PROJECT FINAL REPORT

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Coordinator: Reykjavik University, Thordis Ingadottir (thi@ru.is)

Project website address: www.domac.is

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EXECUTIVE SUMMARY

DOMAC seeks to assess the impact of international courts procedures on domestic procedures for putting to trial the perpetrators of mass atrocities, with a view of maximizing such impact and improving thereby the quantity and quality of international and domestic response to mass atrocities. It thus strives to develop adequate research tools that would enable to gauge such impact, analyze the reasons for any successful demonstrable influence and seek explanations for failure to impact. It also tries to offer proposed methods through which such possible impact could be improved.

DOMAC participants are Hebrew University, Reykjavik University, University College London, University of Amsterdam, and Westminster University. During its 39 months period over forty researchers took part in the research, ranging from students to senior academics, requiring extensive fieldtrips as well as thorough desk research. The project has published numerous reports and several articles and book chapters in distinguished law journals and publications, which already are being cited by legal authorities, civil society and policy makers. A number of workshops, seminars and conferences were organized, co-sponsored by other universities, non-governmental organizations and governments. Among speakers and participants were key actors such as international and national judges, international and national prosecutors, governmental officials, officials of regional and international organizations, as well as academics and civil society.

DOMAC research was conducted within six substantive areas: Normative impact; Prosecution rates and sentencing policies; Capacity building; Case studies; The role of non-criminal international tribunals; and Reparations. The research highlighted the *actual* interaction between domestic, hybrid, regional, and international courts in mass atrocity cases, whether such interaction occurred in formal or informal settings. Views expressed in **DOMAC** report represent the opinions of the authors themselves.

DOMAC findings reveal that both domestic courts and international criminal tribunals are increasingly taking note of and referring to each other´s findings. This growing awareness will probably urge domestic courts in particular to substantiate their judgements, especially if they choose to deviate from the international course. **DOMAC** provided extensive data gathering which alone is very valuable contribution as for the first time a comprehensive set of data exists on mass atrocities related prosecutions in some 7 countries. Ultimately, the data did not establish clear causal relations between developments at the international and national judicial level. However, there is some evidence that shows the strengthening of national responses over time, – a finding which underscores the underutilization of some national legal systems in the first years after atrocities were committed and the concomitant significance of capacity development in promoting international justice through empowering national jurisdictions. Another finding of some of the reports is that categories of crimes established before international criminal courts influence the sentencing policies of national jurisdictions. With respect to capacity building, first, there are crucial difficulties in coherence, coordination and sequencing of capacity development initiatives, and this is the result of structural and not merely contingent features of the dynamics in this area. Secondly, existing efforts have been too focused on individuals and their capacities without adequate regard to the institutional and cultural context in which they are immersed. Finally, there are specific considerations relating to the institutional design of international and

internationalized courts and the balance of incentives for both domestic and international actors that largely account for the main successes and shortcomings in terms of impact on municipal legal systems. Their geographical, institutional and jurisdictional position vis-à-vis local authorities, the applicable laws before them, their exit strategies, their exit strategies, institutional culture and key policy incentives have determined the extent of the impact they had (or failed to have) in terms of enhancing the capacity of local courts. The case studies show that international courts can and often do impact national criminal proceedings in the aftermath of mass atrocities. International courts sometimes encourage, yet sometimes discourage the exercise of jurisdiction by national courts. They also facilitate through the "sticks and carrots" they have available (transfer of cases, complementarity) institutional and legal reform at the domestic level. Finally, international courts can contribute to domestic capacity development. Still, our research also suggests that design flaws, lack of resources, and lack of awareness, cause the potential for strong collaboration between national and international criminal law responses to mass atrocities to remain under-fulfilled. Comprehensive study of the European Court of Human Rights (ECtHR demonstrates that the judgments of the ECtHR are directly relevant to, and have the potential to have a very great impact on the capability of domestic legal systems to deal efficiently and in a fair way with gross violations of fundamental human rights. In particular, the minimum standards of effectiveness of investigations required by the positive obligations identified by the ECtHR are hugely important in ensuring that domestic legal systems are then able to mount effective prosecutions. The research outlined a number of measures through which the role of the ECtHR and Council of Europe institutions can be enhanced in relation to such politically difficult matters as the domestic prosecutions of gross human rights abuses committed by State agents. The International Court of Justice (ICJ) does not enjoy as strong jurisdiction as its regional counterpart. The list of cases before the Court illustrates the Court´s frequent lack of or limited jurisdiction to receive cases involving mass atrocities. States´ submissions also reveal hesitance to require opposing states to prosecute individuals at the national level, despite clear international obligation do so. Recent cases before the Court will hopefully break this practice. Parallel proceedings at the ICJ and ICTY illustrate some tension between addressing the individual accountability of state officials and establishing inter-state responsibility. Such tensions, if left unaddressed, may complicate both sets of proceedings and weaken their legitimacy in the eyes of key constituencies. International mass claims processes have had an impact beyond the countries concerned, and on other domestic and international systems, including the regulations of the International Criminal Court Trust Fund for Victims, and have served as encouragement for victims of abuses to pursue redress. The reparation research revealed that open-ended, non-exclusive claims processes may actually reduce litigation and quiet claims better than closed and exclusive mechanisms designed to 'end all litigation'. International claims processes need to take care not to run into conflicting goals of different international actors as well as national/international rivalries, e.g. on whether to direct resources towards legal capacity-building or human rights to reparation. At the ICC, clarity is needed on what states should handle and what the Court (and/or its Trust Fund) will handle when it comes to reparations. Positive complementarity is called for, rather than both sides sitting on their hands, as the framework arguably permits.

SUMMARY DESCRIPTION OF PROJECT CONTEXT AND OBJECTIVES

In the last decade international courts and tribunals have become major players in the fight against impunity and the enforcement of international criminal law. Since 1993, a number of new international criminal tribunals have been created to address some of the most serious violations of international criminal law: These include the two *ad hoc* tribunals created for Yugoslavia and Rwanda, the International Criminal Court, and a number of internationalized (or hybrid or mixed) criminal tribunals, such as the Special Court for Sierra Leone, the Special Panels for Serious Crimes in East Timor, the Extraordinary Chambers in the Courts of Cambodia, the Kosovo Special Supreme Court Chamber, the Bosnian War Crimes Chamber, and the Special Tribunal on Lebanon. The stated mission of these new tribunals has been to bring an end to impunity, and their creation was broadly perceived as a sign of the maturation of international law and as indicative of its improved enforcement capabilities. Contemporarily, a growing number of European countries started asserting during the 1990s universal jurisdictions over some international crimes, further contributing to the advancement of accountability and the rule of law in international affairs. During the same time, the ICJ received over twenty cases relating to international criminal law, including cases on international humanitarian law, genocide, and universal jurisdiction. The involvement of the ICJ generated additional pressure on states to improve their record of compliance with international criminal law. Finally, the ECtHR and the Inter-American Court of Human Rights have increasingly become involved in international criminal law as well. For instance, the courts have been seized to decide on complaints of suspects of international crimes who have claimed that their right to a fair trial or the *nullum crimen*-principle had been violated. Similarly, both courts have dealt with cases brought by victims of alleged violations of international humanitarian law.

Still, with the hindsight of almost 17 years since the beginning of this 'new wave' of international judicial proceedings seeking to establish legal responsibility for the perpetration of mass atrocities, it seems as if the contribution of international and internationalized courts to the overall fight against impunity has been somewhat disappointing: First, the jurisdictional reach of the international criminal courts created in the 1990s and 2000s has been, until now, rather limited, covering only a limited number of mass atrocity situations. Furthermore, the actual number of international prosecutions has been relatively small – pertaining only to a fraction of

the individuals suspected of perpetrating international crimes. Even where cases were initiated, the path to a judgment has not always been easy, clearly illustrated by the inability of the ICC prosecutor to enter Sudan, and the relatively large number of individuals accused by the ICC who are still at large.

At the same time, it is notable that the European and the international community have made a considerable financial investment towards the establishment and operation of the major international criminal tribunals. Hence, a question of cost-benefit assessment arises: Is the international criminal justice system structured and funded in a manner that maximizes its impact and in the way most conducive to the attainment of the system's goals? Question relating to judicial effectiveness also arise in respect of the role of the ICJ in handling cases arising out of mass atrocity situations. So far, the ICJ has been able to assert jurisdiction only in a handful of cases. Although most of those cases before the ICJ have resulted in a judicial finding that relevant international law norms have been violated, compliance with the Court's decisions has not been fully satisfactory. Furthermore, the cases before the ICJ that have dealt with questions of state responsibility have not necessarily led to corresponding criminal proceedings under national law. The same can be said about the human rights courts, where the courts´ repeated findings about lack of investigations and prosecutions in mass atrocity situations often seem to be ignored.

Against the backdrop of the shortcomings of the existing international judicial institutions, **THE DOMAC PROJECT** was established to develop an alternative, more comprehensive approach to international criminal law that would view national, international and internationalized courts as complementary parts of a single machinery of justice that should operate in a coordinated, if not synchronized manner. Such an approach may encourage a more rational allocation of material and political resources among different criminal courts and the restructuring of international institutions in ways more conducive to the promotion of criminal justice on the other levels.

The Objectives of DOMAC

THE DOMAC PROJECT seeks to assess the impact of international court procedures on domestic procedures for putting to trial the perpetrators of mass atrocities, with a view to maximizing such impact and improving thereby the quantity and quality of the domestic response to mass atrocities. It thus strives to develop adequate research tools that would enable to gauge such impact, analyze the reasons for any successful demonstrable influence and seek explanations

for failures to impact. It also tries to offer proposed methods through which such possible impact could be improved: Methods that may include the formation of formal – or semi-formal links between national and international courts, closer alignment of procedures and work methods, the generation of incentives for national courts to prosecute, reallocation of resources, sharing of staff, lending of support by international to the operation of national courts, etc.

THE DOMAC PROJECT seeks to improve the contribution of international actors to the formulation, development and implementation of policy at international or national level. The project thus tries to facilitate informed and more effective policymaking with respect to international criminal justice and responses to mass atrocities, with the overall goal of identifying overlapping, consistent, or conflicting approaches, and by proposing avenues towards piecing together the various fragments into a single coherent system.

The objectives of **THE DOMAC PROJECT** were reached within the project. Six interrelated RDT work packages were established:

- WP2: The interaction between international criminal tribunals and domestic jurisdictions as a catalyst for the improvement of international criminal law;
- WP3: Comparative examination of the number of prosecutions of perpetrators and sentencing policies in mass atrocity situations addressed by national and international courts;
- WP4: Identification and analysis of any formal or informal initiatives of international tribunals to contribute to capacity of domestic legal and judicial institutions for prosecutions in mass atrocity cases;
- WP5: Case study analysis – focus on the interplay between national and international courts in selected cases (Bosnia, Croatia, Serbia, Congo Sudan, Uganda, Sierra Leone, Rwanda, Colombia and, East Timor);
- WP6: Role of the International Court of Justice and the European Court of Human Rights in the enforcement of international humanitarian law and protection of human rights in mass atrocity situations;
- WP7: Comparative analysis of claims before domestic courts relating to international mass claims processes for reparations to victims of mass atrocities.

In light of the interdependence of various WPs, partners worked in close collaboration to ensure maximum use of resources, as well as to benefit from each other complementary expertise. Several researchers stayed for extended periods at one of the partners´ institutions.

Implementation of these research objectives required utilization of a variety of research methodologies, including data gathering, statistical analysis (e.g., of prosecution rates), legal analysis (e.g., study of constitutive instruments of international courts, analysis of court decisions), interviews with judges, lawyers and administrators working in national and international courts and other decisions makers responsible for configuration of criminal justice related policies, and investigation of case studies. Several field visits were conducted, including in Serbia, Croatia, Bosnia & Herzegovina, Sierra Leone, East Timor, Colombia, Rwanda, Congo, Uganda, and Cyprus. **DOMAC** also organized and participated in various conferences and workshops, both in Africa, North and South America, and Europe. Organization of these events was done in close collaboration and partnership with other universities, international organizations, governments, and both international and local non-governmental organizations.

THE DOMAC PROJECT has published numerous reports, including on normative impact, prosecutions rates, capacity building, and reparations. The publications include analyses of the International Court of Justice, International Criminal Court, International Criminal Tribunal for the former Yugoslavia, International Criminal Tribunal for Rwanda, Special Court for Sierra Leone, the Serious Crimes Panels in East Timor, the War Crimes Section in the Court of Bosnia and Herzegovina and the European Court of Human Rights.

All publications are available on the **DOMAC** website and several are also published in distinguished law journals. In addition, the results of **DOMAC** will be published in a forthcoming book format (probably with Oxford University Press).

DESCRIPTION OF THE MAIN S&T RESULTS

WP2: THE INTERACTION BETWEEN INTERNATIONAL CRIMINAL TRIBUNALS AND DOMESTIC JURISDICTION AS A CATALYST FOR THE IMPROVEMENT OF INTERNATIONAL CRIMINAL LAW

This Work Package has intended to gauge the normative impact of international criminal courts on domestic jurisdictions. Obviously, the normative influence of the ICC on domestic jurisdictions is structurally embedded in the principle of complementarity. This principle stipulates that national states should have priority with regard to the prosecution and trial of international crimes. To that purpose, they are expected to enact adequate criminal legislation and conduct criminal proceedings, applying legal standards which emanate from international sources. Only if national jurisdictions fail to perform their task properly, the ICC is called to intervene which naturally entails that the latter Court will assess whether the state has lived up to the international standards or not.

The ad hoc tribunals which initially have been established to exercise primary jurisdiction, acknowledging the perceived 'inability' or 'unwillingness' of the states on whose territory the international crimes have been committed, have also gradually expanded their normative influence over those domestic jurisdictions. Within the framework of their 'completion strategies', they have sought to transfer cases to national courts, maintaining a quality check on the latters' performance.

The *choice* of specific domestic jurisdictions has primarily been inspired by an urge to identify and analyze various patterns of relationships between international criminal courts and domestic jurisdictions (1). The gist of the research consisted of demonstrating how and in what areas the impact, if any, has materialized (2). The focus of the work package has been on substantive criminal law, although internationally driven developments in criminal procedure have been incidentally highlighted as well.

