

**‘As you set out for Ithaka’: Practical, epistemological, ethical and existential questions
about socio-legal empirical research in conflict**

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Abstract

This is the story behind another story. Inspired by the anthropological practice of reflexivity, it traces some practical, epistemological, ethical and existential questions behind a book based on empirical socio-legal research into international criminal law in situations of conflict. The challenges involved in such research are at times impossible to overcome. Indeed, the challenges may be such that the researcher will never be able to answer her original question fully and confidently. However, challenges can be findings in themselves. They may reveal insights into the role of law in a society, the limitations of vocabularies, the overexposure of international criminal law and inequalities in global knowledge production. Rather than merely obstructing research into a topical issue, challenges may shift the researcher’s attention to other, more fundamental, questions. Nonetheless, understanding challenges as findings does not resolve the existential problem of the researcher’s possible complicity in maintaining the very challenges that she analyses and perhaps ambitiously tries to overcome.

Key words

Reflexivity, socio-legal research, empirical research, international criminal law, research ethics

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As you set out for Ithaka
hope your road is a long one,
full of adventure, full of discovery.

C.P. Cavafy¹

1. The making of: the story behind the ‘official’ story

Compared to the massive body of literature on the law applied and made by international criminal tribunals, empirical research on the work of the tribunals is scarce.² This is remarkable: after all, the job of international criminal tribunals itself is, or should be,³ largely empirical. Criminal trials should primarily be about establishing who did what to whom, where, when and with what justification (if any).⁴ The investigator in international criminal trials and the empirical researcher thus appear to share important objectives: finding truth and dismissing myths.

Empirical research has been particularly scarce when it concerns the *effects* of the enforcement of international criminal law.⁵ Writing on the impact of transitional justice on

¹ C.P. Cavafy, *Collected Poems*, edited by G. Savidis and translated by E. Keeley and Ph. Sherrard (1975), 67. The poem continues with the verses that are cited throughout this article.

² J. Jackson and Y. M’Boge, ‘Integrating a Socio-Legal Approach to Evidence in the International Criminal Tribunals: Editors’ Introduction’, (2013) 26 LJIL 33. The present article was written for the conference ‘Integrating a Socio-Legal Approach to Evidence in International Criminal Tribunals’, organised by University College Dublin on 19 November 2011, which led to LJIL’s special issue on empirical research in international criminal law (2013) 26 LJIL and (2014) 27 LJIL.

³ But see, on a different reality, N.A. Combs, *Fact-Finding without Facts: The Uncertain Evidentiary Foundations of International Criminal Convictions* (2010).

⁴ The empirical work of international criminal tribunals has received remarkably little attention in the literature. For some welcome exceptions, see Combs, *ibid.*, X. Agirre Aranburu, ‘Methodology for the Criminal Investigation of International Crimes’, in A. Smeulers (ed.), *Collective Violence and International Criminal Justice – an Interdisciplinary Approach* (2010) 355-381 and X. Agirre Aranburu, ‘Sexual Violence Beyond Reasonable Doubt: Using Pattern Evidence and Analysis for International Cases’, (2010) 23(3) LJIL 609.

⁵ To state that such research has been scarce is not the same as suggesting that it does not exist. Important empirical research into the impact of international criminal justice on communities affected by the crimes within international tribunals’ jurisdictions has begun to emerge (see, for instance, E. Stover and H. M. Weinstein, *My Neighbor, My Enemy: Justice and Community in the Aftermath of Mass Atrocity* (2004); J. Meernik, *Justice and Peace? How the International Criminal Tribunal Affects Societal Peace in Bosnia*, (2005) 42 *Journal of Peace Research* 271, K. L. King and J. D. Meernik, ‘Assessing the Impact of the International Criminal Tribunal for the Former Yugoslavia: Balancing International and Local Interests while Doing Justice’, in A. H. J. Swart, A. Zahar and G. Sluiter (eds.), *The Legacy of the International Criminal Tribunal for the Former Yugoslavia* (2011) 7, and J. N. Clark, ‘The Impact Question: The ICTY and the Restoration and Maintenance of Peace’, in *ibid.*, 55).

victims, Harvey Weinstein uses a quote from Hannah Arendt to capture the empirical weakness of much of the transitional-justice literature:

... what first appears as a hypothesis – with or without its implied alternatives, according to the level of sophistication – turns immediately usually after a few paragraphs, into a ‘fact’. Which then gives birth to a whole string of similar non-facts, with the result that the purely speculative character of the whole enterprise is forgotten.⁶

The same can be said for much of the literature on the justifications for international criminal law.⁷

What are the conceivable reasons for the scarcity of empirical research into the effects of international criminal tribunals?⁸ Some possible explanations relate to the character of the object of research. International criminal law is not merely a field of study, but also a project. Many scholars in this field have invested much of their lives into this project.⁹ The question that Naomi Roht-Arriaza rhetorically poses to transitional-justice scholars is thus also pertinent for international criminal lawyers: ‘Are we too professionally invested in the very processes we are seeking to evaluate?’¹⁰ If the answer is ‘yes’, then the *study of* international

⁶ Hannah Arendt, *On Violence*, 1969, 6-7, quoted in H. Weinstein, ‘Victims, Transitional Justice and Social Reconstruction: Who Is Setting the Agenda?’, in I. Vanfraechem, A. Pemberton, N. Felix (eds.), *Routledge International Handbook of Victimology* (forthcoming, 2014).

⁷ See more elaborately, S.M.H. Nouwen, ‘Justifying Justice’, in J. Crawford and M. Koskeniemi (eds.), *The Cambridge Companion to International Law* (2012) 327.

⁸ The dearth of empirical evidence for the great claims on the effects of international tribunals is particularly apparent in the case of international criminal tribunals, but not unique to them. Thomas Skouteris has observed a ‘striking’ scarcity of empirical and sociological evidence for the assumptions underpinning the work of international tribunals more generally and on that ground challenges the unconditional narrative of ‘progress’ that has accompanied the proliferation of international tribunals (see T. Skouteris, ‘The New Tribunalism: Strategies of (De)Legitimation in the Era of International Adjudication’, *XVII Finnish Yearbook of International Law 2006*, 307, 334. See also at 352-354).

⁹ See, more elaborately, Nouwen, *Justifying Justice*, *supra* note 7.

¹⁰ N. Roht-Arriaza, ‘Foreword’, in H. van der Merwe, V. Baxter and A.R. Chapman (eds.), *Assessing the Impact of Transitional Justice: Challenges for Empirical Research* (2009), ix. Part of the explanation for such an attitude on the part of lawyer-researchers may lie in the fact that the law student is not primarily taught in law as research, but in law as a ‘profession’. As Claude Lévi-Strauss observed with respect to the difference in the 1920s between, on the one hand, law and medicine students and, on the other, science, arts and humanity students: ‘The apprentice doctors and lawyers had a profession ahead of them. Their behaviour reflected their delight in having left school behind and assumed a sure place in the social system. Midway between the undifferentiated mass of the *lycée* and the specialized activity which lay before them, they felt themselves in, as it were, the margin of life and claimed the contradictory privileges of the schoolboy and of the professional man alike. Where letters and the sciences are concerned, on the other hand, the usual outlets teaching, research-work, and a variety of ill-defined careers are of quite a different character. The student who chooses them does not say good-bye to the world of childhood: on the contrary he hopes to remain behind in it. Teaching is, after all, the only way in which grown-ups can stay on at school. Those who read letters or the sciences are characterized by resistance to the demands of the group. Like members, almost, of some monastic order they tend to turn more and more in upon themselves, absorbed in the study, preservation, and transmission of a patrimony independent of their own time: as for the future savant, his task will last as long as the universe itself. So that nothing is more false than to persuade them that they are committed; even if they believe that they are committing themselves the commitment does not consist in accepting a given role, identifying themselves with one of its functions, and

criminal law may in fact be very close to *advocacy for* international criminal law. In general terms, advocacy and research are both interested in empirical facts. However, where good empirical research is interested in the facts for the sake of evaluation of those facts (which may not be the case if the researcher is wedded to proving a predetermined theoretical framework) good advocacy selects and uses these facts strategically.¹¹ If international criminal law is considered not merely a project, but, as David Koller has argued, a faith, fact-finding is hardly necessary.¹²

Another characteristic of the field that discourages interest in empirical research into its effects is the prominence of the deontological rationale. Accordingly, criminal justice must be done, *irrespective* of its consequences. And yet, even the supporters of deontological arguments often *also* make grand consequentialist claims as to what values other than retribution international criminal trials promote: truth, victims' healing, reconciliation, the rule of law, peace, and so on.¹³ These claims do call for empirical evidence: (what) is the enforcement of international criminal law delivering?

The 'delivery' question leads to another possible explanation for resistance to empirical research. In a day and age in which everything has to be indexed, counted and measured,¹⁴ 'empirical' is often misread as 'quantitative'.¹⁵ Quantitative research requires countable data. When what matters is what is countable,¹⁶ what is countable determines what matters: the availability of datasets rather than the importance of issues begins to set the research agenda. Empirical research that is limited to indexing, quantifying and counting thus risks

accepting its ups and downs and the risks in which it may involve them. They still judge it from outside, and as if they were not themselves part of it. Their commitment is, in fact, a particular way of remaining uncommitted. Teaching and research have nothing in common, as they see it, with apprenticeship to a profession. Their splendours reside, as do also their miseries, in their being a refuge, on the one hand, or a mission, on the other.' (C. Lévi-Strauss (translated by J. Russell), *Tristes Tropiques* (1961 (1955)), 57-8).

¹¹ See also M. E. Keck and K. Sikkink, *Activists Beyond Borders* (1998) 30 ('Like epistemic communities, transnational advocacy networks rely on information, but for them it is the interpretation and strategic use of information that is most important.')

¹² D. Koller, 'The Faith of the International Criminal Lawyer', (2008) 40(4) NYUJILP 1019. See also Nouwen, *Justifying Justice*, *supra* note 7.

¹³ See, *inter plurima alia*, www.icty.org/sid/324, www.unict.org/AboutICTR/GeneralInformation/tabid/101/Default.aspx, and L. Moreno-Ocampo, 'Building a Future on Peace and Justice' (Nuremberg, 24 and 25 June 2007). On the grand claims and little empirical evidence in international criminal law, see also H.M. Weinstein and E. Stover, 'Introduction: Conflict, Justice and Reclamation', in Stover and Weinstein, *supra* note 5, 1 at 4 and 27.

¹⁴ See S.E. Merry, 'Measuring the World: Indicators, Human Rights, and Global Governance', (2011) 52(S3) *Current Anthropology* S83.

¹⁵ See John Conley's comment on S.E. Merry in *ibid.*, S92.

¹⁶ The corporate mind-set has not left international criminal justice unaffected—the language of market rationality is already used to 'sell' international criminal justice to 'donors'. See S. Kendall, 'Donors' Justice: Recasting International Criminal Accountability', (2011) 24 LJIL 585.

misrepresenting an inherently political concept such as ‘justice’ as a value-neutral unit that can be multiplied by the application of technical expertise.¹⁷ Exclusively quantitative research into the effects of international criminal justice is thus rightly resisted. However, there is a long and rich history of empirical research that is not purely quantitative. Why does qualitative research on the effects of the enforcement of international criminal law also remain limited?

One explanation may lie in the wide-ranging challenges that confront the empirical socio-legal researcher on multiple registers, especially when the research takes place in conflict situations. Practically, empirical socio-legal field research requires huge amounts of resources and time.¹⁸ Epistemologically, it suffers from the perennial identity crisis of social science as a science, given the limitations on its ability to demonstrate causality with anything like the certainty of natural sciences. Ethically, the context of research in situations of (post-)conflict continuously confronts the researcher with most difficult questions. Existentially, empirical socio-legal field research can shake up the most basic assumptions, hopes and expectations of the fieldworker, especially if the fieldworker has been trained as an international criminal lawyer. The challenges are huge, precisely because empirical socio-legal research takes place in the midst of a social world that is continuously changing and filled with contradictions, uncertainties and inconsistencies. In conflict situations, the social world within which international criminal law mostly operates, the challenges are even more daunting.¹⁹

And yet, the interest in, and students’ desire to do, fieldwork into the effects of international criminal courts seems to increase. How should the discipline of international criminal law then respond to these challenges? Accept them as insurmountable impediments to qualitative research into the effects of international criminal courts and therefore discourage such research? Accept them as insurmountable impediments that disqualify the

¹⁷ See Merry, *supra* note 14, and T. Krever, ‘Quantifying Law: Legal Indicator Projects and the Reproduction of Neoliberal Common Sense’, (2013) 34(1) *Third World Quarterly* 131.

¹⁸ I am indebted to the Arts and Humanities Research Council, the Bartle Frere Fund, Emmanuel College, the Gates Cambridge Trust, Pembroke College, the Yorke Fund, the UAC of Nigeria Travel Fund and the Smuts Fund for Commonwealth Studies for funding large parts of my research in Uganda and Sudan.

