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The shared protection of human rights at the International Criminal Court

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CHAPTER I: Introduction

1.1. Purpose of the Study

Joe lives in the Ivory Coast. Between 2010 and 2011 he survived the post-election violence that left many in his country dead.¹ The International Criminal Court (ICC) opened an investigation into these events in 2011, and Joe has valuable evidence against one of the ICC accused, Louise. The ICC has asked Joe to be a witness in the trial, but Joe knows that he would place himself at risk of being killed by the supporters of the old regime. The ICC tells Joe that if he agrees to be a witness, one of its functions is to protect him, and assures him that if he comes to the Court, he will be relocated to another country and will not have to return to Ivory Coast. Joe travels to the ICC and gives his evidence. His Court contact person tells him that he will soon be transferred to Belgium, which has agreed to grant him residence for as long as he needs. However, before leaving Ivory Coast, Joe heard from his compatriots that a great number of Ivorians who supported Louise now live in Belgium, and he worries that he will not be safe there. The ICC considers these fears to be unfounded, and faced with his imminent departure to Belgium, Joe applies for asylum in the host State of the Court, the Netherlands, while on route to the Dutch-Belgium border.

After this, Joe has a difficult time. Belgium, on learning that Joe has applied for asylum in the Netherlands, withdraws its offer to grant him residency. As far as Belgium is concerned, this is now the problem of the Netherlands, and Belgium no longer needs to be concerned with the expense of hosting an ICC witness. The ICC takes a similar line: 'why should we trouble ourselves when the Netherlands will look after Joe?' But the Netherlands argues that Joe is not eligible to apply for asylum; he is an ICC witness, on Dutch territory only for this reason, and it should be the ICC's job to provide for his protection needs. Indeed, as far as the Netherlands can see, he already has a new home

¹ The names and events described in this section are only meant to illustrate the purpose of this study, and beyond the fact that post-election violence did indeed take place, are not based on real people or events.

waiting for him in Belgium. Joe, unable to return to Ivory Coast, is now left in a very difficult position.

Louise also faces challenges. She was arrested by the authorities in Ivory Coast, surrendered to the ICC, and detained in the ICC detention centre in the Netherlands. At her initial appearance before an ICC judge, Louise's trial is scheduled to begin in 12 months' time. Faced with this long period of pre-trial detention, Louise applies for interim release. The ICC judge, on looking at her case, deems that she does not present a risk to the proceedings or to potential witnesses, and agrees that she can be released pending her trial on the condition that she does not return to Ivory Coast. As such, it is necessary that another State agree to host Louise for the duration of her interim release. States have been very reluctant to agree to this, given that Louise is charged with serious international crimes, and to host her would be politically unpopular. Each State responds to the ICC's requests by saying that another country would be better suited. With no State willing to host her, Louise cannot be released pending trial. She must remain in the ICC detention centre for the 12 months until the beginning of her trial.

Finally, there is Ted. Part of a political faction that rivalled Louise in the post-election violence, Ted went on the run in South America but was captured. His ICC trial took place in 2012. Convicted of crimes against humanity, Ted is now serving a 10-year sentence in a prison in Mali. Ted has complained to the domestic prison authorities about his detention conditions, which are overcrowded with poor hygiene. The response to these claims has been that he is treated no differently from Malian prisoners, and that the conditions are in accordance with Malian domestic law. He is told that if he has complaints he must take them up with the ICC authorities. Ted attempts to do so, but is told that as he is detained in Mali, he must make his complaint there. This leaves Ted in a legal limbo, unable to bring a complaint either to the ICC or to the Malian authorities.

Joe, Louise, and Ted's stories may be fictitious, but they highlight clearly the issues that catalysed this research project. The way in which international criminal law operates is inherently shared, as many instances in its proceedings require the involvement of multiple actors to make it a success. This shared nature can lead to serious problems in the protection of human rights. In Joe's case, his protection as a witness depended on a third State agreeing to host him and protect him. The fact that there were two States (Belgium and the Netherlands) that could potentially offer protection allowed for 'buck passing' to take place between them, whereby each looked to the other to provide the required protection. The result is that neither provided protection to Joe. Louise was faced with a similar problem. For her to exercise her right to be released pending trial, an important corollary of the presumption of innocence and the right to liberty, she needed a State to host her. But no State was under an obligation to do so, and each State could point to another State that might carry out the task. As for Ted, being in part a domestic

prisoner and in part an ICC prisoner left him unable to enforce his right against inhuman treatment.