Ad 1) Relations between international (criminal) courts and domestic jurisdictions: from antagonism to co-operation

Bearing in mind the need for geographical diversification, **THE DOMAC PROJECT** opted to analyze domestic jurisdictions which reveal different attitudes towards international criminal law

and international criminal courts, ranging from co-operative partnerships to antagonism and distrust.

a) The first report has covered the prosecution and trial of international crimes by selected *Western* states – Australia, Canada and The Netherlands – which have not – at least not recently – suffered from the commission of mass atrocities on their territory, but have predicated their jurisdiction on the universality principle. It is increasingly acknowledged that such states may assist the ICC in its quest to end impunity.[1] Although these states reveal somewhat different approaches towards international criminal law and the ICC (see below, under (2)), their relationship towards the Court can generally be qualified as a 'co-operative partnership'.

b) The *Democratic Republic of Congo* (DRC) is illustrative for those – African – states which have partially outsourced the prosecution of international crimes by referring a situation to the ICC themselves. Parallel to such international proceedings, domestic courts in the DRC have endeavoured to bring lower perpetrators of international crimes to justice.

c) **THE DOMAC PROJECT** expected the relationship between the international criminal tribunal (ICTY) and the *Balkan*-states to be the most tense and discordant. The research has partially endorsed this assumption. Suspicious of the ICTY's presumed bias and lack of independence, Serbian and Croatian legislators and courts have sought to distance themselves from the ad hoc tribunal. The establishment of the Court of Bosnia and Herzegovina has unquestionably contributed to forge closer links between the ICTY and Bosnia, although the former Court has ventured to follow its own course.

d) Finally, *Colombia* has been included, because this country, in our view, best demonstrates the process of – what has recently been coined as – 'positive complementarity'. In this context, the Prosecutor of the ICC made every effort to assist the accomplishment of domestic prosecutions and trials, rather than heading for a disqualification of national initiatives and subsequent start of prosecution at an international level.

[1] Cf H. van der Wilt, 'African misgivings of Western style international criminal justice: In search of parameters for "legal colonialism" (forthcoming)

Ad 2) How and in what areas have international criminal courts influenced domestic jurisdictions?

One of the central hypotheses, underpinning the research of this Work Package, has been that domestic jurisdictions would be inclined to closely follow the elements of international crimes, as established at the international level, while they would have more leeway interpreting modes of criminal responsibility and grounds for excluding criminal responsibility.[2] Although there is some evidence buttressing this hypothesis, the research in general does not corroborate it. The major distinction is rather between states which open up their national legal order to (conventional and customary) international law and states which seclude their legal orders from international influences, requiring the implementation of international law through national legislation. This distinction cuts through preconceived divisions between the general and the special part of criminal law.

Examples of ICL-receptive approaches include the following:

- Canadian courts have relied heavily on the case law of the ICTY and the ICTR in their interpretation of the concept of 'incitement to genocide';
- By applying the elements as defined by the Elements of Crimes, assisting the ICC, a military court of the DRC has utilized a more expansive definition of the elements of rape and sexual violence than would be applicable under national law;
- Colombian courts have faithfully applied the concepts of criminal responsibility of co-perpetration and perpetration by means of an organization, as they have recently been developed in the case law of the ICC. Furthermore, the Colombian Constitutional Court has referred to provisions of the Geneva Conventions and the Rome Statute, highlighting the customary nature of these kinds of prohibitions based on case law of the ICTY;
- The Court of Bosnia and Herzegovina has predicated its interpretation of the crimes of rape and torture as war crimes and crimes against humanity on case law of the ICTY and provisions of the Rome Statute. The relationship between international criminal tribunals and domestic court was more complex, as it perfectly exemplified the process of 'cross-fertilization'. In the words of Antonietta Trapani: 'Essentially, the Tribunal

[2] See the inventory study H. van der Wilt, 'Equal Standards? On the Dialectics between National Jurisdictions and the International Criminal Court', *Int. Crim. Law Review*, Volume 8, Nos. 1-2 (2008), 229-272.

jurisprudence on these issues relied upon the more thorough and fleshed out histories of domestic realms in formulating its conclusions vis-à-vis the definition of the crimes, in turn, the domestic penal systems in transition are then given guidance in proscribing offences within their own criminal codes.'

Courts and legislators of other states have been far more reluctant in assessing criminal concepts in the light of international provisions and jurisprudence:

- In conformity with the rigid dualistic system, there is no evidence that Australian courts have been influenced by international jurisprudence in applying and defining the elements of international crimes;
- Croatian courts have struggled with the doctrine of 'command responsibility' as espoused by the ICTY. The reigning gap between international criminal law and national law in respect of this doctrine has not entirely been bridged. While the concept of command responsibility, derived from international criminal law, has entered into the domestic law through legislative amendments, the construction of the required elements reflects the national conception of the mode of liability.
- Despite the monistic inclinations of the DRC, its courts have not always been transparent in the way they have defined and applied the elements of crimes against humanity, nor to what extent they have been influenced by international jurisprudence.

Whereas the impact of international courts and tribunals on domestic jurisdictions has been in the limelight of the research which has been conducted in this work package, it was envisaged that the reverse influence would be scrutinized as well. References to domestic (criminal) law in the jurisprudence of the international criminal tribunals have incidentally been touched upon in the distinct reports. The topic has extensively been discussed in a separate publication.[3]

Obviously, one cannot draw sweeping conclusions from the exploration of a small sample of selected jurisdiction. The research does not sustain the currently fashionable lamentations, announcing the fragmentation of international law, nor does it prove the reverse thesis that a universally shared interpretation of international criminal law is gradually winning ground. What we can conclude, though, is that both domestic courts and international tribunals are increasingly

[3] Compare H. van der Wilt, 'National Law: A Small but Neat Utensil in the Toolbox of International Criminal Tribunals', *Int. Crim. Law Review*, Volume 10, No. 2 (2010), 209-241.

taking note of and referring to each other's findings. And this growing awareness will probably urge domestic courts in particular to substantiate their judgments, especially if they choose to deviate from the international course.

WP3: COMPARATIVE EXAMINATION OF THE NUMBER OF PROSECUTIONS OF PERPETRATORS AND SENTENCING POLICIES IN MASS ATROCITY SITUATIONS ADDRESSED BY NATIONAL AND INTERNATIONAL COURTS

This Work Package examines information that may establish any linkage between the operation of international criminal tribunals and the tendency of national courts to engage in criminal prosecutions in mass atrocity situations, to offer possible explanations for any positive or negative correlation that is identified, and to try and identify and explain any cross-influence between the sentencing policies of national and international criminal courts engaged in comparable mass atrocity prosecutions.

Unlike other Work Packages, that were mostly qualitative in nature, Work Package 3 has had a strong quantitative component. For each reviewed jurisdiction, data was collected as to the number of mass atrocity related criminal investigations initiated, the number of prosecutions, the number of convictions and sentences, and the outcome of any appeals processes. These numbers were contextualized in light of the structure of relevant legal systems and juxtaposed against the parallel records of international courts, which exercised jurisdiction over the same events. In addition, the reports noted important political and legal developments pertaining to the jurisdiction in question that may provide alternative explanations for fluctuations in the levels of investigation and prosecutions.

Ultimately, the reports authored under this Work Package do not establish clear causal relations between developments at the international and national judicial level. In most cases, the number of cases litigated before both fora were too small to establish a statistically meaningful correlation between the investigation and prosecution trends. Furthermore, since the operation of national criminal jurisdictions is impacted by a range of factors – domestic and international, legal and political, etc., it is difficult to assert on the basis of quantitative data only that international criminal courts have had a significant effect on the work of their national counterparts.

Still, the reports of the Work Packages are valuable in producing for the first time a comprehensive set of data on mass atrocities related prosecutions in some 7 countries (where

significant numbers of domestic investigations took place), which provides us with a clearer understanding of the actual division of labor between the national and international response to mass atrocities. There is also some evidence that shows the strengthening of national responses over time, expressing itself in a growing number of domestic investigations and prosecutions – a finding which underscores the underutilization of some national legal systems in the first years after atrocities were committed and the concomitant significance of capacity development in promoting international justice through empowering national jurisdictions. Another finding of some of the reports is that categories of crimes established before international criminal courts (war crimes, crimes against humanity and genocide) influence the sentencing policies of national jurisdictions (in the sense that crimes classified as war crimes attract less severe sentences than crimes against humanity, and crimes against humanity less than genocide).

The research for this Work Package consisted of review of public records and reports by international organizations and NGO representatives. In two cases – Croatia and East Timor, local professionals were hired to review case files, in order to complete gaps in the available information. In one case, Rwanda, the hired professional was denied access to court files by a decision made by officers in the Supreme Court. As a result, no report was authored on Rwanda. After it became clear in the course of the research conducted in other Work Packages that the number of cases in Sudan, Uganda, and Sierra Leone is too small to merit separate reports, these three countries were also removed from the list of reviewed jurisdictions.

Specific findings:

- There has been a gradual increase in the caseload of national courts in Serbia, Bosnia and Herzegovina and Kosovo since the end of the conflict in the former Yugoslavia. Such an increase coincides, *inter alia,* with domestic institutional reforms (such as the creation of special war crime chambers), as well as with the ICTY completion strategy.
- There is some correlation between the ethnicity of defendants before the ICTY and national courts in the Balkans (most defendants in all jurisdictions are Serbs). In Croatia, however, the number of trials against non-Serbs has arisen over time, and the conviction rates of Serbs have declined. This may be attributed in part to improvements in the quality of the local judicial system. In Serbia the numbers of re-trials for Serb defendants are relatively high, suggesting perhaps some ambivalence within the legal system towards the prosecution of local nationals for international crimes.

- The average sentences imposed by the Special Panels for Serious Crimes in East Timor were 7-10 years. This may suggest some leniency in the domestic criminal process.
- Congolese military courts tend to bring more cases against suspects belonging to government forces than armed militias. However, defendants belonging to government forces tens to be low-ranked; furthermore, death penalties are more prevalent in cases involving armed militias than government forces. In the same vein, most cases in Colombia have involved militia members, whereas the rate of successful appeals is higher for government forces than non-government forces. In both cases, the data may suggest certain biases of the local legal system against opposition forces.

WP4: IDENTIFICATION AND ANALYSIS OF ANY FORMAL OR INFORMAL INITIATIVES OF INTERNATIONAL TRIBUNALS TO CONTRIBUTE TO CAPACITY OF DOMESTIC LEGAL AND JUDICIAL INSTITUTIONS FOR PROSECUTIONS IN MASS ATROCITY CASES

The objective of WP4 was to identify and evaluate the impact of: (i) initiatives and activities of international or 'hybrid' tribunals to foster domestic capacity for prosecutions in mass atrocity cases conforming to relevant human rights and international criminal law standards; and (ii) other intergovernmental initiatives to foster such capacity in the light of the establishment of international criminal tribunals.

Specific tasks in this work plan included:

1. to map and identify specific capacity-related and outreach initiatives of international and internationalized criminal tribunals
2. to identify ancillary capacity-related impacts of international and internationalized criminal tribunals: for example, through the employment and/or training of local staff in investigations, as lawyers or in other capacities
3. to evaluate the impact of such initiatives and activities through interviews with tribunal staff, actors in the domestic criminal justice system (including local lawyers and judges), and other relevant individuals.

Summary of findings

In accordance with the work plan described above, the first phase of this research focused on identifying the main efforts directed to develop the local capacity to prosecute individuals for crimes under international law. This part of the research addressed several jurisdictions, including

Bosnia and Herzegovina (BiH), Cambodia, Central African Republic, Colombia, Croatia, DRC, East Timor, Iraq, Kosovo, Lebanon, Rwanda, Serbia, Sierra Leone, Sudan, and Uganda. The amount of information available was limited both in terms of its comprehensiveness and its quality. Yet, the data collected sufficed to identify the main trends and approaches towards capacity development in this sector in the different jurisdictions, to identify the main players, and to highlight the main difficulties and challenges these efforts face. [4]

The second phase of the research focused on gaining a deeper understanding of these issues through research and analysis focused on a more limited number of jurisdictions. This phase sought to provide an in-depth assessment of the influence that capacity development and related initiatives and processes have had on local judicial institutions and professionals, and to examine the causes of their achievements and their shortcomings. While drawing upon experience in a number of states, this work focused in particular on the experience of Bosnia and Herzegovina, Sierra Leone and Colombia. This allowed not only an assessment of specific initiatives, but also to better examine the synergies between different projects or programmes and between different institutions. The selection of these three jurisdictions as examples emerged from the conclusions of the mapping exercise: the three scenarios illustrate very different situations in terms of existing capacities, legal and cultural context and the involvement of different types of international or internationalized tribunals. The selection of these jurisdictions allowed examination of both formal and informal ways of developing local capacity: for example, initiatives developed mainly in the context of the completion strategies in both the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone, the "positive" complementarity regime of the International Criminal Court, and the experience in the Court of BiH. Our work sought to situate them in the broader narrative of international criminal justice by contrasting them with other available experiences, such as that in relation to the International Criminal Tribunal for Rwanda (ICTR) and the Extraordinary Chambers in the Courts of Cambodia (ECCC). The main purpose here was to assess the effect of international and internationalized tribunals and other participating agencies and institutions that aim at, or can potentially contribute to developing local capacity to conduct war crimes trials. Ultimately, however, the analysis provided has a forward-looking focus: although it addresses existing or past

[4] A. Chehtman and R. Mackenzie, *Capacity Development in International Criminal Justice: a mapping exercise of existing practice,* DOMAC/2, September 2009.

processes, dynamics, and synergies, it provides a critical approach to the issue of capacity development in international criminal justice.

Our main conclusions can be summarized as follows[5]:

- First, there are crucial difficulties in coherence, coordination and sequencing of capacity development initiatives, and that this is the result of structural and not merely contingent features of the dynamics in this area.
- Secondly, existing efforts have been too focused on individuals and their capacities without adequate regard to the institutional and cultural context in which they are immersed.
- Finally, there are specific considerations relating to the institutional design of international and internationalized courts and the balance of incentives for both domestic and international actors that largely account for the main successes and shortcomings in terms of impact on municipal legal systems. Their geographical and institutional position vis-à-vis local authorities, the applicable laws before them, their exit strategies, institutional culture and key policy incentives have determined the extent of the impact they had (or failed to have) in terms of enhancing the capacity of local courts.

Direct capacity development initiatives

These primarily comprise training programmes and workshops. While most international(ized) courts do not, at least initially, have a specific mandate to develop local capacity in the investigation, prosecution and trial of mass atrocity cases, nonetheless judges and staff of such tribunals have participated in these activities. Our research identified some of the common weaknesses or deficits in domestic criminal justice systems that such initiatives are designed to address. While such common needs clearly exist, our research highlighted the need to carefully tailor capacity development efforts to specific situation-countries. The level and type of needs that different legal systems face in post-conflict situations vary considerably. In this context, it is essential to conduct needs assessments before programmes directed to develop local capacities are put in place and to ensure that they fit the prevailing legal, political and institutional context. More precisely, it is crucial to get the balance right between accommodating inputs from local

[5] See A. Chehtman, *Developing Local Capacity for War Crimes Trials: Insights from Bosnia and Herzegovina, Sierra Leone and Colombia*, DOMAC Report, June 2011.

professionals as to what the perceived needs are, and insisting on basic conditions such as adequate procedural safeguards, establishment of adequate institutional incentives for local professionals (avoiding corruption and political influence), appropriate legal training, and adequate assistance and protection to victims and witnesses. Criticisms of such initiatives to date stemmed from the actual or perceived failure to conduct such needs assessments, to prioritise adequately among competing needs, and to consider the institutional, cultural and legal context of the capacity development activity. Evidence also suggested that there remain significant deficits in terms of long-term planning, coherence and coordination of activities. This is in part, due to inadequate or complete lack of needs assessments, insufficient local ownership over the process (or at least contribution by the relevant local stakeholders) and an extended neglect of the importance of self-education. But it is also due to the vested interest of each agency in maintaining control over their own activities, securing funds to guarantee survival, and in having success stories to show their relevant constituencies. These deficits result in significant inefficiency in terms of impact, and lack of sustainability of promising capacity development initiatives.

