

# The legal nature of the International Criminal Court and the emergence of supranational elements in international criminal justice

by

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**T**o understand how the International Criminal Court (ICC) works, it is important to clarify its legal nature as an institution. In this paper the legal nature of the ICC will be considered in three steps. First, the Court's status as a subject of international law will be addressed. We shall then enquire whether the Court must be classified as an international organization. Finally, some thought will be given to the question whether, and to what extent, the ICC is vested with supranational authority.

## **The ICC as a subject of international law**

An international legal person enjoys rights and carries out duties directly under international law and has the general capacity to act upon the international plane. The concept of international

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personality is thus derived from international law. Sovereign independent States are the principal subjects of that law. Conversely, intergovernmental organizations are often seen as derivative subjects of international law with their legal personality stemming from their member States' recognition of them as articulated in the founding charter.<sup>1</sup>

The status of the ICC as a subject of international law is spelled out in Article 4, para. 1, of the Rome Statute of the International Criminal Court, of 17 July 1998 (hereinafter Statute)<sup>2</sup>, which determines: "The Court shall have international legal personality."

This is a very helpful clarification, but it should be noted that even without such an explicit recognition the international legal personality of the ICC would follow from a reasoning similar to that which has been applied to the United Nations (UN). Since unlike the Statute, the UN Charter does not contain an explicit recognition of the Organization's international legal personality, in order to determine it, the International Court of Justice (ICJ) referred to the doctrine of implied powers. In its Advisory Opinion on reparation for injuries suffered in the service of the United Nations the ICJ stated:

"Under international law, the Organization must be deemed to have those powers which, though not expressly provided in the Charter, are conferred upon it by necessary implication as being essential to the performance of its duties."<sup>3</sup>

If this reasoning is applied to the Court, it is evident that there are a number of provisions in the Statute which presuppose the international treaty-making power of the Court: Article 2 of the Statute refers to a relationship agreement to be concluded between the

1 I. Brownlie, *Principles of Public International Law*, 5th ed., Oxford University Press, Oxford, 1998, pp. 57-58; V. Epping, in K. Ipsen, *Völkerrecht*, 4th ed., C. H. Beck'sche Verlagsgesellschaft, Munich, 1999, p. 51; R. Jennings and A. Watts (eds), *Oppenheim's International Law I*, 9th ed., Longman/London/New York, 1996, pp. 119-120.

2 Rome Statute of the International Criminal Court, 17 July 1998, UN Doc. A/CONF.183/9.

3 *Reparation for injuries suffered in the service of the United Nations*, Advisory Opinion: I.C.J. Reports 1949, p. 182.

ICC and the UN.<sup>4</sup> In addition to this, the Court is empowered, according to Article 3, para. 2, of the Statute, to enter into a headquarters agreement with the Netherlands, the host State of the ICC.<sup>5</sup> Furthermore, Article 87, para. 5 (a), of the Statute allows the Court to conclude an agreement with any State not party to the Statute on international co-operation and legal assistance.<sup>6</sup> To mention one final example, Rule 16, Sub-rule 4, of the Rules of Procedure and Evidence envisages the conclusion of agreements between the Court and States to protect vulnerable or threatened witnesses. Thus there can be no doubt that, under the ICJ's Reparation rationale, the international subjectivity of the ICC would have to be affirmed even in the absence of Article 4, para. 1, of the Statute.

### On the international legal personality of the ICC *ratione personae*

As a general rule, only States Parties are bound by the provisions of a treaty. This basic rule also applies, of course, to the constituent instruments of intergovernmental organizations. *Vis-à-vis* non-member States, the international legal personality of such organizations depends on their explicit or implicit recognition by those States.<sup>7</sup> This recognition is said to be of a constitutive nature. However, in exceptional cases the international legal personality *erga omnes* of an intergovernmental organization has been recognized.<sup>8</sup> The ICJ, in its aforesaid Advisory Opinion, stated that:

<sup>4</sup> See K. Dörmann, "The first and second sessions of the Preparatory Commission for the International Criminal Court", in *YIHL*, Vol. 2, 1999, p. 283; F. Jarasch, "Errichtung, Organisation und Finanzierung des Internationalen Strafgerichtshofs und die Schlußbestimmungen des Statuts", in *HuV-I*, Vol. 12, 1999, p. 10; A. Marchesi, in O. Triffterer (ed.), *Commentary on the Rome Statute for the International Criminal Court*, Nomos Verlagsgesellschaft, Baden-Baden, 1999, Article 2, note 11.

