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University of Nottingham Human Rights Law Centre

Nottingham International Criminal Justice Conference

University of Nottingham, University Park Campus, Nottingham, 8–9 July 2024

Abstracts and Speaker Bios

Session One: International Crimes 1 – Current and Emerging Issues

A More Limited War Crimes Law: Better for IHL and for ICL

Rogier Bartels, International Criminal Court and University of Amsterdam

When fighting takes on an ethnic dimension, international humanitarian law (IHL) cannot serve its preventative function, and consequently, it cannot, or hardly, regulate the fighting. Indeed, when the aim of those fighting goes against the rationale of IHL, namely when the objective of the parties, or one of them, is not to overcome the enemy militarily, but instead to attack a people for whom they are; or is to ethnically cleanse a city or area, IHL cannot serve its preventative regulating purpose. One may wonder then whether IHL should be applicable to such situations at all. In fact, prior to the 1995 interlocutory ruling in Tadic by the ICTY Appeals Chamber, situations where two or more armed groups fought without directly opposing the governmental forces were not regarded as non-international armed conflicts, and IHL thus did not apply to these situations. War crimes law was developed at a time that the toolbox for holding someone accountable for atrocities was limited. To avoid breaching the legality principle, the application of IHL was required, and war crimes resorted to. International law has developed since then, and crimes against humanity (CAH) are now firmly embedded in ICL. The proposed paper will argue that we must move away from the idea to apply IHL "as widely as possible". The ICRC used to advocate what amounts to over-application of IHL in the case of violence and usages of force. International criminal courts and tribunals similarly used to expand the application of IHL beyond its legal limits to ensure jurisdiction or application of war crimes. However, where the ICRC has changed course, the courts and tribunals still apply IHL too widely. Such over-application has negative consequences and reduces the potential of international humanitarian law to limit suffering in times of armed conflict. The proposed paper will set out a more limited scope for war crimes and explain that no gap arises by showing that in all cases that are of sufficient gravity to warrant intervention by ICL, as opposed to mere domestic processes (including reliance on regular domestic criminal law), can be covered by CAH.

Speaker: Rogier Bartels obtained law degrees from the University of Utrecht (2003) and the University of Nottingham (2004), as well as a doctorate in law from the University of Amsterdam (2022). Rogier serves as a Legal Officer in the Chambers of the International Criminal Court, currently supervising legal teams in the Pre-Trial Division.

In 2019 and 2020, respectively, he was appointed as a part-time judge in the District Court of Amsterdam and the Court of Appeals in The Hague. In these Dutch courts, he sits on domestic criminal trials, international crimes cases, or extradition cases, on an occasional basis.

Prior to his present positions, Rogier was an assistant professor in military law at the Netherlands Defence Academy, a lawyer in the international crimes section of the Dutch national prosecutor's office, a judge-in-training at the District Court of Rotterdam, an Associate Legal Officer at the International Criminal Tribunal for the former Yugoslavia, and an international humanitarian law adviser at the Netherlands Red Cross.

Rogier has taught full international humanitarian law or international criminal law courses at several universities and he regularly gives guest lectures at academic institutions or as part of

professional trainings for humanitarian workers or members of the military. He is a senior research fellow of the Amsterdam Center for International Law (of the University of Amsterdam), book review editor of the Journal of Conflict and Security Law, and publishes extensively on international humanitarian law and (international) criminal law, and the interplay between these fields.

The Creation and Sharing of User-Generated Content as the War Crime of Outrages upon the Personal Dignity of Deceased Persons under International Criminal Law

Konstantina Stavrou, University of Vienna, @Konstantina_st

During the Syrian conflict, the 'Islamic State' developed a propaganda strategy, also known as 'media jihad' aimed, among others, at increasing its reach and instilling fear, including by filming executions and posing with (body parts of) deceased persons of opposing sides. Since then, a large number of videos and photographs from the Syrian conflict and other recent conflicts have emerged on social media and content sharing platforms. Over the past decade, this type of user-generated content depicting the dead has found its way into courtrooms. Several European criminal courts have found defendants guilty of committing the war crime of outrages upon personal dignity, in particular humiliating and degrading treatment, for either posing for photographs and/or videos next to deceased persons and subsequently sharing the footage on social media and content-sharing platforms, or further disseminating such content.

Speaker: Konstantina is a PhD candidate at the Law Faculty of the University of Vienna focusing on the use of user-generated evidence in international criminal proceedings, a doctoral fellow of the Austrian Academy of Sciences, and a Researcher in the programme 'Human Rights and International Criminal Law' at the Ludwig Boltzmann Institute of Fundamental and Human Rights in Vienna. In addition, Konstantina is a Lecturer at the University of Vienna in the postgraduate programme 'Human Rights'. Konstantina holds an undergraduate degree from Panteion University of Athens and an LL.M. in Public International Law from Utrecht University.

Rethinking Corporate Liability in International Criminal Law. The Case of Ecocide

Jonatan Rigo García, Universitat de les Illes Balears

Ecocide has undoubtedly achieved a well-deserved relevance in the international legal field. Altogether with the debate about the feasibility of its criminalization and the paramount importance of a proper definition, ecocide has also revitalized a well-known issue of international criminal law: corporate criminal liability. The old argument whereby recognizing corporate criminal liability in international law was inappropriate —due to the fact that it was not a common practice among States either— may be now overturned. Indeed, although the existence of different approaches, "the principle societas non delinquere potest is in retreat in all regions of the world and a growing number of countries have now accepted some form of corporate criminal responsibility", as the International Commission of Jurists manifested back in 2016. The very same notion of ecocide is nowadays intimately related to harmful corporate activities, especially regarding extractive industries. Moreover, current scientific knowledge points at human activities —mainly industrial— as a major driver of environmental degradation. However, the lack of a general international crime against the environment and the unharmonized frameworks of both environmental crimes and corporate criminal liability systems between States promote the impunity of corporations for destroying the natural environment. A gap which need to be filled through international criminal law. This, combined with the urgency that the threat of an environmental collapse imposes on human societies, justifies the re-examination of corporate criminal liability under the scope of the possible international crime of ecocide. The

presentation proposed will draw the connections between ecocide and corporations and it will analyse the prospects for accountability.

