The “Cross-Fertilization” Rhetoric in Question: Use and Abuse of the European Court’s Jurisprudence by International Criminal Tribunals

13th – 14th June 2013

Edge Hill University
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Welcome

The Department of Law and Criminology welcomes you all to this important event. We are very proud of the fact that this is the second Conference we have organized dealing with key aspects of international criminal law and the protection of fundamental human rights. This subject is one of our Department’s core research foci. We offer an LL.M in International Justice and Human Rights and International Criminal Law for undergraduate students. We have recently also recruited our first Ph.D. student as GTA.

We hope that the topics discussed during two days are insightful and stimulate ideas for further research on this important. The Department would be very pleased and supportive of initiatives to publish the proceedings of this Conference.

Professor Franco Rizzuto
Head of Department of Law and Criminology
Edge Hill University

The "Cross-Fertilization" Rhetoric in Question:

Use and Abuse of the European Court's Jurisprudence by International Criminal Tribunals

The various fields of international law have become increasingly intertwined, and this process has manifested itself in the “gradual interpenetration and cross-fertilization of previously somewhat compartmentalized areas of international law”.1 The wider phenomenon is reflected in the field of international criminal law, which appears as a new open system based on a network of legal relations between international and national law. This is, in particular, exemplified by Article 21 of the Statute of the International Criminal Court (ICC), which articulates the international penal order as a complex, multi-level structure, and, thus, provides institutional recognition of the emerging interconnection between international criminal tribunals (ICTs) and regional human rights courts.

This interaction has been particularly apparent in the development of a “judicial dialogue” between ICTs and the European Court of Human Rights (ECHR). For the ECHR, reference has been made to the jurisprudence of ICTs (see, for example, M.C. v. Bulgaria), with a view to interpreting specific provisions of international criminal law and international humanitarian law. For the ICTs, reference has been made to the case law of the ECHR in order to clarify the content of fundamental rights enshrined in the Convention or in the tribunals’ statutes. The areas of law where these human rights norms have been invoked, reinterpreted and applied include the right to freedom of expression, nullum crimen sine lege, right not to be subject to inhumane or degrading treatment, fair trial rights, right to an effective remedy, sentencing and pretrial detention, the right to remain silent, self-representation, non bis in idem.

A significant part of academic scholarship emphasized the positive effects produced by the phenomenon of “cross-fertilization” or “dialogue” among courts belonging to different systems. The reference of ICTs to human rights principles established by specialized regional bodies is considered to enable the circulation of a common understanding of fundamental rights. For observance of internationally-accepted norms is held to ensure that fundamental rights are not curtailed during proceedings.

Their recognition is also considered to foster the rule of law and due process guarantees in post-conflict societies. Finally, since the case law of the ECHR is recognized as a synthesis of the European civil law and common law systems, its adoption by ICTs is considered to effectively reduce the risk of endorsing one dominant legal model in international criminal law.

The purpose of this workshop is to critically assess the above-recalled academic stance on the process of gradual interpenetration and cross-fertilization in international criminal law. It will consider the notion of cross-fertilization, seeking to test the underlying coherence of the idea that legal concepts can be transplanted unchanged from the system of origin into another system. For the notion of “fertilizing” a different field, rather than a neutral designation, ascribes an immediately positive connotation to the process of transplantation. However, if one examines the actual process, through the identification and application of principles by ICTs, the description of the phenomenon can no longer be simply and exclusively positive.

The workshop proposes to undertake this critical assessment by restricting its perspective to one direction in which this gradual interpenetration and crossfertilization has developed: the use that ICTs have made of ECHR's jurisprudence. By concentrating upon this, it intends to determine whether and to what extent ICTs have correctly applied imported human rights principles, thereby identifying eventual areas of discrepancy. Indeed, ICTs and human rights courts pursue distinct institutional aims, are differently structured, and the process of comparison of their jurisprudence requires patient interpretation and qualification.

Therefore, we welcome papers focusing on the following range of research questions:

In what manner has the ECHR's case law influenced the final decisions of ICTs? Have ICTs misused the human rights jurisprudence — and, if so, to what extent? Are there discrepancies in the interpretation of the same right by the ECHR and ICTs? If so, can they be justified by institutional differences or other legitimate circumstances? What are the parameters of discretion in the modification of the ECHR in relation to the special context of non-national courts and the most serious international crimes? Is there a realistic way to ensure that ICTs remain in conformity with generally accepted human rights principles? To what extent human rights courts’ decisions have been utilized as argumentum ad auctoritas, rather than non-binding source inspiration, to cover up a more restrictive stance adopted by ICTs? Is there any noticeable difference in the recourse that ICTs and the ICC have had to human rights courts’ jurisprudence?
Triestino Mariniello holds a Ph.D. in international criminal law from University of Naples 2 and an LL.M. in Human Rights Law from Queen Mary - University of London. His research interests focus on international criminal law, criminal justice and human rights, international humanitarian law and European criminal law. Triestino’s academic writing has appeared in a variety of journals, including the American Journal of International Law and Nordic Journal of International Law. He has also been involved in a number of collaborative projects organized, inter alia, by European University Institute, College de France, and University of Paris 1. He has been a Visiting Researcher at the Humboldt University of Berlin and Grotius Centre for International Legal Studies, Leiden University. He has also been a guest lecturer in numerous universities in Italy, United Kingdom and Sweden. Triestino is a qualified barrister in Italy and he has served as a Visiting Professional and Associate Legal Officer at the Pre-Trial Division of the International Criminal Court, working on Situations in Sudan, Democratic Republic of Congo and Republic of Kenya. He has been consulted as expert by practitioners and policy-makers working in the area of criminal justice and human rights, such as International Bar Association, Italian Ministry of Defence, Italian Training School for Judges and Prosecutors, and International Observatory on Human Rights. He has joined the Department of Law and Criminology at Edge Hill University in September 2012, teaching on the LLM in International Justice and Human Rights.

Paolo Lobba is a Research Fellow at the University of Bologna (Italy). He holds a Ph.D. in Criminal Law and Procedure from Bologna University in co-tutelle with Humboldt-University Berlin, and has been admitted to the Italian Bar Association since 2011. He worked with the United Nations in Phnom Penh (Cambodia), where he assisted the Extraordinary Chambers in the Courts of Cambodia as Associate Legal Officer. In this capacity, he was assigned to the appellate proceedings in the Duch case, dealing especially with the issues of jurisdiction, illegal detention, sentencing and victims reparations. Thanks to a number of research grants, including a 10-month post-doctoral scholarship awarded by the German public institution ‘DAAD’, he worked with Professor Gerhard Werle at the Humboldt-University Berlin, addressing a wide range of international criminal law questions. His doctoral dissertation analysed the crime of Holocaust (and other serious crimes’) denial in Europe, examining not only domestic legislation and case law but also relevant European Union acts and the jurisprudence of the European Court of Human Rights.