The challenges facing Joe, Louise, and Ted are a sample of the issues that arise in the different instances of sharedness at the International Criminal Court. The purpose of this study is to examine the adequacy of human rights protection in these shared situations. As such, it looks not only at the circumstances surrounding cases such as Joe, Louise, and Ted's, but takes in a broader range of situations in which multiple actors are involved in ICC proceedings.

1.2. The Research Question

To achieve the object of the study, the following research question was developed:

Are the human rights of accused and witnesses adequately protected in the shared stages of International Criminal Court proceedings?

This chapter will expand upon this question, first by describing the phenomenon labelled in this thesis as 'sharedness', and second by explaining how adequacy will be assessed. Following on from this, the chapter will set out the approach taken to answering the research question, and the methodology adopted in the research. The chapter concludes by providing an overview of the different chapters of the thesis.

1.2.1. Shared Stages of ICC Proceedings

We are introduced to Joe, Louise, and Ted at specific points during their interaction with the ICC. But their association with the Court began prior to those points, and will continue after them. We joined their stories at particular *stages of ICC proceedings*: for Joe this stage was protective relocation abroad, for Louise it was interim release, and for Ted it was enforcement of sentence. Other examples of stages of ICC proceedings include investigation, arrest, trial, exit from a witness protection scheme, and so on. The term 'stages of ICC proceedings' is used broadly and descriptively, indicating the point in proceedings in which the individual finds themselves. It does not refer to specific procedural junctures, such as a confirmation of charges hearing or a sentencing hearing.

Some stages of ICC proceedings are shared, others are not. The difference lies in whether the stage requires the involvement of multiple actors, or whether the situation is one in which the ICC acts alone. In each stage of ICC proceedings, shared or not, the Court has some function to carry out. This might be to secure an arrest, to conduct a trial, to protect a witness, and so on. When the function in question is one which the ICC needs

assistance in carrying out, this means that the involvement of multiple actors is required at that stage. It is this that renders a stage of ICC proceedings shared.

Ted is serving his sentence now, but before this he went through a number of different stages of ICC proceedings. There would have been an investigation which identified Ted as a suspect, leading to him being interrogated; the Prosecutor will have decided to charge him, and what to charge him with; an arrest warrant will have been issued and Brazil, where he was hiding whilst on the run, asked to carry it out; Ted will have been tried before ICC judges, found guilty, and had his sentence decided; a State will have been identified where he would serve his sentence. These are a snapshot of some of the stages of ICC proceedings.

Not all of these stages are shared. For instance, it is the ICC Prosecutor who determines who to charge with crimes under the Rome Statute, and what to charge them with. ICC judges make determinations on the admissibility and weight of the evidence presented, decide on points of law, and arrive at a judgment on guilt or innocence. No State is involved in these core ICC functions. On the other hand, there are a number of stages which are shared. The shared stages of ICC proceedings that are included in this study, for an **accused** such as Ted, or Louise, follow a chronological pattern: beginning with the investigation phase, moving onto arrest, and following surrender to the Court, interim release; when the trial ends in a conviction, there is the period of imprisonment and then release, when the trial ends in an acquittal, then there is release on this basis. All of these stages are instances where the ICC has a function that it needs to carry out, but for which it requires the assistance of States. For **witnesses** such as Joe, a chronological approach to the stages of proceedings is less helpful, as the relevant stages in proceedings are whenever a need for protection arises. The pertinent distinction is therefore not chronological but geographical, as the location of the witness (in their home State, in a third State, or at the seat of the ICC) will determine which actors are involved. These are the stages of proceedings that are covered in this study.

