SYbIL | Spanish Yearbook of International Law

State Cooperation in the Reparations of victims of International Crimes

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Abstract: Cooperation is a general obligation regulated in the Rome Statute. States Parties are the primary and essential cooperators. However, with the system of reparation recognised by the Statute and shaped by jurisprudence, we are faced with a new form of cooperation, that of restorative cooperation. Its analysis is the subject of this work.

Keywords: cooperation international crimes international justice reparation victims' rights

(A) INTRODUCTION

The adoption of the Rome Statute on the International Criminal Court (Statute) in 1998 and its effective date in 2002 constitutes the most important step taken by the International Community to deploy effective instruments that make possible the fight against impunity through international institutions.

The Rome Statute responds to a relationship model between the International Criminal Court (ICC or Court) and the states, that is, their national jurisdictions, through two principles that constitute the backbone of the functioning of the Court, namely: the principle of cooperation and the principle of complementarity. If the first addresses the problems arising from the existence of concurrent jurisdictions, the second responds to the need to adjudicate mechanisms that allow the Court, with the support of the states, to overcome the difficulties that arise in the process.

Although both principles have been developed by the Court and the doctrine, this paper focuses on its restorative perspective in accordance with the jurisprudential motto in the Lubanga case: "Need to go beyond the notion of punitive justice". This model of justice focuses on the victims and their reparation; on the contrary, the prevailing model of punitive justice from Nuremberg to the ad hoc Court has been the punitive one, focussed on the defendant and the sentence. Thus, it is the first time that an international criminal court recognizes a model beyond the punitive one.

(B) COOPERATION SCHEME FROM A RESTORATIVE PERSPECTIVE

The system of judicial cooperation with the ICC is basically defined in part 9. To this must be added other provisions contained in Part 10, which, under the title "Enforcement", establish basic Rules that govern cooperation between the Court and the States Parties with reference to compliance with the sentences issued by the Court. This cooperation finds its backgrounds in the cooperation and mutual judicial assistance agreements between national jurisdictions and the cooperation agreements for serving national

sentences imposed by foreign courts. As it is known, both categories of agreements, whether they have been concluded at a bilateral level or within an international organization, establishes a widely consolidated *corpus iuris* which, for this reason, has worked partly as a source of inspiration for the aforementioned chapters.

Nevertheless, despite the background on which the Statute is inspired to define the model of judicial cooperation of States with the ICC, the regulation of said instrument must broaden its gaze towards the restorative perspective[1], as we will see.

In art. 86 of the Statute cooperation appears as a general obligation, which is conceived instrumentally at the service of the investigation and prosecution of the crimes that are the responsibility of the ICC. In this sense, it can be said that restorative cooperation fits within this general obligation if it is assumed that it is linked to investigation and prosecution, since art. 93, established in the same part ("international cooperation and judicial assistance") as art. 86, regulates some restorative forms of cooperation in the heading "other forms of cooperation". It is understood that the choice of the adjective "other" presumes a separation and a demotion of category, or, at least, it is not as important as the punitive cooperation: "Provisional arrest", art. 92; "Contents of request for arrest and surrender", art. 91; "Surrender of persons to the Court", art. 89, which is clearly specified. Hence, it is inferred that punitive cooperation is more important than restorative, that is, the accused more than the victims. The basis of this thesis is reinforced by the praxis of the ICC, since it is deduced from it that punitive cooperation has had more room than restorative cooperation. In point of fact, it is true that, due to the very nature of the procedural course, the restorative cooperation has not been as necessary as the punitive one, although that is not a justification for not analysing the restorative one in depth.

Restorative international cooperation is based on the principle of comprehensive reparation of damage and the *in dubio pro victim* principle[2]. It consists of understanding and focusing cooperation on the human rights triad (reparation, truth and justice) and restorative postulates; that is, art. 86, 88, 75 and 93 of the RS must be interpreted together. And it is made up of two dimensions[3]: the external one, referring to the cooperation of the States and other actors and the Trust Fund for Victims (TFV), and the internal one, related to each organ of the Court. Here only the external is dealt with in relation to the States.

The States Parties must not only cooperate in the ICC with the participation in its organs and with all its organs, but also with it; they must even ensure that their domestic laws are in accordance with the different forms of cooperation and objectives stated in

[1] Current positions on the conceptualisation of restorative justice are not, strictly speaking, unanimous, even sometimes on the most elementary considerations. However, there is a certain consensus on a different approach to conflict resolution from classical justice, based on the active inclusion of the victim in the resolution and with the aim of fully satisfying that is, as far as possible the harms and impairments to his or her recognised rights. Paul McCOLD, P., "La historia reciente de la justicia restaurativa. Mediación, círculos y conferencias", *Revista Delito y Sociedad,* núm. 35, 2013, at 9-44; Esperanza Orihuela Calatayud., "¿Justicia restaurativa para las víctimas? El papel de la Corte Penal International", *Conflictos, nuevos colonialismos y derechos humanos en una sociedad internacional en crisis* (Aranzadi, Navarra, 2014), at. 23-82; Van Ness and Johnstone, *Handbook of Restorative Justice*, (Taylor & Francis, 2007); Teodor Marshall, Restorative Justice an Overview, (Home Office, Londres, 1999);

the ICC Rule[4]. The Rule gives a wide margin of flexibility to the States Parties and also presents loopholes, which implies certain insecurity for the victims.

The legal framework of analysis focuses mainly, but not exclusively, on art. 93 linked to art. 75 (4) of the Statute because this one make mention of the aforementioned. However, the attitude adopted by the negotiators to link these two provisions is not an obstacle to cooperating for purposes of reparation beyond the stipulated scope, since, as will be seen, voluntary cooperation could be a fundamental element when it comes to achieving the effectiveness of the reparation; otherwise, without this cooperation, the reparation issue could lead us to conclusions that are, firstly, unfortunate, and secondly, disheartening.

(1) State cooperation in asset collection

The collection of assets consists of confiscating assets and resources of the accused that are the direct or indirect product of the crime, or those used or intended to be used in crimes as instruments of execution[5], without prejudice, of course, to the rights of bona fide third parties. State cooperation is unavoidable because the ICC does not have powers in this regard[6].

The identification, seizure and freezing of the defendant's assets is based on the defendant's obligation to repair and the right to return stolen property. It is regulated in art. 75 (4) which grants the ICC the power to order protection measures[7] and in art. 93 of the Statute, as recognized by the Lubanga jurisprudence[8], legislation that is vague on the obligations and rights of the various parties involved in the freezing of assets, which could cause inefficiency and, therefore, harm the victims.

The assets must belong exclusively to the convict; this means that Chambers may not under any circumstances order States to use their property and assets, including fees, to finance compensation for reparation, even in situations where a person holds or has held an official position.

The materialization of the collection of assets by the States Parties is carried out through the adoption of internal procedures for that purpose and in accordance with the request for cooperation[9], which is developed in compliance with domestic law and based on the principle protection of information to protect the safety and physical or

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4 The chambers have emphasised that the main subjects of restorative cooperation are States parties: Case No. ICC-01/04-01/06-2904, 7 August 2012, point. 257.

5 Pre-Trial Chamber, Case No. ICC-01/09-02/11-42, 5 April 2011, points. 6 y 7 and Trial Cham-ber ICC-01/09-02/11-967), 21 October 2014, point. 19.

6 Trial Chamber, Case No. ICC-01/04-01/06-2904, 7 August 2012, points. 276-280.

7 Resolution ICC-ASP/14/Res.3, 26 november 2015.

8 Trial Chamber ICC-01/04-01/06-2904, 7 August 2012, point. 150.

9 There are many challenges to this request (e.g. bank secrecy). It should also be borne in mind that many of the cases known to the ICC come from countries where there has been an armed conflict, and therefore may be in a situation of transition to peace, with all that this entails. The possibility has therefore been raised of entering into agreements with private entities in this regard in order to benefit from the expertise of companies in financial investigations, among other fiscal and financial actions relevant to the case in question. Report ICC-ASP/15/9, 11 October 2016, point. 43.

psychological well-being of victims, potential witnesses and their families. Or, even, through cooperation agreements in this matter. The goal is to secure financing for reparations[10].

The procedural moment in which the Court requests the assistance of the States to adopt precautionary measures is when the alleged offender has become convicted[11]. From that procedural moment, the trial chamber may determine the adoption of provisional measures for the preservation and protection of the properties or of the funds that may be assigned to reparations (rule 99, rules), ex officio or upon request of the Prosecutor, or of the victims who have requested reparation or indicated in writing their intention to do so, and after consulting and presenting observations, the convicted person, interested third parties and States that have an interest in this matter[12]. To this end, the Court must seek cooperation with national authorities and[13], possibly, with international organizations; there is even the likelihood that the defendant cooperates in the identification, freezing or seizure of property and assets, but without prejudice to the right of bona fide third parties.

After the phase of guaranteeing the collection of assets through the imposition of precautionary measures executed by the State with which the convicted person appears to have a direct relationship due to nationality, domicile or habitual residence, or the one in which his or her property or assets are found or with which the victim has that relationship, the next procedural stage is for the ICC Presidency to once again request the cooperation of the State to carry out the execution of the confiscation order in accordance with part 9 of the Statute; that is, under the internal procedures, and inform, when appropriate, the State of the claims asserted by third parties or of the circumstance that no person who has been notified of an action carried out in accordance with art. 75 have made a claim. The confiscation order cannot be modified by the State, as well as the orders where a fine is imposed[14].