¹⁹ For some illustrative accounts of challenges encountered by scholars who have done fieldwork in situations of conflict, see S. E. Hutchinson, ‘Uncertain Ethics: Researching Civil War in Sudan’, in C. Cramer, L. Hammond and J. Pottier (eds.), *Researching Violence in Africa: Ethical and Methodological Challenges* (2011) 79, A. Ross, ‘Impact on Research of Security-Seeking Behaviour’, in C.L. Sriram *et al.* (eds.), *Surviving Field Research* (2009) 177 and C. Nordstrom and A. C. G. M. Robben (eds.), *Fieldwork under Fire: Contemporary Studies of Violence and Survival* (1995).

outcome of any such research? Or accept them, confront them and conduct the research, while publicly acknowledging the challenges?

In choosing the last option, international criminal lawyers could benefit from the rich discipline of anthropology. With its strong emphasis on qualitative empirical research, anthropology has much to offer to the field of international criminal law. Substantively, the subfields of political and legal anthropology have studied conceptions of justice and dispute resolution since at least the 19th century. Having shown how culturally informed such notions are at the local level, anthropology can put ideals such as ‘global justice’ in a revealing light.²⁰ Secondly, since the 1980s, anthropology has enlarged its focus from specific small communities to structural phenomena such as violence. Seen through the lens of this body of literature, violence looks different than from a purely criminal-law perspective. Finally, and most pertinent to this article, the field of anthropology has worked hard to address and render explicit the challenges of fieldwork, practically and theoretically.²¹

In the early days of anthropological fieldwork, the world would read only the ‘results’, without knowing much of the circumstances in which these results were obtained. Like the chemist who has acquired the competence to conduct experiments, the historian who knows how to analyse archives, or the lawyer who is able to ‘find’ the law, the anthropologist was supposed to have unique scientific skills to establish ‘the truth’. These skills were believed to consist mainly of, on the one hand, an ability to immerse oneself in a society and to develop an empathy that allows the anthropologist to understand how the people observed think, and on the other, an ability to detach and to observe objectively without having an impact on the object of study. The practical, epistemological, ethical and existential challenges inherent in fieldwork were generally not publicly revealed, since it could seem to challenge the entire existence of anthropology as a social ‘science’.

Thus when Laura Bohannan published in 1954 one of the first reflexive books on the practice of fieldwork—revealing its serendipity, the lack of control over one’s own life, the it’s-all-happening-elsewhere syndrome, the experience of feeling like a child who needs to be

²⁰ See, for instance, K. M. Clarke, *Fictions of Justice: The ICC and the Challenge of Legal Pluralism in Sub-Saharan Africa* (2009).

²¹ The literature on fieldwork is vast. For some useful texts, see the literature cited in this article and, among many others, S. Devereux and J. Hoddinott, *Fieldwork in Developing Countries* (1992), D. Spencer and J. Davies, *Anthropological Fieldwork: A Relational Process* (2010), the four volumes edited by C.J. Pole, *Fieldwork* (2005) and A.R. Stiffman, *The Field Research Survival Guide* (2009).

taught the ropes of daily life and is ridiculed for her ignorance, the desire for aloneness and horror for loneliness, the fear of losing one's own culture and principles, and the tension between the professional requirement of being an objective observer and her human longing to be loved by the people she studied—she wrote it in the form of an anthropological novel and under a pseudonym.²² She 'may have feared', according to sociologist and lawyer David Riesman in his introduction to a new edition of the now famous *Return to Laughter*, 'that the book might hurt her reputation as a competent and objective ethnographer'.²³

And indeed, when the widow of Bronislaw Malinowski, widely considered the anthropological archetype of the modern fieldworker and ethnographer, posthumously published his fieldwork diary – *A Diary in the Strict Sense of the Term* – this shook, according to some colleagues, the discipline to its foundations.²⁴ As Clifford Geertz argues: 'The myth of the chameleon fieldworker, perfectly self-tuned to his exotic surroundings, a walking miracle of empathy, tact, patience, and cosmopolitanism, was demolished by the man who had done most to create it.'²⁵ By revealing his boredom, despair, loneliness, exhaustion, moodiness, 'impure' thinking, fixation on health, longing for the familiar, preoccupation with the women in his life, and occasional ill-feelings for the people he studied, Malinowski was seen not only to bring the validity of his own work into doubt but also the credibility of anthropology as a science.²⁶

However, what felt like a 'crisis' for one cohort of anthropologists,²⁷ may have felt like a blessed relief to another. For no matter how unique and personal each and every fieldwork experience is, 'in certain key ways each fieldworker does, and must', in the words of anthropologist Sidney Mintz, 'recapitulate the experiences of every other fieldworker.'²⁸ The younger anthropologist who reads the diary of the discipline's giant grandfather may heave a sigh of relieve, discovering that their own feelings of estrangement do not render them the

²² Elenore Smith Bowen, *Return to Laughter: An Anthropological Novel* (1964 (1954)). A few years later, anthropologist Rosalie Wax published a reflexive piece under her own name (R.H. Wax, 'Twelve Years Later: An Analysis of Field Experience', (1957) 63(2) *American Journal of Sociology* 133). Her book manuscript on fieldwork, written in 1946, was at first rejected on account that it was 'fascinating but unpublishable'; only twenty years later the anthropology publishers were interested in publishing her R.H. Wax, *Doing Fieldwork: Warnings and Advice* (1971) (see p. ix).

²³ D. Riesman in Smith Bowen, *supra* note 22, xvi.

²⁴ B. Malinowski, *A Diary in the Strict Sense of the Term* (1967).

²⁵ C. Geertz, *Local Knowledge: Further Essays in Interpretative Anthropology* (1993) 56.

²⁶ See also 'The Crisis over a western researcher and the Diary: Defending Malinowski and the Discipline', http://classes.yale.edu/03-04/anth500b/projects/project_sites/00_Smith/DiaryCrisis.html.

²⁷ *Ibid.*

²⁸ S.M. Mintz, 'Infant, Victim and Tourist: The Anthropologist in the Field', (1977) 27 *John Hopkins Magazine* 54, 58.

odd one out. Indeed, nowadays Malinowski's Diary is often taught as a necessary accompaniment of his 'official' anthropological account.²⁹ No longer is one the official story and the other the unofficial story that should remain hidden. The stories are two sides of the same coin. The 'crisis over the diary' has probably only strengthened anthropology by bringing the discipline closer to its own identity.

Indeed, rather than presenting a 'front of hard assurance, of findings or "results"',³⁰ many anthropologists nowadays discuss the practical, epistemological, ethical and existential 'troubles' of doing the research, acknowledging that these have a bearing on the data collected and their interpretation.³¹ These reflexive accounts range from introductory remarks to an otherwise almost positivist presentation of fieldwork results³² to the extreme of (rather boring) hyper-reflexive narratives in which the navel-gazing fieldworker presents little else than the reality that is her own. Generally, however, anthropology's explicit recognition of the subjective element has been productive.³³ Whether or not as the 'most humanistic of sciences and scientific of humanities',³⁴ anthropology has shown that it can produce unique and valid knowledge claims.

In the field of international law such explicit reflexivity remains rare. This may be related to the object of most legal research: law. The entire practice of law is founded on the necessary fiction that law is external to the lawyer and that the lawyer 'finds', not 'creates', this law. Socio-legal research may be more open to reflexivity, but even in that branch peer reviewers often discourage the inclusion of reflexive accounts as 'unsuitably autobiographical for a scholarly text'.³⁵ Authors are expected to write up research by mentioning 'the facts',

²⁹ B. Malinowski, *Argonauts of the Western Pacific: An Account of Native Enterprise and Adventure in the Archipelagoes of Melanesian New Guinea* (1922).

³⁰ Riesman, *supra* note 23, xviii.

³¹ Indeed, some anthropologists have dedicated entire books to their fieldwork experiences. For early examples see, in addition to Smith Bowen, H. Powdermaker, *Stranger and Friend: The Way of an Anthropologist* (1967), P. Rabinow, *Reflections on Fieldwork in Morocco* (1977) and J.-P. Dumont, *The Headman and I: Ambiguity and Ambivalence in the Fieldworking Experience* (1978).

³² For early examples of this practice, see E. E. Evans-Pritchard, *The Nuer: A Description of the Modes of Livelihood and Political Institutions of a Nilotic People* (1940) and G. Balandier, *Afrique Ambiguë* (1957). For a more recent and more explicit example of an introductory reflexive chapter, see H. Behrend, *Alice Lakwena & the Holy Spirits: War in Northern Uganda, 1985-97* (1999).

³³ For an early example, see Jean Briggs's account *Never in Anger: Portrait of an Eskimo Family* (1970) which, in a period in which reflexivity was not yet a catch-phrase, reveals how the fieldworker's behaviour influences the responses she obtains from the community she studies.

³⁴ American Anthropological Association, 'Statement on Ethics: Principles of Professional Responsibilities', Preamble, www.aaanet.org/profdev/ethics/upload/Statement-on-Ethics-Principles-of-Professional-Responsibility.pdf.

³⁵ This was the experience of political scientist Charli Carpenter, described in her reflexive piece

the theories, and possibly, the methods. The relationship between facts, theories, methods and the researcher, however, is rendered invisible, and so is the personal, social and political character of research.³⁶

But the anthropological tradition of explicit reflexivity can be reconciled with (socio-)legal research and has much to offer, both to the reader and to the researcher.³⁷ First, as a matter of intellectual honesty, the author's reflexivity discloses to the reader the limitations of the findings, the soft side of seemingly hard data and the inherent subjectivity of the most objective researcher. For what Heisenberg observed with respect to physics also applies to the socio-legal researcher and indeed, the investigator of a criminal tribunal:³⁸ the data collection instruments—in the case of interviews, the person who conducts the interviews—cannot but influence the outcome of the research.³⁹ Similarly, analysis cannot be separated from the mind—filled with law and so much else—of the legal analyst, whether judge, advocate or scholar. The researcher and legal analyst cannot escape the fact that the researcher is part of the studied world and that her orientations will be shaped by the socio-historical locations of the researcher, including the values and interests that these locations confer upon researcher.⁴⁰ Moreover, the researcher's mere presence changes the world she studies. These inevitabilities require the humility that reflexivity imposes. Reflexivity brings the author back into the story by revealing his or her frame. With frames 'shap[ing] what is viewed and how

“‘You Talk of Terrible Things So Matter-of-Factly in this Language of Science’”: Constructing Human Rights in the Academy’, (2012) 10 *Perspectives on Politics* 363 at 364.

³⁶ See M. Lockwood, ‘Facts or Fictions? Fieldwork Relationships and the Nature of Data’, in Devereux and Hoddinott (eds.), *supra* note 21, 164 for a similar account (and critique) of economic research.

³⁷ See also Carpenter, *supra* note 35, for a call for more reflexivity in political science.

³⁸ See M. Witteveen, ‘Closing the Gap in Truth Finding: From the Facts of the Field to the Judge’s Chambers’, in Smeulers (ed.), *supra* note 4, 383 at 406-7.

³⁹ See also, *inter plurima alia*, Smith Bowen, *supra* note 22, 184-5 (‘A lecture from the past reproached me. “The anthropologist cannot, like the chemist or biologist, arrange controlled experiments. Like the astronomer, he can only observe. But unlike the astronomer, his mere presence produces changes in the data he is trying to observe. He himself is a disturbing influence which he must endeavor to keep to the minimum. His claim to science must therefore rest on a meticulous accuracy of observation and on a cool, objective approach to his data.”’), Powdermaker, *supra* note 31 at 19, F. Barth, ‘On Responsibility and Humanity: Calling a Colleague to Account’, (1974) 15(1) *Current Anthropology* 99 at 100, N. Barley, *The Innocent Anthropologist: Notes from a Mud Hut* (1983) 169, Sally Engle Merry interviewed in S. Halliday and P.D. Schmidt, *Conducting Law and Society Research: Reflections on Methods and Practices* (2009) 134, Y. Sangarasivam, ‘Researcher, Informant, “Assassin,” Me’, (2001) 91(1/2) *American Geographical Society* 95 and, more generally for social scientists, B. Latour, *Reassembling the Social: An Introduction to Actor-Network-Theory* (2007) 28-9 and 33-34.

⁴⁰ This phenomenon is also known as ‘reflexivity’ (which is to be distinguished from the practice of ‘reflexivity’ discussed in this article), on which see M. Hammersley and P. Atkinson, *Ethnography: Principles in Practice* (1995) 16-21 and A. G. M. Ahmed, ‘Some Remarks from the Third World on Anthropology and Colonialism: The Sudan’ in T. Asad (ed.) *Anthropology and the Colonial Encounter* (1973) 269, at 263.

what is viewed is interpreted’,⁴¹ reflexivity reveals the process through which the author has come to understand the issues the way that she does. Without the author’s public reflexivity, the reader sees only the scene painted by the author. The author’s public reflexivity allows the reader also to see the window that frames the author’s view.

