

# Development in International Criminal Law Open Access Tools: Increasing Public Education and Engagement

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## 1. Introduction

The continued dominance of expensive commercial publishers in research and higher learning has been rightly criticised and challenged. These publishers and the high cost of their academic products severely limit the dissemination of research findings. This profit-driven publication model is morally problematic and needs to be resisted. For knowledge to grow and benefit all, there is a need for publication models that enable the free exchange of research findings and the flourishing of an intellectual commons. This paradigm shift is necessary as access to research findings and publications is an important enabler to providing the general public with knowledge and information regardless of their resources and means. Drawing on technology and the Internet, various groups committed to the public ethos of research have established online portals and databases making scientific material and research accessible at no cost to users. These platforms are commonly referred to as open access tools and are part of the growing open access movement.<sup>1</sup>

Against this background of change, this policy brief examines the growth and evolution of open access tools in the field of international criminal law. It revisits pioneers in the field, such as the International Criminal Court Legal Tools Database ('ICC LTD'), and highlights some new initiatives, such as the Singapore War Crimes Trials Web Portal ('SGWCT Web Portal').<sup>2</sup> The latter comprise a new wave of open access tools which aim to make international criminal law more accessible to those working in the field as well as the general public.

## 2. The ICC LTD as a Leading Open Access Tool in International Criminal Law

The most notable open access tool in international criminal

law is the ICC LTD. It serves practitioners, researchers, students and civil society actors, and is the leading online resource for legal sources in international criminal law. It provides free online access to legal instruments, cases and commentaries on international criminal law in Arabic, Chinese, English, French and Spanish.<sup>3</sup> The objective of the ICC LTD is to serve as a complete virtual library on international criminal law and related fields. It aims to equip and empower users, regardless of their location and resources, so that they can work effectively with international criminal law.<sup>4</sup>

Prior to the establishment of the ICC LTD, it was possible to locate international criminal law sources spread across different web sites. However, much historical material, such as records of the Tokyo Trial and the United Nations War Crimes Commission, was not available online.<sup>5</sup> These are now available in the ICC LTD. It brings together, for the first time, all these contemporary and historical sources in a comprehensive and user-friendly manner.

The ICC LTD has been recognised as playing a leading role in contributing significantly towards the promotion of international criminal law.<sup>6</sup> Its importance has been

<sup>3</sup> The International Criminal Court Legal Tools Database, available at <https://www.casematrixnetwork.org/icc-legal-tools-database/>. See also Martin Sørby, Deputy Director General, Ministry of Foreign Affairs, Statement at the 10<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 December 2011 (<http://www.legal-tools.org/doc/1121b2/>).

<sup>4</sup> H.E. Mr. Wolfgang Paul, Head of the Austrian Delegation, Ambassador to the Netherlands, Statement at the 7<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2008 (<http://www.legal-tools.org/doc/92d8c8/>).

<sup>5</sup> Initially, just over 2,200 documents from the World War II war crimes archive were made available online for the first time (*Washington Post News*, 8 August 2013). Later the number increased to 11,842.

<sup>6</sup> H.E. Mr. Klaus Korhonen, Ambassador, Embassy of Finland to

<sup>1</sup> The Budapest Declaration, available at <http://budapestopenaccessinitiative.org>. Unless otherwise indicated, URLs in this brief were last accessed on 23 June 2016 (LTD-PURLs have no date indication as they are permanent links).

<sup>2</sup> See <http://singaporewarcrimetrials.com/>.

acknowledged by ICC Assembly of States.<sup>7</sup> It is a valuable resource and tool for legal empowerment<sup>8</sup> for several following reasons: (1) its free and public nature enables equal access to legal sources regardless of the financial positions of users;<sup>9</sup> (2) the comprehensive Database enables the work of national criminal justice actors in discharging their primary responsibility to investigate and prosecute ICC crimes;<sup>10</sup> and (3) its reliability<sup>11</sup> strengthens national capacity<sup>12</sup> by facilitating criminal justice actors' better understanding of international criminal law.<sup>13</sup>

### 3. Beyond the ICC LTD: Open Access Tools for the Profession, Education, and Advocacy

Apart from the ICC LTD, there has been a growth of open access tools with complementary objectives. The International Crimes Database ('ICD') was established in 2007 by the T.M.C. Asser Instituut (a former partner in the ICC Legal Tools Project) and is a database on international crimes tried at domestic, international and hybrid courts.