Indirect capacity development

Our research identified various types of activity of international(ized) courts that can or do impact in some way upon the capacity of domestic criminal justice systems to investigate and prosecute mass atrocity cases. These included 'on the job' training (in the rather limited situations where domestic investigators and lawyers from situation countries are recruited into the international(ized) tribunals); the transfer of files and information from international(ized) courts to national agencies; and legislative changes. Such interactions may be positive, negative or neutral, but their existence and effect largely depends upon the nature of the relationship between the international(ized) tribunal and the domestic system. So, for example, rather than capacity development from the 'top down', whether through direct training, study visits or the mere co-existence of international and domestic judges and court staff on internationalized tribunals, what was perceived as most effective was the development of actual, horizontal working relationships between international and national prosecutors and judges – in situations of shared, or concurrent, competence. In that sense, the most striking conclusion of this work is that capacity development in this field is to a large extent determined by structural and institutional dynamics, such as reluctance to hire nationals in international(ized) tribunals, or resistance from locals to be "chaperoned" by their international colleagues.

Accounting for effective capacity development in the justice sector: institutional incentives and constraints

Our research showed that institutional relationships, incentives and constraints shape the impact of international(ized) tribunals on domestic criminal justice systems. These include:

- jurisdictional relations between the international(ized) tribunal and national courts, and to a lesser extent the geographic location of the international(ized) tribunal;
- the applicable law in the international(ized) tribunal; and
- the exit (or 'completion') strategy, if any, implemented in respect of the international(ized) tribunal.

Thus, any comprehensive analysis of the impact of international or internationalized tribunals in developing local capacities in the justice sector must take into consideration the existing incentives that shape both the relevant policies towards the domestic judiciaries, and those of domestic judiciaries towards them. That is, the issue is whether the international(ized) tribunal has itself any concrete interest in local authorities handling part of the case load, and whether the international community can provide the right kind of incentives for the local constituencies to take a real interest in handling a portion of these cases domestically. Under this framework, we found that impact is generally driven by the way in which institutional relationships between the domestic and the international system are structured, namely, whether they are relationships of collaboration, competition, resentment, or mere indifference. Furthermore, we suggest that these incentives are to a significant extent shaped by the prevalent division of labour between the international and the domestic tribunals – their jurisdictional relationship. This situation is illustrated most aptly by the changing relationship between the ICTY and the Court of Bosnia and Herzegovina (BiH) in light of the ICTY Completion Strategy, where the need to bring the work of the ICTY to a close provided a prompt and strong incentive to enhance the capacity of local legal systems. This situation stands in contrast to the initial relationship between the ICTY and local courts under the 'Rules of the Road', whereby the ICTY would conduct its investigations irrespective of what took place domestically.[6] It also contrasts with the experience in relation to the Special Court for Sierra Leone, where the understanding

[6] See A. Chehtman, "Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases Critical Notes on a 'Success Story'", Journal of International Criminal Justice (forthcoming 2011).

that no prosecutions would take place before the domestic courts (due to the amnesty contained in the Lomé Peace Agreement) created no incentive for capacity development.

These conclusions have resonance as well for the work of the ICC now and in the future. In this context, we examined the impact to date in relation to the ICC's involvement in Colombia, and make some suggestions as to ways to develop informal institutional relationships to engage the type of collaboration in Colombia. Put shortly, the ICC has used the "threat" of an intervention in Colombia to push domestic criminal proceedings forward. This policy has been to some extent successful, but has significant shortcomings. On the one hand, it could result in a loss of credibility in the long run; and, on the other, if and when the ICC does decide to intervene in a given jurisdiction it may lose to a significant extent its capacity to influence local decision-makers. Hence, we suggest that the ICC's positive complementarity policy should include, both before and after intervention in a given situation, a greater number and range of incentives to promote and facilitate domestic action.

WP5: CASE STUDY ANALYSIS – FOCUS ON THE INTERPLAY BETWEEN NATIONAL AND INTERNATIONAL COURTS IN SELECTED CASES (BOSNIA, CROATIA, SERBIA, CONGO SUDAN, UGANDA, SIERRA LEONE, RWANDA, COLOMBIA AND, EAST TIMOR)

World Package 5 seeks to examine in detail the interplay between national and international courts in specific mass atrocity situations, to aim and understand the specific dynamics that may lead to competition or improved synchronization between national and international courts and to explore the practical and doctrinal problems associated with lack of coordination between national and international proceedings. Specifically, this Work Package integrates the work undertaken by three other Work Packages – WP2, WP3, WP4 – reviewing, respectively, the impact of international courts on the norms applicable in national criminal proceedings relating to mass atrocity cases, their impact on local investigation and prosecution rates and on capacity development. Where relevant, findings of WP6 dealing with the possible impact of other course, such as the International Court of Justice and the European Court of Human Rights were also considered.

The research conducted involved a review of literature, official state documents, reports by international organizations and NGOs, and on-site visits, in which interviews were conducted with international and national court officials, state officials, officers in international organizations, local academics and lawyers and NGO workers. Among countries visited by WP5

researchers were the Netherlands, United States, Rwanda, Tanzania, Sierra Leone, Uganda, Congo, East Timor; Serbia, Croatia, Bosnia and Herzegovina and Colombia. The ten reports prepared under WP5 were sent to international and local experts for comments; some of the reports were also presented in regional conferences that took place in Belgrade and Kampala and in the final PICT conference in Amsterdam.

General findings:

The research conducted largely corroborated our hypothesis that international courts can and do impact national proceedings, but that the cooperation between national and international courts involved in criminal proceedings has been up until now sub-optimal.

Impacts:

Our research shows that international courts sometimes play a role in encouraging or discouraging the operation of domestic criminal law systems. Furthermore, through employing the 'sticks and carrots' at their availability courts can encourage institutional and legal reform at the domestic level. Finally, cooperation between international and national criminal courts has the potential of developing the capacity of both sets of institutions.

Rates of prosecution – Our research shows that, at times, the existence of an international jurisdiction has been used as an explanation (or pretext) for domestic inaction in the face of mass atrocity crimes. Hence, during the 1990s, prosecutions in Bosnia and Herzegovina came to a halt by reason of the "rule of the road" – an agreement investing the ICTY with supervision over the propriety of national proceedings; similarly, the existence of the Special Court for Sierra Leone may have removed pressure from the local government to reconsider the almost blanket amnesty it legislated and to address mass atrocities relating to the civil war through the ordinary court system.

At the same time, the completion strategy, and the Rule 11bis avenue for transfer of cases from the ICTY to the Balkan states appears to have encouraged Croatia and Serbia to increase their efforts to prosecute war criminals. The threat of international proceedings may have also pushed the authorities in Colombia and Uganda to start domestic prosecutions, although in both cases the number of trials has been low.

Our research shows that international courts can play an important role in raising awareness to the need for criminal accountability and in legitimizing national efforts in that

direction. Hence, many interviewees were of the view that without the ICTY the number of proceedings in domestic courts in the Balkans would have been much lower. Similarly, proceedings in Congo appear to be related to the decreasing international tolerance towards impunity – a message underscored by the operation of the ICC

Institutional and legal reforms – Our research suggests that international courts have been an important factor in encouraging institutional and legal reforms at the domestic level. Such reforms may have been caused in part by the aforementioned awareness raising function of international courts, but, perhaps more directly, by the wish to meet international standards in order to qualify for international court driven cooperation arrangements and programs. Hence, the desire to receive cases from the ICTR and ICTY has led Rwanda and the Balkans states to undertake a number of important reforms, including the creation of special war crimes chambers (in Croatia, Serbia and Bosnia and Herzegovina), the adoption of new procedural codes (especially in Bosnia and Herzegovina), the development of internationally-consistent legal doctrine (for example, greater flexibility in assigning superior responsibility by Balkan courts), and changes in sentencing policies (e.g., the abolition of the death penalty in Rwanda). In the same vein, legal changes in Colombia and Uganda have been explained by reference to the principle of complementarity – a principle that enables the ICC to monitor the propriety of local proceedings.

Capacity development – Our research shows that over time strong professional links have been formed between national and international authorities involved in the prosecution of mass atrocity crimes: information is nowadays routinely shared between such authorities, professionals move between the systems, and there is greater appreciation of the need to learn from each others experience. The internship program at the ICTY is a particularly impressive model of such a capacity development exercise, as is the increased involvement of local professionals in the work of the Sierra Leone Special Court. On a more general level, the functioning of the War Crimes Section in the Court of Bosnia and Herzegovina offers a positive example of a model of cooperation with long-lasting effects, as well as spill over effects (to entity courts).

Shortomings:

The following recurring problems have been identified:

Lack of a comprehensive vision – The first generation of international criminal courts – the ICTY and ICTR – began operating with limited awareness to the untapped potential of national legal systems for addressing international crimes. In both cases, problems of capacity may have slowed

down the work of national courts; furthermore, proceedings that took place – especially, in Croatia and Rwanda, raised serious due process concerns. In addition, in both the Balkans and Rwanda, governments often lacked the will to bring to justice suspected perpetrators belonging to politically powerful ethnic groups. It is against this backdrop that the establishment of ad hoc international criminal courts has to be evaluated. Our research suggests that capacity issues were initially given little attention– they were either excluded altogether from the mandates of the ICTY and ICTR, or grossly under-budgeted. Furthermore, the courts themselves sometimes failed to consider the possible 'spill over' effects that their work may generate for local proceedings. Hence, for example, they did not always collect evidence through methods which would be admissible in local proceedings, they sometimes refrained from employing local experts, who could have subsequently been integrated in the local legal system, and even failed initially to translate some court decisions into local judgments. In other words, they were physically and mentally removed from the countries in which the international crimes in question have occurred.

This sub-optimal state of affairs has changed over time. Gradually, international courts have turned to regard themselves and national courts as involved in a cooperative judicial exercise. This 'learning curve' has coincided with the introduction of the completion strategy, which pressurized international courts to allocate some of their caseload to national courts. As a result, significant improvements can be identified in the second decade of the operation of the ICTY and ICTR in the flow of information between national and international authorities, in their day-to-day collaboration, and in the involvement of international criminal courts in capacity development.

The ICC internalized early-on some of these lessons and has adopted a policy of 'positive complementarity' designed to encourage national authorities to assume a significant part of the burden of investigating and prosecuting mass atrocity related crimes. The policy appears to have been somewhat successful with regard to Colombia, and has had some positive impacts on normative and institutional reforms in Congo and Uganda. Still, the Court's ability to tackle countries hostile to its jurisdiction – such as Sudan – is still very limited.

The third model of international judicial intervention in the aftermath of mass atrocities – hybrid or internationalized courts – was supposed to offer an even more promising avenue for developing a coordinated national-international response. Hybrid courts, such as Special Court for Sierra Leone, or internationalized courts, such as War Crimes Section in the Bosnia and

Herzegovina Court or the Special Panels for Serious Crimes in East Timor, offered the promise of a comprehensive response to mass atrocities harnessing local and international resources, and marked a possible avenue for lasting normative reform and expertise transfer. Our research, however, shows that the success of this model in pushing prosecution rates, inculcating international norms and building capacity, has been partial at best. Whereas the Bosnia Court appears to have generated an all-in-all impressive case law, the Sierra Leone has dealt with a meager number of cases (involving major actors, though). Disappointedly, it appears that the impact of both the Sierra Leone Court and the East Timor Panels on the ordinary judiciary has been minimal. Hence, after the dismantling of the East Timor Panels, prosecutions came to a halt; the same outcome can be found in Sierra Leone. Even in the field of capacity development, results have been not as good as expected. Local employees often occupy low-ranking positions, local court officials complain of a 'brain drain' from the ordinary system to the hybrid court (and from the country to other countries where international organizations operate), and the relevance of the experience accumulated in the hybrid or internationalized courts is at times unclear to local legal elites.

Lack of resources – Even when a comprehensive approach has been internalized by the relevant international court – such as in the case of the ICC - our research suggests that international courts may lack the necessary resources – manpower and budgets – to create meaningful links with national judicial institutions. Hence, the 'positive complementarity' policy of the ICC has been unable to have a strong impact in complex situations such as Congo and Uganda, where serious problems of capacity and/or political will are encountered. Similar problems have also haunted the ad hoc courts – during the first years of their operation (where outreach activity – an important aspect of capacity development and norm internalization – was not budgeted at all, or severely under-budgeted), and hybrid and internationalized courts. In part, because of the disconnect between needs (the multiplicity of judicial functions) and resources, international courts have sometimes rejected any role in the field of capacity development or other forms of interaction with the local legal system. As a result, lack of resources served as a disincentive to the development of a comprehensive approach to criminal adjudication.

Lack of ultimate responsibility – another complicating factor we have identified, which exacerbated the 'tunnel vision' problem – the tendency of international courts to examine the situation from their idiosyncratic needs perspective – is the lack of clear lines of responsibility. The involvement of numerous international actors in countries rebounding from mass atrocities – such as, the UN,

EU, OSCE, and donor countries – generates uncertainty as to who should be taking the lead in fostering the national legal response to mass atrocities. In fact, our research suggests that officials in international courts often cite the existence of other international agencies as reason why it should not get involved in capacity development. At the same time, we observed that international agencies other than courts, also face resource limits, and often lack a comprehensive vision on criminal adjudication. Thus, for example, in the first decade after the end of the war in the Balkans, the EU has applied considerable pressure on Croatia to cooperate with the ICTY, but almost no pressure to revamp its domestic legal system and to rectify its due process problems and selective prosecution practices.

Lack of legitimacy – Finally, our research suggests that the impact of international courts on national legal systems is often hampered by lack of legitimacy of the former in the eyes of key players in the latter. Thus, for example, perceptions of the ICTY as anti-Serb or anti-Croat, may have led to the rejection of the Court's case law by some local judges, and could have slowed cooperation with those institutions by local governments. In the same vein, key functionaries in the Sierra Leone judicial system view the Special Court with suspicion, and pays little heed to its decisions. Arguably, the impact of the ICC in Uganda and Sudan suffers from similar problems. While certainly not a panacea to image problems (which are sometimes the product of manipulations by local politicians), the limited awareness and resources allocated by international courts to outreach programs may have exacerbated some of these tensions between national and international institutions. In addition, we remain unconvinced as to the wisdom of some court design issues, with legitimacy implications – such as not appointing a Rwandan judge at the ICTR, or not conducting any of the ICTY or ICTR hearings in the respective countries.

