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The Emotional Labour of International Criminal Lawyers

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ABSTRACT

Emotional labour — the management of feelings for the purpose of creating an institutionally acceptable public display — has received growing attention in legal scholarship. Although the role of emotion has been increasingly acknowledged in relation to lawyers well-being, emotional labour itself remains under-theorized as a constitutive element of professionalism, particularly in an international context. This article contributes to the development of this emerging field by examining emotional labour within the practice of international criminal law (ICL). Drawing upon original interviews, an analysis of professional codes of conduct, and the normative expectations embedded in legal roles, we demonstrate that emotional labour is both pervasive and institutionally unacknowledged in ICL. We explore how it is performed across different roles and sites, and how its uneven recognition affects practitioners, stakeholders and institutions. By foregrounding emotional labour as a professional competency — rather than framing it solely in terms of well-being — this study advances a broader understanding of legal professionalism, offering insights relevant to complex and challenging legal settings and other 'extreme work' environments.

1. INTRODUCTION

Contemporary scholarship has begun to explore the relevance and role of emotions within international criminal law (ICL). This has included how states invoke emotions when engaging with the International Criminal Court (ICC)[1]; how an appeal to emotions is core to legitimizing the 'project' of ICL[2] as well as to legal and political engagements with

[1] W.G. Werner, 'Argumentation Through Law: An Analysis of Decisions of the African Union', in I. Johnstone and S. Ratner (eds), *Talking International Law: Legal Argumentation Outside the Courtroom* (Oxford University Press, 2021) 203–218.

[2] C. Schwöbel-Patel, 'The "Ideal" Victim of International Criminal Law', 29 *European Journal of International Law* (2018) 703–724; C. Schwöbel-Patel, *Marketing Global Justice: The Political Economy of International Criminal Law*, Vol. 151 (Cambridge University Press, 2021).

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justice[3]; the extent to which the emotions of judges and the public are consciously manipulated in the courtroom to secure a particular outcome;[4] and the role of emotion in ICL decision-making.[5] An analysis of emotions in ICL has even recently been described as a 'long overdue and necessary endeavour'.[6] Apart from discussions centring on mitigating the impact of emotions on practitioner well-being,[7] relatively little attention has been given to the management of emotion as an essential component of professional practice, notwithstanding the fact that international criminal lawyers can routinely expect to experience and be confronted by the extreme emotions of others as expressed by ICL's victims, witnesses and accused.[8] For over 20 years, scholarship within other legal settings has increasingly recognized the significance of 'emotional labour'[9] — broadly conceived as the regulation of one's own emotions or the emotions of others — as a fundamental component of legal professional practice.[10] This body of research positions emotional labour not merely as a matter of individual well-being, but inherent to professionalism itself and as a critical factor influencing institutional efficacy, the quality of professional relationships, and the performance of legal actors. Within ICL practice, however, despite its obvious relevance, the concept of emotional labour remains underexplored.

This article examines how the concept of emotional labour translates to the specific ICL context. Drawing upon interviews with 62 international criminal lawyers, an analysis of ICL's relevant codes of conduct, and consideration of the expected yet often implicit functions required of ICL professionals, this article makes three central claims. First, ICL's lawyers undertake emotional labour as an essential component of their everyday professional functions. Secondly, that this emotional labour remains largely hidden and unrecognized: formally unacknowledged in professional codes of conduct and omitted entirely from current understandings of legal professionalism in ICL. Thirdly, that while emotional labour clearly has staff welfare implications, as a vital part of professional practice it should be incorporated into training, continuing professional development and institutional well-being initiatives.

Our research also contributes to understanding how professionals navigate the considerable demands of emotional labour in analogous 'extreme work' environments, where dangerous or traumatic work comes with a risk of physical or psychological injury. Working on criminal cases of utmost gravity and sensitivity, ICL's legal professionals regularly deal with

[3] K.M. Clarke, *Affective Justice: The International Criminal Court and the Pan-Africanist Pushback* (Duke University Press, 2019).

[4] J. Bens, *The Sentimental Court: The Affective Life of International Criminal Justice* (Cambridge University Press, 2022).

[5] M. Lidén, 'Emotions and Cognition in International Criminal Justice: An Exploration From Cognitive Biases to Emotional Intelligence', 1 *Forensic Science International: Mind and Law* (2020) 1–10.

[6] J. Pallas, 'Emotions in International Criminal Law: Reckoning With the Unknown', in H. Cullen et al. (eds), *The Politics of International Criminal Law* (Brill Nijhoff, 2020) 230–254, at 230.

[7] J. Hagan and F.M. Kay, 'The Emotional Toll and Exhilaration of Human Rights Activism: Gender and Legal Work at the Hague International Criminal Tribunal', 37 *Queen's Law Journal* (2011) 257–301.

[8] T. Brudholm and J. Land (eds), *Emotions and Mass Atrocity: Philosophical and Theoretical Explorations* (Cambridge University Press, 2018); E. Stover, *The Witnesses: War Crimes and the Promise of Justice in The Hague* (University of Pennsylvania Press, 2011).

[9] As first conceptualized by A. Hochschild in *The Managed Heart: Commercialization of Human Feeling* (20th Anniversary Edition, University of California Press, 2003).

[10] Key texts on lawyers and emotional labour include: S. Yakren, 'Lawyer as Emotional Laborer', 42 *University of Michigan Journal of Law Reform* (2008) 141–184; J. Kadowaki, 'Maintaining Professionalism: Emotional Labor Among Lawyers as Client Advisors', 22 *International Journal of the Legal Profession* (2015) 323–345; C. Westaby and A. Subrayan, 'Emotional Labour in the Legal Profession', in J. Phillips et al. (eds), *Emotional Labour in Criminal Justice and Criminology* (Routledge, 2021) 34–53; L. Flower, 'Emotional Defence Lawyers', 3 *Emotions: History, Culture, Society* (2019) 282–299; S. Roach Anleu and K. Mack, 'Magistrates' Everyday Work and Emotional Labour', 32 *Journal of Law and Society* (2005) 590–614; L.C. Harris, 'The Emotional Labour of Barristers: An Exploration of Emotional Labour by Status Professionals', 39 *Journal of Management Studies* (2002) 553–584.

'raw and traumatic' evidence.[11] They also bear a significant responsibility to (variously) the victims, witnesses, the accused and the international community. These obligations increase the pressure under which 30 defence counsel and victims' advocates operate, with a sense of the cases being 'too important to mess up'.[12] All these factors contribute to a high-intensity and overly adversarial work culture that, in the case of the ICC, has recently come in for criticism from the Court's Independent Expert Review.[13] We argue that systematically mapping and analysing emotional labour — and recognizing its enactment as a core dimension of legal professionalism — is essential to responding to these critiques. This approach complements existing initiatives focused on professional wellbeing and secondary trauma.[14]

This article is structured as follows. First, we set out the concept of emotional labour in relation to lawyers more broadly. We then explore how the concept of emotional labour can be translated into the specific ICL context, given its particular structure and functioning, and where there are similarities with other 'extreme work' environments. We next briefly explain our methodology, before discussing our findings, noting specifically how the management of emotions as implicitly expected in ICL's codes of conduct corresponds with the answers of the lawyers interviewed for this research. Our participants consistently engaged in the management of emotions — both their own and those of others — as part of their professional practice. As discussed elsewhere in this symposium,[15] we reflect on how emotional labour is performed across different roles and institutional sites within ICL and examine perceptions of its appropriateness among practitioners trained in diverse legal traditions. Our conclusion reiterates the significance of recognising emotional labour as a core component of professionalism, its place within broader attempts to address issues of institutional culture and staff well-being through future policy change, as well as for improving the quality of the work by ICL practitioners.

2. LAWYERS AND EMOTIONAL LABOUR

The law has classically been seen as a rational, emotionless project, with detachment viewed as key to the objectivity required by the lawyer, who must remain 'aloof from the maelstrom of feelings and emotions' of others in the courtroom.[16] Literature has focused on the fact that emotion and affect are seen as unpredictable and illogical, and the antithesis of

[11] Hagan and Kay, *supra* note 7, at 288.

