29 "The singularity of an event is based not simply on the coming together of prehensions, but on their becoming together in a particular way. The question as to whether an entity—a scientific artefact or work of art for example—is 'real' or whether it is a 'representation' is thus displaced in favour of the question as to what it can do." Mariam Fraser, "Event," *Theory, Culture & Society,* vol. 23, nos. 2–3 (2006): 129–132.
30 See Charles Heller, "Fractured Chain of Custody" in the present volume.
31 ICTY Court Transcripts, , December 12, 2006, 061207IT, 5181–83.
32 Walter Benjamin, *The Arcades Project,* trans. Howard Eiland and Kevin McLaughlin (London: Belknap Press, 1999), 461.
33 ICTY Court Transcripts, April 8, 2008, 080408ED, 942–46.
34 Friedrich Nietzsche, *Beyond Good and Evil*, trans. R. J. Hollingdale (Minneapolis: Filiquarian Publishing LLC, 2006), 134.
35 ICTY Court Transcripts, October 26, 2006, 061026IT, 5390–91.
36 "Testimony has never been or should never be mistaken for evidence. Testimony in the strict sense of the term, is advanced in the first person by someone who says, 'I swear,' who pledges to tell the truth, gives his word, and asks to be taken at his word in a situation in which nothing has been proven . . . It is possible for testimony to be corroborated by evidence, but the process of evidence is absolutely heterogeneous to that of testimony." Jacques Derrida and Bernard Stiegler, *Echographies of Television: Filmed Interviews,* trans. Jennifer Bajorek (Cambridge: Polity Press, 2005), 93–94.
37 Shoshana Felman, "A Ghost in the House of Justice: Death and the Language of the Law," in *The Juridical Unconscious: Trials and Trauma in the Twentieth Century* (Cambridge, MA: Harvard University Press, 2002), 131–51.
38 Primo Levi, cited in Giorgio Agamben, *Remnants of Auschwitz: The Witness and the Archive*, trans. Daniel Heller-Roazen (New York: Zone Books, 2002), 27.
39 Gilles Deleuze, *Francis Bacon and the Logic of Sensation,* trans. Daniel W. Smith (London: Continuum, 2004): 49.
40 ICTY Court Transcripts, February 10, 2009, 090210IT, 793.
41 ICTY Court Transcripts, September 3, 2002, 020903IT, 9484–85.
42 Ibid., 9443.

The Architecture of International Justice

Francesco Sebregondi in conversation with Cesare P. R. Romano

The following interview emerged from a collaboration between Cesare P. R. Romano, professor of law at Loyola Law School, Los Angeles, founding member of the Project on International Courts and Tribunals (PICT), and pioneer of the study of international adjudication, and Francesco Sebregondi, an architect and research associate on the Forensic Architecture project. Together they produced a series of maps and visuals of the world of international courts and tribunals, first published in *The Oxford Handbook of International Adjudication* (2014) and partially reproduced in a modified format here.[1]

The goal of this mapping project is to collect and present large amounts of otherwise diffused data. While legal scholarship chiefly relies on the written word as its medium, visual representations allow a different light to be shed on the matters at stake. Three maps and a timeline serve here as the basis for a discussion focused around the architecture of international justice: its organizational logic, its territorial boundaries, and its patterns of expansion.

