

New Technologies in Criminal Justice for Core International Crimes: The ICC Legal Tools Project

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1. Introduction

The Legal Tools of the International Criminal Court (ICC or ‘the Court’) are new technologies which facilitate the administration of criminal justice for atrocities by improving effectiveness and enhancing the capacity of criminal justice institutions to investigate, prosecute and adjudicate core international crimes. This article will introduce the ICC’s Legal Tools before drawing attention to two recent endorsements of the Tools. It will focus on the adoption of the logic underlying the Case Matrix, one of the Legal Tools, in several decisions of the Pre-Trial and Trial Chambers of the ICC, demonstrating the potential utility of the Legal Tools within the Court. It will go on to highlight the use of the Legal Tools beyond the ICC and the support of the Legal Tools Project at the Court’s first Review Conference, held in Kampala in June 2010.

2. The Legal Tools and New Technology

The ICC’s Legal Tools Project utilises the advantages of new technologies in order to tackle issues of access to legal material and difficulties raised by the

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complexity of cases involving core international crimes. The ICC's Legal Tools offer a comprehensive online or electronic knowledge system and provide an expansive library of legal documents and range of research and reference tools. The Legal Tools were developed with the aim of encouraging and facilitating the efficient and precise practice of criminal justice for core international crimes. Whilst initially created and envisaged for use within the Court,¹ realisation of the value of the Legal Tools as a means of increasing national capacity led to their development² for use by a range of external actors.

The Legal Tools Project includes three main clusters of services: (i) the Legal Tools Database and Website;³ (ii) the Digests on the law and evidence of international crimes and modes of liability and means of proof; and (iii) the Case Matrix application for organising and structuring evidence in core international crimes cases.⁴

The Legal Tools Database and Website provide a free, publicly accessible platform for the dissemination of legal information relating to the investigation, prosecution, defence and adjudication of serious international crimes. The Database contains over 44,000 documents, including decisions and indictments from all international and internationalised criminal tribunals, preparatory works of the ICC, jurisprudence and decisions from the ICC, treaties, information about national legal systems and relevant decisions from national courts, which are fully searchable using a state of the art search engine. The Legal Tools Database also contains a specific search engine which allows users to search specific aspects of national legislation implementing the Rome Statute of the International Criminal Court 1998 ('the Statute').⁵

The Elements Digest provides raw data and notes on the elements of crimes as well as the modes of liability contained in the Statute and Elements of Crimes document.⁶ The text is drawn from all sources of international law. Relevant sources will be hyperlinked in the Digest to allow users direct access

1 International Criminal Court, 'Legal Tools History', available at: <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/2003-2005/> [last accessed 1 September 2010].

2 As the Project expanded, the further development of the Legal Tools was outsourced to a number of academic partners ('the Legal Tools Outsourcing Partners') with specific expertise in the field, whose activities are overseen by practitioners and experts in the field, including the Legal Tools Advisory Committee of the ICC, with representation from the different Organs of the Court, as well as a Legal Tools Expert Advisory Group with some of the leading legal informatics experts serving as members. See International Criminal Court, 'Work on the Tools', available at: <http://www.legal-tools.org/en/work-on-the-tools/> [last accessed 1 September 2010]; and Legal Tools Outsourcing Partners' Network, 'Purpose', available at: <http://www.ltop-network.org/> [last accessed 1 September 2010].

3 Available at: <http://www.legal-tools.org> [last accessed 1 September 2010].

4 International Criminal Court, 'What are the Legal Tools?', available at: <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/> [last accessed 1 September 2010]; and Case Matrix Network, 'Knowledge-transfer, legal empowerment and capacity building', available at: <http://www.casematrixnetwork.org/purpose/> [last accessed 1 September 2010].

5 A/CONF.183/9, entered into force on 1 July 2002.

6 The two digests currently spread over 8,000 pages.

to primary material. The Means of Proof Digest allows users to see the types or categories of evidence that have been used in national and international criminal jurisdictions to satisfy the elements of crimes and modes of liability contained in the Statute.⁷ The two Digests can be accessed through the Case Matrix.

