Cour
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Court

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No.: **ICC-02/05-01/20**
Date: **16 April 2021**

PRE-TRIAL CHAMBER II

Before: **Judge Antoine Kesia-Mbe Mindua, Presiding Judge**
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN DARFUR, SUDAN

IN THE CASE OF
THE PROSECUTOR v. ALI MUHAMMAD ALI ABD-AL-RAHMAN ('ALI KUSHAYB')

Public Document

Response on behalf of the Victims to the Defence *Exception d'incompétence* (ICC-02/05-01/20-302)

Source: **Legal Representative of the Victims**

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Legal Representative of the Victims respectfully submits that the Defence 'Exception d'incompétence' challenging the Court's jurisdiction should be rejected because the arguments advanced by the Defence fail to establish the Court's lack of jurisdiction. First, contrary to the Defence argument, the United Nations Security Council Resolution 1593 referral of the Situation in Darfur does not violate any of the provisions of the Rome Statute. Second, the Court's exercise of jurisdiction over the crimes alleged in the arrest warrants is in accordance with the principle of 'no crime without law' reflected in the Statute. This submission is made on behalf of victims who have waited 17 years for the prospect of justice for crimes in Darfur and whose interests are directly impacted by the Defence's request that the Court dismiss the case for lack of jurisdiction.

II. PROCEDURAL HISTORY

2. On 16 March 2021, the Defence submitted a document entitled 'Exception d'incompétence' requesting that the Chamber declare that the Court has no jurisdiction over the case against Mr Ali Muhammad Ali Abd-Al-Rahman, also known as Ali Kushayb, (the 'Defence Challenge').[1] On 19 March 2021, the Prosecutor requested that the Chamber set out a procedure under rule 58(2) for responses to the Defence Challenge.[2] The Defence and the Office of Public Counsel for Victims responded to this request,[3] and on 25 March 2021 the Chamber issued an Order setting time limits for submissions.[4]

3. On 19 March 2021, the Single Judge appointed Ms Amal Clooney and Mr Nasser Mohamed Amin Abdalla as legal representatives of victims provisionally authorised to participate in this case.[5]

[1] ICC-02/05-01/20-302, ('Defence Challenge').
[2] ICC-02/05-01/20-313.
[3] ICC-02/05-01/20-315; ICC-02/05-01/20-318.
[4] ICC-02/05-01/20-321.
[5] ICC-02/05-01/20-314, para. 25.

III. SUBMISSIONS

4. The Defence Challenge to the jurisdiction of the Court should be rejected as neither of the two grounds advanced in the Defence's submission establish a lack of jurisdiction in this case.

Response to Ground 1: UN Security Council Resolution 1593 contained a valid referral of the Situation in Darfur to this Court

5. The Defence argues that the Court does not have jurisdiction in the case against Mr Abd-Al-Rahman because the referral of the situation in Darfur to the Court in UN Security Council Resolution 1593 is illegal.

6. The Defence argues that:

   i. the 'Darfur Situation' cannot be referred to the Court under article 13(b) of the Statute because it is limited to a specific geographic area within Sudan rather than applying to the whole country;[6]

   ii. The Court lacks jurisdiction because resolution 1593 fails to comply with article 115(b) of the Statute, which sets out sources of funding for the Court;[7] and

   iii. The passage of resolution 2559, terminating the mandate of a UN peacekeeping mission, violates articles 2 and 67 of the Statute and, as a result, deprives the Court of jurisdiction in this case.[8]

   None of these arguments demonstrate that the Court lacks jurisdiction.

(1) Resolution 1593 contains a valid referral of a 'situation' under article 13(2) of the Statute

7. The referral of the 'Situation in Darfur' in resolution 1593 is not contrary to the definition of a 'situation' in article 13(b) of the Statute. The Defence argues that the

[6] Defence Challenge, paras. 11, 17-32.
[7] Defence Challenge, paras. 11, 33-43.
[8] Defence Challenge, paras. 11, 44-52.

resolution does not validly confer jurisdiction under the Statute,[9] on the basis that article 13(b) does not allow the referral of a situation pertaining to a geographical area within a state.

