ONE SIZE DOES NOT FIT ALL: A QUASI-FEDERAL SOLUTION TO THE EURO-CENTRIC STRUCTURAL SHORTCOMINGS OF THE ICC

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ABSTRACT

During his swearing-in speech, Prosecutor Karim A. A. Khan shared his vision for the International Criminal Court ("ICC"): "ICC is not only a court of last resort . . . in my view, The Hague itself should be a city of last resort." His statements hinted towards ICC regionalization via holding in-situ trials closer to affected areas. However, it is doubtful if the present ICC structure is even capable of regionalization. This Article highlights that even though the Court is governed by provisions that enable it to regionalize proceedings by way of holding in-situ proceedings (Articles 3(1), 4(2), and 62 of the Rome Statute and Rule 100 of the Rules of Procedure), these provisions have been reduced to mere boiler-plate clauses adopted from other statutes, rendering the Court's structuring opaque and inaccessible. The Article analyses the considerations made by the Court in past cases denying in-situ trials, including trials of Lubanga, Bemba, Kenyatta, Ruto & Sang, Gbagbo & Blé Goudé, Ongwen, Ntaganda, the Situation in Bangladesh/Myanmar, and Kani. The failure to move these proceedings closer to the affected communities indicates the ICC's inherent structural flaws. For a Court responsible for dealing with individual criminal responsibilities for gross international crimes committed

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across the globe, the cases also illustrate that an ICJ-styled structure is not only ineffective but may also lead to the miscarriage of justice. Additionally, the Article analyzes other forms of regionalization which lie beyond the ICC structure, such as ad hoc courts and/or hybrid tribunals (which are predominantly implemented ex post facto for temporary purposes); and stand-alone regional courts, such as the judicial system proposed for Africa under the Malabo Protocol.

The current, Eurocentric structure of the ICC negatively affects the transparency of the court in several ways. Holding proceedings primarily in The Hague not only indicates the Court's bias towards Western nations, but detracts from its international legitimacy by portraying an image of "foreign justice." Moreover, the distance between the Court and affected communities can make it difficult for local individuals and organizations to participate in and observe proceedings, which can detract from transparency and act as a major hindrance to the ICC's goal of achieving deterrence. The author argues that while the ICC framework permits the Court to hold proceedings away from The Hague, it has rarely considered doing so, possibly due to the ease of holding trials at the already existing seat of the ICC and the structural flaws in actualizing in-situ proceedings. This Article aims to fill the gap in the literature and propose a new "quasi-federal" framework for regionalization. The decentralization of the court in different regions can be seen as a representation of a diverse and equitable court, leading to decolonization of the ICC and increasing its legitimacy and transparency. The proposal hinges on the idea that a system of international criminal justice must be more adaptive to regional/local needs, proactive, independent, and permanent to address the perception of widespread impunity for core crimes and create a sense of deterrence amidst the increase in global democratic backsliding and violence from state actors.

I. INTRODUCTION

On June 16, 2021, during a ceremony held at the Seat of the Court in The Hague, The Netherlands, Karim Asad Ahmad Khan KC formally took office as the new Prosecutor of the International Criminal Court ("ICC").[1] While taking a public oath of office, Mr. Khan gave a

1 Press Release, Int'l Crim. Ct., Mr Karim Asad Ahmad Khan QC Sworn in Today as the Prosecutor of the International Criminal Court (June 16, 2021),

glimpse of his vision of the functioning of the Court. It is pertinent to reproduce a quote from his speech:

> The priority for me, and I believe that's the principle of the Rome statute, is not to focus so much on where trials take place, but to ensure that the quest for accountability and inroads on impunity are made. . . . Linked to that is my view, Mr. President, that of course the ICC is not only a court of last resort, in my view, and it's a matter for the honourable judges of the Court. In my view, the Hague itself should be a city of last resort. Wherever possible we should be trying to have trials in the country or in the region, wherever possible. Of course it is easier for survivors and victims, it can save costs, reduce the carbon footprint, but also importantly it shows we're not in the export business . . . . We are involved in a body of law that is owned by humanity. It is not of the west or of the east. It's not of the global north or of the south, it belongs to each and every one of us.[2]

It is evident that the Prosecutor is trying to move the Court's practice by emphasizing the need to hold regional or in-situ proceedings. This Article seeks to focus on the utility of regionalization and proposes a framework to remedy the shortcomings of the Court's Eurocentric nature, hoping to address the lacuna in the existing practice. The proposal suggests a permanent network of regional courts within the ICC framework, achieved by quasi-federalizing the existing structure. Before moving forward, however, it is essential to establish a basic understanding of certain issues around the ICC.

Many global scholars and jurists have raised questions about the ICC's viability and the costs involved in prosecuting only a handful of individuals. Whether the ICC has been successful is difficult to answer, especially because it depends on how one defines success.[3] Many scholars have defined the success of international criminal

https://www.icc-cpi.int/Pages/item.aspx?name=pr1598 [https://perma.cc/K9W6-52CB].

[2] Int'l Criminal Court, *Swearing-in Ceremony: Speech of New ICC Prosecutor Karim Asad Ahmad Khan QC, 16 June 2021*, YOUTUBE (June 16, 2021) [hereinafter *Swearing-in Ceremony*], https://www.youtube.com/watch?v=tDldr2ma1S0 [https://perma.cc/V6D4-QT9Q].

[3] Yuval Shany, *Assessing the Effectiveness of International Courts: A Goal-Based Approach*, 106 AM. J. INT'L L. 225, 230 (2012).

tribunals by their ability to achieve their goals.[4] The ICC has undoubtedly had its share of problems in recent years,[5] but its success cannot be determined by the outcome of a particular trial or investigation, by the number of its member states, or by the opinions of scholars, but by its ability to meet its goals.[6] In the author's opinion, despite the ICC's faults, it is a necessary body that addresses a critical lacuna in international law. In fact, the international community has long aspired for an international permanent judicial body that can hold individuals accountable for international crimes.[7] That aspiration is evident from the events that led to the creation of the ICC.[8]

A. Need for a Permanent International Criminal Court

Among other things, the ICC is vital to ensure that an international body of law exists for people who have been victims of state-sponsored crimes. It provides a redressal mechanism to victims where the state authorities are unwilling or unable to act on violations. It also aims to prevent states from committing atrocities against their own citizens and against other states.[9] Although it is not easy to ascertain the Court's quantitative impact, according to a study conducted in 2016 by Hyeran Jo and Beth A. Simmons, ratification of the ICC statute has led to a noticeable decrease in violations by state parties.[10] However, due to the recent global rise of authoritarianism and

4 Stuart Ford, *Can the International Criminal Court Succeed? An Analysis of the Empirical Evidence of Violence Prevention*, 43 LOY. L.A. INT'L & COMPAR. L. REV. 101, 104-05 (2020).

5 Lilian Barria & Steven D. Roper, *How Effective Are International Criminal Tribunals? An Analysis of the ICTY and ICTR*, 9 INT'L J. HUM. RTS. 349, 359-62 (2005); Nancy L. Combs, *International Criminal Court Comes of Age*, THE HILL (Jan. 30, 2019), https://thehill.com/opinion/criminal-justice/426954-international-criminal-court-comes-of-age/ [https://perma.cc/TNL8-RQ98].

6 Ford, *supra* note 4, at 105.

7 WAR CRIMES RSCH. OFF., AM. U. WASH. COLL. L., THE RELATIONSHIP BETWEEN THE INTERNATIONAL CRIMINAL COURT AND THE UNITED NATIONS 10-11 (2009), https://www.wcl.american.edu/wcl-american-edu/assets/WCRO_Report_on_ICC_and_UN_August2009.pdf [https://perma.cc/ZAP3-LS4U] [hereinafter AUWCL 2009].

8 *See generally* Marlene Wind, *Challenging Sovereignty? The USA and the Establishment of the International Criminal Court*, 2 ETHICS & GLOB. POL. 83 (2009).

9 Rome Statute of the International Criminal Court pmbl., July 17, 1998, 2187 U.N.T.S. 3 [hereinafter Rome Statute] (entered into force July 1, 2002) ("Determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the *prevention of such crimes*." (emphasis added)).

10 Hyeran Jo & Beth A. Simmons, *Can the International Criminal Court Deter Atrocity?*, 70 INT'L ORG. 443, 460-61 (2016).

democratic backsliding, which have led to increases in state-sponsored atrocities and crimes, local governments failing to hold nationals accountable for war crimes committed abroad, continued instances of crimes against humanity ("CAH") and war crimes across the globe, the ICC is an essential accountability mechanism for the international community moving forward. While it can be argued that the ICC does not have a similar impact on non-state actors, the Court can still play a crucial role in improving domestic infrastructures and accountability to eventually dissuade these non-state actors.

Nonetheless, as mentioned above, the Court has faced its share of challenges. Over the years, many states and scholars have raised various issues with the structure and functioning of ICC.[11] Some states have even created obstructions to the ICC[12] or withdrawn their ratification.[13] Much like in domestic courts, issues in the structure of the judicial system cannot justify removal of the criminal justice mechanism. Efforts should be made to address those issues, however.

Similarly, while acknowledging the need for an international criminal court, issues in the ICC's workings need to be addressed, rather than opposing the ICC as a concept. It is crucial to briefly overview the existing structure of the ICC before delving further into the Article.

11 *See generally* Patryk I. Labuda, *Beyond Rhetoric: Interrogating the Eurocentric Critique of International Criminal Law's Selectivity in the Wake of the 2022 Ukraine Invasion*, 36 LEIDEN J. INT'L L. 1095 (2023).

12 *US Sanctions on the International Criminal Court*, HUM. RTS. WATCH (Dec. 14, 2020, 12:00 AM), https://www.hrw.org/news/2020/12/14/us-sanctions-international-criminal-court [https://perma.cc/E7QY-4CYK]; *Roundtable #6: The Promises and Problems of the International Criminal Court*, COLUM. UNDERGRADUATE L. REV. (Jan. 9, 2021), https://www.culawreview.org/roundtable-1/roundtable-discussion-the-promises-and-problems-of-the-international-criminal-court [https://perma.cc/SF2Z-8QH7]; *States Shouldn't Use ICC Budget to Interfere with Its Work*, AMNESTY INT'L (Nov. 23, 2016), https://www.amnesty.org/en/latest/news/2016/11/states-shouldnt-use-icc-budget-to-interfere-with-its-work/ [https://perma.cc/ML92-4RGG].

13 Franck Kuwonu, *ICC: Beyond the Threats of Withdrawal*, AFRICA RENEWAL, https://www.un.org/africarenewal/magazine/may-july-2017/icc-beyond-threats-withdrawal [https://perma.cc/7P4X-Y6HN] (last visited Dec. 11, 2023); Press Release, Amnesty Int'l, Phillipines: Duterte Cannot Halt ICC Investigation into Murderous "War on Drugs" (July 23, 2021), https://www.amnesty.org/en/latest/press-release/2021/07/duterte-cannot-halt-investigation-into-war-on-drugs/ [https://perma.cc/FP3L-AV49].

B. Current Structure of the ICC

During the Rome Statute negotiations, the Netherlands offered to host the Court.[14] The same is highlighted in the ICC Statute, where Article 3(1) provides that the Seat of the Court shall be established at The Hague in the Netherlands.[15] In its capacity as host state, the Netherlands made a particular commitment to provide the Court with premises in The Hague for ten years, beginning in 2002.[16] The Court presided in the premises of L'Arche, which was available until 2012.[17] In December 2007, however, "the Assembly of States Parties decided that the ICC should be provided with newly built permanent premises."[18] Eventually, on December 14, 2015, the ICC finalized its move into new, permanent premises located at Oude Waalsdorperweg, The Hague, The Netherlands.[19] There are 123 state parties to the Rome Statute of the ICC, and the Court has jurisdiction over war crimes, CAH, genocide, and crimes of aggression.[20] The four organs of the Court are the Presidency, the Judicial Division, the Office of the Prosecutor ("OTP"), and the Registry.[21] The eighteen ICC judges are spread across three divisions: Pre-trial Chamber ("PTC"), Trial Chamber, and Appeals Chamber.[22]

It is the author's view that the Court's current euro-centric and centralized structure, which is similar to the International Court of Justice ("ICJ"), can never be ideal for a court that is supposed to deal with the individual criminal responsibility of perpetrators across the globe and deal with victims and witnesses who belong to various remote corners of the world. The concept of holding proceedings away from the Seat of the Court and closer to the affected communities is not

14 Headquarters Agreement Between the International Criminal Court and the Host State, Official Journal Publication (ICC), ICC-BD/04-01-08, Mar. 1, 2008 [hereinafter Headquarters Agreement].

15 Rome Statute, *supra* note 9, art. 3, ¶ 1.

16 Headquarters Agreement, *supra* note 14.

17 Virginie Saint-James*, La Construction du Siège de la Cour Pénale Internationale à La Haye, entre Symbolique et Polémiques*, 4 LES CAHIERS DE LA JUSTICE 647, 650 (2018).

18 Press Release, Int'l Crim. Ct., The ICC Has Moved to Its Permanent Premises (Dec. 14, 2015), https://www.icc-cpi.int/Pages/item.aspx?name=pr1180 [https://perma.cc/TEY8-6ACC].

19 *Id.*

20 Rome Statute, *supra* note 9, art. 5.

21 *Id.* art. 34.

22 *How the Court Works*, INT'L CRIM. CT., https://www.icc-cpi.int/about/how-the-court-works [https://perma.cc/MU6E-2B8Q] (last visited July 25, 2021).

foreign to the Court, however; the Statute and Rules expressly provide for the possibility.[23] However, this Article will discuss the actual practice of the Court and how these provisions have been interpreted into disuse. The ICC has also attempted to improve its perception and reach through its outreach program. To that end, it established country offices closer to the affected communities in cities spread across seven countries: Kinshasa and Bunia (Democratic Republic of Congo); Kampala (Uganda); Bangui (Central African Republic); Abidjan (Côte d'Ivoire); Tbilisi (Georgia); and Bamako (Mali).[24] While achieving an external presence by establishing field offices is essential, it is not sufficient to address all of the ICC's shortcomings in effectiveness and perception. According to advocates, field offices cannot replicate the effect of holding proceedings closer to the dispute.[25]

C. Research Roadmap

Research Question: The research question that this Article seeks to answer can be broken up into, primarily, three sub-questions: (1) Is regionalization desirable for the ICC and for international criminal law ("ICL") in general? (2) Is the ICC, with its current Eurocentric structure, able to exercise regionalization? (3) If not, what is a structure under which the Court can achieve efficient and effective regionalization?