At all the stages of ICC proceedings included in this study, human rights are affected. As these stages all require the involvement of multiple actors, then these multiple actors will also be involved in protecting the rights affected at those stages. For example, when Louise was arrested, she was arrested by the Ivorian authorities. Arrest deprives an individual of their liberty, and as such can compromise a number of rights. Since the ICC is relying on Ivory Coast's assistance to carry out the arrest, then it must also rely on Ivory Coast's assistance to protect the rights affected by it. Ted's case also illustrates this: in serving a custodial sentence, Ted is deprived of his liberty and subject to the conditions of treatment imposed by the Malian authorities. This inevitably affects a number of Ted's rights. As the ICC is relying on Mali to help it with the function of enforcing sentences, so too must it rely on Mali to help it protect the rights that are affected by that enforcement. Joe's case is somewhat different. When it comes to witness protection, the

function itself is the protection of rights. So the ICC does not need help carrying out a function that has an effect on rights, but rather the ICC needs help carrying out a function that *is* the protection of human rights. In all instances, multiple actors are involved in protecting human rights, and are said to *share* the protection of human rights.

1.2.2. Different Types of Involvement

To say that multiple actors are involved in a stage of ICC proceedings tells us that it is a stage in which the ICC requires assistance, but it does not tell us anything of the States' side of the story. In the different stages included in the study, the way in which States can be involved in stages of ICC proceedings can be different.

For some stages of proceedings, States become involved because they are under a legal obligation to provide the assistance that the ICC needs. When Ted went on the run in South America, any country he entered was under an obligation to assist the ICC by arresting him.² In the end, he was arrested in Brazil. In these situations, Brazil is not only obliged to provide the assistance - i.e. conduct the arrest - but also to protect the human rights affected by that assistance - i.e. by providing the necessary protections during the arrest proceedings. For some stages, the assistance that the State is required to provide is itself the protection of human rights, for example when the assistance that the ICC requires is the protection of a witness in their home State.

At other times, the ICC may require assistance, but contrary to above, States are under no legal obligation to provide it. Joe needs to be protected by being relocated away from Ivory Coast, however, the relevant legal framework does not contain an obligation on any one State to assist the Court by agreeing to host him. The stage is still shared, as it requires the involvement of multiple actors; but in the absence of any legal obligations, the ICC must rely on the voluntary assistance of States.

So far we have seen that a State's involvement in ICC proceedings can be mandatory or voluntary. But once a State becomes involved, the nature of the involvement may complicate, due to the fact that the act of assisting the ICC does not take place in a legal vacuum. When States assist the Court – either pursuant to an obligation or voluntarily - they may also activate other obligations under general international law, and in particular human rights law. Ted's case serves as an illustration. When Ted is convicted by the ICC, he was given a custodial sentence. The way in which the enforcement of sentences was set up at the ICC means that custodial sentences must be served in a domestic prison,

² As all South American States have signed and ratified the Rome Statute (accurate August 2016) – ICC Website <https://asp.icc.cpi.int/en_menus/asp/states%20parties/Pages/the%20states%20parties%20to%20the%20rome%20statute.aspx> visited 2 September 2016.

away from the ICC premises. In Ted's case, Mali volunteered to enforce his sentence. So far, this scenario appears to belong rather in the previous paragraph, dealing with voluntary involvement. However, the process of getting Ted to Mali illustrates how assisting the ICC can become complicated for a State. In order for Ted to serve his sentence in Mali, he must be transported there. As the ICC's host State, the Netherlands has an obligation under the Headquarters Agreement³ to assist the Court by transporting Ted to the airport so that he can leave the country. However, the act by the Dutch authorities of transporting Ted through Dutch territory engages obligations that the Netherlands has other than under the Headquarters Agreement, for example under human rights law. This means that if, let's say, Ted would be at risk of persecution or torture in Mali, the Netherlands would be prohibited from transporting him there, as to do so would violate Dutch obligations under the European Convention of Human Rights on Human Rights (ECHR) (among others). The Netherlands is therefore presented with a conflict: comply with human rights law or comply with the Headquarters Agreement.

There are therefore, differences in how the State becomes involved in a stage of ICC proceedings – pursuant to an obligation or voluntarily – and in what obligations this involvement activates - those in the legal framework of the ICC and/or those under general human rights law. As will be shown in the substantive chapters, these differences are relevant to answering the research question because of the consequences they have for the adequacy of human rights protection in shared stages of ICC proceedings.

1.2.3. Adequacy and Inadequacy of Protection in Shared Stages of ICC Proceedings

The research question is an evaluative one, asking whether human rights are adequately protected in shared stages of ICC proceedings. Rather than establish a detailed yardstick against which to measure adequacy, the approach taken in the study is to assume that protection is inadequate if certain circumstances are present. These are circumstances, connected to the sharedness of the situation, which make it more likely that human rights will be left unprotected, to whatever degree. The circumstances can be labelled as 'problems', of which there are two types: implementation problems and structural problems.

