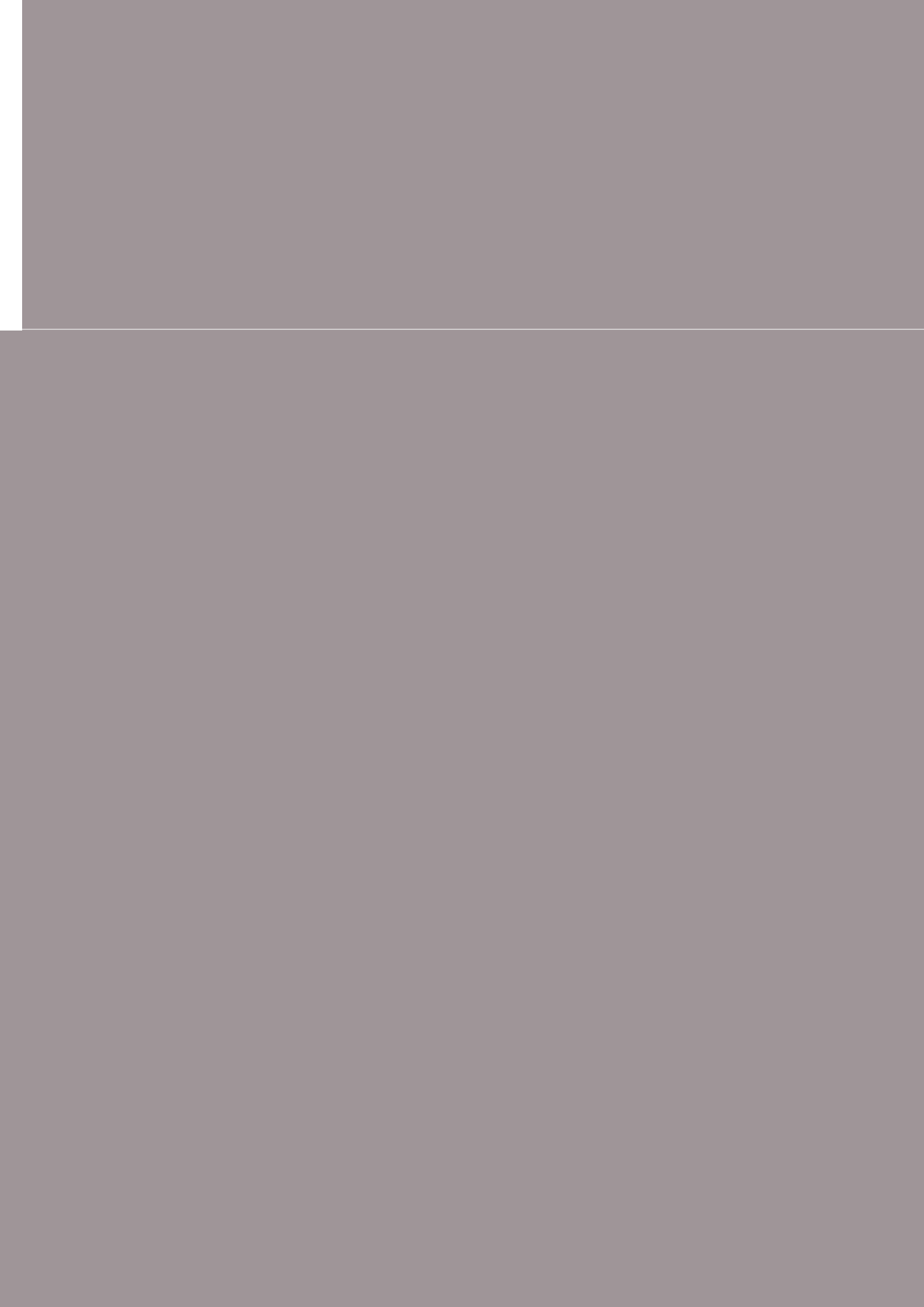




INTERNATIONAL
NUREMBERG
PRINCIPLES
ACADEMY

ASSESSING THE ACCEPTANCE OF INTERNATIONAL CRIMINAL JUSTICE IN SITUATION COUNTRIES – A METHODOLOGY

Prof. Dr. Susanne Buckley-Zistel
Dr. des. Friederike Mieth
Marjana Papa



As part of an interdisciplinary research project, the Nuremberg Academy has developed a methodology to critically assess the multiple dimensions of acceptance of international criminal justice in different situation countries. After a mapping of relevant literature on recent and current situation countries, the project has devised a research design for the

analysis of pertinent levels and factors that can have an impact on actors' acceptance (and non-acceptance) of institutions, mechanisms and outcomes of international criminal justice processes. The methodological approach described in this section may be a useful guide for similar research projects.