Research Methodology: This Article, guided by a third-world approach to international law ("TWAIL"), will adopt a "classical legal research" methodology and a "critical legal studies" approach to address the research questions. Part II briefly discusses the etymology and concept of regionalization and its implications in the field of ICL. Further, it focuses on the utility of regionalization, especially via the model proposed by the Article. Part III lays out the various models of

23 Rome Statute, *supra* note 9, art. 3(3); International Criminal Court, *Rules of Procedure and Evidence*, ICC-ASP/1/3, rule 48 (2013) [hereinafter ICC Rules of Procedure and Evidence], https://www.icc-cpi.int/sites/default/files/Publications/Rules-of-Procedure-and-Evidence.pdf [https://perma.cc/2XKP-8XWA] (last visited Dec. 22, 2023).

24 Press Release, Int'l Crim. Ct., Ukraine and International Criminal Court Sign an Agreement on the Establishment of a Country Office (Mar. 23, 2023), https://www.icc-cpi.int/news/ukraine-and-international-criminal-court-sign-agreement-establishment-country-office [https://perma.cc/EMU9-32U2].

25 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, ICC-01/19-34, Victims' Joint Request Concerning Hearings Outside the Host State, ¶ 39 (Aug. 4, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_04736.PDF [https://perma.cc/G9XP-E8G6].

regionalization adopted by ICL, both within the ICC structure and beyond. Within the ICC framework, the Article briefly analyses the decisions of the Court taken under Article 3(3) and Rule 100 of the ICC's Rules of Procedure and Evidence ("RoPE" or the "Rules") to move the proceedings. Beyond the ICC framework, the Article briefly focuses on the efficacy and functionality of regional court systems and hybrid courts. In Part IV, the Article elaborates on its proposed quasi-federal structure—establishing a basic understanding of the political meaning and terminology of the term "quasi-federal." It lays out the proposed framework and discusses the issue of technical legal permissibility under existing ICC statutory provisions. Part V attempts to preempt some of the concerns that can be raised about the proposal and offers solutions for those concerns. Lastly, Part VI concludes, arguing again that the proposed framework will enable the Court to achieve effective regionalization.

II. REGIONALIZATION IN THE CONTEXT OF ICL

In order to understand regionalization, it is crucial to understand the terminologies of regionalization, both in a general and legal sense.

A. Terminology

In a political sense, an international region can be broadly defined as "a limited number of states linked by a geographical relationship and by a degree of mutual interdependence."[26] In a dynamic sense, regionalization can be conceived as "a continuing process of forming regions as geopolitical units, as organized political cooperation within a particular group of states, and/or as regional communities such as pluralistic security communities."[27] In the ICL context, regionalization is the process of decentralizing international law to address varied and specific regional interests.[28] Central to this Article is the proposition that regionalization of ICL can be achieved by holding ICC

26 Arie M. Kacowicz, *Regionalization, Globalization, and Nationalism: Convergent, Divergent, or Overlapping?*, 24 ALTS.: GLOB., LOC., POL. 527, 530 (1999).

27 Van R. Whiting, *The Dynamics of Regionalization: Road Map to an Open Future?*, *in* THE CHALLENGE OF INTEGRATION: EUROPE AND THE AMERICAS 17, 19 (Peter H. Smith, ed., 1993).

28 Carsten Stahn, *Regionalization as a Blessing or as a Curse? The EU and International Criminal Justice*, OPINIO JURIS (Dec. 6, 2016), http://opiniojuris.org/2016/12/06/regionalization-as-a-blessing-or-as-a-curse-the-eu-and-international-criminal-justice/ [https://perma.cc/5NQA-NS4L].

proceedings closer to the region or place of occurrence and the affected communities. This Article primarily focuses on creating a regionalized international structure that can cater to regional issues in criminal justice. To elaborate, as has been stated by many scholars and the ICC Prosecutor, the fact that the Court is so distant from the dispute's origin has created various perceptions about the kind of justice being meted by the Court and has also hampered the Court's ability to meet many of its functional goals.[29] A model wherein international criminal justice could be closer to affected communities or regions, in the author's opinion, could significantly improve and augment the Court's functioning. The Chambers and the Presidency have repeatedly echoed "the importance of bringing justice closer to the affected community" and recognized that local proceedings "contribute to a better perception of the Court."[30] As stated in the *Ruto* Decision, it is that principle of taking the proceedings closer to communities that "motivated the locating of the Nuremberg Tribunal in Germany, the IMTFE in Tokyo, the Special Court for Sierra Leone in Freetown, the ICTR in Arusha (as close as reasonably possible to Rwanda, when it was considered imprudent to locate that tribunal in Rwanda itself)."[31] And, indeed, the same principle is contained in ICC Statute Article 3(3), which explicitly states that the ICC may preside in locations other than at The Hague.[32] In the *Ruto* case, the Court stated, "It is precisely the same principle that motivated the judges of Trial Chamber V(a) to recommend that the trial of the present case be commenced in Nairobi or, alternatively, Arusha."[33]

29 *See, e.g.*, *Swearing-in Ceremony*, *supra* note 2.

30 Prosecutor v. Gbagbo, Case No. ICC-02/11-01/15-316, Decision on the Gbagbo Defence Request to Hold Opening Statements in Abidjan or Arusha, ¶ 15 (Oct. 26, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20301.PDF [https://perma.cc/H4GH-AGKD]; Prosecutor v. Ongwen, Case No. ICC-02/04-01/15-330, Decision on the Recommendation to the Presidency to Hold the Confirmation of Charges Hearing in the Republic of Uganda, ¶ 22 (Oct. 28, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20687.PDF [https://perma.cc/QHD4-A443].

31 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 30 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

32 Rome Statute, *supra* note 9, art. 3(3).

33 *Ruto*, ICC-01/09-01/11-875-Anx, ¶ 30.

B. Why Regionalize ICC Through Quasi-Federalization?

As already pointed out, the debate for regionalization has surfaced time and again. Academics and courts have repeatedly stated the benefits of bringing proceedings closer to the affected communities. In fact, outside of ICL, the regional mechanisms are primarily the enforcement means of choice for many international legal regimes.[34] William Burke-White notes two commonalities of situations in which regionalized law enforcement has occurred: "First, the international legal problem in question is either regional in nature or poses a particular regional concern. Second, for reasons ranging from geographic proximity to cross-border politics, regional organizations are more effectively positioned and/or politically able to enforce the legal rules in question than are supranational entities."[35] These rationales are also present in ICL, if not more applicable. Within ICL, there is a need for an institution like the ICC that governs a regional court system, and that can ensure independence and cohesion within it. This "quasi-federal" approach seeks to propose a concrete framework for achieving effective regionalization. However, the question will remain: Why should states adopt this framework or at least adopt the view that there is a need for this drastic change?

The lack of regional criminal courts is one of the striking gaps in the global justice architecture. Regional courts have become an important instrument for the enforcement of human rights.[36] They have been sidelined in international criminal justice, however. Initially, the idea of regional justice may have been perceived as a challenge to the proclaimed universality of ICL.[37] However, regionalism is increasingly recognized as an asset because it offers to balance the mutual benefits and weaknesses of international and domestic justice and consider legitimate regional or cultural preferences in relation to crimes. According to Burke-White, "[i]n terms of cost, legitimacy, political

34 *See* Allwell Uwazuruike, *The AU's Journey to an African Criminal Court*, 7 GLOB. AFFS. 343, 344-45 (2021); Matiangai V.S. Sirleaf, *Regionalism, Regime Complexes & International Criminal Justice*, 109 PROC. ANN. MEETING (AM. SOC'Y INT'L L.) 161, 163-64 (2015); Ricarda Rösch, *Thinking Globally, Acting Regionally: Towards the Regionalization of International Criminal Law*, VÖLKERRECHTSBLOG (May 27, 2016), https://voelkerrechtsblog.org/thinking-globally-acting-regionally/ [https://perma.cc/B2R2-GFGA].

35 William W. Burke-White, *Regionalization of International Criminal Law Enforcement: A Preliminary Exploration*, 38 TEX. INT'L L.J. 729, 733 (2003).

36 CARSTEN STAHN, A CRITICAL INTRODUCTION TO INTERNATIONAL CRIMINAL LAW 211 (2019).

37 *Id.* at 210.

independence, and judicial reconstruction, regionalization may be a normatively preferable means of enforcing international criminal law. To that extent, regionalization merits attention as a viable part of a system of international criminal law enforcement."[38] The proposed model can also go a long way in bridging "*the growing emotional distance between the court*"[39] and victims and survivors of the alleged crimes.

Effective regionalization depends on many structural factors, such as economic incentives, mutual trust and cooperation, and a sense of regional identity. This may explain why regional criminal courts are often suggested but rarely created.[40] This Part attempts to show that there are sufficient reasons for states to support the proposed Court regionalization model.[41] The model attempts to incorporate lessons learned from prior regionalization efforts and address the concerns frequently raised by critics.

1. Achieving Goals Beyond Retribution

Some observe that the ICC, directly or indirectly, contributes to reducing crimes committed by state authorities.[42] It may be too early to make any conclusions about the Court's direct impact on crime prevention, however.[43] The Court's current structure appears ill-equipped to concretely achieve any goals beyond retribution.[44] In the author's view—and as echoed by Margaret deGuzman—retribution alone cannot justify the ICC's work, since states are not fundamentally retributivists and may be unwilling to pay for international trials if their only purpose is to punish the guilty.[45]

While Stuart Ford's article *Hierarchy of the Goals of International Criminal Courts* provides a valuable framework for evaluating the potential of international criminal courts, a concerning paradox

38 Burke-White, *supra* note 35, at 730.

39 Charles Chernor Jalloh, *Regionalizing International Criminal Law?*, 9 INT'L CRIM. L. REV. 445, 488 (2009) (emphasis added).

40 STAHN, *supra* note 36, at 211.

41 *See infra* Part IV.

42 Jo & Simmons, *supra* note 10, at 469.

43 Rome Statute, *supra* note 9, pmbl.

44 *See generally* Stuart Ford, *A Hierarchy of the Goals of International Criminal Courts*, 27 MINN. J. INT'L L. 179 (2018).

45 Margaret M. deGuzman, *Choosing to Prosecute: Expressive Selection at the International Criminal Court*, 33 MICH. J. INT'L L. 265, 269-70, 276 (2012).

emerges.[46] Ford characterizes two of the most valuable goals for the international community, "maintaining or restoring peace" and "preventing violations," as "extremely unlikely" and "unlikely" to be achieved, respectively.[47] This seemingly contradictory placement exposes a potential structural defect. Despite aiming for the most noble objectives, these institutions may be inherently limited in their ability to attain them. Achieving goals that lie at the bottom of the hierarchy of value, such as record keeping and retribution, are among the more likely goals to be achieved.[48] This raises critical questions about the efficacy and legitimacy of the Court in addressing pressing issues of international peace and justice. This paradox should compel us to critically examine whether the current uni-positional, Eurocentric structure of the Court aligns with the international community's core expectations, especially serving affected populations and providing an avenue for justice. Prioritizing these goals necessitates a reevaluation of the ICC's design and mandates that it effectively delivers on its most sought-after yet elusive goals.

States will likely not try to build or expand an international network solely so that courts can adjudicate the guilt or innocence of a handful of accused; the expense of regionalization must be justified by something greater than the ease of carrying out trials.[49] The quasi-federalization of the Court can assist it in achieving the goals it was established to achieve.

The Court is most often criticized for being a system of foreign justice that it is too far and too slow for affected communities and that it fails to deter future crimes.[50] Deterrence, which can be characterized

46 *See generally* Ford, *supra* note 44.

47 *Id.* at 234-35. For a complete visualization of the international community's goals and their respective likelihoods of being achieved, see *id.* at 235 (Table 2: Expected Value of Goods).

48 *Id.* at 235.

49 Ford, *supra* note 44, at 187.

50 *See, e.g.*, Sabina Grigore, *Justice Delayed, Justice Denied: Bias Opacity and Protracted Case Resolution at the International Criminal Court*, JUST ACCESS (May 2, 2023), https://just-access.de/bias-opacity-and-protracted-case-resolution-at-the-international-criminal-court/ ("On the one hand, the Court is being criticized for not having done enough to raise awareness about its work, because it has not communicated effectively with affected communities, victims, or the general public. Numerous individuals, particularly those living in conflict-affected zones, are uninformed about the ICC's mandate and do not know how to access its services. This lack of awareness and outreach can prevent victims from coming forward to report violations of the Statute, undermining by and large the credibility of the ICC's work.").

as a sub-goal of prevention, has long been a goal of ICL,[51] and yet seems too often fall short. The purpose of criminal justice in a classical sense, as perceived by the ICC, is to achieve two forms of deterrence. As elaborated by the Court in *Bemba*: "The primary purpose of sentencing . . . is rooted . . . in retribution and deterrence . . . . [A] sentence should be adequate to discourage a convicted person from recidivism (specific deterrence) as well as to ensure that those who would consider committing similar offences will be dissuaded from doing so (general deterrence)."[52] The current ICC framework fails to achieve this general deterrence goal. Heads of state that have been accused of committing mass atrocities are still in power, such as Robert Mugabe, who was officially re-elected.[53] State ratification of the ICC treaty does not prevent rebels and, in some cases government troops, from committing crimes.[54]

Overall, immediate general deterrence of international crimes is unlikely for three reasons: (1) the perpetrators are not rational actors;[55] (2) threats of punishment are ineffective during an outbreak of violence;[56] and (3) likelihood of punishment is too remote.[57]

If there is an institution that can achieve the goal of deterrence, however, it is the ICC, accompanied by a robust regional framework. By providing a permanent network of accessible courts that are specialized in dealing with accountability for grave violations of international law—as against the current practice of ad hoc courts that operate ex post facto or the ICC in The Hague, which is so far and remote that

51 Stefano Marinelli, *The Approach to Deterrence in the Practice of the International Criminal Court*, INT'L L. BLOG (Apr. 6, 2017), https://international-law.blog/2017/04/06/the-approach-to-deterrence-in-the-practice-of-the-international-criminal-court/ [https://perma.cc/6GVB-NFHU].

52 Prosecutor v. Bemba Gombo, Case No. ICC-01/05-01/13-2123, Decision on Sentence Pursuant to Article 76 of the Statute, ¶ 19 (Mar. 22, 2017), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2017_01420.PDF [https://perma.cc/C2A9-EW4Z].

53 Press Release, Amnesty Int'l, Obituary: Robert Mugabe – 1924-2019, a Liberator Turned Oppressor (Sept. 6, 2019), https://www.amnesty.org/en/latest/news/2019/09/robert-mugabe-1924-2019-a-liberator-turned-oppressor/ [https://perma.cc/N3AP-626K].

54 Catherine Gegout, *The International Criminal Court: Limits, Potential and Conditions for the Promotion of Justice and Peace*, 34 THIRD WORLD Q. 800, 809 (2013).

55 Mirjan Damaška, *What Is the Point of International Criminal Justice?*, 83 CHI.-KENT L. REV. 329, 344-45 (2008).

56 Payam Akhavan, *Beyond Impunity: Can International Criminal Justice Prevent Future Atrocities?*, 95 AM. J. INT'L L. 7, 10 (2001).