**Workshop Programme**

**Friday 13 June 2014**

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<tr>
<td>8.30-9.00</td>
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| 9.00-11.00 | Dynamics of Judicial Dialogue: Methods and Rationales  
|            | Chair and Discussant: Harmen van der Will (University of Amsterdam)      |
|            | – Patricia Pinto Soares (UN Human Rights Officer)                         |
|            | – Emanuela Fronza (University of Trento)                                 |
|            | – Julia Geneuss (University of Hamburg)                                   |
|            | – Christophe Deprez (University of Liege)                                |
| 11.00-11.15| Coffee                                                                   |
|            | Chair and Discussant: Harmen van der Will (University of Amsterdam)      |
|            | – Patricia Pinto Soares (UN Human Rights Officer)                         |
|            | – Emanuela Fronza (University of Trento)                                 |
|            | – Julia Geneuss (University of Hamburg)                                   |
|            | – Christophe Deprez (University of Liege)                                |
| 13.00-14.30| Lunch                                                                    |
| 14.30-16.30| The Thorny Relationship Between Substantive Justice and Individual Guarantees: Legality Principle and International Crimes  
|            | Chair and Discussant: Harmen van der Will (University of Amsterdam)      |
|            | – Patricia Pinto Soares (UN Human Rights Officer)                         |
|            | – Emanuela Fronza (University of Trento)                                 |
|            | – Julia Geneuss (University of Hamburg)                                   |
|            | – Christophe Deprez (University of Liege)                                |
| 16.30-16.45| Coffee                                                                   |
| 16.45-18.00| Procedural Issues: Victims’ and Accused’s Rights in International Criminal Trials  
|            | Chair and Discussant: Olympia Bekou (University of Nottingham)           |
|            | – Yvonne Mc Dermott (University of Bangor)                               |
|            | – Krijn Zeegers (University of Amsterdam)                                 |
|            | – Paolo Caroli (University of Trento)                                    |
Saturday 14 June 2014

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<td>9.00-10.45</td>
<td>The Impact of Cross-Fertilization on Substantive Issues: Crimes and Punishment</td>
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<td>– Elena Maculan (Instituto Universitario General Gutiérrez Mellado)</td>
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<td>– Alice Riccardi (University of Rome 3)</td>
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<td>11.00-12.15</td>
<td>Panel I – Human rights and International Criminal Law: Synergy or Fragmentation?</td>
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<td>Keynote speech: Cuno Tarfusser (International Criminal Court)</td>
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<td>– Ulf Linderfalk (University of Lund)</td>
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<td>– Harmen van der Wilt (University of Amsterdam)</td>
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<td>12.15-12.30</td>
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<td>12.30-14.00</td>
<td>Panel II – Lights and Shadows: The Impact of Human Rights on Individual Guarantees</td>
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<td>– Kevin Jon Heller (SOAS – University of London)</td>
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Abstracts

Panel 1: Dynamics of Judicial Dialogue: Methods and Rationales
Chair and Discussant: Ulf Linderfalk (University of Lund)

Human rights regimes of the tribunals and foreign legal tests: Reinventing or fragmenting rights?
Andrea Lollini (University of Bologna)

Sergey Vasiliev (VU University Amsterdam)

Determining whether an ICT has appropriately employed the case law of the ECHR (or, for that matter, of any other judicial or quasi-judicial human rights body) when interpreting a specific IHRL norm is impossible without knowing first where the principal difference lies between the legitimate use and abuse of such jurisprudence. The paper tackles this question in light of the courts’ interpretive autonomy and the terms of judicial conversation in the decentralized system of international legal pluralism. It takes issue with the contention that the reliance by the ICTs on foreign judicial interpretations of IHRL norms will necessarily ‘enable the circulation of a common understanding of fundamental rights’. Rights can only properly be understood and meaningfully ensured within an institutional and legal context. Any serviceable interpretation of such norms that seeks to endow them with regulatory density within criminal proceedings must be reasonably specialist and will need to account for relevant legal and institutional circumstances unique to the purpose, character, and institutional setting of adjudication.

On various aspects international criminal jurisdictions differ from national criminal justice systems, and they do so in ways that will warrant deviation from the interpretations of the ECHR. Some of the circumstances accompanying international criminal adjudication will neither be found in ordinary domestic cases nor captured by the ECHR review. But they do have an impact on the human rights practice in ICTs and, hence, may legitimately affect the interpretation by the tribunals of IHRL principles. The tribunals’ adherence to the ratio decidendi the ECHR offered in its own cases (which are subject to unique adjudicative context, purposes, and considerations) does not automatically guarantee fairness in international criminal proceedings.

Moreover, uncritical reliance by the ICTs on foreign legal tests is objectionable because inconsistent with the judicial nature of these institutions. Facilitating or enhancing general consensus on the substantive content of human rights beyond the language of the respective conventional norms is not the mandate and responsibility of the ICTs, unlike ensuring procedural justice and fairness within their own framework. Essentially, the ICTs have had to elaborate, almost from scratch, and to implement, in the absence of any external human rights supervision, a separate sub-branch of IHRL tailored for international criminal adjudication. This challenging and creative process of ‘reinventing rights’ for ICL is the branching out of IHRL, rather than its ‘fragmentation’. Since the tribunals must function as self-sufficient systems, their specialized human rights regimes have to be at least as ‘thick’ as domestic regimes.

Given the substantive relevance of the ECHR case law to issues before the ICTs, its jurisprudence should be consulted and the reasoning therein meaningfully engaged with. The ICTs must diligently justify both their adoption of, and departure from, the human rights doctrines and tests adopted by the ECHR and other regional courts or monitoring bodies. The compliance with this obligation is what makes the difference between the ‘use’ and ‘abuse’ of human rights jurisprudence.
Use of Case Law of the European Court of Human Rights in the Early Jurisprudence of the International Criminal Court: Insights from the Lubanga Case

Annika Jones (University of Exeter)

Whilst a number of studies have been conducted into the use of human rights jurisprudence within international tribunals, the majority have focussed on the interpretation of specific norms or reference to external jurisprudence in the final decisions of the relevant international court or tribunal. This paper builds upon the existing literature by showing how the decisions of regional human rights courts, including the European Court of Human Rights (ECHR), have been used throughout the course of a single trial before the International Criminal Court (ICC). By placing the focus on a single case, it is possible to show how the decisions of the ECHR have been used by all three judicial divisions of the ICC throughout each stage of the pre-trial and trial process.