[12] In the words of a prosecutor (ICL11) interviewed for the original research on which this article is based.

[13] International Criminal Court (ICC), *Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report 30 September 2020* ('IER Report'), available online at https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf (last visited 19 October 2024), § 223.

[14] There has been a recent focus on staff well–being within the ICC, including the creation of the Staff Well-being and Engagement Committee in 2021 (Assembly of States Parties of the International Criminal Court, *Report of the Court on Human Resources Management*, 28 October 2022, ICC-ASP/21/7), an initiative supported by the Court's Staff Union Council in its response to the IER report (*supra* note 13): Staff Union Council of the International Criminal Court, *First Submission to the Review Mechanism on the Independent Expert Report*, 31 March 2021, available online at https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/SUC%20report%20on%20IER%20recommendations%20-%2031Mar21%20-%20ENG.pdf (last visited 15 July 2025). Well–being is also referenced in the Court's Strategic Plan: 'International Criminal Court Strategic Plan 2023-25' (n.d.), 'International Criminal Court Strategic Plan 2023-25 (last visited 1 April 2025), §§ 14, 56, and as part of Strategic Goals 1 and 7, and Strategic Priority 2.4; ICC, 'Statement of the Prosecutor of the International Criminal Court, Karim A.A. Khan KC, on NGO Roundtable on Trauma-Informed Approach to Investigations and Prosecutions', 28 November 2023, available online at https://www.icc-cpi.int/news/statement-prosecutor-international-criminal-court-karim-aa-khan-kc-ngo-roundtable-trauma (last visited 15 July 2025).

[15] M.J. Christensen, 'Localised and Relational Labour in International Criminal Justice: A Fluid Typology of Intellectual, Manual, and Emotional Work', in this issue of the *Journal of International Criminal Justice* (*JICJ*).

[16] E. Jones, 'An Emotionally Vulnerable Profession? Professional Values and Emotions Within Legal Practice', 26 *Legal Ethics* (2023) 238–257, at 243.

professionalism's core tenets.[17] However, one of the paradoxes of legal professionalism, particularly for lawyers in highly emotionally charged areas of practice, is that they are expected to distance themselves from the emotion in the case at the same time as 'investing' in this emotion to do their job well.[18] Such emotional investment — how lawyers regulate their own emotions and respond to the emotional states of others — has become an increasingly prominent focus in both academic and professional discourse.[19] The field of law and emotion has emerged not only as a recognized area of scholarly inquiry but also as a site of practical engagement, intersecting with a growing body of research on lawyers' well-being.[20] The literature has begun to illuminate the ways in which emotional labour is embedded in the performance of legal professionalism itself, revealing how emotional investment is not merely a response to the demands of practice but a constitutive element of competent legal work. Importantly, while scholars from the parallel discipline of human rights acknowledge the potential personal costs of such labour, as we will discuss,[21] there are also arguments to be made in underscoring emotional labour's centrality to the normative, ethical, relational and institutional dimensions of legal professionalism.[22]

Hochschild first defined emotional labour as 'the management of a way of feeling to create a publicly observable facial and bodily display … for a wage'.[23] Workers involved in direct contact with people perform emotional labour by managing emotions — both their own and others (that we later describe as 'intra-person' and 'inter-person' emotion management[24]) — in a way that fulfils the broad aims of the organization for which they work. Their emotional displays are therefore subject to a certain amount of control by their employer.

Such emotion management is determined by the 'feeling rules' or 'display rules' a worker is required to follow. Feeling rules, as Hochschild defines them, are 'rules or norms according to which feelings are judged appropriate to accompanying events'.[25] Display rules are a series of 'behavioural expectations about which emotions ought to be expressed and which ought to be hidden' in any given situation.[26] Thus, emotional labour is performed in various ways to conform to the expected display rules of the occupation, profession, or institution.

Emotional labour can be performed through surface or deep acting. 'Surface acting' is pretending to feel something that we do not, thereby producing the display of emotion expected

[17] R. Grossi, 'Understanding Law and Emotion', 7 *Emotion Review* (2015) 55–60; T.A. Maroney, 'Law and Emotion: A Proposed Taxonomy of an Emerging Field', 30 *Law and Human Behavior* (2006) 119–142.

[18] C. Gunby and A. Carline, 'The Emotional Particulars of Working on Rape Cases: Doing Dirty Work, Managing Emotional Dirt and Conceptualizing "Tempered Indifference"', 60 *The British Journal of Criminology* (2020) 343–362.

[19] See note 10.

[20] Jones, *supra* note 16; L. Soon et al., 'Towards a Context-Specific Approach to Understanding Lawyers' Well–being: A Synthesis Review and Future Research Agenda', 31 *Psychiatry, Psychology and Law* (2024) 550–573; N. Chlap and R. Brown, 'Relationships Between Workplace Characteristics, Psychological Stress, Affective Distress, Burnout and Empathy in Lawyers', 29 *International Journal of the Legal Profession.* (2022) 159–180.

[21] See for example the Center for Human Rights and Global Justice, *The Human Rights Resilience Project* (New York University, n.d.) https://chrgj.org/human-rights-resilience-project/ (last visited 11 July 2025); M. Satterthwaite et al., 'From a "Culture of Unwellness" to Sustainable Advocacy: Organizational Responses to Mental Health Risks in the Human Rights Field', *Public Law & Legal Theory Research Paper Series* (2019) Working Paper No. 19–12; E. Baker et al., 'Safer Viewing: A Study of Secondary Trauma Mitigation Techniques in Open Source Investigations', 22 *Health and Human Rights* (2020) 293–304; R. Bagrodia et al., 'Crucial Need to Improve Mental Health Research and Training for Human Rights Advocates', 5 *The Lancet Psychiatry* (2018) 466–467.

[22] Jones, *supra* note 16, at 245–246.

[23] Hochschild, *supra* note 9, at 7.

[24] A formulation also used by H.N. Nzitatira et al., 'Judging Genocide: Emotional Labor During Transitional Justice', 48 *Law & Social Inquiry* (2023) 1210–1231.

[25] Hochschild, *supra* note 9, at 7.

[26] A. Rafaeli and R.I. Sutton, 'The Expression of Emotion in Organizational Life', in L.L. Cummings and B.H. Staw (eds), *Research in Organizational Behavior*, Vol. 11 (JAI Press, 1989) 1–42, at 8.

by the institution or occupation in which we work.[27] In contrast, 'deep acting' is where we attempt to align our feelings with the emotions we are displaying (and are expected to display) in work settings.[28] 'Detachment' is a form of emotional disengagement where all personal feelings are suppressed, typically in particularly stressful or uncomfortable work situations. Here, all 'niceties' are stripped away to display a purely 'professional' face, as a form of self-protection.[29] Finally, the expression of genuinely felt emotion, where it is 'situationally or professionally appropriate and helpful',[30] is also seen as requiring the performance of emotional labour to conform to expected emotional displays.[31]

Although Hochschild initially focused her emotional labour research on frontline human service workers, her theory has since been expanded to include lawyers and other 'status professionals'.[32] Of course, lawyers are not a homogenous class: there are obvious distinctions between senior partners (often male, white and well-remunerated) who might be described using Orzechowicz's phrase as 'privileged emotion managers',[33] and paralegals (often female, non-white, less well paid) who may bear the brunt of supporting clients experiencing distress.[34] In this regard, the gendered and unequal nature of such disparities is well documented.[35] Nevertheless, the codes of conduct by which lawyers and other legal professionals of all types are required to abide, albeit differentially, impose restrictions on how emotional labour is to be performed. Furthermore, professionals such as lawyers are expected to work 'off script' and therefore are required to engage in particularly varied and increasingly nuanced forms of emotional labour because of their autonomous practice.[36]

All four forms of emotional labour — surface acting, deep acting, detachment and genuinely — felt emotion-identified in the wider literature are discussed in relation to legal professionals. However, this body of scholarship, particularly that available in English, predominantly reflects studies conducted in Global North jurisdictions.[37] This geographical concentration has implications for how the concept of lawyers' emotional labour translates to the ICL context, a point we explore further in the following section. Within these studies, emotional labour is framed as a routine and expected aspect of legal work, especially within key professional settings such as courtrooms, offices and client interactions. Lawyers are

[27] Hochschild, *supra* note 9, at 33; C. Westaby, 'Feeling Like a Sponge: The Emotional Labour Produced by Immigration Lawyers in Their Interactions With Clients Seeking Asylum', 20 *International Journal of the Legal Profession.* (2010) 153–174.