57 Damaška, *supra* note 55, at 344-45.

its impact is sometimes hardly felt by local communities[58]—quasi-federalization would enable the Court to achieve its goal of general deterrence by increasing the foreseeability of punishment and making it a realistic outcome. Quasi-federalization will have a more substantive effect through positive complementarity.[59] Though the OTP has made conscious efforts to emphasize the importance of positive complementarity in addressing impunity and encouraging states to investigate and prosecute core crimes,[60] the realization has always seemed distant. In this Article's proposed model, local institutions are strengthened, possibly increasing the likelihood of positive complementarity and the Court's deterrence effect. As summarized by Andrea Talentino, "[t]here is a tendency to judge the absence of a speedy solution as a failure. This is particularly true in cases when preventive efforts are to be undertaken where violence is already taking place."[61] The regional quasi-federalization framework is a means to provide an approachable, speedy solution closer to affected regions. While deterrence may be achieved through this Article's proposed amendment, the effect's actual magnitude is uncertain.[62] The main argument for regionalization, however, is the probable impact it will have on the efficacy of Court operations and its importance for victims.

58 *See* Grigore, *supra* note 50.

59 "Positive complementarity can be defined as activities and actions of cooperation aimed at promoting national proceedings, with specific reference to the prosecutorial policy of an international criminal court, whereby the International Prosecutor encourages genuine national proceedings when possible, by way of relying on national and international networks, and invites relevant States to participate in a system of international cooperation. The positive approach to complementarity implies that an international criminal tribunal and the State have agreed upon a consensual division of labour." Hitomi Takemura, *Positive Complementarity*, OXFORD PUB. INT'L L., https://opil.ouplaw.com/display/10.1093/law-mpeipro/e2507.013.2507/law-mpeipro-e2507 (Oct. 2018).

60 Office of the Prosecutor, ICC, Policy Paper on Preliminary Examination, 23 (Nov. 2013), https://www.icc-cpi.int/sites/default/files/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf [https://perma.cc/L67F-TWBT].

61 Jennifer Schense & Linda Carter, *Assessing Deterrence and the Implications for the International Criminal Court, in Two Steps Forward, One Step Back: The Deterrent Effect of International Criminal Tribunals*, 1 NUREMBERG ACAD. SERIES 1, 58 (2017) (quoting Andrea Kathryn Talentino, *Evaluating Success and Failure: Conflict Prevention in Cambodia and Bosnia*, *in* CONFLICT PREVENTION: PATH TO PEACE OR GRAND ILLUSION? (David Carment & Albrecht Schnabel eds., 2003)).

62 Ford, *supra* note 44, at 187.

2. Substantial and Procedural Flexibility

The proposed framework provides the Court with sufficient flexibility to adapt to regional and cultural needs in substantive and procedural matters. This inter-geographical adaptability would allow the ICC to combine legal universalism with relevant pluralist considerations. This adaptability sharply contrasts with the current structure, which ignores regional practices and structural trends that may dictate outcomes entirely contradictory to international practices. As Durkheim famously postulated, criminal punishment is the "expression of the collective consciousness."[63] ICL adjudication should be shifted to regional institutions because criminal law is deeply rooted in a society's history and its political, cultural, and religious background, and is therefore not suitable to one central international Court.[64]

a) Procedural Flexibility

Current ICC procedure is governed by the RoPE and the Court and Registry Regulations, which are based on both civil law and common law regimes.[65] However, many nations have developed equivalent systems. In addition, there will always be a certain amount of unpredictability in the ICC's procedures, which seem to evolve continually. Even with proper representation, certain aspects and practices of the Court will be completely foreign to people from different regions. This unfamiliarity may not only hamper their ability to contribute to proceedings, as witnesses or otherwise, but might also hinder an accused's defense.

Similarly, the ICC, which has had the tendency to under-represent non-Western laws and legal traditions,[66] might be unable to grasp certain practices of a particular region or culture. Despite attempts to

63 Harmen van der Wilt, *On Regional Criminal Courts as Representatives of Political Communities: The Special Case of the African Criminal Court* 194, 196, in THE OXFORD HANDBOOK OF INTERNATIONAL LAW (Kevin Jon heller, Frédéric Mégret, Sarah MH Nouwen, Jens David Ohlin & Darryl Robinson eds., 2020).

64 Regina E. Rauxloh, *Regionalisation of the International Criminal Court*, 4 N.Z. Y.B. INT'L L. 67, 79 (2007).

65 Jerry E. Norton, *The International Criminal Court: An Informal Overview*, 8 LOY. U. CHI. INT'L L. REV. 83, 88 (2010).

66 Mohamed Elewa Badar, *The International Criminal Court, Islamic Tradition, and the Arab World: Quo Vadis?*, ICC FORUM, https://iccforum.com/legal-traditions [https://perma.cc/FB6H-D6B9] (see other articles on the same topic at the same link by James Cavallaro & Jamie O'Connell, Alexandra Huneeus, Ray Nickson, and Theresa Sophia Reinold).

move towards a culture of accountability and respecting cultural norms,[67] much needs to be done to implement culturally sensitive principles in ICC and UN practices. Such implementation might never be possible within the existing rigid ICC structure. The flexibility of the proposed framework may provide the ability to adapt to regional practices and languages by, for example, involving people who are aware of regional issues in the Court's operations. The success of procedures relies on the assumption that all involved parties have specific knowledge of the proceedings.[68] Even though this might never be fully achieved, quasi-federal regionalization can mitigate the possibility that procedural unfamiliarity hampers justice. Adjusting various aspects of ICC procedures—such as investigation methods, counselling, and testimony procedures—so that they are sensitive to regional issues, norms, and practices would assist the ICC in achieving justice.

b) Substantive Adaptability

Quasi-federalization would also allow the ICC to review the definition of core crimes under Article 5 of the Rome Statute from a regional/local perspective, providing regional benches the authority to include crimes that are more relevant to the specific region. If this objective is not achieved, it might at least enable a reconsideration of the definition of existing crimes that constitute core crimes, especially CAH and genocide. Apart from a regional expansion of crime definitions, a network expansion may lead to many topical and conventional international crimes to be included in the Statute.

Article 123 of the ICC Statute envisioned continuous review of the Statute to keep the ICC relevant and adapt to future developments.[69] Even during the discussions at the Rome Conference, many states recommended various crimes (such as drug trade and terrorism) that they considered relevant in their own regional contexts. The inception of the ICC was spurred by Trinidad and Tobago's initiative in December 1989.[70] At that time, Trinidad and Tobago advocated for an

67 Office of the U.N. High Commissioner for Human Rights, The Minnesota Protocol on the Investigation of Potentially Unlawful Death, U.N. Doc. HR/PUB/17/4, (Sept. 2017), https://www.ohchr.org/sites/default/files/Documents/Publications/MinnesotaProtocol.pdf [https://perma.cc/8P7U-R3EN].

68 Rauxloh, *supra* note 64, at 80.

69 Rome Statute, *supra* note 9, art. 123.

70 *Rome Statute of the International Criminal Court: Overview*, U.N. OFF. OF LEGAL AFFS., https://legal.un.org/icc/general/overview.htm [https://perma.cc/N6QY-U6EN] (last visited Dec. 22, 2023).

international court capable of addressing the specific and pressing issue of drug trafficking.[71] This particular focus highlighted the country's need for an international criminal judicial body that could effectively tackle the challenges directly relevant to their region.[72] One of the ICC's initial proposal was grounded in the need for a global court to address region-specific challenges felt by some states, such as the proposal by Trinidad and Tobago to include illicit drug trafficking as a core crime in the Rome Statute, which received significant support.[73] although, after the conflicts in the former Yugoslavia and Rwanda, the ICC evolved to encompass other aspects of international law.[74]

Moreover, during the Rome Conference, various nations also indicated their desire to expand the jurisdiction of the ICC to encompass acts of international terrorism.[75] States such as Algeria, Armenia, Congo, India, Israel, Kyrgyz Republic, Libya, Macedonia, Russia, Sri Lanka, Tajikistan, and Turkey opined that the treaty should encompass these types of crimes.[76] The proposed model might provide much needed substantive flexibility to accommodate the needs of the states and might also provide an incentive for states to submit to the jurisdiction of the Court.

The existing crimes under the Rome Statute can be effectively regionalized in two ways: (1) looking at international crimes listed under the Statute from a regional perspective; and (2) including certain regional crimes that meet the Statute's threshold of "other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health."[77] An example of

71 *Id.*

72 *Id.*

73 Eden Charles, Head of the Delegation of Trinidad and Tobago in the General Debate, Statement at the Eight Session of the Assembly of State Parties to the Rome Statute of the International Criminal Court (Nov. 26, 2009), https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP8/Statements/ICC-ASP-ASP8-GenDeba-Trinidad%20and%20Tobago-ENG.pdf [https://perma.cc/ND3Y-A2AN]; Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Resol. E, U.N. Doc A/CONF.183/10 (July 17, 1998).

74 *See Rome Statute of the International Criminal Court: Overview*, *supra* note 68.

75 Vincen-Joël Proulx, *Rethinking the Jurisdiction of the International Criminal Court in the Post-September 11th Era: Should Acts of Terrorism Qualify as Crimes Against Humanity?*, 19 AM. U. INT'L L. REV. 1009, 1022-23 (2003).

76 Antonio Cassese, *Terrorism Is Also Disrupting Some Crucial Legal Categories of International Law*, 12 EUR. J. INT'L L. 993, 994 (2001).

77 Rome Statute, *supra* note 9, art. 7(1)(k).

the first instance would be the inclusion of rape as means of committing genocide under the Malabo Protocol,[78] where the same is not explicitly included under the Rome Statute.[79] Regarding the second consideration, crimes such as slavery, unconstitutional change of government, and mercenaryism were proposed by the Malabo Protocol, especially considering the need and importance of the crimes in the region. Inclusion of these crimes in the Rome Statute would be complex, however. Furthermore, certain countries may propose codification of crimes that help them suppress dissent. In those circumstances, the quasi-federal nature of the proposed framework would assist, since the universalist jurisprudence would help assess the legality of the crimes.

International crimes should also be specific, as outlined by the principle of *nullum crimen sine lege* or the principle of legality, as provided in Article 22 of the Statute.[80] In contrast, ICL generally, including the current provisions of the Rome Statute and statutes for other hybrid courts (Article 5 of the Statute for the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), for example), lacks specificity and casts a wide net by recognizing similar crimes that meet the threshold of the crimes mentioned under the category of crimes against humanity, characterized as Other Inhumane Acts ("OIA").[81] This practice, which has been widely interpreted to entail violations of customary law or of human rights of comparable gravity of other listed crimes,[82] has been criticized for lacking a certain amount of specificity for the accused, since the prosecution is only required to prove the OIA was foreseeable to the accused as it was "similar in nature and gravity to the other listed crimes against humanity," without specifically enumerating the exact crime, which has often been claimed to violate principle of legality and the principle of fair labelling of crimes.[83] In that regard, listing regionally specific crimes in the

78 Draft Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights art. 28B(f), A.U. Doc. No. STC/Legal/Min. 7(1) Rev. I (May 14, 2014) [hereinafter Malabo Protocol].

79 Rome Statute, *supra* note 9, art. 6.

80 *Id.* art. 22.

81 *Id.* art. 7(1)(k); *see* Jessica Lynn Corsi, *An Argument for Strict Legality in International Criminal Law*, 49 GEO. J. INT'L L. 1321, 1336 (2018).

82 Bernhard Kuschnik, *Humaneness, Humankind and Crimes Against Humanity*, 2 GOETTINGEN J. INT'L L. 501, 526 (2010).

83 For example, the prosecution was required to show that the charged offenses in the Khmer Rouge trials were foreseeable. Chea v. Samphan, Case No. 002/01, Decision, Supreme Court, 6-7, Extraordinary Chambers in the Courts of Cambodia

Statute—if they meet the OIA threshold established by the existing jurisprudence—will somewhat address the issue of certainty and foreseeability of crimes.

3. Facilitate the Presentation of Witness Testimonies and Victims' Participation

Another advantage of holding proceedings closer to the affected communities would be improved witness and victim participation. The ICC's evidentiary regime "makes in-court personal testimony the rule, giving effect to the principle of orality."[84] Article 69(2) of the Statute provides that, subject to certain exceptions, "[t]he testimony of a witness at trial shall be given in person."[85] Per the Appeals Chamber, hearing directly from the witness in the Court is important as it enables the Chamber "to observe [the witness's] demeanour and composure, and . . . to seek clarification on aspects of the witness's testimony that may be unclear so that it may be accurately recorded."[86] As such—though in some instances providing virtual testimonies has been considered—it can be presumed that the victims in distant regions will continue to be called to give in-person live evidence in proceedings before the ICC.[87] In-person testimony in The Hague poses many emotional and administrative issues. While the ICC has established an ICC Victims and Witnesses Section, which attempts to aid and assist the witnesses, acting as a witness in international criminal proceedings

(Nov. 23, 2016). For further critique and explication of the lack of specificity in international criminal law, see also LEENA GROVER, INTERPRETING CRIMES IN THE ROME STATUTE TF THE INTERNATIONAL CRIMINAL COURT 106 (2014) (noting the familiar critique in international criminal law that "(1) prohibited conduct is not described in detail; (2) some prohibited conduct is especially vague (e.g., 'other inhumane acts' as a crime against humanity); and (3) mental elements for crimes are not accurately defined"); Antonio Cassese, *The Statute of the International Criminal Court: Some Preliminary Reflections*, 10 EUR. J. INT'L L. 144, 148-49 (1999).

84 Prosecutor v. Bemba Gombo, ICC-01/05-01/08-1386, Judgment on the Appeals of Mr Jean-Pierre Bemba Gombo and the Prosecutor Against the Decision of Trial Chamber III Entitled "Decision on the Admission into Evidence of Materials Contained in the Prosecution's List of Evidence", ¶ 76 (May 3, 2011), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_05528.PDF [https://perma.cc/LQK7-CW73].

85 Rome Statute, *supra* note 9, art. 69(2).

86 *Bemba Gombo*, ICC-01/05-01/08-1386, ¶ 76.

87 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-34, Victims' Joint Request Concerning Hearings Outside the Host State, ¶ 39 (Aug. 4, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_04736.PDF [https://perma.cc/G9XP-E8G6].

can be, for some, a traumatic and distressing experience.[88] Recounting upsetting experiences in distant, foreign, and unfamiliar environments is challenging for the victims, survivors, and witnesses, who may be required to travel thousands of kilometers from their homes and support systems.

The regional courts would, to an extent, mitigate these difficulties. It would also make the process easier for disabled or injured victims or those for whom it is difficult to travel.[89] As for addressing the administrative challenges, in some (if not most) instances, witnesses may be displaced survivors or stateless refugees who are victims of the crimes under investigation, and lack access to the passports, identity papers, or required travel documents. Although the Court has attempted to develop a mechanism, the administrative hurdles involved in facilitating their transport to and entry into The Netherlands are significant. Holding proceedings closer to the victims and witnesses to ease the challenges in arranging travel, especially for those without ready access to travel documents, is not a novel notion. The ICC previously recognized, on multiple occasions, that conducting proceedings closer to the affected community (in-situ trials) would mitigate these obstacles.[90] The quasi-federal regionalization proposal provides a robust solution to improve participation by victims and witnesses.