Speaker: I am a second year PhD student in international law at the Universitat de les Illes Balears (University of the Balearic Islands). My research interests are, broadly, international environmental law and international criminal law, while my thesis's topic focuses on the international crime of ecocide. I hold a LLB from the same university and a LLM from the Universitat de Barcelona (University of Barcelona). Currently, I am a predoctoral fellow at the Public Law Department of the Universitat de les Illes Balears and a lecturer of Public International Law, thanks to a grant funded by the Govern de les Illes Balears (Balearic Government).

Are mixed heritage identities recognised and protected in the international crime of genocide?

Sandhiya Sophie Argent, independent researcher and lawyer

Whether it is Tutsi against Hutu, Muslim against Christian or Arab against African, the crime of genocide assists in adding to binary determinations of ethnic, racial and religious groups. For those who straddle both, or multiple imposed identities and are mixed heritage, their identity is often only mentioned as evidence of genocidal intent to commit rape. Where society pitches one tribe, religion or other classification against another, it often forces binary identities and enforces colonial and global north readings of identities. Such simplistic determinations of identity, leads to the lack of recognition of mixed heritage people, whose presence in the fabric of society is in danger through being ignored, overlooked or threatened into in-existence itself. This may occur in society but are they subsequently re-enforced in the court room? The dilemma is that the test for genocide, the intent to destroy a group, religion or ethnicity, can serve to reify rigid racial and tribal categories which can of itself hide mixed heritage identities. It may be unavoidable, since employing a subjective lens is needed to assess whether the crime of genocide has been committed. However, too often judgments themselves have also, perhaps unwittingly, erased the presence of mixed heritage people. This represents a double injustice to mixed heritage people and families, who are often the first to be targeted when genocides occur. Judgments that are largely absent of any reference to mixed heritage individuals, represent a dangerous blind spot in the international criminal justice system.

Session Two: International Crimes 2 – Apartheid, Gender and Terrorism

Broadening the meaning of genocide, through apartheid?

Victor Kattan, University of Nottingham, @VictorKattan & Gerhard Kemp, University of the West of England Bristol, @GerhardKempICL

South Africa's application instituting proceedings against Israel at the International Court of Justice ('ICJ') under the 1948 Genocide Convention made multiple references to Israel's '75-year-long apartheid'. Namibia, in written comments to the ICJ on the advisory opinion on legal consequences arising from Israel's occupation of Palestinian territories, noted that Israel's policies could simultaneously be regarded as 'acts of genocide' and as a 'system of apartheid'. Although the crimes of apartheid and genocide are conceptually distinct, there are structural similarities. The preamble to the 1973 Apartheid Convention, for example, observes that certain acts in the 1948 Genocide Convention 'may also be qualified as acts of apartheid'. The definition of the crime of apartheid in Article II (a), (i), (ii), and (b) of the 1973 Apartheid Convention mirrors the definition of the crime of genocide in Article II (a), (b), and (c) of the 1948 Genocide Convention. Some argue that apartheid as conceptualised and practiced in South Africa, had 'genocidal effects' (for example, forced removals, and the deliberate infliction on racial groups

of conditions of life calculated to bring about their physical destruction in whole or in part'). South Africa's post-apartheid Truth and Reconciliation Commission (TRC), however, declined to label apartheid as a form of genocide, opting rather for the characterisation of apartheid as a crime against humanity (the Rome Statute of the International Criminal Court also defines apartheid as a crime against humanity).

The submissions to the ICJ and the first prosecution of the crime of apartheid, currently before a domestic court in South Africa, prompt us to revisit and critically reflect on the interrelationship between genocide and apartheid. In particular, this paper explores the possibility that the 1973 Apartheid Convention broadened the definition of genocide for those states that are parties to both the Genocide Convention and the Apartheid Convention.

Speakers: Dr Victor Kattan is Assistant Professor in Public International Law at the University of Nottingham School of Law where he is writing a book on apartheid as a crime against humanity for Oxford University Press. His publications include, Making Endless War: The Vietnam and Arab-Israeli Conflicts in the History of International Law (Michigan University Press, 2023, with Brian Cuddy); The Breakup of India and Palestine: The Causes and Legacies of Partition (Manchester University Press, 2023, with Amit Ranjan); From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict 1891-1949 (Pluto Press 2009); and The Palestine Question in International Law (British Institute of International and Comparative Law, 2008).

Gerhard Kemp is Professor of Law at UWE Bristol in the United Kingdom where he teaches international criminal law, criminal law and international law and security. He is also an Extraordinary Professor of Public Law at Stellenbosch University in South Africa. Gerhard has received the prestigious Alexander von Humboldt Research Fellowship as well as research fellowships from the Robert Bosch Stiftung and the Stellenbosch Institute for Advanced Studies. He serves on the board of directors of the Institute for Justice and Reconciliation in Cape Town and on the editorial advisory boards of several academic journals.

Gender Blindness in International Criminal Law: The Example of Gender Apartheid

Shadi Sadr, Leiden University

The suffering of women resulting from sexual and gender-based crimes in armed conflicts and massive oppressions has historically been minimized by international criminal law. Despite progress in the past two decades, the law has yet to fully grasp the nature of acts primarily targeting women by explicitly naming them, thereby legitimizing the uniqueness of such situations. The failure to recognise apartheid on the ground of gender as an international crime exemplifies this trend.

The international community derived the name and elements of the crime of apartheid from South Africa's experience, using it to describe an institutionalized system of oppression and dominance based on race. However, despite victims' calls since the early 1980s for the inclusion of gender as a basis for apartheid, the International Law Commission only added religious and ethnic grounds to the definition of apartheid, and the International Criminal Court (ICC) rejected any expansion and only criminalized racial apartheid.

Transposing the legal framework of the ICC's definition of racial apartheid, the proposed paper will first argue that acts of similar magnitude have been perpetrated against women and girls in Afghanistan and Iran, driven by similar criminal intent and sustained over an extended period. Supporting this argument, the paper will juxtapose specific laws and practices within these contexts against the constitutive elements of the crime of apartheid.

The paper will then explore why apartheid based on gender differs from other gender-based crimes, particularly gender persecution, in terms of contextual elements and, more importantly, specific criminal intent.