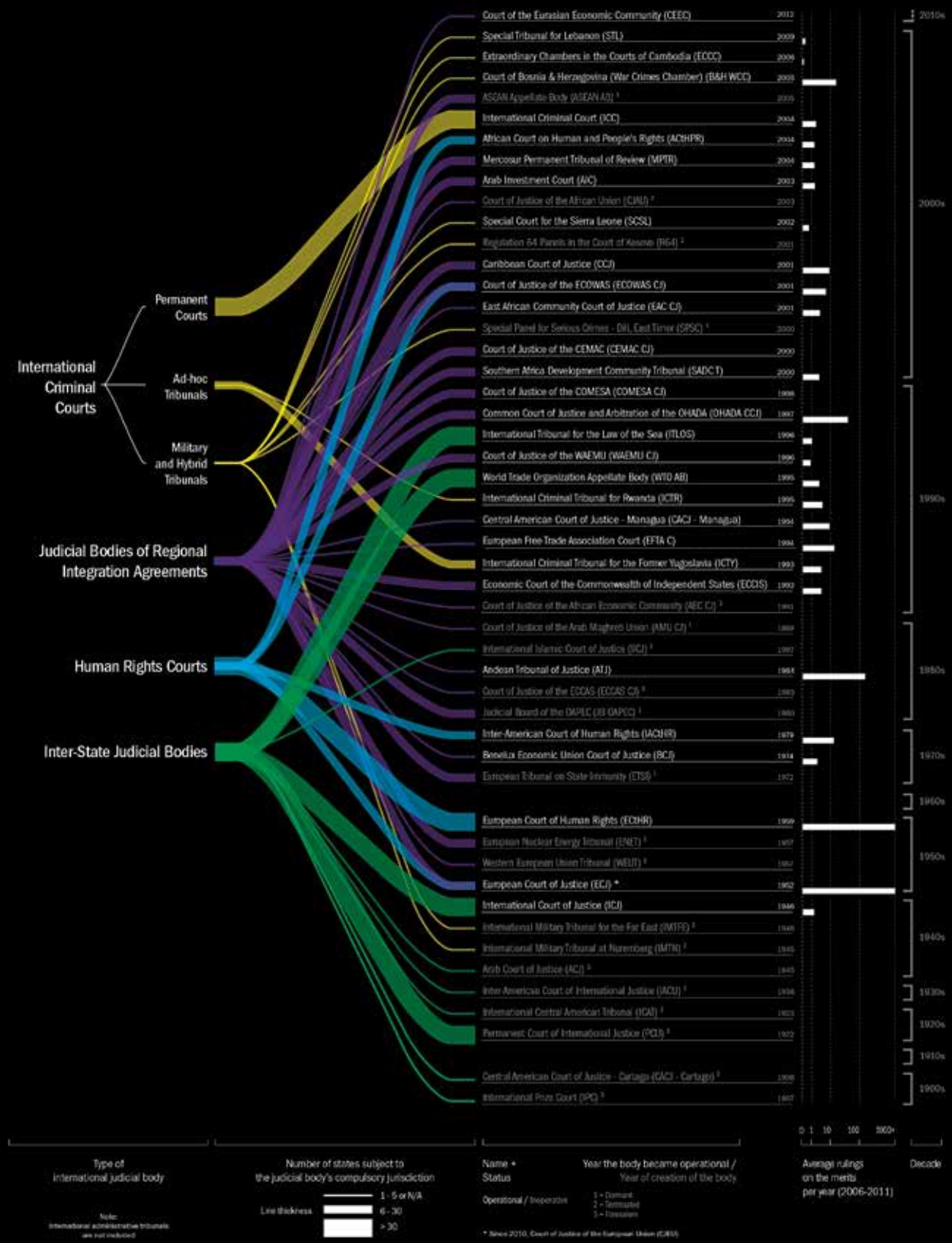
FRANCESCO SEBREGONDI I understand your approach as follows: probing the principles and aspirations of international justice vis-à-vis the reality of its material implementation today—a step that necessarily brings us into issues of politics and space. To use the words of Alex Jeffrey, our common starting point for this mapping project may have been "an understanding of international justice not as an abstract condition or outcome, but as a process that is incomplete and situated in space."[2] Would you agree with this?

CESARE ROMANO Situating international courts in their space—physical, political, ethical, and legal—is at the core of PICT's mission. When PICT was launched in 1997, international courts were largely conceived as islands in the ocean of international law with no connection with each other. There were specialists on this or that court, but there was no unifying vision of the whole. Also, courts largely operated in isolation, often reinventing the wheel and rarely talking to each other and sharing experiences. The first visual image of the field I produced, the PICT Synoptic Chart,[3] is still regarded today as groundbreaking as it attempted to bring together, in the same image, what until that point had been considered completely unrelated phenomena.

