

# **ICL Student Conference 2013/14**

*‘Challenges for International Criminal Justice –  
Ways Forward?’*

Thursday 9th January– Friday 10th January  
2014



## Thursday 9th Jan (9:30am– 12:30 pm)- ‘The ICC : Past, Present and Future’

### 09:30-10:15

**LILY TOMKINS:** *Retroactivity in the wake of atrocity: Nuremberg and the uncertain future.*

Retroactivity in any construction can work to safeguard the individual liberties of those in need of protection. If this is true, we must consider whether protection from *ex post facto* law is an absolute right, or one that should be qualified in specific contexts. Looking to the future, might a retroactive law be a just solution to an unexpected action?

**SARAH MAYER:** *The Denacification in Germany - a failure?*

The presentation will include a brief historic overview of the denacification process and its progression during the occupation and afterwards in the Federal Republic of Germany, then turning towards the question if it really was a failure as it is argued by many historians.

**CAITLIN JENKIN:** *Remembered in history but forgotten in law: the accountability of leaders for atrocities committed during and after the Spanish Civil War, 1936-1939.*

The Nuremberg Tribunal was established in 1945 to hold accountable those responsible for atrocities committed during World War II. However, it is argued that the overarching and widespread impact of these atrocities obscured those of the Spanish Civil War, which occurred less than a decade earlier. This paper examines this conflict's significant atrocities, assessing whether the perpetrators should have been tried using a Nuremberg-style approach.

### 10:30 – 11:30

**MELSON CHUN:** *Emerging Themes at the International Criminal Court*

Within ICL, the ICC has been a bellwether in its own right. I will briefly examine how the procedural framework in international tribunals have moved from one of purely adversarial to one that incorporates more of the inquisitorial elements at the ICC. In the light of the principle of complementarity, I will also discuss the change in the legal framework, i.e. from one of vertical to horizontal collaboration, and its significance.

**BIANCA LOPEZ:** *ICL - A political tool or effective justice?*

The International Criminal Court has been repeatedly criticised by academics and lawyers alike for its specific focus on Africa. The court has only prosecuted black Africans yet the West has committed atrocities deemed by many to be a crime in International Criminal Law. Is the court merely a tool at the funders disposal to exercise power and does the court rely on states and this influence?

**ANDREW TAN:** *The Establishment of International Criminal Courts Post World War II – Progress? We Aren't Really There Yet.*

Though the establishment of International Criminal Courts in the post World War II era can be said to embody the progress of International Criminal Law (ICL), the current system is young and far from perfect. This presentation will address some of deeply rooted problems inherent in the modern system, problems which arguably taint and hinder any further development OF ICL.

**BEN MCPARLAND:** *The problems posed by the ICC's close relationship with the UNSC*

The aim of my paper is to provide a critical analysis of the relationship of the International Criminal Court (ICC) and the United Nations Security Council (UNSC). My particular focus will be on questions of legitimacy and universal justice their relationship poses for the court, how it has affected the development of the crime of aggression and an examination of America's influence within this area.

### 11:45-13:00

**CYNTHIA KWAN:** *Banality of Evil: Guilty or Not Guilty?*

Should a mere executor who had committed or assisted a war crime through performing his or her duties be held responsible for the crime? These people might not have intent to commit a particular crime. To answer this question, it is necessary to explore the reasons for finding them blameworthy for the crimes committed and the purpose of international criminal law.

**REBECCA YU:** *Genocide- from the victim's perspective.*

I will be looking at:

- i. Two to three genocide happened in the past, with some backgrounds of the events.
- ii. Victim's experiences
- iii. International Criminal law that is related to victims.
- iv. List out evidence of work that the ICL had focused on and done, and also the victim's reaction and further discuss if they had truly benefited from it and could they ever recover individually and on a community basis from the experience.

**ELLEN WHITE:** *Argument for the recognition of 'economic genocide' in International Criminal Law.*

The piece will define the limits of genocide under current law, arguing that it is inadequate protection for sections of societies who are bonded not by ethnic, religious or racial grounds but who are still persecuted. Economic classes and communities should also be protected groups and can be defined as a definitive group. Reference will also be made to Cambodia and Russia's culling of 'intellectuals', also India as a model of the connection between class, community and ethnicity.

**JAMES ROBERTS:** *Justice versus Reconciliation: Complementary or Incompatible?*

Against the backdrop of Croatia's attempts to come to terms with the atrocities committed during the Yugoslav Wars, I examine whether attempts to achieve justice through prosecutions of the ICTY and national courts are a prerequisite of reconciliation efforts or whether such procedures only serve as a continuation of hostilities, and consider what approach will aid future reconciliation attempts.

