IR is: Risse, Thomas, Steven C. Ropp and Kathryn Sikkink eds. 1999. *The Power of Human Rights. International Norms and Domestic Change* Cambridge: Cambridge University Press. For more recent work on international norms and the humanitarian intervention dilemma see: Finnemore, Martha. 2008. Paradoxes in Humanitarian Intervention. In Price, Richard M., ed., *Moral Limit and Possibility in World Politics*. Cambridge: Cambridge University Press.

⁵¹Dunne, Tim and Trine Flockhart eds. 2013. *Liberal World Orders* Oxford, United Kingdom: Oxford University Press.

⁵²Smith, Steve. 2002. The End of the Unipolar Moment? September 11 and the Future of World Order. *International Relations* 16:171-183.

⁵³Hurrell, Andrew. 2002. 'There Are No Rules' (George W. Bush): International Order After September 11. *International Relations* 16:185-204. For a recent discussion of the concepts of anarchy and

definition of hegemonic power, with ideational factors such as principles, norms, values, and procedures credited with a bigger role in the reshaping of global order. Some scholars even gave the upper hand in this definition to social norms. Christian Reus-Smit portrayed American hegemony as dependent on an international social basis legitimizing the power of the hegemon⁵⁴. Another study built on Reus-Smit's insights and warned that unilateral actions delegitimizing this international normative structure would have a destabilizing effect on the order itself.⁵⁵ In other words, the hegemon is not free⁵⁶. This problematization stops short however of a complete conceptual overhaul. Although the English School and Constructivism accept as a working assumption the existence of social processes even under conditions of international anarchy, their definition of hegemonic power favours only partially ideational factors.

Robert Cox and the NeoGramscian School in IR are usually credited with the formulation of a truly alternative definition of international hegemony⁵⁷. This statement requires though some qualifications. Robert Cox identified two main assumptions in Gramsci's analysis of ideology: first, basic changes in the distribution of international power can be traced back to changes in (domestic) social relations and second, the state is the main actor in world politics⁵⁸. Even though Cox famously supported the significance of social forces as international political actors⁵⁹, the NeoGramscian school does not deviate from the classic definition of hegemony as a

international society see: Hurrell, Andrew. 2008. *On Global Order. Power, Values, and the Constitution of International Society*. Oxford, United Kingdom: Oxford University Press.

⁵⁴Reus-Smit, Christian. 2004. *American Power and World Order*. Cambridge, United Kingdom: Polity Press.

⁵⁵Hurd, Ian. 2007. Breaking and Making Norms: American Revisionism and Crises of Legitimacy. *International Politics* 44:194-213.

⁵⁶Finnemore, Martha. 2009. Legitimacy, Hypocrisy, and the Social Structure of Unipolarity. *World Politics* 61:58-85.

⁵⁷Ives, Peter and Nicola Short. 2013. On Gramsci and the International: A Textual Analysis. *Review of International Studies* 39:621-642; Paul, Darel L. 2007. The Siren Song of Geopolitics: Towards a Gramscian Account of the Iraq War. *Millennium: Journal of International Studies* 36:51-76.

⁵⁸For a detailed presentation of his conceptualization of hegemony see also: Cox, Robert. 1983. *Hegemony and International Relations: An Essay in Method*. *Millennium - Journal of International Studies* 12:162 – 175, p. 169.

⁵⁹Cox, Robert. 1981. Social Forces, States and World Orders: Beyond International Relations Theory. *Millennium: Journal of International Studies* 10:126 - 155.

world order instigated by the most powerful state. However, NeoGramscianism does position the emergence of hegemonic periods within a broader socio-historical domestic context where the birth of the new ‘historic bloc’ is located. This ‘historic bloc’ is subsequently charged with the task of internationalizing the new hegemony through the instigation of similar revolutions in neighbouring states. NeoGramscian hegemony is therefore not a particular type of order among states, but a complex social, economic, and political structure grounded by the dominant social class of the emerging hegemon. Norms are an expression of this world hegemony and of its ideology. They help fabricate consent and reproduce the new order⁶⁰.

More recent applications of NeoGramscianism have taken up this link between hegemony qua order and the hegemonic actor generating it, but have relaxed the understanding of the latter. One such study suggests that in contemporary international relations historic blocs consist of transnational legal regimes and civil society⁶¹. Another NeoGramscian-inspired research portrayed international war as the expression of ideological competition triggered by the weakening of hegemony. The second U.S.-led invasion of Iraq is arguably the result of American Caesarism and neoconservative ideology exploiting a period of hegemonic crisis⁶². Even this alternative take on hegemony shows however its theoretical limitations. Both in its classic and contemporary forms NeoGramscianism endorses a traditional state-centric view of international relations. Despite its appreciation of ideology, the NeoGramscian definition of hegemony still gives precedence to material factors.

⁶⁰Cox, 1983, p. 171/172.

⁶¹Buckel, Sonja and Andreas Fischer-Lescano. 2009. Gramsci Reconsidered: Hegemony in Global Law. *Leiden Journal of International Law* 22:437-454;

⁶²Paul, Darel L. 2007. The Siren Song of Geopolitics: Towards a Gramscian Account of the Iraq War. *Millennium: Journal of International Studies* 36:51-76.

There is however one main challenger which this materialist and state-centric approach to power in IR cannot ignore: history itself⁶³. The end of Cold War meant not only the end of bipolarity. *1989* challenged as well the orthodox representation of international relations as a stable and structured international system. Subsequent conceptual developments mirrored the discursive effects of this systemic shock. Recent studies of hegemony suggest that the concept is opening up to interdisciplinary influences.

New approaches have tried to break the mold of these classic IR theories and broaden our understanding of international sociopolitical processes. Actor-network theory and its commitment to empiricism and experimentation were imported from sociology to IR in an attempt to trace the ways in which claims of scientific knowledge impact politics⁶⁴. Analyzing the emergence of the “global ideology” David Chandler identifies a shift in patterns of political contestation and identification, from domestic to international politics. His argument portrays these processes as the result of “political disconnection between state elites and societies” as well as “popular disengagement from mass politics”⁶⁵. Other attempts at reformulating hegemony include the development of a new typology of international hierarchies grounded in the Republican political theory concept of domination⁶⁶, reformulations of Waltzian structuralism⁶⁷, and recourse to complex theory and political anarchism⁶⁸. Lastly, the interesting debate on the EU as a

⁶³Buzan, Barry and Richard Little. 2009. Waltz and World History: The Paradox of Parsimony. *International Relations* 23:446. A lively debate is discussing the merits of “history“ for IR research. See: McCourt, David M. 2012. What's At Stake in the Historical Turn? Theory, Practice and Phronesis in *International Relations*. *Millennium: Journal of International Studies* 41:23-42. See also: Reus-Smit, Christian. 2008. Reading History Through Constructivist Eyes. *Millennium: Journal of International Studies* 37:395-414.

⁶⁴Barry, Andrew. 2013. The Translation Zone: Between Actor-Network Theory and International Relations. *Millennium: Journal of International Studies* 41:413-429.

⁶⁵Chandler, David. 2009. The Global Ideology: Rethinking the Politics of the "Global" Turn in IR. *International Relations* 23:530-547. p. 530.

⁶⁶Lanoszka, Alexander. 2013. Beyond Consent and Coercion: Using Republican Political Theory to Understand International Hierarchies. *International Theory* 5: 382-413.

⁶⁷Donnelly, Jack. 2009. Rethinking Political Structures: From Ordering Principles to Vertical Differentiation and Beyond. *International Theory* 1:49-86.

⁶⁸Cudworth, Erika and Stephen Hobden. 2010. Anarchy and Anarchism: Towards a Theory of Complex Systems. *Millennium: Journal of International Studies* 39:399-416.

normative power seeks to problematize the meaning of Great Powers and accommodate the explicitly normative commitments in the Union's foreign policy discourse⁶⁹.

I argue that despite this proliferation of seemingly innovative reformulations, a Poststructuralist discourse theoretical approach to hegemony still offers the most radical break with the classic understandings of international system and hegemony. All definitions reviewed so far rely to a certain extent on the Waltzian representation of IR as an international political system populated by unitary state actors. Although there is considerable disagreement over the typology of this structure, the characteristics of its units and the role of ideational factors, the latter are still commonly subsumed under the shopping basket category of norms, rules, culture, or ideology. Even the unpacking of the EU's actorhood takes place within an admittedly multipolar world where Europe enjoys a hegemonic position⁷⁰. Ernesto Laclau and Chantal Mouffe's theory, despite its explicit commitment to Gramsci, does away with the concept's economic determinism and purposefully overcomes the material/ideational divide by defining discourse as a mix of both elements⁷¹ and hegemony as a process transcending these divisions. Theirs is the most important and potentially fruitful way of leaving behind the material/ideational dichotomy and the interesting, but hardly adequate representation of IR as a material structure.

There are several advantages which accrue from this choice. First, PDT has a much better relationship with history and historical change. Rather than following an empiricist explanatory logic grounded in the testing of hypotheses, discursive hegemony prioritizes as its research object the justificatory practices of international institutions.

⁶⁹Diez, Thomas. 2005. Constructing the Self and Changing Others: Reconsidering 'Normative Power Europe'. *Millennium: Journal of International Studies* 33:613-636; On the „normative power Europe“ debate see also: Kavalski, Emilian. 2013. The Struggle for Recognition of Normative Powers: Normative Power Europe and Normative Power China. *Cooperation and Conflict* 48:247-267; Fisher Onar, Nora and Kalypso Nicolaidis. 2013. The Decentring Agenda: Europe as a Post-Colonial Power. *Cooperation and Conflict* 48:283-303.

⁷⁰Fisher Onar and Nicolaidis, 2013, p. 296.

⁷¹For a discussion of the empirical operationalization of Laclau and Mouffe's concept of hegemony in IR research see also: Herschinger, Eva. 2011. "Constructing Global Enemies." *Hegemony and Identity in International Discourses on Terrorism and Drug Prohibition*. Milton Park, Abingdon: Routledge.

Since meaning is always renegotiated, change is paradoxically constant. Arguments are shaped by and in their turn shape the higher level discourses crisscrossing the international public space. Second, by focusing on hegemony as the epitome of a power game, the theory opens up a different perspective on the conduct of international politics. Third, discursive hegemony gives clear methodological and empirical guidelines. Because justifications are conceptualized as the result of an intersubjective agreement over meaning, political arguments acquire the status of empirical evidence. Data are representations embedded in political arguments, belonging to potentially competing discourses. The empirical researcher must trace these representations across a variety of texts. Fourth, because the theory does not discriminate between discourse producers, we do not need to worry about the nature of political actorhood or which actors are legitimate international players. Fifth, a PDT approach to hegemony is better suited to uncover the mechanisms of power in international policy fields. A Poststructuralist study of policy change interrogates the historical conditions leading to the emergence of a new common wisdom, or the Habermasian background conditions, in that particular policy field, while also questioning the substantive content and universalistic claims of a particularistic hegemonic project⁷².

Despite the empirical advantages of the PDT reformulation of ideology/hegemony qua discourse, the theory has yet to prove its credentials in IR. Some scholars have argued compellingly in favour of a more NeoGramscian turn in PDT that would emphasize political actors rather than subjectivities⁷³. I believe however that Laclau and Mouffe's classic reworking of the concept, in the Poststructuralist

⁷²Prozorov, Sergei. 2009. Generic Universalism in World Politics: Beyond International Anarchy and the World State. *International Theory* 1:215-247. For a critique of the universalizing assumptions of the discourse on world politics and of any discourse aiming to reconstruct a totality, see also: Prozorov, Sergei. 2013. What is the 'World' in World Politics? Heidegger, Badiou and Void Universalism. *Contemporary Political Theory* 12:102-122.

⁷³Diez, Thomas. 2013. Normative Power as Hegemony. *Cooperation and Conflict* 48:195-210, p. 200; Leggett, Will. 2013. Restoring Society to Post-Structuralist Politics: Mouffe, Gramsci and Radical Democracy. *Philosophy & Social Criticism* 39:299-315.

tradition, has yet to prove its full potential in IR research. By employing the full range of PDT concepts in this exploration of hegemony in the field of international security I hope to broaden the application scope of their theory, from mostly domestic to international politics. This thesis is therefore a contribution to the growing body of Poststructuralist literature on international security⁷⁴, albeit in a different direction than the Copenhagen School⁷⁵. Because the dominant security discourse I investigate draws significantly on the vocabulary of international criminal law, my work also touches upon the discipline of international law. The deconstruction process in PDT is here operationalized in a novel way: while I am not inquiring into the ideological roots of the Justice discourse itself, this theoretical and empirical exercise does deconstruct the hierarchy of what matters in IR by emphasizing the one issue classic IR studies like to bypass: the power and political significance of international law.

Contextualizing the International Criminal Court in IR Research

A PDT approach to hegemony can help unpack one of the most interesting normative developments of the last two decades: the punishment of deviance and its successful emergence as the stepping-stone of a reformed international security policy. International criminal law reproduces the discourse on crime and punishment that underpins modern domestic criminal law systems⁷⁶. The relative sudden emergence of ICJ in high politics suggests that current changes in international security practice cannot be comprehended outside a socio-historical perspective. In human history, the morally repugnant effects of large-scale bloodshed have consistently provided the

⁷⁴For classic surveys of critical approaches to security studies see: Krause, Keith and Michael Charles Williams. 1996. Broadening the Agenda of Security Studies: Politics and Methods. *Mershon International Studies Review* 40:229-254, and Krause, Keith and Michael Charles Williams eds. 1997. *Critical Security Studies: Concepts and Cases* Abingdon, Oxon: Routledge.

⁷⁵Waever, Ole. Securitization-Desecuritization. In Lipschutz, Ronnie D., ed., *On Security*. New York: Columbia University Press;

⁷⁶Ratner, Steven A. and Jason S. Abrams. 2001. *Accountability for Human Rights Atrocities in International Law: Beyond the Nuremberg Legacy*. Oxford: Oxford University Press. See also: McCormack, Timothy L.H. and Gerry J. Simpson eds. 1997. *The Law of War Crimes. National and International Approaches*. The Hague/London/Boston: Kluwer Law International and Drumbl, Mark A. 2007. *Atrocity, Punishment, and International Law*. Cambridge University Press: Cambridge.

impetus for more legal restraints on the international conduct of war. Although by comparison with the number of victims, the achievements of international or domestic prosecution appear much less impressive⁷⁷, the advent of a legal framework consisting of rules, principles, and institutions of international criminal justice is one of the 20th century lasting achievements⁷⁸. This 'regime' aimed to re-write the 'rules of engagement' for military operations and to provide an internationally enforceable code of conduct, independent of the nature of the conflict (international/domestic), the status of the potential victim (combatant/non-combatant) or that of the potential aggressor (combatant/civilian and commander/soldier)⁷⁹.

The first legal provisions protecting civilians and *hors de combats* were developed within the framework of international humanitarian law, also known as the laws of armed conflict⁸⁰. They constitute presently a new branch of international public law, international criminal law. Particularly after 1989, the substantive scope of international criminal justice has broadened. It now covers not only violations of international humanitarian law, but also human rights principles and unique standards of legal protection⁸¹. This development was crowned in 1998 by the adoption of the Rome

⁷⁷Cherif Bassiouni estimates that in the course of the twentieth century more than 170 million deaths were caused by conflicts of a non-international character, internal conflicts, dictatorial regimes etc. See: Bassiouni, Cherif M. 1997. Observations Concerning the 1997-98 Preparatory Committee's Work. In Bassiouni, Cherif M., ed., *The International Criminal Court: Observations and Issues Before the 1997-98 Preparatory Committee; and Administrative and Financial Implications*. Eres, p.10.

⁷⁸Cassese, Antonio. 2003. *International Criminal Law*. Oxford: Oxford University Press.

⁷⁹Schabas, William. 2004. *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press.

⁸⁰Shaw, Malcolm N. 2003. *International Law*. Cambridge: Cambridge University Press.

⁸¹Bassiouni, Cherif M. and Madeline H. Morris. 1996. Symposium: Accountability for International Crimes and Serious Violations of Fundamental Human Rights. *Law and Contemporary Problems* 59:1-283. For evaluations of contemporary applications of the principle of individual accountability and possible policy guidelines see also: Ladsman, Stephen. 1996. Alternative Responses to Serious Human Rights Abuses: Of Prosecution and Truth Commissions. *Law and Contemporary Problems* 59:81-92; Morris, Madeline H. 1996. International Guidelines Against Impunity: Facilitating Accountability. *Law and Contemporary Problems* 59:29-39; Scharf, Michael P. 1996. The Letter of the Law: The Scope of the International Legal Obligation to Prosecute Human Rights Crimes. *Law and Contemporary Problems* 59:41-61. For a critical appraisal of the evolution of individual criminal responsibility in international politics see: Goldstone, Richard. 1997. Symposium: Law, War, and Human Rights: International Courts and the Legacy of Nuremberg. *The United Nations' War Crimes Tribunals: An Assessment*. *Connecticut Journal of International Law* 12:227-240 and Meron, Theodor. 2000. The Humanization of Humanitarian Law. *The American Journal of International Law* 94:239-278.

Statute of the International Criminal Court, the apex of a legal evolution that has seen the “great corpus of principles and rules (...) codified in an organic way in a single instrument”⁸². Four elements gained prominence in this historical process of conceptual clarification and codification. They represent the pillars of an international legal and jurisdictional framework concerned with the regulation of international crimes: the principle of individual criminal responsibility, the category of international crimes and the acts subsumed thereof, the scope of jurisdiction, and on an institutional design level, the type of Court – either domestic or international. Provisions for each of these elements changed throughout history, with the most significant developments taking place during the 20th century⁸³.

The problems that have beset the reception of international law in IR research have resurfaced in the analysis of international criminal law and its institutions: is the International Criminal Court and criminal justice in general effective in deterring atrocities? How can we measure its impact on international peace and stability? How can we explain the creation of the Court, or the emergence of the atrocities regime? What can we infer from the behaviour of States towards the ICC? The Journal of International Criminal Justice hosted in 2013 a Symposium in which several leading experts in this field were asked to assess whether the momentum for international criminal law had gone and its success story, beginning with the Nuremberg and Tokyo

⁸²Greppi, Edoardo. 1999. The Evolution of Individual Criminal Responsibility Under International Law. *International Review of the Red Cross* 835:531-553, p.535. For a summary of the main issues concerning the creation and functioning of the International Criminal Court see also: Kirsch, Philippe. 2001. *The International Criminal Court: Current Issues and Perspectives*. Law and Contemporary Problems 64:3 - 13.

⁸³Greppi, 1999. See also: Cassese, Antonio. 1998. On the Current Trends Towards Criminal Prosecution and Punishment of Breaches of International Humanitarian Law. *European Journal of International Law* 9:2-17 and Cassese, Antonio. 1999. The Statute of the International Criminal Court: Some Preliminary Reflections. *European Journal of International Law* 10:144-171. One of the most recent assessments of the academic field and practice of international criminal justice can be found in: Stahn, Carsten and Larissa van den Herik eds. 2010. *Future Perspectives on International Criminal Justice*. The Hague, Netherlands: T.M.C. Asser Press.

Military Tribunals, had come to a close⁸⁴. David Luban, a law professor at Georgetown University, quoted the Chinese diplomat and Prime Minister Zhou En-lai's famous evaluation of the historic significance of the French Revolution: "It's too soon to tell."⁸⁵ Luban identified international norm projection and positive complementarity as the most important ICC achievements. He also cautioned against messianism among advocates of international criminal justice, warning that ICJ could never be "normalized into a global rule of law" because it would never be able to "leapfrog politics"⁸⁶.

Although most contributors rejected the Editors' pessimistic tone, they also qualified their enthusiasm for ICJ. Payam Akhavan, a Canadian academic and former Legal Adviser to the Prosecutor of the International Tribunal for the Former Yugoslavia, portrayed the ICC as an institution that ought to be simultaneously at the center and periphery of a "civilizing process of imposing constraints on mass atrocities"⁸⁷. He described the field of international criminal justice as a "global revolution" and a "normative empire" entering its "post-romantic period" of adjustment to the reality of international politics. Akhavan's interpretation of the ICC converged with that of David Luban. Both academics emphasized the ICC's role as a "teacher of (international) norms"⁸⁸ whose first priority must be the promotion of a culture of human rights, prevention of further atrocities and the individualization of guilt⁸⁹. Evaluations of this more intangible impact of the ICC are overall positive. Despite the problems that have always beset the enforcement of international criminal law, states

⁸⁴Luban, David. 2013. After the Honeymoon. Reflections on the Current State of International Criminal Justice. *Journal of International Criminal Justice* 11:505-515, p. 505.

⁸⁵Luban, 2013, p. 515.

⁸⁶Luban, 2013, p. 508.

⁸⁷Akhavan, Payam. 2013. The Rise, and Fall, and Rise of International Criminal Justice. *Journal of International Criminal Justice* 11:527-536, p. 536.

⁸⁸Finnemore, Martha. 1993. International Organizations as Teachers of Norms: The United Nations Educational, Scientific, and Cultural Organization and Science Policy. *International Organization* 47:565-597.

⁸⁹Akhavan, 2013, p. 533.

have arguably shown signs of having internalized the norm of individual accountability by holding their officials legally responsible for atrocious crimes⁹⁰.

If assessments of the Court's achievements and failures vary, the ICC's status in international affairs continues to puzzle observers. In 2014, the Court grew to 122⁹¹ States Parties out of the 193 U.N. Members, with Africa still the largest group (34 countries). The Asian-Pacific countries are the least populous country group, 18 in 2014, but the group includes regional heavyweights such as the Republic of Korea and Japan as well as the Philippines. Since 2002, the United Nations Security Council and the Court developed institutionally a working relationship. The relative alacrity with which these states ratified the Rome Statute remains confounding. Moreover, the ICC's institutional design itself is a baffling outcome of negotiations carried out during the 1998 Rome Diplomatic Conference. The original proposal, drafted by the International Law Commission, had envisaged a much weaker, consent-based institution, with less sovereignty costs for its members⁹². Instead, the current design shields the Court's actions from the political pressure of other international bodies, such as the U.N. Security Council, or even of its own membership. The ICC Prosecutor has a qualified, yet sufficiently broad discretion in the selection of situations and cases⁹³. This "strong" Court was portrayed as the centralized enforcement mechanism crowning the 1990s developments in international humanitarian and criminal law⁹⁴.

The empirical evidence linking state behaviour to the tribunal's work is however inconclusive. The United States under the first Bush Administration boycotted

⁹⁰Orentlicher, Diane. 2013. Owing Justice and Reckoning With Its Complexity. *Journal of International Criminal Justice* 11:517-526..

⁹¹This the most recent number of ICC Statute ratifications retrieved at: http://www.icc-cpi.int/en_menus/icc/about%20the%20court/icc%20at%20a%20glance/Pages/icc%20at%20a%20glance.aspx. Accessed June 5, 2014.

⁹²Deitelhoff, Nicole. 2009. The Discursive Process of Legalization: Charting Islands of Persuasion in the ICC Case. *International Organization* 63:33-65.

⁹³On the Prosecutor's role see: Röben, Volker. 2003. The Procedure of the ICC: Status and Function of the Prosecutor. In von Bogdandy, A. and R. Wolfrum, eds., *Max Planck Yearbook of United Nations Law*, Volume 7.

⁹⁴Orentlicher, Diane. 2013. Owing Justice and Reckoning With Its Complexity. *Journal of International Criminal Justice* 11:517-526.

the ratification process, but cooperated with the ICC over Darfur and Libya. American officials attempted, yet failed in their efforts to support a similar referral for Syria⁹⁵. Questioning the emergence, present challenges, and future of the ICC raises not only methodological, but also empirical challenges. Beth Simmons and Allison Danner complained about the lack of empirical sources for data collection when researching member states' official positions towards the ICC. In other words, there is little empirical evidence that would allow researchers to tap into governments' motivations or reasoning processes⁹⁶.

These challenges are a possible explanation why the Court, international criminal justice and individual criminal responsibility remain even today “under-researched“ topics in IR. The problematic relationship of students of international politics with the discipline of international law has generated some undesirable silences about these interesting legal phenomena. For example, the connection between criminal law and security has gone largely unnoticed. An exception is the work of two German academics who in 2011 argued that, for an assessment of effectiveness to be methodologically accurate, the ICC's role must be broken down into its three informal functions: as criminal court, a watchdog court, and a world security court⁹⁷.

The international atrocities regime in empirical IR research refers to a set of international criminal law principles, norms, and procedures. This terminology covers the international and hybrid tribunals created in the 1990s, and to a lesser extent transitional justice mechanisms such as truth commissions⁹⁸. Although this regime

⁹⁵Coalition for the International Criminal Court. Veto of Justice for Syria Highlights Need for Security Council Reform, Press Release, 28 May 2014.

⁹⁶Simmons, Beth A. and Allison Danner. 2010. Credible Commitments and the International Criminal Court. *International Organization* 64:225-256: 237.

⁹⁷Jessberger, F. and J. Geneuss. 2012. The Many Faces of the International Criminal Court. *Journal of International Criminal Justice* 10:1081-1094.

⁹⁸The concept “atrocities regime“ was first coined by Abbot, 1999. For subsequent uses see also: Rudolph, Cristopher. 2001. Constructing an Atrocities Regime: The Politics of War Crimes Tribunals. *International Organization* 55:655 – 691; Gilligan, Michael J. 2006. Is Enforcement Necessary for Effectiveness? A Model of the International Criminal Regime. *International Organization* 60:935-967. In international law, the concept of a “regime“ was researched by: McCormack, Timothy L.H. and

encompasses more than just the ICC, most political science studies have focused exclusively on the Court, its design, membership, and potential impact on international peace⁹⁹. This bias has limited the range of research questions and ignored for example the possibility of going beyond assessments of compliance¹⁰⁰ towards a deeper, structural impact of international criminal justice on international behaviour.

A potential explanation could be the lack of interdisciplinarity. Jason Ralph complained in 2005 that although IR scholars had acknowledged the political impact of the Rome Statute in international affairs, international lawyers still conducted most of the relevant research¹⁰¹. A brief state-of-the-art survey shows however that this gap is shrinking. Rational choice researchers engaging with the Court usually look at the cost/benefit calculations of governments. Neumayer's study of ratification patterns, compared against the ratifying state's willingness to intervene, concludes that ratification does not imply a reluctant attitude towards intervention¹⁰². Game theoretic models have also assessed the Court's deterrence potential. Gilligan modelled the effect of an ICC-like institution on the interaction between a rogue leader and a potential asylum state and concluded that, "on the margins", the ICC does prevent future

Gerry J. Simpson. 1997. Achieving the Promise of Nuremberg: A New International Criminal Law Regime? In McCormack, Timothy L.H. and Gery Simpson, eds., *The Law of War Crimes. National and International Approaches*. The Hague, London, Boston: Kluwer Law International.

⁹⁹Fehl, Caroline. 2004. Explaining the International Criminal Court: A 'Practice Test' for Rationalist and Constructivist Approaches. *European Journal of International Relations* 10:357-384. This 'bias' can be said to have been at least partially generated by experts working in this legal field. See: Bassiouni, Cherif M. 1996. Searching for Peace and Achieving Justice: The Need for Accountability. *Law and Contemporary Problems* 59:9-28; Arbour, Louise. 1997. The Legal Profession and Human Rights: Progress and Challenges in International Criminal Justice. *Fordham International Law Journal* 21:531-540. or Akhavan, Payam. 2001. Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities? *American Journal of International Law* 95:7-31.

¹⁰⁰Guzman, Andrew, T. 2009. How International Law Works: Introduction. *International Theory* 1:285-293. For a reply to Guzman see also: Thompson, Alexander. 2009. The Rational Enforcement of International Law: Solving the Sanctioners' Dilemma. *International Theory* 1:307-321.

¹⁰¹Ralph, Jason. 2005. International Society, the International Criminal Court and American Foreign Policy. *Review of International Studies* 31:27-44; See also: Roach, Steven C. ed. 2009. *Governance, Order, and the International Criminal Court* Oxford: Oxford University Press.

¹⁰²Neumayer, Eric. 2009. A New Moral Hazard? Military Intervention, Peacekeeping and Ratification of the International Criminal Court. *Journal of Peace Research* 46:659-671.

atrocities¹⁰³. Although no definite empirical evidence can be found either to support or refute this statement, research tends to be rather positive about the Court's overall impact. Simmons and Danner's findings indicate that the ICC might be a useful tool in signalling governments' commitment to stop violence and engage in credible peace talks¹⁰⁴. Constructivist researchers have already showed empirically how the emergence of a norm and its international life depend on networks of non-state agents¹⁰⁵. They have been therefore quick in responding to the ICC theoretical challenge. Habermasian-inspired Constructivism has connected the Court's creation and institutional design with the work of a transnational coalition of state and non-state actors¹⁰⁶.

These types of analyses have a couple of advantages. Explanations of state behaviour based on hypothesis testing are still more status than process oriented. Yet testing affords us a higher degree of certainty when looking for answers to *why* questions such as: Why do (some) states sign the Rome Statute? Simmons and Danner's counter-intuitive findings that both high and (some) low accountability democracies are as likely to ratify the Rome Statute open up new interpretive possibilities. This empirical test reveals a pattern in what might initially appear a rather strange alliance: the U.K. and the D.R. Congo as ICC members. All these theoretical approaches, Constructivism included, have something interesting to say about the history of the Court. They have less to say however about the *How* questions and the ways in which the ICC is not only shaped by, but itself shapes history. I turn to the operationalization of this question in the next chapter, before a short summary of my methodological approach and the content of this dissertation.

¹⁰³Gilligan, Michael J. 2006. Is Enforcement Necessary for Effectiveness? A Model of the International Criminal Regime. *International Organization* 60:935-967.

¹⁰⁴Simmons and Danner, 2010.

¹⁰⁵Finnemore, Martha and Kathryn Sikkink. 1998. International Norm Dynamics and Political Change. *International Organization* 52:887-917.

¹⁰⁶Deitelhoff, 2009.

Methodology

A Poststructuralist analysis of hegemony in international relations is neither a method-, nor a theory-driven approach. Despite its NeoGramscian roots, PDT is problem-driven in the Foucaultian understanding of the notion of “problematization“. In the past ten years rigorous data collection and interpretation techniques have been elaborated and Poststructuralist Discourse Theory is now granted the status of an IR research program¹⁰⁷. Rather than uncovering theoretical or empirical puzzles, a Poststructuralist study begins with a set of contemporary political and ethical issues. The researcher seeks to analyze them from the perspective of their historical and structural conditions, while simultaneously selecting the theoretical tools necessary for their critique.¹⁰⁸ The object of analysis from a discourse theoretical perspective are these problematizations and the practices that generate them. This approach requires an imaginative effort on the part of the researcher for whom the interpretation of data is an altogether different process than its empirical collection. Because of this middle-way position - neither theory-driven, nor data-driven, against empiricism as well as against theoreticism – applications of PDT are always more challenging and less reassuring in terms of methodological guidelines. This chapter – Introduction – has surveyed current approaches to the study of hegemony in international relations and has offered a short literature review of contemporary IR explorations of international criminal law and the ICC.

I argue that the relatively quick development of international criminal law and its leverage on international security policy cannot be fully explained either by the testing of Neorealist hypotheses, or by charting the diffusion of international norms.

¹⁰⁷Howarth, David and Jacob Torfing eds. 2005. *Discourse Theory in European Politics: Identity, Policy, and Governance*. Houndmills, Basingstoke, Hampshire and New York: Palgrave Macmillan.

¹⁰⁸Howarth, David. 2005. *Applying Discourse Theory: The Method of Articulation*. In Howarth, David and Jacob Torfing, eds., *Discourse Theory in European Politics: Identity, Policy, and Governance*. Houndmills, Basingstoke, Hampshire and New York: Palgrave Macmillan, p. 318.

More subtle processes of legitimization, which involve international legal norms in novel ways, are at work in international politics¹⁰⁹.

Rather than approaching criminal justice as an epiphenomenon of a given international power structure, I show how an analysis of discourse uncovers the ways in which a quasi-ideological transnational alliance of actors is shaped and in its turn shapes the language framing international security policy. Under the glittering banner of “Justice”, the rise of a new political imaginary in international relations proved capable of healing the representational void left by the demise of old Cold War politics. Changes in the UNSC security practice are shown to have their origin in this process of hegemonization. Before moving on to the operationalization of my theoretical toolkit, one short clarification is required. Although sharing their focus on language, my approach differentiates itself from other types of discourse analysis influenced by linguistics. I do not engage with any of the varieties of critical discourse theory¹¹⁰ which have tended to treat language use more as „talk and text in context“¹¹¹. My theoretical approach draws on the theoretical vocabulary developed by Laclau and Mouffe’s theory of hegemony and the empirical methodology refined by the Essex School of Poststructuralist Discourse Analysis.

The Content of this Thesis

Chapter 2 – *Operationalizing Hegemony* – discusses my methodology and the operationalization of my chosen theoretical concepts into seven Meso-level Discursive Mechanisms. A qualitative empirical study of discourse (sampling, data collection, primary and secondary data analyses) supports my hermeneutic approach, which consists in the interpretation of results from my primary and secondary data analyses. This

¹⁰⁹Dunoff, Jeffrey, L. 2011. What is the Purpose of International Law? *International Theory* 3:326-338.

¹¹⁰Wodak, Ruth and Michael Meyer eds. 2009. *Methods of Critical Discourse Analysis*. London, Thousand Oaks and New Delhi: Sage.

¹¹¹van Dijk, Teun A. 1997. The Study of Discourse. In van Dijk, Teun A., ed., *Discourse as Structure and Process*. London, Thousand Oaks, and New Delhi: Sage, p. 3.

interpretive stage includes a structural account of the hegemonization by Justice of international security practice and a historical presentation of the political fight over the meaning of its key concepts. These findings are presented in Chapters 3 and 4.

Chapter 3 – *Empirical Results I: A New Hegemonic Discourse* – presents the discursive mechanisms explaining the hegemonic position of the Justice discourse, in particular the gripping by the nodal point “justice” of several key empty signifiers, the emergence of a strong collective identity and the creation of a narrative fleshing out the vision of a future world order which is just, peaceful, and fair.

Chapter 4 – *Empirical Results II: Discursive Challenges* – surveys the final meso-level Discursive Mechanism. Between 2002 and 2010, three counterdiscourses challenged, but failed to replace the Justice hegemony. These counterdiscourses are: two versions of a discourse labelled “Politicization” (or POL-I and POL-II), spearheaded by the United States between approx. 2000 and 2004 and, respectively, the African Union between 2007 and 2010 as well as the “Peace vs. Justice” (or Peace/Justice) counterdiscourse. The latter pitted against one another advocates of “peace” through political negotiations and proponents of “justice” in favour of legal punishment for rogue leaders.

Chapter 5 – *Conclusion* – rounds up my argument with an overview of the main findings.

Chapter 2. Hegemony and the Discursive Field of International Security

Changes in international security policy during the first decade of the 21st century have created the perfect terrain for an empirical analysis of ideology through the theoretical lens of PDT. Because my goal is to unearth the mechanisms underpinning the power of hegemonic discourse(s) embedded in international security practice, I have

begun my research by problematizing “an anomolous and wondrous phenomenon”¹¹²: the expansion of criminal justice principles in the field of international security during the first decade of the 21st century. In this chapter, I outline the operationalization of my PDT-inspired *how* research question: first, I circumscribe my research object and, in a second step, focus on the development of a theoretical and methodological toolkit for its analysis.

The international emergence of the International Criminal Court as a new international security actor is an unusual phenomenon because it goes against the grain of classic IR theories. The Court challenges deeply held assumptions about the identity of international actors and the social laws governing their behaviour. Ongoing political contestation of the link between criminal justice and international peace suggests that hegemonic rearticulations are still at work in international security, supporting the ICC’s status as an alternative policy option. A study of these sociopolitical processes must therefore steer clear of identifying hard structural determinism as the underlying explanatory framework and show sensitivity to the historical background against which these processes unfold. In a policy environment that appears to be searching for its own equilibrium point between practices of contestation and hegemonic (in)stability, any explanation must construct rather than objectively identify its own specific *explanandum* and *explanans*. In defining my research object I have relied on the methodological toolkit and the theoretical concepts developed by the Essex School of Poststructuralist Discourse Analysis. PDT assumptions are sufficiently flexible to allow for the development of innovative empirical research designs¹¹³. Theoretical concepts such as “empty” or “floating” signifiers, social antagonisms or fantasmatic logics are good connecting points between the methodological rigor of qualitative approaches and

¹¹²Howarth, David. 2010. Power, Discourse, and Policy: Articulating a Hegemony Approach to Critical Policy Studies. *Critical Policy Studies* 3:309-355, p. 325.

¹¹³Howarth, 2005; Glynos, Jason, David Howarth, Aletta J. Norval and Ewen Speed. 2009. *Discourse Analysis: Varieties and Methods*. ESRC National Center for Research Methods August 2009:1 - 41.

Poststructuralism's concern with process. Ernesto Laclau's analysis locates ideological shifts at this basic discursive level¹¹⁴. From a PDT theoretical perspective, a discursive analysis of hegemony must focus on two critical processes:

- 1) *How discourses emerge* due to the instability of their boundaries, the constant need to rearticulate meanings and the twin logics of identity-building and identification;

And

- 2) *How discourses become hegemonic* through political decisions about dominant meanings and identities, the crowning of previous political struggles over the "filling" of empty signifiers.

PDT offers a compelling theoretical account of the emergence of new discursive formations¹¹⁵ in a "field of discursivity"¹¹⁶. This theory gives however little information on how to circumscribe empirically such processes and their resulting discourses. There is an important and growing body of work employing PDT concepts in analyses of domestic politics and political discourses. Some of these studies have focused on the nature of discursive frontiers and social antagonisms¹¹⁷ as well as domestic political struggles over the meaning of democracy¹¹⁸, socialism¹¹⁹, or Green ideology¹²⁰. True to

¹¹⁴Laclau, Ernesto. 2007. *Why Do Empty Signifiers Matter to Politics? Emancipation(S)*. London, United Kingdom: Verso.

¹¹⁵Laclau and Mouffe, 2001, p. 105-114.

¹¹⁶Laclau and Mouffe, 2001, p. 111.

¹¹⁷Aletta Norval's analyses of South African politics focus on the hegemonic project of Apartheid and its lingering discursive effects in South African politics: Norval, Aletta J. 2009. *No Reconciliation Without Redress: Articulating Political Demands in Post-Transitional South Africa*. *Critical Discourse Studies* 6:311-321; Norval, Aletta J. 1996. *Deconstructing Apartheid Discourse*. London and New York: Verso; Norval, Aletta J. 1994. *Social Ambiguity and the Crisis of Apartheid*. In Laclau, Ernesto, ed., *The Making of Political Identities*. London: Verso.

¹¹⁸Adamson, Kevin. 2009. *The Construction of Romanian Social Democracy*. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies and Social Change*. Manchester and New York: Manchester University Press;

¹¹⁹Bastow, Steven. 2009. *Inter-War French Fascism and the Neo-Socialism of Marcel Deat: The Emergence of a "Third Way"*. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies, and Social Change*. Manchester: Manchester University Press;

¹²⁰Stavrakakis, Yannis. 2009. *On the Emergence of Green Ideology: The Dislocation Factor in Green Politics*. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and*

its origins in revolutionary Left-wing political thought, the theory offers interesting insights into the contestation of public projects and the emergence of protest actions in local politics¹²¹. Other PDT scholars have explored the capacity of hegemonic discourses to create powerful social imaginaries, capable of structuring our representations of foundational political moments¹²². An important strand in PDT has researched the politics involved in the construction and dissolution of identities, showing how processes of identity-building and identification constitute the core of new attempts at reconfiguring political communities¹²³ or of challenges to traditional discriminatory stereotypes and social conventions¹²⁴. At the theoretical end of these inquiries, Chantal Mouffe and Aletta Norval have continued to interrogate the relevance

Political Analysis. Identities, Hegemonies, and Social Change. Manchester and New York: Manchester University Press. On the same topic see also: Stavrakakis, Yannis. 1997. Green Ideology: A Discursive Reading. *Journal of Political Ideologies* 2:259 - 280.

¹²¹Griggs, Steven and David Howarth. 2009. New Environmental Movements and Direct Action Protest: The Campaign Against Manchester Airport's Second Runway. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis: Identities, Hegemonies, and Social Change*. Manchester and New York: Manchester University Press. See also: Griggs, Steven and David Howarth. 2008. Populism, Localism and Environmental Politics: The Logic and Rhetoric of the Stop Stansted Expansion Campaign. *Planning Theory* 7:123 - 143.

¹²²Some of the most important empirical studies on this topic were published in the collection of essays *Discourse Theory and Political Analysis* edited by David Howarth, Aletta Norval and Yannis Stavrakakis. The list includes: Barros, Sebastian and Gustavo Castagnola. 2009. The Political Frontiers of the Social: Argentine Politics After Peronist Populism (1955 - 1973). In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies and Social Change*. Manchester and New York: Manchester University Press; Burgos, Rosa Nidia Buenfil. 2009. The Mexican Revolutionary Mystique. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies, and Social Change*. Manchester and New York: Manchester University Press; Celik, Nur Betul. 2009. The Constitution and Dissolution of the Kemalist Imaginary. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis: Identities, Hegemonies, and Social Change*. Manchester and New York: Manchester University Press; and Howarth, David. 2009. The Difficult Emergence of a Democratic Imaginary: Black Consciousness and Non-Racial Democracy in South Africa. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analyses: Identities, Hegemonies and Social Change*. Manchester and New York: Manchester University Press.

¹²³Salecl, Renata. 1994. The Crisis of Identity and the Struggle for New Hegemony in the Former Yugoslavia. In Laclau, Ernesto, ed., *The Making of Political Identities*. London, United Kingdom: Verso;

¹²⁴Ho, P. Sik Ying and A. Kat Tat Tsang. 2009. Beyond Being Gay: The Proliferation of Political Identities in Colonial Hong Kong. In Howarth, David, Aletta J. Norval and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies, and Social Change*. Manchester and New York: Manchester University Press; Sayyid, Bobby. 1994. Sign O' Times: Kaffirs and Infidels Fighting the Ninth Crusade. In Laclau, Ernesto, ed., *The Making of Political Identities*. London, United Kingdom: Verso; Smith, Anne Marie. 1994. Rastafari as Resistance and the Ambiguities of Essentialism in the 'New Social Movements'. In Laclau, Ernesto, ed., *The Making of Political Identities*. London, United Kingdom: Verso.

of such concepts for democratic theory¹²⁵, while portraying reformed liberal democratic systems as radical¹²⁶ and aversive democracies¹²⁷.

Empirical investigations of hegemonic discourses and processes of hegemonization are however relatively few and, with one notable and path-breaking exception¹²⁸, seldom concern themselves with international policy practices. Despite his advocacy of hegemonic analyses in concrete policy fields, David Howarth does not offer further methodological guidelines for the exploration of such phenomena¹²⁹. Therefore, process-based explanations of hegemony have yet to be formalized into empirical theory both in IR and policy research¹³⁰. Formalizing Laclau and Mouffe's Poststructuralist NeoGramscian theory is what I set out to do in this chapter. In my dissertation, I operationalize a PDT-inspired analytical model that allows me to identify and evaluate processes of discursive hegemonization in the field of international security. David Howarth and Jason Glynos' work on logics of critical explanation¹³¹ has helped me develop an *explanans* toolkit by breaking down their triple concept of social, political and fantasmatic logics into a series of middle-range Discursive Mechanisms

¹²⁵Norval, Aletta J. 2006. Democratic Identification: A Wittgensteinian Approach. *Political Theory* 34:229-255; Norval, Aletta J. 2008. A Democratic Politics of Acknowledgement: Political Judgment, Imagination and Exemplarity. *Diacritics* 38:59-76; Norval, Aletta J. 2011. Moral Perfectionism and Democratic Responsiveness: Reading Cavell With Foucault. *Ethics & Global Politics* 4: 207-229.

¹²⁶Mouffe, Chantal. 2013. *Agonistics. Thinking the World Politically*. London and New York: Verso; Mouffe, Chantal. 2009. Democracy in a Multipolar World. *Millennium: Journal of International Studies* 37: 549-561. Mouffe's best know works her critique democracy include: Mouffe, Chantal. 1993. *The Return of the Political*. London and New York: Verso; Mouffe, Chantal. 2000. *The Democratic Paradox*. London and New York: Verso; and Mouffe, Chantal. 2005. *On the Political*. London and New York: Routledge.

¹²⁷Norval, Aletta J. 2009. Democracy, Pluralization and Voice. *Ethics & Global Politics* 2:297-320; A comprehensive presentation of Norval's concept of "aversive democracy" can be found in: Norval, Aletta J. 2007. *Aversive Democracy. Inheritance and Originality in the Democratic Tradition*. Cambridge: Cambridge University Press.

¹²⁸Herschinger, Eva. 2014. *Constructing Global Enemies: Hegemony and Identity in International Discourses on Terrorism and Drug Prohibition*. Abingdon, Oxon: Routledge.

¹²⁹Howarth, 2010.

¹³⁰Howarth, 2005, p. 316.

¹³¹Glynos, Jason and David Howarth. 2007. *Logics of Critical Explanation in Social and Political Theory*. Abingdon: Routledge. See also: Howarth, David and Jason Glynos. 2008. *Critical Explanation in the Social Sciences: A Logics Approach*. *Swiss Journal of Sociology* 34:5-35.

(DMs)¹³². My theoretical approach in the identification of my *explanans* is a retroductive procedure, a back-and-forth movement between my theoretical toolkit and empirical data¹³³.

I have additionally developed a flexible research design, tailored to my overarching research question. The first step in the construction of this design was the formulation of an adequate *explanandum*. In order to identify my research goal more concretely, I reconceptualized it as the relationship between an emerging hegemonic discourse and a change of policy. Two basic assumptions underline this choice: first, a period of contestation in a particular policy field reflects the existence of multiple policy choices and, consequently, of multiple rearticulations of meaning. This situation creates a fertile ground for processes of hegemonization, since a hegemonic articulation is dependent on the existence of a field of discursivity characterized by unstable frontiers and crisscrossed by antagonisms¹³⁴. Second, because from a discourse theoretical perspective a policy field is similar to an institution, international security can be conceptualized as a “more or less sedimented system of discourse” which is “[a] partially fixed system of rules, norms, resources, practices and subjectivities that are linked together in particular ways”¹³⁵.

The coexistence of multiple policy choices suggests however that the sedimentation of a particular discourse has become unhinged and that the respective field of discursivity is populated by several competing discourses. Each potential discourse is expected to offer a formulation of the policy challenge, the means to tackle it, and its projected result. The winner of this competition ushers in a new period of

¹³²I work with a concept of discursive mechanism different than its more established counterpart, „causal mechanism“. See: Banta, Benjamin. 2013. Analysing Discourse as a Causal Mechanism. *European Journal of International Relations* 19:379-402.

¹³³Howarth, 2010, p. 325. See also: Glynos, Jason, David Howarth, Aletta J. Norval and Ewen Speed. 2009. *Discourse Analysis: Varieties and Methods*. ESRC National Center for Research Methods August 2009:1 - 41, p. 32.

¹³⁴Laclau and Mouffe, 2001, p.136. For more information on the PDT concept of “frontiers“ please see: Norval, Aletta J. 1997. *Frontiers in Question*. *Acta Philosophica* 2:51-76.

¹³⁵Howarth, 2000, p. 312.

relative stability, where the dominant hegemonic discourse creates the framework within which the respective policy issues are processed. This description is a portrayal of the discourse/policy cycle exemplified below:

Table 1: The Policy Cycle and Discursive Change

Phase I - Plurality of Discourses	→ Competing policy choices
Phase II - (Emerging) Hegemonic Discourse	→ Policy change
Phase III - (Stable) Hegemonic Discourse (Dominant discourse)	→ Policy stability
→ New Period of Contestation → Return to Phase I	

I describe in Table 1 the cyclical nature of an empirical process of hegemonization in an unidentified policy field. I have constructed this general schema in order to specify my explanandum. My focus is on Phase II, more exactly on the period of contestation characterizing UNSC debates between 2002 and 2010 when, after the entering into force of the ICC Rome Statute on July 1, 2002, the Court, symbolizing the institutionalization of the Justice discourse, begins to make its presence felt in international security.

In this exploration of hegemony I have operationalized several key PDT concepts. First, in order to show *how discourses emerge* I chose to unpack the political logic of equivalence. The “unpacking” implies an empirical focus on the linking of demands and coalition building, the creation of a “we”-collective identity and semantic changes taking place within the basic unit of a discursive formation. This basic unit is the empty signifier as well as the related, but with a hierarchically higher status, nodal point. This analysis is complemented by the introduction of a *why* element, the

grounding narrative derived from the *logic of fantasy*. The functions of this narrative explain “the way subjects are gripped by discourse”¹³⁶.

Second, in order to show *how discourses become hegemonic* as a result of political decisions over meaning, I describe these debates and their historical background at the domestic, institutional, and international levels. These levels correspond to three counterdiscourses: Politicization I the U.S. version (POL-I), Politicization II the A.U. version (POL-II) and Peace vs. Justice or Peace/Justice. All three have attempted at various moments between 2002 and 2010 to “challenge the challenger”. In each case my structural analysis shows how the counterdiscourse tries to prevent, through political contestation, the fixation of partial meanings for key empty signifiers as well as the emergence of a dominant political identity. The frontiers of Justice are still contested by these alternative discourses. Before moving on however to my operationalization of the several meso-level Discursive Mechanisms which helped me unpack these processes, I turn briefly to the discussion of the PDT concept of hegemony.

2.1. The Concept of Hegemony qua Ideology and its Articulation

Hegemony in Poststructuralist Discourse Theory draws on Gramsci’s critique of classical Marxism¹³⁷ and Foucault’s concept of discourse¹³⁸. In their seminal book, *Hegemony and Socialist Strategy*, Laclau and Mouffe borrow from Gramsci his concern with the “materiality of ideology”¹³⁹ and his conceptualization of “historical

¹³⁶Howarth, 2010, p. 326. See also: Glynos, Jason. 2008. Ideological Fantasy At Work. *Journal of Political Ideologies* 13:275-296.

¹³⁷Laclau and Mouffe explicitly reject Gramscian essentialism. See: Laclau and Mouffe, 2001, p. 69. See also: Laclau, Ernesto. 1983. "Socialism," the "People," "Democracy": The Transformation of Hegemonic Logic. *Social Text* 7:115-119. Laclau’s critique of classical Marxism was the subject of his first collection of essay published in 1977: Laclau, Ernesto. 1977. *Politics and Ideology in Marxist Theory*. London: New Left Books.

¹³⁸Laclau and Mouffe, 2001, p.105.

¹³⁹Laclau and Mouffe, 2001, p.67.

blocs” qua collective wills formation¹⁴⁰. By rejecting the classical Marxist assumption of a unified Subject as the origin of historical change, Gramsci reformulated “ideology” from a “system of ideas” to the “organic cement” “weld[ing] together a historical bloc around a number of basic articulatory principles”¹⁴¹. Laclau and Mouffe’s intellectual project revitalized contemporary debates on ideology¹⁴² and shifted again the attention onto the political power of words. The common contemporary orthodoxy appears to be that “our world is deeply and inescapably ideological in character”¹⁴³ and that our identities and actions are constituted within inescapable webs of meaning¹⁴⁴.

PDT combines this avant la lettre deconstructionist approach to political agency with the Foucaultian understanding of discourse as “regularity in dispersion”¹⁴⁵. The result is a definition of discursive hegemony that is neither the description of a status quo situation, with one actor dominating the international system, nor a resource such as material capabilities. Rather, hegemony is an ongoing articulatory practice whose original trigger is the inability of social structures to create a closed and immutable “relational system defining the identities of a given social and political space”¹⁴⁶.

The analysis of hegemony in international politics is a structural rather than actor-oriented approach. Many of Laclau and Mouffe’s theoretical concepts go against the assumptions of empirical IR and normative political theory. This willingness to

¹⁴⁰Ibid.

¹⁴¹Ibid.

¹⁴²Laclau, Ernesto. 1996. The Death and Resurrection of the Theory of Ideology. *Journal of Political Ideologies* 1:201-220. For an overview of contemporary Leftist discussions of ideology see also: Zizek, Slavoj ed. 2012. *Mapping Ideology*. London and New York: Verso.

¹⁴³Norval, Aletta J. 2000. Review Article: The Things We Do With Words – Contemporary Approaches to the Analysis of Ideology. *British Journal of Political Science* 30:313-346.p. 315.

¹⁴⁴Zizek, Slavoj. 2008. *The Sublime Object of Ideology*. London: Verso.

¹⁴⁵Laclau and Mouffe, 2001, p. 105.

¹⁴⁶Laclau and Mouffe, 2001, p. 136. See also: Laclau, Ernesto. 1983. The Impossibility of Society. *Canadian Journal of Political and Social Theory* 7:21-24. For Laclau’s discussion of *undecidability* of social structures see: Norval, Aletta J. 2004. Hegemony After Deconstruction: The Consequences of Undecidability. *Journal of Political Ideologies* 9:139-157 and Laclau, Ernesto. 1996. Deconstruction, Pragmatism, and Hegemony. In Mouffe, Chantal, ed., *Deconstruction and Pragmatism*. Simon Critchley, Jacques Derrida, Ernesto Laclau and Richard Rorty. London and New York: Routledge.

move beyond established orthodoxies is precisely the theory's added value when analyzing competing global discourses, whose appeals to principles of international law and human rights have reopened the theoretical debate between universalism and historicism. This is an old discussion in Western political philosophy. Analyzing the "dialectics of universality", Laclau concludes that one of the main tensions generated by universalist claims is that:

"all these so-called 'universal' principles (...) have to be formulated as limitless principles, expressing a universality transcending them: but they all, for essential reasons, sooner or later become entangled in their own contextual particularism and are incapable of fulfilling their universal function."¹⁴⁷

In his critique of Foundationalism in social sciences Laclau argues that a Poststructuralist concept of hegemony is logically necessary. Because "'order' as such has no content [...] it becomes an empty signifier, [...] the signifier of that absence" and "various political forces can compete in their efforts to present their particular objectives as those which carry out the filling of that lack"¹⁴⁸. Hegemony is therefore an attempt to fill this lack¹⁴⁹.

Laclau and Mouffe's critique of ideology relinquishes the last traces of Marxist essentialism and moves decidedly in a Poststructuralist direction. This reformulation has several consequences for empirical research. In international security practice, military interventions in intrastate armed conflicts have been exceptions rather than the norm. According to PDT assumptions, this inconsistency triggers articulatory practices aiming to hegemonize the field and reinstate order. From this perspective, the drafting of alternative policy proposals at the United Nations is not only a mechanism of

¹⁴⁷Laclau, Ernesto. 2007. *Subject of Politics, Politics of the Subject. Emancipation(S)*. London, United Kingdom: Verso, p. 57.

¹⁴⁸Laclau, 2007, *Why Do Empty Signifiers Matter*, p. 44.

¹⁴⁹*Ibid.*

governance, but also a political process of coalition building¹⁵⁰. International politics, at its most basic level, becomes the staging of competing claims over global meanings. The practice of hegemony is closely related to this process¹⁵¹. Because the discursive articulations framing each policy proposal are potential signs of an emerging *hegemonic formation*, a closer look at the concepts of discursive formations, articulation, Subject and subject positions as well as social antagonisms and empty signifiers lays out the theoretical toolkit which grounds my empirical operationalization of PDT.

The Workings of a Discursive Formation....

Discourse and Articulation

In Poststructuralist Discourse Theory “discourse” is an unstable social structure ordering our perceptions of the material world¹⁵². The building blocks of this social structure are elements, transformed into internal moments of the discourse through articulations, subject positions offering identification points to the human Subject, nodal points hegemonizing the meaning of empty signifiers, and antagonisms symbolizing the frontiers of the discourse as well as the semantic limit of its representational function. PDT rejects the material/ideational split in IR research¹⁵³. Laclau and Mouffe set their theory apart from the Foucaultian distinction between discursive and non-discursive practices. They argue instead that “every object is constituted as an object of discourse” and linguistic as well as behavioral aspects of social practice are effects of “discursive totalities”¹⁵⁴. Although the existence of an external world is not contested, Laclau and Mouffe contend that no material object could constitute itself as an “object” outside discourse:

¹⁵⁰Howarth, 2010, p. 310.

¹⁵¹Laclau, 2007, Why Do Empty Signifiers Matter, p. 44.

¹⁵²Howarth, 2005, p. 317.

¹⁵³Wight, Colin. 2007. Philosophy of Social Sciences and International Relations. In Carlsnaes, Walter, Thomas Risse and Beth Simmons, eds., Handbook of International Relations. Los Angeles, London, New Delhi, Singapore: Sage Publications, p. 39-40.

¹⁵⁴Laclau and Mouffe, 2001, p. 107.

“(…) we affirm the *material* character of every discursive structure. To argue the opposite is to accept the very classical dichotomy between an objective field constituted outside of any discursive intervention, and a discourse consisting of the pure expression of thought. This is, precisely, the dichotomy that several currents of contemporary thought have tried to break. (…) The linguistic and non-linguistic elements are not merely juxtaposed, but constitute a differential and structured system of positions – that is, a discourse. The differential positions include, therefore, a dispersion of very diverse material elements.”¹⁵⁵

In a more recent attempt at defining discourse, Laclau clarifies that the concept is not restricted to either speech or writing. Discourse is “the primary terrain of the constitution of objectivity as such”¹⁵⁶. The concept of “totality” is the abstract representation of a complex of elements whose identity depends upon the totality itself. The identity of an element therefore does not “pre-exist the relational complex but [is] constituted through it.”¹⁵⁷. Laclau breaks away from Saussure’s structuralism by relying on Freudian psychoanalysis and arguing that the kernel of all identities is empty¹⁵⁸. This structural definition of identity begs at this point the question: How do discourses emerge?¹⁵⁹ Having rejected Gramsci’s reliance on social classes, Laclau and Mouffe turn to social structures and their functioning logics as potential explanatory factors for

¹⁵⁵Laclau and Mouffe, 2001, p. 108.

¹⁵⁶Laclau, E. (2007). On Populist Reason. London: Verso, p. 68. See also: Laclau, Ernesto. 1993. Discourse. In Goodin, R.E. and P. Pettit, eds., A Companion to Contemporary Political Philosophy. Oxford: Blackwell.

¹⁵⁷Laclau, On Populist Reason, 2005, p. 68.

¹⁵⁸Laclau, Ernesto ed. 1994. The Making of Political Identities London and New York: Verso, p.3. This edited collection of essays is one of the most comprehensive exploration of the PDT concept of identity. On the topic of “identity“ in PDT see also: Laclau, Ernesto. 2007. Beyond Emancipation. Emancipation(S). London, United Kingdom: Verso; Laclau, Ernesto. 1992. Universalism, Particularism, and the Question of Identity. October 61:83-90; Huyssen, Andreas, Homi Bhabha, Jacques Ranciere and Ernesto Laclau. 1992. Discussion: The Identity in Question. October 61:78-82 and Butler, Judith, Stanley Arnowitz, Ernesto Laclau, Joan Scott, Chantal Mouffe and Cornel West. 1992. Discussion: The Identity in Question. October 61:108-120. For Zizek’s critique of Laclau’s concept of identity see also: Zizek, Slavoj. 2000. The Ticklish Subject. London, United Kingdom: Verso and Zizek, Slavoj. 1994. Identity and Its Vicissitudes: Hegel's 'Logic of Essence' as a Theory of Ideology. In Laclau, Ernesto, ed., The Making of Political Identities. London, United Kingdom: Verso.

¹⁵⁹Laclau, Ernesto and Lilian Zac. 1994. Minding the Gap: The Subject of Politics. The Making of Political Identities. London and New York: Verso.

the creation and dissolution of discourses. PDT answers this question by relying on the concept of practice and depicting history as alternating processes of structural reproduction and innovation. The notion of *articulation* symbolically represents this relationship between discourse and practice:

“(…) we will call *articulation* any practice establishing a relation among elements such that their identity is modified as a result of the articulatory practice. The structured totality resulting from this articulatory practice, we will call *discourse*. The differential positions, insofar as they appear articulated within a discourse, we will call *moments*. By contrast, we will call *element* any difference that is not discursively articulated.”¹⁶⁰

This definition is an attempt to replace the materialism of Positivist social science with a Poststructuralist process-based understanding of history. Rather than grounding their analysis in the assumption of a discourse-producing Subject, the authors shift the emphasis onto the discourse and its inner logic of (re)production and dissolution. Articulation becomes the generic term designating the creation of new meaning, while articulatory practices generate new discursive formations. In Laclau and Mouffe’s theory there is no unified historical Subject demanding political change¹⁶¹. The same situation applies to the human Subject. Rather than tracing back the origin of hegemonies to social groups or individuals, the emphasis falls on a neo-Hegelian dialectical model of history¹⁶². Because social practices create *overdetermined* unstable

¹⁶⁰Laclau and Mouffe, 2001, p.105. On articulatory practice see also: Howarth, 2005, p. 326-8.

¹⁶¹Laclau, Ernesto. 2006. Why Constructing a People is the Main Task of Radical Politics. *Critical Inquiry* 32:646-680. The status of the “subject“ in Poststructuralist Discourse Theory and its apparent structural dependence has generated a lively debate. See also: Critchley, Simon; Peter Dews eds. 1996. *Deconstructive Subjectivities* Albany: SUNY Press and Dews, Peter. 1996. *The Truth of the Subject. Language, Validity, and Transcendence in Lacan and Habermas*. In Critchley, Simon and Peter Dews, eds., *Deconstructive Subjectivities*. Albany: SUNY Press.

¹⁶²Laclau, Ernesto. 2000. *Structure, History, and the Political*. In Butler, Judith, Ernesto Laclau and Slavoj Žižek, eds., *Contingency, Hegemony, Universality. Contemporary Dialogues on the Left*. London and New York: Verso.

structures¹⁶³ and ultimate meanings cannot be fixed, there is a constant need for new discursive formations.

A *discursive formation* is therefore, rather than an end product, a never finalized attempt to construct a centered totality and translate all elements into moments of that discursive totality. Elements are non-discursive differences. Their partial fixation of meaning becomes possible through the creation of nodal points:

“The practice of articulation, therefore, consists in the construction of nodal points which partially fix meaning; and the partial character of this fixation proceeds from the openness of the social, a result, in its turn, of the constant overflowing of every discourse by the infinitude of the field of discursivity.”¹⁶⁴

The second structural feature that triggers the emergence of discourses is the instability of identification processes. Subject positions are discursive identities¹⁶⁵. Social agents identify themselves with the subject positions available within discourses, such as “victim”, law enforcer” or “defender of human rights”. The link between an individual and the identity enacted in a subject position is however arbitrary. This is one of the reasons why hegemonic discourses are intended to stabilize, at least temporarily, new articulations of meaning and identities. Laclau and Mouffe’s concept of discourse offers a possible solution to the agent/structure debate¹⁶⁶. Their argument avoids this dichotomy by defining discourse as a “structured totality resulting from articulatory

¹⁶³Laclau and Mouffe, 2001, p.97-105. The PDT concept of “overdetermination“ is borrowed from Louis Althusser.

¹⁶⁴Laclau and Mouffe, 2001, p.113.

¹⁶⁵Laclau, Ernesto. 2007. *Subject of Politics, Politics of the Subject. Emancipation(S)*. London, United Kingdom: Verso.

¹⁶⁶There have been several attempts to overcome empirically the duality actor/structure and construct co-constitutive explanations of sociopolitical processes. A more recent study of literary discourses after the Great War highlights the role of identity and suggests that the agents’ search for their constantly changing sense of Self provides an alternative approach to the agent/structure problem. See: Nishimura, Kuniyuki. 2011. *Worlds of Our Remembering: The Agent-Structure Problem as the Search for Identity*. *Cooperation and Conflict* 46:96-112. For a seminal study on the poststructuralist answer to this problem see: Doty, Rosanne Lynne. 1997. *Aporia: A Critical Exploration of the Agent-Structure Problematique in International Relations Theory*. *European Journal of International Relations* 3:365 – 392.

practices and never simply empirically given¹⁶⁷. Their analysis portrays the social world as the effect of a representation. The concept of “society” which creates this social world is produced and reproduced through the play of two fundamental logics: equivalence and difference¹⁶⁸. One of them in particular is responsible for the creation of hegemonic discourses.

...How a Discursive Formation Becomes a Hegemonic Discourse

Hegemony is synonymous with the emergence of a dominant discursive formation. Informally, this hegemonic discursive formation represents a type of common sense wisdom informing international politics. An attempt to hegemonize a policy field such as international security becomes equivalent to the creation of a universality affirming totality with an attached policy. This “totality” emerges through the coalescing of dispersed political forces into an alliance supporting a new political project. The latter must be broad enough to include various political demands and give content to a new collective identity¹⁶⁹. The joining together of these distinct interests is the result of what PDT defines as the logic of equivalence¹⁷⁰. Under certain conditions, this political logic is the engine behind the emergence of a new hegemony.

There are two such essential conditions for a hegemonic articulation to take place: first, the presence of social antagonisms making necessary the formulation of a new political project and second, the availability of elements ready to be gripped by a new articulation¹⁷¹. The discursive clashes in the debates involving the International Criminal Court show traces of what Laclau and Mouffe refer to as *antagonism*, or the limit of a discursive order¹⁷². The presence of these antagonisms in the discursive field of international security policy during the 2000s as well as the continued political

¹⁶⁷Laclau and Mouffe, 2001, p.110.

¹⁶⁸Ibid., p. 127.

¹⁶⁹Howarth, David. 2000. *Discourse*. Open University Press, p. 109.

¹⁷⁰Laclau and Mouffe, 2001, p.130-1.

¹⁷¹Howarth, 2000, p. 105; Laclau and Mouffe, 2001, p. 136.

¹⁷²Laclau and Mouffe, 2001, p. 122-7. On antagonism see also: Laclau, Ernesto. 1990. *New Reflections on the Revolution of Our Time*. London: Verso, p. 5-41.

contestation surrounding the Court suggests that the two existential conditions for the emergence of a hegemonic discourse are fulfilled. During this process of hegemonization empty signifiers acquire new meanings¹⁷³. “Floating” signifiers are similar to “empty” ones, but they differ in the amount of pressure exercised upon them by competing discourses¹⁷⁴.

This hegemonic rearticulation allows previously unrelated elements to come together and acquire new relational identities. The ontologically weaker origin of this process is the nodal point, which acts as a bridge-builder across elements¹⁷⁵. In international security several opposing discourses have crystallized around the floating signifiers of “justice”, “peace”, and the “rule of law”. From a PDT perspective, all three are potential nodal points. However, the lack of a fixed center implies that this process of signification is potentially infinite, and that these partial fixations of meaning are always open to challenges. The frontiers of the new hegemony are unstable and the exteriority constituting and simultaneously undermining its position represents the “radical Other” that subsumes all the elements not included in the chain of equivalence¹⁷⁶. This “radical Other” constantly threatens the discourse and questions its capacity to create a new objectivity, i.e. a stable and ordered field of action. An empirical investigation of hegemony must therefore also take into account the constant discursive challenges taking place on its periphery.

The Poststructuralist Discourse Theory developed by the Essex School allows me to conceptualize theoretically and identify empirically the ways in which a new criminal justice discourse acquired hegemonic status in international security policy. However, these concepts are still too general to be applied directly, without an

¹⁷³Laclau, *Why Do Empty Signifiers Matter*, 2007, p. 43.

¹⁷⁴Laclau, *On Populist Reason*, 2005, p. 129-139.

¹⁷⁵Howarth, David, Aletta J. Norval and Yannis Stavrakakis eds. 2009. *Discourse Theory and Political Analysis. Identities, Hegemonies and Social Change* Manchester and New York: Manchester University Press, p. 8.

¹⁷⁶Laclau and Mouffe, 2001, p. 135.

intermediary operationalization, to the empirical case study. The methodology enabling me to identify this discursive formation and its relation with opposing discourses is outlined in the next sections.

2.2. Operationalizing the Hegemonization of International Security

PDT offers concrete guidelines for the identification of primary data sources – texts. The empirical application of the concept of hegemony necessitates however several additional methodological steps. The operationalization of my meso-level Discursive Mechanisms begins with a return to the basics. I have first revised the ontological assumptions David Howarth identifies as the kernel of the PDT research program¹⁷⁷:

- 1) All objects and practices are meaningful.
- 2) Meaning is contingent, contextual, and relational.
- 3) Social relations are contingent, characterized by power and the primacy of politics.
- 4) Discourses rely on exteriors that partially constitute them, while also potentially subverting them.
- 5) The identities of actors are constituted within these systems of articulatory practices.
- 6) The creation of (new) political subjects is the result of hegemonic articulatory practices under conditions of dislocation and driven by the force of identification processes.

These assumptions represent the hard core of the Poststructuralist discourse theory research program in political science. They also summarize the main focus of this dissertation: the starting point of my empirical analysis is language, rather than behaviour. By accepting these assumptions I agree to work within a non-essentialist analytical framework. I understand the social reality of international politics primarily

¹⁷⁷Howarth, 2005, p. 317.

as a social construct where struggles over meaning are the basic unit of analysis. These semantic struggles ensure the continuation and change of social and political practice as well as the emergence and decline of international norms. There is no ‘reality’ outside discourse, only representations of this reality whose meaning is negotiated within *and* among discourses. The definitions of a “criminal” or a “punisher” belong to the representation of international relations specific to the Justice discourse. There are several implications this choice entails for my research. Among the most important, Assumptions (5) and (6), concern the status of “actors” in my approach, which is considerable weaker. I depart from the classic IR view of an international system consisting of nation states and treat “discourses” as the basic unit in global politics. Actors acquire in this context a subordinate status. They are “voices” rather than Subjects, identifying with and enacting the identities available within discursive formations. This weaker Subject does not exist a priori¹⁷⁸. The origin of discursive change is therefore not a material actor, but a force triggered by an external shock causing structural dislocations.

Because each discourse is a particularity aiming to become a totality, its capacity to provide complete closure is always questionable. Instability and change are defining characteristics, rather than the anomalous traits of all discourses. This conceptualization does not ignore however the classic actors of international relations. On the contrary, it allows expansion in the definition of “actor/agent” by adding to the list individuals, social groups, Non-Governmental Organizations as well as domestic and international institutions. There is one important empirical implication of this different conceptualization. The scientific function of these actors is reduced from that of potential causal factors to discourse producers. International criminal justice for example is conceptualized as a discourse produced by a variety of actors qua discourse

¹⁷⁸Laclau and Mouffe, 2001, p. 114. See also: Howarth, 2000, p. 108.

producers: international public servants, academics and civil society leaders, NGOs, regional and international organizations.

Assumptions (5) and (6) will prove essential for my sampling strategy outlined in the following section. In order to reach the meso-level necessary for an application of such highly abstract concepts to the study of my explanandum, the next step in my research design is the operationalization of several Discursive Mechanisms. There are three types of logic the Essex School of Discourse Analysis has developed from Laclau and Mouffe's conceptualization of hegemony: social, political, and fantasmatic¹⁷⁹. While social logics are usually defined as "conditional and historically specific systems of sedimented practice" with examples such as "the logic of the market", "the logic of bureaucracy", and "the logic of apartheid"¹⁸⁰, political logics occur when established orders break down. They are therefore empty of content. A political logic gives shape to the processes of contestation challenging the social order, symbolizing the moment of transition from one instance in the institutionalization of the social to the next. This is a structural account of change that problematizes the status of social agents. There is a shift away however from actors' interests and pre-defined identities to an explanation of how the totality that incorporates them works.

Political logic -> Logic of Equivalence -> Linking of Demands through Empty Signifiers, the Nodal Signifier & Collective Identity

A PDT explanation of change in U.N. policy practice gives priority to the politics underpinning hegemonic discourses. In the field of international security, the change from a Cold War politically correct language emphasizing state sovereignty to a concern with human rights and (no) impunity was paralleled by efforts to streamline a legitimate policy of intervention in intrastate wars. Several new discourses emerged in

¹⁷⁹Howarth, 2005, p. 322.

¹⁸⁰Howarth, 2005, p. 323.

the 1990s that tried to address this challenge. The concept of *political logic*¹⁸¹ facilitates the analysis of the politics involved in the creation of these new discourses and an evaluation of the hegemonic status achieved by one of the most successful - Justice. Its operationalization would not be possible however without two additional concepts: “political demand” and “articulation”.

Articulation is a standard PDT theoretical construct. By associating its function with that of empty signifiers it becomes possible to understand politics as the empirical process of coalescing various group demands into one unifying discourse. Articulation is the move that enables this process and gives it its structural dimension. Since articulations are not the result of an individual actor’s action, the process whereby these political demands are articulated within one discourse cannot be traced back to the actors themselves. They are relevant to the empirical analysis of hegemony in their weaker role, as discourse producers.

The discursive mechanisms on the other hand are identifiable through the analysis of texts and their positioning within the wider field of discursivity in which international security policy is embedded. This field of discursivity is operationalized as the field in which international security policy is produced and therefore as an inchoate space of “floating” elements, in their original position, before a nodal signifier grips and transforms them into the internal moments of a new discursive formation¹⁸². These two concepts amount to one major empirical challenge for PDT researchers: the identification of frontiers. In order to identify a social structure one needs to pinpoint the “legs” of this structure, its visible outer layer. Language is ubiquitous in international debates, but how can one identify a discourse and distinguish it from its “constitutive outside”¹⁸³? How can one describe the workings of discourse/structure

¹⁸¹Howarth and Glynos, 2007, p. 133.

¹⁸²On the gripping process which constitutes a new hegemony see: Laclau and Mouffe, 2001, p.113 and p.135-145.

¹⁸³On the ‘constitutive outside’ see: Howarth, 2000, p. 103.

without referring to an already existent agent? The logic of equivalence is one of the two types of political logics on which I have relied extensively in order to establish empirically the boundaries of the dominant discourse and its counterdiscourses. I operationalized this logic into two meso-level discursive mechanisms: (1) the empirical linking and reconstitution of political demands through the influence of the nodal signifier Justice, and (2) the creation of a collective identity.

These two constructs have been applied to the discursive material of Justice and the results of this application are presented in Chapter 3. The process of “linking” takes place through the creation of chains of equivalence between different political demands¹⁸⁴. This is one of the fundamental processes that transform “hegemony” from an abstract theoretical concept into an empirical research object. Political arguments are expected by PDT to incorporate different interests into a winning discourse. Their empirical identification through the analysis of political discourse allows me to trace the effects of this linking process.

The second meso-level discursive mechanism is the creation of a strong collective identity defined against a radical Other and a constitutive outside. This is a negative type of identity-building formulated as the “-A” congruence. This implies that all elements (A, B, C) which enter an equivalent relationship ($A = B = C$) become the antagonists of a radical Other. This “Other” is left however undefined, except for it being that which is not A, but -A¹⁸⁵. The creation of this strong collective identity is a process empty of specific content. The emergence of the “we” is a discursive attempt at universalization through the creation of an abstract Self¹⁸⁶. This empty “we” is filled by the nodal signifier, in this case Justice, which not only grips the floating elements that

¹⁸⁴On the category of sociopolitical “demand” as the basic unit of analysis for the aggregation of a new political alliance see: Laclau, 2005, *On Populist Reason*, p. 225.

¹⁸⁵Howarth, 2000, p.107.

¹⁸⁶Herschinger, 2012, p. 84.

are to become internal moments in the discourse, but also gives meaning to the collective identity “we/international community”.

In addition to this operationalization, I relied on the theoretical concepts of “empty signifiers” and “nodal points”. If the empty signifiers represent the backbone of a discursive formation, the nodal point is the original surplus of meaning which gives this formation its substantive content. There are two consequences that follow from this theoretical choice. I must first identify empirically the empty signifiers relevant for the discursive formation under analysis and second, trace the effect the nodal signifier Justice has on their meaning. Mechanism (3) operationalizes therefore the emergence of Justice as nodal signifier, while Mechanism (4) traces the rearticulations of key empty signifiers through the influence exercised by the nodal point.

Fantasmatic Logic-> Social Fantasy -> Identification/Enjoyment -> Narrative & Functions

The stability of the dominant discourse would not be graspable without an answer to the “why”- question. Why did Justice and not an alternative discourse hegemonize the field of international security policy? If the operationalization of political logics helps me explain how certain discursive mechanisms enabled this process of hegemonization, the *fantasmatic logic* gauges the significance of processes of identification¹⁸⁷. Because the hegemonic pull works through the creation of an emotional attachment to the respective discourse, this type of logic allows me to unpack the grasp hegemonies have on Subjects.

In order to identify empirically this new social fantasy I have operationalized meso-level Discursive Mechanism (5), the narrative legitimating the policies attached to the discourse. The concept of “narrative” is not usually employed in PDT analysis, although many studies refer to the grounding of new social imaginaries as

¹⁸⁷Glynos, 2008.

the sign of a successful process of hegemonization¹⁸⁸. Narratives are however suitable tools for the empirical identification of foundational stories as representations of a new ordering of social relations that make explicit the substantive content of that order and also legitimize new practices. There are four narrative functions which can be identified as the origin of this legitimacy effect¹⁸⁹: (1) the teleological representation of the past: the narrative constructs the present as the “promise” of the past and recreates a history which includes the specification of the acts required by the new discourse; (2) the representation of a beatific future and the obstacle preventing its realization: the “future” becomes the embodiment of hope for a better world and legitimizes present actions by establishing a direct link between their performance and this expected “better world”; (3) the transgressive element is the third mechanism that allows a temporary escape from the graps of ideology, but ultimately reinforces its grip, and (4) the foundational guarantee, under the shape of a Hero which protects the Victims from the Villains.

Antagonism -> Struggle over Key “Floating” Signifier & Collective Identity

The final meso-level Discursive Mechanisms are the result of the operationalization of a fundamental PDT concept: *antagonism*¹⁹⁰. The theory posits the existence of antagonisms both as necessary preconditions for the emergence of hegemonic articulations and as the limit of hegemonic discourses. The concept is therefore essential in tracing empirically the boundaries of a discursive formation. My approach towards antagonism and the empirical study of discourse differs however from the majority of PDT studies. Students of Laclau have given a particular definition of antagonism as identity blockage¹⁹¹. Rather than following the Marxist tradition, PDT scholars work with a non-essentialist, linguistic understanding of identity. This

¹⁸⁸Laclau, Ernesto. 1990. *New Reflections on the Revolution of Our Time*. London: Verso, p. 60-4.

¹⁸⁹Glynos, 2008.

¹⁹⁰Laclau and Mouffe, 2001, p. 122-127.

¹⁹¹Howarth, 2000, p.105.

approach shifts the theoretical focus onto antagonistic identity relationships, “Me” versus the “Other”, and the empirical focus onto the discursive representations of these identities.

In my operationalization of antagonisms however I chose to rely on Laclau’s concept of “floating signifiers” instead of identity¹⁹². A variant of “empty signifiers”, these are the elements on the frontier of a discursive formation. Several studies have so far underscored the theoretical and empirical relevance of the category of signifiers¹⁹³. They have all shied away however from specifically conceptualizing the boundary of a discourse as the struggle over the meaning of these elements. Whereas I agree with most PDT scholars that every discourse is structured by its attempt to construct a strong political subjectivity¹⁹⁴, I believe that the antagonistic identity relationship between the Collective Self and the radical Other is only one element in the construction of discursive boundaries. A (un)successful counterhegemonic challenge is therefore equivalent to a (failed) attempt at subverting the meaning of key Justice elements, the replacement of its nodal signifier and/or the filling of the collective “we” with a different content through an additional identity-building process. Methodologically, this entails the identification of rival discourses as a specific meso-level Discursive Mechanism (7), whose application is dependent however on Discursive Mechanism (2) identification of new collective identities, Discursive Mechanisms (4), rearticulation of key empty signifiers, and Discursive Mechanism (5) identification of discursive structures. A summary of these meso-level Discursive Mechanisms is offered in Table 2 below:

¹⁹²Cf. 63.

¹⁹³One of the most comprehensive collections of PDT applied studies on this topic is: Howarth, David, Aletta J. Norval and Yannis Stavrakakis eds. 2009. *Discourse Theory and Political Analysis: Identities, Hegemonies, and Social Change* Manchester and New York: Manchester University Press.

¹⁹⁴Howarth, David. 2006. *Space, Subjectivity, and Politics*. *Alternatives: Global, Local, Political* 31:105-134 and Howarth, David and Yannis Stavrakakis. 2009. *Introducing Discourse Theory and Political Analysis*. In Howarth, David and Yannis Stavrakakis, eds., *Discourse Theory and Political Analysis. Identities, Hegemonies, and Social Change*. Manchester and New York: Manchester University Press.

Table 2: Operationalized Meso-level Discursive Mechanisms

- | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none">(1) Empirical linking and reconstitution of political demands(2) Collective identity creation(3) Emergence of Nodal Signifier(4) Rearticulation of key empty signifiers(5) Discursive structure of (new) discourses(6) Grounding Narrative(7) Contestation of Boundaries |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

2.3. Methodology and Research Design

Case studies are the appropriate research design for identifying and analyzing policy discourses according to the methodological guidelines of PDT. This is the most flexible type of research design because it allows the investigation of a longer historical period and the application of a hermeneutic-explanatory or retroductive approach to the selected body of material. The result is a Poststructuralist discourse analysis (PDA) that takes into account the diachronic as well as synchronic dimensions of discourses and merges a qualitative study with hermeneutics¹⁹⁵. The investigation of the discursive mechanisms at the origin of the Justice hegemony is a representative case study for the empirical application of PDT. Although Justice is only one dominant discourse in a specific policy field and its position is open to political contestation, my findings warrant a certain amount of generalizability. The Poststructuralist discourse analysis I have developed for the application of PDT offers a comprehensive map of the discursive mechanisms at work in processes of hegemonization and contestation. I have argued in the preceding section that the empirical analysis of hegemony requires an intermediary level of theorization. This ‘operationalization’ follows the assumptions and general definitions of key PDT concepts, but brings them closer to the analysis of particular political debates. The list of meso-level Discursive Mechanisms in Table 2 is

¹⁹⁵On the status of the “case plus study“ for Poststructuralist discourse analysis see: Hansen, 2006, p. 11.

a comprehensive operationalization of these key concepts and can be applied to the study of various other discourses. In this section I present the research design structuring my empirical exploration of these discursive mechanisms, in particular the methodological criteria underpinning my choice of data and the method of analysis.

Developing a PDA of international policies is a novel enterprise. Theoretically, PDT can be applied to all areas of social life, irrespective of the domestic/international divide that is foundational to the field of international relations. In practice, IR researchers have focused rather on Poststructuralist investigations of foreign policies¹⁹⁶. These studies have broadened our understanding of the foreign policy process, its political rather than exclusively managerial dimension, the sites where such policies are created and the actors involved in the production of foreign policies. In this way, Poststructuralism has helped recover the political dimension of bureaucratic processes and questioned their traditional representations. David Howarth has argued more recently that the aim of critical policy studies is “to critically explain how and why a particular policy has been formulated and implemented, rather than others”¹⁹⁷.

The drafting and implementation of international security policy is a specific competency of the United Nations Security Council. As with all international fields of action however, “policy” is rather a misnomer for what continues to be an essentially political process of decision-making in a highly divisive, yet extremely important area of global life: the maintenance of international peace and security. Rather than separating the boundaries between UNSC policies and politics, I argue that “discourse” is a more useful concept empirically, because it encompasses the actions of the UNSC

¹⁹⁶Hansen, 2006. Lene Hansen’s work is a seminal study in the empirical, systematic, Poststructuralist-inspired study of foreign policy. See also: Doty, Rosanne Lynne. 1993. Foreign Policy as Social Construction: A Post-Positivist Analysis of US Counterinsurgency Policy in the Philippines. *International Studies Quarterly* 37:297-320, p. 303. For earlier work on foreign policy and identity see: Campbell, David. 1992. *Writing Security: United States Foreign Policy and the Politics of Identity*. Minneapolis, MN: University of Minnesota Press.

¹⁹⁷Howarth, 2010, p. 324.

both as politics and policy. In addition, this concept allows me to overcome the difficult challenge of identifying social versus legal norms¹⁹⁸ and to approach legal and political processes not as distinct phenomena, but as related discursive products. In this particular PDA international law need not be separated from politics even when discussing the policy effects of a judicial institution such as an international tribunal.

The theoretical assumptions of this empirical study allow me therefore to overcome the politics/law divide which has often pitted academics and international policymakers against one another, with some favouring more law in international affairs, while others deplored the “tyranny of judges” and their constraining effect on political decision-making¹⁹⁹. Theoretically, I conceptualize discourses in international security policy as complex legitimizing structures of particular policies. This approach takes me away from an examination of concrete policies, and brings me closer to the historical factors leading to their adoption as well as the political struggles over the meta-narratives framing them. The Council’s chosen approach to international security can be located on a continuum from intervention to non-intervention. Studies of U.N. Security Council policies have referred to the rise of “humanitarianism” as an explanation for the perceived change in UNSC practice towards more intervention²⁰⁰ or have traced this phenomenon back to the emergence of new international norms, such as the Responsibility to Protect²⁰¹. The given link between discourse and policy is usually assumed to be a causal one, but few studies engage thoroughly with the empirical evidence underpinning such statements. PDT comes with a different explanatory logic and methodology. The theory gives precise guidelines for the collection of data: texts,

¹⁹⁸Finnemore, Martha. 2000. Are Legal Norms Distinctive? *New York University Journal of International Law and Politics* 32:699-705.

¹⁹⁹Kissinger, Henry. 2001. The Pitfalls of Universal Jurisdiction. *Foreign Affairs* 80:86 - 96.

²⁰⁰Campbell, David. 1998. Why Fight: Humanitarianism, Principles, and Post-Structuralism. *Millennium: Journal of International Studies* 27:497-521.

²⁰¹Bellamy, Alex. 2013. The Responsibility to Protect: Added Value Or Hot Air? *Cooperation and Conflict* 48:333-357. See also: Bellamy, Alex. 2006. The UN Security Council and the Question of Humanitarian Intervention. *Journal of Military Ethics* 5:144-160 and Bellamy, Alex. 2003. Power, Rules and Argument: New Approaches to Humanitarian Intervention. *Australian Journal of International Affairs* 57:499-512.

and the unit of analysis, i.e. struggles over meaning. From a Poststructuralist perspective “security” is a political discourse that “instils responsibility and legitimizes the exercise of power”²⁰². The theorization of the link between discourse and policy begins therefore by collapsing the two terms into one. By defining a particular policy as embedded within a political discourse one shifts the empirical focus onto the discourse’ ability to frame this policy and defend itself against competing counterdiscourses.

If the elements of the *explanans*, the meso-level Discursive Mechanisms have been already identified, there are several issues that still require clarification. My *explanandum* is the relationship between a hegemonic discourse and a process of policy change (Introduction). The connection between the *explanans* and the *explanandum* implies the identification of an empirical basis to which the Discursive Mechanisms are to be applied. Because my PDA is a mixed qualitative/hermeneutic approach, the identification of this empirical basis is equivalent to the qualitative circumscribing of a relevant body of texts. My research design begins therefore with the construction of an appropriate qualitative case study. This case study covers the following research steps: the identification of the sites in international security where discourses are produced and contested; the criteria for the selection of data sources, i.e. the international actors who function as discourse producers; and the criteria and sampling of my chosen unit of analysis – the meanings of empty and nodal signifiers – and its material basis – texts.