Secondly, by telling both the ‘official’ and the seemingly ‘unofficial’ story, the researcher can give expression to the two souls that dwell in many scholars: the one that wants to clarify and explain and the one that is confused by the complexity of the issues confronted. Fieldwork is, in the words of arch-intellectualist anthropologist Claude Lévi-Strauss, the ‘mother and nursemaid of doubt’: ‘This “anthropological doubt” consists not merely in knowing that one knows nothing but in resolutely exposing what one knows, even one’s own ignorance, to the insults and denials inflicted on one’s dearest ideas and habits by those ideas and habits which may contradict them to the highest degree.’⁴² Doubt fertilises understanding and fosters ideas.

It is in this light that I here present elements of a story behind an ‘official’ story. ‘Official’ should be read in scare quotes: the ‘official’ and the ‘unofficial’ story cannot be hermetically separated. The unofficial story is inextricably part and constitutive of the academic narrative and therefore only seems ‘unofficial’.

The official story gives an answer to the question of whether and how the principle of complementarity as set forth by article 17 of the Rome Statute of the International Criminal Court (ICC) has had a catalysing effect in Uganda and Sudan.⁴³ It is based on seven years of process tracing: treaties, statutes, cases, statements, lectures, budgets, books, newspaper articles, files, drafts, photographs, field notes, posters, transcripts and notes of interviews with over 400 people, including displaced persons, government ministers, prosecutors, ‘traditional’ leaders,⁴⁴ intelligence officers, judges, civil society actors, police, human rights

⁴¹ See, in the different context of framing peace negotiations, S. Srinivasan, ‘The Politics of Negotiating Peace in Sudan’, in D. Curtis and G.A. Dzinesa (eds.), *Peacebuilding, Power and Politics in Africa* (2012) 195 at 205.

⁴² Lévi-Strauss quoted in S. Sontag, *Against Interpretation and Other Essays* (2009 (1961)) 73.

⁴³ Nouwen, *Complementarity in the Line of Fire*, *supra* note *.

⁴⁴ The term ‘traditional’ leaders is used to refer to community leaders who derive their leadership position from cultural practices, rather than from a constitutional position in the administration of the state. The term ‘traditional’ is controversial, however, since the historical leadership role of some present ‘traditional’ leaders is at times contested, since ‘traditional’ leaders often *also* participate in the administration of the state and their role is at times provided for in the constitution and since the term ‘traditional’ may raise the incorrect impression of a static (or even more problematically, ‘backward’) practice, whereas their role, like most cultural practices, is contested and dynamic (see, for instance, T. Allen, ‘The International Criminal Court and the Invention of Traditional Justice in Northern Uganda’, (2007) 10(7) *Politique Africaine* 147, 156).

activists, peace negotiators, criminal investigators, scholars, local council representatives, defence lawyers, parliamentarians, army officials, prison wardens, journalists, representatives of embassies and international organisations and ICC suspects, were analysed with a view to assessing whether and how developments in Uganda and Sudan related to the ICC's principle of complementarity.

The 'unofficial' story, of a journey between 2005 and 2012 with several long periods of research in The Hague, Uganda and Sudan, is more ambiguous. It is a story of a search for answers and the discovery of questions—about the mission of international criminal law, about the authority of types of knowledge and about relations of power between unique individuals in and around (post-)conflict zones and a western researcher.

Like the official story, the unofficial story draws on experiences in Uganda and Sudan. However, while quite a few references to places and people will follow, the point of this essay is not to make an argument about these two fascinating countries. For the purpose of this piece, it does not really matter what happened in which of the two states. Rather, the aim of this essay is to present some of the challenges encountered during field research into the effects of international criminal law.⁴⁵ The argument is not that such research is characterised by challenges only. Indeed, as will be argued, the challenges themselves can be part of the reason for the huge sense of satisfaction to be found in fieldwork. In addition, an equally long essay could be written about the gratifying experiences of fieldwork that are unrelated to any challenge. The argument is neither that all the challenges encountered are universal. Nor is it that the challenges discussed are exclusive to fieldwork concerning international criminal law. The challenges presented are merely examples of those that can be encountered during field research into the effects of international criminal law and that call for further reflection.

That reflection can come in several degrees:⁴⁶ behind every unofficial story is an even more unofficial story (making the first unofficial story seem official), and so on, and so on. From this perspective this essay offers reflexivity only to the first degree; it is not 'a diary in the strict sense of the term'.

⁴⁵ Moving between The Hague, Gulu, Khartoum, Darfur, Kampala and headquarters of international organisations, the study does not focus, like classic anthropology, on the culture of one community, traditionally a village. In terms of its mobility, this research is more like the more modern multi-sited ethnography (see G. E. Marcus, *Ethnography Through Thick and Thin* (1998)).

⁴⁶ On 'more reflexive than thou' positions, see G. E. Marcus, 'On Ideologies of Reflexivity in Contemporary Efforts to Remake the Human Sciences', 15(3) *Poetics Today* (1994) 383, 393-4.

The challenges discussed are most directly relevant for the scholar doing fieldwork. But, as will be highlighted, the practitioner in international criminal tribunals, for instance, those who try to gather evidence, may be confronted with similar challenges.

Ultimately, it is precisely the challenges that may be most meaningful, both to the researcher personally and to the understanding of the field of international criminal law more generally. The challenges can be so insurmountable that they prevent the researcher from finding answers to the original question. However, possibly more importantly, they may *change* the researcher's questions. The empirical researcher's journey then starts with one question and ends with more pertinent questions. And perhaps that is what the field of international criminal law needs most—less certainty, less conviction and more fundamental questions, inspired by the complex social, material and political realities of situations of conflict.

This unofficial story, however, will not end on this relatively positive note: a clarion call for more fieldwork, 'no matter the obstacles, do it, it's worth it'. The narration of several challenges, particularly when told in the frame of *Ithaka*, runs the risk of confirming, unintentionally, Susan Sontag's image of the fieldworker as 'a hero', 'engaged in saving his own soul, by a curious and ambitious act of intellectual catharsis'.⁴⁷ But the modern-day fieldworker investigating the impact of the ICC's proceedings cannot escape a sense of complicity. Chasing the remains of an exotic Other before the West would have eliminated it, Sontag's hero Lévi-Strauss already observed how

[a]nthropology is not a dispassionate science like astronomy, which springs from the contemplation of things at a distance. It is the outcome of a historical process which has made the larger part of mankind subservient to the other, and during which millions of human beings have had their resources plundered and their institutions and beliefs destroyed, whilst they themselves were ruthlessly killed, thrown into bondage, and contaminated by diseases they were unable to resist. Anthropology is daughter to this era of violence: its capacity to assess more objectively the facts pertaining to the human condition reflects, on the epistemological level, a state of affairs in which one part of mankind treated the other as an object.⁴⁸

⁴⁷ S. Sontag, 'A Hero of Our Time', *New York Review of Books* (1964). See also Barley, *supra* note 39, 10 and T. Swedenburg, 'With Genet in the Palestinian Field', in Nordstrom and Robben (eds.), *supra* note 19, 25. Sontag's idealisation of Lévi-Strauss as fieldworker is likely to have been based on his *description of* fieldwork, as opposed to his actual fieldwork. As Paul Rabinow comments: '[A]s everyone knew, Lévi-Strauss was not a good fieldworker. The book [*Tristes Tropiques*] was treated by anthropologists either as a fine piece of French literature or, snidely and true to form, as an overcompensation for the author's shortcomings in the bush'. (Rabinow, *supra* note 31, 4).

⁴⁸ C. Lévi-Strauss, 'Anthropology: Its Achievements and Future', (1966) 7(2) *Current Anthropology* 124 at 126.

Lévi-Strauss predicted that ‘within a century or so, when the last native culture will have disappeared from the Earth and our only interlocutor will be the electronic computer, it will have become so remote that we may well doubt whether the same kind of approach [as in traditional anthropology] will deserve to be called “anthropology” any longer’.⁴⁹ Within half a century, anthropology has indeed changed, but rather than having become more remote, it has become closer. Today’s anthropology has expanded its geographical scope to situations in its historical home, the west,⁵⁰ where it investigates not only the Other in the Self (the asylum seeker, migrant, prisoner, minorities, refugees) but also what is considered the quintessential Self (the village community, bankers, nobility).⁵¹ Nonetheless, a fieldworker researching the effects of the ICC’s proceedings *in situ* cannot escape facing the ‘filth ... thrown in the face of humanity’ during colonialism:⁵² the ICC has opened investigations only in former colonies. Observing how these states are still being ‘investigated’ by researchers (whether scholars or ICC employees) predominantly originating from or strongly rooted in the West, the fieldworker who is a national from a former colonial power, with an affiliation with a university in a former colonial superpower and skin colour of the colonial oppressor, is not merely aware that she is a ‘daughter to this era of violence’. She cannot escape a sense of complicity in sustaining a post-colonial division of labour in the production of knowledge, even if this is one of the challenges that she, perhaps ambitiously, tries to overcome. Seen in this light, public reflexivity is not a narcissistic exercise or a performance of what Robert Meister calls ‘feel[ing] good about feeling bad’;⁵³ rather, it is the beginning of making visible the role of the researcher in the construction of the world.⁵⁴

...
Laistrygonians, Cyclops,
angry Poseidon—don’t be afraid of them:
you’ll never find things like that on your way
as long as you keep your thoughts raised high,
as long as a rare excitement
stirs your spirit and your body.
Laistrygonians, Cyclops,

⁴⁹ *Ibid.*, 127.

⁵⁰ But see Wax, *Doing Fieldwork*, *supra* note 22, 23-28 on historical precedents for participant observation ‘at home’, including by Beatrice Potter and Max Weber.

⁵¹ See more elaborately on this shift, T. Hartman, ‘Beyond Sontag as a Reader of Lévi-Strauss: “Anthropologist as Hero”’, (2007) 9(1) *Anthropology Matters Journal*.

⁵² Lévi-Strauss, *Tristes Tropiques*, *supra* note 10, 39.

⁵³ R. Meister, *After Evil: A Politics of Human Rights* (2011) 73.

⁵⁴ See, more generally on the importance that ‘intellectuals’ are aware on the consequences of their ‘brandishing concrete experience’, G. C. Spivak, ‘Can the Subaltern Speak?’, in C. Nelson and L. Grossberg (eds.), *Marxism and the Interpretation of Culture* (1988) 271.

*wild Poseidon—you won't encounter them
unless you bring them along inside your soul,
unless your soul sets them up in front of you.*
...⁵⁵

2. 'The law is lost'—challenges to obtaining data

Where does one begin with empirical research into the effects of international criminal law? The problems begin just there: at the start. Armed conflict has seriously weakened already limited national data-collection capacities. The most essential base-line data are unavailable.⁵⁶ Disputes rage between the national government, international organisations and foreign activists on seemingly basic facts such as the death toll of the conflict.⁵⁷ Some data are available but inaccessible, at least to a foreign researcher, because they could be used in a manner contrary to the interests or wishes of the one who holds the data.⁵⁸ Other data are available and accessible, but unreliable, contested or insufficiently specific.⁵⁹ For instance, an overview provided by prosecutors in North Darfur, below on the left, contains a category of 'war crimes'. However, it is questionable whether that category corresponds with 'war crimes' as defined in international law: included in the domestic category of 'war crimes' are 'murder', 'robbery', 'armed robbery', 'violence against women', 'vehicle kidnapping' and 'damage', but no data are provided that could corroborate that these acts would also amount to war crimes in international law, for instance, information on the position of the person accused of having committed the crime, the position of the victim, or the context or the crime. An overview provided by the office of the Director of Public Prosecutions (DPP) in Gulu, below on the right, contains the charges of then recent cases (all treason) but again no information on the context in which the alleged crimes were committed. It is thus difficult to establish an increase or decrease in domestic prosecutions for conflict-related crimes on the

⁵⁵ Cavafy, *Ithaka*, *supra* note 1.

⁵⁶ See also C. Bijleveld, 'On Research Methods for International Crimes - Methodological Issues in the Empirical Study of International Crimes', in Smeulders (ed.), *supra* note 4, 275, at 284. On the need for baseline data for any assessment of 'impact', see V. Baxter, 'Critical Challenges for the Development of the Transitional Justice Research Field', in H. van der Merwe *et al.*, *supra* note 10, 325, at 326.

⁵⁷ On the politics of Darfur death-rate statistics, see S. Dealy, 'An Atrocity That Needs No Exaggeration', *New York Times*, 12 August 2007, 'Row over Number of Darfur Deaths', *BBC*, 20 August 2007, O. Degomme and D. Guha-Sapir, 'Patterns of Mortality Rates in Darfur Conflict', (2010) 375 *The Lancet* 294, J. Hagan and W. Raymond-Richmond, *Darfur and the Crime of Genocide* (2009), Chapter 4 and M. Mamdani, *Saviors and Survivors: Darfur, Politics and the War on Terror* (Verso, London, New York, 2009).

⁵⁸ See G. Christensen, 'Sensitive Information: Collecting Data on Livestock and Informal Credit', in Devereux and Hoddinott (eds.), *supra* note 21, 124 at 124.

⁵⁹ 'Messiness of data' is not exclusive to conflict zones: H. M. Kritzer, 'Conclusion: "Research Is a Messy Business" - An Archeology of the Craft of Sociolegal Research', in Halliday and Schmidt (eds.), *supra* note 39, 264 at 270-1 shows how it also creates problems when investigating trials in federal courts.

basis of these documents, since it is unclear how the cases are related to the conflict and whether the charges amount to conflict-related crimes in international law.⁶⁰ In both situations, the actual files of the cases prove always difficult and sometimes impossible to obtain.