The Case Matrix is a law-driven case management and legal information application developed for the efficient and precise investigation, prosecution, defence and adjudication of international crimes. The Case Matrix allows users to access documents selected from the Legal Tools Database (the 'Legal texts' function) as well as access to the Elements and Means of Proof Digests. The application also serves as a database for the organisation of information and evidence relating to core international crimes, tailored to the specific crimes that have been committed and relevant modes of liability. In addition, it provides a methodology for the investigation and prosecution of international crimes, offering 'a user's guide to proving international crimes and modes of liability and [providing] a database service to organise and present the potential evidence in a case'.⁸ The Case Matrix can be adapted for use by different actors involved in the processing of core international crimes, such as human rights personnel, investigators, prosecutors, defence teams, victims' representatives, judges and civil society.

3. Adoption of the Case Matrix Logic by the ICC

In several of its early decisions, both Pre-Trial and Trial Chambers of the ICC have ordered the parties to communicate evidence in the form of an in-depth analysis chart, similar in structure to the framework provided by the evidence management application of the Case Matrix. The requirements issued by the Chambers, and the justifications underlying their orders, can be seen as an endorsement of the Case Matrix logic within the ICC.

A. Orders by ICC Chambers

The Case Matrix logic was first adopted by Pre-Trial Chamber III in respect of the case of *Prosecutor v Jean-Pierre Bemba Gombo*. In its decision of 31 July 2008, the Chamber held that evidence submitted to the Registry for disclosure between the parties should be accompanied by, *inter alia*, '[a]n analysis of

7 They do not represent the views of the ICC, its organs or any participants in proceedings before the Court.

8 Bergsmo and Webb, 'Innovations at the International Criminal Court: Bringing New Technologies into the Investigation and Prosecution of Core International Crimes', in Radtke et al. (eds), *Historische Dimensionen von Kriegsverbrecherprozessen nach dem Zweiten Weltkrieg* (Baden-Baden: Nomos, 2007) 208.

each piece of evidence reflecting its relevance as described in part III of this decision.⁹ In part III of its decision, the Chamber outlined that ‘evidence exchanged between the parties and communicated to the Chamber must be the subject of a sufficiently detailed legal analysis relating the alleged facts with the constituent elements corresponding to each crime charged.’¹⁰ The Chamber went on to lay down detailed requirements for the manner in which the evidence should be presented:

Each piece of evidence must be analysed – page by page or, where required, paragraph by paragraph – by relating each piece of information contained in that page or paragraph with one or more of the constituent elements or one or more of the crimes with which the person is charged, including the contextual elements of those crimes, as well as the constituent elements of the mode of participation in the offence with which person is charged.¹¹

The Chamber did not mention the evidence management functionality provided by the Case Matrix. However, its requirements adopt the Case Matrix logic. The evidence management feature of the Case Matrix breaks each crime down into its constituent elements, including the contextual elements of the crime and the modes of participation. It provides a structure in which evidence, potential evidence or information can be uploaded against each element of the crime or mode of liability in accordance with the Chamber’s request.

Following the failure of the Prosecution and the Defence to comply with the requirements laid out in its decision of 31 July 2008, Pre-Trial Chamber III issued two further decisions ordering the respective parties to re-submit evidence in the required format.¹²

The logic of the Case Matrix was subsequently endorsed by Trial Chamber II of the ICC in the case of *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*. On 13 March 2009,¹³ the Trial Chamber issued a decision recalling its request to the Prosecution, during the first public status conference, to submit ‘an ordered and systematic presentation of [its] evidence’.¹⁴ It also recalled its decision of 10 December 2008, directing the Prosecution to ‘submit a proposal

9 *Situation in the Central African Republic in the case of the Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties, ICC-01/05-01/08-55, 31 July 2008.

10 *Ibid.* at para. 66.

11 *Ibid.* at para. 69.

12 *Situation in the Central African Republic, the case of the Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Submission of an Updated, Consolidated Version of the In-depth Analysis Chart of Incriminatory Evidence, ICC-01/05-01/08-232, 10 November 2008; and *Situation in the Central African Republic, the case of the Prosecutor v Jean-Pierre Bemba Gombo*, Decision on the Disclosure of Evidence by the Defence, ICC-01/05-01/08-311, 5 December 2008.