Finally, the paper will discuss the ongoing debates concerning the inclusion of 'gender apartheid' as a crime against humanity under Article 2 of the Draft Articles on Prevention and Punishment of Crimes Against Humanity. It will also touch upon the implications of such codifications for the international justice system, if this historical oversight is finally rectified.

Speaker: Shadi Sadr, a human rights lawyer and PhD candidate at Leiden University, ran Raahi, a legal centre supporting vulnerable women, in the 2000s. She defended women facing death by stoning or affected by Iran's gender-discriminatory laws until security forces shut the centre down in 2007. Sadr was arrested in 2007 and 2009 for her activism but has received international recognition for her work, including several awards such as the Human Rights Tulip and the Alexander Prize from Santa Clara University's Law School.

In 2010, she co-founded Justice for Iran (JFI) to combat impunity in Iran, aiming to hold officials accountable for human rights violations. She co-authored "Crime and Impunity: Sexual Torture of Women in Islamic Republic Prisons."

Sadr has also contributed as a jury member to several international tribunals, including the 2015 International People's Tribunal on Indonesia, the 2017 Tribunal on Myanmar, and the 2018-19 Tribunal into Forced Organ Harvesting in China. Additionally, she co-organised the 2020-2022 Iran Atrocities (Aban) Tribunal and has published extensively on victim-centred justice mechanisms.

Navigating the intersection between terrorism and SGBV: Can the Rome Statute provide a viable route for accountability?

Sara Ciucci, University of Nottingham, @sara_cii

Non-state actors, particularly terrorist groups, have emerged as the predominant perpetrators of sexual and gender-based violence (SGBV), particularly in times of armed conflict. The intersection of terrorism and SGBV poses profound challenges to the accountability mechanisms within the international criminal justice system. Although the Rome Statute lacks explicit provisions addressing terrorism, its recognition of diverse forms of SGBV as grave crimes might offer potential avenues for prosecuting terrorist organisations under the categories of genocide, crimes against humanity, and war crimes.

Yet, navigating accountability within the Rome Justice System encounters limitations and complexities. Challenges arise in proving specific intent, especially in cases of genocide where the destruction of a targeted group may not be the primary objective of terrorist acts. Additionally, establishing the elements of widespread and systematic attacks to prove crimes against humanity poses difficulties, particularly in cases involving isolated incidents or smaller terrorist groups. Limitations also arise in considering acts perpetrated by terrorist groups as war crimes, given that they must occur with a clear link to an armed conflict context. While the Rome Statute provides an avenue in some but not all cases, current Articles 6-8 still fail to capture the full culpability of terrorist perpetrators.

Addressing the nexus between SGBV and terrorism necessitates a more nuanced international legal framework that explicitly recognises the terror intent behind such acts, while also acknowledging the profound impact of sexual violence on victims and affected communities. The presentation aims to identify the most viable solution. While not without challenges, the addition of a new crime or a new category within existing core international crimes specifically

targeting terrorism would enhance the effectiveness of the Rome Statute in combating terrorism-related sexual violence, ensuring greater accountability and justice for victims.

Speaker: Sara is a ESRC PhD candidate at the University of Nottingham, School of Law. Her PhD research explores the intersection between conflict-related sexual violence and terrorism, focusing on the challenges and perspectives of accountability at both the national and supranational levels. More broadly, Sara's research interests include international criminal law, criminal law, and criminal procedure law. Additionally, Sara collaborates with the ICJ Unit of the Human Rights Law Centre where she has been working as a Research Assistant on a series of projects aimed at empowering women survivors' leaders of grassroots organisations and children born of war in Northern Uganda.

The Use or Misuse of Terrorist Membership Labels for the Prosecution of Core International Crimes: How to make Labelling Practices Fair

Ligeia Quackelbeen, Criminal Law Department, Tilburg University & William Fortin, Criminal Law Department, Tilburg University

In the last decades, EU Member states have been confronted with the phenomenon of returnees from conflict zones, including Foreign (Terrorist) Fighters (FTFs), some of whom have been involved in criminal conduct abroad. Domestic criminal justice responses to this have primarily developed in the context of counterterrorism. One of the main prosecutorial strategies regarding this issue has been to charge returnees with membership of terrorist organization (MTO). These offences are often easy to prove, allowing the accountability net to be cast wide.

Coincidingly, several EU states have become active in prosecuting international crimes based on universal jurisdiction: Germany has been at the forefront of systemic investigations, while the Netherlands and France have seen a growing number of international crime cases. These countries have charged returnees with both terrorism offences and international crimes. Given the intersecting nature of international crimes and terrorism, cumulative charging is seen as vital in realizing full accountability. Yet, countries such as Belgium have restricted cumulative charging for terrorist offences, resulting in returnees' crimes becoming overwhelmingly labelled solely through MTO or in combination with other terrorist offences.

This dynamic triggers the question of when conduct becomes deserving of prosecution through either terrorism or international crime labels. From an ICL perspective, one needs to understand what it means to use or misuse the MTO labels against returnees. Such an examination is pressing given the relatively low threshold for MTO prosecution and the severity of related consequences (e.g. refugee exclusion or citizenship stripping).

This paper examines MTO convictions in terms of their compatibility with the principle of fair labelling in light of their punitive consequences. It maps the prosecutorial strategies and the judicial labelling regarding MTO convictions in Germany, France, the Netherlands and Belgium to subsequently examines whether this low-threshold label can be defended from the perspective of fair labelling.

Session Three: Criminal Justice Processes 1 – Commencement and Conclusion

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Performative Transparency, the International Criminal Court and the Office of the Prosecutor

Satwant Kaur, University of Leicester

This paper introduces a theory of performative transparency within the Office of the Prosecutor at the International Criminal Court. The International Criminal Court is a unique institution within

international criminal law and justice and the Office of the Prosecutor who, by determining which situations, cases and individuals come before the court, acts as an effective gatekeeper in upholding the court's mandate of ending impunity. As part of its role, the current Prosecutor, continuing the practice of its predecessors, has released policy papers and strategic documents sharing the work and priorities of the Office of the Prosecutor and therefore the Court with the wider public promoting a sense of transparency. In analysing the Office's policy papers and documents against its practice, this paper questions the purpose of these documents and the extent to which they provide an insight into the work of the Office of the Prosecutor arguing that policy links to practice are tenuous at most. The release of these numerous documents is a performative act allowing each Prosecutor to demonstrate transparency and validate their position and priorities at a particular time but falling short of developing a consistent, continued practice that advances the goals of the Court and international criminal justice more broadly. Each prosecutor brings new change, new priorities and without building on the work of its predecessors renders the mandate of the court futile.