<sup>5</sup> See Dörmann, *op. cit.* (note 4), p. 283; Jarasch, *op. cit.* (note 4), p. 10.; G. A. M.

Strijards, in Triffterer, *op. cit.* (note 4), Article 3, note 5.

<sup>6</sup> C. Kreß, in Triffterer, *op. cit.* (note 4), Article 86, note 3.

<sup>7</sup> Epping, in Ipsen, *op. cit.* (note 1), p. 402.

<sup>8</sup> Brownlie, *op. cit.* (note 1), pp. 678-681; Epping, in Ipsen, *op. cit.* (note 1), p. 402; Jennings/Watts, *op. cit.* (note 1), pp. 16-22; I. Seidl-Hohenveldern and G. Loibl, *Das Recht der internationalen Organisationen einschliesslich der supranationalen Gemeinschaften*, 7th ed., Carl Heymanns Verlag, Cologne/Berlin/Bonn/Munich, 2000, p. 42.

“...fifty States, representing the vast majority of the members of the international community, had the power, in conformity with international law, to bring into being an entity possessing objective international personality, and not merely personality recognized by them alone...”<sup>9</sup>

The question arises whether this reasoning can be applied to the ICC *mutatis mutandis*. An affirmative answer does not seem too far-fetched.<sup>10</sup> According to its Article 125, paras 1 and 3, the Statute shall be open for signature or to accession by all States. It is foreseeable that the overwhelming majority of the community of States will ratify it. And, in substance, the ICC clearly complements the UN: the Statute establishes a collective system of criminal justice which augments the collective security system of the UN Charter, and these systems constitute the key components of an international legal order devoted to the maintenance of peace. It should also be noted that the ICC’s key function is to deal with crimes which, according to the Preamble, are “... of concern to the international community as a whole”. It is thus arguable that the ICC will be another instance of an international legal subject created by a treaty and yet effectively existing *erga omnes*.<sup>11</sup>

### The international legal personality of the ICC *ratione materiae*

The first sentence of Article 4, para. 1, of the Statute does not contain any limitation of the international legal personality of the ICC *ratione materiae*. This cannot mean, however, that the ICC has unlimited international legal personality. General international legal personality applies only to sovereign States as the principal subjects of international law. In the other cases the international subjectivity is a partial one, depending on the powers which have been conferred upon the legal person in question.<sup>12</sup> The three essential powers of an

<sup>9</sup> *Op. cit.* (note 3), p. 185.

<sup>10</sup> W. Rückert, in Triffterer, *op. cit.* (note 4), Article 4, note 5.

<sup>11</sup> Compare, with regard to the UN and other large international organizations, R. Higgins, *Problems and Process: Inter-*

*national Law and How We Use It*, Oxford University Press, Oxford, 1994, p. 48.

<sup>12</sup> Epping, in Ipsen, *op. cit.* (note 1), p. 53; Jennings/Watts, *op. cit.* (note 1), pp. 16-22; Seidl-Hohenveldern/Loibl, *op. cit.* (note 8), pp. 39-42.

international legal person are the treaty-making power, the right to entertain diplomatic relations with other subjects of international law, and active and passive international responsibility. It has been said that these powers are even intrinsically linked with international legal personality.<sup>13</sup>

A number of provisions which presuppose the treaty-making power of the ICC have already been mentioned above. It will also be necessary, or at least highly useful, for the ICC to entertain diplomatic relations. The Statute, starting from the principle of complementarity and extending to the enforcement stage, is based on an intimate interrelation between the national and the international level. In practice, the smooth operation of the new international criminal justice system can be enhanced only by regular contacts between the ICC and States.<sup>14</sup> Thus the entertainment of diplomatic relations would be fully in line with the ICC's functions.

Finally, it is difficult not to recognize the active and passive international responsibility of the ICC, even though this attribute is not dealt with in any great detail in the Statute. Issues of international responsibility will arise above all within the framework of international cooperation and the enforcement regime under Parts 9 and 10 of the Statute. The most important and simultaneously most difficult scenario will be the failure of States to live up to their respective duties. In light of the only rudimentary regulation contained in the Statute itself (cf. Article 87, paras 5 and 7, in connection with Article 112, para. 2(f)), the crucial task will be to intertwine the specifics of the Statute with the general law of international responsibility.<sup>15</sup>

13 Ch. Dominicé, "L'immunité de juridiction et d'exécution des organisations internationales", *RdC*, 1984-IV, p. 163; H. G. Schermers and N. M. Blokker, *International Institutional Law: Unity within Diversity*, 3rd ed., Kluwer Law International, The Hague/Boston/London, 1995, section 1801.