*Overview of crimes prosecuted in North Darfur Cases registered with the DPP in Gulu*⁶¹

Data obtained through incident reporting on the basis of newspaper articles are also unreliable. Underreporting is likely, for instance, when, as at one stage in Sudan, the government orders a ban on publishing reports on criminal cases related to Darfur.⁶²

This challenge in collecting reliable data on domestic investigations and prosecutions of conflict-related crimes is not merely ‘academic’ (in both the meanings of scholarly and ‘only of theoretical interest’). The Jurisdiction, Complementarity and Cooperation Division in the Office of the Prosecutor (OTP) of the ICC, which assesses whether ICC cases are or would be inadmissible on grounds of past or on-going domestic proceedings, faces the same challenge. The OTP has provided some of its data on cases in Darfur to the Security Council, but triangulation (the application and combination of several research methodologies in the study of the same phenomenon) reveals that the OTP, too, often suffers from a lack of accurate primary data.⁶³

⁶⁰ The term ‘conflict-related crimes’ is used to refer to offences for which the conduct is the same as the conduct of the crimes within the ICC’s jurisdiction, but which are not necessarily criminalised domestically as genocide, crimes against humanity or war crimes as in the Rome Statute.

⁶¹ Present author’s redactions.

⁶² W. Ali, ‘Sudan Bans Media from Reporting on Darfur War Crimes Cases’, *Sudan Tribune*, 27 March 2007.

⁶³ For instance, ICC, *Third Report of the Prosecutor of the International Criminal Court to the UN Security Council Pursuant to UNSCR 1593 (2005)*, 14 June 2006, 4, reports: ‘The Special Prosecutions Commissions (SPC) were established by the Chief Justice of the Sudan in January 2006’. However, the *Chief Justice* does not have the authority to establish *prosecution* commissions. The Commission was established by the Minister of

The problems with qualitative methods are no less than those with quantitative. Again, the question is: where to begin? For instance, in identifying interviewees, a researcher may be easily misled by her own understanding of the names of local institutions. The conception of ‘Parliament’ is an example. When an MP is asked about the disjuncture between the support he expresses for the ICC in the course of the interview and his silence in parliamentary debates, he recounts that, although he has been an MP for three years, he has never spoken in a parliamentary debate: the Speaker, a member of the leading party in government, usually refuses to give the floor to the opposition.⁶⁴ But then again, the term ‘opposition’ is ambiguous, too, given that at the time of the interview almost all parties in the national assembly are part of a Government of National Unity, formed on the basis of a power-sharing agreement. Similarly, it is difficult to identify ‘civil society’ when many ‘non-governmental organisations’ are in fact so-called GONGOs, ‘governmental non-governmental organisations’.⁶⁵

Another challenge in identifying centres of information and decision-making is that a person’s influence on decision-making can be unrelated to any official position. To some extent such influence depends on access to information. During interviews it appears that some government ministers, parliamentarians and traditional leaders have less exposure to relevant information on, for instance, a domestic trial or the on-going peace negotiations concerning a conflict in their country, than a researcher based overseas. Other individuals, however, appear to have played key roles in matters seemingly outside their portfolio. In Uganda, a Minister of Internal Security and previously of Defence proves to have played a more decisive role in the referral of the conflict to the ICC than the Minister of Justice or Foreign Affairs. He appears to be the ‘Super Minister’, on account of the fact that he frequently heads several ministries at the same time and has direct access to the President. Elsewhere, in Sudan, both the government and the rebel movements use spokespersons who

Justice (Decision No. 9/2005 Establishing a Committee of Prosecution for Special Criminal Cases in Darfur 2005). Following the creation of two additional special courts, he divided the prosecution team into three teams.

⁶⁴ Interview with an MP, Khartoum, November 2008. Other parliamentarians have been put in jail for expressing their views (interview with another MP, Khartoum, November 2008).

⁶⁵ On Sudanese GONGOs, see G. Farred, ‘The End of Violence: Against Civil Society’, in S.M. Hassan and C.E. Ray (eds.), *Darfur and the Crisis of Governance in Sudan: A Critical Reader* (2009) 311, at 312.

can, in perfect English, appease western interlocutors, while behind the scenes other members, frequently not speaking any English, pull the strings in a different direction.⁶⁶

The researcher's lack of command of local languages is thus another fundamental limitation. A specific complication is that words relevant to the research—justice, court—may not exist as such in some of the key local languages.⁶⁷ Reliance on interpreters brings its own problems.⁶⁸ In conflict zones, hardly any interpreter is not, or is not seen to be, with a party to the conflict, or with an international organisation accused of taking sides. The mere presence of the interpreter can thus influence the interviewee's answers. Moreover, interpreters 'interpret', and they do so in accordance with what they consider relevant, emphasising some parts of a discussion and leaving out the rest. It is thus that a fifteen-minute and passionate oration can get interpreted in one short sentence: the interpreter has dismissed the other fourteen minutes and 50 seconds of the response to the question as 'nonsense'. Written material is not necessarily more reliable. Of one Act, the English and Arabic versions fail to correspond, in a country in which both are official languages.

One discovers the discrepancy only if one has access to the Acts—something not to be taken for granted when even national lawyers are told that they are not allowed to see the legal instruments of which they read in the newspapers.⁶⁹ 'Why would we give it to *you*, a foreigner?' an official queries.⁷⁰ In ministries and libraries, laws are promised, but after several visits the documents are not provided for various stated reasons, for example that 'the archivist is still on holiday', 'the books are too heavy for the photocopier' and 'the law is lost'.⁷¹

⁶⁶ On the politics of spokespersons, see also U. Ukiwo, 'Hidden Agendas in Conflict Research: Informants' Interests and Research Objectivity in the Niger Delta', in Cramer, Hammond and Pottier (eds.), *supra* note 19, 137, at 150.

⁶⁷ See also Witteveen, *supra* note 38, 401 and, more generally on interpretation problems in the context of court proceedings Combs, *supra* note 3, Chapter 3. For a classic account of the difficulties involved in translating concepts, see Laura Bohannon, 'Shakespeare in the Bush', (1966) 75 *Natural History Magazine* 462.

⁶⁸ At the same time, interpreters can bring enormous benefits, including enhancing access to information. On the dual role of interpreters and informants more generally, see H. C. Buechler, 'The Social Position of an Ethnographer in the Field', in F. Henry and S. Saberwal (eds.), *Stress and Response in Fieldwork* (1969) 7.

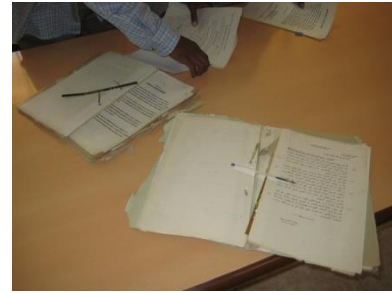
⁶⁹ Discussion with Sudanese lawyers, Khartoum, October 2008. When asked for the decree appointing a Special Prosecutor for Darfur, one political analyst observed (interview, Khartoum, October 2008): 'These decrees are always kept secret. ... They never declare his jurisdiction. So many committees are set up. You hear about their establishment, but not about their work. You cannot access what they do.'

⁷⁰ Fieldnotes, November 2008.

⁷¹ Fieldnotes, November and December 2008.



'The books are too heavy for the photocopier.'



'The law is lost.'

Even *requesting* official documents can be a liability. When asked for specific legislation, officials in the legislation department of the relevant ministry suspiciously retort, 'Why do you need this Act?'⁷² Their response is a reflection less of a general unwillingness to help out than of a fear of being associated with someone who is researching politically sensitive topics. Similar difficulties arise with respect to case-law that is published only when it does not embarrass the government⁷³ and where the records of the case are sometimes accessible ... and sometimes not. The researcher ends up having recourse to informal copies of Acts or using interviews to ascertain the content of case-law—blasphemous methods in the eyes of a formalistically trained lawyer.

Interviews carry their own problems, many of which relate to the features of the interviewer. Naturally, wherever I go and ask hundreds of questions, people also ask something about *me*: nationality, marital status, job, number of children. My keywords 'law', 'PhD', 'UK', 'Holland' sometimes set the scene for a buoyant interview ('Law in the UK? Look at all my textbooks on English law!'; 'Holland? Van Basten, Gullit, Van Nistelrooy!').⁷⁴ But at other times these few words immediately put me in a defensive position. Like the Nuer associated Evans-Pritchard with the British coloniser ('You raid us'; 'You overcame us with firearms and we had only spears'),⁷⁵ today's Sudanese associate me with the reputation of

⁷² Fieldnotes, November 2008.

⁷³ Interview with a law professor, Khartoum, November 2008.

⁷⁴ On the practice of seduction by suggesting national ties, see also A. C. G. M. Robben, 'The Politics of Truth and Emotion among Victims and Perpetrators of Violence', in Nordstrom and Robben (eds.), *supra* note 19, 81, at 89.

⁷⁵ Evans-Pritchard, *supra* note 32, 11. On reasons for hostility towards the fieldworker, see also J. C. Faris, 'Pax Britannica and the Sudan: S. F. Naudel', in Asad (ed.), *supra* note 40, 153, at 160.

today's Dutch: 'Your football is foul play',⁷⁶ 'You supported the invasion of Iraq',⁷⁷ 'Your politicians demonise Islam'⁷⁸ and 'You burn illegal immigrants'.⁷⁹ Also without keywords, my appearances create an association with 'The West' that is remembered for its colonialism and recognised in its continuing efforts to manage Africa.⁸⁰

The political sensitivity of the research topic carries its own problems. A Sudanese friend advises:

The less you mention the word ICC, the better. As a Dutch person, you should not use the term at all.⁸¹

While the government already has 'a tendency to describe foreigners as spies',⁸² my nationality exacerbates the risk of expulsion. Some Sudanese officials believe that the Dutch have extra influence on the ICC because of its seat in The Hague.⁸³ For other reasons, too, it is sometimes better not to be closely associated with the research topic. A researcher *on* the ICC is generally believed to be a researcher *of* the ICC, or at least *pro* ICC.⁸⁴ Quite some creativity is required to reconcile the advice never to utter the word 'ICC' with the imperative of informed consent.⁸⁵

⁷⁶ 'BBC pundits on World Cup final', BBC, 12 July 2010, http://news.bbc.co.uk/sport1/hi/football/world_cup_2010/8808636.stm.

⁷⁷ 'Europe and Iraq: Who stands where?', BBC, 29 January 2003, <http://news.bbc.co.uk/1/hi/world/europe/2698153.stm>.

⁷⁸ 'Dutch MP posts Islam film on web', BBC, 27 March 2008, <http://news.bbc.co.uk/1/hi/world/europe/7317506.stm>.

⁷⁹ See 'Dutch government blamed for fire', BBC, 5 September 2006, <http://news.bbc.co.uk/1/hi/world/europe/5315870.stm>.

⁸⁰ For other dilemmas involved in self-representation, see S. Brown, 'Dilemmas of Self-Representation and Conduct in the Field', in Sriram *et al.* (eds.), *supra* note 19, 213.

⁸¹ Fieldnotes, November 2008.

⁸² Interview with a senior judge, Khartoum, November 2008. Fieldworkers generally have often been associated with spies, since they seem to be able to afford spending endless time talking with people. See also Wax, 'Twelve Years Later', *supra* note 22, 135 and 140 and J. A. Sluka, 'Reflections on Managing Danger in Fieldwork', in Nordstrom and Robben (eds.), *supra* note 19, 276, at 283.

⁸³ This belief is fostered by diplomats who suggest having unique information from the ICC. See A. Fernandez, 'Articles 17 and 19 of the Rome Statute: Sudan's Legal System Unlikely to Be of Help to President Bashir', 08khartoum1717, 26 November 2008, <http://wikileaks.org/cable/2008/11/08KHARTOUM1717.html>, para. 7.

⁸⁴ Cf. Sluka, *supra* note 82, 276, at 289, referring to work done by Henslin (1972:55): 'if you do research on drug users or homosexuality, you may fall under suspicion of being a drug user or homosexual yourself. If you do research on a political movement, some, particularly those opposed to that movement, may believe that you are a partisan. The more political or controversial a subject one researches, the more likely one is to be suspected of bias or partisanship.'