The term 'implementation problem' describes a set of circumstances in which there will be a higher chance than normal that an actor (or actors) will fail to implement an obligation. As the obligation will have a direct or indirect effect on human rights protection, this failure to implement will have a negative effect on an individual's human rights. The two prominent causes of implementation problems in the context of shared

³ Headquarters Agreement between the International Criminal Court and the Host State 1 March 2008 ICC-BD/04-01-08 (Headquarters Agreement).

ICC proceedings are: a lack of clarity about the obligations, and/or deliberate ‘buck passing’.

Beginning with the clarity issue, if an actor is not clear on what the law requires and what protection it is required to provide, the actor may fail to properly perform its obligations, to the detriment of an individual’s rights. As shared situations can be particularly complex, with different sets of obligations and different actors, this is a highly plausible problem. Consider the following: when a State carries out an arrest on the ICC’s behalf, certain safeguards must be provided. The ICC might assume that the arresting State will check whether human rights protections were provided during the arrest, whereas the State might assume that this role falls instead to the ICC. The result of this confusion can be a failure to guarantee the human rights of the suspect. While this type of problem is not exclusive to shared situations, the complexity resulting from the involvement of multiple actors in these situations makes clarity more elusive, and ambiguity more common.

The implementation issues associated with a lack of clarity are generally not deliberate; ‘buck passing’ however, is a more cynical implementation problem. Here the actors, instead of being unclear as to what they must do and when, use the fact that there is another actor who also has an obligation to justify refraining from acting themselves: ‘why should I be the one to act, if the other actor is also obliged to do so? Why should the other not act instead?’⁴

The circumstances in which buck passing can occur arise when two or more actors have, at the same time, obligations relating to the protection of an accused or witness. The precise content of the obligation need not be identical, just that the protective actions of one actor would render action by the other unnecessary. Joe’s situation provides a helpful illustration. The ICC has an obligation to protect him because he is an ICC witness; the Netherlands has an obligation to protect him because he is on Dutch territory and has sought protection under human rights law, which precludes his removal to a country where he would be at risk of harm. If the ICC performs its obligation, it renders action by the Dutch State unnecessary, because Joe’s rights are protected, and vice versa. This overlap creates a situation in which the ICC and the Netherlands can both attempt to avoid complying with their obligations by claiming that the other should be the one to act. The result can be that neither will protect Joe. Buck passing in these circumstances is by no means inevitable, but it is a possibility that the law at present cannot prevent and has

⁴ In psychology literature, this phenomenon has been termed ‘diffused responsibility’, denoting that the existence of multiple potentially responsible actors decreases the likelihood that any will act. John Darley and Bibb Latane, ‘Bystander Intervention in Emergencies: Diffusion of Responsibility’ (1968) 84 *Journal of Personality and Social Psychology* 377.

no tools to deal with. As such, whenever such a situation arises, it will be taken as an indication that human rights protection is inadequate.

Structural problems occur when the shared nature of the situation produces a gap in legal protection. Such gaps are directly connected to the type of situation in which the ICC needs assistance but there is no corresponding obligation on any State to provide this assistance. In these circumstances, the ICC is the only actor with an obligation to protect a right, but because of its institutional structure, it lacks the legal or factual capacity to do so. The result is a gap in protection. This is best illustrated by returning to the problems facing Louise when she seeks to exercise her right to interim release. The ICC has an obligation to uphold Louise's right to liberty by releasing her on an interim basis, but lacks the ability to do so because it does not possess territory; States have the means to see Louise released, but lack the obligation to do so. Where such a gap in protection occurs, human rights protection is clearly rendered inadequate. Even though a State may volunteer to assist the ICC and so fill that gap, the voluntary nature of this assistance leaves the individual in an unacceptably precarious position.

Whenever it is found that structural problems are present in a shared stage of ICC proceedings, and/or that implementation problems are possible, this will point strongly to human rights protection being inadequate. This is not to say that protection will be deficient every particular case, but if a situation leaves space for these problems to arise, then protection is considered, generally speaking, inadequate.

1.3. Approach

To assess whether the human rights of accused and witnesses are adequately protected during shared stages of ICC proceedings, a two-step approach has been used. These two steps are applied to each of the stages of proceedings in turn, and this structure is reflected in the layout of the substantive chapters.