[28] See for example: Harris, *supra* note 10, at 570; Kadowaki, *supra* note 10, at 335.

[29] Typically seen in the medical professions: A. Kerasidou and R. Horn, 'Making Space for Empathy: Supporting Doctors in the Emotional Labour of Clinical Care', 17 *BMC Medical Ethics* (2016) 1–5, but also as seen among lawyers: Kadowaki, *supra* note 10, at 338.

[30] Kadowaki, *supra* note 10, at 333.

[31] B.E. Ashforth and R.H. Humphrey, 'Emotions in the Workplace: A Reappraisal', 48 *Human Relations* (1993) 88–115; Westaby, *supra* note 27.

[32] Harris, *supra* note 10.

[33] D. Orzechowicz, 'Privileged Emotion Managers: The Case of Actors', 71 *Social Psychology Quarterly* (2008) 143–156.

[34] J.L. Pierce, *Gender Trials: Emotional Lives in Contemporary Law Firms* (University of California Press, 1995); H. Stulikova and M. Dawson, 'Stretching the Double Hermeneutic: A Critical Examination of Lay Meanings of "Emotional Labour"', 28 *Sociological Research Online* (2023) 1130–1148.

[35] Pierce, *supra* note 34; J.L. Pierce, 'Emotional Labor in a Male–Dominated Occupation', in N. Sacks (ed), *Gender And Work In Today's World: A Reader* (Routledge, 2018) 65–86; J.L. Pierce, 'Feminist Questions, Emotional Labor, and the Legal Profession: Research on Corporate Litigators, Defense Lawyers, Law Students, and Paralegals', in H. Flam (ed), *Research Handbook on the Sociology of Emotion: Institutions and Emotional Rule Regimes* (Edward Elgar, 2024) 198–213; Westaby and Subrayan, *supra* note 10.

[36] C. Wouters, 'The Sociology of Emotions and Flight Attendants: Hochschild's Managed Heart', 6 *Theory, Culture & Society* (1989) 95–123.

[37] Soon et al., *supra* note 20, at 555, noting that 90% of all studies in the English language on lawyer well–being in the last 50 years have been from the United States, Canada, Australia and the UK. See also Å. Wettergren and S. Bergman Blix, 'Empathy and Objectivity in the Legal Procedure: The Case of Swedish Prosecutors', 17 *Journal of Scandinavian Studies in Criminology and Crime Prevention* (2016) 19–35; C. Bessière et al., 'Putting the Client to Work: Power Dynamics in the Family Lawyer–Client Relationship', 58 *Law and Society Review* (2024) 663–689.

understood to engage in 'performance and impression management',[38] navigating what Flower terms 'structurally embedded emotional regimes' — normative frameworks that shape and constrain emotional expression in legal practice.[39] These regimes are not merely restrictive; they serve to uphold the perceived integrity, fairness and legitimacy of legal institutions by regulating emotional displays in ways that align with professional ideals.[40]

Within the broader discourse on legal professionalism, professional identity and practice as seen through an emotional labour lens, there is an obvious overlap with the increased focus on lawyer well-being. While some of the scholarship has focused on the positive consequences of emotional labour — such as job satisfaction, meaningfulness, motivation and collegiality[41] — it is the adverse effects that have drawn particular attention from organizations seeking to reform workplace cultures and support legal practitioners. Poor states of mental health or psychological distress are especially salient in high-pressure legal environments, where practitioners routinely engage with distressing subject matter and bear significant responsibility for the outcomes of legal proceedings.[42] Empirical research has documented how sustained emotional labour in such contexts can lead to symptoms including secondary trauma, classed as 'psychological signs and symptoms that result from ongoing involvement with traumatised individuals'[43] and result in lawyers experiencing intense emotional reactions such as denial or over-identification.[44] Relatedly, burnout is recognized as a combination of some or all of disparate symptoms including emotional exhaustion, cynicism, stress, depression, 'depersonalization' (where the worker becomes more detached and pessimistic) and feeling ineffective and lacking a sense of accomplishment.[45] Moreover, the enduring influence of a historically masculinized culture within certain sectors of the legal profession — characterized by competitiveness, overwork, and a valorisation of emotional stoicism — continues to shape professional norms and workplace expectations. This culture reinforces long working hours, difficulty disengaging from work, pressure to meet billable hour targets and the demands of high-stakes clients. It also contributes to a pervasive reluctance among legal professionals to seek support for mental health concerns, often due to fears of professional stigma or adverse career consequences.[46]

There remains a relative absence of any explicit reference to emotional labour performance and its impact among law firms, law societies and regulatory institutions, where it has been subsumed within more general well-being concerns.[47] Nevertheless, as the scope and

[38] I. Goffman, *The Presentation of the Self in Everyday Life* (Doubleday, 1959), cited in C. Barry et al., 'The Emotional Labour of Judges in Jury Trials', 50 *Journal of Law and Society* (2023) 477–499, at 492.

[39] Flower, *supra* note 10, at 282.

[40] Roach Anleu and Mack, *supra* note 10, at 614; Flower, *supra* note 10, at 285.

[41] R.H. Humphrey et al., 'The Bright Side of Emotional Labor', 36 *Journal of Organizational Behavior* (2015) 749–769; S. Shuler and B.D. Sypher, 'Seeking Emotional Labor: When Managing the Heart Enhances the Work Experience', 14 *Management Communication Quarterly* (*MCQ*) (2000) 50–89; J. Phillips et al., 'Why Study Emotional Labour in Criminal Justice and Criminology', in Phillips et al. (eds), *supra* note 10, at 3–17.

[42] Such as lawyers working on asylum cases, N. Graffin, 'The Emotional Impacts of Working as an Asylum Lawyer', 38 *Refugee Survey Quarterly* (2019) 30–54; H. Baillot et al., 'Second-Hand Emotion? Exploring the Contagion and Impact of Trauma and Distress in the Asylum Law Context', 40 *Journal of Law and Society* (2013) 509–540; Westaby, *supra* note 27, or on rape cases Gunby and Carline, *supra* note 18.

[43] Graffin, *supra* note 42, at 34, citing Y. Fischman, 'Secondary Trauma in the Legal Professions, a Clinical Perspective', 18 *Torture* (2008) 107–115.

[44] Fischman, *supra* note 43, at 108–109.

[45] Jones, *supra* note 16; A. Sharma et al., 'Stress and Burnout as Predictors of Job Satisfaction Amongst Lawyers', 14 *European Journal of Social Sciences* (2010) 348–359; L. Norton et al., 'Burnout and Compassion Fatigue: What Lawyers Need to Know', 84 *UMKC Law Review* (2015) 987–1002.

[46] R. Collier, *Anxiety and Wellbeing Amongst Junior Lawyers: A Research Study*, Newcastle Law School Research Report, June 2019, available online at https://www.ncl.ac.uk/mediav8/law/files/research-briefings-pdf/Anxiety%20and%20Wellbeing.pdf, (last visited 31 March 2025); LawCare, *Life in the Law 2020/2021*, available online at https://www.lawcare.org.uk/media/14vhquzz/lawcare-lifeinthelaw-v6-final.pdf (last visited 31 March 2025).

[47] See for example, T. Popa et al. '"A Big Nebulous, Multifaceted Concept": Reflections from Victorian Personal Injury Lawyers on Wellbeing, Burnout and Vicarious Trauma', 31 *Psychiatry, Psychology and Law* (2024) 417–439.

impact of lawyers' emotional labour performance is better understood, calls are increasingly being made for law firms to recognize their role as drivers of this emotional labour performance, and to take responsibility not simply for the well-being consequences but also for the normative markers of professionalism.[48] As Holt et al. suggest, this is not simply about more institutional training and mental health support in legal practice; rather, there is an imperative to bring about 'a broader cultural shift in how the emotional impact of the work is acknowledged and discussed' — and, we would add, valued as a necessary and important component of professionalism.[49]

As we will now discuss, at a time when integrity, fairness and legitimacy are under scrutiny at the ICC,[50] examining emotional labour within ICL offers a timely and valuable lens through which to understand the professional practices of its legal actors beyond well-being; this broader perspective also foregrounds the role of emotional labour in shaping and sustaining professional identity, judgment and conduct.