14 See M. Bergsmo, in Triffterer, *op. cit.* (note 4), Preamble, notes 20-21.

15 For a stimulating first analysis, see C. Kreß and K. Prost, in Triffterer, *op. cit.* (note 4), Article 87, notes 24-27.

### The ICC as an international organization

We shall now turn to the question whether the ICC is an international organization, a question which evidently is closely related to the issue of international subjectivity.

#### Characteristics of an international organization

Under general international law, the criteria for the legal personality of an international governmental organization may be summarized as follows:

- a lasting association of States;
- an organic structure;
- a sufficiently clear distinction between the organization and its member States;
- the existence of legal powers exercisable on the international level; and
- lawful purposes.<sup>16</sup>

The ICC obviously meets all these criteria: the Court is created by virtue of an inter-State treaty and, according to Article 1 of its Statute, is meant to become a permanent institution. Under Article 34, the ICC is endowed with organs: the Presidency, an Appeals Division, a Trial Division and a Pre-Trial Division, the Office of the Prosecutor and the Registry. These organs will not be subject to the instruction of States Parties but will operate independently in their respective fields of action. From this it follows that the ICC is itself an international organization and not — as are the International Criminal Tribunals for the Former Yugoslavia and for Rwanda (ICTY and ICTR) — only a subsidiary organ of an international organization.<sup>17</sup>

<sup>16</sup> Brownlie, *op. cit.* (note 1), pp. 678-981; Epping, in Ipsen, *op. cit.* (note 1), pp. 391-392; Jennings/Watts, *op. cit.* (note 1), pp. 16-22; Schermers/Blokker, *op. cit.* (note 13), section 34.

<sup>17</sup> Rückert, in Triffterer, *op. cit.* (note 4), Article 4, note 3.

### The typology of international organizations and the ICC

There are a number of criteria to categorize international organizations. One distinction is made according to the aims pursued. Depending on the historical development of international organizations, traditional international law has in the first place differentiated between international peace organizations and other international organizations, especially those pursuing economic goals.<sup>18</sup> The ICC is an international peace organization if the term peace is, therefore, understood as being intimately linked to that of *justice*. As has been said above, the Court complements the collective security system of the UN with a system of collective criminal justice. The ICC will be an important component of an international order based on the rule of law in that it will strengthen individual criminal responsibility, particularly of individuals in positions of State leadership.

In addition, international organizations are categorized according to their organizational structure. Despite the many differences in detail, some common features have been identified. In particular a distinction is usually drawn between three types of organs: those representing the common interest of the organization, those representing the interests of member States, and, finally, judicial organs.<sup>19</sup> Again on a very general level and starting from the classic three sovereign powers, in the case of international organizations the focus traditionally lies on the legislative and executive area.

The ICC differs sharply from these traditional models. Its organizational structure reflects the peculiarity of the Court as being primarily an international justice organization. All the organs listed in Article 34 of the Statute (so-called *integrated organs*) will act through international personnel not subject to instructions from governments of States Parties. From the perspective of Article 34 of the Statute, the ICC is thus a completely integrated international judicial organization. Its institutional structure can, however, be viewed from a wider

<sup>18</sup> Epping, in K. Ipsen, *op. cit.* (note 1), p. 390; Schermers/Blokker, *op. cit.* (note 13), section 48; Seidl-Hohenveldern/Loibl, *op. cit.*

(note 8), pp. 13-15.

<sup>19</sup> Seidl-Hohenveldern/Loibl, *op. cit.* (note 8), pp. 104-106.

perspective so as to include the Assembly of States Parties described in Article 112 of the Statute. The Assembly is not an integrated organ, as States Parties will be represented by persons acting on governmental instructions. And the area of competence of the Assembly clearly extends beyond the Court's judicial function, for the Assembly of States Parties is primarily a legislative and executive organ. Of utmost importance is the Assembly's power to adopt recommendations of the Preparatory Commission (Article 112, para. 2 (a), of the Statute), which includes the Draft Rules of Procedure and Evidence.<sup>20</sup> The question whether or not the Assembly of States Parties can be regarded as an organ of the ICC is an interesting one. From a formal point of view it must be answered negatively, as the Assembly is not included among the organs listed in Article 34. Considered thus, the Assembly instead appears to be a treaty organ *sui generis*.

