International Justice and History: an imperfect balance

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Index

Editorial

At the time of publication of this newsletter, in Rwanda the *gacaca*, the formalised popular tribunals, will officially close its work after ten years, having tried about 2 million genocide related cases. Killings, rape, (sexual) torture, as well as property crimes within the context of the genocide: looting and destroying houses, killing cattle of Tutsi. On a population of seven million in 1994, only half of them adult, with one million people being killed, it is a huge number of cases. It shows the magnitude of the genocide in Rwanda.

The example of the *gacaca* in Rwanda is of extreme importance for the criminology and victimology of international crimes and for public international law. No country applied so vigorously the public international law dogma of the past two decades: end impunity by holding all perpetrators accountable. As Bassiouni stated ten years ago :

"(…) individuals who commit genocide, crimes against humanity, and war crimes are to be treated as hostis humani generis (an enemy of all humankind). (…) This preclusion [from impunity] extends from the most junior soldier acting under the orders of a superior to the most senior government officials, including diplomats and heads of states."

Holding all perpetrators accountable was what Rwanda did. Not because Bassiouni said so – let us not over-estimate our work as scholars – but because the government felt it had to do so.

The first discussions about the *gacaca* as a way to deal with the genocide suspects date from not long after the genocide. The government faced the situation that about 120,000 persons were held in over-crowded prisons built for less than 20,000 persons. The regular courts could not handle all cases within a reasonable time. Nor could the International Criminal Tribunal for Rwanda try all the cases of genocide suspects in Rwanda; they were expected to try only about 50 persons in total.

From the start, even from before the start, the *gacaca* faced a lot of criticism. Human Rights Watch has been the most outspoken opponent from the beginning. Its final report, entitled *Justice Compromised*, is a final slap in Rwanda's face. Its concerns relate primarily to the absence of fair trial safeguards and limitations on the ability of accused persons to defend themselves effectively; fair trial standards as developed over the years for state regulated classical penal systems. I am afraid that strong critique will be the fate of every mechanism that is not a copy of the classical penal systems in well-functioning states.

And there we have a problem. If the classical penal system in Rwanda had been functioning, the *gacaca* would not have been necessary. But the classical penal system did not function. There were very few lawyers in Rwanda, already before 1994. During the genocide judges and prosecutors were killed or fled. Until 2004, only 5 % of the judges had a law degree. Moreover, Rwanda refused the assistance of foreign judges. The crimes committed in Rwanda by Rwandans against Rwandans had to be dealt with by the Rwandan people, for the Rwandan people. "Considering the necessity for the Rwandan Society to find by itself, solutions to the genocide problems and its consequences", as the preamble to the law establishing the *gacaca* reads. Call it frustration about having been abandoned by the foreigners when the genocide started, call it pride,

whatever, but a fact is that we cannot deny a country the right to try its own criminals if it wishes to do so.

These are some examples of the complex social and legal African reality that has to be taken into account when assessing responses to international crimes, whether these are (quasi) traditional mechanisms, domestic classical criminal courts, or international(ised) courts and tribunals. The *gacaca*, for example, is not a classical penal court system, and anyone who assesses the *gacaca* comparing it to such classical systems will only find flaws and failures. Why not turn this around, and assess the classical penal system comparing it to the more tradition inspired mechanisms such as the *gacaca*. In comparison to the *gacaca*, the classical penal system would score very low on participation, speed, access to justice, and on physical and psychological proximity.

A stronger African perspective is needed in the discussions in the field of international criminal justice, and not only because the bulk of the cases deal with Africa. It is strange that the voice and opinion of Human Rights Watch and northern scholars is louder and better heard than the voice and opinions of African scholars.

Roelof Haveman

Agenda

- 28 June – 1 July 2012: **Third Global Conference** on **Genocide by the International Network of Genocide Scholars (INOGS)**
  San Francisco, USA
  Preliminary call
  Info: Volker Langbehn (langbehn@sfsu.edu) and Juergen Zimmerer (juergen.zimmerer@uni-hamburg.de).