With international criminal justice forming a large part of transitional justice after mass atrocities, understanding if and how it is accepted by different actors in particular situation countries is of major significance. How do they respond to the mechanisms? What are their attitudes towards them?

The objective of this methodology is to provide an analytical framework for assessing the acceptance of international criminal justice in situation countries. It focuses on examining forms of international criminal justice, such as exercised by courts, tribunals or legal provisions, and actors who accept or do not accept these. The development of this research methodology is part of a larger project at the International Nuremberg Principles Academy which examines the dimensions of acceptance of international criminal justice.¹ It is targeted at academic researchers in the field, rather than practitioners who are interested in impact assessments or evaluations. As a consequence, it takes rather a broad and analytical approach, seeking to understand various aspects that influence that acceptance of international criminal justice.

International criminal justice refers to the norms underlying the prosecution of individuals for committing the international crimes of genocide, crimes against humanity and war crimes by international courts and tribunals. It has its roots in the International Military Tribunal in Nuremberg, Germany, which prosecuted Nazi crimes in 1945–6. After a long period of inactivity, mainly due to the Cold War bi-polar world structure, it was only after the violence in the former Yugoslavia and Rwanda in the mid-1990s that international tribunals re-emerged. Since then, a number of international and hybrid tribunals have been institutionalised and the International Criminal Court in The Hague established. Despite the rapid expansion of international criminal justice, it has been subjected to criticism, raising the question of how international criminal justice is perceived and appreciated – in our

terminology accepted – by certain actors in situation countries in which international courts are operating.

Acceptance covers a number of aspects. So far, few studies have examined the issue of acceptance of international criminal justice directly. However, acceptance is implied in much of the available literature debating peace and justice in post-conflict situations, local critiques of transitional justice, and in evaluations of specific courts or tribunals. It moves beyond the mere reception of international criminal justice, such as the passive acknowledgement of its processes, to a more active reception or approval by various groups. We thus define acceptance as the agreement, either expressly or by conduct, to the principles of international criminal justice in one or more of its forms (laws, institutions, or processes). This includes a range of active features from recognising to giving consent and expressing outright approval and belief.

The focus of this research is on actor groups, which vary from local populations affected by crimes and the ensuing tribunals to justice departments that change their legal regulations to incorporate provisions of international criminal justice. Acceptance can refer to both the outcome of a process and the process itself.

Acceptance is not a single act, but rather a complex process, the direction of which may change over time. Acceptance of international criminal justice might depend on current or past developments in legal proceedings, often leading to some aspects of a court, tribunal or legal provision being approved of, whilst others are seen more critically. Acceptance might also vary with the positions of the actors analysed, since they are always situated in a particular socio-political, historical and/or cultural context, determining attitudes towards a mechanism. There will thus rarely emerge one story of acceptance, but often a diversity of views.

¹ For more information see: <http://www.nurembergacademy.org/projects/detail/acceptance-of-international-criminal-justice-12/>.

This methodology consists of four components. They should not be considered as individual blocks in isolation to from each other, but always in light of whether and how international criminal justice is accepted:

- Analysis of international criminal justice
- Analysis of the various actor groups in the particular situation country
- Analysis of the country context
- Analysis of the acceptance of international criminal justice