4. May Enhance the Perceived Legitimacy of the Proceedings

Court legitimacy can be defined by two indicators: (1) the people's perception of the Court, and (2) the Court's actual outputs. It is an overused phrase that justice must not only be done, but it must also be "seen to be done."[91] Visible and accessible proceedings are more likely to be seen as legitimate by the affected communities. Whether

88 Marie-Bénédicte Dembour & Emily Haslam, *Silencing Hearings? Victim-Witnesses at War Crimes Trials*, 15 EUR. J. INT'L L. 151, 154 (2004).

89 *Situation in Bangladesh/Myanmar*, ICC-01/19-34, ¶¶ 46-47.

90 *See e.g.*, Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 15 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2]; Prosecutor v. Bemba Gombo, Case No. ICC-01/05-01/08-2242-Red, Public Redacted Version of "Decision on the "'Third Defence Submissions on the Presentation of its Evidence'" of 6 July 2012, ¶¶ 29, 31(vi) (Sept. 28, 2012), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_08578.PDF [https://perma.cc/46LV-ZUS3].

91 R v. Sussex Justices, *Ex parte* McCarthy [1923] 1 KB 256 at 259.

as an observer in the public gallery or a participating victim in the proceedings, involvement in a criminal trial has been recognized as contributing to victim empowerment, validation, and a sense of recognition by the Court and the international community.[92]

In fact, in the *Ntaganda* case, while considering whether to move the opening statements to Bunia, in the Democratic Republic of Congo, the ICC Registrar reported that "the perception of the Court and its profile would greatly benefit" from changing the location of the proceedings.[93] The Presidency confirmed this view by noting that holding proceedings away from The Hague may, in principle, contribute to a better perception of the Court and bring the proceedings closer to the affected communities.[94] Indeed, the criticism that the ICC delivers "distant justice," with little measurable impact on the lives of the victims, focuses on the physical distance between The Hague and the location of the alleged crime or of the victims and survivors' residences.[95]

More fundamentally, there is a growing perception among political leaders in Africa that the Court is a vestige of the colonial order. For instance, Paul Kagame, the President of the Republic of Rwanda said, "Rwanda cannot be party to ICC for one simple reason . . . with ICC all the injustices of the past including colonization, imperialism, keep coming back in different forms. . . . As long as you are poor, weak there is always some rope to hang you. ICC is made for Africans and poor countries."[96] By contrast, the prosecution of former Chadian President Hissan Habré before the Extraordinary African Chambers in

92 *Situation in Bangladesh/Myanmar*, ICC-01/19-34, ¶ 48.

93 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-645-Red, Public Redacted Version of Decision on the Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, ¶ 12 (June 15, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_06513.PDF [https://perma.cc/Y6M8-39T4]. *See generally* Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-404, Registry Report Pursuant to Oral Order of 17 October 2014 (Nov. 21, 2014), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2014_09680.PDF [https://perma.cc/C243-PXUX].

94 *Ntaganda*, ICC-01/04-02/06-645-Red, ¶ 26.

95 CENTRE INTERNATIONAL POUR LA JUSTICE TRANSITIONNELLE [INTERNATIONAL CENTRE FOR TRANSITIONAL JUSTICE], SENSIBILISATON À LA CPI EN RDC: SORTIR DU « PROFIL BAS » [RAISING AWARENESS ABOUT THE ICC IN THE DRC: GETTING OUT OF "LOW PROFILE"] 15 (2007).

96 David Kezio-Musoke, *Kagame Tells Why He Is Against ICC Charging Bashir*, HIIRAAN ONLINE (Aug. 3, 2008), https://www.hiiraan.com/comments2-news-2008-aug-kagame_tells_why_he_is_against_icc_charging_bashir.aspx [https://perma.cc/6DUM-DBSR].

Dakar, Senegal, has been lauded for its proximity to affected victims and survivors in Chad.[97] Described as departing from the "'distant', alienating trend of symbolic justice," the trial was recognized for having "pursued, performed and profited by those indirectly and directly victimized by the accused."[98] The quasi-federal structure is visioned to have a similar effect on the Court's perception and thereby improve its legitimacy.

5. Providing Closure or Redress for Victims

Providing closure to the victims is probably seen as one of the important justifications for regionalization. International trials can provide either closure or redress for victims of the core crimes.[99] Closure and redress can be ensured in several ways. One way is through the process of a public trial and verdict, which may provide closure for victims and their communities by formally and publicly acknowledging the harm they suffered.[100] Another way that trials may provide closure for victims and survivors is by providing opportunities to testify. This is one reason that the ICC permits victims to take on roles beyond that of witnesses.[101] As addressed above, regionalization would improve survivors' access to trials, thus providing closure and redressal for victims.[102] In fact, whenever a party has attempted to move the proceedings outside the host state, the Court has explicitly considered the benefits of bringing the Court's work closer to affected communities and survivors.[103] In light of the Rome Statute's

97 Hippolyte Marboua, *Central Africa Republic Wants to Learn Lessons from Habre Trial*, JUSTICEINFO.NET (May 27, 2015), https://www.justiceinfo.net/en/346-central-african-republic-wants-to-learn-lessons-from-habre-trial.html [https://perma.cc/E95W-GKBF] (last visited July 25, 2021).

98 Thijs B. Bouwknegt, *Beyond 'African Solutions to African Problems' at the Extraordinary African Chambers and 'Distant Justice' at the International Criminal Court*, 17 J. INT'L CRIM. JUST. 981, 981 (2019).

99 Damaška, *supra* note 55, at 333-34.

100 Charles P. Trumbull IV, *The Victims of Victim Participation in International Criminal Proceedings*, 29 MICH. J. INT'L L. 777, 802-03 (2008).

101 *Victims*, INT'L CRIM. CT., https://www.icc-cpi.int/about/victims [https://perma.cc/4ST7-K8CW] (last visited July 25, 2021).

102 *See infra* Part 2(B)(3).

103 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-526, Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, ¶ 21 (Mar. 19, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_03408.PDF [https://perma.cc/XL9X-XBQU].

provisions,[104] bringing proceedings closer to the Court is in the interest of justice, even if it is only for a small part of the proceedings (such as opening statements). The Rome Statute's language was drafted with the belief that it would give affected communities a sense of ownership over the proceedings, which would improve the Court's outreach programs and help dispel criticisms of its seemingly distant justice.[105]

III. VARIOUS MODELS OF REGIONALIZATION

It is pertinent to note that regionalization in ICL is not a novel topic. There is a multitude of academic work and legal jurisprudence that emphasizes the need to regionalize. There is a lacuna in this field, however, of discussions detailing the frameworks that the ICC or ICL institutions might implement. The few notable academic works on this topic primarily date back to over a decade. Some of the authors include, inter alia, William Burke-White in 2003,[106] Regina Rauxloh in 2007,[107] and Stuart Ford in 2010.[108] In brief, Burke-White, one of the first commentators on ICC regionalization, acknowledged the Court's ability to regionalize within the Statute framework and elaborated on the past case-by-case regionalization of the ICC.[109] His work focused, in particular, on the practice of moving proceedings in whole or in part closer to the affected communities.[110] His work is more of a commentary on the Article 3(3) regime than a proponent of a new framework. Burke-White's work is vital, however, as it was one of the first academic works that emphasized the importance of regionalization. Rauxloh examines the proposal of a standalone regional framework,[111] much like what the African Union envisions in the Malabo Protocol.[112]

104 Rome Statute, *supra* note 9, art. 3(3); ICC Rules of Procedure and Evidence, *supra* note 23, rule 100.

105 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 30 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

106 Burke-White, *supra* note 35.

107 Rauxloh, *supra* note 64.

108 Ford, *supra* note 4.

109 *See generally* Burke-White, *supra* note 35.

110 *See generally id.*

111 *See generally* Rauxloh, *supra* note 64.

112 *See generally* Ademola Abass, *Historical and Political Background to the Malabo Protocol*, *in* THE AFRICAN CRIMINAL COURT: A COMMENTARY ON THE MALABO PROTOCOL 11 (Gerhard Werle & Moritz Vormbaum eds., 2017).

Lastly, and much closer to the proposal of this article, is the work of Stuart Ford. Ford discusses the permissibility of establishing permanent local or regional courts within the ICC framework.[113] Ford's work experiments with the idea of regionalization by proposing local and/or regional trial courts.[114] However, there are some critical aspects that Ford's proposal could not foresee considering the subsequent evolution of the Court's practice. The following Part will elaborate on this Article's proposed court framework. Models for the framework are broadly characterized by two categories: (1) within the ICC framework; and (2) beyond the ICC framework.

A. Within the ICC Framework

Jurisprudence on regionalization of proceedings within the ICC framework has developed significantly in the past decade. The ICC framework—i.e., the Statute and the RoPE—permits the Court to hold proceedings away from the host state, either in situ or in a region closer to the affected communities.[115]

1. Applicable Law

While Article 3(1) of the Statute states that the "Seat of the Court shall be established at The Hague in the Netherlands," paragraph 3 of the same provision makes clear that the Court "may sit elsewhere, whenever it considers it desirable, as provided in this Statute."[116] Additionally, Article 4(2) of the Statute states that the Court may exercise its functions on the territory of any state party or, by special agreement, on the territory of a non-state party, including the phrase "as provided in this Statute."[117] As for the trial stage, Article 62 provides, "Unless otherwise decided, the place of the trial shall be the seat of the Court."[118] Rule 100 of the Rules sets out the procedure to be followed in order to hear a dispute in an alternative sitting place. Rule 100 was

113 *See generally* Stuart K. Ford, *The International Criminal Court and Proximity to the Scene of the Crime: Does the Rome Statute Permit All of the ICC's Trials to Take Place at Local or Regional Chambers?*, 43 J. MARSHALL L. REV. 715 (2010).

114 *Id.* at 716.

115 Rome Statute, *supra* note 9, art. 3(3); ICC Rules of Procedure and Evidence, *supra* note 23, rule 100.

116 Rome Statute, *supra* note 9, art. 3(3).

117 *Id.* art. 4(2).

118 *Id.* art. 62.

amended in 2013,[119] allowing the relevant Chamber to recommend whether to allow in-situ proceedings to the President, who would ultimately decide the matter. For the sake of clarity, the amended Rule 100 of the Rules is reproduced below:

> 1. In a particular case, where the Court considers that it would be in the interests of justice, it may decide to sit in a State other than the host State, for such period or periods as may be required, to hear the case in whole or in part.
> 2. The Chamber, at any time after the initiation of an investigation, may *proprio motu* or at the request of the Prosecutor or the defence, decide to make a recommendation changing the place where the Chamber sits. The judges of the Chamber shall attempt to achieve unanimity in their recommendation, failing which the recommendation shall be made by a majority of the judges. Such a recommendation shall take account of the views of the parties, of the victims and an assessment prepared by the Registry and shall be addressed to the Presidency. It shall be made in writing and specify in which State the Chamber would sit. The assessment prepared by the Registry shall be annexed to the recommendation.
> 3. The Presidency shall consult the State where the Chamber intends to sit. If that State agrees that the Chamber can sit in that State, then the decision to sit in a State other than the host State shall be taken by Presidency in consultation with the Chamber. Thereafter, the Chamber or any designated Judge shall sit at the location decided upon.[120]

In a word, any party wishing to change the place of a trial must submit a formal application to the Presidency, which must then seek the views of the relevant Chamber. Prior to making any such recommendation, the Chamber must have obtained, and taken account of,

119 Int'l Criminal Ct. [ICC], Resolution ICC-ASP/12/Res.7: Amendments to the Rules of Procedure and Evidence (Nov. 27, 2013).

120 ICC Rules of Procedure and Evidence, *supra* note 23, rule 100.

the views of the parties and an assessment prepared by the Registrar.[121] The Presidency, upon receipt of a trial relocation request, must also consult the state where the Court may sit.[122] In terms of pre-drafting history, the International Law Commission ("ILC") assumed that trials would normally take place at the Seat of the Court.[123] In the Draft Code of Crimes against the Peace and Security of Mankind, which eventually became the Rome Statute, the drafters wrote that "the court may decide, in the light of the circumstances of a particular case, that it would be more practical to conduct the trial closer to the scene of the alleged crime, for example, so as to facilitate the attendance of witnesses and the production of evidence."[124]

2. Comparison with Other International Courts and Tribunals

Several other courts are governed by provisions that are similar to Articles 3, 4, and 62 of the Rome Statute.[125] First, for the Special Court of Sierra Leone ("SCSL"), the Agreement between the United Nations and the Sierra Leonean government designated Sierra Leone as the seat of the SCSL.[126] However, the agreement also states that "[t]he Court may meet away from the seat if it considers it necessary for the efficient exercise of its functions" and provides that the Court "may be relocated outside Sierra Leone, if circumstances so require."[127] Rule 4 of the SCSL Rules of Procedure and Evidence permits a chamber or judge to "exercise their functions away from the Seat of the Special Court, if so authorized by the President."[128]

121 Prosecutor v. Ongwen, Case No. ICC-02/04-01/15-258, Order for Submissions on the Possibility of Holding the Confirmation of Charges Hearing in the Republic of Uganda, at 3 (June 29, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_08669.PDF [https://perma.cc/4ZDL-YLDQ].

122 Prosecutor v. Muthaura, Case No. ICC-01/09-02/11-522, Decision on the Defence Request to Change the Place of the Proceedings, ¶ 5 (Nov. 7, 2012), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_09452.PDF [https://perma.cc/JM5J-QQSH].

123 Ford, *supra* note 113, at 727 n.56.

124 *Draft Code of Crimes against the Peace and Security of Mankind*, [1994] 2 Y.B. Int'l L. Comm'n 26, U.N. Doc A/CN.4/SER.A/1994/Add.1(Part2).

125 Ford, *supra* note 113, at 735.

126 Agreement Between the United Nations and the Government of Sierra Leone on the Establishment of a Special Court for Sierra Leone, Sierra Leone-U.N., art. 10, Jan. 16, 2002, 2178 U.N.T.S. 137.

127 *Id.*

128 Special Court for Sierra Leone, Rules of Procedure and Evidence (amended May 14, 2005), rule 4, https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-

Second, the Rules of Procedure and Evidence for the International Criminal Tribunal for Rwanda ("ICTR") and the International Criminal Tribunal for Yugoslavia ("ICTY") contain provisions that permit the respective chambers to preside away from the Seat of the tribunal.[129] Finally, the ICJ—which is not an individual criminal liability court but is still relevant for purposes of the discussion—is governed by provisions which are similar to Articles 3, 4, and 62 of the Rome Statute.[130] In language comparable to Articles 3(3) and 4(2) of the Rome Statute, Article 22 of the ICJ Statute permits the ICJ to sit and exercise its functions in locations other than its seat in The Hague "whenever the Court considers it desirable."[131] While the ICJ has never tried a case outside of The Hague, it is not uncommon for other tribunals or courts to try cases ex situ.[132] When it comes to the ICC, the story is a little different, as attempts have been made to hold in situ trials closer to the affected communities, but all have been unsuccessful.