13 *Situation in the Democratic Republic of the Congo in the case of the Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, Order concerning the Presentation of Incriminating Evidence and the E-Court Protocol, ICC-01/04-01/07-956, 13 March 2009.

14 ICC-01/04-01/07-T-52-ENG ET WT, 27 November 2008, at 58.

for a table linking the charges confirmed by Pre-Trial Chamber I and the modes of responsibility with the alleged facts as well as the evidence on which it intends to rely at trial'.¹⁵

The Chamber rejected a table that had been proposed by the Prosecution on the basis that it 'would not enable the parties or the Chamber to have an ordered, systematic and sufficiently detailed overview of the incriminating evidence'.¹⁶ In particular, the Chamber raised concerns that the table '[did] not show clear and particularised links between the charges, the elements of the crime, the alleged facts, and the relevant parts of the item of evidence' and '[did] not allow the evidence to be sorted out on the basis of its relevance to a particular factual statement'.¹⁷ The Chamber ordered the Prosecution to submit an 'analytical table. . . based on the charges confirmed and follow[ing] the structure of the *Elements of crimes*'.¹⁸ Again, although the Trial Chamber did not refer to the Case Matrix explicitly, it laid down requirements which would be met by the submission of evidence in the format provided by the evidence management functionality.

The approach of Trial Chamber II was subsequently followed by Trial Chamber III in the case of *Prosecutor v Jean-Pierre Bemba Gombo*.¹⁹ Having referred extensively to the decision of Trial Chamber II of 13 March 2009,²⁰ Trial Chamber III ordered the prosecution to file an updated in-depth analysis chart in accordance with the same requirements.

B. Justification for the Adoption of the Case Matrix Logic

The approach of the Chambers to the submission of evidence in the decisions outlined above was supported by the dual rationale of increasing the efficiency of the international criminal process, and ensuring respect for the rights of the accused.

(i) Efficiency of the criminal process

In its decision of 31 July 2008, Pre-Trial Chamber III stated the purpose of its request to be 'to streamline the disclosure of evidence, to ensure that the defence be prepared under satisfactory conditions, to expedite proceedings and to prepare properly for the confirmation hearing'.²¹ The approach of the Chamber was grounded in its conception of the role of Pre-Trial Chambers at

15 See supra n. 13 at para. 1.

16 Ibid. at para. 9.

17 Ibid.

18 Ibid. at para. 11.

19 *Situation in the Central African Republic in the case of the Prosecutor v Jean-Pierre Bemba Gombo*, ICC-01/05-01/08-682, 29 January 2010.

20 Ibid. at paras 21–5.

21 See supra n. 9 at para. 72.

the ICC; to act as a filtering system, preventing cases which fail to meet the threshold of Article 61(7) of the Statute from proceeding to the trial stage²² and as a stage in the preparation for trial.²³ It considered the methodology adopted to allow this process to be conducted more efficiently,²⁴ ensuring only relevant material would be introduced to the Chamber at the outset of the trial process.²⁵

Trial Chamber II also justified its approach on the ground of expediency.²⁶ The Chamber recognised the additional administrative burden that the methodology would impose on the prosecution.²⁷ However, at the same time it considered that ‘the supplementary investment of time and resources, required by the Prosecution for preparing the Table of Incriminating Evidence, will facilitate the subsequent work of the accused and the Chamber and thereby expedite the proceedings as a whole.’²⁸ The approach of the Chamber was to consider the efficiency of the trial process as a whole, rather than the workload of individual organs of the Court at various stages of the trial process.

(ii) Protection of the rights of the accused

In addition to the emphasis on efficiency, Pre-Trial Chamber III acknowledged the value of a precise and structured approach to the handling of evidence for the rights of the accused. It acknowledged that ‘disclosure of a considerable volume of evidence for which it is difficult or impossible to comprehend the usefulness for the case merely puts the defence in a position where it cannot genuinely exercise its rights, and serves to hold back proceedings.’²⁹ The Chamber considered that these issues could be remedied by handling evidence in a systematic and organised fashion, presenting it in the format it proposed.