The creation of this empirical basis yields the material or data to which the Discursive Mechanisms are subsequently applied through a hermeneutic approach. My data analysis is therefore the only step in my PDA that goes beyond the methodological requirements of a qualitative study and where the Poststructuralist concern with interpretation re-emerges. My empirical chapters 3 and 4 present the results of this

²⁰²Hansen, 2006, p. 35.

approach. Before moving on however to these findings and their discussion, I review first the steps that have allowed me to create the empirical basis for my interpretation.

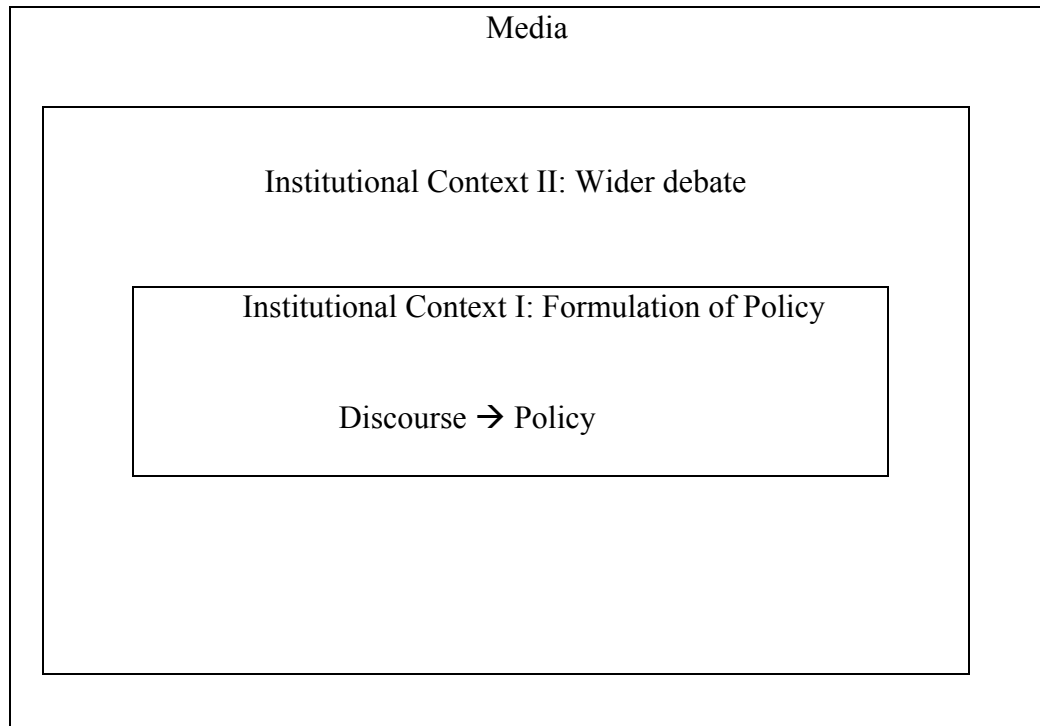
The sites for the production of hegemonic discourses are dependent on the choice of policy field. An investigation into the hegemonizing effects of Justice in international security requires therefore a consideration of boundaries: first, of the discourse itself, and second, of the social field within which Justice has certain effects and where counterdiscourses might emerge. Because the social field, or the field of discursivity is always broader than a particular discourse, the focus of my searches was not limited to the individual or corporate actors advocating more involvement for the ICC. The selection of sites follows an intensity criterion according to the effects they have on the drafting of UNSC policy. “Intensity” in this context is defined as the highest number and greatest variety of *arguments*, either in favour or against criminal justice. The criterion helps expand the sample by including non-traditional venues, which do not influence directly international security policy, but are nevertheless relevant to the debate. Three such sites have been identified, which I subsequently assigned to the triple-layered box in Table 3.

The site with the highest level of intensity is the institutional setting in which international security policies are debated and eventually adopted. This is the United Nations Security Council where the hegemonic discourse shows its status by winning political fights with other discursive formations. The second layer includes the wider institutional context contributing to the production of Justice. This includes primarily the Assembly of States Parties to the International Criminal Court (ICC ASP). The ASP, where ICC member states meet regularly once a year, is a major producer of Justice. The wider institutional setting is made up, additionally, of regional organizations such as the African Union, the European Union or the Organization of American States together with transnational Non-Governmental Organizations such as

Amnesty International, the Coalition for an International Criminal Court, Human Rights Watch, the International Committee of the Red Cross, Parliamentarians for Global Justice, or smaller, more specialized NGOs, for example REDRESS (Seeking Reparation for Torture Survivors), the Darfur Consortium, and Women's Initiative for Gender Justice. This second institutional layer includes arguments against and in favour of international criminal justice.

The recreation of this public sphere would not be complete however without the virtual space provided by the Media. This is the third layer within which the dominant policy discourse is embedded. The interaction between various discourse producers takes place in this digitalized environment. Press releases, public statements or conference proceedings are available electronically. These digital documents show how the relationship between the material presence of an institution such as the ICC ASP and the production of discourse is a necessary, but not a sufficient condition. Particularly in the historical period under analysis, from 2002 to 2010, the expansion of digital archives and online publications has transformed the space of international politics into an international public sphere. This situation raises an important empirical challenge. Tracing the boundaries of a particular discourse becomes a complicated procedure if it is performed inductively. This problem brings me to the next issues in need of clarifications, namely the criteria and sampling of texts for the extraction of my chosen unit of analysis and the identities of discourse producers. These are all related issues which I have addressed under the "sampling" section of my empirical study. The criteria for identifying my chosen unit of analysis deserve special attention however, although this topic is also addressed below, in the discussion of my sampling strategy.

Table 3: Sites of Discourse Production



The Poststructuralist assumption of the primacy of politics, even if theoretically compelling, continues to be a challenge in practice. In the field of literary studies, Poststructuralists contend that the relationship between the two elements that constitute a linguistic sign, the signifier and the signified, is an arbitrary one. This arbitrariness, they argue, necessarily leads to political decisions over alternative meanings. By borrowing this assumption PDT scholars identified politics as constitutive of the original moment in the creation of meaning and equated it with the power struggles that precede this creation.

The problem that follows from this assumption is a well-known one for students of IR. While politics becomes a ubiquitous process, the researcher's ability to locate this process empirically is constrained by its generality. The concept of "empty signifier", elaborated below, gives these empirical efforts a more fruitful direction. Since politics becomes the equivalent of "struggles over meaning" and PDT defines these struggles as usually fought over the inclusion of one or another empty signifier into the discursive formation, the political element of a PDA must be a decision. This

decision is the choice of one meaning among various alternatives. Because these *meanings* are embedded within the *arguments* presented by supporters of different policies, this decision in favour of a particular content for international security policy precedes the adoption of the UNSC Resolution calling for its implementation. The meanings of a particular and/or multiple empty signifiers become the new policy framework and represent this decisive political moment. In order to identify this moment empirically the researcher must show how the play of arguments fills the content of one or another empty signifier. This criterion structures the sampling strategy elaborated below and offers guidelines for the collection of data grounding my interpretation.

2.3.1. Sampling

Step 1: General Framework for Data Collection

Aletta Norval and Jason Glynos define discourse as “relational configurations of elements that comprise agents (or subjects), words and actions”²⁰³. This structural understanding of discourse partially obscures however its diachronic dimension. History is one of the most important variables a PDT analysis must factor in. Historical events represent the backdrop against which international policies are formulated and implemented. Poststructuralist case studies must recreate in as much detail as possible these conditions. My quest for the relational configurations of elements representing the dominant discourse of international security begins therefore with a historical overview.

The years between 2002 and 2010 represent approximately a decade of eventful moments in international relations. Table 4 samples the most significant occurrences, from the entry into force of the ICC Rome Statute until the convening of the Kampala Conference in May/June 2010, the first statutory review of the Court’s

²⁰³Glynos, Howarth et al, 2009, *Discourse Analysis*, p. 8.

Foundational Act. The defining events of this decade include the resurrection of classic interstate war, humanitarian disasters caused by civil conflict as well as the increasing assertiveness of the ICC and its Prosecutor. This selection is based on the relevance of these events for international peace and security. The timeline provided in Table 4 focuses on the most important, in terms of casualties and threat of extension, conflicts.

A phenomenon that can be easily observed empirically is the ever stronger connection between breaches of international peace and the debate surrounding criminal justice mechanisms as legitimate and effective tools for its restoration. Compared to the 1990s and most notably with respect to the wars in the Former Yugoslavia, the international community has shown less willingness to intervene militarily, in particular when armed clashes occurred on the territory of a sovereign state. The conflict in Darfur, the Western province of Sudan, is the most representative example of this trend in UNSC policy. Although war broke out in April 2003, the U.N. Security Council discussed this issue merely one year later. Moreover, despite the well-documented difficult circumstances of Darfuri civilians, the Council's actions continued to follow a mixed strategy. Rather than opting for intervention, the UNSC channelled its efforts towards humanitarian relief, while trying to coordinate political negotiations between the warring parties and getting the ICC involved. The debates in the Council revealed ideological rifts and strong disagreement not only over the appropriate course of action regarding Darfur, but also about the relationship between peace and justice. Although the Rome Statute had entered into force as early as July 2002, there was still no international political consensus on the types of international crimes the Court was expected to exercise jurisdiction over and the mechanisms for its enforcement. Darfur, the post-electoral domestic violence in Kenya between December 2007 and February 2008, the brief Russian-Georgian war in the summer of 2008, Israel's war in Gaza between December 2008 and January 2009, and street clashes in Guinea's capital,

Conakry, during September 2009 represent as many types of conflict which have become, post-1989, the challenges facing the UNSC.

As the decade unfolded, the demand for international interventions to save civilians from mostly internal clashes increased, rather than diminished. Moreover, the international public sphere created through the global use of digital media was beginning to act as an agenda-setter for international peace and security, or at least, for the terms in which this debate on policy alternatives was framed. Not all of these conflicts became items of UNSC debates. The Council did not address either the Georgian-Russian war, or the Israeli invasion of Gaza. However, all these situations reached the ICC Prosecutor, who increased through his reactions the visibility of the Court and fanned the flames of the international debate over the desirability of justice.

In the Darfur situation the Court issued in 2007 its first arrest warrants for two Sudanese citizens. Shortly after the Russian-Georgia war, in August 2008, Luis Moreno-Ocampo made public his investigation into allegations of war crimes. In a surprising move, the Ministries of Justice from both countries submitted information to his Office, despite Russia not being a Member of the ASP and having criticized within the UNSC recourse to international criminal trials. 2009 was another year of intense publicity and scrutiny for the ICC. In March, for the second time in the history of international law, the Court issued an arrest warrant on the name of a sitting head of state, Omar al-Bashir of the Sudan. In retaliation, only a few months later, the African Union Assembly passed its first Decision officially requesting its Member States, some of them also states parties to the ICC, to refuse cooperation for the extradition of Bashir. In September 2009, the report of the U.N. Fact-Finding Mission on Human Rights in Palestine and Other Occupied Territories, the so-called Goldstone Report, caused another international stir after the signatories recommended that in the absence of

domestic criminal proceedings in Israel, against alleged perpetrators, the Council should refer the situation to the Court.

Finally, the Kenyan situation, in which, in 2014, the country's President and Deputy President were awaiting or, respectively, under trial at The Hague, was also officially opened in 2009. In November that year, Luis Moreno-Ocampo had sought authorization for a *proprio motu* investigation, marking in this way the first time in the Court's history when its Prosecutor requested to exercise his prerogative.

Table 4: Historical Timeline

A Historical Timeline of Events: 2002 – 2010	
1 July 2002	Entry into force of the Rome Statute after ratification by 66 Member State.
April 2003	War breaks out in Darfur, Sudan's Western Province
Mar. – Apr. 2003	War in Iraq (2 nd Persian Gulf War)
31 March 2005	United Nations Security Council adopts historic Resolution 1593 referring the Darfur situation to the International Criminal Court under Art. 13(b).
27 April 2007	Issuance of first Arrest Warrants in the Darfur Situation for Ahmad Harun and Ali Kushayb
27 Dec. 2007 – Feb. 28, 2008	Post-election violence in Kenya.
14 Jul. 2008	ICC Prosecutor submits an Application for the issuance of an Arrest Warrant for Omar al-Bashir, the President of Sudan.
7–12 August 2008	War in Georgia: The 5-day war between Russia and Georgia over South Ossetia.
14 August 2008	The ICC Prosecutor makes public its examination in the Georgia situation. Two visits in Georgia and Russia followed in November 2008 and, respectively, March 2010.
27 December 2008 – January 2009	War in Gaza: Israeli military forces invade Gaza.
22 January 2009	The Minister of Justice of the Palestinian National Authority lodges a Declaration pursuant to Article 12(3) of the ICC Statute with the Registrar and the Registrar acknowledges receipt of the declaration.
4 March 2009	Arrest Warrant issued by the International Criminal Court for Omar al-Bashir, the President of Sudan.
3 July 2009	The African Union Assembly at its 13 th Ordinary Session in Sirte, Libya adopts a Decision requesting AU Member States to invoke ICC Statute Article 98 relating to immunities and refuse to cooperate with the Court for the arrest and surrender of Sudan's President Omar al-Bashir. Botswana distances itself from the official statements by Summit Chair, Muammar Ghaddafi.

A Historical Timeline of Events: 2002 – 2010

23 Sept. 2009	“Human Rights in Palestine and other Occupied Territories”, the Report of the United Nations Fact Finding Mission on the Gaza Conflict (the Goldstone Report), A/HRC/12/48, finds evidence of grave breaches of the Geneva Conventions and recommends the U.N Security Council discuss these findings.
14 October 2009	ICC Prosecutor confirms that the situation in Guinea is under preliminary investigation by his office. Guinea is a Member State of the Rome Statute and declared itself “able and willing” to investigate the violent events that took place in Conakry, on the 28 of September 2009.
26 November 2009	ICC Prosecutor seeks authorization from the Pre-Trial Chamber II to open a <i>proprio motu</i> investigation in the Kenya in relation to crimes committed on its territory during the post-election violence of 2007 and 2008.
31 May – 11 June 2010	First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda

This selection of international events shows that the Court’s actions were not only reactions to external pressures, but they were also impacting the international field of security. If the UNSC referral of the Darfur situation in March 2005 signalled a moment of consensus over the role of justice in international security, the following years witnessed increasingly more differences of opinion. The new disagreements revolved around the role the International Criminal Court *should* play in international responses to conflicts. The discursive terrain on which such debates were conducted was therefore essentially normative. In the absence of a coherent UNSC policy, the *de facto* involvement of the Court in these different types of conflicts had divided even more an increasingly diverse international community, whose voices were deliberating and simultaneously contributing to the shaping of new international standards of behaviour. This description of the processes at work in the international public sphere brings us closer to the identification of the discursive space where a new hegemony was born.

Although the UNSC did not officially address all the conflicts described above, ICC involvement generated sufficient controversy for alliances of positions to

emerge. Some of these alliances are rather unconventional. Arguments in favour of sovereignty, critical of what some described as international intrusiveness in the affairs of sovereign states, were voiced not only by countries with less than perfect human rights records, but also by international organizations committed to their support, such as the African Union. The political debate sharpened in the Security Council, where Permanent and Non-Permanent Members presented the whole gamut of arguments for and against the ICC. In Table 3 (Sites of Discourse Production) I present the three-layered space where these various claims competed. Table 5 (Mapping the Debate: Discourse Producers, Sites of Production and Texts) adds to this list the information concerning the discourse producers and the types of texts chosen for my data collection.

Table 5. Mapping the Debate: Discourse Producers, Sites of Production, and Texts²⁰⁴

Actors		Sites		Texts
<i>Corporate Actors</i>	State Actors (Official Representatives) NGOs Regional Organizations IOs	Institutional Context I	United Nations Security Council	Communiqués Official statements Press Releases Reports Resolutions UNSC Minutes of Debates
		Institutional Context II	International Criminal Court Assembly of State Parties	
		Media	Media	
<i>Individuals</i>	International Public Servants Experts Academics	Media	Media	Articles Blog entries Interviews Newspapers quotes Official Press Releases, Speeches

Step 2: Sampling Criteria for Data Sources

My sampling strategy, which helped me identify the “legs” of the discourse in terms of data sources and create my data collection, is theoretical. I chose to focus more on identifying the historical periods of convergence and divergence over the place

²⁰⁴ Adapted from Hansen, 2006, p. 64.

of criminal justice in security policy, rather than discussing in-depth my choice of discourse producers. Concerning the latter, apart from their relevance as ‘voices’ in the debate, I used no further criterion to discriminate between them. My strategy was all-inclusive, in the sense that I was aiming for the greatest variety of arguments and meanings. Therefore, any actor which joined the debate with a new argument, either ‘for’ or ‘against’, was a potential discourse producer. Even though these “discourse producers” were actors with either individual, or corporate identities, the criterion for their selection was not their identity, but the preeminence of the place they occupied in the debate. I chose texts written or presented by governmental officials, international policymakers, NGO professionals, heads of regional organizations as well as policy experts (for example lawyers) and academics. I also relied on identity markers such as “Russia” or the “United States” in order to sample the sources for my data, and because these identities were sufficiently stable to warrant this selection.

In order to narrow down further the international debate, I relied on the historical timeline presented in Table 4. This chronology helped me identify the most relevant Security Council meetings, specifically for the policy centered on the use of Chapter VII U.N. Charter powers, and the historical sub-periods with the highest likelihood to support the emergence of hegemonic and counterhegemonic discourses. As the first situation referred by the Security Council to the International Criminal Court, Darfur proved to be the most politically significant debate. In this landmark case, the UNSC Members discussed extensively the benefits of a “peace and justice” approach to security. Moreover, with respect to Darfur, apart from the ICC referral, the Council made use of its entire repertoire of security measures in its attempts to restore peace. Darfur entered the UNSC’s agenda in 2004. International consensus over the legitimate course of action in addressing this humanitarian disaster peaked in 2005, along with the referral to the Court, and declined sharply after 2008. The emergence of

Justice as a hegemonic security discourse took place during this period. Besides Darfur, I selected several other UNSC debates on the topics of “protection of civilians”, “transitional justice”, and the “rule of law”. Although not explicitly linked to security policy, these debates contributed to the reformulation of the key empty signifiers later to be appropriated by Justice.

I considered all documents relevant to a particular debate as primary data sources. The documents produced during UNSC discussions, such as official statements recorded into the minutes of the Council’s meetings, were given empirically a similar status with Security Council Resolutions and Presidential Statements. The speeches and interviews by U.N. Secretary-Generals Ban Ki Moon or Kofi Annan belong as well to this category, together with the Resolutions and other official Acts of Regional Organizations, the statements of ICC ASP Members, the official communiqués and press releases of Non-Governmental Organizations. The reproduction in the media of officials’ quotes was also considered a primary source of data. Policy documents such as the Reports commissioned or drafted by the U.N. Secretary-General, the 2005 World Summit Outcome document or the Nuremberg Declaration of Peace and Justice belong as well to the category of primary documents since quite often they programmatically insert into the debate (re)formulations of key concepts such as “justice”, “peace”, “security”, “sovereignty” or the “rule of law”.

Additionally, I expanded the map of the wider political debate specified in Table 5 with three additional tables, corresponding roughly to three historical periods. Table 7 - Mapping the Justice debate – covers the political debate during the relative stable international consensus over Justice between 2002 and 2007, including declarations at the 2010 Kampala Review Conference. The American challenge against the ICC was covered by the period after December 2000, when U.S. President Clinton signed the Rome Treaty, until approximately 2004 (Table 8 – Mapping Politicization I).

Finally, Table 9 – Mapping Politicization II and Peace/Justice - presents the sites, actors, and texts selected during the years of greatest divergence in ICC positions, between 2007 and 2010, when two major counterdiscourses emerged: one spearheaded by the African Union and the second backed by a mixed group of “Peace over Justice” supporters. The three tables presented in the next pages map the *sites*, the *discourse producers*, individual and corporate actors, as well as the types of *texts* that were chosen for my subsequent coding procedure; in other words, they summarize the results of my data selection.

This procedure yielded a total of 652 primary documents (see List of primary documents). I developed three sampling frames summarizing the documents selected for my data analysis. The frames identify these texts according to their sites of production and the discourse producers which generated them (Table 6). In this sense, they offer the most comprehensive empirical list possible of the documents I employed as an empirical basis for identifying the main discourse, Justice, and three counterdiscourses POL-I, POL-II and Peace/Justice (Annexes 2, 3 and 4).

Table 6: Primary Data: Sampling Frames

Nr.	Title
Sampling Frame 1 (Annex 2)	Politicization 2000 –2004 U.S. anti-ICC Campaign
Sampling Frame 2 (Annex 3)	The Justice Discourse: 1 July 2002 (Entry into force of International Criminal Court Rome Statute)– June 11, 2010 (First Review Conference of the ICC Rome Statute, Kampala, Uganda)
Sampling Frame 3 (Annex 4)	Counterdiscourses 2007 – 2010

Table 7. Mapping the Justice Debate: 2002-2010

Actors			Sites	Texts
<i>Corporate Actors</i>	State Actors (Official Representatives)	UNSC Members (2002 - 2010)	Institutional Context I (United Nations Security Council)	Minutes of UNSC Debates
	State Actors (Official Representatives)	ICC Assembly Members (2002 - 2010)	Institutional Context II- ICC ASP Annual Meetings, 2002 - 2010	Official statements
	NGOs	Amnesty International, Andean Commission of Jurists Asian Forum for Human Rights and Development (Forum-Asia) Bahrain Coalition for the ICC Coalition for an International Criminal Court (CICC) Federation internationale des Ligues des Droits de l'Homme (FIDH), Human Rights Network - Uganda (HURINET) Human Rights Watch, IKOHI – Indonesia International Committee of the Red Cross (ICRC) International Refugee Rights Initiative and the INSAF Centre for Justice and Peace (Sudan) Justice without Frontiers National Coalition for the International Criminal Court Nepal (NCICC) No Peace Without Justice Palestinian Center for Human Rights Parliamentarians for Global Action REDRESS (Seeking Reparation for Torture Survivors) The Darfur Consortium (African and International Civil Society Action for Darfur), Women's Initiative for Gender Justice	Institutional Context II- ICC ASP Annual Meetings, 2002 - 2010	Official statements Press Releases
	International & Regional Organizations	African Union (A.U. Council, A.U. Peace and Security Commission), European Commission, European Parliament, European Council, Organization of American States, United Nations Security Council	Media	Communiqués Official statements Press Releases Resolutions

Table 7. Mapping the Justice Debate: 2002-2010 (Continued)

Actors			Sites	Texts
<i>Individuals</i>	International Public Servants/Experts	HRH Prince Zeid Ra'ad Zeid Al-Husseini, Jordan, President of the International Criminal Court Assembly of States Parties Kofi Annan, U.N. Secretary-General Ban Ki-Moon, U.N. Secretary-General Joshka Fisher, Germany, Hans-Peter Kaul, Germany, Philippe Kirsch, Canada, former President of the International Criminal Court Paul Martin, former Prime Minister of Canada Luis Moreno-Ocampo, first Prosecutor of the International Criminal Court Sonia Picado, Frank Walter Steinmeier, Germany, Erkki Tuomioja, Finland Song Sang-Hyun, President of the International Criminal Court Christian Wenaweser, Austria, President of the International Criminal Court Assembly of States Parties Wangari Maathai, Kenya, Nobel Prize Winner	Institutional Context I and II Media	Articles Blog entries Interviews Official statements Quotes in Newspapers

Table 8: Mapping Politicization I – the U.S. Challenge: 2000/2004

Actors			Sites	Texts
<i>Corporate Actors</i>	State Actors (Official Representatives)	UNSC Members (2002 - 2004) U.S. Official Representatives	Institutional Context I- United Nations Security Council Media	Press Briefings Conference interventions Interviews Official statements Official policy documents Resolutions UNSC Minutes of Debates
	NGOs	Amnesty International Coalition for an International Criminal Court	Media	Press statements
	Regional Organizations/International Organizations	European Union Council Organization of American States	Institutional Context II	Official policy documents Resolutions
<i>Individuals</i>	U.S. President U.S. Senators U.S. Members of the House of Representatives		U.S. Congress Media	Interventions during Congress Debates Newspaper quote
	International Public Servants/Experts		Joshka Fischer, former Foreign Affairs Minister Germany Kofi Annan, former U.N. SG Preparatory Commission for the International Criminal Court (PCNICC), Peter Schieder, President of the Parliamentary Assembly of the Council of Europe, Per Stig Moller, Danish Foreign Minister and EU Presidency Holder	Media

Table 9: Mapping Politicization II (the A.U. Challenge) and Peace vs. Justice

Actors			Sites	Texts
<i>Corporate Actors</i>	State Actors (Official Representatives)	UNSC Members (2004 - 2010)	Institutional Context I- United Nations Security Council and U.N. General Assembly	Communiqués Official statements Press Releases Reports Resolutions UNSC Minutes of Debates
	State Actors (Official Representatives)	African Union Member States and A.U. States Parties to the ICC Rome Statute	Media	Newspaper quotes
	Regional Organizations/ International Organizations	African Union Assembly African Union Commission African Union Peace and Security Council U.N. Human Rights Council U.N. General Assembly	Institutional Context II	Communiqués Decisions Press statements Resolutions
<i>Individuals</i>	International Public Servants/ Experts	African Union High Level Panel on Darfur United Nations Fact-Finding Mission on the Gaza Conflict	Media	Reports
		Thabo Mbeki, Chairperson of the African Union High Level Panel on Darfur Jean Ping, President of the African Union Commission	Institutional Context II	Official statements

2.3.2. Data Analysis I

Step 1: Identification of Meanings and Discourses

Because a body of material must support the interpretation of findings in any PDT analysis, the next step in my research design was the conceptualization of guidelines for the building of an “archive”. An “archive” is a collection of primary documents representing the empirical basis for the identification of discourses. My archive consisted of the 652 documents resulted from my data collection. The criteria for the selection of *meanings*, my basic unit of analysis, were however more complex. PDT offers the concepts of *political frontier* and *antagonism* as guidelines for identifying the boundaries of a discourse. This implies that the focus shifts onto the elements, usually the empty signifiers and the nodal points structuring this discourse. The meanings of these empty/nodal signifiers are, ultimately, my unit of analysis. Because discursive boundaries are usually flexible, research continues until the chain of equivalent signifiers reaches an element not yet hegemonized. The battle over the meaning of “peace” was such a boundary, contested by two different discourses: Justice and Peace vs. Justice.

In order to tease out these meanings I specified two further intermediary steps. For the creation of my collections of quotes I used as textual indicators *arguments against* or *in favour* of international criminal justice. The coding schedule presented in Annex 1 gives an overview of the rules of inclusion and exclusion that I applied in order to discriminate between arguments. Annex 1 also offers some examples for my codes. The type of documents that can be used for this procedure was not restricted by other criteria. Rather, the breadth of the data collection procedure depends upon the chosen research design for the investigation of the field of discursivity structuring any discourse. This first step in the identification of my unit of analysis corresponds to my primary data analysis (coding) presented below.

Step 2: Data Analysis I - Coding

The selection of primary documents lays the basis for proper data analysis. This includes the differentiation of the empirical bases belonging to the hegemonic discourse and the counterdiscourses. I coded the primary arguments through a simple procedure: arguments in favour of criminal justice were sampled together, whereas arguments against the Court's involvement in internal conflicts were distributed according to two criteria into three collections of quotes. The ensuing four main collections (Table 10) cut across my previous diachronic division of case studies in order to capture the play of discourses, as represented through clashes between alternative meanings. Because an argument is the material that embodies the antagonisms I was trying to unearth empirically, clashes between different positions were used to mark the boundaries of the hegemonic discourse, i.e. the fight on the fringes, where new counterdiscourses contested established meanings.

The arguments in favour of criminal justice were brought together into one Collection of Quotes (Annex 5). They were selected through a coding procedure applied to primary documents produced between 2002 and approximately 2007. Although most of the quotes selected for the Collection of Quotes - "The Justice discourse 2002 -2010" - belong to this period, when consensus over international measures for Darfur reached its peak, I allowed a certain degree of flexibility in the drawing of this chronological boundary. The Collection included as well excerpts from documents produced in 2010, during the Kampala Conference, and in UNSC debates between 2008 and 2010. The interventions of ICC Member States at the ICC Review Conference were also coded and added to this list. The *sampling frames* (Tables 7 - 9) were built around the categories of *discourse producers*, identified during the mapping of the policy, and the *texts* issued or created by them. In the case of the Justice discourse, there is an equivalent relationship between its Collection of Quotes (Annex 5) and the Sampling Frame 2 "The Justice

Discourse” (Annex 3). This is not however the case for the Collections of Quotes acting as empirical basis for the three counterdiscourses (Annexes 6 to 8), where the arguments against criminal justice were divided according to two criteria: 1) the actor coalescing the counterdiscourse in its role as the main discourse producer (the United States for POL-I, the African Union for POL-II, a mix of corporate and individual actors for Peace/Justice); and 2) the type of setting for this production, whether domestic (POL-I) or international (POL-II and Peace/Justice). The chronological factor played also a part in this classification, which yielded Sampling Frame 1 “Politicization 2000 – 2004 U.S. anti-ICC Campaign” and Sampling Frame 2 “Counterdiscourses 2007 - 2010”. The latter acted as the pool of documents out of which the Collection of Quotes for POL-II and Peace/Justice were created.

The United States’ unique institutional and discursive attack against the Court is a singular example of the power, or lack thereof, domestic discourses have in challenging the framework of international policymaking. The counterdiscourse spearheaded by the United States can be circumscribed to approximately 4 years, and its temporal location sets it apart from other hegemonic challenges. POL-I is the earliest contestation of the Justice hegemony, one that simultaneously revealed the strength of the hegemonic discourse in setting the parameters of the Council’s security policy, and the ways in which this power could be contested. Sampling Frame 3 (Annex 4) covers a period of three years, between 2007 to 2010, when opposition at the UNSC against the referral of situations to the ICC, or any other criminal justice mechanism, became strongest. This frame covers therefore ICC and criminal justice contestation in a broader manner, across a variety of actors. By applying the criteria described above I identified two different counterdiscourses and assigned them to the Collections of Quotes “Politicization II” (Annex 7) and “Peace vs. Justice” (Annex 8). This classification of arguments into collection of quotes transformed my data sources into “text” and enabled

a greater methodological clarity in the identification of the operationalized discursive mechanisms.

Table 10. Collection of Quotes: “Discourse” becomes “Text”

Nr.	Title
Collection of Quotes 1 (Annex 5)	The Justice Discourse 2002-2010
Collection of Quotes 2 (Annex 6)	Politicization I/POL-I: U.S. anti-ICC Campaign: 2000 – 2004
Collection of Quotes 3 (Annex 7)	Politicization II/POL-II: A.U. Counterdiscourse 2007-2009
Collection of Quotes 4 (Annex 8)	Peace vs. Justice/Peace/Justice: Counterdiscourse 2007-2009

The material provided by Collection of Quotes 2 to 4 (Table 10) facilitated the identification of three different discursive structures, the backbones of the respective counterdiscourses. This was the empirical basis for the application of meso-level discursive mechanism 7 – Contestation of Boundaries – and the findings were presented in Chapter 4 (Empirical Results II – Discursive Challenges). The counterdiscourses showed a similar operational pattern, in trying to create alternative meanings for key empty signifiers, while attempting to dislodge the nodal signifier of Justice.

The Collection of Quotes constituting the “text” of the Justice discourse is the biggest document among the four, and covers the longest period of time: 2002 to 2010 (Annex 5). In order to facilitate a closer reading of this material and ease the hermeneutic stage of my data analysis, I applied a secondary level of coding to the Justice Collection of Quotes. Annexes 9 to 11 summarize the results of this further textual selection. The various references to “we” qua “international community” and “Other” allowed me to trace the process through which Justice constructed a new collective identity (Discursive Mechanism Nr. 2); the descriptions associated with the empty signifiers “Justice”, “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability” and “Rule of Law” facilitated the reconstruction of the linking of political demands (Discursive Mechanism Nr. 1), the portrayal of the emergence of “justice” as nodal signifier (Discursive Mechanism Nr. 3), its effect on the other empty

signifiers (Discursive Mechanism Nr. 4) and the linguistic map of these reformulations (Discursive Mechanism Nr. 5). Finally, by tracing the association of “Justice” with a particular social fantasy and the International Criminal Court (Annex 11), I was able to identify the substantive content of the narrative characterizing the hegemonic discourse and the functions it performs in ensuring its stability (Discursive Mechanism Nr. 6).

Table 11. Coded Segments: The Justice Discourse

Nr.	Title
Coded segments (Annex 9)	“We” versus the “Other”
Coded segments (Annex 10)	The Elements: “Justice”, “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability”, “Rule of Law”
Coded segments (Annex 11)	“Justice” qua Social Fantasy and the ICC Role

2.3.3. Data Analysis II – A Hermeneutic Presentation of Findings

The final step of my data analysis was hermeneutic, built on the preceding stages of my research design, which had fleshed out the classic qualitative design of this case study. My application of PDT to the selected text material could not have been finalized, however, without this hermeneutic approach. The operationalization of my chosen Meso-level Discursive Mechanisms relied on the coded segments identified in these previous stages. My findings suggest that the three counterdiscourses I analyzed were not successful in replacing Justice, nor in undermining its dominant position in international security policy. Until May 2010, there was no discursive alternative which could have legitimized a different set of policy measures, or which could have laid out a new conflict management strategy. “Justice” appeared to be still holding sway, symbolically, over “Peace”. The interpretation of these ‘battles’ of meaning, fought over the elements structuring these discourses, was therefore the final step of my discourse analysis. Because texts do not speak for themselves, the empirical findings of my interpretation are presented in Chapters 3 and 4, which correspond roughly to my identification of the dominant discourse: Justice (Chapter 3), and three

counterdiscourses: “Politicization I”, “Politicization II ”and “Peace vs. Justice” (Chapter 4). In order to facilitate the presentation of my findings, all four discourses were introduced in two ways: a historical background, which positioned their emergence in a particular political context, and a structural analysis. The background consists of an analytical narrative detailing the ‘battles’ over meaning between different discourse producers and the historical events that triggered them. The structural analysis decodes the main reformulations of the empty signifiers structuring the discourse, and explores identity-building processes.

Chapter 3. Empirical Results I: A New Hegemonic Discourse

“This is why a healthy, effective United Nations is so vital. If properly utilized, it can be a unique marriage of power and principle, in the service of all the world’s people.”

Kofi Annan, Address to the 2005 World Summit

3.1. Introduction

In the span of eight years, between 2002 and 2010, a series of permutations of meaning take place in international discourse, which transform the discursive framework and the practice of international security. A new ideology and a different set of legitimate policies become the hallmark of UNSC action. “Justice” acquires gradually the position of nodal signifier in a field of discursivity increasingly split through chains of equivalent elements into two opposing camps.

In an almost complete reversal of the logic of populism²⁰⁵, the institutional establishment represented by the United Nations Security Council and the main international organizations participating in the wider security debate (Chapter 2, Table 3) work to recreate the meaning of the staple collective identity of international politics:

²⁰⁵Laclau, *On Populist Reason*, 2007.

the international community. This is however a different kind of “international community”. Set apart from its Cold War past, the “we” of international security becomes a political subject with a humane face, designed to appeal to the man on the street, a generic individual who in the 21st century has become acknowledged as the legitimate beneficiary of security. Grippled by Justice, “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability”, and the “Rule of Law” acquire distinct meanings as internal moments of the new dominant discourse. Previously embedded in the policy discourses of *Human Security* and the *Responsibility to Protect*, these empty signifiers coalesce anew around “justice” qua “criminal justice” and its dyadic relationship with “peace” qua “sustainable peace”. Finally, an emerging social imaginary gives stability to the meanings and identities of Justice.

The main empirical basis for the findings presented in this chapter is the Collection of Quotes – The Justice Discourse 2002-2010 (Annex 5). The secondary coding procedure and the respective Annexes presented in Table 11 (Chapter 2) have provided the data for the following description and evaluation of the seven Meso-level Discursive Mechanisms. The debate on humanitarian intervention, the institutional reform of the U.N. collective security system and the war in Darfur represent the historical backdrop of this process of hegemonization. Two characteristics define one of the most interesting discursive phenomena of contemporary international relations.

First, this new hegemony is the result of political struggles over the meaning of key policy concepts and the rise of a new social imaginary capable to stabilize the Justice hegemony by portraying an appealing “promise of the future”. This world of justice, democracy, security, and development is one of the key representations structuring the Justice discourse (Chapter 3.4). Second, Justice is an institutional discourse directly connected with attempts to reform the U.N. Security Council’s role as the guarantor of international peace and security. The entry of Justice in international

security debates was facilitated by the semantic effects of earlier policy attempts to circumvent the “humanitarian intervention” dilemma and by concrete historical circumstances that triggered a turn to law in international discourse. It is this observable empirical change and its history that I begin to discuss in the following section.

3.2. Policy Debates in International Security and the Production of “Empty” Signifiers

PDT analyses identify as the trigger of discursive change an external event whose effects cannot be handled within the existent symbolic order. The immediate cause of change in a field of discursivity varies therefore from environmental catastrophes to civil wars and domestic or transnational revolutions. I argue that international policies are created within fields of discursivity that follow the same laws of (discursive) change.

The end of the Cold War is the external shock in international security policy that triggered several institutional and conceptual changes. While 1989 removed previous ideological antagonisms between the Permanent Members of the U.N. Security Council, it also brought back into the limelight inconsistencies in the Organization’s foundational rules. One of the most famous effects of these inconsistencies is the humanitarian intervention dilemma. Rather than a symptom of a particular historical period, the problematique of international military interventions on the territory of a sovereign state is the enduring legacy of two contradictory provisions in the United Nations Charter. The U.N. was founded in 1945 in order to maintain international peace and security (Art. 1.1. U.N. Charter) and legitimize an international order grounded on the principle of the sovereign equality of all its Members (Art. 2.1. U.N. Charter). Evolving from these provisions and those covered by Chapter VII U.N. Charter (“Action with respect to threats to the peace, breaches of the peace, and acts of

aggression”), international security policy is the field that addresses potential security threats and breaches of international peace.

Intervention is the U.N.’s last resort measure in the fulfillment of its security role. However, choosing a course of action, either intervention or non-intervention, triggers a clash between these equally powerful provisions. In the absence of a principle allowing the identification of a normative hierarchy, decision-making in international security policy remains therefore either deadlocked, or prone to ad hoc solutions. PDT offers a different framework for addressing this problem. From a Poststructuralist perspective, the humanitarian intervention dilemma is not only the effect of a problematic institutional design, but also a sign of the incapacity of the current hegemonic discourse to process a real world problem. By stretching a bit the definition of a “trigger” one can begin to see how policy fields act as fields of discursivity. United Nations military interventions are not only legally and logistically challenging operations. They are also the discursive effect of multiple negotiations of meaning. If one switches the lens through which U.N. actions are analyzed, it becomes possible to see humanitarian intervention as a discursive gap and policies attempting to overcome this dilemma as embedded within competing hegemonic discourses. The UNSC’s incapacity to act in controversial situations such as Rwanda or Srebrenica can be linked to the absence of legitimate justifications for intervention and, therefore, of a dominant discourse with the ability to hegemonize the field of discursivity in international security.

I argue that a hegemonic discourse capable of closing this discursive gap emerged between 2002 and 2010. Justice qua criminal justice created a stable framework of legitimate meanings and gave the Security Council a policy option: the referral of civil conflict situations to the International Criminal Court. This hegemonization of international security would not have been however possible without

the effects of previous discourses. The policy debates leading to the 2005 World Summit released a series of elements from the grip of a presumably older discursive formation and allowed them to “float” unfixed in the social space of international security policy. The *Responsibility to Protect* (R2P) and *Human Security* are two major policy discourses that attempted to rearticulate these elements, in particular the key concepts of “sovereignty” and “security”.

The historical moment in which these discourses become visible in political and policy debates is the 2005 World Summit, the highlight of early post-1989 efforts to reform the U.N. and its security policy. In 2001 and 2004, two independent expert panels, the Canadian-sponsored International Commission on Intervention and State Sovereignty (ICISS)²⁰⁶ and the Secretary-General’s High Level Panel on Threats, Challenges, and Change²⁰⁷ issued their policy proposals on the humanitarian intervention dilemma and the reform of the U.N.’s security system²⁰⁸. The ICISS gave one of the most famous reformulations of “sovereignty” as the “responsibility to protect”. This rearticulation was expected to shift the debate away from discussions concerning the legality of interventions in international law to the rights of the victims of armed conflicts and the obligations of sovereign states towards their citizens²⁰⁹. The Commissioners embraced as well a broader definition of “security” arguing that in international relations “human security” had become as significant as the older notion of “state security”²¹⁰. In 2004, the Secretary-General’s High Level Panel endorsed these rearticulations and subsequently made use of them for their own preparatory Report.

²⁰⁶International Commission on Intervention and State Sovereignty. "The Responsibility to Protect." edited by Gareth Evans and Mohamed Sahnoun. Ottawa, Canada: The International Development Research Center, 2001.

²⁰⁷United Nations High Level Panel on Threats, Challenges, and Change. *A More Secure World: Our Shared Responsibility*: United Nations 2004.

²⁰⁸Annan, Kofi, United Nations Secretary-General. "In Larger Freedom: Towards Development, Security, and Human Rights for All". Report of the Secretary-General, A/59/2005, 21 March 2005, §252-253.

The Report included proposals to increase the membership of the Security Council to 24 states and make the UNSC more representative on geographical and financial contribution criteria.

²⁰⁹ICISS Report, §2.28, §2.33.

²¹⁰ICISS Report, §1.28.

These discourses were complemented by and fed into ongoing Security Council discussions about the reform of U.N. peacekeeping practices, the Organization's role in promoting the rule of law, and the broader issue of civilian protection. The "system" these discourses challenged was the dominant understanding of collective security grounded in the U.N. Charter. The promotion of "human security" moved the debate conceptually away from the older version of "state security". Yet while the ethical importance of the "state" receded, its political salience as the main provider of security increased. The rise of this new discourse structured around the individual as its ethical core was balanced by a pragmatic emphasis on the significance of states for international order:

"If there is to be a new security consensus, it must start with the understanding that the front-line actors in dealing with all the threats we face, new and old, continue to be individual sovereign States, whose role and responsibilities, and right to be respected, are fully recognized in the Charter of the United Nations. But in the twenty-first century, more than ever before, no State can stand alone. Collective strategies, collective institutions and a sense of collective responsibility are indispensable. (...) no State, no matter how powerful, can by its own efforts alone make itself invulnerable to today's threats. And it cannot be assumed that every State will always be able, or willing, to meet its responsibility to protect its own peoples and not to harm its neighbors."²¹¹

Both discourses tried to circumvent the image of international relations as an international society of states and go beyond either pluralistic or solidaristic understandings of IR²¹². They also endorsed new definitions of agency in international

²¹¹Annan, Kofi, U.N. Secretary-General, A More Secure World, Synopsis („Towards a new security consensus“).

²¹²Bellamy, Alex. 2010. The Responsibility to Protect - Five Years on. Ethics & International Affairs 24:143-169.

relations: the international community in the case of R2P and the individual for *Human Security*.

The Secretary-General's own Report, *In Larger Freedom*²¹³, issued in March 2005, only a couple of months before the 2005 World Summit, acknowledged these conceptual developments. Kofi Annan equated "security" with "development" and "human rights". The Report explored the idea of a tripartite definition of freedom qua "freedom from want", "freedom from fear" and "freedom to live in dignity"²¹⁴. "Human security" was more successful in entrenching itself in international security policy. The clarity of its message helped its diffusion and in some cases even led to rearticulations of foreign policy²¹⁵. Although, as I argue below, both discourses failed to stabilize the meaning of all floating elements, their rearticulatory efforts facilitated the emergence of a new hegemony. These discourses created the conditions that gave Justice the possibility to fix available elements into a chain of equivalence and act as its strategic nodal point.

- *The Evolution of Policy Discourse I: Human Security*

The United Nations Development Programme Human Development Report (UNDP HDR) first formulated the concept of "human security" in 1994²¹⁶. This notion was meant to expand the traditional definition of international security and shift the emphasis from territorial integrity and national interest to the safety of the actual beneficiary: the population, hence the individual. This HDR definition was also substantively broader, with the concept covering two new ideas: "human security" as "freedom from want" and "freedom from fear"²¹⁷. While "freedom from want" refers to

²¹³U.N. Secretary-General, *In Larger Freedom*, 2005.

²¹⁴U.N. Secretary-General, *In Larger Freedom*, 2005, §5.

²¹⁵Paris, Roland. 2001. Human Security. *Paradigm Shift Or Hot Air?* *International Security* 26:87-102 and Suhrke, Astri. 1999. Human Security and the Interests of States. *Security Dialogue* 30:265-276.

²¹⁶United Nations Development Programme. "Human Development Report." New York and Oxford: Oxford University Press, 1994.

²¹⁷*Ibid.*, p. 24.

the fulfillment of basic economic needs, “freedom from fear” is a rearticulation of the traditional definition of security as the absence of bodily harm. This conceptual broadening opened up possibilities for the identification of existential ‘threats’ in different sectors of human activity. Seven different areas are described in the UNDP Report as potentially threatening to human life. The concept of security is defined accordingly along these seven dimensions: from economic, food and health, to environmental, personal, community and political security²¹⁸.

The international diffusion of *Human Security* progressed quickly. In 1995, the Commission on Global Governance endorsed this broader notion and lumped together under the concept of “threat” phenomena such as hunger, diseases, and repression as well as harmful disruptions in the patterns of daily life²¹⁹. The Commission also stressed that “the security of people must be regarded as a goal as important as the security of states”²²⁰. This focus on individuals as bearers of an international right to protection was echoed several years later, in 2003, when the Commission on Human Security argued that this concept was meant to empower people, whether living in conflict or post-conflict situations, as refugees, or under the poverty-threshold²²¹. The enthusiasm in international affairs, in the beginning of the 2000s, was so great that *Human Security* entered diplomatic practice. States such as Canada or Japan adopted their own, albeit more restrictive, definitions and used the concept to reformulate foreign policy goals. Canada equated human security with

²¹⁸The seven elements of “human security” in the UNDP Reports are: 1) economic security (e.g. freedom from poverty); 2) food security (e.g. access to food); 3) health security (e.g. access to health care and protection from diseases); 4) environmental security (e.g. protection from such dangers as environmental pollution and depletion); 5) personal security (e.g. physical safety from such things as torture, war, criminal attacks, domestic violence, drug use, suicide, and even traffic accidents); 6) community security (e.g. survival of traditional cultures and ethnic groups as well as the physical security of these groups); 7) political security (e.g. enjoyment of civil and political rights, and freedom from political oppression). See: UNDP Human Development Report 1994, p. 27-31.

²¹⁹Commission on Global Governance. "Our Global Neighbourhood. The Report of the Commission on Global Governance." Oxford: Oxford University Press, 1995.

²²⁰Our Global Neighbourhood, “Promoting Security” (Ch. 3). Online resource retrieved at: <http://www.gdrc.org/u-gov/global-neighbourhood/>.

²²¹Kettermann, Matthias. 2006. The Conceptual Debate on Human Security and Its Relevance for the Development of International Law. *Human Security Perspectives* 1:39-52, p. 43.

“freedom from pervasive threats to people’s rights, safety or lives” and identified five foreign policy priorities among which the protection of civilians as well as the promotion of governance and accountability for the public and private sectors²²². Together with Norway, Canada launched the Human Security Network, a forum of like-minded states that have so far supported a number of important international policy initiatives²²³. Some of the most significant are the banning of anti-personnel landmines, preventing the misuse and proliferation of small arms and light weapons, and the promotion of an International Criminal Court²²⁴. The concept was officially included in U.N. debates in 1999, when Secretary-General Kofi Annan chose to focus in his Address to the 54th General Assembly on the prospects for “human security” and “intervention” in the 21st century²²⁵.

Some analysts have suggested that the power of “human security” lies in its vagueness²²⁶. Because various political demands can be linked under its umbrella, this definition appeals to a broader international audience. From a PDT perspective, what matters is not whether *Human Security* prescriptions can be translated directly into practical policies, but rather its ability to generate consensus around a new vision of collective security. For a PDT analysis “human security” is therefore an empty signifier, the reformulation of an older element pertaining to discourses on humanitarianism and development. The concept comes with an attached identity, the individual as an international legal and political actor, and a script for international action, albeit of a rather vague kind: the protection of this generic individual’s rights. *Human Security* transformed humanitarian concerns into a security issue and ultimately challenged

²²²Paris, 2001, p. 90.

²²³Krause, Keith. 2007. Towards a Practical Human Security Agenda. Geneva Center for the Democratic Control of Armed Forces Policy Paper No. 26:1-20 as well as Paris, Roland. 2001. Human Security. Paradigm Shift Or Hot Air? *International Security* 26:87-102; and Paris, Roland. 2004. Still an Inscrutable Concept. *Security Dialogue* 35:370-372.

²²⁴Krause, 2007, p. 4.

²²⁵Annan, Kofi, U.N. Secretary-General, "Secretary-General Presents His Annual Report to the General Assembly", United Nations, 20 September 1999.

²²⁶Paris, 2001; Suhrke, 1999.

international law-making processes by legitimizing the participation of individuals in the creation of new international norms²²⁷. The ambivalent meaning of its main element, its greatest strength, proved however to be its major weakness. The discourse stops short of providing a coherent conceptual framework for the drafting of international security strategies and cannot be easily translated into concrete policy measures.

- *The Evolution of Policy Discourse II: the Responsibility to Protect*

The *Responsibility to Protect* is another major policy discourse that attempted to overcome the humanitarian intervention dilemma by reformulating a grounding concept of the post-1945 international order: sovereignty. In 2001, the International Commission for Intervention and State Sovereignty redefined “sovereignty” as the “responsibility” for “protecting the safety and lives of citizens and promotion of their welfare”²²⁸. From the beginning, the political appeal of the Commission’s message was meant to be broad. The ICISS endorsed as well the concept of “human security”. The Report justified its approach by invoking the necessity of taking into account the impact of emerging principles of human rights and human security on state and international security practice²²⁹. R2P was in this way programmatically strengthened through linkages to the related discourses of humanitarianism and *Human Security*. The Report even provided its own definition of this concept, similar to the one put forward in the 1994 UNDP Human Development Report. According to ICISS, “human security” referred to “the security of people – their physical safety, their economic and social well-being, respect for their dignity and worth as human beings, and the protection of their human rights and fundamental

²²⁷Kettermann, 2006.

²²⁸ICISS Report, §2.15. The re-characterization of “sovereignty” qua “responsibility” is spelt out in paragraphs §2.14 and §2.15.

²²⁹ICISS Report, §2.6.

freedoms“.²³⁰ The endorsement of “human security” along these general lines makes the carefully drafted definition of R2P stand out even more.

“Responsibility” became relatively quickly the new catchphrase in international security policy. In order to reframe the highly divisive humanitarian intervention debate, ICISS followed in the footsteps of the *Human Security* discourse by attempting to forge a new vision of collective security where “sovereignty”, a state’s legal identity in international law, is reformulated as “responsibility”. Additionally, the Report creates a high threshold for any potential derogation from the principle of non-intervention. The exercise of “responsibility” towards individuals qua citizens falls primarily to the state and only in the last instance, once the state fails in its duty to protect, to the international community. Although this formula is still sufficiently conservative and does not strip states of their sovereign prerogative over their territory, it does create a window of opportunity for legitimate international interventions and, ultimately, empowers the Security Council to act.

For some international actors, this was a step too far. The 2005 World Summit adopted R2P, which was subsequently endorsed by the U.N. General Assembly²³¹ as well as the U.N. Security Council²³². The Summit Outcome Document however offers only a revised version of the principle presented in the 2001 ICISS Report²³³. The original R2P included not only a definition of “state sovereignty” as “responsibility towards local populations”, but also a threshold for overriding the principle of non-intervention, a set of criteria for military interventions, and the requirement that any intervention should seek the authorization of the Security Council. The World Summit Outcome Document recognized the responsibility of states to

²³⁰ICISS Report, §2.21.

²³¹The 2005 World Summit Outcome was adopted by General Assembly Resolution A/RES/60/1 of 15 September 2005.

²³²The U.N. Security Council reaffirmed paragraphs 138 and 139 of the 2005 World Summit Outcome Document in Resolution 1674, S/RES/1674(2006), 28 April 2006, §4 and in Resolution 1894, S/RES/1894(2009), 11 November 2009, Recitals.

²³³2005 World Summit Outcome, §138-9.

protect their citizens, but the emphasis fell not on the rights of the individual qua citizen or the meaning of responsibility. Rather, the state was reaffirmed as the main guarantor of security. The role of the international community was reduced to that of a collective safety net as an assistance provider, and intervention became an extreme hypothetical case.

Although the leaders attending the World Summit agreed to continue discussing R2P in the General Assembly, by 2009 any possibility of a consensus was thoroughly deadlocked²³⁴. After 2005, the Security Council reaffirmed only once, in one of its Resolutions on the issue of “Protection of civilians”, the respective R2P paragraphs of the World Summit Document²³⁵. References to R2P in the Council’s Presidential Statements were also scarce. In 2009, however, a new initiative proved successful in reinserting “responsibility” in U.N. decision-making. By eliminating the concept’s more controversial policy implications and switching to a minimum normative consensus on “sovereignty” as “responsibility”, U.N. Secretary-General Ban Ki Moon showed the way forward out of this political deadlock²³⁶. His 2009 Report on “Implementing the Responsibility to Protect” outlined his “narrow, but deep” approach²³⁷. Other provisions of the original R2P, such as the threshold for military interventions and self-restraint in the use of veto by UNSC permanent members, were discarded in favour of a three-pillar strategy²³⁸. The U.N. SG’s version of R2P relies on paragraphs 138 and 139 of the World Summit Outcome and is generally recognized as the principle’s authoritative implementation framework²³⁹.

²³⁴Bellamy, 2010. For a discussion of R2P in connection to the crisis in Darfur and the Iraq war see also: Bellamy, Alex. 2005. Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq. *Ethics in International Affairs* 19:31-54.

²³⁵United Nations Security Council. Resolution 1674, S/RES/1674(2006), 28 April 2006.

²³⁶Bellamy, 2010.

²³⁷United Nations Secretary-General. "Implementing the Responsibility to Protect". Report of the Secretary-General, A/63/677, 12 January 2009.

²³⁸*Ibid.*, Summary: Pillar one: The protection responsibilities of States; Pillar two: international assistance and capacity-building; Pillar three: timely and decisive response.

²³⁹*Ibid.*, §2.

The initial discursive strategy employed by supporters of the original R2P failed to garner sufficient political support. This situation was relatively paradoxical given that the concept was developed in the policy world and, therefore, strategically aimed at forging consensus over international security policy. In their Foreword to the ICISS Report, the Commission's co-chairs, Gareth Evans and Mohamed Sahnoun, specifically referred to "the so-called 'right of humanitarian intervention'"²⁴⁰. If the lack of political will to implement R2P criteria in order to streamline military interventions remains to this day obvious, just as intriguing is nevertheless the significant number of institutions created to support its international diffusion²⁴¹. I argue that the discursive success of the original R2P was undermined by its connection in the ICISS Report to "protection". Whereas no international actor denied that "sovereignty" should be understood as "responsibility"²⁴², the issue of "protection" proved much thornier. As an empty signifier in the R2P discourse "protection" offers a broad base for identification. Anyone can become a "protector". In practice, this concept resuscitates however the same distinction that marred the humanitarian intervention debate, namely the question of how to draw the line between legitimate reasons for intervention/protection and illegitimate ones.

One of the unspoken conclusions of the 2005 World Summit was that, for the UNSC Permanent Members, agreement on a different hierarchy of "protectors" remained politically impossible. There are of course other possible explanations why consensus on R2P failed. David Chandler argues that rather than avoiding situations of illegitimate interventions by tying the powerful permanent members of the Security Council to a set of criteria, the principle is a reflection of the current power distribution

²⁴⁰ICISS Report, Foreword.

²⁴¹Bellamy, Alex. 2013. The Responsibility to Protect: Added Value Or Hot Air? *Cooperation and Conflict* 48:333-357.

²⁴²A concept initially coined by Francis Deng, Francis M., Sadikiel Kimaro, Terrence Lyons, Donald Rothchild, and William Zartman. "Sovereignty as Responsibility. *Conflict Management in Africa*." Washington D.C.: The Brookings Institution, 1996.

in international affairs. No intervention could ever take place on the territory of a UNSC Permanent Member. Instead of offering a way forward from this conundrum, the new R2P language is arguably used to justify the status quo²⁴³.

If explanations vary about the ICISS failure to make R2P accepted in its original version, one aspect of this narrative has nevertheless garnered consensus: the alliance promoting R2P did not manage to gain sufficient political support for the practical implementation of this principle into a security policy. Even the target audience, developing countries, were weary of endorsing a concept some thought would enable double standards in the enforcement of international legal norms²⁴⁴.

The “protection” element in R2P did not vanish from international security practices. Rather, it found a different outlet. Parallel to the loosening up of Cold War orthodoxies about the definition of “security”, the Security Council began to take an active role in the creation of a new normative framework. The humanitarian intervention debate was bypassed in exchange for a case-by-case approach to intrastate violence. If the act of “protection/intervention” was brushed aside in favour of “prevention” and “assistance”, the idea behind R2P shifted to a different area: the *protection of civilians* in peacekeeping mandates.

The Security Council merged the re-affirmation of R2P in the 2005 World Outcome Document with the issue of civilian protection. The UNSC had taken steps as early as 1999 towards reforming U.N. peacekeeping practices and including provisions on the *protection of civilians* in the missions’ mandates. The Council’s first act on this topic was Resolution 1265 of 17 September 1999, where the UNSC expressed its willingness to consider “how peacekeeping mandates might better address the negative impact of armed conflict on civilians”²⁴⁵. One year later, Resolution 1296 gave more

²⁴³Chandler, David. 2004. The Responsibility to Protect? Imposing the 'Liberal Peace'. *International Peacekeeping* 11:59-81.

²⁴⁴Chandler, 2004.

²⁴⁵United Nations Security Council, Resolution 1265, S/RES/1265(1999), 17 September 1999, §11.

substance to this political willingness. The Security Council explicitly affirmed its intention to ensure that peacekeeping missions are given “suitable mandates and adequate resources to protect civilians under imminent threat of physical danger”²⁴⁶. Resolution 1674 of 2006 narrowed down the concept of “civilians”, replaced with those “under imminent threat of physical danger within their zones of operation”²⁴⁷. This provision has become standard at the U.N. and, after 2005, it has been routinely incorporated in the mandates of U.N. peacekeeping missions. In his 2005 Report, the Secretary-General restated his call for a “culture of protection”²⁴⁸ in international relations, encouraging the Council to continue updating the normative framework safeguarding the rights of individuals in conflict situations²⁴⁹.

The 2005 World Summit Outcome Document represents a turning point in the historical development of post-Cold War discourses on security. Purposefully crafted to reflect consensus, the Outcome Document brings together different and sometimes opposing political demands. A common denominator on security policy which embraces “freedom from want” and “freedom from fear”, “democracy as an international value”, the “international rule of law”, “a culture of peace”, and “human rights” reflects more the ambivalence of Summit participants, rather than identifies a practical way to address breaches of international peace and security.

The Summit ended on a performative note, by having Member States reaffirm in the first section of the Draft Resolution their commitment to the purposes and principles of the Charter and international law as “indispensable foundations of a

²⁴⁶United Nations Security Council, Resolution 1296, S/RES/1296(2000), 19 April 2000, §13.

²⁴⁷United Nations Security Council, Resolution 1674, S/RES/1674(2006), 28 April 2006, §16.

²⁴⁸United Nations Secretary-General. “Report on the Protection of Civilians in Armed Conflict”, S/2005/740, 28 November 2005, §53.

²⁴⁹United Nations Security Council, Resolutions on the topic of “Protection of civilians”: Resolution 1325 (2000), S/RES/1325 (2000), 31 October 2000 (“Women, Peace and Security”); Resolution 1502(2003), S/RES/1502(2003), 26 August 2003 (“Humanitarian and UN Personnel”); Resolution 1612(2005), S/RES/1612(2005), 26 July 2005 (“Children in Armed Conflict”); Resolution 1674, S/RES/1674(2006), 28 April 2006 (“The Responsibility to Protect and the Protection of Civilians”); Resolution 1378(2006), S/RES/1738(2006), 23 December 2006 (“Protection of Journalists”); Resolution 1894, S/RES/1894(2009), 11 November 2009 (“Protection of Civilians and the Responsibility to Protect”).

more peaceful, prosperous, and just world”²⁵⁰. The reform of the U.N. Security Council was shelved for future discussions and two new bodies were created: a Peacebuilding Commission²⁵¹ and the Human Rights Council²⁵². If the ambitions of institutionally redesigning a collective security system for the 21st century were ultimately scaled down, the language framing these discussions exhibited signs of change. The provisions of the Outcome Document reflected a general U.N. concern with the necessity of relying on international law qua “rule of law” as the standard setter for legitimate state behaviour²⁵³. The topic was transferred to the U.N. General Assembly in 2006²⁵⁴. The G.A. adopted several resolutions on the international rule of law and decided that beginning with its 62nd Session the Sixth Committee should annually choose one or two subtopics for further discussions²⁵⁵.

The 2005 World Summit is also the high point of the R2P and *Human Security* discourses. The redefinition of “sovereignty” as “responsibility” and the struggle to create a new consensus on “human security” are among the first international attempts to reform UNSC security policy. Despite their inability to provide a homogeneous framework for policymaking, one of their most important effects is the decoupling of “sovereignty” and “security” from traditional Cold War definitions. Even if these reformulations failed to garner sufficient political support for a complete overhaul of the U.N.’s intervention policy, this turn to law and discourse in international

²⁵⁰2005 World Summit Outcome, A/RES/60/1, §1.2.

²⁵¹2005 World Summit Outcome, A/RES/60/1, §97-105.

²⁵²2005 World Summit Outcome, A/RES/60/1, §157-160.

²⁵³2005 World Summit Outcome, A/RES/60/1, §134.

²⁵⁴Liechtenstein and Mexico requested in a letter addressed to the U.N. Secretary-General, that the rule of law at the national and international levels be included on the provisional agenda of the General Assembly’s 61st session. See: United Nations General Assembly. "Request for the Inclusion of an Item in the Provisional Agenda of the Sixty-First Session. The Rule of Law at the National and International Levels." Letter Dated 11 May 2006 from the Permanent Representative of Liechtenstein and Mexico to the United Nations Addressed to the Secretary-General, A/61/142, 22 May 2006.

²⁵⁵United Nations General Assembly. "Resolution 61/39. The Rule of Law at the National and International Levels", A/RES/61/39, 18 December 2006, §5. In 2011, the U.N. General Assembly decided to have the Sixth Committee debate the topic of “Rule of law and transitional justice in conflict and post-conflict situations”. See: United Nations General Assembly. "Resolution 65/32. The Rule of Law at the National and International Levels," A/RES/65/32, 10 January 2011, §14.

security created the preconditions for a more successful hegemonic practice. The legacy of R2P and *Human Security* is therefore a field of discursivity crisscrossed by elements ready to be rearticulated. The empty signifiers of “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability” and “Rule of law” would soon be in the grip of a new hegemonic rearticulation. The criminal justice discourse was about to provide a viable and credible alternative to the various demands made against the U.N. collective security system.

3.3. A New Hegemony: The Justice Discourse

The institutional background that provided the testing ground for these new meanings are a series of U.N. Security Council debates. Between 2002 and 2007, UNSC Member States reopened the international dialogue on the relationship between “peace” and “justice” as well as the United Nations’ role in promoting the rule of law²⁵⁶. In 2006, the United Nations General Assembly initiated a separate discussion on the rule of law and transitional justice in its Sixth Committee for Legal Affairs. These developments suggest that genuine concern about the role of international law in global politics existed at that time within the United Nation system.

The debates also draw the contours of my chosen “Institutional Context I” within the three sites of discourse production (Table 3, Chapter 2). This institutional layer is the most semantically charged area in the international security field of discursivity, because the winning arguments at the UNSC are also the empirical proofs for the emergence of a new dominant discourse. If the Council’s conceptual debates helped reformulate the meanings of key Justice empty signifiers, the real test for the power of the new discursive formation to set the parameters of international security

²⁵⁶I identified three main debates for the topic: “Justice and the Rule of Law: the United Nations Role”, on the 24 Sept. (S/PV.4833) & 30 Sept. 2003 (S/PV.4835) as well as 6 October 2004 (S/PV/5021 & Resumption 1). The debate of 22 June 2006 focused on issue of “Strengthening international law: rule of law and maintenance of international peace and security“ (S/PV.5474 & Resumption 1).

policy came with the UNSC discussions of Darfur²⁵⁷ and protection of civilians²⁵⁸. Overall, these conceptual and policy debates contributed to the legitimacy of the new semantic changes, while also revealing the extent to which such claims could be undermined by different counterdiscourses.

Seven Meso-level Discursive Mechanisms have facilitated the hegemonization of international security by the Justice discourse (see Table 2, Chapter 2): the creation of an historic bloc through the empirical linking and reconstitution of political demands (DM1) and the creation of a collective identity (DM2); the emergence of “justice” as the nodal signifier of the new discursive formation (DM3); the rearticulation of key empty signifiers (DM4) and “peace qua justice” becoming the structuring dyad of the new discourse (DM5); the emergence of a new social fantasy grounded by the Justice narrative (DM6); and resistance against counter-hegemonic challenges contesting the boundaries of Justice and dislocating its moments (DM7). In this chapter I offer a hermeneutic reading of the first six discursive mechanisms, while chapter 4 provides an in-depth discussion of the final one, the contestation of the boundaries of Justice by three main counterdiscourses.

3.3.1. The Creation of an Historic Bloc and Collective identity²⁵⁹

Justice enters the Council’s deliberations during UNSC debates concerning the reform of U.N. peacekeeping (Issue on the Council’s agenda: “Protection of civilians”) the Organization’s role in promoting justice and the rule of law (“Justice and the Rule of Law”/“Strengthening International Law”), and Darfur (“Sudan”). Between

²⁵⁷14 UNSC debates concerning Sudan/Darfur are included in the Collection of Quotes for the Justice Discourse (Annex 5). These debates took place on: 11 June 2004 (S/PV.4988); 30 July 2004 (S/PV.5015); 18 September 2004 (S/PV.5040); 18 November 2004 (S/PV.5080); 11 January 2005 (S/PV.5109); 8 February 2005 (S/PV.5120); 16 February 2005 (S/PV. 5125); 24 March 2005 (S/PV.5151); 29 March 2005 (S/PV.5153); 31 March 2005 (S/PV.5158); 29 June 2005 (S/PV.5216); 13 December 2005 (S/PV.5321); 14 June 2006 (S/PV.5459); and 31 July 2007 (S/PV.5727).

²⁵⁸The two open debates on “Protection of Civilians in armed conflict“ took place on 9 Dec. 2005 (S/PV.5319 & Resumption 1) and 22 June 2007 (S/PV. 5703).

²⁵⁹The following quotes are taken from the coding exercise presented in Annex 9 – Coded segments “We“ vs. “The Other“.

2002 and 2007, “Justice” is gradually inserted in a chain of equivalent relationships including “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability” and the “Rule of law”. This insertion soon mutates into a relationship of structural domination, with “justice” acting as the head of a new discursive structure.

Because each “empty” signifier is the bearer of a political demand, every potentially dissenting “voice” is bought in by a discourse that manages to link successfully disparate political claims. For example, African demands for more social justice and development are merged with Western concerns about democratic principles and values. This connection creates a political alliance that expands further through the incorporation of other social demands. This process is similar to the emergence of a new constituency in domestic politics, where political discourse bridges different societal interests. The impact of Justice in UNSC debates was also enhanced by several pre-existent conditions. Thus, the policy debate on U.N. reform had generated not only the empty signifiers ready to be gripped by a new discourse, but also agreement on new international standards of behaviour. The vocabulary of international criminal law fits therefore the broader U.N. consensus over States’ increased responsibility towards their citizens and the necessity to support the norm of individual criminal responsibility in order to end armed conflicts.

“Justice” draws on all these previous achievements, enters the debate and steers it in a new direction: the insertion of international criminal law principles in peacebuilding strategies and, more specifically, the recognition of the International Criminal Court as a new and legitimate international security actor. An example of how this discursive steering works is the intervention by Sierra Leone’s representative, Mr. Pemagbi, who connects “respect for the rule of law” internationally with “international peace and security”, and “peace” with the ICC:

“Respect for the rule of law within States, at the national level, promotes peace and stability. Equally, respect for the rule of law at the international level promotes international peace and security. Support for the ICC should be seen in that perspective.”²⁶⁰

The logic of equivalence builds these chains (of equivalence) which gradually draw a frontier between the emerging dominant discourse and its exterior.

- *First, the discourse creates a new historical bloc by bridging different interests and absorbing all counter-claims (Discursive Mechanism 1 – “Empirical Linking and Reconstitution of Political Demands”).*

This bridging becomes possible because of an ambiguous point in the argumentative strategy of UNSC Member States. During the selected Security Council debates, diplomats emphasized one issue in particular: the recurrence of civil conflicts had shown repeatedly that halting temporarily an armed confrontation did not usually guarantee a stable peace. Member States concurred therefore that a comprehensive peace strategy should not be limited to negotiations of ceasefires and peace agreements. These were considered, at best, only short-term remedies. The argument however jumped quickly to a rather vague conclusion: “sustainable” or “lasting” “peace” was not possible without eliminating the “root causes” of conflicts. This was the ambiguous discursive point that allowed the logic of equivalence to divide the international security field along one major antagonism. The concept’s ambiguity supported the creation of a broader consensus on what these causes were as well as on the type of solution necessary to attain the objective of “peace”. “Root causes” acted therefore as the discursive bridge between various political demands and the cement of the new policy realignment.

²⁶⁰Mr. Pemagbi, Sierra Leone, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 30 (“Justice and the Rule of Law: the United Nations Role”).

Technically, the vague meaning of “root causes” facilitates the juxtaposition of a series of unrelated elements. In addition to the immediate causes of conflict, several other structural factors are mentioned interchangeably during these debates as a potential “root cause”. Among them is the lack of development, backwardness and poverty²⁶¹ as well as discrimination and prejudice²⁶². All these elements are simultaneously the bearers of political claims. Their juxtaposition expands the chains of equivalent relationships, making possible for African and South American countries, which had demanded more financial aid, to connect discursively with China’s insistence on poverty as the main cause of war. The political effect of this new realignment was that countries as different in their international interests as Mexico, Cameroon, Nigeria and China became the producers of a new, dominant discourse. Every new element defined as the “root cause” of international conflict expands this network of equivalent relationships further by allowing the incorporation of new claims into an emerging discursive coalition.

A second move facilitating DM1 was the readiness of UNSC Members to endorse either too vague, or too general ideas concerning the solutions needed for the attainment of “lasting” peace. In this case as well the logic of equivalence successfully brought together some unlikely allies. All UNSC Member States acknowledged the importance of “justice” for the preservation of peaceful international relations. Opinions

²⁶¹Mr. Li Zhaoxing, China, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 8-9 (“Justice and the Rule of Law: the United Nations Role”). See also for „development“: Mr. Derbez, Mexico, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 10 (“Justice and the Rule of Law: the United Nations Role”); Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 18 (“Justice and the Rule of Law: the United Nations Role”); Mr. Stagno Ugarte, Costa Rica, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 25 (“Justice and the Rule of Law: the United Nations Role”); Mr. Adekanye, Nigeria, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, Res.1, p. 18 (“Strengthening international law: rule of law and maintenance of international peace and security”); Mr. Tachie-Menson, Ghana, United Nations Security Council, Debate, 22 June 2007, S/PV. 5703, p. 20 (“Protection of Civilians in Armed Conflict”).

²⁶²Mr. Li Zhaoxing, China, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 8-9 (“Justice and the Rule of Law: the United Nations Role”).

differed rather over the interpretation of its meaning and the practical ways to enforce “justice”.

This alliance for Justice, created mostly during the “Justice and the Rule of Law” debates in 2003 and 2004, included at that time all UNSC Members. Austria and Guinea for example emphasized the significance of “multilateralism” for “peace”: a *peaceful* international order must be “just”, meaning “multilateral” in the conduct of its affairs²⁶³. For France and Benin “justice” was more than a foundational U.N. value. Both countries favoured peacebuilding strategies that addressed not only conflicts, but also took into consideration more dispersed societal grievances²⁶⁴. The French Representative argued that the international use of force was not a sufficient means to end wars permanently. Instead, the Council should take into account the claims of persecuted minorities and victims whose voices were demanding the protection of their human rights²⁶⁵. Trinidad and Tobago brought into the discussion the needs of individuals. Appeals to “justice” went beyond its restrictive interpretation as “criminal”, focusing on its social, political, and economic dimensions. Mr. Gift argued that only by improving the life conditions of the ordinary man in the street²⁶⁶, again through an internationally assisted process of state building, one could hope to bring about “peace”. Other countries interpreted “justice” in a more general way, as the duty to respect one’s obligations under international law. “Justice” became in this context one component of the international rule of law. Angola echoed France’s argument by suggesting that a

²⁶³Mr. Fall, Guinea, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 13 (“Justice and the Rule of Law: the United Nations Role”). See also for „multilateralism“: Mr. Pfanzer, Austria, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 32 (“Strengthening international law: rule of law and maintenance of peace and security”).

²⁶⁴Mr. Galouzeau, France, 24 Sept. 2003, United Nations Security Council, Debate, S/PV.4833, p.6 (“Justice and the Rule of Law: the United Nations Role“); Mr. Adechi, Benin, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 18 (“Justice and the Rule of Law: the United Nations Role“); Mr. De La Sablière, France, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p.18 (“Strengthening international law: rule of law and maintenance of peace and security“).

²⁶⁵Mr. Galouzeau, France, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.6 (“Justice and the Rule of Law: the United Nations Role“).

²⁶⁶Mr. Gift, Trinidad and Tobago, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.30 (“Justice and the Rule of Law: the United Nations Role“).

commitment to “justice” should also cover the institutional building of sustainable democratic societies²⁶⁷. The representative of Palestine supported the creation of a culture of law in international relations²⁶⁸, while Nigeria claimed that respect for human rights was an essential precondition to “peace”²⁶⁹. The catch-all-phrase belonged to Algeria, whose Representative called for a “culture of prevention” under which everything else was listed: “the promotion of sustainable development, poverty eradication, national reconciliation, good governance, the promotion of a culture of peace and tolerance, the rule of law and the observance of human rights”²⁷⁰.

“Justice” was present in all these arguments. When discussing “peace”, “security”, “development” and “human rights”, UNSC Member States emphasized either the equivalent relationship between these goals, or offered a nuanced interpretation of each element. Despite disagreements on other foreign policy issues, these chains of equivalence proved remarkably stable. For example, Russia argued consistently in favour of the rule of law in international relations²⁷¹. China used the

²⁶⁷Mr. Gaspar Martins, Angola, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 22 (“Justice and the Rule of Law: the United Nations Role”).

²⁶⁸Mr. Al-Kidwa, Palestine, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 15 (“Justice and the Rule of Law: the United Nations Role”).

²⁶⁹Mr. Wali, Nigeria, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 36 (“Justice and the Rule of Law: the United Nations Role”).

²⁷⁰Mr. Baali, Algeria, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 2 (“Protection of civilians in armed conflict”).

²⁷¹Mr. Ivanov, Russian Federation, United Nations Security Council, 24 Sept. 2003, S/PV.4833, p.5 (“Justice and the Rule of Law: the United Nations Role”). See also for statements on the “rule of law”: Mr. Cunningham, United States, United Nations Security Council, 24 Sept. 2003, S/PV. 4833, p. 20 (“Justice and the Rule of Law: the United Nations Role”); Ms. Palacio, Spain, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 14 (“Justice and the Rule of Law: the United Nations Role”); Mr. Pleuger, Germany, United Nations Security Council, 24 Sept. 2003, S/PV.4833, p. 15 (“Justice and the Rule of Law: the United Nations Role”); Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 19 (“Justice and the Rule of Law: the United Nations Role”); Mr. Guehenno, Under-Secretary-General for Peacekeeping Operations, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 3 (“Justice and the Rule of Law: the United Nations Role”); Mr. Haraguchi, Japan, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.9 (“Justice and the Rule of Law: the United Nations Role”); Mr. MacKay, New Zealand, United Nations Security Council, 30 Sept. 2003, S/PV.4835, p. 10 (“Justice and the Rule of Law: the United Nations Role”); Mr. Sahovic, Serbia and Montenegro, United Nations Security Council, 30 Sept. 2003, S/PV.4835, p.11 (“Justice and the Rule of Law: the United Nations Role”); Mr. Motoc, Romania, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 15 (“Justice and the Rule of Law: the United Nations Role”); Mr. Cappagli, Argentina, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 29 (“Justice and the Rule of Law: the United Nations Role”); Mr. Kim Sam-hoon, Republic of Korea, United Nations Security Council, 30 Sept. 2003, S/PV.4835, p.31 (“Justice and the Rule of Law: the United Nations Role”); Mr. Almansoorm,

image of a “better global village”, where “all countries live[d] in peace and stability”²⁷², to express its understanding of legitimate U.N. goals. Both Russia and China connected “justice” with the international “rule of law”, and associated the latter with the United Nations’ international role. The connections between potential root causes of wars and UNSC policies forged relatively easily political consensus among the Council’s members. The Darfur crisis strengthened rather than weakened this unlikely historical bloc. The alliance was forced in this particular case to act on its commitments and implement the policy requirements of the new discourse. The Darfur situation was ultimately referred to the International Criminal Court, and Justice proved its hegemonic status by setting the semantic parameters of the Council’s security policy.

UNSC Members differed however in their level of support for the Council’s measures. Between 2004 and 2005 Algeria, Brazil, China, Russia, Pakistan, and the U.S. abstained during the voting of crucial U.N. Charter Chapter VII Resolutions, but did not veto either the sanctions against Sudan, or the referral of the Darfur situation to the ICC²⁷³. China was the only state consistently abstaining on all Resolutions. However, despite its reluctance to endorse international sanctions and constrain Sudan, China did not relinquish its support for international justice. During the crucial Darfur debate of 31 March 2005, Mr. Wang Guangya emphasized China’s allegiance to the principles of international criminal justice, but prioritized effectiveness: “Undoubtedly,

Bahrain, United Nations Security Council, Debate, 30 September 2003, S/PV.4835, p. 35 (“Justice and the Rule of Law: the United Nations Role”); Mr. van den Berg, Netherlands, United Nations Security Council, Debate, 6 October 2004, S/PV.5052 (Resumption 1), p. 4 (“Justice and the Rule of Law: the United Nations Role”); Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 21 (“Strengthening international law: rule of law and maintenance of international peace and security”); Mr. Li Junhua, China, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 26 (“Strengthening international law: rule of law and maintenance of international peace and security”).

²⁷²Mr. Li Zhaoxing, China, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 8-9 (“Justice and the Rule of Law: the United Nations Role”).

²⁷³United Nations Security Council Resolution, S/RES/1556, 30 July 2004 - ban on weapons sales to rebels and Janjaweed armed groups, abstaining China and Pakistan; United Nations Security Council Resolution, S/RES/1564, 18 Sept. 2004 - creation of the ICI, abstaining Algeria, China, Pakistan, the Russian Federation; United Nations Security Council Resolution, S/RES/1591, 29 March 2005 - travel ban and asset freezes, abstaining Algeria, China, the Russian Federation; United Nations Security Council Resolution, S/RES/1593, 31 March 2005 - Darfur referral, abstaining USA, China, Algeria, Brazil.

the perpetrators must be brought to justice. The question is: What is the most effective and feasible approach in this connection?”²⁷⁴

The solidity of these chains of equivalence facilitated a period of relative discursive stability. Because the linking of political claims through the nodal signifier “justice” was very successful, no other element was left outside this chain of equivalent relationships. Moreover, a second mechanism helped strengthen the grip of Justice over these floating discursive elements. This second mechanism was a strong collective identity which, structured around the good vs. evil moral antagonism, gave discourse producers an attractive point of identification.

- *Second, the logic of equivalence strengthens this new political alliance by creating a strong collective identity (Discursive Mechanism 2 – “Collective Identity”).*

The emergence of a strong collective identity helped the hegemonization process by enforcing the discursive boundaries of Justice. This effect is analogous to that of Populism, a discourse that comes with an image of domestic politics constructed as two opposing blocs: the people vs. the establishment.²⁷⁵ Justice reverses however this splitting-of-camps logic. In a doubly successful move, the new hegemonic discourse reorganizes the “people” under the umbrella of the “international community”. The discourse applies the identity of the “Other” not to the establishment, but to those who fight against it. The ‘evil’ political system of Populism becomes the morally good “we” in Justice. Because of its ambiguous meaning, the “international community” is also a very flexible collective identity. Its substantive content can vary, therefore opening up the possibility of an endless chain of identifications. By allowing the discourse to stay relevant even when historical events disrupt the coherence of its representations, this flexibility explains partially why Justice gained such a strong footing at the UNSC.

²⁷⁴Mr. Wang Guangya, China, United Nations Security Council, Debate, 31 March 2005, S/PV.5158, p.5 (“Sudan”).

²⁷⁵Laclau, *The Logic of Populism*, 2007.

The “United Nations” and “international community” are used interchangeably during UNSC debates, and the two labels signify the same political referent. This “we” is a collective subject with a “conscience”, for which “justice and the rule of law is today at the very heart of [its] concerns”, which must act rightly by “strengthening and advancing the rule of law”, “uphold what is right” and “defend what is just”, “guide rather than direct, and reinforce rather than replace”, whose goals are to “build a better global village where there are no wars or conflicts as all countries live in peace”, to ensure “international peace and security”, “provide security to peoples in greatest need”, “preventing the breakdown of the State” and “laying the foundations for the establishment of the modern State”. Its “raison d’être” is to “save succeeding generations from the scourge of war, to reaffirm faith in the dignity and worth of the human person and to establish conditions under which justice can be maintained”²⁷⁶. This is a morally perfect Subject. While the U.N. represents this perfect “we”, the “Other” is a wider category which subsumes “the people”, those in “greatest need”, “those guilty of extreme violations of human rights”, “innocent civilians”, “persecuted minorities in Timor and Kosovo”, “victims who have been humiliated to the core”, “repressed aspirations to democracy”, “democratic citizenship” which needs to be restored, “nations weakened by war”, societies emerging from conflict, the “ordinary man in the street”, “future generations”, “a conventional set of interlocutors”, “self-styled republics and territories”, “black holes”, and “perpetrators of serious crimes”. The “Other” is everyone else, an identity that covers rather paradoxically both the ‘evil’ “perpetrators” and the ‘good’ “victims”²⁷⁷.

The strength of this collective identity relies on two additional pillars: first, the fascination exercised by a morally superior collective Self, and second, the antagonism We/Other structurally induces the subject to identify with the morally good

²⁷⁶The quotes are taken from Annex 9 – Coded Segments “We“ vs. the “Other“.

²⁷⁷Ibid., Annex 9.

“we”. This effect showed its power during the Darfur debates, when the sedimentation of the “international community”’s positive identity remained stable. Sudan accepted implicitly this discursive framework. During the voting of Resolution 1556, which imposed an arms embargo against Janjaweed and rebel groups, the Sudanese Representative blamed Sudan’s predicament on states actively trying to undermine the country’s sovereignty²⁷⁸. His intervention did not challenge however the identities of the Justice discourse. Sudan avoided being branded as the “Other” by claiming to be a responsible member of the international community and, therefore, part of the “we”. Mr. Erwa stressed that his country had assumed its responsibility towards Sudanese citizens and had taken measures to mitigate the suffering of Darfuris.²⁷⁹

Sudan is not the only discourse producer fighting the imposition of an unwanted identity. In an intervention during the Seventh Session of the ICC Assembly of States Parties, Mr. Fattah Ahmadi, the Iranian Representative, played as well the “international community” card:

“For more than half a century, and almost since the inception of the United Nations, the international community, through the General Assembly, has recognized the need to establish an international court to prosecute and punish perpetrators of the most heinous international crimes, namely war crimes, crimes against humanity, genocide and the crime of aggression. The establishment of the International Criminal Court was a milestone towards achieving peace through justice. Though there is still a distant way to achieve the desirable results.”²⁸⁰

The *jouissance*, the pleasure experienced by the subject during the moment of his or her identification, adds to the power of this identity. Because the fascination exerted by a

²⁷⁸Mr. Erwa, Sudan, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.13 (“Sudan”).

²⁷⁹Ibid., p. 11.

²⁸⁰Iran, Statement by Mr. Fattah Ahmadi, Director, Treaties and Public International Law Department, Ministry of Foreign Affairs, Seventh Session of the ICC Assembly of States Parties, The Hague, 14-22 November 2008.

morally superior Self grows once the Self improves ethically, the actors involved in the production of this identity were caught in a circle of meaning creation/identification. ICC Members, the NGOs supporting the enforcement of criminal justice principles as well as the international experts and public servants praising the merits of “justice” strengthened through their interventions the content of a collective identity whose grip over their actions was simultaneously increasing. These appeals to Justice contributed to their own enjoyment/jouissance of being part of the “we”. The morally superior Self is therefore the discursive effect of three interconnected argumentative strategies. The Members of the ICC Assembly, NGOs supportive of the Court as well as international experts and public servants popularized the criminal definition of “justice” in the wider security debate (Institutional Context II) and the media. These different argumentative strategies had distinct effects on the main identity of Justice. Their collective efforts however resulted in the creation of an international Self that was not only righteous, but also virtuous: the “just punisher”.

The discourse in the ICC Assembly of States Parties tried to stabilize the concept of a united international community that should be supportive of individual criminal responsibility and the Rome Statute. Joined by NGOs as well as international public servants and experts²⁸¹, ICC Members fed into the image of a morally righteous collective subject. References to the United Nations fell however into the background. Brushing aside the ideological split between ICC Members and non-Members, this discursive strategy aimed to create a common point of identification. The flexibility of the “we” collective identity facilitated this move.

Between 2002 and 2009, the Court’s Assembly of States Parties met nine times, with two resumed sessions in February and April 2003. During this period, eager to attract new Members, state actors sent a message of unity to the wider U.N.

²⁸¹Annex 3 – Sampling Frame – The Justice Discourse 2002-2010 summarizes the pro-Justice interventions of international public servants and experts as well as NGOs.

constituency, calling for more political support in the international fight against impunity. Justice and the ICC in particular were showcased as the accomplishment of the international community's "lofty goal" to ensure international peace and security²⁸². The emphasis fell on shared values and goals. The international values of "human rights", "justice" and the "rule of law" were brought into a close semantic relationship with the U.N.'s goals of "peace" and "security". The "international community", with which ICC Member States identified, was the subject endowed with these values and goals. The discursive performances during these yearly Assemblies continued to flesh out the vision of a 'righteous' international community. Brazil argued during the Fifth Session of the ICC Assembly that the expansion of the Court's membership could only help "our common international endeavour to uphold human rights, to promote international justice and the rule of law worldwide"²⁸³. In 2008, the Democratic Republic of Congo's statement invoked the necessity of a "morale minimale"²⁸⁴, a 'thin' morality in international relations that included international human rights treaties and the Rome Statute.