The focus of the paper is the case of Prosecutor v. Thomas Lubanga Dyilo (the Lubanga case), which was the first case to be completed by the Court. From the issuance of an arrest warrant against Mr. Thomas Lubanga Dyilo on 10th February 2006 to the conviction of the accused on 14th March 2012, the judges of the ICC rendered over 350 decisions in relation to the Lubanga case. In many of the decisions, judges interpreted and applied provisions of the Rome Statute for the first time and overcame issues that had not been expressly provided for in its text. In doing so, the judges made frequent reference to the decisions of the ECHR.

This paper presents the results of content analysis regarding the use of ECHR jurisprudence in the Lubanga case. The analysis highlights the frequency of reference to the decisions of the ECHR, the issues that have prompted judges to refer to ECHR case law, how the decisions have been used and the degree of coherence between the decisions of the ICC and the ECHR. The paper uses the data drawn from the content analysis to reflect critically on the relationship between the ICC and the ECHR and to consider the significance of judicial cross-referencing between the two institutions for the coherence of their jurisprudence.

Beyond Anecdotal Reference: A Comprehensive Assessment of the References of the ICTY to the ECHR

Frauke Sauерwein (Max Planck Institute for Comparative Public Law and International Law)

It should come as no surprise that the relationship between the two courts has been on the radar for some time. Already in 2000 and again in 2003 Antonio Cassese made a seminal assessment of the importance of the ECHR for the ICTY. The issue was also addressed in several noteworthy speeches of European and ICTY Judges and in 2010 a symposium in Geneva was even dedicated to this question. A striking feature of these initial incursions into the topic is the anecdotal manner in which the references of the ICTY to the ECHR are handled. In other words, individual cases are mentioned but no comprehensive assessment of all non-confidential judgements and decisions of the tribunal has been undertaken, until now that is.

In the paper that I hope to present at the workshop, based on advanced research, I will give a detailed assessment of the number of ICTY cases referring to the ECHR, the areas of law in which this has occurred, and the development of its citation practice throughout the years of its existence (first part).

Moreover, referring to references in individual opinions I will, too, tackle the question of when and why the judges in the majority chose not to refer to the European court.

In a second part, I will offer a categorisation of the different ways and manners of referring to the ECHR. This will show the width and the depth – and on occasion the superficiality – of the references to its older brother and the functions that these citations serve. For example a passing reference in a footnote carries a different weight to a discussion of a European case over three pages. Moreover, references do not always serve the same function. A reference proving that there is a customary right of the accused to be informed of charges can be contrasted to a reference justifying a long pre-trial detention by using exceptional cases in the ECHR jurisprudence as the norm.

In a final part, I will briefly discuss why the undertaken assessment is helpful for a differentiated discussion on what constitutes a “proper” reliance on another court’s jurisprudence. After all, the function served by the reference is instrumental in determining whether it might be too strong vis-à-vis the different role of the individual in international criminal law and human rights law.

Chair and Discussant: Harmen van der Wilt (University of Amsterdam)

Breaking Down the Code: How much of human rights law into international criminal law?
Patricia Pinto Soares (UN Human Rights Officer)

The paper starts by reviewing the case law of international criminal tribunals (with an emphasis on the jurisprudence of the ICTY) and the International Criminal Court (ICC), highlighting how in several instances a somewhat erratic resort to the case-law of the European Court of Human Rights (ECHR) has been deployed in the framework of the judicial reasoning of international criminal judges. It will be scrutinized the extent to which such policy might be damaging to the consistency and coherence of the international criminal law (ICL) system. In contrast, few examples of “rationalized” usage of human rights jurisprudence by international criminal tribunals and the ICC will be examined, dissecting the methodology and philosophical standards employed, in the attempt of identifying parameters that may assist international judges in importing from human rights law what is consistent with the telos and philosophical pillars of ICL and refusing what is not. This work will be carried out as a test to the premise/hypothesis that “complementarity” and “analogy” are the starting points and basic analytical tools in triggering and following-up a constructive and harmonized methodological exercise of admitting external – as long as prolific – influences from human rights law in the realm of ICL. The “testing framework” will further include the parameters set forth in Article 21 (3) of the Rome Statute – specifically “internationally recognized human rights” and the “interests of justice”, namely as per Article 53 (1) (c) of the Rome Statute. In the latter case, it will demand the scrutiny of the scope of “justice” under ICL with an analysis of the reasons that may justify a diverse approach vis-à-vis, for example, the concept of “justice” under human rights law. Against this background, the Article will conclude by proposing a multiple-tier analytical framework – differentiating between standards, tools and criteria – for facilitating a resourceful resort to human rights law jurisprudence by international criminal judges, in a manner that safeguards the integrity of the ICL system.

Internationally recognised human rights (Article 21 (3) of the ICC Statute) and the reference by the International Criminal Court to the European Convention on Human Rights.
Emanuela Fronza (University of Trento)

The system of the International Criminal Court (ICC) registers substantial changes in the structure and configuration of criminal law and procedure. The complementarity principle enshrined in the Statute of the ICC and the provision concerning “Applicable law” (Article 21 of the Statute) demonstrate the particular structure of this new criminal system characterised by legal and judicial interactions among different legal orders and, consequently, by the key role assumed by judicial interpretation.

We will investigate the ICC’s interactive practices beginning with an analysis of Article 21 para. 3 of its Statute. This clause sets forth that: “The application and interpretation of law pursuant to this Article must be consistent with internationally recognized human rights.” This provision requires the consistency of application and interpretation with existing international and regional human rights norms. Furthermore, it makes cross referencing and interdependence with other normative and judicial levels part of the structure of the ICC system.

We will limit our analysis to when and how the ICC has referred to the European Convention on Human Rights and European Court of Human Rights case law in this context (or when it has not).

The observation of these practices will also bring to light which interactive techniques allow “internationally recognised” human rights to function as a limit and not only as an object of this new criminal system.
International Criminal Tribunals and ECHR case law: Balancing of Interests in Context
Julia Geneuus (University of Hamburg)

When international criminal tribunals discuss human rights issues, they frequently refer to the jurisprudence of human rights courts, in particular the case law of the European Court for Human Rights. When engaging in this practice of cross-referencing, the tribunals regard the European Court's decisions as persuasive authority, emphasizing that due to the unique context in which international criminal tribunals operate and the specificities of international criminal law, there is a need to re-interpret the human rights standards as determined by the Court. This way, international criminal courts develop their own set of human rights standards. In the academic literature the need for a translation of human rights standards seems to be uncontested, yet it is emphasized that the "uniqueness dogma" may lead to a reduced level of protection for the accused.