8. This is not supported by any relevant authority. A plain reading of the text – as required by the Vienna Convention on the Law of Treaties[10] – does not limit the definition of a 'situation' to one relating to an entire state. The drafting history of article 13(b) does not indicate any intention to limit a Security Council referral in this manner.[11] Nor is there any limit on the legal authority of the Security Council to pass a resolution limited to a geographically delimited part of a country, something that is clearly within the Council's power under the UN Charter and which is common practice in a number of contexts.[12]

9. The Defence also argues that the referral is problematic because the geographic area referred to is imprecise.[13] While the alleged jurisdictional consequence of this claim is not clear, the claim is in any event erroneous. The external borders of the Darfur region in Sudan have not changed since Sudan's independence in 1956,[14] and all the localities listed in the arrest warrants and the Document Containing the Charges clearly fall within it.

10. Finally, the Defence argues that resolution 1593 follows a series of Chapter VII Security Council resolutions pertaining to Sudan as a whole and that resolution 1593's focus on 'Darfur' is a departure from them.[15] Even if all previous resolutions

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[9] The Defence states that it is not asking the Court to assess the conformity of the resolution with the UN Charter. See Defence Challenge, para. 32.

[10] Vienna Convention on the Law of Treaties (1969), art. 31(1).

[11] W. Schabas & G. Pecorella, 'Article 13 Exercise of Jurisdiction', in O. Triffterer & K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2016), pp. 690 – 702. E. Wilmshurst, '*Jurisdiction of the Court*' in R. S. Lee, The International Criminal Court – The Making of the Rome Statute: Issues, Negotiations, Results (1999), pp. 127-141.

[12] See e.g., Resolution 2497 (2019) (the situation in Abyei); Resolution 1570 (2004) (the situation concerning Western Sahara); Resolution 896 (1994) (the situation in Abkhazia).

[13] Defence Challenge, para. 21.

[14] See, e.g., 1963 US Library of Congress map; 1974 US Geological Survey map; 2003 USAID/United Nations Map; 2019 UN-OCHA map; 2020 UNAMID map.

[15] Defence Challenge, para. 20.

related to Sudan rather than Darfur, which they do not,[16] this has no bearing on the Court's jurisdiction. Nor does the fact that resolution 1593 itself refers in other clauses to 'Sudan' assist the Defence in establishing a lack of jurisdiction.[17] Indeed, the fact that the resolution notes that there is a threat to international peace and security in the country as a whole clearly includes Darfur within it and provides the necessary trigger for action under Chapter VII of the UN Charter.

(2) The question of funding does not affect the jurisdiction of the Court

11. The Defence asserts that resolution 1593 fails to validly confer jurisdiction on the Court because it provides that 'none of the expenses incurred in connection with the referral' would be paid for by the United Nations,[18] whereas article 115(b) of the Statute requires that the UN cover costs associated with a referral 'subject to the approval of the General Assembly'.[19]

12. But the question of whether the United Nations has provided funding to the Court has no bearing on the issue of jurisdiction. The Court and the UN negotiated a separate agreement addressing the terms of their relationship including any financial agreements.[20] Article 13 of that agreement regulates financial matters between the two entities and states that '[t]he United Nations and the Court agree that the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations pursuant to article 115 of the Statute shall be subject to separate arrangements'.[21] As legal scholars have confirmed, 'the language of Article 115 does not compel the United Nations to pay for [specific] expenses. There is nothing in the Statute that would prevent the Court

[16] See, e.g., UN Security Council Resolution 1564 (S/RES/1564 (2004)), which was adopted approximately 6 months prior to the adoption of resolution 1593 (SC/RES/1593 (2005)) and established the international commission of inquiry tasked with investigating violations of international law in Darfur.
[17] See, e.g., Defence Challenge, paras. 18, 30.
[18] Defence Challenge, para. 33 citing SC/RES/1593 (2005), para. 7.
[19] Defence Challenge, paras. 11, 33-43.
[20] Negotiated Relationship Agreement between the International Criminal Court and the United Nations, Art. 13 ('UN-ICC Relationship Agreement').
[21] Ibid.

from accepting Security Council referrals even if the UN does not pay for the expenses of those cases'.[22]

13. Further, as acknowledged by the Defence, both the Single Judge and the Presidency have previously dismissed successive Defence requests invoking article 115(b) of the Statute on the basis that the Defence does not have legal standing regarding the general administration of the Court, its financial management, or its diplomatic relations.[23] The Defence Challenge merely rehashes this argument, and it should be dismissed on the same basis.

(3) The Adoption of Resolution 2559 has no effect on the Court's jurisdiction in this case

14. The Defence argues that the Security Council's adoption of resolution 2559 – which provided for the withdrawal of a UN peacekeeping mission in Sudan on 31 December 2020 – negates the Court's jurisdiction in this case.[24] This appears to be based on the theory that the withdrawal constitutes a violation of articles 2 and 87(6) of the Statute because it deprives the Court of 'logistical and security support' for its activities in Sudan.[25] Again, the Defence has not established a violation of the Statute, let alone one that would deprive the Court of jurisdiction.