The legal identity of the Court was therefore smoothly integrated into a Justice discourse that took upon itself the task of unifying the discourse field of international security. The reconstitution of the "we" collective identity drew almost naturally on the logic of equivalence structuring this field. Canada broadened the roster of subject positions by appealing to other "democratic, law-abiding states"²⁸⁵ to join the Court, while Brazil reached out to "other peace loving countries"²⁸⁶. These secondary identities particularized several discursive positions. Justice avoided in this way a

²⁸²Annex 9 - Coded segments: "We vs. the Other", interventions by ICC States Parties.

²⁸³Brazil, Address by His Excellency Ambassador Gilberto Vergne Saboia, Head of the Delegation of Brazil, Fifth ICC Assembly of States Parties, General Debate, The Hague, 24 November 2006.

²⁸⁴DR Congo, Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de la Justice de la République Démocratique du Congo, à la Septième Session de l'Assemblée des Etats Parties au Statut de la Cour Pénale Internationale, La Haye, 14-22 Novembre 2008.

²⁸⁵Canada, Notes for an Address by the Honourable Bill Graham, Minister of Foreign Affairs, to the First Assembly of ICC States Parties, New York, 9 September 2002.

²⁸⁶Brazil, Statement by Ambassador Luiza Ribeiro Viotti, Permanent Representative of Brazil to the United Nations, Sixth Assembly of States Parties, General Debate, New York, 3 December 2007.

complete semantic closure for the “we” which, in a symbolic move, Columbia equated with the entire humankind²⁸⁷.

The politics of identification played out by ICC Members strengthened the Justice message of unity. The NGOs taking part in the sessions of the Court’s Assembly of States Parties acted however on a different rationale. If the ICC ASP States reinforced the collective identity of the “international community”, the NGOs were more versatile in their discursive production and more emphatic on the need for action. Rather than help construct a morally appealing Self, their statements emphasized the actors’ obligation to identify with and act upon the requirements of this identity. References to morality were used to strengthen the universalism of Justice²⁸⁸ and served as effective lobbying tools vis-à-vis international organizations such as the African Union²⁸⁹ and the Arab League²⁹⁰.

During this period, the discourse’ hegemonizing tendencies began slowly to show their constraining effects on international behaviour and to elicit resistance. If the morally superior collective Self acted as a strong identification point allowing bridges between divergent political demands, this flexibility caused at times international controversy. Palestinian Human Rights Organizations used Justice to lobby the international community into action against the Israeli invasion of Gaza in December 2008. Their demand for an International Criminal Court investigation into alleged war crimes brought together appeals to criminal justice with the political demand for Palestinian statehood. In its statement to the 2009 Session of the ICC Assembly of States Parties, the Palestinian Center for Human Rights asked rhetorically whether there

²⁸⁷Columbia, Intervention at the Fifth Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006.

²⁸⁸Coalition for the International Criminal Court, Statement by William R. Pace, Convenor, Eighth Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18-26 November 2009.

²⁸⁹Justice without Frontiers, Statement at the Seventh Session of the Assembly of State Parties to the International Criminal Court, The Hague, 14 November 2009; Human Rights Watch, "African Civil Society Declaration in Support of the ICC", 30 July 2009.

²⁹⁰Group of NGOS, Letter to the Arab League on the Situation in Darfur, 29 October 2007.

was no Court for Gaza²⁹¹. The NGOs' discursive strategy tried to mobilize support for intervention by calling on the international community to stop violence against civilians²⁹². Their message reinforced previous references by ICC Members to a higher international sense of morality and fed into the representation of a righteous collective Self:

“Today, in an international context that is drastically different from the one 12 years ago, this Conference is of unique importance. Although the support for international justice is often considered secondary, you can and you must affirm and reinforce your support for the International Criminal Court and the effective implementation of the Rome system. You will then be able to achieve the goal of the Court to put an end to impunity for the most serious crimes that deeply shock the conscience of humanity and threaten the peace and well-being of the world.”²⁹³

The Justice discourse opened a new international public space for conveying dissatisfaction with the human rights records of regional organizations and with efforts to implement the provisions of the Rome Statute in the national legislation of ICC Member States. Local actors channelled via Justice their criticism of authoritarian governments. International NGOs lobbied against “allies of President al-Bashir”²⁹⁴ arguing that a refusal to execute the Bashir arrest warrant would amount to a “betrayal

²⁹¹Palestinian Center for Human Rights, Statement at the Eighth Session of the Assembly of States Parties to the Rome Statute of the ICC, The Hague, 18 – 26 November 2009. See also: NGO Statement, “NGOs gathered in Kampala Call for End to Impunity Crisis Following Israeli Attack on Aid Convoy”, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010.

²⁹²Annex 9 - Coded segments: “We vs. the Other“, interventions by NGOs during the 2002/2009 Assemblies of ICC States Parties.

²⁹³Federation internationale des Ligues des Droits de l’Homme (FIDH), Opening Speech by Dismas Kitenge, Vice-President, for the Review Conference of the Statute of the International Criminal Court, Kampala, June 1, 2010.

²⁹⁴Human Rights Watch, Statement for the General Debate of the Eighth Session of the International Criminal Court Assembly of States Parties, 19 November 2009.

of the people of Darfur who are seeking justice”²⁹⁵. African activists lobbied on behalf of Darfur²⁹⁶, while Ugandan NGOs requested ICC States Parties to pressure Uganda into more effective cooperation with the Court by allowing the investigation of its own defense forces for alleged war crimes²⁹⁷. Nepalese NGOs pressured their own government to join the Court and honour its human rights commitments²⁹⁸. Latin American²⁹⁹, Arab³⁰⁰ and Asian³⁰¹ human rights organizations actively took part in a discursive reconstruction which portrayed their regions as connected through history, values, and respect for the international rule of law to the righteous collective Self. The key identity of the new hegemonic discourse enabled in this way further growth in the symbolic membership of the alliance for Justice.³⁰²

This process of substantiating the collective “we” continued in the public statements of key international civil servants and experts. Gradually, the idea that “justice” was the antithesis of politics gained ground. On 6 September 2004, before the Third Session of the ICC Assembly of States Parties, the Assembly’s first President, Prince Zeid Ra’ad Zeid Al-Hussein of Jordan referred again to “humanity” and “our

²⁹⁵Human Rights Watch, Statement to the General Debate of the International Criminal Court’s Seventh Assembly of States Parties, 15 November 2008.

²⁹⁶The Darfur Consortium (African and International Civil Society Action for Darfur), Statement on behalf of NGOs to the Fourth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 3 December 2005; International Refugee Rights Initiative and the INSAF Centre for Justice and Peace (Sudan), Statement on the Darfur situation and State cooperation with the ICC at th Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 4 Decemver 2007; Kenyan NGOs, “We demand that Kenya cooperates with the ICC in the arrest and surrender of President Omar al Bashir should he be in Kenya’s territory”, Letter to President Mwai Kibaki, 19 October 2010.

²⁹⁷Human Rights Network – Uganda (HURINET), Statement at the Eighth Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18-26 November 2009.

²⁹⁸National Coalition for the International Criminal Court Nepal (NCICC), Statement at the Seventh Assembly of States Parties to the International Criminal Court, The Hague, 14 – 22 November 2008; IKOHI – Indonesia, Statement at the Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 4 December 2007.

²⁹⁹Andean Commission of Jurists, Presentation to the General Assembly Debate, Rome Statute Review Conference, Kampala, Uganda, 1 June 2010.

³⁰⁰Bahrain Coalition for the ICC, Statement to the Eighth Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18-26 November 2009.

³⁰¹Asian Forum for Human Rights and Development (Forum-Asia), “Asian Perspective must be represented in the ASP”, Statement on the First Resumed Session of the Assembly of States Parties of the International Criminal Court, New York, 3 February 2003.

³⁰²Justice without Frontiers, Statement at the Seventh Session of the Assembly of State Parties to the International Criminal Court, The Hague, 14 November 2009.

collective fate” by linking the creation of the ICC with the promise of an atrocity-free future:

“(…) unless we do this, we will be leaving our collective fate once again to the cold calculus of expediency and politics and - after the disasters of the twentieth century – could we, humanity, possibly reach into another century without the company of atrocities? Perhaps it is this logic that has compelled us to support the Court in the resolute manner that we do.”³⁰³

The linking of a morally superior collective Self with “justice” performed semantic changes on both elements. “Justice” gained in generality, veering towards the status of a symbol and, therefore, gradually assuming its role as the nodal signifier of the new dominant discourse. The “we”-collective identity on the other hand became more closely associated with “criminal justice” and its identity prescriptions. One of the noticeable consequences of this association was an emphasis on action. The U.N. Secretary-General Kofi Annan was, for example, one of the most outspoken advocates of interventionism³⁰⁴. On September 20, 1999 in his Annual Report presented before the U.N. General Assembly, Annan prioritized “human security” and “intervention” on the Organization’s 21st century security agenda³⁰⁵. He reinforced in his speech the identity of the morally superior Self, but connected morality to action, in particular intervention and the set-up of criminal justice mechanisms. The Secretary-General strengthened in this way the linkage between an abstract “international community” and morality by labelling this “we” as humanity’s “collective conscience” and by making clear the normative implications of this semantic overlap:

³⁰³HRH Prince Zeid Ra’ad Zeid Al-Husseini, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Opening Remarks at the Third Session of the Assembly of States Parties of the International Criminal Court, The Hague, 6 September 2004.

³⁰⁴Annan, Kofi, U.N. Secretary-General, Speech at the Opening of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June 1998 and Annan, Kofi, U.N. Secretary-General, Address to the Stockholm International Forum, Stockholm, Sweden, 26 January 2004.

³⁰⁵Annan, Kofi, U.N. Secretary-General, Annual Report to the General Assembly, 20 Sept.1999.

“If the collective conscience of humanity - a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples - cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice.”³⁰⁶

A growing number of international community leaders continued to warn in their statements against the dangers of not pursuing an international agenda prioritizing “justice”. Speaking before the 59th Session of the U.N. General Assembly, on 22 September 2004, Canadian Prime Minister Pierre Martin reinforced this connection: “The United Nations is our moral conscience. The time has come for us to act.”³⁰⁷ By 2010 however, the year of the First Review Conference of the ICC Statute, the Court and the “international community” had begun to grow increasingly apart. U.N. Secretary-General Ban Ki Moon argued that a powerful normative shift had already occurred and that the ICC was the sign of the “new age of accountability”³⁰⁸. The distinction between “justice” and “politics”, while reinforcing the international law/politics divide aided the construction of a morally noble Self. The Court’s identity on the other hand was built as one subject position within the Justice discourse and, therefore, apart from this unifying collective identity. This argumentative strategy helped both constructions. The Court’s image was circumscribed to a mostly legal debate. Philippe Kirsch, the ICC’s first President, defended in his interventions the Court’s distinct position in international relations³⁰⁹. Luis Moreno-Ocampo, the ICC

³⁰⁶Annan, Kofi, U.N. Secretary-General, Annual Report, 20 Sept.1999.

³⁰⁷Martin, Paul, Statement to the U.N. General Assembly, 22 September 2004.

³⁰⁸Ban Ki Moon, U.N. Secretary-General, “With the International Criminal Court, a New Age of Accountability”, The Washington Post, 29 May 2010 and Ban Ki Moon, U.N. Secretary-General. “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

³⁰⁹Kirsch, Philippe, Statement by Judge Philippe Kirsch, President of the International Criminal Court at the Inaugural Meeting of Judges, 11 March 2003; Kirsch, Philippe, Statement, Assembly of States Parties to the Rome Statute of the International Criminal Court, Second (Resumed) Session, New York, 22 April 2003; Kirsch, Philippe, “Protecting the Integrity of the International Criminal Court”, Strategy Meeting with the Parliamentarians for Global Action, New York, April 22, 2003; Kirsch, Philippe, “La Cour pénale internationale au carrefour du droit international et des relations internationales”, Université de Québec à Montréal, le 6 mai 2003; Kirsch, Philippe, Statement, Third

Prosecutor, portrayed the Court's role in a slightly more technical style as the enforcer of the Rome Statute³¹⁰. Judges Richard Goldstone³¹¹, Hans Peter Kaul³¹², and the ICC's second President, Song Sang-Hyun³¹³ emphasized repeatedly the significant contributions the Court was making to peace, international jurisprudence and the rule of law, while also warning that the primary responsibility for action belonged to U.N. Members. These meaning negotiations were at times quite complex. Nobel Price winner Wangari Maathai, in an editorial published shortly before the Kampala Conference, labelled the ICC an African Court against rogue African leaders³¹⁴.

The dominant representation of "international community" acquired through these interventions new attributes. There were several images of the "U.N." floating in the discursive space of international security. However, the image endorsed by international public servants and experts displayed the clearest and most practical behavioural expectations. Vague allusions to "a responsibility for the whole human race

Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 6 September 2004; Kirsch, Philippe, "Applying the Principles of Nuremberg", Keynote Address at the Conference "Judgment at Nuremberg" held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, U.S., 30 Sept. 2006; Kirsch, Philippe, Address before the United Nations General Assembly, 1 November 2007; Kirsch, Philippe, Address to the United Nations General Assembly, 30 Oct. 2008.

³¹⁰Moreno-Ocampo, Luis, Statement made by Mr. Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court, Ceremony for the solemn undertaking of the Chief Prosecutor of the International Criminal Court, The Peace Palace, The Hague, The Netherlands, 16 June 2003; Moreno-Ocampo, Luis, Address by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court at the International Conference "Building a Future on Peace and Justice", Nuremberg, 24/25 June 2007; Moreno-Ocampo, Luis, Opening Remarks by Dr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court, Toronto International Film Festival, 9 September 2007; Moreno-Ocampo, Luis, Opening Statement, ICC Review Conference – General Debate, Kampala, 31 May 2010.

³¹¹Goldstone, Richard, "Prosecuting Aggression", New York Times Op Editorial, 26 May 2010.

³¹²Kaul, Hans-Peter, "Peace through Justice? The International Criminal Court in the Hague", Speech at the Militärisches Museum der Bundeswehr, 2 November 2009 and Kaul, Hans-Peter, "From Nuremberg to Kampala – Reflections on the Crime of Aggression", 4th International Humanitarian Law Dialogs Crimes against Peace – Aggression in the 21st Century, Chautauqua Institution, Robert H. Jackson Center, 30 August 2010.

³¹³Song, Sang-Hyun, "The bridge of peace rests on pillars of justice", "Bridge to the Future Conference (End to Impunity)", Arnhem, 19 September 2009; Song, Sang-Hyun, "ICC Kampala Conference to open new frontiers", The Observer, 26 May 2010; Song, Sang-Hyun, Keynote Remarks, Consultative Assembly of Parliamentarians on the ICC and the Rule of Law, Kampala, Uganda, 27 May 2010; Song, Sang-Hyun, Opening Remarks to the Review Conference of the ICC Rome Statute, Kampala, Uganda, 31 May 2010; Song, Sang-Hyun, Statement on the Occasion of the Day of International Criminal Justice, 17 July 2010; Song, Sang-Hyun, Keynote Speech at the Commonwealth Meeting on the International Criminal Court, Marlborough House, London, 5 October 2010.

³¹⁴Maathai, Wangari, "International Criminal Court Belongs to Us Africans", The East African, 24 May 2010.

to protect our fellow human beings from extreme abuse” and mobilizing messages such as “we stand or fall together” were substituted in these statements by more specific references to the responsibility to protect civilians and to the punishment of international crimes³¹⁵. The image of this collective Self became predicated on action, while ‘action’ received its own semantic content. Because this collective Self was expected to enforce emerging international norms and principles³¹⁶, it acquired gradually the identity of the enforcer/punisher in the Justice discourse. The logic of Justice took over in this way the morally superior image of the “international community” and narrowed down its meaning.

3.3.2. *The Nodal Signifier “Justice”, Rearticulations of Empty Signifiers and the Structure of the Hegemonic Discourse*

The selection of this particular content for the “We”-collective identity would not have been possible without a parallel discursive development, namely the emergence of the nodal signifier “justice”. Against the background of the 2004-5 policy debates on R2P and *Human Security*, the demand for “justice” gained gradually preeminence in the field of security and the concept eventually acquired the position of nodal point in the new hegemonic discourse. Discursive Mechanism 3 – *Emergence of Nodal Signifier* – is the hermeneutic operationalization of the political logic of equivalence; this mechanism allowed me to explain how the rise of “justice” became one of the most important semantic changes of the international security policy field.

³¹⁵Annex 9 - Coded segments: “We vs. the Other“, Statements by international public servants and experts.

³¹⁶Annan, Kofi, U.N. Secretary-General, Statement to the U.N. General Assembly, 21 March 2005. Other R2P statements: Annan, Kofi, U.N. Secretary-General, Annual Report to the General Assembly, 20 Sept. 1999; Annan, Kofi, U.N. Secretary-General, Address to the U.N. Human Rights Commission, 7 April 2004; Annan, Kofi, U.N. Secretary-General, Address to the 2005 World Summit, 14 Sept. 2005; Annan, Kofi, U.N. Secretary-General, Address at the Time Warner Center, 8 Dec. 2006; Annan, Kofi, U.N. Secretary-General. Address at the Truman Library, 11 Dec. 2006; Ban Ki Moon, U.N. Secretary-General. “Responsible Sovereignty in an Era of Transnational Threats”, Bertelsmann Foundation, Berlin, 15 July 2008; Martin, Paul, Statement by the Right Honourable Paul Martin, Prime Minister of Canada to the Fifty-Ninth Session of the United Nations General Assembly, New York, 22 September 2004.

Two parallel operations fed into this process, which in its turn can be broken down into three stages. During debates at the UNSC, the multiple meanings of “justice” – “restorative”, “criminal”, or “social” and “economic” justice – detached the concept from a specific attachment to one particular demand and enabled its universalizing function. On the other hand, the interventions of ICC Members during their yearly Assembly meetings as well as the statements of international public servants and NGOs specializing in international criminal law gradually connected “justice” with its more restrictive reformulation, as the absence of impunity and accountability for international crimes. Between 2002 and 2010, “Justice” took on the symbolic task of representing the new chain of equivalent relationships between elements that had previously attempted to act as hegemonic nodal points. The exhaustion of these aspiring hegemonies facilitated the propulsion of “criminal justice” to the top of the pyramid of powerful meanings. The history of its ascension is circumscribed to the period of time between 2002 and 2010. However, the analysis of the empirical material sampled in the Collection of Quotes – The Justice Discourse 2002 - 2010 (Annex 5) is not a diachronic, but a synchronic account of several related semantic changes. This structural approach is contextualized through a series of references to the most important historical events which acted as catalysts for the symbolic condensation of meanings. Because of their close relationship with the transformation of “justice” into the nodal signifier of the new hegemonic formation, Discursive Mechanism 4 - *Rearticulation of Key Empty Signifiers* and Discursive Mechanism 5 – *Discursive Structure of (New) Discourses* have been integrated in the analysis of this process. “Justice” achieved its position as nodal signifier in three steps:

Step 1: “Justice” becomes the symbolic representation of a chain of equivalent relationships (*Discursive Mechanism 3 – Emergence of Nodal Signifier*). The

result is a field of discursivity structured around a network of related elements, dominated by the nodal point “justice” (*Discursive Mechanism 5 – Discursive Structure of (New) Discourses*).

Step 2: “Justice” grips “Peace” and creates the Peace & Justice Dyad (*Discursive Mechanism 3 – Emergence of Nodal Signifier*);

Step 3: “Justice” grips the elements “Security”, “Sovereignty”, “Protection”, “Accountability” and “Rule of law” (*Discursive Mechanism 4 – Rearticulation of Key Empty Signifiers*).

The stability of this new discursive formation relies on several structural-discursive factors. The most important among them are the legitimacy of new meanings as well as the strength of network ties, between the elements themselves and between each element and the nodal signifier dominating the whole chain. The manufacturing of meaning for these previously floating signifiers is simultaneous with the manufacturing of consent among differently positioned social actors. During the historical period under analysis, new reformulations become gradually accepted as textbook definitions of “Justice”, “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability” and the “Rule of law”. The semantic relationship between the elements of Justice is therefore reinforced by this acquired legitimacy. Table 12 below summarizes the network of elements or empty signifiers and their rearticulations within the new hegemonic discursive formation. I analyze the emergence of these new meanings in the following sections.

Table 12: The Justice Discourse – Structural Image

Nodal Signifier: JUSTICE	
Elements:	
Peace	Sustainable
Security	Human
Sovereignty	Responsibility
Protection	Prevention
Accountability	Individual Criminal Responsibility
Rule of Law	Judicial Reform

Sites of Antagonism



This structural image of Justice portrays in a visual manner the division of the field of discursivity in international security between the pro-Justice camp and its negative outside, which is in this case only a potentiality (Discursive Mechanism 5 – *Discursive Structure of (New) Discourses*). The signifiers with the most contested meanings give flesh to this potentiality. “Peace” and the “rule of law” are the weakest network ties in the Justice discourse. They are potential sites of antagonism, rupture points where new discourses can penetrate the hegemonic discursive formation and undermine its core meanings. The analysis of these counterhegemonic challenges is presented in Chapter 4. Before moving on however to the empirical frontiers of Justice, I discuss first the three steps that have resulted in one particular political demand acquiring the status of a nodal point.

Step 1: Justice Becomes the Symbolic Representation of a Chain of Equivalent Relationships

The frequency analysis applied to the Collection of Quotes – the Justice Discourse 2002-2010 yielded a ranking with “Peace” the most frequently recurring element (115 hits), followed by “Rule of Law” (92 hits), “Accountability” (76 hits), “Justice” (72 hits), “Security” (31 hits), “Sovereignty” (28 hits) and “Protection” (24 hits). This result identifies “Peace” and “Rule of Law” as the most referenced and debated discursive elements. The outcome of the frequency analysis is consistent with the identification of “Peace” and “Rule of Law” as potential sites of antagonisms, because it implies a lack of consensus over their meanings. Although “Justice” ranks only third in this hierarchy, its influence shapes the new discursive and policy realignment in international security. If the social basis of the historic bloc promoting the hegemonization of security by Justice is a mix of state and nonstate discourse producers, ranging from UNSC Permanent Members, NGOs, international organizations to public servants and international experts, the policy option Justice offers is simple and straightforward: in order to restore peace and security in international affairs by successfully tackling situations of intrastate armed conflicts, one needs to enforce respect for international justice. The apparent straightforwardness of this message is the result of two semantic operations.

There are two meanings “justice” has acquired in the international security debate: one negative, which supports its universalizing function, and the other “criminal”, which helps the prioritization of “criminal justice” as a political demand. The emptiness of “justice” facilitates its universal appeal. The three open debates at the United Nations Security Council on justice and the rule of law in September 2003³¹⁷

³¹⁷United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833 (“Justice and the Rule of Law: the United Nations Role”) and United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835 (“Justice and the Rule of Law: the United Nations Role”).

and October 2004³¹⁸ legitimized new chains of equivalence. Most speakers agreed that “justice [was] not just a side issue”³¹⁹, that “justice and the rule of law are emerging as the cornerstones of building peace and democracy”³²⁰ and that they are “prerequisites for community life”³²¹. This strategy of universalization proved successful in linking various demands and creating a new alliance structured around “justice”. The chains of equivalence inbuilt in these arguments merged the new nodal signifier with a series of other political demands and even binary juxtapositions such as “without law one cannot have justice”³²². The Council debates touched upon the challenges of peace-building and conflict management in a rather general manner. The way in which the pressing international problem of conflict and intervention is constructed during these discussions appears to be less about specific policies, and more about the refashioning of a stable collective imaginary. The underlying issue framing these interventions is not the search for effective policy measures, but the restoration of international order because “in the absence of compliance with the law and ‘playing by the rules’, it is chaos that will prevail”³²³. This framing shows why, despite its lesser frequency, “justice” dominates the international security debate. Its meaning connections to “democracy, (...) economic prosperity, human rights, combating terrorism, (...) lasting peace” and “the rule of law”³²⁴ make this element capable of generating a new social imaginary. This imaginary is predicated on the relationship between “justice”, “law” and “order”: “the nexus between justice and the rule of law is the very foundation for

³¹⁸United Nations Security Council, Debate, 6 October 2004, S/PV/5021 & Resumption 1 (“Justice and the Rule of Law: the United Nations Role”).

³¹⁹Annan, Kofi, U.N. Secretary-General, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 2 (“Justice and the Rule of Law: the United Nations Role”).

³²⁰Mr. Galouzeau, France, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.6 (“Justice and the Rule of Law: the United Nations Role”).

³²¹Mr. Cappagli, Argentina, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 29 (“Justice and the Rule of Law: the United Nations Role”).

³²²Mr. Al-Kidwa, Palestine, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 15 (“Justice and the Rule of Law: the United Nations Role”).

³²³Mr. Al-Kidwa, Palestine, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 15 (“Justice and the Rule of Law: the United Nations Role”).

³²⁴Mr. Cunningham, United States, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 20 (“Justice and the Rule of Law: the United Nations Role”).

the strengthening of international law”³²⁵, and “establishing the principles of justice and the rule of law is essential to the establishment and maintenance of order at the inter-State and intra-State levels”³²⁶.

The unfolding of this process of universalization during Security Council debates answers a deep-seated need for discursive coherence. This longing for the stability of an ideological framework capable of healing normative clashes resurfaces in the interventions of prominent legal experts such as Judge Philippe Kirsch, the ICC’s first President. When President Kirsch speaks in 2006 before the audience gathered at Washington University to celebrate the 60th anniversary of the Nuremberg judgments, his words are invested with symbolic power: “Rome was the beginning. The end may never come. For like Rome itself, the struggle for peace, law and justice in the world is eternal”³²⁷. The speech reinforces the universal presentism embedded in the narrative of “international justice” which, superimposed to more conventional accounts of post-World War II history, transforms the latter into the prehistory of Justice. In 2007, in his Address before the United Nations General Assembly, Kirsch makes this connection clearer and invokes again the “we”-collective identity as the Subject historically called upon to perform its Justice duty: “It is our collective responsibility to ensure that the momentum created in 1998 continues and that international justice prevails.”³²⁸ The universal appeal of “justice” is only reinforced by references equating it to “the highest value”³²⁹ or statements about “justice” being “universal”³³⁰. The effect of these social

³²⁵Mr. Kanu, Sierra Leone, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, Res.1, p. 2 (“Strengthening International Law: Rule of Law and Maintenance of International Peace and Security”).

³²⁶Mr. Kasuri, Pakistan, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.4 (“Justice and the Rule of Law: the United Nations Role”).

³²⁷Kirsch, Philippe, “Applying the Principles of Nuremberg,” Keynote Address at the Conference ‘Judgment at Nuremberg’ held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, USA, 30 Sept. 2006.

³²⁸Kirsch, Philippe, Address by Judge Philippe Kirsch, President of the International Criminal Court, before the United Nations General Assembly, 1 November 2007.

³²⁹Serbia, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007.

constructions is the increasing legitimacy of the new discourse qua security ideology. Framed as challenges rather than obstacles on humanity's way towards the peaceful future promised by Justice, intrastate conflicts become discursive objects whose *raison d'être* and possible management can only be addressed by the new hegemony.

The fact that the “justice” element shapes semantically the discourse is due however to the second semantic operation. The prioritization of “criminal justice” as a political demand is reinforced during ICC Assembly meetings by requests favourable to the implementation of the international criminal law principle of individual accountability³³¹ and against a “culture of impunity”³³². “Criminal justice” becomes gradually the equivalent of “punishment and retribution”³³³. At the ICC ASP, “justice” is equated with the absence of impunity and individual accountability³³⁴. There are also practical limits to what a “criminal justice approach based on prosecution and incarceration”³³⁵ can achieve. In his concluding speech at the 2007 Nuremberg International Conference “Building a Future on Peace and Justice”, former Finnish

³³⁰Sierra Leone, Statement by the Delegation of the Republic of Sierra Leone to the Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 – 22 November 2008. See also: Coalition for the International Criminal Court, Statement by William R. Pace, Convenor, Eighth Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18-26 November 2009.

³³¹Norway, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010. See also: Norway, Statement by Martin Sorby, Deputy Director General Royal Ministry for Foreign Affairs, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 – 22 November 2008; Kirsch, Philippe, ICC President, Address to the United Nations General Assembly, 30 Oct. 2008; Maathai, Wangari, “International Criminal Court belongs to us Africans”, *The East African*, 24 May 2010.

³³²New Zealand, Statement, First Session of the Assembly of the States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002. See also: Spain on behalf of the EU, Declaración realizada en nombre de la Unión Europea en el debate general de la Conferencia de Revisión del Estatuto de Roma de la Corte Penal Internacional, Kampala, Uganda, 31 de Mayo 2010.

³³³Namibia, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006.

³³⁴DR Congo, Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de la Justice de la République Démocratique du Congo, a la Septieme Session de l'Assemblée des Etats Parties au Statut de la Cour Penale Internationale, La Haye, 14-22 Novembre 2008; Finland, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 November 2008; FIDH, Opening Speech by Dismas Kitenge, Vice-President, for the Review Conference of the Statute of the International Criminal Court, Kampala, June 1, 2010.

³³⁵HRH Prince Zeid Ra'ad Zeid Al-Husseini, Ambassador of Jordan to the USA, Report on the Major Findings of the Conference, International Conference “Building a Future on Peace and Justice”, Nuremberg, 25-27 June 2007.

Foreign Affairs Minister Erkki Tuomioja portrays “justice” as a “multifaceted process that can be pursued through a number of measures”³³⁶. In sum, “justice is not only retributive, but restorative as well”³³⁷.

The Nuremberg Declaration on Peace and Justice, the follow-up document of the 2007 Nuremberg International Conference³³⁸, gives this new meaning its official form. “Justice” becomes synonymous with criminal “accountability” in a version that connects the term with the more general notion of “fairness in the protection and vindication of rights”:

“‘Justice’ is understood as meaning accountability and fairness in the protection and vindication of rights, and the prevention and redress of wrongs. Justice must be administered by institutions and mechanisms that enjoy legitimacy, comply with the rule of law and are consistent with international human rights standards. Justice combines elements of criminal justice, truth-seeking, reparations and institutional reform as well as the fair distribution of, and access to, public goods, and equity within society at large.”³³⁹

The definition does not foreclose further reformulations. It establishes however a hierarchy among potential meanings. Accountability for international crimes comes first, followed by more ambiguous concepts such as “protection”, “prevention”, and “redress”, the latter a possible synonym of “restoration”. The definition tries to encompass “criminal”, “restorative” and “social” justice, with elements such as “equality”, “equal access to public goods” and redistribution towards the bottom of the pyramid of meanings.

³³⁶Tuomioja, Erkki, Concluding Speech at the International Conference “Building a Future on Peace and Justice”, Nuremberg, 27 June 2007.

³³⁷Ban Ki Moon, U.N. Secretary-General, “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

³³⁸The Conference took place in Nuremberg between 25 to 27 June 2007 and was organized by Finland, Germany, and Jordan.

³³⁹Nuremberg Declaration, Part II, Para. 2.

Finally, Kampala marks symbolically the progression of Justice in international security. The First Review Conference of the Rome Statute of the International Criminal Court hosted by Uganda reunited not only ICC States Parties, but also Observer States, International Organizations, NGOs, academic institutions and think tanks³⁴⁰. The Conference included a special venue, the People’s Space, for NGOs and individuals who did not take part in the General Debate. This was a truly international conference, bringing together multiple stakeholders and giving flesh to the Nuremberg call for a “worldwide movement against impunity”³⁴¹. One of its most important political outcomes is the endorsement of the relationship between “justice” and “no impunity”, whereby “justice and the fight against impunity are, and must remain, indivisible”³⁴². Although this relationship does not specifically acknowledge “justice” qua “criminal”, it grounds the concept in international criminal law. Moreover, recognizing the various discursive linkages established during the previous years, the Kampala Declaration portrays the International Criminal Court as a key element in the U.N. security architecture. The meaning of collective security becomes predicated on the image of a multilateral international system whose aims range from “ending impunity” and “establishing the rule of law” to achieving “sustainable peace”³⁴³. The Declaration recognizes as well the successful pairing of “peace” and “justice”.

Step 2: “Justice” grips “Peace” and creates the Peace & Justice Dyad

The second stage in the emergence of the nodal signifier “justice” is the creation of a strong dyad: the linking of the elements “peace” and “justice” bears a particular significance for the hegemonization by Justice of international security. If

³⁴⁰Handbook for Participants, Review Conference of the Rome Statute of the International Criminal Court, 29 May 2010.

³⁴¹Nuremberg Declaration, Part I. Preamble.

³⁴²Kampala Declaration, RC/Decl.1, 1 June 2010, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010.

³⁴³Ibid., Recitals.

previous semantic changes flesh out the structure of the new discourse and its mechanics, the creation of this strong bond of equivalence reveals the way in which Justice comes to dominate security debates. The gripping of “peace” is representative for the gradual inclusion into the discourse of various other social demands. In short, the hegemonization of international security can be described as a step-by-step reconstitution of the elements pertaining to the previous symbolic system. At the UNSC, in the ICC ASP and the virtual space provided by the media, between 2002 and 2010 discussions revolve around the unsolved practical questions of enforcing peace negotiations and ensuring long-term political stability. The discursive difficulty of negotiating between multiple policy positions, state interests and expert knowledge about the challenges faced by peacekeeping missions and post-conflict reconstruction strategies dominates the agenda of these meetings. Because of the ongoing deadlock over specific policy measures, Security Council members turned their attention increasingly towards “peace” and prevention, rather than to their effective reaction, on the ground, to such conflicts. Reformulations of “peace” serve therefore at the UNSC as discursive ploys to avoid policy and normative clashes. This new discourse however gradually displays its power. The belief that “just punishment is the best deterrent”, can “serve truth” and “open the way to lasting peace, security and reconciliation”³⁴⁴ comes to signify not only an acceptance of the principles of international criminal law, but also other concerns, such as the institutional reconstruction of failed states or the principle of multilateralism for external interventions. The demand for international justice monopolizes during this period Security Council debates. “Peace” is therefore discussed in an almost exclusive relationship to “justice”.

These semantic changes, triggered by the pairing of “justice” with “peace”, are identifiable in the two key documents already introduced in the preceding section.

³⁴⁴Croatia, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007.

These are the 2007 Nuremberg Declaration on Peace and Justice and the 2010 Kampala Declaration. The latter emphasizes the complementarity between “lasting peace” and “justice”³⁴⁵, while the Nuremberg Declaration focuses on the “sustainability” of “peace”:

“Sustainable peace goes beyond the signing of an agreement. While the cessation of hostilities, restoration of public security and meeting basic needs are urgent and legitimate expectations of people who have been traumatized by armed conflict, sustainable peace requires a long-term approach that addresses the structural causes of conflict, and promotes sustainable development, rule of law and governance, and respect for human rights, making the recurrence of violent conflict less likely.”³⁴⁶

This reformulation covers the entire range of peace-building activities and gives normative priority to the individuals who “have been traumatized by armed conflicts”, i.e. the “victims”. The definition shows as well the extent to which Justice frames the problematique of international military interventions. Rather than showcasing the outbreak of armed conflict as the result of economic underdevelopment or unstable political systems, the Nuremberg Declaration emphasizes the connection between “structural causes” of violence and the lack of “justice”. This long-term view of conflict management facilitates the creation of chains of equivalence between multiple demands, such as “public security”, “basic needs”, “development”, “rule of law”, “good governance”, and “human rights”, while simultaneously avoiding the necessity of any specific policy recommendations. This vagueness allows the overdetermination by Justice of the other elements. “Sustainability” is therefore the discursive effect of “justice” on “peace”. Semantically, this notion is also the result of competition among a handful of potential signifiers. The agreement on the discursive parameteres for the

³⁴⁵Ibid., Recitals.

³⁴⁶Nuremberg Declaration on Peace and Justice, Part II, Para. 1.

international security policy debates is built gradually at the United Nations Security Council and the ICC Assembly of States Parties where “real”³⁴⁷, “lasting”³⁴⁸, “durable”³⁴⁹, “long-term”³⁵⁰ and “sustainable”³⁵¹ “peace” are regularly invoked during UNSC debates and ICC ASP meetings (Annex 10 – Coded segments “Elements”). With the Nuremberg Declaration recognizing “sustainable peace” as well as “justice” qua “accountability” and “fairness” as the standard reformulations of key international

³⁴⁷Annan, Kofi, U.N. Secretary-General, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.3 (“Justice and the Rule of Law: the United Nations Role”).

³⁴⁸Mr. Passy, Bulgaria, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 12 (“Justice and the Rule of Law: the United Nations Role”); Mr. Helg, Switzerland, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.16 (“Justice and the Rule of Law: the United Nations Role”). See also: Argentine, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009; Brazil, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Croatia, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; France, Déclaration de Monsieur Jean-Francois Blarel, Ambassadeur de France aux Pays-Bas, Chef de délégation, France au non de l'Union européenne, Septième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Penale Internationale, La Haye, 14 novembre 2008; The Netherlands, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, November 23 – December 1, 2006; Switzerland, First Review Conference of the Rome Statute of the International Criminal Court, General Debate Statement by State Secretary Jürg Lindenmann Head of the Swiss Delegation, Directorate of International Law, Federal Department of Foreign Affairs Kampala, Uganda, 31 May 2010; Venezuela, Statement of the Bolivarian Republic of Venezuela in the VIII Assembly of States Parties of the Rome Statute, The Hague, 19 November 2009.

³⁴⁹Mr. Kim Sam-hoon, Republic of Korea, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.31 (“Justice and the Rule of Law: the United Nations Role”); Mr. Wali, Nigeria, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 36 (“Justice and the Rule of Law: the United Nations Role”). See also: Brazil, Statement, Eighth Session of the Assembly of the States Parties to the Rome Statute of th International Criminal Court, The Hague, 19 November 2009; Luxembourg, Intervention de S.E. M. Jean Asselborn, Conference de Revision du Statut de Rome de la Cour Penale Internationale, Kampala, Ouganda, 31 mai 2010; Switzerland, Intervention, Cinquieme Assemblée des Etats parties au Statut de Rome de la Cour penale internationale, La Haye, le 23 novembre 2006.

³⁵⁰Mr. Zhang Yishan, China, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 21 (“Justice and the Rule of Law: the United Nations Role”). See also: Norway, Statement by Mr. Rolf Einar Fife, Director General Royal Ministry of Foreign Affaires, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, December 2007.

³⁵¹Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 19 Justice and the Rule of Law: the United Nations Role”); Mr. Kim Sam-hoon, Republic of Korea, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.31 (“Justice and the Rule of Law: the United Nations Role”); Mr. Pleuger, Germany, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.7 (“Sudan”). See also: Costa Rica, Intervención de Costa Rica a cargo de Adriana Murillo Ruin, la Conferencia de Revision de la Corte Penal Internacional, Kampala, Uganda, 31 mai – 11 de junio 2010; Cyprus, Statement by H.E. Ambassador Andreas D. Mavroyiannis, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 4 December 2007; Liechtenstein, Statement by H.E. Ambassador Christian Wenaweser, Permanent Representative of the Principality of Liechtenstein to the United Natios, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008; Norway, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 24 November 2006.

security concepts, the debate appeared in 2007 to have reached a certain semantic stability.

The Nuremberg Declaration was purposefully drafted as a practical guide for the people involved in all stages of conflict resolution, ranging from peace negotiations to post-conflict peacebuilding and development³⁵². Although its policy recommendations are still rather general, the document successfully takes stock of international normative developments and shows the increasing symbolic significance in international politics of the criminal justice vocabulary. The two Nuremberg definitions for “peace” and “justice” as well as the Declaration’s Principles and Policy Recommendations revolve around the principle of complementarity between “peace” and “justice” as well as the emerging international norm of no impunity³⁵³. ICC Members and countries with “Invited” or “Observer” status spoke, before Kampala, consistently in favour of the indivisible relationship between “justice” and “peace”³⁵⁴

³⁵²Nuremberg Declaration on Peace and Justice, Recitals.

³⁵³Nuremberg Declaration on Peace and Justice, Part III Principles: The Declaration endorses five Principles: “Complementarity of peace and justice“, “Ending impunity“, “A victim-centered approach“, “Legitimacy“, and “Reconciliation“.

³⁵⁴Argentine, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009; Brazil, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; DR Congo, Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de la Justice de la Republique Democratique du Congo, a la Septieme Session de l'Assemblee des Etats Parties au Statut de la Cour Penale Internationale, La Haye, 14-22 Novembre 2008; France, Déclaration de Monsieur Jean-Francois Blarel, Ambassadeur de France aux Pays-Bas, Chef de délégation, France au non de l'Union européenne, Septième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Penale Internationale, La Haye, 14 novembre 2008; Germany, Statement on behalf of Germany by Georg Witschel, Director General for Legal Affairs, Federal Foreign Office, Berlin, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November 2006; Kenya, Statement, Seventh Session of the Assembly of States Parties to the International Criminal, The Hague, 14-22 November 2008; Kenya, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18-26 November 2009; Liechtenstein, Statement by H.E. Ambassador Christian Wenaweser, Permanent Representative of the Principality of Liechtenstein to the United Nations, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008; The Netherlands, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, November 23 – December 1, 2006; Luxembourg, Intervention de S.E. M. Jean Asselborn, Conférence de Revision du Statut de Rome de la Cour Penale Internationale, Kampala, Ouganda, 31 mai 2010; Norway, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 24 November 2006; Norway, Statement by Mr. Rolf Einar Fife, Director General Royal Ministry of Foreign Affairs, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, December 2007; South Africa, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May 2010; Sweden, Statement on behalf of the

and that “justice” is about the “fight against impunity”³⁵⁵. Even Iran, often at a disadvantage in this system of representations, conceded that the “establishment of the International Criminal Court was a milestone towards achieving peace through justice”³⁵⁶. NGOs, international public servants and legal experts contributed as well to the diffusion of this strong dyadic pairing and justified the symbolic significance of “justice” for international “peace” as well as its policy relevance for international security³⁵⁷.

Conceptually, “sustainability” is the semantic bridge connecting “peace” to “justice” that transforms these concepts into a powerful dyad. “Sustainability” may not be the only meaning of “peace”, but it is this meaning that makes “peace” the most important element in the network of elements structuring the Justice discourse. Politically, “sustainability” connects the demands of distinct international constituencies. In order to link “development” to conflict and social justice, one policy recommendation in the Nuremberg Declaration even begins with the statement that conflict is often the result of a lack of social justice³⁵⁸. “Justice” plays therefore an

EU, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009; Switzerland, Intervention, Cinquieme Assemblee des Etats parties au Statut de Rome de la Cour penale internationale, La Haye, le 23 novembre 2006; Switzerland, First Review Conference of the Rome Statute of the International Criminal Court, General Debate Statement by State Secretary Jürg Lindenmann Head of the Swiss Delegation, Directorate of International Law, Federal Department of Foreign Affairs Kampala, Uganda, 31 May 2010;

³⁵⁵Brazil, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Brazil, Statement, Eighth Session of the Assembly of the States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009;

³⁵⁶Iran, Statement by Mr. Fattah Ahmadi, Director, Treaties and Public International Law Department, Ministry of Foreign Affairs, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14-22 November 2008.

³⁵⁷Human Rights Watch, Statement by Richard Dicker, Director of Human rights Watch’ International Justice Program, Sixth Session of the Assembly of States Parties, 7 December 2007; Human Rights Watch, Civil Society Declaration on Africa and the Review Conference of the Rome Statute of the International Criminal Court, 24 May 2010; HRH Prince Zeid Ra’ad Zeid Al-Hussein, Ambassador of Jordan to the USA, Report on the Major Findings of the Conference, International Conference “Building a Future on Peace and Justice”, Nuremberg, 25-27 June 2007; Sharif Al Zubi, Minister of **Justice** of the Hashemite Kingdom of Jordan, Address at the Opening Ceremony, International Conference “Building a Future on Peace and Justice”, Nuremberg, 25 June 2007; Ban Ki Moon, U.N. Secretary-General, “With the International Criminal Court, a new age of accountability”, The Washington Post, 29 May 2010; Luis Moreno Ocampo, Opening Statement, ICC Review Conference – General Debate, Kampala, 31 May 2010;

³⁵⁸Nuremberg Declaration on Peace and Justice, Part IV Recommendations, Para. 3.1.

ambiguous role in this discursive milieu, juggling between multiple identities. Its definition qua “accountability” and “fairness” adds a strong liberal ideological element to the concept of “sustainable development”. This argumentative strategy mixing either right, and/or leftist ideological elements succeeds in creating a meaning for the peace/justice dyad sufficiently ambiguous to increase its attractiveness. Acting as a surface of inscription for a variety of other political demands, this vagueness explains the difficulty encountered by the counterdiscourses presented in Chapter 5 in subverting their relationship.

Step 3: Justice Grips the Elements “Security”, “Sovereignty”, “Protection”, “Accountability” and “Rule of law” into a New Discursive Formation

The third and final step by which “justice” acquires its position as the nodal signifier of the new discourse is a rearticulatory operation linking together several different elements. This operation consolidates hegemonization effects by shaping some of the key moments of the dominant discourse. The ideology of international security acquires during this stage its Justice imprint. The pool of empty signifiers shaken by Justice consists of some of the key elements released from their previous meanings during the policy debates analyzed in the first part of this chapter. “Peace”, “Security”, “Sovereignty”, “Protection”, “Accountability” and the “Rule of Law” are not only empty signifiers, but also particular demands joined into a new chain by the logic of equivalence. Each of these elements receives a surplus meaning that stabilizes their relationship with the nodal signifier and with each other. In addition to “Peace” becoming “sustainable”, several other reformulations are put forward: “Security” and “Sovereignty” maintain their previous identities qua “human security” and, respectively, “responsibility”. “Protection” qua “prevention” becomes the bearer of the only specific prescription for international action. “Accountability” displays a certain amount of

semantic ambivalence, its meaning qua “individual criminal responsibility” supported by a tendency towards generality and symbolism, while “Rule of Law” is narrowed down to “judicial reform”. The signifiers’ previous “emptiness” does not imply a complete lack of meaning. All these elements enter the hegemonization process with residual links to their former signifieds. In each particular case however the semantic effect of Justice is different. Their inclusion in the Justice discourse usually implies an additional linking process to an intermediary discursive element. The coded segments sampled from the Collection of Quotes - The Justice Discourse 2002-2010³⁵⁹ show varying articulatory intensities and a different pattern of semantic linkages.

- **Security**, despite its position as the signifier generating the goal of international security policy is one of the least frequent references, with only 31 coded segments. In UNSC debates “security” displays a certain semantic stability, its meaning positioned on a continuum between reformulations of “collective” and “human security”³⁶⁰. These two strong definitions are themselves nodes of different equivalent chains. “Human security” in particular is an intersection of overlapping meanings that broaden the classic formulation of “security”. UNSC Members connect in their statements these meanings to goals such as “justice” and the “rule of law”, whose pursuit “entail[s] the promotion of multilateralism, underpinned by the concept of collective security”³⁶¹. These discursive interventions do not directly challenge the signifier’s sedimented

³⁵⁹Annex 10 - Coded Segments “Elements”.

³⁶⁰Mr. Fall, Guinea, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 13 (“Justice and the Rule of Law: the United Nations Role”); Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 19 (“Justice and the Rule of Law: the United Nations Role”); Mr. Haraguchi, Japan, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.9 (“Justice and the Rule of Law: the United Nations Role”); Mr. Mayoral, Argentine, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p.19 (“Strengthening International Law: Rule of Law and Maintenance of International Peace and Security”); Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 20 (“Strengthening International Law: Rule of Law and Maintenance of International Peace and Security”); Mr. Tachie-Menson, Ghana, 22 June 2007, S/PV. 5703, p. 20 (“Strengthening International Law: Rule of Law and Maintenance of International Peace and Security”).

³⁶¹Mr. Fall, Guinea, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 13 (“Justice and the Rule of Law: the United Nations Role”).

identity, but steer it into a new direction where the semantic bridge to “justice” is more easily created.

Two types of articulations are responsible for this bridging. During the sampled UNSC debates discourse producers refer to “security” as a good to be delivered to post-conflict or conflict situations, where the “United Nations must contribute to training an effective police force to establish order and security, and to do so in keeping with human rights”³⁶². “Security” becomes the equivalent of “order” and the referent object of “security” is a subject endowed with “human rights”. “Order” is a powerful empty signifier because it functions as a catalyst for action irrespective of the content inscribed onto it. In this particular discourse, “order” legitimizes UNSC measures, but only to the extent that these policies have as objective the well-being of the human subject “people” and are limited by the subject’s “human rights”. The United Nations acquires in this narrative the identity of an international actor tasked with state-building functions:

“The United Nations must also give priority to providing security to people in the greatest need of it, to ensuring compliance with agreements, assuring State reform and preventing the breakdown of the State and laying down the bases for the establishment of a modern State”³⁶³.

The international security toolkit is therefore filtered through a set of normative criteria. This narrowing down of the repertoire of legitimate actions introduces an element of necessity in the chain of equivalences. The qualified meaning of “order” acts as a gatekeeper to alternative actions. By foreclosing other policy options, this discursive element paves the way for another set of interventions that ultimately allow the linkage of “security” to “justice”.

³⁶²Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 19 (“Justice and the Rule of Law: the United Nations Role”).

³⁶³Ibid.

The second discursive intervention by which “security” moves closer to “justice” is its connection to “prevention”. The function fulfilled by the transitional element “prevention” is essential in the Justice reformulation of “security”. The rearticulation of “security” into “order” enables the identification of two types of actions as legitimate: prevention and development. The second alternative is only peripheral in UNSC debates and did not attract significantly more attention outside this venue³⁶⁴. Instead, the international debate focused on prevention. During ICC Assemblies, member states, NGOs participating in these reunions as well as experts and international public servants took a stance on international security issues such as, for example, the conflict in Darfur. At the core of these discussions were the means available to the international community for effective reaction. Bypassing more interventionist policy choices, these discourse producers emphasized that “a permanent international justice (...) ha(d) a deterrent effect on the perpetration of such crimes”³⁶⁵ and that the “preventive role of the ICC will discourage future perpetrators”³⁶⁶. In this way, one type of action – prevention – filtered through the reformulation of “security” into “order” enabled the insertion of “justice” and of the discursive element “ICC” in this chain of equivalent meanings. The justificatory strategies of NGO representatives strengthened this relationship by describing the Court as “arguably the most successful achievement in the so-called new peace and security architecture in the post Cold War era”³⁶⁷. International experts endorsed this description by portraying to the ICC as “a bastion against tyranny and lawlessness, and as a building block in the global

³⁶⁴Mr. Haraguchi, Japan, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.9 (“Justice and the Rule of Law: The United Nations Role”); Mr. Tachie-Menson, Ghana, United Nations Security Council, Debate, 22 June 2007, S/PV. 5703, p. 20 (“Justice and the Rule of Law: The United Nations Role”).

³⁶⁵Argentine, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008.

³⁶⁶Macedonia, Statement by H.E. Mr. Srgjan Kerim, Permanent Representative of the Republic of Macedonia to the United Nations, First Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002.

³⁶⁷Coalition for the International Criminal Court, Statement by William R. Pace, Convenor, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, 3-4 December 2007.

architecture of collective security”³⁶⁸. “Prevention” is one of the most important intermediary elements of Justice. Aside from its impact on “security”, its influence is equally discernable in the creation of the “justice”/“sovereignty” relationship.

- *Sovereignty*

The introduction of “sovereignty” into this chain of equivalences is one of the greatest, and at the same time most difficult achievements of the Justice discourse. “Sovereignty” has a particular reputation as a discursively ‘troublesome’ element. It has obstructed other attempts to have its meaning reformulated, most notably as the “responsibility to protect”. The rearticulation of empty signifiers into moments of a new discourse triggers an almost necessary shift in meaning. In the case of “sovereignty” however this change is difficult to gauge, because the concept is the site of multiple semantic struggles. There are several and not always coherent usages of the term in diplomatic and academic circles³⁶⁹. Scholars of IR and International Law who brought the “linguistic turn” to its analysis have argued that the idea of sovereignty is more than a norm, a principle or an institution. Rather, it is a specific form of legitimation, an argumentative strategy in normative reasoning³⁷⁰. “Sovereignty” is therefore a rich empty signifier, one that although lacking a stable core/signified, carries significant symbolic weight in an argument irrespective of the meaning inscribed onto it. Widely acknowledged as a founding principle of our contemporary international political system, with the ability to define a state’s legal identity and act a symbol of transnational identification, sovereignty” is in this sense more powerful than “security”. The side effect of the “linguistic turn” in the analysis of “sovereignty” however is an emphasis on the relevance of discursive contexts. Since discourses consist of partial consolidations of

³⁶⁸Annan, Kofi, U.N. Secretary-General. Address to the meeting of the ICC Assembly of States Parties, 10 September 2002.

³⁶⁹Philpott, Daniel. 1995. Sovereignty: An Introduction and Brief History. *Journal of International Affairs* 48:353-368.

³⁷⁰Werner, Wouter G. and Jaap H. De Wilde. 2001. The Endurance of Sovereignty. *European Journal of International Relations* 7:283-313.

meaning, there are no clear benchmarks on how to unpack the political negotiations at the origin of new reformulations. Therefore, the significance of “sovereignty” cannot be understood apart from the discourse to which this concept belongs. The linguistic context is key in understanding the process whereby the empty signifier “sovereignty” acquired its new status as an element of Justice.

A survey of the “sovereignty” code applied to the Justice discourse³⁷¹ shows that there are relatively fewer interventions (coded segments) explicitly referring to this element: only 28 compared to 115 for the element “Peace”. Given the preeminence of “sovereignty” in previous humanitarian interventions debates, this silence suggests that one possible way of avoiding the problem was to circumvent it altogether. The segments coded during the data collection stage reveal on the other hand a double effect of “justice” on the meaning of “sovereignty”. First, the pressure exercised by “justice” highlights the contingent articulation between this element and “security”. Since 24 October 1945, when the U.N. Charter entered into force, the sovereign equality of all member states has been one of the founding principles of the post-World War II system of collective security.³⁷² Even though this meaning of “sovereignty” continues to be well established in international diplomatic language and practice, one should not forget however that it is also contingent upon a particular security discourse. The Justice discourse tests the limits of this articulation by redefining both “security” and “sovereignty”.

Previous to this debate, several interventions had already challenged the boundaries of the state’s legal identity as a sovereign entity. In his speech at the opening of the 1998 U.N. Diplomatic Conference on the Establishment of an International Criminal Court, Kofi Annan argued that “state sovereignty”, “in its most basic sense”, was being redefined by “the forces of globalization and international cooperation”, with

³⁷¹Annex 10 – Coded Segments “Elements“.

³⁷²U.N. Charter, Chapter 1 „Purposes and Principles“, Art. 2.1.

the State “now widely understood to be the servant of its people and not vice versa.”³⁷³ At the U.N. Security Council and during the yearly Assemblies of ICC States Parties, some discourse producers claimed that “sovereignty” had undergone a significant change of meaning. In September 2004, at the height of the Darfur war, the Chilean Representative argued that “the concept of sovereignty ha[d] evolved from a supreme, absolute and unlimited jurisdictional authority to an authority that [wa]s equal to that of any other independent State, but limited by international law, humanitarian law and human rights law and based on the free will of the people of the territory in question.”³⁷⁴ Six years later, during the 2010 Kampala Review Conference, Bangladesh referred to “a paradigm shift in our understanding of the State”, and suggested that the traditional meaning of “sovereign authority” as “absolute power” had been “replaced by global standards of governance and State responsibility”, standards which included “broader elaborations of peace, security, justice, war crimes, genocide, and aggression.”³⁷⁵ Such statements took stock of and simultaneously challenged the stability of “sovereignty”’s traditional meaning.

The second effect of Justice is the rearticulation of a performative concept of “sovereignty”. If R2P failed as an international security discourse to ‘heal’ the normative contradiction in the humanitarian intervention dilemma, its legacy found a different outlet in the double rearticulation of “sovereignty” as “responsibility” and “protection”. Justice reappropriates R2P by breaking it down into its two constituent parts and reconnecting “sovereignty” to “responsibility” through the rearticulation of the element “protection”.

³⁷³Annan, Kofi, U.N. Secretary-General, Speech at the Opening of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June 1998.

³⁷⁴Mrs. Alvear Valenzuela, Chile, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 21 (“Justice and the Rule of Law: the United Nations Role”).

³⁷⁵Bangladesh (The Peoples Republic of), Statement, the First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010.

The UNSC Darfur debate is the discursive testing ground of this diluted version of “responsibility”, normatively narrower than R2P. The Council is the site of multiple negotiations of meaning concerning the definition of state sovereignty³⁷⁶, whether other “sovereign” entities are entitled to exercise its attributes³⁷⁷, and the limits of sovereign power³⁷⁸. The state actor does not lose its sovereign prerogative, but its authority is reformulated in a way that takes into account certain normative limits³⁷⁹. During the UNSC debate preceding the adoption of Resolution 1556(2004), “responsibility” becomes a claim against the “rebellious” Subject, the Government of Sudan³⁸⁰. Trying to prove that it abides by its international obligations, Sudan implicitly accepts the parameters of the new discourse:

“My Government, eager to fulfil its responsibilities, will fully comply with the provisions of this resolution. We will continue our tireless efforts to mitigate the suffering of our citizens and the population in Darfur and to restore stability to that very dear and traumatized part of our homeland.”³⁸¹

At the same time, Justice creates a hierarchy of subject positions that connect “sovereignty” with “protection” and give the former its performative character. Although the “state” is acknowledged as the main provider of “protection”, the “international community” also acquires the prerogative to interrogate the discharge of

³⁷⁶Some voices remained faithful to the classic definition of state sovereignty. Mrs. Núñez de Odremán, Bolivarian Republic of Venezuela, United Nations Security Council, Debate, 22 June 2006, S/PV.5474, Res.1, p. 15 (“Strengthening international law: rule of law and maintenance of international peace and security”).

³⁷⁷Mr. Baja, Philippines, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.10 (“Sudan”).

³⁷⁸Kofi, Annan, U.N. Secretary-General, United Nations Security Council, Debate, 16 February 2005, S/PV.5125, p. 2 (“Sudan”).

³⁷⁹Bangladesh (The Peoples Republic of), Statement, the First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May - 11 June 2010.

³⁸⁰Mr. Danforth, United States of America, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.3 (“Sudan”); Mr. Pleuger, Germany, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.7 (“Sudan”); Mr. Denisov, Russia, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.6 (“Sudan”).

³⁸¹Mr. Erwa, Sudan, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p. 12 (“Sudan”).

this duty³⁸². In this narrower version, “responsibility” carves out a legitimate space for international action. ICC supporters are keen to emphasize that the main expectation for action falls to the sovereign state and that the international community fulfills (only) a complementary role³⁸³. However, interventions in the Security Council, at the ICC Assembly of States Parties and in the media continue to define individuals as the recipients of “protection” and, respectively, the bearers of a right to justice³⁸⁴. Justice follows therefore in the footsteps of *Human Security* and, by reappraising the individual as the legitimate subject of international security policy, justifies a broader scope for international interventions.

The first empirical effect of the gripping of “sovereignty” by “justice” is the erosion of its traditional understanding of “state sovereignty” as boundless authority. This discursive move is a classic liberal curtailment of the sovereign’s absolutist prerogatives. By using the individual as its referent object and linking the concept to the human rights discourse, Justice undercuts the egalitarian logic of the principle of (equal) sovereignty with a new egalitarian discourse having the individual and humanity at its core. Finally, Justice cements the reformulation of “sovereignty” qua “responsibility”, albeit in its narrower version, and facilitates the inscription into the discourse of the empty signifier “protection” qua “prevention”.

- ***Protection***

“Protection” is, in Annex 10, the code with the fewest number of coded segments: only 24. The element appears to play only a marginal role in the Justice discourse. Even though the empirical evidence might suggest otherwise, I argue that, counterintuitively, “protection” is the empty signifier that glues together all the other

³⁸²Brazil, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Kofi, Annan, U.N. Secretary-General, Statement to the U.N. General Assembly, 21 March 2005.

³⁸³Martin, Paul, Statement by the Right Honourable Paul Martin, Prime Minister of Canada to the Fifty-Ninth Session of the United Nations General Assembly, New York, 22 September 2004.

³⁸⁴Sir Emyr Jones Parry, United Kingdom, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.5 (“Sudan”).

elements and gives “Justice” its entry point in the international policy debate. The history of its several rearticulations serves as a backdrop to the presentation of its most important relationship: the connection to the intermediary element “prevention”. Having been separated from R2P and given the status of an independent element, “protection” receives special attention at the United Nations.

“Protection” is a discursive element connected with the Security Council’s agenda item “Protection of civilians in armed conflict”. Since 2002, the UNSC hosts biannual meetings on this topic³⁸⁵. Even though, originally, “protection” was discussed mainly in connection to U.N. peacekeeping missions and their mandates, the concept has gradually spilt over in other thematic debates. This phenomenon is partially due to the fact that the notion of “protection of civilians” is both morally compelling and a winning argument in discussions of concrete situations such as Darfur. Its functional versatility makes the element a potentially powerful empty signifier. Meaning-wise, “protection” undergoes two reformulations before getting gripped by Justice. The first move consists of its strategic decoupling from “sovereignty” and reformulation as a technical element in the U.N. peacekeeping debate. This rearticulation separates “protection” from R2P and opens up new interpretive possibilities, while keeping intact its empty signifier potential. After its first reformulation enables connections to “prevention” and the “rule of law”, “protection” is linked in a second move to “justice”.

The first reformulation consists therefore in the inscription of a technical meaning onto “protection”. As early as 2000, the Brahimi Report had advocated the drafting of more robust peacekeeping mandates authorizing the use of force for the protection of civilians³⁸⁶. The Security Council acted upon these recommendations and

³⁸⁵The most important open debates on this topic during the period under analysis are: United Nations Security Council, Debate, 9 Dec. 2005, S/PV.5319 & Resumption 1 and United Nations Security Council, Debate, 22 June 2007, S/PV. 5703.

³⁸⁶Annan, Kofi, U.N. Secretary-General. Report of the Panel on United Nations Peace Operations (Brahimi Report), A/55/305 - S/2000/809, 21 August 2000, §48-55. For an assessment of the effectiveness of these Chapter VII-mandate peacekeeping missions please see: Lamp, Nicolas and

included peace-enforcement and peace-building measures in the Missions' mandates. Subsequent discussions however went conceptually even further. "Protection of civilians" acquired new functions, becoming an important policy objective and an international norm with the power to prescribe U.N. behaviour³⁸⁷. This pluralism is the result of the policy context. There are overlaps, time and meaning-wise, between the debate on the reform of U.N. peacekeeping practice, policy attempts to overcome the humanitarian intervention dilemma, and the reformulation of "sovereignty" as R2P.

"Protection" falls at the intersection of these discourses. Its pluralism and versatility underline the concept's openness to reformulations. Its discursive connection to "justice" is achieved through the rearticulation of "protection" as "prevention" and its semantic linkage to the "rule of law". The first of these rearticulations takes place at the UNSC. While discussing the moral significance of protecting civilians, discourse producers connect the concept of "protection" to "prevention" and, more peripherally, to "rule of law" in a way that justifies alternative ways of action rather than interventions³⁸⁸. The protection/prevention pair is visible in other statements of international public servants and experts particularly in connection with the R2P concept. In the aftermath of the ICISS Report, international public servants such as Kofi Annan and later Ban Ki Moon attempted to separate R2P from the practice of military interventions. Their goal was therefore to forge consensus on new international norms, rather than a specific policy³⁸⁹. Gradually, however, a different vocabulary was ushered in.

Dana Trif. 2009. United Nations Peacekeeping Forces and the Protection of Civilians in Armed Conflict. Hertie School of Governance Working Papers 47.

³⁸⁷Mr. Al-Bader, Qatar, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 11 ("The protection of civilians in armed conflict"). See also: Annan, Kofi, U.N. Secretary-General, Presentation of Annual Report to the General Assembly, 20 Sept.1999.

³⁸⁸Mr. Baali, Algeria, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 2 ("Protection of civilians in armed conflicts"); Mr. Kleib, Indonesia, United Nations Security Council, 22 June 2007, S/PV.5703, p. 15 ("Protection of civilians in armed conflicts").

³⁸⁹Annan, Kofi, U.N. Secretary-General, Address to the Stockholm International Forum, Stockholm, Sweden, 26 January 2004; See also: Annan, Kofi, U.N. Secretary-General, Address at the Truman

The new discourse helped UNSC Member States discuss concrete cases of armed conflict, while keeping their policy options open. The terms of the debate were therefore relatively general. Despite the worsening humanitarian situation in Darfur, few interventions referred specifically to the “protection of civilians”. Some statements advocated the creation of a “culture of prevention”, rather than endorsing stronger measures.³⁹⁰ Because “protection” was sufficiently vague, the concept allowed multiple meanings and left the door open for a softer version of international action. Other discourse producers fell back on “protection” in order to discuss human rights violations and economic wellbeing instead of intervention³⁹¹. This propensity to cast aside a specific content for “protection” facilitated several linkages that would otherwise neither appear as logical, nor policy-wise necessary. Thus, the intermediary element of “prevention” enabled the linking of “protection” to the International Criminal Court, portrayed at the ICC Assembly as a Court with a deterrent role in international peace and security³⁹². Following the adoption of UNSC Resolution 1593(2005), authorizing the ICC Prosecutor to conduct investigations in a state not-party to the Rome Statute, this focus on prevention appeared suddenly as a path-dependent policy choice. Without the political will to use force on the territory of a sovereign state, “prevention” had become *the* legitimate type of international action. Under such circumstances, the only preventive strategy available to policymakers hoping to preempt further escalations of conflict was recourse to criminal justice.

Library, 11 Dec. 2006; Ban Ki Moon, U.N. Secretary-General, “Responsible Sovereignty in an Era of Transnational Threats”, 15 July 2008, Bertelesmann Foundation, Berlin.

³⁹⁰The Representative of Algeria spoke about the creation of a “culture of prevention”. Mr. Baali, Algeria, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 2 (“The protection of civilians in armed conflict”).

³⁹¹Mr. Arias, Panama, United Nations Security Council, Debate, 31 July 2007, S/PV. 5727, p.9 (“Sudan”).

³⁹²Annex 11 – Coded segments “Justice“ as Fantasy and the ICC. For examples of specific interventions see: Brazil, Statement, First Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3-10 September 2002; Bulgaria, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010; Japan, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 November 2008.

- *Accountability*

During the UNSC debates over Darfur, Justice gripped two additional elements. One of them was “accountability”, which entered the discourse as “individual criminal responsibility” and, therefore, directly connected to criminal justice. “Accountability” and “individual criminal responsibility” are however two distinct discursive elements. While ICR is a legal norm and a founding principle of international criminal law with a history traceable to Article 227 of the 1918 Versailles Treaty³⁹³, the element of “accountability” is an empty signifier. Its articulation as “individual criminal responsibility” took place relatively recently, going back to the first international criminal tribunals of the 1990s.

“Accountability” has nevertheless multiple meanings in international relations practice³⁹⁴. The standard definition of “accountability” refers to a type of behaviour, usually of an organization or an elected body, which needs to be accounted for or justified in front of an audience. Its application to individual and state behaviour in international relations is part of a more general trend in international law, which includes the expansion of the legal category of subject beyond the sovereign state. In international relations however there are no predefined audiences in front of which such new actors could be held accountable. Although individuals should, in principle, undergo trials in domestic justice systems for violations of international humanitarian law, these treaties have a bad enforcement record.

The strength of “accountability” lies however somewhere else, namely in its ability to justify policy measures as well as generate processes of identification. As an empty signifier, “accountability” is normatively powerful and can mobilize symbolic

³⁹³Schabas, William. 2004. *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press.

³⁹⁴Grant, Ruth W. and Robert O. Keohane. 2005. *Accountability and Abuses of Power in World Politics*. *American Political Science Review* 99:29-43; Kettl, Donald F. 2009. *Administrative Accountability and the Rule of Law*. *Political Science and Politics* 42:11-17.

international support relatively easily. Its gripping gives Justice the perfect legitimization of its policy solution, ICC referrals, and helps cement its discursive structure through the creation of two new relationships: (1) “accountability” becomes connected to “no impunity” and (2) “accountability” is linked to the already familiar intermediary element “prevention”. These contingent articulations gradually facilitate the insertion of the International Criminal Court as a key discursive ingredient in international security debates. The signified of “accountability” meanwhile remains relatively stable, as “individual criminal responsibility”. A secondary discursive operation increases however its symbolic power and attractiveness as an identification point by playing on the concept’s more general meaning.

The relationship between “accountability” and “no impunity”³⁹⁵ is a contingent articulation within the Justice discourse. As elements of the new discursive formation, both concepts undergo several changes. The “no impunity” norm acts discursively as an intermediary element between “accountability”, “justice” and the ICC, while also acquiring an international status of its own. Before the Rome Statute’s codification of international crimes entered into force, “impunity” had been broadly construed as absence of punishment for perpetrators of crimes under international humanitarian law. In his 1999 speech before the United Nations General Assembly, U.N. Secretary-General Kofi Annan had praised the deterrent role of international criminal tribunals and had extolled their “battle against impunity”³⁹⁶. After this date however “impunity” was gradually connected to international criminal law.

³⁹⁵For further quotes see: Mr. Helg, Switzerland, 30 Sept. 2003, S/PV.4835, p.16 (“Justice and the Rule of Law: the United Nations role”); Mr. Loevald, Norway, 9 December 2005, S/PV.5319, p.10 (“The protection of civilians in armed conflict”); Mr. Burian, Slovakia, 22 June 2006, S/PV. 5474 (“Strengthening International Law”); Mr. Sardenberg, Brazil, 30 July 2004, S/PV.5015, p.8 (“Sudan”); UN Secretary-General, 8 February 2005, S/PV.5120, p. 3 (“Sudan”); Mr. Taha, Sudan, 8 February 2005, S/PV.5120, p. 6 (“Sudan”); Mrs. Patterson, United States of America, 31 March 2005, S/PV.5158, p. 3 (“Sudan”).

³⁹⁶Annan, Kofi, U.N. Secretary-General, Presentation of Annual Report to the General Assembly, 20 Sept.1999.

Kofi Annan's speeches are a rich source of information on the dynamics of Justice. The Secretary-General's interventions either in 1999 before the UNGA, or in 2006 during one of his last public lectures before the end of his mandate, revisit often the topic of international criminal justice, highlighting the connections between "accountability", "impunity" and "sovereignty". Annan's argument that governments must be held accountable³⁹⁷ in order to prove to "states bent on criminal behaviour" that "sovereign impunity"³⁹⁸ was no longer an option, shows how these concepts are constantly undergoing changes of meaning which 'empty' them of a specific content. The discursive jump from the "accountability" of "individuals" to the "accountability" of "governments" or from "impunity" to "sovereign impunity" takes only one public intervention. Some exceptions aside³⁹⁹, the notion of "sovereign impunity" did not become too popular in international debates. "No impunity", on the other hand, and its relationship to "accountability" gained more prominence in UNSC meetings.

"Accountability" is the element with the third biggest number of coded segments, 76, following "Peace" and "Rule of Law". However, despite this relatively high frequency, explicit references to "accountability", either of individuals or governments, are rather rare in UNSC debates (only 19 hits)⁴⁰⁰. They are more often found in statements and resolutions by international organizations⁴⁰¹, NGOs⁴⁰² and

³⁹⁷ Annan, Kofi, U.N. Secretary-General, Address at the Truman Library, 11 Dec. 2006;

³⁹⁸ Annan, Kofi, U.N. Secretary-General, Presentation of Annual Report to the General Assembly, 20 Sept. 1999.

³⁹⁹ Mr. Patten, Statement by Mr. Patten, European Commissioner for DG External Relations, September 25, 2002, European Parliament, Strasbourg; Ban Ki Moon, U.N. Secretary-General, "An Age of Accountability", Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

⁴⁰⁰ Annex 10 – Coded segments "Elements". For examples of such references see: Moreno-Ocampo, Luis, ICC Prosecutor, United Nations Security Council, Debate, 14 June 2006, S/PV.5459, p. 5 ("Sudan"); Mrs. Patterson, United States of America, United Nations Security Council, Debate, 31 March 2005, S/PV.5158, p. 3 ("Sudan").

⁴⁰¹ European Council Conclusions, 12134/02(presse 279), 2450th Council Session, Brussels, 30 Sept. 2002.

⁴⁰² Human Rights Watch, Statement to the General Debate of the International Criminal Court's Seventh Assembly of States Parties, 15 November 2008.

international public servants/experts⁴⁰³. This silence suggests that issues such as the accountability of political and military leaders, more freely discussed by international experts⁴⁰⁴, were still a sensitive topic at the UNSC. Under discursive pressure from Justice, UNSC Members opted instead for the concept of “no impunity” as a means of generating political consensus without appearing to single out individuals. This strategy did not eliminate “accountability” as a discursive element. It pushed however the debate over its core meaning to different fora, such as the Assembly of ICC States Parties and the media, where the connection between “accountability” and international criminal justice was diluted in favour of a stronger moral message.

The indirect effect of *accountability*'s relationship to “no impunity” is therefore a discursive transformation that enhances the element's symbolic power and its attractiveness as a discursive point of identification. This capacity to generate political consensus becomes explicit during the Kampala Review Conference, where U.N. Secretary-General Ban Ki Moon's “birth of a new Age of accountability”⁴⁰⁵ and ICC President Song Sang-Hyun's “new discourse of accountability”⁴⁰⁶ endorse this reformulation. “Accountability” acquires in these statements the status of an international value, rather than a concrete policy proposal. “No impunity” also undergoes a shedding of meaning. At Kampala, Ban Ki Moon portrays the emergence

⁴⁰³HRH Prince Zeid Ra'ad Zeid Al-Hussein, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003; HRH Prince Zeid Ra'ad Zeid Al-Hussein, Ambassador of Jordan to the USA, Report on the Major Findings of the Conference, International Conference “Building a Future on Peace and Justice”, Nuremberg, 25-27 June 2007; Annan, Kofi, U.N. Secretary-General, Address to the U.N. Human rights Commission, 7 April 2004; Annan, Kofi, U.N. Secretary-General, Address at the Truman Library, 11 Dec. 2006.

⁴⁰⁴HRH Prince Zeid Ra'ad Zeid Al-Hussein, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003;

⁴⁰⁵Ban Ki Moon, U.N. Secretary-General, “With the International Criminal Court, a new age of accountability”, The Washington Post, 29 May 2010; Ban Ki Moon, U.N. Secretary-General. “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

⁴⁰⁶Song Sang-Hyun, President of the International Criminal Court. Opening Remarks to the Review Conference of the ICC Rome Statute, Kampala, Uganda, 31 May 2010.

of a “culture of accountability” as a replacement for the past “culture of impunity” by throwing “justice” and “rule of law” into this mix:

“To eliminate the culture of impunity, and guarantee a culture of accountability, justice and the rule of law, it is imperative that State Parties, mindful of their obligations under the Statute, fully support the Court to bring justice to those victims of gross human rights violations and atrocities.”⁴⁰⁷

The statement carefully avoids assigning a specific content to “accountability”, although even a cursory reading of Ban Ki Moon’s statement leaves no doubt that “bringing justice to those victims of gross human rights violations and atrocities”⁴⁰⁸ must involve the enforcement of individual criminal accountability by a specialized tribunal.

These political debates represent the virtual arena where Justice continued to colonize the space of international public policy by creating additional, morally laden meanings for concepts that would have otherwise been mere technical terms. By labelling the past as “an era of impunity”⁴⁰⁹, the discourse creates a frontier that transforms the present into a discursive inside defined in terms of moral behaviour. Discourse producers appeal to the Security Council almost as if the UNSC is a moral actor whose actions, “combating impunity and promoting the rule of law”⁴¹⁰, acquired a higher meaning. Strategically, the sedimentation of “no impunity” in such discussions allowed actors in the secondary institutional layer, the ICC Assembly of States Parties, to insert the ICC as a discursive element into the Justice chain of equivalences. Representatives of ICC States Parties portrayed the Court as the best tool in fighting

⁴⁰⁷Tanzania, Statement by H.E. Jakaya Mrisho Kikwete, President of the United Republic of Tanzania during the General Debate of the Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May 2010. For statements endorsing measures against a „culture of impunity“ see also: Mr. Mayoral, Argentine, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p.19 (“Strengthening international law“); Mr. Sardenberg, Brazil, United Nations Security Council, Debate, 30 July 2004, S/PV.5015, p.8 (“Sudan“); Annan, Kofi, U.N. Secretary-General, United Nations Security Council, Debate, 18 September 2004, S/PV.5080, p.4 (“Sudan“).

⁴⁰⁸Ibid.

⁴⁰⁹Ban Ki Moon, U.N. Secretary-General. “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

⁴¹⁰Mr. Mayoral, Argentine, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p.19 (“Strengthening international law“).

impunity⁴¹¹ and as a new accountability mechanism⁴¹² that enhances prevention⁴¹³. They connected discursively “accountability” with the International Criminal Court in a way that catered to the Council’s hesitation in the face of hard policy choices, but which also inserted the ICC into the Justice chain of equivalence.

- ***Rule of law (ROL)***

“Rule of law” is the second most frequently coded element, with 92 segments across the Collection of Quotes – The Justice Discourse 2002-2010 (Annex 5). ROL, in a way similar to “sovereignty” and “accountability”, is a rich empty signifier without a particular attachment to a stable meaning⁴¹⁴. However, due to its huge symbolic power, its inclusion in the Justice discourse increased the latter’s appeal and broadened its support base in policy debates. The historical background against which the “rule of law” became a discursive element of the Justice discourse was the international search for legitimate and effective alternatives to intervention in cases of armed conflict. There existed an unspoken agreement among the discourse producers

⁴¹¹Selected quotes: Argentine, Statement, Fourth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 28 November – 3 December 2005; Argentine, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008; Austria, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Austria, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010; Belgium, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November 2006; Bosnia Herzegovina, Statement, First Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002; Brazil, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006; Bulgaria, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010; Ecuador, Speech of the Ambassador Maria del Carmen Gozales Cabal, Fifth Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court, the The Hague, 23 November 2006; Guyana, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 20 November 2009; Portugal, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008;

⁴¹²Ghana, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 4 December 2007; Serbia, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November – 1 December 2006.

⁴¹³Annan, Kofi, U.N. Secretary-General, Address to the UN Human Rights Commission, 7 April 2004; Moreno-Ocampo, Luis, Statement of the Prosecutor of the International Criminal Court, Mr. Luis Moreno-Ocampo to the U.N. Security Council pursuant to UNSCR 1593 (2005), 14 June 2006; Portugal, Statement on behalf of the European Union, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007.

⁴¹⁴Bassu, Giovanni. 2014. Law Overruled: Strengthening the Rule of Law in Postconflict States. *Global Governance* 14:21-38.

surveyed in this study that international “peace” and “security” were, in principle, tied to the “rule of law”. The nature of this relationship and the exact impact of ROL on international peace remained however disputable. Between 2002 and 2010, advocates and opponents of Justice claimed in equal measure to be driven in their actions by concerns over the “rule of law”. ROL was therefore, during this particular historical period, a “floating” signifier pressured by various discourses to accept a relatively stable, albeit provisional, meaning. Justice eventually won this symbolic battle, finally stabilizing the element and incorporating it into its structure.

In August 2004, the U.N. Secretary-General’s Report on “Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies” drew a connecting line between the concepts of “justice” and the “rule of law” by relying on elements such as “accountability” and “prevention”. This was the first explicit attempt to create a justice/ROL pairing. If ROL was defined in Annan’s Report as a “principle of governance” by which one should understand that “all persons, institutions, and entities, public and private, including the State itself, are *accountable* to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards”⁴¹⁵, “justice” was articulated as an “ideal of *accountability* and fairness in the *protection* and vindication of rights and the *prevention* and punishment of wrongs.”⁴¹⁶ This standard formulation frames other ROL references either at the U.N. Security Council, or in the ICC Assembly of States Parties.

There is a marked difference however in the concept’s usage, which suggests that even this rearticulation of ROL as a particular type of accountability could have been exploited differently, had certain discursive dynamics not hegemonized its meaning. In 2003, 2004, and 2006, during the four Security Council debates on justice, the rule of law and international law, representatives of countries such as Pakistan,

⁴¹⁵Annan, Kofi, U.N. Secretary-General. Report, S/2004/616, §6 (my emphasis).

⁴¹⁶*Ibid.*, §7 (my emphasis).

Russian, China, Azerbaijan, but also ICC Members Slovakia, the Netherlands or Spain identified ROL as an ordering principle in international relations⁴¹⁷. Some discourse producers, like Venezuela, explicitly linked the concept to state sovereignty and non-intervention⁴¹⁸. This conservative, in-defense-of-the-status-quo usage was increasingly challenged by parallels drawn between the significance of ROL for the domestic stability of sovereign states and its presumed role in international relations. Statements on this topic reveal sometimes rather baffling juxtapositions. Speaking on behalf of Azerbaijan during the 2006 UNSC debate on the “Strengthening of international law”, Mr. Mammadov connected the Council’s “ultimate goal” of “peace and security” to “respect for the rule of law at both the national and international levels”⁴¹⁹. The relationship was supposed to be symbiotic, but no further clarifications were offered about how one could show such “respect”.

A similar desire to elevate ROL to an even higher level of abstraction than “accountability” can be traced back to statements by pro-ICC governments and international organizations. The European Parliament, Japan or South Africa refer to

⁴¹⁷Mr. Kasuri, Pakistan, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.5 (“Justice and the Rule of Law: the United Nations Role”); Mr. Ivanov, Russian Federation, 24 Sept. 2003, S/PV.4833, p.5; Mr. Li Zhaoxing, China, 23 Sept. 2003, S/PV.4833, p.8; Mr. Cunningham, United States, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 20 (“Justice and the Rule of Law: the United Nations Role”); Ms. Palacio, Spain, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 14 (“Justice and the Rule of Law: the United Nations Role”); Mr. van den Berg, Netherlands, United Nations Security Council, Debate, 6 October 2004, S/PV.5052 (Resumption 1), p. 4 20 (“Justice and the Rule of Law: the United Nations Role”); Mr. Burian, Slovakia, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 11 (“Strengthening international law: rule of law and maintenance of international peace and security”); Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 20 (“Strengthening international law: rule of law and maintenance of international peace and security”); Ms. Nana Effah-Apenteng, Ghana, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 24 (“Strengthening international law: rule of law and maintenance of international peace and security”); Mr. Li Junhua, China, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 26 (“Strengthening international law: rule of law and maintenance of international peace and security”); Mr. Mammadov, United Nations Security Council, Debate, 22 June 2006, Azerbaijan, S/PV. 5474, Res.1, p. 4 (“Strengthening international law: rule of law and maintenance of international peace and security”).

⁴¹⁸Mrs. Núñez de Odremán, Bolivarian Republic of Venezuela, United Nations Security Council, Debate, S/PV. 5474, Res.1, p. 15 (“Strengthening international law: rule of law and maintenance of international peace and security”).

⁴¹⁹Mr. Mammadov, Azerbaijan, United Nations Security Council, Debate, S/PV. 5474, Res.1, p. 4 (“Strengthening international law: rule of law and maintenance of international peace and security”).

ROL as an international value⁴²⁰. A more ambiguous, on-the-fence-meaning, was given by Samoa. In 2010, at Kampala, Samoa's Representative equated ROL with "protection" in a "dangerous world"⁴²¹. This juxtaposition between "peace", "security" and the "rule of law" was perhaps inevitable during debates on the role of the United Nations and of international law in the 21st century collective security system. However, the unintended effect of these interventions was to prepare the ground, discursively, for a linkage that would not have been otherwise thought of: "sustainable peace" with "justice" and "justice" with the "rule of law".

If the first pair was discussed at length in a previous section, the second one requires more attention because what began as a contingent articulation is by now almost a "fact" of international life. There are many references to "justice", used interchangeably with the "rule of law", in UNSC debates⁴²². Some speakers referred, exceptionally, to "justice" as equality⁴²³. Overall, however, there appeared to be a general lack of political interest in this fundamental principle of contemporary justice theories, and the trend, between 2002 and 2010, was a gradual narrowing down of meaning. I attribute this effect to the Justice discourse. "Rule of law" as a discursive

⁴²⁰European Union Parliament, Resolution on the International Criminal Court, P5_TA-PROV(2002)0449, 26 Septembrie 2002; Japan, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 30 November – 14 December 2007; South Africa, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May 2010.

⁴²¹Samoa, Statement by Mr. Malietay Melietoa, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010.

⁴²²Mr. Fall, Guinea, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 12/13 ("Justice and the Rule of Law: the United Nations Role"); Mr. Haraguchi, Japan, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.9 ("Justice and the Rule of Law: the United Nations Role"); Mr. Gift, Trinidad and Tobago, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.30 ("Justice and the Rule of Law: the United Nations Role"); Mr. Almansoorn, Bahrain, United Nations Security Council, Debate, 30 September 2003, S/PV.4835, p. 35 ("Justice and the Rule of Law: the United Nations Role"); Mr. Zhang Yishan, China, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 21 ("Justice and the Rule of Law: the United Nations Role"); Mr. van den Berg, Netherlands, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p.4 ("Justice and the Rule of Law: the United Nations Role"); Mr. Al-Kidwa, Palestine, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 15 ("Justice and the Rule of Law: the United Nations Role"); Mr. Kanu, Sierra Leone, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, Res.1, p. 2 ("Strengthening international law").

⁴²³Mr. Belinga-Eboutou, Cameroon, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 18/19 ("Justice and the Rule of Law: the United Nations Role"); Mrs. Núñez de Odremán, Bolivarian Republic of Venezuela, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, Res.1, p. 15 ("Strengthening international law").

element underwent in this period a transformative process. If the Secretary-General's original 2004 definition of "justice" qua "accountability" connected this concept to "rule of law" qua principle of governance, by 2010 the meaning of both elements had come to signify (exclusively) "criminal justice". Argentina, in its intervention at the Kampala Review Conference, explicitly equated "rule of law" with "criminal justice"⁴²⁴. During debates about the scope of peacekeeping missions' mandates, ROL became the equivalent of a series of concrete policy measures such as judicial reform. Politicians discussed peacekeeping, crisis prevention, and conflict management as policy areas in need of a "rule of law" toolkit of policies and human resources⁴²⁵.

The justice/rule of law pairing was reinforced through references to "sustainable peace". The "justice" – "rule of law" – "sustainable peace" triangle had progressively gained ground in Security Council discussions as a justification for alternatives to military intervention. In December 2005, during an open debate on the "Protection of civilians in armed conflicts", the Representative of Denmark gave the following succinct formulation of this issue, indirectly inserting criminal justice, via "impunity", into the chain of equivalent relationships:

"A culture of impunity for mass atrocities can critically undermine long-term security. If peace and reconciliation are to be real and sustainable,

⁴²⁴Argentine, Intervention, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May 2010.