3. EMOTIONAL LABOUR AND THE ICL CONTEXT

The paradox of professionalism for lawyers is particularly apparent in ICL. On the one hand is the traditional understanding that objectivity, as an essential skill for an international criminal lawyer, demands that 'excessive' emotional involvement should be avoided, to maintain appropriate professional distance and ensure a focus on procedural fairness.[51] On the other hand, emotion is one of the principal animating forces at the heart of ICL, shaping its processes, legitimacy and public perception.[52]

As has been noted elsewhere, ICL professionals inevitably experience emotional responses to their work and those they encounter through it.[53] Unsurprisingly, though, there is no direct mention of emotional labour in any of the professional codes of conduct for ICL lawyers at the ICC. However, many of the codified professional duties allude to the management or presentation of emotions. Article 26 of the Code of Conduct of the Office of the Prosecutor (COC-OTP)[54] on the issue of 'honourable conduct' requires prosecutors to be 'dignified and courteous' (to other professionals and the accused), 'collegial and supportive' (towards OTP colleagues and the Court) and 'dignified, courteous and sensitive' (to victims and witnesses). Article 66 also stipulates that the OTP 'aims to establish a relationship of trust and respect with victims and witnesses'. Similarly, the equivalent code of conduct for defence and victims lawyers (Code of Professional Conduct for Counsel [CPCC[55]])[56] requires counsel to be 'respectful and courteous' in their professional conduct (Article 7), defining the relationship of client and counsel as one of 'candid exchange and trust' (Article 14), and in relations with victims and witnesses, counsel

[48] N. Melita, 'Emotional Intelligence, Distancing, and Learning a New Skill as Strategies to Combat the Deleterious Effects of Emotional Labor on Attorney Wellbeing', 17 *Frontiers in Behavioral Neuroscience* (2023) 1221145.

[49] L. Holt et al., 'Mental Health Effects of Working as a Legal Professional in the Field of Asylum Law: A Systematic Review', 2 *BMJ Public Health* (2024) 1–14.

[50] ICC, *supra* note 13.

[51] K. Kožina and J. Đapo, 'International Criminal Law, Justice and Lawyers: Interview With Sir Geoffrey Nice', 52(103) *Pravnik* (2018) 23–27, at 27.

[52] Bens, *supra* note 4; Clarke, *supra* note 3.

[53] D. Outram, 'In Conversation With Sir Geoffrey Nice KC', *The Oxford Student*, 23 March 2024, available online at https://www.oxfordstudent.com/2024/03/23/in-conversation-with-sir-geoffrey-nice-kc/ (last visited 19 October 2024).

[54] Office of the Prosecutor, *Code of Conduct for the Office of the Prosecutor*, International Criminal Court, 5 September 2013, available online at https://www.icc-cpi.int/sites/default/files/iccdocs/oj/otp-COC-Eng.PDF (last visited 1 April 2025).

[55] International Criminal Court, *Code of Professional Conduct for Counsel Appearing at the ICC*, International Criminal Court, 2011, available online at https://www.icc-cpi.int/sites/default/files/Publications/Code-of-Professional-Conduct-for-counsel.pdf (last visited 1 April 2025).

[56] International Criminal Court, *Code of Professional Conduct for Counsel Appearing at the ICC*, International Criminal Court, 2011, available online at https://www.icc-cpi.int/sites/default/files/Publications/Code-of-Professional-Conduct-for-counsel.pdf (last visited 1 April 2025).

should 'have particular consideration for victims of torture or of physical, psychological or sexual violence, or children, the elderly or the disabled' (Article 29(2)). All these expectations require more than cognitive skills or technical expertise; rather, they provide implicit guidance — in the form of display rules — for legal professionals required to undertake emotional labour.

Although there are growing indications that staff welfare and well-being are now taken more seriously within ICL's institutions,[57] the role of emotional labour as a constitutive element of legal professionalism remains largely absent from these discussions. Hagan and Kay's original research from over 20 years ago compares the experiences of female lawyers in large Toronto law firms with those working in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY).[58] However, their focus centres primarily on the 'emotional toll' of legal work; framing emotional labour in terms of conflicting feelings of ambivalence, exhilaration and guilt, and the psychological burden of engaging with traumatic subject material, but their analysis is firmly situated within a well-being paradigm. Drawing on earlier work in the broader legal sphere,[59] although Hagan and Kay draw attention to the gendered dimensions of emotional labour — arguing that differences in emotional expression are shaped by socialization and organizational culture rather than inherent personality traits[60] — they do not explore how emotional labour functions as a professional competency or as a normative expectation within legal practice.

This gap has persisted in ICL scholarship, despite Hagan and Kay's earlier call for greater attention to the constructive and destructive roles emotions play in shaping both practitioners and the institutions in which they operate. Although adjacent fields such as transitional justice[61] and humanitarian aid[62] have begun to engage more seriously with emotional labour, ICL has remained largely silent on its professional dimensions. More recently, however, Ullrich's research has begun to address this lacuna by examining how the emotional labour performed by victims' legal representatives and their field-based intermediaries is systematically undervalued and rendered invisible within the institutional logics of international criminal justice.[63] Her findings underscore the need to reconceptualize emotional labour not merely as a source of psychological strain, but as a form of professional and relational work that is essential to the functioning — and legitimacy — of ICL processes.

Of course, as has been discussed elsewhere, many ICL lawyers (though by no means all, and often to a varying degree) enjoy considerable privileges, status, remuneration and social capital — especially those based in The Hague.[64] Their work is nevertheless situated within an institutional context that requires sustained emotional regulation. The ICC's Strategic Plan for 2023–2025 characterizes its operational environment as 'increasingly complex and challenging', 'unpredictable' and 'volatile'.[65] These features align with the concept of

[57] *Supra* note 14.

[58] Hagan and Kay, *supra* note 7.

[59] Pierce, *supra* note 34.

[60] Hagan and Kay, *supra* note 7, at 266.

[61] Nzitatira et al., *supra* note 24; N. Vaisman and L. Barrera, 'On Judgment: Managing Emotions in Trials of Crimes Against Humanity in Argentina', 29 *Social & Legal Studies* (2020) 812–834.

[62] E. Pascucci, 'The Local Labour Building the International Community: Precarious Work Within Humanitarian Spaces', 51 *Environment and Planning A: Economy and Space* (2019) 743–760; C. Remington et al., 'Cross-Cultural Emotional Labor: A Study of NGO Workers in Haiti', 47 *International Journal of Public Administration* (2024) 1110–1121; P. Das, 'Investing Emotions at Work: Exploring Emotional Labour of Women in Indian Anti-Trafficking NGOs', 34 *Development in Practice* (2024) 669–679.

[63] L. Ullrich, *Victims and the Labour of Justice at the International Criminal Court: The Blame Cascade* (Clarendon Studies in Criminology, Oxford University Press, 2024).

[64] M.J. Christensen, 'The Creation of an Ad Hoc Elite: And the Value of International Criminal Law Expertise on a Global Market', in K.J. Heller et al. (eds), *The Oxford Handbook of International Criminal Law* (Oxford University Press, 2020) 89–105.

[65] ICC, *International Criminal Court Strategic Plan 2023–2025* (n.d.), available online at https://www.icc-cpi.int/sites/default/files/2023-08/2023-strategic-plan-icc-v.2.pdf (last visited 6 August 2025), at §§ 1, 19, 21, 23 and at page 8.

