Preface

There are times when those who work in the academy or in public service and focus on justice and human rights may have doubts that human progress is possible, given the horrors that the world has witnessed in the last century and in the first decades of the twenty-first century. This was certainly the case for this author after close to two decades of academic and professional work in the fields of international human rights, justice and law. Then came along the opportunity to experience first-hand the work of those in the international arena who devote not only their professional lives, but also much of their personal lives, to building a global institution whose primary function is to promote peace and justice among our human family. The institution was the International Criminal Court, whose historic establishment is the culmination of centuries of humanity's desire to promote the idea that sustainable peace is only possible in the absence of impunity, as the first chapter of this work will discuss.

It was at the end of 2008 that I readily accepted an invitation to be a Visiting Professional at the International Criminal Court in The Hague in 2009. I opted for a position in the Legal Advisory Section of the Office of the Prosecutor. This choice was deliberate because I wished to understand how the early investigations and prosecutions were being shaped by the Office of the Prosecutor and, in particular, by the Chief Prosecutor, Luis Moreno-Ocampo.

The experience was immensely enriching as it made me realize that theoretical perspectives of the relationship between the search for peace and the thirst for justice in the intense conflict zones of our world must be tempered with the facts on the ground. The experience also convinced me that reality and truth lay somewhere between extreme positions on whether peace trumps justice or justice trumps peace.

As the discussion on the conflict in northern Uganda reveals in Chapter 4 of this book, the solution may be neither a peaceful settlement nor justice fulfilled, but instead may lie only in a military endgame. I have also learned that the interplay between desired prosecutorial strategies and ultimate judicial outcomes is hugely complex and rarely predicable. This is primarily due to the great challenges a permanent international criminal tribunal that is a court of last resort faces in gathering evidence, producing and protecting witnesses, and creating or building upon new modes of criminal liability, while also attempt-

ing to reconcile civil and common law methods of prosecution and judicial decision making.

Given the enormous complexity of the historic challenge laid before the International Criminal Court to combat impunity for the most serious crimes known to humanity and to promote the cause of international justice, there is fertile ground for the critics to throw barbs at the Court and its officials. The impact of such critiques, if not rebutted, could undermine the critical support from the international community needed for the future strengthening of the Court and could even imperil its legitimacy. For this reason, this work has attempted to examine the main critics and present relevant contrary perspectives based on what was experienced both while at the Court and in subsequent research and discussions with colleagues and officials connected to the Court around the world. Particularly, the contrary perspective is focused on the criticism that the Court has imperilled peace in several of the countries in which it has started investigations or prosecutions or has demonstrated bias against Africa. If not rebutted, such criticisms have the potential to cause, in the author's view, unjustified undermining of the Court.

However, it is also acknowledged that those who are focused on the daily challenges and complexities involved in the work of the Court should not lightly cast aside legitimate critiques of the Court or its officials. There is no global institution with such a complex mandate that is perfect. That also applies to the decisions of the Court as this text's critique of the Appeals Chamber in the Bemba prosecution will reveal. This second edition, in Chapter 2, also deliberately goes into significant detail to show where prosecutions and outcomes of cases since the first edition was published have either fulfilled the mandate of the Court or been less than satisfactory, giving valuable lessons for the more effective prosecution of future cases.

Certainly, given the fact that this historic global institution is in its infancy, it would be unreasonable for there not to be room for improvement and mistakes to be rectified. It has also become clear that the global fight against impunity regarding the most serious of international crimes cannot be waged by the Court alone. The co-combatants must be the entire international community and global civil society along with regional and multilateral organizations. To leave this global fight only to the International Criminal Court is to programme it for failure, as Chapter 5 of this book discusses.

The genesis of the work therefore comes from the linking of decades of theoretical perspectives with the exigencies of real-world facts and practical applications of international humanitarian and criminal laws now embedded in the ICC Statute and in the decisions of the International Criminal Court. The result is a work that denies there is a zero-sum game between peace or justice. Nevertheless, the final chapter of this work, Chapter 6, identifies the actual and potential threats to the future of the Court and how they can be dealt with.

Sadly, this second edition includes the hypocrisy of the UN Security Council as one of those threats.

At the time of writing the second edition of this text, the world has witnessed evidence of appalling war crimes, crimes against humanity, and genocidal actions around the world, especially in the Middle East, parts of Africa, and Myanmar, that seem to be conducted with impunity. In the face of this reality, it may be easy even for those that support the Court to give up on the cause of human justice. However, it is important to remember the wisdom of Martin Luther King, who said that “the arc of the moral universe is long, but it bends toward justice.” Given the relatively short amount of time that the ICC Statute and the Court have been in existence in terms of human history, even the smallest steps in the long journey to justice must be encouraged. The fight against impunity must never be given up.

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