⁴²⁵Mr. Pleuger, Germany, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.15 ("Justice and the Rule of Law: the United Nations Role"); Mr. Guéhenno, Under-Secretary-General for Peacekeeping Operations, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 3 ("Justice and the Rule of Law: the United Nations Role"); Mr. MacKay, New Zealand, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 10 ("Justice and the Rule of Law: the United Nations Role"); Mr. Sahovic, Serbia and Montenegro, 30 Sept. 2003, S/PV.4835, p. 11; Mr. Motoc, Romania, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p. 15 ("Justice and the Rule of Law: the United Nations Role"); Mr. Kim Sam-hoon, Republic of Korea, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.31 ("Justice and the Rule of Law: the United Nations Role"); Mr. Pfanzelter, Austria, United Nations Security Council, Debate, 22 June 2006, S/PV. 5474, p. 32 ("Strengthening international law"); Czech Republic, Statement H.E. Ms. Margita Fuchsova, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010; Steinmeier, Frank Walter, Opening Speech by Federal Foreign Minister Steinmeier at the International Conference "Building a Future on Peace and Justice" in Nuremberg, 25 June 2007.

they must be built on *the rule of law*. *Impunity* for breaches of international humanitarian and human rights law is totally unacceptable.”⁴²⁶

Mr. Mammadov’s 2006 UNSC speech, calling rather vaguely for respect for the international rule of law, was gradually substituted by a discourse that offered concrete policy measures in support of the same ROL. I have argued elsewhere that Sudan implicitly recognized the legitimacy of the Justice discourse by acknowledging its sovereign responsibility towards the restoration of peace in Darfur. Sudanese official discourse did not change after the referral of the Darfur situation to the ICC in March 2005. Soon after the signing of the first Darfur Peace Agreement, on 5 May 2006, and following the deployment of an ICC Fact-Finding Mission in the region, the Sudanese Representative at the UNSC, Mr. Manis, continued to argue that his country was committed to the rule of law and justice in Darfur. The Sudan vowed to hold accountable perpetrators of violations of human rights and international humanitarian law through the mechanisms Khartoum had already set up in the region.⁴²⁷ Moreover, the justice/ROL formulation allowed NGOs to chastize the U.S. for its disregard of the rule of law in the Iraqi prisoners scandal.⁴²⁸ The pair was strongly supported by interventions in the ICC Assembly, where the Court was portrayed as an expression of the international ROL⁴²⁹. Politicians and experts converged on the idea that the International Criminal Court contributed to the promotion of the ROL⁴³⁰ and, in general,

⁴²⁶Mr. Loevald, Norway, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 10 (“The Protection of civilians in armed conflict”).

⁴²⁷Mr. Manis, the Sudan, United Nations Security Council, Debate, 14 June 2006, S/PV. 5459, p.6 (“Sudan”).

⁴²⁸Amnesty International, Press Release, “U.S. Withdrawal: Determination of International community is ‘Victory for International Justice and the Rule of law’”, 23 June 2004;

⁴²⁹Croatia, Statement by H.E. Mr. Frane Krnic, Head of Delegation, Fifth Session of the Assembly of States Parties to the International Criminal Court, The Hague, 24 November 2006; Jordan, Statement, The Hashemite Kingdom of Jordan, Address by H.R.H. Prince Zeid Raad Al Hussein, Permanent Representative to the United Nations, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 25 November 2006; Philippe Kirsch, Statement by Judge Philippe Kirsch, President of the International Criminal Court at the Inaugural Meeting of Judges, 11 March 2003.

⁴³⁰Mr. Derbez, Mexico, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p. 10 (“Justice and the Rule of Law: the United Nations Role”); Mr. Pemagbi, Sierra Leone, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 30 10 (“Justice and the Rule of Law: the

to the triumph of liberty against oppression⁴³¹. The Court's playing a preventive role⁴³² in the new security architecture, an articulation analyzed extensively in the following section, fitted well in this narrative.

3.3.3. *The Emergence of a New Fantasy: Justice in the Global Village*

Scattered over hundreds of interventions at the United Nations Security Council, in the ICC Assembly of States Parties, and media statements, 148 coded segments shape a narrative that provides the key to understanding the mechanisms which 'grip' subjects and provide them with sufficient motivational energy to engage in a new political movement. I focused on two analytical elements to describe this process: the *content* of the fantasy (the narrative) and its *functions* (narrative functions). At the content level, the discourse put forward a number of claims. One of the most important was that Justice represented a global answer to a perceived planetary crisis of values. The time had come when, arguably, humanity should create space for alternative faiths

United Nations Role“); Argentine, Statement, Fourth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 28 November – 3 December 2005; Brazil, Statement, First Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3-10 September 2002; Egypt, Statement by the Delegation of the Arab Republic of Egypt, The Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Lesotho, Statement by Mr. Kautu Moeletsi, Counsellor (Legal Affairs), Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, November 2006; Luxembourg, Allocution de S.E.M. Jean-Marc Hoscheit, Ambassadeur, Représentant Permanent du Grand-Duché de Luxembourg devant la Sixième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale, New York, 4 Décembre 2007; Nigeria, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010; Serbia, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007; Sweden, Statement, Seventh Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court, The Hague, 14 November 2008; Asian Forum for Human Rights and Development (Forum-Asia), “Asian Perspective must be represented in the ASP”, Forum Asia Statement on the First Resumed Session of the Assembly of States Parties of the International Criminal Court, 3 February 2003; Philippe Kirsch, Statement by Judge Philippe Kirsch, President of the International Criminal Court at the Inaugural Meeting of Judges, 11 March 2003.

⁴³¹Senegal, Intervention de M. Saliou Niang Dieng, Septième Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale, La Haye, 14-22 novembre 2008.

⁴³²Macedonia, Statement by H.E. Mr. Srgjan Kerim, Permanent Representative of the Republic of Macedonia to the United Nations, First Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002; Portugal, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006:

in order to avoid a multiplication of conflicts⁴³³. This overarching claim is grounded in a narrative legitimating practice change in international security. There are two main aspects related to this narrative: in a technical sense, Justice offers a policy solution to the dilemmas of military intervention on the territory of a sovereign state in the absence of consent; however, it also acts as a catalyst for political change by offering a new mode of enjoyment to its subjects⁴³⁴. This emergence helps pin down several narrative functions I lay out in the following pages.

The three different sites where Justice is born - the U.N. Security Council, the ICC Assembly of States Parties, and the “virtual” space of international debates – are also responsible for the emergence of its grounding fantasy. The narrative, which structures this new political imaginary, is produced across these institutional settings. The largest input is provided by ICC member states (37 coded segments) and the interventions of experts and international public servants (96 coded segments). I have formalized my findings in Table 13, where I present this narrative through the recreation of the most relevant coded segments from Annex 11 – “Justice” qua Fantasy and the ICC. In one of his statements at the UNSC, Chinese representative Li Zhaoxing lays out the metaphors that constitute the backbone of this fantasy. Speaking before the Security Council during the debate on “Justice and the Rule of Law: the United Nations Role”, Mr. Li presents a metaphoric vision of the future:

“Our goal is to build a better global village where there are no wars or conflicts as all countries live in peace and stability; where there is no poverty or hunger as all the inhabitants enjoy development and dignity; and where there is no discrimination or prejudice and all peoples and civilizations coexist in harmony complementing and enriching one (an)other. To achieve all that, we the peoples

⁴³³Mr. De Venecia, Philippines, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p.6 (“Justice and the Rule of Law: the United Nations Role”).

⁴³⁴Glynos, Jason. 2008. Ideological Fantasy At Work. *Journal of Political Ideologies* 13:275-296, p. 289-291.

need a world of democracy and the rule of law, and we need a stronger United Nations. Let us work hand in hand towards that end.”⁴³⁵

The *content* of this narrative consists in an idealized scenario for the attainment of global peace. Its language draws extensively on legal and moral concepts. ‘War’ is portrayed as an existential and imminent threat that not only marred humanity’s past, but also threatens its immediate future. We live in “daunting times for humankind”⁴³⁶ with all “civilization [...] at stake”⁴³⁷. One of the most outstanding features of this quasi-apocalyptic vision is the supplementary creation of a collective identity. This subject position works as an identification point for all types of discourse producers: from governments to non-governmental organizations, experts, public servants, and the ‘ordinary man in the street’. References to “our planet” and the “grave challenges” before it⁴³⁸ are interspersed with appeals to solidarity emphasizing that “the human race is only one”⁴³⁹, “humanity is indivisible”⁴⁴⁰ and “we stand or fall together”⁴⁴¹.

In the Justice narrative, moral progress is more than a good in itself. It becomes tied to a vision of the future “global village” which is freer, fairer, and safer⁴⁴². This world is “democratic” and “multilateral” in its procedures⁴⁴³. International law is the recognized symbol of civilization⁴⁴⁴ and just punishment⁴⁴⁵ the means to legitimately preserve order. This ‘future’ is not only desirable, but also necessary. The

⁴³⁵Mr. Li Zhaoxing, China, United Nations Security Council, Debate, 24 Sept. 2003, S/PV. 4833, p. 8-9 (“Justice and the Rule of Law: the United Nations Role”).

⁴³⁶Annan, Kofi, U.N. Secretary-General Address to the meeting of the ICC Assembly of States Parties, 10 September 2002.

⁴³⁷Annan, Kofi, U.N. Secretary-General, Address at the Time Warner Center, 8 Dec. 2006.

⁴³⁸HRH Prince Zeid Ra’ad Zeid Al-Hussein, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003.

⁴³⁹Venezuela, Statement of the Bolivarian Republic of Venezuela in the VIII Assembly of States Parties of the Rome Statute, The Hague, 19 November 2009.

⁴⁴⁰Annan, Kofi, U.N. Secretary-General, Annual Report to the General Assembly, 20 Sept. 1999.

⁴⁴¹Annan, Kofi, U.N. Secretary-General, Address at the Time Warner Center, 8 Dec. 2006.

⁴⁴²Annan, Kofi, U.N. Secretary-General, Address to the 2005 World Summit, 14 Sept. 2005.

⁴⁴³Mr. Gaspar Martins, Angola, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 22 (“Justice and the Rule of Law: The United Nations Role”).

⁴⁴⁴Mr. Gomez Robledo, Mexico, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 33 (“Justice and the Rule of Law: The United Nations Role”).

⁴⁴⁵Croatia, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007.

Second World War becomes, discursively, the enduring lesson⁴⁴⁶ that makes explicit the necessity of global “peace”. “Nuremberg” on the other hand is “our collective heritage” and its “legacy”⁴⁴⁷ shows humanity what kind of action would be desirable in order to protect persecuted minorities⁴⁴⁸, “sav[e] succeeding generations from the scourge of war”⁴⁴⁹ and, more generally, act for the sake of “those vulnerable and needy people throughout the world” in order “to save their lives, to protect their rights, to ensure their safety and freedom”⁴⁵⁰. There is a “guilty” Subject in this narrative: humans. The “global village” is therefore more than an aspiration to order and stability. It is a longing for moral redemption, because “all of us failed”⁴⁵¹ to protect “defenseless men and women”⁴⁵². In this story, the goal of “peace” acquires a performative dimension. In order to achieve “peace”, people must change their behaviour and identify with “their common humanity” rather than their ethnic, ideological and religious differences⁴⁵³.

The main obstacle to world “peace” in this narrative is not the political organization of international relations. The United Nations, the defining global institution of the contemporary collective security system, is described as “our moral conscience”⁴⁵⁴ and, arguably, capable of fulfilling these aspirations. The real threat to the attainment of “peace” is the fragmentation of the international system, because

⁴⁴⁶Ms. Nana Effah-Apenteng, Ghana, United Nations Security Council, Debate, 22 June 2006, S/PV.5474, p. 24 (“Strengthening international law”).

⁴⁴⁷Kirsch, Philippe, “Applying the Principles of Nuremberg,” Keynote Address at the Conference ‘Judgment at Nuremberg’ held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, USA, 30 Sept. 2006.

⁴⁴⁸Mr. Galouzeau, France, United Nations Security Council, Debate, 24 Sept. 2003, S/PV.4833, p.6 (“Justice and the Rule of Law: The United Nations Role”).

⁴⁴⁹Mr. Gift, Trinidad and Tobago, United Nations Security Council, Debate, 30 September 2003, S/PV.4835, p. 30 (“Justice and the Rule of Law: The United Nations Role”); Mr. Loej, Denmark, United Nations Security Council, Debate, 9 December 2005, S/PV.5319, p. 30 (“Protection of civilians in armed conflict”).

⁴⁵⁰Annan, Kofi, U.N. Secretary-General, Address to the 2005 World Summit, 14 Sept. 2005.

⁴⁵¹Annan, Kofi, U.N. Secretary-General, Address to the Stockholm International Forum, Stockholm, Sweden, 26 January 2004.

⁴⁵²Annan, Kofi, U.N. Secretary-General, Address to the UN Human Rights Commission, 7 April 2004

⁴⁵³Mr. De Venecia, Philippines, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p.6 (“Justice and the Rule of Law: The United Nations Role”).

⁴⁵⁴Paul Martin, Statement by the Right Honourable Paul Martin, Prime Minister of Canada to the Fifty-Ninth Session of the United Nations General Assembly, New York, 22 September 2004.

“deterioration lays the groundwork for anarchy in international relations”⁴⁵⁵. The problems are therefore not organizational, but the result of a faulty willingness to assume responsibility: humanity must decide to act “now”⁴⁵⁶ and these decisions should be governed by the lessons of “Nuremberg”. Because the “peace” we strive for may be “tentative and fragile” without “the foundations of justice and the rule of law”⁴⁵⁷, “peace” becomes dependent upon “justice”. “Rome”, like “Nuremberg”, is the answer to humanity’s search for a better world. In this alternative history, the Court is portrayed as “a gift of hope to future generations and a giant step forward in the march towards universal human rights and the rule of law”⁴⁵⁸. Because “Rome” gives flesh to a vision of humanity’s better Self, “it is our duty to give it full meaning”⁴⁵⁹.

Table 13. Formalization of Findings for Narrative Analysis

...saving succeeding generations from the scourge of war...
... peace without the foundations of justice and the rule of law may be tentative and fragile....
... Nuremberg is our collective heritage....
... we must carry forth the Nuremberg legacy....
...where the system is allowed to fragment....anarchy in international relations.....
...the issues before us are critical for humanity...
...wars deny the dignity and sacred character of the individual....
... the future of nations states is tied to their capacity to achieve peace and justice.....
...a minimum of morality in good governance...
... only if we can face with our past, we can build strong foundation for the future...
...the road from Nuremberg to Kampala has been long and arduous...
...humanity’s progress...
... rule of law and justice should be the basis of world order....
...the world set its sights on us....
...the fight against impunity is a noble idea which roots itself in the spirits of men...
... as humans, we have a moral obligation to continue striving for a better world....

⁴⁵⁵Mr. Gift, Trinidad and Tobago, United Nations Security Council, Debate, 30 September 2003, S/PV.4835, p. 30 (“Justice and the Rule of Law: The United Nations Role”).

⁴⁵⁶Song Sang-Hyun, President of the International Criminal Court, “The bridge of peace rests on pillars of justice”, Bridge to the Future Conference (End to Impunity), Arnhem, 19 September 2009.

⁴⁵⁷Mr. Kim Sam-hoon, Republic of Korea, United Nations Security Council, Debate, 30 Sept. 2003, S/PV.4835, p.31 (“Justice and the Rule of Law: The United Nations Role”); Mr. Zhang Yishan, China, United Nations Security Council, Debate, 6 October 2004, S/PV.5052, p. 21 (“Justice and the Rule of Law: The United Nations Role”); Mongolia, Speech by Dr. B. Altangarel, Director of the Law and Treaty Statute of the International Criminal Court, The Hague, 24 November 2006.

⁴⁵⁸Nigeria, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010.

⁴⁵⁹REDRESS (Seeking Reparation for Torture Survivors), Statement presented at the Eighth Assembly of States Parties, The Hague, 18-26 November 2009.

... recognizing that the human race is only one and that the welfare or impairment of the world affects us all human beings....
... there is a vision set down in Rome and it is our duty to give it full meaning...
... it is said that all roads lead to Rome, but not all lead there directly.....
... their[human being] true nature is to be noble and generous...
...a global era requires global engagement....
.....humanity is indivisible....
... we leave a century of unparalleled suffering and violence...
... our greatest, most enduring test remains our ability to gain respect and support of the world's peoples...
... the world has the missing link for the advancement of peace....
...good people spoke up....
... these are daunting times for humankind....
...all of us failed....
...forget our collective failure to protect...defenseless men and women...
...the quest for basic liberties has still to be won...
...a world where instead of might making right, right would make might...
...for the sake of those vulnerable and needy people...
...all civilization is at stake...
...it began with Nuremberg and Tokyo...
...there is no going back...
...the world has to rebuild itself morally...
...and so from the darkness of destruction, a fragile seed was planted that could bring the light of justice to future generations...
...the United Nations is our moral conscience...
...the time has come for us to act....
... let us seize this historic opportunity on our own continent to demonstrate our commitment to peace and justice...

The *content* of this narrative portrays in a short, summarized version the beliefs individuals hold towards “peace” and “justice”. Some key signifiers such as “Rome” or “Nuremberg” play however more than a metaphoric role. They perform narrative functions, showing that discourses can become quasi-ideological totalities by gripping their subjects rather than simply creating beautiful stories. Or, instead, beautiful stories become scripts for action due to a series of performative effects triggered by their own structure. I have unpacked the fantasmatic logic of Justice by breaking it down and investigating the narrative functions identified in Chapter 2:

- *The teleological representation of the past*
- *The beatific future, the horrific alternative, and the obstacles on the way*

- *The transgressive element*
- *The foundational guarantee: the Hero who protects the Victim[s] from the Villain[s]*

1) *The teleological representation of the past*: Justice comes with strong claims to an alternative history. One of the main strengths of this narrative is the construction of a chronology that invests historical events such as “Nuremberg” and “Rome” with symbolic meaning. The 1918 Versailles Treaty, in particular Article 227 indicting the German Emperor Wilhelm II, the Nuremberg (1945/46) and Tokyo Tribunals (1946/48), the creation of the Ad Hoc and Hybrid International Criminal Tribunals in the mid’ 1990s as well as the adoption of the Rome Statute in 1998 acquire in this narrative a new symbolic identity. They cease to be just key events in a historical timeline covering the development of modern international criminal law.

The metaphor of the “road” enables a symbolic reconstruction of the past by legitimizing the inscription of “Rome” into a sequence that begins with “Nuremberg”, includes “The Hague”, and ends with “Kampala”. The present is simultaneously portrayed as a break with the past, since “we live in a Post-World War II era”⁴⁶⁰, and as the fulfillment of an old legacy. There is a certain paradox in this semantic overdetermination of history, which suggests that the apparently smooth chronological sequence fulfills a different narrative role. When the Representatives of Costa Rica and the Czech Republic refer in their ICC ASP interventions to the *road* towards Rome as difficult⁴⁶¹ or, respectively, “long and arduous”⁴⁶² they contribute to the creation of this symbolic rapport with the past.

⁴⁶⁰Al Zubi, Sharif, Minister of Justice of the Hashemite Kingdom of Jordan, Address at the Opening Ceremony, International Conference “Building a Future on Peace and Justice”, Nuremberg, 25 June 2007.

⁴⁶¹Costa Rica, Intervencion del Embajador Jorge Urbina Ortega, la Sexta Asamblea de Estados Partes del Estatuo de Roma, Nueva York, 3 de diciembre de 2007.

⁴⁶²Czech Republic, Statement H.E. Ms. Margita Fuchsova, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010.

History becomes, in a certain sense, the equivalent of the present. In his speech at the Washington University, Philippe Kirsch re-enacts “Nuremberg” by comparing “Rome” with the “struggle for peace, law, and justice in world” which is, “like Rome itself [...] eternal”⁴⁶³. This is an inverted sequence of events. The present is instrumentally used to inscribe “Nuremberg” with a different meaning. “Accountability” and “fair trials” are portrayed as part of “the core of the meaning of Nuremberg” and “the basis for [its] legacy”. The discursive result of these operations is that history legitimizes contemporary developments in international criminal law. “Nuremberg” and “Rome” become landmarks in a progressive march towards “The Hague” and “Kampala”.

The past is therefore a discursive space with its own topography; it is a place from where the “world” had to emerge and “rebuild itself morally”. History is the “darkness of destruction” in which “a fragile seed was planted that could bring the light of justice to future generations”⁴⁶⁴. These “future generations” include Kirsch, his audience, and the people of the Earth. The present is re-read in a way that gives value to this past and explains what it means to have a responsibility for the future. “The Hague”, another symbolic marker, energizes the audience by having the “world” watch how ICC member states “march to establish a new judicial institution ushering in the rule of law”⁴⁶⁵. In this sequence of events, the Court ceases to be an international tribunal with headquarters in The Hague. Instead, the International Criminal Court becomes a key discursive element of the Justice narrative. When Luis Moreno-Ocampo refers to the ICC during the 2007 Nuremberg Conference, the Prosecutor speaks in

⁴⁶³Kirsch, Philippe, “Applying the Principles of Nuremberg,” Keynote Address at the Conference ‘Judgment at Nuremberg’ held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, USA, 30 Sept. 2006.

⁴⁶⁴Ibid.

⁴⁶⁵Jordan, Statement, The Hashemite Kingdom of Jordan, Address by H.R.H. Prince Zeid Raad Al Hussein, Permanent Representative to the United Nations, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 25 November 2006.

metaphors and addresses himself to future audiences. The Court is “the new law”⁴⁶⁶. This ‘presentism’ mythifies the ICC, whose image becomes associated with the universal fight against impunity. More than a concrete international institution, the ICC takes the role of “a noble idea which roots itself in the spirits of men”⁴⁶⁷.

One of the main functions of the Justice narrative is therefore to offer a legitimate alternative reading of history. The past is portrayed as a teleological scenario. The unfolding struggle for “justice” begins with the Nuremberg and Tokyo Tribunals from which “there is no going back”⁴⁶⁸. The result is a “functioning judicial institution that [...] eluded us for decades”⁴⁶⁹. The myth of the ever-returning present helps the inscription of other events in this alternative historical timeline. For Sonia Picado, President of the Inter-American Institute of Human Rights, the 2007 Nuremberg Conference is a foundational moment and “this gathering, today, in this room, has a tremendous moral strength and power”⁴⁷⁰. The International Criminal Justice Day, 17 July, is another historical landmark. This day “inspires us all to reach new heights in our work” and “turn into practice these noble principles embodied in the Rome Statute”⁴⁷¹. Kampala is invested with a different symbolism and Nobel Prize winner Wangari Maathai calls on Africans to seize this “historic opportunity” and demonstrate commitment to “peace” and “justice”⁴⁷².

⁴⁶⁶Moreno-Ocampo, Luis, Address by Mr. Luis Moreno-Ocampo, Prosecutor of the International Criminal Court at the International Conference “Building a Future on Peace and Justice”, Nuremberg, 24/25 June 2007.

⁴⁶⁷Luxembourg, Intervention de S.E.M. Jean-Marc Hoscheit, Ambassadeur du Luxembourg à La Haye devant la Huitième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale, La Haye, le 19 novembre 2009.

⁴⁶⁸Ban Ki Moon, U.N. Secretary-General, “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

⁴⁶⁹Wenaweser, Christian, President of the Assembly of ICC States Parties, Opening Remarks, Review Conference of the ICC Rome Statute, Kampala, Uganda, 30 May 2010.

⁴⁷⁰Picado, Sonia, Keynote Speech by Sonia Picado, President, Interamerican Institute of Human Rights, Representative of President Oscar Arias of Costa Rica, Opening Ceremony of the International Conference “Building a Future on Peace and Justice”, Nuremberg, 25-27 June 2007, 25 June 2007.

⁴⁷¹Song Sang-Hyun, President of the International Criminal Court, Statement on the Occasion of the Day of International Criminal Justice, 17 July 2010.

⁴⁷²Maathai, Wangari, “International Criminal Court belongs to us Africans”, The East African, 24 May 2010.

2) *The beatific future, the horrific alternative, and the obstacles on the way*

“Time” is not the only category appropriated by the Justice narrative. The “beatific future” of Justice, predicated upon the existence of a righteous Subject, shows the extent to which the strength of the narrative is dependent upon a forceful political identity. The “just punisher” of the new dominant discourse is the Subject who must bring about the world of the “global village”. His or her power is derived from this appeal as a discursive identification point. The depiction of an idealized future that guarantees freedom, security, and prosperity comes together with this embedded identity. The promise of Justice is similar to Aletta Norval’s “promise of democracy”. It is a constructed image that “intervenes and acts upon the present”⁴⁷³ by mobilizing people to act towards the goals embraced by this new ideology. The metaphors creating the coherent image of the “global village” dispel insecurities about past and future dangers by depicting a world on the brink of a metamorphosis. This is a transformation that is both desired and, presumably, anticipated. The only factor delaying change is the lack of principled action.

There are several types of acts the Subject is expected to perform. First, the “global village” represents a future in which “justice” is a foundational value. This superimposition of metaphors allows the narrative to make what seems an almost logical claim: that “the future of nation states is tied to their capacity to achieve peace and justice”⁴⁷⁴. In this way, the narrative features both the ideal and the obstacle to its realization. Should the obstacle win, the “catastrophic” result is “anarchy”, the antinomy of “order”, and moral failure. The obstacle is therefore unprincipled behaviour. The idea that wars are moral setbacks which “deny the dignity and sacred

⁴⁷³Norval, Aletta J. 2007. *Aversive Democracy. Inheritance and Originality in the Democratic Tradition*. Cambridge: Cambridge University Press, p. 145.

⁴⁷⁴Columbia, Statement by H.E. Ambassador Claudia Blum, Sixth Session of the Assembly of States Parties to the International Criminal Court, New York, 3 December 2007.

character of the individual”⁴⁷⁵ and bring to the fore humanity’s worst instincts⁴⁷⁶ increases the pressure on the Subject to act on principle. Kofi Annan emphasized this point in one of his last speeches as U.N. Secretary-General:

“The truth is, it's not enough just to have the right principles and say what we think should happen. (...) My friends, our challenge today is not to save Western civilization – or Eastern, for that matter. All civilization is at stake, and we can save it only if all peoples join together in the task.”⁴⁷⁷

In short, in order to bring about the desired world of the future one must behave morally because, “as humans, we have a moral obligation to continue striving for a better world”⁴⁷⁸. This moral obligation entails “a relentless crusade against impunity”⁴⁷⁹. The narrative justifies the necessity of promoting this type of international behaviour by referencing historical facts. Humanity’s history is portrayed as moral progress⁴⁸⁰ as well as an unrelenting struggle to purge bad experiences and enable the promised future to come into being. The progressive march of international criminal law towards its codification in “Rome” and “Kampala” is superimposed, therefore, to humanity’s professed moral progress. The code of Hammurabi becomes in the Justice narrative a landmark in mankind’s struggle to build an order where “instead of might making right, right would make might”, because the vision of “a government of laws and not of men” is almost as old as civilisation itself⁴⁸¹. This progress towards “the Eternal City” leaves

⁴⁷⁵Columbia, Intervention, Fifth Assembly of States Parties to the Rome Statute of the International Criminal Court, 24 November 2006; DR Congo, Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de la Justice de la République Démocratique du Congo, à la Septième Session de l'Assemblée des Etats Parties au Statut de la Cour Pénale Internationale, La Haye, 14-22 Novembre 2008.

⁴⁷⁶Guyana, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 20 November 2009.

⁴⁷⁷Annan, Kofi, U.N. Secretary-General, Address at the Time Warner Center, 8 Dec. 2006.

⁴⁷⁸Switzerland, First Review Conference of the Rome Statute of the International Criminal Court, General Debate Statement by State Secretary Jürg Lindenmann Head of the Swiss Delegation, Directorate of International Law, Federal Department of Foreign Affairs Kampala, Uganda, 31 May 2010.

⁴⁷⁹The Gambia, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June.

⁴⁸⁰Republique de Guinee, Conference de Revision du Statut de Rome de la Cour Penale Internationale, Kampala, 31 mai – 11 juin 2010.

⁴⁸¹Annan, Kofi, U.N. Secretary-General, Speech, U.N. General Assembly, 21 Sept. 2004.

behind some of “the darkest moments in human history” and would not have been possible in the absence of the “determined belief of human beings that their true nature is to be noble and generous”⁴⁸². Principled behaviour is therefore both possible and necessary. Speaking at the Nuremberg Conference, Frank Walter Steinmeier invoked the difficult, yet healing properties of “historical truth” in societies scarred by civil wars⁴⁸³. Croatia, a country whose recent past was also seared by painful memories, echoed this view in one of the ICC ASP meetings. For the Croatian Representative the process of facing the past was key in the building of “strong foundation[s] for the future”⁴⁸⁴.

Principled behaviour finds a specific outlet in the policy world. If the moral message of Justice appeals to individuals across the globe, the second type of action has a designated audience: the governmental and non-governmental actors shaping security policy. In this case, Justice constructs the compatibility between the Court and the United Nations. Moral and political reforms are presented as synonymous with “reforms designed to put our common humanity at the center of the U.N.’s agenda”⁴⁸⁵. Just as the U.N. becomes in this narrative the world’s collective conscience, the Court’s alleged unique significance to humanity⁴⁸⁶ suggests that the ICC too is considered one of the most important building blocks of collective security.

Because both institutions are arguably rooted in humanity’s common aspiration for the *good*, their organizational principles are similarly inspired by a notion

⁴⁸²Annun, Kofi, U.N. Secretary-General, Speech at the Opening of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June 1998.

⁴⁸³Steinmeier, Frank Walter, Opening Speech by Federal Foreign Minister Steinmeier at the International Conference “Building a Future on Peace and Justice” in Nuremberg, 25 June 2007.

⁴⁸⁴Croatia, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 18 – 26 November 2009.

⁴⁸⁵Martin, Paul, Statement by the Right Honourable Paul Martin, Prime Minister of Canada to the Fifty-Ninth Session of the United Nations General Assembly, New York, 22 September 2004; Song Sang-Hyun, President of the International Criminal Court, “The bridge of peace rests on pillars of justice”, Bridge to the Future Conference (End to Impunity), Arnhem, 19 September 2009.

⁴⁸⁶HRH Prince Zeid Ra’ad Zeid Al-Husseini, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003.

of moral goodness that appears to conflate “good” with “rule of law” and “multilateralism”. From this perspective, the International Criminal Court becomes the expression of a morally progressive multilateral system⁴⁸⁷. In this capacity, the ICC is discursively empowered to take upon itself the role of the Subject and make possible the world of the future. The Court’s identification with the “just punisher” is however only peripherally touched upon in this section. While the image of the future that Justice constructs and at the same time “promises” to its audience is predicated upon the actions of a righteous Subject, the ICC’s relationship to this Hero identity will be dealt with in the analysis of the fourth narrative function.

3) *The transgressive element*

There are few references to a transgressive element in this narrative, although there is one instance in which we become aware of a second type of obstacle preventing humanity from attaining the “global village”. This obstacle is the defining principle of contemporary international relations. Speaking before the U.N. General Assembly, in 1999, Kofi Annan portrays the beginning of the 20th century as “an era when strictly traditional notions of sovereignty can no longer do justice to the aspirations of peoples everywhere to attain their fundamental freedoms”⁴⁸⁸. His speech refers to the Kosovo war of that year, tackling the problems raised by the use of force in the absence of a Security Council mandate. The Secretary-General makes a plea for changing the standard definitions of “sovereignty” and “national interest”. Arguing that the Charter “is a living document” and nothing in it prevents alternative interpretations, he endorses the claim that “rights beyond borders”⁴⁸⁹ justify a particular type of action not strictly in line with its provisions. This speech as well as other statements on the humanitarian intervention dilemma toy with the idea of reform. International security

⁴⁸⁷Song Sang-Hyun, President of the International Criminal Court, Keynote Speech at Commonwealth Meeting on the International Criminal Court, Marlborough House, London, 5 October 2010.

⁴⁸⁸Annan, Kofi, U.N. Secretary-General, Annual Report to the General Assembly, 20 Sept. 1999.

⁴⁸⁹Ibid.

policy is arguably in search of a new vision, one more in tune with evolving international norms and the core principles structuring the political organization of human existence.

This type of reformist discourse avoids however the transgressive element of fantasies. Although the Security Council is an institution that presumably gives shape to the power imbalance in international affairs, reforming the UNSC does not imply searching for more equality or implementing fundamental changes. The break with the past is not institutional. The challenge therefore is not to redesign the institutions of international security, but rather bring them back to the original goal of the United Nations: the idea of acting morally for the benefit of humankind. This is a paradoxical juxtaposition of morality and political power. The idea is nevertheless popular, and ICC Member States have been equally willing to portray the ICC as the expression of the principles governing relations among “civilised states” or as the “minimum of morality in good governance”⁴⁹⁰. If “sovereignty” as “state sovereignty” becomes more malleable to reinterpretation, the identities provided by both the United Nations and the ICC prove resilient.

Instead of transgression, the narrative invites the Subject to return to the origins of the current order. The Subject is expected to recover the meaning of that foundational moment and to continue on the path already laid out by these more enlightened predecessors. I argue that this message offers a less violent path to change, one which affords the Subject a certain degree of stability and protection from “a direct confrontation with the radical contingency of social relations”⁴⁹¹.

⁴⁹⁰D.R. Congo, Allocution de Son Excellence Monsieur Emmanuel Luzolo Bambi Lessa, Ministre de la Justice de la République Démocratique du Congo, à la Septième Session de l'Assemblée des Etats Parties au Statut de la Cour Pénale Internationale, La Haye, 14-22 Novembre 2008.

⁴⁹¹Glynos, 2008, *Ideological Fantasy At Work*, p. 287.

4) *The foundational guarantee: The Hero who protects the Victim[s] from the Villain[s]*

Finally, the Justice narrative does not offer any foundational guarantees. It is discursively difficult to construct such a guarantee when the goal is mobilizing support for political change. There are nevertheless discursive mechanisms that can instill this feeling of stability despite the obvious flux of international security institutions. The narrative stabilizes the discourse by relying on the teleological scenario described above and by creating positive identification points. Although “Justice” is a relatively unsophisticated discourse, its simplicity is the key to a major identity-building process: the emergence of the “just punisher” as the overarching identity structuring the Justice discourse. The “just punisher” is a protector, a leader, and a law enforcer. In short, the person who identifies with this subject position becomes a Hero. Because it is a subject position, the “punisher” can also be identified with a collective subject, the “we” who redress wrongs, punish criminals, restore peace and security, and build societies based on respect for the rule of law and human rights. The “punisher” protects the Victim[s], usually civilians caught in civil wars, against the Villains, those guilty of the gravest crimes against humanity.

These three identities offer only two positive points of identification: the morally good Hero, i.e. the international community, and the Victims. The Villains are most of the time portrayed as beyond redemption. Because of this strongly antagonistic frontier between the “good” Hero/Victims and the “evil” Villains, being cast in the role of the latter is something that most politicians would usually try to avoid. For example, Iranian Representatives speaking during ICC ASP meetings and at Kampala portrayed his country as the “victim” of international unlawful behaviour, rejecting in this way

references to its presumed wrongdoing⁴⁹². There are also a few famously reformed Villains in the Justice discourse: Japan, described as a “peace-loving nation”⁴⁹³, and Germany, which had arguably transformed itself into a “model of the responsible sovereign” and in this way returned to “the fold of respected nations”⁴⁹⁴. The narrative constructs additionally two potential Heroes: the U.N. and the International Criminal Court. The United Nations stands as a symbol for the “international community” which, by creating the ICC, has arguably transformed the words “never again” from a moral promise to the victims, into a legal duty⁴⁹⁵. I already described this identity-building process in a previous section of this Chapter (Section 3.3.1). Although the “we”/“international community” may overlap with the “just punisher” identity, the link between these two subject positions is only circumstantial. The identity of the ICC on the other has been discursively molded to fit this pattern. The ICC displays all the characteristics of the ideal Hero qua “just punisher”: the Court is a promoter of peace, symbol of the international rule of law, protector of human rights, expression of a justice ideal, and bearer of a messianic role. The ICC ASP Member States and the international experts supporting the Court’s mission have lavished this institution with praise:

- *The ICC is a promoter of peace.* The Court is portrayed as a new security actor with a “deterrent effect” on wars, playing a part in the preservation of international

⁴⁹²Iran, Statement by Mr. Fattah Ahmadi, Ministry of Foreign Affairs, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14-22 November 2008; Iran, Statement By Djamchid Momtaz, Legal Advisor, Ministry of Foreign Affairs, General Debate, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010.

⁴⁹³Japan, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 30 November – 14 December 2007.

⁴⁹⁴Ban Ki Moon, U.N. Secretary-General, “Responsible Sovereignty in an Era of Transnational Threats”, 15 July 2008, Bertelsmann Foundation, Berlin; Steinmeier, Frank Walter, Opening Speech by Federal Foreign Minister Steinmeier at the International Conference “Building a Future on Peace and Justice” in Nuremberg, 25 June 2007.

⁴⁹⁵Moreno-Ocampo, Luis, Opening Statement, ICC Review Conference – General Debate, Kampala, 31 May 2010.

peace and security⁴⁹⁶. The Convenor of the Coalition for an International Criminal Court, one of the most important NGOs supporting international criminal justice, even described the ICC as “the most successful achievement in the so-called new peace and security architecture”⁴⁹⁷.

There is a hidden argument in such statements, namely that the connection between the “deterrence” of crimes, the “protection” of human rights, and “Peace” is a logical one. There is however no logical necessity in connecting the act of punishment with “Peace”, except if one considers that crimes are a transgression of a certain order and their punishment serves to reinforce the boundaries of acceptable behaviour within that order, hence contributing to the order’s reinforcement. The content of the particular order remains however a mystery. The Justice narrative offers some keywords to describe this content. Statements portraying the ICC as a promoter of peace do not use however such sophisticated arguments. They play rather on the commonly held belief that “order” and “Peace” are synonymous, and that “right” order is dependent upon “right” behaviour. In this idealized scenario, failing to help the Court pursue its objectives, among others the execution of its arrest warrants, means that “we will have wasted the efforts of more than a century and destroyed an institution essential to global peace”⁴⁹⁸. The content of the order reinforced by ICC trials becomes more explicit in descriptions of the Court’s institutional role in promoting the rule of law, protecting human rights, and pursuing justice.

⁴⁹⁶ Argentine, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008; Luxembourg, Allocution de S.E.M. Jean-Marc Hoscheit, Ambassadeur, Représentant Permanent du Grand-Duché de Luxembourg devant la Sixième Session de l’Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale, New York, 4 Décembre 2007; Sierra Leone, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November – 1 December 2006.

⁴⁹⁷ Coalition for the International Criminal Court, Statement by William R. Pace, Convenor, Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court, 3-4 December 2007.

⁴⁹⁸ Moreno-Ocampo, Luis, Statement made by Mr. Luis Moreno-Ocampo, Chief Prosecutor of the International Criminal Court, Ceremony for the solemn undertaking of the Chief Prosecutor of the International Criminal Court, The Peace Palace, The Hague, The Netherlands, 16 June 2003.

- *The ICC is an expression of the rule of law in international affairs:* In a certain sense, the Court ceases to be a real world institution. In this narrative, the ICC is a symbol positioned on a similar level with other international ideals. The Court is described as an institution that “enriches the legal structure of the international community and the rule of law at a global level”⁴⁹⁹. The ICC is the boldest embodiment of the age-old vision of a universal order based on the rule of law⁵⁰⁰. Simultaneously, it is also “the reflection of a fundamental normative shift in international relations from impunity to an approach based on justice and respect for the rule of law”⁵⁰¹. The promotion of the international rule of law is entrusted to a Tribunal presumably built on a “noble and essential philosophy”: to uphold victims’ rights and ensure the enforcement of international norms⁵⁰². Its rules of procedure must respect the highest standards of impartiality and become themselves global standards of behaviour⁵⁰³. The Court becomes as well the expression of a historical process - the internationalization of “democracy, justice and the rule of law in international affairs.”⁵⁰⁴

- *The ICC is a protector of human rights:* This image adds a new dimension to the Hero’s profile. To a certain extent, the superimposition of the ICC image with the “just punisher” reconstructs both identities simultaneously. The narrative draws a careful

⁴⁹⁹Argentine, Statement, Fourth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 28 November – 3 December 2005; Colombia, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute, The Hague, 14-22 November 2008; Trinidad and Tobago, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November – 1 December 2006.

⁵⁰⁰Croatia, Statement by H.E. Mr. Frane Krnic, Head of Delegation, Fifth Session of the Assembly of States Parties to the International Criminal Court, The Hague, 24 November 2006; Spain/Espana, Intervencion, El Debate General de la VI asamblea de Estados Partes en el Estatuto de Roma de la Corte Penal Internacional, Nueva York, 3 de diciembre de 2007.

⁵⁰¹Kirsch, Philippe, Address to the United Nations General Assembly, 30 Oct. 2008.

⁵⁰²Palestinian Center for Human Rights, Statement at the Eighth Session of the Assembly of States Parties to the Rome Statute of the ICC, The Hague, 18 – 26 November 2009.

⁵⁰³Kirsch, Philippe, Statement by Judge Philippe Kirsch, President of the International Criminal Court at the Inaugural Meeting of Judges, 11 March 2003; Kirsch, Philippe, “La Cour pénale internationale au carrefour du droit international et des relations internationales”, Université de Québec a Montréal, le 6 mai 2003.

⁵⁰⁴Macedonia, Statement by H.E. Mr. Srgjan Kerim, Permanent Representative of the Republic of Macedonia to the United Nations, First Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002.

parallel between this role and the objective of ending impunity⁵⁰⁵. The protection of human rights becomes synonymous with the recreation of an idyllic vision of a crime-free world. By trying individuals potentially guilty of crimes against humanity, the ICC contributes towards “a world justice system that banishes impunity and prevents crimes that we abhor”⁵⁰⁶. Such statements dwell less on the Court’s daily activities. The “fight against impunity” and the “eradication of a culture of impunity” are openly discussed as moral and political imperative[s]⁵⁰⁷. These metaphors reproduce a good vs. evil scenario and portray the Hero of the Justice narrative as the messianic harbinger of the new world. The image of such a protector of human rights conflates several legal, moral, and religious attributes. The narrative displays as well consistent references to a core morality that is presumably the prime mover behind the creation of the Court. Even the “Peace and Justice” dilemma is recast in moral terms⁵⁰⁸. The ICC is an institution that by fighting impunity “ensure[s] that humanity’s worst instincts are kept at bay”, a “near impossible task”, but one “from which we cannot shrink”⁵⁰⁹.

⁵⁰⁵Argentine, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008.

⁵⁰⁶Argentine, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November 2006; Sweden, Statement, Seventh Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court, The Hague, 14 November 2008.

⁵⁰⁷Chile (Republica de Chile), Intervencion del Embajador Juan Martabit, Octava Sesion de la Asamblea de Estados Partes Corte Penal Internacional, 19 noviembre 2009; Korea (The Republic of), Statement by Mr. Ho-sung Lee, Representative of the Republic of Korea to the Fifth Session of Assembly of States Parties of the International Criminal Court, The Hague, 23 November 2006; Luxembourg, Allocution de S.E.M. Jean-Marc Hoscheit, Ambassadeur, Représentant Permanent du Grand-Duché de Luxembourg devant la Sixième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Pénale Internationale, New York, 4 Décembre 2007.

⁵⁰⁸China, Statement by Mr. Xu Hong, Head of the Chinese Delegation, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 20 November 2009; Columbia, Statement by H.E. Ambassador Claudia Blum, Sixth Session of the Assembly of States Parties to the International Criminal Court, New York, 3 December 2007; Greece, Statement by Ms. Phani Dascalopoulou-Livada, Legal Adviser, Ministry of Foreign Affairs, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006; Lesotho, Statement by Mr. Kautu Moeletsi, Counsellor (Legal Affairs), Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, November 2006; Slovenia, Statement by Ms Simona Drenik, Head of the Slovenian Delegation, Ministry of Foreign Affairs, Seventh Session of the Assembly of the State Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008.

⁵⁰⁹Guyana, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 20 November 2009.

This message of unity is intended to mobilize symbolic and political support from a varied international audience. Because the Court is a “milestone” in our “longstanding collective commitment” to the objectives listed above⁵¹⁰, the emphasis falls on the “we” collective identity. The Court’s projected goals reinforce the unity of “protectors” qua “punishers” and “victims”. ICC is an institution that offers the protected Subject, the “victims”, a voice⁵¹¹. Even more technical details such as references to international crimes, principles of international criminal justice and accountability, impartiality, or efficiency are mixed with moral language. The ICC is consistently portrayed a powerful tool of international justice⁵¹², because (international) crimes “still shame mankind at an age when we would like to believe ourselves wiser than our ancestors.”⁵¹³

- *The ICC pursues an ideal of justice:* The pursuit of justice is paradoxically the Hero’s only contested attribute. There is consensus over the Court’s role as the protector of human rights and promoter of the rule of law. However, the core ICC function, the delivery of justice, still generated political debate and acrimony. There was disagreement over the effects of criminal justice on peace processes (“if the peace process is blocked, justice would be castles in the air”⁵¹⁴) as well as the “gap” between “ideal justice pursued by the Court” and the “aspiration for resuming peaceful life by people in conflicting areas”⁵¹⁵. There was also fear that the ICC could overstep its mandate. The pursuit of justice became in this way a site of meaning negotiations. Since the “just

⁵¹⁰Brazil, Statement, First Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3-10 September 2002; Serbia, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November – 1 December 2006; Suriname, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009.

⁵¹¹Slovenia, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31st May 2010.

⁵¹²Bosnia Herzegovina, Statement, First Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 10 September 2002.

⁵¹³Brazil, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 24 November 2006.

⁵¹⁴China, Statement by Mr. Xu Hong, Head of the Chinese Delegation, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 20 November 2009.

⁵¹⁵China, Statement, the First Review Conference of the ICC Rome Statute, Kampala, Uganda, 31 May – 11 June 2010.

punisher” identity could exist in the absence of “justice”, much of these discursive negotiations attempted to define the latter.

Despite the moral tone of the whole narrative, throughout the 2002/2010 period there was also an attempt to steer away from grander visions of punishment and order. In 2003, while attending the inauguration of the first International Criminal Court judges, Prince Zeid Al-Hussein promised that the new institution would not be “the world’s crucible for vengeance” and that the ICC would provide “a fair trial” to those accused⁵¹⁶. He echoed in this statement Kofi Annan, who had tried to assuage similar fears during the first ICC ASP reunion. Annan had emphasized that the Court would not convert itself into an organ for “political witch hunting”, but would rather act as a “bastion against tyranny and lawlessness”⁵¹⁷. For the Spanish Representative, speaking at the ICC ASP, the ICC was not a future panacea⁵¹⁸. Gradually, references to the Court’s mission of delivering international justice were narrowed down to a “judicial” role for the ICC, with “enforcement” reserved to states and international organizations⁵¹⁹. The Court’s supporters began to portray the institution as a facilitator, helping States bear their responsibility towards justice⁵²⁰. In October 2010, the ICC President, Song Sang-Hyun, described the Court’s role in international affairs as purely judicial⁵²¹. This discursive step back from an almost unqualified support for criminal punishment shifted the emphasis from “peace” towards “healing”. The NGO Parliamentarians for Global Action qualified further the type of justice to be delivered

⁵¹⁶HRH Prince Zeid Ra’ad Zeid Al-Hussein, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003

⁵¹⁷Annan, Kofi, U.N. Secretary-General Address to the meeting of the ICC Assembly of States Parties, 10 September 2002.

⁵¹⁸Spain/Espana, Intervencion, El Debate General de la VI asamblea de Estados Partes en el Estatuto de Roma de la Corte Penal Internacional, Nueva York, 3 de diciembre de 2007.

⁵¹⁹Kirsch, Philippe, Address by Judge Philippe Kirsch, President of the International Criminal Court, before the United Nations General Assembly, 1 November 2007.

⁵²⁰Czech Republic, Statement H.E. Ms. Margita Fuchsova, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010; Denmark, Statement delivered by H.E. Ambassador Thomas Winkler Under-Secretary for Legal Affairs, First Review Conference of the International Criminal Court, Kampala, Uganda, 31 May 2010;

⁵²¹Song Sang-Hyun, President of the International Criminal Court, Keynote Speech at Commonwealth Meeting on the International Criminal Court, Marlborough House, London, 5 October 2010.

by the Court's "sacred mandate"⁵²². From this perspective, the ICC's actions were expected to have more than a punitive effect. Rather than *post hoc* punishment, the Court's aim was expected to have restorative properties, which would arguably help its mission of deterring future crimes. Despite such concessions however, the narrative continued to stress the moral significance of criminal justice. During the Kampala Review Conference, Brazil urged the international community to have "the courage of its convictions" and support an institution that was an expression of universal values⁵²³. Also in Kampala, the President of the Assembly of ICC States Parties, Christian Wenaweser, stressed in his speech the Court's uniqueness as the first independent, permanent international criminal court with jurisdiction over the most serious crimes under international law⁵²⁴. This ideal ICC image was not always welcomed. Statements rejecting the Court's discursive claims to be a "just punisher" echoed the "Politicization" and "Peace vs. Justice" counterdiscourses, challenging the emerging hegemony (Chapter 4). At the narrative level however, such arguments had little impact on Justice. The fantasy that created the image of a morally upright and peace-loving Hero resisted attempts to sever the bond between the International Criminal Court and its Justice identity.

- *The Court fulfills a messianic role*: The last discursive attribute is therefore the effect of this resilient moral discourse underlying Justice. The ICC qua ideal Hero embodies a "clear"⁵²⁵ vision of moral uprightness. Discourse producers argued about "the dreams of many generations of academics, politicians, lawyers as well as ordinary

⁵²²Parliamentarians for Global Action, Statement at the Fifth Assembly of States Parties of the International Criminal Court, The Hague, 24 November 2006.

⁵²³Brazil, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 11 June 2010.

⁵²⁴Wenaweser, Christian, President of the Assembly of ICC States Parties, Opening Remarks, Review Conference of the ICC Rome Statute, Kampala, Uganda, 30 May 2010.

⁵²⁵Norway, Statement, Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, 24 November 2006.

people”⁵²⁶ and that “justice” was as much African as it was European, Latin American, or “any other kind of justice”⁵²⁷. Much of this rhetoric took the moral high ground. The Court was portrayed as an institution with a global vocation⁵²⁸. More importantly, its existence was supposed to generate a particular kind of healing. The ICC guaranteed closure for humanity’s relationship with both its past and with its future. The new institution was a symbol of a “fundamental break with history”⁵²⁹ that “offer[ed] us hope for a twenty-first century more honourable than preceding centuries”⁵³⁰. In the Justice narrative, the ICC became the arm of “justice” which embraced the “aspirations of populations affected by conflicts”⁵³¹. In a metaphorical way, the constraints this definition imposed on political decision-making are the equivalent of “a Rubicon [that] must not be crossed”⁵³². In the Justice version of history, 1998 is the moment when the “good” people finally put into practice the foundational vision of the Nuremberg participants⁵³³. Therefore, the Court “stands as a bulwark against the temptation, no matter how well-intentioned, to bargain away justice”⁵³⁴.

⁵²⁶Poland, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 1 June 2010.

⁵²⁷Sierra Leone, Statement by H.E. M. Allieu Ibrahim Kanu, Deputy Permanent Representative, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 4 December 2007; Sierra Leone, Statement by the Delegation of the Republic of Sierra Leone to the Seventh Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14-22 November 2008.

⁵²⁸Argentina, Statement, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November 2006; Argentina, Statement, Eighth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009; France, Intervention de M. Jean-Michel Gaussot, Ambassadeur de France aux Pays-Bas, Cinquième Session de l'Assemblée des Etats Parties au Statut de Rome de la Cour Penale Internationale, La Haye, 23 novembre 2006.

⁵²⁹Ban Ki Moon, U.N. Secretary-General, “An Age of Accountability”, Address to the Review Conference on the International Criminal Court, Kampala, 31 May 2010.

⁵³⁰HRH Prince Zeid Ra’ad Zeid Al-Husseini, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Opening Remarks at the Third Session of the Assembly of States Parties of the International Criminal Court, The Hague, 6 September 2004.

⁵³¹No Peace Without Justice, Statement by Gianfranco Dell’Alba, Secretary-General, Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh Session, General Debate, The Hague, 15 November 2008.

⁵³²Kaul, Hans-Peter, “Peace through Justice? The International Criminal Court in the Hague“, Speech at the Militärisches Museum der Bundeswehr, 2 November 2009.

⁵³³Kirsch, Philippe, “Applying the Principles of Nuremberg, ”Keynote Address at the Conference ‘Judgment at Nuremberg’ held on the 60th Anniversary of the Nuremberg Judgment, Washington University, St. Louis, USA, 30 Sept. 2006.

⁵³⁴Kirsch, Philippe, Address to the United Nations General Assembly, 30 Oct. 2008.

Chapter 4. Empirical Results II: Discursive Challenges

4.1. Introduction

Between 2002 and 2010 three counterdiscourses challenged the hegemonic status of the Justice discourse:

- *Politicization I (POL-I)* – Between 2000 and 2004, the United States campaigned to protect its armed forces from potential trials at the International Criminal Court. The actions taken by the U.S. Government and Congress included: the adoption of domestic legislation (*American Servicemembers Protection Act* or the so-called *Hague Invasion Act*), the signing of *Bilateral Immunity Agreements* with several ICC state parties, and lobbying for the insertion of special clauses in U.N. Security Council peacekeeping resolutions that granted immunity from the Court’s jurisdiction to personnel from non-ICC member states.
- *Politicization II (POL-II)* – the African Union publicly disagreed with the issuance on 5 March 2009 of an arrest warrant for Sudanese President Omar al-Bashir. The A.U. officially requested the Security Council to use its powers under the International Criminal Court’s Rome Statute Article 16 in order to stop legal proceedings against Bashir. The positions of A.U. states were split, with most African members of the ICC defending the Court’s actions. The arrest warrant against the Sudanese President had awakened however a deep-seated African mistrust of a Court mostly perceived as Western and as meting out Western justice. The fear of a potential “politicization” of the Court was at the root of most of the anti-ICC rhetoric of some A.U. member states.

- *Peace vs. Justice (Peace/Justice)* – the third counterdiscourse is structured around the idea that a *political solution*, hence negotiations and amnesties, is the most effective means of bringing an immediate end to an armed conflict. The Darfur conflict and the debates at the Security Council regarding the U.N. role in mediating peace are its historical context. In particular the ICC arrest warrants split the international community between a *Justice* camp, for which enforcement of criminal justice principles was paramount in preventing further violence, and the *Peace vs. Justice* supporters, who argued that *peace* and *justice* were at best sequential goals.

The emergence of each counterdiscourse is contingent upon a certain historical background. The first attempt to undermine Justice is the U.S. campaign against the International Criminal Court. American criticism intensified almost immediately after December 2000, when President Clinton signed the Rome Treaty, the Court's Foundational Act. During the 1998 Rome Diplomatic Conference⁵³⁵, hosted by the Food and Agriculture Organization, different visions of institutional design had already clashed over the role and functioning of the first international criminal tribunal in human history. Some of the Conference participants strongly opposed key provisions in the Draft Statute, especially the Court's independence from U.N. Security Council supervision and a Prosecutor with *proprio motu* powers. The United States of America voted against the final document joining Israel, China, Libya, Yemen, Qatar, and Iraq.

The “Politicization” and “Peace vs. Justice” counterdiscourses make their presence felt in international security between 2008 and 2010, when international disagreement over the enforcement of the Darfur arrest warrants reached its highest point of intensity. A series of unfortunate events heightened these tensions further. The Kenyan post-election violence (27 Dec./28 Feb. 2008), the 5-day Russian-Georgian war

⁵³⁵Schabas, William. 2004. *An Introduction to the International Criminal Court*. Cambridge: Cambridge University Press.

(7/12 Aug. 2008) and the Israeli march on Gaza (27 Dec. 2009/ Jan. 2009) confronted the international community with new outbursts of intrastate violence. All these situations had the potential to become ICC referrals. Only Kenya reached however this stage, through the ICC Prosecutor's decision to use his *propriu motu* powers and request the Pre-Trial Chamber II's authorization for the opening of an investigation. The U.N. Security Council did not discuss the Goldstone Report, although its recommendations included the set-up of criminal justice mechanisms in the aftermath of the Israeli Cast Lead Operation⁵³⁶. These wars fuelled however political differences over Darfur and split the two camps further along the Peace vs. Justice divide.

4.2. Boundaries and Rival Discourses I: "Politicization" and the United States

"I think it is always important when we are addressing international bodies or our relationship to them that we speak so clearly to the right of this Nation to determine its own destiny and, more importantly, that we will not be signatories to, nor will we endorse as a Senate or as a Government, concepts in the international arena that take from us our right of American sovereignty and the right, therefore, of our judicial system over the citizens of this country away from that of an international body."

Senator Larry Craig (Republican, Idaho), American Servicemembers' Protection Act, 107th Congress, 26 September 2001

The American version of "Politicization" challenges the Justice discourse during the early stages of its hegemonic claims, at a crucial moment in international affairs: between 2000 and 2004, the United States initiated two wars in Afghanistan⁵³⁷ and

⁵³⁶The Palestinian Authority tried to get the International Criminal Court involved in this conflict. On 22 January 2009, the Minister of Justice of the Palestinian National Authority lodged a Declaration pursuant to Article 12(3) of the ICC Statute with the Registrar, recognizing the jurisdiction of the Court.

⁵³⁷Maley, William. 2009. *The Afghanistan Wars*. New York: Palgrave Macmillan.

Iraq⁵³⁸, debated domestically a new doctrine on the international use of force⁵³⁹, passed legislation prohibiting U.S. Agencies to cooperate with the International Criminal Court, while also restricting participation in United Nations peacekeeping operations⁵⁴⁰, and waged an international campaign meant to ensure “protection” of officials and military personnel from the jurisdiction of the International Criminal Court⁵⁴¹.

“Politicization” is not however a symptom of a certain historic period. This counterdiscourse comes with a particular construction of American identity and is rooted in American Conservative ideology. The principle of accountability for international crimes and the role the International Criminal Court plays in the pursuit of this objective pose a certain dilemma for American international behaviour. The United States has a well-known international public record of supporting the norm of individual criminal responsibility. It is an important donor to the International Criminal Tribunals for Rwanda, the Former Yugoslavia and, respectively, the Special Court for Sierra Leone⁵⁴². All these Ad Hoc tribunals have enforced this norm and convicted individuals, former military men and officials, accused of committing crimes against humanity, war crimes, and genocide. How could any country under such circumstances legitimately *not* sign the Treaty creating an institution that makes this legal norm and principle its *raison d’être*?⁵⁴³

⁵³⁸Donnelly, Faye. 2009. *Securitization and the Iraq War*. London and New York: Routledge.

⁵³⁹American Society of International Law (ASIL). "U.S. Adoption of New Doctrine on the Use of Force." *The American Journal of International Law* 97, no. 1 (2003): 203-05.

⁵⁴⁰American Society of International Law (ASIL). "American Servicemembers' Protection Act." *The American Journal of International Law* 96, no. 4 (2002): 975-77.

⁵⁴¹American Society of International Law (ASIL). "U.S. Bilateral Agreements Relating to the ICC." *The American Journal of International Law* 97, no. 1 (2003): 200-03; American Society of International Law (ASIL). "U.S. Efforts to Secure Immunity from ICC for U.S. Nationals." *The American Journal of International Law*, 97, no. 3 (2003): 710-11;

⁵⁴²Rhea, Harry M. 2012. *The United States and International Criminal Tribunals: An Introduction*. Intersentia.

⁵⁴³The American legal community has discussed in depth the legal issues raised by the International Criminal Court, its Statute and institutional design. In 1996 and 2001, the American journal *Law and Contemporary Problems* hosted two Special Issues dedicated to the prosecution of international crimes. Contributors were well-known academics, but also policymakers such as John R. Bolton and Patricia McNerney or international judges like Phillippe Kirsch, the first President of the International Criminal Court. These Special Issues reflect however significant differences of opinion over the enforcement of individual criminal responsibility and the role of the International Criminal Court in

One explanation could be that American foreign behavior is Janus-faced and contradictory⁵⁴⁴. In their study of United States policy towards Darfur, Scott Stedjan and Colin Thomas Jensen argue that the U.S. will sometimes act altruistically. However, this altruism does not develop further than a “minimalist” approach towards human security, unless the U.S. has a clear national security, economic, or domestic political interest⁵⁴⁵.

I argue instead that identity and discourse can explain this apparent contradiction. The Conservative mistrust of the International Criminal Court⁵⁴⁶ is more than a transient political reaction to a presumably faulty institutional design. The strong, almost visceral dislike shown by many Conservative American politicians is a sign of friction between two distinct ideologies. Justice and POL-I are discourses structured around different formulations of the nodal signifier “Justice”, including distinctive rearticulations of key elements such as “Accountability”, “Sovereignty” and “Rule of Law”. Between 2000 and 2002, American Conservatism clashed with and contested the

international affairs. In 1996, the topic of the Symposium was „Accountability for International Crimes and Serious Violations of Fundamental Human Rights“ and the issue was edited by Cherif M. Bassiouni and Madeline H. Morris. The articles are mostly in favour of implementing accountability mechanisms in post-conflict situations, either in the shape of prosecutions for perpetrators of international crimes or truth commissions, and prescribe only a limited role for amnesties in peace negotiations. There are even voices supporting the principle of universal jurisdiction over such crimes. In 2001 however, most contributors are rather critical of the ICC’s institutional design. They discuss issues such as the exercise of jurisdiction over non-party states, possibilities for prosecutorial abuse, and threats to American sovereignty. Only one contributor is in favour of the U.S.’ cooperation with the ICC. For an overview of the individual contributions to this debate see: Morris, Madeline. 2001. Foreword. *Law and Contemporary Problems* 64:1-2; Morris, Madeline H. 1996. Foreword. *Law and Contemporary Problems* 59:1-3. For more information on the American legal debate see also: Ralph, Jason. 2005. International Society, the International Criminal Court and American Foreign Policy. *Review of International Studies* 31:27-44; Roach, Steven C. 2006. *Politicizing the International Criminal Court. The Convergence of Politics, Ethics, and Law*. Lanham, Boulder, New York et al: Rowman & Littlefield Publishers; Roach, Steven C. ed. 2009. *Governance, Order, and the International Criminal Court* Oxford: Oxford University Press. For an overview of the current American position towards the Court see: Dutton, Yvonne. 2013. *The United States: For Justice, But Against Relinquishing Sovereignty. Rules, Politics, and the International Criminal Court*. New York, NY: Routledge.

⁵⁴⁴Cerone, John P. 2007. Dynamic Equilibrium: The Evolution of US Attitudes Toward International Criminal Courts and Tribunals. *The European Journal of International Law* 18:277-315.

⁵⁴⁵Stedjan, Scott and Colin Thomas-Jensen. 2010. The United States. In Black, David R. and Paul D. Williams, eds., *The International Politics of Mass Atrocities. The Case of Darfur*. London and New York: Routledge.

⁵⁴⁶Urquhart, Brian. "One Angry Man." *The New York Review of Books*, 6 March 2008.

hegemonizing tendencies of Justice, a discourse which at that time was only beginning its international career.

A closer look at the U.S. political and legal debates between 2000 and 2004 shows that American international behaviour is not contradictory, but consistent with its foreign policy discourse. A quick overview of political statements during this period suggests that despite the belligerent rhetoric of the first Bush presidency, there is little variation in the American approach towards the Court⁵⁴⁷. The thaw in institutional relations between the State Department and the International Criminal Court began during the second Bush Administration. By 31 March 2005, when the United Nations Security Council referred the Darfur situation to the Court, the United States behaviour had crystallized into a mixture of strong support for criminal justice mechanisms and public reservations over the Court's Statute. In practice, this approach implies that the U.S. can sponsor referrals to the ICC, but usually abstains during Security Council voting on these resolutions. The Obama Administration continued this policy⁵⁴⁸.

Jason Ralph argued in an article published in 2005 that the Rome Statute contributes to the creation of a world society that transcended the society of states. This change in international institutional arrangements is, presumably, less accommodating to American interests and to the strong exceptionalist American discourse⁵⁴⁹. I go one step further and contend that the American discourse on "justice" & "accountability" and the Justice discourse analyzed in the previous chapter are different discursive structures. American foreign policy relies on a different formulation of "justice" qua "rule of law", assigns a central position to the empty signifier "sovereignty", and is structured around a strong identity: the Conservative American Self.

⁵⁴⁷Annex 6 – Collection of Quotes U.S. Anti-ICC Campaign 2000-2004.

⁵⁴⁸Obama, Barack, National Security Strategy, the White House, Washington, May 2010.

⁵⁴⁹Ralph, Jason. 2005. International Society, the International Criminal Court and American Foreign Policy. *Review of International Studies* 31:27-44.

The “Politicization” counterdiscourse described in the next pages is born out of the friction between these two related, yet distinct discourses. “Politicization” is an opportunistic discursive challenger that attempts to undermine the Justice/Peace pair by prioritizing a different meaning for “Justice” and a new Justice/Rule of Law linkage. My findings show however that, ultimately, “Politicization” fails to prevent the emerging hegemony of “Justice” because the counterdiscourse does not create a sufficiently broad international support base for its key meanings. The American Self, its core identity, overlaps partially with the “just punisher” of the Justice discourse. Its roots are however ideologically different and, as a subject position, this Self is not an appealing identification point.

The origins of American “Politicization” can be traced back to the 2000/2002 domestic debates over legislation such as the American Servicemembers’ Protection Act (ASPA) and the new National Security Strategy legitimizing the unilateral use of force⁵⁵⁰. The emotional origin of this counterdiscourse is however a visceral reaction against Justice attempts to portray the Court as a legitimate international institution and potential cooperation partner in the fight against impunity. The Court had as well some discursive allies. During the Congress debates over ASPA, several speakers tried to connect the September 11, 2001 terrorist attacks and the U.S. “war on terror” with possible help from The Hague⁵⁵¹. Neither moral, nor prudential reasons convinced however the ASPA supporters⁵⁵². Even Democrats such as Senator Joe Biden agreed in the end that the Rome Statute was flawed and that American

⁵⁵⁰American Society of International Law (ASIL). "U.S. Adoption of New Doctrine on the Use of Force." *The American Journal of International Law* 97, no. 1 (2003): 203-05.

⁵⁵¹Sen. Dodd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5141-S5142.

⁵⁵²Sen. Brownback, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5145; Sen. Allen, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5147.

servicemen must be protected from the tribunal's jurisdiction⁵⁵³. The result of these debates is a version of "Politicization" which offers an alternative interpretation of U.S. international behaviour and legitimizes unilateralism. These justifications amount to a coherent worldview, which in its turn sustains different rearticulations of key concepts such as "justice", "sovereignty", "accountability", and the "rule of law".

4.2.1. Historical Background: "Politicization" and the United States

2000/2002 – The Domestic and Ideological Roots of the Counterdiscourse

The United States' attitude towards the ICC began to deteriorate almost immediately after President Clinton signed the Rome Treaty on 31 December 2000⁵⁵⁴. Clinton's speech gives the American fear of "politicization" qua "abuse of justice" its international keyword. The President refers in his statement to his country's tradition of moral leadership and support for the principle of individual accountability. He declines however to hand over the Treaty for ratification to the U.S. Senate, because the United States still has some "fundamental concerns" regarding the Court. He emphasizes in particular the dangers of "politicized prosecutions" and the exercise of ICC jurisdiction over military personnel from non-party states. These are "significant flaws" in a Statute that does not accommodate key American concerns:

"In signing, however, we are not abandoning our concerns about *significant flaws* in the Treaty. In particular, we are concerned that when the Court comes into existence, it will not only exercise authority over personnel of states that have ratified the Treaty, but also claim *jurisdiction* over personnel of states that have not." (...) „In fact, in negotiations following the Rome Conference, we

⁵⁵³Sen. Biden, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5145.

⁵⁵⁴Morris, Foreword, Law and Contemporary Problems, 2001.

have worked effectively to develop procedures that limit the likelihood of *politicized prosecutions*.⁵⁵⁵

Clinton's critique of the Court's institutional design will become a common reference point in American foreign policy statements during the first Bush Administration. A strong anti-ICC discourse, contesting the legitimacy of the Court, had begun however to diffuse in Congress months before December 31. Two days prior to President Clinton's signing of the Rome Treaty, several former governmental officials publicly endorsed the American Servicemembers Protection Act. The letter, addressed to Tom DeLay, the House of Representatives majority whip, described the International Criminal Court as a "threat to American sovereignty and international freedom of action."⁵⁵⁶ The authors warned that American leadership in the world could be the first casualty of the ICC and claimed that the United States had a much better record of enforcing its laws against human rights violations than some of the countries supporting the ICC.

This letter and Clinton's speech addressed several issues that will become recurrent in American official statements:

- 1) *Jurisdiction*: Critics feared that the Court might claim jurisdiction over officials and personnel of states that were not party to the Rome Treaty. President Clinton made this point when he argued that the International Criminal Court Statute had left open the possibility of "politicized prosecutions"⁵⁵⁷.

⁵⁵⁵Clinton, William J. "Statement on Signature of the International Criminal Court Treaty", Washington, DC, December 31, 2000. See also: BBC News. "Clinton's Statement on War Crimes Court.", 31 December 2001.

⁵⁵⁶Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000. Referenced in: Rovine, Arthur W. "Memorandum to Congress on the ICC from Current and Past Presidents of the American Society of International Law." *American Journal of International Law* 95, no. 4 (2001): 967-69, p. 967. The list of signatures includes former Secretaries of State James A. Baker III and Henry A. Kissinger, Secretary of Defense Donald D. Rumsfeld, former National Security Adviser Zbigniew Brzezinski, former Director of Central Intelligence Robert M. Gates, and former Ambassador to the United Nations Jeanne J. Kirkpatrick.

⁵⁵⁷Clinton, William J. "Statement on Signature of the International Criminal Court Treaty", Washington, DC, December 31, 2000.

- 2) *Sovereignty*: The International Criminal Court is described as “a threat to American sovereignty and international freedom of action”⁵⁵⁸.
- 3) *Scope of the ICC Prosecutor’s Powers*: The Prosecutor of the International Criminal Court is considered politically unaccountable and therefore wielding unchecked (political) power⁵⁵⁹.
- 4) *Constitutionality*: The ICC Prosecutor is allegedly acting under procedures inconsistent with the American Constitution⁵⁶⁰.
- 5) *Constraints on Decision-Making*: The Court could “chill decision-making” and inhibit policymakers from defending vital American interests from terrorism, aggression etc.⁵⁶¹

American foreign policy officials reiterated in their international statements this critique of the International Criminal Court Statute. The different types of counterarguments however gradually coalesced into one symbolic chain of equivalence with “Justice” as its nodal signifier. “Justice”, “sovereignty”, freedom”, “protection”, “accountability” and “rule of law” would come to define American opposition to the International Criminal Court⁵⁶².

⁵⁵⁸Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000. For a selection of statements on this topic by American legislators, policymakers and experts see also: Sen. Allen, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5147.

⁵⁵⁹Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000. For a selection of statements on this topic by American legislators, policymakers and experts see also: Sen. Allen, 2002.

⁵⁶⁰Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000. For other statements on the same topic see also: Sen. Byrd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5143; Negroponte, J. D., U.S. Mission to the United Nations, Remarks at stakeout following U.N. Security Council vote on Resolution 1422, 12 July 2002; Mr. Rosand, United States, United Nations General Assembly, UNGA Fifty-eighth session, 95th Plenary Meeting, A/58/PV.95, 13 September 2004, p. 5; Veterans of Foreign Wars of the United States, Washington, DC, To all Members of the Senate from Robert E. Wallace, Executive Director, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, First Session, Senate, 2 October 2001, S10027-S10056, Library of Congress, S10043;

⁵⁶¹Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000.

⁵⁶²Prosper, Pierre-Richard, Ambassador-at-Large for War Crimes Issue, Statement on U.N. International Criminal Tribunals for Rwanda and the Former Yugoslavia before the House International Relations

The domestic debate over ASPA helped crystalize this discourse, entrenching in American foreign policy the preeminence of “sovereignty”, the mistrust of international justice administered from The Hague (“politicization”), and a renewed emphasis on “political accountability”. Senator Jesse Helms of North Carolina, Chair of the Senate Foreign Relations Committee and Tom DeLay, House Majority Whip, introduced the American Servicemembers’ Protection Act in Congress in June 2000⁵⁶³. The official goal of this Republican legislative initiative was to protect American military and other personnel from the possibility of “politicized” prosecutions at the ICC⁵⁶⁴. ASPA included however several controversial provisions, whose scope could have arguably damaged relationships with key allies, including the Netherlands. Sections 2004 and 2006 prohibited all types of cooperation with the Court, from exchange of classified national security information to mutual legal assistance and extradition, for all governmental agencies, U.S. courts or regional governmental bodies. Section 2005 restricted the participation of American personnel in U.N. peacekeeping operations, while Section 2007 cut U.S. military assistance to the Court’s members, with certain exemptions for NATO countries, major non-NATO allies and Taiwan. The Act included as well broad powers for the President, who had the right to waive its provisions on a case-by-case basis (Section 2011)⁵⁶⁵. Section 2008, for which ASPA received the nickname the “Hague Invasion Act”, authorized the President “to use all

Committee (Feb. 28, 2002). Referenced in: American Society of International Law (ASIL). "State Department Views on the Future for War Crimes Tribunals." *The American Journal of International Law* 96, No. 2 (2002): 482-84.

⁵⁶³American Service-members' Protection Act (ASPA). Published in: *American Journal of International Law* 96, No. 4 (2002): 975-77.

⁵⁶⁴The full text of APSA was published by the U.S. Department of State, Bureau of Political-Military Affairs, 30 July 2003, at: <http://www.state.gov/t/pm/rls/othr/misc/23425.htm>.

⁵⁶⁵ASPA, *American Journal of International Law*, 2002. See also: Letter dated September 25, 2001, signed by Paul V. Kelly, Assistant Secretary for Legislative Affairs. Text inserted into Congressional Record 107th Congress (2001-2002), 26 September 2001, S9854.

means necessary and appropriate” to bring about the release of any “covered person”⁵⁶⁶ detained by the ICC⁵⁶⁷.

The Congress debate, rhetorically inflated and nationalistic, was focused in particular on the Act’s presumed benefits: the protection of American military personnel and senior level officials from the exercise of ICC jurisdiction. Although Democrats argued mostly against the initiative, invoking also national security reasons, they had a difficult time in countering Republican hardliners. Interventions in Congress appealed to “the right of the American nation to determine its own destiny”⁵⁶⁸ and to protect “those who are protecting us”⁵⁶⁹. Such statements resonated deeply with the public opinion, still in a state of shock after the terrorist attacks of September 11. Senator Helms referred to the ICC as an “International Kangaroo Court”, with the potential “to run amok”, and to the Rome Treaty as an “appalling breach of American sovereignty.”⁵⁷⁰ Speaking in the Senate, on September 26, 2001, Mr. Helms invoked a state of emergency:

“Mr. President, our Nation is at war with terrorism. Everybody knows that. Thousands in our Armed Forces are already risking their lives around the globe, preparing to fight the war. (...) These are all courageous men and women who are not afraid to face up to evil terrorists, and they are ready to risk their lives to preserve and to protect what I like to call the miracle of America.”⁵⁷¹

⁵⁶⁶ASPA, American Journal of International Law, 2002. Section 2013 gives a broad definition of “covered United States persons“. The term refers to “members of the Armed Forces of the United States, elected or appointed officials of the United States Government, and other persons employed by or working on behalf of the United States Government, for so long as the United States is not a party to the International Criminal Court.“

⁵⁶⁷ASPA, American Journal of International Law, 2002, Section 2008.

⁵⁶⁸Sen. Craig, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854.

⁵⁶⁹Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854.

⁵⁷⁰Sen. Helms, American Servicemembers' Protection Act, 107th Congress, U.S.Senate, 10 May 2001, Library of Congress, S4814.

⁵⁷¹Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854.

The right to wage wars in self-defense and to protect American servicemembers fighting abroad was a sensitive topic in the early 2000s. Although “politicization” was only one of the issues discussed during the domestic debate over the ICC, as my survey of U.S. official statements shows, it was a key one⁵⁷². “Politicization” was however more than a symbol of the American distrust in the impartiality of international justice. The concept decoupled “justice” from its “criminal” meaning and substituted it with “procedure”. This discursive reformulation transformed the International Criminal Court from an institution associated with “justice” into a potentially subversive threat. The ICC and its Statute were portrayed as endangering American sovereignty because international legal procedures could be used to indict Americans on “frivolous charges [,] simply as a means to grind a political axe”⁵⁷³. The pro-Justice camp tried to counteract these pessimistic views of international law. Senator Dodd attempted, unsuccessfully, to connect global efforts to promote justice and the rule of law with the U.N.-backed creation of an international criminal tribunal⁵⁷⁴. Lawyers and prominent academics used legal arguments to support this cause. In a Memorandum to Congressman Henry Hyde, Chairmen of the House Committee on International Relations, several (former) Presidents of the American Association of International Law

⁵⁷²Sen. Byrd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5143; Sen. Helms, American Servicemembers' Protection Act, 107th Congress, U.S. Senate, 10 May 2001, Library of Congress, S4814; Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854; Kissinger, Henry. 2001. The Pitfalls of Universal Jurisdiction. *Foreign Affairs* 80:86 – 96; Negroponte, John D., United States, United Nations Security Council, Debate, S/PV.4568, 10 July 2002, p.3 (“The situation in Bosnia and Herzegovina”); Rostow, Nicholas, United States, Statement by Nicholas Rostow, General Counsel, on Agenda Item 154: the International Criminal Court, in the Sixth Committee, October 23, 2003; Rumsfeld, Donald, U.S. Department of Defense Briefing: Global War on Terrorism, Secretary of Defense Donald Rumsfeld, Federal News Service, 21 June 2002; Rumsfeld, Donald, Interview on TV Caracol in Bogota, Columbia, Released by the Department of Defense, 19 August 2003; U.S. Embassy to the Kingdom of the Netherlands, *The International Criminal Court & Reaction to the American Servicemembers' Protection Act*, 12 June 2002. At: <http://www.usemb.nl/061202.htm>; Sen. Warner, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5139.

⁵⁷³Sen. Byrd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5143.

⁵⁷⁴Sen. Dodd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S. Senate, 6 June 2002, S5138-S5148, Library of Congress, S5141.

(ASIL) argued that ASPA provisions went too far and that worries over a potential abuse of the Court's jurisdictional powers were simply not justified⁵⁷⁵.

The ASIL Presidents emphasized that jurisdictional powers under customary international law were even broader, and an enemy soldier captured on the territory of a sovereign state would be subject to its domestic laws. The idea that a Court independent from the U.S. veto could not be expected to deliver "fair" or impartial justice matched however well the American public's demand for tougher security measures. All dissenting voices that opposed the Act, whether by invoking American involvement in the trial of Nazi leaders, or the necessity to punish the crimes of rogue leaders such as Saddam Hussein, Slobodan Milosevic, or Osama bin Laden fell on deaf ears. President Bush signed a revised version of the initial text into law on August 2, 2002⁵⁷⁶.

Discursive Diffusion in the International Policy Security Debate: 2002/2004

The United States foreign policy between 2002 and 2004 reflected this strong anti-ICC discourse. "Politicization" legitimized American justifications of unilateralism in international politics. On May 6, 2002 John R. Bolton, Under-Secretary of State for Arms Control and International Security, publicly 'unsigned' the Rome Treaty in an official letter to United Nations Secretary-General Kofi Annan⁵⁷⁷. Disagreement over the Court's role aggravated the Bush Administration's relations with the U.N. and created a rift in the Security Council between the pro-ICC EU countries and the United States. The U.S. continued however its assertive foreign policy. In its 2002 National Security Report the White House claimed an evolving right under

⁵⁷⁵Rovine, Arthur W., "Memorandum to Congress on the ICC from Current and Past Presidents of the American Society of International Law." *American Journal of International Law* 95, no. 4 (2001): 967-69.

⁵⁷⁶Supplemental Appropriations Act for Further Recovery from and Response to Terrorist Attacks on the United States, Pub.L.No.107-206, Section 2001-2015, 116 Stat. 820 (2002).

⁵⁷⁷Bolton, John R., U.S. Under Secretary of State for Arms Control, and International Security, Letter to Kofi Annan, Washington, 6 May 2002. See also: American Society of International Law (ASIL). "U.S. Signing of the Statute of the International Criminal Court." *The American Journal of International Law* 95, no. 2 (2001): 397-400.

international law to use military force preemptively against the threat posed by “rogue states” in possession of weapons of mass destruction⁵⁷⁸. Five months later the United States launched its Second Iraq War.

In parallel to these domestic actions the U.S government initiated a public relations campaign claiming that its actions were consistent with international law. American officials argued that Saddam Hussein’s regime possessed weapons of mass destruction and was therefore in breach of previous U.N. Security Council resolutions⁵⁷⁹. At the same time, fear of “politicization” and the International Criminal Court pushed the United States into a series of controversial actions. The U.S. requested between 2002 and 2003 the insertion of specific immunity-granting language in U.N. resolutions mandating peacekeeping missions. This request created difficulties during the negotiations of Resolutions 1422⁵⁸⁰, 1487⁵⁸¹, and 1502⁵⁸² and revealed significant discrepancies in European and American definitions of “justice”. American officials pursued as well the so-called Bilateral Immunity Agreements. These bilateral treaties between the United States and members of the International Criminal Court granted additional immunity to American personnel from a possible exercise of the Court’s jurisdiction by making use of the rather ambiguous wording of ICC Statute Article 98⁵⁸³. The international public reaction to American actions was an intense debate over the meaning of “justice”. NGOs⁵⁸⁴ and international organizations such as the European

⁵⁷⁸American Society of International Law (ASIL). "U.S. Adoption of New Doctrine on the Use of Force." *The American Journal of International Law* 97, no. 1 (2003): 203-05. Cf.???

⁵⁷⁹Donnelly, F., *Securitization and the Iraq War*, 2009.

⁵⁸⁰United Nations Security Council, Resolution 1422, S/RES/1422(2002), 12 July 2002 („On Immunity of Peacekeeping Personnel of non-party States to the International Criminal Court“).

⁵⁸¹United Nations Security Council, Resolution 1487, S/RES/1487(2003), 12 June 2003 („On Immunity of Peacekeeping Personnel of non-party States to the International Criminal Court“).

⁵⁸²United Nations Security Council, Resolution 1502, S/RES/1502(2003), 26 August 2003 (“On Protection of Humanitarian and United Nations Personnel”).

⁵⁸³Article 98 ICC Statute „Cooperation with respect to waiver of immunity and consent to surrender“, para.1 stipulates that the Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.

⁵⁸⁴Amnesty International, “Amnesty International urges the Security Council to ensure that Liberia resolution excludes impunity and effectively protects civilians”, Press release, 1 August 2003;

Union and the Parliamentary Assembly of the Council of Europe (PACE) denounced these acts as contrary to international law. U.N. Secretary-General Kofi Annan⁵⁸⁵, the German Foreign Minister Joschka Fischer⁵⁸⁶, Danish Foreign Minister Per Stig Moller⁵⁸⁷ or the President of the PACE Peter Schieder intervened publicly in this debate. Mr. Schieder went as far as declaring that, while Europe believed in the International Criminal Court and international justice, the United States did not, and that at stake was “our fundamental belief about how the world should be run”⁵⁸⁸. There was increasing consensus in international circles during these years that the United States and ICC member states did not share the same definitions of international justice, law and order.

Despite this opposition, the U.S. continued to rearticulate the meaning of international justice by associating it with “procedure” and “sovereignty”, rather than with criminal enforcement mechanisms. Speaking before the House International Relations Committee about the Administration’s views on the future of war crimes tribunals, Pierre-Richard Prosper, U.S. Ambassador-at-Large for War Crimes Issues reiterated this deep-seated American distrust of the International Criminal Court: “We are steadfast in our belief that the United States cannot support a Court that lacks the essential safeguards to avoid a politicization of justice.”⁵⁸⁹

Amnesty International, “U.S. Withdrawal: Determination of International Community is ‘Victory for International Justice and the Rule of Law’”, Press Release, 23 June 2004; Coalition for an International Criminal Court, “United States Postpones Adoption of UN Resolution to Protect Humanitarian Personnel over ICC Stance”, Press Release, 25 August 2003; Pace, William R., Convenor for the Coalition for the International Criminal Court, Statement Upon the Adoption of the Security Council Resolution on the Protection of Humanitarian and U.N. Personnel, 26 August 2003.

⁵⁸⁵ Annan, Kofi, U.N. Secretary-General, Letter to Colin Powell, 3 July 2002; Annan, Kofi, U.N. Secretary-General, Statement following the Security Council Meeting on Liberia, Press encounter, 1 August 2003.

⁵⁸⁶ Fischer, Joschka, Letter from the German Foreign Minister to Secretary of State Colin Powell, 24 October 2001.

⁵⁸⁷ Moller, Per Stig, “Europe courts the U.S.”, Speech by the Foreign Minister of Denmark and Holder of the EU Presidency, 5 November 2002.

⁵⁸⁸ Schieder, Peter, Speech by the President of the Parliamentary Assembly of the Council of Europe Peter Schieder at the 4th Parliamentary Conference on the Stability Pact for South-Eastern Europe, 21 May 2003.

⁵⁸⁹ Prosper, Pierre-Richard, Statement on U.N. International Criminal Tribunals for Rwanda and the Former Yugoslavia before the House International Relations Committee (Feb. 28, 2002), *American Journal of International Law*, 2002, p. 483.

Most of these arguments invoked international norms and laws. Prominent American civil servants repeatedly emphasized their mistrust of the ICC's rules of procedure. In a statement following the official U.S. "unsigning" of the ICC Treaty, Secretary of Defense Donald Rumsfeld warned that the danger of politically motivated prosecutions could become a recipe for isolationism and might create a powerful disincentive for American engagement in the world. Rumsfeld argued that the protection of servicemembers was tantamount to the defense of American interests and way of life. The U.S., he claimed, had an obligation "to protect our men and women in uniform from this court and to preserve America's ability to remain engaged in the world"⁵⁹⁰. "Freedom" of action, whether in defense of the national interest or promoting world peace, was discursively linked to "protection", "sovereignty", and "justice". This was a foreign policy discourse which reflected, to a certain extent, popular demands. Interest groups, such as the association of Veterans of Foreign Wars of the United States, joined this public debate by sending a letter to the U.S. Senate during its October 2001 session. The Veterans expressed their disapproval of the International Criminal Court's institutional design and emphasized again the threat posed by the Court to American military personnel:

"We oppose the International Criminal Court in its present form. We believe it poses a significant danger to our soldiers, sailors, airmen, and Marines, who are deployed throughout the world. U.S. military personnel and other U.S. Government officials could be brought before the court even though the United States is not a party to the Treaty. The court will claim jurisdiction to indict, prosecute, and imprison persons accused of "war crimes", "crimes against humanity", "genocide", and the "crime of aggression" (not yet defined by the ICC). These crimes are expansively defined and would be interpreted by the

⁵⁹⁰Rumsfeld, Donald, "Secretary Rumsfeld Statement on the ICC Treaty", United States Department of Defense, No. 233-02, 6 May 2002.

court's judges, who will be appointed with no input from the United States. The ICC will not be required to provide Americans the basic legal protections of the constitution. *We think it is wrong to expect our servicemen and women to serve their country under this threat.*⁵⁹¹

Some statements were even more explicit. Donald Rumsfeld openly talked about the difficulties which a “politicized or a loose cannon prosecutor” might create⁵⁹². These divergent views came into sharper relief during Security Council debates over peacekeeping mandates, in particular the discussions concerning Resolutions 1422, 1487 and 1502. The U.N. Security Council provided in this way, inadvertently perhaps, the institutional setting where the American “Politicization” struggled to “grip” Justice.