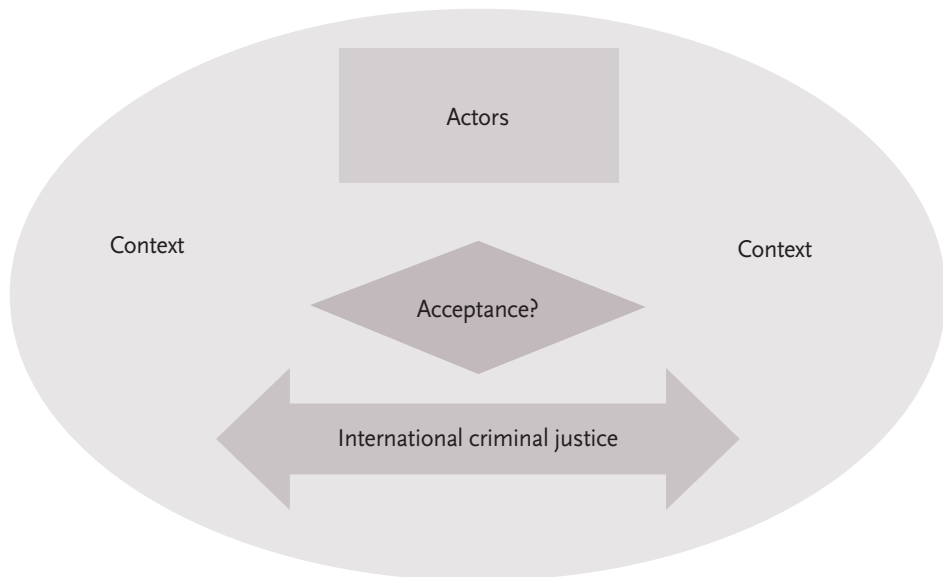


Figure 1 - Acceptance of international criminal justice, Prof. Dr. Susanne Buckley-Zistel

International criminal justice

International criminal justice in the form of tribunals, courts or the respective laws should be analysed. This involves a depiction of the form of the institution – whether it is a hybrid court, an ad hoc tribunal, or the International

Criminal Court – and an assessment of the level of international engagement. Central are also the apparent limits of the investigations. It also requires an analysis of the forms and scope of crimes that were perpetrated.

International Criminal Justice:

What is accepted/not accepted?

Which crimes are investigated? (e.g. crimes against humanity, war crimes, etc.)

In the particular situation context, what does international criminal justice entail?

Can international criminal justice be best described as certain norms or ideas, as concrete institutions, as certain legal provisions, or as a process?

What is the history of international criminal justice in the situation country?

If acceptance concerns a specific institution, at which stage is the process? (E.g. investigation phases, ongoing trials, verdicts, etc.)

How comprehensive is the scope of the investigation? Are there limits (e.g. geographical, temporal) in the investigations?

Who are the individuals indicted? Are they high-level or lower-level perpetrators, is the selection representative or not?

Was international criminal justice imposed from the outside or called for from members of the society?

What is the level of engagement of international criminal justice actors in the situation country (e.g. shared responsibility with domestic actors, external jurisdiction through the ICC, etc.)?

Are there any outreach activities by the courts?

Actors: Who accepts/does not accept?

Which actors are relevant in terms of acceptance? (e.g. victims, lawyers, civil society, general public, politicians, veterans, donors, international NGOs, etc.)

What is the level of knowledge of actors regarding international criminal justice? How informed is their view?

Actors

The second step comprises of a mapping of the actors' landscape in the situation country and, where relevant, beyond. An actor is an individual or collective initiator of action, and each society consists of many actors representing a multitude of positions and views on international criminal justice. When assessing acceptance it is thus important to position the actors within the social and political structure and to understand their perceptions and actions against the backdrop of their past and present experiences, their past and present role in society, and their objectives and strategies that derive from this positioning. Actors may include but are not limited to: victims, perpetrators, veterans, human rights or legal NGOs/CBOs, faith based groups, political leaders and elites, (former) entrepreneurs of violence, court staff and legal practitioners, and the general public.

When analysing actors it is important to understand their access to information, and the kind of information they have access to. This may vary significantly with their place of residence (urban, rural, capital), level of education, access to resources and the media, degree of relevance of international criminal justice for their personal and public life, and so on. Their role in current society must also be understood. Some actors may take the form of organised entities such as victims groups; others may not be easily identified as a group. Nevertheless, the position they speak from is key in understanding why they say what they say.

