1 Introduction

It has been noted that ‘[t]rue peace is not merely the absence of tension: it is the presence of justice’. In the past century, pernicious ideologies such as apartheid, communism, fascism, Nazism and more recently, religious fundamentalism were developed and perfected during its course. These ideologies inspired some of the worst tyrannies that led to two world wars and to countless other wars and conflicts that left millions of children, women and men as victims of unspeakable atrocities and violations of peoples’ basic human rights. All continents have suffered the consequences of armed conflicts. Unfortunately, however, Africa seems to have had a disproportionate share of this suffering. Cataclysmic events in Rwanda, Burundi, Liberia, Sierra Leone, Chad, the Ivory Coast and, more recently, Libyan Arab Jamahiriya (hereinafter: “Libya”), Tunisia and Egypt resulted in the deaths, destitu-
tion and displacement of millions of Africans, many of whom still live in unhealthy conditions in refugee and internally displaced persons camps.⁴

Thirty years after the adoption of the African Charter on Human and Peoples’ Rights (hereinafter: “African Charter”),⁵ recognizing fundamental human rights such as the right to life, integrity and dignity of the person (Articles 4 and 5), Africa still witnesses flagrant violations of these rights that often amount to ‘the most serious crimes of concern to the international community as a whole’.⁶ More often than not, the perpetrators of these violations are never brought to justice. Also often, they apparently consider themselves to be above the law. And yet without the perpetrators facing justice, the cessation of the cycle of violence cannot be attained. Only through justice can sustainable peace be achieved.

In line with this premise, the twentieth century has recorded a grand endeavour in the pursuit of justice: the establishment of ad hoc international criminal tribunals to try alleged perpetrators of specific conflicts and a permanent international criminal court as a global response to the unspeakable atrocities that occur worldwide. The International Criminal Court (hereinafter: “ICC” or “the Court”), which is the focus of the present chapter, is committed to fighting impunity for perpetrators of the most serious human rights abuses and international humanitarian law violations.⁷ By so doing, it contributes to the prevention of these crimes.⁸ As former UN Secretary-General Kofi Annan stated on the occasion of the adoption of the Rome Statute, the establishment of the ICC is ‘a gift of hope to future generations, and a giant step forward in the march towards universal human rights and the rule of law’.⁹

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⁷ The Court has jurisdiction with respect to the following crimes: the crime of genocide, crimes against humanity, war crimes and the crime of aggression as defined in Article 8bis (read together with Articles 15bis and 15ter) of the Rome Statute, provisions that were adopted at the 2010 Review Conference. See Article 5 of the Rome Statute and Amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression, Resolution RC/Res.6, adopted at the 13th plenary meeting, on 11 June 2010. The Court’s jurisdiction will be dealt with in the following section of this Chapter.
⁸ Rome Statute, Preamble, para. 5.