Once the assets have been obtained through the orders imposed by the Court, its Presidency carries out a series of consultations with the Prosecutor, the victims or their legal representatives and the national authorities or representatives of the Trust Fund in order to decide all the matters related to the destination or assignment of the goods

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10 Report ICC-ASP/13/Res.4, 17 December 2014, point. 10.

11 However, it is possible, and has been recommended in workshops on asset recovery, that where a warrant of arrest or summons to appear has been issued, the chambers may issue requests to "identify, determine the whereabouts or freeze or seize the proceeds and assets of crime and instrumentalities of crime" as provisional measures "with a view to their subsequent confiscation, determine the whereabouts or freeze or seize" proceeds, property and assets obtained from, or instrumentalities of crime, as provisional measures "with a view to their sub-sequent confiscation", and ultimately for the benefit of victims (arts. 57(3)(e) and 93(1)(k) of the Rome Statute).

12 The carrying out of the consultation and the submission of observations is a discretionary power granted to the Chambers by the Statute, Art. 75 (3); however, unless there are justified reasons and in accordance with the restorative function, this consultation and the submission of observations should always be carried out.

13 Pre-Trial Chamber, Case. No. ICC-01/04-01/06-62-tENG, 31 March 2006.

14 The Rules do not expressly mention the principle of immutability of the confiscation order by the national authorities, but only refer to this principle in reparation orders and orders imposing fines; however, it is logical that such rules, rules 219-220, could be applied to confiscation orders, especially as section IV of the Rules refers to the enforcement of fines and confisca-tion or reparation orders.

or assets, giving priority to consultations on repairing the damage, to the execution of the measures related to compensation and to the payment of judicial aid if it is private, that is, not belonging to the Court. Furthermore, in the event that the Court considers it under art. 79 (2) and art. 75 (2) of the Statute, the collected assets could be transferred to the Trust Fund. In accordance with Rules 31 to 34 of its regulations, it acknowledges receipt of the proceeds, submits observations to the Chamber according to Rule 148 of the Rules of Procedure and Evidence (Rule) and manages and uses the funds based on the stipulations contained in the decision of the Court regarding its use[15]. Likewise, such resources from the collection of assets are detached from those assigned by the Assembly of States Parties (ASP), Rules 35 and 36 of the TFV Regulation (Regulation TFV), and from voluntary contributions, since the latter are destined to the assistance provided to the victims through the autonomous mandate of the TFV[16].

However, would it be possible to request assistance from the States both for the adoption of precautionary measures and subsequently, for the corresponding execution of the collection of assets before conviction? The formulation of this question is part of the legal basis of art. 57 (3), which contemplates the possibility of protecting the collection of assets in order to avoid a hypothetical loss of the property obtained from the crime by the convict[17]. In other words, it is a measure similar to that established in art. 75 (4) but at a procedural moment prior to the conviction, arrest warrant or appearance of the convicted person. Both provisions refer, however, to the same article, 93 of the Statute.

Lubanga jurisprudence has considered that both the Pre-Trial Chamber requesting the arrest warrant including the Prosecutor's Office itself during the investigation and the ICC Registry for the purpose of investigating the insolvency of the convicts as well as the Trial Chamber requesting the adoption of measures in accordance with art. 75 (4) and art. 93 (1) once the defendant has been sentenced they can request the cooperation of the States Parties at both procedural moments to take measures to protect the property, in order to guarantee "the enforcement of a future reparation award" and in accordance with the interests of the victims[18]. In this way, a certain financial success could be guaranteed from the first procedural actions[19].

These have been followed by the Trial Chamber in Katanga and Kenyatta[20]. However, the matter focuses on the latter case due to the very nature of the discussion that the confiscation opens.

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15 L. Moffett, Justice for Victims before the International Criminal Court (Routledge, London, 2015), at 183.

16 Trial Chamber, Case. No. ICC-01/04-01/07-3551, 14 May 2015, at 59-62, and ICC-01/04-01/06-62-tENG, 31 March 2006, at 3.

17 Trial Chamber, Case. No. ICC-01/09-02/11-931, 8 July, 2014, point. 12-17.

18 Pre-Trial Chamber, Case No. ICC-01/04-520-Anx2, 10 February 2006, point. 148.

19 "In the Chamber's view, the reparation scheme provided for in the Statute is not only one of the Statute's unique features. It is also a key feature. In the Chamber's opinion, the success of the Court is, to some extent, linked to the success of its reparation system. In this context, the Chamber considers that early tracing, identification and freezing or seizure of the property and assets of the person against whom a case is launched through the issuance of a warrant of arrest or a summons to appear is a necessary tool to ensure that, if that person is finally con-victed, individual or collective reparation awards ordered in favour of victims will be enforced. Should this not happen, the Chamber finds that by the time an accused person is convicted and a reparation award ordered, there will be no property or assets available to enforce the award", Pre-Trial Chamber, Case. No. ICC--01/04-520-Anx2, 10 February 2006, point. 150.

20 Pre-Trial Chamber, Case. No. ICC-01/04-01/07-54-tENG, 5 November 2007.

The Government of Kenya refused to cooperate with the ICC because it considered that the chamber's request was made before the trial, which was incompatible with the legal basis of art. 93 (1) (k), whose application is post-conviction; thesis that has been supported by Judge Henderson[21]. He considers that art. 57 and Rule 99 of the Rules do not authorize the chamber to request protection measures under art. 93 Statute; therefore, the interpretation made by the chambers of art. 57(3) (e) was too extensive. Although it should be emphasized regarding this issue that the Statute does not impose a restriction on financial information about a certain person, for the simple reason that the transmission of the information obtained by the financial inquiry may be necessary to confirm charges.

So far there have been no further statements in this regard and the case has not yet reached the Appeals Chamber. However, the crux of the matter lies in how to interpret the part of art. 57 (3) (e) in which it speaks of "to take protective measures for the purpose of forfeiture", especially the underlined notion. In fact, this discussion took place in the preparatory work, in which it was suggested that confiscation should not be included as a penalty, but linked to reparation.

The chambers and the Prosecutor's Office have Ruled on the confiscation. They do not seem to have explicitly distinguished the existence of a confiscation procedure within the framework of the penalty, whose legal basis is art. 77 (2) and the procedure to be followed is regulated in Rules 145 and 147 of the Rule, and a confiscation procedure in the reparative framework, whose legal basis is art. 75 (4) and its procedure is regulated in Rules 217, 218 and 222 of the Rule. In other words, the judicial system of the ICC regulates a dual nature for confiscation: punitive and restorative, which brings forward the legal nature conditioning its purpose, its scope, its procedure and the time to introduce it.

Regarding the purpose of confiscation based on its legal nature, we have on one side the confiscation of art. 77 (2), which consists of definitively depriving the convict of the products, goods or assets from the crime of which he or she is the owner in order to apply confiscation as a penalty; that is, to impose punishment or sanction on the perpetrators of the crime and thus avoid unjust enrichment special prevention . This purpose could have dissuasive effects general prevention . While the confiscation of art. 75 (4) consists of depriving the convict of those assets that would have been obtained from the crime in order to finance the reparation of the damage.

In terms of scope, confiscation as a penalty only extends to the products, goods or assets resulting from the crime and does not fall on the instruments of the crime, that is, means or instruments with which the crime was prepared or executed, whatever be the transformations that have been experienced. However, the scope of confiscation in terms of reparation does cover the instruments of the crime as stated in art. 57 (3) because the fourth provision of art. 75 refers entirely to art. 93 (1).

As far as precautionary measures are concerned, both in one confiscation and in another, they can be adopted on the basis of art. 57 (3), which refers to art. 93 (1) (k)[22], the

[21] Trial Chamber, Case. No. ICC-01/09-02/11-898, 7 February 2014.

[22] The purpose of art. 93 (1) (k) is to enable provisional measures to be taken for the purpose of preven-ting the disappearance of assets, and it is applicable to both art. 77 (2) and art. 75 (4), the Office of the Prose-

jurisdiction of which rests with the Pre-Trial Chamber, and pursuant to Art. 75 (4), which also refers to art. 93 (1) but without specifying the letter, it concerns the jurisdiction of the court of the trial chamber. In any case, the chambers require the assistance of the States to execute the precautionary measures: securing the assets to guarantee a subsequent confiscation, be it punishment or reparation. In addition, although it is true that the precautionary measure of art. 57 (3) could be brought pursuant to art. 77 (2), confiscation as a penalty, it is no less true that there is also the possibility that the precautionary measure is adopted on the legal basis of reparation confiscation because art. 57 (3) indicates in a certain way the purpose that the subsequent confiscation could have: "The ultimate benefit of victims", although it is not a requirement[23].

It is also noteworthy that the Statute regulates the possibility of an equivalent confiscation in art. 109 (2) and in Rule 218 (c) of the Rule. It is established that the State in question that cannot carry out the confiscation order filed by the Pre-Trial Chamber adopts the necessary measures to confiscate assets for an amount that corresponds to its value, without prejudice to bona fide third parties. In other words, when it is not possible to make a direct confiscation of the convict's assets, the option of making a confiscation for an equivalent value is provided. But this is only possible in confiscation as a penalty and not in terms of reparation, because the indicated provision refers to part VII of the Statute about penalties.

Regardless of the nature of the confiscation, the assets obtained by the ICC in this respect could be used to repair the victims, since if it were criminal, art. 79 (2) provides that the Court may order that the sums and assets received by way of fine or forfeiture be transferred to the TFV, after consultation with the victims or their legal representatives and the prosecutor, so that the TFV may use them for the reparation of the victims in accordance with the reparation mandate stipulated in art. 75 of the Statute. Therefore, it is not the means that are important, but the end.