## Thursday 9th Jan (13:30pm– 16:30 pm)- ‘War Crimes: What is missing?’

### 13:30-14:15

**LOLA OKUYIGA:** *'Standardising the laws of armed conflict: a re-consideration of military ethics in a world of haves and have nots.*

How should we go about standardising the laws of combat in a world characterised by gross economic, technological and other inequalities? Should the fact a country isn't as advanced be a mitigating factor? Some might argue yes if the country was protecting itself and no if the economically challenged country was the one who instigated the conflict, but should there be a difference?

**GURJ MANHAS:** *The use of military force against a sovereign state for the purpose of regime change should be considered a legal use of force.*

I will argue in the affirmative and will base my argument on a necessity based benefit theory of legitimacy that will show that regimes that fall outside of this theory are illegitimate and that military action on a sovereign state that aims to change such a regime is legitimate and therefore should be a legal use of force. However, I will argue further that military action of any kind should also be subject to this theory of legitimacy and therefore must be conducted in a proportional manner that is necessary and beneficial to the people of the sovereign state in question.

**SAM SKALLA:** *In an age of “terrifying, lethal gadgets” what challenges do unconventional weapons pose to the norms and principles of International Criminal Law?*

This presentation will examine the ways in which ‘unconventional weapons’ challenge three primary norms: the Principle of Distinction, Proportionality and of Accountability; and consider whether the conflict between the development of new unconventional weaponry and the preservation of norms within International Criminal and Humanitarian Law will lead to a paradigm shift in the way in which International Criminal Law operates.

### 14:30-15:15

**ASHLEY GORDON:** *Drone strikes*

Drone strikes are a global means of assassination which impede on state sovereignty and often harm innocent people, particularly in the Middle East. Civilian death comes as a result of unspecific targeting, 'justified' by the principle of proportionality, and the unclear distinction made between combatants and non-combatants by drone operators. The use of drone strikes is therefore unlawful under international criminal law and should be classified a war crime under the jurisdiction of the International Criminal Court.

**NATALIE WILLIAMS:** ?

**PEI YONG:** *Effectiveness of Civilians Protection in Armed Conflicts (with a narrow focus on women civilians)*

The paper discusses the effectiveness of IHL in providing protection for civilians in warfare. It will first briefly describe the law of armed conflicts and then lay out the role IHL plays in providing better protection by demonstrating its application in some cases. Then, the paper argues that despite the development, the protection of civilians in conflict situations remain largely inadequate. Here, I will also discuss the issues with regards to women civilians and argue that women civilians suffer more than men civilians due to the deficiency of the law. Lastly, the paper will put forward some recommendations to improve protection of civilians.

### 15:30 – 16:30

**SARAH CHAN:** *Do we need a specific ‘Gender Based Crime’ mandate?*

This paper will discuss the shortcomings in prosecuting Gender Based Crimes. This will address whether a specific ‘gender based crimes’ distinction is necessary, whether the distinction has benefited the victim and where improvements can be made. Cambodia and cases from the Extraordinary Chambers in the Courts of Cambodia will be used as a narrative to illustrate the issues.

**SHAILJA CHANDRA:** *Forced Marriage as a Crime against Humanity.*

Forced marriages are a pervasive feature of armed conflicts around the world, such as in Sierra Leone, Cambodia, Rwanda and Uganda. Despite forced marriage having been charged and recently affirmed as an international crime before the Special Court for Sierra Leone (SCSL) courts and commentators have paid little attention to examining its viability as a distinct category of crime in international law. Forced marriage can be distinguished from arranged marriages on the one hand, and sexual slavery on the other, to justify its prosecution as an ‘other inhumane act’ as part of crimes against humanity.

**ASHLEE COATES:** *Thinking about the unthinkable: male sexual violence and vindication for its victims.*

This paper will discuss the status of men under ICL in relation to sexual violence and how sexual violence is perceived in armed conflict. Whilst demonstrating why I agree with scholars that male sexual violence ought to be included within the remit of 'gender-based violence', I will go on to suggest how male victims can be helped under ICL and what needs to change.

**VICTORIA REDMAN:** *‘Child soldiers: the distinction and consequences of voluntary and involuntary recruitment’*

The conventional global idea of child soldiers is that they are blameless. However, there are also many who commit these acts willingly. This can be because of economic or social pressures, in the hope of being provided for or merely because the idea of involvement in war seems exciting. In the course of this paper, I am going to discuss the different natures in which children are recruited and the consequences it can have on their punishment and sentencing.

### 17:00 (IMC.002) – KEYNOTE SPEAKER: **LINDA MELVERN - “LESSONS FROM RWANDA”**

## Friday 10th Jan (9:30am– 13:00 pm)- ‘Victims and Alternatives to the ICC’

### 9:30 – 10:30

**SEAN MULCAHY:** *A Comparison of Female Victims’ Experiences at the ICTY and the Tokyo Women’s Tribunal*

The effectiveness of international criminal tribunals in dealing with violence against women is measured through a comparison of the treatment of female victims at the ICTY and Tokyo Women’s Tribunal. The paper critiques the dominant instrumentalist model of seeking justice for victims through criminal convictions and suggests a synthesis approach that recognises the importance of prosecutions and healing for victims.