3. Current Practice

Article 3(3) of the Rome Statute provides, "The Court may sit elsewhere, whenever it considers it desirable, as provided in this Statute."[133] As stated by Burke-White, "The Rome Statute thus explicitly authorizes sessions outside of The Hague and leaves a great deal of leeway to the Court to determine when it should do so."[134] The *travaux preparatoires* suggest that the Court must assess "practicality of such arrangements and whether it is in the interests of justice to do so."[135] In terms of the practice, contrary to the vision expressed by the Prosecutor in his oath ceremony that "the Hague itself should be a city of last resort," the Court has held the opinion that "the possibility of holding proceedings away from the seat of the Court was not a rule but an

CF6E4FF96FF9%7D/Liberia%20SCSL%20rules%20of%20proc.pdf [https://perma.cc/KFB8-8LZF].

129 International Tribunal for the Former Yugoslavia, Rules of Procedure and Evidence, Rule 4 *bis*, 28, U.N. Doc. IT/32/Rev. 45 (Dec. 8, 2010); International Tribunal for Rwanda, Rules of Procedure and Evidence, U.N. Doc. ITR/3/REV.1 (June 29, 1995).

130 Ford, *supra* note 113, at 737-38.

131 Statute of the International Court of Justice art. 22, June 26, 1945, 59 Stat. 1055.

132 Ford, *supra* note 113, at 738.

133 Rome Statute, *supra* note 9, art. 3(3).

134 Burke-White, *supra* note 35, at 750.

135 *Id.* at 751-52.

exception which should be interpreted narrowly; Article 3(3) of the Statute making it clear that the seat of the Court is ordinarily in The Hague."[136] Though not all ICC judges might hold this opinion, the Court's practice appears hostile to holding proceedings away from the Hague. Since the Court's inception, and after multiple requests, the Court has never decided to hold whole proceedings outside the Hague. To date, the ICC's practice primarily concerns cases in which the Court has considered moving *parts* of the proceedings away from the host state. Even though partial removal has been considered multiple times, the Court has always decided against it. To sum up, the issue seems to have been contemplated by the Court in nine cases: *Lubanga*,[137] *Bemba*,[138] *Kenyatta*,[139] *Ruto & Sang*,[140] *Gbagbo & Blé Goudé*,[141] *Ongwen*,[142] *Ntaganda*,[143] *Situation in*

136 *See* Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶¶ 21-26 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2] (stating the views of the judges opposed to holding proceedings away from the seat of the Court).

137 Prosecutor v. Lubanga Dyilo, Case No. ICC-01/04-01/06-1311, Decision Issuing a Confidential and a Public Redacted Version of "Decision on Disclosure Issues, Responsibilities for Protective Measures and Other Procedural Matters" (May 8, 2008), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2008_02391.PDF [https://perma.cc/SN8Z-X7S2].

138 Prosecutor v. Bemba Gombo, Case No. ICC-01/05-01/08-2242-Red, Public Redacted Version of "Decision on the "'Third Defence Submissions on the Presentation of its Evidence'" of 6 July 2012, (Sept. 28, 2012), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2012_08578.PDF [https://perma.cc/46LV-ZUS3]

139 Prosecutor v. Muthaura, Case No. ICC-01/09-02/11-102, Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing (June 3, 2011), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_06923.PDF [https://perma.cc/UU44-EQ8M].

140 *Ruto*, ICC-01/09-01/11-875-Anx.

141 Prosecutor v. Gbagbo, Case No. ICC-02/11-01/15-316, Decision on the Gbagbo Defence Request to Hold Opening Statements in Abidjan or Arusha (Oct. 26, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20301.PDF [https://perma.cc/H4GH-AGKD]

142 Prosecutor v. Ongwen, Case No. ICC-02/04-01/15-330, Decision on the Recommendation to the Presidency to Hold the Confirmation of Charges Hearing in the Republic of Uganda (Oct. 28, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20687.PDF [https://perma.cc/QHD4-A443].

143 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-526, Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, (Mar. 19, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_03408.PDF [https://perma.cc/XL9X-XBQU].

Bangladesh/Myanmar,[144] and *Kani*.[145] The cases are illustrated by the following table, which diagrams ICC decisions in which the Court considered partial removal of proceedings:

Case	Request for	Suggested Place of Trial	Procedure	Reason for Rejection
Lubanga	Moving part of the proceedings	Democratic Republic of Congo ("DRC") (in situ)	Trial Chamber sought permission from the DRC government.	DRC government denied permission on the ground that it could lead to ethnic tensions in an area that had been recently pacified and was potentially unstable.[146]
Kenyatta	Moving parts of the trial	Republic of Kenya or ICTR in Arusha, Tanzania	Defense filed an application to the Trial Chamber V to change the place of trial.	Chamber rejected the application as it was addressed to the Chamber and not the Presidency. According to RoPE Rule 100, an application to change the place of trial had to be made to the Presidency.[147]

144 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-34, Victims' Joint Request Concerning Hearings Outside the Host State (Aug. 4, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_04736.PDF [https://perma.cc/G9XP-E8G6].

145 Prosecutor v. Kani, Case No. ICC-01/14-01/21-389-Red, Decision on the Prosecution's Request for the Trial to be Held Partially in Bangui (July 5, 2022), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_05291.PDF [https://perma.cc/7G9U-ND5Z].

146 Prosecutor v. Lubanga Dyilo, Case No. ICC-01/04-01/06-1311, Decision Issuing a Confidential and a Public Redacted Version of "Decision on Disclosure Issues, Responsibilities for Protective Measures and Other Procedural Matters", ¶ 53 (May 8, 2008), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2008_02391.PDF [https://perma.cc/SN8Z-X7S2].

147 Prosecutor v. Muthaura, Case No. ICC-01/09-02/11-102, Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing, ¶¶ 3-5 (June 3, 2011), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2011_06923.PDF [https://perma.cc/UU44-EQ8M].

Ruto & Sang	Change of place of the court for trial	Republic of Kenya or, ICTR in Arusha, Tanzania	Decision by the Plenary Judges on Presidency's request.	After an extensive debate on all issues such as security and costs, nine out of fifteen judges favored moving the trial away from the host state. However, the required two-thirds majority vote could not be reached. Hence, the Court did not move the trial.[148]
Gbagbo & Blé Goudé	Holding opening statements closer to the community	Abidjan, Côte d'Ivoire, or Arusha, Tanzania	Request filed by Defense, and decision by Trial Chamber after recommendations from the Registry.	Request filed seven weeks before the scheduled commencement of trial. The Chamber, in denying the request, "paid particular regard to the security risks and logistical implications of holding the opening statements in Côte d'Ivoire, and to the argument that holding the opening statements in Arusha would not achieve the central purpose of bringing the trial closer to affected

148 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 14 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

				communities in Côte d'Ivoire."[149]
Ongwen	(1) Hearing on the confirmation of charges	Gulu, Republic of Uganda	Pre-Trial Chamber II *proprio motu*— after seeking suggestions from parties sent its recommendation to the Presidency.	Presidency found that the potential benefits of holding the confirmation hearing in Uganda in January 2016 were outweighed by significant risk, especially during the Court's permanent move to The Hague.[150]
	(2) Holding opening statements of the trial proceedings outside the host state	Gulu, Republic of Uganda	Request by all parties to Trial Chamber to make a recommendation to Presidency and to conduct a judicial site visit in Northern Uganda.	Trial Chamber was of the view that holding the trial's opening statements in Uganda was not "desirable" within the meaning of Article 3 of the Statute, primarily because of security and logistical issues.[151]
Ntaganda	Holding part of the trial (opening statements) away from the host state[152]	Bunia, Democratic Republic of Congo	Decision by Presidency on recommendation by the Chamber.	The Presidency decided that the opening statements would be held at The Hague due to concerns over "the security

149 Prosecutor v. Gbagbo, Case No. ICC-02/11-01/15-316, Decision on the Gbagbo Defence Request to Hold Opening Statements in Abidjan or Arusha, ¶¶ 14, 16 (Oct. 26, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20301.PDF [https://perma.cc/H4GH-AGKD].

150 Prosecutor v. Ongwen, ICC-02/04-01/15-330, Decision on the Recommendation to the Presidency to Hold the Confirmation of Charges Hearing in the Republic of Uganda, ¶ 25 (Oct. 28, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20687.PDF [https://perma.cc/QHD4-A443].

151 *Id.* ¶ 8.

152 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-645-Red, Public Redacted Version of Decision on the Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, ¶ 12 (June 15, 2015), https://www.icc-

				of the victims and their families, the witnesses and the broader affected communities." The circumstances showed a "volatile" and "unpredictable" situation in Bunia.[153]
Bangladesh /Myanmar	Holding pre-trial proceedings outside the host state	Bangladesh	Request sought by victims before Pre-Trial Chamber.	Pre-Trial Chamber was of the view that the request was too premature but was open to the possibility in the future.[154]
Mahamat Said Abdel Kani	To hear the opening statements and the first witnesses in whole or in part in Bangui. However, though it would not be possible for the accused to appear in-	Bangui/ Central African Republic	Request sought by the Prosecutor before Trial Chamber VI, supported by victims.	Trial chamber acknowledged "its commitment to the objective of bringing the judicial process closer to victims, the affected communities and those impacted in the situation country as a whole" and that "this goal could be served by holding hearings in situ in the

cpi.int/sites/default/files/CourtRecords/CR2015_06513.PDF [https://perma.cc/Y6M8-39T4]; Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-438, Registry Revised Feasibility Report on Trial *In Situ*, ¶ 3 (Feb. 2, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_00639.PDF [https://perma.cc/E5M8-J4C3] ("[*I*]*n situ* hearings, for a specific period and in the geographical area of study appear to be feasible.").

153 *Ntaganda*, ICC-01/04-02/06-645-Red, ¶ 26.

154 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-38-Corr, Corrected Version of "Decision on Victims' Joint Request Concerning Hearings Outside the Host State," ¶¶ 26-27 (Oct. 27, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_05877.PDF [https://perma.cc/38V4-Y28G].

	person from Bangui[155]			CAR."[156] However due to concerns over the safety and security of the victims and the accused, the Court was not satisfied if part of the trial could be held in Bangui.[157] Moreover, it also found that holding hearings in Bangui would not be efficient or effective, as a lot of resources would have to be mobilised.[158] Thus, it was not in the interest of justice to hold in-situ trials.[159]

Table 1: Analysis of Decisions by the Court

As is evident, the Court, for various reasons,[160] has decided not to shift the proceedings away from The Hague. However, the Court reiterated the advantages of bringing the proceedings closer to the affected communities in all of the above proceedings. The author will discuss all of these cases collectively and attempt to summarise the current legal stance of the Court.

First, it is essential to discuss the decision of the Plenary Judges in the *Ruto & Sang* Decision, which seems to reflect the current practice of the Court, as it has been followed in all subsequent decisions. The Court came the closest to moving the proceedings away from the

155 Prosecutor v. Kani, Prosecution's Request for the Trial be Held Partially in Bangui, Case No. ICC-01/14-01/21-337-Red (June 7, 2022), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2022_04583.PDF [https://perma.cc/TP2G-RR9H].

156 *Kani*, ICC-01/14-01/21-337-Red, ¶ 10.

157 *Id.* ¶¶ 11-19.

158 *Id.*

159 *Id.*

160 *See infra* Part V.

Seat in the *Ruto & Sang* case, wherein nine out of the fifteen judges voted in favor of shifting the trial either to Kenya or Tanzania.[161] However, as they were not able to reach the necessary two-thirds majority, the Court ultimately decided not to move the proceedings.[162] In reaching its determination, the Court formulated parameters which have been reiterated and considered in subsequent judgments.

First, the Court in *Ruto & Sang* delineated various factors for the Presidency to consider when making its decision, including "the arguments of the parties, participants and Registry for and against holding proceedings away from the seat of the Court; the correspondence from Tanzania, Kenya and the ICTR; and the recommendation of the Chamber."[163]

The Court in *Ruto* also laid out several factual factors for the Court to consider:

> [S]ecurity issues; the costs of holding proceedings outside The Hague; the potential impact upon victims and witnesses; the length and purpose of the proceedings to be held away from the seat of the Court; the potential impact on the perception of the Court; and the potential impact on other proceedings before the Court.[164]

The position was further crystallized in *Gbagbo*, where the Court enumerated certain additional factors which need to be balanced with the benefit of moving proceedings away while screening the state in which the proceedings are to be held:

> (i) whether the potential host State would support the [r]equest;
>
> (ii) the security situation in either location . . . ;

161 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

162 *Id.* ¶ 14.

163 *Id.* ¶ 11.

164 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-645-Red, Public Redacted Version of Decision on the Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, ¶¶ 13, 18 (June 15, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_06513.PDF [https://perma.cc/Y6M8-39T4].

> (iii) ensuring the safety and well-being of the accused; and
>
> (iv) the time and resources required to conduct all of the necessary arrangements attendant with holding proceedings in a State other than the host State, including, *inter alia*, whether the potential host State has concluded an Agreement of Privileges and Immunities of the International Criminal Court (APIC) with the Court.[165]

After applying these factors, the Court in the above cases decided against holding the proceedings outside the host state. This raises a question about whether Article 3(3) of the Rome Statute and RoPE Rule 100 are being implemented correctly. The greater question is whether the Court is structurally capable of regionalizing even with these provisions. The short answer is no.

An additional issue is that judges' decisions on moving hearings outside of The Hague appear hyper-sensitive to external factors.[166] For illustration, in *Ruto & Sang*, the Court's proceedings were affected by severely critical anonymous letters and the danger of politicization.[167] Lastly, regionalization under the current ICC structure, by means of in-situ trials, is temporary, unforeseeable, and unpredictable. Moreover, while some authors argue that this model may be able to provide deterrence,[168] it may not be able to deter crimes or inspire confidence among the affected communities.[169] As stated above, the ICC has treated the possibility of holding proceedings away from the Seat of the Court not as a rule, but a narrowly interpreted exception.[170] This Article presents a proposal to remedy these flaws, which is explicated in the next Part.

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165 Prosecutor v. Gbagbo, Case No. ICC-02/11-01/15-316, Decision on the Gbagbo Defence Request to Hold Opening Statements in Abidjan or Arusha, ¶ 15 (Oct. 26, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_20301.PDF [https://perma.cc/H4GH-AGKD].

166 *Ruto*, ICC-01/09-01/11-875-Anx, ¶ 37 (separate opinion of Eboe-Osuji, J.).

167 *Id.* ¶¶ 33-34.

