The calls for international justice in the wake of armed conflicts appear to be rooted in a perception or a belief that there exists, somehow, a universal self-stabilising Order in this World which demands international judicial action in response to violations of international humanitarian law. The existence of an international legal system is part of the Order and such action will restore trust in the system and attempt to bring an end to what stands out as de facto impunity for these heinous crimes. However, the Order may well vary considerably in different cultural and religious contexts.

This article seeks to explore if, and in the affirmative, to what extent and how, such cultural and religious differences affect the interpretation of international humanitarian law and in particular the ongoing development of the adjacent body of international criminal legal procedure applicable before international criminal tribunals. In order to set the background, I will first offer some general remarks on the issue of the Order behind the law and the universality of human rights and international humanitarian law. Then I will proceed to address the Statutes and the Rules of Procedure and Evidence of the two UN Tribunals and the ICC.

1. Introduction: The common order

In any culture, the Order is perceived to maintain a fundamental balance in Life and to govern the relations between all human beings as well as the relations between human beings and nature. Depending on

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* The views expressed in this article are those of the author exclusively and may not in any way be taken to represent the positions of the Tribunals or the United Nations as such.
the observer’s point of departure (secularist, theocentricist, cosmologic or mysticist, post-modernist, etc.), the source of the Order lies in reason, in God or The Creator, in Nature itself, in human solidarity or in whichever higher authority the observer might wish to point to; common to them all, anyway, is the assumption that there exists an Order which binds this World together. Regardless of its source or origin, the Order provides meaning and direction in our lives, it accounts for our relations with nature and with kinsmen, it helps us explain who we are and what we are, and it outlines our obligations and limits. Most importantly, it offers forceful visions of human dignity, respect and tolerance—not only for individuals but also (to avoid the stain of extreme liberalism) for collective human communities such as families, clans, tribes, etc., and it endows all humans with inalienable rights and inherent duties toward society.

Massive and serious violations of international humanitarian law in the context of armed conflicts occasionally disrupt the Order. In such instances, faith in the Order must be restored by punitive correction of the perpetrators; hence the call for international justice. For the international lawyer, the claim that there can be no justice without peace, and no peace without justice, is a self-evident dictate which merely confirms the hypothesis of an underlying Order. Peace without justice will certainly be short-lived, and justice without peace will not bring an end to the atrocities; neither is acceptable. Peace and justice, thus, are inextricably linked together as constitutive parts of the global Order. This suggests that the international treaties adopted to protect the victims of armed conflict would be pointless if no effective remedies were available to ensure that those who violated the norms were brought to justice—no matter where in the world the crimes were committed, or by whom. If domestic prosecution in national jurisdictions is not feasible, then the ‘international community’ should provide for international criminal tribunals to do the job. Hence, again, the call for international Justice.

2. Law, religion and human rights

In a legal context, the idea of an underlying Order is inherent to the very concept of Law. If we endeavour to live in organised societies, there has to be some sort of common understanding among the people living in each society about the basic values and principles by which