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the Netherlands, Statement at the 8<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 19 November 2009 (<http://www.legal-tools.org/doc/bbba11/>). The ICC LTD works with a number of external partners to update and maintain the Database. The ICC has signed co-operation agreements with universities and research centres in different parts of the world, including National University of Singapore, Faculty of Law, Korea University School of Law, O.P. Jindal Global University Centre for International Criminal Justice and Humanitarian Law and Peking University Law School in Asia, whose members contribute to the ICC LTD. For a list, see: <https://www.legal-tools.org/status-of-work-on-the-tools/co-operation-agreements/>.

<sup>7</sup> ICC Resolution ASP/8/Res.3, 26 November 2009, para. 39 (<http://www.legal-tools.org/doc/a0472d/>).

<sup>8</sup> Mr. Pieter de Savornin Lohman, Statement on behalf of the Kingdom of the Netherlands at the 10<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 14 December 2011 (<http://www.legal-tools.org/doc/f5b8a1/>).

<sup>9</sup> Director General Päivi Kaukoranta, Statement of the Representative of Finland at the 11<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2012 (<http://www.legal-tools.org/doc/672c2a/>).

<sup>10</sup> Päivi Kaukoranta, Director General for Legal Affairs for the Ministry of Foreign Affairs of Finland, Statement at the Sixty-Sixth General Assembly Plenary 43<sup>rd</sup> and 44<sup>th</sup> Meetings, GA/11163, 26 October 2011 (<http://www.un.org/press/en/2011/ga11163.doc.htm>).

<sup>11</sup> Martin Sørby, Deputy Director General, Ministry of Foreign Affairs, Statement at the 11<sup>th</sup> Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, The Hague, 15 November 2012 (<http://www.legal-tools.org/doc/a367c7/>).

<sup>12</sup> ICC Resolution ASP/11/Res.6, 21 November 2012 (<http://www.legal-tools.org/doc/b9631f/>), para. 10; see ICC Resolution ASP/10/Res.5, 21 December 2011, para. 63 (<http://www.legal-tools.org/doc/ec50d0/>).

<sup>13</sup> Alf Butenschøn Skre and Asbjørn Eide, "The Human Right to Benefit from Advances in Science and Promotion of Openly Accessible Publications", in *Nordic Journal of Human Rights*, 2013, vol. 31, no. 3, p. 449.

It aims to be the go-to resource for criminal justice practitioners as well as students, journalists, and victims who may wish to have access to data on international crimes.<sup>14</sup>

The Centre for International Law Research and Policy's ('CILRAP') Case Matrix Network ('CMN') has developed the CMN Knowledge Hub aimed at facilitating day-to-day prosecutorial and investigative work on core international crimes.<sup>15</sup> These provide criminal justice actors, such as investigators, prosecutors, lawyers and judges, with easy access to a one-stop channel where they can familiarise themselves with the legal requirements of core international crimes and applicable broader international obligations. These tools also enable criminal justice actors to efficiently and accurately apply international criminal law in their everyday work. An illustration is the award-winning Case Matrix application which is a system designed to facilitate users' understanding of the law by allowing them to enter the crimes and modes of liability being charged and thereafter breaking down the case based on the legal requirements which must be fulfilled for conviction of the accused. It also aids users' application of the law to the evidence of an individual case via a digital filing system.<sup>16</sup>

The fast-changing nature of international criminal law makes up-to-date online knowledge platforms particularly important for professionals working in this field. An outstanding example would be the Commentary on the Law of the International Criminal Court (CLICC, often referred to as the "Klamberg Commentary"), that is an integral service in CILRAP's CMN Knowledge Hub.<sup>17</sup> The CLICC provides a provision-by-provision analysis of the Rome Statute and the Rules of Procedure and Evidence of the ICC. It is frequently updated and tracks the quick development of international criminal law at no cost to the user.

Other organisations have developed international criminal law open access tools with an educational objective. These tools include as their audience teachers and students of international criminal law. International criminal law courses are already made available through Massive Open Online Courses ('MOOCs') such as Coursera.<sup>18</sup>

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<sup>14</sup> The International Crimes Database Project, available at <http://www.internationalcrimesdatabase.org/AboutIcd/Project>.

<sup>15</sup> See <https://www.casematrixnetwork.org/cmn-knowledge-hub/>. See also the CMN's sub-project International Criminal Justice Toolkits Project, available at <https://www.casematrixnetwork.org/cmn-toolkits-project/>.