168 Poonam Sandhu, *Positive Complementarity as Justice? The Case for International Criminal Proceedings* In Situ, at 19 (Int'l Hum. Rts. Internship Program, Working Paper Vol. 11, No. 1, 2022), https://www.mcgill.ca/humanrights/files/humanrights/poonam_sandhu_-_positive_complementarity_as_justice_the_case_for_international_criminal_court_proceedings_in_situ_.pdf [https://perma.cc/D98R-KL2L].

169 Rauxloh, *supra* note 64.

170 *Ruto*, ICC-01/09-01/11-875-Anx, ¶ 26.

B. Beyond the ICC Structure

Regionalization of ICL has also been attempted beyond the ICC structures in two primary settings: (1) standalone regional criminal courts, which have no correlation with the ICC, and (2) hybrid courts, which have more localized ICL regionalization. Because these courts are beyond the primary focus of this Article, they will be briefly discussed.

1. Parallel Standalone Regional Systems

While Burke-White, exploring various forms of regionalisation of ICL, suggested regional sitting of the ICC Trial Chambers on a case-by-case basis,[171] Rauxloh discussed the proposal for a parallel regional system that had no correlation to the ICC (also briefly discussed by Burke-White).[172] An early example of such a regional criminal court is the Caribbean Court of Justice, which was vested with appellate jurisdiction for civil and criminal law matters in the Caribbean region.[173] Regional criminal courts long exercised quasi-criminal functions in adjudicating international crimes, instead of addressing atrocity crimes.[174] Regional criminal courts generally focus on state violations, and, as such, are unprepared to address criminal responsibility.[175] They also differ "in terms of expertise, methodology and judicial culture," as well as their lack of investigative capacity.[176] The creation of regional criminal courts is often hindered by sovereignty and competing domestic judicial systems.[177] The Organization of American States ("OAS") considered a regional criminal court in the 1990s, but one was never created.[178]

More recently, the Malabo Protocol aimed at creating a regional court for the African Union. As of today, however, the Protocol has

171 *See* Burke-White, *supra* note 35, at 750-51.

172 Rauxloh, *supra* note 64, at 83 (arguing that "the establishment of regional criminal courts would undermine the development of a fully fledged body of international criminal law by diverting cases from the ICC, developing different families of multinational law and furthermore fragmentising case development in this area of law"); Burke-White, *supra* note 35, at 749-50.

173 Désirée P. Bernard, *The Caribbean Court of Justice: A New Judicial Experience*, 37 INT'L J. LEGAL INFO. 219, 220 (2009).

174 STAHN, *supra* note 36.

175 *Id.*

176 *Id.*

177 *Id.*

178 *Id.*

only been signed by fifteen of the fifty-five African states.[179] By signing onto the Malabo Protocol, states may face issues based on the unclear overlap between the Protocol framework and the ICC.[180] The Protocol caused controversy in its effort to develop a regional criminal jurisdiction. African states turned to regionalism and the idea of an African criminal court as a result of dissatisfaction with institutions such as the ICC and the United Nations Security Council ("UNSC") after the situation in Darfur in 2004,[181] and the dominance of Western states in the justice discourse.[182] African states first worked within multilateral structures (e.g., the ICC Assembly of States Parties and the United Nations) to change the status quo.[183] After these efforts failed, African states adopted a proposal to extend the jurisdiction of the African Court of Justice and Human and People's Rights in 2014.[184]

The idea for a standalone regional court may be a double-edged sword. The Malabo Protocol example is subject to certain valid praises and critiques from within the international criminal justice community.[185] On one hand, the Protocol attempts to address the neglect of quotidian crimes and economic causes of conflict by ICL.[186] It

179 *Central African Republic Ratifies the Malabo Protocol*, AFRICAN UNION (July 19, 2023), https://pap.au.int/en/news/press-releases/2023-07-19/central-african-republic-ratifies-malabo-protocol [https://perma.cc/BU7Q-JJYB].

180 *See* AMNESTY INT'L, AFRICA: MALABO PROTOCOL: LEGAL AND INSTITUTIONAL IMPLICATIONS OF THE MERGED AND EXPANDED AFRICAN COURT — SNAPSHOTS 5 (May 2, 2017), https://www.amnesty.org/en/documents/afr01/6137/2017/en/ [https://perma.cc/JV6S-NRCR].

181 *See* Godfrey M. Musila, *A Promise Too Dear?: The Right to Reparations for Victims of International Crimes Under the Malabo Protocol of the African Criminal Court*, *in* THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES 947, 948 (Charles C. Jalloh, Kamari M. Clarke & Vincent O. Nmehielle eds., 2019); Report of the Meeting of African States Parties to the Rome Statute of the International Criminal Court (ICC), June 8-9, 2009, MinICC/Legal/3 (African Union); Communique of the 142nd Meeting of the Peace and Security Council, ¶ 11(i), July 21, 2008, PSC/Min/Comm(CXLII) (African Union); Communique of the 175th Meeting of the Peace and Security Council, Mar. 5, 2009, PSC/PR/Comm.(CLXXV) (African Union).

182 Charles Jalloh, *The Place of the African Court of Justice and Human and Peoples' Rights in the Prosecution of Serious Crimes in Africa*, *in* THE AFRICAN COURT OF JUSTICE AND HUMAN RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES 57, 71 (Charles C. Jalloh, Kamari M. Clark & Vincent O. Nmehielle eds. 2019).

183 STAHN, *supra* note 36, at 212.

184 *Id.*

185 *See* Jalloh, *supra* note 182.

186 Matiangai Sirleaf, *The African Justice Cascade and the Malabo Protocol*, 11 INT'L J. TRANSITIONAL JUST. 71 (2017); Jalloh, *supra* note 182, at 93.

combines atrocity crimes—such as aggression, genocide, CAH, and war crimes—with transnational crimes—such as terrorism, money laundering, trafficking in persons, drugs, and hazardous wastes.[187] It also addresses conduct such as illicit exploitation of natural resources,[188] which is inextricably connected to the continent's troubled history of external intervention. Other crimes, such as the alleged crimes of "unconstitutional change of government" and "mercenaryism," have also been included, though they lack universal recognition.[189] While on the other hand, the Protocol's highly debated immunity provisions, which, unlike the Rome Statute, provide for absolute immunity for sitting heads of state, not only attempts to shield the heads of state from criminal responsibility, but also creates a culture of impunity.[190] Citing the Malabo Protocol, critics fear that regional courts' tendency to be prone to over-politicisation might provide a license for impunity.[191]

Another challenge with Malabo Protocol-based regional courts, which lack inter-institutional coordination components, lies in the potential duplication of the ICC's efforts. This form of a parallel system could lead to redundant processes, potentially dispersing already-strained resources and attention. Furthermore, these regional courts could confront significant scrutiny regarding their independence and transparency, raising numerous concerns that might surpass those faced by the ICC,[192] which could impact their credibility and

187 *See* AMNESTY INT'L, *supra* note 179; Larissa van den Herik & Elies van Sliedregt, *International Criminal Law and the Malabo Protocol – About Scholarly Reception, Rebellion and Role Models* (Grotius Centre Working Paper No. 2017/066-ICL, 2017), https://www.universiteitleiden.nl/binaries/content/assets/rechtsgeleerdheid/instituut-voor-publiekrecht/grotius-centre/working-paper-series/2017-066-icl.pdf [https://perma.cc/ETY7-USRH].

188 van den Herik & van Sliedregt, *supra* note 187.

189 Malabo Protocol, *supra* note 75, arts. 28E, 28H; *see also* Harmen van der Wilt, *Unconstitutional Change of Government: A New Crime within the Jurisdiction of the African Criminal Court*, *in* THE AFRICAN COURT OF JUSTICE AND HUMAN AND PEOPLES' RIGHTS IN CONTEXT: DEVELOPMENT AND CHALLENGES 619, *supra* note 181.

190 Malabo Protocol, *supra* note 75, art. 46A.

191 Lutz Oette, *The African Union High-Level Panel on Darfur: A Precedent for Regional Solutions to the Challenges Facing International Criminal Justice?*, *in* AFRICA AND THE FUTURE OF INTERNATIONAL CRIMINAL JUSTICE 353, 353-74 (Vincent Nhemielle ed., 2012).

192 *See generally* DOMINIQUE MYSTRIS, AN AFRICAN CRIMINAL COURT: THE AFRICAN UNION'S RETHINKING OF INTERNATIONAL CRIMINAL JUSTICE (2021).

effectiveness. Standalone regionalization, thus, has systemic issues; it has the potential to be both a blessing and a curse.[193]

2. Hybrid Courts (As a Model of Ad Hoc Courts)

Given the complexities of regional courts, the practice has moved mainly towards a system of internationalized/regionalized domestic courts that are supported by international/regional institutions, rather than a system wherein domestic courts develop specialized regional expertise.[194] These courts are distinct from the older models of ad hoc tribunals, such as the Nuremberg Court, ICTY, or ICTR.[195] While the UN has lacked the political will to respond to many cases (e.g., Syria and Myanmar), for example, it moved to establish tribunals for Cambodia,[196] Sierra Leone,[197] and East Timor,[198] among others. Moreover, the European Union established the Specialist Chambers of Kosovo, in agreement with the Republic of Kosovo.[199] The new in-vogue regionalist model appears to be characterized by smaller-scale operations with far fewer personnel, involving international "hybrid tribunals," negotiated by treaty between the United Nations and national governments.[200] However, hybrid courts, marked by their own problems concerning institutional design,[201] generally lack the reach of permanent regional courts and, like other older models of ad hoc courts, operate ex post facto,[202] hence lacking the capacity to create general deterrence.

193 Stahn, *supra* note 28.

194 STAHN, *supra* note 36.

195 Caitlin E. Carroll, *Hybrid Tribunals Are the Most Effective Structure for Adjudicating International Crimes Occurring Within a Domestic State*, SETON HALL L. STUDENT WORKS, no. 90, 2013, at 2.

196 Agreement Between the United Nations and the Royal Government of Cambodia Concerning the Prosecution Under Cambodian Law of Crimes Committed During the Period of Democratic Kampuchea, Cambodia-U.N., June 6, 2003, 2329 U.N.T.S. 117.

197 S.C. Res. 1315 (Aug. 14, 2000).

198 S.C. Res. 1272 (Oct. 24, 1999).

199 *Specialist Chambers*, KOS. SPECIALIST CHAMBERS & SPECIALIST PROSECUTOR'S OFF., https://www.scp-ks.org/en/background [https://perma.cc/6B4X-4U8E] (last visited Feb. 25, 2024).

200 David Cohen, *Seeking Justice on the Cheap: Is the East Timor Tribunal Really a Model for the Future?*, E.- W. CTR., Aug. 1, 2002, at 5-7.

201 Harry Hobbs, *Hybrid Tribunals and the Composition of the Court: In Search of Sociological Legitimacy*, 16 CHI. J. INT'L L. 482, 485 (2016).

202 Caitlin Reiger, *Hybrid Attempts at Accountability for Serious Crimes in Timor Leste*, *in* TRANSITIONAL JUSTICE IN THE TWENTY-FIRST CENTURY: BEYOND TRUTH

Although proposals for various regional models exist, this Article seeks to combine the positives of regional structures and the existing ICC structure to propose a quasi-federal system for the Court. This proposal aims to remedy the structural defects in the existing ICL framework.

IV. PROPOSED ARCHITECTURAL FRAMEWORK: PERMANENT REGIONAL NETWORK

As mentioned above,[203] the existing regionalization within the ICC structure and other judicial fora does not optimally address the Court's shortcomings. This article proposes a quasi-federal regional structure for the ICC to remedy the shortcomings of the current structure and be available to parties as an alternative to other regional systems.

A. Meaning of the Terms

It is crucial to understand the meaning of the term "quasi-federal." In a general sense, quasi-federal implies a structure that contains both unitary and federal structural features or lies in between the two systems.[204] To better understand the meaning of the term quasi-federal, it is important to understand federal and unitary systems. Per Gerard Horgan, who relies on Ronald Watts, federal systems contain multiple levels and combine elements of "shared-rule" through common institutions and "regional self-rule" for the constituent units.[205] On the other hand, in unitary systems, constituent units preserve their respective integrities, primarily or exclusively, through common organs rather than dual government structures.[206] The United States judiciary is a classic example of the federal approach. Both the union

VERSUS JUSTICE 143, 164 (Naomi Roht-Arriaza & Javier Mariezcurrena eds., 2006); Suzannah Linton, *Cambodia, East Timor and Sierra Leone: Experiments in International Justice*, 12 CRIM. L.F. 185, 186 (2001); Charles T. Call, *Is Transitional Justice Really Just?*, 11 BROWN J. WORLD AFFS. 101, 107-09 (2004).

203 *See supra* Part III.A.

204 Gerald A. McBeath & Andrea R. C. Helms, *Alternate Routes to Autonomy in Federal and Quasi-Federal Systems*, 13 PUBLIUS 21, 23-24 (1983).

205 *See* Gerard Horgan, *The United Kingdom as a Quasi-Federal State* 2 (Queen's Univ. Inst. of Intergovernmental Rel., Working Paper, 1999), https://www.queensu.ca/iigr/sites/iirwww/files/uploaded_files/1999-3GerardHorgan.pdf [https://perma.cc/2TTB-NL65] (citing RONALD L. WATTS, COMPARING FEDERAL SYSTEMS IN THE 1990S 8 (1996)).

206 *Id.* at 3.

and each of its states have their own court hierarchy, culminating in a Supreme Court.[207] South Africa and Myanmar, in comparison, are examples of unitary judicial systems where the union-level governments control the entire hierarchy of courts.[208] Germany, Canada, and India contain quasi-federal court systems, wherein unitary and federal features are combined.

B. Framework

This article essentially proposes to impose the quasi-federal structure of national systems onto the ICC's architecture. The proposed framework would comprise of regional trial and pre-trial chambers, with a central Appeals Chamber and Presidency at The Hague. The Court has tried to engage in limited regionalized functions, such as conducting on-site investigations, addressing affected communities on visits, and establishing outreach offices in areas close to the place of occurrence.[209] To effectively regionalize, the Court must hold actual proceedings —both pre-trial and trial—closer to the place of occurrence, thus improving the Court's functionality and legitimacy. This structure also implies a permanent court network that would improve foreseeability and accessibility for victims and witnesses. The Court's quasi-federal features would enable the regional trial and pre-trial chambers to govern on issues within their regions while the overarching headquarters—comprising of an Appeals Chamber and Presidency in The Hague (the existing infrastructure)—will review, supervise, and take appeals from regional benches. The jurisdiction of regional benches will extend only as far as the territory of the states within the particular region. In addition, non-state parties can grant ad hoc jurisdiction to the ICC instead of forming their own ad hoc tribunals. Undoubtedly, implementing this system would be a Herculean task, and its rollout might be achieved in several phases, prioritizing implementation in regions with more signatories or higher need. Making this determination would require the Court to conduct feasibility studies and analysis. Implementation obstacles should be no barrier to

207 CHERYL SANDERS, COURTS IN FEDERAL COUNTRIES 2-4 (2019), https://www.idea.int/sites/default/files/publications/courts-in-federal-countries.pdf [https://perma.cc/7NBG-NRTN].