In sum, our research suggests that design flaws, lack of resources and lack of a comprehensive vision, cause the potential for strong collaboration between national and international criminal law responses to mass atrocities to remain under-fulfilled.

WP6: THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE AND THE EUROPEAN COURT OF HUMAN RIGHTS IN ENFORCEMENT OF INTERNATIONAL HUMANITARIAN LAW AND PROTECTION OF HUMAN RIGHTS IN MASS ATROCITY SITUATIONS.

The inclusion of these tribunals was considered paramount in the overall picture of international criminal justice and fight against impunity. While international criminal tribunals play a major role in enforcement of individual responsibility the International Court of Justice and European Court of Human Rights have no less prominent role – that is to enforce national prosecutions at the national level via state responsibility. States have undertaken a number of obligations to invesigate and prosecute individuals for serious human rights violations and grave breaches of international humanitarian law, includingin under the European Convention on the Protection of Human Rights and Fundamental Freedoms and the Geneva Conventions of 1949. However, enforcement of that obligation has always been problematic: states have been very reluctant to prosecute their own forces. International criminal tribunals were a major development in prosecution of individuals, but as has been illustrated, they can and will only deal with handful of cases. Due to lack of jurisdiction and sources international criminal tribunals will never substitute the need of national prosecutions. The role of the International Court of Justice and human rights tribunals to enforce states´responsibility to investigate and prosecute serious crimes at the national level is therefore of major importance.

Role of the European Court of Human Rights

The research focused on the role played by the European Court of Human Rights ("ECtHR") in enhancing the capability of domestic legal systems of the State Parties to the European Convention on the Protection of Human Rights and Fundamental Freedoms ("ECHR") to effectively investigate and prosecute serious violations of fundamental human rights committed in the context of armed conflicts, military occupation or situations of prolonged and intense internal unrest as the result of terrorist activities. In light of the overall aim of **THE DOMAC PROJECT**, the research analyzed through the medium of case studies the discrete question of the way in which the interaction between the ECtHR (and other relevant organs of the Council of Europe, in particular the Committee of Ministers) and the national authorities in Member States has fostered the development of domestic institutional structures, legislation and procedures aimed at ensuring effective accountability for serious human rights violations. In addition, it examined the extent to which these developments have been effective in ensuring that prosecutions are brought to justice, and meaningful sanctions imposed on those responsible. More specifically, the first objective of the research was to examine whether, to what extent and

how the States parties to the ECHR have complied, or are currently complying, with judgments of the Court relating to situations of gross human rights violations, characterized by violations of Article 2 (right to life) and Article 3 (prohibition of torture and inhuman and degrading treatment). Second, the research assessed whether, quite apart from the question of direct compliance with specific judgments in individual cases, the Court's judgment have had a broader impact on the capability of the domestic legal systems in question to investigate serious violations of fundamental rights and prosecute those responsible.

The research was carried out in two different strands. The first strand focused on four case studies dealing with situations of widespread and serious violations of human rights committed by agents of State which have been parties to the ECHR for a relatively long period of time (in particular, the case studies concerned the events in Chechnya during the "Second Chechen War" 1999-2001, the actions of members of the Turkish security forces in the context of the conflict with the PKK; the actions of the Turkish security forces in northern Cyprus; the actions of the United Kingdom security forces in the context of the "Troubles" in Northern Ireland). The findings of this part of the research are presented in a comprehensive report issued by **DOMAC** in July 2010.[7] The second strand focused on the role of the case-law of the ECtHR in states which are relatively new to the ECHR system and were not parties to the Convention at the point where the atrocities took place, namely Croatia and Bosnia Herzegovina. This latter strand of the research explored two specific issues which are particularly relevant in the context of domestic prosecution of war crimes, namely, the application of the principle of legality under Article 7 ECHR and the applicability of the fair trial guarantees as enshrined in Article 6 ECHR.

From both strands of the research emerged that the judgments of the ECtHR are directly relevant to, and have the potential to have a very great impact on the capability of domestic legal systems to deal efficiently and in a fair way with gross violations of fundamental human rights. In particular, the minimum standards of effectiveness of investigations required by the positive obligations identified by the ECtHR are hugely important in ensuring that domestic legal systems are then able to mount effective prosecutions.

[7] *Report on Compliance with judgments of the European Court concerning serious violations of human rights committed by State agents and their impact on domestic investigations and prosecutions* (DOMAC/7, July 2010).

The research outlined a number of measures through which the role of the ECtHR and Council of Europe institutions can be enhanced in relation to such politically difficult matters as the domestic prosecutions of gross human rights abuses committed by State agents.

The measures in question can be divided into measures to be adopted by the ECtHR, by the Committee of Ministers and by other Member States of the Council of Europe. With regard to the first category of measures, the research advocates a more robust approach to just satisfaction under Article 41 ECHR, in particular through the indication of specific measures to be adopted by the State by way of just satisfaction. By setting out clearly and specifically what remedial measures should be adopted by the respondent State, the ECtHR would undoubtedly foster increased compliance with its judgments and enhance their impact on the wider legal system. Such an approach would reduce the ability of States to claim, in the context of monitoring of compliance by the Committee of Ministers, that the minimal measures they have adopted constitute adequate compliance. A further proposed measure is the adoption of "pilot judgments" in some of the cases under consideration. Admittedly, such an approach is not without its problems. In particular, in contrast to the types of cases at issue in the case studies, the situations which have previously been found suitable for the "pilot judgment" procedure have generally involved large numbers of similar violations in which there was no significant dispute over the facts. By contrast, applications involving violations of the right to life or the prohibition of torture and ill-treatment, especially if occurring in the context of armed conflict and a wider pattern of alleged violations, will very often involved substantial disputes of fact both as to precisely what occurred and as to who was responsible. However, given the systemic problems which are at the basis of the deficiencies identified by the Court as regards investigation and prosecutions in some of situations examined by the case studies, consideration should be given as to the ways in which the "pilot judgment" procedure might be adapted and expanded with a view to improving compliance. Finally, opportunities are provided by the new enforcement procedures introduced by Protocol No. 14, in particular the possibility for the Committee of Minister to refer to the Court the issue of whether a State has adequately complied with a judgment. As for measures involving the Committee of Ministers, the primary recommendation is that the Committee be far more rigorous in its examination of compliance before taking a decision to close its consideration of compliance with particular judgments of the Court. This would require an assessment not only of the *formal* adoption of general measures in compliance with a judgment, but also as whether those measures had in fact resulted in a *concrete* impact within the legal system in question. In addition, in extreme cases of persistent non-

compliance, the Committee of Ministers should consider the possibility of suspension or withdrawal of membership of the non-complying State pursuant to Article 8 of the Statute of the Council of Europe. Following the entry into force of Protocol No. 14, the Committee of Ministers should also ensure that it makes effective use of the new additional enforcement mechanisms envisaged. In particular, it should ensure that it makes appropriate use of the possibility under Article 46(3) of the Convention (as amended) of referring instances of failure to comply with final judgments back to the Court. Obviously, the decision whether or not to refer a case back to the Court will be subject to political considerations. However, where a State has consistently denied that it is required to adopt the measures recommended by the Committee in order to ensure effective compliance with a judgment of the Court, or has argued that the measures it has adopted are sufficient, the effectiveness of the Convention system requires that the Court should be given the opportunity to resolve the dispute authoritatively, rather than the matter being allowed to be dragged out over prolonged periods of time.

Finally, as for measures involving individual Member States of the Council of Europe, the obvious means at the disposal of other Member States is an increased resort to the inter-State complaint procedure under Article 33 ECHR. In this regard, a number of problems historically related to inter-State applications (and in particular the risk of politicization) could be avoided by the bringing of cases jointly by coalitions of States.

Role of the International Court of Justice

In the last decade, the International Court of Justice ("ICJ" or "Court") has received a number of cases relating to international humanitarian law and gross violation of human rights. The research focused on three aspects: First, the jurisdiction of the ICJ with respect to these cases; second, the impact of these cases on national prosecutions; and third, the inter-relations between the cases at ICJ and parallel cases at international criminal tribunals.

To say the least, many situations involving violations of international humanitarian law and gross violations of human rights never reach the Court. The Court´s jurisdiction is still based on state consent and with only 66 declarations under the optional clause (even many of those contain far reaching limitations) it has never been close to become the "world court" or for that matter the "the principal judicial organ" of the United Nations. Many cases did not make it through the jurisdictional hurdle, such as the *NATO cases*, and *Congo v. Rwanda*. A major conflict, occupying the agenda of the international community for decades -the Israel-Palestinian conflict-

only reached it a few years ago to the Court as a request for an Advisory Opinion (and then only one aspect of the underlying dispute), a procedure not binding on relevant parties. Many of the cases that did reach the Court did so based on provisions in treaties, i.e., the jurisdictional clause in the Convention on the Prevention and Punishment of Genocide (*Bosnia and Herzegovina v. Serbia* and *Croatia v. Serbia*). This left the Court with jurisdiction strictly limited to violations of those treaties – excluding any considerations of possible violations of other human rights treaties or international humanitarian law. In other cases, the potential jurisdictional base is limited, and the Court has taken a restrictive approach in determining whether certain preconditions to the exercise of its jurisdiction established by the relevant treaty have been met (International Convention on the Elimination of All Forms of Racial Discrimination in *Georgia v. Russian Federation*, 2011). Only in one case was the Court endowed with a broad jurisdiction, the *Armed Activity Case (Congo v. Uganda),* and was able to base its findings on all major instruments of human rights and humanitarian law. But even here the situation cannot be regarded as satisfactory as, for want of jurisdiction, the Court found itself in a position where it had no jurisdiction to decide another case related to the same broader conflict (*Congo v Rwanda*).

Realistically, the Court will only be able to exercise jurisdiction over cases of concern if more states parties to the Court accept the compulsory jurisdiction under Article 36(2) of the Statute of the Court. A second option is to add jurisdictional clauses to major conventions, such as the Geneva Conventions of 1949. In the absence of compromissory clauses, the enforcement of most UN human rights conventions and the Geneva Conventions of 1949 are truly left at the mercy of states parties. However, in an era of fight against impunity and general trend towards compulsory jurisdiction both options are worth the pursuit. A further step towards enhancing the role of the ICJ in realizing the goals of international criminal justice rests with the Court itself. The ICJ could be expected to exercise jurisdiction where a basis for such jurisdiction exists, and to avoid approaches that restrict its role in this regard.

In general, states have a good compliance record with decisions of the ICJ. The cases involving mass atrocities do not reveal the same pattern. Non-compliance with preliminary orders of the Court both in *Bosnia & Herzegovina v. Serbia* and *Congo v. Uganda* are good examples. The recent transfer of Ratko Mladic to ICTY is also a case at point, taking place 4 years after the ICJ decisions to that affect, let alone 16 years after his indictment at the ICTY. The cases demonstrate the reluctance of states to enforce decisions of ICJ. It could been argued that the enforcement mechanism at place, the role given to the Security Council in Article 94 of the

Charter of the United Nations, has not been applied rigorously. Evidently, the issue of non-compliance with decisions of the Court is much rather of political nature rather than of a lacuna in the legal framework of the Court. Ironically, in the few cases that states did comply with the decisions of the ICJ, it at times had a negative impact on national prosecutions. For instance, following the decision of the Court in *Belgium v. Congo* national authorities in Belgium narrowed considerably its national legislation regarding universal jurisdiction. The Court found in *Bosnia & Herzegovina v. Serbia* that Serbia had no obligation under the Genocide Convention to the prosecute individuals for the genocide committed, as it took place outside the territory of Serbia. Finally, one should always keep in mind that an evaluation of compliance with decisions of the ICJ is fraught with difficulties. Most cases before the Court were adjudicated in a midst of dynamic political reality, with many competing forces having an impact on developments at the national level, such as changes in governments, membership applications to regional organizations, loan application to international organizations, etc. For instance, after the decision in the case of *Bosnia & Herzegovina v. Serbia* the Serbian government improved its co-operation with the ICTY. However, it cannot be established that the ICJ decisions was a decisive factor in that development, much rather the country´s negotiations with the European Union on the Stabilisation and Association Agreement.

In the same manner, the cases demonstrate a reluctance of states to enforce states obligations to prosecute at the national level. This is evident in states´ submissions. States hardly include in their submissions the duty of a state to prosecute, not even as a primary obligation, what then as a secondary obligation (as a form of reparation). This was in particular evident in the *Armed Activity Case*, compelling one judge to address this issue in a separate decision. The practice is very surprising given the nature of the some cases, the clear obligation undertaken by states to prosecute, cf. the Geneva Conventions of 1949, and the undisputed obligation of states to give satisfaction for the injury caused, including by penal action against the individuals whose conduct caused the internationally wrongful act, cf. Article 37 of the International Law Commission´s Draft on Rules of Responsibility of States for Internationally Wrongful Acts. Recent cases, such as *Belgium v. Senegal*, where the primary submission is the obligation of Senegal to prosecute Mr. H. Habré, will hopefully brake this pattern. The missed opportunity in earlier cases is regrettable, in particular in light of the lack of the enforcement of the obligation at the international level.

Despite the weaknesses described, one would assume that the findings of ICJ could still have a major relevance at both national level and international level. However, while the ICJ did make a finding that an atrocity took place, such as in Srebrenica and various locations in Congo, it did not have an impact on the number of prosecutions at the national level. Indeed, only a handful of national cases made use of that finding. The ICTY has hardly made any use of findings of the ICJ in the *Bosnia & Herzegovina v. Serbia,* and same can be said about the International Criminal Court with respect to *Congo v. Uganda.* Similarly, the UN Human Rights Committees did not make note on the Court´s findings in their reports.

It can also be argued, in particular from the victims´ point of view, that the states´ discretion at the Court is not always bringing justice home. Even when a state holds a decision of award of reparations enforcement seems not to be its primary consideration. Hardly has the Court found a state in such serious breaches of obligations under peremptory norms of international law as in the *Armed Activity Case* and as a consequence found that Uganda had an obligation to make reparations to Congo. As before, only failing a settlement between the parties should the question of reparations be decided by the Court. Now six years later such a settlement has not been reached. Of more importance, under traditional international law, those reparations are the state´s, not its citizens and victims. It is to be wished that the Court will have the opportunity to access reparations. It will be closely watched whether the Court will follow its careful steps taken in its Advisory opinion in the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,* acknowledging individuals rights to reparations and also stating that reparations must be awarded to those who had suffered damages by the state of Israel. Such a development would be consistent with development in other forums, such as at the human rights tribunals, international criminal tribunals and mass claims mechanisms, such as the United Nations Compensation Commission

WP7: REPARATIONS FOR MASS ATROCITY AND THE INTERACTION BETWEEN INTERNATIONAL CLAIMS MECHANISMS AND DOMESTIC COURTS

Reparations and criminal procedures

The first report of the work package addressed the question of how reparations fit within a project such as **DOMAC**, which is focused on criminal procedures.[8] Throughout the research period, the relevance and connections became increasingly obvious, not only through the project collaboration, but also through input from other institutions and from external events. For example, at the same time as **DOMAC** winds down, the first trial at the International Criminal Court (ICC) draws closer to an end, and the Court now urgently needs to clarify its policy on reparations in time for conducting its first reparations proceedings. At the same time, the 'Arab spring' of 2011 has brought ICC indictments and the seizing of assets, and claims for reparations will surely follow throughout the region.