15. There is no violation of articles 2 and 87(6) because these provisions merely empower the Court to undertake certain activities. Article 2 provides that the 'Court shall be brought into relationship with the United Nations through an agreement', and article 87(6) provides that the Court 'may ask any

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[22] Mahnoush H. Arsanjani, 'Financing', in A. Cassese et al. (eds), *The Rome Statute of the International Criminal Court: A Commentary (Volume 1)* (2002), pp. 315, 325.

[23] See, e.g, ICC-02/05-01/20-101, paras. 7-8 ('the Single Judge notes that the request plainly falls outside the ambit of the Defence, and that the Defence has no legal standing to either evaluate nor provide recommendations regarding the Court's financial management'); ICC-02/05-01/20-180 , paras. 4, 6 ('The Presidency considers that issues concerning the general administration of the Court … do not give rise to an entitlement to a remedy for parties in proceedings [or] implicate any specific entitlement of the Defence').

[24] UNAMID was a joint African Union and United Nations peacekeeping mission, formally approved by United Nations Security Council Resolution 1769 on 31 July 2007, to bring stability to the war-torn Darfur region of Sudan. Defence Challenge, paras. 11, 44-52.

[25] Defence Challenge, para. 50. See also paras. 51-52.

intergovernmental organization to provide information or documents' and 'other forms of cooperation and assistance'. The Defence does not explain how termination of a peacekeeping mandate by the United Nations Security Council can be held to violate these provisions nor why peacekeeping should be considered a prerequisite to jurisdiction exercised by the Court pursuant to article 13 (b) of the Statute. As a result, this argument fails to establish the Court's lack of jurisdiction over this case.

Response to Ground 2: The Court has jurisdiction over the crimes alleged against Mr Abd-Al-Rahman because the referral does not violate the principle of 'no crime without law'

16. The second ground of the Defence Challenge should be rejected because the Court's exercise of jurisdiction does not violate the principle of *nullum crimen sine lege* – or 'no crime without law' – set out in article 22(1) of the Statute. The Defence also invokes article 24(1) of the Statute[26] but the relevance of this provision is not clear. Article 24 requires that the Court not adjudicate crimes committed before 1 July 2002, and the charges at issue in this case relate to 2003 and later.[27]

The Court has already determined that it has jurisdiction in this case and situation

17. The Defence accepts that in the earlier decision on the Prosecutor's application for a summons in this case, Pre-Trial Chamber I made a preliminary ruling that the Court has jurisdiction over this case.[28]

18. More specifically, Pre-Trial Chamber I determined that it 'may, where a situation is referred to it by the Security Council, exercise jurisdiction over crimes committed in the territory of States which are not Party to the Statute and by nationals of States not Party to the Statute'.[29] And it confirmed that it had jurisdiction over '[t]he Situation under investigation, from which the case against Ahmad Harun and Ali Kushayb arises, [which] has been defined as encompassing Darfur, Sudan since 1

[26] Defence Challenge, para. 53.
[27] See, e.g., Defence Challenge, para. 53.
[28] Defence Challenge, para. 9, fn. 4 and 5.
[29] ICC-02/05-01/07-1-Corr, paras. 16-17.

July 2002'.[30] It noted that 'the Prosecution Application refers to conduct alleged to have taken place in 2003 and 2004 in certain areas and villages of Darfur, Sudan' and that 'the Chamber finds that the case against Ahmad Harun and Ali Kushayb falls within the jurisdiction of the Court'.[31]

19. In the case of *Prosecutor v. Al Bashir*, which was also based on the resolution 1593 referral, Pre-Trial Chamber I determined that 'insofar as the Darfur situation has been referred to the Court by the Security Council, acting pursuant to article 13(b) of the Statute, the present case falls within the jurisdiction of the Court despite the fact that it refers to the alleged criminal liability of a national of a State that is not a party to the Statute, for crimes which have been allegedly committed in the territory of a State not party to the Statute'.[32] Similarly, in the case of *Prosecutor v. Abu Garda,* Pre-Trial Chamber I held that it had jurisdiction over the case because the factual allegations contained in the application for issuance of a summons corresponded to crimes punishable by the Court under the Statute.[33]

(1) There is no violation of article 22 of the Statute as the conduct was criminal under customary international law at the time of the events

20. The Defence argues that article 22 of the Statute, which prohibits a criminal conviction for conduct that did not constitute a criminal offence at the time it was committed, is violated because Sudan was not a party to the Rome Statute at the time of the events referred to in the arrest warrants and had not ratified other treaties codifying the crimes that have been charged.

