1. Introduction

1.1 Fragmentation and the notion of international criminal prosecution

The question of fragmentation in international law is traceable to conflicts among treaty regimes. The globalization and organization of the international community simultaneously results in creating a variety of rules of *lex specialis*, while also aiming at a standardization of ways of living across the planet. This antithetical concept is labelled as ‘a well-known paradox of globalization’. International criminal law may also be subsumed under a special regime and self-contained system of international law. International criminal law intends to harmonize its specialization with the broader legal system of international law. International criminal law as a special regime must express a unified object and purpose.

One of the unified objects and purposes of international criminal law may be reflected in the notion of ‘interests of justice’ under the Rome Statute. It is the guiding principle whereby the Prosecutor may decide not to investigate or prosecute a case. This notion of interests of justice, appearing in Article 53 of the Rome Statute, provides a very broad notion and abstruse boundary to the ICC’s prosecutorial strategy. The wording, ‘interests of justice’, demands a conceptu-
alisation of legitimacy from a contextual perspective. It should be interpreted within the special regime of international criminal law and more broadly in the international legal system. The goals of international prosecution must be well suited for the purposes and goals of international criminal justice. The unified object and the purpose of international criminal justice may have a therapeutic effect on the problems (if any) which have emerged from the fragmentation of international criminal law.

The regionalization of international law is one of the positive aspects of the phenomena caused by the fragmentation and diversification of international law. International criminal law is no exception to this. On the one hand, in the sphere of international criminal law, regionalization is promoted by a rise in the number of regional and hybrid fora to adjudicate international crimes. On the other hand, the establishment of the International Criminal Court (ICC) conjures the image of legal stability. This expectation of legal stability and unification of international criminal law perhaps stems from the establishment of the ICC as a permanent institution. Therefore, it is expected that the criteria for case selection in international criminal justice would become more and more concrete and stable under the auspices of the ICC.

Although there is a permanent international criminal court, no one can deny the possibility that, along with the ICC, future ad hoc international criminal tribunals and hybrid tribunals may be established by the international community. Such tribunals seem to emerge sporadically. In a similar fashion, the evaluation of situations subsequent to referrals from states parties and the Security Council may be erratic since these referrals most often reach the Court pursuant to an unexpected outbreak of atrocities. Nonetheless, this would not necessarily be the inherent phenomenon of situation selection or international criminal law. The development of international law is ‘usually precipitated by crises and atrocities, through decisions taken hastily and under great pressure’. Here again the fundamentals of international criminal justice can serve as a safeguard against an erratic policy of international criminal justice which may be susceptible to international politics. The fundamentals of international criminal justice must include the essential values of humanity.

Today some commentators realize that the gravity assessment, especially quantitative gravity, is not enough for evaluating the proper exercise of prosecutorial discretion. It continues to be a struggle to find an objective gauge to

6 For a criticism of quantitative gravity, see, e.g., K. J. Heller, ‘Situational Gravity under the Rome Statute’, in C. Stahn and L. van den Herik, (eds.), Future Perspectives in International Criminal Justice (2009). For critical views of both qualitative and quantitative gravity, see, e.g., M. Osiel, ‘How Should the ICC Office of the Prosecu-