It has been said that these two procedures have not been explicitly differentiated, but it is possible that, implicitly, the chambers, together with the prosecution, would have Ruled or, at least, that regardless of the legal nature of the confiscation, the victims could be the recipients of the assets collected from the convict. This procedure is distinguished in the Bemba case, since the chambers requested in 2008, before his conviction in 2016, the seizure of assets as a precautionary measure filed under art. 57 (3)

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cutor has noted in the Kenyatta case. Trial Chamber, Case. No. ICC-01/09-02/11-906-Red, 9 January 2015, point. 11.

[23] On this issue Judge Henderson states in his dissenting opinion as follows: ""I do not read the phrase 'in particular for the ultimate benefit of victims' contained in article 57(3)(e) of the Statute as expan-ding the authority of the Pre-Trial Chamber under that article beyond that which is expressly stated. Rather, I see this phrase as an acknowledgment that in taking the significant step of prospectively freezing or seizing the property or assets of a person who is presumed innocent, the Pre-Trial Cham-ber shall take into consideration in addition to the strength of the evidence and the rights of the accused person whether such measures would in particular be for the ultimate benefit of the victims. In this regard, article 79(2) of the Statute provides that the Court may order that money and other property collected through fines or forfeiture be transferred to the Trust Fund. The Trust Fund itself is expressly established for the benefit of victims of crimes that fall within the jurisdiction of the Court, and article 75(2) provides that the Court may order reparations to victims out of this Fund.", Trial Chamber, Case. No. ICC-01/09-02/11-931-Anx, 9 July 2014, point. 5.

and 93 (1) (k), whose execution was carried out by Portugal[24], transferring the assets to the ICC. This confiscation is not conceptualized as a penalty by Trial Chamber II, without this implying the return of the assets to Bemba[25].

Based on the aforementioned approach, it can be concluded that it is possible to request assistance from the States both for the adoption of precautionary measures and subsequently for the corresponding execution of the collection of assets, regardless of the procedural phase in which the process is found, that is, before or after conviction. Hence, the teleological interpretation of the Lubanga, Katanga and Kenyatta cases with respect to guaranteeing the collection of assets and carrying out their subsequent execution is not contrary to the rights of the defense or to the object and purpose of the treaty, but quite the opposite, since giving a broad scope to the term confiscation and allocating the assets collected from the criminal to the reparation of the victims through different procedural channels means establishing a restorative approach in this regard. An approach that must also be applied during and after completion of the sentence, because ICC regulations allow continuous verification of the financial situation of sentenced persons, especially if they declare themselves at first insolvent and, as a consequence, the TFV must assume the financing of the reparation.

Another issue also arises in connection with the Bemba case. The Congolese convict has been acquitted by the Appeals Chamber[26] and, therefore, if there is no criminal responsibility, there is no reparation for the damage: what could happen then with the collection of assets carried out by the ICC? The Statute makes no provision in this regard. The legal logic leads itself to confirming that all those assets seized from the alleged criminal must be returned in the event of annulment of the trial or acquittal. And the procedure through which the return should be formalized would be the same as that followed for collection or any other provided for in the national judicial system in this regard. Therefore, state cooperation is necessary both in the collection and in the return of assets.

(2) State cooperation in the execution of reparation orders

In the execution of the reparation orders issued by the ICC, the Rule that the exercise of the jurisdictional function does not only consist of judging, but also includes everything related to enforcing what is judged, is not followed. This dogma is not strictly applicable to the ICC because doing what is executed is not an exclusive function of the Court, since the legal texts do not confer executive powers on it, nor can it be considered a power inherent to its functions[27]. Therefore, the legal nature of the execution is not, perhaps, exclusively jurisdictional due to the very nature of the cooperation system on which the procedure of the ICC is based.

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24 Pre-Trial Chamber, Case. No. ICC-01/05-01/08-251-Anx, 10 October 2008.
25 Trial Chamber, Case. No. ICC-01/05-01/08-3673-AnxA, 8 March 2019.
26 Trial Chamber, Case. No. ICC-01/05-01/08-3636-Red, 8 June 2018.
27 The Appeals Chamber of the ICTY ruled in the Blaskic case in these terms, i.e. an enforcement power of an international criminal court cannot be seen as an inherent function of the court: IT-95-14, Ju-dgment of 29 October 1997, at 25-27.

The execution of the reparation order is not an end in itself, but the beginning of a process that must guarantee the effective exercise of the rights and freedoms of the victims, that is, through the execution process, the physical transformation of the reality of the victims by materializing what was recognized in the reparation order. Therefore, an inadequate or non-existent execution would possibly violate the rights of the victims and the reality of justice would not be created.

The Statute provides that the States parties and those that have accepted the jurisdiction of the ICC for an ad hoc case must give effect to the decisions issued in accordance with art. 75 in the same way as the execution of fines and confiscations. To address the development of the execution of the reparation order in the national judicial system of the executing State, Rule 217 of the Rule refers to part 9 of the Statute, that is, the one intended to regulate international cooperation and state assistance[28].

Are the procedures provided for in the domestic law of the executing State applicable, as in the rest of the executions of confiscation orders or penalties? Or should specific Rules that the Court determines apply? The reference makes it very clear: the execution of the decision of art. 75 will be dealt with in accordance with the internal procedures of the State in question, although the content of the request for cooperation and of the reparation order is the power of the ICC, not of the States[29].

However, it must be said that the reparation order is being executed by the TFV and its partner under the supervision of the ICC Second Trial Chamber in the Lubanga case. During the execution, the principles of urgency, legality and respect for the fundamental rights of the victims must be applied.

The executive title, so that the competent body proceeds ex officio to the execution, is the final reparation order, so that in case of acquittal of the defendant, the execution is not such, because the reparation order does not exist. The Rule does not regulate the provisional execution of the reparation order, so it is based on the final judgment. However, that does not prevent the reparation order from being appealed and precautionary measures being adopted in this regard.

The parties involved in the execution differ depending on who is in charge the State or the TFV of executing the reparation order; that is, it depends on whether the procedure is articulated through state execution or done through the TFV. In this section, the first option will be analysed, leaving the second for a later section dedicated to the TFV.

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[28] In the negotiations leading up to the Rome Statute, a key issue related to the enforcement of fines and confiscation orders and other decisions issued under Art. 75 of the Rome Statute, expressed in the following terms: "Some delegations, in a spirit of compromise and in an effort to reach consensus, were prepared to accept 'giving effect to' according to the procedure of their national law [rather than simply 'their national law, as originally proposed'", Draft Report of the Working Group on Enforce-ment (Doc. A/CONF.183 /C.1/WGE/L.13), 4 July 1998, at 5.

[29] States may give effect to an order for reparation, the order shall specify the following: (a) the identity of the person against whom it has been made; (b) in respect of reparations of a financial nature, the identity of the victims to whom reparations have been awarded on an individual basis and, if the amount of reparations is to be deposited in the Trust Fund, such information concerning the Fund as is necessary to proceed with the deposit; and (c) the extent and nature of the reparations ordered by the Court, including, where appropriate, the property and assets ordered to be returned. Rule 218 (3) of the Rules.

In accordance with Rule 217 of the Rule, on which the cooperation of the States with respect to the execution of the reparation order revolves, the Presidency of the ICC is destined to play a crucial role in the execution of the reparation orders. For this reason, the cooperation of the States in this regard will be developed with the Presidency without prejudice to the intervention of any other organ of the Court , which will also inform the victims of the reparation order and its development when the reparation is individual. This shows that in the aforementioned Rule there is no place for the reparation order, whose nature is civil and not criminal, to be executed at the request of a party; therefore, it is not governed by the dispositive principle, does this suppose undermining the rights of the victims before the Administration of Justice of the ICC, including also that of the executing State in question?

Regulation 113 (1) of the Regulations of the Court states that the Presidency will create, and has done so, within it, a unit for the execution of sentences and reparation orders, which will assist it in the exercise of its functions, in accordance to part 10 of the Statute. This unit is called the Enforcement unit within the Presidency and is in charge of coordination and substantive judicial assistance for the Presidency. Among the functions in this regard is, upon request, the provision of assistance to the State in which the reparation order will be executed in accordance with its domestic law.

From the essential role of the Presidency, it can be assumed that the ICC must show diligence in the procedure for executing the reparation order, which implies the need to adopt all the measures at its disposal to effectively develop cooperation with the States[30]. For the purposes of executing a reparation order, the identification of the State that could comply with the enforcement measures is essential. To carry out this task, the ICC will rely on the victims or their legal representatives.

In the exercise of its diligence during the execution procedure, the ICC may also request information from the executing State on the location of the sentenced person or the assets seized. In the same vein, the Presidency of the Court is required to guarantee the continuous tracking of the financial situation of the convicted person, even after having served the prison sentence, in order to enforce the reparation orders in the event of not having collected assets. This shows that the role of the ICC in the implementation of the victims' right to reparation does not end with the issuance of a reparation order, since it plays a fundamental role in the process of its execution in the national judicial system of the executing State[31]. Therefore, the success of the execution procedure of the order depends both on the diligence of the Court and on the cooperation of the State; it is even possible to speak of requested States in order to carry out the execution. Likewise, the ICC regulations manages the possibility of adopting precautionary measures in relation to the procedure for executing the reparation order. However, art. 75 (4) of the Statute limits its application because it refers to the procedural moment in which there is a conviction, which means that such measures may not be very successful.