In a similar manner, the Trial Chamber recognised the concerns of the defence regarding the amount of evidence in the case and entitlement to be informed of the precise evidentiary basis of the Prosecution’s case, and emphasised that the methodology would ‘ensure that the accused have adequate time and facilities for the preparation of their defence, to which they are entitled under Article 67(1)(b) of the Statute, by providing them with a clear and comprehensive overview of all incriminating evidence and how each item of evidence relates to the charges against them.’³⁰ The Chamber

22 Ibid. at para. 11.

23 Ibid. at para. 25.

24 Ibid. at para. 72.

25 Ibid. at para. 64.

26 See supra n. 13 at para. 15.

27 Ibid.

28 Ibid.

29 See supra n. 9 at para. 67.

30 See supra n. 13 at para. 6.

considered the approach that it had ordered with regard to the submission of evidence to 'ensure that there is no ambiguity whatsoever in the alleged facts underpinning the charges confirmed by the Pre-Trial Chamber' and provide for 'a fair and effective presentation of the evidence on which the Prosecution intends to rely on at trial'.³¹ Similarly, Trial Chamber III justified the adoption of a similar approach on the grounds that it would provide for the 'fair and effective presentation of the evidence which the prosecution intends to rely on at trial'.³²

C. *Relevance of the ICC's Endorsement for Other Fora*

The justifications supporting the adoption of the Case Matrix as a means of organising and communicating evidence are not ICC specific. Efficiency and fairness are issues pertinent not only to the ICC but also to other criminal justice systems which could benefit from the use of the technology provided by the Case Matrix. The need for expediency is particularly pertinent at the national level due to the role that national institutions are envisaged to play under the ICC's regime and the sheer number of cases that might arise for adjudication. National criminal justice systems are normally exposed to work pressures, expectations and control mechanisms which when combined far exceed those of international criminal jurisdictions.

It is significant to note that the decisions referred to above relate to one of several means of using the Case Matrix. The decisions concern the use of a case analysis chart to facilitate the communication of evidence to the Chambers of the ICC and for disclosure between parties. The Case Matrix has a number of different uses beyond this. The evidence management function provided by the Case Matrix can be used not only to communicate material, but also within different parts of the criminal justice system to organise and oversee the documentation, investigation, prosecution, defence and adjudication of international crimes. Consequently, whilst the technology offered by the Legal Tools can assist in the communication and dissemination of evidence in the manner contemplated by the Chambers of the ICC, it also has much wider utility within the judicial process.

The next part will consider how the technology provided by the Legal Tools could be used beyond the ICC in a range of different institutions which form part of the wider system of criminal justice for international crimes surrounding the ICC.

31 Ibid. at para. 5.

32 See supra n. 19 at para. 21.

4. Building Capacity Outside the ICC

A. *The ICC's Complementarity Regime and the Importance of National Justice*

The intention to confirm the place of states at the forefront in the fight against impunity is clear already from the Preamble to the Statute, which affirms that the 'effective prosecution [of the most serious crimes of concern to the international community] must be ensured by taking measures at the national level', recalling that 'it is the duty of every state to exercise its criminal jurisdiction over those responsible for international crimes'. The essential role of national criminal justice institutions is elaborated further under Articles 1 and 17 of the Statute. Article 1 affirms that the ICC 'shall be complementary to national criminal jurisdictions', emphasising the primary role granted to states under the ICC's institutional framework. Article 17 establishes the relationship between the ICC and national criminal justice institutions. It restricts the jurisdiction of the ICC in situations where states are willing and able genuinely to investigate and prosecute, thereby giving states priority over the investigation of international crimes and providing the ICC with the role of a 'safety net'³³ or 'court of last resort'³⁴ where national institutions fail to act.