International Judicial Bodies
Taxonomic Timeline

Data
Karen J. Alter, Cesare P.R. Romano
[as of 1st July 2013]

Visualization
Francesco Sebregondi / Forensic Architecture



International Judicial Bodies
Compulsory Jurisdiction Across the Globe

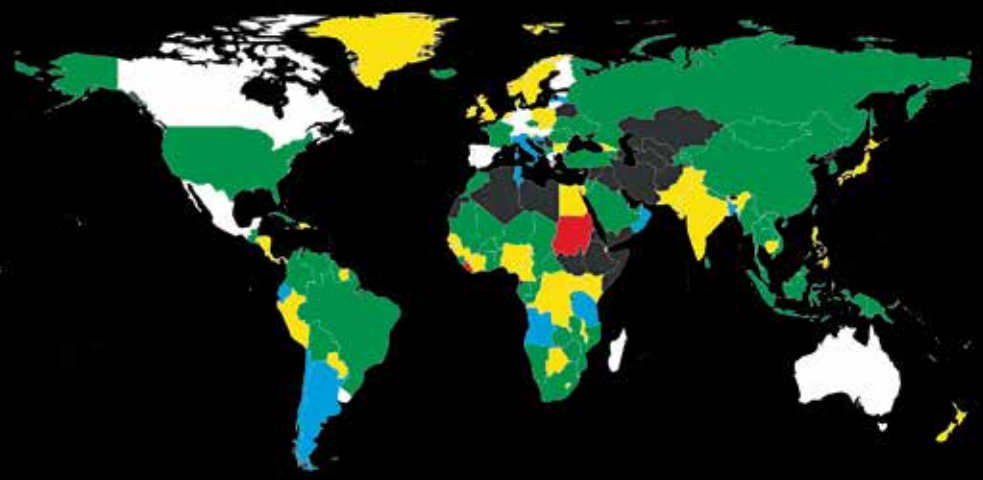
Data
Karen J. Alter, Cesare P.R. Romano
[as of 1st July 2013]

Visualization
Francesco Sebregondi / Forensic Architecture

Inter-State Judicial Bodies

States colored according to the acceptance of compulsory jurisdiction of one, two, or three international judicial bodies for inter-state disputes considered (ICJ, WTO AB, ITLOS)

States not accepting compulsory jurisdiction of any of the three bodies considered



International Criminal Court

States that have ratified the Rome Statute of the ICC

States that have not ratified the Rome Statute of the ICC

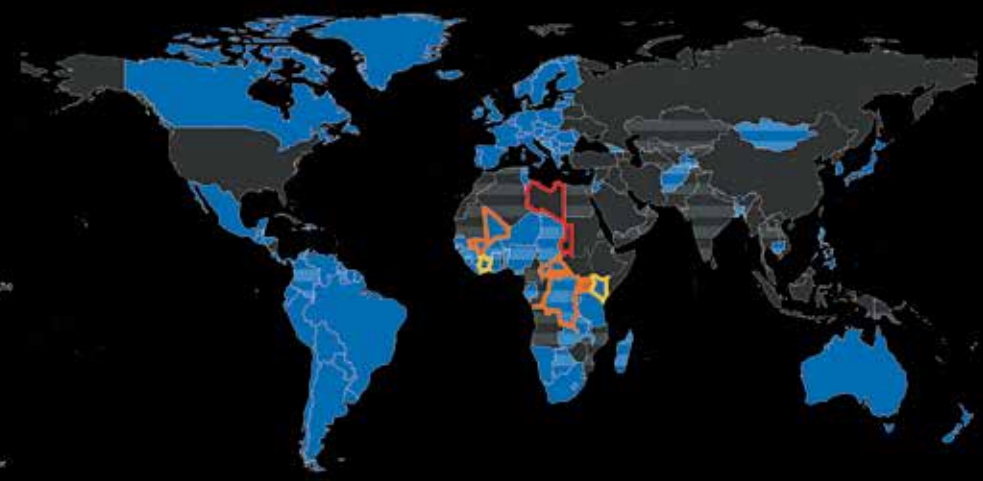
States that have ratified a Bilateral Immunity Agreement with the United States

Situations that have been formally investigated by the ICC since its creation:

Referral by ICC State Party

Referral by UN Security Council

Proprio Motu investigation by the ICC Office of the Prosecutor



Judicial Body Seat

Seat of judicial body with universal reach

Seat of judicial body with regional reach

Note:
The full names of the judicial bodies marked here by their corresponding acronym can be consulted in the Taxonomic Timeline

FS When looking at the timeline, one can clearly make out a sharp rise in the numbers of international courts since the 1990s. Could you explain some of the main factors of this increase?