While the specific context of international criminal tribunals as the “borrowing courts” has already been examined thoroughly, this paper will focus more on the other side of the interactive process. In this regard, it is argued that the need for translation of human rights standards is warranted not only by the unique context of the international criminal justice system, but arguably also by the specific context in which the European Court operates. The Strasbourg Court’s function as review court, its main mandate to deliver individual justice, as well as the “doctrinal tools” the Court developed to adjust state sensitivities in order to secure a cooperative relationship allow for flexibility and control over the reception process.

However, due to the significant risk for the rights of the accused, it is argued that this flexibility of international criminal tribunals concerns the outcome, but not the method of the translation process.

The Discretionary Use of Strasbourg Jurisprudence by the International Criminal Court
Christophe Deprez (University of Liege)

Although the case law of the European Court of Human Rights ("ECHR") has had and still shows critical influence on the development of the practice of the International Criminal Court ("ICC"), it remains unclear what the authority of such external jurisprudence is vis-à-vis the international criminal judge. While it is virtually undisputed that human rights law, in general terms, is applicable to proceedings before the ICC, many scholars tend to adopt a much nuanced approach to the authority of human rights case law in particular. This paper aims to shed further light on the issue by addressing the question whether ICC judges have used Strasbourg jurisprudence in a consistent manner, in particular as regards the authority which they decided to vest the latter with. It demonstrates that ICC Chambers have relied on European human rights practice, alternatively, as a mere source of inspiration, as binding interpretation, as a corpus having ambivalent authority, or as a source whose legal value it simply left unspecified. This leads us to conclude that, on the whole, the ICC has been mostly inconsistent regarding the value of ECHR case law in the context of international criminal proceedings. Such inconsistency, we argue, amounts to a discretionary use of Strasbourg jurisprudence that further reinforces the Court's paradoxical position as the ultimate authority for defining the boundaries of its own human rights constraint.

Panel 3: The Thorny Relationship Between Substantive Justice and Individual Guarantees: Legality Principle and International Crimes
Chair and Discussant: Paola Gaeta, (University of Geneva)

Nulla poena sine lege principle: a particular sign of interactions between Strasbourg and The Hague
Patricia Pinto Soares (UN Human Rights Officer)

A true “judicial dialogue” has been developed between the International Criminal Tribunals (ICTs) and the European Court of Human Rights (ECHR). The Strasbourg case law has clearly influenced both ICTs indeed, in their definition of crimes and rights of the accused in particular. However, interactions are not only one-way: there is a mutual influence between the two legal systems. Indeed an analysis of the principle of legality of penalties reveals that this influence takes place the other way round as well.

Nevertheless, influence does not mean respect: sometimes this interaction is made at the cost of judicial quality and individual guarantees. These ups and downs in the jurisprudential confluence show that the cross-fertilization of international criminal law and human rights might be evident, but does not always serve fair purposes.

This contribution aims to introduce the “dialogue” between international criminal judges and the ECHR on this principle. It will be divided into three stages.

Firstly, I will present the recognition of the applicability of the principle of legality of penalties in international criminal law; this recognition is especially made in reference to the jurisprudence of the ECHR (I).

Secondly, I will highlight that despite the recognition of the applicability of the principle, the international criminal judges do not respect the criteria laid down by the ECHR. The principle of legality therefore seems diminished in international criminal law – according to some authors, it is even irrelevant (II).

Thirdly, I will demonstrate that, in parallel, international criminal law also had a significant influence on the definition of the principle of legality laid down by the ECHR: it led to the recognition of “general principles of law” as legal sources, inducing a deteriorated protection of defence rights (III).

To conclude, I will present a brief analysis of the Maktouf and Damjanovic v. Bosnia and Herzegovina case (ECHR, July 18th, 2012) and its impact. In this judgment, the ECHR seems to restore the principle of legality, which was sometimes forgotten. Hope that influence of this judgment will fertilize the international criminal law.
Legality, Modes of Liability and Complementarity: Necessities of a Coordinated Approach?
Giulio Vanacore (University of Urbino)

The principle of legality is the cornerstone of any modern penal system. The jurisprudence of the European Court of Human Rights, with a significant number of decisions, has provided its personal and challenging interpretation of the principle, as laid down in its minimal framework of Article 7 of the Convention. Legality in criminal law has been so crafted and fashioned with new ideas of accessibility to the relevant provision and foreseeability of the consequences of its violation. The first question arising is why the Court has preferred to insert these concepts of accessibility and foreseeability into the 'box of legality' and not into the 'one of culpability'. Indeed the ideas of accessibility and foreseeability seem to concern more a relationship between the individual and his (or her) knowledge of the criminal provision than a principle regarding the norm in itself. A likely solution to this dilemma is offered both with regard to proceedings before the ECtHR and criminal trials before the international criminal jurisdictions.

More recently, these same concepts of accessibility and foreseeability have been used in the context of judicial arguments upon modes of liability and, in particular, indirect co-perpetration (art. 25 (3) (a)) before the International Criminal Court. The underlying idea is that when the criminal disposition is not accessible or foreseeable by the accused, as far as an international crime within the jurisdiction of the Court is concerned (let aside the problem of a mere mistake of law), any prosecution would violate the principle of legality as reread by the Strasbourg Court.

This reflection is valid not only when a provision regarding genocide, crimes against humanity, war crimes, or aggression (art. 6-8bis of the Statute) is at stake. The discourse concerning legality and its ECtHR pillars (accessibility and foreseeability of the norm) also apply when dispositions other than those directly stigmatizing international crimes within the Statute are concerned. One may think not only about the norms on modes of liability (art. 25), as has been said, but also, potentially, on mens rea (art. 30) or mistake (art. 32), that is to say, the classical norms of the 'general part' of any criminal law statute. Before the ICC the question was whether the German theory of 'control over the crime' (Fahrendenrecht), and its variant of 'control over an organisation' (Organisationsherrschaft) could serve to enlighten the dark corners of (indirect) (co-)perpetration pursuant to art. 25 (3) (a). The solution proposed is right in the sense of the application of the parameters of accessibility and foreseeability for this peculiar (and discussed) form of imputation of the crime. Modes of liability must enter inside the scope of legality.

An in-depth analysis of the relevant juridical system from which the accused comes (African States so far before the ICC, belonging to English, French or Arabic legal traditions) is highly needed. This discourse linking legality with modes of liability could also bring the scholar to the path of the complementarity principle. The Rome Statute affirms that the Court shall be complimentary to national criminal jurisdictions and many scholars have interpreted these words by saying that the ultimate aim is to build a Court of last resort. Are these considerations reconcilable with an interpretation of statutory provisions, such as art. 25 (3) (a), which is made by borrowing exclusively from a national theory falling outside the boundaries of both the legal system of the accused and the conditions of accessibility/foreseeability? Also, is the debated effect of harmonization of national criminal jurisdictions, likely provided by the complementarity principle seen from a downward prospective, put under discussion?