The political standoff in the Security Council over the legal effects of the Rome Statute began on June 30, 2002, one day before the entry into force of the Rome Statute. The UNSC's meeting had a relatively routine issue on the agenda: the renewal of the United Nations Mission in Bosnia and Herzegovina (UNMIBH) mandate⁵⁹³. This renewal was probably the final one for UNMIBH, which was winding down its activity after several years of assistance in the implementation of the Dayton Peace Agreement. The handover to the European Union Police Mission was scheduled for the end of the year. The U.S. threatened to use its veto against the draft resolution⁵⁹⁴. John Negroponte stated on behalf of the United States that his country would not consider any renewal of a peacekeeping mission's mandate unless concerns over the issue of immunity were

⁵⁹¹Veterans of Foreign Wars of the United States, Washington, DC, To all Members of the Senate from Robert E. Wallace, Executive Director, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, First Session, Senate, 2 October 2001, S10043.

⁵⁹²Defense Department Operational Update Briefing, Federal News Service, 12 June 2002. Briefers: Donald Rumsfeld, Secretary of Defense and General Richard Myers, Chairman, Joint Chiefs of Staff.

⁵⁹³United Nations Security Council, Debate, S/PV. 4563, 30 June 2002 (“The Situation in Bosnia and Herzegovina”).

⁵⁹⁴United Nations Security Council, Draft Resolution, Sponsored by Bulgaria, France, Germany, Ireland, Italy, Norway, Russian Federation, and United Kingdom of Great Britain and Northern Ireland, S/2002/712, 30 June 2002.

appropriately answered⁵⁹⁵. American representatives had previously asked the Security Council to adopt a U.N. Charter Chapter VII Resolution in order to grant immunity to peacekeepers from countries not parties to the Rome Statute. The U.S. was digging its heels in, pushed by the imminent entry into force of the ICC Treaty, the domestic debate over the ASPA, and its global war on terrorism. Secretary of Defense Donald Rumsfeld even declared in a press conference that the Administration was seeking every possible means to protect its Armed Forces from the risk of politicized prosecutions⁵⁹⁶.

The U.S. veto against the Bosnian Peacekeeping Mission could have had serious political implications. In the absence of a mandate renewal, the UNMIBH would have been forced to withdraw quickly, possibly compromising vital programs for Bosnia's police reform and border security. For 12 consecutive days UNSC Members tried to find a working compromise. The Council discussed various alternatives and debated the legal consequences of the American proposal. Many speakers worried about the problems involved in the drafting of a Resolution with potentially far-reaching effects on international law⁵⁹⁷.

The American request focused on Article 16 of the ICC Rome Statute. Art. 16 gives the Security Council the prerogative to use its Chapter VII powers and request the Court, in exceptional cases, to defer proceedings in a Situation for a renewable period of one year. This provision offers the Council more scope of maneuver during political negotiations and, arguably, prevents their breakdown by halting ongoing judicial proceedings. The U.S. insisted that the Security Council should use its Art. 16 ICC Statute powers and request the ICC to disregard any situation in which

⁵⁹⁵Mr. Negroponte, United Nations Security Council, Debate, S/PV.4563, 30 June 2002, p. 2/3 ("The Situation in Bosnia and Herzegovina").

⁵⁹⁶Department Defense Briefing: Global War on Terrorism, Secretary of Defense Donald Rumsfeld, Federal News Service, 21 June 2002.

⁵⁹⁷United Nations Security Council, Debate, S/PV. 4566, 3 July 2002 ("The Situation in Bosnia and Herzegovina"); United Nations Security Council, Debate, S/PV.4568, 10 July 2002 (and Res. 1) ("The Situation in Bosnia and Herzegovina"); United Nations Security Council, Debate, S/PV.4572, 12 July 2002 ("The Situation in Bosnia and Herzegovina").

peacekeepers from non-member states might be involved. The United States Representative justified the American request carefully. Mr. Negroponte argued that immunity from ICC prosecution for peacekeepers from non-state parties was within the framework of a U.N. immunity regime and, therefore, within the scope of the Security Council's powers⁵⁹⁸. During the 10 July open debate, Negroponte tried to convince UNSC members that such a Resolution was a pragmatic solution to the issue of peacekeepers' protection, in accordance with the norms of international law and the Rome Statute of the International Criminal Court⁵⁹⁹. The Council acquiesced in the end to the American delegation's requests. Resolution 1422, adopted two days later, on 12 July 2002, included the compromise paragraph suggested by the United States. Peacekeepers from ICC non-member states were granted absolute immunity from the Court's jurisdiction for the period of one year⁶⁰⁰. At the end of this negotiation marathon, Mr. Negroponte stressed that the United States considered future actions in order to prevent any "abuse of international law":

“For the United States, this resolution is a first step. The President of the United States is determined to protect our citizens - soldiers and civilians, peacekeepers and officials - from the International Criminal Court. We are especially concerned that Americans sent overseas as soldiers, risking their lives to keep the peace or to protect us all from terrorism and other threats, be themselves protected from unjust or politically motivated charges. Should the ICC eventually seek to detain any American, the United States would regard this as

⁵⁹⁸Mr. Negroponte, United States, United Nations Security Council, Debate, S/PV. 4563, 30 June 2002, p. 2/3 (“The Situation in Bosnia and Herzegovina”).

⁵⁹⁹Mr. Negroponte, United States, United Nations Security Council, Debate, 10 July 2002, p. 9/10 (“The Situation in Bosnia and Herzegovina”).

⁶⁰⁰United Nations Security Council, Resolution 1487, S/RES/1487(2003), 12 June 2003 („On ICC Jurisdiction and United Nations Operations“).

illegitimate - and it would have serious consequences. *No nation should underestimate our commitment to protect our citizens*⁶⁰¹.

This American victory revealed however important normative cleavages among U.N. members and disagreements over the meaning of fundamental principles of international law. Canada criticized the adoption of Resolution 1422, arguing that the Council was effectively amending an international treaty and therefore acting *ultravires*⁶⁰². Brazil went even further and labelled the American amendment proposal a breach of the Vienna Convention on the Laws of Treaties⁶⁰³.

The United States discursive performance at the UNSC relied on many of the slogans employed in its domestic public discourse, but favoured legal arguments over nationalist rhetoric. “Freedom”, which in the U.S. Congress debate was connected to “sovereignty” and “the right to defend one’s national interest”, became synonymous with “freedom from unlawful prosecutions”.

The Justice/Rule of law pairing became gradually more prominent in U.S. foreign policy statements. American international discourse relied increasingly on representations of an international order characterized by the “rule of law” and “sovereignty” as absolute principles. Moreover, the debate over “Politicization” did not end with the adoption of Resolution 1422. By 2003, during negotiations over its renewal, the same differences of opinion had become even sharper. The U.S. and critics of its position alike showed their discursive inflexibility over the meanings of “justice” and the “rule of law”. During the 12 June 2003 open debate at the U.N. Security Council, Günther Pleuger argued that the adoption of Resolution 1487 would be an attack on the indivisibility of justice. For Germany, the International Criminal Court

⁶⁰¹Mr. Negroponte, U.S. Mission to the United Nations, „Remarks at stakeout following UN Security Council vote on Resolution 1422“, 12 July 2002. Released by the U.S. Department of State, Online Archive, at: <http://2001-2009.state.gov/p/io/rls/rm/2002/11846.htm>.

⁶⁰²Mr. Heinbecker, Canada, United Nations Security Council, Debate, S/PV.4772, 12 June 2003, p. 3/4 (“United Nations Peacekeeping”).

⁶⁰³Mr. Viotti, Brazil, United Nations Security Council, Debate, S/PV.4772, 12 June 2003, p. 13 (“United Nations Peacekeeping”).

was “an efficient and indispensable instrument to further international security, peace and justice”⁶⁰⁴.

In 2003, the Americans were discursively on the defensive⁶⁰⁵. The ASPA military assistance cuts to non-BIA signatories were about to enter into force, increasing political tensions in the Council. Even though Resolution 1487, including the controversial paragraph on immunity, was eventually adopted, the mood in the Council had shifted in favour of the Justice camp. France, Germany, and Syria abstained from this vote⁶⁰⁶. The outcome foreshadowed possibly even stronger opposition in the future, pushing Representative Cunningham to find new justifications for American demands. The emphasis fell on the empty signifiers “rule of law” and “accountability”. Cunningham argued that, as far as his country was concerned, the ICC was not “the law”. The Court lacked “accountability” since, unlike other International Criminal Tribunals, the ICC was not a U.N. institution. Therefore, because it was not politically accountable to the Security Council, the Court weakened the latter’s role in the protection of international peace and stability⁶⁰⁷.

The U.S. Government praised Resolution 1422 as a “balanced compromise”⁶⁰⁸ and continued to refer in its international statements to norms of international law. In his intervention before the U.N. 6th Committee’s, in October 2003, American Representative Nicholas Rostow argued that his country’s position was a principled one. The American policy towards the International Criminal Court was not meant to undermine the institution, but to express support for the international “rule of

⁶⁰⁴Mr. Pleuger, Germany, United Nations Security Council, Debate, S/PV.4772, 12 June 2003, p. 24/25 (“United Nations Peacekeeping”).

⁶⁰⁵Cunningham, James, “Statement by Ambassador James Cunningham, Deputy United States Representative to the United Nations, on the Renewal of Resolution 1422”, USUN Press Release, No. 85(03), 12 June 2003.

⁶⁰⁶United Nations Security Council, Resolution 1487 (2003), S/RES/1487, 12 June 2003 („On ICC Jurisdiction and United Nations Operations“).

⁶⁰⁷Mr. Cunningham, United States, United Nations Security Council, Debate, S/PV.4772, 12 June 2003, p. 23/24 (“United Nations Peacekeeping“).

⁶⁰⁸Holmes, Kim R., United States Assistant Secretary for International Organization Affairs, “The Future of U.S.-U.N.Relations“, Remarks at the XXI German American Conference, Berlin, Germany, 13 June 2003. Retrieved at: http://www.amicc.org/docs/Holmes6_13_03.pdf.

law”⁶⁰⁹. The U.S. arguably shared the ICC’s goals, but remained critical of the Court’s institutional design.

The international career of POL-I came to a halt in 2004, when the United States lost the ability to invoke legitimate state interest and procedural justice in support of its case. The Abu Ghraib scandal, in which American soldiers were accused of torturing Iraqi prisoners, undermined further requests for peacekeepers’ immunity. It also cast its shadow over the American campaign to have U.S. personnel exempted, under any circumstances, from the ICC’s jurisdiction⁶¹⁰. Not only Abu Ghraib weakened POL-I, but also the United States’ discursive inability to generate consensus over the reformulations of “justice” qua “procedure”, “rule of law”, and “accountability”. Representative Cunningham acknowledged the increasing discomfort in the Council over American immunity requests. He demanded therefore only a final, one-year renewal of Resolution 1487, with a sunset clause.⁶¹¹ Due to the unwillingness of the other Council Members to consider the draft, the U.S. withdrew even this request. David Boucher justified this action during the Washington daily press briefing by invoking the Administration’s wish to avoid “a prolonged and divisive debate in the Council.”⁶¹²

The U.S. continued nevertheless to ‘hunt’ down references to the International Criminal Court in other peacekeeping resolutions. Between 2003 and 2004, the United States tried in a variety of ways to strike out any mention of the Court

⁶⁰⁹Rostow, Nicholas, General Counsel, U.S. Mission to the United Nations, Statement on Agenda Item 154: the International Criminal Court, in the Sixth Committee, October 23, 2003. Coalition for an International Criminal Court Online Archive, at: <http://www.iccnw.org/documents/US6thCommResolution23Oct03.pdf>.

⁶¹⁰Risen, James. "The Struggle for Iraq: Treatment of Prisoners; G.I.'S Are Accused of Abusing Iraqi Captives" *The New York Times*, 29 April 2004.

⁶¹¹Cunningham, James B., Deputy U.S. Representative to the United Nations, Remarks on the ICC at the U.N. Security Council Stakeout, 22 June 2004. Retrieved at: http://www.un.int/usa/04print_110.htm.

⁶¹²Boucher, Richard, Spokesman Washington, DC, Daily Press Briefing, 23 June 2004. Retrieved at: <http://iipdigital.usembassy.gov/st/english/texttrans/2004/06/20040623193446eaifas0.9734156.html#axzz2tjKWsDvi>.

in official U.N. acts. The renewal of peacekeeping missions mandates in Liberia⁶¹³, Congo⁶¹⁴, Cyprus⁶¹⁵, and Burundi⁶¹⁶ was made conditional upon the insertion of a paragraph granting special derogation from ICC jurisdiction to personnel from non-member states. Alternatively, the U.S. cast a positive vote only if the respective country, such as the D.R. Congo, had signed a Bilateral Immunity Agreement. Security Council Resolution 1502 on the “Protection of Humanitarian and United Nations Personnel” specifically left out any mention of the International Criminal Court⁶¹⁷. The Council emphasized the need to respect the rules and principles of international law applicable to armed conflict, in particular The Hague and Geneva Conventions, but did not mention the codification of such “grave breaches” in the Rome Statute.

However, American support for “Politicization” decreased significantly by 2005. The U.S. changed its position and favoured a more cooperative approach towards the ICC. The Bush Administration had become involved in the international debate over the Darfur conflict and the alleged genocide perpetrated there against local African tribes. The need to have an international insurance policy for U.S. Armed Force against the Court became therefore secondary to finding a solution for the tens of thousands of Darfuri refugees. Even though the Americans abstained from voting the UNSC’s Resolution 1593, the U.S. supported the referral of the Darfur Situation to the International Criminal Court. Some Republicans were themselves warming up to the notion of an international criminal justice enforced from The Hague. In an article for the Washington Post, John McCain and Bob Dole, both well-known Conservative

⁶¹³United Nations Security Council, Resolution 1497 (2003), S/RES/1497, 1 August 2003 („On Liberia“); Mr. Danforth, United States, United Nations Security Council, Debate, S/PV. 5036, 17 September 2004, p. 2 (“The Situation in Liberia“).

⁶¹⁴Mr. Holliday, United States, United Nations Security Council, Debate, S/PV.5048, 1 October 2004, p.3 (“The Situation Concerning the Democratic Republic of the Congo“).

⁶¹⁵Mr. Olsen, United States, United Nations Security Council (2004), Debate, S/PV. 22 October 2004, p. 2/3 (“The Situation in Cyprus“).

⁶¹⁶Mr. Danforth, United States, United Nations Security Council, Debate, S/PV.5093, 1 December 2004, p. 3 (“The Situation in Burundi“); See also: Washington Post, “Massacre Probe Concerns U.S.: Role of International Court in U.N. Investigation Is Cited”, 2 December 2004.

⁶¹⁷United Nations Security Council Resolution 1502, S/RES/1502, 23 August 2003, (“Protection of United Nations Personnel“).

politicians, suggested a tit-for-tat strategy in which the U.S. could use the ICC as a threat against the Sudanese government⁶¹⁸.

The Politicization discourse gradually softened its international tone. In her inaugural speech before the United Nations, Ambassador Susan Rice reaffirmed President's Obama commitment to building strong international partnerships in order to address global challenges that "no single nation can successfully tackle alone"⁶¹⁹. The list included global peace and security as well as the prevention of genocide, eradication of poverty, support for human rights, democracy, and human dignity. The Rome Statute received American approval, in its most positive form so far, in the White House 2010 National Security Strategy:

"Although the United States is not at present a party to the Rome Statute of the International Criminal Court (ICC), and will always protect U.S. personnel, we are engaging with State Parties to the Rome Statute on issues of concern and are supporting the ICC's prosecution of those cases that advance U.S. interests and values, consistent with the requirements of U.S. law."⁶²⁰

Nine years after President Clinton signed the International Criminal Court Treaty, American foreign policy returned to Clinton's original ideas of engagement rather than active opposition. Even though a request for membership remains to this day unlikely, the United States has successfully developed a working relationship with the Court⁶²¹. POL-I continues to permeate American foreign policy discourse, but as an international counterdiscourse it no longer has the power to raise credible discursive threats against Justice.

⁶¹⁸McCain, John, and Bob Dole. "Rescue Darfur Now." *Washington Post*, 10 September 2006.

⁶¹⁹Rice, Susan E., U.S. Permanent Representative, United States Mission to the United Nations, Statement on Respect for International Humanitarian Law in the Security Council, 29 January 2009, USUN Press Release, No. 020(09). At: <http://usun.state.gov/briefing/statements/2009/january/127018.htm>.

⁶²⁰Obama, Barack, "National Security Strategy", The White House, Washington, May 2010. At: http://www.whitehouse.gov/sites/default/files/rss_viewer/national_security_strategy.pdf.

⁶²¹Broomhall, Bruce. 2001. Toward U.S. Acceptance of the International Criminal Court. *Law and Contemporary Problems* 64:141 – 153, p. 143.

4.2.2. Structural Analysis

Table 14: The U.S. “Politicization” Counterdiscourse – Structural Image

Nodal signifier: JUSTICE	
Elements:	
Rule of law	Justice/Procedure
Sovereignty	Freedom/Protection
Accountability	Individual criminal responsibility
Accountability	Political

Site of Antagonism



“Politicization” is the outcome of a clash between two distinct discursive formations structured around different representations of international order and formulations of “justice”. Both claim “justice” as their nodal signifier. The Justice discourse relies however on a definition of international criminal justice which implies policy-wise that its supporters would strongly endorse enforcement of international criminal law norms through an independent, permanent international judiciary. The International Criminal Court is discursively embedded in the representation of a cosmopolitan world order, favouring punishment of crimes as its foundational principle over the inviolability of state sovereignty.

POL-I on the other hand challenges this definition. The American counterdiscourse is simultaneously an independent entity and a structural reaction to the hegemonizing tendencies of “Justice”. The American variant relies on an image of international order where the sovereign prerogative of states is a foundational principle.

This image draws on the accountability discourse of the 1990s, a representation of the international system as a society of states⁶²², and a Conservative concern with “freedom”. The “Justice” element in this discourse is defined as “procedural justice”, a formulation less favorable to legal developments that could potentially undermine the status quo in international relations.

POL-I is a relatively simple counterdiscourse, with only three main empty signifiers – “Rule of Law”, “Sovereignty” and “Accountability” (Table 14). A survey of frequencies in the Collection of Quotes “U.S. anti-ICC Campaign 2000-2004” (Annex 6) shows that “Justice” is the most frequent element, with 46 occurrences, followed by “Accountability” with 21 and “Sovereignty” with 9. “Freedom” was identified 14 times and “Protection” yielded 32 hits. The chain of equivalence representing the backbone of this discourse includes: “justice” – “rule of law” – “accountability” – “sovereignty” – “freedom” – “protection”. The frontier POL-I shares with Justice is the empty signifier “rule of law”. This is the discursive zone with the highest degree of political pressure. Quotes favouring the American formulation of “Justice” struggled to justify its connection to the “Rule of Law”. The structure of the discourse outlined in Table 14 above is the result of two processes: the reappropriation of elements already hegemonized by the Justice discourse, such as “justice”, “sovereignty”, “accountability”, and “rule of law” as well as the discursive sedimentation of a particular identity. This is the Conservative Self presented as a “Protector” of “America”, the subject position in POL-I that allows only limited overlap with the “just punisher” of the Justice discourse and is less open to processes of identification. This identity is not specific only to POL-I. It is an ideological construct pervasive in the Conservative American discourse. In this historic and discursive context however, POL-

⁶²²See also: Ralph, *International Society*, *Review of International Studies*, 2005.

I helps explain the ways in which the United States foreign policy discourse challenged, but failed to prevent the hegemonization of international security policy by Justice.

Rearticulations

Three types of rearticulations can be identified in “Politicization”. First, the empty signifier “sovereignty” acquires a more prominent position in the chain of equivalent relationships. Second, “accountability” splits into two discursive elements. Lastly, the formulation of the justice/rule of law pair as the grounding element of POL-I is the discursive effect of American attempts to insert immunity amendments in U.N. Security Council peacekeeping resolutions and sign B.I.As with ICC Members. The Conservative worldview portrays the United States as a sovereign subject of an international system where pursuit of national interest is a legitimate justification for foreign policy. The Constitution is arguably the only legal document that can protect the rights of American citizens⁶²³. This is the “voice” of U.S. foreign policy shaped during Congress debates over the American Servicemembers Protection Act. Two camps carried out the domestic struggle over the meaning of empty signifiers “justice”, “sovereignty”, “freedom”, and “protection”. The outcome of these rearticulations is however only one chain of equivalent elements. This empirical result suggests that despite disagreements over domestic legislation and foreign policy, discourse producers reached consensus on the meaning of these key signifiers. This consensus strengthened the justice/rule of law pairing identifiable in the international statements of American policymakers.

⁶²³Veterans of Foreign Wars of the United States, Washington, DC, To all Members of the Senate from Robert E. Wallace, Executive Director, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, S10043; Sen. Craig, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, First Session, Senate, 2 October 2001, S10027-S10056, Library of Congress, S10044.

Former governmental officials and Conservative Republicans emphasized the importance of “sovereignty”⁶²⁴. In a series of interventions during the ASPA Senate debates, Senator Helms strongly attacked the International Criminal Court: the ICC was portrayed as a “Kangaroo Court”, most likely to “run amok in the future” and, like other U.N. bodies, for example the Human Rights Council, able to “persecute” American soldiers engaged in the fight against terrorism⁶²⁵. For Sen. Helms, the Court posed an existential threat to American freedom of movement and decisionmaking ability.

The Conservative discourse consistently equated “protection” with “freedom” and the latter with “sovereignty”. President Bush also justified his Administration’s heavy-handed treatment of the Rome Statute signatories during the B.I.A. campaign as necessary for the protection of “freedom-loving” people from terrorists⁶²⁶. The United States used “freedom” and the “protection” of soldiers deployed abroad as two powerful discursive representations of the United States’ global engagement⁶²⁷. There is a certain discursive uncertainty in these early references to the Court, which is depicted both as a United Nations body and as a foreign legal system. The Conservative aversion towards “the tyranny of judges”⁶²⁸ suggests that POL-I relies on a different understanding of the relationship between “justice” and “international law” on the one hand, and “international law” and “politics” on the other. The ICC’s symbolic threat to American sovereignty is constantly mentioned during ASPA

⁶²⁴Letter to the Honourable Tom DeLay, Majority Whip of the U.S. House of Representatives, Several Former Foreign Policy Leaders, 29 Nov. 2000; Sen. Helms, American Servicemembers' Protection Act, 107th Congress, U.S.Senate, 10 May 2001, Library of Congress, S4814; Sen. Craig, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854; Sen. Craig, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, First Session, Senate, 2 October 2001, S10027-S10056, Library of Congress, S10044; Sen. Byrd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5143; Sen. Allen, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5147.

⁶²⁵Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854.

⁶²⁶Bush, George W., Remarks prior to discussions with president Alvaro Uribe of Colombia and an exchange with reporters, 30 September 2002.

⁶²⁷Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854.

⁶²⁸Kissinger, *The Pitfalls of Universal Jurisdiction*, Foreign Affairs, 2001.

domestic debates. Senator Craig argued that “when [...] addressing international bodies” one had to speak clearly about the “right of this Nation to determine its own destiny”⁶²⁹. During the October 2001 Senate discussion on the Helms Amendment, Sen. Craig challenged the International Criminal Court:

“What is at question? Our sovereignty, the right of this country to protect its citizens under our judicial system [...]”⁶³⁰.

The second rearticulatory move is the splitting of “Accountability” into two elements. The first “accountability” element preserves its original meaning qua “individual criminal responsibility”. A second variant however reformulates “political accountability” as “accountability” according to the laws of a democratic political system. This second element imposes a standard on the Court and its Prosecutor which legitimizes arguments against the ICC’s perceived unchecked power. Because the International Criminal Court does not operate in an institutional setting of checks-and-balances, like the U.S. Constitutional Court, this international institution as well as the Prosecutor enforcing its norms would arguably lack “accountability”.

Defenders of a more cooperative approach towards the ICC rejected this Conservative framing of the debate. They questioned the definition of “freedom” and the meaning of “protection”. Rather than ensuring “freedom” of decision-making and movement, the Democrats portrayed ASPA as endangering important strategic alliances with European partners. Senator Christopher Dodd argued that the fight against terrorism would become meaningless if the United States decided to prohibit cooperation with an institution where such criminals could be legitimately put on trial. Senator Dodd contested the Conservative interpretation of “sovereignty”. He invoked

⁶²⁹Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, p. S9854.

⁶³⁰Sen. Craig, Congressional Record, Proceedings and Debates of the 107th Congress, Vol. 147, No. 130, First Session, Senate, 2 October 2001, S10027-S10056, Library of Congress, S10044. See also: Sen. Allen, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5147.

the American commitment to the rights of Holocaust victims and argued that the ICC goal of punishing perpetrators of international crimes was compatible with the objectives of U.S. foreign policy. The Court was therefore an important international institution, a friend rather than a potential enemy:

“We have nothing to fear from this Court. We have nothing to fear about strengthening the rule of law.”⁶³¹

Finally, the formulation of the justice/rule of law pairing grounded American international statements onto the terrain of international law and gave a certain legal standing, albeit contested, to United States foreign policy actions. The historical context explains partially why the themes of “protection” and defense of “freedom” figured prominently on the Bush Administration’s agenda. From a legal and political point of view however, the prioritization of state sovereignty over the international enforcement of international criminal law pushed the U.S. on a “lonely legal ledge”⁶³².

Identity and POL-I: The Conservative American Self

“Self” \leftrightarrow “Other”

I labelled the core identity of POL-I the “American Self”. Following my empirical analysis of its discursive attributes, I added the adjective “conservative”. Table 15 below presents the empirical results of an additional coding procedure, through which I identified the different subject positions constructed within “Politicization” and the identification processes at work. The results suggest that while there is a pluralism of identities, ranging from “law enforcers”, “freedom” fighters, “America” to “rogue nations” and “allies”, there are only three coherent selves: the “I/Me/Self” (American

⁶³¹Sen. Dodd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5141.

⁶³²Wedgwood, Ruth. 2000. Courting Disaster: The U.S. Takes a Stand. *Foreign Service Journal* March 34: p. 39.

Self), the “Friend” (“Other”/Positive Identification) and the “Enemy” (“Other”/Negative Identification).

The Self is the “strongest voice for freedom in the world”, courageous, sovereign, law-abiding, enforcing respect for international law and the “world’s foremost advocate of human rights”⁶³³. The Self is a “Protector” of “America”. The “Friend” is an ally in the global coalition against terrorism, possibly a European and/or a NATO member, a victim of the Holocaust and even a global subject such as the “world” which “finally stands up” to the “Idi Amins and Sadam Husseins of the world and others who evade their nation’s justice and [...] the response of the international community”⁶³⁴.

The “Enemies” are “rogues nations” such as Libya and Sudan, “dictators”, “real war criminal and terrorists”, the U.N. Human Rights Commission (sic!), “undemocratic countries” as well as “overzealous prosecutors and judges” able to use the Court for politically motivated trials and “persecute” American military fighting terrorism. This is a Conservative vision of the American Self, portrayed simultaneously as abiding international norms and free from the constraints of international laws it did not consent to. The Conservative American Self is more confrontational and mistrustful of international tribunals. The higher frequency of coded segments in the Negative Identification category suggests as well that this Self is more likely to identify threatening “Others” than potential “Friends”.

⁶³³These quotes and the following ones are taken from Table 15.

⁶³⁴Sen. Dodd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5141.

Table 15: The U.S. “Politicization” Counterdiscourse - “Me” vs. the Other(s)⁶³⁵

“I/Me/Self”	“Other” Negative Identification	“Other” Positive Identification
<p>The strongest voice for freedom in the world Enforcer of laws against human rights violations A Nation at war with terrorism Courageous men and women Citizens The miracle of America Men and women who are willing to risk their lives to protect their country The world’s foremost advocate of human rights Protectors We [must] speak as a Nation to the world This Nation has a right to determine its own destiny This country has a right to protect its citizens under our judicial system</p>	<p>Rogue nations such as Libya and Sudan Evil terrorists Unaccountable international prosecutor operating under procedures inconsistent with the [American] Constitution The International Kangaroo Court A Court which persecutes The U.N.’s International Criminal Court will be in a position to persecute soldiers and sailors for alleged war crimes as they risk their lives fighting the scourge of terrorism Real war criminals and terrorists A Court with the unbridled power to intimidate our military people and citizens with bogus, politicized prosecutions. The U.N. Human Rights Commission Dictators Idi Amins and Saddam Husseins An ICC run amok A politicized or loose cannon prosecutor The U.N. on a witch hunt Undemocratic countries handpicking officials or soldiers for ICC trials An international body with the right to take away the right of American sovereignty and therefore the right of the U.S. judicial system over its citizens Countries, or overzealous prosecutors and judges</p>	<p>Allies Global coalition against terrorism NATO allies European allies Victims of the Holocaust The world stands up/they are doing what we asked them to do for years International community People such as Harry Truman, George Marshall, and Douglas MacArthur</p>

Because the elements forging this identity have roots in American Conservative ideology, the Self is simultaneously more capable of generating consensus domestically and weaker when addressing an international audience. This subject position is therefore both one of the strongest and weakest attributes of POL-I. This vulnerability becomes more visible once the nationalistic objectives of the American Self obstruct POL-I’s wider political appeal. “Politicization” did not garner sufficient international support, with discourse producers more likely to identify with the “just

⁶³⁵The coding procedure was applied to Annex 6 Collection of Quotes – U.S. Anti-ICC Campaign: 2000-2004.

punisher” of the Justice discourse. Such a situation was, presumably, contrary to the interests of the United States. Between 2001 and 2003 the Bush Administration was actively building an international coalition in support of its wars in Afghanistan and Iraq. A legitimate international discourse would have probably enhanced, rather than diminished, the power of American claims to self-defense and the U.S. right to unilateral intervention.

The resurgence of this strong Conservative identity is however partially explained by the country’s particular historical context. The September 11, 2001 terrorist attacks induced a trauma difficult to process discursively by American policymakers. The metaphor of the "war" was used to define the changing geopolitical context for the United States and justify, for a "Nation at war", extraordinary political measures. The new security threats, introduced so brutally to the American public in 2001, challenged previous experiences of the “Enemy”. The discursive effect of this traumatic event is a proliferation of “Others” identified as potential threats (Table 15). My empirical findings suggest that the Self displays a high degree of insecurity and feels threatened by unidentifiable dangers. The result is a negative international dynamic, where the rest of the world is more likely to generate “Enemies” than “Friends”.

These rigid demarcation lines between Self and Other are present in Congress debates over ASPA and American international interventions at the United Nations. The Court is discursively relegated to the “Enemy” category. Although some politicians, usually Democrats, tried to construct a more positive image of the ICC, they still followed the same binary identity schema. Rather than challenging this rigid Friend/Enemy divide, the pro-ICC American discourse simply shifted the boundary of evil further. The rest of the world was split between friends/allies and enemies - the

Saddam Hussein and Idi Amin⁶³⁶. Joining the Self was the “world”, arguably finally endorsing the United States’ quest for the punishment of individuals guilty of mass atrocities. The Democrats tried to connect this revamped American Self with the equivalent subject position of Justice, the “just punisher”. The Self was portrayed as a promoter of values such as individual freedom, human rights, and democracy. This friendlier scenario failed in the end not because an alternative identity was unthinkable or unappealing. Statesmen such as Harry Truman were invoked as role models of potential “just punishers”⁶³⁷. The pervasive feeling of danger following 9/11 weakened however this reformulation. Because the anti-ICC American camp drew, metaphorically, a line in the sand between the Self and Other, allowing only negative or positive identification with the latter, the list of legitimate U.S. international actions was narrowed down to self-defense and unilateralism.

Despite the use of legal language in the portrayal of the Self as “law-abiding”, the general mistrust of international law displayed by American Conservatives suggests that under certain historical circumstances the “freedom” of the Self and its “sovereignty” are simply ranked higher. During moments of crisis, the process of identity construction in American domestic and foreign policy discourse favours the chain of equivalences linking “freedom”, “protection” and “self-defense”. This structuring chain allows and even normatively favours a zero sum approach in confrontations with a potential Enemy. The “Other” is more likely to be identified as a life-threatening foe, rather than a Friend. In this identity-building process, the International Criminal Court becomes the inadvertent victim. Although its image in the U.S. foreign policy discourse has improved since 2004, the Court remains to this day in American political imaginary a suspicious Other.

⁶³⁶Sen. Dodd, Supplemental Appropriations Act for Fiscal Year 2002, 10th Congress, U.S.Senate, 6 June 2002, S5138-S5148, Library of Congress, S5141.

⁶³⁷Ibid., S5141.

4.3. *Boundaries and Rival Discourse II: “Politicization” and the African Union*

POL-I did not exhaust the potential of Politicization to challenge the hegemony of Justice. The American version is a rearticulatory exercise tied to U.S. domestic debates over the American Servicemembers Protection Act (2000/2002) and international efforts to shield its personnel from a potential exercise of ICC jurisdiction (2002/2004). However, the nodal point “politicization” is not exclusively linked to American foreign policy. Its “emptiness” as a signifier suggests that more than one meaning can “fill” its content. The second “filling” begins to take shape between 2007 and 2010, spearheaded by African Union efforts to halt ICC proceedings against Omar al-Bashir, the President of Sudan.

In 2009, the International Criminal Court issued an arrest warrant on al-Bashir’s name for his alleged involvement in the Darfur civil war. The Sudanese President is the first acting head of state to be indicted by an international criminal tribunal. He is accused of having orchestrated a brutal military counter-insurgency, inciting war crimes, crimes against humanity and genocide against three Darfur tribes: the Fur, Masalit, and Zaghawa. This is the political context in which Politicization (POL-II) resurfaces once again on the frontiers of Justice, challenging its connection to international criminal law.

Between 2004 and 2005 the Security Council made use of its entire repertoire of security measures in order to restore peace in Darfur. UNSC actions during these early stages of conflict consisted of gradual sanctions, ranging from an arms embargo⁶³⁸ on the Janjaweed militias and rebel groups, to a Sanctions Committee responsible for asset freezes and travel bans for designated Sudanese nationals⁶³⁹; the

⁶³⁸United Nations Security Council, Resolution 1556(2004), S/RES/1556, 30 July 2004 (“On Sudan”), §7.

⁶³⁹United Nations Security Council, Resolution 1591(2005), S/RES/1591(2005), 29 March 2005 (“On Sudan”), §3.

creation of an International Commission of Inquiry into the Darfur atrocities⁶⁴⁰ followed by the referral of the situation to the International Criminal Court⁶⁴¹; and the deployment in the region of two United Nations peacekeeping missions. The first one, the United Nations Mission in Sudan (UNMIS) was deployed in 2005 and tasked with overseeing the implementation of the 2005 South/North Sudan Comprehensive Peace Agreement⁶⁴². The second, a hybrid African Union/United Nations peacekeeping mission (UNAMID), equipped with a robust mandate to protect civilians, was designed to support the implementation of the 2006 Darfur Peace Agreement⁶⁴³.

Two types of counterdiscourses emerge as a reaction to these decisions: Politicization, spearheaded by the African Union and Members of the Council belonging to the League of Arab States (L.A.S.), the Organization of Islamic States (OIS) and the Non-Aligned Movement (NAM); and Peace vs. Justice, whose supporters included, additionally, two UNSC Permanent Council Members: China and Russia. Politicization is not, therefore, the only challenger of Justice. Reflecting the tense mood in international relations during this period, several discourses on peace and security coexist simultaneously in the Council. Three new conflicts erupted between December 2007 and January 2010, bringing even more into the spotlight the Security Council's inability to maintain international peace: the post-electoral violence in Kenya (2007/2008), the Georgia-Russia war in August 2008, and the Israeli invasion of Gaza between 27 December 2008 and January 2009. Confronted with an explosion of international and intrastate violence, a majority of UNSC Members would gradually arrive at the conclusion that the international criminal law enforcement mechanism

⁶⁴⁰United Nations Security Council, Resolution 1564(2004), S/RES/1564(2004), 18 September 2004 ("On Sudan"), §12.

⁶⁴¹United Nations Security Council, Resolution 1593(2005), S/RES/1593, 31 March 2005 ("On Sudan"), §1.

⁶⁴²United Nations Security Council, Resolution 1590(2005), S/RES/1590, 24 March 2005 ("On Sudan"), §4.

⁶⁴³United Nations Security Council, Resolution 1769(2007), S/RES/1769, 31 July 2007 ("On Sudan"), §1, §15(a)(ii).

provided by the ICC was a potential solution to its security problem. Justice had already gained the support of an impressive and diverse coalition of actors (Chapter 3). POL-II and Peace vs. Justice are, therefore, the last major counterdiscourses born on its frontiers that have the power to threaten the new security ideology.

This discursive attack on Justice co-exists with the American version of Politicization. This situation is rather puzzling because, despite similarities in their arguments, the United States and U.N. Security Council Members were divided over the best course of action in the new Sudanese domestic conflict. The American Representative at the UNSC, Mr. Patterson, prioritized “accountability”. In March 2005, Mr. Patterson justified the United States abstention on Resolution 1593, referring Darfur to the ICC, by citing his country’s concerns over the provisions of the Rome Statute, in particular the Court’s potential exercise of jurisdiction over non-member states. This possibility arguably struck “at the essence of the nature of sovereignty“ and prevented the U.S. from casting a positive vote for the referral. However, the United States expressed its willingness to accept the Council’s decision in the interest of “accountability” and in order to end the culture of impunity in Sudan⁶⁴⁴.

Algeria claimed during the same debate that by referring Darfur to the ICC the Security Council was serving neither the interests of peace, nor those of justice. Instead, ”double standards“ and a ”two-track justice“ characterized the Council’s work⁶⁴⁵. China endorsed “national judicial sovereignty“ and justified its abstention on Resolution 1593 as unwillingness to support the exercise of the Court’s jurisdiction against the will of a non-party state⁶⁴⁶. These cleavages sharpened during subsequent

⁶⁴⁴Mr. Patterson, United States, United Nations Security Council, Debate, 31 March 2005, S/PV.5158, p.3 (“Sudan“).

⁶⁴⁵Mr. Baali, Algeria, United Nations Security Council, Debate, 31 March 2005, S/PV.5158, p. 4/5 (“Sudan“).

⁶⁴⁶Mr. Wang Guangya, China, United Nations Security Council, 31 March 2005, S/PV.5158, p. 5 (“Sudan“).

Darfur debates, in particular between 2007 and 2009, with Member States assigning different meanings to key empty signifiers⁶⁴⁷.

The antagonism between POL-II and Justice begins in 2004, at the U.N. Security Council, following mounting international pressure for more effective action to protect the Darfuri civilians. The latter had become caught in a violence spiralling out of control between the armed rebel groups, the Sudanese National Army and the Arab militias. UNSC discussions focused on the worsening humanitarian crisis, the political demands of the rebels and the inventory of available security measures for the restoration of peace. The international media added even more pressure to these debates through its significant coverage of Darfur. For example, U.S. Republican Senators John McCain and Bob Dole wrote in September 2006 that Darfur was facing its own “Srebrenica moment” and the United Nations Security Council had a moral responsibility to act⁶⁴⁸. In July and September 2004 the UNSC discussed economic sanctions against the Sudan. After the adoption of Resolution 1556⁶⁴⁹, which imposed an arms embargo and threatened future action under Article 41 U.N. Charter, the Sudanese Representative invoked in his country’s defense the evidence of “double standards” and unfair treatment at the hands of “some” States:

“I have just witnessed an *unfair and unjust policy of double standards*. Indeed, these are shameless acts. Are these the same States that we see every day on television, with their massive military machines, engaged in the occupation of nations, firing upon innocent civilians in Iraq and Afghanistan and playing the

⁶⁴⁷United Nations Security Council, Debate, 31 July 2007, S/PV.5727 (“Sudan”); United Nations Security Council, Debate, S/PV.5789, 5 December 2007 (“Sudan”); United Nations Security Council, Debate, S/PV.5912, 16 June 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.5922, 24 June 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.5935, 16 July 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.5947, 31 July 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.5956, 18 August 2008 (“Sudan”); United Nations Security Council, Debate, S/PV. 6028, 3 December 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.6096, 20 March 2009 (“Sudan”); United Nations Security Council, Debate, S/PV.6139, 11 June 2009 (“Sudan”); United Nations Security Council, Debate, S/PV.6251, 21 December 2009 (“Sudan”).

⁶⁴⁸McCain, John, and Bob Dole. "Rescue Darfur Now." *Washington Post*, 10 September 2006.

⁶⁴⁹United Nations Security Council, Resolution 1556(2004), S/RES/1556, 30 July 2004, (“Sudan”) §6-7.

role of loyal guardian to the occupying, usurping forces in Palestine that kill and displace the unarmed and innocent Palestinian people? Why do those supporting States follow the sponsors of this resolution without questioning them or discussing virtues? Are these voices that condemn what is happening? Why do they remain silent about the crimes of torture, killing and rape that take place in Abu Ghraib and the prisons of Afghanistan? Why do those countries remain silent before the truth, like silent devils? The fact that one possesses the power to practice oppression and injustice does not give one a monopoly over virtue. Virtue and injustice can in no way be reconciled.”⁶⁵⁰

The Sudan used the argument of “Politicization” in its defense and, *tu quoque*, challenged the Security Council over its alleged double standards concerning the American unilateral use of force in Afghanistan and Iraq. The Sudanese intervention invoked a world order founded on the principles of equal sovereignty and justice, both of which were apparently undermined by the international actions of the United States. Politicization becomes in this way the common reference point of an unlikely discursive alliance between several actors: the United States, the Sudan, and the African Union. The United States had used similar justifications to undermine Justice. Darfur is however a novel situation, generating a different type of discursive challenge. If the U.S. had defended through POL-I its position in a hypothetical case, the possible indictment of its personnel by the International Criminal Court, the Darfur conflict was a real-world problem. In the course of approximately seven years, this conflict would become a test for the representational ability of the new hegemonic discourse. POL-II, despite its similarities with the American version of Politicization, is a different counterdiscourse and the chains of equivalence established between “justice”,

⁶⁵⁰Mr. Erwa, Sudan, United Nations Security Council, 30 July 2004, S/PV.5015, p. 14 (“Sudan”).

”accountability“, ”sovereignty“, “peace”, and “rule of law” are inscribed with different meanings.

4.3.1. Historical Background: The First Bashir Arrest Warrant and the African Union Reaction

If the historical background of the second discursive challenge to the Justice hegemony is the Darfur war, its immediate trigger is the al-Bashir ICC case. On 14 July 2008, Luis Moreno-Ocampo filed a new Application under Article 58 of the Rome Statute requesting the issuance of an arrest warrant on the name of the Sudanese President. The Prosecutor incriminated al-Bashir under Article 25(3)(a) of the ICC Statute as an indirect (co)/perpetrator of war crimes, crimes against humanity, and genocide⁶⁵¹. This Application, in particular the charges of genocide, increased further the already high media profile of the Darfur conflict. International reactions to Moreno-Ocampo’s decision were nevertheless mixed. Even well-known human rights activists and Sudanese experts distanced themselves from his actions, criticizing the Application as a political and even illegal action under international law, rather than a victory for justice⁶⁵².

Only three years after the opening of the first UNSC-referred Situation, the Court’s involvement in Darfur generated intense scrutiny and strong objections. At the core of this disagreement are persistent differences of opinion over the impact an external criminal justice mechanism such as the ICC could have on the Darfur peace process. Critics are equally keen to point out the circumstantial evidence linking the Government of Sudan and the crimes committed by its alleged militia proxies, the Janjaweed, while also casting a shadow on the GoS’ presumed inability or even

⁶⁵¹Case information Sheet, Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir, Case n° ICC-02/05-01/09.

⁶⁵²Nouwen, Sarah, and Mogogo Albanese. "Arresting Bashir: How the ICC Has Violated Its Own Statute", Entry, Making Sense of Darfur Blog, Social Science Research Council (SSRC) Blogs, 10 March 2009.

unwillingness to mitigate the humanitarian crisis affecting the Darfur so-called “African” tribes⁶⁵³.

Prior to this Application, the debates in the Security Council show similar divisions among the Permanent Members over the issues of “justice”, “peace”, “rule of law”, “accountability”, and “impunity”. The discursive game changer came on December 5, 2007, when in his briefing before the UNSC, the ICC Prosecutor officially complained about Sudan’s lack of cooperation⁶⁵⁴. The Sudanese authorities had refused to hand over two individuals on whose names the Court had issued arrest warrants: Ahmed Harun⁶⁵⁵, former Interior Minister, and Ali Kushayb⁶⁵⁶, the alleged Janjaweed militia leader. In September 2005, the Sudanese Government had even appointed Harun as Minister of State for Humanitarian Affairs and overseer of the Humanitarian Aid Commission, an agency supervising the complex permit system for the delivery of aid to Internally Displaced Peoples’ camps⁶⁵⁷. For the ICC Prosecutor⁶⁵⁸ and Security Council members France⁶⁵⁹, the UK⁶⁶⁰, and Belgium⁶⁶¹ such a situation was equivalent

⁶⁵³International Crisis Group, “Sudan: Now or Never in Darfur”, ICG Africa Report N°80, 23 May 2004; International Crisis Group, “Darfur: The Failure to Protect”, ICG Africa Report N°89, 8 March 2005; International Crisis Group, “A New Sudan Action Plan”, ICG Africa Briefing N°24, 26 April 2005.

“Do Americans Care About Darfur? An International Crisis Group/Zogby International Opinion Survey”, ICG Africa Briefing N°26, Washington/Brussels, 1 June 2005; International Crisis Group, “To Save Darfur”, ICG Africa Report N°105, 17 March 2006; International Crisis Group, “Getting the UN into Darfur”, ICG Africa Briefing N°43, Nairobi/Brussels, 12 October 2006; International Crisis Group, “Darfur: Revitalizing the Peace Process”, ICG Africa Report N°125, 20 April 2007; International Crisis Group, “Darfur’s New Security Reality”, ICG Africa Report N°134, 26 November 2007; International Crisis Group, “Sudan’s Comprehensive Peace Agreement: Beyond the Crisis”, ICG Africa Briefing N°50, Nairobi/Brussels, 13 March 2008; International Crisis Group, “Sudan: Preventing Implosion”, ICG Africa Briefing N°68, Nairobi/Brussels, 17 December 2009; International Crisis Group, “Sudan: Justice, Peace and the ICC”, ICG Africa Report N°152, 17 July 2009.

⁶⁵⁴Moreno-Ocampo, Luis, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p. 2/6 (“Sudan”); Moreno-Ocampo, Luis, Sixth Report of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593 (2005), 5 December 2007.

⁶⁵⁵International Criminal Court Pre-Trial Chamber 1, Warrant of Arrest for Ahmad Harun, ICC-02/05-02/07, 27 April 2007.

⁶⁵⁶International Criminal Court Pre-Trial Chamber 1, Warrant of Arrest for Ali Kushayb, ICC-02/05-01/07, 27 April 2007.

⁶⁵⁷Moreno-Ocampo, Luis, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p. 5 (“Sudan”).

⁶⁵⁸Moreno-Ocampo, Luis, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p. 2/6 (“Sudan”).

⁶⁵⁹Mr. Ripert, France, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p. 7/8 (“Sudan”).

⁶⁶⁰Sir John Sawers, United Kingdom, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p. 8/9 (“Sudan”).

to a slap in the face for international justice. Frustrated with this lack of progress and the deadlock in the Council over his repeated requests for more political pressure on the Sudan⁶⁶², the Prosecutor announced that his office was preparing to open two new investigations in the Darfur situation⁶⁶³. The additional application for an arrest warrant was unsealed on 21 July 2008 and revealed that Omar al-Bashir himself had become the Court's highest profile indictee.

The unsealing of the al-Bashir Application sent shockwaves in the international security policy world. The ensuing UNSC debate continues even today, revolving around the broader political implications of this conflict and the normative clash between the demands of international justice versus sovereignty. Prior to his Application, Luis Moreno Ocampo had tried to convince the Council that by pressuring the Sudan to cooperate with the Court both demands would be satisfied. The ICC Prosecutor's Seventh Report emphasized that impunity was undermining international efforts to stabilize Darfur⁶⁶⁴ and that "criminals" were hampering security and humanitarian efforts⁶⁶⁵.

While Moreno-Ocampo urged the Council into pressuring Member States to respect their commitments and deliver the two indictees, Harun and Kushayb, Russia, China, and Qatar disagreed that such actions would help restore peace. The Russian Representative, Mr. Rogachev, argued that "it would probably be a mistake to limit the

⁶⁶¹Mr. Verbeke, Belgium, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p. 9/10 ("Sudan").

⁶⁶²Moreno-Ocampo, Luis, Statement of the Prosecutor of the International Criminal Court to the Security Council Pursuant to UNSCR 1593(2005), 29 June 2005; Moreno-Ocampo, Luis, Address to the United Nations Security Council Pursuant to UNSCR 1593 (2005), New York, 13 December 2005; Moreno-Ocampo, Luis, Statement of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593(2005), 14 June 2006; Moreno-Ocampo, Luis, Statement by the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to UNSCR 1593 (2005), 7 June 2007; Moreno-Ocampo, Luis, Fifth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593(2005), 7 June 2007.

⁶⁶³Moreno-Ocampo, Luis, Statement of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593(2005), 5 December 2007.

⁶⁶⁴Moreno-Ocampo, Luis, Seventh Report of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to the UNSCR 1593(2005), 5 June 2008, §8.

⁶⁶⁵*Ibid.*, §9.

work of the ICC in Sudan to combating impunity”. Russia recommended instead to the Security Council to promote a “constructive dialogue” between the parties, the involvement of the Sudanese legal system in the investigation of crimes in Darfur, further dialogue between the International Criminal Court and the African Union as well as the restoration of an atmosphere of trust between the Court and the GoS. The latter would have required, according to Russia, a refocusing of the Prosecutor’s investigations on the crimes committed by the rebels⁶⁶⁶. Chinese representative, Mr. Liu Zhenmin, was equally mindful of the legal boundaries restricting external international action into the territory of a sovereign state. Mr. Liu focused in his speech on the urgent need to resolve the Darfur problem by stabilizing and improving the security situation. China supported the ongoing political negotiations and the deployment of UNAMID peacekeepers, but warned that only “stressing an end to impunity” and “pushing for mandatory measures” was not an approach likely to result in the cooperation of the Sudanese Government⁶⁶⁷. Even further away from the ICC Prosecutor’s position was Qatar, whose statement echoed Sudan’s accusations of selective justice⁶⁶⁸.

These discussions continued to divide UNSC Members despite Luis Moreno-Ocampo’s passionate advocacy. The Prosecutor presented his Eighth Report on the Darfur Situation⁶⁶⁹ during a closed Council meeting in June 2008⁶⁷⁰, only a month before the official unsealing of his new Application. Between 2007 and 2008, Moreno-Ocampo emphasized repeatedly in his public statements that continued violence in Darfur was due to “impunity”⁶⁷¹. During the first Council meeting after the unsealing,

⁶⁶⁶Mr. Rogachev, Russian Federation, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p.10 (“Sudan”).

⁶⁶⁷Mr. Liu Zhenmin, China, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p. 10-11 (“Sudan”).

⁶⁶⁸Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, 5 December 2007, S/PV.5789, p. 15 (“Sudan”).

⁶⁶⁹Moreno-Ocampo, Luis, Eighth Report of the Prosecutor of the International Criminal Court to the U.N. Security Council Pursuant to UNSCR 1593(2005), 3 December 2008.

⁶⁷⁰United Nations Security Council, Debate, 16 June 2008, S/PV.5912 (“Sudan”).

⁶⁷¹Moreno-Ocampo, Luis, Address by the Prosecutor of the International Criminal Court, International Conference "Building a Future on Peace and Justice", Nuremberg, 24/25 June; Moreno-Ocampo, Luis,

in December 2008⁶⁷², UNSC Members failed however to agree on a common position, let alone one favourable to the Prosecutor's wishes.

In this tense political climate, the ICC Pre-Trial Chamber 1 (PCT1) delivered the final blow to the Council's discursive unity. On March 4, 2009, the PCT1, composed of three judges - Presiding Judge Akua Kuenyehia (Ghana), Judge Anita Ušacka (Latvia) and Judge Sylvia Steiner (Brazil) – found unanimously there were reasonable grounds to believe⁶⁷³ that Omar al-Bashir was criminally responsible as an indirect (co)perpetrator for crimes within the jurisdiction of the Court⁶⁷⁴. The Arrest Warrant listed five counts of crimes against humanity (Article 7)⁶⁷⁵ and 2 counts of war crimes (Article 8)⁶⁷⁶. The genocide charges were initially dropped, with the Pre-Trial Chamber 1 having found in its first ruling that there was not enough evidence to prove the specific intent of the GoS to destroy the Darfur tribes of the Fur, Masalit, and Zaghawa⁶⁷⁷. This decision was subsequently overturned after the Prosecutor's appeal. The Appeals Chamber identified a new evidentiary standard⁶⁷⁸ and the PTC1 issued a second Arrest Warrant in July 2010. Omar al-Bashir, re-elected in April 2010 as Northern Sudan's President, is at present accused of having masterminded war crimes, crimes against humanity, and genocide⁶⁷⁹.

“The Time Is Now: A Conversation About Darfur”, Opening Remarks by the Prosecutor of the International Criminal Court, Toronto International Film Festival, 9th September 2007; Moreno-Ocampo, Luis, Address to the Assembly of States Parties, International Criminal Court, 30 November 2007; Moreno-Ocampo, Luis, “The Darfur Case”, Keynote Address, Council for Foreign Relations Symposium, New York, 17 October 2008; Moreno-Ocampo, Luis, “Combating Genocide and Other Massive Crimes - the International Criminal Court's Contribution”, Commemoration of the 60 Years of the Genocide Convention, the Hague, 7 December 2008.

⁶⁷²United Nations Security Council, Debate, 3 December 2008, S/PV.6028 (“Sudan”).

⁶⁷³The “reasonable grounds” standard is formulated in Article 58 ICC Statute.

⁶⁷⁴Pre-Trial Chamber 1 Decision on the Prosecutor's Application for a Warrant of Arrest against Omar Hassan Ahmad Al Bashir. No. ICC-02/05-01/09, 4 March 2009, §28.

⁶⁷⁵Art.7 ICC Statute: Murder - Article 7(1)(a); extermination - Article 7(1)(b); forcible transfer - Article 7(1)(d); torture - Article (7)(1)(f); and rape - Article 7 (1)(g).

⁶⁷⁶Art.8 ICC Statute: Intentionally directing attacks against a civilian population as such or against individual civilians not taking part in hostilities - Article 8(2)(e)(i); and pillaging - Article 8(2)(e)(v).

⁶⁷⁷International Criminal Court, Case information Sheet, Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir, Case n° ICC-02/05-01/09.

⁶⁷⁸Moreno-Ocampo, Luis, Statement following the ICC Appeals Chamber Decision on Prosecutor's Appeal to Include Genocide Charges against Al Bashir, 3 February 2010.

⁶⁷⁹International Criminal Court Pre-Trial Chamber 1, Second Arrest Warrant for Omar Al Bashir, ICC-02/05-01/09, 12 July 2010.

The African Union's reaction to this ruling was a complex mix of legal arguments⁶⁸⁰. Beginning its existence on July 9, 2002, one day before the open debate on the renewal of the UNMIBH mandate, the A.U. is an institution symbolically connected from birth with the first major discursive challenge against the International Criminal Court (Chapter 4, Section 4.2.1). However, like Uganda in a different context, the African Union ultimately spoke with a "forked tongue"⁶⁸¹. Although the Union's institutions – the Assembly, the Commission, and the Peace and Security Council – showed consistent support for the prioritization of "sovereignty" over the enforcement of international criminal law norms⁶⁸², the positions of its Member States have always been more ambivalent. Between 2008 and 2009, the A.U. struggled to find an answer to its dilemma. Dissenting voices broke its appearance of unity, transforming the Bashir Arrest Warrant into a discursive struggle over the meaning of "justice" and its enforcement. The ICC also stepped up its political game, requesting a significant number of African Union Member States to fulfill their duty as States Parties to the Rome Statute and arrest al-Bashir. The ensuing result of these actions was the splitting of the A.U. constituency along one major dividing line. While Ethiopia went openly against the Court and pushed for closer ties with the Sudan⁶⁸³, Botswana remained firm in its ICC commitments⁶⁸⁴. These difficult discursive negotiations between conflicting legal commitments and political identities were rendered even more complex by regional conflict patterns and the fragile stability of some African states. The Chadian President Idriss Déby declared publicly that his country would cooperate openly with

⁶⁸⁰International Crisis Group, "Sudan's Spreading Conflict (III): The Limits of Darfur's Peace Process", ICG Africa Report N°211, 27 January 2014.

⁶⁸¹The East African, "Uganda Speaks with Forked Tongue..." Editorial, *The East African*, 20 July 2009.

⁶⁸²African Union, Communiqué of the Peace and Security Council, PSC/MIN/Comm.(XLVII), Addis Ababa, Ethiopia, 10 March 2006; African Union Assembly, Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, Assembly/AU/Dec.199(XI), Sharm El-Sheikh, Egypt, 30 June - 1 July 2008; African Union Peace and Security Council, Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Addis Ababa, Ethiopia, 21 July 2008.

⁶⁸³Haileyesus, Samson. "Ethiopia, Sudan Push Towards Closer Ties." *Ethiopian Review*, 7 May 2009.

⁶⁸⁴Piet, Bame, "Khama Wants Bashir at ICC, AU Differs." *Mmegi Online*, 5 May 2009.

the Court in apprehending al-Bashir. Déby's declaration was issued after the repelling of a rebel attack presumably supported by the Sudan. The Chadian President also distanced himself also from the A.U., which he accused of having failed to manage the Sudan-Chad conflict⁶⁸⁵.

Other embarrassments for Khartoum are the ambivalent reactions from South Africa and Uganda. The Sudanese President did not attend Jacob Zuma's inauguration ceremony in May 2009, with rumors circulating in the media that he had been advised not to come⁶⁸⁶. Despite South African Foreign Affairs Minister's public statement that pursuing Bashir was not "constructive"⁶⁸⁷, African Civil Society groups had come out strongly in support of "justice" and "no impunity". In a statement released by Human Rights Watch, 130 African civil society and human rights groups pressured the South African Government to honor its international commitments and respect the rule of law in Africa⁶⁸⁸. The most embarrassing episode for al-Bashir was Uganda's "flip-flopping"⁶⁸⁹ over the Sudanese President's participation in the 2009 Global Smart Partnership Dialogue Conference organized by Kampala⁶⁹⁰. The Ugandan Junior Foreign Affairs Minister, Henry Okello Oryem, had promised during a joint press conference with ICC prosecutor Luis Moreno Ocampo that his government would execute the outstanding ICC arrest warrant for al-Bashir⁶⁹¹. The Sudanese President was furious and, despite a personal call from President Museveni apologizing for the incident, still requested the resignation of Okello⁶⁹². However, according to media rumors, this faux-pas was an orchestrated act on behalf of Uganda, caught between its multiple commitments: pressure from the ICC Prosecutor, its own interest in preserving

⁶⁸⁵Sudan Tribune, "Chad Will Cooperate with ICC on Darfur Crimes - Deby", *Sudan Tribune*, 14 May 2009.

⁶⁸⁶Sudan Tribune, "South Africa Maintains Stance against ICC Warrant for Sudan's Bashir." *Sudan Tribune*, 15 May 2009.

⁶⁸⁷Ibid.

⁶⁸⁸VOA News, "African Civil Society Groups Rebuke AU Stand on Bashir." *VOA News*, 31 July 2009.

⁶⁸⁹The East African, "Uganda Speaks with a Forked Tongue...", Editorial, *The East African*, 20 July 2009.

⁶⁹⁰Kagumire, Rosebell, "Bashir Blocked but Is Museveni Off the Hook?" *The Independent*, 29 July 2009.

⁶⁹¹Ibid.

⁶⁹²Sudan Tribune, "Sudan's Bashir Absent from Uganda Summit", *Sudan Tribune*, 27 July 2009.

good relations with a useful Court, and the upcoming Ugandan Presidency of the U.N. Security Council⁶⁹³.

The Bashir Arrest Warrant challenged the validity of the Justice discourse and polarized African countries. Governments and African civil society organizations were equally divided over their potential choices of action⁶⁹⁴. Even a few Sudanese politicians came out in support of the Court and the principle of individual criminal responsibility as potential solutions for the restoration of peace⁶⁹⁵. Africa is one of the largest continental blocks in the membership of the ICC⁶⁹⁶ and has shown genuine enthusiasm for international justice. Uganda⁶⁹⁷, D.R. Congo⁶⁹⁸, and the Central African Republic⁶⁹⁹ have invoked the jurisdiction of the Court by self-referring situations to the ICC under Article 13(2) of the Rome Statute. The International Criminal Court's decision to issue arrest warrants for Ahmad Harun, Ali Kushayb and President al-Bashir was however met with chilliness. Sudan reacted strongly against the al-Bashir Arrest warrant, calling the ICC a political tool in the hands of the Neocolonial West⁷⁰⁰. The official A.U. statements backed this position, with Sudan's claims supported by several African leaders. Such arguments fitted well with the Union's concern about the territorial integrity of the Sudan and its support for political negotiations between the Government and rebel groups.

⁶⁹³Kagumire, Rosebell, "Bashir Blocked but Is Museveni Off the Hook?" *The Independent*, 29 July 2009.

⁶⁹⁴Human Rights Watch, African Civil Society Declaration in Support of the ICC, Human Rights Watch, News, 30 July 2009.

⁶⁹⁵Memorandum to the African Union Peace and Security Council and the African Union Heads of State Summit by 18 Sudanese Political Parties Members, 2009.

⁶⁹⁶There are currently 34 African states members of the International Criminal Court. The last country to join this bloc is Ivory Coast, as of 15 February 2013. Information from the International Criminal Court website, retrieved at:
http://www.icc-cpi.int/en_menus/asp/states%20parties/african%20states/Pages/african%20states.aspx.

⁶⁹⁷International Criminal Court, President of Uganda refers situation concerning the Lord's Resistance Army (LRA) to the ICC, ICC-20040129-44, Press Release, 29 January 2004.

⁶⁹⁸International Criminal Court, ICC-Prosecutor received referral of the situation in the Democratic Republic of Congo, ICC-OTP-20040419-50, Press Release, 19 April 2004.

⁶⁹⁹International Criminal Court, ICC-Prosecutor received referral concerning Central African Republic, ICC-OTP-20050107-86, Press Release, 7 January 2005.

⁷⁰⁰Marks, Simon, "Sudan's Bashir Addresses ICC Charges, Darfur's Woes, Interview with Omar Al-Bashir." *Online NewsHour*, 13 August 2009.

The African Union has equally shown commitment to the Darfur peace process. The organization was the first to deploy a peacekeeping mission⁷⁰¹ and, for several years, the A.U. and the Security Council shared a similar vision of their joint course of action in Darfur. The A.U. began to challenge the UNSC policy only after the Prosecutor's Application for the Bashir Arrest Warrant. Following the latter's unsealing in July 2008, African Union Member States struggled to develop a coherent international reaction and agree on a common definition of the problems plaguing Darfur⁷⁰².

The outcome of these struggles is the African version of Politicization. Between 2008 and 2009, despite political disagreements among its Members, the A.U.'s discursive strategy displayed a high degree of homogeneity. First, the Union did not challenge the legitimacy of the International Criminal Court's Rules of Procedure. The African members of the ICC, which met twice at the ministerial level during June and November 2009, made similar choices. The preparatory concept papers for these meetings and the outcome documents emphasized the importance of engaging the Court by making use of existent legal procedures⁷⁰³. Moreover, the A.U.'s own commitment in its Constitutive Act to the principle of no impunity would have obstructed its discursive ability to reframe opposition to the enforcement of this international norm in

⁷⁰¹International Crisis Group, "The AU's Mission in Darfur: Bridging the Gaps", ICG Africa Briefing N°28, Nairobi/Brussels, 6 July 2005; International Crisis Group, "The EU/AU Partnership in Darfur: Not yet a Winning Combination", ICG Africa Report, N°99, 25 October 2005; For more information on African Union Peacekeeping Operations, including the deployment of AMIS in Darfur in 2004 please see: Soderbaum, Fredrik and Rodrigo Tavares eds. 2011. *Regional Organizations in African Security* New York, NY: Routledge.

⁷⁰²African Union Peace and Security Council, Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Addis Ababa, Ethiopia, 21 July 2008; African Union Peace and Security Council, Communiqué of the 175th Meeting of the Peace and Security Council, PSC/PR/Comm.(CLXXV)Rev.1, Addis Ababa, Ethiopia, 5 March 2009; African Union Assembly, Decision on the Meeting of the African States Parties to the Rome Statute of the International Criminal Court (ICC), Assembly/AU/Dec. 245(XIII)Rev.1, Sirte, Lybia, 1- 3 July 2009; African Union Peace and Security Council, Communiqué of the 207th Meeting of the Peace and Security Council, PSC/AHG/COMM.1(CC VII), Abuja, Nigeria, 29 October 2009.

⁷⁰³African Union, Concept Note for the Meeting of African States Parties to the Rome Statute of the International Criminal Court (ICC), MinICC/Legal/3, Addis Ababa, Ethiopia, 8 - 9 June 2009; African Union, Meeting of African States Parties to the Rome Statute of the International Criminal Court (ICC), MinICC/RPT, Addis Ababa, Ethiopia, 8-9 June 2009.

Darfur⁷⁰⁴. The inter-institutional debate between the organization's main bodies and its constituency focused instead on the political implications of cooperation with the Court and the normative conflict between the ICC Statute Articles 27 ("Irrelevance of official capacity") and 98 ("Cooperation with respect to waiver of immunity and consent to surrender"). The A.U.'s official position emphasized the need for a global solution to the conflict, involving the entire Sudanese state. The Organization contended that the prosecution of Omar al-Bashir might destabilize the situation further, rather than increase the likelihood of peace⁷⁰⁵. The Union opted therefore to request at the UNSC the deferral of proceedings in the Bashir case. Additionally, the A.U. mandated a High Level Panel for Darfur (AUPD), under the leadership of Thabo Mbeki, to make policy recommendations on how to address the twin needs of "accountability" and "reconciliation"⁷⁰⁶.

The African Union' choice to engage on this issue the Security Council failed however to deliver positive results. In its July 2008 Communiqué, the A.U. Peace and Security Council asked the UNSC to exercise its powers under Article 16 ICC Statute and request the deferral of investigations in the Bashir case in the interest of Darfur victims and of peace⁷⁰⁷. The Communiqué recalled the commitment of African states to the principle of individual criminal responsibility, but argued that an approval by the Pre-Trial Chamber of the Prosecutor's Application might undermine efforts to promote peace and reconciliation in the Sudan. Libya, with its dual membership in the A.U. and the Arab League, was particularly outspoken on this topic. The League of Arab States issued its own Resolution condemning the "politicization of the principles

⁷⁰⁴The African Union Constitutive Act lists under Article 4 "Principles", Para.(o): „respect for the sanctity of human life, condemnation and rejection of impunity and political assassination, acts of terrorism and subversive activities“.

⁷⁰⁵African Union Peace and Security Council, Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Addis Ababa, Ethiopia, 21 July 2008, §9.

⁷⁰⁶African Union Peace and Security Council, Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Addis Ababa, Ethiopia, 21 July 2008, §11(i) and (ii).

⁷⁰⁷African Union Peace and Security Council, Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Peace and Security Council, Addis Ababa, Ethiopia, 21 July 2008.

of international justice⁷⁰⁸. The Organization of Islamic States and the Non-Aligned Group also threw their weight publicly in support of this position⁷⁰⁹. This UNSC debate took place on 31 July 2008, when the Council discussed the adoption of Resolution 1828 extending the mandate of the U.N./A.U. hybrid mission in Darfur⁷¹⁰. Libya, South Africa, and Burkina Faso, supported by the A.U., the L.A.S., the OIS and the NAM, tabled amendments to the Resolution that included an Article 16 deferral.

The Libyan Representative, Mr. Mubarak, restated the arguments of the July 2008 Communiqué, including the potentially negative impact of an al-Bashir Arrest Warrant on the Darfur peace process, the “misuse” of international indictments against African leaders, a “double standards” justice, and the undermining of “strong national institutions in Africa”⁷¹¹. Although the African Union’s position found political support among the Permanent Members, the amendment was not included in the final draft and the discussion was postponed without an agreement on concrete political action⁷¹². Russia⁷¹³ and China⁷¹⁴ expressed their support for a holistic solution to the Darfur conflict, but did not threaten to veto the Resolution. Libya voted in the end in favour of the final draft, because “it wished to see the mission continued, and hoped that the issue would be taken up in the future”⁷¹⁵.

Subsequent UNSC meetings on the Darfur conflict and the Sudan⁷¹⁶ acknowledged the need to balance the requirements of “peace” and “justice” (Chapter

⁷⁰⁸Sudan Tribune. "Arabs Reject "Unbalanced" ICC Request against Sudanese President." *Sudan Tribune*, 20 July 2008. There are only three Arab League members which are also ICC States Parties: Djibouti, Comoros Islands, and Jordan.

⁷⁰⁹United Nations Security Council, Debate, S/PV.5947, 31 July 2008 (“Sudan”).

⁷¹⁰United Nations Security Council, Resolution 1828, S/RES/1828(2008), 31 July 2008 (“UNAMID”).

⁷¹¹Mr. Mubarak, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p. 6/7 (“Sudan”).

⁷¹²United Nations Security Council, Debate, S/PV.5947, 31 July 2008 (“Sudan”).

⁷¹³Mr. Churkin, Russian Federation, United Nations Security Council, S/PV.5947, 31 July 2008, p. 3/4 (“Sudan”).

⁷¹⁴Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p. 5/6 (“Sudan”).

⁷¹⁵Mr. Mubarak, Libyan Arab Jamahiriya, United Nations Security Council, Debate 31 July 2008, S/PV.5947.Pg. 6/7 (“Sudan”).

⁷¹⁶United Nations Security Council, Debate, S/PV.5956, 18 August 2008 (“Sudan”); United Nations Security Council, Debate, S/PV.6028, 3 December 2008 (“Sudan”); United Nations Security Council,

4.4.), but refused to discuss further the A.U.'s request for a deferral. The international political context worsened in 2009, making consensus in the Council over the Bashir case even less likely. In the aftermath of the Israeli invasion of Gaza, the United Nations Human Rights Council (UNHRC) stridently embraced the fight against impunity as the best available policy to promote "lasting peace"⁷¹⁷. The UNHRC mandated an Independent International Fact-Finding Mission chaired by South African Judge Richard Goldstone to investigate alleged breaches of international humanitarian law.

The Report of the United Nations Fact-Finding Mission on the Gaza Conflict found evidence of grave breaches of the Geneva Conventions committed by Israeli forces⁷¹⁸ as well as the crime of persecution for the whole Gaza population⁷¹⁹. The Report recommended the involvement of the Security Council and, in the absence of domestic legal proceedings in Israel against the perpetrators, a Chapter VII Article 16 referral of the situation to the International Criminal Court.⁷²⁰ Although the U.N. General Assembly requested the Secretary-General to send the report of the United Nations Fact-Finding Mission on the Gaza Conflict to the Security Council⁷²¹, the UNSC refused to put this issue up for debate on its meeting agenda. Confronted also with the Council's silence, the African Union formulated its own position. The A.U. Assembly decided in July 2009 that its Member States would not cooperate in the arrest and surrender of President Omar al-Bashir⁷²².

Debate, S/PV.6096, 20 March 2009 ("Sudan"); United Nations Security Council, Debate, S/PV.6139, 11 June 2009 ("Sudan"); United Nations Security Council, Debate, S/PV. 6227, 30 November 2009 ("Sudan").

⁷¹⁷United Nations Human Rights Council Resolution, A/HRC/S-9/2, 27 February 2009; United Nations Human Rights Council Resolution, A/HRC/RES/S-12/1, 21 October 2009.

⁷¹⁸Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009 (the Goldstone Report), §1935.

⁷¹⁹Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009 (the Goldstone Report), §1936.

⁷²⁰Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009 (the Goldstone Report), §1969.

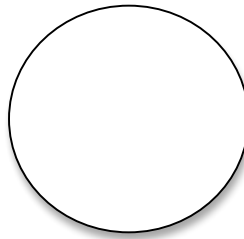
⁷²¹United Nations General Assembly Resolution A/RES/64/10, 1 December 2009, §2.

⁷²²African Union Assembly, Decision on the Meeting of the African States Parties to the Rome Statute of the International Criminal Court (ICC), Assembly/AU/Dec. 245(XIII)Rev.1, Sirte, Lybia, 1- 3 July 2009, §10.

Table 16: The African Union “Politicization” Counterdiscourse – Structural Image

Nodal signifier: POLITICIZATION	
Elements:	
Accountability	Individual Criminal Responsibility
Justice	No Impunity/Procedure/Fair/Impartial
Rule of law	Enforcement of international norms
Peace	Reconciliation/ Development
Sovereignty	Diplomatic Immunity/Territorial integrity

Sites of Antagonism



One of the main features characterizing both POL-I and POL-II is their consistent emphasis on the relevance of individual criminal responsibility for international peace. Neither discourse distances itself from this legal norm, which is also one of the most important principles of international criminal law. In its July 2008 Communiqué, the A.U. Peace and Security Council reiterated its belief that “long-lasting peace” and “reconciliation” in Darfur could not be achieved without upholding “the principles of accountability”⁷²³. “Accountability” qua “individual criminal responsibility” appears 16 times in Annex 7⁷²⁴ and is the element with the fourth highest frequency among POL-II discursive components (Table 16). The political disagreement is therefore not so much about the substantive content of individual criminal responsibility, but concerns rather

⁷²³African Union Peace and Security Council (2008). Communiqué of the 142nd Meeting of the Peace and Security Council, PSC/MIN/Comm(CXLII), Peace and Security Council, 142nd Meeting, Addis Ababa, Ethiopia, 21 July 2008, §10.

⁷²⁴Annex 7 – Collection of Quotes – Counterdiscourses 2007 -2010 “Politicization“.

the enforcement of these norms by an international organization whose membership overlaps only partially with that of the United Nations. Supporters of both versions of Politicization voiced similar concerns. American officials have repeatedly emphasized their mistrust in the institutional design of the International Criminal Court and its lack of political accountability as well as the United States' right to formulate its foreign policy free from external institutional influences. Others have criticized the apparent selectivity of international justice (the *tu quoque* argument) and the possible erosion of state sovereignty.

These counterarguments help draw the linguistic map of a counterdiscourse that emerged as a reaction to Justice and, yet, displays its distinctive features as an independent discursive formation. The meanings of the empty signifiers structuring the discourse are signs of an older political imaginary, relying on the image of international relations as a system of equal sovereign states. Conflicts such as Darfur challenge the stability of this image by undermining the legal, political, and discursive coherence of the “sovereign” state. This is one of the reasons why debates over the Council’s legitimate means of action, irrespective of their justifications, have such far-reaching political consequences. “Darfur” is, more than a real conflict with “victims” and “perpetrators”, an international discursive battleground over the relationship between “justice”, “accountability”, “sovereignty”, “rule of law” and “peace” as well as the legitimate means of enforcing international criminal law norms: an international criminal court, a hybrid tribunal or national judicial proceedings? The complicated game of Sudanese politics superimposed to the UNSC Permanent Members’ own strategic interests in the region⁷²⁵, the media attention, the involvement of humanitarian aid organizations, and the divergent commitments of African Union Member States have transformed “Darfur” from an armed conflict into a threat to discursive stability. Sudan’s internal war has

⁷²⁵For information on the Chinese position towards the ICC’s African arrest warrants see also: Candia, S. and L. Namubiru (2009). China opposes Kony arrest, 5 August 2009.

become a test for the ability of the hegemonic discourse to heal antagonisms and offer a satisfying solution to all grievances.

Despite differences of opinion among its Members, the Security Council consistently endorsed its referral to the International Criminal Court and refused to change policies. The system of signifiers constituting the hard core of the Justice discourse was nevertheless shaken by the reality of a conflict that could potentially justify both “peace” through “justice” and “peace” through political negotiations. In this discursive space, crisscrossed by antagonisms, Politicization fitted better with the African Union’s perhaps unintended middle-way. This approach was both a visceral reaction to perceived Neocolonial practices and an emerging concern of African countries for the integrity of international justice. Various actors that rejected the “no impunity” orthodoxy in international security policy embraced the Politicization counterdiscourse.

Rearticulations of Key Empty Signifiers and New Relationships of Equivalence

The structural analysis of POL-II shows that the counterdiscourse emphasizes “fairness” and “procedure” and therefore challenges the hegemonic discourse by subverting the meaning of its nodal signifier. For POL-II, “justice” is “procedural” rather than “criminal”. In international relations, Politicization holds procedurally correct behaviour as normatively prior to the enforcement of international criminal law. The empirical evidence provided by the frequency analysis of the sampled quotes⁷²⁶ reveals a hierarchy of meanings for “justice” that strengthens its connections to “fairness” (12 hits), “procedure” (4 hits) and “impartiality” (1 hit). POL-II endorses as well punishment for international crimes perpetrators, with “no impunity” gathering a total of 21 hits. “Rule of law” is the frontier shared by Justice with Politicization, and the discursive space where this new practice of contestation emerged. The

⁷²⁶Annex 7 - Collection of Quotes – Counterdiscourses 2007-2010 “Politicization“.

counterdiscourse reformulates empty signifiers “peace” and “sovereignty”, while also undermining the relationship between “peace” and “criminal justice”.

- *The Meaning of ”Justice” and “Accountability”*

The A.U.’s counterdiscursive efforts began in 2008 and intensified in 2009, when the International Criminal Court officially indicted al-Bashir. The reaction in the African media foreshadowed the obstacles facing the Organization in constructing a legally coherent position that would reconcile the requirements of “justice” with the African Union’s defense of the inviolability of state sovereignty⁷²⁷. Although the African group is one of the largest in the ICC membership, African countries have also consistently rebuked the presumably unfair targeting of their leaders. Sudanese accusations of “double standards” in the enforcement of international justice, at the U.N. and in the media, echoed these persistent African fears of embedded Neocolonial practices⁷²⁸.

The A.U.’s institutional discourse, while challenging the decision of the International Criminal Court, tried to steer the discussion towards an acceptable middle ground by endorsing “no impunity” and “accountability”. Jean Ping, Chairman of the A.U. Peace and Security Council emphasized in his speech after the submission of the A.U. High Level Panel on Darfur Report that the Union’s actions should not be interpreted as an attempt to cover-up the atrocities committed during the civil war and that the fight against impunity was a priority.⁷²⁹ Rather than pursuing a critique of Neocolonialism, the A.U. focused instead on the norms and principles of international law.

⁷²⁷Ogunbayo, Modupe, "A Moment of Reckoning for Al-Bashir." *NewsWatch*, 8 March 2009.

⁷²⁸Ibid. See also: Marks, Simon. "Sudan's Bashir Addresses ICC Charges, Darfur's Woes, Interview with Omar Al-Bashir." *Online NewsHour*, 13 August 2009.

⁷²⁹Ping, Jean, Allocution de M. Jean Ping, Président de la UA Commission, à l'occasion de la cérémonie de remise du rapport du group de haut niveau de l'UA sur le Darfour (GUAD), Addis Ababa, 8 Octobre 2009.

Its defense of “sovereignty” is consistent with the African Union’s previous policies and discourse. The A.U. Assembly adopted a Decision in July 2008 condemning the “misuse of the principle of universal jurisdiction”⁷³⁰. This Resolution was a reaction to the arrest warrants issued by France for Rwandan officials allegedly connected to the 1993 missile attack against the plane of Juvenal Habyarimana, Rwanda’s President. Habyarimana’s death remains to this day a mystery, and his assassination is generally thought to have provided the trigger for the Rwandan Tutsis genocide. The Union’s discursive efforts were therefore initially focused on the meaning of “justice”. The A.U.’s Sharm El-Sheikh Summit declared the French arrest warrants “political” and forbade their execution by its Member States⁷³¹. The Decision also called in particular on the European Union states to impose a moratorium on the execution of these warrants⁷³². The A.U. justified its intervention first on grounds of procedural justice and second, with reference to the potential destabilizing effects of these warrants on a state’s integrity and stability. An even more interesting attempt to reformulate “justice” belongs to the Report of the High Level Panel on Darfur. In Section III.B “Addressing the Issue of Justice and Impunity”, the Report attributes the following definition to “the people of Darfur” who:

“(…) understand ‘justice’ broadly to encompass the process of achieving equality, obtaining compensation and restitution, establishing the rule of law, as well as criminal justice. They will therefore expect a package of interventions which deal with all these aspects of justice, and which do not prefer any one measure above the other.”⁷³³

⁷³⁰African Union Assembly, Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, Assembly/AU/Dec.199(XI), Sharm El-Sheikh, Egypt, 30 June - 1 July 2008.

⁷³¹African Union Assembly, Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, Assembly/AU/Dec.199(XI), Sharm El-Sheikh, Egypt, 30 June - 1 July 2008, §5(ii), §5(iv).

⁷³²Ibid., §8.

⁷³³African Union High Level Panel on Darfur, “Darfur – The Quest for Peace, Justice and Reconciliation“, Report presented to the A.U. Peace and Security Council, 29 October 2009, Abuja, Nigeria, PSC/AHG/2(CCVII), §317.

“Criminal justice” is fourth place, after “equality”, “compensation” and “rule of law”. Neocolonialist accusations also resurfaced in justifications of non-cooperation with the International Criminal Court. The counterdiscourse established a relationship of equivalence between the claims of selective application of international justice principles and that of persistent Neocolonialism in the behaviour of Western versus developing nations. If the United States had represented the Court as a weak institution, potentially manipulated by the opponents of international justice, the African Union allegedly identified the Court with Western colonial powers and connected its actions with the legacy of European colonialism. The A.U. Assembly Decision following the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction tapped indirectly into the representational power of the Neocolonialism critique. Al-Bashir’s personal retaliation against the Court portrayed the ICC as the tool of an enduring Western Neocolonialism⁷³⁴.

- *Reformulations of “Sovereignty” as “Territorial Integrity” and “Diplomatic Immunity”*

The second major reformulation of POL-II is the empty signifier “sovereignty” and its position in the chain of equivalence structuring the counterdiscourse. There are only 4 hits for “sovereignty” in the Collection of Quotes summarizing the empirical basis for the identification of POL-II. However, “sovereignty” carries a high symbolic value. Similar to the American version of Politicization, POL-II draws its strength from a representation of international relations as a world of sovereign states where “sovereignty” is discursively linked to autonomy. However, the political imaginary of the Neocolonialist critique portrays the current international order as an order of unequal sovereigns. This image severs the connection with “autonomy” and leaves “sovereignty” open to rearticulations closer in meaning to

⁷³⁴Marks, Simon, "Sudan's Bashir Addresses ICC Charges, Darfur's Woes, Interview with Omar Al-Bashir." *Online NewsHour*, 13 August 2009.

the African Union's discursive needs. In this revised version of Politicization, "sovereignty" comes gradually to signify "territorial integrity" and "diplomatic immunity".

Territorial integrity is closely connected to the A.U.'s concern that the Bashir Arrest Warrant would jeopardize peace talks in Darfur and that a piecemeal approach to enforcing criminal justice norms would not lead to "sustainable peace". The African Union refrained from joining the camp of the Peace vs. Justice advocates, more favourable to a political handling of the conflict. Its concerns over the territorial integrity of the Sudan are embedded in the complex issues surrounding the drawing of borders in Africa during decolonization. This alternative reading of the civil war in Darfur recommended a different course of action than the one advocated by the proponents of a zero tolerance towards impunity. It also gave Sudan a script for action. In the General Assembly debate held during the 63rd Session from the 23 and 29 September 2008, Mr. Ali Taha, then Vice-President of Sudan, sounded "a warning bell" about the dangers posed by "the abuse of the principle of universal jurisdiction" the stability and peace of the African continent as well as developing countries⁷³⁵. The Government of Sudan enforced its own claims to sovereignty by playing the card of stability and portraying itself as a responsible sovereign and the guarantor of the peace process. Vice-President Taha presented the rebel movements which had not signed the May 2006 Darfur Peace Agreement as the troublemakers who should be the legitimate targets of the ICC. President al-Bashir on the other hand was the symbol of sovereignty and the victim of a failed attempt at political and moral assassination.

Diplomatic immunity is the second meaning inscribed onto the empty signifier "sovereignty". The African Union's diplomatic efforts throughout 2008 up

⁷³⁵Mr. Ali Taha, Vice-President of the Republic of the Sudan, United Nations General Assembly, UNGA 63rd Session, 23-27 September & 29 September 2008. Excerpts prepared by the Coalition for an International Criminal Court. Original speeches can be retrieved at: <http://www.un.org/en/ga/63/generaldebate/>.

until the Kampala Review Conference of May 2010 focused on Article 98 ICC Statute. The issue of diplomatic immunity becomes during this period a central element in A.U. decisionmaking. The African Union Assembly's Sirte Resolution of July 3, 2009 decided that Member States should not cooperate in the arrest and surrender of President Omar al-Bashir and invoked as legal basis Article 98⁷³⁶. In the case of a conflict of obligations between the principles of the International Criminal Court Statute and international law, this article clarifies that ICC States Parties should comply first with the general provisions of international law. The drafters of Article 98 had tried to anticipate the unlikely situation when a third party national, benefitting from the diplomatic immunity of his or her country, would be arrested on the territory of an ICC state party. The usual reading of this provision is that diplomatic immunity can only be waived with the agreement of the sending state. The Sirte Resolution was an expression of support for al-Bashir who had received in May 2009 some mixed messages from his neighbors. Botswana's President Kama supported the arrest warrant and disagreed publicly with the A.U. President Kama criticized African leaders, specifically the Sudan, for disregarding "human rights" and the "rule of law"⁷³⁷. For Botswana, refusal to cooperate with the ICC was identical to condoning impunity. The Rome Statute, to which Botswana is a state party, attributes to the International Criminal Court the role of delivering international justice when states appear either unwilling or incapable of exercising jurisdiction. Rogue leaders are meant to sit in the dock at The Hague so that "they can answer to the charges brought against them."⁷³⁸ The A.U.'s emphasis on "diplomatic immunity" undermined such criticism by invoking the principles of impartiality and fairness associated with "procedural justice". The normative quality of

⁷³⁶African Union Assembly, Decision on the Meeting of the African States Parties to the Rome Statute of the International Criminal Court (ICC), Assembly/AU/Dec. 245(XIII)Rev.1, Sirte, Lybia, 1- 3 July 2009, §10.

⁷³⁷African Union Assembly, Decision on the Meeting of the African States Parties to the Rome Statute of the International Criminal Court (ICC), Assembly/AU/Dec. 245(XIII)Rev.1, Sirte, Lybia, 1- 3 July 2009.