"I WANT ALL WAR CRIMINALS PERSECUTED!" Exploring the Social Media Response to an Article 15 Communication

Natalie Hodgson, University of Nottingham

It is increasingly common for individuals and organisations to publicise their Article 15 communications to the International Criminal Court (ICC) through the media and on social media. While this may enable the authors of communications to influence members of the public and advocate for political and social change, the strategic use of Article 15 communications also poses a number of potential risks and challenges for the ICC, particularly in an era where misinformation and disinformation are rife on social media. This paper will contribute to our understanding of the strategic benefits and potential risks of Article 15 communications. Through a content analysis of posts on the social media website X (formerly known as Twitter), this paper investigates how users responded to a communication by Australian Senator Jacqui Lambie concerning the potential responsibility of higher level Australian Defence Force commanders for war crimes committed in Afghanistan. The social media response to Lambie's communication demonstrates that an Article 15 communication can be an effective strategy for the authors of communications to engage the public on an issue. However, this paper identifies a number of areas where there is potential for misunderstanding regarding the ICC and the likely outcome of an Article 15 communication. In extreme cases, these misunderstandings might lead to people developing a negative opinion of the Court.

Speaker: Dr Natalie Hodgson is an Assistant Professor in Law at the University of Nottingham and head of the Forced Migration Unit in the University's Human Rights Law Centre. Natalie completed her PhD in Law at UNSW Sydney in 2022. Natalie's research explores the ways in which civil society actors engage with international criminal law, with a particular focus on Article 15 communications.

Early Release in International Criminal Law

Róisín Mulgrew, University of Galway and Irish Centre for Human Rights, @MulgrewRoisin

Although the statutes of the ICTY and ICTR only provided for the possibility of pardon or commutation of sentence, what transpired in practice was that Presidents granted unconditional early release. The judges of the SCSL decided, however, in 2013, that this was not an appropriate form of release, and adopted an innovative and detailed model for conditional early release. The MICT also adopted a system of conditional early release but only because of a recommendation issued by the UN Security Council. The Rome Statute, in contrast, does not

permit early release. A panel of ICC Appeal Chamber judges must consider the appropriateness of reducing the original sentence imposed.

This paper traces the evolution of the law on and systems for early release in international criminal law by analysing and comparing the statutory, regulatory and policy-based rules of the ICTY, ICTR, MICT, SCSL and ICC, as well as relevant jurisprudence and practice. In particular, it compares and contrasts the different approaches to creating and operationalising a conditional early release system at the MICT and the RSCSL.

The paper explores the key factors that inform release decision-making in international criminal and how rehabilitation has been reconceptualised in and for the international criminal justice context. The paper examines important influences on release decisions, with a focus on the judicial role, victim input, state and prosecutor views. Finally, the paper will draw attention to the need to recognise the impact of health and advanced age considerations on release and therefore for international punishment.

Speaker: Dr. Mulgrew is a Lecturer in Criminology and Criminal Justice and Associate Head for Research at the School of Law, University of Galway. She is an expert in international penal law. Publications include *Towards the Development of the International Penal System* (CUP, 2013), *Research Handbook on the International Penal System* (Elgar, 2016), an *ICLR* Special Issue on 'National Prosecutions of International Crimes' (2019), a *JICJ* Symposium on *Post-Trial (In)Justice* (2023). Her monograph *Early Release in International Criminal Law* and edited collection, *Research Handbook on the Punishment of Atrocity Crimes* (with Prof Mikkel J Christensen) are in press with Elgar Publishing.

Session Four: Criminal Justice Processes 2 – Judges and Evidence

Mental Health Professionals as Expert Witnesses Before the ICC

Marina Fortuna, University of Groningen

In my presentation I shall discuss the participation of a particular category of expert witnesses, that of mental health professionals, before the ICC. While mental health expertise before national criminal courts has been thoroughly addressed in legal scholarship, the same cannot be said about mental health experts appearing before international courts. Yet, as the Ongwen trial has recently shown, their importance for international criminal trials cannot be underestimated. The aim of this presentation then is to shed light on different aspects of these experts' participation before the ICC, namely:

- What is the purpose of mental health expertise before the ICC? Here, I shall examine the difference between expertise in order to determine fitness to stand trial versus expertise geared towards establishing a mental health disease or disorder.

- Who can appoint a mental health expert to the case and will the regime of their participation in the proceedings differ based on that?

- How, if at all, does the ICC establish the credibility of expert evidence? Are there any particular criteria and, if not, should some criteria be developed and what can these criteria be?

- What is the material based on which mental health professionals reach their conclusions?

- Are there any gaps in the existing rules and/or practice regarding the participation of these experts before the ICC?

This presentation shall be based on an analysis of both the ICC Statute and the Rules of the Court, but also on the transcripts of the hearings in the Ongwen case.

Speaker: Marina Fortuna is Assistant Professor of Public International Law at the University of Groningen. She was previously part of the ERC TRICI-Law project within which she conducted research on interpretation of customary international law in international courts and tribunals. Her research focuses on the practice of international courts and quasi-judicial bodies, especially the ICJ, human rights courts and treaty bodies and international criminal tribunals, which she examines from the standpoint of various aspects of general international law. Her current research interest lies in the area of evidence in international courts.