The lack of capacity of states to fulfil their role under international law as reflected in the ICC's complementarity regime has led to the development of the notion of 'positive complementarity'. The term 'positive complementarity'³⁵ was originally introduced by the Office of the Prosecutor in its 2006 Policy Paper³⁶ in order to describe the role the Court could play in the construction of national capacity.³⁷ However, the term has subsequently been used more widely to refer to the assistance that states and civil society can play in building capacity at the national level. During the first Review Conference of the ICC, held in Kampala in May–June 2010, efforts were made to identify ways in which a range of actors could contribute to the construction of national

33 Bassiouni, 'Where is the ICC Heading?', (2006) 4 *Journal of International Criminal Justice* 421 at 422.

34 Turner, 'Nationalizing International Criminal Law', (2005) 41 *Stanford Journal of International Law* 1 at 3.

35 For the general discussion on positive complementarity approach, see Burke-White, 'Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice', (2008) 49 *Harvard International Law Journal* 53; and Burke-White, 'Implementing a Policy of Positive Complementarity in the Rome System of Justice', (2008) 19 *Criminal Law Forum* 59.

36 ICC-Office of the Prosecutor, *Report on Prosecutorial Strategy* (The Hague: ICC, September 2006).

37 *Ibid.* at 5.

capacity in order to strengthen the ICC's regime.³⁸ The ICC's Legal Tools Project was highlighted as one means of building national capacity.³⁹

B. The Legal Tools and Positive Complementarity

(i) Access to legal information relating to serious international crimes

Access to legal information is the bread and butter of lawyers. Without adequate access to legal information lawyers cannot write proper legal motions, arguments and decisions. It is not enough to have talented and well-educated lawyers and investigators. Providing effective access to legal information on war crimes, crimes against humanity and genocide is therefore one of the first steps in all capacity building in criminal justice for such crimes. If the access is expensive, it cannot be effective insofar as many potential users are excluded.

The Legal Tools provide free and easy access to legal information relevant to core international crimes. The wide range of resources contained in the Legal Tools Database, which can be easily accessed through the search or browse functions on the Legal Tools Website, is of potential value for any lawyer or institution operating in the field of international criminal law. Such resources may not be of existential value for legal actors who have access to a wealth of legal materials and expertise. Such actors, however, constitute a small minority. The resources in countries that have suffered the commission of mass atrocities may be particularly limited. In the aftermath of international crimes, there may not be the budget to build up resources necessary to hold perpetrators to account for their crimes.

The availability of the Legal Tools serves to level the playing field in the documentation, investigation, prosecution and adjudication of core international crimes and in the defence of persons accused of them, allowing national judicial institutions to process international crimes involving their nationals or committed on their territory that may otherwise have lacked the means to do so. National institutions working on one or more core international crimes cases, which do not have access to the Internet, can find and use relevant information from the Legal Tools Database via the Case Matrix. In offering universal access to relevant information in the field of international criminal law, the Legal Tools can make a significant contribution to local empowerment,

38 See generally Bergsmo, Bekou and Jones, 'Complementarity after Kampala: Capacity Building and the ICC's Legal Tools', (2010) 2 *Goettingen Journal of International Law* 791.

39 Reference was made to the ICC Legal Tools Project as a means of contributing to national jurisdictions by the delegations of Norway and the Netherlands during the plenary session on complementarity during the stocktaking exercise. Moreover, the Legal Tools had been included in ICC, 'Review Conference of the Rome Statute: Focal points' compilation of examples of projects aimed at strengthening domestic jurisdictions to deal with Rome Statute Crimes', 30 May 2010, RC/ST/CM/INF.2 at 32.

the importance of which was stressed throughout the stocktaking exercise in Kampala.

The resources included in the Legal Tools Database and Website assist not only in the documentation, investigation, prosecution, defence and adjudication of core international crimes, but also in the drafting and amendment of implementing legislation. The specific search engine for national implementing legislation (NILD) allows states to compare approaches that have been taken in different jurisdictions and to model their legislation on that of states with similar characteristics, for example, those sharing the same legal tradition. NILD also highlights the approaches which are likely to facilitate states in fulfilling their role under the ICC's complementarity regime and those which might be narrower than what is required, thus falling short of the Statute.