Eventually, the role (and critical research) of a really common and shared Dogm atik in international criminal law and scholarship needs to be strengthened.
Panel 4: Procedural Issues: Victims' and Accused's Rights in International Criminal Trials
Chair and Discussant: Olympia Bekou (University of Nottingham)

‘Balance’ in International Criminal Law: The Use and Abuse of the Jurisprudence of the European Court of Human Rights
Yvonne McDermott (University of Bangor)

International criminal tribunals place an uncommon, and, some would say, unhealthy, emphasis on the notion of ‘balance’ when it comes to the rights of the accused. In a now perhaps infamous decision in the Haradinaj case, the ICTY Appeals Chamber determined that the case should be sent back for a retrial on the basis that the prosecutor’s right to a fair trial (later judiciously rephrased as ‘the fairness of proceedings’) had been given insufficient weight in the original trial. The Special Court for Sierra Leone has stated that the right to an expeditious trial belongs not just to the accused, but to the international community also.

To what extent can these, and other, decisions on ‘balance’ be justified by reference to the jurisprudence on the rights of the accused from the European Court of Human Rights (ECHR) and other international human rights adjudicatory bodies? International criminal tribunals’ approaches to the jurisprudence of the ECHR have been inconsistent on this question. Some have expressly undermined the import of ECHR judgments, while others have cited the ECHR as authority for their proposition that the rights of the accused need to be balanced against the rights of other procedural actors at trial. This paper focuses specifically on the influence of the ECHR on decisions pertaining to the rights of victims and witnesses, and examines whether the international criminal tribunals’ approaches to ECHR case-law has always been correct.

The Right to Be Tried without Undue Delay Before International Criminal Tribunals: Discrepancies with the European Court’s Approach and Possible Justifications
Krit Zeegers (University of Amsterdam)

International criminal trials are notoriously lengthy. On average, the time between the arrest of a suspect and the final judgement in his case is almost six years at the ICTY, and more than eight years at the ICTR. The ICC has yet to complete its first trial in both instances; however, the fact that its first case took more than six years to complete in first instance is hardly promising. The Statutes of international criminal courts and tribunals (‘ICTs’) all provide accused persons the right to be tried without undue delay. Although several accused persons before the ICTY and the ICTR, in particular, have alleged violations of this right, no ICT has found a violation to date, despite the undeniable excessive length of some of their trials. This paper will assess the law and practice of the ICTs with regard to the right to be tried without undue delay. Their approach will be tested against that of the ECHR. Although there is a rich line of case law on this issue, it will be shown that despite their claims to the contrary, the ICTs have deviated from the approach of the ECHR in a number of areas. Firstly, the ICTs have often placed the burden of proof on the defence to show that there has been undue delay. By contrast, the ECHR only requires the defendant to show on a prima facie level that the procedure has been lengthy, whereupon the burden shifts to the authorities to prove that this length was justified and that they acted diligently. Secondly, in their assessments of whether delays have been undue, the ICTs excessively rely on the complexity of the cases before them, without truly substantiating the relationship between the complexity of the case and its length. Thirdly, the ICTs have largely failed to critically assess their own responsibility for possible delays. Prosecutorial policies of cumulative charging, repeatedly amending indictments and the joinder of multiple cases have been largely ignored by the ICTs, despite their impact on the length of the proceedings. At the same time, Chambers have failed to assess their own role in causing delays, a point repeatedly stressed by dissenting Judge Short in the Bizimungu et al. trial before the ICTR, where three years had passed between closing arguments and a first instance judgement. Finally, the ICTs have relied on the gravity of the charges, as a relevant factor in determining whether or not a delay has been undue. The ECHR, however, has generally rejected such reliance. This paper will critically assess these discrepancies between the approach of the ECHR and that of the ICTs. In doing so, it will assess whether or not such deviations from international human rights law are permissible and legitimate. After all, the ICTs are not, strictly speaking, bound by the ECHR and there are many differences between a regular, domestic criminal process and one before an ICT. At the same time, the ICTs claim to uphold the highest standards of justice, which should therefore be a yardstick against which to measure their performance.
Judicial Definition of Torture as a Paradigm of Cross-Fertilization: Combining harmonization and expansion
Elena Maculan (Instituto Universitario General Gutiérrez Mellado)

Following the recent announcement by the Prosecutor of the ICC that has decided to re-open the preliminary examination of the situation in Iraq, torture as an international crime will probably come to the fore once again. It will be interesting to see whether the ICC follows the interpretive paths set by the ad hoc Tribunals about this offence.

The threefold dimension of torture, which is an offence under Human Rights Law, International Humanitarian Law and International Criminal Law, has created a multi-faceted legal framework in which the definition of the crime differs in relation to a number of key elements, namely: (i) the severity threshold of the pain or suffering inflicted; (ii) the so-called public official requirement and (iii) a catalogue of specific purposes that the perpetrator has to pursue.

Against this background, the ad hoc Tribunals have extensively had recourse to human rights case law, and especially to ECHR precedents, thus giving rise to a fruitful phenomenon of cross-fertilisation. Importing arguments from other systems has had the intent to fill the statutory gaps, to clarify interpretative questions and, at a more subtle level, to enhance the legitimation of the International Criminal Tribunals (ICTs) by finding support in systems whose authoritative value is widely recognised. European case law has apparently been a prominent point of reference for this judicial interaction, both because it has given a great number of decisions dealing with the definition of torture and because of the authority of the Court itself. The first point to be tested in this analysis, therefore, is whether the ECHR plays a special role among the external sources to which the ICTs have recourse.

Accordingly, the paper focuses on the aspects on which the influence of the European case law is more significant:

1. The gradual abandoning of the public official requirement;
2. The development of distinctive criteria between torture and inhuman treatment and, as a consequence, the inapplicability of cumulative charges under both categories;
3. The determination of a severity threshold for an act to amount to torture;
4. The labelling of rape as an act of torture.

The main research hypothesis is that the influence of the European case law about torture has produced a twofold effect. On the one hand, despite being sometimes undermined by a certain degree of incoherence, it has given a significant boost to the harmonisation of the constitutive elements of the crime. On the other hand, it has also set an expansive course, in that it has gradually eliminated the requirements which somehow limited the applicability of the offence.