21. A key issue implicated by article 22 is the requirement of notice: a suspect must be on notice, at the time he commits the charged acts, that those acts were criminal. As the Appeals Chamber of the ICTY put it, the accused 'must be able to appreciate that the conduct is criminal'.[34] But the accused need not know the precise source of the criminalisation. As the Chamber found, the word 'criminal' is defined 'in the

[30] ICC-02/05-01/07-1-Corr, para. 17.
[31] ICC-02/05-01/07-1-Corr, paras. 16-17. (prior to the severance of the case); *see also* para. 25.
[32] ICC-02/05-01/09-3, para. 40. See also para. 41.
[33] ICC-02/05-02/09-1, paras. 2-3.
[34] ICTY *Hadžihasanovic* Jurisdiction Decision (Appeals Chamber), para. 34.

sense generally understood, without reference to any specific provision': the 'emphasis [is] on conduct, rather than on the specific description of the offence in substantive criminal law'.[35] The Special Tribunal for Lebanon – a court created by a UN Security Council resolution – has reached the same conclusion.[36]

22. In this case, the Defence admits that the Court has jurisdiction over conduct constituting crimes defined under Sudanese domestic law '*or international law applicable in Sudan at the time*' of the relevant facts.[37]

23. The conclusion is, of course, inescapable, as it is clearly set out in article 15 of the International Covenant on Civil and Political Rights which provides that *either* domestic law *or* international law can provide the requisite notice to a person that their conduct is punishable.[38] Article 15 is a fundamental principle of law and Article 22 of the Rome Statute gives effect to it in the context of ICC proceedings.[39] According to article 15(1) of the ICCPR: 'No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, *under national or international law*, at the time when it was committed'.[40]

24. It is clear that 'international law' includes customary international law. Article 38 of the Statute of the International Court of Justice lists 'international custom' as a source of 'international law'. This is also confirmed in the drafting history of article

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[35] ICTY *Hadžihasanović* Jurisdiction Decision (Trial Chamber), para. 62.
[36] STL STL-11-01/I/AC/R176bis para. 136: 'What matters is that an accused must, at the time he committed the act, have been able to understand what he did was criminal, even if "without reference to any specific provision". The ICTY has emphasised that the fact that an accused 'could not foresee the creation of an International Tribunal which would be the forum for prosecution' does not change this result. See ICTY Delalic et al., Appeals Judgment, paras. 179-180.
[37] Defence Challenge, para. 54. See also paras. 82, 89.
[38] See International Law Commission, *Draft Statute for an International Criminal Court* (1994), commentary to draft article 39, para. 1.
[39] See B. Broomhall, 'Article 22 Nullum Crimen Sine Lege' in O. Triffterer & K. Ambos eds., *The Rome Statute of the International Criminal Court: A Commentary (2016)*, p. 955 (referring to Article 22 as its 'counterpart' for the ICC). However, the principle applies 'mutatis mutandis' – with increased flexibility in the international context. See B. Broomhall, 'Article 22 Nullum Crimen Sine Lege' in O. Triffterer & K. Ambos eds., *The Rome Statute of the International Criminal Court: A Commentary (2016)*, pp. 954-955.
[40] ICCPR, Art. 15 (1) (emphasis added). Sudan acceded to the ICCPR in 1986: see United Nations Treaty Collection, Status of ICCPR (16 April 2021).

15 of the ICCPR itself, which made clear that 'the term "international" law was to mean both international treaty law and customary international law'.[41] And the ICTY Appeals Chamber also determined that an international criminal court may impose criminal responsibility 'if the crime charged was clearly established under customary international law at the time the events in issue occurred'.[42]

25. It is well established that war crimes and crimes against humanity were crimes under customary international law in 2003-2004, the time of the relevant conduct in this case. As far back as 1995, the ICTY Appeals Chamber confirmed in the seminal *Tadić* decision that crimes against humanity were part of customary international law and that 'the definition of crimes against humanity adopted by the Security Council in Article 5 [of the ICTY Statute] comports with the principle of *nullum crimen sine lege*.'[43] Similarly, legal commentators have confirmed that the crimes against humanity listed in article 7 of the Rome Statute are in 'accord with the traditional conception of crimes against humanity under customary international law.'[44]