⁸⁵ See also the experience of J. C. Kovats-Bernat, 'Negotiating Dangerous Fields: Pragmatic Strategies for Fieldwork Amid Violence and Terror', (2002) 104(1) *American Anthropologist* 215 and Ross, *supra* note 19, 184. On informed consent, see, for instance, American Anthropological Association, 'Statement on Ethics: Principles of Professional Responsibilities', *supra* note 34, principle 3 and Association of Social

Research fatigue on the part of interlocutors and informants poses another challenge. One Acholi informant welcomes me, saying: ‘Are you yet another student writing a PhD on our backs?’⁸⁶ Relatively safe since 2004, northern Uganda has attracted hordes of researchers working on post-conflict issues (not unlike how post-1994 Rwanda became the research paradise for PhDs on transitional justice). No matter how interesting the researcher’s questions (on human rights violations in camps for internally displaced persons, reintegration of child soldiers, amnesty, militarisation, ‘traditional justice’ practices, levels of reconciliation, attitudes towards ‘peace’ and ‘justice’, coping mechanisms, structures of violence, or the catalysing effect of complementarity for that matter) it is often the same people that see researchers come, ask seemingly endless questions of dubious relevance, and go again, never to come back. Northern Uganda has also been the site of a plethora of expensive workshops organised by western organisations. These activities have not only kept people from their work and inflated the daily subsistence allowances for participation in focus groups, but have also left people disillusioned with assisting in research projects given the lack of clear purpose and follow-up.⁸⁷

Even if relevant, the research findings are seldom returned to those who participated in the research.⁸⁸ As one Acholi explained his reluctance again to participate in a focus group:

When the British came, they found the Acholi open and friendly. ... This honesty caused us bitterness and hatred from other tribes. This openness must also be a warning for researchers. We have given much information, but they take it away and we never hear back again.⁸⁹

Put this experience in the context of suffering under the rapacity of colonialism, of national elites and of armed groups, and it is clear how the researcher might be seen as ‘pillaging’ information, which is for some people one of their few remaining possessions. Moreover, people are aware of the fact that the researcher will personally profit from the data obtained,⁹⁰

Anthropologists of the UK and the Commonwealth, ‘Ethical Guidelines for Good Research Practice’, www.theasa.org/ethics/Ethical_guidelines.pdf, 4.

⁸⁶ Fieldnotes, August 2008.

⁸⁷ See also International Bar Association Human Rights Institute, ICC Monitoring and Outreach Programme, First Outreach Report (June 2006), 19.

⁸⁸ See also Baxter, *supra* note 56, 327, and, calling for improvement in this respect already fifty years ago, S. Saberwal, ‘Rapport and Resistance among the Embu of Central Kenya (1963-1964)’, in Henry and Saberwal (eds.), *supra* note 68, 47, at 62.

⁸⁹ Discussion with a cultural leader, Gulu, September 2008.

⁹⁰ The disturbing experience of the predatory character of fieldwork is common to many fieldworkers. See, amongst many others, S. Razavi, ‘Fieldwork in a Familiar Setting: The Role of Politics ...’, in Devereux and Hoddinott (eds.), *supra* note 21, 152, at 157.

if only in terms of professional advancement, but does not offer anything concrete in return.⁹¹ Offsetting this unequal exchange by paying informants creates a host of other methodological challenges,⁹² including adding to perverse incentives—a phenomenon not unfamiliar to international criminal tribunals.⁹³

A related challenge is that of ‘feedback’.⁹⁴ Interviewees, whether displaced persons or government ministers, are often well versed in the discourse of the outside world on the issues under discussion.⁹⁵ Perceiving the interviewer as part of that outside world, they use that discourse to respond to her questions. For instance, possibly associating the interviewer with donors and technical advisors, some officials repeatedly stress in discussions on complementarity the importance of meeting ‘international standards’.⁹⁶ Similarly, traditional leaders argue that traditional-justice mechanisms are not adequate because they are not tailored to the crime of ‘genocide’.⁹⁷ These answers do not merely reflect the phenomenon that interlocutors adopt the language and conceptions with which they associate the researcher. They can also point to socially desirable or pedagogical answers, in which the interviewer is told what the interviewee thinks the interviewer wishes to hear or what the interviewee thinks the world should be like. Moreover, particularly in situations of conflict, the researcher is constantly being ‘seduced’ to engage with some arguments, narratives and people and to ignore others: interlocutors are aware that we fieldworkers, in Antonius Robben’s words, ‘will retell their stories and through our investiture as scientists provide these with the halo of objectivity that our academic status entails’.⁹⁸ The ensuing reports, journal articles or books could be used to change international perceptions, or to advance

⁹¹ The book to which this article relates, i.e. the ‘official’ story, will be made freely available to the hundreds of people who participated, directly or indirectly, in the research. The book will be acquired and distributed with resources obtained thanks to the Yorke Prize that it was awarded and with personal funds. But even then, returning the research products is in many instances an insufficient response to requests for assistance in exchange for data. As Amy Ross describes one interviewee’s response to her offer to send a copy of the published article for which she was collecting data: “‘Sure send your paper. When we get it (here he made a gesture of rolling a set of papers into a log) we can put it into the fire and maybe have a hot dinner, if there is any food. Send a book! Ha ha.’” (Ross, *supra* note 19, 184).

⁹² See, more elaborately, Buechler, *supra* note 68, at 17.

⁹³ See, on the harmful effects of extensive use of intermediaries (and their (indirect) payment) on truth finding in the ICC’s first case, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment Pursuant to Article 74 of the Statute, ICC-01/04-01/06-2842, Trial Chamber I, 14 March 2012, 90-221. See also Combs, *supra* note 3, Chapter 5.

⁹⁴ See also Behrend, *supra* note 32, 5.

⁹⁵ See also, for instance, T.H. Mothibe, ‘Fieldwork among Neighbors: An African’s View of Another African Country’, in C.K. Adenaike and J. Vansina (eds.), *In Pursuit of History: Fieldwork in Africa* (1996) 11, at 16.

⁹⁶ Interviews with government officials, Kampala, September and October 2008, May and June 2010 and November 2011.

⁹⁷ Interviews with traditional leaders in Darfur, December 2008.

⁹⁸ Robben, *supra* note 74, 97.

leadership claims within the group.⁹⁹ One interviewee asks explicitly: ‘shall we write my biography together?’

If not given for social desirability, pedagogy, or an attempt to win the historical account, answers may also be part of a survival strategy.¹⁰⁰ In areas of the world where visits by westerners often come with the potential or promise of some type of funding, the western researcher, too, no matter how explicitly she says she is coming with questions only, is likely to be seen as a key to access to services, financial resources (in particular scholarships) and visas. This applies not only when she jumps out of a Land Cruiser—the vehicle of aid agencies—in areas of poverty;¹⁰¹ it equally applies when she enters the centres of power. On the basis of her privileged appearance and business card—‘anyone who is anyone has a business card’¹⁰²—the researcher is presumed to be part of a political, economic and scholarly elite, able to engage in political trades.

If, in an attempt to avoid purely extractive research, the researcher engages in a dialogue and also answers the interviewee’s questions, she increases the potential for reactivity. On a few occasions, ministers and judges echo the researcher’s answers to their own previous questions.¹⁰³ During a one-on-one interview, a key player in the Ugandan Justice Law and Order Sector argues that if Uganda wishes to make use of complementarity, its proceedings must result in punishments similar to the ones meted out by the ICC. After the interview, I direct the interviewee to the Colombian Peace and Justice Act, which does provide for domestic proceedings, but with shorter punishments than the ones likely to be imposed by the ICC.¹⁰⁴ The next week, attending a meeting of the Ugandan Justice, Law and Order Sector, I hear the same person argue the precise opposite of what he said in the interview, now referring to the Colombian Peace and Justice Act. Indeed, he then asks me, although present only as an observer, to explain the Colombian Peace and Justice Act to the audience. My commitment to avoid purely extractive research—or possibly, my response to

⁹⁹ Ukiwo, *supra* note 66, 137.

¹⁰⁰ Answers inspired by a survival strategy reflect the interviewee’s perception of which account will serve his or her interests.

¹⁰¹ On which, see also Ross, *supra* note 19, 183.

¹⁰² C. Wilkinson, ‘Positioning “Security” and Securing One’s Position: The Researcher’s Role in Investigating “Security” in Kyrgyzstan’, in C. R. L. Wall and P. P. Mollinga (eds.), *Fieldwork in Difficult Environments: Methodology as Boundary Work in Development Research* (2008) 43, at 55.

¹⁰³ Fieldnotes, September and October 2008, participant observation official meeting, Kampala 2008.

¹⁰⁴ Definitive Conciliated Text of Law Bill Number 211 of 2005 Senate and 293 of 2005 House of Representatives.

what psychologist Ronald Wintrob has called fieldworkers' 'conflict over reciprocity'¹⁰⁵—has exacerbated the methodological problem of reactivity.

Moreover, as Wikileaks brought home, reactivity is beyond the researcher's control—the information that she provides (not unlike the information she is provided with) may begin to live the life of a rumour spread in the children's game 'Telephone' or 'Gossip'. The leaked code cable reflects how a US official interpreted our discussion on complementarity. While I recognise some of my sentences on the 'same case' requirement in the ICC's case-law on article 17 and the interpretation of 'the interests of justice' in article 53 of the Statute, the legal reasoning in the code cable seems to conflate the two issues and makes little sense to me.¹⁰⁶

Most problematic is the danger that the research might pose to persons assisting in it. When the issuing of an ICC arrest warrant for President Bashir was imminent, Sudanese human rights activists were being detained and tortured by the National Intelligence and Security Service on allegations of cooperation with the ICC.¹⁰⁷ Because of the pervasive conflation between researchers *on* the ICC with researchers *of* the ICC, any public association with me could thus be dangerous to some of my interlocutors, in particular human rights activists. Not only the substance of any discussion, but also the mere fact of an encounter should therefore be confidential. Arranging confidential meetings becomes complicated, however, when it appears that human rights activists' phones are tapped.¹⁰⁸ Moreover, in Sudan, national security officers are ubiquitous, including in the university.¹⁰⁹ A three-day chase for the recovery of a bicycle parked at the university revealed that the authorities were so well aware of my whereabouts in the university that they knew who stole the beloved means of transportation (unfortunately, this intelligence was not put to use for the recovery of the bike).

¹⁰⁵ R. M. Wintrob, 'An Inward Focus: A Consideration of Psychological Stress in Fieldwork', in Henry and Saberwal (eds.), *supra* note 68, 63, at 71. Wintrob (at 70) found that a common response among 'relatively inexperienced fieldworkers' to this conflict is to continue drifting 'into an overdetermined role as healer or other authority figure'.

¹⁰⁶ Fernandez, *supra* note 83, para 4: 'If a genuine prosecution of Haroun and Kushayb under Sudanese law satisfies the conditions of articles 17 and 19, the prosecutor, under article 53 of the Rome Statute, can conclude that "a prosecution is not in the interests of justice ... (or) the interests of victims," and can determine that there is no "reasonable basis to proceed with the investigation".'

¹⁰⁷ 'Three Human Rights Activists Arrested in Sudan', *Sudan Tribune*, 25 November 2008.

¹⁰⁸ Fieldnotes, December 2008.

¹⁰⁹ Fieldnotes, November 2008.

With some remarkable exceptions, officials of the United Nations peacekeeping missions in Sudan are more reluctant than most Sudanese to discuss anything related to the ICC. Their fear is that the government will interpret discussions between the UN and a researcher *on* the ICC as UN support *for* the ICC, potentially leading the government to withdraw its consent to their missions. ICC officials will recognise the same duality in the UN's support for the ICC, which fluctuates between strong normative enthusiasm and at times practical distance, inspired by the need for peacekeeping missions not to be closely associated with the ICC. The ambiguity came to the fore in *Lubanga*, where the UN had handed over large amounts of evidence to the OTP, but on the condition of confidentiality.¹¹⁰

Equally familiar to the ICC will be the armies of gatekeepers, health issues and mundane practicalities such as power cuts and broken generators that can bring one's research, at least the research one came to do, to a standstill.¹¹¹ Stuck for half a day in a traffic jam that seems escapable only by helicopter, returning for the umpteenth time to a department to wait for an official whose name might as well have been *Godot*, sleeping next to the lavatory in order to allow the body to relieve itself from its combat with last night's street food, the researcher's mind wanders off to Lévi-Strauss:

Anthropology is a profession in which adventure plays no part; merely one of its bondages, it represents no more than a dead weight of weeks or months wasted en route; hours spent in idleness when one's informant has given one the slip; hunger, exhaustion, illness as like as not; and those thousand and one routine duties which eat up most of our days to no purpose and reduce our perilous existence in the virgin forest to a simulacrum of military service.¹¹²

After spending entire weeks on navigating multiple tiers of officialdom to obtain research authorisation or a permit to travel to a different part of the country, where one is subsequently encountered by intelligence officers with whom one still has to negotiate access, the fieldworker sometimes longs for the efficiency of doing research in the world of *LexisNexis*.

¹¹⁰ See *Prosecutor v. Thomas Lubanga Dyilo*, Decision on the Consequences of Non-Disclosure of Exculpatory Materials Covered by Article 54(3)(E) Agreements and the Application to Stay the Prosecution of the Accused, Together with Certain Other Issues Raised at the Status Conference on 10 June 2008, ICC-01/04-01/06-1401, Trial Chamber I, 13 June 2008.

¹¹¹ See, for instance, Fifth Diplomatic Briefing of the International Criminal Court: Compilation of Statements, The Hague, 26 October 2005, 12, where the Registrar recounts: 'Roads are often impassable due to heavy rain or peppered with mines... Physical hardship and poor sanitary conditions have had repercussions on the Court's operations. ... [A] large number (approximately 80%) of those ICC staff working in the field have returned to Headquarters sick.'