CR The end of the Cold War was pivotal in opening the floodgates for the multiplication of international courts. Several factors were at play, depending on the family of international courts considered. For example, and to focus only on one kind of courts, the end of the confrontation between the two blocks made it possible for international criminal law to be resurrected, after a long hiatus since the end of World War II. Within the UN, and specifically the Security Council, agreement could be reached in 1993 to create the International Criminal Tribunal for the former Yugoslavia (ICTY). When the next year all hell broke loose in Rwanda, the Security Council replicated the ICTY model, creating the International Criminal Tribunal for Rwanda (ICTR). The ad-hoc nature of these two tribunals led many to think again about the need for a permanent international criminal court, which came into being in 1998 in the form of the International Criminal Court (ICC). The shortcomings of the ICC and the need for more localized international criminal justice led to the creation of the various hybrid criminal courts.

FS In your article "Can you hear me now? The Case for Extending the International Judicial Network," you chose to speak of an international judicial *network*, "since 'system' implies a level of coordination that does not exist yet."[4] Could you describe some of the mechanisms of coordination already in place? How do judicial power and knowledge circulate among the different bodies forming this network? By which means does the existing configuration of the network shape its extensions (here I am thinking of new courts created on the model of existing courts)? Have you identified any feedback loops by which the architecture of the network may self-adjust to, say, dysfunctional experiences or shifts in geopolitical conditions?

CR Coordination and dialogue between courts and their various users has greatly increased since the early days of PICT. When we launched the project, in February 1997, we gathered together in London the registrars (i.e. the senior legal officers) of seven international adjudicative bodies. It was the first time in history that this happened and those gentlemen had never met each other, even though they were largely doing the same work. Since then, meetings between judges and staff of international courts have become almost routine. A number of initiatives have been launched to facilitate dialogue. One of the most notable is the Brandeis Institute for International Judges, which picked up the task of helping the actors directly involved in international adjudication—international judges—learn from one another so as to address judicial, ethical, and administrative questions and improve international adjudication.

The dialogue between courts has given rise to an informal international judiciary.[5] Indeed, there is evidence that international judges have adopted, consciously or unconsciously, by design or out of necessity, a series of *modi vivendi*—informal and non-codified but no less effective—for structuring and regulating interactions between their courts, mainly with the aim of avoiding conflict of jurisdiction and of jurisprudence. In certain cases it seems they are going even further, from peaceful coexistence and mutual regard for their respective spheres of competence and jurisdiction to strategic cooperation and mutual assistance to extend their own power and authority. In sum, international courts are no longer "self-contained systems." They are gradually evolving, spontaneously and organically, if not into a "judicial system" then at least into a specific type of social network, a "judicial network," where each international court is a node. This network also extends to national courts, as the work of André Nollkaemper from the University of Amsterdam shows.[6] Indeed, it is increasingly plausible to consider national courts exercising international jurisdiction—or jurisdiction running parallel to that of international adjudicative bodies—as part of this broad universe of international adjudicatory procedures.

FS At first sight, in the maps we have produced, the current international judicial network seems to reproduce some of the spatial configurations of European colonialism: the seats of all four courts with a universal reach are situated in Western Europe, and the eight situations investigated to date by the ICC are all in Africa. We also see that some of today's most powerful states—for instance China, the United States, Russia, and India—seem very reluctant to consolidate an international judicial network, least of all its branches with universal reach. To what degree is international justice a Eurocentric adventure, and how long can we expect it to survive Europe's ongoing decline in global influence? Do you see it possibly receding in the coming years?

CR I don't think the idea of international adjudication is a Eurocentric adventure. You are correct in pointing out that all four courts with jurisdiction extending worldwide are based in Europe, but the Americas have a history of international and transnational adjudication as old as the European one. The first truly permanent international court (the Central American Court of Justice) was established in Cartagena, Costa Rica, in 1908. Nowadays, the continent that features the highest concentration of international adjudicative bodies is not Europe but Africa.

That being said, it is true that, as Benedict Kingsbury said, adjudication is a product of liberal and legalist juridical orders that are particularly associated with democracy, rule of law, open markets and information flows, basic liberal property and political rights setting limits on state powers, and some

hierarchical governance structures dominated by liberal polities and their corporate and civil society groupings.[7] A multipolar global political order, especially one where the relative power of the United States and Europe is decreasing, is already bringing about ideas about what global governance is and how law and legal institutions can and should function that are quite different from those embodied by international adjudicative bodies. In this regard, the marginal role played so far in the judicialization project by the superpowers of tomorrow (India, Russia, China, and also Brazil and South Africa), the vast Asia-Pacific region, and the Arab World is a concern.