Moreover, the resources found in the Legal Tools have value not only for the states that would normally exercise jurisdiction over crimes following territoriality or nationality.⁴⁰ They can also be used by states wishing to investigate and prosecute serious international crimes through the exercise of universal jurisdiction. Furthermore, they can be used by states, international organisations and civil society wishing to place political pressure on states to discharge their obligations under the Statute. The Legal Tools can be used too by civil society working in the documentation of human rights violations amounting to core international crimes which may lead to the investigation and prosecution of international crimes.⁴¹

In sum, the Legal Tools provide a complete library of materials relating to the practice of international criminal law. The materials provided by the Legal Tools are likely to have value for fully-functioning national judicial institutions. However, their significance is of particular importance within states that have fewer resources. Use of the information contained within the Legal Tools may allow states that would not have been able to engage in investigations and prosecutions to fulfil their role as reflected by the principle of complementarity under Article 17 of the Statute.

(ii) Facilitating transfer of legal knowledge and expertise

International criminal jurisdictions have not only produced a wealth of legal documents since the mid-1990s; they have also contributed to the development

40 In accordance with Article 12 of the Statute.

41 The Tools are not a mere aspiration. Rather, they are fully realised, and they have been developed and are maintained in a sustainable manner. Additionally, the related *Case Matrix Network* provides capacity building activities which enhance positive complementarity in more than 20 countries by mid-2010, drawing, *inter alia*, on the technical platform of the Legal Tools, see: <http://www.casematrixnetwork.org> [last accessed 28 September 2010]. The *Network* seeks to reach all countries which have recently had, or are currently engaging in, core international crimes cases by mid-2012, see: <http://www.casematrixnetwork.org/users/> [last accessed 28 September 2010].

of detailed knowledge and expertise in international criminal law. Making these resources available to national legal actors is essential for these actors, their institutions and the donors of international criminal justice.

The Case Matrix application offers a low cost and instant means of increasing the capacity of national legal actors. It offers a comprehensive system which can be integrated within existing infrastructure and used by domestic personnel without the need for lengthy training or international oversight. Furthermore, following the installation of the Case Matrix, the application remains within the national judicial system, ensuring that the state in question will be ready to respond to possible future conduct that may form the basis of investigations and prosecutions. The fact that the Case Matrix can be incorporated into existing legal structures and operated by local personnel increases its value as a mechanism for local empowerment.

Once installed, national legal actors have ready access to the necessary resources and an effective methodology to conduct investigations, prosecutions, defence and adjudication of international crimes. Users will have access to the Elements and Means of Proof Digests which incorporate knowledge and experience derived from theory and practice in a format that can be easily accessed and imparted into national judicial institutions. The Digests not only provide valuable guidance for legal actors who are not familiar with the processing of international crimes; they can also encourage compliance with international standards and practices by providing a model for national jurisdictions.

The evidence management function contained within the Case Matrix provides a methodology for the oversight of serious international criminal cases. This function has been designed by practitioners with considerable experience in criminal justice for atrocities with the intention of increasing the efficiency and precision of the justice process. It allows for the efficient organisation of evidence by reference to the elements of crimes and modes of liability being charged. In doing so, it contributes to more effective case assessment by indicating which charges are supported by sufficient evidence to allow for prosecution and potential conviction—and which do not. It also supports the development of better prosecutorial strategies and the focusing of time and resources on the weak points of strong cases. Furthermore, it reduces the potential for duplication of work by providing a platform for sharing and transferring information between teams and among different elements of the criminal justice system.⁴² The efficiency and precision of the criminal justice process, which is encouraged by the use of the Case Matrix, is particularly important for national institutions working on a limited budget, especially where there is a large backlog of serious crimes cases. The application can be

42 Kaul, 'Construction Site for More Justice: The International Criminal Court after Two Years', (2005) 99 *American Journal of International Law* 370 at 373.

customised to suit the needs of particular institutions. This allows national capacity to be constructed in a manner which is sensitive to cultural differences.

5. Implications of the Use of the ICC's Legal Tools in the Practice of Criminal Justice for Core International Crimes: Some Concluding Remarks

Two positive implications of the use of the Case Matrix logic have been highlighted by the ICC. The ICC has endorsed the use of a structured analysis framework similar to that created by the evidence management function of the Case Matrix on the basis that it is conducive of the efficiency and fairness of proceedings at the Court. The same justifications could be put forward for use of the Case Matrix at the national level.