30 The duty to cooperate and the fight against impunity require a diligent administration of justice and, to that end, ICC organs must act appropriately and carefully to ensure that proceedings are conducted with appropriate expediency. Report about cooperation, RC/Decl.2, 8 June 2010, point. 1.

31 "ICC reparation orders will be implemented effectively depends, at the end of the day, on the interac-tion and cooperation of ICC member states and possible states ar not parties to the ICC", E. Dwertmann, The Reparation System of the International Criminal Court (Martinus Nijhoff, Boston, 2010), at 280.

However, in the event that the precautionary measures are given, they may be applied ex officio or at the request of a party (victims or their legal representatives and the prosecutor), in which case the State will be notified so that it can proceed with their *execution inaudita parte nihil possumus definire.*

The execution of reparation orders by the State under art. 75 (5) and 109 implies its automatic and complete recognition. However, this has a significant margin of appreciation to fulfil its obligations, since it decides the procedure to follow[32]. This shows that it is not required to follow any external procedure[33], but only to establish a procedure that allows the effective execution of reparation orders.

States must prevent, therefore, the imposition of legal or factual barriers, so they must act in order not to be incapacitated in the execution of the reparation order. But, if necessary, the Court must be informed and consulted, which can advise the State on the specific measures to be taken. A voluntary agreement to cooperate in relation to enforcement of the reparation order could even be entered into as an alternative solution and to supplement statutory and national enforcement shortfalls. Consequently, depending on the legal system, the victims may or may not have an enforceable title to claim before the domestic jurisdiction to achieve the execution of their credit.

Another issue connected to the execution of the reparation order is related to the possibility of supervising the execution of the reparation order and, therefore, the procedure that should guide the supervision , but only the supervision of the execution of the sentence is mentioned. However, it is possible to emulate, *mutatis mutandis*, that jurisdictional function of the Court supervising compliance with its decisions. To this end, tracking compliance with the order could involve requesting information from the State on the activities carried out for the purposes of compliance, as well as obtaining relevant observations from other interested parties, such as the victims, and also hold hearings on the supervision of compliance with the reparative decision. Once the information is obtained, the Presidency of the Court could assess whether or not there was compliance. However, the question arises as to what standards the supervision would conform to. The reparation order is issued on the legal basis of art. 75 and is executed in accordance with internal procedure. Hence, broadly speaking, in any case, such supervision should not be carried out to the detriment of the rights of the victims under domestic law and international law, as stipulated in the sixth section of the aforementioned provision.

The execution procedure ends with the extinction of the defendant's civil liability ordered in the executory title and the satisfaction of the victims, that is, by imposed compliance with the obligation to repair.

(3) Other ways to cooperate for reparation purposes

[32] But within certain limits, such as: "State Parties have the obligation under Parts 9 and 10 of the Sta-tute, of cooperating fully in the enforcement of orders, decisions and judgments of the Court, and they are enjoined not to prevent the enforcement of reparations orders or the implementation of awards", Trial Chamber, Case. No. ICC-01/04-01/06-2904, 7 August 2017, point. 256.

[33] A. Cassese et al., The Rome Statute of the International Criminal Court: A commentary (Oxford University Press, Oxford, 2002), at 1829.

The forms of cooperation described above are the main ones for reparation purposes. However, there are others that could play a no less important role in repairing the damage to the victims and in assuming obligations of cooperation with the ICC.

Observations made under article 75 of the Rome Statute. The Court works in difficult environments, whether in post-conflict or ongoing conflict situations. In this context, its ability may be limited to carry out a decision pursuant to art. 75 of the Statute. For this reason, this provision provides in its third section an essential tool to involve any interested party in the case in question: the submission of observations at the request of a party or ex officio during the entire reparation phase. Among the participants, express mention is made of the States that have an interest. In practice, the national authorities of Mali have presented observations (Al Mahdi case) regarding the execution of the reparation plan at the request of the chamber[34], and in the Lubanga case, the national authorities have sent documents through the observations made on the reparation plan, also requested by the chamber.

It must be taken into account that submitting observations implies participating in the reparation stage or, at least, in a specific procedural action. Although it is true that the States are not required to do so, it is also true that it is at least convenient in order to show an attitude of cooperation with the ICC and thus demonstrate to the victims their willingness to help rebuild their lives; hence, perhaps, the interposition of observations on their own initiative is more appropriate than being requested by the chambers.

Victim protection and assistance. Security is obviously a concern for victims who have accessed or intended to access the ICC; therefore, it is a challenge for the ICC, since the Court and its staff cannot develop this protection alone because they do not have the relevant economic and human resources, especially when it comes to mass victimizations that have occurred in territories where hostility between parties and especially against the foreigner is the daily Rule.The States in question, based on the principle of proximity and taking into account that the protection of victims is established as an obligation of cooperation in the Statute, must cooperate to increase the scope of protection for victims, in addition to strengthening its efficiency and effectiveness and contribute to improving the image of the ICC in the eyes of victims.

This protection policy has been expanded through cooperation agreements between the ICC and the States Parties for the relocation and protection of victims and through the modification of national legislation; work has even been done to provide psychosocial support and to obtain the resources required to provide it[35]. However, more still needs to be done, as States need to support the Court in raising the profile and staffing of field offices, in order to, among other things, ensure that they are able to safely carry out effective, efficient and safe protection work[36].

Regarding assistance to victims, the question could arise of the option of a centralized assistance model in the field offices that the ICC has, establishing a mandate under

34 Trial Chamber, Case. No. ICC-01/04-01/06-3379-Red-Corr-tENG, 21 November 2017, point. 195-199.

35 This cooperation takes place through the ICC Registry and with the Victims and Witnesses Unit and the Witness and Victim Protection Agency or counterpart body of the particular State, where permit-ted by the national law of that State.

36 Report ICC-ASP/14/26/Rev.1, 17 November 2015, at 4, and Report ICC-ASP/15/9, 11 October 2016, at 9.

which State officials and authorities would be required to refer the victims who have suffered damages because of the commission of the international crime to these offices. Or, again, a dual model could be implemented, in which the Court's field offices would be in charge of matters related to the international criminal process and, on the other hand, a state public office would be created to assume emotional support and care for victims of international crimes.

Potential remedial measures to be considered. There is still no practice in this regard, but certain sections of art. 93 of the Rome Statute lend themselves to the adoption of reparative measures by the State in question that could benefit the victims. And, in fact, the ASP urges the States Parties to do so. This is the case, for example, of conducting visual inspections, the exhumation and examination of corpses and mass graves, art. 93 (1) (g).

There are two essential elements that support this hypothesis. In the first place, the reparative jurisprudence has made it very clear that the list of types of reparation established in art. 75 is open. Second, international practice could guide the Court. There is jurisprudence of the Inter-American Court of Human Rights that considers as a measure of reparation, satisfaction and guarantee of non-repetition, what is regulated in the provision mentioned in the previous paragraph[37].

These are measures that are given within the framework of investigations into the commission of a certain crime and that, for the victims, direct or indirect, could involve symbolic reparation or even restitution. This is a very important matter, as there are certain cultures in which the family does not rest in peace it can even be considered a humiliation and, obviously, intense suffering prolonged *sine die* until the disappeared person is returned or the body handed over to give it the corresponding burial according to its culture or religious rituals[38].

States could cooperate in this regard through mechanisms to search for disappeared persons, or by creating a database of mass graves, or by establishing a genetic bank that makes it possible to obtain and preserve hereditary biological data that helps to determine and clarify the filiation between the deceased and the living, as well as their identification, or opening proceedings at the national level aimed at locating the whereabouts and identifying the bodies of the victims to deliver them to their relatives who are also victims... All are measures that the ICC, in accordance with the provision cited, could request the State in question and it would be obliged to execute them.

Likewise, together with the above, it is possible that the Court, on the legal basis of art. 93 (1) (l), may request any other type of assistance not prohibited by the legislation of the requested State and intended to facilitate the investigation and prosecution of crimes within the jurisdiction of the Court. To this end, the requested State would carry out the corresponding investigations so that the Court could effectively carry

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[37] *Familia Barrios vs. Venezuela* (2011) Series C, No. 237, 336; *"Instituto de Reeducación del Menor" vs. Paraguay* (2004) Serie C. No. 112, 321; *Hermanas Serrano Cruz vs. El Salvador* (2005) Series C, No. 120, 183-188; *Durand y Ugarte vs. Perú* (2001) Series C, No. 89, 39.

[38] The importance for victim-families of honouring their dead in accordance with their culture has been highlighted by the Inter-American Court of Human Rights in the case of the *Comunidad Moiwana vs. Suriname* (2005) Serie C, No. 124, 208.

out its judicial work in clarifying the facts and, eventually, convict those who could be responsible perpetrators. In addition, within the aforementioned provision there is also the possibility of carrying out field cooperation actions with the aim of holding reparation hearings in the relevant regions, thus increasing the Court's visibility and access to justice.

The obligation to cooperate in this line could, of course, be beneficial for the victims, it could even strengthen the relationship of trust between them and state institutions and the International Criminal Court.

Seminars and complementary agreements and arrangements for restorative cooperation. The Court has organized several cooperation seminars with the States Parties since it became operational. These seminars seek, firstly, to consolidate the relationship between the States themselves, as well as between the Court and the States; secondly, to discuss improvement proposals with the aim of making the Court more effective and suitable for achieving its objectives, and thirdly, to commit the States Parties to the signing of collaborative agreements based on the Rome Statute.