FS How does the principle of universal jurisdiction relate to the apparatus of specifically established international courts and tribunals? And how has the implementation of this principle evolved in the past twenty years? The researchers of the Model Court group, associated with the Forensic Architecture project, have recently explored the peculiar case of the trial of François Bazaramba, a Rwandan national convicted of genocide by a small district court in the Finnish town of Porvoo.[8] In your opinion, does this case constitute a somehow marginal exception to the prevalent operational routes of international justice, or is it evidence that the principle of universal jurisdiction is still an active pole within the ongoing development of an international judicial network?

CR We should not forget that the primary responsibility to dispense justice, nationally and globally, still belongs to national courts and authorities. Indeed, as a principle of customary international law, access to international judicial remedies is always conditional upon exhaustion of domestic remedies. Direct resort to international jurisdictions is permissible only when there is no possibility for recourse in a domestic jurisdiction. Sometimes domestic courts do not exist (for example, because they have been closed down by war), are unable to dispense justice impartially, or lack jurisdiction over one of the parties (for example, the defendant is shielded by the sovereign immunity doctrine). In these cases, the individual can bypass the domestic level and directly access competent international jurisdictions, should they exist. Sometimes it is the courts of other nations that exercise jurisdictions in the name of the principle of universal jurisdiction. Regardless, we are always talking about national courts, not international ones. The supplementary nature of international courts to domestic ones is both a matter of logical and practical convenience; it ensures that claims are addressed at the lowest possible level of complexity, and it is a corollary of the principle of sovereignty, which is the ordering principle of the international community.

FS This sounds right in principle, but a case like that of Bazaramba seems to go against any logical and practical convenience. Is a national court in Finland *closer* to a case situated in Rwanda than an international court such as the ICTR, located in Arusha, just because it belongs to the national/domestic level? Is it able to address it at the lowest level of complexity, while located seven thousand kilometers to the north, and having to mediate its hearings with videoconferencing technology? While this specific case might well be an oddity, it raises an important question which concerns not only national courts exercising universal jurisdiction but also every international court with universal reach: the question of *distance*. I had the chance to meet with Julien Seroussi, assistant to Judge Bruno Cotte in the ICC Trial Chamber II during the Katanga/Ngudjolo Chui case,[9] and he described the immense obstacles brought about in the legal proceedings by the cultural distance between the witnesses and the court: for example, what first appeared to the court as inconsistencies regarding dates and locations in several testimonies were later understood to be the result of a culturally different relation to time and place in this region of the world—nonetheless leaving the court with the difficult task of bridging the gap. How is distance—geographic, cultural, social—understood as a limit condition within international adjudication? When does the imperative of dispensing justice for crimes that today have a universal status collide with the impossibility of a court *hearing* stories told from too far away?

CR I agree with you that a Finnish court adjudicating crimes committed by a Rwandan in Rwanda against Rwandans sounds like a paradox. In a perfect world Bazaramba would have been tried in Rwanda. However, international courts can try only so many cases. They have limited resources. In general, they are created only for the most serious crimes, those committed by the military and political leadership. To the extent that there is a conflict between the imperative of dispensing justice for international crimes and the objective difficulty domestic courts might have in adjudicating on acts committed too far away, I believe it is better to have justice done somewhere, albeit imperfectly, than not having justice done anywhere, as it used to be until the recent past.

FS As you and others have noted, the case of Rwanda also reveals a remarkable paradox: "the high-level organizers of the Rwandan genocide over whom the ICTR has custody may receive lower sentences than those less serious offenders tried by national courts,"[10] where death sentences can be pronounced. Through its articulations to local legal structures, the international judicial network produces a complex of differential routes for justice to be delivered, each with their own rules of procedures and sentencing, which in itself seems to challenge one of the basic principles of justice: could we say that today, if all are equal, it is not before the law, but before a variety of legal orders?

CR Nowadays it is obvious that there are many opportunities to obtain justice—far more than ever in the history of humankind. At the national level, the number of democracies with robust and independent judiciaries has been steadily on the rise. Internationally, there are now dozens of international courts and tribunals and human rights procedures available.[11] Be that as it may, gaps and failures still abound. The international judicial network is still in its infancy: most international courts were created less than twenty years ago, as the timeline shows. Internationally, we are still far away from the full realization of the principle of *ubi jus ibi remedium* ("where there is a right, there must be a remedy"), particularly if the holder of the right is an individual. There are many rights which lack a remedy because there is no competent forum to grant relief. But, again, what exists nowadays is a far cry from what existed until the end of the Cold War.