<sup>16</sup> See Morten Bergsmo, Olympia Bekou and Annika Jones, "Preserving the Overview of Law and Facts: The Case Matrix", in Morten Bergsmo (ed.), *Active Complementarity: Legal Information Transfer*, Torkel Opsahl Academic EPublisher, Oslo, 2011, p. 58. Ralph Hecksteden and Morten Bergsmo were awarded the 2008 Dieter Meurer Prize for Legal Informatics for making the Case Matrix, see <https://www.legal-tools.org/what-are-the-icc-legal-tools/>.

<sup>17</sup> Commentary on the Law of the International Criminal Court, available at <http://www.cmn-kh.org/CLICC/>.

<sup>18</sup> See Coursera, available at <https://www.coursera.org/>

These open access tools with an educational objective provide innovative models on how knowledge and skills can be taught and received.

Serious students and teachers will also need access to detailed commentaries and research. Some international law publishers and journals are willing to make select publications open access if certain conditions are fulfilled.<sup>19</sup> A few, like the Torkel Opsahl Academic EPublisher ('TOAEP'), have adopted a policy of making all publications open access. TOAEP is a non-profit international law publisher that is firmly committed to open access publishing. It actively seeks to make its publications freely available, and this particularly benefits those in materially less resourceful countries.<sup>20</sup> Most international law commentaries by traditional publishers are very costly and out of the reach of those in developing societies. These open access educational tools will help educate and prepare a new generation of international criminal law practitioners and scholars regardless of where they are located.

Another notable trend is the growth of advocacy and awareness web sites on international criminal law issues, such as JusticeInfo.net.<sup>21</sup> Such web sites aim to disseminate news and developments on international criminal and humanitarian law to the broader public, particularly journalists and lawyers. Specifically, JusticeInfo.net has the objective of highlighting current affairs and developments in international criminal and humanitarian law to anyone who desires access to reliable sources in justice, peace and reconciliation issues.<sup>22</sup> These web sites often have the distinct objective of advocating particular causes.

#### 4. The Next Wave: Public Education and Legal Heritage

As the open access movement in international criminal law gains further momentum, its target audience will expand to include not only practitioners, researchers, and students but also ordinary members of the public. Such tools will introduce and familiarise the public with international criminal law, its objectives, and its importance. The basic values protected by international criminal law should be considered part of our common heritage and history. An example of an open access platform developed with this public education objective in mind is the Singapore War Crimes Trials Web Portal launched in August 2016.<sup>23</sup> The

SGWCT Web Portal is an online freely accessible web portal about the 131 war crimes trials held by the British in Singapore after the Second World War, from 1946-48, where over 400 Japanese military personnel were prosecuted for wartime atrocities committed in Singapore and throughout Asia (Singapore War Crimes Trials).

The British kept meticulous trial transcripts and trial-related documentation on the Singapore War Crimes Trials. Hundreds of Asian civilians served as trial witnesses, and these trials were widely covered by the media in the period 1946-48. Notwithstanding these facts, the Singapore War Crimes Trials have largely been 'forgotten' by the Singapore public. Currently, these trials' original primary documents and transcripts remain housed at the United Kingdom National Archives at Kew Gardens. These trials and their stories of justice also do not receive much attention in schools. Thus, it does not come as a surprise that ordinary Singaporeans are largely unaware of these Singapore War Crimes Trials.

The SGWCT Web Portal will provide one-stop public access to the Singapore War Crimes Trials, featuring comprehensive case summaries of these war crimes trials. It will also provide clear links to relevant materials hosted on the ICC LTD as the public commons of international criminal law, thus directing users there for primary legal materials should they wish to conduct further research. The Web Portal also includes a searchable database with information on trial participants, such as judges, defendants, counsels, and victims. It uses a variety of information and visual aids to engage ordinary members of the public, such as data trend analysis, interactive maps of trial and crime locations, as well as archival and modern day photographs. Through these interactive and visual features, the SGWCT Web Portal seeks to achieve dual objectives. First, the Portal aims to inspire interest in the general public by promoting the public's appreciation of a crucial but under-explored aspect of Singapore's legal heritage. Second, the Portal aims to be a jumping off point for those trying to learn more about the Singapore War Crimes Trials.

By designing and building the SGWCT Web Portal to include not only detailed primary trial data and information, but also data trends, interactive maps and other visual tools that make sense of this data, the SGWCT Web Portal adds a public outreach dimension to international criminal law's open access movement. By using technology to facilitating access to, and critical understanding of, primary data and data trends on the Singapore War Crimes Trials, the SGWCT Web Portal endeavours to engage ordinary members of the public on the legal aspects, wider legacy, and contemporary relevance of the Singapore War Crimes Trials. The SGWCT Web Portal sees value in combining

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funded by the Singapore Academy of Law and National Heritage Board, Singapore.