'extreme work', a useful additional lens through which to examine both the emotion management component of legal professionalism and the impact of ICL's subject matter on professionals. 'Extreme work' typically concerns occupations carrying a high risk of death or serious physical injury, such as the military or policing.[66] However, the concept of 'extremity' has also been expanded to include psychological distress[67] or to more everyday work characterized by the physical, mental or emotional toll of the job, where increased intensity, erratic demands or overwork is prevalent.[68] The scholarship identifies specific emotional labour demands within 'extreme work' environments,[69] including professions such as forensic psychiatry,[70] forensic archaeology[71] and expatriate employment in conflict zones.[72] Such demands require appropriate organizational and institutional support; not only to mitigate adverse consequences like burnout, emotional exhaustion and resignation, but also in recognition of the professional requirements of the job.[73] Together with the more developed literature on emotional labour, these studies underscore the relevance of exploring its impact in ICL.

Translating and applying the concept of emotional labour to international criminal lawyers and others who work in this field requires consideration of its particular characteristics. ICL operates across and between different cultural contexts. The cultural diversity of those who work in ICCs and tribunals[74] — and their inter-cultural engagement with one another and with the court's witnesses, victims and accused — impacts the functioning of these institutions.[75] As Swigart suggests, the differences in linguistic, legal and work cultures lead to 'dissonances' and 'tensions' between staff members.[76] For example, the historical dominance of the English language and the common law adversarial tradition within ICL has presented difficulties for diverse judicial benches as well as for the advocates that appear before them.[77] Successfully navigating these differences in expectations and understandings calls for the skill of (inter-)cultural competence, which has also been seen as key for lawyers working in multinational teams.[78] In related fields, a direct link has also been found between

[66] S.M. Wadsworth and K. Southwell, 'Military Families: Extreme Work and Extreme "Work-Family"', 638 *The Annals of the American Academy of Political and Social Science* (2011) 163–183; P.J. Turnbull and V. Wass, 'Normalizing EW in the Police Service?', 22 *Organization* (2015) 512–529.

[67] F. Bozdağ and N Ergün, 'Psychological Resilience of Healthcare Professionals During COVID-19 Pandemic', 124 *Psychological Reports* (2021) 2567–2586.

[68] S.A. Hewlett and C.B. Luce, 'Extreme Jobs', 84(12) *Harvard Business Review* (2006) 49–59; T. Garavan et al., 'Extreme Work in Organizations: Mapping the Field and a Future Research Agenda', 35 *The International Journal of Human Resource Management* (*IJHRM*) (2024) 1603–1625 at 1604; E. Granter et al., 'Extreme Work/Normal Work', 22 *Organization* (2015) 443–456.

[69] J. Ward et al., 'Working at the Edge: Emotional Labour in the Spectre of Violence', 27 *Gender, Work & Organization* (2020) 82–97.

[70] M.G. de Vries et al., 'Surface Acting is Related to Emotional Exhaustion Among Staff Members Working in High Secure Forensic Psychiatric Care', 33 *The Journal of Forensic Psychiatry & Psychology* (2022) 389–405.

[71] J.P. Romero, 'The Emotional Management of Death and Absence by Forensic Anthropologists in Colombia and Peru', 1 *The Irenaut* (2023) 91–108.

[72] N. Khakimova et al., 'The Role of Psychological Wellbeing and Personal Resilience Towards Successful Expatriate Assignees in High-Risk Countries', 24 *International Journal of Psychosocial Rehabilitation* (2020) 1167–1183.

[73] Y. Brunetto et al., 'Managing Emotional Labour: The Importance of Organisational Support for Managing Police Officers in England and Italy', 34 *IJHRM* (2022) 832–854.

[74] For example, the ICC itself employs people from 100 countries. International Criminal Court, 'About the Court', available online at https://www.icc-cpi.int/about/the-court (last visited 13 February 2025).

[75] J. Almqvist 'The Impact of Cultural Diversity on International Criminal Proceedings', 4 *JICJ* (2006) 745–764; L. Swigart, 'Linguistic and Cultural Diversity in International Criminal Justice: Toward Bridging the Divide', 48 *The University of the Pacific Law Review* (2016) 197–217; J. Fraser and B. Leyh (eds), *Intersections of Law and Culture at the International Criminal Court* (Edward Elgar Publishing, 2020); L. Swigart, 'Now You See it, Now You Don't: Culture at the International Criminal Court', in Fraser and Leyh, *ibid.*, 14–37.

[76] Swigart 2016, *supra* note 74.

[77] Swigart 2020, *supra* note 74, at 14–15; M. Bohlander, 'Language, Culture, Legal Traditions, and International Criminal Justice', 12 *JICJ* (2014) 491–513.

[78] Cultural competence is defined as 'the set of skills, behaviors, and attitudes that allow an individual to interact and work effectively with those from other backgrounds': Remington et al., *supra* note 61, at 1111.

intercultural competence and the ability of staff to perform emotional labour within complex and unfamiliar settings overseas.[79]

The wider literature suggests that both the experience and the impact of emotional labour among lawyers varies according to area of practice, organizational culture and individual coping mechanisms.[80] This broader discourse acknowledges cultural variations in emotional expression and regulation, as has been explored in the field of public service within countries as diverse as China, Japan, Nigeria, Turkey and the USA.[81] As we will see, the responses of participants in the research study undertaken for this article suggest that uniformity in understanding emotional labour cannot be assumed between diverse ICL professionals. Such differential understandings have the potential to be an additional source of tension and dissonance among ICL's professionals. This relates to the differential emotional labour performance across ICL's diverse professional roles and identities, as Hagan and Kay's original study suggests.[82] Other studies in both ICL and related disciplines emphasize the importance of intersectional issues such as social identity, race, class and status.[83] The differential performance of emotional labour is also starkly apparent across the varied sites of ICL, as identified by Ullrich,[84] and as Christensen additionally notes in his article for this Symposium.[85]

4. METHODOLOGY

This article draws upon data from a research project undertaken by the first author, who interviewed 62 ICL practitioners working (or who had worked) at a range of international criminal tribunals. The aim was to investigate practitioners' motivations and professional self-perceptions and to explore the phenomenon of 'cause lawyering' as it relates to ICL.[86] Recruitment of participants for the study was based on purposive sampling, with their role as international criminal lawyers being the single criterion for selection. The data were generated from semi-structured interviews with 26 prosecutors, 25 defence counsel, 8 victims' lawyers, 1 retired judge and 2 Registry staff members. Interviewees were drawn from a cross-section of seniority, previous professional domestic background, and institutional experience of between 12 months and 24 years at the ICC, The Extraordinary Chambers in the Courts of Cambodia, the Kosovo Specialist Chambers, the ICTY, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, and the Special Tribunal for Lebanon. Thirty-five of the participants were male, 27 female, but no further biographical or personal data were collected. Institutional ethical approval was granted in 2018, and interviews with participants took place between September 2018 and March 2019. Interviews were conducted either in person or online; interviews were audio recorded and subsequently

[79] Remington et al., *supra* note 61.

[80] Harris, *supra* note 10; Westaby, *supra* note 27; Graffin, *supra* note 42.

[81] Guy et al. (eds), *The Palgrave Handbook of Global Perspectives on Emotional Labor in Public Service* (Palgrave Macmillan, 2019).

[82] Hagan and Kay, *supra* note 7.

[83] Ullrich, *supra* note 62; Das, *supra* note 61.

[84] Ullrich, *supra* note 62.

[85] Christensen, *supra* note 15; see also L. Ullrich, '#Workingforjustice: Victim Participation at the International Criminal Court (ICC)', *EJIL:Talk! Blogpost of the European Journal of International Law*, 11 September 2024, available online at https://www.ejiltalk.org/workingforjustice-victim-participation-at-the-international-criminal-court-icc/ (last visited 14 February 2025).

[86] 'Cause lawyering' is the practice of law primarily to advance a lawyer's own moral, political or ideological commitments rather than more conventional, client-focused lawyering, see for example, A. Marshall and D. Crocker Hale, 'Cause Lawyering', 10 *Annual Review of Law and Social Science* (2014) 301-320; S.A. Scheingold and A. Sarat, *Something to Believe In: Politics, Professionalism, and Cause Lawyering* (Stanford University Press, 2004). The findings of the initial research on cause lawyering in international criminal justice appear in: A. Batesmith, 'International Prosecutors as Cause Lawyers', 19 *JICJ* (2021) 803–830.

transcribed, with all data fully pseudonymized. All participants consented to being interviewed on condition of anonymity.