Such claims, if unresolved, have a tendency to linger on, as EU member states were reminded in November 2009, when the President of the Czech Republic signed the Treaty of Lisbon after being reluctant to do so out of a concern that it could lead to a flood of property claims by Germans expelled from the country after World War II. Thus, 70-year-old property claims stood in the way of a regional treaty entering into force for 27 member states.

Despite growing recognition of the legal and moral justifications for victim reparations in international law, the ad hoc criminal tribunals – the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) – were given limited tools to facilitate reparation. In 2000, the ICTY President explained that the ICTY judges all agreed that the need of the victims to obtain compensation was fundamental for restoration of peace and reconciliation in the Balkans, but that the Tribunal should not be responsible for introducing the compensation mechanism. The ICTY's Rules Committee was instead asked to undertake a thorough examination of the matter, and it found that victims were entitled to reparation under international law but suggested that an international compensation committee, modeled on the United Nations Compensation Commission (UNCC) [9] would be a better solution. The

[8] On the rationales for including such non-courts and civil suits as part of the DOMAC study, see WP7 Inventory Report, www.domac.is.

[9] See discussion of UNCC in Report of WP7 Workshop II, www.domac.is.

Extraordinary Chambers in the Courts of Cambodia (ECCC) has a civil party procedure but has thus far not been a resounding success for victims.

The number and resources of international courts is insufficient to process large numbers of reparations claims, and national courts have been reluctant to admit such cases. The credibility of the human rights movement suffers because of the general lack of reliable mechanisms for delivering remedies to victims of egregious human rights violations. The quest for human rights class actions in domestic courts has brought to light the procedural problem that national codes of civil procedure were not designed to deal with mass actions on atrocities. Two groups of lawyers and academics are finding themselves having to work together, namely proceduralists and human rights lawyers. Some would say there is an impending clash between human rights class action litigations and the harmonization and development of procedural law.[10]

Focus of the work package

WP7 focused on areas of international practice relating to private reparations claims for public international law violations. Two main areas were looked at:

- The impact of international mass claims processes (MCPs), which are in a sense an 'outsourcing' of the judicial function into more or less self-contained regimes that issue final and binding decisions with flexible procedures tailored to each factual situation. MCPs have been a laboratory for testing and developing procedural and technical solutions for reviewing and deciding hundreds of thousands of claims that domestic courts routinely refuse to address on the merits (on grounds of immunity or political question doctrines and deference to the executive branch), or do not have the procedures or resources to handle.
- Decisions of international courts concerning domestic reparations, to the extent that they were called upon to evaluate domestic and mixed (international/ domestic) claims mechanisms.

Influence of MCPs on domestic procedures

MCPs have been a way to get around many thorny mass atrocity issues, such as the global dispersal of victims, the unavailability of evidence, comparative inheritance law issues, and so on.

[10] See Paul Dubinsky, Report of WP7 Workshop I, www.domac.is.

Given the vast numbers of claims in many such processes, their ultimate success can be measured *inter alia* by the ability to quiet claims and mitigate disappointments and reduce or pre-empt litigation – in other words, by the beneficiaries' satisfaction with the process and its outcome. The benefits of MCP are clear: they allow for consolidation of cases in one forum and efficient decision-making. But they often involve some due process compromises.

MCPs have had an impact not only in the countries concerned, but on other domestic and international systems as well, on the regulations of the ICC Trust Fund for Victims (TFV), and have served as encouragement for victims of abuses to (continue to) pursue redress. MCPs have led to:

- Adoption of domestic legislations and enforcement mechanisms;
- Entire new domestic institutions where an international process is transferred post-conflict, or merged into the domestic legal order;
- Human rights courts assessing the functioning and legitimacy of claims programs;
- Considerable local recruitment and training of staff as claims collectors, reviewers, implementation teams, etc;
- Incidental capacity-building and technology transfers;
- Diffusion of some local tensions where parties could not accept the legitimacy of a local decision-making body or applicable law (e.g. Cyprus; Kosovo), but complications where local bodies resisted the international procedures (e.g. Iraq);
- Subsequent cases in domestic courts, human rights bodies, and international courts to clarify the norms applicable to victims of mass atrocities; and
- Empowerment of victims to organize and have their diverse voices heard. For example, MCPs may serve as models for home-grown process such as the Sierra Leone mechanism, which was the first domestically conceived and run reparations program in Africa.

Processes studied and discussed in WP7[11]

WP7 examined reparations mechanisms in Bosnia and Herzegovina; Cambodia; Colombia; Cyprus; Eritrea and Ethiopia; Iraq; Kosovo; Sierra Leone; South Africa; Sudan; Turkey; World War II claims (Italy, Germany, Switzerland, Poland). The ICJ, ICC and its Trust Fund for

[11] For a full overview of the data, see Annex to Inventory Report, www.domac.is; and for discussion of these processes, see Reports of WP7 Workshops I and II, available at www.domac .is.

Victims, and – though some case studies – the work of the European Court of Human Rights and the Inter-American Court of Human Rights.

Impact on closure and finality

The stated goal of most claims processes is to settle quickly, once and for all, the claims arising out of each factual situation. As there can be no real closure without a sense of justice, if a process is too tightly sealed off, it may have the opposite effect, namely of leading to more and more litigation and possibly rekindling of resentments and conflict. In order to assess which types of claims process would be more or less likely to generate further legal disputes, WP7 asked, with respect to each claims mechanism, whether it was:

- Open – i.e. a process that does not bar lawsuits elsewhere but merely has procedures for preventing double recovery; or
- Closed – i.e. a process fully outsourced from the domestic legal system, seeking a definitive break with the past and an enduring legal peace.

Another area that greatly affects the sense of legitimacy and acceptance of a claims program is if *appeals* are allowed and if so whether they are decided by an independent appeals body or the same body as decided the first instance. WP7 therefore looked at whether the processes had the possibility of appeal, and if so, what the rate of appeals was as a further indicator of a MCP's ability to arrive at legal peace and satisfaction.

Findings

The WP7 research revealed that open-ended, non-exclusive processes do not appear to lead to more protracted claims than hermetically sealed processes with strict deadlines and limited appeals. If victims feel unjustly excluded or prevented from pursuing their claim, they may persist, whereas if the process was fair but the claim denied on reasonable grounds, at a minimum, they will have been heard. In order to be an attractive alternative to court litigation, an open (i.e., non-exclusive) MCP has to give great thought to procedures, remedies, speed, transparency, etc, and thus 'compete' with other alternatives.

Fears about opening up the floodgates to masses of identical suits are understandable and often warranted, but closed processes may lead to a greater incidence of subsequent litigation, appeals, or request for reconsideration of decisions on awards, and bad perceptions about the process generally.

Conflicting goals of international actors

The property restitution programs in the Balkans have provided important lessons for the international community. Of these, Kosovo is an example of perhaps the most complicated web of interfaces between an international claims mechanism, the international entities that established it (UN, EU), and national courts and other entities that have joined the mix, such as EULEX. In Kosovo, an *ad hoc* property commission met with resistance from those who felt that, since there now was a domestic court system in place, the *ad hoc* commission would oust jurisdiction of the courts, and that placing the claims outside the courts ran counter to the policy of transferring competences to domestic institutions, wasting financial resources on an international body rather than investing in local institutions and capacities. Human rights principles were then invoked to argue that capacity building of the courts at the expense of speedy reparations for victims was morally repugnant.[12]

A similar situation arose in Iraq, where judges were reluctant to adopt mass claims procedures into the domestic legal system, with the result that the use of the ordinary justice system might perhaps have yielded the same or better results. The rivalry and non-recognition of authority would then have played a lesser role and absorbed less time and energy of all involved.[13]

ICC and national reparations[14]

The ICC is complementary to national criminal jurisdictions. It can order reparations against a perpetrator after trial and conviction, but it is as yet unclear how the two levels will interface on the issue of complementarity – given that the national jurisdiction is to have primacy, at least as far as criminal trials. Strictly speaking, the ICC in fact need not involve any kind of claims process at all. The minimum requirement is that it adopt principles on reparations. It very clearly needs to rely on domestic implementation as it does not have an enforcement arm. The Court itself would not in its own name initiate proceedings in the countries in question.

WP7 explored the yet to be triggered reparations mechanism of the ICC and its potential implications for the future of transnational public law litigation. The idea of complementarity as

[12] See WP7 presentation in Belgrade, November 2009, available at www.domac.is.

[13] See Peter van der Auweraert in Report of WP7 Workshop II, www.domac.is.

[14] See Edda Kristjansdottir, 'Who is Most Able and Willing? Complementarity and Victim Reparations at the International Criminal Court' in Non State Actors, Soft Law, and Protective Regimes (Cecilia Baillet ed., forthcoming CUP 2011). See also Fiona McKay in Report of WP7 Workshop I, www.domac.is.

merely a substitution of one court for another – where either the ICC or a state judiciary should act in any given situation – leads to some paradoxes when it comes to reparations. The ICC Office of the Prosecutor has indicated that the Court's goal is not to have to prosecute often but rather be a catalyst for action and strengthen the primacy of domestic jurisdictions. But when it comes to the reparations provisions of the Court's Statute, states when implementing it into domestic legislation seem mostly to commit to carrying out reparations orders handed down by the Court rather than asserting their own ability to handle such matters. And since the Court itself need not order reparations, the 'stick' of complementarity is missing when it comes to reparation.

The widely endorsed 'positive complementarity' idea – whereby the ICC, states, international organizations, human rights bodies, alternative justice mechanisms, and donors all live up to their respective spheres of competence and cover the areas that the others cannot reach – is more promising as a framework and more in line with what transnational litigation and international mass claims practice already is.

Hopes and possibilities

In 2008, the then Executive Director of the ICC Trust Fund for Victims shared with WP7 that, in the experience of the TFV thus far, victims generally hoped for two things, namely (1) *Accountability* – victims want those responsible to say that what they did was wrong and that they are sorry. They want to hear this from the perpetrator or from the Court in the perpetrator's stead; and (2) a *returning to one's former life* – to overcome the sense of guilt and shame of being a victim, in the end, what most victims want is to return to their old lives. 'Charity tends not to be appreciated. People prefer to earn their recovery – to get back their dignity, to get their due. Money often makes people feel as if their silence is being bought.'[15]

Whether it is land, money, or some other type of remedy that is sought in any given case, the fact of the matter is that there is now technology and know-how available for accomplishing what was until recently impossible in international law, namely to offer individualized review of claims of hundreds of thousands of victims of mass atrocities. For legal practitioners, the matter is relatively straight forward: if given a mandate (if there is a will), they can carry out the tasks (there is a way). The more difficult question is to whose will the international law on reparations

[15] See presentation by André Laperrière, in Report of WP7 Workshop I, www.domac.is.

should respond. With competing views not only between international actors, victims, and local authorities, but also among different international actors (e.g. rule of law versus human rights concerns), within the victim communities themselves, between victims and their community representatives, or between victims and advocates pursuing systemic change through impact litigation in their name – the need is growing for neutral procedures and impartial decision-makers in the area of mass atrocity reparations.

POTENTIAL IMPACT

Target audience

THE DOMAC PROJECT has sought to impact four principal communities – the academic community, international decision makers, national decision makers and NGOs.

Academic community – The academic field of international criminal law and the study of international criminal courts has been flourishing in recent years. Considerable attention was also given to the inter-relations between national and international courts – in particular, to the concept of complementarity under the ICC Statute. Still, **THE DOMAC PROJECT** advances the existing academic discourse in important ways, by emphasizing the need to view national and international courts as part of the same comprehensive response to mass atrocities, and by focusing on the contribution of international courts to the work of national courts. This new perspective to the operation of international criminal justice, invites a new focus for the study (and design) of international courts – the extent to which they advance criminal proceedings at the national level. Such re-focused academic research may lay the groundwork for subsequent reform proposals.

International decision makers – **THE DOMAC PROJECT** sought to impact the ways in which international decision makers perceive the goals of international judicial interventions in mass atrocity situations. From a traditional point of view that regarded the successful functioning of international courts in the specific cases presented before it as an independent and supreme international goal, **THE DOMAC PROJECT** sought to nurture an alternative view, which regards the exercise of jurisdiction by international courts as mainly catalytic in nature (while accepting the inevitability of international judicial involvement in some case/circumstances). This change in perception may also imply a change in resource allocation (both material resources and the expenditure of political capital) – e.g., reducing the number of cases dealt with by international courts and channeling more funds to capacity development at the local

Luis Moreno-Ocampo, Chief Prosecutor of the ICC, at 2009 DOMAC conference in Reykjavik

level; spending more political capital on pressurizing states to undertake war crime prosecution (possibly at the expense of pressures to cooperate with international courts). It may also imply a change in future institutional design plans – in particular, integrating an 'exit strategy' or 'legacy component' into the structure of international courts, embedding international judicial elements in national legal systems, devising 'sticks and carrots' that can spur national authorities into action.

In addition, **THE DOMAC PROJECT** sought to impress upon international decision makers the need to develop a more coherent and sustainable strategies of capacity development. In particular, the research undertaken by us in this field militates in favor of embarking on need assessments before offering specific capacity development efforts, creating focal points for coordination and execution of capacity development efforts and opting for long-0erm structural cooperative solutions (such as joint investigation and transfer of information protocols and internship programs), at the expense of ad hoc assistance programs.

National decision makers – **THE DOMAC PROJECT** sought also to affect perceptions of national decision makers, in particular, by strengthening their sense of ownership of post-mass atrocity criminal prosecution processes, and encouraging them to think about international courts – criminal and non-criminal - as a possible source of expertise and assistance (as opposed to a source of a legal threat). By encouraging national decision makers to critically assess the impact of international courts on their work, **THE DOMAC PROJECT** may have assisted them in formulating more clearly their expectation from international courts – thus contributing to a more balanced rapport between the two sets of institutions.

NGOs – In the same vein, **THE DOMAC PROJECT** sought to affect the strategies employed by international and national NGOs involved in the operation of international criminal justice at the national or international level. Like national and international decision makers, such organizations may benefit from refocusing their expectations and efforts in the field of capacity development, resource allocation and campaigning, so as to produce a better synergy between national and international criminal processes in the aftermath of mass atrocity situations.