Step one is the 'discussion of obligations'. For any assessment to be made as to the adequacy of human rights protection, it is first necessary to understand what obligations exist that correspond to those rights. Understanding protection by understanding obligations. As such, the analysis of each shared stage of ICC proceedings begins by asking: what obligations does each actor have to protect rights? Taking one actor at a time, the obligations of the different actors involved in a shared situation will be examined. The analysis at this stage does not look at how the obligations may interact, but rather looks at each actor in isolation.

The discussion of obligations is not all encompassing, in the sense that it does not purport to be a comprehensive description of the entirety of the obligations incumbent on each

actor at each stage of ICC proceedings. Instead, the discussion is focused on setting out the obligations that relate to the protection of human rights. For an obligation to fall into this category, it may be phrased in human rights terms - such as 'the accused must be given a fair trial' - but it need not be. The only requirement is that the obligation be directly or indirectly relevant to protecting a witness or accused's human rights.

In each of the different stages included in this study, a myriad of individual rights can be affected, the particulars of which will naturally depend on the specific circumstances. Take Louise's case: by not being permitted interim release, her right to liberty may well be violated. But she could also argue that since now she must spend 12 months at the seat of the Court, it is impossible for her family, who has limited financial means, to visit. Had Louise been granted interim release and been permitted to reside temporarily in, let's say, Ghana, her family could have made the trip from neighbouring Ivory Coast with relatively little expense. This means that her right to family life is also affected. Each factual stage can affect different rights depending on the individual concerned and the particular circumstances.

It was not feasible in a study of this size to undertake an analysis of all potentially affected rights. Instead, for pragmatic reasons, the choice was made to base the inquiry on the right most likely to be compromised in a given case; the right which would always be at risk regardless of the particular circumstances of the individual. For instance, because arrest will always restrict an individual's freedom of movement, the right focused on for that stage of proceedings is the right to liberty. The result of this delimitation is that the study deals with four human rights: the right to liberty, the right to a fair trial, the right to protection from torture, inhuman and degrading treatment and punishment, and the right to life. For each stage, prior to beginning the discussion of obligations, step one will identify the right central to that stage.

Step two considers the 'problems in human rights protection'. By looking at the totality of the obligations discussed in the first step, it can be determined whether any implementation or structural problems arise, such that the protection of human rights would be deemed inadequate. Between step one and step two in the analysis of the stages in proceedings there is a shift in perspective. Step one is concerned with obligations, and takes these as the starting point. Step two is concerned with rights, namely problems in their protection, and so takes rights as the starting point.

1.4. Methodology

This study is a work of doctrinal legal research, and as such has involved the study of traditional legal sources.⁵ The study is undertaken from a positivist legal perspective.

⁵ Article 38, Statute of the International Court of Justice 1945.

Positivism is the mainstream approach in international law,⁶ and is the tradition in which the author was educated and operates. The author acknowledges that, despite positivists sharing the same legal toolbox, different positivists arrive at different understandings of what the law says and means. Where there is space for interpretation in the law, it must be accepted that an individual's experience and domestic legal tradition will play a role. For instance, the author's education in the English common law tradition means that much weight is attached to case law, and discussion of the *obiter dicta* in legal decisions is deemed important. An author will also bring their own normative agenda and value preferences to their research, and in the interests of transparency, the author acknowledges that the promotion of human rights protection is a driving force behind this work.

As discussed above in section 1.3, the first step in the analysis of the shared stages of ICC proceedings is to discuss the obligations of the actors. The choice of the term 'discussing' is deliberate. Terms such as 'mapping of obligations' have been avoided because they suggest that the obligations are well established and clear, and that in order to understand how human rights are protected in shared situations, it is merely necessary to look up the law.⁷ The aspects of the international criminal justice process covered in this study do not benefit from such clarity and lack of ambiguity. To 'discuss' obligations better reflects the dynamic process of description and interpretation that much of this thesis involves.