⁷³⁸Keoreng, Ephraim, "Sudanese Ask Khama to Go Easy on Al-Bashir." *Mmegi Online*, 8 May 2009.

the process leading to the application of international criminal law norms and principles was given preeminence over the actual trials and verdicts. The African Union legitimized its position by sticking to the letter of the law, thus formulating a potentially powerful political argument.

- *“Peace” as “Reconciliation” and “Development”*

The second most important characteristic of POL-II is the rearticulation of “peace” as “reconciliation” and “development”. These formulas are referenced throughout A.U. official statements and in African UNSC interventions. However, the discursively most significant document, which offers a definitive rearticulation of “peace” and a discussion of its policy implications, is the Report of the A.U. High Level Panel on Darfur. In his speech during the handing over ceremony of the AUPD Report, Thabo Mbeki, the Panel’s Chairperson, referred to “peace”, “justice” and “reconciliation” as “interconnected, mutually dependent, equally desirable and [which could not be] achieved separate one from the other.”⁷³⁹ Mbeki identified as the “root cause” of the Darfur conflict its marginalisation by rapport to the center, Khartoum, and underdevelopment⁷⁴⁰. The AUPD recommendations include the reinvigoration of the Sudanese Special Criminal Court on the Events in Darfur and the creation of a Hybrid Criminal Court, composed of both Sudanese and foreign judges. The underlying policy proposal is a so-called “integrated Justice and Reconciliation Response to Darfur”⁷⁴¹. The emphasis on “reconciliation” draws on previous African experiences, most notably South Africa’s, with truth and reconciliation commissions. The Panel’s endorsement of more traditional means of delivering justice circumvents the thorny issue of “sovereignty” raised by the actions of the International Criminal Court. “Development”

⁷³⁹Mbeki, Thabo, Speech of the Chairperson of the AUPD on handing over the AUPD Report to the Chairperson of the A.U. Commission, Jean Ping, Addis Ababa, 8 October 2009.

⁷⁴⁰Mbeki, Thabo, Speech of the Chairperson of the AUPD on handing over the AUPD Report to the Chairperson of the A.U. Commission, Jean Ping, Addis Ababa, 8 October 2009.

⁷⁴¹African Union High Level Panel on Darfur, “Darfur – The Quest for Peace, Justice and Reconciliation“, Report presented to the A.U. Peace and Security Council, 29 October 2009, Abuja, Nigeria, PSC/AHG/2(CCVII), §317.

on the other hand was meant to refocus international attention on the conflict's "root cause", namely the scarcity of water and land resources.

The meaning of "peace" is broadened as well in order to construct an all encompassing notion that could satisfy the victims' grievances and the Sudan's need for more control over the peace process. The A.U. endorsed these recommendations⁷⁴². Its discursive efforts however did not end with the AUPD proposal. On the contrary, a different approach would gain more prominence during the 2009 debates at the Security Council. On March 5, one day after the PCT1 made public its decision to approve the issuance of an arrest warrant, the A.U. Peace and Security Council adopted a new Communiqué in which it reiterated its call to the UNSC to assume its responsibility by deferring the Bashir investigation. Foreshadowing the growing relevance of the Peace vs. Justice counterdiscourse, the Decision emphasized that "the search for justice" should not be pursued in a way that prejudiced the peace process⁷⁴³. Darfur was discussed on the terrain of international law, with all parties agreeing in principle to support the fight against a culture of impunity and individual accountability. However, against the background of an increasing number of deaths and displaced people, Darfur became a very "real" civil conflict, in need of an urgent political solution and restoration of peace. Confronted with these negative and very publicized developments, the African Union's position, while largely following the POL-II discourse, began to show signs of radicalization. Its arguments contributed to the emergence of a stronger challenger to Justice: the Peace vs. Justice counterdiscourse.

Identity

There is no new identity building process at work in POL-II. Testing the ability of Justice to frame international security policy, the counterdiscourse reopens the

⁷⁴²African Union Peace and Security Council, Communiqué of the 207th Meeting of the Peace and Security Council, PSC/AHG/COMM.1(CCVII), Abuja, Nigeria, 29 October 2009, §1.

⁷⁴³African Union Peace and Security Council, Communiqué of the 175th Meeting of the Peace and Security Council, PSC/PR/Comm.(CLXXV)Rev.1, Addis Ababa, Ethiopia, 5 March 2009, §2.

political debate on the merits of “criminal justice” and the effects of its associated policies on international peace. POL-II challenges the identity of the “law enforcer” qua “just punisher” in situations as complicated as the one in Sudan, and emphasizes the subject position of the “responsible sovereign”. This new identity, adopted by the Government of Sudan, does not challenge discursively the main antagonism of Justice between the subject positions of “law enforcer” and “perpetrator” of international crimes. It does re-appropriate however on behalf of Sudan the positive identity of the legally responsible actor. The blame for the misuse of “justice” shifts onto the Other, which often times happens to be the United States accused of double-standards. Sudan, in this rereading of the Darfur conflict, assumes the positive identity of the “law enforcer”.

4.4. Boundaries and Rival Discourse III: “Peace vs. Justice” and Disagreement over Darfur

4.4.1. Historical Background: the War in Darfur and International Efforts to Restore Peace: Darfur is one of the most publicized cases in the history of contemporary civil wars⁷⁴⁴. Even more significant however is its status as the most important test of global collective security at the beginning of the 21st century. Due to the involvement of the International Criminal Court through the first historic referral of the United Nations Security Council, Darfur has become a textbook case study in discussions of international security policy, with wider political implications for the United Nations collective security system⁷⁴⁵. The lingering effects of the 2003/2004 Darfur humanitarian disaster are felt even today. The Council, international experts on humanitarian affairs and the global civil society continue to disagree over the most

⁷⁴⁴Flint, Julie and Alex De Waal. 2008. *Darfur. A New History of a Long War*. London and New York: Zed Books Ltd.; Black, David R. and Paul D. Williams eds. 2010. *The International Politics of Mass Atrocities. The Case of Darfur* London and New York: Routledge.

⁷⁴⁵United Nations officials have described the conflict as the worst humanitarian crisis in Africa. See: International Crisis Group. "Darfur Rising: Sudan's New Crisis", ICG Africa Report N°76, 25 March 2004, p. 1.

appropriate way of finding a peaceful, long-term settlement to the conflict and about the scope of international intervention⁷⁴⁶. Nongovernmental organizations have supported the enforcement of individual criminal responsibility and international justice for the Darfur atrocities. U.N. Member States and policy experts on the other hand have adopted more nuanced positions on this issue. The idea that “justice” contributes to “lasting peace”, but that “peace” itself is the result of political negotiations has gained a certain amount of clout in policy debates. The Darfur conflict stands at the center of these discussions, because it is also the first intrastate conflict in which the UNSC tested the effectiveness of its entire toolkit of security measures and included in its repertoire referrals to the International Criminal Court.

The presence of the “Peace vs. Justice” (Peace/Justice) counterdiscourse in international security policy becomes visible between 2007 and 2009. Especially after the ICC Prosecutor’s Application, in July 2008, for an Arrest Warrant on the name of al-Bashir, discussions in the Council concerning its Darfur policy become increasingly less consensual. These differences of opinion slowly revealed not only divergent policy preferences, but also contrasting worldviews on the definition and conduct of international relations. An unexpected side-effect of these disagreements is the emergence of the United Nations Security Council as an institutional setting structuring the interaction of its Members and indirectly shaping their attempts at reformulating the discourse of international security. One academic even argued that with respect to Darfur the Security Council had come to symbolize for many people and governments “the legitimate and appropriate forum for the expression of a ‘collective sense of urgency’”⁷⁴⁷. As the institutional battlefield between different discursive alliances, the

⁷⁴⁶International Crisis Group. "Sudan's Spreading Conflict (Iii): The Limits of Darfur's Peace Process, ICG Africa Report N°211, 27 January 2014.

⁷⁴⁷MacKinnon, Michael G. 2010. The United Nations Security Council. In Black, David R. and Paul D. Williams, eds., *The International Politics of Mass Atrocities. The Case of Darfur*. London and New York: Routledge, p. 71.

UNSC acquires therefore an additional identity. Particularly between 2007 and 2009, a “war of meaning” is fought over the interpretation of the Darfur conflict and the scope of legitimate international intervention in the affairs of a sovereign state.

The Security Council’s involvement with Darfur begins in 2004. Since the timeline of UNSC measures has been provided elsewhere⁷⁴⁸, I will only briefly review here the most important milestones. In April 2003, North Darfur was the site of a major outbreak of armed violence. Rebels from the Sudan Liberation Movement/Army (SLM/A) attacked the Government’s air base in El Fasher. In response, the Government of Sudan (GoS) launched a military counter-insurgency, mobilizing its Army and Air Force and, allegedly, Arab militias known as the Janjaweed⁷⁴⁹. The conflict escalated quickly into a full-blown civil war between the so-called “African”, agricultural tribes of the Zaghawa, Masalit, and Fur against the “Arab” cattle-herders backed by the GoS⁷⁵⁰. By 2007, the Office of the Prosecutor of the International Criminal Court reported 2,5 million people in Internally-Displaced Peoples’ camps (IDPs) in Sudan and Chad as well as countless deaths and violations of human rights and international humanitarian law⁷⁵¹.

The media portrayed the conflict mostly as a clash between different tribes. The 2005 Report of the International Commission of Inquiry on Darfur (ICI) described however a more complicated social fabric and ethnic identity. Before the cessation of South Sudan in 2011, the Sudan was Africa’s largest sovereign state with a territory of

⁷⁴⁸MacKinnon, *The United Nations Security Council*, 2010.

⁷⁴⁹International Crisis Group, “Darfur Rising: Sudan’s New Crisis”, ICG Africa Report N°76, 25 March 2004.

⁷⁵⁰Ibid.

⁷⁵¹United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p.4 (“Sudan”). The International Crisis Group had warned as early as May 2004 that an estimated 1,2 million had been forced from their homes and were housed in poorly run government-controlled Internally Displaced Persons (IDP) camps within Darfur. Approximately 200,000 of these victims were believed to have fled across the border into Chad, where they were still pursued by Janjaweed militias. See: International Crisis Group, “Sudan: Now or Never in Darfur”, ICG Africa Report N°80, 23 May 2004, p. i. By August 2004, ICG Reports estimated the total amount of people affected by the Darfur war to 2.2 million. World Health Organization statistics predicted 110,000 deaths by the end of the year, if humanitarian relief remained inadequate. See: International Crisis Group, “Darfur Deadline: A New International Action Plan”, ICG Africa Report N°83, Nairobi/Brussels, 23 August 2004, p. 1.

about 2.5 million square kilometers and an estimated population of approximately 39 million inhabitants. Its political organization was a federal system of government with several administrative levels⁷⁵². The Sudanese were divided along tribal lines and spoke more than 130 languages and dialects⁷⁵³. The ICI suggested that the political domination of the Blue Nile region in Sudanese politics had brought about some sort of national integration. In the decades following the country's 1956 independence an "Islamic-African-Arab culture" had become predominant in Sudan, while Arabic gained the status of "lingua franca" for Sudanese citizens⁷⁵⁴. Sudan experts like Alex de Waal and Julie Flint argued however that the causes of the conflict were less about ethnic identity and more about the possession of Darfur's scarce natural resources as well as underdevelopment⁷⁵⁵.

Sudan is an oil-rich country with a history of political domination by the Northern Nile region Arab elite. This is the political support base for President Omar al-Bashir and his National Congress Party (NCP). For 21 years, civil war separated the more stable and prosperous North from the South which, despite its oil resources, was significantly poorer. Before the outbreak of violence in Darfur, Sudanese politicians and the Southern rebel group Sudan People's Liberation Army had come close to signing a negotiated peace agreement. Darfur, Sudan's Western province, is an undesirable second war for the GoS. Unlike the South, Darfur is an oil-poor region where climate change has sharpened tribal conflicts over scant water and land resources. The pro-government militias, the so-called Janjaweed, are black "Arabs" supporting the NCP in its fight against the Darfur rebel groups, which are themselves divided along tribal lines⁷⁵⁶.

⁷⁵²International Commission of Inquiry on Darfur, Report to the United Nations Secretary-General Pursuant to Security Council Resolution 1564 of 18 September 2004, Geneva, 25 January 2005, §40.

⁷⁵³Ibid., §41.

⁷⁵⁴Ibid., §41.

⁷⁵⁵De Waal and Flint, Darfur, 2008.

⁷⁵⁶The International Crisis Group issued a Report detailing the history of Darfur conflicts before the 2003

The Government of Sudan's reply to the El-Fasher attack was an (in)famous military campaign labelled by the ICC Prosecutor as "scorched earth"⁷⁵⁷. Darfur civilians were caught between multiple armed struggles: the confrontation between the two most important rebel groups, the Sudanese Liberation Movement/Army (SLM/A) and the Justice and Equality Movement (JEM), and the Government; the terror campaign unleashed by the Janjaweed Arab militia presumably supported by Khartoum; and the conflict between the rebels and the Janjaweed. This war involved not only local actors – the "Africans" vs. the "Arabs". Sudanese opposition politicians in exile and the Chadian President Idriss Deby joined the mediation process and transformed the conflict into a national political struggle over the future of Sudan⁷⁵⁸. The GoS on the other hand tried to legitimize its military solution for Darfur by describing its campaign as an attempt to restore order and fight against armed rebels seeking to undermine Sudanese sovereignty. In a country characterized by a difficult colonial past, differences in language, religion, and ethnicity as well large discrepancies in access to resources and political power, the Sudanese Government portrayed this new civil conflict as an extreme way of voicing political grievances⁷⁵⁹. Although the evidence connecting al-Bashir with the punishing raids carried out in Darfur by the Janjaweed is not publicly available, the effects of the war on the local population have been very well

attack at El Fasher and the regional policy of the Government of Sudan, allegedly responsible for growing interethnic divisions. See: International Crisis Group, "Darfur Rising: Sudan's New Crisis", ICG Africa Report N°76, 25 March 2004. For a comprehensive presentation of the early reactions of the international community and the United Nations see as well the following reports: International Crisis Group, "Sudan: Now or Never in Darfur", ICG Africa Report N°80, 23 May 2004, and International Crisis Group, "Darfur: The Failure to Protect", ICG Africa Report N°89, 8 March 2005.

⁷⁵⁷Moreno-Ocampo, Luis, Statement to the United Nations Security Council on the Situation in Darfur, the Sudan, Pursuant to UNSCR 1593(2005), New York, 3 December 2008, p. 2.

⁷⁵⁸International Crisis Group, "Darfur Rising: Sudan's New Crisis", ICG Africa Report N°76, 25 March 2004, p. 21-24.

⁷⁵⁹Mr. Erwa, Sudan, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 13-14 ("Sudan"); Mr. Taha, Sudan, United Nations Security Council, Debate, S/PV.5080, 18 November 2004, p. 5-7 ("Sudan"); The Sudan, Letter Dated 8 February 2005 from the Permanent Representative of the Sudan to the United Nations Addressed to the President of the Security Council, S/2005/77, 10 February 2005; Mr. Mohamad, Sudan, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.11 ("Sudan"); Mr. Abdelmannan, Sudan, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 4 ("Sudan"); Mr. Mohamed, Sudan, United Nations Security Council, Debate, S/PV.6227, 30 November 2009, p. 6 ("Sudan").

documented. The fighting left tens of thousands of people without their livelihood, forced to live in government-run IDP camps and still harrassed by militias⁷⁶⁰. The International Crisis Group alleged that approximately 200,000 Darfuris who had sought refuge across the border in Chad during the conflict's early stages were still pursued by the Janjaweed⁷⁶¹. The number of deaths and the magnitude of destruction reached relatively quickly such high levels that by March 2004 the outgoing U.N. Resident and Humanitarian Coordinator Mukesh Kapila invoked the word "ethnic cleansing"⁷⁶². The United States Government made the same allegation several months later, although Colin Powell qualified this statement in his testimony before the Senate adding that the U.S. was not contemplating any direct military action⁷⁶³.

This complicated second civil war caused a new cleavage among the U.N. Security Council's Permanent Members. China, Russia, and African states like Libya and Algeria showed support for the "sovereignty" of the Government of Sudan and for less intrusive international measures. France, the United Kingdom and the United States on the other hand were in favour of international criminal justice mechanisms and advocated tougher punitive actions against violators of international humanitarian and human rights law. The Council issued its first Darfur Presidential Statement on May 26, 2004, one year after the El Fasher attacks. The UNSC called on all parties to the conflict to respect the N'Djamena Humanitarian Ceasefire Agreement signed a month earlier in Chad, on April 8, 2004, and to facilitate the access of humanitarian organizations to the population affected by war⁷⁶⁴. The UNSC continued to monitor in parallel developments in South Sudan and Darfur. While the South/North Sudanese Peace

⁷⁶⁰United Nations Secretary-General, Report on the Sudan, S/2004/703, 30 August 2004, §49-53 („Humanitarian situation and response“).

⁷⁶¹International Crisis Group, "Sudan: Now or Never in Darfur", ICG Africa Report N°80, 23 May 2004, Executive Summary, p. 1.

⁷⁶²BBC News, "Mass Rape Atrocity in West Sudan", 19 March 2004.

⁷⁶³Powell, Colin, "The Crisis in Darfur", Testimony before the U.S. Senate Foreign Relations Committee, 9 September 2004. Retrieved at: <http://geneva.usmission.gov/press2004/0910CrisisinDarfur.htm>.

⁷⁶⁴United Nations Security Council, Presidential Statement, S/PRST/2004/18, 26 May 2004.

Process was temporarily concluded on January 9, 2005 with the signing of a Comprehensive Peace Agreement (CAP) between the Sudan's People Liberation Movement and the Government of Sudan⁷⁶⁵, the situation in Darfur continued to deteriorate. By the end of March 2005, the Darfur crisis had reached such proportions that, despite disagreements among the Permanent Members, the Council decided to refer the situation to the International Criminal Court with only four abstentions: Algeria, Brazil, China, and the United States⁷⁶⁶.

This referral was the latest step in a series of international measures seeking to increase political pressure on the Sudan and push its Government to protect Darfuri tribes. In their Joint Communiqué of July 3, 2004⁷⁶⁷, the U.N. Secretary-General and the GoS listed a series of short-term international and domestic measures to be implemented by the Sudan in response to the humanitarian crisis, including access for humanitarian relief organizations, the disarming of the Janjaweed militias, justice for the victims of atrocities, and the resumption of political negotiations with rebel groups. The Council was equally willing to let the African Union take the lead in the international mediation process. In support of the N'Djamena Ceasefire Agreement, the A.U. deployed in June 2004 a team of monitors in El Fasher, the future location of the Ceasefire Commission, the Agreement's supervisory body.

This deployment marks the beginning of the African Union's long-term involvement in the Sudan. The African Union Mission in Sudan (AMIS) was later upgraded to a peacekeeping force of up to 3,320 personnel⁷⁶⁸. Overall however, despite the looming threat of a new Rwanda unfolding, the early response of the Security

⁷⁶⁵United Nations Secretary-General, Report on the Sudan, S/2005/57, 31 January 2005, §11-18 ("The Comprehensive Peace Agreement").

⁷⁶⁶United Nations Security Council Resolution 1593 (2005), S/RES/1593(2005), 31 March 2005, ("Sudan"), §1. See also: United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 2 ("Sudan").

⁷⁶⁷Joint Communiqué between the Government of Sudan and the United Nations on the Occasion of the Visit of the Secretary-General to Sudan 29 June – 3 July 2004. Retrieved at: http://www.un.org/news/dh/sudan/sudan_communique.pdf

⁷⁶⁸Badescu, Cristina and Linnea Bergholm. 2010. The African Union. In Black, David R. and Paul D. Williams, eds., The International Politics of Mass Atrocities. London and New York: Routledge.

Council was rather low key. The search for so-called “African solutions” to the Darfur conflict looked increasingly more like an attempt to delegate a burdensome problem. Michael G. MacKinnon identifies two possible explanations why international efforts during the highest intensity phase of the conflict, in 2003 and 2004, were minimal: the fatigue of the Security Council at a time when the Iraq and Afghanistan wars were high priority issues on its security agenda and second, a focus on the positive development in Southern Sudan, where the CAP was about to end a 21-year-long conflict⁷⁶⁹.

Nevertheless, the deteriorating humanitarian situation and growing international media attention pressured the Security Council into action and forced it to adopt a more assertive role in the management of this new intrastate war. In the following years, Darfur became gradually a test for the effectiveness of the Council’s security policy tools. The UNSC made increasing use of its Chapter VII powers to impose a series of measures against the GoS and the armed groups, including an arms embargo, smart sanctions against targeted individuals, and the referral to the International Criminal Court.

The political decisions over the sequencing of these measures are embedded in a process of discursive contestation. Between 2005 and 2009, the cleavages in the Council concerning Darfur came into sharper relief. The word “genocide” had already tapped into the representational resources of the Justice discourse. Russia⁷⁷⁰ and China agreed that more efficient measures were necessary, but refused to accept that the threat of sanctions might induce the GoS to show more political will in implementing its international commitments. Both countries argued that it would be more expedient to support the mediation efforts of AMIS and offer more carrots, rather than sticks, to the GoS. In the words of the Chinese Representative after the adoption of Resolution 1564:

⁷⁶⁹MacKinnon, *The United Nations Security Council*, 2010.

⁷⁷⁰Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 4 (“Sudan”).

“We should help bring about an early agreement with a view to the achievement of a political solution between the Sudanese Government and the rebels, rather than send the wrong signal and make negotiations more difficult. We should increase humanitarian assistance to Darfur, rather than create a situation that could lead to the closing of the door to relief and assistance.”⁷⁷¹

These arguments supported indirectly the Sudan’s rejection of more intrusive international measures. The disagreement among Council Members reflected however not just diverging solutions to the problem posed to international peace and security by a new civil conflict, but also different views on the role of the state and of the international community in bringing about peace. The debates over Resolutions 1556 and 1564 illustrate these divisions. Resolution 1556, adopted on 30 July 2004, created the first sanctions regime by imposing an arms embargo on non-governmental Sudanese armed groups, including the Janjaweed⁷⁷². This measure was followed several months later by Resolution 1564, in which the Council accused Sudan of not fully meeting its obligations, under Resolution 1556 and the 3 July 2004 Joint Communiqué, to improve the security of Darfur civilians⁷⁷³. The Council decided therefore to establish an International Commission of Inquiry (ICI) in order to investigate possible violations of international human rights and humanitarian law⁷⁷⁴.

The text of the Resolution was a compromise between the demands of the United States and the United Kingdom for tougher measures against the Sudan, including economic sanctions for its petroleum industry, and supporters of a more “diplomatic” approach⁷⁷⁵. The Chinese and Pakistani Representatives explained their

⁷⁷¹Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 4 (“Sudan”).

⁷⁷²Mr. Khalid, Pakistan, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p.10 (“Sudan”); Mr. Zhang Yishan, China, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p. 2 (“Sudan”);

⁷⁷³United Nations Security Council Resolution 1564(2004), S/RES/1564(2004), 18 September 2004, §1.

⁷⁷⁴United Nations Security Council Resolution 1564(2004), S/RES/1564(2004), 18 September 2004, §12 (“Sudan”).

⁷⁷⁵MacKinnon, *The United Nations Security Council*, 2010, p. 75.

reluctance to endorse a harsher sanctions regime by emphasizing the need for a strategy that should be based on respect for Sudan's territorial integrity and sovereignty. Another argument supporting this position prioritized political negotiations over "justice". During the Council Debate over the ICC referral, the Chinese Representative spoke in favour of a "no impunity" approach, but gave precedence to multilateral negotiations:

"Undoubtedly, the perpetrators must be brought to justice. The question is: What is the most effective and feasible approach in this connection? In addressing the issue of impunity, we believe that, when trying to ensure justice, it is also necessary to make every effort to avoid any negative impact on the political negotiations on Darfur."⁷⁷⁶

Sudan was favourable to this position, having always argued that it was the victim of "double standards" and that its actions were aimed at re-establishing order, an allegedly normal reaction given the manifold issues of a developing country⁷⁷⁷.

Consensus in the Council was at its highest in late March 2005, when a package of three resolutions was adopted: Resolution 1590 authorized the deployment of a Chapter VI United Nations Mission in Sudan (UNMIS) in order to monitor and assist the implementation of the Comprehensive Peace Agreement between North and South⁷⁷⁸; Resolution 1591 revised the arms embargo established through Resolution 1556 and added asset freeze and targeted sanctions to the regime⁷⁷⁹; lastly, Resolution 1593 referred the situation to the International Criminal Court⁷⁸⁰. If the deployment of UNMIS had been expected and relatively well received by the Government of Sudan, the imposition of new sanctions and the referral to the International Criminal Court did

⁷⁷⁶Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.5 ("Sudan").

⁷⁷⁷Mr. Erwa, Sudan, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 13-14 ("Sudan").

⁷⁷⁸United Nations Security Council Resolution 1590(2005), S/RES/1590(2005), 24 March 2005 §1 and §4 ("Sudan").

⁷⁷⁹United Nations Security Council Resolution 1591(2005), S/RES/1591(2005), 29 March 2005, §3 ("Sudan").

⁷⁸⁰United Nations Security Council Resolution 1593(2005), S/RES/1593(2005), 31 March 2005, §1 ("Sudan").

not garner universal approval. Algeria, China, and the Russian Federation abstained on the voting of Resolution 1591, while the United States, China, Algeria, and Brazil abstained on Resolution 1593.

A new line of antagonism emerged during these early debates between two distinct discursive formations. The list of countries favouring the Justice approach included France, the United Kingdom and, with qualifications, the United States as well as non-permanent members Canada, Germany, Denmark, Croatia, Costa Rica and Brazil. The Peace/Justice camp was equally powerful and vocal. China, Russia, Algeria, Pakistan, Qatar, Libya, Indonesia, sometimes Burkina Faso and South Africa backed by international organizations such as the League of Arab States, the Organization of Islamic Conference, and the Non-Aligned Movement expressed different views on state sovereignty and international peace⁷⁸¹. The complexity of the Darfur conflict challenged normative expectations that perpetrators of international crimes should be punished and international criminal law norms enforced. The Sudan, a strong state, was able to defend in the Council its position against intervention and to rally international political support. Differences of opinion persisted however even among the advocates of Peace/Justice. China⁷⁸² and Russia⁷⁸³ consistently favoured a diplomatic approach to the conflict and urged the rebel groups and the Sudanese Government to negotiate a peaceful settlement. African states on the other hand, such as South Africa and Burkina Faso, were forced to reconcile their commitment to the International Criminal Court, as states parties to the Rome Statute, with concern over the Court's potentially negative impact on the Darfur peace process.

⁷⁸¹Annex 8 – Collection of Quotes – Counterdiscourses 2007 – 2010 “Peace vs. Justice“.

⁷⁸²Mr. Zhang Yishan, China, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p. 2 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 4 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p. 5 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.5 (“Sudan”).

⁷⁸³Mr. Denisov, Russia, United Nations Security Council, Debate, Sudan, S/PV.5040, 18 September 2004, p. 4 (“Sudan”); Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p.3 (“Sudan”).

These contrasting views, together with disagreements over the meaning of “peace” and “justice”, were routinely expressed in Council debates between 2004 and early 2005. They echoed equally forceful differences over security policy. Prior to March 2005, the debate had focused unsuccessfully on the twin issues of expanding the sanctions regime against the GoS and the deployment of a U.N. peacekeeping mission, with a robust Chapter VII mandate to protect civilians. Although the Secretary-General presented Reports before the Security Council in which he emphasized the difficult situation of Darfuri refugees⁷⁸⁴, UNSC Members Algeria, China, and Russia were against the idea of accusing Sudan of non-compliance, or the adoption of tougher international measures. This political and policy deadlock forced the Council to create the ICI, headed by Italian jurist Antonio Cassese. The Commission’s mandate, spelt out in Para. §12 of UNSC Resolution 1556, included three main tasks: to investigate reports of international humanitarian and human rights law violations in Darfur; to determine whether or not acts of genocide had occurred; and to identify the alleged perpetrators, in order to make them accountable for their crimes. This decision became a game changer in the discursive struggles over Darfur. The Commission’s Report brought the messy reality of war before the Council, portraying a catastrophic humanitarian situation and undermining both Sudanese claims and international support for the diplomatic approach.

The Commissioners and their investigative team visited Darfur from November 2004 to January 2005. They held talks with a variety of actors, from Government representatives and local officials to members of the Sudanese Army and police, rebel leaders, victims and internally displaced people as well as United Nations

⁷⁸⁴Darfur is mentioned first in one of the final paragraphs of the Secretary-General’s June 2004 Report on the Sudan. See: United Nations Secretary-General, Report of the Secretary-General on the Sudan, S/2004/453, 3 June 2004, §22. This lack of attention changed soon after the adoption of UNSCR 1556(2004) of 30 July 2004. In 2005, the U.N. Secretary-General published 8 Darfur Monthly Briefs in addition to the 8 Reports on the Sudan. Specific assessments of the Darfur situation continued until 23 February 2007, when the UNSG published its final Monthly Brief. See: United Nations Secretary-General, Monthly Report of the Secretary-General on Darfur, S/2007/104, 23 February 2007.

and NGO employees⁷⁸⁵. The Commission gathered extensive information about the atrocities committed in Darfur between February 2003 and mid-January 2005. The Report, handed in to the Secretary-General on 25 January 2005, offered a comprehensive account of the Darfur conflict, complemented by a detailed analysis of Sudanese history and the complex factors underlying the outbreak of the new war. The ICI argued that, although identity was still fluid among the tribes populating Darfur, the Fur, Zaghawa, Massalit, Jebel, Aranga and other so-called “African” tribes could be considered a subjectively protected group under international law⁷⁸⁶. The Commission found that attacks against these tribes had been disproportionate by comparison to any potential military threats posed by the rebel groups. The Government of Sudan was therefore found responsible of having conducted deliberate attacks against civilians⁷⁸⁷. The ICI concluded that, although the counterinsurgency organized by the GoS had stopped short of genocide⁷⁸⁸, the Government and the Janjaweed were responsible for serious violations of international human rights and humanitarian law⁷⁸⁹. Regarding individual criminal accountability, the Commissioners reemphasized the need for urgent action and expressed their dismay that attacks against civilians continued even during the exercise of their mandate⁷⁹⁰.

The Report challenged the Sudan’s claims that it was “willing and able” to prosecute the perpetrators of the Darfur atrocities. Although the GoS cooperated with the ICI, its officials did not present sufficient evidence that the Sudanese judicial system had attempted to bring the alleged perpetrators before a court of justice. On the contrary, the Commission found that measures taken by the GoS had been “grossly

⁷⁸⁵International Commission of Inquiry on Darfur, Report, Geneva, 25 January 2005, §20-25.

⁷⁸⁶International Commission of Inquiry on Darfur, Report, Geneva, 25 January 2005, §508-512.

⁷⁸⁷International Commission of Inquiry on Darfur, Report, Geneva, 25 January 2005, Executive Summary, Part I, p. 3.

⁷⁸⁸International Commission of Inquiry on Darfur, Report, Geneva, 25 January 2005, §507- 522.

⁷⁸⁹International Commission of Inquiry on Darfur, Report, Geneva, 25 January 2005, Chapter VI “Violations of International Human Rights and Humanitarian Law – the Commission’s Factual and Legal Findings“, p. 53-108, §182 – 418.

⁷⁹⁰Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, Executive Summary, Part I, p. 3.

inadequate and ineffective”, contributing to the “climate of almost total impunity for human rights violations in Darfur”⁷⁹¹. The conclusion of this international legal assessment included one of the most important and controversial recommendations of the ICI, namely that the Security Council should refer without delay the situation of Darfur to the International Criminal Court and invoke Article 13(b) ICC Statute⁷⁹².

The Report of the International Commission of Inquiry on Darfur had several important political consequences. The evidence presented by the team of judges led by Antonio Cassese delegitimized Sudan’s international position. Although the GoS had defended its actions by invoking reasons of military necessity, such arguments must have sounded a bit hollow when confronted with the ICI findings and its portrayal of the magnitude of human suffering and material destruction. When the Council discussed the ICI Report on 16 February 2005, the U.N. High Commissioner for Human Rights, Louise Arbour, asked that “the full range of options should be on the table”⁷⁹³.

The Council endorsed the Commission’s findings. However, between 16 February and 31 March 2005, the UNSC failed to take any concrete measures. The Permanent Members continued to be divided over the ICI’s main recommendations, in particular over the controversial referral of Darfur to the International Criminal Court. Although there was, presumably, a “convergence of opinion” among UNSC Members on the urgent need to act in order “to ease the suffering of the civilian population”⁷⁹⁴, the Council failed to draft a comprehensive Darfur strategy. Many of its Members however regarded the International Criminal Court as the most appropriate institution to enforce international justice norms and combat impunity. Therefore, a potential Darfur

⁷⁹¹Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, Executive Summary, Part IV, p. 5.

⁷⁹²Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-General, Geneva, 25 January 2005, Executive Summary, Part IV, p. 5.

⁷⁹³United Nations Security Council, Reports of the Secretary General on the Sudan, S/PV.5125, 16 February 2005, p.2.

⁷⁹⁴Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p. 3 (“Sudan”).

referral had gained considerable political support⁷⁹⁵. The deadlock came to an end during the 31 March 2005 debate, when the UNSC finally adopted Resolution 1593. Denmark⁷⁹⁶, the Philippines⁷⁹⁷, Japan⁷⁹⁸, United Kingdom⁷⁹⁹, Argentina⁸⁰⁰, France⁸⁰¹, Greece⁸⁰², Tanzania⁸⁰³, Romania⁸⁰⁴, Benin⁸⁰⁵ joined by the United States⁸⁰⁶ and Russia⁸⁰⁷ argued that the evidence presented by the Commission amounted to an accusation of impunity to which the Council had the moral and legal obligation to respond. Other UNSC Members contended however that a civil conflict should not be managed from a purely judicial perspective. Although these states recognized the victims' moral and legal right to demand justice, their preferred course of action favoured first the restoration of order.

The Chinese Representative expressed his concern about the ICC's lack of jurisdiction and Sudanese consent in investigating Darfur crimes⁸⁰⁸. Even though China agreed that the Security Council had the legal right to refer non-Member States to the Court, this practice was arguably still new in international affairs. Most importantly, it

⁷⁹⁵United Nations Security Council, Debate, S/PV.5158, 31 March 2005 ("Sudan").

⁷⁹⁶Mr. Løj, Denmark, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 6 ("Sudan").

⁷⁹⁷Mr. Baja, the Philippines, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 6 ("Sudan").

⁷⁹⁸Mr. Oshima, Japan, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 6/7 ("Sudan").

⁷⁹⁹Sir Emyr Jones Parry, United Kingdom, United Nations Security Council, S/PV.5158, 31 March 2005, p. 7 ("Sudan").

⁸⁰⁰Mr. Mayoral, Argentina, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 7/8 ("Sudan").

⁸⁰¹Mr. De La Sablière, France, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 8 ("Sudan").

⁸⁰²Mr. Vassilakis, Greece, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 9 ("Sudan").

⁸⁰³Mr. Mahiga, United Republic of Tanzania, United Nations Security Council, S/PV.5158, 31 March 2005, p. 9/10 ("Sudan").

⁸⁰⁴Mr. Motoc, Romania, United Nations Security Council, S/PV.5158, 31 March 2005, p. 10 ("Sudan").

⁸⁰⁵Mr. Adechi, Benin, United Nations Security Council, S/PV.5158, 31 March 2005, p. 10/11 ("Sudan").

⁸⁰⁶Mrs. Patterson, United States of America, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 3 ("Sudan").

⁸⁰⁷Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 10 ("Sudan").

⁸⁰⁸Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.5 ("Sudan").

was an untested measure with unforeseeable security consequences. China⁸⁰⁹ and Algeria⁸¹⁰ took therefore a step back from the stronger normative claims made by the Justice discourse. Their interventions offered an alternative reading of the situation, implying that the rebellion against governmental forces was the sign of a domestic power struggle and should not be interfered with. The information summarized in the ICI Report about Sudan's historical and social background supported this alternative reading. The Commission had portrayed the various internal antagonisms created by the Sudan's linguistic and cultural differences, supporting implicitly the claim that the inevitable clashes between mainstream and minority cultures were sharpened by poverty and social inequality.

The threat of potential regional spillovers was an equally credible scenario. Sudan is bordering in the West the Central African Republic and Chad as well as Uganda and the Democratic Republic of Congo in the East. Most of them are fragile states, with a history of military takeovers and civil wars between local armed groups. Given the instability of political regimes in neighbouring countries, the Sudan was relatively a success story. Political support in the Council for the GoS reflected therefore a broader concern with regional stability and statehood. China's Representatives emphasized the need to restore "security" and "stability" first, followed by international humanitarian and development assistance.

The political aftermath of the ICI Recommendations were the three UNSC Resolutions adopted at the end of March 2005. Discursively however, disagreement in the Council, complicated by the ICI findings, created the material conditions for the symbolic freeing of key notions such as "peace", "justice", and "security". Russia, otherwise a consistent defender of non-intrusive international security policy, voted in

⁸⁰⁹Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.5 ("Sudan").

⁸¹⁰Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p.3 ("Sudan").

favour of Resolution 1593, defending the view that the “fight against impunity” was one of the most important elements of a long-term political settlement in Darfur⁸¹¹. During subsequent Darfur debates, “politics” was discursively separated from “law”, and “peace” from “justice”.

Such interventions slowly unpacked the relational identities of the Justice discourse, challenging the bond between “justice” and “peace”. These cleavages were already apparent in the period preceding the March 2005 Resolutions. They continued to deepen in the following years, particularly between 2007 and 2009, when “peace” looked as an increasingly unattainable objective. The Darfur file became a regular agenda issue for the Security Council with the Secretary-General submitting in 2006 no fewer than 10 Monthly Briefs⁸¹². As the humanitarian situation worsened, the UNSC struggled to reconcile opposing views among its Member States, while responding to growing demands from the international civil society to ensure more effective civilian protection⁸¹³. International mediation efforts proved relatively successful and several landmark peace-building initiatives took place during this period: the signing on the 5 May 2006 of the Darfur Peace Agreement (DPA) in Abuja, Nigeria, between the Government of Sudan and the Sudan Liberation Army-Minni Minawi faction, the re-hatting of African Union peacekeepers as part of the hybrid U.N. Mission established by Chapter VII UNSCR 1769(2007), UNAMID⁸¹⁴, and the Darfur Peace Agreement signed between the GoS and the Justice and Equality Movement on 17 February 2009 in Doha,

⁸¹¹Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 6 (“Sudan”).

⁸¹²The U.N. Secretary-General submitted 10 Monthly Briefs on Darfur in 2006 and 2 in 2007, 16 Reports on the Sudan between 2006 and 2009, 16 Reports on the Deployment of UNAMID within the same period and 2 Reports on the activities of UNMIS, in October 2009 and April 2010. Source: United Nations Documentation Center.

⁸¹³International Crisis Group, “To Save Darfur”, ICG Africa Report N°105, 17 March 2006, Part IV B “More Effective Civilian Protection”, p. 15.

⁸¹⁴United Nations Security Council Resolution 1769(2007), S/RES/1769(2007), 31 July 2007, §1 (“Sudan”).

Qatar⁸¹⁵. Unfortunately, the DPA was a short-lived success story. Two major rebel groups, the Sudanese People Liberation Army - Abdel Wahid faction and the Justice and Equality Movement refused to accept the terms of the Agreement and continued their armed opposition against the GoS⁸¹⁶.

The possibility of an international intervention in the conflict gained therefore ground and legitimacy. UNSC discussions in 2006 and 2007 focused on the deployment in Darfur of a U.N. Chapter VII peacekeeping operation. A few other policy options were also on the table. Even the European Union was considered at some point a potential partner to AMIS⁸¹⁷. Outsourced and confronted with donor exhaustion, the A.U. Mission in Darfur lacked a specific mandate to protect civilians⁸¹⁸. By April 2007, an International Crisis Group Report urged the U.N. to revitalize “the moribund peace process”⁸¹⁹. The Sudan on the other hand continued to oppose a major international task force despite evidence that the security situation was not improving and civilians were still targets of indiscriminate attacks⁸²⁰. This debate was briefly concluded with the adoption of UNSCR 1769(2007) and Sudanese consent to a hybrid U.N./A.U. peacekeeping mission.

The difficult management of the Darfur political process was, to a certain degree, the result of the split between major stakeholders. The UNSC, the African Union, the Sudan and its regional neighbours as well as the Darfur rebels pursued often opposing agendas. The effects of these disagreements were the 2009 failed political

⁸¹⁵United Nations Secretary-General, Report of the Secretary-General on the Sudan, S/2009/211, 17 April 2009, §28.

⁸¹⁶United Nations Secretary-General, Report of the Secretary-General on the Sudan, S/2007/104, 23 February 2007, §25-44.

⁸¹⁷International Crisis Group. "The EU/AU Partnership in Darfur: Not yet a Winning Combination", ICG Africa Report, N°99, 25 October 2005.

⁸¹⁸International Crisis Group. "The AU's Mission in Darfur: Bridging the Gaps", ICG Africa Briefing N°28, Nairobi/Brussels, 6 July 2005, Part.B “AMIS: The Limitations”, p.6/8.

⁸¹⁹International Crisis Group. "Darfur: Revitalizing the Peace Process", ICG Africa Report N°125, 20 April 2007, Executive Summary and Recommendations, p. 1.

⁸²⁰United Nations Secretary-General, Report of the Secretary-General on the Sudan, S/2007/104, 23 February 2007, §2-13 and §19-24; United Nations Secretary-General, Report of the Secretary-General on the Sudan, S/2007/462, 27 July 2007, §2-16.

negotiations in Doha and growing international calls for the protection of civilians as well as for tougher measures against those obstructing the peace process. In 2006, the International Crisis Group described the status quo over Darfur as the “the international community’s 3-year failure to apply effective diplomatic and economic pressure on Sudan’s government and its senior officials.”⁸²¹

The debate in the Security Council parallel to these developments reflected concerns and divisions over the twin issues of “security” and “peace”, the role of “justice” in restoring “peace”, and the attribution of responsibility for the obstruction of the Darfur peace process. Despite the unanimous adoption of Resolution 1769, authorizing the deployment of UNAMID, statements during the ensuing debate revealed important differences of opinion. Qatar⁸²², China⁸²³, and Russia⁸²⁴ backed a political settlement of the conflict that would respect Sudanese sovereignty, allowing only a complementary role for the international community. For Indonesia, the political process was central in addressing Darfur’s manifold problems⁸²⁵, a position which subsequent expert presentations during the Council appeared to endorse⁸²⁶.

This normative hierarchy between “peace” qua “security” vs. “justice” continued to divide the Council. In December 2007, after repeated complaints from Luis Moreno-Ocampo regarding Sudan’s lack of cooperation, China came out strongly in defense of “security”. From its perspective, the problem of immunity could only be

⁸²¹International Crisis Group. "Getting the UN into Darfur", ICG Africa Briefing N°43, Nairobi/Brussels, 12 October 2006, p. 1.

⁸²²Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.6 (“Sudan”).

⁸²³Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.10 (“Sudan”).

⁸²⁴Mr. Rogachev, Russia, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p.10 (“Sudan”).

⁸²⁵Mr. Natalegawa, Indonesia, United Nations Security Council, Debate, 24 June 2008, S/PV.5922, p. 16 (“Sudan”).

⁸²⁶Mr. Salim Ahmed Salim, Special Envoy of the African Union for Darfur. United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p.7 (“Sudan”); Mr. Holmes, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, United Nations Security Council, Debate, S/PV.6139, 11 June 2009, p. 5 (“Sudan”).

secondary to the stabilization of Darfur⁸²⁷. The actions of the ICC Prosecutor added a new variable to the list of factors influencing the Council's policy or, as some would argue, the lack of it. After the unsealing of the al-Bashir Arrest Warrant Application, policy clashes over "peace" vs. "justice" became not only more frequent, but also quite bitter. Between 2008 and 2009 Sudan rejected all the Arrest Warrants issued by the International Criminal Court as a threat to the country's unity and sovereignty, accusing Moreno-Ocampo of helping the rebels and endangering the peace process⁸²⁸. These arguments found consistent support among Council Members. The delays in the deployment of UNAMID and the fallout of the ICC Arrest Warrants, including the most controversial one for President Bashir, generated starkly opposing positions. Vietnam blamed the International Criminal Court for the worsening Darfur crisis⁸²⁹. The United States agreed that insecurity was the biggest problem in Darfur. However, Mr. Khalilzad argued that not the political track, but an international intervention through the speedier deployment of UNAMID was the more effective way to improve the security situation⁸³⁰. Croatia⁸³¹ and Costa Rica expressed similar views. Mr. Urbina, the Costa Rican Representative, asked the Council "not to give in to the voices that insist [it] [is] endangering the peace process in Sudan" and named Darfur the "the first case of the responsibility to protect as stipulated in the 2005 World Summit Outcome"⁸³².

U.N. Member States tried in general to avoid being labelled as condoning impunity. During the debate following the ICC Prosecutor's December 2008 Report,

⁸²⁷Mr. Liu Zhenmin, China, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p.10/11 ("Sudan").

⁸²⁸Mr. Mohamad, Sudan, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.11 ("Sudan").

⁸²⁹Mr. Le Luong Minh, Viet Nam, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 12 ("Sudan").

⁸³⁰Mr. Khalilzad, United States of America, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 22 ("Sudan").

⁸³¹Mr. Skracic, Croatia, United Nations Security Council, Debate, S/PV.594, 31 July 2008, p.4 ("Sudan").

⁸³²Mr. Urbina, Costa Rica, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p.13 ("Sudan").

South Africa's concerns with a potential misreading of its position led Mr. Kumalo to ask the Prosecutor openly:

“The question that I would like to pose to the Prosecutor is: Does this mean that if the Security Council discusses article 16 of the Rome Statute as it applies to this case, we will be understood as either attempting to protect those people or having been induced in some way into covering up of what is happening in the Sudan?”⁸³³

The South African Representative was in a difficult position, caught between his own expressions of support for the fight against impunity and criticism of any course of action that might have had a coercive effect on the Sudan. African countries at the UNSC and the Sudan in particular went to great lengths to counter Moreno-Ocampo's statements that the GoS had coordinated a criminal system aimed at “freeing” the land from its inhabitants⁸³⁴. Burkina Faso countered that the A.U.'s decision not to cooperate with the ICC in arresting al-Bashir should not be understood as condoning impunity, but rather as insisting on the need to ensure that the “will for justice” does not entail the taking of decisions that could jeopardize the political process⁸³⁵.

Although during 2007 and 2009 Peace/Justice did not challenge the core principles of Justice such as individual criminal responsibility and the “no impunity” norm, the meaning of key Justice empty signifiers became the object of symbolic struggles. The arguments thrown into the representational battle over Darfur, whether made out of genuine concern, economic and military interests, or identity issues, led to the final major contestation of Justice as the dominant discursive framework of international security policy.

⁸³³Mr. Kumalo, South Africa, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 16 (“Sudan”).

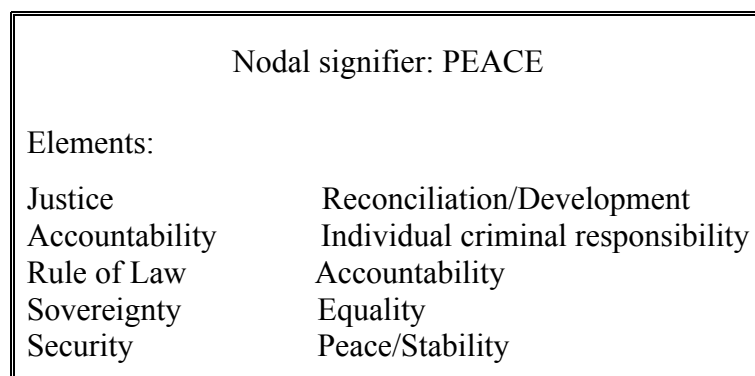
⁸³⁴Mr. Abdelmannan, Sudan, United Nations Security Council, Debate, 20 March 2009, S/PV.6096, p. 4 (“Sudan”).

⁸³⁵Mr. Kafando, Burkina Faso, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 7/8 (“Sudan”).

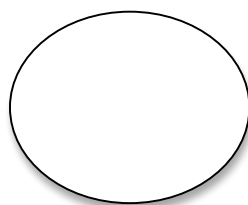
PEACE

4.4.2. Structural Analysis

Table 17: The “Peace vs. Justice” Counterdiscourse – Structural Image



Sites of Antagonism



The third counterdiscourse undermining the position of Justice as the new ideology in international security is “Peace vs. Justice” or Peace/Justice. Between 2002 and 2010, Peace/Justice gradually acquired the status of the most important challenge to the discursive supremacy of criminal justice principles in international security policy. Its capacity to offer alternative, powerful readings of the reality of civil wars as well as its successful rearticulation of certain key concepts such as “order” and “security” suggest that this counterdiscourse could become a serious threat to Justice. Unlike POL-I and POL-II, Peace/Justice allows a more flexible articulation of its chains of equivalences. This openness towards other categories of political demands has the potential to ensure its long-term success. Its support base is also broader, with Peace/Justice having been endorsed not only by Security Council Members, but also by legal experts. Although by 2010 this discourse had only begun to consolidate its claims, a linguistic map of its mechanisms should add to our understanding of how criminal justice defends itself

structurally from such attacks, and the ways in which its blind spots could lead to yet another hegemonic formation in the future.

A brief comparison with the structure of previously analyzed discourses reveals certain similarities and differences. The empty signifiers grounding the new discourse do not change. “Accountability”, “Justice”, “Rule of Law”, “Sovereignty”, and “Security” are the main elements making up its structure. “Peace”, however, fulfills a double function as nodal signifier and frontier element between the hegemonic discursive formation Justice and the challenger. The new discursive antagonism is played out over the meaning of “peace”, while “security” acquires additionally a supportive role as the element of a dyad: peace/security. The frequency analysis applied to Annex 8 “Collection of Quotes – Counterdiscourses 2007 - 2010” yields a different hierarchy than Pol-I and Pol-II. The most frequently used signifiers are “peace” (121 hits) and “security” (72 hits). “Justice” is mentioned 48 times, “sovereignty” 9 times, while “rule of law” and “accountability” 4 times each. Additional meanings such as “stability” (20 hits) and “reconciliation” (13 hits) have also a relatively high frequency. The results of this analysis show that most of the arguments against the Justice discourse prioritize “peace”, elevated to the rank of an international value.

This counterdiscourse emerged during the 2004 and 2005 Security Council meetings on Darfur, when UNSC Member States began gradually to unpack the meaning of a “political solution”⁸³⁶ to Sudan’s latest internal conflict. The proto-“Peace vs. Justice” discursive formation can be traced back to these early UNSC debates⁸³⁷.

⁸³⁶Mr. Zhang Yishan, China, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p. 2 (“Sudan”); Mr. Khalid, Pakistan, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p. 10 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 4 (“Sudan”); Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p.3 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p. 5 (“Sudan”); Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 4 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p. 5 (“Sudan”); Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.6 (“Sudan”).

⁸³⁷United Nations Security Council, Debate, S/PV.5015, 30 July 2004 (“Sudan”); United Nations Security Council, Debate, S/PV.5040, 18 September 2004 (“Sudan”); United Nations Security Council, Debate,

The first international public statements supporting Peace/Justice emphasized the primacy of a political solution in conflict resolution, favouring “peace” over “justice” as the main objective of international security policy and supporting a conservative interpretation of “sovereignty”, as the prerogative of a state to refuse intrusive international measures. Russia spoke of “approved diplomatic methods”⁸³⁸ in handling the Darfur conflict as well as in the international interaction with Sudan. Another characteristic of this position is the role assigned to the African Union. The A.U. is regarded as the main player in international efforts to mediate negotiations among the Sudanese parties. Pakistan, Algeria and China spoke during UNSC debates in favour of an “African solution” to Darfur⁸³⁹. On the other hand, the role of the international community was reduced to a “constructive” mediation approach. China suggested that the involvement of the international community should be minimal, consisting only of financial and humanitarian assistance as well as diplomatic support for political negotiations between the Darfuri rebels and the Government of the Sudan⁸⁴⁰. After 2005, when cleavages among the Council’s Members became sharper, Permanent Members China and Russia supported by countries such as Burkina Faso⁸⁴¹, Libya⁸⁴², Indonesia⁸⁴³, Vietnam⁸⁴⁴ or South Africa⁸⁴⁵ continued to prioritize the political track of

S/PV.5151, 24 March 2005 (“Sudan”); United Nations Security Council, Debate, S/PV.5153, 29 March 2005 (“Sudan”); United Nations Security Council, Debate, S/PV.5158, 31 March 2005 (“Sudan”).

⁸³⁸Mr. Denisov, Russia, United Nations Security Council, Debate, S/PV.5040, 18 September 2004, p. 4 (“Sudan”).

⁸³⁹Mr. Khalid, Pakistan, United Nations Security Council, Debate, S/PV.5015, 30 July 2004, p. 10 (“Sudan”); Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p.3 (“Sudan”); Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p. 5 (“Sudan”).

⁸⁴⁰Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5153, 29 March 2005, p. 5 (“Sudan”).

⁸⁴¹Mr. Kafando, Burkina Faso, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.7/8 (“Sudan”).

⁸⁴²Mr. Ettalhi, Lybian Arab Jamahiriya, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 9 (“Sudan”).

⁸⁴³Mr. Natalegawa, Indonesia, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 16 (“Sudan”).

⁸⁴⁴Mr. Hoang Chi Trung, Viet Nam, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 19; Mr. Le Luong Minh, Viet Nam, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 12 (“Sudan”).

conflict resolution and the normative preeminence of “peace”. Their main argument was that a lasting settlement to the Darfur conflict could only be achieved through political negotiations between the armed rebel groups and the Government of Sudan, within a framework that guaranteed the preservation of Sudan’s territorial integrity. The Russian Representative argued in his speech, after the adoption of UNSC Resolution 1769, that “a settlement can be achieved exclusively through political means” and that “the peace process must become genuinely comprehensive, with full respect for the sovereignty and territorial integrity of the Sudan and with the constructive cooperation of the international community”⁸⁴⁶.

Three Council meetings are significant milestones in the development of this position: the debate over the extension of the UNAMID mandate on July 31, 2008, when Libya and Burkina Faso tabled an amendment which would have deferred investigations in the al-Bashir case for one year; the discussion following the Prosecutor’s briefing on the Darfur situation of December 3, 2008; and the 20 March 2009 meeting, after Sudan’s decision to expel 13 international organizations from Darfur and revoke the license of 3 national ones in retaliation to the ICC’s Pre-Trial Chamber I’s decision to issue an Arrest Warrant for al-Bashir. These debates helped construct, discursively, an alternative approach to civil conflict. This approach favoured a different sequencing of measures in the UNSC’s Darfur policy, rather than international criminal justice mechanisms and military intervention. Moreover, three new discursive rearticulations successfully created different meanings for the key empty signifiers: “justice”, “peace”, “security”, and “sovereignty”. Although the counterdiscourse Peace/Justice failed to construct a new collective identity, the “just

⁸⁴⁵Mr. Kumalo, South Africa, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 16 (“Sudan”).

⁸⁴⁶Mr. Churkin, Russia, United Nations Security Council, Debate, 31 July 2007, S/PV.5727, p.5 (“Sudan”).

punisher” of the Justice discourse was appropriated under a slightly revised formula, as the “*sovereign just punisher*”.

One of the strengths of Peace/Justice is its reliance on a different discursive representation of civil war. The latter is described as the effect of multiple causal factors and of an underlying political power struggle. Although none of the statements in favour of the “political solution” make this argument explicit, the antagonism played out over the meaning of “peace” and “justice” reflects different worldviews and normative commitments. Some of these representations and norms have been already mentioned in connection with the POL-I and POL-II counterdiscourses: for example, the international system continued to be understood as a system of independent, unitary political units, founded on the U.N. Charter principle of the sovereign equality of states. The “political solution” advocated by China and Russia drew its strength from a definition of politics as the domain of power and interest-based bargaining, rather than moral norms and values. From this perspective, the behaviour of a sovereign state cannot be bound, in principle, by laws it did not consent to. International law plays therefore a secondary role in this worldview, since only state consent can legitimize the status of a new international legal norm. The opposition to more coercive measures against the Sudan was based on the defense of the principle of equal sovereignty. However, such arguments also referred back to the tenet that international law and order were grounded on state consent.

This worldview has persisted in international affairs and informs most of the opposition to the new cosmopolitanism embedded in the Justice discourse, which advocates a universal standard of behaviour that cuts across material and conceptual boundaries between individual and state actors. Similar to the African and American versions of “Politicization”, Peace/Justice is a relatively conservative discourse, prioritizing the institutional status quo and favouring “security” over goals such as

“justice” and “equality”. Although this worldview does not exclude the need for “justice”, the conservative version of this concept is “procedural justice”, i.e. the impartial application of the law, rather than a substantial standard of behaviour. Peace/Justice is thus a conservative revival of a particular post-World War II security practice. This discursive revival tried to incorporate and transform elements of the Justice discourse. It drew therefore on the strengths of Justice, but became powerful by relying on the common knowledge, or the background conditions, informing most diplomatic practice.

- *“Peace” rather than “Justice” and “Security” as “Peace”*

The mechanisms of this revival are identifiable at the discursive structural level, with the first rearticulation of Peace/Justice aiming to break the grounding dyad of the Justice discourse. The Algerian intervention during the March 2005 UNSC debate is the most representative of these early efforts to rearticulate the meaning of “peace” by creating a different policy alternative, rather than a referral to the International Criminal Court. Defending his country’s abstention on UNSCR 1593(2005), Mr. Baali argued that the process of fighting impunity must be aimed at restoring harmonious relations between the populations of Darfur, and “serve the cause of peace”⁸⁴⁷. The Darfur civil conflict and the problems it raised for international intervention were then unpacked into four different issues: the punishment of perpetrators, justice and reparations for the victims, national reconciliation and a political settlement through negotiations with the support of the Sudanese Government. Although this solution recreated a different hierarchy of policy objectives, it ultimately still favoured a minimalist role for the international community and gave precedence to the attainment of “peace”:

“We are convinced that the African Union can satisfy the requirements for peace without sacrificing the requirement of justice that we all owe the victims. For,

⁸⁴⁷Mr. Baali, Algeria, United Nations Security Council, Debate, S/PV.5158, 31 March 2005, p.4 (“Sudan”).

while it is true that there can be no peace without justice, *it is equally true that without peace, there will be no justice.*”⁸⁴⁸

The argument that peacemaking is the result of political negotiations, rather than of judicial processes, was superimposed to the representation of civil conflict as the outcome of a complex interplay of factors. Through the discursive unpacking of the Darfur issue into several different problems, the logic of difference at work in the counterdiscourse broke the previous chain of equivalence formulated by Justice and shaped several constituencies with distinct political demands: the victims’ grievances are identified as “reconciliation”, “reparation for losses”, and “economic development”, while the rebels are defined as “power seekers”, attempting to change the political organization of the Sudan in favour of a more suitable and fair institutional arrangement. This redefinition of the stakeholder groups and their demands was meant to legitimize the arguments of the Peace/Justice supporters that the political track was sequentially prior to “justice”. In his intervention on December 3, 2008, three months before the unsealing of the Bashir Arrest Warrant Application, the Libyan representative Mr. Ettalhi emphasized this point:

“We believe that peace and justice are inseparable objectives and are necessary for the settlement of any conflict, whether in Darfur or elsewhere. We believe that judicial justice can be achieved only in an environment of security and political stability. The establishment of peace and stability is thus an objective prerequisite for upholding justice. We therefore always attempt to avoid any measures that could have a negative impact on efforts to the establish security and achieve a political settlement.”⁸⁴⁹

⁸⁴⁸Mr. Liu Zhenmin, China, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p. 10/11 (“Sudan”).

⁸⁴⁹Mr. Ettalhi, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p.5 (“Sudan”).

The Algerian intervention portrays a more complex image of the Darfur civil conflict. Similar statements fed into this image and continued to sever “peace” from “justice”. Indonesia put the emphasis on “political reconciliation” and “addressing the root causes of the conflict rather than its symptoms”⁸⁵⁰ as well as “having synergy between the pursuit of justice and the maintenance of peace and security”⁸⁵¹. Burkina Faso argued that the “search for a political solution and the administration of justice [were] not at all contradictory”⁸⁵².

These articulatory efforts continued to intensify after the issuance of the first ICC Arrest Warrants in the Darfur situation, in 2006, and reached their peak in 2009. Statements in the Security Council increasingly connected “peace” with “security” or “stability”, rather than with “justice”⁸⁵³. This discursive attack against the stricter version of criminal justice norms enforcement continued to prioritize political negotiations and “security”. Several UNSC Member States criticized the actions of the International Criminal Court. They argued that the issuance of the Bashir Arrest Warrant had caused the security situation in Sudan and Darfur to deteriorate, and had encouraged the rebels to take further military actions⁸⁵⁴. Some of the expert hearings

⁸⁵⁰Mr. Natalegawa, Indonesia, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 16 (“Sudan”).

⁸⁵¹Mr. Kleib, Indonesia, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 14 (“Sudan”).

⁸⁵²Mr. Kafando, Burkina Faso, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

⁸⁵³Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.10 (“Sudan”); Mr. Liu Zhenmin, China, United Nations Security Council, Debate, S/PV.5789, 5 December 2007, p.10/11 (“Sudan”); Mr. Khalilzad, United States, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 22 (“Sudan”); Mr. Kleib, Indonesia, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.9 (“Sudan”); Mr. Ettlhi, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p.5 (“Sudan”); Mr. Zhang Yesui, China, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 9 (“Sudan”); Mr. Kleib, Indonesia, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 14 (“Sudan”); Mr. Liu Zhenmin, China, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 10 (“Sudan”); Mr. Churkin, Russia, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 10 (“Sudan”).

⁸⁵⁴Mr. Churkin, Russia, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.3 (“Sudan”); Mr. Mubarak, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.7 (“Sudan”); Mr. Ettlhi, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p.5 (“Sudan”); Mr. Zhang Yesui, China, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 9/10 (“Sudan”); Mr. Kumalo, South Africa, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p.16

conducted during this period supported this linkage. Salim Ahmed Salim, the Special Envoy of the African Union for Darfur, stated before the UNSC that “the number one concern of Darfurians [...] is the question of security”⁸⁵⁵. Such statements gave “security” the status of a political demand on behalf of the victims, strengthened its connections to politics and gave it a higher priority level than that of “justice”. The Indonesian Representative stressed this new hierarchy in one of his interventions, where he portrayed all other means of intervention as secondary to negotiations:

“Peacekeeping operations, humanitarian assistance, and courts of justice can and must complement the political process and perhaps even create the conditions for it, but they cannot be a substitute for it.”⁸⁵⁶

These arguments legitimized the rejection by Peace/Justice supporters of Luis Moreno-Ocampo’s appeals for the enforcement of the outstanding ICC arrest warrants and more political pressure on the Sudan. The Justice camp was criticized for its presumably simplistic approach to Darfur, and for favouring punishment at the expense of all other grievances. This counterdiscourse does not reject however either the norm of individual criminal responsibility, or the necessity of its enforcement. Rather, “justice” itself is rearticulated in a way that allows its insertion in a new chain of equivalent relationships including the rearticulated elements of “sovereignty” and “security”.

- *“Justice” is redefined as “Reconciliation” and “Development”*

The rearticulation of “Justice” takes place against the background of the Bashir Arrest Warrant debate, and bears a particular African imprint. Peace/Justice does not reject

(“Sudan”); Mr. Liu Zhenmin, China, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 10 (“Sudan”); Mr. Churkin, Russia, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 10 (“Sudan”); Mr. Le Luong Minh, Viet Nam, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 12 (“Sudan”); Mr. Dabbashi, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.6096, 20 March 2009, p. 13/14 (“Sudan”).

⁸⁵⁵Mr. Salim Ahmed Salim, Special Envoy of the African Union for Darfur, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 7 (“Sudan”).

⁸⁵⁶Mr. Natalegawa, Indonesia, United Nations Security Council, Debate, S/PV.5922, 24 June 2008, p. 16 (“Sudan”).

Justice claims concerning the impact of “justice” on “peace”, or the normative significance of the principle of individual criminal responsibility. This is simultaneously one of the strengths of the counterdiscourse and its weakest point. If the capacity of Peace/Justice to reappropriate key elements from the hegemonic discourse is proof of its ability to process novel political demands, such as the victims’ right to redress, it also shows the extent to which Justice has already permeated the framework of international security policy. In short, this is an implicit acknowledgment of the representational power enjoyed by the hegemonic discourse.

The reinterpretation of “justice” and the creation of a new chain of equivalent relationships took place in the aftermath of the 2005 Report of the International Commission of Inquiry on Darfur. At that time, African countries were particularly keen to connect “reconciliation” and “development” to both “peace” and “justice”. Libya justified its request to amend Resolution 1828⁸⁵⁷ by referencing the African Union’s Peace and Security Council Communique of 21 July 2008 as well as the A.U. Assembly’s Decision of the same year on the “Abuse of the Principle of Universal Jurisdiction against African Leaders”. In both documents the A.U. had already warned against the pernicious impact of a too strict judicial approach for long-term peace⁸⁵⁸. Gradually, supported by multiple discursive efforts trying to justify the difficult middle-way position of ICC’s African members, the notion of an “African solution” for Darfur gained substance. Burkina Faso attempted to formulate the concept of “equal justice for all in the Sudan, and in Darfur in particular” and defended the controversial ICC Arrest Warrant for Bashir by arguing that the Court’s actions must be undertaken in the “context of a purely judicial approach” whose objectives were “revealing the truth, prosecuting the guilty and protecting the interests of the

⁸⁵⁷United Nations Security Council Resolution 1828(2008), S/RES/1828(2008), 31 July 2008 („Extension of UNAMID mandate“).

⁸⁵⁸Mr. Mubarak, Libyan Arab Jamahiriya, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p.7 (“Sudan”).

victims”⁸⁵⁹. These objectives were further reformulated in a way that connected a normative commitment to the fight against impunity with the practice of truth-telling, but which excluded international prosecution for atrocities.

This discursive bridge was built through the creation of a distinct element, “reconciliation”, which entered a chain of equivalent relationships with “justice” and “peace”⁸⁶⁰. International experts, such as the joint African Union-U.N. Chief Mediator for Darfur and the UNAMID Representative added the element “development”⁸⁶¹ in this discursive chain and gave it an equal status to that of “justice”. Their Security Council statements advocated a more elaborate approach to the conflict. They took into consideration the victims’ need for material compensation and economic as well as social development. By 2009, despite the lack of progress in the Darfur political negotiations, these redefinitions had already legitimized a particular language use and a softer version of international intervention. In their presentation before the Security Council, Thabo Mbeki, head of the African Union High Level Panel on Darfur and Jean Ping, Chairperson of the Commission of the African Union spoke about the “inseparable” challenges of “peace, justice, and reconciliation”⁸⁶² as well as the need for a Sudanese solution to the conflict, rather than external intervention⁸⁶³.

- *“Accountability” keeps its meaning as “Individual criminal responsibility” and becomes linked to “Rule of Law”*

The lack of substantive progress in the political negotiations between the GoS and the rebels continued to undermine peace efforts. The inclusion of the main element of the

⁸⁵⁹Mr. Kafando, Burkina Faso, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

⁸⁶⁰Mr. Hoang Chi Trung, Viet Nam, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 19 (“Sudan”).

⁸⁶¹Mr. Wang Guangya, China, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.10 (“Sudan”); Mr. Bassole, Joint African Union-United Nations Chief Mediator for Darfur, United Nations Security Council, Debate, S/PV.6227, 30 November 2009, p. 4 (“Sudan”); Mr. Ibrahim Gambari, Joint Special Representative for the African Union and the United Nations Hybrid Operation in Darfur, United Nations Security Council, Debate, S/PV.6318, 20 May 2010, p.4 (“Sudan”).

⁸⁶²Ping, Jean, United Nations Security Council, Debate, 21 December 2009, p. 4 (“Sudan”).

⁸⁶³Mbeki, Thabo, United Nations Security Council, Debate, S/PV.6251, 21 December 2009, p. 6 (“Sudan”).

Justice discourse within Peace/Justice had indirectly acknowledged the legitimacy of the argument connecting international criminal law to the restoration of “sustainable peace”. Therefore, the counterdiscourse did not position itself completely outside the new hegemony. The additional inclusion of “accountability” qua “individual criminal responsibility”, without other reformulations, increased pressure on Peace/Justice to establish its own legitimacy claims.

Discourse producers struggled therefore to create a discursive frontier with the Justice hegemonic discourse by putting forth an alternative version of the element “justice”. This strategy included a reappraisal of the meaning of “rule of law” and of its relationship to “justice”, “accountability”, and “sovereignty”. During Security Council meeting of December 3, 2008, South Africa argued that the Court’s ability to deter war crimes served the international promotion of the “rule of law”. Mr. Kumalo acknowledged the moral and legal significance of international criminal law norms and their beneficial effect on international peace. However, his intervention tried to disconnect the international enforcement of individual criminal accountability from the Council’s security policy. This mechanism was arguably too blunt to be considered an effective response to a complicated civil conflict with multiple causes⁸⁶⁴. Similar statements questioned the preventive role of international criminal justice and favoured its more conservative definition as “rule of law”⁸⁶⁵.

The Prosecutor of the International Criminal Court lent his support to this interpretation, but used the argument to strengthen his own agenda. During the Council’s December 2008 meeting on Sudan, Luis Moreno-Ocampo defended his actions in the Bashir case by emphasizing the legal requirements of his mandate. Trying to garner support for a decision that had already triggered a considerable amount of

⁸⁶⁴Mr. Kumalo, South Africa, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

⁸⁶⁵Mr. Kafando, Burkina Faso, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

political contestation, the Prosecutor agreed with this reaffirmation of the ICC's purely judicial role. In his declarations before the Security Council⁸⁶⁶ as well as other public interventions⁸⁶⁷ Moreno-Ocampo insisted that his mandate required him to follow the evidence "without fear, favour, or political consideration"⁸⁶⁸.

This discursive strategy continued throughout 2008 and 2009, with the ICC's Office of the Prosecutor endorsing a purely judicial role for the Court⁸⁶⁹. Through such permutations in meaning the "fight against impunity" shifted from the domain of the political to the legal field. However, the distinction between "politics" and "law" weakened the claims of Justice for priority in the sequencing of international measures. During the December 2008 debate, Mr. Kumalo reminded Member States that the Security Council had a different mandate than the International Criminal Court, which required the UNSC to consider the broader political context of its actions. South Africa had supported the African Union request for a one-year deferral in the Bashir case, while at the same time trying to defend the Prosecutor's Arrest Warrant Application:

"The only issue I wanted to make clear is that we are the Security Council. *We are not lawyers. We are not prosecutors.* We sit here, having to make decisions, and we look at the entire Rome Statute. The Rome Statute makes a provision for

⁸⁶⁶Moreno-Ocampo, Luis, Statement to the United Nations Security Council on the Situation in Darfur, the Sudan, Pursuant to UNSCR 1593(2005), 5 June 2009; Moreno-Ocampo, Luis, Statement to the United Nations Security Council on the Situation in Darfur, the Sudan, Pursuant to UNSCR 1593(2005), New York, 4 December 2009.

⁸⁶⁷Moreno-Ocampo, Luis, Remarks, "Justice in Post-Armed Conflicts and the ICC: Reduction of Impunity and Support to International Justice" Conference, hosted by Professor Cherif Bassiouni and the League of Arab States, Cairo, 15 January 2009; Moreno-Ocampo, Luis, Keynote Address, New Haven, 6 February 2009; Moreno-Ocampo, Luis, The Role of International Judicial Bodies in Administering the Rule of Law, Remarks, Qatar Law Forum, Doha, Qatar, 30 May 2009; Moreno-Ocampo, Luis, Address to the Assembly of States Parties, Eighth Session of the Assembly of States Parties, The Hague, 18 November 2009; Moreno-Ocampo, Luis, Statement, "Working with Africa: The View from the ICC Prosecutor's Office", ISS Symposium on "The ICC That Africa Wants", Cape Winelands, 9 November 2009; Ocampo, Luis Moreno. "Prosecutor's Keynote Address, Council on Foreign Relations, Washington DC, 4 February 2010.

⁸⁶⁸Moreno-Ocampo, Luis, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 20 ("Sudan").

⁸⁶⁹Bensouda, Fatou, Deputy Prosecutor's Remarks, "Introduction to the Rome Statute Establishing the ICC and Africa's Involvement with the ICC", 14 April 2009; Bensouda, Fatou, Statement by the Deputy Prosecutor of the International Criminal Court, Overview of Situations and Cases before the ICC, linked with a Discussion of the Recent Bashir Arrest Warrant, Pretoria, 15 April 2009.

this article to be used, and the Security Council will, at the time when it takes this issue up, balance the two things: the maintenance of international peace and security, and the fight against impunity. The Security Council must be for fighting impunity, but there is also the other side to it.⁸⁷⁰

However, not every State Member in the Council assented to this reformulation. Croatia, drawing on its past civil war experience, had previously contested the sequencing of “politics”, “peace”, and then “justice”. Mr. Skracic argued that impunity could not bring stability to a conflict, but rather deferred the realization of a political settlement. The best foundation for “real” and “sustainable” peace was “justice and justice alone”⁸⁷¹. Costa Rica pushed the argument further and, in its support for a stronger role for the ICC, portrayed Darfur as the first case of the Responsibility to Protect:

“We are in the presence of a State that does not want to — or is not able to — protect its population, who are the target of war crimes, crimes against humanity, genocide and ethnic cleansing. How much longer will the Council delay in examining whether we are seeing *the first case of the responsibility to protect*, as stipulated in the 2005 World Summit Outcome?”⁸⁷²

Costa Rica’s intervention refocused attention on the atrocities committed against civilians and the need for an institution to assume responsibility for their prosecution. Nevertheless, against the background of a protracted conflict in Darfur, such statements strengthened, rather than weakened Peace/Justice. Because the focus of the debate shifted slightly towards a discussion of the merits of a purely judicial approach to international peace, Peace/Justice supporters used this framing to support their claim that a solution

⁸⁷⁰Mr. Kumalo, South Africa, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

⁸⁷¹Mr. Skracic, Croatia, United Nations Security Council, Debate, S/PV.5947, 31 July 2008, p. 4 (“Sudan”).

⁸⁷²Mr. Urbina, Costa Rica, United Nations Security Council, Debate, S/PV.6028, 3 December 2008, p. 13 (“Sudan”).

for Darfur could only be found through political means, i.e. international diplomacy and negotiations. In Mr. Kumalo's intervention, the relationship between "rule of law" and "justice" was used to bolster the argument that the ICC's work had a positive, yet relatively long-term effect on the ground.

The speedier solution to a conflict was therefore not in the hands of a Court, but of a political body like the UNSC or the African Union. The distinction between the mandates of the U.N. Security Council and the International Criminal Court legitimized, according to Peace/Justice, the division of labour between the two institutions. While the Security Council was tasked with the political job of restoring international peace, the "fight against impunity" was assigned to the ICC. This redistribution of tasks, together with a hierarchy of security policy tools favouring negotiations, strengthened the conservative view of international politics and the subsidiary role of international law. The reformulation of "sovereignty" empowered this message further.

- *"Sovereignty" becomes "equal Sovereignty"*

The linking of "accountability" and the "rule of law" transformed the latter into an element of a more conservative international discourse. This discursive reformulation were reinforced through the creation of a similar equivalent relationship between "rule of law" and "sovereignty". In an attempt to reappropriate this pair and deflect the effects of Justice on its meaning, Peace/Justice supporters tried to absorb the Darfuris' specific demands and merge them with a more general request for the peace and stability of the entire Sudan. This process was anchored in the redefinition of "equality". In its intervention after the adoption of Resolution 1828, Burkina Faso referred to "equal justice" as the prerequisite for the success of the "political solution":

„Faithful to the principles of justice and the rule of law, Burkina Faso wishes to reaffirm, as the African Union has already done, its dedication to fighting impunity and to promoting *equal justice* for all in the Sudan, and in

Darfur in particular, without which no political solution to the crisis can endure. That is the only way to ensure that justice is done on behalf of the thousands of victims of the war.”⁸⁷³

The first effect of this new reformulation of “justice” was to increase the number of stakeholders in the Darfur peace process, which was virtually extended to the entire population of Sudan. The second was to introduce a new political claim against Justice: the demand for more equality. Because it created a new discursive constituency, which brought together the Darfur victims and the Sudanese citizens, the insertion of this discursive element had an additional political dimension. The debates in the Council, revolving around the meaning of “equality”, helped diffuse this effect further. China’s interventions connected “equality” to “sovereignty”. The Chinese favoured a political settlement through negotiations “on equal footing”, with respect for the “sovereignty and territorial integrity of Sudan”⁸⁷⁴. The pairing of “equality” with “sovereignty” diluted the former’s normative appeal, but repackaged the latter as a new, revolutionary demand against the Justice hegemony.

The egalitarian logic invoked in these arguments cannot conceal however the conservative character of the counterdiscourse. The “sovereignty” claim brought forward by Peace/Justice might superficially seem to create a more inclusive format for political negotiations. In practice, however, the counterdiscourse strengthened the position of the Sudanese Government and legitimized a softer, less intrusive type of international intervention. The insertion of “equality” into the chain of equivalent relationships endorsed Sudan’s claim of being the sole authority which could rightfully enforce justice on its territory, and helped the GoS rejected the ICC Prosecutor’s accusations of non-cooperation.

⁸⁷³Mr. Kafando, Burkina Faso, United Nations Security Reports, Debate, S/PV.6028, 3 December 2008, p. 12 (“Sudan”).

⁸⁷⁴Mr. Wang Guangya, China, United Nations Security Council, Debate, 31 July 2007, S/PV.5727, p.10 (“Sudan”).

The adoption of Resolution 1769(2008) and the deployment of the hybrid U.N./African Union Peacekeeping Mission in Darfur strengthened Peace/Justice further, but also revealed its core weakness. The result of a protracted international debate and of a lengthy as well as contentious deployment, UNAMID was described as ‘an untested and unwanted hybrid model for a peacekeeping operation’, unable to bring about a turnaround in either the humanitarian situation, or the political process⁸⁷⁵. Discursively however, UNAMID catered successfully both to the logic of “equal sovereignty” advocated by Peace/Justice supporters and, at least superficially, to the Justice demands for more forceful international measures in the protection of civilians. Qatar stressed that Sudan’s consent to the deployment of the hybrid mission was a sign of its willingness to cooperate⁸⁷⁶. Russia reiterated the importance of respecting Sudanese sovereignty and territorial integrity, arguing that the international community must have a constructive role in this cooperation⁸⁷⁷. Such statements drew international attention away from one of the more controversial issues related to UNAMID. Although Resolution 1769 was adopted under Chapter VII U.N. Charter, its mandate included “protection of civilians” only as a peripheral element whose implementation was to be “without prejudice to the responsibility of the Government of Sudan”⁸⁷⁸. This provision left UNAMID few possibilities of actively engaging in the protection of Darfuris, and would eventually delegitimize U.N. presence on the ground. Peace/Justice failed therefore to deliver its promise of “peace” and to provide a positive identification point for a broader constituency. The new counterdiscourse proved unable to overcome the normative gap between its professed embrace of “accountability” qua “individual criminal responsibility” and support for traditional sovereignty claims.

⁸⁷⁵MacKinnon, *The United Nations Security Council*, 2010, p. 93.

⁸⁷⁶Mr. Al-Nasser, Qatar, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.6 (“Sudan”).

⁸⁷⁷Mr. Churkin, Russia, United Nations Security Council, Debate, S/PV.5727, 31 July 2007, p.5 (“Sudan”).

⁸⁷⁸United Nations Security Council Resolution 1769(2007), S/RES/1769, 31 July 2007, §15(a)(ii).

Identity-building

The Collection of Quotes comprised in Annex 8 shows no discursive markers of a new identity. Peace/Justice recycled the main collective identity of the Justice discourse into a slightly new version: the “sovereign just punisher”. The “sovereign” qualification to the “just punisher” was added indirectly through the element “sovereignty”. Because of its acceptance of “accountability” qua “individual criminal responsibility”, Peace/Justice did not reject the main identity of Justice. However, attempts to include “sovereignty” claims on an equal footing with “accountability” suggest that the enforcer of norms must be a sovereign state, hence the *sovereign* “just punisher”.

Chapter 5. Conclusion

Hegemonic discourses are by definition unstable social structures, open to the rearticulation of their dominant meanings. To use a simile from geography, they rise and are broken in similar ways to the waves of a lake. The main difference is that discourses do not only emerge, but they also shape their environment, i.e. the field of discursivity in which they are born. The results of my empirical analysis suggest that despite three major attempts at substituting “Justice” with nodal signifiers “procedural Justice” (POL-I), “Politicization” (POL-II) and “Peace” (Peace/Justice), the field of international security continues to be dominated by criminal justice concepts. The discursive mechanisms I have employed as conceptual tools in my analysis of hegemonization have helped me map the field of discursivity for one of the most important international policy areas in 21st century international relations.

The starting point of this research project is an empirical observation. In the space of approximately eight years, between the entry into force of the International Criminal Court Rome Statute, on 1 July 2002, and the First Review Conference of the ICC’s Foundational Act, between 31 May and 11 of June 2010, the language and

practice of international security changed significantly. Policy reform in the area of international peace and security has constantly been a source of soul-searching debates at the United Nations Security Council, especially after massive moral failures in cases such as Rwanda and Srebrenica. The dilemma of humanitarian intervention has confronted the Council as well as the international community with a practical and normative puzzle: how to justify external military interventions in a sovereign state, whose unqualified authority over its territory, and the population living within its geographical confines, is explicitly guaranteed by the U.N. Charter?

The historical background characterizing the beginning of the 21st century displays as well marked differences by comparison to previous years. During the seemingly long and stable decades of the Cold War, neither statesmen, nor academics showed much trust in international law as a framework guiding international interaction. The Neorealist School of IR and its concept of bipolarity dominated international relations research. After 1989 however, the changes in the structure of the international system suddenly gave way to a new mode of speaking and, arguably, behaving in international affairs. From this longer-view-of-human-history perspective, the adoption in 1998 of the Rome Statute of the International Criminal Court was an unprecedented achievement⁸⁷⁹. Debates and drafts which had previously stalled for years at the International Law Commission and in the United Nations General Assembly finally bore fruit⁸⁸⁰. Two distinct expert projects, a Draft Code of International Crimes and the Statute of an international criminal court, came together in the 1998 Rome Treaty. This document is an extraordinary and unexpected result of decades of political negotiations and, possibly, the epitome of the 1990s diffusion of criminal justice concepts, the effect of several United Nations and Hybrid International Criminal Tribunals⁸⁸¹. The International Criminal Court continues this trend of criminal justice enforcement in

⁸⁷⁹Anderson, *The Rise of International Criminal Law*, 2009.

⁸⁸⁰Schabas, *An Introduction to the International Criminal Court*, 2004, p. 8-10.

⁸⁸¹Roper and Barria, *Designing Criminal Tribunals*, 2006.

international security policy. Its activity has also had positive effects on the revival of international law in the governance of international affairs.

Understanding, describing, and evaluating the Court's discursive impact required however a triple strategy, one which combined the theoretical tools of ideology, conflict, and international policy research. "War" is not only the description of an armed confrontation between several opposing, militarily organized social actors. The metaphor of "war" is also a representational strategy that allowed me to unearth the politics hidden in sedimented social structures. The development of international criminal law is significant not only from an institutional and normative perspective. By collapsing "law" into "discourse" and by circumscribing the latter to the international public debate on security policy, I tried to investigate empirically macrolevel historical change. My concept of "discourse" is an analytical tool borrowed from the Poststructuralist Discourse Theory of Ernesto Laclau and Chantal Mouffe. Conceptually, PDT's "discourse" is rooted in Michel Foucault's genealogical and archeological methods, Derriderian deconstruction as well as the NeoMarxist critique of ideology. PDT assumptions posit the primacy of politics in social relations as well as the historical contingency of meaning and identity-building processes. These assumptions undermine the representational stability of international relations, opening up a new perspective on the transnational sociopolitical processes at work in global politics. PDT starts from the premise that language shapes our social world and is, therefore, the empirical entry point for researching such processes and, as I argued in my thesis, international politics. Starting from an empirical observation, namely the discursive inroads made by criminal justice principles, norms, and vocabulary into UNSC debates on peace and security, I developed the following research question: How did the Justice discourse hegemonize the field of international security?

There is no standard methodology for investigating processes of discursive hegemony in international security policy. PDT rejects as well the reproduction of methods and their “mechanical application” to empirical material⁸⁸². Rather, the concept of “problematization” is used to describe the process of developing customized research designs for the “problematized” research object⁸⁸³. The emergence of a new ideology in one of the most important policy fields of international relations is such a problematized research object. The inductive procedure I have used in order to trace the workings of discursive hegemonization comprises two methodological steps: first, a qualitative study which addressed the challenges of circumscribing empirically the boundaries of the discourse and the respective field of discursivity in international security; second, a hermeneutic approach applied to the findings of my primary data collection procedure. A qualitative study of public discourse must combine a diachronic and synchronic approach to historical data. I have therefore parceled out and coded approximately eight years of international public debate in order to facilitate the second, hermeneutic step in my procedure.

My empirical findings, presented in Chapters 3 and 4, portray the Justice hegemony as the result of an international process of coalition-building through the linking of social demands, the creation of a strong collective identity, the emergence of the nodal signifier “Justice”, its gripping of previously empty signifiers floating in the discursivity field of international security as well as the production of a narrative structuring the new political imaginary. The Justice narrative increases the *jouissance* of the political Subject by offering the morally appealing identity of the “law enforcer” qua “just punisher” as a point of identification. The remaining subject positions, the “victims” and the “villains”, have only a secondary, supporting role. They increase, indirectly, the symbolic appeal of the “just punisher”.

⁸⁸²Howarth, *Applying Discourse Theory*, 2005, p. 317.

⁸⁸³*Ibid.*, p. 318.

These discursive changes take place under particular historic conditions: the entering into force of the Rome Statute of the International Criminal Court, in July 2002, marks the beginning of a long lasting discursive relationship between international criminal law and international security policy. The United Nations Security Council is the main forum where Justice qua discourse displays its hegemonic tendencies and where the earliest signs of discursive counter-reactions can be identified. Because Poststructuralism assumes that “society” as a system of stable representations can never be fully constituted, change becomes a fundamental characteristic of discourse. In short, the theory posits that discourses are always in flux. Hegemonies could be therefore interpreted as sociopolitical processes trying to stabilize this constant instability of meanings and identities.

PDT identifies political and fantasmatic logics as the mechanisms governing the emergence of new hegemonies. By unpacking these logics into seven Meso-level Discursive Mechanisms, I trace the emergence of Justice as an (Neoliberal) ideology grounded in the vocabulary of international criminal law and borrowing from previous policy discourses on the *Responsibility to Protect* and *Human Security*. In this novel representation of international order “Peace” becomes “sustainable”, “Accountability” is “individual criminal responsibility”, “Sovereignty” is “responsibility”, “Security” is “human”, “Protection” is “prevention”, and “Rule of law” is narrowed down to signify domestic “judicial reform”. These elements structure the new discourse and popularize its key meanings. Justice also gives content to the “We”-collective identity by creating the subject position of the “just punisher” qua enforcer of international law. The discourse producers supporting this process consist of an active coalition of International Criminal Court Members (among which the Permanent U.N. Security Council Members France and Great Britain), NGOs, international experts/public

servants, and academics. The field of production for the new Justice ideology encompasses several institutional layers and the virtual space provided by the media.