FS While the cases of international justice themselves connect and circulate through multiple institutional scales (from the domestic to the supranational), the architecture of the international judicial network has developed on a scalar model: on the one side, disputes between states are being arbitrated by dedicated judicial bodies which form a supranational level of authority; on the other side, under the principle of complementarity, the trial of an individual may only "step up" to an international judicial body if justice cannot be or is not being delivered at a local or national level, as you mentioned earlier. Thus, the existing international judicial network keeps the state as the touchstone of its architecture; with some rare exceptions, an international judicial body can only deal with matters that are entirely *contained* within the borders of states that have accepted its jurisdiction. Yet today, some of the crucial matters of our globalized world—such as matters of migrations, climate change, or global finance—involve factors and agencies that span across the borders of states and international regional communities. Legal fora capable of hearing and trying such matters do not exist yet. If they were to emerge, it is likely that these new fora would need to adopt a radically different architecture, perhaps one that would follow Bruno Latour's provocation—to have each matter or issue at stake gathering a different assembly of relevant parties around itself.[12] As a legal scholar, what challenges do you foresee to the emergence and activation of ad-hoc, "meta-national" legal fora, which would assemble all stakeholders and experts around a given issue, in order to deliver a legal decision?

CR It is absolutely correct to say that the existing international judicial network keeps the state as the touchstone of its architecture. This is both a strength and a limitation of the system. It is a strength because international courts derive their legitimacy from states' own legitimacy. By creating international courts and accepting their jurisdiction, states lend their legitimacy to courts, empowering them to administer justice in their name but also in the name of their peoples. It is a limitation because, as you said, not everyone or every problem can meet the criteria that limit international courts' jurisdiction. The way forward, however, is not to bypass states, lest legitimacy would be missed, but rather to complete the international judicial network so as to ensure that everyone, regardless of nationality or where she or he happens to be on the world map, can have access to a provider of justice.

1 Cesare Romano, Karen Alter, and Yuval Shany, eds., *The Oxford Handbook of International Adjudication* (Oxford: Oxford University Press, 2014).
2 Alex Jeffrey, "Justice Incomplete: Radovan Karadzic, the ICTY, and the Spaces of International Law," *Environment and Planning D: Society and Space*, vol. 27 (2009): 387–402.
3 Cesare Romano, "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle," *NYU Journal of International Law and Politics*, vol. 31 (1999): 709–51.
4 Cesare Romano, "Can You Hear Me Now? The Case for Extending the International Judicial Network," *Chicago Journal of International Law*, vol. 10 (2009): 233–73, at 239.
5 Cesare Romano, "Deciphering the Grammar of the International Jurisprudential Dialogue," *NYU Journal of International Law and Politics*, vol. 41, no. 4 (2009): 755–87.
6 See André Nollkaemper, *National Courts and the International Rule of Law* (Oxford: Oxford University Press, 2011).
7 Benedict Kingsbury, "International Courts: Uneven Judicialization in Global Order," in *Cambridge Companion to International Law,* eds. James Crawford and Martti Koskenniemi (Cambridge: Cambridge University Press, 2012), 203–27.
8 See Model Court, "Resolution 978HD" in the present volume.
9 See ICC-01/04-01/06, *The Prosecutor v. Thomas Lubanga Dyilo*; and ICC-01/04-01/07, *The Prosecutor v. Germain Katanga*, http://www.icc-cpi.int, accessed September 2013.
10 Mark Drumbl and Kenneth Gallant, "Sentencing Policies and Practices in the International Criminal Tribunals," *Federal Sentencing Reporter*, vol. 15, no. 2 (December 2002): 140–44.
11 For a detailed examination of access to justice across the globe, subdivided according to the Aristotelian categories of retributive, corrective, and distributive justice, see Cesare Romano, "Can You Hear Me Now?"
12 Bruno Latour, "From Realpolitik to Dingpolitik, or How to Make Things Public," in *Making Things Public, Atmospheres of Democracy*, eds. Bruno Latour and Peter Weibel (Cambridge, MA: MIT Press, 2005), 14–41, at 15. Available to download at http://www.bruno-latour.fr, last accessed September 2013.