

THE INTERNATIONAL LEGAL INSTITUTIONS IN THE HAGUE

- How do they work, and
- Do they make the world a better place?

As seen through the lens of a generalist diplomat from
New Zealand, a small state

OUTLINE

Prologue: Is might right?

Part 1: Why The Hague?

Part 2: The individual institutions

(a) International litigation

- **International Court of Justice (World Court) – ICJ**
- **Permanent Court of Arbitration – PCA**
- **PRIME Finance**

(b) Penal tribunals (crimes against humanity)

- **International Criminal Court for the Former Yugoslavia - ICTY**
- **International Criminal Court - ICC**
- **Special Tribunal for Lebanon - STL**
- **Kosovo Relocated Specialist Judicial Institution - KRSJI**

(c) Non-court institutions

- **Hague Conference on Private International Law - HCPIIL**
- **The Hague International Model United Nations - THIMUN**
- **Hague Academy of International Law**
- **Think tanks and NGOs**
- **EU institutions**

Conclusion: Is the world a better place?

PROLOGUE: IS MIGHT RIGHT?

Realpolitik

Thucydides, Melian Dialogue:

In this world, questions of right and wrong arise only between equals in power.
The strong do what they can, the weak suffer what they must.

(Similar message in fable of the Wolf and the Lamb)

LANDMARKS IN THE DEVELOPMENT OF INTERNATIONAL LAW

- Hugo Grotius (1583-1645): Law of War and Peace, Law of the Sea
- Peace of Westphalia 1648: equality of states
- Hague Peace Conference 1899: PCA
- Woodrow Wilson's 14 Points 1918: League of Nations, PCIJ
- San Francisco conference 1945: United Nations, ICJ
- Nuremberg and Tokyo War Crimes Tribunals from 1945
- Rome Statute 1998: ICC
- Responsibility to Protect (R2P) 2005

PART 1: WHY THE HAGUE?

Now recognised as Legal Capital of the World – *Pax et Justitia (Peace and Justice)*

- Venue for 1899 international peace conference, leading to:
 - Establishment of Permanent Court of Arbitration (PCA)
 - Building of Peace Palace
- Permanent Court of International Justice established under League of Nations
- Hague Academy and Peace Palace library helped create critical mass
- New bodies drawn there over the years



PART 2: THE INDIVIDUAL INSTITUTIONS

(a) International Litigation

International Court of Justice (ICJ)

- Established after World War 2 as successor to PCIJ
- Fifteen judges, nine-year terms

Permanent Court of Arbitration (PCA)

- Established 1899
- Specific tribunal for each case, established by parties

PRIME Finance (Panel of Recognized International Market Experts in Finance)

- Established 2012

All in Peace Palace



BASIS FOR ICJ JURISDICTION

- Where parties specifically agree to refer a dispute to ICJ
- Where a treaty specifically provides for it
- Where the parties have accepted Court's compulsory jurisdiction
(currently 75 states including NZ, most with reservations)

Also Advisory Opinions when requested by UN bodies or agencies

LEGAL BASIS FOR ICJ DECISIONS

- Provisions of international agreements
- International custom
- Generally recognised legal principles
- Judicial decisions
- Experts' writings



NEW ZEALAND AT THE ICJ

- 1970s: French nuclear testing (in parallel with Australia)

- Case led by Martyn Finlay

- Lapsed when France ceased atmospheric testing

- Unsuccessful bid to revive case in 1995 when testing resumed

- 1990s: Advisory opinion on legality of threat or use of nuclear weapons

- Case led by Paul East

- Court found no explicit legal authorisation or prohibition

- 2013: Australian case against Japanese whaling in Antarctic

- (NZ as intervener)

- Case led by Christopher Finlayson

- Court found Japan's whaling programme not genuinely scientific



PERMANENT COURT OF ARBITRATION

Mandate: in accordance with international agreements, settle disputes

- Between states, or
- Between states and international organisations, or
- Between states and non-state parties

Often the default forum for settling trade or investment disputes

Works with ICSID and UNCITRAL

Also offers mediation, conciliation, and support for commissions of inquiry

Quicker and simpler than ICJ, but no advisory opinions

INDIVIDUAL INSTITUTIONS (cont)

(b) Penal

- International Criminal Tribunal for the former Yugoslavia (ICTY)
(replaced by Permanent Mechanism for International Criminal Tribunals)
- International Criminal Court (ICC)
- Special Tribunal for Lebanon (STL)
- Kosovo Relocated Specialist Judicial Institution (KRSJI)

No death penalty

Special premises for each (heavy security)

(Others not in The Hague: Rwanda, Sierra Leone, Cambodia)



INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA (ICTY)

Established 1993 by UNSC

160 indictments, 100 convictions

In particular:

- Slobodan Milosevic, Serbian President

Died during trial

- Radovan Karadzic, Bosnian Serb leader

Life imprisonment for genocide, war crimes, crimes against humanity

- Ratko Mladic, Bosnian Serb general (Srebrenica massacre)

Life imprisonment for genocide, war crimes, crimes against humanity

Wound up in 2017

INTERNATIONAL CRIMINAL COURT (Rome Statute 1998)

Over 120 members (but only two UNSC P5)

Complementary jurisdiction - takes cases:

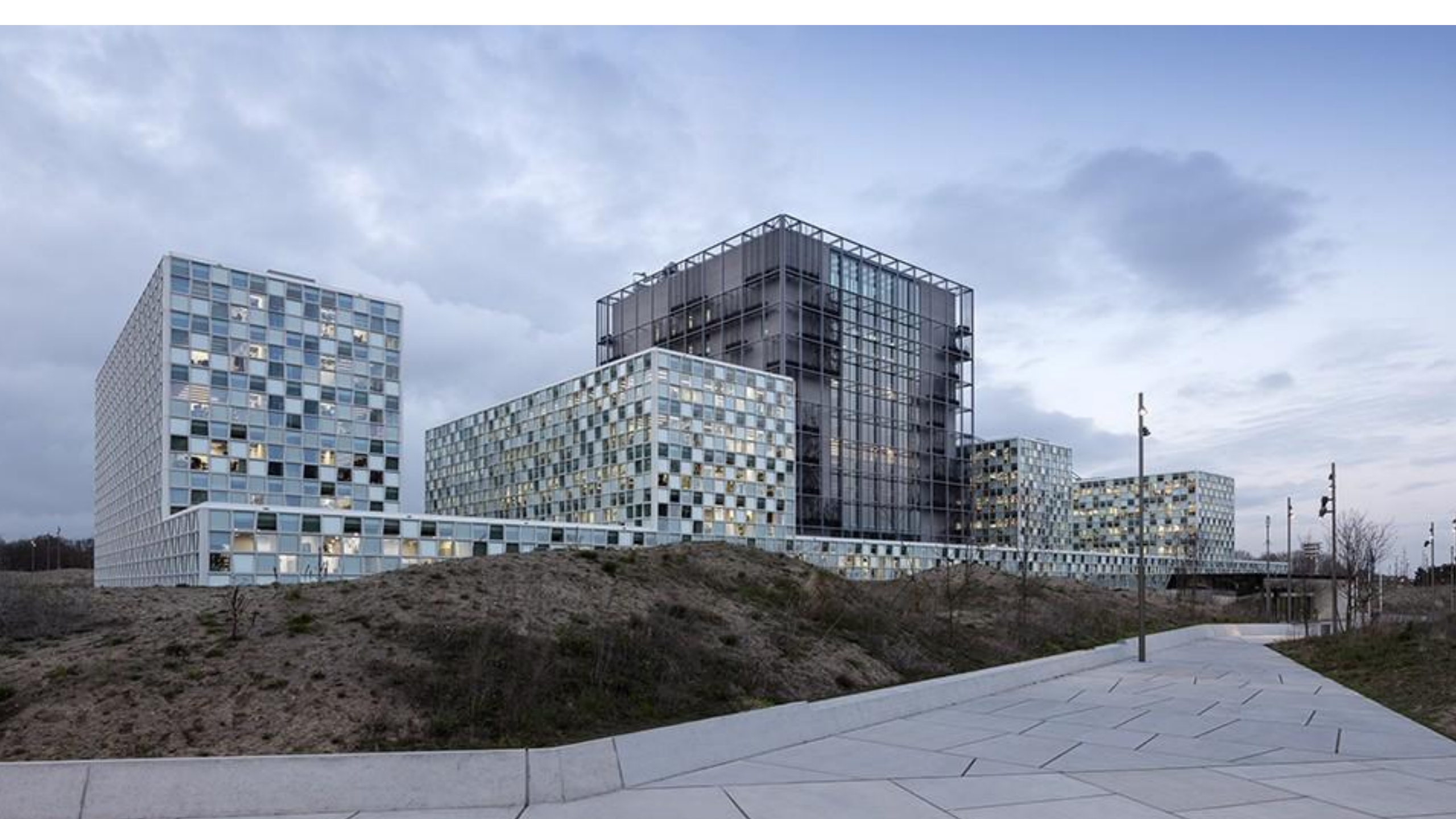
- If national courts can't or won't act; or
- If referred by UN Security Council

Prosecutor can launch investigations on own initiative

Covers:

- Genocide
- Crimes against humanity
- War crimes
- Crime of aggression – since 2018
- (New proposal: ecocide)

Focus on those in leadership positions: ending impunity



INTERNATIONAL CRIMINAL COURT: SOME FACTS AND FIGURES

President: Chile Eboe-Osuji

Prosecutor: Fatou Bensouda

- 28 “situations” examined, in:

Uganda, Congo, Central African Republic, Sudan, Iraq (concerning UK nationals), Venezuela, Colombia, Afghanistan, Guinea, Kenya, Honduras, Nigeria, North Korea, Cote d’Ivoire, Libya, Mali, Ukraine, Palestine, Gabon, Georgia, Burundi, and Philippines

- 35 arrest warrants issued; 14 individuals still at large
- 8 convictions, 4 acquittals

SPECIAL TRIBUNAL FOR LEBANON (STL)

Established 2007 by UNSC

Assassination in 2005 of Lebanese PM Rafik Hariri, and related attacks

Salim Jamil Ayyash and 4 others indicted, being tried *in absentia*

All from Hezbollah

Prosecution case based on telephone metadata





INDIVIDUAL INSTITUTIONS (end)

(c) Non-court

Hague Conference on Private International Law (HCPIIL)

- Hague Conventions

The Hague Academy of International Law

- summer courses in Peace Palace

The Hague International Model United Nations (THIMUN)

- school students

Think tanks and NGOs related to legal bodies

Also EU institutions

- Europol and Eurojust

CONCLUSION

Our age has been remarkable for the willingness of major powers to accept limits
The sphere of the rule of law in international relations has expanded – good for NZ
Potential trade-off between peace and justice, especially in the short term
Qualified positive verdict on contributions of Hague institutions to date
Do Donald Trump and Xi Jinping represent new normal – retreat from rule of law?
What about the “Thucydides trap”?