The cooperation seminars are a productive instrument to promote the cooperation of the State parties or non-parties in matters of reparation towards the victims of international crimes, because they allow to deepen the obligation to cooperate for restorative purposes, identify channels of communication and national mechanisms of more effective and adequate judicial assistance, enter into bilateral cooperation agreements on the execution (for example, of reparation decisions) and emphasize the importance of public and diplomatic support from States at the national, regional or international level to the Court in order to encourage the promotion of public recognition of the damage suffered by the victim and their right to obtain reparation.

In short, it is about, among all, developing and deepening the issue of reparation so that the Court can fulfil this mandate effectively and efficiently, providing meaningful justice for the victims and affected communities, as well as reinforcing the legitimacy and credibility of the legal and judicial system, created by the Rome Statute, and the legal and moral commitment of the International Community towards it.

Regarding the agreements and supplementary arrangements, these are vital for the functioning of the Court, but currently the number of agreements regarding reparation is zero[39]. The States Parties may enter into supplementary agreements in order to strengthen restorative cooperation. Examples of voluntary agreements from the reparative perspective could be the facilitation of the identification of assets and the seizure or freezing of assets as soon as possible, if possible before the arrest warrant is publicly processed; or appointment agreements for national coordinators or central authorities, together with the ICC Secretariat, in charge of cooperation on restorative matters with the Court; or additional agreements related to public information and dissemination campaigns of the reparation mandate aimed at victims; or any other

[39] On the other hand, voluntary or supplementary agreements have been concluded in punitive matters, such as agreements on the release of acquitted persons, provisional release agreements or agree-ments on the enforcement of sentences, Report of the Bureau on cooperation, ICC-ASP/13/19/Add.2, 28 November 2014, at 10.

agreement that explores the way in which the States parties have necessary knowledge and resources to provide assistance.

Also, along with the above, the State party can provide restorative assistance to the ICC by disseminating its operation, its purposes and its powers in the national media, since, in this way, information and advertising contribute to the performance of a restorative social function, especially needed in times of transitional justice.

(4) Article 75 (5) Statute: a legal channel to expand the content and scope of restorative cooperation?

The scope of the obligation to cooperate could be extended to more spaces of restorative cooperation in accordance with art. 75 (5) of the Statute which grants the Court the power to impose remedial measures on the States according to the obligation to cooperate. As previously mentioned, through this provision the reparation order will have to be implemented at the national level if it is executed directly by a State. However, this article says that the States "shall give effect to a decision under this article", that is, it is interpreted that any reparation decision adopted under art. 75 must be executed by the States at the national level.

The art. 75 (5) therefore opens a window that, although for the time being it has not been used by the chambers not even to execute a reparation order, makes it possible to give greater content to the repair both in its dimensions and in its types. It is essential to ask what, and of what type, could be the decisions imposed under the aforementioned provision and if they serve as a basis for the chambers to impose a reparative decision different from the reparation order.

An interpretation of the provision in view of the object and purpose of the treaty and the jurisprudence of the ICC makes it possible to affirm that the Statute allows chambers to Rule on a restorative cooperation decision whose content is, for example, to impose remedial measures of symbolic or material character to the States with the purpose of offering the victims a complementary reparation to that established on the criminal international responsibility of the defendant. This possible action of the ICC is also reinforced by the preambular arguments that accompany the Statute, in which the need to cooperate internationally in the fight against acts that suppose an attack on the fundamental interests of the International Community and, therefore, is highlighted, violate the essential obligations imposed by International Law. Furthermore, the regulation of art. 75 (5) refers to art. 109 of the Statute, so that compliance with the decisions ordered in relation to the first provision mentioned does not imply an optional regime for the States, but rather the obligation to make such remedial decisions effective. How else can this provision, which could be considered a clause that expands the content and scope of restorative cooperation, be understood?

The Court's obiter dicta would be protected by its restorative function and by the principle of restorative cooperation recognized by art. 75, interpreted together with art. 86, 93 and 109. The ICC, evidently, would not judge the possible responsibility of the state for the massive and systematic violations of human rights that have been perpetrated in its territory, since it lacks jurisdiction to do so, but rather it would try to

broaden the restorative cooperation through the restorative function. Furthermore, the Court and the States represent different parts of the Statute reparative legal system and, therefore, perform complementary functions with the purpose of fully repairing the damage suffered by the victims. It is thus to create, in accordance with art. 75, a culture in dubio pro victim and restorative justice. Indeed, Trial Chamber in the Lubanga case noted that, under art. 75, 93 and 109, States have the obligation to cooperate fully both with the execution of reparation orders and in carrying out certain measures for reparation purposes; although those made by the chamber were recommendations, not obligations[40].

(5) The best way to cooperate is by giving jurisdiction

The ICC and the States Parties share the commitment to multilateralism believing that international cooperation, the dialogue between the legal actors, involved and interested, is the only possible way to adequately and effectively materialize the reparation mandate; that is, the purposes of the reparations indicated by the jurisprudence of the Court.

The practical materialization of ICC-State Parties cooperation in the field of reparation, and its subsequent, albeit weak, formalization process, has revealed the dysfunctions and disparities that have ended up affecting both the quality of cooperation and the work of the ICC. Therefore, in order to minimize harmful actions in terms of cooperation, which ultimately affect the victims of international crimes, it is necessary to strengthen the Court's capacity to act in order to contribute intensely to the construction and improvement of the Statute system, given its universality and its objectives.

This would be done through the transfer of more sovereign powers in favour of the Court. This could suppose a legal transformation that would indicate changes in the material constitution of the Statute system. Three proposals in this regard:

In the first place, transferring powers with the aim of granting the Court a true universal jurisdiction, since its present performance, unless the matter has been referred by the Security Council acting within the framework of Chapter 7 of the Charter of the United Nations, is reduced solely to proceeding on the basis of the consent of the State where the crime was committed or, alternatively, that of the nationality of the defendant. This proposal could also be strengthened with other activities carried out in favour of the universality of the Statute with a view to increasing the number of States parties, which would unmistakeably help consolidate the Statute system.

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40 "The Court, through the present trial and in accordance with its broad competence and jurisdiction, assisted by the State Parties and the intemational community pursuant to Part 9 of the Statute on 'Intemational cooperation and judicial assistance', is entitled to institute other forms of reparation, such as establishing or assisting campaigns that are designed to improve the position of victims; by issuing certificates that acknowledge the harm particular individuals experienced; setting up outreach and promotional programmes that inform victims as to the outcome of the trial; and educational campaigns that aim at reducing the stigmatisation and marginalisation of the victims of the present crimes. These steps can contribute to society's awareness of the crimes committed by Mr Lubanga and the need to foster improved attitudes towards events of this kind, and ensure that children play an active role within their communities", Trial Chamber, Case. No. ICC-01/04-01/06-2904, 7 August 2012, point. 239.

Secondly, to create an inclusive international criminal justice system, with the ICC as its central axis[41], since international criminal justice can strengthen the foundations for the creation of a global Rule of law. An example of the integrating nature of this system would be the creation of an International Criminal Judicial Network that would allow the establishment of direct contacts and the exchange of necessary information between the different authorities, in order to become an assisting instrument for the holding of procedural acts abroad and the execution of procedural acts in the national legal systems of the States Parties. The objective? To ease, lighten and improve, from the legal, institutional and practical point of view, cooperation and coordination between the ICC and the States Parties.

Thirdly, to create a complete international criminal legal-judicial apparatus superimposed on the States, that is, to provide the Court with general and priority jurisdiction over national jurisdiction and universal scope; thus, the Court could be more autonomous and less dependent on state powers. In order to achieve such an endeavour, connections must be established and powers must be transferred and, possibly, concepts so attached to the essence of the State must be reformulated, such as the model of criminal justice, Criminal Law and Criminal Procedure Law -surreptitiously, that of jurisdiction -. Through this practice, an international criminal unit could be achieved in the globalization of criminal justice and not focus on an empty schematic construction with minimal articulations and structures[42]. Too ideal? Perhaps, but who would have predicted eight decades ago the creation and operation of international criminal courts, even on a permanent basis?

The options indicated in the previous paragraph are not discarded; in fact, they are necessary and abided by the objectives and spirit of the Statute because the ICC was anointed by the participants in the Rome Conference as a bulwark of common values of Humanity and whose support was reaffirmed at the Kampala Conference, in addition to which is part of the United Nations system. Thus, the benefits of its urbi et orbi system must be extended and spread, especially when it is necessary to strengthen its coordination spaces with other actors and its reparative legal system, which must expand its ties and gradually enter the internal sphere of each State party.

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41 This is supported by the following ASP statement: "The Court is part of a new system of international justice in which states, international organisations, other international courts and non-governmental organisations participate", for, after all, together they protect "the peace, security and well-being of mankind". And within this system, the Court "plays a particular and central role", Resolution ICC-ASP/5/6, 23 November 2006, point. 20. After all, the Court is also an instrument in the service of peace, "strengthening international security and fostering reconciliation and post-conflict peace-building with a view to achieving sustainable peace in accordance with the purposes and principles of the Charter of the United Nations", Resolution ICC-ASP/5/Res.3, 1 December 2006, point. 2.

42 States are quite different, wary of their sovereignty, particularly in criminal matters. So it should not be overlooked that this proposal will not be possible without a real constitution, i.e. the operational establishment of an effective legal and institutional structure, to be achieved through mutual sacrifices on the basis of a common interest embodied in the UN Charter and the Preamble of the Interna-tional Criminal Court. There could be friction, to be sure. There were, and still are, in the UN, in the EU, and in any other organization international? But we must continue to insist on the capacity of invention to discover and materialise structures in conformity with the International Law whose living system is a great enterprise of globalisation.

