



K O N I N K L I J K E N E D E R L A N D S E
A K A D E M I E V A N W E T E N S C H A P P E N

Academy Colloquium International Criminal Justice and the Enforcement Deficit

In Search of Sui Generis Theories and Procedures

Date: 25 – 27 October 2017

Venue: KNAW, The Trippenhuis, Kloveniersburgwal 29, 1011 JV Amsterdam ([route description](#))

Since the establishment of the ICTY in 1993, many other international criminal tribunals have been established. As a result, quite some experience has been developed on almost every aspect of international criminal law and international criminal justice. However, a period of just over twenty years – just one generation of expertise - must still be considered as relatively short in order to be prepared for all relevant questions. The number of cases the tribunals could deal with in comparison to the number of victims is very low. Formulated in a rhetorical way, the chances of getting away with genocide are much better than with shop lifting. This raises questions about the existential foundation of international criminal justice and international criminal law and its benefits as the predominant judicial response to international crimes. Punishment theories argue that the benchmark can never be full punishment, but that the effects of criminal law tend to be more symbolic, and that its deterrent impact can never be measured.

The main question for this colloquium is whether international crimes have a character of their own, a *sui generis* character, which does not necessarily build upon elements and theories of criminal law and criminal procedure as they were developed and envisaged for crimes in a purely national setting that are dealt with by national enforcement tools. Thus, the colloquium seeks to be thought provoking and is willing to address taboos and challenge conventional thinking. As a result, a flexible, even ‘vulnerable’ structure has been chosen. The result might be a set of radical conclusions, but perhaps also a confirmation of present practice. Some of the papers presented will be updated after the colloquium for publication.

The program will admit a group of selected doctoral students in different stages of their research to participate in the masterclass in addition to attending the colloquium. To be admitted to the program, students must currently be enrolled in a doctoral program. Students must submit a research project as part of the application, and a key focus of the masterclass is to help students improve their research projects. Students will briefly present their project and receive feedback from a distinguished audience.



Programme

Wednesday 25 October 2017

- 9:00-10:15 a.m. Masterclass Methodology of International Criminal Law
Prof. Kai Ambos (University of Göttingen/ Judge Kosovo Tribunal)
- 10:15-10:45 a.m. Coffee / Tea
- 10:45-12:00 a.m. Masterclass Foundations of International Criminal Procedure
Prof. Göran Sluiter (University of Amsterdam)
- 12:00-1:30 p.m. Lunch
- 1:30-3:00 p.m. Masterclass presentations of PhD students (10 minute papers)
- 3:00-3:30 p.m. Tea break
- 3:30-5:00 p.m. Masterclass presentations of PhD students (10 minute papers)
- 5:15-7:15 p.m. Meeting with the General Public in Dutch/ Publieksbijeenkomst in het Nederlands:
Internationale berechting van misdrijven: Wat doen we wel en wat doen we niet?
Klip, Zegveld and Hirsch Ballin, 20 min. each on their conference papers
- 7:30-10:00 p.m. Dinner



Thursday 26 October 2017

**Block 1: The Character of the (Hybrid) International Criminal Tribunal
(chair Klip)**

Whilst the United Nations *ad hoc* tribunals continued to function, the international community developed new constructions of criminal tribunals that were closer to the states where the atrocities took place: the hybrid tribunals. What is their specific contribution to the development of international criminal justice? In addition, national prosecutions have been established, in most situations by impartial states. By contrast, the emphasis in the situation states seems to be on capacity- building with respect to the rule of law, adopting a forward-looking approach. The challenge is to assess whether the structure of these tribunals as such has an impact on its effects and effectiveness in relation to both the prosecution of perpetrators, as well as maintaining peace and establishing the rule of law.