In the interests of analytical clarity, the steps taken when discussing the obligations of the actors at each of the stages of proceedings will be briefly explained. The first step is always to identify, with regards to the actor being discussed, the legal provision applicable to the situation. These legal provisions are looked for in the sources described in the Chapter 2. As they are overwhelmingly treaty provisions, it is appropriate to frame the 'discussion of obligations' in terms of treaty interpretation. Inspired by the terms of Article 31 Vienna Convention on the Law of Treaties (VCLT), the question is asked whether, giving the words of the provision their ordinary meaning, the obligations of the actor can be definitively discerned.⁸ If so, the discussion of obligations need progress no further, unless to confirm the interpretation. If not, then the second step is to consult other sources of information in order to inform an interpretation of the law and ascertain an actor's obligations.

⁶ Peter Malanczuk, *Akehurst's Modern Introduction to International Law* (Routledge 1997), 1, 16-17, 32; Hans J. Morgenthau, 'Positivism, Functionalism, and International Law' (1940) 34 2 *The American Journal of International Law* 260, 263-4; Frauke Lachenmann, 'Legal Positivism' (2011) *Max Planck Encyclopedia of Public International Law*; Bruno Simma and Andreas L. Paulus, 'The Responsibility of Individuals for Human Rights Abuses in Internal Conflicts: A Positivist View' (1999) 93 2 *The American Journal of International Law* 302, 302.

⁷ It is certainly open to question whether this is ever the case in any area of law.

⁸ Article 31 of the VCLT requires that a treaty be interpreted 'in accordance with the ordinary meaning to be given to the terms'.

One such source is the broader context in which the provision is located, including other provisions in the same legal instrument and framework. Another source is the practice in relation to the particular provision, including case law applying the provision, how the relevant actors have applied the provision in practice, and statements made by the actors as to their understanding of the provision and the obligations it creates for them. Other relevant rules of international law applicable to the situation and/or the actors are also considered, as is the drafting history of a provision. As this is an academic study, the commentary and opinions of academics are, of course, important to informing interpretation. While these sources of information listed are linked to Articles 31 and 32 of the VCLT, a flexible approach has been taken that does not strictly abide by the interpretation hierarchy set out in those provisions.

The final step in the interpretative process will differ depending on the source of the obligation. For obligations whose source is within the Rome Statute protection framework - made up of the Rome Statute⁹ and the legal documents that derive from the Statute, such as the ICC Rules of Procedure and Evidence¹⁰ and the Regulations of the Court¹¹ - the interpretation is subject to Article 21(3) of the Statute¹². This provision subjects all interpretations of the applicable law to a consistency test, in which they are measured for compliance with human rights. Article 21(3) is discussed in detail in the following Chapter. For obligations whose source is outside the Rome Statute protection framework, in other words the rest of international law, there is no similar provision to Article 21(3). In these situations, the author will propose an interpretation that best balances competing interests. Pursuant to the normative agenda stated above, the promotion of human rights will carry a heavy weight in this balancing.

1.5. Organisation of the Chapters

Following on from this present introduction, **Chapter 2** will set out the basis of the ICC and State obligations to protect human rights. This will include a discussion on the sources of law used in this study, an explanation of the concept of the Rome Statute protection framework and its use, and a discussion of the role of Article 21(3) Rome Statute. For the ICC in particular the chapter will explore if and how it is bound by general international law; for States in particular the chapter will cover how human rights law operates when States act in cooperation with international organisations.

⁹ Rome Statute of the International Criminal Court 1998.

¹⁰ ICC Rules of Procedure and Evidence ICC-ASP/13 2002 (ICC RPE).

¹¹ Regulations of the Court ICC-BC/01-03-11 2004.

¹² Article 21(3): 'The application and interpretation of law pursuant to this article must be consistent with internationally recognized human rights'

Chapters 3, 4, 5, and 6 make up the substantive chapters of the study. **Chapter 3** is the first chapter dealing with accused, and encompasses the stages of investigation, arrest, and interim release. **Chapter 4** continues with accused, and includes the stages of treatment in the enforcement State, acquittal, and release on completion of sentence. **Chapters 5 and 6** are dedicated to witnesses who need protection. Chapter 5 focuses on providing this protection on the territory of a State, whether this be the witness' home State or a third State, and Chapter 6 focuses on protecting witnesses that are located at the seat of the Court.

Chapter 7 is the concluding chapter of this thesis. It will set out a number of possible solutions to the structural and implementation problems identified in the substantive chapters, and will answer the question of whether human rights protection in the shared stages of ICC proceedings is adequate.