Moving Through Uncharted Waters: Comparative Intuitive-Cognitive Judging at International Criminal Courts

Gregor Maučec, University of Amsterdam, Faculty of Law & University of Liverpool, School of Law and Social Justice

This paper looks closely at how judicial intuition matters to international criminal judging. It analyses long-standing controversies and debates over the role of intuitive processes in judging and their effects on impartial adjudication, objectivity of the judicial decisions and judicial legitimacy, by undertaking the first comparative study of "thinking-fast" judging specifically across four international criminal courts - the International Criminal Court, the International Criminal Tribunals for the former Yugoslavia and Rwanda, and the Kosovo Specialist Chambers. Surprisingly, the paper finds that each of the central claims and traditional assumptions that drive the scientific discourse over the impact of judges' use of intuitions in legal decision-making is flawed, mistaken or misleading when it comes to these courts. While recognising that judicial intuitions are an essential component of the act of judging and that decision-making processes of individual judges at these courts also have elements that may not be susceptible to rationalisation, the paper argues that the presence of judges' intuitive ways of thinking in deciding complex criminal cases has no systematic impact on judicial impartiality, objectivity and legitimacy of judicial decisions. The key factors instead are the ways individual judges go about deciding cases and patterns of their proneness to passive processing of the information and making fast decisions that may suggest cognitive bias among individual judges. Although not finding any clear-cut evidence that international criminal judges excessively employ heuristics in deciding cases, or that their important decisions are significantly influenced by their intuitions, the paper suggests that the effects of nonrational cognitive processes of decision-making on the issues considered are mediated by a third factor, namely the collective judging at the trial stage and the appellate review of the trial chamber's rulings. The paper concludes by briefly discussing the applicability of these findings for the larger universe of international courts.

Creating Consistency in the Courtroom: the Role of ICC Practice Manuals

Kyra Wigard, KU Leuven

The Rome Statute has been hailed as a compromise between civil and common law legal systems. Nevertheless, the hybrid format has led to procedural challenges in practice for the judges at the International Criminal Court (ICC): how to assess witnesses and their testimony, how to evaluate evidence, and what is the role of a judge during the different stages of proceedings? These issues have resulted in different Chambers employing different working methods, grounded more in either civil or common law. To counter these inconsistencies within the Court, judges have adopted chambers practice manuals since 2015 to streamline proceedings and create more coherence. In 2023, the most comprehensive manual was adopted and included procedures on issuing individual opinions. While these are notable developments, this paper argues that the use of manuals leaves an important gap if one is to truly offer solutions to procedural challenges at the ICC. First, manuals are not binding on

Chambers. This entails there is no obligation for judges to follow the manual. Moreover, some of the manuals proposing important procedural solutions are new and their usability has not been tested yet, but practice at the ICC gives little indication that judges would be particularly inclined to follow this manual. Third, interview results indicate some judges themselves regard manuals more as a tool for judicial politics than aiming to create coherent procedures. Finally, due to the rotating judicial system applicable at the ICC, a majority of judges will have to be found for a manual or working methods with each change of the judicial pool every three years. These factors give rise to questions about whether manuals increase judicial coherence, or will in fact distract from providing sustainable solutions to important procedural challenges at the ICC.

Speaker: Kyra Wigard is a research fellow at KU Leuven Centre for Public Law and recently completed her PhD at KU Leuven researching the judiciaries and legal traditions of the International Court of Justice and the International Criminal Court under supervision by professor Gleider Hernández and Professor Carsten Stahn. She writes about ongoing cases and developments at the ICJ and ICC, particularly with a view from the bench.

Session Five: Criminal Justice Processes 3 – Victims

Victims' voices in the Katanga case: exploring some of the challenges faced by the use of AI technology in the ICC

Giovanna Maria Frisso, University of Lincoln, @FrissoGiovanna

In 2023, the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) launched Project Harmony, an evidence management platform that uses artificial intelligence (AI) technology for, among others, expeditious pattern identification, automatic translations, target searches of source material. The incorporation of AI technology was presented as essential to speed investigations and prosecutions, increasing the OTP's overall efficiency. Given that the call for increased efficiency in the ICC has not been confined to the OTP, one could expect other organs to adopt a comparable technological approach.

Considering Project Harmony's existing capabilities, and in particular OTPLink, this article argues that such technological approach could be adopted by the Victims Participation and Reparations Section (VPRS) to analyze victims' applications. Nonetheless, the use of such tools by the OTP, as well as by the VPRS, is not devoid of risks. Existing literature has already highlighted potential risks associated with technological integration in (criminal) legal processes, which vary from algorithmic bias and fairness to the use of misinformation. This article explores some of the challenges that language barriers can present to a meaningful and non-discriminatory use of AI technology in processing victims' applications through a specific case study – the Katanga case. To this end, it considers the challenges identified by the VPRS in addressing victims' perspectives on reparations to highlight some of the potential limits of AI.

As the analysis carried out by the VPRS has been not properly considered in the case proceedings, this article is also a reminder that the oversight of our ability to communicate is not exclusive to AI technology, but a characteristic of human interactions.

Speaker: I am a Senior Lecturer at the University of Lincoln. I hold a PhD from the University of Nottingham, where my research focused on victims' rights at the International Criminal Court (ICC). I continue to work on the topic, in particular on the definition of who qualifies as a victim at the ICC, procedural aspects of victim recognition and victims' rights. My most recent contribution to this area concerns the status of victim of children born of war.

Supporting Inclusive Victim Participation at the ICC

Annika Jones, University of Exeter

The incorporation of victim participation into the legal framework of the International Criminal Court (ICC) brought hope, to some, that the voices of victims would be elevated and heard more clearly in the ICC's proceedings than they had been at previous international criminal tribunals, where they could participate only as witnesses. While research has emphasised the significant distinction to be drawn between the wide pool of victims of international crime and the far more restricted pool of 'juridified victims' who are able to participate in international criminal proceedings, less attention has been drawn to the demographics of the juridified victim and the extent to which access to justice for victims of international crime is shaped by factors such as age, gender and disability. Against this background, this paper highlights the importance of the inclusivity of victim participation at the ICC, including for the realisation of several of the Court's underlying goals, most notably its fact-finding, expressive and restorative capacity. Using empirical data drawn from a survey of practitioners engaged in victim participation at the ICC, it reflects on current limits of international criminal proceedings and ways in which they can be addressed to improve the inclusivity of international criminal justice and the ICC's ability to represent, support and provide agency to the communities that are most deeply affected by international crime.