The research sought to examine lawyers' motivations for the work they do through individual practitioner narratives to take seriously the 'everyday life' of ICL lawyers given its 'explanatory potential'.[87] Questions on motivation, identity and professional self-perception were open-ended, allowing participants to discuss their experiences and views thoroughly. The flexibility of the semi-structured approach allowed exploration of unexpected topics,[88] and emotion management and emotional labour arose inductively.[89] While this qualitative approach presents limits on generalizability, it enables the interviewer to capture unanticipated but valuable in-depth data on the underexplored topic of emotional labour of international criminal lawyers. The data were then analysed using reflexive thematic analysis.[90] Initial coding using NVivo identified emotional labour as a theme within the data, and through an iterative approach, subthemes were developed relating to how prosecutors, victims' lawyers, and defence lawyers perform emotional labour in their everyday work and its potential impact on their well-being. In some very limited instances, superfluous words in participant quotes have been removed for clarity, taking care to maintain the original sense and meaning of the interview.[91]

5. FINDINGS: PERVASIVENESS OF EMOTIONAL LABOUR AND ITS CONSEQUENCES

A. Inter-Person Emotion Management: Managing the Emotions of Others

In terms of managing the emotions of others, empathy and relational competencies were frequently referenced by the interviewees, as implicitly required by Article 66 of the COC-OTP to establish relationships of 'trust and respect' with victims and witnesses.[92] For example, as one Prosecutor noted:

> I have empathy for people … it's the way you turn questions, or you understand who you have in front of you, whether it's former [low-level perpetrators] reluctant to speak or whether it's a victim. And so, with experience also, it's the way you approach people in order to have them really contributing to ascertaining the truth. (ICL2, Prosecutor)

Similarly, for some defence and victims' lawyers interviewed, empathy and relationship-building were key, echoing the qualities of 'candid exchange and trust' in Article 14 of the CPCC:[93]

> I think the core component is empathy … if you want to be a defence counsel … . What drew me towards what I do has always been empathy, caring about people caring about issues and I think at defence that really comes to the foreground. (ICL21, Defence Lawyer)

[87] J. Meierhenrich, 'Foreword: The Practices of the International Criminal Court', 76 *Law and Contemporary Problems* (2013) i–x.

[88] A. Galletta and W.E. Cross, *Mastering the Semi-Structured Interview and Beyond: From Research Design to Analysis and Publication*, Vol. 18 (NYU Press, 2013).

[89] Emotion and emotional labour also arose inductively for several other qualitative studies exploring the professional functions of lawyers and legal professionals: Barry et al., *supra* note 38; Anleu and Mack, *supra* note 10.

[90] V. Braun and V. Clarke, 'Reflecting on Reflexive Thematic Analysis', 11 *Qualitative Research in Sport, Exercise and Health* (2019) 589–597.

[91] A.C. Eldh, L. Årestedt and C. Berterö, 'Quotations in Qualitative Studies: Reflections on Constituents, Custom, and Purpose', 19 *International Journal of Qualitative Methods* (2020) 1–6.

[92] Office of the Prosecutor, *supra* note 54.

[93] *Supra* note 55; Ullrich, *supra* note 62.

> I'm not emotional in the sense of crying or shouting. I don't cry at the end of a day, and I'm also not shouting and being aggressive … I mean emotional in the sense that I am empathetic and I care. (ICL53, Victims' Lawyer)

Empathy, placing oneself in the position of another, a core skill of the lawyer in developing client trust, consists of a cognitive and emotional element.[94] Here empathy is associated with a caring attitude described by ICL21 and ICL53, and linked to an 'ethics of care' in legal practice,[95] which serves to further improve lawyer–client relationships.[96] However, other interviewees sounded a note of caution:

> I think people come in idealist, wanting to do something good, caring about the victims, [wanting to be] empathetic and that, whether or not that's a good thing I think is also questionable. (ICL56, Victims' Lawyer)
> I think not everybody can do the job that we do, because you need to empathise but not too much to maintain your objectivity. (ICL44, Victims' Lawyer)

Here, we see a correlation between emotional labour being core to the professional function and an aspect of the motivation for the efforts of ICL lawyers. However, in some cases, an 'excess' of empathy may be considered unprofessional and thus requires a need for balance:

> I think you have you have to strike a balance. I mean you have to understand what has happened to these people, but you also have to … know what is it that you're going to be able to prove in a courtroom, and to prosecute a case in a manner that's fair to those who are being prosecuted. (ICL1, Prosecutor)

For this Prosecutor, 'balance' is the delicate relationship between empathy with the victim or witness and what ICL1 referencing procedural fairness in court later described as 'dispassion' and 'fairness', a concept of balancing that has also been described in domestic legal settings.[97]

B. Intra-Person Emotion Management: How ICL Lawyers Deal With Their Own Emotions

Keeping their emotions 'in check' was a common theme for interviewees to avoid becoming overwhelmed by their own reactions to what they were hearing. Some lawyers expressed this as a form of emotional equilibrium to provide effective legal representation. As former ICTY Prosecutor Sir Geoffrey Nice suggests, 'remaining professional' is essential: not letting emotions 'get in the way of seeing the case for what it is'.[98] Although this is also referred to in research on domestic legal settings,[99] drawing the line may be more difficult in ICL practice. For example, as two practitioners explained:

[94] L.N. Henderson, 'Legality and Empathy', 85 *Michigan Law Review* (1986) 1574–1653.

[95] C. Menkel-Meadow, 'Is Altruism Possible in Lawyering?' 8 *Georgia State University Law Review* (1992) 385–419; C. Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 1993); S. Ellmann, 'The Ethic of Care as an Ethic for Lawyers', 81 *Georgetown Law Journal* (1992) 2665–2726.

[96] J.L. Barkai and V.O. Fine, 'Empathy Training for Lawyers and Law Students', 13 *Southwestern University Law Review* (1982) 505–529.

[97] Westaby, *supra* note 27; Wettergren and Bergman Blix, *supra* note 37, at 31.

[98] Kožina and Dapo, *supra* note 51, at 27.

[99] L.C. Peter-Hagene et al., 'Emotion and Legal Judgment', in D. DeMatteo et al. (eds), *The Oxford Handbook of Psychology and Law* (Oxford University Press, 2023).

> It's all about emotion we are talking about in this field … of very cruel, serious, grave crimes and where lives of so many are destroyed, and so it is a way to react and find a value. (ICL53, Victims' Lawyer)
> I think it would be suicide to work with victims and be kind of cold and standoffish, because you wouldn't make a good impression: they wouldn't believe that what you're selling is for real. (ICL9, Prosecutor)

ICL9 also recognized it was nevertheless 'appropriate in our field' to maintain detachment, even if it came across as a little 'artificial', both for self-preservation and to manage witness and victim expectations. As in other legal fields, ICL lawyers undertake 'impression management',[100] achieved using deep or surface acting. Indeed, one victims' lawyer described the expectation to surface act whilst playing multiple roles:

> Another frustration is also that you … are also some kind of a mother sometimes, a social worker, psychologist as well. And the frustration is that you find yourself having all these different roles because your clients do not have access to the relevant service where they live. (ICL35, Victims' Lawyer)

As we saw above, the CPCC describes the relationship between lawyer and client as involving candid exchange.[101] Candour has both a professional and practical dimension for lawyers. Professionally, there are boundaries which ICL lawyers must respect. Practically, there is the management of client expectations. However, within the framework of emotional labour expectations, participants described a different aspect of candour when talking about interacting with clients. As suggested by ICL35, a candid exchange with the client is impossible because they must 'surface act' to mask the frustrations of playing multiple roles. Professional boundaries are therefore being pushed in the performance of emotional labour. Lawyers must develop self-awareness and understanding that surface acting (although they would be unlikely to think in these terms), complicates a candid exchange.