- 4-6 July 2012: **Annual Conference British Society of Criminology (BSC)**
  University of Portsmouth
  Submission: open in January
  Conference info

- 6 – 9 July 2012: **Annual Scientific Meeting** of the **International Society of Political Psychology** (ISPP) in Chicago (US)
  Deadline submissions: February 3, 2012
  Conference link

- 12-15 September 2012: **Annual Conference European Society of Criminology (ESC).**
  Bilbao Spain
  Submission open
  Conference info

- 14-17 November 2012: **Annual meeting** of the **American Society of Criminology (ASC),**
  Chicago, US.
  Submissions will open in January
  Conference info

- 3-6 April 2013: **Annual Convention of the International Studies association (ISA**), San Francisco, US
  Deadline 1 June 2012
  http://www.isanet.org/annual_convention/

- 19-22 June 2013: **Biennial conference International association of Genocide Scholars (IAGS)**, Sienna, Italy
  Conference info

If you organize a conference, workshop or symposium related to international crimes, please inform us
info@supranationalcriminology.org
and we will make a reference on our website and in the newsletter.

THE HAGUE NEWS VIII

This contribution briefly summarizes the recent practice of 'the Hague international criminal courts and tribunals' in the period from December 2011untill May 2012.

1. ICTY

There have not been many new developments at the ICTY during the first half of 2012. On 5 March 2012 closing arguments in the trial of *Vojislav Seselj*, the leader of the Serbian Radical Party, began. Seselj is accused of crimes against humanity and war crimes committed against the non-Serb population from large parts of Bosnia and Herzegovina, Croatia and Serbian Vojvodina in the period of 1991-1994. Seselj became (in)famous for his very obstructive behaviour towards the Tribunal, including his hunger strike. His disruptive behaviour was repeatedly condemned by judges during the contempt of Tribunal proceedings that were initiated next to his trial.

The trial of *Ratko Mladic* started on 16 and 17 May. The Defence requested an adjournment of the proceedings for 6 months due to Prosecution's disclosure failures. Trial Chamber I postponed the proceedings for 1 month and scheduled the hearing of the first Prosecution witness on 25 June 2012.

2. ICTR

Since the end of 2011, the Appeals Chamber of the ICTR finalized proceedings in the case of six defendants.

In December 2011, the Appeals Judges affirmed the convictions and sentences in the Hategekimana and Kanyarukiga cases. *Idelphonse Hategekimana*, former commander of the Ngoma Military Camp in Butare Prefecture, was convicted on trial for genocide and murder and rape as crimes against humanity in relation to incidents of killings of Tutsi who had taken refuge at Ngoma Parish and the Maison Generalice. The Trial Chamber sentenced him to life imprisonment. *Gaspard Kanyarukiga*, a businessman, was found guilty of genocide and extermination as a crime against humanity for his participation in planning the destruction of the Nyange church in Kibuye prefecture that led to the death of approximately 2000 Tutsis and sentenced to 30 years in prison. The Appeals judges in both cases did not find any errors in the Trial Chambers' reasoning and confirmed the findings.

Conversely, three defendants in the Military I case, Ntabakuze, Nsengiyumva and Bagosora (reported in 2009/I issue), saw some of their convictions reversed and sentences reduced. All three defendants were sentenced by the Trial Chamber to life imprisonment for genocide, crimes against humanity and war crimes committed by Hutu soldiers and militiamen during the 1994 genocide. In case of *Aloys Ntabakuze*, former Major in the Rwandan army and Commander of the Para-Commando Battalion, the Appeals Chamber reversed his convictions based on preventing the refugees killed at Nyanza hill from seeking sanctuary and on killings perpetrated in Kabeza. The Appeals Chamber also set aside the finding of the Trial Chamber that Ntabakuze was responsible for the crimes of militiamen. Ntabakuze's sentence was reduced to 35 years of imprisonment. Judges Pocar and Liu appended a dissenting opinion. In a different set of proceedings, the Appeals Chamber also reversed some of the *Theoneste Bagosora's* convictions for several individual killings and murder of Belgian peacekeepers, for killings in Gisenyi town, at Mudende University and Nyundo Parish as well as convictions for other inhuman acts as crimes against humanity based on the defilement of Rwandan Prime Minister Uwilingiyimana's corpse. Further, the appeals judges reclassified his liability for crimes committed at Kigali area roadblocks as superior responsibility instead of ordering. The Appeals Chamber, Judges Pocar and Liu dissenting, considered that the reversal of some of Bagosora's convictions called for a revision of his life sentence, and entered a new sentence of 35 years of imprisonment. During the events Bagosora was directeur de cabinet in the Rwandan Ministry of Defence. *Anatole Nsengiyumva's* convictions for some individual killings and for the killings at Mudende University, Nyundo Parish, and Bisesero were also reversed on appeal. In addition, the Appeals Chamber found him responsible as a superior (instead as an order-giver) for killings in Gisenyi town, with judges Meron and Robinson dissenting. The Appeals Chamber considered that the reversal of nearly all of Nsengiyumva's convictions called for a substantial revision of his life sentence, and entered a new sentence of 15 years of imprisonment. Due to the time he spent in detention during his lengthy trial, Nsengiyumva, former Commander of the Gisenyi Operational Sector, was immediately released from the Tribunal's custody.