Speaker: Dr Annika Jones is an Associate Professor in Law at the University of Exeter. Her research addresses aspects of international criminal procedure, including the representation of different voices in the international criminal justice process, the impact of efficiency-building on the nature and function of international criminal courts and tribunals, and interactions between different judicial institutions in the adjudication of international crimes. Annika has worked in the Appeals and Trial Chambers of the International Criminal court. Her previous roles also include contribution to the development of the National Implementing Legislation Database, one of the International Criminal Court's digital legal tools.

Voices Beyond Verdicts: Integrating Victims' Narratives in the Proceedings of the International Criminal Court

Alessandra Cuppini, Faculty of Law and Criminology, Ghent University

Narrative victimology, as a theoretical framework emphasizing the comprehension of victims' experiences through storytelling, is particularly pertinent in the context of International Criminal Court (ICC) proceedings. Victims' narratives often transcend the immediate impact of the crime, encapsulating broader social, cultural, and historical contexts. However, integrating these narratives into ICC trials presents significant challenges due to tensions between legal truth-seeking and the subjective nature of victim stories that often lead to an instrumentalization of victims' narratives.

This contribution seeks to develop a normative framework that underscores the value of truth-seeking beyond mere legal determinations of guilt or innocence. It advocates for a comprehensive approach that acknowledges broader truths about mass atrocities. The argument is structured around three interrelated grounds:

1. The ICC's Search for Truth and Justice: Examining the role of the ICC in uncovering the truth behind mass atrocities and delivering justice to victims while navigating the complexities of legal proceedings.

2. The Right to Truth: Emphasizing the importance of victims' right to truth and their ability to have their narratives heard and acknowledged within the legal framework of the ICC.

3. The Legal Epistemological Function of the ICC: Investigating the ICC's function in shaping legal knowledge and understanding of historical events, particularly regarding the validation and recognition of victims' narratives.

By proposing this normative framework, the presentation aims to contribute to the enhancement of victims' participation and recognition within ICC proceedings, ultimately fostering a more comprehensive understanding of mass atrocities and their broader societal impacts.

The bitter with the sweet: the OTP's narrative in the charges against Joseph Kony

Silvina Sánchez Mera, Robert Gordon University, @silsanchezmera

On 19 January 2024 the International Criminal Court ('ICC') Prosecutor submitted the document containing the charges against Joseph Kony, LRA commander. This would constitute the second case in the situation in Uganda, the first being that of Dominic Ongwen, former LRA commander under Kony's orders. While Kony remains at large, the document is relevant as it is an indication of the crimes committed by the LRA and the narrative of the prosecution in the case.

This presentation's aim is twofold. First, to discuss changes in the narrative and application of the law in the charges brought against Kony, with respect to its predecessor's case, Ongwen. In particular, the recognition of the slavery of children, persons below the age of 18, into the LRA to fight; and the fate of children born in the LRA. Second, to discuss those narratives that have remained unchanged and its consequences. Specifically, the lack of recognition of adult male victimhood and reducing the experiences of women to victims of sexual abuse.

Drawing on the ideal victim theory, feminist approaches and a doctrinal analysis I aim to show how gender and age representations affect the application of the law and victimhood recognition in detriment of adult men. I contend that gender representations of 'men are soldiers, women are victims' construct adult fighting men as ideal perpetrators and children and women as ideal victims. This impacts who the ICC considers as victims of intra-party crimes and the application of the law. Further, the ICC's practice helps reinforce such representation. Ultimately, I argue that victimhood recognition of adult fighting men for intra-party crimes is still a blind spot for the ICC.

Speaker: Silvina Sánchez Mera is a Lecturer in Law and Criminology at Robert Gordon University. She holds a PhD from La Trobe University. Her doctoral research focused on the International Criminal Court's practice regarding crimes committed against child soldiers by their recruiters and engaged with feminist and criminological theories. She has previously worked as a tutor at La Trobe and as a Lecturer in Public International Law and Human Rights Law in Argentina. Her professional experience also includes working as legal officer at a State Juvenile Court, as a researcher for Defence Counsel at the ICTY and interned at the ECCC. She is a Chevening alumni and an Endeavour Scholar.

Session Six: Beyond the ICC 1 – Universal Jurisdiction

Universality, Subsidiarity, Complementarity: Seeking Order in the Prosecution of International Crime

Mark Chadwick, Nottingham Law School, Nottingham Trent University

Jurisdictionally speaking, there are manifold ways in which perpetrators of core international crimes might be brought to account. In line with the ICC's central tenet of "complementarity", it is anticipated that a State with jurisdiction over an offence should be the primary bearer of jurisdictional competence, and indeed it is desirable for various reasons that this should be the

case. Generally, we would look to the territorial State to exercise jurisdiction but in cases where international crimes have been committed, the "home" State's judicial system may well be compromised or unable to operate in such a way as to administer "genuine" justice.

In such cases, "universal jurisdiction" may provide an alternative means of delivering justice, whereby any other State in the world is permitted to exercise jurisdiction in relation to international crimes, regardless of any connection it may have to such offences. Indeed, the ICC "complementarity" principle suggests that the ICC ought to defer investigation to any State that has jurisdiction over the offences, which would include States seeking to exercise universal jurisdiction.

This raises questions of process, however, as unlike the Rome Statute articles governing the ICC's complementarity process, there is no specific guidance, in international law, governing the relationship between the "home" State and the "universal jurisdiction" State. Drawing on relevant international legal principles and (possibly) developing customary international law, this presentation considers how this relationship between States (sometimes called "subsidiarity" or "horizontal complementarity") could and should be governed. It will consider the the key factors that affected States should consider, the potential role for international organisations (including the ICC), and the overall utility of universal jurisdiction as a means for promoting accountability. In so doing, the presentation seeks to conceptualise a broader "system" of international criminal justice, centred primarily around the jurisdictional competencies of States.

Understanding the Mandate of Domestic Courts in Exercising Universal Jurisdiction: the Trial of Ousman Sonko as a Case Study

Carlotta Rossato, University of Padua

According to the survey on criminal cases based on universal jurisdiction carried out between 1961 and 2017 by Langer and Eason, universal jurisdiction has undergone a ‘quiet expansion’, which has been both numerical and geographical.

Based on the interactive map designed by the NGO Trial International, as of today there have been around 180 cases grounded on universal jurisdiction, which led to 63 convictions. Of these, 40 were rendered in the last 5 years.