¹¹² Lévi-Strauss, *Tristes Tropiques*, *supra* note 10, at 17. See also Barley, *supra* note 39, at 98, suggesting that perhaps one per cent of his time in the Cameroons was spent on research, the rest 'on logistics, being ill, being sociable, arranging things, getting from place to place, and above all, waiting'. For a good description of the time it can take to obtain one interview, see also Saberwal, *supra* note 88, at 50-2.

Glimmering through the description of many of these challenges is the gauntlet constituted by the risk of (perceived) ‘culture talk’, in Mahmood Mamdani’s words, and, to paraphrase Edward Said, ‘Meridionalism’. As coined by Mamdani, ‘culture talk’ seeks explanations for a deed in the culture of the doer (as opposed to ‘political talk’, which tends to explain the deed as a response to a political context of unaddressed grievances).¹¹³ ‘Orientalism’, as explored by Said, is a Western style for dominating, restructuring, and having authority over the Orient by making statements about it, authorising views of it, describing it, teaching it, settling it and ruling over it.¹¹⁴ A research project that focuses on the responses of two states in Africa to an international legal principle risks suggesting a radical distinction between the worlds of the observer and of the observed, of the author and of the ‘other’. The danger is that the analysis of complementarity’s effect in Uganda and Sudan is read not as an overview of findings, but, as in much of the literature on complementarity, as a contrast to an ideal that only hypothetically exists elsewhere in the world.¹¹⁵ The reading of the ‘official’ story would, however, become rather cumbersome if with each observation it highlighted that western states appear equally reluctant to prosecute nationals for conflict-related crimes if this could divide their societies.¹¹⁶

The risk of perceived ‘Meridionalism’ also applies to the writing of this ‘unofficial’ story. This story seems to continue the colonial tradition of writing about the exploration of Africa as one long obstacle race. But this piece does not argue that the challenges are *inherent* in Africa; to some extent they are inherent in fieldwork; to another, they are inherent in the fieldwork of a European in Africa in a present shaped by the colonial encounter. I cannot wait for the day that an African researcher doing fieldwork on complementarity’s catalysing effect in The Netherlands writes her ‘unofficial’ story of challenges.

...
*Hope your road is a long one.
May there be many summer mornings when,
with what pleasure, what joy,
you enter into harbors you’re seeing for the first time;
may you stop at Phoenician trading stations*

¹¹³ M. Mamdani, *Good Muslim, Bad Muslim: America, the Cold War and the Roots of Terror* (2004) 219.

¹¹⁴ E.W. Said, *Orientalism: Western Conceptions of the Orient* (1995 (1978)) 5.

¹¹⁵ See also I. Tallgren, ‘The Sensibility and Sense of International Criminal Law’, (2002) 13(3) EJIL 561, at 567 and C. Clapham, ‘Clientalism and the State’, in C. Clapham (ed.), *Private Patronage and Public Power* (1982) 1, at 33.

¹¹⁶ For some sobering observations on European practice in this respect, see T. Judt, *Postwar: A History of Europe since 1945* (2005), 41-62.

*to buy fine things,
mother of pearl and coral, amber and ebony,
sensual perfume of every kind—
as many sensual perfumes as you can;
and may you visit many Egyptian cities
to learn and go on learning from their scholars*
117
....

3. The ‘challenge’ of ‘too much’ information

At first sight perhaps unproblematic, the scenario in which one is given access *too easily* and *too much* raises its own challenges. While local colleagues are refused the most basic information,¹¹⁸ a government official provides me with original hand-written government records for photocopying outside the building—‘please return them tomorrow’.¹¹⁹ A Supreme Court judge shares his cell phone number—‘you can call me anytime’.¹²⁰ This privilege of the exotic outsider, more specifically, that of the white woman from a well-known western university, is the opposite of the why-would-we-give-it-to-you-a-foreigner treatment. But it strikes an embarrassing ring with the days in which British, French and Dutch anthropologists worked under the wings of colonial powers. As Talal Asad has argued, anthropology was ‘a feasible and effective enterprise’ as a result of ‘the power relationship between dominating (European) and dominated (non-European) cultures’.¹²¹ Sovereignty may have changed hands, but the dominance reverberates. This privileged handling also raises ethical questions, specifically when it is based on the expectation that the researcher understands the principle of *quid pro quo* that undergirds the political economy.

¹¹⁷ Cavafy, *Ithaka*, *supra* note 1, 68.

¹¹⁸ Cf Elizabeth Oglesby’s description of an inequality that infuriated Guatemalan anthropologist Myrna Mack: ‘For decades, Guatemala has been a haven for US scholars studying the country’s Indian cultures and, more recently, documenting the effects of social upheaval on those cultures. While foreign academics can count on relatively unimpinged and risk-free access to even the remotest regions, few Guatemalan social scientists dare venture outside the capital city.’ (E. Oglesby, ‘Myrna Mack’, in Nordstrom and Robben (eds.), *supra* note 19, 254, at 255).

¹¹⁹ Fieldnotes, November 2011.

¹²⁰ Fieldnotes, November 2008.

¹²¹ T. Asad, ‘Introduction’ in Asad (ed.), *supra* note 40, 17. This is not to say that anthropologists were always willing agents of colonialism. As Wendy James has argued, while the anthropologist was dependent on colonial authorities for permission to carry out research and sometimes material support, and while political dissent was scarcely possible, many anthropological works had a radical site, criticising the philosophy of western superiority on which colonialism was based (see W. James, ‘The Anthropologist as Reluctant Imperialist’ in *ibid.*, 41, at 42-3). For a nuanced assessment of the funding structures of anthropological fieldwork in colonial times, see J. Goody, *The Expansive Moment: The Rise of Social Anthropology in Britain and Africa, 1918-1970* (1995).

‘Too much’ information has another dimension. People in camps for displaced persons take hours to come, meet, and talk. I have my questions, they theirs: ‘why is that ICC of yours investigating only the LRA [Lord’s Resistance Army] and not the Government; is the Government’s failure to protect us not a crime under international law?’; ‘who is going to execute the arrest warrants?’; ‘who is going to pay reparations, when?’ I hear myself repeat the OTP’s arguments, about gravity, temporal jurisdiction and legal justifications for forced displacement. I hear myself explain the difference between international crimes and human rights violations and between state responsibility and individual criminal responsibility. I hear myself echo arguments about the ICC’s dependence on states for executive action—indeed, largely on the same states that have failed to arrest the LRA over the last twenty-something years. I hear myself mention the Victims’ Trust Fund, its huge discretion and little money, and the possibility of obtaining money from rich convicted defendants ... Kony? The lesser problem is that I, as a researcher, am sounding like an ICC outreach officer; perhaps the researcher always remains a teacher, albeit ideally not practising these two roles at the same moment. The real problem is that I hear myself fail to convince my interlocutors and myself: *So what?* I cannot suppress the question that challenges the entire frame within which I operate: do these legal answers provide any sense of *justice*?

Indeed, many interviewees are not interested in the research questions about the ICC. They want to tell a different story: about how an entire generation is growing up in camps for displaced persons, about their own views on how the conflict should be resolved, about requests for tiny amounts of money, to cover the costs of the transport to the interview or more substantial amounts, to send one grandchild to school. In between the lines is the overwhelming message of destruction—of lives, generations and cultures—and the surviving desire to regain control and rebuild. What does the researcher looking into the effects of article 17 of the Rome Statute do with this information? Treat it as ‘irrelevant’?

...
*Keep Ithaka always in your mind.
Arriving there is what you are destined for.
But don't hurry the journey at all.
Better if it lasts for years,
so you're old by the time you reach the island,
wealthy with all you have gained on the way,
not expecting Ithaka to make you rich.*

4. Challenges as findings

The most rewarding way to cope with some of these challenges is to see them as findings in themselves. For instance, in the context of stonewalling of attempts to identify the positive law, the response that ‘the law is lost’ is usefully indicative of the access to, and role of, positive law in the country more generally. Even if the researcher were to find the particular legal instrument, how much meaning does the instrument have if national lawyers do not have access to it and do not invoke it? By the same token, learning case-law through interviews is not the standard legal method, but one can at least be sure that this is not merely the case-law in the books, but the case-law that (some) lawyers know.

Similarly, the political sensitivity of the topic ‘ICC’ may reveal something about how the ICC is understood, and used, in conflict situations. No matter how insistently lawyers present it as a judicial bastion, in conflict situations the ICC is also inherently political. In a state targeted by various international sanctions, ICC arrest warrants for incumbent officials are seen as the latest political instrument to punish a state, government and people that have internationally been classified as ‘rogue’. Indeed, an arrest warrant for a sitting of Head of State is an order for *de facto* regime change. Arrest warrants for rebel movements, by contrast, are interpreted as international legitimisation of the government’s military counteroffensive.¹²³

Apart from saying something about the world observed, the challenges say much about the researcher. First, they say something about how the researcher is perceived, and thus about how the world that has produced her is perceived. Even when the researcher tries to act entirely in accordance with the objectivity that the role of academic requires her to perform, she cannot ditch the body that she inhabits, a body that is raced, gendered, and happens to have a particular nationality. That body carries a set of associations that make her appear rich, well-connected and partisan (‘She has a business card from Cambridge so she can provide a scholarship’; ‘She is white, hence rich’, ‘She is Dutch, thus supports the ICC’).

¹²² Cavafy, *Ithaka*, *supra* note 1, 68.

¹²³ See, more elaborately, S.M.H. Nouwen and W.G. Werner, ‘Doing Justice to the Political: The International Criminal Court in Uganda and Sudan’, (2010) 21(4) EJIL 941.

Secondly, the challenges reveal the researcher's own unlimited limitations. One of them is the extent to which her words can do justice to the world observed. Joris Luyendijk has powerfully described how journalists face the same challenge, writing as he does:

That is the trouble when you try to give an unbiased report about the Middle East: there are no unbiased words. So whose vocabulary to adopt? You cannot open your news item with a sentence that says: 'Today in Judea and Samaria/the Palestinian territories/the occupied territories/the disputed territories/the liberated territories, three innocent Palestinians/Muslim terrorists/Arab newcomers were preemptively eliminated/brutally murdered/killed by the Zionist enemy/Israeli occupation troops/Israeli defence forces.'¹²⁴

This limitation is not only the researcher's or the journalist's, grappling with concepts such as 'parliament', 'opposition' or 'civil society', but also the lawyer's. Legal definitions notwithstanding, in the court room, people from different backgrounds have different understandings of concepts such as 'occupation', 'terrorism', 'responsibility' and even 'truth'.¹²⁵

The methodological, epistemological and practical challenges even reveal something about the topic I came to study: the catalysing effect of complementarity. Take the methodological challenge of feedback and reactivity. The openness of some officials to my discourse, ideas and views appears indicative of Ugandan responsiveness to 'norm entrepreneurship'¹²⁶—in this context, the work conducted by activists promoting international norms for adoption at the domestic level—and the permeability of the system to 'norm infiltration'. I encounter many Ugandan government officials citing from reports of international NGOs on what the Rome Statute says, rather than from the Rome Statute itself. In one ministry donors have 'embedded' transitional-justice experts who publish their reports under the name of the Ugandan Justice, Law and Order Sector, suggesting that the Ugandan government has bought into the donor-sponsored experts' ideas. However, the norm 'infiltration' does not occur without redefinition and subversion: neatly fitting within Sally Engle Merry's continuum of vernacularisation,¹²⁷ the name and transnational referent of foreign ideas—'transitional justice'—are adopted, but with a dramatically different

¹²⁴ J. Luyendijk, 'Agreement on Terms', *Le monde diplomatique*, 16 March 2007.

¹²⁵ See also T. Kelsall, *Culture under Cross-Examination: International Justice and the Special Court for Sierra Leone* (2009) and Combs, *supra* note 3.

¹²⁶ M. Finnemore and K. Sikkink, 'International Norm Dynamics and Political Change', (1998) 52(4) *International Organization* 887, at 893, speak of 'norm entrepreneurs'.

¹²⁷ See S.E. Merry, 'Transnational Human Rights and Local Activism: Mapping the Middle', (2006) 108(1) *American Anthropologist* 38, at 43-44, and, specifically for the Ugandan context, see Nouwen, *Complementarity in the Line of Fire*, *supra* note*, 167.

understanding of the content of the idea. For instance, the chairman of the ‘Transitional Justice Working Group’ understands transitional justice to refer to justice involving short punishments.¹²⁸

More fundamentally, the practical, methodological and epistemological challenges taken together begin to reveal one of the key paradoxes of the entire complementarity regime if one takes into account that ICC investigators may face similar challenges.¹²⁹ The Court’s admissibility regime is built on the realistic assumption that *states* are sometimes unwilling or unable to investigate and prosecute international crimes.¹³⁰ However, the many instances so far in which ICC judges have refused to confirm charges or decided to acquit the accused suggest that the *OTP*, too, has faced many challenges in obtaining reliable data or is for other reasons unable or unwilling genuinely to investigate and prosecute. Indeed, in some instances the ICC may be *less* able or *less* willing than the state, in which case the international court is even more inadequate to address impunity than the state. The Statute, however, does not provide for this scenario; it establishes a Court that evaluates states from the perspective of *Verantwortungsethik*, an ethic of responsibility, while the Court itself is based on a politics inspired by *Gesinnungsethik*, an ethic of conviction.¹³¹ Not acknowledging the reality of the challenges that the Court, too, faces, the Statute fails to create a mechanism for comparing the capabilities and willingness of the state and that of the ICC.