Hence, the evolution of the concept of torture may be described both in terms of overcoming the fragmented legal definitions towards the harmonization and broadening of its scope. In addition, this evolution at the judicial level has had some influence on the Rome Statute, and it may be expected to have an impact also onto the ICC understanding of the offence.

A Cross Fertilization Process in the case of Torture and Other Prohibited Treatment?
Elizabeth Santalla (Private Bolivian University)

In elucidating the constituent elements of torture and ill-treatment related offences, the early jurisprudence of the ICTY resorted, to a large extent, to the ECHR’s jurisprudence. In so doing, it held that the main elements of the crime of torture are the same irrespective of the nature of the armed conflict or of its existence as a crime against humanity. Interestingly, while Kunarač paved the way to consider torture committed by non-state actors, Furundžija and Kvočka, in line with Celebići, held that among the possible purposes of torture, humiliating the victim should also be included in view of its close connection with the notion of intimidation and the underlying aim of safeguarding human dignity of international humanitarian law. Knojelac, however, did not accept the humiliation purpose as part of customary law. It is further difficult to infer from the jurisprudence of both jurisdictions uniform parameters of interpretation, in particular, as to the level of intensity of the suffering attributed to each category of ill-treatment. In this connection, the impracticality of attempting to delineate a precise threshold has found ample echo in doctrine. Yet, judicial cross-fertilization may find in the question of torture and other ill-treatment an eloquent expression of arguable utility, in view of the fact that, inter alia, the changing nature that ill-treatment takes with the passage of time, as early recognized in Selmiouni v. France, ought to have repercussions in customary law. This is particularly relevant with respect to the Rome Statute framework as human rights underpin the interpretation and application also of the Elements of Crimes. Human shielding is arguably a case in point. Such a process ought to continue in various directions, including the influence of international criminal law on human rights law, as opposed to what the case was at the ECHR’s early jurisprudence. Cross-fertilization may further advance the scope and implications of the jus cogens character of the prohibition against torture and all other ill-treatment, bearing in mind that the recognition and respect of human dignity lie at the heart of the prohibition, and mindful of the fact that through any such acts the person is just treated as an object. It may further lead, from a lege ferenda perspective, to question and revisit the required elements to differentiate torture from other ill-treatment.
A unilateral cross-fertilization process. The judicial dialogue of the ECHR and ICTs regarding the right of rehabilitation of individuals convicted for crimes under international law.

Alice Riccardi (University of Rome 3)

In 2013, the ECHR Grand Chamber declared in Vinter and Others v. United Kingdom that “there is now clear support in European and international law for the principle that all prisoners (...) be offered the possibility of rehabilitation” (§99). Through its pronouncement, the ECHR affirmed that the absolute right to human dignity enshrined in art. 3 ECHR implies that rehabilitation must overarch other sentencing rationale. To cement its position, the ECHR impressively reviewed international and regional HR texts, general State practice and practice of contracting States – and relevant provisions of the Statutes of the ICC, ICTY, ICTR, SCSL, and STL, which would confirm an international “commitment to the rehabilitation of life sentence prisoners” (§118). Moreover, it specifically pondered on the rehabilitation of the most odious offenders, and concluded it applies “even for extremely serious cases like genocide” (§100). Surprisingly though, ICTs traditionally hesitated in recognizing convicted individuals right to rehabilitation.

The paper aim is twofold. On the one hand, it explores the unilateral process of cross-fertilization between the ECHR and ICTs, by describing interpretative discrepancies among different jurisdictions. On the other, it seeks to trace whether a rehabilitation-oriented trend exists in ICL. Therefore, it first focuses on the practice of ad hoc Tribunals – which have shown a high degree of adversity against rehabilitation, accrued by a series of Appeals Chamber judgments explicitly outdistancing from HR standards (e.g. Mucic et al. §806; Kamarauhanda §357; Popovic et al. §2130). The underlying logic of such analysis is to unveil the legal reasons convincing ad hoc Tribunals not to incorporate the human right to rehabilitation into ICL. Second, the paper investigates whether the ICC law and case-law leave some room for embodying HR principles regarding rehabilitation. In particular, it holds that a rehabilitation-oriented evolution is detectable both in the drafting history of ICC Statute provisions concerning sentencing and in the Lubanga and Katanga decisions ex art. 76 ICC Statute. Conclusively the paper argues that, vis-à-vis identified indicia and notwithstanding ad hoc Tribunals resistance, the ECHR correctly resorted to ICL as an evidence of the international recognition of rehabilitation as a valid sentencing rationale.

Biographies

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Olympia Bekou is Professor of Public International Law and Head of the International Criminal Justice Unit of the University of Nottingham Human Rights Law Centre. She has also held fellowship and visiting positions in Germany, Australia, France and Turkey where she researched and taught International Criminal Law. Olympia has extensive experience in the management of large research grants and is currently leading a number of capacity building projects. She has provided research and capacity building support for 63 States, through intensive training to more than 75 international government officials and drafting assistance to Samoa, Fiji and Jamaica, and has been involved in training the Thai Judiciary. She has also undertaken capacity building missions in post-conflict situations such as Uganda, the DRC and Sierra Leone. Olympia is responsible for the National Implementing Legislation Database of the International Criminal Court’s Legal Tools Project and is Deputy Director of the Case Matrix Network.

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Paolo Caroli is a Ph.d. student in the Doctoral Course of Comparative and European Legal Studies in the University of Trento, where he had his Master in law with thesis in international criminal law on the right to the truth. He spent time studying abroad in Germany (Göttingen) and Colombia (Bogotà and Medellin). Worked as a young lawyer for the European Center for Constitutional and Human Rights (ECCHR) in Berlin.

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Shane Darcy is a lecturer at the Irish Centre for Human Rights at the National University of Ireland Galway, where he teaches international criminal law, business and human rights and transitional justice. He is the author of a number of publications in these areas, and his most recent book publication is Judges, Law and War: The Judicial Development of International Humanitarian Law (Cambridge University Press, 2014). In 2010, he was awarded the Journal of International Criminal Justice Prize.

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Christophe Deprez is since October 2011 a Research Fellow of the F.R.S.-FNRS (Belgian National Fund for Scientific Research) and a Ph.D. candidate at the University of Liège. He holds a Master’s degree from the Law Faculty of the latter university (la plus grande distinction, 2010) and an LL.M. in Public International Law from the Amsterdam Law School, University of Amsterdam (cum laude, 2011). His doctoral research led him to the Max Planck Institute for Foreign and International Criminal Law in Freiburg im Breisgau (2012) and to the University of Bologna (2014) for short research stays. His areas of interest include international criminal law and human rights law, with a particular focus on deprivation of liberty in the procedure before the International Criminal Court.