Notwithstanding such a quantitative positive trend, it is possible to observe significant room for improvement from a qualitative point of view. In particular, the practice of such trials reveals major limits regarding participation and outreach towards the communities affected by prosecuted crimes.

Such an outreach gap seems to stem from the inability of national courts to fully grasp the inherent mandate of uj trials as criminal processes concerning crimes against the whole mankind, which are consequently treated like any criminal trial.

Domestic courts generally fail to take into account the broader context and impact of the process; they offer very limited support to the victims and witnesses attending the proceedings; and they do not commit to outreach efforts to the benefit of the affected community.

This background raises questions on the limitations of the Western criminal legal system in addressing extraterritorial cases of massive crimes: Who are the ‘victims’? Can justice be done in a foreign language? Is outreach a private task? What does the right to access to justice entail? These issues touch the foundations of the justice process, adding a bottom-up perspective, and lead to wondering: Who is this justice really done for?

The contribution examines the above-mentioned issues through the consideration of case studies, especially the recent trial of Ousman Sonko before the Swiss Federal Criminal Court.

Speaker: Carlotta Rossato is a third-year PhD student at the Human Rights Centre of the University of Padua. After graduating in law from the University of Milan, she participated in the Critical Legal Training at the European Center for Constitutional and Human Rights in Berlin. She interned at the Public Prosecutor's Office at the Court of Bologna and a criminal law firm and was admitted to the Italian Bar. She is currently conducting her doctoral research on the exercise of universal jurisdiction. To this end, she joined the International Investigations and Litigation team at TRIAL International for six months.

The Guilt Gap: what the difference in acquittals between trials at the ICC and domestic courts' use of universal jurisdiction can tell us about international criminal justice

Michelle Coleman, Swansea University School of Law

The International Criminal Court (ICC) has had a relatively high proportion of acquittals and dismissals. Of the completed cases at the Court to date, four resulted in conviction, three ended in acquittal, while the other six ended with the charges being unconfirmed, withdrawn or otherwise vacated. Cases tried in domestic courts using universal jurisdiction result in a relatively low proportion and number of acquittals and dismissals. For example, Trial International reports that in 2022 there were twenty-three convictions in the first instance or during appeal and only one acquittal which currently has an appeal pending.

At times, it may feel like justice is not being done if the case does not end in conviction, however an acquittal or dismissal that is rightly reached can show that the evidence is being properly considered and the rule of law is being upheld. However, the difference in the number and the proportion of acquittals and dismissals between the International Criminal Court (ICC) and trials held through universal jurisdiction may indicate a fairness or inequality issue within the greater field of international criminal law.

This paper discusses and examines the acquittal disparity. The disparity in the number and proportion of acquittals between the ICC and the universal jurisdiction trials in domestic courts may show that different standards of justice are being obtained depending on where the international crime is tried. The paper argues that the difference in acquittal rate can be largely explained through differences in case selection, investigation issues, and how responsibility is understood and proved. This could indicate fairness and justice issues in discrete points of the trial process, rather than for the trial overall. Identification of these points may allow for correction or greater coherence across jurisdictions, which would allow for greater consistency in the future.

Speaker: Michelle Coleman is a Lecturer at Swansea University School of Law where she teaches criminal law and evidence. Her research focuses on international criminal law with specific emphasis to fair trial rights and rule of law. Her book, The Presumption of Innocence in International Human Rights and Criminal Law, was published by Routledge in 2021. Her current research project on acquittals explores their impact on courts, states, victims, and the rights of the accused. Before entering academia Michelle practiced law as a public in New Jersey and worked for VPRS at the International Criminal Court.

Session Seven: Beyond the ICC 2 – Local Justice, Hybrid Justice and Alternatives to International Criminal Justice

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Making the Global Local: Creating Local Trial Chambers of the International Criminal Court

Caleb H Wheeler, Cardiff University

International criminal justice is becoming increasingly local. When, the International Criminal Court ('ICC') was founded 25 years ago it was meant to become the primary legal institution responsible for investigating, prosecuting, trying and punishing individuals accused of international crimes. However, a variety of factors have reduced the reach of the ICC and caused those working to impose accountability for international crimes to look to domestic jurisdictions for solutions. The ICC needs to assess whether it can re-orient its trial processes so that it remains relevant in this changing legal landscape.

One way it might do this is by recasting itself as an international criminal legal hub through the establishment of local or regional trial chambers that sit away from the Court's seat in The Hague. This paper assesses the legality, potential effectiveness, and practicality of such a move. First, it examines whether a legal basis exists for the localization of ICC trials through a thorough examination of the Rome Statute's relevant provisions. Next, it explores whether relocating trials can improve the standing of the court, both in terms of the justice it delivers and how its activities are perceived. Finally, the paper will address some of the practical challenges that would result from localization; including how to identify appropriate physical locations for holding trials, how these new local chambers will be staffed, the impact such a change would have on the Court's existing organs, and how local trials chambers might be funded. The paper will conclude that localizing justice offers the ICC a way forward for the future. Localization makes it easier for victims and witnesses to be involved in the trial process, either as active participants or passive observers, improving the actual and perceived quality of the justice being done.

Speaker: Dr Caleb H. Wheeler is a lecturer in law at Cardiff University. He is an international criminal law expert who has written extensively on international criminal courts and tribunals, international criminal trials and the rights of trial participants. His most recent book, Fairness and the Goals of International Criminal Trials was published by Routledge in 2023. Dr Wheeler chairs the organizing committee of the European Society of International Law's interest group on international criminal justice. Dr Wheeler is also a qualified lawyer who practiced for five years in the United States before entering academia.

Beyond the ICC, deep in the blind spots of international criminal justice: new hybrid criminal courts

Maddalena Cogorno, University of Florence, @maddalenacog

In its first 20 years, the International Criminal Court has been facing criticisms due to perceived flaws in its operations, lengthy investigations and proceedings, an "African bias", and doubtful effectiveness of complementarity. In addition, the wars in Ukraine and Gaza imposed new challenges on the international community. These are some of the reasons that led to the development of alternative solutions for the prosecution of mass crimes.