The implementation of the suggested proposals requires a change in the current legal framework of the ICC. To make these changes a reality, in order to impose a more effective, adequate and strengthened action of the ICC, not only internally but also abroad with the aim of preventing that the negative action or not of the States in cooperative matters ends up affecting the influence or authority (these are rarely well defined) of the ICC, it could, on the one hand, amend the Statute or negotiate and adopt a Protocol annexed to it and, on the other hand, both possibilities could be combined, that is, to amend the Statute to grant the ICC complete universal jurisdiction and priority over that of the States and adopt a Protocol annexed to the Statute in which powers would be transferred to establish an international criminal legal-judicial apparatus, whose main nucleus would be the ICC, and the States, its satellites.

(6) Restorative or victim-centered complementarity: another possible form of restorative cooperation?

General International Law establishes for the States a series of existing general obligations in relation to the fight against impunity and the reparation of the damage suffered by the victims. States bear the primary responsibility for investigating, prosecuting and condemning international crimes and redressing their consequences, and, to this end, they need to adopt adequate measures at the national level and intensify judicial assistance and cooperation at the international level so that the systems national judicial systems are capable of submitting crimes to the effective action of justice, especially in the criminal sphere, in order to avoid impunity[43].

However, on certain occasions, state legal and judicial operators are not in a position or do not have the will to comply with their international obligations and exercise their punitive mission. It is then that the international courts must assist the States in the prosecution of criminals who have committed crimes so serious that they transcend Humanity.

The ICC, as an instrument that helps to put an end to impunity, has a complementary nature to the state jurisdictions to prosecute those crimes for which it has authority. This jurisdiction manifests itself in two ways: first, the jurisdictions of the States Parties must provide for the prosecution of crimes that the Court does not assume in its jurisdiction; secondly, within the criminal judicial legal space shared by confirming the RS, the Court unlike the ad hoc Courts does not enjoy jurisdictional preference, but is, rather, subsidiary to national jurisdictions.

The principle of complementarity consists of supplementing national jurisdictions when they are not in a position or do not have the political-judicial will to exercise their jurisdiction or, as Cassese affirms regarding the Court's relationship with national jurisdictional systems, it is not a question of prevalence of the national, but a mere presumption in its favour[44]. Or, simply, it is a legal instrument of cooperation between

[43] Resolution ASP, ICC-ASP/12/Res.4, 27 November 2013, point. 3.

[44] A. Cassese, 'The Statute of the International Criminal Court: Some preliminary reflections', *European Journal of International Law* (2010), [https://doi.org/10.1093/acprof:oso/9780199232918.003.0025]

different jurisdictions through the distribution of powers[45]. We are faced with a principle of minimum international criminal intervention or ultima ratio, since the victims of international crimes access the ICC when they have no other choice, since it is not a practical matter to use the choice of this forum to present the request for reparation.

It is, as well, an important puzzle for the Statute legal system because it must not overshadow the needs of the victims and the affected community and, therefore, neither the triad of human rights. Furthermore, in this context, it is considered that the ICC should focus on delivering justice and creating an environment in which justice could be delivered at the national level in the long term.

The art. 1 and 17 of the Statute regulate the principle of complementarity[46], which is reinforced by the preambular paragraph that expressly mentions it. These provisions link to the reparation of the damage of part 6 ("The trial") of the Statute through part 9 ("International cooperation and judicial assistance"), whose articles 89 (2) and 95 are linked to the complementarity. Those provisions that do not fall within the normative foundations of state jurisdictions may be possible to amend.

Jurisprudence has interpreted the principle of complementarity from a punitive perspective because of art. 1 and 17 this can be interpretation follows: if one reads carefully, it is observed that the provisions focus exclusively on the punitive function[47], whose results have, however, been positive[48].

Consequently, this interpretation leads to the question of whether a complementarity interpreted from a restorative perspective is necessary. Yes, because the mere punitive interpretation does not address the issue in its total or in its depth, particularly for victims who have suffered harm as a result of the crimes. In fact, the restorative

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45 N. Viadal. *Derecho penal y globalización. Cooperación penal internacional* (Marcial Pons, Madrid, 2009), at. 93.

46 About complementarity, Ana Salinas and Eulalia Petit de Gabriel (Dir.), La Corte Penal Internacional 20 años después (Tirant lo Blanch, Valencia, 2021); Milton Owour., The International Criminal Court and Positive Complementarity. Legal and Institucional Framework, (GRIN Verlag, München, 2018). Nabil Jurdi, "The Complementarity Regime of the International Criminal Court in Practice: Is it Truly Serving the Purpose? Some Lessons from Libya" en Leiden Journal of International Law, vol. 30, issue 1, 2017, at 199-220; Andrew Novak, The International Criminal Court: an introduction (Springer, Switzerland, 2015); Sarah M.H. Nouwen, Complementarity in the line of fire: the catalysing effect of the international criminal court in Uganda and Sudan (Crambridge Universtiy Press, Cambridge, 2013); Steven Kayuni., International Criminal Court´s Complementarity Principle, (LAP Lambert Academic Publishing, Latvia, 2012); Kai Ambos, The Colombian Peace Process and Principle of Complementarity of the International Criminal Court: An Inductive, Situation-based Approach (Springer, Berlin, 2010); Stigen, The Relationship Between the International Criminal Court and Nationals Jurisdictions: The Principle of Complementarity (Martinus Nijhoff Publishers / Brill Academic Public, Leiden/Boston, 2008).

47 Pre-Trial Chamber, Case. No. ICC-01/04-01/06-8-Corr, 10 February 2006; Appeals Chamber, Case. No. ICC-01/04-01/07-1497, 25 September 2009; Appeals Chamber, Case. No. ICC-01/04-01/06-772, 14 December 2006; Pre-Trial Chamber, ICC-02/04-01/05-377, 10 March 2009; Appeals Chamber, ICC-01/04-01/07-1279, 8 July 2009; Appeals Chamber, ICC-01/09-02/11-274, 30 August 2011; Pre-Trial Chamber, ICC-01/11-01/11-344-Red, 31 May 2013.

48 "Although there is not overt complementarity framework created in the provisions of the Statute, there is absolutely no reason, where appropriate, the existence of reparations programmes at national level (or lack thereof) cannot be taken into account by the Court and the OTP in decisions relating to complementarity. Today, questions of victim redress have not been integrated to any great extent into decision-making in relation to complementarity", C. McCarthy et al, Law and Practice of the In-ternational Criminal Court (Oxford University Press, Nueva York, 2015) at 1216.

interpretation has its reason for being in the principle of comprehensive reparation and in the principle of in dubio pro victim and is in accordance with the applicable law, art. 21 (3). It is, therefore, necessary to make use of the sense of justice and interpretive fairness.

Indeed, based on the reduced interpretation that jurisprudence has given to the principle of complementarity, it is necessary and clear to approach it from a position centered on the victims, thus giving it a more comprehensive and transversal approach than the one promoted[49]; that is, it must be interpreted according to the restorative perspective[50]. But before entering into the development of restorative complementarity, it should be said that, although jurisprudence has not walked on the restorative perspective applicable to complementarity, the ASP and the Prosecutor's Office have done so sideways. First, the ASP has approached complementarity from a more victim-centered profile with the purpose and need to strengthen the capacity of national governments to protect them. And, secondly, the Prosecutor's Office has observed that complementarity can also be approached from a more restorative perspective under the protection of art. 53 and 54 of the Statute. However, this purpose of amendment or commitment to the victims has fallen on deaf ears in the practice of the Prosecutor's Office and the ASP, because it is argued that, in the context of art. 75, there is no mechanism by which the Court, when determining whether or not a case is admissible, can verify whether a State has provided, and to what extent, reparation to victims for crimes committed in its territory.

The ICC should unquestionably broaden the interpretation and application of complementarity in the absence of state capacity to repair the victims, make them participate in criminal proceedings and recognize the damage suffered, although legal and structural reforms must be adopted or carried out for this relevant national authorities so that victims can properly exercise internationally recognized rights. In other words, the recognition of the rights of the victims and the possible reparation of the damage must be determining elements in the analysis of the acceptability of a situation by the ICC. Thus, for a situation to be admissible or not, it is not enough that it is not being or has not been investigated at the national level and that the State does not have the legislative or material means to do so, but also that the admissibility of the situation is focused on the rights and interests of the victims to proceed with the work of the ICC.

The ICC should coordinate restorative complementarity in accordance with two interlocking elements. On the one hand, the state jurisdictions that must provide, to the extent possible, not only the prosecution of the crimes assumed by the Court, but also the reparation of the victims; on the other, the States that must undertake not only the applicable internal reforms in matters of prosecution and investigation with the aim of avoiding the intervention of the ICC, but also those focused on justice, truth

[49] Penalise by states of the crimes described in art. 6-8 of the Statute as crimes punishable under national law, as well as the declaration of their jurisdiction over those crimes and their commitment to the effective implementation of those laws, i.e. effectiveness and accountability. Resolution, ICC-ASP/14/Res.4, 26 November 2015, point. 90.

[50] In this sense, B. Olympia et al, *Cooperation and the International: perspectives from theory and practice* (Brill Nijhoff, Leiden-Boston, 2016), at. 212.

and reparation in a functional and procedural legal framework focused on the victims and also in an extrajudicial framework, because the obligation to cooperate is not only punitive but also restorative.

Furthermore, restorative complementarity must take into account the gender perspective in the case of sexual crimes, in accordance with international human rights law, the guidance established by the prosecution in this regard and the principles applicable to reparations developed by the jurisprudence in the Lubanga case[51]. With only one exception, the Court on the Central African Republic II situation[52], the OTP's reporting has not included discussion of the gendered flaws that are found in many national criminal justice systems, and which even the most superficial gender analysis can expose.