From the early 2000s onwards, the language of Justice has permeated Security Council practice and its responses to civil wars and post-conflict situations. For advocates of forceful international interventions however, this new security ideology represents a step back in the fight against impunity. From their perspective, the discursive ability of Justice to overcome normative clashes between U.N. Charter provisions is complemented by a possible justification for inaction. Because the policy of “prevention” qua “protection” leads naturally to the selection of the International Criminal Court as a legitimate actor of international security, Justice avoids the normative difficulties of the humanitarian intervention dilemma by shifting the responsibility of reaction onto an international criminal tribunal. The Justice discourse legitimizes therefore the involvement of the International Criminal Court in the U.N. Council’s security policy while, simultaneously, decreasing the UNSC’ obligation to offer active, military protection to civilians.

The empirical findings in Chapter 3 suggest as well that this new attempt at universalization has its limits. Political imaginaries and narratives can offer Subjects new modes of identification, but discursive political alliances in the field of international security policy are mostly short-lived. The difficult marriage between the signifiers “peace” and “justice” shows empirically the discursive and temporal limits of such a relationship. The discursive frontier between these two elements is about to become another site of antagonism once “Peace” is appropriated by a new counterdiscourse. Although the challenges coming from Politicization I & II as well as Peace/Justice have not been sufficiently credible, the dominant discourse remains unstable and open to other discursive attacks.

POL-I, POL-II and Peace/Justice have demonstrated their potential to challenge the Justice discourse in international debates, legitimize their own normative claims, and offer policy alternatives for international security measures. However, during the historical period under analysis, these discourses failed to garner sufficient political support in order to overthrow Justice. Despite its deep ideological opposition to the International Criminal Court, American foreign policy discourse turned away from POL-I, opting instead to cooperate with the ICC. The Security Council refused to discuss the African Union request for a deferral of the ICC investigation in the al-Bashir case. The Court's supporters have also rejected the normative and policy claims of Peace/Justice. Because the meaning of "Justice" as "international criminal justice" and of "Accountability" as "individual criminal responsibility" have remained remarkably stable, their inclusion in POL-I, POL-II, and Peace/Justice weakened attempts to refashion a new hegemonic discourse in international security policy. A brief comparative analysis of the structural properties of these counterdiscourses suggests that only a couple of key empty signifiers have undergone changes of meaning. POL-I is a relatively unsophisticated discourse, with only three empty signifiers: "Rule of law" becomes synonymous with "procedural justice", "Sovereignty" takes on the double meaning of "freedom" and "protection", while "Accountability" splits into two discursive elements. The rearticulations of "Justice", "Sovereignty", and "Peace" as well as the additional linking of "Accountability" with the "Rule of law" are similarities that cut across discursive boundaries, bringing together the three counterdiscourses.

The empirical findings I presented in Chapter 4 suggest that these distinct discursive formations have all tried, so far unsuccessfully, to decouple "responsibility" from "Sovereignty" and "international criminal law" from "Justice". POL-I, a discourse shaped by American domestic politics, attacked directly the articulation of "Justice" qua "criminal justice" and constructed an American Self with little political appeal to other

international actors. Likewise, POL-II failed to construct a broad political consensus on its key reformulation of “Justice” qua “procedure” and did not construct a popular alternative to the identity of the “just punisher”. This discursive strategy placed POL-II in a position hierarchically inferior to Justice and was unsuccessful in ousting the latter from its hegemonic status in international security. Finally, despite its international roots, Peace/Justice did not offer any new alternatives in terms of meanings or identities. Its support for “equal sovereignty” and a definition of “rule of law” tied to “accountability” only served to reinforce the older political imaginary discourses such as the *Responsibility to Protect* and *Human Security* had tried to challenge. From this perspective, Peace/Justice is not a new discursive formation, but rather the revival of former Cold War orthodoxies about international relations, security, and the principle of equal sovereignty. Thus, the slight revision of the main identity of Justice into the “sovereign just punisher” only served to reinforce the symbolic appeal of the current hegemonic discourse.

In conclusion, my empirical analysis of discourse in international security suggests that Justice has successfully hegemonized the discursivity field of international security. There is a lot more left to say about the elements making up the new ideology, or the content of Justice when compared to the other ideologies permeating the public space of international politics. The “sustainability” of “Peace” is a discursive development congruent with similar changes in other policy fields, where concepts borrowed from disciplines akin to economics have achieved higher symbolic status. One could investigate as well whether Justice does indeed belong to the Neoliberal ideological family and what would be its distinctive traits. Such potential research questions are food for thought and, perhaps, material for future studies. In my project, I researched the politics and normative changes of a challenging international policy

field, an objective that has gradually taken the shape of a hermeneutic and qualitative study of a longer historical period.

Scholars of Poststructuralist Discourse Theory are usually quite explicit about the scientific challenges of their research program⁸⁸⁴. Ernesto Laclau and Chantal Mouffe's approach does not identify cause-and-effect type of explanations linking distinct factors to various political dynamics. Compared to mainstream IR theories such as Neorealism, PDT is agnostic about the actors and laws governing the international system, or whether such a system exists at all. The theory does not posit a relationship of equivalence between the life-world of international politics and a particular image of the international political system. Rather, PDT problematizes such representations of international relations and offers an empirical entry point into analyses of how international politics, as a field of international social action, works. Laclau and Mouffe's critique of Marxist materialism and their conceptual reliance on a Hegelian view of history shifts the emphasis from observations of microlevel sociopolitical processes to aggregate social behaviour. This distinction is comparable to the one between micro vs. macroeconomic research. Only some IR research questions warrant therefore an engagement with this theory. In one important area, however, PDT assumptions prove invaluable: understanding, interpreting, and evaluating historical-structural change in international relations.

A notoriously difficult subject for IR theories, structural change is more amenable to discourse theoretical-approaches. Deconstruction has sown doubt about the images of international order either explicitly, or implicitly assumed by classical IR theories. Deconstruction questions the objectifying tendencies of IR representations, suggesting instead that the consensus naturalizing these images should be exposed as primarily political. This hermeneutic turn in IR has a *caveat*: rather than hard scientific

⁸⁸⁴Howarth, *Applying Discourse Theory*, 2005.

truth, one can only uncover struggles over meaning between various political alliances and ultimately expose this struggle as the generator of contemporary policies. At a cursory glance, the Justice discourse brings less ideological change in international security policy than one might expect given its social roots and underdog status. This result does not imply however that new political vocabularies do not emerge in policy fields. On the contrary, my findings suggest that discursive spinoffs of existent ideologies are actively transforming the institutional frameworks in which international politics and policies are developed, thereby contributing to an inexorable process of historical change.

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Annex 1 – Coding Schedule

Type of Data Analysis	Sampling Outcome	Basic Unit of Analysis	Scope	Examples	Rules for inclusion/Exclusion
Primary Data Analysis	Collection of Quotes (Annex 5)	Arguments in favour of ICC, justice, and criminal justice mechanisms Hegemonic discourse: “Justice”	Primary data sources	“The United Nations, through many complex operations, has learnt that the rule of law is not a luxury and that justice is not a side issue.”	Broadest inclusion, text to be coded unless argument specifically against the ICC
Primary Data Analysis	Collection of Quotes (Annex 6)	Argument against the ICC and/or criminal justice mechanisms Counterdiscourse 1: US “Politicization”	Primary data sources	“It is easy to imagine the U.S. or Israel becoming a target of a U.N. witch hunt, with officials or soldiers being sent before judges handpicked by undemocratic countries.”	Broadest inclusion, unless argument specifically in favour of the ICC
Primary Data Analysis	Collection of Quotes (Annex 7)	Argument against the ICC and/or criminal justice mechanisms Counterdiscourse 2: AU “Politicization”	Primary data sources	“However, it would probably be a mistake to limit the work of the ICC in Sudan to combating impunity. We regard that work in broader terms, as part of the overall efforts to resolve the situation in that region.”	Broadest inclusion, unless argument specifically in favour of the ICC
Primary Data Analysis	Collection of Quotes (Annex 8)	Argument against the ICC and/or criminal justice mechanisms Counterdiscourse 3: “Peace vs. “Justice”	Primary data sources	“The process of fighting impunity must therefore also aim at restoring harmonious relations between the populations of Darfur and serve the cause of peace.”	Broadest inclusion, unless argument specifically in favour of the ICC
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element “Justice”	Justice discourse (2002/2010)	“In the long term, justice always acts in the service of peace. It is therefore important to prevent impunity.”	“Justice” is the main element of the coded fragment.
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element “Peace”	Justice discourse (2002/2010)	“A peace achieved without the foundations of justice and the rule of law may be tentative and fragile. We should thus view the institution of justice and the rule of law in post-conflict societies as an investment in a sustainable, durable peace.”	“Peace” is the main element of the coded fragment.

Type of Data Analysis	Sampling Outcome	Basic Unit of Analysis	Scope	Examples	Rules for inclusion/Exclusion
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element "Security"	Justice discourse (2002/2010)	"The United Nations must also give priority to providing security to peoples in the greatest need of it, to ensuring compliance with agreements, assuring State reform and preventing the breakdown of the State and laying down the bases for the establishment of a modern State."	"Security" is the main element of the coded fragment.
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element "Sovereignty"	Justice discourse (2002/2010)	"The Concept of sovereignty has evolved from a supreme, absolute and unlimited jurisdictional authority to an authority that is equal to that of any other independent State, but limited by international law, humanitarian law and human rights law and based on the free will of the people of the territory in question."	Flexibility in the selection of text segments. Focus on "sovereignty" as the main element, but also on substitutes such as "the government of..." or "the state of..."
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element "Protection"	Justice discourse (2002/2010)	"I trust you will not flinch from creating a court strong and independent enough to carry out its task. It must be an instrument of justice, not expediency. It must be able to protect the weak against the strong."	Flexibility in the selection of text segments. "Protection" need not be the main element.
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element "Accountability"	Justice discourse (2002/2010)	"The Government established the Independent Committee as a reflection of the national will we attach importance to the principles of accountability, the administration of justice and an end to impunity."	Focus on "accountability" as the main element of the text segment. The emerging accountability/no impunity pair to be selected under the "accountability" code.
Secondary Data Analysis	Coded segments (Annex 10)	Meaning of Element "Rule of Law"	Justice discourse (2002/2010)	"Governing a country requires the rule of law, as does managing international relations."	Focus on "rule of law" as the main element of the text segment.
Secondary Data Analysis	Coded segments (Annex 9)	Identity/"We"	Justice discourse (2002/2010)	"our goal is to build a better global village where there are no wars or conflicts as all countries live in peace"	Focus on text segments which refer to a "we" – collective self.

Type of Data Analysis	Sampling Outcome	Basic Unit of Analysis	Scope	Examples	Rules for inclusion/Exclusion
				and stability”	
Secondary Data Analysis	Coded segments (Annex 9)	Identity/”Other”	Justice discourse (2002/2010)	“The work of the many organisms and bodies of the United Nations system is intended to benefit the ordinary man in the street, to improve his conditions of life and to ensure a better world for him and future generations.”	Focus on text segments which refer to the Self’s alter ego.
Secondary Data Analysis	Coded segments (Annex 11)	Fantasy/”Justice”	Justice discourse (2002/2010)	“Our goal is to build a better global village where there are no wars or conflicts as all countries live in peace and stability; where there is no poverty or hunger as all the inhabitants enjoy development and dignity; and where there is no discrimination or prejudice and all peoples and civilizations coexist in harmony complementing and enriching one (an)other. To achieve all that, we the peoples need a world of democracy and the rule of law, and we need a stronger United Nations. Let us work hand in hand towards that end.”	Focus on descriptions of an imagined past/present/future, of the Subjects populating these worlds and the type of actions they are supposed to carry out. No exclusion rules, except when the text segment defines the meaning of “Justice”, in which case the classification should be under the “Justice” code in Annex 10.
Secondary Data Analysis	Coded segments (Annex 11)	Fantasy/”ICC”	Justice discourse (2002/2010)	“The Court will only be as strong as the willingness of its members to commit to and enforce its guiding principles. The international community must have the courage of its convictions. The universality of the Court lies in the widely held values that it espouses. Its reach will grow as a result of fulfilling its promise and not by submitting to false pragmatism and the so called realities of power.”	Focus on descriptions of the ICC role in international affairs. No exclusion rules

Annex 2. Sampling Frame - “**Politicization**” the U.S. anti-ICC Campaign 2000/2004

Nr.	Event: Type & Time	Document	Comments
1.	United Nations Security Council Debates (interventions by U.S. Representatives included under „U.S. Official Position“ in the respective Collection of quotes)	SC 4555 Meeting, S/PV.4555, 19 June 2002	Report of the SG on the United Nations Mission in Bosnia and Herzegovina (S/2002/618)
		SC 4563 Meeting, S/PV.7437, 30 June 2002	Security Council rejects draft proposing extension of United Nations Mission in Bosnia and Herzegovina opposing text. United States stresses immunity for troop contingents from states not party to Rome Statute of International Criminal Court. Adoption of Resolution 1420 (extension of mandate until 3 July 2002).
		SC 4564 Meeting, S/PV.4564, 30 June 2002	Report of the Secretary-General on the United Nations Mission in Bosnia and Herzegovina (S/2002/618)
		SC 4566 Meeting, S/PV.4566, 3 July 2002	The situation in Bosnia-Herzegovina and the adoption of Resolution 1421, prolonging the mandate of UNMBIH until the 15th of July 2002.
		SC 4568 Meeting, S/PV.4568, 10 July 2002 plus Resumption	Bosnia mission mandate in question, as Security Council debates legal exposure of un peacekeepers member states express concern about the future of United Nations Peacekeeping.
		SC 4572 Meeting, S/PV.4572, 12 July 2002	Security Council requests international criminal court not to bring cases against peacekeeping personnel from states not party to statute unanimously adopts resolution 1422 (2002); request is for 12 months, with annual renewals intended.
		SC 4772 Meeting, S/PV.4772, 12 June 2003	Security Council requests one-year extension of UN Peacekeeper Immunity from the International Criminal Court. Resolution 1487(2003) is adopted.
		SC 4803 Meeting, S/PV.4803, 1 August 2003	The Situation in Liberia. Adoption of Resolution 1497 (2003). Germany expresses disapproval of Paragraph 7, which arguably goes far beyond what the Council had decided in resolution 1487 (2003).
		SC 4814 Meeting, S/PV.4814, 26 August 2003	Protection of United Nations personnel, associated personnel and humanitarian personnel in conflict zones. No mention of ICC regretted by Mexico. US declares para. 3 and 4 as creating no new international legal obligations for the parties (the <i>watering down</i> strategy).
	Open Debate on Renewal of 1487 postponed indefinitely; US withdraws request	Scheduled Open Debate: May 21, 2004 (postponed, China not having received instructions)	

Nr.	Event: Type & Time	Document	Comments
			(Re)scheduled Open Debate: May 24, 2004 June 23, 2004: The US decides to withdraw the Resolution
		SC 5036 Meeting, S/PV. 5036, 17 September 2004	The situation in Liberia. Adoption of Resolution 1561(2004). The US endorses the Res. claiming confidence in bilateral protection agreements with the Liberian Gov.
		SC 5048 Meeting, S/PV.5048, 1 October 2004	The situation in DR Congo. Adoption of Resolution 1565(2004). US declares itself satisfied by the existence of an Article 98 Agreement with the Congolese Gov., the request to MONUC not to cooperate with the ICC, and the absence of US personnel in the operation.
		SC 5093 Meeting, S/PV. 5093, 01 December 2004	The situation in Burundi. Extension of ONUB mandate approved. Resolution 1577(2004) adopted.
		SC 5061 Meeting, S/PV. 5061, 22 October 2004	The situation in Cyprus. Adoption of Resolution 1568(2004) on UNCIFYP renewal. The US mentioned its policy of protecting US peacekeepers from possible ICC jurisdiction, but refrained to mention any BIAs concluded with Cyprus. No US personnel participated in this operation.
		GA 58th Session, 95th Plenary Meeting, A/58/PV.95, 13 September 2004	Agenda item 57: Cooperation between the United Nations and the International Criminal Court. Adoption of Res. 58/318. The US restates its reasons for rejecting the Draft Treaty.
2.	General Assembly Debates (Intervention by Mr. Rosand included under „U.S. Official Position“ in the respective Collection of quotes)	UN Security Council Resolution S/RES/1420(2002), 30 June 2002	Extension of the mandate of United Nations Peacekeeping Mission in Bosnia and Herzegovina (UNMBIH) until 3 July 2002

Nr.	Event: Type & Time	Document	Comments
3.	Resolutions and Drafts (Documents mentioned in the historical background, but not sampled)	UN Security Council Resolution S/RES/1421(2002), 3 July 2002	Extension of the Mandate of UNMBIH until 15 July 2002
		US SC Draft Resolution 10 July 2002	US Proposal on Resolution Extending the Mandate of UNMBIH (prohibition of transfer to international tribunal)
		US SC Draft Resolution 19 July 2002	US Proposal on Resolution Extending the Mandate of UNMBIH (blanket immunity for all peacekeepers)
		UN Security Council Resolution S/RES/1422(2002), 12 July 2002	Immunity for Peacekeepers from Non-State Parties to the ICC
		UN Security Council Resolution S/RES/1487(2003), 12 June 2003	Renewal of Res. 1422 on Peacekeepers Immunity
		UN Security Council Resolution S/RES/1497(2003), 1 August 2003	Establishment of a Multinational Force in Liberia plus immunity from the ICC for Non-State Parties Peacekeepers
		UN Security Council Resolution S/RES/1502(2003), 26 August 2003	Humanitarian Personnel
		UN Security Council Resolution S/RES/1561(2004), 17 September 2004	UNMIL mandate extension in Liberia until 19 Sept. 2005
		UN Security Council Resolution S/RES/1565(2004), 1 October 2004	Extension of MONUC deployment in the DR Congo until 31 March 2005
		UN Security Council Resolution S/RES/1568(2004), 22 October 2004	Extension of UNFICYP Mandate in Cyprus until 15 June 2005.
		UN Security Council Resolution S/RES/1577(2004), 01 December 2004	Extension of ONUB mandate in Burundi until 1 June 2005.
		UN General Assembly Resolution A/RES/58/318	Approval of the draft Relationship Agreement between the United Nations and the International Criminal Court
		Parliamentary Assembly of the Council of Europe Resolution 1300, 25 Sept. 2002	Risk for the Integrity of the Statute of the International Criminal Court
		EU Parliament Resolution, P5 TA-PROV(2002)0049, 26 Sept. 2002	Resolution on the International Criminal Court

Nr.	Event: Type & Time	Document	Comments
		Parliamentary Assembly of the Council of Europe Resolution 1336, 25 June 2003	Threats to the International Criminal Court
		US Senate Meeting 10 May 2001	American Servicemembers' Protection Act
4.	US Congress Debates	US Senate Meeting, 26 September 2001, 107th Congress	American Servicemembers' Protection Act
		US Senate Meeting, 2 October 2001, 107th Congress (2001 -2002)	American Servicemembers' Protection Act
		US Senate Meeting, 6 June 2002, 107th Congress, p. S5138 – S5148	Supplemental Appropriations Act for Fiscal Year 2002
		US House of Representatives, 23 July 2002 US	Conference Report on H.R. 4775, 2002 supplemental appropriations act for further recovery from and response to terrorist attacks on the United States
		Senate Meeting, 1 August 2002, 107th Congress (2001-2002)	American Servicemembers' Protection Act
		Clinton, William J. 31 December 2000	Official Statement on the Signing of the ICC Rome Treaty
5.	Official US Position	Bolton, John 6 May 2002	Letter by Undersecretary for Arms Control and International Security to the United Nations Secretary General (unsigning of the ICC Treaty)
		Rumsfeld, Donald 6 May 2002	Statement on the ICC Treaty by the US Secretary of Defense
		Statement of the U.S. Embassy June 12, 2002	The International Criminal Court & Reaction to the American Servicemembers' Protection A
		Rumsfeld, Donald 21 June 2002	Department of Defense Briefing: Global War on Terror, the ICC
		Negroponte, John 12 July 2002	Remarks at stakeout following UN Security Council vote on Resolution 1422
		Bush, George W. 30 September 2002	Remarks prior to discussions with President Alvaro Uribe of Colombia
		Cunningham, James 12 June 2003	Statement by Ambassador James Cunningham, Deputy United States Representative to the U Nations Nations, on the Renewal of Resolution 1422, Security Council, June 12, 2003
		Rumsfeld, D. 19 August 2003	Interview on TV Caracol in Bogota, Columbia
		Boucher, R. 12 June 2003	State Department Briefing with Richard Boucher
		Holmes, Kim R. 13 June 2003	Remarks at the XXI German American Conference, Berlin, Germany
		Boucher, R. 30 June 2003	State Department Briefing with Richard Boucher
		Boucher, R. 3 July 2003	Daily Press Briefing

Nr.	Event: Type & Time	Document	Comments
		Boucher, R. 31 July 2003	State Department Press Briefing with Richard Boucher on the Liberian Peacekeeping
		Rostow, N. 23 October 2003	Resolution Statement by Nicholas Rostow, General Counsel, on Agenda Item 154: the International Criminal Court, in the Sixth Committee, October 23, 2003
		Cunningham, James B. 22 June 2004	Remarks by Ambassador James B. Cunningham, Deputy U.S. Representative to the United Nations, on the ICC, at the Security Council Stakeout, June 22, 2004
		Boucher, R. 23 June 2004	Press Briefing with Richard Boucher, Spokesman, Washington DC, on the non-renewal of Resolution 1487
		Napper, L. 12 October 2004	Ambassador Larry Napper, Statement at the OSCE Human Dimension Implementation Meeting
		Bellinger, J. 8 September 2006	Statement by John B. Bellinger, U.S. Department of State Legal Adviser, San Remo Italy
		Rice, S. 29 January 2009	Statement on Respect for International Humanitarian Law at the United Nations Security Council, 29 January 2009
		Rice, S. 4 March 2009	On the ICC's Arrest Warrant for Sudanese President Omar al-Bashir
		Obama May 2010	White House National Security Strategy
		Obama, B. 14 July 2010	Interview with South African Broadcasting Corporation
		EU Council, General Affairs, and External Relations, 2450 th Council session, 12134/02 (Presse 279) Brussels, 30 Sept. 2002	EU Council Conclusions in the International Criminal Court Annex: EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the International Criminal Court and the United States Regarding the Conditions to Surrender of Persons to the Court
6.	Regional Organizations	EU Council (doc. 10400/03) CFSP, June 2003	Common Position on the International Criminal Court
		Organization of American States 10 June 2003	Resolution AG/RES. 1929 adopted by the OAS General Assembly on the promotion of the rule of law with the reservation of the US.
		Amnesty International 01 August 2003	Amnesty International urges the Security Council to ensure that Liberia resolution excludes impunity and effectively protects civilians
7.	NGOs	Amnesty International 23 June 2004	U.S. Withdrawal: determination of international community is 'victory for international justice and the rule of law'
		Coalition for an International Criminal Court (CICC) 25 August 2003	Press Release, "United States Postpones Adoption of UN Resolution to Protect Humanitarian Personnel over ICC stance"

Nr.	Event: Type & Time	Document	Comments
		Pace, William, CICC Convenor, August 2003	Statement Upon the Adoption of the Security Council Resolution on the Protection of Humanitarian and UN Personnel on August 26, 2003
		Fischer, Joschka 24 October 2001	Letter from German Foreign Minister to Secretary of State Colin Powell
8.	International Public Servants/Experts	Annan, Kofi (UN Secretary General): Letter, 3 July 2002	Letter to Mr. Colin L. Powell, Secretary of State of the United States of the United States of America. Expresses disapproval of the US attitude in the UNMBIH mandate renewal debate.
		Preparatory Commission for the International Criminal Court (PCNICC): Statement, PCNICC/2002/L.3, 3 July 2002, 18 July 2002	Statement transmitted to the Chairman of the Preparatory Commission to the President of the Security Council and to the Secretary General
		Annan, K. (UN Secretary General): Press Encounter, 1 August 2003	Statement following the Security Council meeting on Liberia
		Scheider, Peter 21 May 2002	Speech by the President of the Parliamentary Assembly of the Council of Europe Peter Schie at the 4th Parliamentary Conference on the Stability Pact for South-Eastern Europe
		Moller, Per Stig 5 November 2002	Europe Courts the U.S., Speech by the Foreign Minister of Denmark and Holder of the EU Presidency
9.	Media	Washington Post 2 December 2004	"Massacre Probe Concerns U.S.: Role of International Court in U.N. Investigation Is Cited"

Annex 3. Sampling Frame – the Justice Discourse 2002/2010

Nr	Event: type & time	Document	Comments
1.	United Nations Security Council Debates	SC 4833 Meeting, S/PV. 4833, 24 September 2003	Justice and the ROL, the UN Role
		SC 4835 Meeting, S/PV.4835, 30 September 2003	Justice and the ROL, the UN Role
		SC 4988 Meeting, S/PV.4988, 11 June 2004	Report of the SG on the Sudan
		SC 5015 Meeting, S/PV. 5015, 30 July 2004	Report of the SG on the Sudan
		SC 5109 Meeting, S/PV.5109, 11 January 2005	Report of the SG on the Sudan
		SC 5040 Meeting, S/PV.5040, 18 September 2004	Report of the SG on the Sudan
		SC 5052 Meeting, S/PV. 5052, 6 October 2004 plus Resumption	Justice and the ROL, the UN Role
		SC 5080 Meeting, S/PV. 5080, 18 November 2004	Report of the SG on the Sudan
		SC 5120 Meeting, S/PV.5120, 8 February 2005	Report of the SG on the Sudan
		SC 5125 Meeting, S/PV.5125, 16 February 2005	Report of the SG on the Sudan
		SC 5151 Meeting, S/PV.5151, 24 March 2005	Reports of the SG on the Sudan
		SC 5153 Meeting, S/PV.5153, 29 March 2005	Reports of the SG on the Sudan
		SC 5158 Meeting, S/PV.5158, 31 March 2005	Reports of the SG on the Sudan
		SC 5216 Meeting, S/PV.5216, 29 June 2005	Report of the SG on the Sudan Ocampo briefing on ICC Prosecutor's work following UNSC Resolution 1593
		SC 5319 Meeting, S/PV. 5319, 9 December 2005 plus Resumption	Report of the SG on Protection of Civilians
SC 5321 Meeting, S/PV. 5321, 13 December 2005	Reports of the SG on the Sudan		
SC 5321 Meeting, S/PV. 5322, 13 December 2005 (closed)	Official communique of the 5322nd closed meeting, held in private at Headquarters, New York		

Nr	Event: type & time	Document	Comments
			- exchange of views with Mr. Luis Moreno-Ocampo, ICC Prosecutor
		SC 5459 Meeting, S/PV. 5459, 14 June 2006	Reports of the SG on the Sudan
		SC 5474 Meeting, S/PV. 5474, 22 June 2006 plus Resumption	Strengthening international law: rule of law and maintenance of international peace and security
		SC 5703 Meeting, S/PV. 5703, 22 June 2007	Report of the SG on Protection of Civilians
		SC 5727 Meeting, S/PV. 5727, 31 July 2007	Reports of the SG on the Sudan
2.	States Parties Positions ¹ ICC Assembly of State Parties & Kampala 1st Review Conference	Statements at the 1st Assembly of States Parties, New York, 8 - 12 September 2002 - 2 Resumed sessions for the election of judges (February 2003) and the Prosecutor (April 2003)	6 Positions available: Argentina, Bosnia Herzegovina, Brazil, Canada, Macedonia, New Zealand.
		Statements at the 2nd Assembly of States Parties, New York, Sept. 2003	Missing Positions of Member States
		Statements at the 3rd Assembly of States Parties, The Hague, Sept. 6-10, 2004	Missing Positions of Member States
		Statements at the 4th Assembly of States Parties, 28 November – 3 December 2005, The Hague	7 Positions available: Finland, Namibia, Nigeria, Norway, United Kingdom, Argentina, DRC
		Statements at the 5th Session of the ASP, The Hague, 23 Nov. 2006 – 1 Dec. 2006	42 positions available
		Statements at the 6th Session of the ASP, United Nations Headquarters, New York, 30 Nov. - 14 Dec. 2007	45 positions available
		Statements at the 7th Session of the ASP, The Hague, 14 – 22 Nov. 2008	49 positions available (including observer states: Chile, Guatemala, Iran, Laos)

¹The primary documents were taken from the respective database on the Coalition for an International Criminal Court website (Sessions 1 to 5, Website: <http://www.iccnw.org/?mod=aspSessions>) and the records of the general debates (Sessions 5 – to present) hosted by the website of the ICC Assembly of States Parties (http://www.icc-cpi.int:80/en_menus/asp/sessions/general%20debate/Pages/general%20debate.aspx).

Nr	Event: type & time	Document	Comments
		Statements at the 8th Session of the ASP, The Hague, 18 – 26 Nov. 2009	40 positions available (including observer states: China, Iran, the U.S.)
		Statements at the 1st Review Conference of the ASP, Kampala, 31 May – 1 June 2010	Participants: 84 states (67 State parties and 17 observer states), Palestine, international organizations, and NGOs Available: 76 State positions
3.	International Organizations Resolutions and Positions	Statement by Mr. Patern, European Commissioner for DG External Relations, 25 September 2002, European Parliament, Strasbourg	Reaction to the US Bilateral Immunity Agreements
		European Parliament Resolution on the International Criminal Court, P5_TA-PROV(2002)0449, 26 Septembre 2002	Reaction to the US Bilateral Immunity Agreements
		European Council Conclusions on the International Criminal Court, 12134/02 (Presse 279), Brussels, 30 Sept. 2002	Reaction to the US Bilateral Immunity Agreements Guiding Principles concerning BIAs
		European Parliament Resolution 24 October 2002	European Parliament Resolution on the General Affairs Council's Position concerning the International Criminal Court, 24 Oct. 2002
		Organization of American States 10 June 2003	Resolution AG/RES. 1929 adopted by the OAS General Assembly on the promotion of the ICC, with the reservation of the US
		European Council Common Position on the International Criminal Court, 10400/03, CFSP, 18 June 2003	Common position on the ICC
		European Council Conclusions 25 May 2010	Conclusions on the Review Conference of the Rome Statute of the International Criminal Court
		AU Commission Statement at the ICC Rome Statute Review Conference	Statement by Mr. Ben Kioko, legal counsel, at the Review Conference of the Rome Statute of the International Criminal Court (ICC)
4.	NGOs	1st to 6th Session of the Assembly of State Parties (ASP) – ICC-ASP	A selection of positions is available!
		NGO Interventions at the 7th Assembly of the ICC State	CICC, Comision Columbiana de Juristas, FIDH, HRW, INSEC/NCICC,

Nr	Event: type & time	Document	Comments
		Parties	Justice Without Frontiers, LIPADHO, No Peace Without Justice
		NGO Interventions at the 8th Assembly of the ICC State Parties	AI, Bahrain Coalition for the ICC, CICC, COVITE, FIDH, Georgian Coalition, Guyana, HRW, HUMANAS, HURINET, ICRC, No Peace without Justice, Palestinian Center for HR, PGA, REDRESS
		Cairo Institute for HR Studies, Letter to the Arab League on the Situation in Darfur, 29 October 2007	Arab Civil Society Takes a Stance
		ICRC	Statement at the 8th Session of the Assembly of States Parties to the International Criminal Court, The Hague, November 2009
		International Humanitarian Fact Finding Commission (IHFFC)	Statement at the 8th Assembly of State Parties to the International Criminal Court, The Hague, November 2009
		Statement by Civil Society Organisations and Concerned Individuals on South Africa's Support for the Decision by the AU to Refuse Cooperation with the ICC, 15 July 2009	The South African Civil Society Calls on Jacob Zuma
		African Civil Society Urges African State Parties to the Rome Statute to Reaffirm their Commitment to the ICC, Courtesy of Human Rights Watch, 30 July 2009	African Civil Society Takes a Stance after the AU Sirte Summit
		The Kenyan Section of International Commission of Jurists, Letter Addressed to the President, Mwai Kibaki, October 19, 2010	Demands cooperation with the ICC on the apprehension of Omar Bashir.
		Statements at Kampala	Amnesty International Coalition for an International Criminal Court Andean Commission of Jurists FIDH, HRW, HR Network Uganda, No Peace Without Justice, Women's Initiative for Gender Justice, Civil Society Declaration on African and the Review Conference (sponsored by HRW)
5.	Statements by International Public	Al-Hussein 27 June 2007	Report on the Major Findings of the International Conference „Building a Future on Peace and Justice“, Nuremberg, 25 - 27 June 2007, 27 June 2007

Nr	Event: type & time	Document	Comments
	Servants and Experts	Al-Zubi 25 June 2007	Address at the Opening Ceremony International Conference „Building a Future on Peace and Justice“, Nuremberg, 25 - 27 June 2007, 25 June 2007
		Annan, Kofi - UN Secretary-General, 15 June 1998	Opening of the Rome Conference
		Annan, Kofi - UN Secretary-General, 20 Sept. 1999	Annual Report to the General Assembly
		Annan, Kofi - UN Secretary-General, 3 July 2002	Letter to Colin Powell
		Annan, Kofi - UN Secretary-General, 10 Sept. 2002	Address to the meeting of the ICC Assembly of States Parties
		Annan, Kofi - UN Secretary-General, 1 August 2003	Press encounter following the Security Council meeting on Liberia, SC RES 1497
		Annan, Kofi - UN Secretary-General, 26 Jan. 2004	Address to the International Forum in Stockholm
		Annan, Kofi - UN Secretary-General, 7 April 2004	Address to the Commission on Human Rights
		Annan, Kofi - UN Secretary-General, 21 Sept. 2004	Address to the Stockholm International Forum
		Annan, Kofi - UN Secretary-General, 21 Mar. 2005	Statement to the UN General Assembly
		Annan, Kofi - UN Secretary-General, 14 Sept. 2005	Address to the 2005 World Summit
		Annan, Kofi - UN Secretary-General, 8 Dec. 2006	Statement on the International Human Rights Day
		Annan, Kofi - UN Secretary-General, 11 Dec. 2006	Truman Library Speech
		Annan, Kofi - UN Secretary-General, 31 May 2010	Address at the Review Conference of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Kampala, Uganda
		Ban Ki Moon, UN Secretary-General, 15 July 2008	„Responsible Sovereignty in an Era of Transnational Threats“, Bertelsmann Foundation, Berlin
		Ban Ki Moon, UN Secretary-General, 29 May 2010	With the International Criminal Court – A New Age of Accountability, Washington Post Editorial
		Ban Ki Moon, UN Secretary-General, 31 May 2010	“An Age Of Accountability” Address To The Review Conference On The International Criminal Court Kampala
		Fisher, Joshka 24 October 2001	„Letter from the German Foreign Minister to Secretary of State Colin Powell“, dated October 24, 2001, delivered on October 31
		Goldstone, Richard 26 May 2010	„Prosecuting Aggression“, New York Times Op Editorial
Kaul, Hans-Peter 2 November 2009	„Peace through Justice? The International Criminal Court in the Hague“, Speech at the Militärisches Museum der Bundeswehr		
Kaul, Hans-Peter 30 August 2010	From Nuremberg to Kampala – Reflections on the Crime of Aggression, 4th International Humanitarian Law Dialogs, Robert H. Jackson Center		
Kirsch, Philippe 11 March 2003	Statement by Judge Philippe Kirsch , President of the International Criminal Court at the Inaugural Meeting of the ICC Judges		

Nr	Event: type & time	Document	Comments
		Kirsch, Philippe 22 April 2003	Statement by Judge Philippe Kirsch, President of the International Criminal Court, Assembly of States Parties to the Rome Statute of the International Criminal Court, Second (Resumed) Session, New York
		Kirsch, Philippe 22 April 2003	Protecting the Integrity of the ICC – PfGA Address
		Kirsch, Philippe 6 May 2003	La Cour pénale internationale au carrefour du droit international et des relations internationales – UdeM, Quebec, Canada Speech
		Kirsch, Philippe 16 Jun. 2003	Speech at the Ceremony for the undertaking of the Chief Prosecutor, The Hague
		Kirsch, Philippe 6 Sept. 2004	Statement at the Third Session of the Assembly of States Parties to the Rome Statute
		Kirsch, Philippe 30 Sept. 2006	Applying the Principles of Nuremberg in the ICC, St. Louis, USA,
		Kirsch, Philippe 9 Oct. 2006	Address to the UN General Assembly
		Kirsch, Philippe 1 Nov. 2007	Address to the UN General Assembly
		Kirsch, Philippe 30 October 2008	Address to the United Nations General Assembly
		Martin, Paul 22 Sept. 2004	Statement by the Right Honourable Paul Martin, Prime Minister of Canada, to the Fifty-Ninth Session of the United Nations General Assembly
		Ocampo, L.M. 16 June 2003	Solemn Undertaking as Chief Prosecutor, The Hague, the Netherlands
		Ocampo, L.M. 29 Jun. 2005	Statement to UNSC
		Ocampo, L.M. 28 Nov. 2005	Address at the ASP 4 th Session
		Ocampo, L.M. 13 Dec. 2005	Address to the UNSC, New York
		Ocampo, L.M. 14 Jun. 2006	Statement to the UNSC
		Ocampo, L.M. 24 June 2007	Building a Future on Peace and Justice, Nuremberg
		Ocampo, L.M. 9 Sept. 2007	The Time is Now, Toronto International Film Festival
		Ocampo, L.M. 5 Dec. 2007	Statement to the UNSC
		Ocampo, L.M. 4 March 2009	Announcement of the Pre-Trial Chamber decision on the Prosecutor's Application against Omar Al-Bashir
		Ocampo, L.M. 31 May 2010	Opening Statement, Review Conference – General Debate

Nr	Event: type & time	Document	Comments
		Ocampo, L.M. 2008	Seventh Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005)
		Ocampo, L.M. 2009	Eighth Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593(2005)
		Ocampo, L.M., 1 February 2010	ICC Prosecutorial Strategy 2009 – 2011
		Picado, Sonia 25 June 2007	Keynote Speech, Opening Ceremony of the International Conference “Building a Future on Peace and Justice”, Nuremberg, 25-27 June 2007
		Steinmeier, Frank Walter 25 June 2007	Opening Speech by Federal Foreign Minister Steinmeier at the International Conference „Building a Future on Peace and Justice“ in Nuremberg
		Tuomioja, Erkki 27 June 2007	Concluding Speech at the International Conference „Building a Future on Peace and Justice“ in Nuremberg
		ICC President Sang-Hyun Song 19 September 2009	The Bridge to Peace rests on Pillars of Justice
		ICC President Sang-Hyun Song 26 May 2010	„ICC Kampala Conference to open new frontiers“, The Observer
		ICC President Sang-Hyun Song 27 May 2010	Official Speech in the Ugandan Parliament, Kampala, Uganda
		ICC President Sang-Hyun Song 31 May 2010	Opening Statement, Review Conference – General Debate
		ICC President Sang-Hyun Song 17 July 2010	Statement on the Occasion of the International Day of International Criminal Justice
		ICC President Sang-Hyun Song 5 October 2010	Keynote Speech at Commonwealth Meeting on the International Criminal Court, London
		Wenaweser, Christian ASP President 30 May 2010	Opening Remarks, Kampala Review Conference
		Maathai, Wangari 24 May 2010	International Criminal Court belongs to us Africans, The East African, Op Ed
6.	Reports and recommendations by International Public Servants/EXPERTS	Report of the Panel on United Nations Peace Operations (the Brahimi Report), A/55/305 – S/2000/809, 17 August 2000	Overview of peacekeeping practices
		Report of the Secretary-General to the Security Council on the Protection of Civilians in Armed Conflict, S/2001/331, 30 March 2001	Additional 14 recommendations including strengthening international criminal justice to the 40 recommendations in the 1st 1999 Report on the Protection of Civilians in Armed Conflict

Nr	Event: type & time	Document	Comments
		„The Responsibility to Protect“, Report of the International Commission on Intervention and State Responsibility, December 2001	Outlining the Responsibility to Protect (R2P) Principle
		„The Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies“, Report of the Secretary-General, S/2004/616, 23 August 2004	Transitional justice mechanisms
		„A More Secure World: Our Shared Responsibility“, Report of the Secretary-General’s High-Level Panel on Threats, Challenges and Change, United Nations 2004	Presents the arguments in favour of a new security consensus; outlines proposals for the creation of a new Human Rights Council, the Peacebuilding Commission, and the reform the Security Council
		Report of the International Commission of Inquiry on Darfur, transmitted in a Letter from the Secretary General, 31 January 2005.	Recommends referral of Darfur to the International Criminal Court
		„In Larger Freedom: Towards Development, Security and Human Rights for All“, Report of the Secretary-General, UN doc. A/59/2005, 21 Mar. 2005.	Consensus over broad principles of peace, security and justice
		2005 World Summit Outcome, Resolution adopted by the General Assembly, A/RES/60/1, 24 October 2005.	Adopts R2P, § 138 and 139
		„Report of the Secretary-General on the Protection of civilians in armed conflict“, S/2005/740, 28 November 2005	Protection of civilians
		Nuremberg Declaration on Peace and Justice, Annexed to the Letter dated 13 June 2008 from the Permanent Representatives of Finland, Germany, and Jordan to the United Nations addressed to the Secretary-General, A/62/885, 19 June 2008	Declaration on Principles and Recommendations for the joint pursuit of „peace“ & „justice“
		Kampala Declaration, Declaration RC/Decl.1, Adopted at the 4th Plenary Meeting, on 1 June 2010, by consensus	The Kampala Declaration reiterates support for sustainable peace through justice, ending impunity, promoting victims’ rights.

Annex 4. Sampling Frame – Counterdiscourses 2007/2010

Nr.	Event: type & time	Document	Comments
1.	United Nations Security Council Debates	SC 5015 Meeting, S/PV.5015, 30 July 2004	Report of the Secretary-General on the Sudan (S/2004/453)
		SC 5040 Meeting, S/PV.5040, 18 September 2004	Report of the SG on the Sudan
		SC 5125 Meeting, S/PV.5125 16 February 2005	Report of the SG on the Sudan
		SC 5151 Meeting, S/PV.5151, 24 March 2005	Reports of the SG on the Sudan
		SC 5153 Meeting, S/PV.5153, 29 March 2005	Reports of the SG on the Sudan
		SC 5158 Meeting, S/PV.5158, 31 March 2005	Reports of the SG on the Sudan
		SC 5727 Meeting, S/PV.5727, 31 July 2007	Reports of the Secretary-General on the Sudan
		SC 5789 Meeting, S/PV.5789, 5 December 2007	Reports of the SG on the Sudan. Briefing by ICC Prosecutor on the Darfur Situation
		SC 5898 Meeting, S/PV. 5898, 27 May 2008	Briefing by the Under-SG for Humanitarian Affairs and Emergency Relief Coordinator plus Res. 1
		SC 5912 Meeting, S/PV.5912, 16 June 2008	Reports of the SG on the Sudan. Consideration of the 7th Briefing of ICC Prosecutor
		SC 5922 Meeting, S/PV.5922, 24 June 2008	Reports of the SG on the Sudan. Briefing by Special Envoy of the Secretary General for Darfur
		SC 5935 Meeting, S/PV.5935, 16 July 2008	Reports of the SG on the Sudan. Attacks on UNAMID Peacekeepers
		SC 5947 Meeting, S/PV.5947, 31 July 2008	Reports of the SG on the Sudan. UNAMID deployment
		SC 5956 Meeting, S/PV.5956, 18 August 2008	Reports of the SG on the Sudan. Briefing by SG Special Representative for the Sudan
		SC 6028 Meeting, S/PV.6028, 3 December 2008	Reports of the SG on the Sudan. Briefing by ICC Prosecutor
		SC 6096 Meeting, S/PV.6096, 20 March 2009	Reports of the SG on the Sudan. Briefing by the Director of the Office for the Coordination of Humanitarian Affairs
		SC 6139 Meeting, S/PV.6139, 11 June 2009	Reports of the SG on the Sudan
		SC 6201 Meeting, S/PV.6201, 14 October 2009 & Res. 1	The situation in the Middle East, including the Palestinian Question – References to the Goldstone Report

Nr.	Event: type & time	Document	Comments
		SC 6216 Meeting, S/PV. 6216, 11 November 2009 & Res. 1	Protection of civilians in armed conflict
		SC 6227 Meeting, S/PV.6227, 30 November 2009	Reports of the SG on the Sudan
		SC 6251 Meeting, S/PV.6251, 21 December 2009	Reports of the SG on the Sudan. Briefings by Jean Ping, Chairperson of the AU Commission, and Thabo Mbeki, Chairperson of the AU High Level Panel on Darfur
		SC 6318 Meeting, S/PV.6318, 20 May 2010	Reports of the SG on the Sudan
3.	International Public Servants	Mbeki, Thabo 8 October 2009.	Speech of the Chairperson of the AUDP On Handing Over the AUPD Report to the Chairperson of the AU Commission, Addis Ababa
		Ping, Jean 8 October 2009	Speech, Submission of the African High Level Panel on Darfur
4.	Reports and recommendations by International Public Servants/Experts	AU Concept Note	Concept Note for the Meeting of African States Parties to the Rome Statute of the International Criminal Court, MinICC/Legal/3, 8 – 9 June 2009, Addis Ababa, Ethiopia
		AU Report	Report of the Meeting of African States Parties to the Rome Statute of the International Criminal Court, 8 – 9 June 2009, Addis Ababa, Ethiopia
		Report of the African Union High Level Panel on Darfur October 2009, PSC/AHG/2(CC VII)	AUDP Report confirms
		Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009	Goldstone Report
5.	Resolutions and other Actions by International and Regional Organizations	AU Communique, PSC/MIN/Comm.(XLVI), 10 March 2006	Decides to support in principle the transition from AMIS to a UN Operation within the framework of the partnership between the AU and the UN.
		AU Resolution Assembly/AU/ Dec.199(XI), 30 06 – 01 July 2008, Sharm El-Sheikh	Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction
		AU Peace and Security Council 142nd Meeting, Addis Ababa, PSC/MIN/Comm (CXLII), 21 July 2008, Communiqué	Reaction to the Bashir arrest warrant application
		UN Human Rights Council Resolution, A/HRC/S-9/2, 27 February 2009	Decides to dispatch an international fact-finding mission to investigate violations of international human rights and humanitarian law

Nr.	Event: type & time	Document	Comments
		AU Peace and Security Council 175th Meeting, Addis Ababa, PSC/PR/Comm. (CLXXV), 5 March 2009	Reaction to the Bashir Arrest warrant
		AU Resolution Assembly/AU/Dec. 243-267 (XIII) Rev.1, 1- 3 July 2009 the “non-cooperation” Resolution	Decision on the Meeting of African states parties to the Rome Statute of the International Criminal Court
		UN Human Rights Council Resolution, A/HRC/RES/S-12/1, 21 October 2009	Endorses the recommendations contained in the Report of the Independent International Fact-Finding Mission, and calls upon all concerned parties to ensure their implementation
		AU Peace and Security Council 207th Meeting, Abuja, PSC/AHG/COMM.1(CCVII), 29 October 2009, Communiqué	Endorses the African Union Darfur Panel Report and its recommendations
		UN General Assembly Resolution A/RES/64/10, 1 December 2009	Endorses the Goldstone Report Asks the Secretary General to Transmit the Report to the Security Council
6.	Mass-Media/Newspapers	<i>Sudan Tribune</i> , 30 June 2008	„Justice a Threat to Darfur?“
		<i>Sudan Tribune</i> , 20 July 2008	„Arabs reject „unbalanced“ ICC request against Sudanese President“
		<i>NewsWatch</i> , 8 March 2009	„A Moment of Reckoning for Al Bashir“
		<i>Sudan Tribune</i> , 24 March 2009	„Jordan dissents from Arab position on the ICC warrant for Sudan’s Bashir“
		<i>Mmegi Online</i> , 5 May 2009	„Kama wants Bashir at ICC, AU differs“,
		<i>Ethiopian Review</i> , 7 May 2009	„Sudan push towards closer ties“,
		<i>Mmegi Online</i> , 8 May 2009	„Sudanese ask Khama to go easy on al-Bshir“,
		<i>Sudan Tribune</i> , 6 May 2009	„Botswana President supports ICC warrant against Sudan’s Bashir“,
		<i>Sudan Tribune</i> , 14 May 2009	„Chad will cooperate with the ICC on Darfur crimes“
		<i>Sudan Tribune</i> , 15 May 2009	„South Africa maintains stance against ICC warrant for Sudan’s Bashir“
		<i>VOANews</i> , 15 July 2009	„South African President Urged to Honor ICC Warrant for Sudan’s al-Bashir“
		<i>Sudan Tribune</i> , 17 July 2009	„Sudanese President cancels Uganda visit over arrest threat“

Nr.	Event: type & time	Document	Comments
		<i>The East African</i> , 20 July 2009	„Uganda Speaks with a forked Tongue“
		<i>Sudan Tribune</i> , 27 July 2009	„Bashir Absent from Ugandan Summit“
		<i>The Independent</i> , 29 July 2009	„Bashir blocked, but is Museveni off the hook?“
		<i>VOANews</i> , 31 July 2009	„African Civil Society Groups Rebuke AU Stand on Bashir“
		<i>The New Vision</i> , 5 August 2009	„China opposes Kony arrest“
		<i>NewsHour</i> , 13 August 2009	„Sudan’s Bashir addresses ICC charges“
		<i>NewsHour</i> , 8 September 2009	„ICC Prosecutor makes case against Sudan’s President“
		<i>Sudan Tribune</i> , 23 October 2009	„AU Mbeki panel makes implicit endorsement of ICC prosecutions in Darfur“
		<i>Ohmy News International</i> , 27 November 2009	„Goldstone Report Transmitted to UN Security Council“
		<i>Sudan Tribune</i> , 4 Feb. 2010	„AU criticizes ICC ruling on Bashir genocide charges“
		<i>UN News Center</i> , 31 May 2010	„At ICC review conference, Ban declares end to ,era of impunity““
		<i>BBC News</i> , 31 May 2010	„International Criminal Court ,altered behaviour““

Annex 5. Collection of Quotes – The Justice Discourse 2002-2010 (SELECTED)

→ 1) United Nations Security Council Debates¹

Secretary-General, 24 Sept. 2003, S/PV. 4833, p. 2 – Justice and the Rule of law

“The United Nations, through many complex operations, has learnt that the rule of law is not a luxury and that justice is not a side issue. We have seen people lose faith in a peace process when they do not feel safe from crime, or secure in returning to their homes, or able to start rebuilding the elements of a normal life, or confident that the injustices of the past will be addressed. We have seen that without credible machinery to enforce the law and resolve disputes, people resort to violent or illegal means. And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance. In addressing these issues, sensitive questions are involved – questions of sovereignty, tradition and security, justice and reconciliation. The task is not simply technically difficult. It is politically delicate. It requires us to facilitate the national formulation and implementation of an agenda to address these issues, to cultivate the political will and leadership for that task and to build a wide constituency for the process. (...) We must take a comprehensive approach to justice and the rule of law. It should encompass the entire criminal justice chain – not just police, but lawyers, prosecutors, judges and prison officers, as well as many issues beyond the criminal justice system.”

UN Secretary-General Kofi Annan, 24 Sept. 2004, S/PV.4833, p. 3 - Justice and the Rule of law

“But a one-size-fits-all approach does not work. Local actors must be involved from the start – local justice sector officials and experts from government, civil society and the private sector. We should, wherever possible, guide rather than direct, and reinforce rather than replace. The aim must be to leave behind strong local institutions when we depart.”

UN Secretary-General Kofi Annan, 24 Sept. 2003, S/PV.4833, p.3 - Justice and the Rule of law

“We should know that there cannot be real peace without justice, yet relentless pursuit of justice may sometimes be an obstacle to peace. If we insist, at all times and places, on punishing those who are guilty of extreme violations of human rights, it may be difficult or even impossible to stop the bloodshed and save innocent civilians. If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive. But equally, if we ignore the demands of justice simply to secure agreement, the foundations of that agreement will be fragile, and we will set bad precedents.”

Mr. Kasuri, Pakistan, 24 Sept. 2003, S/PV.4833, p.4 - Justice and the Rule of law

“The quest to define and, subsequently, to implement justice and the rule of law has been central to the march of civilization. It is critical to the realization of social and economic justice, and for the implementation of political, economic, cultural, religious and environmental rights. Establishing the principles of justice and the rule of law is essential

¹ Selection of sampled debates in the Security Council during the selected historical period: 3 open debates on Justice and the Rule of law; 1 debate on Strengthening International law; 14 debates on Sudan; 2 open debates on Protection of Civilians.

to the establishment and maintenance of order at the inter-State and intra-State levels. Faithful application of those principles strengthens the system, while failure entails serious, and often tragic, consequences.”

Mr. Li Zhaoxing, China, 24 Sept. 2003, S/PV. 4833, p. 8-9 - Justice and the Rule of law

“Our goal is to build a better global village where there are no wars or conflicts as all countries live in peace and stability; where there is no poverty or hunger as all the inhabitants enjoy development and dignity; and where there is no discrimination or prejudice and all peoples and civilizations coexist in harmony complementing and enriching one (an)other. To achieve all that, we the peoples need a world of democracy and the rule of law, and we need a stronger United Nations. Let us work hand in hand towards that end.”

→2) State Positions ICC Assembly of State Parties²

Argentine, Statement, First Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3-10 September 2002

“We know the ICC still faces concerns and resistance in some States, worried about its politicisation or inappropriate use of its functions. However, the system developed by the Rome Statute and its complementary procedural and substantive instruments, contains all necessary safeguards to preserve the competence and legitimate interests of all States and their nationals. It also contains the appropriate mechanisms to ensure the proper implementation of the organs of the Court, and to avoid any misdirection in the exercise of the judicial function. So, it is neither necessary nor (sic!) convenient to modify the balanced rules of the Rome Statute. It is also inadmissible to search to affect – through other types of agreements – the integrity, object and purpose of the Statute, nor the future capabilities of the ICC to exercise its jurisdiction over the crimes under its competence as they are established.”

Argentine, Statement, Fourth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 28 November – 3 December 2005

“The International Criminal Court is on the whole suitable for the international community to fight against impunity and to judge those who have committed the gravest crimes, to which end the content and spirit of the Rome Statute should be respected and the balance of its laws, which takes the concerns of the States into consideration without decreasing the powers of the Court, should be preserved.

(...) The existence of the International Criminal Court notable enriches the legal structure of the international community and the rule of law at a global level. It also complements the efforts of the national jurisdictions to confront crimes that constitute the greatest offenses against humankind. We should continue working to ensure its definite consolidation.”

² Selection of quotes for interventions during the ICC Assembly of States Parties.

Australia, Statement, First Review Conference of the Rome Statute of the International Criminal Court, Kampala, Uganda, 31 May – 1 June 2010

“A few challenging issues remain – particularly on the jurisdictional basis and the entry into force mechanism. Australia will do its utmost to help bring these significant negotiations to a successful conclusion. We encourage other States to do the same. In doing so, we should seek to achieve a result that enjoys the broadest possible support.”

Austria, Statement, Sixth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, New York, 3 December 2007

“The Court’s success should never be measured solely in terms of the number of cases heard by it, but by its overall impact on the fight against impunity, for its mere existence induces States to strengthen their efforts to prevent as well as to prosecute criminal acts. Thus the Court is serving as an effective deterrent for potential perpetrators.”

Belgium, Fifth Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 23 November 2006

“Plus de quatre ans après l’entrée en vigueur du Statut de Rome, la Belgique estime opportune de rappeler son soutien indéfectible à une action de la Cour pénale internationale qui permette une lutte efficace contre l’impunité des crimes internationaux les plus graves.”

“Troisièmement, la Belgique avait salué l’avancée que représentait pour la justice internationale la place réservée aux victimes par le Statut de Rome. C’est pourquoi elle s’est impliquée dès l’origine dans la mise sur pied du Fonds en faveur des victimes.”

→ 3) International Organizations Resolutions and Positions

Mr. Patern, Statement by Mr. Patern, European Commissioner for DG External Relations, September 25, 2002, European Parliament, Strasbourg

“Madam President, I am very pleased to speak today about the European Commission’s continuing support for the Rome Statute and for an effective International Criminal Court. I believe, as Parliament does, that the creation of the International Criminal Court represents a critical milestone in the evolution of international human rights law.

No longer will tyrants gain impunity for genocide, war crimes, and crimes against humanity – including widespread murder of civilians, torture and mass rape – by hiding behind the cloak of national sovereignty. No longer will the international community have to create international criminal tribunals after the fact – after the crimes that we all deplore have already been committed.

In the 21st century, potential tyrants and mass murderers will know in advance that the international community is prepared to hold them accountable for massive violations of human life and dignity. It is our belief and our hope that this awareness will help to reduce the frequency and the severity of such crimes. But when it does not, and the relevant national legal authorities are unwilling or unable to act, the international community will have in place a complementary system of criminal justice that is fair, transparent and effective.

The European Union fully supports the Court.”

European Parliament Resolution on the General Affairs Council’s Position concerning the International Criminal Court, 24 Oct. 2002

“underlining that the US action from the very beginning was aimed at weakening the credibility of the ICC, exerting pressure on all the signatories and threatening to impose sanctions on states that ratified the Rome Statute in order to prevent its full establishment,” (recital B)

“Welcomes the initial efforts of the Danish Presidency to preserve a united position of the EU Member States, but regrets that the General Affairs Council, against the clear will of the European Parliament, has not adopted a clear common position in response to the US Administration’s efforts to conclude bilateral agreements with individual Member States and by doing this to undermine the universality of the International Criminal Court;” (Article 2)

→ 4) Statements by NGOs

African Civil Society, Statement by civil society organizations and concerned individuals on South Africa’s support for the decision by the AU to refuse cooperation with the ICC, 15 July 2009

“On 3 July 2009 a meeting of African heads of state at the Assembly of the African Union (AU) decided to withhold cooperation from the International Criminal Court (ICC) in respect of the arrest and surrender of President Omar al-Bashir of The Sudan. President al-Bashir has been indicted by the ICC for war crimes and crimes against humanity allegedly committed in Darfur. The decision by the AU represents the most serious challenge to the struggle against impunity and lawlessness on the African continent.”

Amnesty International, Letter to Secretary-General Kofi Annan on Protection of UN Personnel, 25 August 2003

“The most tragic events in Baghdad last week illustrate the importance of the draft resolution, proposed by Mexico, for the protection of humanitarian workers (S/2003/581). It is entirely appropriate, and indeed essential, that the current draft text recalls that the Rome Statute of the ICC has identified intentional attacks against personnel in humanitarian assistance and peacekeeping missions in accordance with the Charter of the United Nations as war crimes, and that States must end impunity for such acts.”

→ 5) Statements by International Public Servants

HRH Prince Zeid Ra’ad Zeid Al-Hussein, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court at the Inaugural Meeting of Judges of the International Criminal Court, 11 March 2003

“At the very moment when our planet lives with grave challenges threatening international peace and security, we assemble today in The Hague to confirm, once again, our commitment to the international rule of law. In a few moments, the first 18 judges of the International Criminal Court will make their solemn undertaking, and begin to exercise

their functions under the Rome Statute. It is an occasion, the root of which is to be found in the first flickering of human common sense, later fashioned with inspiration and logic by our predecessors, into a legal path which passed through Versailles and London, before ending finally in Rome some five years ago. Yet as humanity accompanied these developments, towards the achievement we celebrate today, people throughout the world continued to suffer horrifyingly from genocide, war crimes and crimes against humanity, and in numbers that were utterly shameful – a constant reminder of what needed to be done.”

UN Secretary-General Kofi Annan, UN General Assembly, Speech, 21 Sept. 2004

“That code [Hammurabi’s] was a landmark in mankind’s struggle to build an order where, instead of might making right, right would make might.”

“The vision of “a government of laws and not of men” is almost as old as civilisation itself.”

UN Secretary-General Kofi Annan, Statement to the UN General Assembly, 21 March 2005

“Thank you for allowing me to present to you, in person, the five-year progress report that you requested from me, on the implementation of the Millennium Declaration.”

“What I am proposing amounts to a comprehensive strategy. It gives equal weight and attention to the three great purposes of this Organization: development, security and human rights, all of which must be underpinned by the rule of law.”

“I have called the report “In Larger Freedom”, because I believe those words from our Charter convey the idea that development, security and human rights go hand in hand. In a world of inter-connected threats and opportunities, it is in each country's self-interest that all of these challenges are addressed effectively. The cause of larger freedom can only be advanced if nations work together; and the United Nations can only help if it is remoulded as an effective instrument of their common purpose.”

“In the second part of the report, entitled “Freedom from Fear”, I ask all states to agree on a new security consensus, by which they commit themselves to treat any threat to one of them as a threat to all, and to work together to prevent catastrophic terrorism, stop the proliferation of deadly weapons, end civil wars, and build lasting peace in war-torn countries.”

Judge Hans-Peter Kaul, From Nüremberg to Kampala – Reflections on the Crime of Aggression, 4th International Humanitarian Law Dialogs, Robert H. Jackson Center

“The principle of “Equal law for all, Equality before the Law” is a general principle of law recognised by civilized nations within the meaning of article 38(1)(c) of the Statute of the International Court of Justice. Yes, law must apply to everyone equally.

Well, while there are some in this world and also in this country who want to ignore this principle, who want to push it back, there are, however, also many in this great country who actively support and work for full respect of the principle of “Equal law for all, Equality before the Law”.”

Philippe Kirsch, Statement by Judge Philippe Kirsch, President of the International Criminal Court at the Inaugural Meeting of Judges, 11 March 2003

“This day marks the end of a long period of diplomatic efforts and the beginning of the implementation of a system of permanent international criminal justice.

(...) The International Criminal Court is an independent body; it is neutral and impartial and must operate according to the highest traditions of the Rule of law. At the same time, it is important to appreciate that, in many ways, it does not indeed cannot stand alone. It is, at once, independent and interdependent with many of the other institutions and actors of the international community.”

Annex 6. Collection of Quotes – U.S. Anti-ICC Campaign 2000-2004 (SELECTED)

→ 4) *U.S. Congress Debates: the American Servicemen Protection Act (ASPA)*

U.S. Senate (2001). American Servicemembers' Protection Act, 107th Congress, U.S.Senate, 10 May 2001, Library of Congress.

Sen. Helms, American Servicemembers' Protection Act, 107th Congress, U.S.Senate, 10 May 2001, Library of Congress, S4814

“Mr. President, in rejecting the U.S. membership in the U.N. Human Rights Commission, the strongest voice for freedom in the world has been silenced at and by the United Nations. Clearly, Members of the United Nations are far more comfortable with a definition of human rights which is agreeable to rogue nations like Lybia and Sudan. This is precisely the sentiment which created the International Criminal Court. If the signatories to the Rome Treaty proceed to establish a permanent International Criminal Court, we need an insurance policy against politicized prosecution of American soldiers and officials.

This bill is just that protection, and let me be absolutely clear, the Rome Treaty, if sent to the United States Senate for ratification will be dead on arrival. Notwithstanding the fact that the Senate will not ratify this treaty, it is, to my knowledge, the first treaty which would be applicable to the U.S. even without the United States consent. This is, to say the least, an appalling breach of American sovereignty and it will not stand.

But, there will be real consequences if the United States remains silent in the face of this outrage. It is easy to imagine the U.S. or Israel becoming a target of a U.N. witch hunt, with officials or soldiers being sent before judges handpicked by undemocratic countries.”

U.S. Senate (2001). American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress.

Sen. Helms, American Servicemembers' Protection Act, 107th Congress, 26 September 2001, Library of Congress, S9854

“Mr. President, our Nation is at war with terrorism. Everybody knows that. Thousands in our Armed Forces are already risking their lives around the globe, preparing to fight the war. (...) These are all courageous men and women who are not afraid to face up to evil terrorists, and they are ready to risk their lives to preserve and to protect what I like to call the miracle of America.”

“And that is why I am among those of their fellow countrymen who insist that these men and women who are willing to risk their lives to protect their country and fellow Americans should not have to face the persecution of the International Criminal Court – which ought to be called the International Kangaroo Court. This Court will be empowered when 22 more nations ratify the Rome Treaty.

Instead of helping the United States go after real war criminals and terrorists, the International Criminal Court has the unbridled power to intimidate our military people and citizens with bogus, politicized prosecutions.

Similar creations of the United Nations have shown that this is inevitable. Earlier this year, the U.N. Human Rights Commission kicked off the United States – the world’s foremost advocate of human rights – to the cheers of dictators around the globe.

The United Nations’ conference on racism in Durban, South Africa, this past month, became an agent of hate rather than against hate. With this track record, it is not too difficult to anticipate that the U.N.’s International Criminal Court will be in a position not merely to prosecute, but to persecute our soldiers and sailors for alleged war crimes as they risk their lives fighting the scourge of terrorism.

Therefore, now it is the time for the Senate to move to protect those who are protecting us.”

→ 5) Official U.S. Position

Rumsfeld, D. (2002). Defense Department Operational Update Briefing, Federal News Service, 12 June 2002. Briefers: Donald Rumsfeld, Secretary of Defense and General Richard Myers, Chairman, Joint Chiefs of Staff.

“(…) a politicized or a loose cannon prosecutor in a court like that can impose enormous difficulties and disadvantages on people: individuals, governments. And as a result, the United States has decided that we’re – as you have read, the United States has decided that we’re operating in the United Nations to try to get resolutions to exempt U.S. forces from the requirements of that court, or the imposition of the court. To the extent we’re participating in peacekeeping activities that are U.N. related, we intend to do a similar thing by going around to countries on a bilateral basis. There is a provision in the treaty which permits countries to come to an agreement bilaterally that – in this case the US – forces operating in their country would not be subject to the court. And it’s both civilian and military.”

U.S. Embassy, Statement ASPA, 12 June 2002

“We believe the ICC treaty has a number of fundamental problems. The United States is concerned that its military and civilian personnel will be exposed to politically motivated investigations and prosecutions. The ASPA provision grants an authority for the President to use all means necessary. It does not require or suggest that any particular means be used to address this issue.

Should matters of legitimate controversy develop with the ICC's host- country, the Netherlands, we would expect to resolve these controversies in a constructive manner, as befitting relations between close allies and NATO partners. Obviously, we cannot envisage

circumstances under which the United States would need to resort to military action against the Netherlands or another ally.”

Negroponete, J.D. - United Nations Security Council (2002). The situation in Bosnia and Herzegovina, (S/2002/618), 4563rd Meeting, S/PV. 4563, 30 June 2002

“Having accepted these risks by exposing people to dangerous and difficult situations in the service of promoting peace and stability, we will not ask them to accept the additional risk of politicized prosecutions before a court whose jurisdiction we do not recognize.”

“The failure of the Security Council to act to preserve an appropriate legal status for United States and other non-ICC party peacekeepers can only end in damage to international peacekeeping generally. We believe that none of this is of our making.”

“We have scrupulously sought to find a way forward that is consistent both with others’ obligations to the Rome Treaty and with United Nations peacekeeping practice. Furthermore we have accepted the principle that this solution should apply only to States that are not party to the ICC.”

Barack Obama, 14 July 2010, Interview with South African Broadcasting Corporation

“THE PRESIDENT: Well, my view is that the ICC has put forward an arrest warrant. We think that it is important for the government of Sudan to cooperate with the ICC. We think that it is also important that people are held accountable for the actions that took place in Darfur that resulted in, at minimum, hundreds of thousands of lives being lost.

And so there has to be accountability, there has to be transparency. Obviously we are active in trying to make sure that Sudan is stabilized; that humanitarian aid continues to go in there; that efforts with respect to a referendum and the possibility of Southern Sudan gaining independence under the agreement that was brokered, that that moves forward.

So it is a balance that has to be struck. We want to move forward in a constructive fashion in Sudan, but we also think that there has to be accountability, and so we are fully supportive of the ICC.”

→ 6) NGO Statements: International Reaction to U.S. Position

Coalition for an International Criminal Court, “United States Postpones Adoption of UN Resolution to Protect Humanitarian Personnel over ICC Stance”, Press Release, 25 August 2003

“The United States today postponed the adoption of a Security Council resolution seeking increased protection for UN peacekeepers and other humanitarian personnel due to a reference to the ICC in the draft text.”

“Earlier this month, the Security Council adopted Resolution 1497, which authorized the deployment of a multinational stabilization force to Liberia. At U.S. insistence, Resolution 1497 included sweeping immunities language that challenged not only international law

under the Rome Statute, but also national laws, leading France, Germany and Mexico to abstain.”

Pace, William R., Convenor for the Coalition for the International Criminal Court, Statement, “Upon the Adoption of the Security Council Resolution on the Protection of Humanitarian and UN Personnel on August 26, 2003”, 26 August 2003

“The Coalition welcomes the Security Council resolution addressing the need for greater protection of humanitarian workers and UN personnel. The tragic, murderous, and vicious attack on UN offices and staff last week underscores the need for the UN, member states and Security Council to drastically increase their efforts to prevent these acts and to end impunity for those who commit these crimes.”

“It is important and significant that today's resolution by the Security Council reaffirms that these acts are war crimes. The Rome Statute of the ICC provides the most concise and effective definition that attacks on humanitarian workers and UN personnel are war crimes. The new ICC is the main international organization to bring war criminals to justice.”

“It is again unfortunate that the USA government continues to hold important Security Council resolutions hostage to the Bush Administration's ideological opposition to the Rome Statute and the ICC.”

→ 7) International Reaction to U.S. Position: Statements by International Public Servants

Fischer, Joschka. Letter from the German Foreign Minister to Secretary of State Colin Powell Dated October 24, 2001, delivered on October 31.

“As you know, the German Government is a firm advocate of the International Criminal Court. In the Common Position adopted by the Council of European Union sitting in the Foreign Ministers formation on June 11, 2001, the EU member states reaffirmed their unreserved support for the ICC and above all the objective of early entry into force of the Rome Statute and the establishment of the Court.

Adopting the ASPA would open a rift between the US and the European Union on this important issue. I would therefore like to ask you to do everything in your power to prevent such a development. Precisely in view of the international effort against terrorism. I feel that it is particularly important for the United States and the European Union to act in accord in this field too. The future International Criminal Court will be a valuable instrument for combating the most serious crimes. It will provide us with an opportunity to fight with judicial means crimes such as the mass murder perpetrated by terrorists in New York and Washington on 11 September 2001.”

UN Secretary-General Kofi Annan, Letter to Colin Powell, 3 July 2002

“I think that I can state confidently that in the history of the United Nations, and certainly during the period that I have worked for the Organization, no peacekeeper or any other mission personnel have been anywhere near the kind of crimes that fall under the jurisdiction of the ICC. The issue that the United States is raising in the Council is

therefore highly improbable with respect to United Nations peacekeeping operations. At the same time, the whole system of United Nations peacekeeping operations is being put at risk.”

Annex 7. Collection of Quotes – Counterdiscourses 2007-2010 “Politicization” (SELECTED)

→1) United Nations Security Council Debates

Mr. Erwa, Sudan. United Nations Security Council (2004). Report of the Secretary General on the Sudan, 5015th Meeting, 30 July 2004, S/PV.5015 (my emphasis), p. 14

“I have just witnessed an *unfair and unjust policy of double standards*. Indeed, these are shameless acts. Are these the same States that we see every day on television, with their massive military machines, engaged in the occupation of nations, firing upon innocent civilians in Iraq and Afghanistan and playing the role of loyal guardian to the occupying, usurping forces in Palestine that kill and displace the unarmed and innocent Palestinian people? Why do those supporting States follow the sponsors of this resolution without questioning them or discussing virtues? Are these voices that condemn what is happening? Why do they remain silent about the crimes of torture, killing and rape that take place in Abu Ghraib and the prisons of Afghanistan? Why do those countries remain silent before the truth, like silent devils? The fact that one possesses the power to practice oppression and injustice does not give one a monopoly over virtue. Virtue and injustice can in no way be reconciled.”

Mr. Rogachev, Russian Federation. United Nations Security Council (2007). Reports of the Secretary-General on the Sudan, 5789th Meeting, 5 December 2007, S/PV.5789, p.10.

“The Russian delegation commends the efforts of the Prosecutor’s Office to resolve the very difficult issue of bringing to justice those accused of committing crimes in Darfur. However, it would probably be a mistake to limit the work of the ICC in Sudan to combating impunity. We regard that work in broader terms, as part of the overall efforts to resolve the situation in that region.”

„It is with great regret that we have learnt that cooperation between the ICC and the Government of the Sudan is now in a state of near collapse. Clearly, the current atmosphere of mistrust between the Sudan and the ICC is not helping the investigation. We need to step up our efforts to promote a constructive dialogue between the parties. We call on the Sudanese authorities to take the necessary measures in that regard, including within the framework of existing legal procedures and mechanisms.“

“An important aspect in creating an atmosphere of trust would be for the investigation to focus on crimes committed by rebels. Efforts by the Prosecutor to that end would assist the peace process and encourage all parties to the conflict to seek dialogue and a cessation of violence. Another important aspect would be full involvement by the Sudanese legal system in investigating the crimes committed. Further promotion of dialogue between the ICC and the African Union could also facilitate the situation.“

Mr. Liu Zhenmin, China. United Nations Security Council (2007). Reports of the Secretary-General on the Sudan, 5789th Meeting, 5 December 2007, S/PV.5789, p. 10-11.

“The causes of the problem in Darfur are complex. Any settlement plan must ensure that the correct solution is found.”

“From the very outset, China has believed that the most urgent aspect of resolving the problem of Darfur is to stabilize and improve the security situation. At this point, the international community is moving forward with its two-track approach and accelerating the deployment of the Hybrid Operation on the ground. At the same time, it is striving to move forward the political negotiations on Darfur. That is now the overall objective in the Darfur situation, and work on all other aspects should contribute to its attainment.”

“In our view, it is through an improvement of the situation in Darfur and the stabilization of the political situation that the problem of impunity can be resolved. Only then will judicial fairness be fundamentally achieved. The ICC became involved in the problem of Darfur on the basis of a Security Council resolution mandate. Its work should also complement the efforts of the international community to advance the political process and deploy peacekeepers. It is necessary to seek and obtain the support and cooperation of the Sudanese Government. To ignore the overall political and security situation there, simply stress ending impunity and push solely for mandatory measures is an approach unlikely to result in cooperation and support from the Sudanese Government. It would also hardly be conducive to the overall efforts of the international community to resolve the problem of Darfur.”

“Ending impunity is an essential component of resolving the problem of Darfur. We support the ICC in playing a constructive role and hope that the Security Council will achieve a comprehensive resolution to the problem of Darfur.”

→ 3) International Public Servants/Experts

Mbeki, Thabo. Speech of the Chairperson of the AUDP, Thabo Mbeki, on Handing over the AUPD Report to the Chairperson of the AU Commission, Jean Ping, AU Headquarters, Addis Ababa, 8 October 2009

“Following the decision taken by the Peace and Security Council of the African Union, at its 142nd meeting held at ministerial level, on 21 July 2008, and subsequently confirmed at the 12th Ordinary Session of the Assembly of the African Union held in Addis Ababa on 1-3 July 2009, you, Chairperson, appointed us to serve as members of the independent African Union High-Level Panel on Darfur.”

“When making the firm statement that there must be peace, that justice must be done and seen to be done, and that reconciliation should be achieved, our interlocutors also recognized the reality that the objectives of peace, justice and reconciliation in Darfur are interconnected, mutually dependent, equally desirable and cannot be achieved separate one from the other.”

“Repeatedly during our process of consultation, the Darfurians insisted that the Panel would fail in its mission if it did not identify and address what they called ‘the root cause of the crisis in Darfur’.”

“That root cause is the marginalisation and underdevelopment of Darfur as a result of policies and practices implemented throughout Sudan during both the colonial and post-colonial periods.”

“Many in Darfur have argued that this was the fundamental reason for the armed rebellion which broke out in 2003, and therefore that any just and lasting solution of the conflict in Darfur must redress the imbalance between the historic Sudanese centre and periphery.”

Ping, Jean. Allocution de M. Jean Ping, President de la Commission, a L’Occasion de la Ceremonie de Remise du Rapport du Groupe de Haut Niveau de l’UA sur le Darfour (GUAD)

“J’ai parle tantot du contexte dans lequel la decision du 21 juillet 2008 du Conseil de paix et de securite de l’UA a ete prise. Permettez que je revienne sur la question, compte tenu des malentendues qu’elle a pu soulever, parce que l’UA a demande et continue de demander que le Conseil de securite des Nations unies assume pleinement ses responsabilites en faisant usage de l’Article 16 du Statut de Rome pour faire sursoir a la procedure initiee par la Cour penale internationale.”

→ 4) Reports and Recommendations by International Public Servants/Experts

Report of the United Nations Fact-Finding Mission on the Gaza Conflict, A/HRC/12/48, 25 September 2009 (the Goldstone Report)

“The Mission was struck by the repeated comment of Palestinian victims, human rights defenders, civil society interlocutors and officials that they hoped that this would be the last investigative mission of its kind, because action for justice would follow from it. It was struck, as well, by the comment that every time a report is published and no action follows, this “emboldens Israel and her conviction of being untouchable”. To deny modes of accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community. The Mission believes these comments ought to be at the forefront in the consideration by Member States and United Nations bodies of its findings and recommendations and action consequent upon them.” (§1957)

“The Mission is firmly convinced that justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.” (§1958)

→ 5) Resolutions and Other Actions by International and Regional Organizations

African Union (2006), Communique of the Peace and Security Council, PSC/MIN/Comm.(XLVII), 46th Meeting, Addis Ababa, Ethiopia, 10 March 2006

The Peace and Security Council (PSC) of the African Union (AU), at its 46th meeting, held on 10 March 2006, adopted the following decision on the situation in Darfur:

“Takes note of the Report of the Chairperson pursuant to paragraph 5 of the PSC Communique PSC/PR/Comm.(XLV) of 12 January 2006 on the situation in Darfur (PSC/MIN/2(XLVI));“

“Decides to support in principle the transition from AMIS to a UN Operation within the framework of the partnership between AU and the United Nations in the promotion of peace, security and stability in Africa;“

African Union Assembly (2008). Decision on the Report of the Commission on the Abuse of the Principle of Universal Jurisdiction, Assembly/AU/Dec.199(XI), Assembly of the African Union, 11th Ordinary Session, Sharm El-Sheikh, Egypt, 30 June - 1 July 2008.

“5. RESOLVE as follows:

- (i) The abuse of the Principle of Universal Jurisdiction is a development that could endanger International law, order and security;
- (ii) The political nature and abuse of the principle of universal jurisdiction by judges from some non-African States against African leaders, particularly Rwanda, is a clear violation of the sovereignty and territorial integrity of these States;
- (iii) The abuse and misuse of indictments against African leaders have a destabilizing effect that will negatively impact on the political, social and economic development of States and their ability to conduct international relations;
- (iv) Those warrants shall not be executed in African Union Member States;
- (v) There is need for establishment of an international regulatory body with competence to review and/or handle complaints or appeals arising out of abuse of the principle of universal jurisdiction by individual States.“

“7. FURTHER REQUESTS the Chairperson of the AU Commission to urgently cause a meeting between the AU and European Union (EU) to discuss the matter with a view to finding a lasting solution to this problem and in particular to ensure that those warrants are withdrawn and are not executable in any country;

8. ALSO REQUESTS all UN Member States, in particular the EU States, to impose a moratorium on the execution of those warrants until all the legal and political issues have been exhaustively discussed between the African Union, the European Union and the United Nations.”

→6) Mass-Media/Newspapers

Piet, B. (2009). Khama wants Bashir at ICC, AU differs, Mmegi Online, 5 May 2009.

“A few months later, when welcoming Tanzanian President, Jakaya Kikwete, to Botswana, President Khama commended his efforts to unite the people of his country and the entire continent during his tenure as chairman of the African Union. But he supported the warrant of arrest.

"We however note with regret that Africa is lapsing into the dark days of coups and unconstitutional changes as was the case in Mauritania, Guinea-Bissau and Madagascar.

Africa must remain resolute in rejecting extra-parliamentary transfer of power by isolating the illegal regimes until the constitutional order is restored.“

Keoreng, E. (2009). Sudanese ask Khama to go easy on al-Bashir, Mmegi Online, 8 May 2009

“In his speech during Tanzanian president Jakaya Kikwete's visit here, President Khama [Botswana] had said that "we should equally condemn Africa's leaders who continually show a disregard for human rights and the rule of law as is presently the case with Sudan. And by not condoning impunity, we should also have the courage to render such leaders to international justice including the International Criminal Court so that they can answer to the charges against them, " he said.“

Annex 8. Collection of Quotes – Counterdiscourses 2007-2010 “Peace vs. Justice” (SELECTED)

→ 1) UN Security Council Debates

Mr. Zhang Yishan, China. United Nations Security Council (2004). Report of the Secretary General on the Sudan, 5015th Meeting, 30 July 2004, S/PV.5015, p. 2.

„We believe that the satisfactory resolution of the political situation in Darfur requires, first, the speedy alleviation of the severe humanitarian situation; secondly, that political negotiations be expedited so as to reach, as soon as possible, a comprehensive agreement based on respect for the Sudan's sovereignty and territorial integrity; and, thirdly, that the international community honour its assistance commitments expeditiously, provide effective logistical support and increase its contributions.“

„The draft resolution proposed by the United States and other countries, although some amendments have been made to it, still includes mandatory measures against the Sudanese Government. As all the parties are speeding up diplomatic efforts, such measures cannot be helpful in resolving the situation in Darfur and may even further complicate it.“

Mr. Khalid, Pakistan. United Nations Security Council (2004). Report of the Secretary General on the Sudan, 5015th Meeting, 30 July 2004, S/PV.5015, p. 10.

„Pakistan welcomes the emphasis on the need for a political solution to the Darfur crisis. We hope and expect that the Sudan Liberation Army and the Justice and Equality Movement will adopt a realistic and constructive position in the dialogue which is to be undertaken under the auspices of African Union mediation. All parties must negotiate in good faith in that dialogue.

In that context, Pakistan welcomes the fact that, at our insistence, the text now includes the principle of preserving the territorial integrity of the Sudan. A solution to the Darfur crisis must be found within the unity and territorial integrity of the Sudan. Pakistan also welcomes the recognition of the leading role of the African Union in addressing the Darfur crisis and calls for international support for that role.“

Mr. Churkin, Russia. Reports of the Secretary-General on the Sudan, 6096th Meeting, 20 March 2009, S/PV.6096, p. 10.

“Today's meeting of the Security Council is very symptomatic. It was convened in haste and without due preparation, and underscores the absence of a coordinated strategy on

Darfur on the part of the international community and the Security Council that would assiduously address the political solution, peacekeeping and the search for justice. If what we are witnessing here is the expression of a certain policy, it is a dangerous one that will, unfortunately, lead first and foremost to the suffering of the people of Darfur and other regions of the Sudan.”

Mr. Rugunda, Uganda. Reports of the Secretary-General on the Sudan, 6096th Meeting, 20 March 2009, S/PV.6096, p. 11.

“I do not share the view of my colleague from the Sudan that because only 13 NGOs have been expelled — and that therefore only 7 per cent of the NGO community has been affected — it is a negligible matter. What we know is that the NGOs affected are well known, big international organizations whose capacity and effectiveness have been very well tested in many trying situations. Thus, the fact that only 13 may have been expelled does not mean that their contribution is small. In fact, we have received information that the expulsion may have affected 50 to 60 per cent of the humanitarian work that is going on.”

→7) Mass-Media/Newspapers

UN New Centre (2010). At ICC Review Conference, Ban declares end to "era of impunity", 31 May 2010.

„More than one decade after the International Criminal Court (ICC) was set up, a new “age of accountability” is replacing the “old era of impunity,” Secretary-General Ban Ki-moon underlined today.

Twelve years ago when world leaders gathering in Rome for its establishment, “few could have believed, then, that this court would spring so vigorously into life,” Mr. Ban said at the first-ever review conference of the ICC held in Kampala, Uganda.

“Seldom since the founding of the United Nations itself has such a resounding blow been struck for peace, justice and human rights,” he stressed.

Today's gathering, the Secretary-General said, marks an occasion to bolster “our collective determination that crimes of humanity cannot go unpunished.”

BBC News (2010). International Criminal Court 'altered behaviour' - UN, 31 May 2010. BBC News.

„The International Criminal Court (ICC) has forced governments to alter their behaviour in the eight years of its existence, the UN chief has said. Ban Ki-moon told a summit in Uganda discussing the Hague-based court that it had curtailed impunity and had broken new ground on victims' rights.“ (...)”In this new age of accountability, those who commit the worst of human crimes will be held responsible.”

Annex 9. Coded Segments – “We” vs. the “Other” (SELECTED)

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
1	“We”	UN Security Council Debates 2002/2008	The United Nations, through many complex operations, has learnt that the rule of law is not a luxury and that justice is not a side issue.
2	“We”	UNSC Deb ‘02/’08	And we have seen that elections held when the rule of law is too fragile seldom lead to lasting democratic governance.
3	“We”	UNSC Deb ‘02/’08	The task is not simply technically difficult. It is politically delicate. It requires us to facilitate the national formulation and implementation of an agenda to address these issues, to cultivate the political will and leadership for that task and to build a wide constituency for the process.
4	“We”	UNSC Deb ‘02/’08	We must take a comprehensive approach to justice and the rule of law. It should encompass the entire criminal justice chain – not just police, but lawyers, prosecutors, judges and prison officers, as well as many issues beyond the criminal justice system.
5	“We”	UNSC Deb ‘02/’08	We should, wherever possible, guide rather than direct, and reinforce rather than replace. The aim must be to leave behind strong local institutions when we depart.
6	“We”	UNSC Deb ‘02/’08	If we always and everywhere insist on uncompromising standards of justice, a delicate peace may not survive.
7	“We”	UNSC Deb ‘02/’08	But equally, if we ignore the demands of justice simply to secure agreement, the foundations of that agreement will be fragile, and we will set bad precedents.
8	“We”	UNSC Deb ‘02/’08	The quest to define and, subsequently, to implement justice and the rule of law has been central to the march of civilization.
9	“We”	UNSC Deb ‘02/’08	...the commitment we make to strengthen and advance the international rule of law will be a lasting legacy for future generations.
10	“We”	UNSC Deb ‘02/’08	We are certain that without asserting the primacy of law in international relations, we will be doomed to an endless and fruitless consideration of the issues of prevention and settlement of conflicts.
11	“We”	UNSC Deb ‘02/’08	To uphold what is right, defend what is just and observe international obligations is the solemn commitment made by the United Nations to the world’s people and is the essence of the United Nations Charter.
12	“We”	UNSC Deb ‘02/’08	Justice and the rule of law... lie at the heart of United Nations action.
13	“We”	UNSC Deb ‘02/’08	our goal is to build a better global village where there are no wars or conflicts as all countries live in peace and stability
46	“We”	UNSC Deb ‘02/’08	my Government tried to address the rebellion through serious national dialogue and sincere cooperation with the international community.