Since 2015, proposals emerged to restore hybrid criminal justice after a period of quiescence.

Hybrid criminal justice offers undeniable social and legal advantages: focusing on a single country allows an accurate prosecution of not only "big fish"; greater flexibility to adhere to judicial traditions and needs of the community concerned; enhanced capacity-building, ownership and participation in transitional processes; and the chance to fill the "blind spots" between the ICC and domestic courts and thus fight impunity.

This intervention aims to observe the new developments and consequent implications of hybrid criminal justice, through the experiences of the CAR Special Criminal Court, the Kosovo Specialist Chambers, and the projects for hybrid courts in Ukraine.

First, a regionalisation of hybrid criminal justice: it is no longer the state concerned to initiate the design process of a tribunal, but regional organisations, or groups of states, which are also

involved in managing the courts once established. Second, the affirmation of a typical structure giving wide room to victims and absorbing non-procedural objectives such as the rule of law, reparation strategies, and the promotion of peace.

Last, hybrid courts allow a new conception of complementarity of the ICC, making themselves part of a multi-level integrated system of prosecution and punishment of international crimes.

Since hybrid criminal courts seem to have come back to stay, what permanent position in the system of international criminal justice is there for them?

Speaker: Since March, Maddalena has been working as a Postdoc Researcher at the University of Florence on a project related to the international protection of cultural heritage in situations of emergency during wartime and peacetime. She earned her PhD from the University of Pavia in 2022, with the thesis "Hybrid criminal justice: the reconstruction and development of the phenomenon", which earned her a national prize. Maddalena previously graduated from the University of Genoa with a dissertation on victims' rights before the ICC. Additionally, she has served multiple times as a legal consultant for the Extraordinary Chambers in the Courts of Cambodia.

The return of amnesties and the desperate search for legal certainty

Jinu Carvajalino, Royal Holloway, University of London

Despite a general understanding of the prohibition of amnesties for international crimes, mechanisms adopted in Colombia (2016), Ivory Coast (2018), Northern Ireland-UK (2024) and Spain (2024) have put the question back on the table. States continue facing a question about how to close judicial procedures at the end of transitional processes, the role of amnesties as a negotiation tool, and how to give legal certainty to the parties in conflict. UN bodies and human rights tribunals have condemned the used of blanket and self-amnesties. However, recent decisions from international bodies like the European Court of Human Rights (Margus v. Croatia), the African Commission on Human and Peoples' Rights (Thomas Kwoyelo v. Uganda), and the Inter-American Court of Human Rights (concurring opinion to the Massacres of El Mozote v. El Salvador) have opened the door to the implementation of conditional and well-crafted amnesties in transitional justice. Even the International Criminal Court avoided identifying a general prohibition of amnesties under international law (Prosecutor v. Saif Al-Islam Gaddafi). Some scholars have called this 'creative ambiguity' (Bell 2009, Mallinder 2016, Close 2019).

This paper argues that the status of amnesties under international law is currently undermining the legal certainty of peace processes and domestic criminal procedures. By focusing on outlawing the most problematic type of amnesties, courts have avoided giving guidance on how to craft adequate amnesties to balance between demands of justice and needs of peace and reconciliation. Reading the decisions of international and domestic courts in different jurisdictions, this paper develops a framework for courts to evaluate amnesties. Complex mechanisms like the one implemented in Colombia (2016), present an opportunity for international tribunals to engage more clearly with rethinking amnesties as a fine-tuning process to balance between principles of justice, reconciliation, truth recovery, reparations, and non-repetition. Ultimately, the paper argues that some amnesties may facilitate positive complementarity while guaranteeing legal certainty.

Speaker: Jinu is a Lecturer in Law at Royal Holloway, University of London. Before coming to the UK, Jinu worked in Colombia as a qualified lawyer at the Prosecution Office and at the Constitutional Court. Jinu's research focuses on the right to justice in post-conflict situations, the prosecution of international crimes by domestic jurisdictions, and the role of judicial interactions in shaping international standards of justice. He adopts a socio-legal approach and is interested

in the application of quantitative and qualitative methods in legal research, complexity theory, and the inclusion of research methods in academic legal training.

Beyond Liberalism and Legalism: Lessons from Grassroots Transitional Justice in Cambodia and East Timor

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Transitional justice, a term that commonly refers to how a society responds to legacies of massive human rights abuses, gained momentum in the 1980s and 1990s in South America and Central and Eastern Europe during the third wave of democratic transitions. Although transitional justice is a dynamic and evolving field, the dominant international model of transitional justice as a liberal and legalistic framework still bears the western ideological form shaped by the post-Cold War era transitions and the 'end of history' rhetoric. This liberal template prioritises prosecutorial responses to gross violations of civil and political rights to the detriment of broader injustices and alternative responding mechanisms. According to Nouwen and Werner (2015), the idea of international criminal justice has monopolised discourses of post-conflict justice at the global level.

In contrast to a narrow, rights-based understanding of transitional justice that is now hegemonic, Southeast Asia has witnessed broader, more pluralistic perceptions of justice shaped by local and cultural specificities. In East Timor, families of deceased victims hold elaborate death rituals to restore the disrupted social and cosmological relations instead of taking the legal path which does not capture the socially-shared nature of the harm endured by Timorese victims. In Cambodia, victims resist a retributive justice approach which runs counter to the Khmer Buddhist teachings that object to dwelling on the past and deem the demands for rights as 'illusive attempts to aggrandize the self' (Harris 2005). This paper analyses whether and to what extent homegrown, bottom-up initiatives are better suited than the international criminal approach to address concerns and priorities of those most affected by past violence. Moreover, it challenges the authority of international actors and international law in determining the scope and content of transitional justice, which makes local needs and realities secondary to global interests.

Speaker: Fangyi Li is a second-year PhD student at Edinburgh Law School, researching on grassroots transitional justice in Cambodia and Timor-Leste and how bottom-up initiatives might inform the paradigmatic transitional justice rooted in liberalism and legalism. Before joining the School, Fangyi interned at two international criminal tribunals - the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the International Criminal Tribunal for the Former Yugoslavia (ICTY). Fangyi holds an LLB and an LLM in international law from Jilin University, and a second LLM in human rights law from the London School of Economics (LSE).