Dissemination

Academic conferences – The main findings of **THE DOMAC PROJECT** presented in a large number of conferences in which leading figures in the relevant academic fields participated. The main such events have been the world's two most important international law conferences – the

2009 American Society of International Law Conference (which devoted a whole panel to discussion of **THE DOMAC PROJECT**) and the 2010 European Society of International Conference in which the work of **DOMAC** on capacity development was introduced. In addition, the final **DOMAC** Conference in Amsterdam (2010) was widely publicized and attracted a large number of academic interested in the field. Finally, one may note the regional conferences organized by the **DOMAC** staff in four continents as an important avenue for dialogue with the local academic communities in those regions. (Regional conferences were conducted in Colombia, London, Amsterdam, Reykjavik, Jerusalem, Belgrade, and Kampala). Particularly noteworthy have been in this regard the series of **DOMAC** workshops organized on reparation schemes – an understudied aspect of the international response to mass atrocities.

Academic articles - A second avenue for dissemination of **DOMAC** research findings to the academic community has been through the publication of academic articles in top law journals. In particular, one may note in this respect a series of articles published by Prof. Harmen ven der Wilt on his **DOMAC** research in the leading international law and international criminal law journals (International Criminal Law Review, Journal of International Criminal Justice). In addition, one may note that a book containing the main findings of **THE DOMAC PROJECT** will be soon published by a leading publishing house (probably Oxford University Press). These publication venues provide **DOMAC's** work with academic prominence and potentially a long-lasting impact.

Teaching - Members of **DOMAC** belonging to academic institutions have added **DOMAC** related findings to their academic curricula - thus expanding considerably the number of young academics exposed to **THE DOMAC PROJECT** and its outcomes. Students have participated in many of **DOMAC's** conferences. In addition, advanced degree students comprised the backbone of the **DOMAC** research team. These young professionals are likely to incorporate **DOMAC** findings in much of their future work in the field.

Richard Karegyesa, ICTR Prosecutor, at 2010 DOMAC conference in Amsterdam

The website – The **DOMAC** website has been a major avenue for dissemination of

the work of **DOMAC** to all target audiences (in particular, NGOs and academics). Almost all **DOMAC** reports were published on the website (the exceptions being a number of academic articles that were published in law journals insisting on exclusivity in publication). It also provided general information about the project, its personnel and its fundamental aims.

Interviews – A considerable part of **DOMAC's** research was conducted by way of interviews with decision makers operating at the national and international level, as well as with NGO activists. Although these interviews were primarily designed as a method of obtaining information about the impact of international courts on national court proceedings, they also served the important function of drawing attention of interviewees to the work of **DOMAC** and to the set of issues it raises. Often, interviewees asked us to receive further information about the project (other than the relevant reports on the subjects of the interview - which were of course sent to them automatically). In the same vein, practitioners asked to comment on the reports served a dual function of **DOMAC** critics as well as dissemination agents.

Regional conferences – **DOMAC** researchers have made a particular effort to participate in regional conference, in which national and international decision makers, as well as NGO activists were present. Such conferences fostered direct dialogue between **DOMAC** and individuals confronting the very same problems the project studies. Again, they served the dual function of transmitting to **DOMAC** information from "the ground", as well as conveying our ideas thereto. In particular, we may note the participation of all of the **DOMAC** senior researchers in the 2010 ICC Review Conference in Kampala, Uganda in which the notion of positive complementarity – central to **DOMAC's** work – was part of the State Parties' agenda. Our participation in Kampala enabled us to provide an input to the negotiation process that led to the Kampala Declaration. Before that, a number of **DOMAC** researchers have attended one of the preparatory inter-governmental conferences in New York. On both occasions, **DOMAC** researchers presented their work in collaboration with NGOs monitoring the same processes. One side effect of this structural attribute has been the strengthening of ties between **DOMAC** and the leading NGOs in the field (such as REDRESS and the ICTJ) – thereby providing DOMAC an way of influencing the work of such NGOs.

Another notable conference has taken place in 2009 in Belgrade, in collaboration with the OSCE and the Belgrade Center for Human Rights. The conference brought together for the first time a sizeable group of judges, prosecutors and ministry of justice officials from Serbia, Bosnia and Herzegovina and Croatia, on the one hand, and ICC and ICTY judges and officials, on the

other hand. In doing so, **DOMAC** may have contributed to improvement of communication channels among regional stakeholders, and between them and international actors.

Distribution of reports – Paper and electronic copies of the main **DOMAC** reports were circulated in the various **DOMAC** conferences, as well as through direct mailings to key decision-makers.

Other dissemination efforts - **DOMAC** researchers have been frequently consulted on academic and policy related topics by a variety of national and international officials, including officials belonging the EU Commission.

Concluding remarks

In the three years of its existence, **THE DOMAC PROJECT** has been successful – we believe – in impacting the academic and professional discourse on the interplay between international courts and national courts. We have been able to reach directly many hundreds of academics and practitioners, of all levels of seniority – from students and NGO ground workers, to presidents of national and international courts, ambassadors and government ministers. Furthermore, our reports, articles, website data and conference presentations have reached many thousands of stakeholders. Given the interest in our work, its venues of publication and the enthusiastic reaction we receive, it appears that **DOMAC** has been able to make a long-lasting contribution to the study of international criminal justice, and has laid foundations for future reforms in the field.

Not the least important has been the contribution of **DOMAC** to the strengthening of academic ties between the five respective academic institutions involved in the project. The close collaboration between the **DOMAC** research teams has already led to other forms of cooperation between ourselves (student exchange, joint conferences, etc.). We sincerely believe that the exemplary harmonious and fruitful working relations that have developed within **DOMAC** have been one of the most positive side effects of the project for us, in the best tradition of the Framework Programs.

CONTACT DETAILS

All details on the project can be found at the website: www.domac.is

DOMAC PARTNERS:

REYKJAVIK UNIVERSITY

The mission of Reykjavik University is to create and communicate knowledge, in order to increase the competitiveness of individuals, firms and society as a whole. The school's aim is to make Reykjavik University the center for international research collaborations in Europe and across the Atlantic. The university consists of four academic schools: School of Law, School of Business, School of Computer Science and the School of Science and Engineering. Reykjavik University is a community of almost 3000 students and over 500 full time and part time employees. Reykjavik University is the coordinator of the Project

AMSTERDAM UNIVERSITY

The Faculty of Law of the Universiteit van Amsterdam is one of the largest faculties in the Netherlands, offering a wide variety of courses and enjoying a strong international orientation. The Faculty of Law collaborates with other law schools in the Netherlands and incorporates such fields as economics, psychology, sociology and even health care with the study of law. The Faculty offers three bachelors programmes and eight masters (LL.M.) programmes. Research undertaken at the Faculty falls under five research institutes specialising in: International Law, Private Law, Environmental Law, Labour Law and Information Law. The research on international law is carried out at the Amsterdam Center for International Law (ACIL), which comprises over 50 researchers specialising in general public international law, EU law, international criminal law, the law of international organisations, international tax law, international aspects of constitutional law and jurisprudence. By breaking down traditional barriers between international legal disciplines, as well as between international and national law, ACIL seeks to build new perspectives on international legal governance.

HEBREW UNIVERSITY

The Law Faculty at the Hebrew University in Jerusalem is the oldest and most prestigious law faculty in Israel, responsible for the education of most Supreme Court judges, and the legal elite in the country. The law faculty places a particular emphasis on excellence in the field of international law – a decision grounded in the long tradition of excellence of the faculty in this field and the increased academic cooperation between the law faculty and other academic institutions outside Israel: It offers an LL.M. degree in human rights and international law, accommodates a large number of PhD students writing dissertations on international law topics, operates an international law Forum - a unique discussion and research group in the field of international law that meets on a bi-weekly basis and conducts international law research projects (e.g., it has commissioned in recent years research projects on fragmentation of international law, the role of national judges in applying international law, etc.).

UNIVERSITY COLLEGE LONDON

The Department of Laws at University College London (UCL) is recognised as one of the top research departments of law in the United Kingdom, receiving the top ranking in the UK's last Research Assessment Exercise. UCL Laws research is designed to contribute to the development of law and influence legal practice and public policy. The Centre for International Courts and Tribunals is based in the Department of Law at UCL. The Centre is part of the Project on International Courts and Tribunals, and has been established at UCL since 2002. It undertakes a range of research, training and teaching activities. The Centre is directed by Professor Philippe Sands QC. It currently holds a major research grant from a UK research council for a project on the nomination and appointment of judges to international courts.

UNIVERSITY OF WESTMINSTER

The University of Westminster School of Law has an international reputation in international and comparative law, socio-legal research and international commercial and financial law. In the Research Assessment Exercise 2001 the School was awarded 5, one of the top classifications, and in the 2008 exercise 85% of the research submitted was rated 'international quality'. The 2008 Research Assessment Exercise results confirmed Westminster's position as a leading modern University with an outstanding record of achievement in research. The School of Law has a number of specialised research centres, including the Westminster International Law and Theory Centre, Centre for Law, Gender and Sexuality, and the Centre for Capital Punishment Studies,

and School staff also participate in the London Universities Maritime law and Policy Group. The Department of Advanced Legal Studies offers a number of specialist LL.M degrees including: International Law; European Union Law; and Conflict Resolution.

From discussions during Domac Panel at ICC Review Conference in Kampala

Members of the DOMAC Steering Committee:

Prof. Thordis Ingadottir (RU), Prof. Yuval Shany (HUJI), Prof. Ruth Mackenzie (UoW) and Prof. Harmen van der Wilt (UoA).

Members of DOMAC Scientific Evaluation Committee:

Prof. dr. juris Geir Ulfstein, University of Oslo, Department of Public and International Law and Prof. Dr. Dr. h.c. mult. Albin Eser, M.C.J. Direktor em., Max-Planck-Institut.

USE AND DISSEMINATION OF FOREGROUND

A **DOMAC** website has been running throughout the whole project period and it will remain open following the end of the project period. During the project´s 39 months duration the website has been visited on average around 220 times per month. Each of the participating universities has also on its own website a hyperlink to the **DOMAC** website. All **DOMAC** reports are listed on the website and most of them are accessible there (some research work was published only in international law journals). Similarly, all **DOMAC** public events have been advertised on the website. A **DOMAC** brochure was printed at the outset of the project and distributed at various events. A flyer listing **DOMAC** publications and a CD containing **DOMAC** publications was also distributed.

DOMAC researchers conducted several fieldtrips, including to Serbia, Croatia, Bosnia & Herzegovina, East Timor, Colombia, Sierra Leone, Rwanda, Congo, Uganda, and Cyprus. During such field visits, targeted interviews and meetings were held with key stakeholders. Interviews were conducted in accordance with the partner's research protocols and shared among researchers in accordance with the required procedures. In total, approximately 200 people were interviewed.

Prof. William Schabas speaking at the Genocide Convention at 60: Theory and Practice' a conference co-organized by DOMAC

DOMAC has published over ten reports, all available on the **DOMAC** website; in addition, seven **DOMAC** reports have been submitted/published in distinguished international law journals (African Journal of Legal Studies, International Criminal Law Review, Journal of International Criminal Justice and the Nordic Journal of International Law). Six contributions were published in ASIL Proceedings of the 103rd Annual Meeting, relating to the **DOMAC´s** sponsored panel there (see table 1). Two **DOMAC** reports will be published as chapters in books (The Milosevic Trial: An Autopsy (ed. Timothy Waters, Oxford University Press); Contemporary International Lawmaking: New Paradigms, Dilemmas, and Solutions (Cambridge University Press). Some reports are forthcoming in the next few weeks. Finally, there is a forthcoming publication (probably with Oxford University Press) containing 14 **DOMAC** substantive book chapters. The publications will present **DOMAC** findings, additional deliverables from key

outside authorities on the subject, and finally contributions from a competitive call for papers conducted for the **DOMAC** final conference. For a list of all **DOMAC** publications, see table 1, table 2 and template A1.

DOMAC has organized a number of public seminars and conferences. Organization of these events was done in close collaboration and partnership with other universities, international organizations, governments, and both international and local non-governmental organizations. These events include a Symposium on The Genocide Convention at 60: Theory and Practice (Hebrew University, January 2009), a Symposium on Prosecuting Serious International Crimes: The Joint Role of National and International Courts (Reykjavik University, May 2009), and a panel on The Impact of International Criminal Proceedings in Mass Atrocity Cases at the ASIL 103rd Annual meeting (American Society of International Law, Washington, March 2009). Two events were organized in conjunction with meetings of the Assembly of States Parties of the International Criminal Court. The former one was a panel at the Resumed eight session of the Assembly of States Parties of the International Criminal Court (United Nations New York, March 2010), and the latter was a large conference organized by **DOMAC**, REDRESS and DENMARK at the ICC Review Conference in Kampala (Kampala, Uganda, June 2010). A number of closed seminars with key actors were held, including in Belgrade in November 2009, in Reykjavik in May 2009, and in Amsterdam in December 2008 and June 2010. A **DOMAC** final conference was held at the University of Amsterdam in October 2010. For a list of all **DOMAC** seminars and conferences, see template A2.

DOMAC researchers have presented **DOMAC** work at various other conferences and events (not organized by **DOMAC**). For instance at the University of Naples conference on Interaction between national and international courts (Naples, Italy, 2008), University of Oslo conference on Unity or Fragmentation of International Law: the Role of International and National Tribunals (Oslo, Norway, May 2009), Interpol

Sigall Horovitz presents Domac research at the 2009 Interpol Expert Meeting on International Crimes

Expert Meeting on International Crimes (Oslo, Norway, May 2009), University of Minnesota conference on Exceptional Courts and Military Commissions (Minnesota, USA, October 2009), STALS conference on The relationship between courts in the Multilevel legal system (Pisa, Italy, 2009), Grotius Centre conference on the Complementarity: From Theory to Practice (The Hague, The Netherlands, September 2009), University of Indiana conference on the Milošević Trial: An Autopsy (Indiana, USA, February 2010), Eurojustice conference on Measuring Confidence and Public Attitudes to Justice (Parma, Italy, May 2010), Wits University Int'l Conference on Africa and International Criminal Justice (Johannesburg, South Africa, July 2010), Oslo University conference on the Creation of International Law: An Exploration of Normative Innovation, Contextual Application, and Interpretation in a Time of Flux (Oslo, August 2010), 4th Biennial Conference of the European Society of International Law (Cambridge, England, September 2010), a conference Towards Reconciliation. Experiences, Techniques and Opportunities for Europe, organized by European Council on Tolerance and Reconciliation, Bertelsmann Stiftung and Robert Bosch Stiftung (Dubrovnik, Croatia Oct 2010), European Commission Expert Workshop on advancing the complementarity principle, (Pretoria, South Africa, April 2011), and the College of Europe Foundation and Folke Bernadotte Academy conference on Prevention of Genocide and Mass Atrocities (Brussels, Belgium, May 2011). For list of all dissemination activities, see template A2.