The suppression of emotions such as disappointment and frustration was also expected, as this defence lawyer explained:

> Preparing for my first meeting with the client, and being very over-eager … [I was] … almost immediately disappointed and realised it wasn't quite going to go that way. It's going to be building trust with this guy, [but it's going to be like] pulling teeth. (ICL54, Defence Lawyer)

For some practitioners, focusing on abstract legal issues enabled them to strike a balance between empathy and detachment as a form of emotional self-preservation:

> When you work in the abstract, you don't really have a sense that 'X' victim, 'Y' victim has gone through this, as opposed to the trial lawyer pleading that case in court. But I think sometimes working on these abstract legal issues helps also because it balances it out a bit … there's a slight self-preservation issue. (ICL43, Prosecutor)

This echoes the findings in Wettergren and Bergman Blix's study of domestic Swedish prosecutors, where, notwithstanding their sense of professionalism by conforming to display rules,

[100] Goffman, *supra* note 38.
[101] *Supra* note 55.

feelings of extreme (over-) identification arose suddenly, unwillingly and unexpectedly. A lawyer's failure to manage their 'empathic imagination' in these circumstances may result in a situation 'where the full-blown tragedy of their everyday work is suddenly clear'.[102] In common with others in 'extreme work' environments,[103] the quotes above demonstrate the extent to which interviewees experienced and displayed genuine emotion in their work. The management of these powerful feelings takes considerable emotional labour, the consequences of which were also apparent in the data collected for this study.

C. Emotional Labour as Professional Practice — And the Consequences for International Criminal Lawyers

In framing ICL as an environment of 'extreme work', the relationship between emotional labour, professional performance and well-being emerges as particularly salient, thereby warranting closer scholarly attention. While it can foster a sense of purpose and moral reward, emotional labour carries significant psychological costs, including burnout, emotional dissonance and identity strain.

The main positive consequence of performing emotional labour was identified by interviewees as providing the motivation to work hard in a difficult and demanding job. As one Prosecutor expressed it:

> I don't think it would be an exaggeration to say that every single victim witness that I work with renews that motivation in me, and I find every single one to be incredibly strong and inspiring (ICL17, Prosecutor).

As is the case with those working in the legal profession generally and in other fields such as medicine and social work, ICL lawyers can gain satisfaction from the emotional labour they perform. For them, the impact of their work on victims underscores the value of emotion management in their professional practice, as well as providing 'moral wages' for being caring and compassionate.[104]

Nevertheless, interviewees more frequently identified various negative consequences from performing emotional labour, including that the work 'took something' from them (ICL43, Prosecutor) or that they lost their sense of humour or sense of self (ICL32, Defence Counsel). Such practitioners describe being emotionally 'stripped' of some part of themselves, resonating with Hochschild's definition of depersonalization,[105] where workers find it challenging to respond emotionally in their job roles.

In addition, the performance of emotional labour through surface acting results in an incongruence between the emotions felt and emotional displays expected by the organization, described as emotional dissonance.[106] This inevitably makes the regulation of emotional expression more challenging.[107] Ignoring emotional dissonance can result in the phenomenon of 'emotional deviance', where a worker displays genuine emotions deemed unprofessional by the organization because they do not conform to prescribed display rules.[108] This manifests tensions between organizational goals and an individual's professional identity. Some

[102] Wettergren and Bergman Blix, *supra* note 37, at 29.

[103] De Vries et al., *supra* note 69, and Romero, *supra* note 70.

[104] K. Kolb, *Moral Wages: The Emotional Dilemmas of Victim Advocacy and Counseling* (University of California Press, 2014).

[105] Hochschild, *supra* note 9.

[106] Rafaeli and Sutton, *supra* note 26; S.M. Kruml and D. Geddes, 'Exploring the Dimensions of Emotional Labor: The Heart of Hochschild's Work', 14 *MCQ* (2000) 8–49.

[107] J.A. Morris and D.C. Feldman, 'The Dimensions, Antecedents, and Consequences of Emotional Labor', 21 *Academy of Management Review* (1996) 986–1010, at 992.

[108] Rafaeli and Sutton, *supra* note 26.

participants referred to lawyers screaming abuse or breaking down in tears in the office after an adverse verdict (ICL32, ICL14, both Defence Counsel) or even ICL lawyers walking out of the courtroom after speaking disrespectfully towards judges (ICL57, Defence Counsel).

Another negative consequence of emotional labour performance, particularly discussed by victims' lawyers and defence counsel, was over identifying with clients, or as one victims' lawyer put it, 'I think sometimes people are a little bit too close to what they're trying to do' (ICL56, Victims' Lawyer). Some interviewees suggested that being too close to the case or the client can result in burnout and related mental health issues. Other interviewees spoke about how being 'emotionally connected' or engaging fully with clients or victims on an ongoing basis could make them psychologically unwell. For many interviewees, burnout was often linked to either deep acting or the display of genuine emotions. Genuinely experienced emotion was seen as being capable of compromising judgment and objectivity. A 'loss of perspective' (ICL1, Prosecutor) or a 'clouding of judgment' (ICL15, Prosecutor) was something to be avoided, and any emotional connection to the case had the possibility of getting in the way of 'strategic thinking or strategic perspectives' (ICL17, Prosecutor). For these participants, emotional display rules were being violated, compromising expected professionalism. Undoubtedly, however, there are questions to be asked about the emotional labour being undertaken in these scenarios as an organisationally inappropriate yet obviously human emotional display that is also a product of the system itself.

6. DISCUSSION: EMOTIONAL LABOUR AS HIDDEN PROFESSIONAL PRACTICE IN ICL

An absence of any previous engagement with emotional labour in the ICL field tells us much about how professionalism continues to be understood. Insisting on the practice of ICL as a purely rational endeavour — even as emotions are systematically employed to build cases and justify the causes[109] — speaks to the insecurity at the heart of the discipline, a fear of being seen as too emotional, overly partial and insufficiently objective. As others have previously identified, ICL wrestles with an identity crisis, caught between an anti-impunity mission and a legitimating normative human rights framing.[110] The emotional labour of ICL lawyers is hiding in plain sight. Although overlooked as a component of professionalism, it is both implicitly recognized in the language of the Codes of Conduct and hinted at in the calls to address burnout and other staff well-being issues. A tension arises when the understandable institutional imperative to standardize professionalism through benchmarks of expertise, integrity, independence, impartiality and confidentiality meets human reality. Emotional experiences and the processes of managing emotions are highly individual, particularly given the consequences for all ICL's constituents, but there is a wider point on emotional labour being required as an essential component of legal professionalism that speaks to the need for an institutional response.

Our data indicate that, to maintain consistency with code of conduct requirements, emotional labour performance is, as it is in other settings, a core component of the ICL lawyer's everyday work. Engaging sensitively with witnesses, victims and accused to build rapport and trust through empathy is unquestionably part of the professional function, as it is in state-based criminal law and in many other legal fields. Lawyers must manage the emotions of others as well as regulate their own emotions in conformity with expected professional

[109] Bens, *supra* note 4; Ullrich, *supra* note 62; Schwöbel-Patel, *supra* note 2.

[110] D. Robinson, 'The Identity Crisis of International Criminal Law', 21 *Leiden Journal of International Law* (2008) 925–963; S. Bibas and W. Burke-White, 'International Idealism Meets Domestic-Criminal-Procedure Realism', 59 *Duke Law Journal* (2010) 637–704.

display rules. References in the various codes of conduct for ICL lawyers to be 'dignified', 'courteous', 'collegial', 'zealous', 'impartial' and 'honourable' — often in the face of extremely distressing evidence, and while themselves experiencing powerful feelings — demands a high degree of emotional labour and skilful emotion management. Whether ICL lawyers 'surface act' to project emotions they do not feel, 'deep act' to generate expected emotional displays, detach in the face of raw and traumatic evidence, or in some instances present their own genuinely held emotions without gloss or artifice, this emotional labour is part of their everyday professional reality.