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[courses?query=international%20criminal%20law#](#).

<sup>19</sup> See Oxford Open initiative where authors have the option of paying an open access publication charge to enable their paper to be freely available online immediately, available at <http://www.oxfordjournals.org/en/oxford-open/index.html>, last accessed 14 July 2016.

<sup>20</sup> Torkel Opsahl Academic EPublisher, available at <https://www.fichl.org/torkel-opsahl-academic-epublisher/>.

<sup>21</sup> Justice Info website, available at <http://www.justiceinfo.net/en>.

<sup>22</sup> *Ibid.*

<sup>23</sup> The Singapore War Crimes Web Portal Project is generously

the various objectives of open access tools highlighted above. It aims to be a comprehensive research database and online tool targeting legal researchers as well as an educational public outreach platform that generates interest among ordinary citizens.

It is undeniable that the open access movement has been enabled largely by technological advancement, as evidenced by the exponential growth of access to the Internet, thus changing the ways by which online portals and databases containing scientific material, research and knowledge are disseminated and made available to the public. Technology and its functions have essentially underpinned the idea of the twenty-first century global village. However, other than this far-reaching quality of technology, the SGWCT Web Portal also draws on other benefits of technology, such as its ability to make sense of data. This fusion of design and technology democratises knowledge. This necessarily brings about a whole new dimension on how open access tools can be further developed and designed to make international criminal law knowledge more accessible and relevant to the general public. The fast-developing nature of international criminal law means that many details, facts and data are often buried in sources and primary documents, requiring tedious effort and lengthy time to uncover and discern trends, patterns, and learning points. However, by appropriately utilising technology, coupled with open access tools and quality design, important trends and data in international criminal law previously uncovered or unnoticed may be revealed.

One of the aims of the SGWCT Web Portal is to further international criminal law knowledge and education through quality design. Certainly, this warrants a separate discussion on the importance of design in education and knowledge sharing. However, if we indeed subscribe to the principle of good design as an enabler of democratic access to information and education, the possibilities seems limitless.<sup>24</sup> It will be interesting to see how technological developments and reinterpretations push the boundaries of the open access movement in international criminal law.

## 5. Conclusion

With internationalisation of the rule of law and cross-

<sup>24</sup> Karl T. Ulrich, “Design Creation of Artifacts in Society”, University of Pennsylvania, 2011, p. 163, available at <http://opim.wharton.upenn.edu/~ulrich/designbook.html>.

border convergence in the understanding of basic and universal values, it is even more necessary for ordinary citizens to have access to knowledge that enables them to understand why and how our international legal system has evolved to its current stage.<sup>25</sup> Justice for universally condemned atrocities and international criminal law are crucial building blocks of our international legal system. These should not be left to a specialist group of international criminal law experts. Media coverage on international criminal law and atrocities is more often than not diluted into bite-sized nuggets of facts and information.

An informed and globally aware citizenry requires public access to accurate and comprehensive knowledge — not only of international criminal law but also history. The historical events of the Second World War continue to shape the geopolitics of Asia,<sup>26</sup> and thus remain highly relevant. History can teach and warn us not to repeat mistakes of the past.<sup>27</sup> A necessary prerequisite of public engagement and action is information and knowledge. The democratising of international criminal law and historical knowledge through open access tools is a step in the right direction. This policy brief seeks to encourage more discussion on how open access tools in international criminal law are vital to opening important legal and historical information and knowledge to the public, in the broader interest of furthering our sense of shared history, humanity, and membership within a larger international community.

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<sup>25</sup> Lionel Yee SC, “The Rule of Law – ‘Killer App’ or Open Source Software?”, in Professor Sir Jeffrey Jowell QC, Mr. J. Christopher Thomas QC, Dr. Jan van Zyl Smit (eds.), *Rule of Law Symposium 2014 – The Importance of the Rule of Law in Promoting Development*, Academy Publishing, Singapore, 2015, p. 206.

<sup>26</sup> “Q and A: Rana Mitter on the Legacy of World War II in Asia”, *The New York Times*, 10 July 2014.

<sup>27</sup> Walter Woon, Speech at the Remembrance Ceremony, Kranji War Memorial, Singapore, 12 September 2015.



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