The most valuable finding to the researcher perhaps stems from the seemingly ‘irrelevant’ information.¹³² During a day-long focus group in Gulu on access to justice, I hear a lot about concepts, needs and expectations of ‘justice’, practices, institutions, obstacles and procedures, but nobody of the 15 participants, ranging from officials to cultural leaders, even utters the word ICC.¹³³ When asked during the evaluation why the ICC was not mentioned, people explain that the ICC has nothing to do with ‘justice’. The explanations say both little

¹²⁸ Interview, Kampala, September 2008.

¹²⁹ See, more elaborately, Nouwen, *Complementarity in the Line of Fire*, supra note *, Chapter 5.

¹³⁰ The terms unwilling and unable are used here in a sociological meaning rather than in the meaning of article 17 of the Rome Statute of the International Criminal Court, Rome, 17 July 1998, 2187 UNTS 90 (RS). Legally, an assessment of willingness and ability is required only if there are domestic proceedings and the terms willingness and ability are narrowly defined in art. 17. However, other forms of unwillingness and inability can still lead to the admissibility of a case, because they lead to the absence of domestic proceedings.

¹³¹ See Weber, *Politik als Beruf* (1919), published in English in D. Owen and T. Strong, *Max Weber: The Vocation Lectures: “Science as a Vocation”; “Politics as a Vocation”* (2004).

¹³² For similar experiences of anthropologists, see, e.g., P. C. W. Gutkind, ‘The Social Researcher in the Context of African National Development: Reflections on an Encounter’, in Henry and Saberwal (eds.), supra note 68, 20 and B. Manz, ‘Reflections on an *Antropología Comprometida*: Conversations with Ricardo Falla’, in Nordstrom and Robben (eds.), supra note 19, 261, at 272.

¹³³ Focus group, Gulu, 18 September 2008.

and much about my research question on the catalysing effect of the complementarity principle in the Statute of the International Criminal Court. They say very little about the catalysing effect of the ICC. They say much about the origins of my research question, which is rooted in the writings and discussions within the international-criminal-law epistemic community,¹³⁴ not in Northern Uganda. I have asked a question that tends to reinforce the practices and experiences of my own field¹³⁵ by assuming that the discipline is an appropriate lens for studying the world and somehow always relevant in crises.¹³⁶ For a more locally relevant question, I should have used ‘participatory action research’ methods not merely for obtaining data, as I did, but also for identifying the research question.¹³⁷ But this type of identification of research questions fits uneasily in PhD programmes, or grant schemes for that matter, where the opportunity to *begin* research depends on a proposal that is assessed for the project’s possible contribution to the literature.

Soon I discover that it is not just me focusing on international criminal justice. Once calling for an appointment with a Ugandan expert, the response is: ‘Sarah? From Holland? On international criminal law? But I just made an appointment with Sarah from Holland to talk about international criminal law!’ Arriving for a repeat interview with a key official in the Ugandan International Crimes Division, I join an entire queue of western researchers, human rights activists and capacity-building experts, all waiting to ask the official about developments in the Ugandan International Crimes Division. Our project proposals, research questions and theoretical frameworks differ, but with almost identical questions we must look

¹³⁴ See also Manz, *supra* note 132, 261, at 267-7 (‘A typical anthropologist in the United States ... chooses a research topic based on what he or she reads in the library, often without any connection to the community that is going to be the object of that research’).

¹³⁵ See, in a different context, D. Curtis, ‘Introduction: The Contested Politics of Peacebuilding in Africa’, in Curtis and Dzinesa (eds.), *supra* note 41, at 16.

¹³⁶ See H. Charlesworth, ‘International Law: A Discipline of Crisis’, (2002) 65(3) *Modern Law Review* 377.

¹³⁷ PAR is ‘a form of collective self-reflective enquiry undertaken by participants in social situations in order to improve the rationality and justice of their own social or educational practices, as well as their understanding of these practices and the situations in which these practices are carried out’ (Kemmis and McTaggart cited in S. Kemmis, ‘Critical Theory and Participatory Action Research’, in P. Reason and H. Bradbury (eds.), *The Sage Handbook of Action Research: Participative Inquiry and Practice* (2008) 121, at 122, emphases omitted). PAR methods are valuable for ethical as well as epistemological reasons. With respect to ethics, PAR is ideally conducted by local people and for local people, unlike traditional extractive research where so-called experts go to a community, study their subjects and take away data for their articles. In PAR studies, everyone is at the same time researcher, learner, analyst and knowledge contributor. With respect to epistemology, traditional research methods frequently obstruct truth-finding because those with power determine both the questions and the frameworks for answers (R. Chambers, *Whose Reality Counts? Putting the First Last* (1997)). For challenges to PAR, see A. Cornwall and R. Jewkes, ‘What Is Participatory Research?’, (1995) 41(12) *Social Science & Medicine* 1667. For outright criticism of PAR, see B. Cooke and U. Kothari (eds.), *Participation: The New Tyranny?* (2001); but note that much of the criticism goes to the way PAR is conducted in practice rather than to the idea as such. See also Baxter, *supra* note 56, at 329.

and sound remarkably similar to the interviewee. A few hours later, we run into each other again, at the office of another key actor in the field of international criminal law in Uganda, and then again, at one of the few places in town where Ugandan coffee is transformed into western-style *lattes*. Like a magnet, international criminal justice has attracted human and financial resources of donors, policymakers and researchers.

This concentration is consequential. Many of the researchers who focus on the ICC ask questions in the frame of international criminal law. The adoption of that frame also determined what is seen. Choosing the international-criminal-law perspective means zooming in on the type of violence that international criminal justice itself focuses on: violence that is relatively fast, relatively direct—chains of agency can still be reconstructed—and ‘spectacular’, in the sense of impressive on the eye.

Many interviewees in northern Uganda, by contrast, try to redirect the interviewer’s attention to a different type of violence which, following Ron Nixon, could be called ‘slow violence’, ‘a violence of delayed destruction that is dispersed across time and space, an attritional violence that is typically not viewed as violence at all.’¹³⁸ Slow violence is indirect: the complex causality that spans time and space seems to decouple the violence from human agency. This covert, slow, structural violence, directed by hidden agency, is not merely a breeding ground for the overt, instant, individual violence that international criminal law does focus on:¹³⁹ many people experience it on a daily basis as a fundamental injustice in itself.

The eye of international criminal law, with its focus on individual attribution, does not see slow violence (other than, perhaps, as ‘context’ for the ‘real’ violence).¹⁴⁰ In Northern Uganda, it sees killings by the LRA; it does not see a thousand people a week dying in camps for internally displaced persons.¹⁴¹ International criminal law sees LRA leader Joseph

¹³⁸ R. Nixon, *Slow Violence and the Environmentalism of the Poor* (2011) 2. The idea of ‘slow violence’ builds on Johan Galtung’s work on ‘structural violence’ (see J. Galtung, ‘Violence, Peace and Peace Research’, (1969) 6(3) *Journal of Peace Research* 167).

¹³⁹ See also Nixon, *supra* note 138, at 10-11.

¹⁴⁰ For a compelling analysis of how the ICC in *Lubanga* applied the criminal-law lens, seeking causal connections that allow it to assign guilt or innocence, and dismissing more ethnographic understandings, see R.A. Wilson, ‘Through the Lens of International Criminal Law: Comprehending the African Context of Crimes at the International Criminal Court’, (2011) 1(1) *Studies in Ethnicity and Nationalism* 106.

¹⁴¹ ‘Uganda: 1,000 Displaced Die Every Week in War-Torn North – Report’, *IRIN* (29 August 2005). See also the comment by a father of a child with the ‘nodding syndrome’: ‘It hurts us when the government and then the international community puts more attention on the Kony issue while we’re suffering with the disease here ... It’s all well and good if they can flush out the [LRA] rebels from wherever they are, but the most important thing for now is that this disease is tackled.’ (reported in A. Fallon, ‘Why Are Uganda’s Children Nodding to

Kony,¹⁴² but not the black fly-borne parasite or vitamin B6 deficiency that may be the cause of thousands of children dying of this ‘mysterious disease’ without scientific name that has victimised more than 3,000 children in Northern Uganda.¹⁴³ International criminal law sees the torture that is ‘the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused’.¹⁴⁴ It does not see what Chris Dolan has identified as ‘social torture’: a form of torture in which the methods and impacts are not immediately visible (in the words of one Ugandan, ‘This insecurity is a greater threat than the abductions. It is present every day but nobody sees it’) but that affects society as a whole and that is spurred by causal contexts rather than a single causal incident, of which there is no clear place (‘the whole world has become the torture chamber’), beginning or end (‘daily life is your torture’).¹⁴⁵ ‘Social torture’ is committed by multiple actors and is self-perpetuating, so that methods and impacts become the same (as Primo Levi observed: ‘Anyone who has been tortured, remains tortured’), and become self-administered (people risking HIV tomorrow by selling sex in order to eat today).¹⁴⁶

This is not to say that international criminal law *should* see slow violence; there are more ways to see the world than through the lens of international criminal law. And while it is common for those who do research in conflict zones to question the relevance of their research compared to engaging in humanitarian support or political activism,¹⁴⁷ there is a role for specialisation and the long-term picture—not everybody needs to be a *Médicins sans Frontières* doctor. The problem, however, lies in the monopolising tendencies of a fashionable topic: the foregrounding of international criminal justice backgrounds something else. The more people study Northern Uganda from the perspective of international criminal law, the more international criminal law becomes the frame through which the situation in

Their Deaths? While the World Still Reels at Joseph Kony’s Atrocities, Hundreds of Young People Are Dying from an Illness No One Understands and Which Has No Cure’, *Independent*, 10 April 2012).

¹⁴² See also A. Branch, ‘Dangerous Ignorance: The Hysteria of Kony 2012’, 12 March 2012, www.aljazeera.com/indepth/opinion/2012/03/201231284336601364.html.

¹⁴³ ‘World Health Organization Africa ‘Uganda: Nodding Disease (Situation as of 14 February, 2012)’ www.afro.who.int/en/clusters-a-programmes/dpc/epidemic-a-pandemic-alert-and-response/outbreak-news/3548-uganda-nodding-disease-situation-as-of-14-february-2012.html. See also www.ghfn.org/1-topics-general-pages/nodding-disease.

¹⁴⁴ RS, art. 7(2)(e). See also art. 8(2)(a)(ii).

¹⁴⁵ For all quotes and arguments contained in this sentence, see C. Dolan, *Social Torture: The Case of Northern Uganda 1986-2006* (2011), Chapter 1.

¹⁴⁶ *Ibid.*

¹⁴⁷ See E. J. Wood, ‘The Ethical Challenges of Field Research in Conflict Zones’, (2006) 29 *Qualitative Sociology* 373, at 383 and C. Cramer, L. Hammond and J. Pottier, ‘Navigating the Terrain of Methods and Ethics in Conflict Research’, in Cramer, Hammond and Pottier (eds.), *supra* note 19, 1, at 7.

Northern Uganda is seen. The sharper this focus, the more blurred becomes the perspective of slow violence. What Arundhati Roy says about globalisation, also holds for the rise of international criminal law:

... a light which shines brighter and brighter on a few people and the rest are in darkness, wiped out. They simply can't be seen. ... you stop seeing something and then, slowly, it's not possible to see it. It never existed and there is no possibility of an alternative.¹⁴⁸

The overexposure of international criminal law blinds the world to slow violence and other injustices.¹⁴⁹

Against this backdrop, the researcher's practical issues seem to sink in an ocean of triviality, but even they contain important findings.¹⁵⁰ It is precisely the personal experience of having to wait, plea and push for a travel permit and then still having to negotiate with intelligence officers to be granted access that allows the fieldworker to feel the personal and social states of emergency that hide behind the legal one.¹⁵¹ Sometimes it is only once one has left that state, enjoying a freedom that suddenly appears abnormal, that fear and its numbing effect relent and one realises how much it had both mind and body in its grasp. The difficulties in obtaining electricity, the dangers of roads and the vulnerability to diseases also allow the researcher to begin to experience how questions concerning health, security, resources and opportunities, can be more burning than her obsession with the catalysing effect of a principle in the Rome Statute. Indeed, such experiences widen one's understanding of the concept of injustice way beyond the concept that underpins the project of international criminal law. Nonetheless, the 'shared' experience, and thus the understanding, is limited by decisive asymmetries. Whatever happens, ultimately, the researcher, like a tourist, can

¹⁴⁸ Arundhati Roy in an interview with M. Bunting, 'Dam Buster', *Guardian*, 28 July 2011, also cited by Nixon, *supra* note 138, 1.

