

International Crimes: Keeping the “national” strong

Par:

[Marie-Laure Tapp](#)

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Cette année encore, *Quid Justitiae* s’associe au [Partenariat canadien pour la justice internationale](#) à l’occasion de l’[Assemblée des États Parties \(AÉP\) à la Cour pénale internationale](#), dont la 17^e édition se déroule à La Haye, aux Pays-Bas, du 5 au 12 décembre 2018. Pendant cet événement, des représentant.e.s des États ayant ratifié le Statut de Rome ou y ayant accédé se rassemblent pour prendre des décisions cruciales concernant la Cour. De multiples événements parallèles sont aussi organisés par des organisations de la société civile pour stimuler les discussions et trouver des solutions aux problèmes qui entravent la réalisation du projet envisagé lors de l’adoption du Statut de Rome. Dans ce contexte, *Quid Justitiae* diffuse les billets écrits par les étudiant.e.s du Partenariat qui participent à l’AÉP. Ces billets résument, vulgarisent et analysent les événements qui surviennent à l’AÉP.

La seconde contribution à ce symposium est offerte par [Marie-Laure Tapp](#) et concerne la complémentarité et la compétence universelle.

Pour lire la précédente publication du symposium, cliquez [ici](#) ou [ici](#).



Photo credit: Marie-Laure Tapp

Despite the challenges faced by many jurisdictions, national courts are of tremendous importance to ensure redress for victims of international crimes. It is a well-known reality that the International Criminal Court (ICC) could not possibly take on all the cases involving crimes that fall under its jurisdiction. Not only the financial means and human resources necessary to accomplish this feat would be impossible to gather (we can only think of the [challenges facing the Court](#) at the moment with a limited number of cases), but the ICC is only meant to fill the famous, yet sometime elusive, “impunity gap”. This is why complementarity, at the very basis of the ICC’s philosophy of intervention, is guaranteed to remain a topic of high relevance at every future Assembly of State Parties (ASP) to the ICC. At this year’s ASP, starting on Wednesday, the complementarity-related jurisprudence in DR Congo [will be analysed on December 7th](#) at an event organized by Senegal and the *Club des Amis du Droit du Congo*. The case of Gambia and Ghana [will also be discussed](#) in relation to

complementarity.

The [Coalition for the International Criminal Court](#) (CICC) [explains](#) in its backgrounder to the 17th ASP that

“Consultations between States Parties, the Court, civil society, and other actors regarding complementarity have highlighted differences in understanding of what complementarity means in practice for the Court, the ASP, and national systems – considering mandate limitations as well as challenges with funding, coordination, and political will.”

It however fortunately also [reports that](#) a “*Complementarity Platform for technical assistance*” was brought forward by the ASP Secretariat last October. While little information seems to be available as of today on the said platform, the CICC explains that it is meant to “facilitate[e] links between ICC States Parties requesting technical assistance with actors that may be able to assist national jurisdictions in their efforts to investigate or prosecute Rome Statute crimes.” We will make sure to gather as much information as possible during this 17th ASP on this interesting new initiative.

In the same vein, the ICC emphasized last October in its [Report on Cooperation](#) (para. 73) that “further engagement with regional organizations can help promote efforts regarding universality, implementing legislation, cooperation and complementarity [...]”. It thus appears that the correct formula for the effective application of the principle of complementarity remains elusive and subject to the whims of various political and diplomatic ballets, both at the national and regional levels.

Yet, actions can be taken to stabilize this pitching boat. Positive complementarity, generally understood as domestic capacity-building to support and ensure investigations and prosecutions on core international crimes will, it makes little doubt, be the subject of much discussion at this year’s ASP. For example, the role of the ICC in supporting national and hybrid investigations and prosecutions will also be discussed [during a side-event](#) co-hosted by Luxembourg and the Open Society Justice Initiative. Human Rights Watch recently [noted](#) that “the term [‘positive complementarity’] has garnered increased recognition and has come to encompass initiatives by a range of actors to encourage national prosecutions of international crimes”. Yet, it also pondered “whether domestic challenges are too great for the ICC’s commitment to positive complementarity to surmount.” The organization indeed analyzed in great depth the impact of the ICC on national courts in a [report](#) published last June, which goes over the Colombian, Georgian, British and Guinean contexts. We look forward to see if they will reappear during the discussions held at this 17th ASP.

National courts also have the opportunity to be an indispensable element of international justice in another complementary, yet more indirect, manner, through the application of universal jurisdiction. The European Center for Constitutional and Human Rights (ECCHR) [defines it](#) as “provid[ing] for a state’s jurisdiction over crimes against international law even when the crimes did not occur on that state’s territory, and neither the victim nor perpetrator is a national of that state. The principle allows national courts in third countries to address international crimes occurring abroad, to hold perpetrators criminally liable, and to prevent impunity.” Syria comes to mind immediately, with a few cases on atrocities committed in the midst of this conflict [being heard before courts in Europe](#) as we speak. [A side-event](#) documenting universal jurisdiction as an “emerging tool to complement” the work of the ICC will be co-hosted by Liechtenstein and by the ECCHR, presenting the perspectives of a prosecutor, a survivor, and those of the Impartial and Independent Mechanism for Syria and the civil society. Challenges abound on the universal jurisdiction front too, especially with regards to the gathering of evidence and the need for specialized expertise to collect, analyse and present it to judges in a fashion that will not only allow cases to be opened, but also with content that will ensure the long-term credibility and feasibility of prosecutions based on universal jurisdiction. It is about walking the fine line between idealism and realism. On that note, Civitas Maxima and the Center for Justice and Accountability are [organizing a side event](#) on December 11, titled “Closing the Impunity Gap: A Pragmatic Approach to Universal Jurisdiction”. Let us see how the conversation on this delicate exercise will unfold in the next 10 days.



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