**BRENDA WONG:** *Memory and Reconciliation: An Exploration of Justice for Victims in light of the Extraordinary Chambers of the Courts of Cambodia*

I will be exploring the importance of truth and reconciliation in achieving justice for the victims of the crimes against humanity and genocide in Cambodia by the Khmer Rouge regime. I shall do this by examining the efficacy of the ECCC in achieving a sense of closure and redemption for its victims by scrutinizing the proceedings of the 4 cases that have been in proceedings so far (Case 001, 002, 003 and 004).

**RACHAEL AITKIN :** *An argument for a collaborative relationship between the ICC and TRC’s with regards to the participation of victims in international criminal justice.*

This paper will provide a critical examination of the current system of victim participation in the ICC, arguing that a collaborative relationship with TRC’s would not only make practical sense, but could allow an increase in the possible benefits that victims can receive from participating in the international criminal justice process

**RHEA CHOWDHURY:** *Women as perpetrators of international crimes.*

I conducted case studies on three females accused of perpetrating international crimes: Pauline Nyiramasuhuko (ICTR), Biljana Plavsic (ICTY) and Simone Gbagbo (ICC). In a male dominated sphere, these women have been accused of being involved in the commission of heinous crimes and I aim to discuss their involvement in the crimes conducted, whether their indictment is justified and the issues surrounding their trials.

### 10:45 – 11:30

**NICOLA BLOWER:** *Were the Gacaca courts an effective method of justice and reconciliation in Rwanda?*

The ‘Gacaca’ courts were national courts utilised in Rwanda from 2001 to deal with crimes considered to be of a less serious nature which occurred during the Rwandan Genocide. This presentation explores the use of these courts and analyses their effectiveness in achieving justice and reconciliation for the people of Rwanda.

**SAWAN MASANI :** *Gender Mobile Courts in the DRC: An exceptional initiative responding to exceptional circumstances*

Sexual violence has long been committed with impunity in the Democratic Republic of Congo. Therefore, the purpose of this presentation is to analyse whether the Gender Mobile Courts are a plausible model to end that culture by providing justice to the victims, which can be employed in other remote and afflicted regions.

**LAURA LIPINAITE:** *Crime and (no) punishment: Reconciliation and peacebuilding in post-conflict societies.*

his paper will address two key issues. Firstly, it will look into the concepts and practices of restorative, retributive and transitional justice in post-conflict societies to assess their individual and joint capacity to achieve reconciliation at both individual and national level. Secondly, it will analyse the relationship between reconciliation and peacebuilding process, in particular, the idea of reconciliation as a means to laying foundations for sustainable reconstruction of a peaceful and just society. Case studies analysed include South Africa, Rwanda and Chile.

### 11:45-12:30

**FERANMI IBITOYE:** *In light of the criticism from the African Union, is it right to allow the International Criminal Court to prosecute sitting heads of state within Africa?*

This conference explores the claim that the international criminal court has unfairly targeted the African Union with regards to prosecution for international crimes. It will assess the legitimacy of prosecuting sitting heads of state, particularly the Kenyan president Uhuru Kenyatta and his deputy William Ruto. From this I will discuss the possible implications this may have for the international community, especially after talks of the African Union withdrawing from the Rome statute.

**NAVNEET SANDHU:** *Can the ICC punish and facilitate peace? Lessons learned from Kenya.*

Kenya is novel case within International Criminal Law as its sitting President Kenyatta and Deputy William Ruto face trial in the ICC. The controversial background to the trial brings a pressing concern about whether these trials will be to the detriment of peace in the country. This conference paper answers that if this is indeed the case, what International Criminal Law can do to harmonise its aims.

**BEN HAVARD :** *The ICC in Uganda: A critique of the relationship between the ICC and the Ugandan Government*

In 2004 the International Criminal Court opened its first investigation following a referral by the Ugandan government. The subsequent decade has seen a turbulent period of continued violence and atrocities, with the relationship between the ICC and the Ugandan Government proving uncertain. The situation raises questions over the role and purpose of the ICC, its functionality and the principle of complementarity.

**DINA ALAWNEH :** *The ICC and Israeli-Palestinian Situation*

Israel has committed many atrocious crimes against the Palestinian civilian population, particularly in the arguable one-sided “Gaza War” or “Operation Cast Lead,” which led to over 1,400 Palestinian civilian deaths. However the ICC has yet to take action upon this. In my Conference Paper I will explore the reasons as to why it should in light of the findings of the UNFFM, the “Goldstone Report”. I will also tackle the reasons as to why it hasn’t and how they thus highlight some of the challenges facing ICL.