208 *Id.*

209 *Mission: Outreach- Engaging with People Most Affected by Crimes*, INT'L CRIM. CT., https://www.icc-cpi.int/about/outreach (last visited Feb. 25, 2024).

the proposal, however, as the benefits to the legitimacy of the Court cannot be understated.

Ford's work on this subject, published in 2010,[210] is probably the academic work closest in substance to this article's proposal. The architecture of the two proposals is vastly different, however. Ford's proposal is more akin to Burke-White's work; it attempts to crystalize the Court's existing practice by establishing "semi-permanent" benches in the region where the criminal conduct occurred.[211] While both structures propose regional chambers, this Article proposes widening the Court's system by establishing a network of *permanent* ICC regional courts. In this proposal, regional benches will be governed by headquarters and provide a consistent regulatory structure through the Rome Statute and RoPE/Regulations. The proposed quasi-federal framework will also provide regional benches with sufficient flexibility to develop their own practices.

The minute design details of the proposed ICC architecture are beyond the scope of this Article and will be left to experienced legal architects. This Article primarily intends to convince the reader of the utility and the possibility of the quasi-federal structure. This Article attempts to propose a structure for which the Court should strive and to start a discourse on the structural shortcomings of the Court, a topic that is constantly overshadowed by the ICC's regularly discussed operational issues.

While discussing the quasi-federal framework, it is important to draw parallels with regional human rights mechanisms. Regional human rights courts are primarily governed by regional human rights treaties and charters. In fact, the African Criminal Court envisaged under the Malabo Protocol is an attempt to extend and strengthen the jurisdiction of the African Court on Human and Peoples' Rights ("ACHPR") to provide it the ability to deal with international crimes committed in Africa.[212] The framework proposed in this Article also draws inspirations from regional human rights courts, especially in terms of realizing the need for adaptability and accessibility for communities in the region. Unlike regional human rights bodies, however, it proposes an interconnection between the regional criminal courts

210 *See generally* Ford, *supra* note 4.

211 Ford, *supra* note 113, at 716.

212 Eden Matiyas, *What Prospects for an African Court Under the Malabo Protocol?*, JUSTICEINFO.NET (May 31, 2018), https://www.justiceinfo.net/en/37633-what-prospects-for-an-african-court-under-the-malabo-protocol.html [https://perma.cc/9ERD-EAH8].

which will form part of a singular ICC network, with an overarching governing body in The Hague. This Article does not suggest standalone regionalized courts as a solution; rather, it suggest a network of internationalized regional ICC benches that possess the ability to adapt to regional differences and practices.

A structural overhaul is required, one way or the other, and this Article seeks to propose a model for the overhaul. Figure 1 below presents a graphical representation of the proposed model.

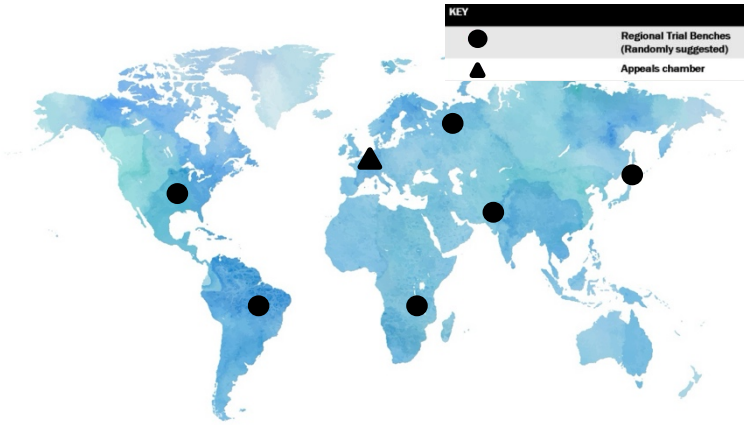

Figure 1: Proposal for a Quasi-Federal ICC Structure

C. Selection of Regional Benches

Figure 1 indicates regional benches in black circular markings—assigned to each continent as examples and not intending to select any specific intra-region location—where the trial and pre-trial proceedings would take place. These permanent regional chambers would exercise jurisdiction over their respective regional state parties. Selection of the seats for these regional benches can be made based on criteria already developed by the Court.[213] However, instead of conducting the Court's analysis on a case-by-case basis to move part of the

213 *See supra* Part III.A.0.

proceedings in situ, the Court can evaluate the factors for designation of a permanent seat. Some of these factors include:

> i. the security situation and the foreseeable stability of the state;
> ii. costs of establishing and operating a bench in a particular location;
> iii. viability of establishing a court in that region;[214]
> iv. potential impact on the perception of the Court;
> v. accessibility of the state from the other regional states;
> vi. support from the state for Court's operations; and,
> vii. presence of the United Nations or other international organization infrastructures in states that can assist regional benches.

Ideally the trials would take place in the state where the acts are committed, but for many reasons this may not be possible for the ICC. As a more realistic goal, the Court can look to establish regional benches in states that best satisfy the above-mentioned criteria.[215] Doing so will ensure that the host states are stable and can inspire confidence within the community and ensure the security of judges and court staff. Evaluation of a state's stability will weigh the degree of support offered by the state and its dedication towards achieving the Court's goals. Factors such as viability and potential impact on the perception of the Court will require an extensive analysis. In terms of cost analysis, the ICC will need to increase its expenditure, as more staff will need to be hired, basic operational capital will need to be purchased and maintained, and permanent infrastructures will need to be upkept. However, this still may be more feasible than investing in ad hoc solutions or case-by-case expenditure, since those expenditures can be redirected towards a permanent solution. The practical issues of infrastructure are briefly discussed in a later section.[216]

However, whether states will be inclined to take on this added responsibility is a question that still must be considered.

214 For example, setting up a regional court in Asia might not be viable since most Asian nations have not ratified the Rome Statute.

215 *See also supra* Part III.A.3.

216 *See infra* Part V.A.

D. Technical Permissibility

While this Article attempts to explore the permissibility of the proposed structure within the Rome Statute, the most direct and effective way to implement the structure would be through amendment to the Rome Statute with an express agreement between the state parties. The provisions of the Rome Statute must be renegotiated to provide a robust mechanism for the regional court system. Amendments would be required to Articles 3 and 62 of the Rome Statute, and Rule 100 of the RoPE, inter alia, to facilitate regional benches.

Even though the Rome Statute and RoPE do not explicitly provide for the formation of regional benches, they do not create any obstacle to their formation either. The language of the Rome Statute and RoPE needs to also be analyzed under VCLT Article 31 and interpreted "in the light of [their] object and purpose."[217] The negotiating history can also be used as a "supplementary means of interpretation."[218] To analyze the permissibility of the proposed quasi-federal framework, we must assess the permissibility of locating both pre-trial and trial chambers in global regions. The Article will address, first, whether the Statute allows the ICC to conduct pre-trial and trial proceedings outside the host state; and second, whether the framework permits establishing permanent regional chambers outside the host state.

1. Pre-Trial and Trial Functions

As stated above, the permissibility of a similar framework was assessed by Ford, who concluded that a framework of semi-permanent regional trial chambers would be permissible within the existing legal framework.[219] However, Ford could have foreseen neither the Rule 100 amendments nor the outcome of future jurisprudence concerning the permissibility of holding pre-trial proceedings away from the host state. Ford believed that the pre-trial proceedings could not be held outside the host state under the framework of the Statute.[220] He primarily relied on Article 62 in support of that conclusion.[221] He

217 Vienna Convention on the Law of Treaties art. 31(2), May 23, 1969, 1155 U.N.T.S 331 [hereinafter VCLT].

218 *Id.* art. 32.

219 Ford, *supra* note 4, at 725-32.

220 *Id.* at 739.

221 *Id.* at 730.

interpreted Article 3(3) to be limited by Article 62 and therefore only applicable to the trial stage.[222] However, in light of since-issued ICC caselaw, the Court has made it clear that even pre-trial proceedings can be held outside the host state. In fact, in a number of proceedings, the Court has considered holding pre-trial proceedings (such as hearings for confirmation of charges) outside the host state, closer to the affected communities.[223] Further, in the decision by the Pre-Trial Chamber in the on survivors' request to hold proceedings outside of the Hague in *Situation in Bangladesh/Myanmar*, the Pre-Trial Chamber confirmed that it would consider these requests.[224] The Pre-Trial Chamber, replying to the Office of the Prosecutor's objection to the victims' request, clarified that:

> Rule 100(2) states plainly that the Chamber may recommend sitting away from the seat of the Court 'any time after the initiation of an investigation'. In other words, although the actual hearing can only take place in the context of a case, *i.e.* after the issuance of a warrant of arrest or summons to appear, the preparation for such hearing can commence prior to that. On that basis the Chamber does not accept arguments from the Prosecutor, that the victims at this stage cannot "trigger" the exercise of the Chamber's *proprio motu* power to make a recommendation to change the Seat of the Court.[225]

This quote reveals two things. First, the Court can consider moving proceedings away at any point after the investigation is initiated; and second, contrary to the views of Ford, the Court can also hold pre-trial (and not just trial) proceedings away from the host state. The question of holding trial proceedings outside the host state is therefore not contentious and has been confirmed by the Court.[226] Thus, the

222 *Id.* at 730.

223 *Id.* at 729.

224 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-38-Corr, Corrected Version of "Decision on Victims' Joint Request Concerning Hearings Outside the Host State" (Oct. 27, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_05877.PDF [https://perma.cc/38V4-Y28G].

225 *Id.* ¶ 22.

226 Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-34, Victims' Joint Request Concerning Hearings Outside the Host State, ¶ 39 (Aug. 4, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_04736.PDF [https://perma.cc/G9XP-E8G6].

existing structure permits conducting both pre-trial and trial proceedings outside the host state.

2. Permanent Regional Chambers

To address whether permanent regional chambers are permissible, we must scrutinize the language of Articles 3(3) and 4 of the Statute. Articles 3(3) and 4(2) read together provide that the Court may sit outside of the Hague whenever it considers it desirable, and it may operate within a state with agreement from any party state or special agreement from any other state.[227] These provisions can be construed to allow permanent chambers if, per the *travaux preparatoires*, the Court considers it to be in the "interest of justice."[228] Moreover, Article 4(1) of the Statute and the implied powers doctrine[229] provide the Court with the authority to enter into the agreements that are necessary to establish local or regional trial chambers. Applying the mischief rule of interpretation[230] to the provisions would also suggest that there is enough room in the wordings of the Statute to allow the establishment of permanent regional benches. The only standard for the Court to analyze is "considers it desirable,"[231] which, when read in conjunction with "interest of justice," could justify the creation of permanent regional benches. This interpretation will also be in line with Article 31(1) of the VCLT, which provides that "[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to

227 Rome Statute, *supra* note 9, arts. 3-4.

228 Situation in Bangladesh/Myanmar, ICC-01/19-34, ¶ 11. The ICC made the same considerations in the *Bemba*, *Muthuara & Kenyatta*, *Ruto & Sang*, *Gbagbo & Blé Goudé*, *Ongwen*, and *Ntaganda* cases.

229 *See* Ondřej Svaček, *Applicable Law, Interpretation, Inherent and Implied Powers – A Brief Rendezvous with the ICC*, 7 CZECH Y.B. INT'L L. 360, 369 (2016).

230 "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief, and the remedy: that is, how the common law stood at the making of the act; what the mischief was, for which the common law did not provide; and what remedy the parliament hath provided to cure this mischief. And it is the business of the judges so to construe the act, as to suppress the mischief and advance the remedy." 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND IN FOUR BOOKS 87 (1859); *see also* Heydon's Case [1584] 76 Eng. Rep. 637, 638; The Sussex Peerage [1844] 8 Eng. Rep. 1034, 1057; Samuel L. Bray, *The Mischief Rule,* 109 GEO. L.J. 967 (2021).

231 ICC Rules of Procedure and Evidence, *supra* note 23, rule 100; *see, e.g.*, Situation in the People's Republic of Bangladesh/Republic of the Union of Myanmar, Case No. ICC-01/19-34, Victims' Joint Request Concerning Hearings Outside the Host State, ¶ 11 (Aug. 4, 2020), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2020_04736.PDF [https://perma.cc/G9XP-E8G6].

the terms of the treaty in their context and in the light of its object and purpose."[232] Adoption of this interpretation is in furtherance of the objectives of the Rome Statute.[233]

V. CONCERNS REGARDING THE PROPOSED FRAMEWORK

It is no secret that a regionalization framework presents certain challenges. This Part attempts to address common concerns with regionalization and preemptively address possible concerns with the proposed quasi-federal framework. As stated by Judge Eboe-Osuji, "it is difficult to envisage a[n ideal case] of this Court in which . . . arguments [cannot] be raised against conducting the trial at a particular place—including at the Seat of the Court itself."[234]In sum, there will always be arguments against regional hearings, but it is time for the ICC to advance towards a legitimacy-bolstering regional approach.

A. Costs and Feasibility: Infrastructure, Staff, and Operational Needs

It is reasonable to doubt the feasibility of the quasi-federal proposal, especially when the ICC alone has only been able to prosecute a handful of individuals.[235] In fact, the international criminal courts have prosecuted only around 300 individuals since the 1990s, which is far less than the number of people tried by domestic courts.[236] One of the major concerns for the proposed ICC regionalization would be the costs involved in establishing and maintaining a permanent network of courts. Per Antonio Cassese and Stuart Ford, a chamber's facility should at least have the following:

> (1) consistent access to utilities—primarily electricity, water, and communications; (2) a courtroom or courtrooms that will be adequate for what are intrinsically public trials (which means enough gallery space for public attendance); (3) adequate security; (4) enough space for all of the

232 *See* VCLT, *supra* note 217, art. 31(1).

233 Rome Statute, *supra* note 9, pmbl.

234 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 44 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

235 *See* Ford, *supra* note 35, at 186.

236 *Id.* at 184.

> attendant administrative and functional offices (prosecution, defence, chambers, registry, etc.); (5) access to an international transportation hub; (6) access to nearby accommodations that are adequate for the expected international staff (including access to adequate schools for the families of international staff).[237]

In addition, "[i]t is also desirable for the detention facility to be located on-site to minimize the security risk of transporting detainees back-and-forth to the Court."[238]

Infrastructural costs can be significantly reduced by using already existing structures of the United Nations and other international organization infrastructures. The Court, on various occasions, while considering shifting the proceedings out of the host state to Africa, has considered the ICTR in Arusha as a probable place to hold proceedings.[239] Similarly, other states such as Kenya—which has relatively well-developed facilities since it hosts the United Nations' African Headquarters—have adequate facilities that can serve the needs of the Court if appropriate arrangements are made for the use of such facilities.[240] Further, expanding the ICC's network is greater than the goal of providing additional fora for trials; it includes, for example, promoting global norms.[241] In fact, funding temporary in-situ proceedings—where personnel must commute between The Hague and the site of the proceedings—might be a greater cost than permanent regional fora. This cost was a consideration in *Ntaganda*, where the ICC Presidency categorically decided not to shift the proceedings out of The Hague due to the costs associated with the proceeding change, which was estimated to amount to more than €600,000.[242] Further,

237 Ford, *supra* note 4, at 719-20 (citing THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT: A COMMENTARY 190 (Antonio Cassese, Paola Gaeta & John R.W.D. Jones eds., 2002)).