However, it is not impossible to take a different, more substantive approach in analysing the ICC's structure. If the legislative authority of the Assembly of States Parties is deemed to be an essential element of the ICC Statute, much can be said for classifying the Assembly as an organ of the ICC in terms of substance. Viewed thus, the institutional structure of the international organization known as the ICC would be more complex. If the Assembly were to be considered part of its judicial core, consisting of the organs listed in Article 34 of the Statute, the organization would also have an executive and, more importantly, a legislative component to enact norms of a derivative nature. With regard to the principle of the separation of powers, the attribution of the latter function to an organ which is institutionally clearly detached from the judicial component constitutes a major advance compared to the ICTY and ICTR.

<sup>20</sup> Compare K. Ambos, "'Verbrechenselemente' sowie Verfahrens- und Beweisregeln des Internationalen Strafgerichtshofs", in *NJW*, Vol. 54, 2001, pp. 407-410; H.-P. Kaul,

"Der Aufbau des Internationalen Strafgerichtshofs: Schwierigkeiten und Fortschritte", in *VW*, Vol. 49, 2001, pp. 215-217.

## The ICC as an international organization with supranational elements

### What does supranational mean?

The authority of an international organization to bind a member State does not entail the exercise of sovereign power: traditional international organizations have authority only over their member States, and not within them.<sup>21</sup> The essential characteristic of supranationality, as the term is understood here, is that enactments by the international organization have direct effect within the respective member States' territory and on individuals.<sup>22</sup> This legal effect, which incidentally can flow from a legislative, executive or judicial act, directly obliges or empowers the individual subjects within a State, without the interposition of any transforming, receiving or *exequatur* act of that State.<sup>23</sup> From the viewpoint of the individual, supranationality thus results in the partial substitution of the sovereign. Supranationality — understood in that sense — has been foreshadowed by a number of international river commissions such as the Mosel Commission or the Central Commission for the Rhine Ship Traffic, but remained largely unknown until the end of World War II.<sup>24</sup>

## The European Community as the current example of a supranational organization

Nowadays, the European Community (EC) is the paradigm of supranational cooperation, as evidenced by Article 249,

<sup>21</sup> H. Mosler, in J. Isensee and P. Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland VII*, C. F. Müller Verlag, Heidelberg, 1992, pp. 609-611; A. Randelzhofer, in Th. Maunz and G. Dürig (eds), *Grundgesetz: Kommentar*, 8th ed., C. H. Beck'sche Verlagsbuchhandlung, Munich, 1998, Article 24, para. 1, notes 30, 61.

<sup>22</sup> M. Baldus, "Übertragung von Hoheitsrechten auf ausländische Staaten im Bereich der Sicherheitsverwaltung", in *Die Verwaltung*, Vol. 32, 1999, pp. 488-489; Randelzhofer, in Maunz/Dürig, *op. cit.* (note 21), Article 24, para. 2, note 30; K. T. Rauser, *Die Übertragung von Hoheitsrechten auf*

*ausländische Staaten*, C. H. Beck'sche Verlagsbuchhandlung, Munich, 1991, p. 34.

<sup>23</sup> Epping, in Ipsen, *op. cit.* (note 1), p. 77; R. Geiger, *Grundgesetz und Völkerrecht*, 2nd ed., C. H. Beck'sche Verlagsbuchhandlung, Munich, 1994, p. 139.

<sup>24</sup> F. Berber, *Lehrbuch des Völkerrechts III*, 2nd ed., C. H. Beck'sche Verlagsbuchhandlung, Munich, 1977, pp. 318-324; O. Rohahn, in I. von Münch and Ph. Kunig (eds), *Grundgesetz-Kommentar 2*, 3rd ed., C. H. Beck'sche Verlagsbuchhandlung, Munich, 1995, Article 24, note 43, 48; Seidl-Hohenveldern/Loibl, *op. cit.* (note 8), pp. 15-16.

para. 2, of the Treaty establishing the European Community. Under this provision the EC can enact regulations which not only have general application but are each binding in their entirety and directly applicable in every member State. In comparison, directives are binding, as to the result to be achieved, upon each member State to which they are addressed, but must leave to the member State's authority the choice of form and methods. As a corollary to this supranational legislative power, individuals may turn directly to the European Court of Justice, which secures the protection of their rights.