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Michelle joined the University of Liverpool as a lecturer in law in September 2012. Michelle specialises in international law and international human rights law. In her research, Michelle is particularly interested in critical and political theory on international law and human rights. She also has a keen interest in conflict, counter-terrorism and states of emergency from historical, theoretical and human rights perspectives. Her monograph, The Prohibition of Torture in Exceptional Circumstances, was published by Cambridge University Press in August 2013.

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Emanuela Fronza is Assistant Professor of Criminal Law and Lecturer in International Criminal Law at the Faculty of Law of the University of Trento (Italy). She is also a member of the Graduate School Committee and Ph.D. Programme in International Studies of the School of International Studies of the University of Trento.

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Paola Gaeta (Ph.D. in Law, European University Institute, (1997) is Professor of International Criminal Law at the Law Faculty of the University of Geneva and Adjunct Professor of International Criminal Law at the Graduate Institute for International and Development Studies. Since 2007, she is Director of the LL.M. and Training Programmes of the Geneva Academy of International Humanitarian Law and Human Rights and since 2011 Director of the Geneva Academy itself. Before joining the University of Geneva, she was Professor of Public International Law at the University of Florence. She is a Member of the Editorial Board of the Journal of International Criminal Justice and was member of the Editorial Board of the European Journal of International Law in 2004-2012. Her publication include the third edition of Cassese's International Criminal Law (2013), The UN Genocide Convention: A Commentary (ed.) (2009), and The Statute of the International Criminal Court: A Commentary (co-editor with A. Cassese and J. R.W. D. Jones) (2001).

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Julia Geneuss is a Senior Researcher and Lecturer in German and international criminal law at the University of Hamburg (Germany). She graduated in Freiburg im Breisgau, holds a Dr. iur. from Humboldt-University Berlin and a LL.M. from NYU School of Law. She worked with Professor Florian Jessberger at Humboldt-University Berlin and Professor Maximo Langer at NYU School of Law, before joining Hamburg University on a full-time position in 2011. She is a member of the Editorial Committee of the Journal of International Criminal Justice and was a Graduate Editor of NYU's Journal of International Law and Politics. Her teaching and research interests include German and international criminal law, in particular issues of universal jurisdiction and complementarity. In her doctoral dissertation she examined the role of the German Federal Prosecutor within the system of international criminal justice and the implications for his or her decision whether to investigate international crimes based on the principle of universal jurisdiction.

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Professor Kevin Jon Heller holds the Chair in Criminal Law at SOAS, University of London. He was previously Associate Professor & Reader at Melbourne Law School, where he also served as Project Director for International Criminal Law at the Asia Pacific Centre for Military Law, a joint project of Melbourne Law School and the Australian Defence Force. His books include The Nuremberg Military Tribunals and the Origins of International Criminal Law (Oxford University Press, 2011); The Hidden Histories of War Crimes Trials (OUP, 2013) (edited with Gerry Simpson); and The Handbook of Comparative Criminal Law (Stanford University Press, 2011) (edited with Markus Dubber). He is currently writing a book entitled A Genealogy of International Criminal Law, which will be published by OUP in 2015, and is co-editing the Oxford Handbook of International Criminal Law, which will be published by OUP in 2016. For the past eight years, he has been a permanent member of the international-law blog Opinio Juris.

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Annika Jennes is a Lecturer in Law at the University of Exeter. She holds a first class degree in Law (LLB) and an LLM in International Criminal Justice and Armed Conflict with distinction, both from the University of Nottingham. She completed her doctoral thesis, which looks at the use of judicial decisions in international criminal law, at the same institution. In 2012, she was awarded the University of Nottingham Endowed Postgraduate Award for her doctoral research. Annika's research interests include international criminal law, international humanitarian law, human rights law and public international law.

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Ulf Linderfalk is a Professor of International Law at the Faculty of Law, Lund University, Sweden. He is also the Editor-in-Chief of the Nordic Journal of International Law, Professor Linderfalk's main research interest is international legal structure, and he has published extensively on issues such as treaty interpretation, the concept of normative conflict, legal hierarchy, special regimes, legal principles, balancing, and conceptual terms. His current research includes the following three projects: Proportionality in the Application of International Law; The Functionality of Conceptual Terms in International Law and International Legal Discourse; Due Diligence in International Law and Corporate Social Responsibility.

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Ph.D. in "Comparative and European Legal Studies" by the University of Trento (Italy) and in "Peace and International Security" by the UNED of Madrid (Spain), under a co-tutelage regime. Label of "Doctor Europaeus". Best PhD candidate of the University of Trento for the year 2011/2012 and Extraordinary Award for Doctoral Thesis of the UNED, year 2013.

She is currently a post-doc research fellow at the Instituto Universitario Gutiérrez Mellado in Madrid, holding a contract in the context of a national Research and Development Program. At the Institute she is also Professor in the Doctoral Program in International Security, in the Master's Degree in Peace, Security and Defence and in the Specialization Course in International Criminal Law. During the past five years she has also been working at the University of Trento (Italy) as a lecturer in International Criminal Law, Promotion and Protection of Human Rights and Transitional Justice.

Her main research fields are International Criminal Law, Transitional Justice and Comparative Criminal Law, with a special focus on Latin-American systems. She has published many articles and book chapters in Italian, Spanish and English, mainly dealing with transitional justice experiences, modes of liability in International Criminal Law, domestic courts’ interpretation of international crimes and judicial cross-fertilization between the ICC, the European and Inter-American Courts of Human Rights and Latin-American Supreme Courts. In 2013 she published her first book as author, together with Professor Daniel Pastor from the University of Buenos Aires. The book, which is entitled El derecho a la verdad y su ejercicio por medio del proceso penal, analyses the Argentinean experience of the “truth-finding trials”, about which she had previously published an article in the 2012 Utrecht Law Review. She is also co-editor with Professor Alicia Gil of a comprehensive book about “Intervención delictiva y Derecho penal internacional”.

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Dr Yvonne McDermott is a Lecturer in Law at Bangor University, Wales, where she is the Deputy Director of the Bangor Centre for International Law and Director of Teaching and Learning for the School. Her PhD thesis, 'The Right to a Fair Trial in International Criminal Law' was awarded the special mention by the International Institute of Human Rights in their René Cassin Thesis Prize 2013. Her first monograph, Fairness in International Criminal Trials, will be published by OUP in early 2015.

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Patricia Pinto Soares is Ph.D. in Law from the European University Institute, currently working as human rights officer in DRC. Previously, she worked as legal officer in INTERPOL. During the academic year 2009-2010, she was a researcher at the Center for Transatlantic Relations of SAIS Johns Hopkins University, in Washington D.C. She further worked at an international law firm in Lisbon, and gained experience at the Extraordinary Chambers of the Court of Cambodia, in Phnom Penh, in 2007.