Complementarity is an essential part of the relationship between state authority and ICC jurisdiction in dealing with international crimes and their consequences. Restorative complementarity aligns with the spirit of the writers of the Statute in relation to victims, and should not overshadow or undermine the broader needs of victims and society. Why? Well, because the essential objective of a positive restorative complementarity is to make the State make reparations to the victims, thus avoiding the intervention of the ICC[53].

This highlights that the ICC is not only a Court of last resort, it is also a catalytic mechanism that must induce States to fight against impunity and compensate victims through a complementarity notion both punitive and restorative. That is, to increase cooperation so that national legal systems are capable of submitting statutory crimes to the action of justice and repairing victims through judicial or administrative channels.

On balance, it is about developing and establishing a virtuous cooperation between the States Parties and the ICC as broad as possible in accordance with the statutory objectives. In addition to continuing and strengthening, within the framework of the appropriate instances, the effective national application of the Rome Statute, with a view to consolidating the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of concern to the international community with in accordance with internationally recognized procedural guarantees and also provide reparation to the victims, in accordance with the principle of complementarity.

(C) NON-COOPERATION

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51 Carlos Gil Gandía "La reparación desde la perspectiva de género: Un nuevo desafío para el Derecho Internacional", Esperanza Orihuela Calatayud (Dir.), *Crímenes Internacionales y Justicia Penal. Principales desafíos,* (Aranzadi, Navarra, 2016), at. 191-221. Ruth Rubio Marín y Dorothy Estrada Tanck, "Reparaciones para mujeres víctimas de violencia bajo la Corte Penal Internacional", en Monge Fernández, Antonia y Parrilla Vergara, Javier (eds.), *Mujer y Derecho penal: ¿necesidad de una reforma desde una perspectiva de género?,* (Bosch Editor 2020), pp. 493-525.

52 This was the only occasion in which the OTP reported that it had considered the possibility of gendered barriers in a national legal system as part of a Court complementarity assessment.

53 On this issue, it is interesting to note what the representative of the victims of the Ruto and Sang case said: "In the case of Kenya as a State, this obligation in international law finds vitality primarily through the adoption of the Basic Principles, and the State's ratification of the Rome Statute of the International Criminal Court. The ratification by the State of the Rome Statute, and the adoption of the Basic Principles, then becomes a ceding of the State's national jurisdiction. This means that the State has a reversionary national obligation to ensure the realization of an effective right to repara-tion for victims", Trial Chamber, Case No. ICC-01/09-01/11-2035, 15 June 2016, at. 8.

The judicial activism of the ICC in the fight against impunity and in defence of human rights, in general, and the rights of victims of international crimes, in particular, may end up putting the leadership of a government of a state party or powerful people of a certain state against the wall, either directly or indirectly: without going any further, the African Union and its member states made and make a policy of blockade against the ICC to protect political leaders[54]. One of the possible consequences in the event of such a situation is the refusal of a State to cooperate with the Court with the aim of hindering its ability to deliver justice for the benefit of those whom the government wants to protect.

The breach of the obligation to cooperate or the absence of cooperation shows three elements: the political, related to the will of the government in power, the legal, which raises the need for the Court to have more powers to make state cooperation more effective, and the structural one, which implies the need to have greater clarity on how far the ICC can go in its judicial and procedural work and the cost that ineffective cooperation has for it. Elements that must converge because the political one could render the legal and structural ones ineffective.

How does the ICC deal with these situations and to which body(ies) does the function of acting in these cases correspond? In matters of state non-cooperation, the ASP

54 There has been no shortage of stereotypical statements blaming the West for colonising Africa through the ICC. The ICC's work has been directly and indirectly bungled and attempts have also been made to change the rules of the game. The African Union adopted a resolution (Report of the Working Group on Amendments [ICC-ASP/13/31], adopted during the thirteenth session, held in New York, 8-17 December 2014, p. 18) according to which an amendment was proposed to the complementarity provision of the Preamble of the Rome Statute to allow for the recognition of regional judicial mechanisms, which would act as a firewall to the jurisdiction of the ICC: "Emphasising that the International Criminal Court established under this Statute shall be complementary to national and regional criminal jurisdictions [...]", bearing in mind that the current provision reads: "Emphasising that the Criminal Court established under this Statute shall be complementary to national criminal jurisdictions [...]". Likewise, the disobedience of African states in the matter of arrest and surrender in the Al-Bashir case is papable, alluding to the principle of non-interference in internal affairs and demonstrating that the Court lacks legitimacy (most of the African cases before the ICC have been referred by African states, such as: Central African Republic, Democratic Republic of Congo, Northern Uganda and Mali), making it necessary to create, according to certain leaders (Al-Bashir and Mugabe) an African International Criminal Court, which would surely be more impartial with its leaders (GODWIN COMRADE, A. , "Mugabe wants Africa to establish its own International Criminal Court to try Europeans" in Daily Post, 20 April 2016). This is all part of the rhetoric of seeing themselves as victims of a new Western colonialism that uses the ICC (34 of the 54 members of the African Union are members of the ICC) as an inquisitorial court to invade and try Africans; however, Desmund Tutu spoke out against their argument: "I regret that the charges against President Bashir are being used to stir up the sentiment that the justice system -and in particular, the international court- is biased against Africa. Justice is in the interest of victims, and the victims of these crimes are African. To imply that the prosecution is a plot by the West is demeaning to Africans and understates the commitment to justice we have seen across the continent", in "Will Africa Let Sudan Off the Hook?" New York Times, 2 March 2009. This really is an (in)visible manifestation of the flag of patriotism behind which is the defence of immunity as synonymous with impunity, being hoisted with the protocol adopted in June 2014 by the African Union: Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, popularly known as the Malabo Protocol, to guarantee the immunity of continental leaders and senior government officials from prosecution while in office. This leads to the following interpretation: such a protocol would exempt the aforementioned officials from the jurisdiction of a court; such a consideration could therefore transgress the right to judicial protection and due process.

consisting of the States, not by the magistracy that forms the Court , together with the chambers of the Court, plays an essential and important role, since the Statute has given it that way in art. 112 and 87 (5) (7) in order to contribute to the effectiveness of the objectives of the treaty. Effectiveness, however, understood in a restricted sense because the provisions do not explicitly establish the consequences of the absence of cooperation and only empower the ICC bodies to make a finding in this regard and refer the matter at hand to the ASP, which plays a political-diplomatic role[55].

Until now, the lack of cooperation from the States Parties has focused on the punitive function of the Court, especially with regard to the lack of cooperation in the requests for the arrest and surrender of Al Bashir, which several States have refused to carry out[56]. For this reason, the procedures of the ASP, whose execution corresponds to its presidency, have been elaborated with respect to this function and not the restorative one. However, it can be stated that they could also be generally applicable to the latter function[57].

The procedures applicable to the lack of cooperation are, on the one hand, those applied to the States parties and those that can be extended to those States that agree to refer an ad hoc case; on the other hand, those applied to States under the obligation to cooperate with the Court by virtue of a decision of the Security Council. As regards the first procedure, the chambers of the ICC are competent to refer to the ASP, in accordance with art. 87 (7), a question of non-cooperation, upon request to the non-cooperating State to be heard before announcing non-compliance. Regarding the second procedure, the chambers of the ICC refer, according to regulation 109 (4) of the Regulations of the Court, through the Presidency of the Security Council, the issue of non-compliance to the ASP, a procedure also applicable to those States that do not part that have the obligation to cooperate by virtue of the resolution adopted by the Security Council in accordance with chapter VII of the Charter of the United Nations and art. 13 (b) of the RS.

The actions that have been taken to date by the Presidency of the ASP have been of various kinds and of an informative and advisory nature. Due to their possible application to non-compliance with a request for cooperation for reparation purposes, the following should be highlighted: exchange of information between the Court and the coordinators on the lack of cooperation; exchange of information with the States parties, either bilaterally or multilaterally in the plenary of the ASP; exchange of information with civil society and drafting of press releases... In addition, the presidency has held informal plenary consultations and informal meetings with the States of the cases of non-cooperation and templates that are intended to help and encourage them compliance

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55 Diplomatic and public support and its relationship to the cooperation and efficiency of the Court was highlighted in the Court's report on cooperation ASP, ICC-ASP/15/9, 11 October, as well as recognised by the ASP in its resolution on cooperation, ICC-ASP/11/Res.5, 11 November 2012, para. 11. Both documents highlight the importance of States Parties enhancing and integrating diplomatic, political and other forms of support for the ICC's mandates, while promoting greater awareness and understanding of the Court's activities among victims.

56 Resolution, ASP, ICC-ASP/11/29, 1 November 2012, at. 12.

57 C. Gil Gandía, *La reparación de las víctimas de crímenes internacionales y la Corte Penal Internacional*, (Aranzadi, Navarra, 2020).

with the obligation to cooperate have been developed. Based on the measures adopted by the presidency, it could be said that the purpose is to persuade the States to cooperate.