### The International Criminal Tribunals for the Former Yugoslavia and for Rwanda: emergence of supranational elements

Traditionally the United Nations has been perceived as a classic international organization.<sup>25</sup> Articles 24 and 25 of the UN Charter have been seen as the legal basis for adopting decisions which are binding upon member States but without having any direct effect in the latter's territory.<sup>26</sup> This position needs reconsideration in light of the UN's subsequent practice, and more particularly the establishment of the two ad hoc Tribunals. The powers of both international criminal tribunals are not confined to States as such, even though States and State-like entities are the primary addressees of the Tribunal's decisions.<sup>27</sup> In *The Prosecutor v. Tihomir Blascic* the ICTY has recognized the Tribunal's power in two cases to issue orders which are addressed directly to individuals.<sup>28</sup> The first case is where the respective State allows such direct effect, i.e. the ICTY expresses the desirability of its decisions to have a direct effect, but leaves the States to decide on the permissible extent thereof. An interesting consequence of this view is the possibility of relative supranationality *ratione personae*. The second

<sup>25</sup> Ch. Tomuschat, in H.-J. Abraham (ed.), *Bonner Kommentar zum Grundgesetz*, 91st ed., C. F. Müller Verlag, Heidelberg, 1999, Article 24, note 114.

<sup>26</sup> Geiger, *op. cit.* (note 23), p. 140.

<sup>27</sup> C. Kreß, "Jugoslawien-Strafgerichtshof", in H. Grützner and P.-G. Pötz (eds),

*Internationaler Rechtshilfeverkehr in Strafsachen*, 2nd ed., C. F. Müller Verlag, Heidelberg, 2000, note 60.

<sup>28</sup> ICTY, Trial Chamber I, Judgment of 29 October 1997, *Blascic*, IT-95-14-AR 108 bis, para. 41.

case specifically concerns the States directly involved in the underlying armed conflicts. Vis-à-vis those States the Chamber allows on-site investigations even in the absence of an authorization by the territorial State. In the view of the Chamber it is critical for the efficiency of the international investigation that interviews may be conducted on site without any authority of the territorial State being present.

A further supranational element to which the *Blasie* judgment alludes is the Tribunals' primacy over national criminal jurisdiction, under Article 9, para. 2, of the ICTY Statute and Article 8, para. 2, of the ICTR Statute. On the basis of these provisions the two tribunals can request a national court at any stage of its procedure to defer a case to the international level and the national court would be bound to comply with such a request. A German court experienced such a situation in the Tadic case, where the accused had to be surrendered to the ICTY even though the national proceedings were about to reach the trial stage.<sup>29</sup>

### Supranational elements in the ICC Statute

It is interesting to examine the extent to which the "supranationalization" of international criminal law which has surfaced in the practice of the ad hoc tribunals has been maintained in the ICC Statute. The crucial difference between the ICC and the two ad hoc tribunals must be noted at the outset: the ICC Statute is based on the principle of complementarity.<sup>30</sup> Under this regime, the ICC may

<sup>29</sup> See R. Griesbaum, "Über die Verfahrensgrundsätze des Jugoslawien-Strafgerichtshofes, auch im Vergleich zum nationalen Recht", in H. Fischer and S. R. Lüder (eds), *Völkerrechtliche Verbrechen vor dem Jugoslawien-Tribunal, nationalen Gerichten und dem Internationalen Strafgerichtshof*, Berlin Verlag Arno Spitz, Berlin, 1999, p. 117; J. MacLean, "The enforcement of the sentence in the Tadic case", in H. Fischer, C. Krefß and S. R. Lüder (eds), *International and national prosecution of crimes under international law*, Berlin Verlag Arno Spitz, 2001, p. 729.

<sup>30</sup> See P. Benvenuti, "Complementarity of the International Criminal Court to national criminal jurisdictions", in F. Lattanzi and W. Schabas (eds), *Essays on the Rome Statute of the International Criminal Court I*, Editrice il Sirente, Ripa di Fagnano Alto, 2000, p. 21; J. Holmes, "The principle of complementarity", in R. S. Lee (ed.), *The International Criminal Court*, Kluwer Law International, The Hague/Boston/London, 1999, p. 41.

exercise its jurisdiction only on a subsidiary basis. Supranationality and subsidiarity are not, however, mutually exclusive concepts.<sup>31</sup>

According to the ICC Statute the Prosecutor may take specific investigative steps on site: Article 99, para. 4, of the Statute empowers him to carry out certain non-compulsory investigative steps on the territory of a State requested for assistance, and to do so without the presence of the authorities of that State, and Article 57, para. 3 (d), of the Statute gives the Prosecutor wide-ranging investigative power in the special case of a disintegrated State.<sup>32</sup>

Another interesting element can be found in Article 58, para. 7, of the Statute. Under this provision, the Prosecutor is authorized to directly summon a person if there are reasonable grounds to believe that the person committed the crime alleged and that a summons is sufficient to ensure the person's appearance.