26. War crimes, including those committed in the context of a conflict of a non-international character, had also attained the status of customary international law prior to the drafting of the Rome Statute. The Report of the International Law Commission on the drafting of the Statute states that '[t]he Commission shares the widespread view that there exists the category of war crimes under customary

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[41] W. Schabas, *U.N. International Covenant on Civil and Political Rights: Nowak's CCPR Commentary*, p. 438 citing A/C.3/SR.1008, paras. 2-3, and A/4625, para 14. See also B. Broomhall, 'Article 22 Nullum Crimen Sine Lege' in O Triffterer & K. Ambos eds., *The Rome Statute of the International Criminal Court: A Commentary* (2016), p. 956, para. 20.

[42] *Hadžihasanovic* Jurisdiction Decision (Appeals Chamber), para. 51.

[43] ICTY Tadić Jurisdiction Decision (Appeals Chamber), para. 141; *see* Report of the Secretary-General pursuant to Paragraph 2 of Security Council Resolution 808 (1993).

[44] C. Hall & K. Ambos, 'Article 7 Crimes Against Humanity', in O. Triffterer & K. Ambos (eds.), *The Rome Statute of the International Criminal Court: A Commentary* (2016), p.158, para. 5. See also C. Stahn, *A Critical Introduction to International Criminal Law* (2019), p. 53: 'Crimes against humanity were included in the Statutes of major international criminal courts and tribunals, based on their recognition under customary international law.' The Special Rapporteur appointed by the International Law Commission to study the drafting of a crimes against humanity treaty confirmed the existence of responsibility for crimes against humanity in customary international law since the Nuremberg Charter, *see* A/CN.4/680 (2015), p.28.

international law . . . Reference is made here both to the "laws and customs" not only because the phrase is a hallowed one but also to emphasize its basis in customary (general) international law'.[45] Similarly, Rule 156 of the International Committee of the Red Cross Customary International Humanitarian Law Rules, the authoritative catalogue of the norms of customary international law, recognizes war crimes as a norm of customary international law applicable in both international and non-international armed conflict.[46] This conclusion is also confirmed by the ICTY Appeals Chamber in the *Tadić* jurisdiction decision.[47] And, as the Defence acknowledges, Sudan acceded to the Geneva Conventions of 1949 in 1957, prior to the events in issue.[48]

27. The Defence accepts that customary international law covers certain war crimes in article 8 of the Rome Statute in international armed conflict, but does not accept that war crimes in the context of non-international armed conflicts form part of customary international law, including those listed articles 8(2)(c) and (e), which form the basis of the charges against Mr Abd-Al-Rahman.[49] This position is not supported by the authorities cited above which relate to both international and non-international armed conflicts.[50] Further, the crimes under article 8(2)(c) are serious violations of article 3 common to the four Geneva Conventions of 12 August

[45] International Law Commission, 'Report of the International Law Commission on the work of its forty-sixth session', 2 May – 22 July 1994, ('ILC Report - 46th session') p. 39, para. 10.
[46]ICRC, Customary International Humanitarian Law, Volume 1: Rules (2005),(' ICRC Customary Law Rules') Rule 156, p. 568. The ICRC Rules are a product of a large-scale consultation process which started in 1996 to catalogue customary international law rules on international humanitarian law *existing* even prior to its publication (see p. xvii of the Rules).
[47] ICTY, Tadić Jurisdiction Decision (Appeals Chamber), para. 98. See also U.N. Doc. S/25704, 3 May 1993, para. 34: the ICTY 'should apply rules of international humanitarian law which are beyond any doubt part of customary international law'.
[48] Defence Challenge, paras. 67, 110. War crimes under Article 8 (2) (c) of the Rome Statute pertains to violations of common Article 3 of the four Geneva Conventions (*see* Statute, Article 8 (2) (c)). The adoption of Article 8 (2) (c) and 8 (2) (e) of the Statute merely consolidates the view that war crimes committed in non-international armed conflicts exist under customary international law even prior to the creation of the Court (*see* M. Cottier, 'Article 8 War Crimes' in O. Triffterer & K. Ambos eds., *The Rome Statute of the International Criminal Court: A Commentary* (2016), p. 308, para. 15). See also UN Doc. A/RES/2675, paras 3-5 (1970) on the protection of civilian populations and property in armed conflicts of any kind).
[49] Defence Challenge, paras. 107-111, 113-11.
[50] See above, para. 26.