- 9:00-9:45 a.m. Session 1. International/ ad hoc/ permanent tribunals
Prof. Steven Freeland (University of Western Sydney)
- 9:45-10:30 a.m. Session 2. Hybrid tribunals
Prof. Michele Caianiello (University of Bologna)
- 10:30- 11:00 a.m. Coffee / Tea
- 11:00-11:45 a.m. Session 3. Victims as a third party: The Empowerment of Victims' Rights
Prof. Liesbeth Zegveld (University of Amsterdam/ defence counsel)



11:45-12:30 a.m. Session 4. Money makes the world go round: How much international criminal justice can the world afford?
Prof. Ernst Hirsch Ballin (University of Amsterdam/ former Minister of Justice)

12:30-2:00 p.m. Lunch

Block 2: Substantive Criminal Law Issues (chair Caianiello)

Since the coming into being of the various tribunals, the substantive criminal law aspects have undergone some significant changes. Generally speaking, the definitions of the crimes have been expanded, with an accumulation of definitions being accepted. In addition, the foundations for criminal responsibility have also been enlarged. As a result of these developments, the responsibilities created by international criminal law for international crimes are now much broader than 25 years ago. The underpinnings of this development may be found in both evidential problems, as well as a desire to bring an end to impunity. What is of interest is whether the steps taken express the responsibility that is inherent to the nature of the crimes, or whether it concerns a rather random necessity to at least hold *somebody* responsible.

2:00-2:45 p.m. Session 5. The Evolution of the Core Atrocity Crimes
Prof. Gerhard Kemp (Stellenbosch University)

2:45-3:30 p.m. Session 6. Definition of the crimes
Prof. William Schabas (Leiden University)

3:30-4:00 p.m. Tea-break

4:00- 4:45 p.m. Session 7. Enlarging criminal responsibility - JCE: 'just convict everyone'?
Prof. Pedro Caeiro (Universidade de Coimbra)

4:45-5:30 p.m. Session 8. The Development of Modes of Liability
Prof. Florian Jessberger (University of Hamburg)

5:30-6:30 p.m. Reception

7:00-10:00 p.m. Dinner for all participants

Friday 27 October 2017

Block 3: Procedural Challenges (chair Kemp)

Over the years, the tribunals have highlighted a clash between the two dominant legal systems in the world: common law versus civil law. This is, for instance, exemplified in the role that the parties may have during the hearings, and whether the court is passive or active. The question must be addressed as to whether this is the right approach, and whether it would be possible to look at international crimes, and the challenges that they give rise to, from the perspective of the 'demands' of those crimes. What does the prosecution want to indicate with the



choices it makes? Which procedural format fits best to the nature of trials involving a high number of victims? What powers should be given to the defence in challenging the charges? Why do we have victim participation and what is its purpose?

- 9:00-9:45 a.m. Session 9. Prosecution: how to make selections?
Prof. André Klip (Maastricht University)
- 9:45-10:30 a.m. Session 10. Nature of the trial: inquisitorial versus adversarial, or something else?
Prof. Christoph Safferling (University of Nürnberg-Erlangen)
- 10:30-11:00 a.m. Coffee / Tea
- 11:00-11:45 a.m. Session 11. Position of the defence and adequate facilities
Michael Karnavas (Defence counsel)
- 11:45-12:30 a.m. Session 12. National prosecutions and the implementation of complementarity
Prof. Ward Ferdinandusse (University of Groningen/ Netherlands' Prosecution Service)
- 12:30-2:00 p.m. Lunch

Block 4: Evading Pavlov, is international criminal justice the only way? (chair Freeland)

The last session deals with undesired side effects of the establishment of international criminal tribunals. States may refer their situation to the ICC in order to get rid of political opponents. Witnesses may apply for asylum in the host state and be unwilling to return. Is this all in the game, or is it possible to create circumstances in which these side issues may have no impact on the course of events? It is also time to consider whether the only response to international crimes is (international) prosecution, or whether alternatives exist that offer a more complete justice to the interests at stake. Whatever we do, it will cost time and money and this reality may have a serious influence on the choices made. To what extent should it influence the foundations of the legal system?

- 2:00-2:45 p.m. Session 13. Host state issues and asylum: Abusing and Excusing the International Criminal Court
Prof. Göran Sluiter (University of Amsterdam/ defence counsel)
- 2:45-3:30 p.m. Session 14. Enforcement Jurisdiction and Reparations in International Criminal Law
Prof. Kenneth Gallant (University of Arkansas)
- 3:30-4:00 p.m. Concluding Remarks and Thanks
Professor André Klip and Professor Steven Freeland
- 6:00 p.m. - Dinner