In the current situation, if the ASP wants to put an end to non-cooperation and deal with the delusional succession of events and situations that violate the normative text, its object and purpose and the Court's jurisprudence, it must seek greater support, a legitimizing veil, difficult and dangerous or easy and pacifying depending on the region, institution or body, but also from the victims and affected communities. To this end, it could, on the one hand, agree on the establishment of new agreements and channels of communication with the entire organization chart of the ICC, the United Nations, other intergovernmental and regional organizations, the States Parties and the Security Council, in order to enforce the request for cooperation as soon as possible and thereby be able to defend the legitimacy of its legal system and, by extension, of its organs, so that it, in turn, defends, protects and guarantees the rights of the victims; on the other hand, facing the challenges with the configuration of an adequate and effective procedure in case of non-cooperation, which means carrying out necessary changes to the ICC legal system without endangering the impartiality of the Court and thus avoiding secondary victimization. This is important in view of the aforementioned legitimacy, that is, the international reputation of the ICC, which is not based solely on its productivity and profitability low, by the way , but also on creating a normative and institutional network cooperative, although it is difficult if not impossible for certain States. Because no matter how efficient the ICC is, it will always depend on external actors to support and, where appropriate, materialize its actions. It is hoped that as the action of the ICC progresses and proves to be an efficient and effective criminal justice mechanism, its support network will become stronger and cases of non-cooperation can be more easily addressed.

(D) STATE AGGREGATION TO THE RESTORATIVE JUSTICE IMPARED BY THE COURT

The Court cannot cover the reparation of all the victims who have suffered damages due to international crimes because not all of them comply to the ICC or, by complying, they do not obtain justice or reparation or, even obtaining it, it is not enough; moreover, it is not a Court of reparations, as certain judges have stated[58]. Consequently, the State in question must provide reparation to those that have not complied for whatever reasons, because it is the primary party responsible in this regard and must therefore make all the necessary efforts to deal with this situation[59], in relation to a legal and judicial policy of human rights, that is, make policies of reparation, justice and truth[60].

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58 Judges Morrison and Van den Wyngaert have stated in their separate opinion in the Bemba case that: "It is emphatically not the responsibility of the International Criminal Court to ensure compensation for all those who suffer harm as a result of international crimes. We do not have the mandate, let alone the capacity and the resources, to provide this to all potential victims in the cases and situations within our jurisdiction", Appeal Chamber, Case No. ICC-01/05-01/08-3636-Anx2, 8 June 2018, at 75.

59 Trial Chamber II, Case No. ICC-01/04-01/07-3551, 14 May 2015, point. 72-74

60 "Reparations proceedings that Court-ordered reparations do not exonerate a state from its separate obligations, under domestic law or international treaties, to provide reparations to its citizens, as well as its

The democratic rule of law embodies its conscience in laws, in procedures, in institutions, which facilitate the real life of a society, which implies that it needs to care for, defend and guarantee the rights of its citizens. Any State party to the ICC must be obliged to do so by assuming a series of statutory obligations, but especially because of what the RS means. These are, therefore, responses of a state nature, which, based on the principle of solidarity with its citizens, would strengthen the link between these with state institutions and the victims with them.

In this sense, the justice of the Court can be completed through the administrative, legislative and judicial channels.

First, domestic legislation should establish or incorporate a broad concept of victim. Attitude consistent with a state system of compensation for victims that is commendable. Although it is true that, on occasions, the concept of victim is restricted for budgetary reasons, due to the impact that a broad notion could have on state coffers, or for reasons of criminal dogma.

Second, the reparation programs prepared by the State are a legal-administrative instrument that intends to compensate the victims. The term "reparation" in this sense is restricted, because this type of program does not unite truth, criminal justice or institutional reform and, furthermore, it is aimed at the mass or community, not at individuals individually[61]. Yes, on the other hand, they provide public recognition to the victims of the crimes, regardless of whether the authors of the illegal act are known or not; stimulate and strengthen ties between state institutions and victims; create victim participation mechanisms in the process of designing and executing the reparations program; they remake the political community destroyed by the conflict; finance the program with the state treasury, although this does not prevent it from receiving voluntary contributions from the private sector or from other states or IOs: in fact, the debate could be opened as to whether the states that are part of the RS should help, in any form, for the state party in need to carry out the elaboration of reparation programs.

Thirdly, the State judicial system, to the extent possible, should complete the investigation, trial and, where appropriate, conviction of those responsible who have participated in the commission of the crimes and have not been tried for the ICC or they have been and it remained to be tried at the national level for the commission of other crimes. For this it is important that amnesties are not granted. Doing justice not only requires knowing the facts and repairing the victims, but also acting on the knowledge of the truth.

Fourth, the State in question could promote out-of-court conflict resolution mechanisms subject to the principles of freedom, complementarity, confidentiality, gratuitousness, official, flexibility and duality of positions, equality and contradiction of the parties, with the aim of achieving or strengthen reconciliation between the convicted person, the victim and the affected community. An example would be out-of-court direct

obligations under the Statute to cooperate with the Court, including with regard to the implementation of reparations", Trial Chamber VIII, ICC-01/12-01/15-225, 16 June 2017, at 34.

61 P. De Greiff, "Algunas reflexiones acerca del desarrollo de la Justicia Transicional", *Anuario de Derechos Humanos* (2011), at 26 [doi: 10.5354/0718-2279.2011.16994].

or indirect mediation, carried out by a mediator or a mediation team. These mechanisms are also aimed at promoting peaceful scenarios of consensus and coexistence, thus generating public political spaces for the promotion of peace, the reconstruction of the social fabric and not forgetting the victims of international crimes.

Fifth, if the ICC-convicted inmate is insolvent, the State in question where he is serving his sentence could appeal to informal processes and mechanisms in the interest of the victim, subject to limits and controls, whose objective is to resolve the conflict between the parties, giving the victim a real leading role.

Sixth, the establishment of a Truth and Reparation Commission of an administrative and temporary nature, which offers the victims the possibility of recounting what has happened to them and seeks publicity that allows their dignity in society.

Seventh, the recognition of the rights of victims in the constitutions of the States parties. The neglect of the victim is not only criminal but also constitutional. Several constitutions do not provide in their regulations an article dedicated to the rights of victims. Examples are the Spanish and the Portuguese. It seems, therefore, appropriate to complement the justice provided by the ICC to the victims and in accordance with the victim hermeneutics, the inclusion of references to the rights of victims in the constitutions, as some Latin American States do, art. 20 of the Political Constitution of the United Mexican States (1917).

All of the foregoing is intended, furthermore, for the States that are party to the ICC to take a legal-political stand on the principle of in dubio pro victim and the principle of comprehensive reparation, in so far as the domestic legal order would strengthen its legitimacy towards the victims, not only materially, but also symbolically. This, however, would not prevent that, in cases of post-conflict situations, certain influential actors could make it impossible for the State to carry out policies of reparation, justice and truth, since these could probably hinder its priorities, among which justice for the victims is not included.

This pattern is the one that should complement, as long as it can be made, the justice of the International Criminal Court.

(E) FINAL REMARKS

The preceding pages have sought to critically analyse the ICC's legal system of cooperation from a restorative perspective. This is a novel approach, in line with the reparation mandate of the Rome Statute.

If during the first years of the Court's life, the main concern of its organs and of the Assembly of States Parties focused on the definition and scope of the principle of cooperation and complementarity from the punitive perspective, it is time for it to take charge of its restorative perspective more deeply. The importance of this perspective is defined by the ICC maxim "need to go beyond the notion of punitive justice", which must cover the entire legal framework.

In order to guarantee justice for the victims, the ICC must walk together with the States parties; cooperation regime that must combine the elements of the search for

truth, justice and reparation with the authority of the States, so that they complement and strengthen each other. In fact, the combination of these elements is possible if all the actors involved adopt a victim-centered approach as a basic principle that should serve as a starting point towards justice for the victims, since the victims are central for reconciliation to be achieved, successful and believable. The assumption of the central role of the victim is, therefore, a legal-ethical duty ad intra and ad extra to the ICC.

The States Parties are actors that, in accordance with the ICC norm, are obliged to cooperate with it on the issues analysed: an obligation that is one of diligence and results, not just a mere attitude. A legal imperative whose foundation lies in guaranteeing justice for the victims. From praxis, it is concluded that cooperation has focused more on punitive matters than on restorative matters, perhaps due to the very nature of the procedural course and, consequently, what is required by the ICC.

Be that as it may, all cooperation with the ICC should be oriented with a civic ethic towards its objectives, which can be reduced or limited by de facto powers or by the States themselves that see the ICC as a counterweight to the empty spaces of law. This ethic entails respecting and protecting the rights of victims. If, on the other hand, there is no cooperation with the ICC, as happens when that obligation is not fulfilled, many obstacles are put in place to comply with it or the justice of the ICC is exploited, which implies the discrediting of an institution and the forgetfulness of the victims.

Cooperation is, therefore, the ICC's Achilles' heel, since, although it is true that it has shown that, with its presence and action, wherever it has acted, it has exerted a positive or, at least, moderating effect of the attitude of the States parties towards the reparation of the victims and accountability, it is no less true that their intervention has also caused questions in the leaders of the day who tend more to impunity than to justice. Therefore, the Court can and should strengthen cooperation if it makes a virtue of necessity; that is, the ICC must strengthen its powers and its legality with the cooperating actors and, therefore, its dual legal and political power. In other words, on the one hand, it must have the capacity to impose its restorative cooperation policy on the States Parties, and, on the other, it must be capable of mobilizing the States to develop a restorative cooperation with the Court based on the triad of human rights of the victims (reparation, truth and justice).

We find ourselves, therefore, in a new stage of cooperation in international criminal justice: the squaring of the circle of punitive and restorative justice. Therefore, the ICC must be creative and embrace possibilities of truly restorative approaches, centered on and from the victim, together with the sentenced person. Otherwise, the ICC and the States party to the Statute will be playing politics with the victims and restorative justice.