Third, a warrant of arrest issued pursuant to Article 58, para. 1, of the Statute has direct effects within the national legal system. In particular, the arrest warrant determines with binding force — not to be questioned by national authorities in the course of the arrest proceedings — that the conditions of Article 58, para. 1, of the Statute are fulfilled.<sup>33</sup> As a corollary the individual concerned has the right to challenge the arrest warrant directly at the international level. This right is usefully specified in Rule 117, Sub-rule 3, of the Rules of Procedure and Evidence. Once the person is arrested, the custodial State has to apply Article 59, para. 4, of the Statute and not its national law in deciding whether to grant interim release.

<sup>31</sup> Compare O. Lagody, "Legitimation und Bedeutung des Ständigen Internationalen Gerichtshofes", in *ZStW*, Vol. 113, 2001, p. 803.

<sup>32</sup> For the details on Article 99, para. 4, of the Statute see H.-P. Kaul and C. Kreß, "Jurisdiction and cooperation in the Statute of the International Criminal Court: Principles and compromises", in *YIHL*, Vol. 2, 1999, pp. 168-169; C. Kreß, "Strafen, Strafvollstreckung und internationale Zusammenarbeit

im Statut des Internationalen Strafgerichtshofes", in *HuV-I*, Vol. 11, 1998, pp. 160-161; K. Prost and A. Schlunck, in Triffterer, *op. cit.* (note 4), Article 99, notes 11-29; S. R. Lüder and G. Schotten, "A guide to State practice concerning international humanitarian law: Germany", in *YIHL*, Vol. 3, 2000, in preparation.

<sup>33</sup> Compare C. Kreß, "Völkerstrafrecht in Deutschland", in *NSStZ*, Vol. 20, 2000, p. 623.

Finally, such direct effects do not end with the surrender of a person to the ICC. Rather, they continue to flow from the transferred judicial powers throughout the whole process before the ICC, including the final judgment over such a person. The judgment constitutes no doubt the most extreme effect of a decision by an international organization upon an individual person.

### Conclusions

The International Criminal Court is a subject of international law and has all three core capabilities, i. e. treaty-making power, the right to entertain diplomatic relations, and active and passive international responsibility. Arguably, the ICC's legal personality is valid *erga omnes*.

The ICC is an international organization. It constitutes a new form of integrated international judicial organization. In a wider sense the new international justice system, extending to the Assembly of States Parties, is an even more complex organization which includes executive and above all legislative powers. The exercise of these powers is left to an organ composed of State representatives. Compared to ICTY and ICTR, this institutional arrangement better reflects the principle of the separation of powers.

Notwithstanding the principle of complementarity, the ICC Statute contains a number of supranational elements. First of all there are the powers to conduct on-site investigations. In addition, the summons of a suspect and the issuance of an arrest warrant entail direct effects. Finally, there is some justification for qualifying all orders issued directly by the ICC vis-à-vis individuals in the course of criminal proceedings as supranational.



## Résumé

### **La nature juridique de la Cour pénale internationale et l'émergence d'éléments supranationaux dans la justice pénale internationale**

PAR SASCHA ROLF LÜDER

*Dans cet article, l'auteur examine différentes questions soulevées par la nature juridique de la Cour pénale internationale (CPI). Le Statut de Rome, dans son article 4, précise que cette Cour a « la personnalité juridique internationale ». En se référant à la doctrine développée par la Cour internationale de Justice selon laquelle une organisation internationale doit disposer des attributs indispensables à l'exercice de ses fonctions, on peut donc conclure que la personnalité juridique internationale de la CPI est de toute façon reconnue. Dans le même esprit, on peut déduire que la CPI est une organisation internationale, c'est-à-dire une nouvelle forme d'organisation judiciaire internationale intégrée, dans le sens qu'elle n'est pas assujettie aux instructions émanant des gouvernements des États parties. Selon le Statut de Rome, la Cour est effectivement composée de différents organes qui ont soit des pouvoirs législatifs, soit des pouvoirs exécutifs. Enfin, l'auteur constate que la CPI a des pouvoirs supranationaux, car elle peut, par exemple, délivrer des mandats d'arrêt avec effets directs pour les autorités nationales.*