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
1	“We”	International Criminal Court Assembly of States Parties (ICC-ASP) 2002/2010	The International Criminal Court is on the whole suitable for the international community to fight against impunity and to judge those who have committed the gravest crimes,
2	“We”	ICC ASP ‘02/’10	The existence of the International Criminal Court notable enriches the legal structure of the international community and the rule of law at a global level.
3	“We”	ICC ASP ‘02/’10	the international community will contribute to strengthen the ICCs dissuasive capabilities.
4	“We”	ICC ASP ‘02/’10	The high responsibilities that have been entrusted to the Court can only be fulfilled with the support and cooperation of the international community.
5	“We”	ICC ASP ‘02/’10	In the medium and long term universality is the great challenge before the ICC and the international community.
6	“We”	ICC ASP ‘02/’10	It is our hope that the ICC will create greater awareness in the international community with respect to the principles of international criminal justice, as well as accountability which can play significant role in the consolidation of peace and global stability.
7	“We”	ICC ASP ‘02/’10	This meeting is the crowning achievement of the lofty goal the international community set itself at the 1998 Rome Conference: the establishment of a permanent and independent tribunal to promote the rule of law and ensure that the gravest international crimes do not go unpunished.
8	“We”	ICC ASP ‘02/’10	The institution which we today launch is a milestone in our longstanding collective commitment to the protection of human rights and to the pursuit of world peace and security.
9	“We”	ICC ASP ‘02/’10	Our common international endeavour to uphold human rights, to promote international justice and the rule of law worldwide can only be strengthened through the expansion of the universality of the Rome Statute and of the ICC
10	“We”	ICC ASP ‘02/’10	The ability of the Court to fulfill the high functions...depends...(on) the international community as a whole, including the important grassroots work of the non-governmental organizations
11	“We”	ICC ASP ‘02/’10	The international community has taken memorable steps in this regard (justice, peace) with the establishment of the International Criminal Court. It is now up to the States Parties and other peace loving countries to strengthen the Court.
30	“We”	ICC ASP ‘02/’10	We have joined others of the international community who support the goal of ending impunity and the principle of equality before the law.
1	“We”	NGO 2002/2010	Amnesty International (AI) applauds the determination of the international community, which led the US to withdraw its proposal for a further renewal of Security Council Resolutions 1422 and 1487 to exempt peacekeepers from the jurisdiction of the International Criminal Court (ICC).

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
2	"We"	NGO '02/'10	We wish to express our sorrow regarding the loss of life and call on the international community to immediately take all appropriate measures in response to this unacceptable violence.
3	"We"	NGO '02/'10	This tragedy is the result of the prolonged impunity granted to Israel by the international community, despite Israel's documented, persistent disregard for international and humanitarian law in the Occupied Palestinian Territory (OPT) and its violation of fundamental human rights, including the right to life
4	"We"	NGO '02/10	We, the undersigned organisations gathered in Kampala at the International Criminal Court (ICC) Review Conference, are shocked by Israel's killing and injury of civilians carrying humanitarian supplies to Gaza. We wish to express our sorrow regarding the loss of life and call on the international community to immediately take all appropriate measures in response to this unacceptable violence.
1	"We"	International Public Servants & Experts (IPS) 2002/2010	Yet to appreciate fully the Court's unique significance to humanity, we need only visit the first sentence of Article 27 of the Rome Statute... The accountability of political and military leaders is now, unequivocally, part of international law.
2	"We"	IPS '02/'10	Once seized of a case, the International Criminal Court will not be the world's crucible for vengeance. It will provide a fair trial to those accused of having committed the gravest of crimes, endeavour to lay bare the truth, foremost to the victims themselves, but also to the wider world community, and then do what it can to assist those victims.
3	"We"	IPS '02/'10	We, the States Parties, have protected this institution, in a manner that I believe has been both spirited and noble – for in defence of the Court, including some of the poorest among us, have seen fit to forfeit great material advantage.
4	"We"	IPS '02/'10	We have all done this, I believe, not because we see in it narrower interests or profit, but because we view the International Criminal Court as the only new institution which offers us hope for a twenty-first century more honourable than preceding centuries.
5	"We"	IPS '02/'10	The international community should be careful not to prioritize stability approaches (Security Sector Reform, DDR) over restorative, justice-related and victim-centred approaches (...).
39	"We"	IPS '02/'10	If a state is unable or unwilling to protect its civilian population when threatened to become victim of a most serious international crime, the international community has the responsibility to protect the civilian population.
1	"Other"	UN Security Council Debates 2002/2008	We have seen that without credible machinery to enforce the law and resolve disputes, people resort to violent or illegal means.
2	"Other"	UNSC Deb '02/'08	We have seen people lose faith in a peace process when they do not feel safe from crime, or secure in

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
			returning to their homes, or able to start rebuilding the elements of a normal life, or confident that the injustices of the past will be addressed.
3	“Other”	UNSC Deb ‘02/’08	If we insist, at all times and places, on punishing those who are guilty of extreme violations of human rights, it may be difficult or even impossible to stop the bloodshed and save innocent civilians.
4	“Other”	UNSC Deb ‘02/’08	Restoring peace... It is also about protecting persecuted minorities in Timor and Kosovo; assisting victims who have been humiliated to the core; enforcing respect for human rights in Liberia and in the Democratic Republic of the Congo; freeing repressed aspirations to democracy in Cambodia; solidifying fragile national institutions and restoring life to democratic citizenship in Haiti; offering nations weakened by war the means to recover their political sovereignty through the establishment of a constitutional process, as in Afghanistan;
5	“Other”	UNSC Deb ‘02/’08	helping societies emerge from conflict
6	“Other”	UNSC Deb ‘02/’08	The United Nations must also give priority to providing security to peoples in the greatest need of it
7	“Other”	UNSC Deb ‘02/’08	The work of the many organisms and bodies of the United Nations system is intended to benefit the ordinary man in the street, to improve his conditions of life and to ensure a better world for him and future generations.
8	“Other”	UNSC Deb ‘02/’08	we do so in most cases when we have before us a conventional set of interlocuters to deal with. However, we do not seem to know what to do with regard to self-styled republics and territories where there is no recognized authority to be held accountable by world opinion. There are numerous such black holes today, and they exist, unfortunately, in most areas of our planet.
9	“Other”	UNSC Deb ‘02/’08	every human being in every society
10	“Other”	UNSC Deb ‘02/’08	the law of inter-State relations – <i>ius gentium</i> – is at the service of the individual.
1	“Other”	International Criminal Court Assembly of States Parties (ICC ASP) 2002/2010	On one hand, perpetrators of serious crimes defined in the Statute must no longer be able to expect impunity.
2	“Other”	ICC ASP ‘02/’10	Providing protection to the victims should be a priority objective of any advanced policy against criminality.
3	“Other”	ICC ASP ‘02/’10	The Rome Statute establishes unprecedented rules in the international criminal law, allowing for compensation of the victims of crime, recovery and compensation for the damages. These rights of victims are as important as the due process right of the perpetrator of the crime.
4	“Other”	ICC ASP ‘02/’10	We, the representatives of the States Parties to the Rome Statute, who together constitute this Assembly, have assumed a special trust. In the months and years ahead, we must demonstrate to every state, to members of civil society, and to victims of the most heinous crimes, that the Court we have created is

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
			important, apolitical and capable of interceding where national institutions have failed to deliver justice
5	“Other”	ICC ASP ‘02/’10	Here I would like to just point out that my country finds the issue of the impact of the Rome Statute system on victims and affected communities to be of particular importance. Providing protection to the victims should be a priority objective of any advanced policy against criminality.
6	“Other”	ICC ASP ‘02/’10	These rights of victims are as important as the due process right of the perpetrator of the crime.
7	“Other”	ICC ASP ‘02/’10	Como ya se ha señalado en este debate general, las víctimas no pueden esperar.
8	“Other”	ICC ASP ‘02/’10	We wish... that the perspectives of victims and affected communities will be carried on to our future discussions and decisions.
9	“Other”	ICC ASP ‘02/’10	the issue of a definition for the crime of Aggression will generate varied responses.... any hesitation or lack of will on this important issue, will be an irreparable dent on the hard work and contribution on all those who have toiled to punish perpetrators of this heinous crime since the end of the second world war.
10	“Other”	ICC ASP ‘02/’10	Italy sees the role of victims under the Statute as a fundamental achievement for international criminal justice
11	“Other”	ICC ASP ‘02/’10	the preventive role of ICC will discourage future perpetrators of such crimes
12	“Other”	ICC ASP ‘02/’10	Despite of all the injustices to our People, we still believe in peaceful means to end the Israeli occupation, and without the international community's serious involvement, this occupation will never end.
13	“Other”	ICC ASP ‘02/’10	It is ultimately about people: children, women and men who have suffered these atrocities.
1	“Other”	NGO 2002/2010	the voice of victims are sometimes heard, but often silenced. We recognise strong and even brave political statements of support for justice, but we also see governments and others too willing to compromise principles for political expediency.
2	“Other”	NGO ‘02-’10	While the Rome statute contains a serie of great innovations allowing participation of victims to the proceedings and recognizing their right to reparations, the FIDH doubts of the capacity of the Court to implement those rights. Indeed, the financial difficulties that the Court might face may prevent the effective participation and protection of victims.
3	“Other”	NGO ‘02-’10	perpetrators of serious crimes should not go unpunished
4	“Other”	NGO ‘02-’10	Joining the ICC will provide the people of the region legal protection from war crimes and genocidal acts. Most of all, joining the ICC will offer Asian peoples a chance for a future without impunity.
1	“Other”	International Public Servants & Experts (IPS) 2002/2010	I know you are ready for long weeks of hard and detailed negotiations. But I hope you will feel, at every moment, that the eyes of the victims of the past crimes, and of the potential victims of future ones, are fixed firmly upon us.
2	“Other”	IPS ‘02-’10	From Sierra Leone to the Sudan to Angola to the Balkans to Cambodia and to Afghanistan, there are a

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
			great number of peoples who need more than just words of sympathy from the international community. They need a real and sustained commitment to help end their cycles of violence, and launch them on a safe passage to prosperity.
3	“Other”	IPS '02-'10	Just as we have learned that the world cannot stand aside when gross and systematic violations of human rights are taking place, so we have also learned that intervention must be based on legitimate and universal principles if it is to enjoy the sustained support of the world's peoples.
4	“Other”	IPS '02-'10	This court of law where formerly untouchable perpetrators, regardless of their rank or status, can be held accountable for their crimes.

Annex 10. Coded Segments – the Elements (SELECTED)

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
1	JUSTICE	UNSC Debates 2002/2008	justice is not just a side issue
2	JUSTICE	UNSC Deb '02/'08	We must take a comprehensive approach to justice and the rule of law
3	JUSTICE	UNSC Deb '02/'08	A one-size-fits-all approach does not work. Local actors must be involved from the start – local justice sector officials and experts from government, civil society and the private sector.
4	JUSTICE	UNSC Deb '02/'08	Justice and the rule of law are emerging as the cornerstones of building peace and democracy. They lie at the heart of United Nations action
5	JUSTICE	UNSC Deb '02/'08	This means that at the very origin of the United Nations the dialectic relationship between justice, law, peace, and development – or, as some would put it, the consubstantial link between these concepts, which in themselves are genuine programmes – was reaffirmed.
6	JUSTICE	UNSC Deb '02/'08	the need for justice, development and the rule of law does not seem to be commonly shared, at least not in deeds and in truth.
7	JUSTICE	UNSC Deb '02/'08	Democracy, justice, economic prosperity, human rights, combating terrorism and lasting peace all depend on the rule of law.
8	JUSTICE	UNSC Deb '02/'08	X welcomes the embedding of components of justice and the rule of law in terms of reference for United Nations peace operations and for United Nations missions in general.
9	JUSTICE	UNSC Deb '02/'08	In the long term, justice always acts in the service of peace. It is therefore important to prevent impunity. A peace agreement is not worthy of its name if it contains an amnesty for war crimes, genocide or other crimes against humanity
10	JUSTICE	UNSC Deb '02/'08	History has repeatedly shown that justice and peace are inextricably linked and that one cannot exist without the other, whether it be social justice, economic justice, the recognition of fundamental human rights and freedoms or respect for the rule of law.
11	JUSTICE	UNSC Deb '02/'08	Justice and the rule of law are prerequisites for community life. Peace is not possible without them.
12	JUSTICE	UNSC Deb '02/'08	A peace achieved without the foundations of justice and the rule of law may be tentative and fragile. We should thus view the institution of justice and the rule of law in post-conflict societies as an investment in a sustainable, durable peace.
13	JUSTICE	UNSC Deb '02/'08	Somewhere between amnesty and uncompromising justice each society must strike its own delicate balance that will enable it to establish sufficient justice to restore peace and to move onward from its violent past.
17	JUSTICE	UNSC Deb '02/'08	The nexus between justice and the rule of law is the very foundation for the strengthening of

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
			international law and the maintenance of international peace and security.
1	JUSTICE	ICC Assembly of States Parties (ICC-ASP) 2002/2010	My Government considers the International Criminal Court, and the One Court principle it embodies, key elements in the emergence of a system of international justice, deemed by Brazil as highly necessary in today's world
2	JUSTICE	ICC ASP '02/'10	In the months and years ahead, we must demonstrate to every state, to members of civil society, and to victims of the most heinous crimes, that the Court we have created is important, apolitical and capable of interceding where national institutions have failed to deliver justice.
3	JUSTICE	ICC ASP '02/'10	El trabajo de la Corte es decisivo para combatir la impunidad, al tiempo que sirve para disuadir a potenciales criminales de la comisión de crímenes atroces, contribuyendo de esta manera a asegurar la justicia y el imperio de la ley.
4	JUSTICE	ICC ASP '02/'10	Le moteur de cet engouement ont été incontestablement les graves injustices et préjudices occasionnés par plusiers années de guerre et de violations graves des droits de l'homme et du droit international humanitaire en RDC ainsi que la conviction de la nécessité de combattre l'impunité en tant que ferment de ces cycles dramatiques de violences et le désir de rétablir la paix et la reconciliation sur la base d'une saine justice. Une justice que fasse droit et rende leur dignité aux victimes. Une justice qui sanctionne les auteurs de ces actes odieux, quelle que soit la qualité officielle dont ils peuvent se prévaloir.
5	JUSTICE	ICC ASP '02/'10	Como ya se ha señalado en este debate general, las víctimas no pueden esperar. La inacción de la comunidad internacional tiene un precio en vidas humanas. En ese sentido, debemos dar pasos concretos para garantizar no solo el derecho a la verdad, sino también el derecho a la justicia y el derecho a la reparación. Más aún, debemos tomar las medidas necesarias para prevenir que estas atrocidades se vuelvan a repetir.
6	JUSTICE	ICC ASP '02/'10	Finland is convinced that the fair administration of justice is an essential element in peace efforts, one that cannot be traded off as a political negotiating chip. While questions of the right timing may sometimes have to be considered, impunity for the most serious crimes cannot be accepted.
7	JUSTICE	ICC ASP '02/'10	La force de la CPI réside dans sa vocation permanente et universelle et, a cet égard, elle a des devoirs singuliers: elle doit en effet être un modèle de justice internationale, en rendant une 'justice de qualité' incontestable aux yeux de tous.
8	JUSTICE	ICC ASP '02/'10	The question of the relationship between peace and justice which we had the opportunity to address last year continues to be in the center of the debate concerning international criminal justice, but it seems to us that it is more and more accepted that there is no real anatagonism between the two and what has to be addressed is modalities and procedures.
32	JUSTICE	ICC ASP '02/'10	It is important at this juncture of the Court's evolution as a legal forum to independently apply justice

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			in a fair and even-handed manner thereby contributing to the creation of a solid International Criminal Justice system.
1	JUSTICE	NGO 2002/2010	International justice is the least expensive and the one sector that contributes to the entire breadth of the peace and security spectrum – deterrence, prevention, reduction, settlement, peace-building, reconciliation and transformation.
2	JUSTICE	NGO '02/'10	The success of the Rome Statute system is due to many persons in this room, who are ready to sacrifice their own and their states' narrower interests for the long term goal of justice for all.
3	JUSTICE	NGO '02/'10	Although the support for international justice is often considered secondary, you can and you must, affirm and reinforce your support for the International Criminal Court and the effective implementation of the Rome system. You will then be able to achieve the goal of the Court to put an end to impunity for the most serious crimes that deeply shock the conscience of humanity and threaten the peace and well-being of the world.
4	JUSTICE	NGO '02/'10	The AU's decision threatens to block justice for victims of the worst crimes committed on the continent. It is inconsistent with article 4 of the AU's constitutive act that rejects impunity, as well as the treaty obligations of the 30 African governments that ratified the Rome Statute of the ICC. The decision also undermines the consensus reached by African ICC States Parties at a meeting in Addis Ababa in June 2009.
1	JUSTICE	International Public Servants & Experts (IPS) 2002/2010	This immediately raises the fundamental issue of the nature of 'justice'. To what extent are informal mechanisms acceptable, and how far are there limits to a criminal justice approach based on prosecution and incarceration?
2	JUSTICE	IPS '02/'10	The first point that comes to mind is the most obvious one – sort of the leitmotiv of the conference: justice and peace need not be contradictory forces.
3	JUSTICE	IPS '02/'10	The fourth point is about the notion of justice. As the development of the field of transitional justice has shown, "justice" needs to be – and in fact is – understood in a broad sense. Transitional justice may comprise criminal justice, truth-telling, reparations and institutional reform.
4	JUSTICE	IPS '02/'10	The "hunger" for justice may vary over time and may grow once worries about survival diminish. But there is broad understanding that accountability and reconciliation can, and in fact do, co-exist.
5	JUSTICE	IPS '02/'10	There was general agreement that to deliver on socio-economic justice, transitional justice mechanisms and development efforts should complement each other.
6	JUSTICE	IPS '02/'10	The drive for justice has been an integral part of the quest for international peace. As the Court now takes up its formidable responsibilities, the United Nations looks forward to working in partnership with you in that pursuit.
7	JUSTICE	IPS '02/'10	Some say that justice must sometimes be sacrificed in the interests of peace. I question that. We have

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			seen in Sierra Leone and in the Balkans that, on the contrary, justice is a fundamental component of peace. Indeed, justice has often bolstered lasting peace, by de-legitimizing and driving underground those individuals who pose the gravest threat to it. That is why there should never be amnesty for genocide, crimes against humanity and massive violations of human rights. That would only encourage today's mass murderers – and tomorrow's would-be mass murderers – to continue their vicious work.
19	JUSTICE	IPS '02/'10	Let us work together to bring an end to the culture of impunity by holding those who commit such crimes to account.
1	PEACE	UN Security Council Debates 2002/2008	people lose faith in a peace process when they do not feel safe from crime
2	PEACE	UNSC Deb '02/'08	there cannot be real peace without justice yet relentless pursuit of justice may sometimes be an obstacle to peace. If we insist, at all times and places, on punishing those who are guilty of extreme violations of human rights, it may be difficult or even impossible to stop the bloodshed and save innocent civilians.
3	PEACE	UNSC Deb '02/'08	The answer to bringing about a world of peace, stability, justice and the rule of law lies solely in closer international cooperation, a multilateral approach and democracy and the rule of law in international relations
4	PEACE	UNSC Deb '02/'08	One fact has to be recognized: restoring peace does not mean just silencing the weapons of war through the use of force.
5	PEACE	UNSC Deb '02/'08	Establishing the principles of justice and the rule of law is essential to the establishment and maintenance of order at the inter-State and intra-State levels.
6	PEACE	UNSC Deb '02/'08	Attaining lasting peace depends largely on building an effective system for the administration of justice in line with international standards.
7	PEACE	UNSC Deb '02/'08	The primary objective of the United Nations, and especially of the Security Council, is to ensure international peace and security. That goal is inseparable from the existence of a concept of law common to all international society, a body of legal categories basically accepted by all. All law, in the sense of a legal order, is based in values. There can be no credible prospect for any peace if it is not based on common respect for universal values, which provide in turn the basis for universally accepted norms.
8	PEACE	UNSC Deb '02/'08	The creation or restoration of rule-of-law structures in post-conflict situations may be very difficult, but they are vital. Multilateral engagement in a crisis area can generate a better and more peaceful order in the long term only if this order is based on rule-of-law principles.
9	PEACE	UNSC Deb '02/'08	In his report on the causes of conflict in Africa (A/52/871-S/1998/318), the Secretary-General studied

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			the conditions that need to be met for sustainable peace and development on that continent. Those conditions include good governance, transparency, administrative accountability and robust democracy
10	PEACE	UNSC Deb '02/'08	First, the United Nations is expected to play a principal role in the establishment of peace based on law and justice, the only way to build a secure and democratic society.
11	PEACE	UNSC Deb '02/'08	the importance of the rule of law to a successful system of peace cannot be overstated.
12	PEACE	UNSC Deb '02/'08	Without the rule of law – the backbone of any functioning society – one cannot make people trust democracy, and consequently one cannot make them talk peace to one another.
24	PEACE	UNSC Deb '02/'08	the true culmination or success of which will lie in the pacification of the Sudan and in respect for human rights in Darfur. That can be achieved only to the extent that we not only promote the protection and defence of human rights, but also help to ensure economic and social development of the Sudan and the entire region
1	PEACE	ICC Assembly of States Parties (ICC-ASP) 2002/2010	Argentina is convinced that peace and justice are not opposing objectives. On the contrary, they are mutually reinforcing objectives. Lasting peace cannot be achieved without justice. In other words, without judging those who have committed heinous crimes and whose impunity would undermine any attempt of reconciliation. We can find examples of peace negotiations that became more complex due to the inclusion of elements of responsibility and justice. But there are also many examples of peace agreements that failed because they did not consider said elements. This is not about choosing between peace and justice but rather bringing them both together.
2	PEACE	ICC ASP '02/'10	La construcción de la paz internacional tiene como pilares fundamentales el derecho y la justicia internacional, por ello reconocemos el trabajo serio y responsable de la corte e instamos a que continúe de manera absolutamente independiente de cualquier interés político que afecte o vulnere el principio de autodeterminación y soberanía de los pueblos. Preceptos que estamos confiados y seguros caracterizan a la Corte.
3	PEACE	ICC ASP '02/'10	We believe that an effective and independent court is necessary element for peace and security in our contemporary world where universal respect for human rights is of paramount importance to humanity.
4	PEACE	ICC ASP '02/'10	Peace and Justice have always been two of the most difficult pursuits of mankind. The establishment of the Court has brought forth a new and decisive instrument for the defense of human rights and the promotion of the rule of law, taking us closer to the achievement of those values.
5	PEACE	ICC ASP '02/'10	It is up to us to make justice fully able to reach to the reality of war. The accomplishments of the Court so far demonstrate that judgment of war and of wartime conduct is a decisive step towards peace and reconciliation.
6	PEACE	ICC ASP '02/'10	The pursuit of international justice and the fight against impunity are key in achieving lasting peace and security. Individuals who perpetrate crimes against mankind must be sure of their punishment and

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			the victims must have no doubt that criminals will be brought to justice.
7	PEACE	ICC ASP '02/'10	There is no doubt that the perpetration of crimes against humanity, war crimes, genocide and aggression poses a threat to international peace and security. Without putting an end to impunity, it is impossible to secure durable peace.
8	PEACE	ICC ASP '02/'10	A peaceful world order requires a strong and independent ICC to work side by side with other organizations envisioned by the UN's founding fathers, such as the Security Council, the General Assembly and the International Court of Justice.
9	PEACE	ICC ASP '02/'10	To argue that introducing the crime of aggression risks "politicizing" the Court is to pretend that we can avoid difficult options. Matters of world peace and security are by definition political in nature, but are best addressed through a legal framework that enjoys broad support and legitimacy. This requires leadership and courage of vision in the face of the realities of military power and vested interests.
61	PEACE	ICC ASP '02/'10	Por ello, y por la estructura normativa del Estatuto, la Republica Bolivariana de Venezuela esta convencida de que los requerimientos que exige el balance entre la seguridad, la paz y el bienestar de la humanidad y la justicia, podran ser logrados en tanto y en cuanto se logren preservar las garantias que ofrece el Estatuto frente a cualquier intento de abrir camino a objetivos politicos que no favorecen la paz y la justicia internacionales.
62	PEACE	ICC ASP '02/'10	Recognizing that the human race is only one and that the welfare or impairment of the world affects us all human beings, the notion of lasting and stable peace must be nurtured every day, for every single citizen of this planet, with the example of tolerance, with the preaching of acceptance for others and respect the rights of others. The best way to eradicate the most serious crimes against humanity is to promote the values that instil the peace as a precondition of life, as a necessity and as a right irreplaceable.
1	PEACE	NGO 2002/2010	This great Treat, the Court and Assembly represent humanity's determined search for peace and justice, not only here in Africa but throughout the world.
2	PEACE	NGO '02/'10	Your Assembly should also reaffirm that no peace process should put aside the need to fight against impunity, not the independence and efficiency of the Court's prosecutions.
3	PEACE	NGO '02/'10	On a separate but related point, with active conflicts in virtually every situation where the ICC is working, the relationship between peace and justice is a prominent feature of the landscape of the court's work. It is imperative for the ICC to receive consistent, unflinching support from states and the UN where it pursues justice in the context of a peace process.
4	PEACE	NGO '02/'10	As the ICC conducts its work in different situations where conflict is ongoing, concerns that efforts to achieve peace will be undercut by efforts to ensure justice have consistently arisen. Few deny that peace and justice must go hand in hand in the long-term, but the analysis often becomes more difficult

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			during particular periods of conflict or peace negotiations.
5	PEACE	NGO '02/'10	The stocktaking session on peace and justice is an important moment for reflection on identifying ways to pursue peace and justice simultaneously, and to recognize several core principles that are fundamental to state parties' commitment to the ICC in the context of debates on peace and justice. These include that perpetrators of serious crimes should not go unpunished; that the ICC should function as an independent institution; and that accountability for grave crimes is a key way to contribute to sustainable peace, including by promoting the possibility to deter future crimes.
1	PEACE	IPS 2002/2010	Any assumption of a norm of 'retributive justice' as the only means to deliver sustainable peace was strongly challenged on the basis of case studies from Spain, Mozambique and Burundi.
2	PEACE	IPS '02/'10	The second point is a very basic and commonly accepted one: peace must be understood as "sustainable peace". (...)The second point is a very basic and commonly accepted one: peace must be understood as "sustainable peace".
3	PEACE	IPS '02/'10	Therefore the mediator should be attentive to future developmental needs in order that the root causes of conflict are addressed from the outset. This is essential in generating a "peace dividend" (in other words: a sentiment of trust in the superiority of the post-conflict order), which is crucial to reconciliation.
4	PEACE	IPS '02/'10	But the conference has reminded us that although the pursuit of peace and justice occasionally results in a moral dilemma, those deciding do not act in a moral or normative vacuum.
5	PEACE	IPS '02/'10	Our venue emphasizes the fact that peace must include justice if it is to hold. Even if justice is postponed as negotiators try to hammer out a cessation of hostilities or try to negotiate interim peace accords, justice must ultimately be addressed in order to fortify the peace.
6	PEACE	IPS '02/'10	In the post World War II era, the rallying cry for conflicts all over the world was: no peace without justice. Today's reality has forced upon populations to accept delayed justice or barely any justice at all in the interim or even final peace accords.
7	PEACE	IPS '02/'10	The road to achieving peace is long and arduous. As communities work towards reconciliation and peace, development must proceed on the same track. Simply, people must feel the dividends of peace.
8	PEACE	IPS '02/'10	As we seek new ways to combat the ancient enemies of war and poverty, we will succeed only if we all adapt our Organization to a world with new actors, new responsibilities, and new possibilities for peace and progress.
9	PEACE	IPS '02/'10	Just as our commitment to humanitarian action must be universal if it is to be legitimate, so our commitment to peace cannot end with the cessation of hostilities. The aftermath of war requires no less skill, no less sacrifice, no fewer resources in order to forge a lasting peace and avoid a return to violence.

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10	PEACE	IPS '02/'10	If the collective conscience of humanity -- a conscience which abhors cruelty, renounces injustice and seeks peace for all peoples -- cannot find in the United Nations its greatest tribune, there is a grave danger that it will look elsewhere for peace and for justice.
11	PEACE	IPS '02/'10	These are daunting times for humankind. But at long last, the world has this missing link for the advancement of peace, this new institution with which to battle impunity, this court of law where formerly untouchable perpetrators, regardless of their rank or status, can be held accountable for their crimes.
12	PEACE	IPS '02/'10	to be successful, peace-building activities must reflect international norms and standards. But that does not mean that we should uncritically import foreign models. One size does not fit all.
13	PEACE	IPS '02/'10	Any victim would understandably yearn to stop such horrors, even at the cost of granting immunity to those who have wronged them. But this is a truce at gunpoint, one without dignity, justice or hope for a better future. The time has passed when we might talk of peace vs. justice. One cannot exist without the other. Our challenge is to pursue them both, hand in hand. In this, the International Criminal Court is key. In Kampala, I will do my best to help advance the fight against impunity and usher in the new age of accountability. We must never forget that crimes against humanity are just that - crimes against us all.
24	PEACE	IPS '02/'10	Let us seize this historic opportunity on our own continent to demonstrate our commitment to peace and justice.
1	SECURITY	UN Security Council Debates 2002/2008	I wish to reaffirm our belief that justice and the rule of law, with a view to preserving peace and security throughout the world, entail the promotion of multilateralism, underpinned by the concept of collective security
2	SECURITY	UNSC Deb '02/'08	First, the United Nations is expected to play a principal role in the establishment of peace based on law and justice, the only way to build a secure and democratic society.
3	SECURITY	UNSC Deb '02/'08	The United Nations must also give priority to providing security to peoples in the greatest need of it, to ensuring compliance with agreements, assuring State reform and preventing the breakdown of the State and laying down the bases for the establishment of a modern State.
4	SECURITY	UNSC Deb '02/'08	the United Nations must contribute to training an effective police force to establish order and security, and do so in keeping with human rights.
5	SECURITY	UNSC Deb '02/'08	Thirdly and lastly, placing importance on justice and the rule of law is an essential element in promoting human security and furthering economic and social development.
6	SECURITY	UNSC Deb '02/'08	Where no justice or rule of law exists, frustration and bitterness will accumulate, and a society that is supposed to be united for development will instead become fragmented and divided, and descend into a vicious circle of conflict and poverty.
7	SECURITY	UNSC Deb '02/'08	Effective implementation of human rights reduces the conditions that lead to threats to, and violations

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			of, international peace and security,
8	SECURITY	UNSC Deb '02/'08	Strengthening international law and norms is a prerequisite for living in peace and security.
9	SECURITY	UNSC Deb '02/'08	We all must stand united in order to achieve our noble objective, namely, that international peace and security be a reality for all peoples of the world.
10	SECURITY	UNSC Deb '02/'08	In that regard, we are guided by the Secretary-General's report of April 1998 on "The causes of conflict and the promotion of durable peace and sustainable development in Africa", which identified the promotion of human security and human development as the basis of conflict prevention.
11	SECURITY	UNSC Deb '02/'08	We can convey the emerging consensus that certain bad compromises are "off-limits", such as total and final impunity and we can promote a clearer normative framework for the peace and justice dilemma.
1	SECURITY	ICC Assembly of States Parties 2002/2010	A permanent international justice not only reassures the criminal persecution of those who have committed the gravest international crimes, but it also has a deterrent effect on the perpetration of such crimes. In this way, the Court necessarily contributes to reinforcing justice and the rule of law, as well as to preserving peace and international security.
2	SECURITY	ICC ASP '02/'10	Il convient de rappeler que la création de la CPI répond à la volonté de la Communauté Internationale de se doter d'une juridiction pénale permanente à même de poursuivre les auteurs de crimes qui heurtent la conscience humaine, parce que constituant des atteintes inacceptables à la dignité de l'homme, et qui menacent la paix et la sécurité internationale.
3	SECURITY	ICC ASP '02/'10	In our view, the preventive role of ICC will discourage future perpetrators of such crimes and thus contribute towards the efforts aimed at the maintenance of the international peace and security.
4	SECURITY	ICC ASP '02/'10	The United Kingdom would like to reiterate its view that, in northern Uganda and elsewhere, the goals of peace and justice are not mutually exclusive.
5	SECURITY	ICC ASP '02/'10	Indeed it is our view that justice is a necessary component of sustainable peace. We continue to support a successful resolution of the peace talks in northern Uganda compatible with international law and the Rome Statute.
1	SECURITY	NGO 2002/2010	The Rome Statute and the ICC is arguably the most successful achievement in the so-called new peace and security architecture in the post Cold War era and has achieved considerable progress over the past year
1	SECURITY	IPS 2002/2010	The most stable foundation for security in a region is improved quality of life for its people, and this kind of security can develop only from global partnerships like the Euro-Med and Barcelona process.
2	SECURITY	IPS '02/'10	The pursuit of peace, justice and security are universal.
3	IPS '02/'10	IPS '02/'10	The ICC is not -- and must never become -- an organ for political witch hunting. Rather, it must serve as a bastion against tyranny and lawlessness, and as a building block in the global architecture of collective security.

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4	SECURITY	IPS '02/'10	I have called the report "In Larger Freedom", because I believe those words from our Charter convey the idea that development, security and human rights go hand in hand. In a world of inter-connected threats and opportunities, it is in each country's self-interest that all of these challenges are addressed effectively. The cause of larger freedom can only be advanced if nations work together; and the United Nations can only help if it is remoulded as an effective instrument of their common purpose.
5	SECURITY	IPS '02/'10	And we have been reminded, again and again, that to ignore basic principles – of democracy, of human rights, of rule of law – for the sake of expediency, undermines confidence in our collective institutions, in building a world that is freer, fairer, and safer.
6	SECURITY	IPS '02/'10	Development, security and human rights go hand in hand; no one of them can advance very far without the other two. Indeed, anyone who speaks forcefully for human rights but does nothing about security and development – including the desperate need to fight extreme poverty – undermines both his credibility and his cause.
7	SECURITY	IPS '02/'10	Unless Africa wholeheartedly embraces the inviolability of human rights, its struggle for security and development will not succeed.
8	SECURITY	IPS '02/'10	My first lesson is that, in today's world, the security of every one of us is linked to that of everyone else.
9	SECURITY	IPS '02/'10	Against such threats as these, no nation can make itself secure by seeking supremacy over all others. We all share responsibility for each other's security, and only by working to make each other secure can we hope to achieve lasting security for ourselves.
10	SECURITY	IPS '02/'10	My second lesson is that we are not only all responsible for each other's security. We are also, in some measure, responsible for each other's welfare. Global solidarity is both necessary and possible.
11	SECURITY	IPS '02/'10	My third lesson is that both security and development ultimately depend on respect for human rights and the rule of law.
12	SECURITY	IPS '02/'10	Experience has taught us that respect for the law is the only guarantee of lasting peace; this is a lesson learned during the last decades of massive violence and atrocities.
13	SECURITY	IPS '02/'10	The judges decided today that Omar Al Bashir shall be arrested to stand trial for crimes committed against millions of civilians in Darfur; his victims are the very civilians that he, as President, was supposed to protect.
14	SECURITY	IPS '02/'10	"Security first" is an approach which acknowledges, first and foremost, the overwhelming desire of conflict victims to see an end to bloodshed and tyranny. But "security first" must not mean "security alone" to the detriment of goals such as justice, truth and the dismantling of structures at the heart of the conflict. Indeed, in the very interests of peace and security, the door to justice must never be closed for good.

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1	SOVEREIGNTY	UN Security Council Debates 2002/2007	The Concept of sovereignty has evolved from a supreme, absolute and unlimited jurisdictional authority to an authority that is equal to that of any other independent State, but limited by international law, humanitarian law and human rights law and based on the free will of the people of the territory in question.
2	SOVEREIGNTY	UNSC Deb '02/'08	respect for States' sovereignty — which, traditionally, resides with the people — is vital in the process of defining the political and legal framework of each and every nation, free from interference by any supra-national body. As long as international legality is respected, then international peace and security will be strengthened
3	SOVEREIGNTY	UNSC Deb '02/'08	The responsibility for this disaster lies squarely with the Government of Sudan. To suppress a rebel uprising begun in early 2003, the Government commenced a campaign of terror against innocent civilians.
4	SOVEREIGNTY	UNSC Deb '02/'08	Those commitments include the most basic of a Government's obligations to its own people: the obligation to protect them — something that the Government of Sudan has so far failed to do.
5	SOVEREIGNTY	UNSC Deb '02/'08	The priority must be to ensure reliable security for the civilian population and for humanitarian personnel. The primary responsibility for this lies with Khartoum, but the armed opposition must also share in it.
6	SOVEREIGNTY	UNSC Deb '02/'08	The Government of the Sudan has been given a chance to avoid the imposition of sanctions by demonstrating, within the next 30 days and in a clear and verifiable manner, that it is making significant and measurable progress on disarming the Janjaweed militias and bringing them to justice, and that it is making every effort to protect its own people.
7	SOVEREIGNTY	UNSC Deb '02/'08	We hold the Government of the Sudan responsible for the security of all 1.5 million people at risk in Darfur and for the unhindered delivery of humanitarian aid.
13	SOVEREIGNTY	UNSC Deb '02/'08	But the power and the responsibility to do something about this grave crisis are in your hands. Once again, I call on the Council to act urgently to stop further the death and suffering in Darfur, and to do justice for those whom we are already too late to save.
1	SOVEREIGNTY	ICC Assembly of States Parties 2002/2010	The issues before US are critical for the humanity. The world has gone through a paradigm shift in our understanding of the State. Sovereign authority to mean absolute power is being replaced by global standards of governance and State responsibility. These standards encompass broader elaboration of peace, security, justice, war crimes, genocide, and aggression, etc.
2	SOVEREIGNTY	ICC ASP '02/'10	We believe that sovereignty and international justice are complementary rather than mutually excluding concepts. War stems more often from human choices than from human needs. The criminal individual responsibility of political and military leaders is, thus, a legal construction that allows us to fulfill the very notion of human responsibility, when it comes to the most serious breaches of human rights and international humanitarian law.

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3	SOVEREIGNTY	ICC ASP '02/'10	The Court has made clear that nothing must trump the fundamental rights of individuals and communities to justice. Not even that organizing and founding principle of international life - State sovereignty. After all, no nation can truly enjoy liberty so long as the basic freedoms of others are denied.
4	SOVEREIGNTY	ICC ASP '02/'10	Finally, the Czech Republic would like to stress that the International Criminal Court is here not to be a substitute for the responsibility of States, but rather to enable States to bear their responsibility themselves.
5	SOVEREIGNTY	ICC ASP '02/'10	The role of the Court in this regard is to complement the role of the national judiciary, which is the primary responsible for prosecuting its nationals who commit crimes against humanity, which is part of the responsibility of the State to ensure safety and security of its citizens and to carry out fair and impartial trials to those who commit such crimes through a neutral national judiciary.
6	SOVEREIGNTY	ICC ASP '02/'10	State Parties have the primary responsibility to exercise jurisdiction in crimes committed on their territories or by their nationals wherever, committed.
7	SOVEREIGNTY	ICC ASP '02/'10	It is hardly surprising that holding perpetrators to account will generate some tension with efforts to build peace, especially in the short-term. It is precisely at these moments that the UN secretariat and states must work to advance both objectives. Our experience underscores that justice does not thwart peace.
8	SOVEREIGNTY	ICC ASP '02/'10	In short, justice cannot and should not be traded away in peace talks like a poker chip.
1	SOVEREIGNTY	IPS 2002/2010	Some small states fear giving pretexts for more powerful ones to set aside their sovereignty. Others worry that the pursuit of justice may sometimes interfere with the vital work of making peace.
2	SOVEREIGNTY	IPS '02/'10	State sovereignty, in its most basic sense, is being redefined by the forces of globalization and international cooperation. The State is now widely understood to be the servant of its people and not vice versa. At the same time, individual sovereignty – and by this I mean the human rights and fundamental freedoms of each and every individual as enshrined in our Charter – has been enhanced by a renewed consciousness of the right of every individual to control his or her own destiny.
3	SOVEREIGNTY	IPS '02/'10	Why? Because, despite its limitations and imperfections, it is testimony to a humanity that cares more, not less, for the suffering in its midst, and a humanity that will do more, and not less, to end it.
4	SOVEREIGNTY	IPS '02/'10	In the third part of the report, entitled “Freedom to Live in Dignity”, I urge all states to agree to strengthen the rule of law, human rights and democracy in concrete ways. In particular, I ask them to embrace the principle of the “Responsibility to Protect”, as a basis for collective action against genocide, ethnic cleansing and crimes against humanity – recognising that this responsibility lies first and foremost with each individual state, but also that, if national authorities are unable or unwilling to protect their citizens, the responsibility then shifts to the international community; and that, in the last resort, the United Nations Security Council may take enforcement action according to the Charter.

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5	SOVEREIGNTY	IPS '02/'10	First, we must give real meaning to the principle of “Responsibility to Protect”.As you know, last year's World Summit formally endorsed that momentous doctrine – which means, in essence, that respect for national sovereignty can no longer be used as an excuse for inaction in the face of genocide, war crimes, ethnic cleansing and crimes against humanity.
6	SOVEREIGNTY	IPS '02/'10	Some governments have tried to win support in the global South by caricaturing responsibility to protect, as a conspiracy by imperialist powers to take back the hard-won national sovereignty of formerly colonized peoples. This is utterly false.
7	SOVEREIGNTY	IPS '02/'10	The primary responsibility for the protection of a state's own population lies with the state itself, and we are not arguing for a unilateral right to intervene in one country whenever another country feels like it. It is always preferable to have multilateral authority for intervention in the affairs of a sovereign state. What we seek is the evolution of international law and practice so that multilateral action may be taken in situations of extreme humanitarian emergency.
1	PROTECTION	UN Security Council Debates 2002/2008	a far-reaching prevention strategy to tackle the underlying causes of conflict would make it possible to provide for the protection of civilians in the long term. Such a strategy would be based on the promotion of sustainable development, poverty eradication, national reconciliation, good governance, the promotion of a culture of peace and tolerance, the rule of law and the observance of human rights. That is what we mean by a culture of prevention.
2	PROTECTION	UNSC Deb '02/'08	The protection of civilians in armed conflict leads us to the basic reason for the establishment of the United Nations and for the promotion of respect for the rule of law, including international humanitarian and human rights law.
3	PROTECTION	UNSC Deb '02/'08	As such, the provision of such protection is not an option, but a duty and a raison d'être of the United Nations. It is one of the most important issues on the Council's agenda because of its close linkage to the maintenance of international peace and security.
4	PROTECTION	UNSC Deb '02/'08	while protection of civilians in armed conflict should be strengthened, the best protection is the prevention of armed conflict itself. It is the role that the Security Council could play in promoting the prevention of conflict and in the maintenance of international peace and security.
5	PROTECTION	UNSC Deb '02/'08	The full range of options should be on the table – including targeted sanctions, stronger peacekeeping efforts, new measures to protect civilians and increased pressure on both sides for a lasting political solution.
6	PROTECTION	UNSC Deb '02/'08	Just as all eyes are on the Council to help protect the civilians of Darfur, so too are all eyes upon the Sudan, and we look to its Government to do the right thing and pursue the path of peace.
1	PROTECTION	ICC Assembly of States Parties 2002/2010	It is our Constitutional obligation to support oppressed peoples waging a just struggle against imperialism, colonialism or racialism throughout the world. The Crime of Aggression to us is not only the hard military power that befalls an unsuspecting people. It is rather the willful attempt to subjugate

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			the sovereign character and spirit of a nation by acts of both territorial transgressions and estrangement of its social, natural and economic lifelines. Therefore, we feel the need for a boarder definition of the crime of Aggression, which can ensure a safer world.
2	PROTECTION	ICC Assembly of States Parties	The institution which we today launch is a milestone in our longstanding collective commitment to the protection of human rights and to the pursuit of world peace and security.
3	PROTECTION	ICC Assembly of States Parties	Providing protection to the victims should be a priority objective of any advanced policy against criminality. The Rome Statute establishes unprecedented rules in the international criminal law, allowing for compensation of the victims of crime, recovery and compensation for the damages. These rights of victims are as important as the due process right of the perpetrator of the crime.
4	PROTECTION	ICC Assembly of States Parties	the very existence of the Court itself – the perception that the Court is ‘out there’ – works as an effective deterrent against the perpetrators.
1	PROTECTION	NGO 2002/1010	While the Rome statute contains a serie of great innovations allowing participation of victims to the proceedings and recognizing their right to reparations, the FIDH doubts of the capacity of the Court to implement those rights. Indeed, the financial difficulties that the Court might face may prevent the effective participation and protection of victims.
1	PROTECTION	IPS 2002/2010	Most human societies, alas, have practised warfare. But most have also had some kind of warrior code of honour. They have proclaimed, at least in principle, the need to protect the innocent and defenceless, and to punish those who carry violence to the excess.
2	PROTECTION	IPS ‘02/’10	I trust you will not flinch from creating a court strong and independent enough to carry out its task. It must be an instrument of justice, not expendiency. It must be able to protect the weak against the strong.
3	PROTECTION	IPS ‘02/’10	This developing international norm in favour of intervention to protect civilians from wholesale slaughter will no doubt continue to pose profound challenges to the international community.
4	PROTECTION	IPS ‘02/’10	We must protect especially the rights of minorities, since they are genocide’s most frequent targets. In too many parts of the world today, such a culture of prevention is rhetorical, at best.
5	PROTECTION	IPS ‘02/’10	Thanks to the Commission, we now understand that the issue is not one of a right to intervention, but rather of a responsibility – in the first instance, a responsibility of all States to protect their own populations, but ultimately a responsibility of the whole human race, to protect our fellow human beings from extreme abuse wherever and whenever it occurs. This nascent doctrine offers great hope to humanity.
6	PROTECTION	IPS ‘02/’10	It is for their sake, not yours or mine, that this reforma agenda matters. It is to save their lives, to protect their rights, to ensure their safety and freedom, that we simply must find effective collective responses to the challenges of our time.
7	PROTECTION	IPS ‘02/’10	And I would add that this responsibility is not simply a matter of states being ready to come to each

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			other's aid when attacked – important though that is. It also includes our shared responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity – a responsibility solemnly accepted by all nations at last year's UN summit.
8	PROTECTION	IPS '02/'10	(...) for convening this forum on responsible sovereignty, one of the defining challenges of the 21st century.
9	PROTECTION	IPS '02/'10	RtoP is not a new code for humanitarian intervention. Rather, it is built on a more positive and affirmative concept of sovereignty as responsibility -- a concept developed by my Special Adviser for the Prevention of Genocide, Francis Deng, and his colleagues at the Brookings Institution more than a decade ago. RtoP should be also distinguished from its conceptual cousin, human security. The latter, which is broader, posits that policy should take into account the security of people, not just of States, across the whole range of possible threats.
10	PROTECTION	IPS '02/'10	The Security Council should establish new thresholds for when the international community judges that civilian populations face extreme threats; for exploring non-military and, if necessary, proportionate military options to protect civilians. The responsibility to protect is not a license for intervention; it is an international guarantor of political accountability.
12	PROTECTION	IPS '02/'10	Our common mission is to ensure that the most serious crimes of concern to humanity are investigated and punished thus contributing to the protection of millions of individuals.
13	PROTECTION	IPS '02/'10	They have chosen the law to protect their citizens and their land. This is the main concept: the rule of law as protection.
1	ACCOUNTABILITY	UN Security Council Debates 2002/2008	In the long term, justice always acts in the service of peace. It is therefore important to prevent impunity. A peace agreement is not worthy of its name if it contains an amnesty for war crimes, genocide or other crimes against humanity.
2	ACCOUNTABILITY	UNSC Deb '02/'08	A culture of impunity for mass atrocities can critically undermine long-term security. If peace and reconciliation are to be real and sustainable, they must be built on the rule of law. Impunity for breaches of international humanitarian and human rights law is totally unacceptable.
3	ACCOUNTABILITY	UNSC Deb '02/'08	As such, the provision of such protection is not an option, but a duty and a <i>raison d'être</i> of the United Nations. It is one of the most important issues on the Council's agenda because of its close linkage to the maintenance of international peace and security.
4	ACCOUNTABILITY	UNSC Deb '02/'08	The main challenge in ending impunity is to ensure a balance between lasting peace and the creation of an effective justice system.
5	ACCOUNTABILITY	UNSC Deb '02/'08	Combating impunity and promoting the rule of law should be a firm policy of the Security Council.
6	ACCOUNTABILITY	UNSC Deb '02/'08	the Council should at all times underline that what is sometimes called the "peace versus justice" dilemma may be a dilemma for those having committed atrocious crimes, but not for the international

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			community
7	ACCOUNTABILITY	UNSC Deb '02/'08	the decisions will also have to convey a strong message to all perpetrators of human rights violations that there will be no impunity and that the guilty will be brought to justice.
8	ACCOUNTABILITY	UNSC Deb '02/'08	Many innocent civilians continue to suffer as a result. This cannot be allowed to continue. The strongest warning to all the parties that are causing this suffering is essential. We cannot allow impunity.
9	ACCOUNTABILITY	UNSC Deb '02/'08	Council members are appalled by the serious crimes committed in Darfur in violation of international law, described in the report of the International Commission of Inquiry. We call on all the parties to put an immediate end to the violence and to attacks against civilians.
10	ACCOUNTABILITY	UNSC Deb '02/'08	The Council condemns unreservedly the serious violations of international human rights law and international humanitarian law committed in Darfur. The Council is determined to tackle impunity and to bring the perpetrators of those crimes to justice.
11	ACCOUNTABILITY	UNSC Deb '02/'08	human rights violations and other crimes in Darfur must be investigated and the perpetrators must be punished so that peace can prevail and a peace settlement can be achieved.
12	ACCOUNTABILITY	UNSC Deb '02/'08	The Government established the Independent Committee as a reflection of the national will we attach importance to the principles of accountability, the administration of justice and an end to impunity.
13	ACCOUNTABILITY	UNSC Deb '02/'08	As matters stand, the international community risks allowing the guilty to escape punishment simply because there is no consensus on the appropriate forum in which to prosecute the crimes.
14	ACCOUNTABILITY	UNSC Deb '02/'08	The full range of options should be on the table – including targeted sanctions, stronger peacekeeping efforts, new measures to protect civilians and increased pressure on both sides for a lasting political solution.
15	ACCOUNTABILITY	UNSC Deb '02/'08	We strongly support bringing to justice those responsible for the crimes and atrocities that have occurred in Darfur and ending the climate of impunity there. Violators of international humanitarian law and human rights law must be held accountable.
16	ACCOUNTABILITY	UNSC Deb '02/'08	By adopting this resolution, the international community has established an accountability mechanism for the perpetrators of crimes and atrocities in Darfur. The resolution will refer the situation in Darfur to the International Criminal Court (ICC) for investigation and prosecution.
17	ACCOUNTABILITY	UNSC Deb '02/'08	We decided not to oppose the resolution because of the need for the international community to work together in order to end the climate of impunity in the Sudan.
18	ACCOUNTABILITY	UNSC Deb '02/'08	I have stressed throughout this presentation the need for cooperation in order to ensure accountability, not only for past but also for present crimes within the jurisdiction of the Court that continue to affect the displaced population in Darfur. Our justice effort should contribute to their protection and to the prevention of further crimes.

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19	ACCOUNTABILITY	UNSC Deb '02/'08	The Government of the Sudan will continue its efforts to establish the rule of law and justice through the courts and other mechanisms set up in Darfur, to put an end to impunity and to hold accountable all those convicted of violations of human rights and international humanitarian law.
1	ACCOUNTABILITY	ICC Assembly of States Parties 2002/2010	The International Criminal Court is on the whole suitable for the international community to fight against impunity and to judge those who have committed the gravest crimes, to which end the content and spirit of the Rome Statute should be respected
2	ACCOUNTABILITY	ICC ASP '02/'10	(...) I want to underline the central importance of the connections between peace, justice, and human rights and the ICCs role. To support it is to contribute to the progress towards a world justice system that banishes impunity and prevents crimes that we all abhor.
3	ACCOUNTABILITY	ICC ASP '02/'10	The Argentine delegation wishes to start by reaffirming its full commitment to the promotion and the protection of human rights and the end of impunity. We are convinced that the International Criminal Court fulfills a fundamental role in the achievement of these objectives.
4	ACCOUNTABILITY	ICC ASP '02/'10	The Court's success should never be measured solely in terms of the number of cases heard by it, but by its overall impact on the fight against impunity, for its mere existence induces States to strengthen their efforts to prevent as well as to prosecute criminal acts. Thus the Court is serving as an effective deterrent for potential perpetrators.
5	ACCOUNTABILITY	ICC ASP '02/'10	(...) allow me to express our sincere gratitude to Uganda for hosting the first Review Conference of the Rome Statute of the ICC. Here, we are being offered a historic opportunity to strengthen [the] role of the Court and to reaffirm our commitment to the fight against impunity.
6	ACCOUNTABILITY	ICC ASP '02/'10	Austria, traditionally committed to a world-wide observance of the rule of law, would after so many years of systematic and comprehensive preparatory work—like to see Aggression fully incorporated in the Rome Statute. Making this crime internationally punishable would send a powerful and lasting signal around the world.
7	ACCOUNTABILITY	ICC ASP '02/'10	son soutine indéfectible à une action de la Cour pénale internationale qui permette une lutte efficace contre l'impunité des crimes internationaux les plus graves
8	ACCOUNTABILITY	ICC ASP '02/'10	We, in Bosnia and Herzegovina, have experienced the crimes against humanity that should never be forgotten: mass murders, detention camps, humiliation and torture of civilians, systematic mass rape, ethnic cleansing and many more acts of violations of international humanitarian law, even genocide, were Bosnian reality for more than three years at the end of 20 th century.
44	ACCOUNTABILITY	ICC ASP '02/'10	We have watched this process institutions of international justice can play in helping restore accountability and the rule of law to states struggling to emerge from lawless violence. Certainly, the US Government places the greatest importance on assisting countries when the rule of law has been shattered to stand up their own system of protection and accountability – to enhance their capacity to ensure justice at home.

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1	ACCOUNTABILITY	IOs	No longer will tyrants gain impunity for genocide, war crimes, and crimes against humanity – including widespread murder of civilians, torture and mass rape – by hiding behind the cloak of national sovereignty. No longer will the international community have to create international criminal tribunals after the fact – after the crimes that we all deplore have already been committed.
2	ACCOUNTABILITY	IOs	The Council recalls that the European Union and the United States fully share the objective of individual accountability for the most serious crimes of concern to the international community.
1	ACCOUNTABILITY	NGO 2002/2010	The fight against impunity, both at the national and at the international level, requires strong political commitment and concrete action.
2	ACCOUNTABILITY	NGO '02/'10	We remind the ASP that the goal of achieving universal ratification of the Rome Statute must not be an empty platitude, but like the Geneva Conventions, a moral imperative, one which could confer enormous benefits to the entire international legal order.
3	ACCOUNTABILITY	NGO '02/'10	On 17 July 1998, 139 states agreed to end the culture of impunity for genocide, war crimes and crimes against humanity. Perpetrators must know that justice is not a bargaining chip. States must affirm the importance of maintaining the International Criminal Court's independence from political interference.
4	ACCOUNTABILITY	NGO '02/'10	The Conference will also demonstrate that further progress will not be automatic and that all stakeholders - individual states and their legal systems, the ASP, NGOs, the UN and other international and regional bodies - need to step up their investments in justice to reach the final goal of ending impunity.
5	ACCOUNTABILITY	NGO '02/'10	If it barter away accountability for the most serious crimes under international law, the Security Council would give encouragement to all those alleged to be responsible for major atrocities to combine threats and negotiation, as Khartoum is now attempting to do, to avoid the rule of law. It also would be a renunciation by the Security Council – of its own commitment to bring justice to Darfur.
1	ACCOUNTABILITY	IPS 2002/2010	The accountability of political and military leaders is now, unequivocally, part of international law.
2	ACCOUNTABILITY	IPS '02/'10	In any event, careful consideration was needed as to whether insisting on accountability should take precedence over ending the conflict. The possibility of a strategic 'silence' in the text of a peace agreement might sometimes be acceptable and wiser than attempting to address all the issues.
3	ACCOUNTABILITY	IPS '02/'10	We have little hope of preventing genocide, or reassuring those who live in fear of its recurrence, if people who have committed this most heinous of crimes are left at large, and not held to account.
4	ACCOUNTABILITY	IPS '02/'10	A recent powerful tool of deterrence has been the actions of the Tribunals for Rwanda and the former Yugoslavia. In their battle against impunity lies a key to deterring crimes against humanity.
18	ACCOUNTABILITY	IPS '02/'10	the Statute created a truly progressive multilateral system that is making a very concrete impact on the global struggle against impunity.
1	RULE OF LAW	UN Security Council Debates 2002/2008	rule of law is not a luxury

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2	RULE OF LAW	UNSC Deb '02/'08	Elections hold when the rule of law is too fragile seldom lead to lasting democratic governance
3	RULE OF LAW	UNSC Deb '02/'08	the commitment we make to strengthen and advance the international rule of law will be a lasting legacy for future generations
4	RULE OF LAW	UNSC Deb '02/'08	We are certain that without asserting the primacy of law in international relations, we will be doomed to an endless and fruitless consideration of the issues of prevention and settlement of conflicts. Russia believes that the principle of the rule of law is an imperative for the entire system of international relations.
5	RULE OF LAW	UNSC Deb '02/'08	To end a conflict does not necessarily mean the arrival of peace. Causes of conflicts differ, but more often than not they have a great deal to do with poverty and backwardness. Without development, justice and the rule of law are merely a mirage. There is quite a long way to travel from war to stability and from anarchy to rule of law
6	RULE OF LAW	UNSC Deb '02/'08	Governing a country requires the rule of law, as does managing international relations.
7	RULE OF LAW	UNSC Deb '02/'08	The issues dealt with by the Security Council – peacekeeping, crisis prevention and conflict management – are inseparably linked to the rule of law.
8	RULE OF LAW	UNSC Deb '02/'08	The creation or restoration of rule-of-law structures in post-conflict situations may be very difficult, but they are vital. Multilateral engagement in a crisis area can generate a better and more peaceful order in the long term only if this order is based on rule-of-law.
9	RULE OF LAW	UNSC Deb '02/'08	Secondly, the United Nations must work for the rule of law in relations between States and the peaceful settlements of disputes. More specifically, it must support and stand by an initiative undertaken by States themselves to that end.
10	RULE OF LAW	UNSC Deb '02/'08	As responsible members of the great international family, all countries should take on the challenges they face by acting within the framework of international institutions and in accordance with international law. Of course, we also need to keep pace with the times and further improve and enrich the existing international laws and norms in accordance with changes and developments.
11	RULE OF LAW	UNSC Deb '02/'08	establishing and maintaining the rule of law has been an enduring theme of American foreign policy for over two centuries
33	RULE OF LAW	UNSC Deb '02/'08	The crucial role of the rule of law in society cannot be overemphasized. Without the rule of law there can be no order, and without order there can be no sustainable peace, stability or social and economic development.
1	RULE OF LAW	ICC Assembly of States Parties 2002/2010	the system developed by the Rome Statute and its complementary procedural and substantive instruments, contains all necessary safeguards to preserve the competence and legitimate interests of all States and their nationals.
2	RULE OF LAW	ICC ASP '02/'10	The existence of the International Criminal Court notable enriches the legal structure of the international community and the rule of law at a global level.

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3	RULE OF LAW	ICC ASP '02/'10	The Argentine Republic firmly believes in the philosophical concept of the rule of law which has permitted us to bring to justice, with the judicial collaboration of many States, the perpetrators of the crimes against humanity committed during the Argentine dictatorship in the 1970s.
4	RULE OF LAW	ICC ASP '02/'10	Notre ambition est de pouvoir traduire, sur le plan international, en collaboration avec toute la Communauté des Etats et des Organisations Internationales représentées, cet Etat de droit interne.
5	RULE OF LAW	ICC ASP '02/'10	As a country that strongly believes in the rule of law, Botswana strongly supports the work of the Court and is convinced that there should be no interference of any sort in the work and processes of the Court.
6	RULE OF LAW	ICC ASP '02/'10	This meeting is the crowning achievement of the lofty goal the international community set itself at the 1998 Rome Conference: the establishment of a permanent and independent tribunal to promote the rule of law and ensure that the gravest international crimes do not go unpunished.
7	RULE OF LAW	ICC ASP '02/'10	
8	RULE OF LAW	ICC ASP '02/'10	Our common international endeavour to uphold human rights, to promote international justice and the rule of law worldwide can only be strengthened through the expansion of the universality of the Rome Statute and of the ICC.
9	RULE OF LAW	ICC ASP '02/'10	Para Chile existe el convencimiento de que este Tribunal constituye un importante instrumento para promover el respeto del derecho internacional humanitario y de los derechos humanos.
10	RULE OF LAW	ICC ASP '02/'10	Dans ce contexte, le renforcement de l'Etat de droit demeure un défi majeur à relever pour briser le cycle de la violence et mettre un terme à l'impunité des crimes les plus graves qui ont longtemps revêtu la conscience de l'humanité et dont les populations congolaises n'ont pas encore fini d'en payer le prix.
11	RULE OF LAW	ICC ASP '02/'10	The establishment of the ICC is possible the boldest embodiment of the age-old vision of the universal order based on the rule of law.
12	RULE OF LAW	ICC ASP '02/'10	Establishing the rule of law is, therefore, an essential part of any transition process.
13	RULE OF LAW	ICC ASP '02/'10	The principle of complementarity and promotion of the rule of law on the national level is a very important aim for us – States – and for the ICC itself.
37	RULE OF LAW	ICC ASP '02/'10	Trinidad and Tobago as a small state committed to the rule of law in all matters affecting the international community, calls on all States assembled here in Kampala to demonstrate the requisite flexibility and agree to a definition of the crime of aggression, and enable the Court to exercise its jurisdiction over this crime without subjecting it, or subordinating it to any external entity.
1	RULE OF LAW	10s	whereas a positive development in transatlantic relations could reinforce the convergence between the European Union and the USA as regards the major values and objectives of democracy and the rule of law and should take place in the framework of a strong commitment to a multilateral approach to problems

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2	RULE OF LAW	IOs	whereas the Rome Statute makes a decisive contribution to the implementation of international law and justice and can thus be seen as part of the Copenhagen political criteria
1	RULE OF LAW	NGO 2002/2010	We hope that today's decision will prompt the US to review its opposition to the ICC and join the world community in reaffirming the primacy of international law.
2	RULE OF LAW	NGO '02/'10	The treatment of Iraqi prisoners is an example of the blatant disregard being shown for the rule of law, and the Bush Administration should be doing everything in its power to support the principles embodied in the ICC
3	RULE OF LAW	NGO '02/'10	The Islamic civilization and Arab culture emphasize the importance of human dignity; it is not allowed for anyone, regardless of his status, to be above the law, or to be immune from accountability, even if he was a Prophet from God.
4	RULE OF LAW	NGO '02/'10	Arab and Islamic public opinion see that there can be no justice and peace in one view, and the absence of an effective role of the Court in some regional cases such as the war on Gaza, Lebanon, Iraq and Afghanistan has increased the sense of injustice and double standards of the Court.
5	RULE OF LAW	NGO '02/'10	We firmly believe that joining the ICC will uphold Asia's strong adherence to international consensus and the rule of law, in addressing crimes of international concern. Joining the ICC will provide the people of the region legal protection from war crimes and genocidal acts. Most of all, joining the ICC will offer Asian peoples a chance for a future without impunity.
1	RULE OF LAW	IPS 2002/2010	At the very moment when our planet lives with grave challenges threatening international peace and security, we assemble today in The Hague to confirm, once again, our commitment to the international rule of law.
2	RULE OF LAW	IPS '02/'10	Atrocities committed during armed conflicts and dictatorships call for sanctions under the rule of law. However, after moving away from periods of mass violence, a clear-cut distinction between law-abiding citizens and criminal elements is often hard to draw. Hence, there is a tendency to grant far-reaching amnesties. From a legal viewpoint, such amnesties are generally rejected for core crimes under international law. In particular, self-imposed amnesties generally reflect an abuse of power.
3	RULE OF LAW	IPS '02/'10	We have before us an opportunity to take a monumental step in the name of human rights and the rule of law. We have an opportunity to create an institution that can save lives and serve as a bulwark against evil.
13	RULE OF LAW	IPS '02/'10	By building on the system of justice born in Rome, states can take another bold step to ensure that the rule of law prevails precisely when it comes to the most horrific of crimes.

Annex 11. Coded Segments – “Justice” qua Fantasy and the ICC (SELECTED)

Nr.	CODE LABEL	SITE OF PRODUCTION	CODED SEGMENT
1	JUSTICE QUA SOCIAL FANTASY	UNSC Debates 2002/2007	Our goal is to build a better global village where there are no wars or conflicts as all countries live in peace and stability; where there is no poverty or hunger as all the inhabitants enjoy development and dignity; and where there is no discrimination or prejudice and all peoples and civilizations coexist in harmony complementing and enriching one (an)other. To achieve all that, we the peoples need a world of democracy and the rule of law, and we need a stronger United Nations. Let us work hand in hand towards that end.
2	SOCIAL FANTASY	UNSC Deb ‘02/’08	One fact has to be recognized: restoring peace does not mean just silencing the weapons of war through the use of force. It is also about protecting persecuted minorities in Timor and Kosovo; assisting victims who have been humiliated to the core; enforcing respect for human rights in Liberia and in the Democratic Republic of the Congo; freeing repressed aspirations to democracy in Cambodia; solidifying fragile national institutions and restoring life to democratic citizenship in Haiti; offering nations weakened by war the means to recover their political sovereignty through the establishment of a constitutional process, as in Afghanistan; and setting up an independent and effective police force and judicial system in Bosnia and Herzegovina.
3	SOCIAL FANTASY	UNSC Deb ‘02/’08	The United Nations was founded after the Second World War with the objective of saving succeeding generations from the scourge of war. However, that goal of peace for all mankind cannot be assured without strict observance by all members of the international community of the fundamental principles and purposes of the Charter upon which the Organization is based. Observance of the fundamental principles of international law enshrined in Article 2 of the Charter is essential for creating and maintaining a clearly defined and reliable international system to govern inter-State relations. Where that system is allowed to fragment, for example through the selective application of international law and justice or through the avoidance of States of their international responsibilities, such deterioration lays the groundwork for anarchy in international relations.
4	SOCIAL FANTASY	UNSC Deb ‘02/’08	From the experience of the United Nations in Bosnia and Herzegovina, Kosovo, East Timor, Sierra Leone and Afghanistan, we have learnt that, in breaking cycles of conflict, establishing a credible system of justice and the rule of law is as crucial as providing security and basic humanitarian aid on the ground. A peace achieved without the foundations of justice and the rule of law may be tentative and fragile. We should thus view the institution of justice and the rule of law in post-conflict societies as an investment in a sustainable, durable peace. Reasserting the leading role of the United Nations in creating, advancing and maintaining global peace, the Republic of Korea believes that the Security Council should continue to integrate justice and the rule of law into the scope of its work in rebuilding post-conflict societies.
10	SOCIAL FANTASY	UNSC Deb ‘02/’08	The world has come too far, and the consequences of failure are too great. We must continue to carry forth the Nuremberg legacy and make an effective, permanent international court a lasting reality.

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1	SOCIAL FANTASY	ICC Assembly of States Parties (ICC ASP) 2002/2010	The issues before US are critical for the humanity. The world has gone through a paradigm shift in our understanding of the State. Sovereign authority to mean absolute power is being replaced by global standards of governance and State responsibility. These standards encompass broader elaboration of peace, security, justice, war crimes, genocide, and aggression, etc. There is, therefore, a need to constantly bring in new perspectives into these issues. This meeting, therefore, provides a timely opportunity to exchange our thoughts and further strengthen the competence of the International Criminal Court- the court of last resort.
2	SOCIAL FANTASY	ICC ASP '02/'10	La defensa de la dignidad del ser humano y la promocion, el respeto y la garantia de sus derechos son una aspiracion a la que la humanidad ha ido llegando tras siglos de transitar por un arduo y dificil camino, siendo uno de sus jogros mas importantes y significativos la creation de la Corte Penal Internacional. Gracias a ella miles de personas victimas de la violencia y la crueldad podran ver realizados sus anhelos de justicia y de paz.
3	SOCIAL FANTASY	ICC ASP '02/'10	El futuro de las naciones esta ligado a su capacidad de alcanzar la paz y la justicia. Y en proposito, la Corte Penal Internacional esta llamada a ocupar un lugar historico.
4	SOCIAL FANTASY	ICC ASP '02/'10	La guerre en Afrique, et particulièrement en République Démocratique Congo est une guerre qui vous concerne, qui nous concerne toutes et tous. Faut-il parce qu'elle est pauvre et sous-développée, que l'Afrique devienne le lieu d'affrontement des hégémonies étrangères par l'entremise de puissances périphériques et de divers groupes armés interposés? Faut-il qu'elle soit le lieu d'expérimentation et de trafic des armements produits ailleurs comme si la dignité et le sang de ses populations n'avaient finalement pas le moindre prix? Qu'on ne s'y trompe pas: toute déflagration, en Afrique ou dans toute autre partie de notre planète est un risque majeur pour la sécurité de tous, interpelle en conséquence la conscience de tous et engage chacun de nous dans des actions concrètes en faveur de la paix qui est par ailleurs fondamentalement oeuvre de la justice. Est-il en effet de paix véritable au milieu des injustices de tous ordres qu'engendrent nos égoïsmes et nos convoitises, nos orgueils et nos intolérances, nos brimades et nos violences, nos abus de droit et nos excès de pouvoir, nos mensonges et nos tromperies...! La paix se nourrit de la justice. C'est notre conviction et notre engagement. Les guerres et toutes les formes de violences que dénie la dignité et le caractère sacré de l'être humain n'ont pas de nationalité; elle nous concernent tous.
5	SOCIAL FANTASY	ICC ASP '02/'10	Je vise et évoque aussi le mal considérable et le tort irréparable que l'on cause ainsi à l'idée d'un minimum de morale dans la bonne gouvernance. Morale minimale que définissent précisément les instruments internationaux de la Communauté des Etats civilisés au premier rang desquels se placent la Déclaration universelle des droits de l'homme ainsi que les différents traités, pactes et protocoles du droit international humanitaire, y compris le Statut de Rome de la CPI.
37	SOCIAL FANTASY	ICC ASP '02/'10	Recognizing that the human race is only one and that the welfare or impairment of the world affects us all human beings, the notion of lasting and stable peace must be nurtured every day, for every single citizen

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			of this planet, with the example of tolerance, with the preaching of acceptance for others and respect the rights of others. The best way to eradicate the most serious crimes against humanity is to promote the values that instil the peace as a precondition of life, as a necessity and as a right irreplaceable. However, recognizing our brothers with their cultural differences can we build a world in which they act responsibly and be fully aware that what affects a single human being, a reason to harm others, be it the germ of the injustices and conflicts.
1	SOCIAL FANTASY	NGO 2002/2010	You are well aware that the establishment of the International Criminal Court is considered one of the most important achievements in the last decade of the last century, which came as a result of your efforts and the support of civil society organizations in various parts of the globe, and which aimed at putting a limit and an end to the phenomena of impunity which, unfortunately, was common in human history and in various cultures and civilizations.
2	SOCIAL FANTASY	NGO '02-'10	The success of the Rome Statute system is due to many persons in this room, who are ready to sacrifice their own and their states' narrower interests for the long term goal of justice for all. Our membership of 2500 organizations in more than 150 countries look to you to ensure implementation and enforcement of the Rome Statute, both at the national level, in cooperation with the UN and other international and regional organizations, and through the ICC. In spite of all the challenges we face, we are convinced that we are moving in the right direction, and we congratulate you on that.
3	SOCIAL FANTASY	NGO '02-'10	As the CICC has stated many times, the Rome Statute is one of the greatest advances ever in international law, and the Rome Conference in 1998 provided a unique outcome that for many reasons would not have been reached at another time or in another place. Since 1998, the Statute and the Court have withstood grave threats by opponents and we congratulate the State Parties, ICC officials and others in the international community for their committed efforts to defend the Rome Statute.
4	SOCIAL FANTASY	NGO '02-'10	This great Treaty, the Court and Assembly represent humanity's determined search for peace and justice, not only here in Africa but throughout the world.
5	SOCIAL FANTASY	NGO '02-'10	It is our duty to ensure that the vision set down in Rome is given full meaning. It is important that the ICC does not lose sight of this historic opportunity to bring justice closer to the victims. It should reach into victims' communities; support victims' ability to participate in proceedings and give meaning to effective reparation.
1	SOCIAL FANTASY	International Public Servants & Experts (IPS) 2002/2010	At the very moment when our planet lives with grave challenges threatening international peace and security, we assemble today in The Hague to confirm, once again, our commitment to the international rule of law. In a few moments, the first 18 judges of the International Criminal Court will make their solemn undertaking, and begin to exercise their functions under the Rome Statute. It is an occasion, the root of which is to be found in the first flickering of human common sense, later fashioned with inspiration and logic by our predecessors, into a legal path which passed through Versailles and London, before ending finally in Rome some five years ago. Yet as humanity accompanied these developments,

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			towards the achievement we celebrate today, people throughout the world continued to suffer horrifyingly from genocide, war crimes and crimes against humanity, and in numbers that were utterly shameful – a constant reminder of what needed to be done.
2	SOCIAL FANTASY	IPS '02-'10	Yet to appreciate fully the Court's unique significance to humanity, we need only visit the first sentence of Article 27 of the Rome Statute, which offers language so simple and yet so abundant in meaning and power: "This statute shall apply equally to all persons without distinction based on official capacity." The accountability of political and military leaders is now, unequivocally, part of international law.
3	SOCIAL FANTASY	IPS '02-'10	As a lawyer coming from one of the most troubled regions in the world today, and from a country that has worked tirelessly with Arab states and the international community towards achieving a just peace in the Middle East, I am deeply appreciative of the significance of meeting today in the historic ("Schwurgerichtssaal 600") crown courtroom 600 of the Higher Regional Court in Nuremberg - the scene of the Nuremberg War Crime Tribunals. Our venue emphasizes the fact that peace must include justice if it is to hold. Even if justice is postponed as negotiators try to hammer out a cessation of hostilities or try to negotiate interim peace accords, justice must ultimately be addressed in order to fortify the peace.
4	SOCIAL FANTASY	IPS '02-'10	In the post World War II era, the rallying cry for conflicts all over the world was: no peace without justice. Today's reality has forced upon populations to accept delayed justice or barely any justice at all in the interim or even final peace accords.
5	SOCIAL FANTASY	IPS '02-'10	It is said that all roads lead to Rome. But not all lead there directly. The road that has led us to this Conference in the Eternal City has been a long one. It has led through some of the darkest moments in human history. But it has also been marked by the determined belief of human beings that their true nature is to be noble and generous. When human beings maltreat each other, they call it 'inhuman'.
6	SOCIAL FANTASY	IPS '02-'10	Most human societies, alas, have practised warfare. But most have also had some kind of warrior code of honour. They have proclaimed, at least in principle, the need to protect the innocent and defenceless, and to punish those who carry violence to the excess.
7	SOCIAL FANTASY	IPS '02-'10	These tribunals (ad hoc) are showing, however imperfectly, that there is such a thing as international criminal justice, and that it can have teeth. But ad hoc tribunals are not enough. People all over the world want to know that humanity can strike back – that whatever and whenever genocide, war crimes or other such violations are committed, there is a court before which the criminal can be held to account; a court that puts an end to a culture of impunity; a court where 'acting under orders' is no defense; a court where all individuals in a government hierarchy or military chain of command, without exception, from rulers to private soldiers, must answer for their actions.
96	SOCIAL FANTASY	IPS '02-'10	Let us seize this historic opportunity on our own continent to demonstrate our commitment to peace and justice.
1	INTERNATIONAL	UN Security	The International Criminal Court is emerging as an affirmation of the common conviction that justice and peace are indispensable for human development.

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	CRIMINAL COURT	Council Debates 2002/2008	
2	ICC	UNSC Deb '02/'07	The establishment of a Court of this nature is a lasting contribution to the principle mandate of the United Nations and of the Security Council: the maintenance of international peace and security and the promotion of the rule of law and respect for human rights and fundamental freedoms throughout the world.
1	ICC	ICC Assembly of States Parties (ICC ASP) 2002/2010	The International Criminal Court is on the whole suitable for the international community to fight against impunity and to judge those who have committed the gravest crimes, to which end the content and spirit of the Rome Statute should be respected and the balance of its laws, which takes the concerns of the States into consideration without decreasing the powers of the Court, should be preserved.
2	ICC	ICC ASP '02/'10	The existence of the International Criminal Court notably enriches the legal structure of the international community and the rule of law at a global level.
3	ICC	ICC ASP '02/'10	It also complements the efforts of the national jurisdictions to confront crimes that constitute the greatest offenses against humankind.
4	ICC	ICC ASP '02/'10	The Argentine delegation wishes to start by reaffirming its full commitment to the promotion and the protection of human rights and the end of impunity. We are convinced that the International Criminal Court fulfills a fundamental role in the achievement of these objectives. A permanent international justice not only reassures the criminal persecution of those who have committed the gravest international crimes, but it also has a deterrent effect on the perpetration of such crimes. In this way, the Court necessarily contributes to reinforcing justice and the rule of law, as well as to preserving peace and international security.
5	ICC	ICC ASP '02/'10	The ICC has a global vocation but it has not yet achieved universal participation. In the medium and long term universality is the great challenge before the ICC and the international community.
6	ICC	ICC ASP '02/'10	From Sierra Leone to the Sudan to Angola to the Balkans to Cambodia and to Afghanistan, there are a great number of peoples who need more than just words of sympathy from the international community. They need a real and sustained commitment to help end their cycles of violence, and launch them on a safe passage to prosperity.
7	ICC	ICC ASP '02/'10	The International Criminal Court is on the whole suitable for the international community to fight against impunity and to judge those who have committed the gravest crimes, to which end the content and spirit of the Rome Statute should be respected and the balance of its laws, which takes the concerns of the States into consideration without decreasing the powers of the Court, should be preserved.
8	ICC	ICC ASP '02/'10	(...) The existence of the International Criminal Court (...) also complements the efforts of the national jurisdictions to confront crimes that constitute the greatest offenses against humankind. We should continue working to ensure its definite consolidation.

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63	ICC	ICC ASP '02/'10	Trinidad and Tobago as a State is committed to the rule of law both at the national and international levels, views these developments as important pillars in building bridges for the maintenance of international peace and security. We acknowledge the roles played by the referring States, the United Nations, States Parties and non-governmental organizations for their cooperation with the Court. It is our hope that such cooperation is intensified so that the Court would be able to effectively discharge the mandate entrusted to it by the international community.
64	ICC	ICC ASP '02/'10	Trinidad and Tobago is confident that in departing the court, President Kirsch would have left behind an institution whose foundation is built upon the aspirations of all those past and present who believe that peace and justice are inextricably linked to one another. Mr. President, to sacrifice one on the altar of political expediency is to fatally injure the other.
1	ICC	NGO 2002/2010	The Rome Statute and the ICC is arguably the most successful achievement in the so-called new peace and security architecture in the post Cold War era and has achieved considerable progress over the past year.
2	ICC	NGO '02-'10	Today, in an international context that is drastically different from the one 12 years ago, this Conference is of unique importance. Although the support for international justice is often considered secondary, you can and you must, affirm and reinforce your support for the International Criminal Court and the effective implementation of the Rome system. You will then be able to achieve the goal of the Court to <i>put an end to impunity for the most serious crimes that deeply shock the conscience of humanity and threaten the peace and well-being of the world.</i>
3	ICC	NGO '02-'10	The ICC is not an end in itself but a means to achieve a clear goal, a response to impunity for serious crimes, and to prevent the reoccurrence of such crimes. There is no peace without justice.
4	ICC	NGO '02-'10	While this tragedy takes place, the first Review Conference of the International Criminal Court (ICC) opens in Kampala, Uganda. On this historic occasion the entire international community, at the presence of UN higher authorities, is celebrating international justice's most important achievement. The Court is the result of over 50 years of struggle to enforce international law through accountability; it was celebrated as the means to uphold the rule of law, to move from war to law.
5	ICC	NGO '02-'10	But the difficulties I mentioned earlier are not past, and even as we support the Court in developing its vision as a universal institution that is responsive to the needs and aspirations of populations affected by conflicts, we must continue to confront and overcome the looming threats. One such threat is the attempt, gaining strength in recent months, to paint the Court as 'anti-African'. This idea has consistently been put forward by people who seem to want to adopt an appeasement approach towards perpetrators of crimes under international law. They paint the ICC as a colonialist institution, discounting the fact that three of the four cases before the Court were referred by African countries themselves. They resurrect the phantom of a rogue ICC Prosecutor and they place an undefined peace above justice, all under claims of realism.
6	ICC	NGO '02-'10	Is there no court for Gaza? The International Criminal Court (ICC) was built on a noble and essential

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			philosophy and goal: to ensure that victims' rights were upheld and that those most responsible for the most serious crimes were held to account and thus to ensure that the rule of enforceable international law would extend throughout the globe.
7	ICC	NGO '02-'10	While remaining respectful of the independent and impartial nature of the judicial decisions and the operative and strategic actions of the Court, PGA remains watchful of the sacred mandate of the Court in bringing a type of justice that is delivered, that is restorative and not only punitive, and that is not only visible after that crimes have been committed but may be capable of deterring future with the aim of maximizing the impact of ICC and achieving the goals enshrined in the Rome Statute Preamble. We follow carefully the new issues stemming from the interplay between domestic and international justice, such as the sequencing of different types of remedies, including traditional accountability mechanisms, which should not jeopardize – in the end – the role of the ICC. We stand for a larger role of the UN and partner states to arrest suspects.
8	ICC	NGO '02-'10	There is no scale larger in international justice than the International Criminal Court, this is the time to implement the best of what we know and the best of what we have learnt on a global scale matching pragmatism with imagination, our good intentions with capacity and skills, paying attention to the detail but not losing sight of the larger picture of establishing an independent International Criminal Court capable of providing accountability, deterring perpetration of grievous crimes, recognizing the rights of victims and delivering gender-inclusive justice.
1	ICC	International Public Servants & Experts (IPS) 2002/2010	Once seized of a case, the International Criminal Court will not be the world's crucible for vengeance. It will provide a fair trial to those accused of having committed the gravest of crimes, endeavour to lay bare the truth, foremost to the victims themselves, but also to the wider world community, and then do what it can to assist those victims. Moreover, by virtue of its permanent and independent character, it will, in time, provide a much-needed deterrent to those who would otherwise plot to bring great suffering to innocent people through violent means. In the final analysis, the International Criminal Court will be the inseparable and necessary companion to a more peaceful world, and our permanent conscience.
2	ICC	IPS '02-'10	We have all done this, I believe, not because we see in it narrower interests or profit, but because we view the International Criminal Court as the only new institution which offers us hope for a twenty-first century more honourable than preceding centuries.
3	ICC	IPS '02-'10	But the overriding interest must be that of the victims, and of the international community as a whole. I trust you will not flinch from creating a court strong and independent enough to carry out its task. It must be an instrument of justice, not expediency. It must be able to protect the weak against the strong.
4	ICC	IPS '02-'10	We have before us an opportunity to take a monumental step in the name of human rights and the rule of law. We have an opportunity to create an institution that can save lives and serve as a bulwark against evil. We have also witnessed, time and again in this century, the worst crimes against humanity have an opportunity to bequeath to the next century a powerful instrument of justice. Let us rise to the challenge.

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			Let us give succeeding generations this gift of hope. They will not forgive us if we fail.
5	ICC	IPS '02-'10	Earlier tribunals, like those of Nuremburg, Tokyo, Arusha and The Hague, were established after the fact. The ICC is different. It gives advance warning that the international community will not stand by but will be ready, immediately, if crimes within the Court's jurisdiction are committed. Indeed, by its very existence, the Court can act as a deterrent.
6	ICC	IPS '02-'10	Above all, the independence, impartiality and the integrity of the Court must be preserved. The ICC is not -- and must never become -- an organ for political witch hunting. Rather, it must serve as a bastion against tyranny and lawlessness, and as a building block in the global architecture of collective security.
7	ICC	IPS '02-'10	These are daunting times for humankind. But at long last, the world has this missing link for the advancement of peace, this new institution with which to battle impunity, this court of law where formerly untouchable perpetrators, regardless of their rank or status, can be held accountable for their crimes.
8	ICC	IPS '02-'10	The drive for justice has been an integral part of the quest for international peace. As the Court now takes up its formidable responsibilities, the United Nations looks forward to working in partnership with you in that pursuit.
9	ICC	IPS '02-'10	One could say that it was already accepted -- at least implicitly -- when the United Nations set up international tribunals to prosecute and punish the perpetrators of genocide and other related crimes in the former Yugoslavia and Rwanda. And now the International Criminal Court seeks to apply the same principle more generally.
10	ICC	IPS '02-'10	I sincerely hope that the Court will be able to deter potential perpetrators of genocide and other large-scale abuses in the future. With time, the ethical standard that the Court represents should be gradually internalized and accepted by political and military leaders in all countries, and by combatants in all conflicts.
11	ICC	IPS '02-'10	We have made progress in holding people accountable for the world's worst crimes. The establishment of the International Criminal Court, the work of the UN tribunals for Yugoslavia and Rwanda, the hybrid ones in Sierra Leone and Cambodia, and the various Commissions of Experts and Inquiry, have proclaimed the will of the international community that such crimes should no longer go unpunished.
12	ICC	IPS '02-'10	As U.N. secretary general, I have come to see how effective the ICC can be --- and how far we have come. A decade ago, few would have believed that the court would now be fully operational, investigating and trying perpetrators of genocide, war crimes and crimes against humanity committed in a broadening geography of countries.
40	ICC	IPS '02-'10	Naturally, the judicial activities of the ICC have also generated political interest. Some accused of crimes have reacted to these developments with self-interested political attacks on the ICC. More importantly, among others, the ICC's activity may have caused modifications in behaviour. The United Nations, which I visited last week, has indications that fear of prosecution may have led some would-be perpetrators to

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			refrain from the commission of atrocities in the first place. If only one warlord has decided to release his child soldiers, then the ICC can already be deemed a success.
41	ICC	IPS '02-'10	I would like to stress that the ICC's mission is pure judicial. It is not part of the United Nations system or any political organ. The independence of the ICC, its 18 judges and the Prosecutor are protected under the Rome Statute. The Judges and the Prosecutor are elected by the States Parties, which number 113 at the moment.
42	ICC	IPS '02-'10	As I have already explained, the ICC's achievements are truly impressive; we now have a system that encourages States to investigate and prosecute the most serious offenses under international law and that provides an international court as a backup. It is a system that sends out a strong statement against impunity and a warning for anyone who contemplates the commission of crimes under the Statute. It is a system that persons responsible for atrocities can and must be held accountable. The ICC really is ushering in a 'new era of accountability'", to quote the expression used by the UN Secretary-General, Ban Ki Moon.
43	ICC	IPS '02-'10	We can thus proudly say that we are looking at a functioning judicial institution that had eluded us for decades: The first independent, permanent international criminal court with jurisdiction over the most serious crimes under international law. At the same time, we all can and we all must do better: The Court itself and we, as States Parties. We have therefore added another dimension to this conference and will take stock both of the achievements to this day and of the challenges ahead. The four dimensions – victims and affected communities, peace and justice, complementarity and cooperation – are at the very heart of the Rome Statute system.

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