Several writings cite **DOMAC** Reports, including articles published in distinguished law journals such as the Chicago Journal of International Law, Journal of International Criminal Justice, Michigan Journal of International Law, and Utrecht Law Review. Among books that include citations to **DOMAC** reports are *The International Criminal Court: A Commentary on the Rome Statute*, William Schabas, Oxford University Press (2010), *Non-state Participants in the International Legal Order*, Jean d'Aspremont, ed., Routledge, Oxford (2011), and The *UN Genocide Convention: A Commentary*, Paola Gaeta ed., Oxford University Press (2009). Among projects/organizations that cite **DOMAC** reports in their publications are the project on Just and durable peace by piece (JAD-PBP) (its report on Hybrid Tribunals & the rule of Law: Notes from Bosnia and Cambodia, by Olga Martin-Ortega & Johanna Herman), Council on Foreign Relations (its report on Justice Beyond The Hague, Supporting the Prosecution of International Crimes in National Courts, by David Kaye), Open Society Justice Initiative (its report on Putting Complementarity into Practice: Domestic Justice for International Crimes in DRC, Uganda, and Kenya, by Eric Witte), and ASIL Insights. The ICTY and the Special Court of Sierra Leone wrote about the visit of **DOMAC** researchers and **DOMAC** in their relevant yearly reports.

Table 1. ASIL: Proceedings of the 103rd Annual Meeting (March 25-28, 2009 Washington, DC), Panel on *the Impact of International Criminal Proceedings in Mass Atrocity Cases (*The American Society of International Law, 2010)

Contribution	Author
The Contribution of International Institutions to Domestic Reparation for International Crimes	Andre Nollkaemper
Primacy and the Accountability Gap: A View from Bosnia and Herzegovina	David Schwendiman
The Role of National Courts in Advancing the Goals of International Criminal Tribunals	Yuval Shany
Relations between National and International Criminal Courts in the Aftermath of Mass Atrocity Situations	Olivia Swaak-Goldman
Comparison of the Legacy of the Special Court for Sierra Leone and the ICC Intervention in Uganda from a Practical Perspective	Marieke Wierda
The ICTY's Completion Strategy: Continuing Justice in the Region	Fausto Pocar

Table 2. Forthcoming book: 'Impact of international courts on domestic proceedings in mass atrocity cases' (probably published with Oxford University Press)

Chapter title	Author
General conclusions: Normative impact – the interaction between international criminal tribunals and domestic jurisdictions as a catalyst for the improvement of international criminal law	Harmen van der Wilt
Normative impact of international tribunals on domestic jurisdictions: A comparative look between the Balkans and Africa	Antonietta Trapani
Taking leaves out of the Rome statute: The interpretation of Congolese military cases in the light of international criminal law	Dunia P. Zongwe
Assessing the impact of international criminal courts on the capacity of local courts	Alejandro Chehtman and Ruth Mackenzie
Positive complementarity and the law enforcement network – Drawing lessons from the ad hoc tribunals´ completion strategy,	Patrícia Pinto Soares
Reparations for Mass Atrocities: Waivers, Exclusion and Statements of Interest	Edda Kristjansdottir
Claims and reparations after conflict - the different experiences of Kosovo and Sierra Leone	Norbert Wühler
Civil claims in regard of mass atrocities: some lessons from the Srebenica cases	Andre Nollkaemper
Prosecution and Sentencing – A comparative examination	Yuval Shany
Case study analysis – Domestic Impacts of International Courts in Africa	Sigall Horovitz
Case study analysis – The interplay between national courts in	Yael Ronen.

the Balkans and the ICTY	
The role of the International Court of Justice in the enforcement of international humanitarian law at the national level	Thordis Ingadottir
The European Court of Human Rights and domestic prosecutions of serious violations of human rights	Silvia Borelli
The normative impact of the Inter-American Court of Human Rights on Latin-American national prosecution of mass atrocities	Ximena Medellin-Urquiaga

SECTION A: TABLES

TEMPLATE A1: LIST OF SCIENTIFIC (PEER REVIEWED) PUBLICATIONS										
NO.	Title	Main author	Title of the periodical or the series	Number, date or frequency	Publisher	Place of publication	Year of publication	Relevant pages	Permanent identifiers[16] (if available)	Is/Will open access[17] provided to this publication?
1	*Preliminary Report on Case Studies, Work Package 5*	Yuval Shany	Domac Report	.	Domac	Iceland	2008	.	http://www.domac.is/media/domac/Preliminary-Report-Case-Studies.pdf	Yes
2	*Equal Standards? On the Dialectics between National Jurisdictions and the International Criminal Court*	Harmen van der Wilt	International Criminal Law Review	Volume 8, Numbers 1-2	Martinus Nijhoff	The Netherlands	2008	pp. 229-272	http://www.domac.is/media/domac-skjol/ICLR-8-2008-HvdW.pdf	Yes
3	*Procedural Obligations Under the European Convention on Human Rights: Useful Guidelines for the Assessment of 'Unwillingness' and 'Inability' in the context of the Complementarity Principle*	Harmen van der Wilt & Sandra Lyngdorf	International Criminal Law Review	Volume 9, Number 1	Martinus Nijhoff	The Netherlands	2009	pp. 39-75	http://www.domac.is/media/domac-skjol/ICLR-9-2009-HvdW-SL.pdf	Yes

[16] A permanent identifier should be a persistent link to the published version full text if open access or abstract if article is pay per view) or to the final manuscript accepted for publication (link to article in repository).

[17] Open Access is defined as free of charge access for anyone via Internet. Please answer "yes" if the open access to the publication is already established and also if the embargo period for open access is not yet over but you intend to establish open access afterwards.

4	*Comparative Analysis of Prosecutions for Mass Atrocity Crimes in Canada, Netherlands, and Australia*	Antonietta Trapani	Domac Report	Domac/1	Domac	Iceland	2009	.	http://www.domac.is/media/domac-skjol/DOMAC1-2009.pdf	Yes
5	*Capacity Development in International Criminal Justice: A Mapping Exercise of Existing Practice*	Alejandro Chehtman and Ruth Mackenzie	Domac Report	Domac/2	Domac	Iceland	2009	.	http://www.domac.is/media/domac-skjol/DOMAC2-2009.pdf	Yes
6	*Sierra Leone: Interaction between International and National Responses to the Mass Atrocities*	Sigall Horovitz	Domac Report	Domac/3	Domac	Iceland	2009	.	http://www.domac.is/media/domac/DOMAC3-SH-corr..pdf	Yes
7	*The ICJ Armed Activity Case – Reflections on States´ Obligation to Investigate and Prosecute Individuals for Serious Human Rights Violations and Grave Breaches of the Geneva Conventions*	Thordis Ingadottir	Nordic Journal of International Law	Volume 78, No. 4	Martinus Nijhoff	The Netherlands	2009	pp. 581-598.	http://www.domac.is/media/domac/TI-NJIL-2009-vol-4.pdf	Yes
8	*The Impact of the European Convention of Human Rights in the Context of War Crimes Trials in Bosnia and Herzegovina*	Silvia Borelli	Domac Report	Domac/5	Domac	Iceland	2009	.	http://www.domac.is/media/domac/DOMAC5---Impact-of-the-ECHR-on-war-crimes-prosecutions-in-Bosnia.pdf	Yes
9	*Reparation Workshop II: The interaction between Mass Claims Processes and Cases in Domestic Courts - Report*	Edda Kristjánsdóttir	Domac Report	.	Domac	Iceland	2009	.	http://www.domac.is/media/domac/Reparation-Workshop-Report.pdf	Yes
10	*International Settlement of Mass Atrocity Claims: Responses by Domestic Courts - Inventory Report*	Edda Kristjánsdóttir	Domac Report	.	Domac	Iceland	2009	.	http://www.domac.is/media/domac/WP7-Inventory-Report.pdf	Yes
11	*National Law: A Small but Neat Utensil in the Toolbox of International Criminal Tribunals*	Harmen van der Wilt	International Criminal Law Review	Volume 10, Number 2	Martinus Nijhoff	The Netherlands	2010	pp. 209-241	.	No
12	*Prosecutions and Sentencing in the Western Balkans*	Yael Ronen, with the	Domac Report	Domac/4	Domac	Iceland	2010	.	http://www.domac.is/media/domac/DOMA	Yes

		assistance of Sharon Avital and Oren Tamir							C-4-2010.pdf	
13	*Rwanda: International and National Responses to the Mass Atrocities and their Interaction*	Sigall Horovitz	Domac Report	Domac/6	Domac	Iceland	2010	.	http://www.domac.is/media/veldu-flokk/DOMAC6---Rwanda.pdf	Yes
14	*Reparation Workshop I: The Interactions between Mass Claims Processes and Cases in Domestic Courts - Report International Settlement of Mass Atrocity Claims: Responses by Domestic Courts - Inventory Report*	*Edda Kristjánsdóttir*	Domac Report	Domac	Domac	Iceland	2011	.	http://www.domac.is/media/domac/Workshop-II-report-Final.pdf	Yes
15	*Compliance with judgments of the European Court concerning serious violations of human rights committed by state agents and their impact on domestic investigations and prosecutions*	Silvia Borelli and Sandra Lyngdorf	Domac Report	Domac/7	Domac	Iceland	2010	.	.	Yes
16	*Bosnia and Herzegovina: the interaction between the ICTY and domestic courts in adjudicating international crimes*	Yael Ronen	Domac Report	Domac/8	Domac	Iceland	2011	.	.	Yes
17	*Developing local capacity for war crimes trials: insights from BiH, Sierra Leone, and Colombia*	Alejandro Chehtman	Domac Report	Domac/9	Domac	Iceland	2011	.	.	Yes
18	*The Impact of the International Criminal Tribunal for Yugoslavia on War Crime Investigations and Prosecutions in Croatia*	Keren Michaeli	Domac Report	Domac/10	Domac	Iceland	2011	.	.	Yes

19										
20	*Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases: Critical Notes on a 'Success Story'*	Alejandro Chehtman	Journal of International Criminal Justice	Published online / forthcoming in journal	Oxford	UK	2011	.	http://jicj.oxfordjournals.org/content/early/2011/06/15/jicj.mqr024.abstract	No
21	*Two Sides of the Same Coin? Judging Milošević and Serbia before the ICTY and ICJ*	Yuval Shany	Chapter in: The Milošević Trial: An Autopsy	Forthcoming	Oxford University Press	.	2011			No
22	*African misgivings of Western style international criminal justice: In search of parameters for 'legal colonialism'*	Harmen van der Wilt	Journal of International Criminal Justice	Forthcoming	Oxford	UK	2011	.	.	No
23	*Impacts of International Courts on Atrocity-Related Trials in Rwanda and Sierra Leone*	Sigall Horovitz	African Journal of Legal Studies	Forthcoming	Martinus Nijhoff	The Netherlands	2011	.	.	No
24	*Who is Most Able and Willing? Complementarity and Victim Reparations at the International Criminal Court*	Edda Kristjánsdóttir	Chapter in: Non State Actors, Soft Law, and Protective Regimes (Cecilia Baillet ed.)	Forthcoming	[Cambridge University Press]	UK	2011	.	.	No
25	*Jurisdictional reach and restraint: the ICJ and international criminal justice*	Ruth Mackenzie	Domac Report	Forthcoming	Domac	UK	2011	.	.	Yes
26	*Assessing the Impact of the International Ad-hoc Tribunals on the Domestic Courts of the Former Yugoslavia*	Antonietta Trapani	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
27	*Complementarity in the Congo: The Direct Application of the Rome Statute in the Military Courts of the DRC*	Antonietta Trapani	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes

28	*The ICC and its normative impact on Colombia's legal system*	Alejandro Chehtman	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
29	*Prosecutions and Sentencing in the democratic republic of Congo (DRC)*	Yael Ronen	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
30	*The impact of the ICC in Colombia: positive complementarity on trial*	Alejandro Chehtman	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
31	*The Impact of the International Criminal Tribunal for Yugoslavia on War Crime Investigations and Prosecutions in Serbia*	Keren Michaeli	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
32	*Uganda : Interaction between International and National judicial Responses to The Mass Atrocities*	Sigall Horovitz	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
33	*DR Congo: Interaction between International and National judicial Responses to The Mass Atrocities*	Sigall Horovitz	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
34	*Sudan: Interaction between International and National judicial Responses to The Mass Atrocities in Darfur*	Sigall Horovitz	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes
35	*The Impact of the International Criminal Tribunal for Yugoslavia on War Crime Investigations and Prosecutions in East Timor*	Natalie Rosen	Domac Report	Forthcoming	Domac	Iceland	2011	.	.	Yes

TEMPLATE A2: LIST OF DISSEMINATION ACTIVITIES

NO.	Type of activities[18]	Main leader	Title	Date	Place	Type of audience[19]	Size of audience	Countries addressed
1	Conference	Domac	*Impact of international criminal procedures on domestic criminal procedures in mass atrocity cases*	30 September and 1 October 2010.	Amsterdam	Scientific Community and Policy Makers	100	Multiple
2	Conference	Domac, Redress and government of Denmark; co-sponsored by South-Africa	*The joint role of international and national courts in prosecuting serious crimes and providing reparations: the African experience,*	4 June 2010	ICC Review Conference, Kampala	Civil Society; Scientific Community and Policy Makers	80	Multiple
3	Conference	Domac	*DOMAC Panel at the Resumed eight session of the Assembly of States Parties of the International Criminal Court*	23 March 2010	United Nations, New York	Civil Society and Policy Makers	30	Multiple
4	Conference	Domac; Belgrade Centre for Human Rights; OSCE Mission to Serbia	*Roundtable on the Impact of International Criminal Courts on Domestic Proceedings*	19-20 November 2009	Belgrade	Scientific Community; Civil Society and Policy Makers	40	Balkan region
5	Conference	Domac; Universidad de Los Andes	*The Impact of International Justice: lessons from the Balkans, Sierra Leone and their relevance for the case of Colombia*	4 November 2009	Conversatorio, Universidad de los Andes	Scientific Community	10	Columbia
6	Conference	Domac; Icelandic National	*Prosecuting Serious International Crimes: The Joint*	16 May 2009	Reykjavik University	Scientific Community;	50	Multiple

[18] A drop down list allows choosing the dissemination activity: publications, conferences, workshops, web, press releases, flyers, articles published in the popular press, videos, media briefings, presentations, exhibitions, thesis, interviews, films, TV clips, posters, Other.

[19] A drop down list allows choosing the type of public: Scientific Community (higher education, Research), Industry, Civil Society, Policy makers, Medias ('multiple choices' is possible.