238 *Id.* at 720.

239 *See supra* Part III.A.0.

240 *See The United Nations in Kenya*, UNITED NATIONS KENYA, https://kenya.un.org/en/about/about-the-un [https://perma.cc/VZ2V-S2D7] (last visited Mar. 1, 2023).

241 deGuzman, *supra* note 45, at 270.

242 Prosecutor v. Ntaganda, Case No. ICC-01/04-02/06-645-Red, Public Redacted Version of Decision on the Recommendation to the Presidency on Holding Part of the Trial in the State Concerned, ¶ 21 (June 15, 2015), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2015_06513.PDF [https://perma.cc/Y6M8-39T4]

establishing ex post facto, country-specific, ad hoc tribunals and investigation mechanisms (such as UNITAD, IIMM, IIIM) is an expensive endeavor.[243] These tribunals may be problematic because they are temporary and require multiple preparatory arrangements, and existing regional benches, regional OTPs, and networks of semi-autonomous investigation bodies can perform or exceed the function of these ad hoc bodies. The expenses, which primarily relate to travel and arranging specific hearings, can be averaged out[244] if a permanent structure is created that will serve the foreseeable future.[245]

B. The Politicization of the Court

Critics of regionalization have long argued that holding proceedings in The Hague, far from the community over which the accused may still wield authority, might ensure a neutral atmosphere and prevent the proceedings from stirring up political, ideological, or other passions.[246] Furthermore, some ICC judges have raised concerns over the high risk of "politicization" of cases, considering the possible social and political influence of the accused and their principals in the regions, and given their evident interest in the frustration or abortion of the trial,[247] however achieved. Although this argument may militate against holding trials in a given affected location, holding proceedings in a neutral country in the region may be a sufficient fix.[248] Secondly, in fact, politicization arguments have also been raised by parties for trials at the Seat of the Court (before the pre-trial chamber in the Palestine Situation, for example). However, as the Court stated in that

243 Kingsley Abbott & Saman Zia-Zarifi, *Is It Time to Create a Standing Independent Investigative Mechanism (SIIM)? Part I*, OPINIOJURIS (Apr. 10, 2019), http://opiniojuris.org/2019/04/10/is-it-time-to-create-a-standing-independent-investigative-mechanism-siim/ [https://perma.cc/4KSL-M769] (proposing a permanent investigation body, which is said to be cheaper than ad hoc mechanisms).

244 *Id.* The costs for a permanent structure may be higher upfront to establish, however, over a period of time total costs for ad hoc mechanisms or in situ trials (if taken seriously) will far exceed that of permanent structures.

245 *Id.*

246 AUWCL 2009, *supra* note 7, at 18 n.36.

247 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 33 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

248 *Id.*

decision: all of the Court's cases have political implications.[249] The fact that there are political implications should not impact its operations. Similarly, the ICJ stated: "[T]he circumstance that others may evaluate and interpret these facts in a subjective or political manner can be no argument for a court of law to abdicate its judicial task."[250] The cases, by their very nature, are already "politicized," as they generally concern a nation's political or governmental figures. People have always expressed their views notwithstanding the fact that the proceedings are taking place at The Hague.[251] It is, therefore, echoing the opinion of Justice Eboe-Osuji, a fallacy to imply that politicization can be avoided by not conducting proceedings closer to the affected regions.[252] Cases are politicized even while taking place at The Hague.[253]

C. Security and Concerns of Demonstrations

Without a doubt, security concerns and the risk of demonstration are the biggest arguments against holding proceedings in the affected region. However, it is a common feature of high-publicity judicial inquiries that citizens engage in peaceful demonstrations.[254] Demonstrations are common in some of the "most robust" Western democratic societies, including Canada, the United Kingdom, and the United States,[255] considering, for example, the relatively recent raiding of the

249 Situation in the State of Palestine, Case No. ICC-01/18, Decision on the 'Prosecution Request Pursuant to Article 19(3) for a Ruling on the Court's Territorial Jurisdiction in Palestine', ¶ 55 (Feb. 5, 2021), https://www.icc-cpi.int/sites/default/files/CourtRecords/CR2021_01165.PDF ("Further, some participants have stated that because of the highly political aspect of the Situation in Palestine, it should not be examined by this Court. It should however be noted that, by the very nature of the core crimes under the Rome Statute, the facts and situations that are brought before the Court arise from controversial contexts where political issues are sensitive and latent. Accordingly, the judiciary cannot retreat when it is confronted with facts which might have arisen from political situations and/or disputes, but which also trigger legal and juridical issues.").

250 CHILE EBOE-OSUJI, STRUGGLES OF JUSTICE IN A HIGHLY POLITICIZED CONTEXT 6 (2020), https://www.icc-cpi.int/sites/default/files/iccdocs/presidency/200116-hague-academy-pres-speech.pdf [https://perma.cc/XTM9-V23B].

251 *Ruto*, ICC-01/09-01/11-875-Anx, ¶¶ 33-35.

252 EBOE-OSUJI, *supra* note 250, at 2.

253 *Ruto*, ICC-01/09-01/11-875-Anx, ¶ 33.

254 *Id.* ¶¶ 36-37.

255 *Id.* ¶ 37.

U.S. Capitol in Washington, D.C.[256] Indeed, the ICC's proceedings in The Hague have not been spared from public demonstrations.[257] It is thus strange to use the risk of peaceful demonstrations as a reason to avoid holding trials closer to the affected regions.

Moreover, international prosecutors need not be psychologically intimidated by peaceful demonstrations outside the courthouse.[258] Evaluation of available seats of the regional benches should involve a security analysis of the foreseeable stability of a state. Security concerns exist in some regions more than others and it will not be too difficult to find states with sufficient stability. Presence and resources of missions and entities in the regions, like the U.N. Organization Stabilization Mission in the Democratic Republic of the Congo ("MONUSCO"),[259] the U.N. Multidimensional Integrated Stabilization Mission in the Central African Republic ("MINUSCA"),[260] U.N. Department for Safety and Security, which already have cooperation agreements with the Court to provide assistance in many matters,[261]

256 *Capitol Riots Timeline: What Happened on 6 January 2021?*, BBC (Aug. 2, 2023), https://www.bbc.com/news/world-us-canada-56004916 [https://perma.cc/A2JW-ECHQ].

257 *See also Pro-Palestinian Activists Occupy International Court Entry, Demanding Action Against Israeli Leader*, AP, https://apnews.com/article/icc-court-israel-palestinians-protest-detentions-netanyahu-f31d2f9d8d25ed797660ea33cadd2322 [https://perma.cc/XUJ9-N7W4] (Oct. 23, 2023, 9:49 AM); Hamza Mohamed, *Families of Jailed Tunisian Opposition Ask ICC to Investigate President*, AL JAZEERA (Oct. 5, 2023), https://www.aljazeera.com/news/2023/10/5/families-of-jailed-tunisian-opposition-ask-icc-to-investigate-president [https://perma.cc/3GG3-K56C]; Harry Cockburn, *Climate Change Activists Who Occupied International Criminal Court Arrested by Dutch Police*, INDEPENDENT (Apr. 16, 2019, 4:24 PM), https://www.independent.co.uk/climate-change/news/climate-change-protest-extinction-rebellion-international-criminal-court-the-hague-a8872621.html [https://perma.cc/P22G-EEX3].

258 Prosecutor v. Ruto, ICC-01/09-01/11-875-Anx, Decision of the Plenary of Judges on the Joint Defence Application for a Change of Place Where the Court Shall Sit for Trial in the Case of the Prosecutor v. William Samoei Ruto and Joshua Arap Sang, ¶ 37 (Aug. 26, 2013), https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2013_05613.PDF [https://perma.cc/9U9H-D6V2].

259 *MONUSCO Fact Sheet*, U.N. PEACEKEEPING, https://peacekeeping.un.org/en/mission/monusco [https://perma.cc/9WTR-ZZSF] (last visited Mar. 1, 2024).

260 *MINUSCA Fact Sheet*, U.N. PEACEKEEPING, https://peacekeeping.un.org/en/mission/minusca [https://perma.cc/ME43-NW28] (last visited Mar. 1, 2024).

261 U.N. OFF. OF LEGAL AFFS., BEST PRACTICES MANUAL FOR UNITED NATIONS – INTERNATIONAL CRIMINAL COURT COOPERATION (2016), https://legal.un.org/ola/media/UN-

are capable of maintaining peace and security in the regions. A similar provision can be made for the ICC's regional trial and pre-trial chambers. Apart from the host state, many states have stable domestic environments and are capable of holding high-profile trials.[262] A permanent regional court structure that negates the need for ad hoc, in-situ proceedings in the actual place of occurrence, provides a much more secure, neutral alternative.[263]

In most situations, holding proceedings in the actual place of conflict can be challenging. In fact, the trial in the *Taylor* case was moved from Sierra Leone to The Hague for security reasons.[264] Alternatively, the proceedings in the *Taylor* case could have been shifted to a predetermined safer location within the region, with established infrastructure and closer proximity to the affected communities.

VI. CONCLUSION

At over twenty years old, the ICC is no longer in its nascent stage. As stated by Prosecutor Khan, "we can no longer hide behind the oft-used excuse that the Court is still in its infancy. She is now an adult and must keep her promises."[265] It is time we also identify the structural shortcomings of the Court and look for a permanent solution to make international criminal law attainable for every region, and to

ICC_Cooperation/Best%20Practice%20Guidance%20for%20UN-ICC%20cooperation%20-public.docx.pdf.

262 Ford, *supra* note 113, at 719.

263 As is evident from the quote by a local resident of CAR on trials before Special Criminal Court, "We are aware of the situation, but where we are, we still live with the rebels who have not disarmed. We want justice, but the contrast between insecurity and justice continues to affect the daily lives of victims here. It is important for everyone to steer clear, because here we continue to live with our executioners." *See* Vianney Ingasso, *Central African Republic: Special Criminal Court Hands Down First Judgment*, JUSTICEINFO.NET (Nov. 1, 2022), https://www.justiceinfo.net/en/108356-central-african-republic-special-criminal-court-first-judgment.html [https://perma.cc/E2MN-KB8B].

264 Press Release, Int'l Criminal Ct., The Special Court for Sierra Leone to Use ICC Facilities for Trial of Charles Taylor, ICC-20060621-140 (June 21, 2006), https://www.icc-cpi.int/news/icc-special-court-sierra-leone-use-icc-facilities-trial-charles-taylor [https://perma.cc/5A4A-KQY2]; Prosecutor v. Taylor, Case No. SCSL-03-01-PT, Order Changing Venue of Proceedings, ¶¶ 11-12 (June 19, 2006), https://www.rscsl.org/Documents/Decisions/Taylor/110/SCSL-03-01-PT-108.pdf [https://perma.cc/EW34-PWHZ].

265 Karim Khan, Opinion, *Comment la CPI Doit Tenir Sa Promesse d'un Meilleur Avenir pour L'humanité, par Karim Khan*, LE TEMPS (Switz.), July 16, 2021, https://www.letemps.ch/opinions/cpi-tenir-promesse-dun-meilleur-avenir-lhumanite-karim-khan [https://perma.cc/2VGK-XZR6].

make the ICC a viable resort for people from all states. Doing so will improve the Court's legitimacy and perception. After all, a rigid, one-sized court will always be perceived to be lacking for its inability to adapt to specific regional needs. Should the quasi-federal proposal be implemented, and the proceedings be conducted regionally, the public visibility of such proceedings will play a significant role in engendering a sense of accountability.[266] This is especially critical given that, in many places, such criminal conduct occurs repeatedly. Local proceedings will thus engender public belief in redress and provide a nearer sense of accountability for potential criminal offenders.

There is probably no better way to ensure the Court's accountability to public expectations than allowing greater public scrutiny of its proceedings, which is only possible if the proceedings are conducted as close as possible to the location of the alleged crimes.[267] The notion that the Court represents foreign justice to affected communities[268]—as noted by the ICC's new Prosecutor—does not augur well for the Court.[269] Conducting the proceedings regionally will demystify the ICC's processes and allow the victims and survivors—the parties for whom the Court is designed to bring justice—to own the process. When the process is "touched" and "felt," it would undoubtedly satisfy the transparency of the process, thereby lending legitimacy to the Court's role.[270] Conducting proceedings near the site of the atrocities also serves moral and educational values. By allowing survivors to more easily participate in proceedings and bringing the proceedings closer to members of the public and local media, the Court fosters a greater sense of respect for regional communities and the enforcement of international justice. Consequently, the Court's outreach and educational responsibilities play a critical role in attaining the Court's objectives to end impunity and promote lasting "peace, security and

266 Prosecutor v. Ruto, Case No. ICC-01/09-01/11-121, Observations on Behalf of Henry Kipromo Kosgey to the 'Decision Requesting Observations on the Place of the Proceedings for the Purposes of the Confirmation of Charges Hearing', ¶¶ 29-31 (June 13, 2011), https://www.icccpi.int/sites/default/files/CourtRecords/CR2011_07242.PDF [https://perma.cc/ZDX8-WV52].

267 HUM. RTS. WATCH, MEMORANDUM FOR THE FIFTH SESSION OF THE ASSEMBLY OF STATES PARTIES TO THE ICC 14 (Nov. 2006), https://www.hrw.org/legacy/backgrounder/ij/asp1106/asp1106web.pdf [https://perma.cc/5VM8-UUTR].

268 *Dim Prospects: The International Criminal Court Loses Credibility and Cooperation in Africa*, THE ECONOMIST (Feb. 19, 2011), https://www.economist.com/international/2011/02/17/dim-prospects [https://perma.cc/5A7E-64MA].

269 *See Ruto*, ICC-01/09-01/11-121, ¶ 15.

270 Ford, *supra* note 113, at 715-16.

well-being of the world."[271] Additionally, involving local professionals in ICC proceedings and bringing them closer to the local judiciary will inspire and improve the standards of national justice systems.[272] The quasi-federal structure involves some challenges, but the proposed model's regionalized structure addresses the well-documented shortcomings of the Court and provides it with a blueprint for achieving legitimacy and justice in the future.

271 Rome Statute, *supra* note 9, pmbl.; *see Ruto*, ICC-01/09-01/11-121, ¶ 15.

272 Etelle R. Higonnet, *Restructuring Hybrid Courts: Local Empowerment and National Criminal Justice Reform*, 23 ARIZ. J. INT'L & COMPAR. L. 347, 359 (2006).