Another key factor is the relevance of international criminal justice in the situation country more generally. This, again, may vary between the different interest groups. Their position may reach from ignorance to an outright rejection of punitive justice in the particular context.

Context

Which other historical, social, economic and/or political factors may influence acceptance? What is the level of engagement of international criminal justice actors in the situation country (e.g. shared responsibility with domestic actors, external jurisdiction through the ICC, etc.)? How does the history of human rights violations in the situation country influence acceptance

of international criminal justice? Were certain parties of the current socio-political landscape involved in previous atrocities? What forms of violence took place and/or continue to take place? Did previous atrocities concern all of the population or only specific groups? How does the current situation (economic, cultural, political, etc.) influence acceptance?

Context

Countries which have experienced mass atrocities differ regarding their political, social, cultural and economic constitution, and any assessment of acceptance by different actors needs to be contextualised. The third step is thus to analyse how the experience and legacy of the violence, the history of the situation country and the present structure of the society is relevant to studying acceptance, which may, again, vary for each actor. This analysis should therefore consist of a range of perspectives to avoid simplification and one-sided views.

The purpose of analysing the context in which international criminal justice is situated is to explore how it influences (non-)acceptance by particular actors. It is thus not merely a description of the history of the conflict, but

is tailored towards the wider question of acceptance. The views of different actors and/or the population may differ regarding why and how violence occurred and against whom, and have an effect on their acceptance or non-acceptance. There may be ongoing societal or violent conflicts that are not related to the situation under review before international criminal courts or tribunals. The society of the situation country may be ethnically, religiously or ideologically divided and prone to politicisation and manipulation. Finally, it is important to be aware that there is no objective context in which we can situate acceptance, but that the context may be perceived and understood differently according to each actor.

Acceptance

Which aspects of international criminal justice – a tribunal, its outcomes, legislation, or more general ideas or concepts of international criminal justice – are relevant for the actors' acceptance?

What do different actors accept, what do they see critically?

Do the respective actors accept by conduct or by expression?

What are reasons for acceptance / non-acceptance?

Has acceptance changed over time?

If yes, how and why?

What consequences does acceptance / non-acceptance have for the respective actors?

Acceptance

Acceptance is a dynamic process and not a matter of yes or no, and it may have many nuances. Acceptance may be partial, and it may be conditional. In addition, while some aspects of courts or tribunals might be accepted, other might be viewed more critically.

The analysis of acceptance involves the development of an understanding of how acceptance is manifest in the particular country context. One way to assess the perception of interviewees is to let them define what they understand by the term acceptance, the absence thereof, and the many shades between these far ends of the spectrum. Alternatively, the interviewees can be asked broader questions without any mention of acceptance, and the researcher can assess the data collected to determine if and how the answers given can be situated on the wide spectrum of acceptance nuances. These viewpoints can be analysed to fit the proposed acceptance definition which emphasises the active manifestations of acceptance.

To further investigate acceptance, it is suggested to analyse the conduct of the different

actors as well. Here, observations, the study of documents and more indirect actions, can provide important leads to the nature of acceptance or non-acceptance in a situation country. For example, in addition to analysing how a particular political actor assesses international criminal justice, how often they do so and whether this is coherent across different audiences or situations can also be assessed. It is also important to understand the timeline of international criminal justice and to situate the analysis of acceptance within these processes. They may reach from the conception of a court or tribunal, to the first investigation, indictments, hearings, to the verdicts and revisions. Each stage may prompt a different response from actors. For instance, acceptance may be high in the initial stages, but drop after the first verdict. Since it is often not possible to conduct a longitudinal study to assess acceptance over time, the stage which the process has reached at the time of the study is important. It is also useful to ask interviewees whether they think that their attitude towards the court has changed over time.

Acknowledgment of Contributors

The acceptance research team is very grateful to the following colleagues who were willing to discuss this methodology with us and who contributed important ideas.

Dr. Briony Jones, University of Warwick

Dr. Jan Köhler, Freie Universität Berlin

Prof. Dr. Chandra Lekha Sriram, University of East London

Assistant Prof. Phuong Pham, Harvard University

Associate Prof. Jelena Subotic, Georgia State University

Prof. Dr. Mark Drumb, Washington and Lee University