1949 in the context of non-international armed conflicts.[51] Sudan ratified the Geneva Conventions in 1957, half a century before an arrest warrant was issued in this case.[52] The crimes under article 8(2)(e) apply to non-international armed conflict within the scope of Additional Protocol II.[53] Individual responsibility for violations of common article 3 and of Additional Protocol II in the context of non-international armed conflict has been consistently confirmed to constitute customary international law by the Appeals Chamber of the ICTY.[54]

(2) ***The conduct was also criminal under 'general principles of law' recognized by the community of nations***

28. According to article 15(2) of the ICCPR, an accused may be criminally convicted for any act or omission 'which at the time it was committed, was criminal according to the general principles of law recognized by the community of nations'. This source of law is separate from customary international law, as confirmed by the listing in article 38 of the ICJ Statute. It is also a separate basis on which a prosecution can comply with article 15 of the ICCPR – falling under article 15(2), rather than 15(1) – and by extension article 22 of the Statute.[55]

29. In this case, since it is clear that the conduct in question was criminal under customary 'international law',[56] and since international law provides sufficient notice to an accused under article 22, as the Defence concedes,[57] the Court need not address this issue further.

30. However, even if the legal characterisation of the relevant conduct was still in question, it is clear that the conduct that forms the basis of the charges is criminalised under international law. As the Appeals Chamber of the ICTY has

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[51] Statute, Article 8 (2)(c).
[52] Defence Challenge, para. 67 citing CICR, Base de données de droit international humanitaire, «Soudan».
[53] W.A. Schabas, An Introduction to the International Criminal Court (2020), p. 137.
[54] In addition to the authorities cited in the preceding paragraph, see also ICTY, Tadić Jurisdiction Decision (Appeals Chamber), 2 October 1995, paras. 116-117.
[55] See above, para. 23 of this Response.
[56] See above, paras. 25-27 of this Response.
[57] See above, para. 22 of this Response.

confirmed, it 'is universally acknowledged that the acts enumerated in common Article 3 [of the Geneva Conventions] are […] "criminal according to the general principles of law recognised by civilised nations"'.[58] This includes murder, mutilation, torture, cruel, humiliating and degrading treatment, and the taking of hostages in non-international armed conflicts.[59] And, as the Defence accepts, rape, murder, physical violence, and pillage of goods were crimes under national law at the relevant time.[60]

31. As the ICTY concluded:

> It is undeniable that acts such as murder, torture, rape and inhuman treatment are criminal according to "general principles of law" recognized by all legal systems. Hence the caveat contained in Article 15, paragraph 2, of the ICCPR should be taken into account when considering the application of the principle of *nullum crimen sine lege* in the present case. The purpose of this principle is to prevent the prosecution and punishment of an individual for acts which he reasonably believed to be lawful at the time of their commission. *It strains credibility to contend that the accused would not recognise the criminal nature of the acts alleged in the Indictment*.[61]

32. Here too, it strains credibility to contend that the suspect would not recognise the criminal nature of the acts alleged in the arrest warrants and Document Containing the Charges. There is no plausible basis for concluding that the suspect lacked notice that a criminal prosecution may ensue from his acts, nor does the Court lack jurisdiction to preside over his trial.

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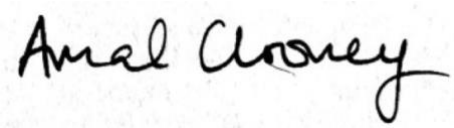
[58] Delalic et al., Appeals Judgment, para 173.
[59] See Geneva Convention I of 1949, Article 3 (common to all four Geneva Conventions of 1949).
[60] Defence Challenge, para. 91. See also para 103.
[61] Delalic et al., Appeals Judgment, paras. 179-180 (emphasis added). The Defence suggests that the Court should ignore ICTY jurisprudence because the ICTY Statute had less detailed definitions of the applicable crimes. Even if this argument had any merit, it is limited to the scope of the 'general principles of law' under Article 15(2) of the ICCPR in the Defence submissions and the Defence accepts that 'international law' under Article 15(1) of the ICCPR provides a basis for compliance with the Rome Statute. Compare, e.g., Defence Challenge, paras. 83-88 and 95, 99 with paras. 54 and 82.

IV. CONCLUSION

33. In light of the above, the Legal Representative of Victims respectfully requests that the Pre-Trial Chamber dismiss the Defence Challenge to the jurisdiction of the Court.



Ms Amal Clooney

Legal Representative of Victims

Dated this 16th day of April 2021