The resources incorporated into the Legal Tools may not only serve to increase efficiency and fairness at the national level; they may allow national institutions to document, investigate, prosecute and adjudicate international crimes which they would otherwise have lacked the capacity to do. In this sense, the Legal Tools contribute to the democratisation of criminal justice and local empowerment over the pursuit of justice by reducing the need for international tribunals such as the ICC to exercise jurisdiction on the basis that national institutions are unable. Justice may be more effectively sought at the national level because of the problems faced by international institutions in gaining access to witnesses, evidence and perpetrators.⁴³ Proceedings at the national level are also more likely to hold significance for the local community due to both proximity and communication through national personnel.⁴⁴ The pursuit of justice at the national level is also essential due to the limited capacity of the ICC caused by its open-ended jurisdiction. To date, the ICC, with an annual budget of €103,623,300, has managed to open nine cases.⁴⁵ If the ICC is to achieve the stated goal of ending impunity for international crimes, national institutions will have to play the leading role in the investigation and prosecution of crimes under the Court's jurisdiction. The Legal Tools provide a fast and cost effective means of increasing national capacity. Furthermore, since the technology will remain within the national system to be used by national personnel, the Legal Tools provide a long-term solution to

43 Bassiouni, *supra* n. 33 at 423.

44 Justice mechanisms located within post-conflict societies have been considered 'better able to demonstrate the importance of accountability and fair justice to local populations', see Stromseth, 'Pursuing Accountability for Atrocities After Conflict: What Impact on Binding the Rule of Law', (2007) 38 *Georgetown Journal of International Law* 251 at 260.

45 Figure taken from the programme budget for 2010, Resolution ICC-ASP/8/Res.7, adopted at the 8th plenary meeting, 26 November 2009.

incapacity which is not dependent on external resources or the employment of international personnel. In doing so, the technology encourages the empowerment of national systems of justice as well as long-term support in the criminal justice process.

The Legal Tools also provide a means of stimulating cross-referencing and cross-fertilisation in the field of international criminal law.⁴⁶ Access to a wide range of sources of law, available in the Legal Tools Database as well as the Elements and Means of Proof Digests, allows legislators, judges and counsel to consider approaches taken in other domestic or international systems. Sources of law from other jurisdictions may also provide a point of reference for non-governmental organisations advocating for rules to be drafted, interpreted or amended in a particular way. Whilst differences in context may prevent approaches adopted in one legal system from being incorporated into others, the practice of cross-referencing can encourage discussion, add a wider range of considerations into the legislative or adjudicative process, and lead to higher quality, well-reasoned decisions. Furthermore, discussions between legal systems may lead to the emergence of internationally recognised standards of evidence or clearer definitions of crimes. Coherence and consistency has been thought to contribute to the strength and legitimacy of international law.⁴⁷ In the field of criminal justice for atrocities, coherence is of utmost importance because of its underlying rationale in the deterrence and restoration of international crimes. If the law is seen as *ad hoc* and unstable, it is less likely to have the deterrent⁴⁸ and restorative⁴⁹ effect that a strong, consistent body of rules might have.

Whilst there are compelling reasons for the use of new technologies such as the Legal Tools in the application of international criminal law, certain negative implications must be considered. The first is the impact on established work processes. The use of a structured framework to organise and communicate evidence to Chambers or disclose evidence to other parties involved in the proceedings may have implications for the way the parties work. The Office of the Prosecutor of the ICC has raised this issue in respect of the

46 For discussion on judicial cross-fertilisation, see generally Helfer and Slaughter, 'Toward a Theory of Effective Supranational Adjudication', (1997) 107 *Yale Law Journal* 273; and Burke-White, 'International Legal Pluralism', (2004) 25 *Michigan Journal of International Law* 963.

47 See generally Rao, 'Multiple International Judicial Forums: A Reflection of the Growing Strength of International Law or its Fragmentation?', (2004) 25 *Michigan Journal of International Law* 929.

48 The ICC is thought to have a 'specific preventative effect on individual (potential) perpetrators': see Werle, *Principles of International Criminal Law* (The Hague: T.M.C. Asser Press, 2009) at 35.