		Committee on International Humanitarian law	*Role of National and International Courts*			Media; Policy Makers and Civil Society		
7	A panel at conference	International Criminal Law Interest Group and DOMAC: ASIL 103rd Annual Meeting, International Law as Law	*The Impact of International Criminal Proceedings on National Prosecutions in Mass Atrocity Cases*	27 March 2009	Washington DC	Scientific Community; Policy Makers and Civil Society	100	Multiple
8	Conference	Domac; The Vidal Angel Program for Research against Hate and Bigotry; The Minerva Center for Human Rights	*The Genocide Convention at 60: Theory and Practice*	7 January 2009	The Hebrew University of Jerusalem	Scientific Community	50	Multiple
9	Conference	Domac	*Anthropology and Human Rights: Investigation, exhumation and analysis of evidence in the context of political/ethnic violence*	27 November 2008	University College London	Scientific community	20	UK
10	Conference	Domac; Amsterdam Center for International Law	*Reparation Workshop I. The Interaction between Mass Claims Processes and Cases in Domestic Courts*	4 December 2008	Amsterdam	Scientific community	40	Multiple
11	Presentation	ESIL / 4th Biennial Conference: International Law 1989-2010: A Performance Appraisal	*The impact of international criminal tribunals on the capacity of local courts to process war crimes cases: lessons from BiH, Sierra Leone and Colombia, by Alejandro Chehtman*	3 September 2010	Cambridge	Scientific Community and Policy Makers	30	Multiple
12	Presentation	Interpol / Interpol Expert Meeting on International	*DOMAC Case Study: The Impacts of the SCSL on Domestic Prosecutions in Sierra*	May 2009	Oslo	Scientific Community;	200	Sierra Leone

		Crimes	*Leone* *type of audience - civil society; academia; policy makers; Interpol; national police forces the number of attendees, by Sigall Horovitz*			Industry; Policy Makers		
13	Presentation	Wits U / Int'l Conference on Africa and International Criminal Justice	*Assessing the Impact of the ICTR and SCSL on Impunity in Rwanda and Sierra Leone through identifying their impact on Domestic Trials, by Sigall Horovitz*	July 2010	Johannesburg	Scientific Community	70	Rwanda and Sierra Leone
14	Presentation	ICTR / NPA Forum	*Presenting the DOMAC Project, by Sigall Horovitz*	November 2008	Arusha	Scientific Community; Industry; Policy Makers	150	Multiple
15	Presentation	Creation of International Law: An Exploration of Normative Innovation, Contextual Application, and Interpretation in a Time of Flux	*Who is the Most Able and Willing?* *Complementarity and Victim Reparations* *at the International Criminal Court, by Edda Kristjánsdóttir*	6-7 August 2010	Oslo University	Scientific Community	30	Multiple
16	Presentation	European Council on Tolerance and Reconciliation, Bertelsmann Stiftung and Robert Bosch Stiftung / Towards Reconciliation. Experiences, Techniques and Opportunities for Europe	*"Reconciliation without Compensation" Session conceived by the Foundation "Remembrance, Responsibility and Future"* *Presentation by Edda Kristjánsdóttir*	24-25 October 2010	Dubrovnik, Croatia	Civil society; policy makers; media	20	Primarily Balkan countries; Germany

17	Presentation	STALS (Sant'Anna Legal Studies) / The Relationship between Courts in the Multilevel Legal System	*The dedoublement fonctionnel theory and national courts, by Yuval Shany*	2009	Pisa	Scientific Community	50	Multiple
18	Presentation	University of Oslo Law Faculty / Unity or Fragmentation of International Law: the Role of International and National Tribunals	*The conflicting loyalties of national and international judges, by Yuval Shany*	2009	Oslo	Scientific Community	100	Multiple
19	Presentation	Exceptional Courts and Military Commissions, Minnesota University of Minnesota Law School	*Are International Criminal Courts Special Courts?, by Yuval Shany*	2009	Minnesota	Scientific Community	50	Multiple
20	Presentation	University of Indiana Law School, The Milošević Trial: An Autopsy,	*The Relationship between Individual and State Responsibility, by Yuval Shany*	2010	Indiana	Scientific Community	30	Serbia and Bosnia
21	Presentation	University of Naples Law Faculty, Interaction between National and International courts,	*The Relationship between National and International Courts under International Law, by Yuval Shany*	2008	Naples	Scientific Community	50	Multiple

22	Presentation	TMC Asser Institute	*'Assessing "unwillingness" and " inability": Can the case law of the ECHR provide useful guidelines?', by Harmen van der Wilt*	15 October 2008	The Hague	Scientific Community	30	Multiple
23	Presentation	Grotius Centre	*The Hague, Fragmentation of International Law, by Harmen van der Wilt*	21 March 2009	The Hague	Scientific Community	50	Multiple
24	Presentation	Grotius Centre / ICC and Complementarity: From Theory to Practice" Grotius Centre	*ICC and Complementarity: From Theory to Practice, by Harmen van der Wilt*	15 September 2009	The Hague	Scientific Community; Policy Makers and Civil Society	200	Multiple
25	Presentation	OTP, International Criminal Court	*General lecture by Harmen van der Wilt*	5 March 2010	The Hague	Scientific Community; Industry	30	Multiple
26	Presentation	Eurojustice / Measuring confidence and public attitudes to justice	*On the Domac Project, by Thordis Ingadottir*	7 May 2010	Parma	Scientific Community	30	Multiple
27	Presentation	RIKK: The Centre for Women's and Gender Studies at the University of Iceland / Lecture series	*Impact of international courts in mass atrocity cases*	5 February 2009	Reykjavík	Scientific Community and General Public	20	Multiple
28	Presentation	EU / Expert Workshop on advancing the complementarity principle	*Developing local capacity for war crimes trials: insights from BiH, Sierra Leone, and Colombia, by Alejandro Chehtman*	May 2011	Pretoria	Policy makers, Industry, and Scientific Community	35	Multiple
29	Presentation	College of Europe Foundation and Folke Bernadotte Academy /	*An overview of the latest developments in international law: the impact of international courts on domestic criminal*	12 May 2011	Brussels	Scientific Community and Policy Makers	80	Multiple

		Conference on Prevention of Genocide and Mass Atrocities	*procedures in mass atrocity cases, by Thordis Ingadottir*					
30	Presentation	Leiden University - Campus Den Haag Launch Conference: Assessing the Impact of the International Criminal Court	*Presentation of paper on reparations in panel on the influence and implementation of the Rome Statute, by Edda Kristjánsdóttir*	6 May 2011	The Hague	Scientific Community	50	Multiple

A General Information *(completed automatically when **Grant Agreement number** is entered.*

Grant Agreement Number:	SSH7-2008-217589
Title of Project:	Impact of international criminal procedures on domestic criminal procedures in mass atrocity cases
Name and Title of Coordinator:	Reykjavík University

B Ethics

1. Did your project undergo an Ethics Review (and/or Screening)? • If Yes: have you described the progress of compliance with the relevant Ethics Review/Screening Requirements in the frame of the periodic/final project reports? Special Reminder: the progress of compliance with the Ethics Review/Screening Requirements should be described in the Period/Final Project Reports under the Section 3.2.2 *'Work Progress and Achievements'*	***No*** ***0Yes*** ***0No***
2. Please indicate whether your project involved any of the following issues (tick box) :	***NO***
RESEARCH ON HUMANS	
• Did the project involve children?	
• Did the project involve patients?	
• Did the project involve persons not able to give consent?	
• Did the project involve adult healthy volunteers?	
• Did the project involve Human genetic material?	
• Did the project involve Human biological samples?	
• Did the project involve Human data collection?	
RESEARCH ON HUMAN EMBRYO/FOETUS	
• Did the project involve Human Embryos?	
• Did the project involve Human Foetal Tissue / Cells?	
• Did the project involve Human Embryonic Stem Cells (hESCs)?	
• Did the project on human Embryonic Stem Cells involve cells in culture?	
• Did the project on human Embryonic Stem Cells involve the derivation of cells from Embryos?	
PRIVACY	
• Did the project involve processing of genetic information or personal data (eg. health, sexual lifestyle, ethnicity, political opinion, religious or philosophical conviction)?	
• Did the project involve tracking the location or observation of people?	
RESEARCH ON ANIMALS	
• Did the project involve research on animals?	
• Were those animals transgenic small laboratory animals?	
• Were those animals transgenic farm animals?	
• Were those animals cloned farm animals?	
• Were those animals non-human primates?	
RESEARCH INVOLVING DEVELOPING COUNTRIES	
• Did the project involve the use of local resources (genetic, animal, plant etc)?	
• Was the project of benefit to local community (capacity building, access to healthcare, education etc)?	
DUAL USE	
• Research having direct military use	No
• Research having the potential for terrorist abuse	

C Workforce Statistics

3. Workforce statistics for the project: Please indicate in the table below the number of people who worked on the project (on a headcount basis).

Type of Position	Number of Women	Number of Men
Scientific Coordinator	3	3
Work package leaders	3	3
Experienced researchers (i.e. PhD holders)	4	2
PhD Students	7	0
Other	12	9

4. How many additional researchers (in companies and universities) were recruited specifically for this project?	**2**
Of which, indicate the number of men:	1

D Gender Aspects

5. Did you carry out specific Gender Equality Actions under the project?

○	Yes
x	No

6. Which of the following actions did you carry out and how effective were they?

		Not at all effective				Very effective
❑	Design and implement an equal opportunity policy	○	○	○	○	○
❑	Set targets to achieve a gender balance in the workforce	○	○	○	○	○
❑	Organise conferences and workshops on gender	○	○	○	○	○
❑	Actions to improve work-life balance	○	○	○	○	○
○	Other:					

7. Was there a gender dimension associated with the research content – i.e. wherever people were the focus of the research as, for example, consumers, users, patients or in trials, was the issue of gender considered and addressed?

x Yes- please specify

Gender aspects are very relevant in the scientific content of the DOMAC project. For instance, in view of current research on rape as an international crime, gender issues are an important component of WP2.

○ No

E Synergies with Science Education

8. Did your project involve working with students and/or school pupils (e.g. open days, participation in science festivals and events, prizes/competitions or joint projects)?

○ Yes- please specify

x No

9. Did the project generate any science education material (e.g. kits, websites, explanatory booklets, DVDs)?

x Yes- please specify

Domac website provides access to academic reports free of charge and will continue to operate after conclusion of project; a flyer, and a cd with reports was also made and distrubed at a conference.

○ No

F Interdisciplinarity

10. Which disciplines (see list below) are involved in your project?

○ Main discipline[20]: 5.4

○ Associated discipline: 5.4 ○ Associated discipline:

[20] Insert number from list below (Frascati Manual).

G Engaging with Civil society and policy makers

11a Did your project engage with societal actors beyond the research community? *(if 'No', go to Question 14)*	X ○	Yes No

11b If yes, did you engage with citizens (citizens' panels / juries) or organised civil society (NGOs, patients' groups etc.)?

- ○ No
- ○ Yes- in determining what research should be performed
- ○ Yes - in implementing the research
- X ○ Yes, in communicating /disseminating / using the results of the project

11c In doing so, did your project involve actors whose role is mainly to organise the dialogue with citizens and organised civil society (e.g. professional mediator; communication company, science museums)?	○ X	Yes No

12. Did you engage with government / public bodies or policy makers (including international organisations)

- ○ No
- X ○ Yes- in framing the research agenda
- X ○ Yes - in implementing the research agenda
- X ○ Yes, in communicating /disseminating / using the results of the project

13a Will the project generate outputs (expertise or scientific advice) which could be used by policy makers?

- X ○ Yes – as a **primary** objective (please indicate areas below- multiple answers possible)
- X ○ Yes – as a **secondary** objective (please indicate areas below - multiple answer possible)
- ○ No

13b If Yes, in which fields?

Agriculture		Energy		Human rights	x
Audiovisual and Media	X	Enlargement		Information Society	
Budget		Enterprise		Institutional affairs	
Competition		Environment		Internal Market	
Consumers		External Relations	x	Justice, freedom and security	x
Culture		External Trade		Public Health	
Customs		Fisheries and Maritime Affairs		Regional Policy	
Development Economic and Monetary Affairs		Food Safety		Research and Innovation	
		Foreign and Security Policy	x	Space	
Education, Training, Youth		Fraud		Taxation	
Employment and Social Affairs		Humanitarian aid		Transport	

13c If Yes, at which level?

- X ○ Local / regional levels
- X ○ National level
- X ○ European level
- X ○ International level

H Use and dissemination

14. How many Articles were published/accepted for publication in peer-reviewed journals?	**7**
To how many of these is open access[21] provided?	**3**
How many of these are published in open access journals?	
How many of these are published in open repositories?	
To how many of these is open access not provided?	**4**
Please check all applicable reasons for not providing open access:	
X❑ publisher's licensing agreement would not permit publishing in a repository ❑ no suitable repository available ❑ no suitable open access journal available ❑ no funds available to publish in an open access journal ❑ lack of time and resources ❑ lack of information on open access ❑ other[22]: ……	

15. How many new patent applications ('priority filings') have been made? *("Technologically unique": multiple applications for the same invention in different jurisdictions should be counted as just one application of grant).*		**0**
16. Indicate how many of the following Intellectual Property Rights were applied for (give number in each box).	Trademark	**0**
	Registered design	**0**
	Other	**0**
17. How many spin-off companies were created / are planned as a direct result of the project?		**0**
Indicate the approximate number of additional jobs in these companies:		

18. Please indicate whether your project has a potential impact on employment, in comparison with the situation before your project:

❑	Increase in employment, or	❑	In small & medium-sized enterprises
❑	Safeguard employment, or	❑	In large companies
❑	Decrease in employment,	X	None of the above / not relevant to the project
❑	Difficult to estimate / not possible to quantify		

[21] Open Access is defined as free of charge access for anyone via Internet.

[22] For instance: classification for security project.

19. For your project partnership please estimate the employment effect resulting directly from your participation in Full Time Equivalent (*FTE = one person working fulltime for a year*) jobs:	*Indicate figure:*
Difficult to estimate / not possible to quantify	X

I Media and Communication to the general public

20. As part of the project, were any of the beneficiaries professionals in communication or media relations?

○ Yes X No

21. As part of the project, have any beneficiaries received professional media / communication training / advice to improve communication with the general public?

○ Yes x No

22 Which of the following have been used to communicate information about your project to the general public, or have resulted from your project?

X	Press Release	❑	Coverage in specialist press
❑	Media briefing	❑	Coverage in general (non-specialist) press
❑	TV coverage / report	x	Coverage in national press
X	Radio coverage / report	❑	Coverage in international press
X	Brochures /posters / flyers	x	Website for the general public / internet
❑	DVD /Film /Multimedia	X	Event targeting general public (festival, conference, exhibition, science café)

23 In which languages are the information products for the general public produced?

❑	Language of the coordinator	x	English
x	Other language(s)		Icelandic