As demonstrated throughout our discussion, the recognition of emotional labour as a core component of legal professionalism — rather than as an irrational or extraneous emotional distraction — is gaining increasing traction within legal scholarship and practice.[111] We argue that this evolving understanding holds particular relevance for practitioners in ICL, where the emotionally charged nature of the subject matter intensifies the demands placed on legal professionals. The gravity and complexity of ICL work not only heighten the emotional burdens borne by practitioners but also underscore the necessity of engaging with emotional labour as a professional skill. As many of our interviewees indicated, experiences of burnout, exhaustion and other adverse psychological effects were not uncommon, and these consequences were seen to directly affect core aspects of professional functioning — including decision-making, active listening, boundary maintenance and ethical judgment.[112] Importantly, these reflections suggest that emotional labour is not peripheral to legal professionalism in ICL, but central to its enactment. For our participants, there appeared to be a shared understanding that professionalism in this context requires a careful balance between empathy, impartiality and fairness. However, institutional and policy-level discussions have yet to integrate these dimensions into prevailing conceptions of professional conduct. We suggest that such conversations are overdue, and that a more explicit engagement with emotional labour can enrich understandings of what it means to act professionally in the context of ICL.

The specific context of ICL speaks to the humanizing quality of emotional experience in the face of the *de*humanization so central to the perpetration of, and suffering following, mass crimes. It is the interaction of this experience with professionalism that constitutes a version of 'taking emotion seriously', as Saab writes in relation to international law.[113] We argue that 'taking emotion seriously' will involve acknowledging the necessity and value of emotional labour as an integral part of professional practice, and not simply recognizing the well-being implications of emotional processing. How lawyers manage emotions not only shapes their own experiences but also impacts the trust and confidence others have in ICL's processes, institutions and outcomes.[114]

We also argue that failing to explicitly acknowledge emotional labour as a necessary component of ICL practice has three further consequences. First, for ICL's professionals, because emotional labour is not sufficiently recognized and valued as *professional work*, opportunities are being missed for lawyers to be aware of and thus fully develop the emotional competencies required for the job. There is anecdotal evidence that ICL lawyers are increasingly expected to employ 'soft skills' such as emotional resilience and emotional intelligence,[115] attributes that have also been stated as desirable for hiring future staff.[116] However, this is a long way from recognizing the professional skills required in (and the

[111] *Supra* note 10.

[112] Fischman, *supra* note 43, at 114.

[113] A. Saab, 'Emotions and International Law', 10 *ESIL Reflections* (2021) 1–10, at 7, citing G. Simpson, 'The Sentimental Life of International Law', 3 *London Review of International Law* (2015) 3–29, at 10–11.

[114] Bens, *supra* note 4.

[115] Lidén, *supra* note 5.

[116] ICC, *supra* note 13, § 223, at page 72.

concomitant demands of) undertaking emotional labour across the full spectrum. As we have seen, there is no explicit requirement for emotional labour performance in the ICC's codes of practice, which merely gesture obliquely towards this, using expressions that lawyers are required to act 'with sensitivity' and to 'build trust'. This does not capture how emotional labour is vital in developing relationships, for example, with a fearful victim, a witness who does not understand the trial process, or a client mistrustful of the system.

This is closely linked to the second major consequence — for the courts and tribunals themselves. Failure to take the emotional labour of ICL lawyers seriously risks compromising the mission statements and strategic aims of the institutions, which prioritize the recruitment and retention of highly competent staff.[117] If left unaddressed, burnout, depersonalization or other well-being issues will, as has been seen in other contexts, result in compromised functioning of the institutions and lawyers unable to fulfil their demanding work or leaving the profession entirely.

Thirdly, a failure to acknowledge and/or equip lawyers with the skills required to undertake emotional labour as part of their professional function will almost certainly diminish the experiences of victims, witnesses and accused, whose relationships with their interlocutors are vital for the proper functioning and credibility of the institutions. Our interviewees frequently referred to the need for balance in their practice — balance between law and emotion, between reason and affect, between dispassion and empathy — but rather than viewing these as mutually exclusive binary opposites, a more rounded (and realistic) version of legal professionalism calls for an understanding of the extent to which such concepts are complementary. As we have seen, the inter-personal dynamics between ICL lawyers and other actors depend on emotional skills and qualities that are already required in the ICC's codes of conduct — respect, courtesy, dignity, trust and sensitivity — to which we can add (at the very least) empathy, emotional awareness and emotional regulation, all key components of emotional labour. Such skills and qualities are not innate: they need to be developed. Without them, lawyers' relationships with ICL's stakeholders are likely to be poorer, to the detriment of all.

7. CONCLUSIONS AND A RESEARCH AGENDA

In this study, we have identified how emotional labour is an essential, though largely unacknowledged, component of professional practice in ICL. Although it is implicitly required in relevant professional codes of conduct, it remains absent from institutional discourse and theoretical frameworks. Drawing on empirical data, we have shown how ICL lawyers routinely engage in the regulation and management of their own emotions and those of others, making emotional labour central to the enactment of professionalism in this field. At the same time, the cumulative effects of this labour are becoming increasingly difficult to overlook — not only in terms of its implications for lawyers' self-perception and professional identity, but also in relation to the psychological toll it may extract, including burnout and other forms of emotional distress.

Building on Hagan and Kay's foundational work on the emotional toll of ICL,[118] our research highlights the need to explore the context- and culture-dependent nature of emotional labour in ICL. As in other legal settings,[119] the expectations and manifestations of emotional labour in ICL are likely to be shaped not only by institutional cultures and occupational display rules but also by the legal traditions and professional identities that practitioners bring to international

[117] ICC, *supra* note 64.
[118] Hagan and Kay, *supra* note 7.
[119] Barry et al., *supra* note 38; Phillips et al., *supra* note 10.

tribunals and its various 'sites'.[120] Lawyers from different legal systems carry distinct 'cultural scripts'[121] that influence how emotional engagement is perceived and performed — ranging from the common law emphasis on detachment to the civil law orientation toward truth — seeking, as our participants noted. Moreover, individual self-perceptions — such as identifying as a 'cause lawyer' versus a 'conventional lawyer'[122] — further mediate emotional labour practices within ICL. Future research should explore how these intersecting variables shape understandings of professionalism and emotional expression in ICL.

A broader cultural shift may be necessary to integrate emotional labour into prevailing conceptions of professionalism. This includes recognizing the emotional demands placed on all legal actors — not only due to the traumatic subject matter, but also through the everyday demands of managing their own emotions and the emotions of others, as occurs in domestic legal practice.[123] In common with other 'extreme work' environments, acknowledging the emotional dimensions of ICL practice is essential to sustaining both individual well-being and institutional integrity, as well as critically examining the content and boundaries of legal professionalism. We propose a new research agenda that positions emotional labour as a foundational component of professional practice in ICL. Rather than framing emotional labour solely as a matter of individual well-being, we argue for its recognition as a theoretical and practical component of professional competence and institutional dynamics. Building on parallel scholarship in transitional justice and related fields,[124] we have examined how emotional labour shapes professional decision-making in ICL, and points to the necessity of institutional support mechanisms — including training in emotion management and coping strategies — to sustain ethical, effective and manageable legal practice. As Sedgwick reminds us, international criminal tribunals must attend not only to the needs of affected communities and the international community, but also to the lived experiences of those who serve as the 'individual conduits of international justice'.[125] In response to growing calls to take emotion seriously in international (criminal) law, this article proposes a research agenda that centres emotional labour as a critical, constitutive element of legal practice in this field. Translating emotional labour to the specific context of ICL requires an understanding of the competing (inter-) cultural considerations, power hierarchies, intersectional identities and multiple sites of the field: much of which speak to the already — existing tensions at the core of ICL and its institutions.

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[120] Christensen, *supra* note 15.

[121] T.A. Maroney, 'Empirically Investigating Judicial Emotion', 9 *Oñati Socio-Legal Series* (2019) 799–830, at 814, as cited in Barry et al., *supra* note 38, at 497.

[122] Batesmith, *supra* note 85.

[123] Jones, *supra* note 16; Pallas, *supra* note 6, citing Abrams on the importance of 'recognition, reconnaissance, and regulation' of emotion in law: K. Abrams, 'Barriers and Boundaries: Exploring Emotion in the Law of the Family', 16 *Virginia Journal of Social Policy and the Law* (2008) 301–321.

[124] Nzitatira et al., *supra* note 24.

[125] J.B. Sedgwick, 'A People's Court: Emotion, Participant Experiences, and the Shaping of Postwar Justice at the International Military Tribunal for the Far East, 1946-1948', 22 *Diplomacy & Statecraft* (2011) 480–499.

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