49 Bibas and Burke-White 'International Idealism Meets Domestic-Criminal-Procedure Realism', (2010) 59 *Duke Law Journal* 637. See also Haslam, 'Victims Participation at the International Criminal Court: A Triumph of Hope over Experience?', (2004) *The Permanent International Criminal Court*; and Alvarez, 'Rush to Closure: Lessons of the Tadic Judgment', (1998) *Michigan Law Review* 96 at 2031.

use of the case analysis chart for the communication of evidence to the Registrar at the ICC,⁵⁰ highlighting the implications of its use both in terms of time and resources and the impact on the balance of duties, roles, responsibilities, prerogatives and burdens to the parties under the Statute.⁵¹ It is important to note that the objections of the Prosecution were not directed to the use of a case analysis chart to organise its own internal work, but at the obligations imposed by the Chamber in relation to communication and disclosure of the evidence to the Chamber and to the Defence. It is understandable that prosecution services may not wish to add to their burden of work which frequently exceeds available resources, even in those agencies where the work is organised well. It is particularly challenging to change the organisation and method of presentation of evidence in an ongoing case preparation process. If, however, a mature design for the organisation and presentation is implemented from the start of an investigation, there may be considerable resource gains. This fact simply underlines the importance of investigation plans and the overall methodology for the preparation of core international crimes cases. Moreover, the technology provided by the Legal Tools can be used in a variety of ways, depending on the needs of the particular institution. It does not impose strict work processes, but can be used to support those thought desirable and appropriate within different jurisdictions.

It is also important to consider the Legal Tools in terms of their content. Restrictions on the content of the Legal Tools would affect the range of information available to users. This could be problematic for an actor who relies on the Legal Tools to find evidence of international custom or general principles. There will inevitably be an operational delay in incorporating new documents into the Legal Tools Database. Documents must be provided by institutions, which must then be registered, approved and entered into the system. Obstacles may be encountered in accessing certain materials, particularly from national jurisdictions. States contribute to the Legal Tools at their discretion and failure to communicate legislation or decisions can have an impact on the body of materials that are available in the Legal Tools Database. Whilst there are such inevitable operational limitations on materials in the Legal Tools, those provided exceed what would otherwise have been available to users. The Legal Tools Database provided access to over 44,000 documents

50 *Situation in the Central African Republic in the case of the Prosecutor v Jean-Pierre Bemba Gombo*, Prosecution's Application for leave to Appeal Pre-Trial Chamber III's 31 July 2008 Decision on the Evidence Disclosure System and Setting a Timetable for Disclosure between the Parties', ICC-01/05-01/08-63, 6 August 2008; and *Situation in the Democratic Republic of Congo in the case of the Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, ICC-01/05-01/08-982, 23 March 2009.

51 *Situation in the Central African Republic in the case of the Prosecutor v Jean-Pierre Bemba Gombo*, *ibid.* at paras 26–28; and *Situation in the Democratic Republic of Congo in the case of the Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, *ibid.* at paras 32–3 and 36–7.

from both international and domestic institutions by mid-2010.⁵² Even the most well developed legal systems would struggle to gain access to such a vast range of material, let alone those systems which lack any sources of information on international criminal law whatsoever. Consequently, whilst efforts must be made to enhance the completeness and universality of the contents of the Legal Tools, their use is likely to contribute to the dissemination and exchange of information and materials in the field of international criminal law. It is important that states, civil society and individuals contribute documents to the Legal Tools so that the system becomes as complete as possible.

The use of new technologies in the field of justice for atrocities is as recent as the field itself. Whilst new technologies have been used by internationalised institutions, there is scope for expansion of their use, both within and outside the ICC. But this is a process that takes—and should take—time. By focussing on the ICC's Legal Tools, this article has sought to explore the ways in which new technologies can support both national and international legal actors to document, investigate, prosecute and adjudicate core international crimes. It has concluded that the ICC's Legal Tools provide both an effective means of building capacity but also invaluable assistance in strengthening existing resources and improving efficiency, whilst maintaining high standards of justice and respecting the rights of the accused. Whereas the impact such new technologies may have in shaping the future of criminal justice for atrocities is acknowledged, it has been argued that the distinct advantages offered by their use, are to be cherished.

52 ICC, *supra* n. 2.