¹⁴⁹ Noni Munge draws a parallel with the situation in Kenya: 'The trial of the President and Vice-President is one of the most topical issues in the country—occupying prime time on TV news networks, front pages of the local dailies, and discussed in all manners of social settings from the bars to the hair salons. But discussion of the political and socio-economic issues (land insecurity, high poverty, tribalism) which contributed to the violence (and which have contributed to the cycles of violence witnessed in all elections at least since 'multipartyism') appear to have largely fallen to the way side. A worry of mine is that, because of this preoccupation, the ICC and the trial of the President and Vice-President will become the main if not sole narrative of a moment in history, and as a nation we will have missed an opportunity to address phenomena contributing to systematic injustices and cyclical violence.' (personal correspondence, 14 September 2013).

¹⁵⁰ See also Rabinow, *supra* note 31, 154.

¹⁵¹ See also L. Green, 'Living in a State of Fear', in Nordstrom and Robben (eds.), *supra* note 19, 105.

usually rely on a bank account, an insurance policy, and, if worse comes to worst, a ticket out.¹⁵²

Even a run in what later appears to be a minefield, a confrontation with armed, aggressive and drunk ‘soldiers’, and a gas explosion that makes one land in hospital can provide insights. Apart from a sense of the dangers to which one’s interlocutors are exposed, these events may leave the researcher with what Carolyn Nordstrom and Antonius Robben call an ‘existential shock’—a personal experience of the paradox that human lives can be constituted as much around their destruction as around their reconstruction.¹⁵³ Besides trauma, the experience can provide a feeling of catharsis, as if the (imminence of the) explosion has blown away one’s own life’s irrelevancies, leaving only the pillars. An existential shock prompts strengthening of foundations.

Great challenges could thus lead to important findings, mostly in the form of new questions. Researchers working *on* international criminal tribunals have the freedom to decide that important questions are elsewhere, for instance, in poverty, trade relations and inequality. Officials working *in* international criminal tribunals are free to change their working assumptions, for instance, as to whom and what to investigate, but will continue to be limited by statutory boundaries. Most will thus continue to give their best within the parameters of their job. Some, however, captured by the other burning questions, stay ‘in the field’¹⁵⁴ but change their employer, mission, and lines.

...
Ithaka gave you the marvelous journey.
Without her you wouldn't have set out.
She has nothing left to give you now.

¹⁵² See also Mintz, *supra* note 28, 60: ‘[I]n that chance to pack up and leave, the anthropologist enjoys the tourist’s most valued privilege’. Cf. in the context of international revolutionaries, the novel by A. Makine, *Human Love* (2009) 73: ‘Most of all, he grasped the very great difference between two types of revolutionary: those who could pack their bags, depart, settle somewhere else, and those who did not have this choice.’ See also C. Nordstrom, ‘War on the Front Lines’, in Nordstrom and Robben (eds.), *supra* note 19, 129, at 130 and Swedenburg, *supra* note 47, at 31, citing Jean Genet who observed that he was ‘auprès’, not ‘avec’ the Palestinians and that he looked onto their revolt ‘as if from a window or a box in a theatre, and as if through pearl-handled opera glasses’.

¹⁵³ C. Nordstrom and A.C.G.M. Robben, ‘Introduction: Anthropology and Ethnography of Violence’, in Nordstrom and Robben (eds.), *supra* note 19, 1, at 13.

¹⁵⁴ One friend challenged the use of the word ‘field’: ‘are you going to plant?’ Both in the context of university research and international criminal investigations, there is a risk that the ‘field’ is presented as a place that is to be developed, in contrast to the ‘non-field’, the ivory tower or the court room. I use ‘field’ here in the meaning of the natural environment of the object of research. In my case, I have done ‘fieldwork’ not merely in Uganda and Sudan, but also at the ICC.

5. Beyond challenges as findings: the researcher's complicity

If the conclusion was merely that challenges must be seen as findings and that the journey of empirical research is more important than its destination, the unofficial story could end here. It would read like a *Bildungsroman*, setting out the tests that the researcher has defied and end on the happy note of a call for more fieldwork. The final note could be very optimistic indeed: the queue of researchers at the official's door suggests that more and more researchers go through this experience.

But the unofficial story does not end here. Lavished with knowledge obtained in encounters with most impressive people and enriched thanks to their generosity in time, insights and trust, the researcher brings home not only treasured data, but also a dose of 'moral confusion'.¹⁵⁶ The echo of the greeting 'Are you yet another student writing a PhD on our backs?' continues to resonate. I may not have 'looted' information in the sense of removing it—the sources of information still have the information—but the experience of having been a parasite on a spree remains.

The problem is not so much a question of my taking others' data or trying to 'represent' others' views in my work. The real issue is the inequality in opportunities to set the research agenda, analyse the data and tell the story. Only very few are in a position to make the journey that is empirical socio-legal research, to get to experience the challenges and to transform them into findings. Only very few can take the boat to Ithaka. And while anthropological research as such may have become more open to people from all over the world,¹⁵⁷ as far as field research into the effects of the ICC is concerned, the boat, following the ICC, still goes in the same direction as the former colonial powers.

The unequal access to opportunities taints the production of knowledge—only a particular set of people, in a particular set of circumstances, is able to shape the research agenda which

¹⁵⁵ Cavafy, *Ithaka*, *supra* note 1, 69.

¹⁵⁶ See D. Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (2004) 78. See also, *inter plurima alia*, K. Wilson, 'Thinking About the Ethics of Fieldwork', in Devereux and Hodinott (eds.), *supra* note 21, 179, at 195-6. On the common experience of a sense of 'betrayal' when contrasting the intense fieldwork experience with the relatively dull piece of academic work that results from it, see A. Coffey and P. Atkinson, *Making Sense of Qualitative Data* (1996) 41.

¹⁵⁷ As suggested by C. Geertz, *After the Fact: Two Countries, Four Decades, One Anthropologist* (1995) 132.

in turn informs policies that shape the world. These limitations on knowledge production are exacerbated by the discipline's own assessment of who counts as 'authority'.¹⁵⁸ Take, for example, the authority of former Principal Judge in Uganda, Justice James Ogoola. Patiently and poetically, he has answered the questions of many a researcher regarding the Ugandan International Crimes Division [ICD, also known as UWCC], for which he laid the foundations. He is *the* authority on the topic. But when his speech on the ICD was published in a US law journal, the editors complemented it with footnotes. The result is two stories, one above the footnote line and one below, which are largely disjointed. For instance, above the line, Justice Ogoola writes:

The UWCC is intended to deal with only the most serious cases arising especially out of the LRA conflict, namely those committed by the Commanders who gave the orders to the troops to commit those crimes.¹⁶ We estimate such cases to number only between five and ten, in all.¹⁷ The great majority of the combatants in the bush would return, not to face the full wrath of the UWCC, but the mechanics of the traditional justice system-of which we have a 'legion' countrywide.¹⁸

Below the line, the footnotes read:

16 See Alexander K.A. Greenawalt, *Complementarity in Crisis: Uganda, Alternate Justice, and the International Criminal Court*, 50 VA. J. INT'L L. 107, 108 (2009) ("In 2005, the International Criminal Court (ICC or Court) issued arrest warrants for a handful of LRA leaders accused of crimes against humanity and other grave offenses.").

17 See *id.* at 113 ("The ICC prosecutor duly initiated an investigation and, in July 2005, procured arrest warrants for Joseph Kony and four other LRA leaders.").

18 See *id.* at 112-13 ("In addition to military efforts, the government passed legislation in early 2000 offering blanket amnesty to any LRA member who agreed to surrender and renounce involvement with the rebellion. . . . As of August 2008, at least 12,481 former LRA rebels had reportedly received amnesty under the Act.").

Directly obvious problems are that the footnotes concern the work of the ICC, whereas the main text is about the UWCC, and that traditional justice is not the same thing as amnesty. The more fundamental question is why the editors considered it necessary to provide the work of a respected US scholar as 'authority' for, or background information to, the Ugandan judge's story on the establishment of a court in which he played a key role.

¹⁵⁸ More generally on discrimination as to what accounts as knowledge, see H. Dabashi, 'Can Non-Europeans Think? What Happens with Thinkers Who Operate Outside the European Philosophical "Pedigree"?', *AlJazeera*, 15 January 2013, www.aljazeera.com/indepth/opinion/2013/01/2013114142638797542.html.

These are challenges that go beyond findings. The researcher may learn from these challenges and indeed, consider them findings. However, by focusing on international criminal justice, by appearing as a privileged researcher with access to financial and epistemological resources and a ticket out, the western researcher investigating complementarity in Uganda and Sudan is also complicit in some of the very challenges that she tries to overcome,¹⁵⁹ in particular fundamental political, material and epistemological inequality. These challenges cannot be overcome merely through the conduct of *more* socio-legal empirical research; they require socio-legal empirical research, and publication of that research, by different people.

...
*And if you find her poor, Ithaka won't have fooled you.
Wise as you will have become, so full of experience,
you will have understood by then what these Ithakas mean.*¹⁶⁰

6. Instead of concluding: opening up

‘You always return confused’, a professor comments on my summing up of almost a year’s wandering. ‘Is it the sand and the dust of the desert that has blurred your vision? ... Don’t worry, one day, you’ll read our books on what really happened’. History, his discipline, and law, mine, seem to have no time or space for the realities of chaos and confusion.¹⁶¹ At law conferences, it strikes me how those who have spent considerable time in situations of conflict, often take less absolutist positions than those who have not. Presenting some of my findings, I am occasionally accused of ‘nihilism’, as if universality in condemnation of international crimes should come with universal agreement on how to deal with the mess afterwards.

Alternatively, it is implied that I have ‘gone native’, the process in which the researcher comes to identify more with the local area of research than with the profession of

¹⁵⁹ More theoretically on complicity of anthropologists, see G. E. Marcus, ‘The Uses of Complicity in the Changing Mise-En-Scène of Anthropological Fieldwork’, (1997) 59 *Representations* 89 and K. M. Clarke, ‘Toward a Critically Engaged Ethnographic Practice’, (2010) *Current Anthropology* S301, and of international lawyers, see R. Knox, ‘Strategy and Tactics’, (2013) 21 *Finnish Yearbook of International Law* 2010, 193.

¹⁶⁰ Cavafy, *Ithaka*, *supra* note 1, 69.

¹⁶¹ See also A. Simons, ‘The Beginning of the End’, in Nordstrom and Robben (eds.), *supra* note 19, 42, 57: ‘if anthropology can offer any antidote at all to the generalizations of social history, the tailored particulars of political economy, or the momentous occasioning of chronology, it may well be to counter all narrative flows with the confusion of participants’ emotions and the observed realities of chaos.’

anthropology,¹⁶² or, in my case, international law. But in my multi-sited research it is difficult to identify the one ‘local area of research’ with which I have come to identify:¹⁶³ the displaced in northern Uganda, intelligence officers in Khartoum, ICC judges in The Hague, government officials in Kampala, human rights activists in Darfur? And yet, perhaps the fieldworker in international law is more exposed to accusations of going native than the modern-day (and post-positivist) anthropologist. ‘To an ethnographer sorting through the machinery of distant ideas’, in Clifford Geertz’s ideal of fieldwork, ‘the shapes of knowledge are always ineluctably local, indivisible from their instruments and their encasements’.¹⁶⁴ In contrast, international criminal law, not unlike old-fashioned anthropology, usually seeks that what is universal—global knowledge. The most difficult challenge may reside not ‘in the field’ but ‘at home’, not in doing the research, but in revisiting my assumptions, in reaching nuanced conclusions and in presenting these to the centres of power of international criminal law and beyond.¹⁶⁵

While the ‘official’ story may seem to have ended with the publication of a book, the personal fieldwork story continues to raise questions. Should international criminal law remain the focus of study? As Arundhati Roy asks with respect to ‘those who make a professional living off their expertise in poverty and despair’, ‘at what point does a scholar stop being a scholar and become a parasite who feeds off despair and dispossession’?¹⁶⁶ Perhaps every person working on genocide, crimes against humanity, war crimes wonders this at times, particularly at those moments that one doubts that one’s article, book or judgment does anything to address the causes of the phenomena studied or adjudicated. Fieldwork, however, throws this question in one’s face. The ultimate challenge then is to find a way to turn ‘expertise’ into something that reverses systems of destitution, oppression and inequality. ‘What permanent commitments does [this fieldwork] demand of you?’¹⁶⁷

Ithaka is not yet in sight.

¹⁶² C.K. Adenaike, ‘Reading the Pursuit: An Introduction’, in Adenaike and Vansina (eds.), *supra* note 95, xvii, at xxxix.

¹⁶³ See also G. E. Marcus, ‘Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography’, (1995) 24 *Annual Review of Anthropology* 95, at 113-4.

¹⁶⁴ Geertz, *Local Knowledge*, *supra* note 25, 4.

¹⁶⁵ See also R.M. Shain, ‘A Double Exile: Extended African Residences and the Paradoxes of Homecoming’, in Adenaike and Vansina (eds.), *supra* note 95, 104.

¹⁶⁶ A. Roy, *Power Politics* (2001) 26.

¹⁶⁷ Manz, *supra* note 132, at 266.