Finally, on 14 December 2011 the Appeals Chamber reduced the sentence of 25 years of *Dominique Ntawukulilyayo* to 20 years imprisonment convicting him of aiding and abetting killing of Tutsis in April 1994. The Appeals Chamber set aside the finding of the Trial Chamber that Ntawukulilyayo, former sub-Prefect of the Gisagara sub-prefecture, ordered genocide for these killings.

3. SCSL

On 26 April 2012 the Trial Chamber II of the SCSL found *Charles Taylor*, the former President of Liberia, guilty of all counts of his indictment that was alleging his responsibility for crimes committed by rebel forces during Sierra Leone's civil war. Many of the factual allegations raised by the Prosecutor in the indictment, however, were not proven. The prosecutor failed to prove that Taylor was one of "the masterminds" behind the Sierra Leonean conflict and the convictions convey a pretty limited involvement of Taylor in the conflict. The judges did not find him responsible as a superior for crimes committed by the rebel forces nor was he, according to the judges, participant in a joint criminal enterprise. Taylor was found liable for aiding and abetting RUF and AFRC rebels' war crimes (terrorism, murder, outrages upon personal dignity, cruel treatment and pillage) and crimes against humanity (murder, rape, sexual slavery, inhuman acts, recruitment, enlistment and use of child soldiers and enslavement). His participation in these various offences was based on Taylor's assistance to rebels by providing them with arms, ammunition, military personnel, operational and moral support and his planning of several attacks in 1998-1999 during which these crimes were committed. Charles Taylor is the first former head of state to be convicted by the international tribunal since the Nuremberg trial. On the one hand, the judgment was hailed by many international criminal justice activists as demonstration of the reach of international criminal justice to highest echelons of

states' leadership and as finally bringing justice to victims in Sierra Leone. On the other hand, some have criticized the excessive length, procedural irregularities of the proceedings and the Prosecutor's failure to prove a more extensive involvement of Taylor. On 30 May 2012 the Trial Chamber rendered its sentencing judgment and sentenced Taylor to 50 years of imprisonment emphasising in particular his position of authority and leadership. Both decisions, convictions and sentence, can be subjected to appeal by both parties.

4. ICC

Democratic Republic of Congo

On 14 March 2012, the Trial Chamber I deliver the first ICC judgment in the Lubanga case. *Thomas Lubanga Dyilo* was found guilty as a co-perpetrator of the war crimes of conscripting and enlisting children under the age of 15 and using them actively to participate in hostilities. The conviction relates to the crimes committed in the context of an internal armed conflict in Ituri between FPLC, military wing of the UPC led by Lubanga, and other militias from 1 September 2002 to 13 August 2003. According to the judgment, Lubanga participated in a common plan to build an army with the purpose of establishing and maintaining political and military control over Ituri. This plan had as a consequence recruitment of boys and girls under 15 into the army and their participation in the conflict as soldiers or bodyguards of senior army officials. Lubanga exercised an overall coordinating role of the UPC activities and actively supported recruitment of children, by for example giving speeches to the local population and recruits. In addition, he personally used children as his bodyguards and knew of similar practices among other staff members of the UPC. The judgment is significant not only for being the first verdict delivered by the ICC but it addresses many substantive and procedural issues of ICL such as victims participation, conduct of the OTP during investigation and trial, definition of internal armed conflict or of a war crime of enlistment of child soldiers. Among other issues, judges heavily criticized the Prosecutor's conduct during the investigation and trial that almost led to the suspension of the proceedings. In accordance with the ICC Statute the defence requested a separate sentencing hearing that is scheduled to start on 13 June 2012.