Riccardi, Alice
Alice Riccardi is currently Research Fellow of International Law within the International Disaster Law Project – FIRB 2012, a multi-partner research project teaming up Roma Tre University, Scuola Superiore Sant’Anna of Pisa, Bologna University – Alma Mater, and International Telematic University Uninettuno. She is also Contracted Professor of International Criminal Law at LUMSA University of Rome. Moreover, she is a qualified lawyer and in this capacity she cooperates with the Transnational Sanctions Project which offers legal representation to individuals targeted by strict sanctions, including before the Office of the Ombudsperson of the United Nation Security Council 1267 Committee.

She holds a Ph.D. from Scuola Superiore Sant’anna of Pisa (2012), where she defended a thesis entitled “Rationales of Sentencing in International Criminal Law: a praise for consistency”, and a Master Degree in Law from Roma Tre University (2007), both summa cum laude.

She has been Visiting Scholar at the Max Planck-Institut fur auslandisches und internationales Strafrecht of Friburg, Germany (2011), and served in the Legal Advisory Section of the Office of the Prosecutor of the International Criminal Court (2009-2010), and in Trial Chamber I of the International Criminal Tribunal for the Former Yugoslavia (2008).
Elizabeth Santalla obtained her first law degree cum laude at Catholic Bolivian University. Has pursued a Master’s degree in Law (LL.M) at the University of San Francisco, School of Law (USA) and has undertaken courses at the post-graduate level at, inter alia, the Geneva Academy of International Humanitarian Law and Human Rights, the Grotius Centre for International Legal Studies – Leiden University, the Hague Academy of International Law, the Inter-American Institute of Human Rights, the University of Helsinki – the Castrén Institute, the University of Rosario (Colombia).

She has been a legal advisor at the Implementing Agency in Bolivia of the UNHCR, an associate legal officer at the Registry – Legal Advisory Section of the ICTY, a visiting professional at the Pre-Trial Division at the ICC, and member of Bolivia’s legal team in charge of the analysis and elaboration of an application filed before the ICCJ in 2013.

She has undertaken consultancy work for the implementation of the Rome Statute in Bolivia with the Ombudsman-GTZ, and more recently with Peace and Justice Initiative and the Coalition for the ICC. She has consulted to the UNHCR – Bolivia’s office on the plan of action on human rights and other topics. She is a member of the Latin American Group of Studies on International Criminal Law since 2002 and so has participated in the annual research projects of the group since then. She has also published in other fora.

She is currently an external Professor of International Law at Private Bolivian University and has also lectured at Catholic Bolivian University, Andean Bolivian University, at Military University “Nueva Granada” – Bogotá, and in other regional programs.

Frauke Sauwerin is currently working as a research fellow at the Max Planck Institute for Comparative Public Law and International Law in Heidelberg, Germany. She studied law in Heidelberg, Germany, and Strasbourg, France. She has the French certificate “Notions fondamentales de droit international, européen et comparé” and the German first state examination in law. Since 2011, she is writing her PhD thesis under the supervision of Prof. Dr. Armin von Bogdandy. In her dissertation she is investigating the interactions between the International Criminal Tribunal for the former Yugoslavia (ICTY) and the European Court of Human Rights. She is a scholarship holder of the “Cusanuswerk”. In 2013, Frauke Sauwerin worked for three months as an intern with Judge Fausto Pocar in the Appeals Chamber of the ICTY in The Hague. In 2013, she published an article on the Benelux Economic Union in the Max Planck Encyclopedia of Public International Law.

Damién Scalia is Advanced Researcher at the Swiss National Science Foundation and works at the UCLouvain (Belgium). He is also a lecturer in international humanitarian law (University of Grenoble) and international criminal law (CERAH - Geneva). He holds a PhD in international criminal law (about the principle of legality of penalties) from the Universities of Geneva and Paris-Ouest Nanterre La Défense. He is currently conducting empirical research into the perception of ICL by persons who have been tried under that law.

Giulio Vanacore has been a post-doc researcher in Criminal Law at the University of Urbino since April 2013 (research project on complementarity before the International Criminal Court).

He graduated summa cum laude in 2008 at Federico II University in Naples, discussing a master thesis in international law titled, Issues Regarding the Surrender of Persons to the International Criminal Tribunal for Rwanda. In November 2008 he passed a public exam for admittance into the Internal, Comparative, and International Criminal Law and Procedure Ph.D programme at University of Urbino, receiving a three years scholarship and being top selection of the class. After three academic years (2008/2011), he dissertated a Ph.D thesis in criminal law titled, The Admissibility Assessment Before the International Criminal Court and the First Case Law: A Model of Complementarity. He has been collaborating with Department Chairs of International, Comparative and Italian Criminal Law at Second University of Naples and at University of Urbino, as well as with Department Chair of International Law at University of Naples Federico II. In 2012, he worked as an intern before the United Nations International Criminal Tribunal for the former Yugoslavia, Trial Chambers. In 2013, he participated in an Italian Government Commission of Experts, instituted before the Italian President of Council of Ministers, with the aim of studying and amending several criminal provisions on organized crime, mafia and economy crimes.

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Harmen van der Witt is Professor of international criminal law at the Amsterdam School of Law, University of Amsterdam.

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Van der Witt is a member of the editorial board of the Journal of International Criminal Justice and the Netherlands Yearbook of International Law. He has been a member of the Research council of the EUFIT-project on the European Arrest Warrant and member of the Steering Committee of FT project DOMAC (Impact of International Courts on Domestic Procedures in Mass Atrocity cases). Van der Witt has been an ad litem Judge in the Criminal Court of Roermond and is currently an ad litem judge in the Extradition Chamber of the District Court in Amsterdam.

Krit Zeegers is a Ph.D. Researcher within the Amsterdam Center for International Law at the University of Amsterdam. His research focuses on the application of international human rights norms in international criminal proceedings. In addition, Krit teaches criminal procedure and international human rights law. He holds a Ba in international law and political science from the University of Utrecht, and an LL.B. and LL.M. from the University of Amsterdam. Prior to working as a Ph.D. candidate, Krit interned with the UNESCO liaison office to attend the ECOSOC sessions at the UN Office in Geneva, and at the Chambers of the International Criminal Tribunal for the former Yugoslavia.

Elizabeth Santalla, Damién Scalia, F. Sauwerin, Giulio Vanacore, Sergey Vasilyev, Harmen van der Witt, and Krit Zeegers are mentioned in the text, each with their respective fields of study and accomplishments.
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