In December 2011 the Pre-Trial Chamber I declined to confirm charges against ***Callixte Mbarushihama*** The majority of the Chamber found that there was not sufficient evidence to establish substantial grounds to believe that Mbarushimana could be held criminally responsible for war crimes and crimes against humanity as alleged by the Prosecutor. First, the Chamber found it impossible to establish substantial grounds to believe that crimes were committed in a course of "an attack directed against any civilian population…pursuant to…organizational policy" – chapeau requirement of crimes against humanity under the ICC Statute. Second, the Majority ruled that Mbarushimana did not provide any contribution to the commission of the alleged crimes. Mbarushimana was subsequently released from the ICC custody to a French territory. The OTP appealed the decision of the trial chamber but its appeal was dismissed by the Appeal Chamber on 30 May.

The trial of ***Germain Katanga*** and ***Mathieu Ngudjolo Chui*** has entered its final phases when the parties presented their closing statements from 15 to 23 May 2012. The Chamber will now pronounce its final decision. According to the ICC website, during the proceedings the Chamber heard 24 witnesses and experts called by the Office of the Prosecutor, 28 witnesses and experts called by the two Defence teams and 2 witnesses called by the legal representatives of the victims participating in the proceedings. The Chamber also called 2 other experts to testify. A total of 366 victims were authorised to participate in the trial. The parties and participants before the Chamber exchanged more than 3,290 filings.

In the relevant period, the OTP also requested two new arrest warrants in the DRC situation. The first against ***Bosco Ntaganda,*** a top commander of Lubanga's militia, the UPC/FPLC, who is already wanted by the Court for children recruitment. Based on the Lubanga judgment, the Prosecution wanted to add charges for crimes of murder, persecution and rape/sexual slavery as crimes against humanity and attacks against civilians, murder, rape/sexual slavery and pillage as war crimes committed in Ituri in the period of September 2002 to September 2003. The OTP also applied for a warrant of arrest against a leader of one of the most active militia in Kivu provinces, ***Sylvestre Mudacumura***, the Supreme Commander of the FDLR-FOCA, who allegedly together with Mbarushimana and others launched a campaign of attacks against civilians in the Kivus. Mudacumura was charged with 5 counts of crimes against humanity and 9 counts of war crimes committed by the militia between 20 January 2009 and 31 August 2010 in North and South Kivu. On 31 May 1012 the Pre-Trial Chamber I, however, dismissed the application without examining the merits stating that the application "fell short of the proper level of specificity" in describing the alleged crimes "for which the person's arrest is sought".

Darfur, Sudan
On 1 March 2012 Pre-Trial Chamber I issued an arrest warrant against the current Minister of Defense of Sudan ***Abdelrahim Mohamed Hussein*** (the application for the warrant was reported in the last issue) for 41 counts of crimes against humanity and war crimes allegedly committed in Darfur. The Chamber considered that there are reasonable grounds to believe that Hussein made an essential contribution to the formulation and implementation of the common plan of the counter-insurgency campaign against armed groups opposing the Government entailing unlawful attacks against civilians perceived by the Government as being close to the rebel groups. Since the alleged crimes overlap with crimes charged against Al Bashir, the President of Sudan who is sought by the ICC on genocide, crimes against humanity and war crimes charges, and since Hussein acted as the President's Special Representative in Darfur and according to the Pre-Trial Decision, they co-perpetrated the same common plan, the question offers itself why Hussein has not also been charged with genocide.

Republic of Kenya
On 23 January 2012 the Pre-Trial Chamber II issued its decision on confirmation of charges in the two Kenyan cases against 1) ***William Samoei Ruto*** (suspended Minister of Higher Education, Science and Technology of Kenya), ***Henry Kiprono Kosgey*** (Member of the Parliament) and ***Joshua Arap Sang*** (head of operations at Kass FM in Nairobi) and 2) ***Francis Kirimi Muthaura*** (Head of the Public Service and Secretary to the Cabinet), ***Uhuru Muigai Kenyatta*** (Deputy Prime Minister and Minister for Finance) *and* ***Mohammed Hussein Ali*** (Chief Executive of the Postal Corporation of Kenya). The charges in both cases include crimes against humanity of murder, deportation/forcible transfer, rape, other inhuman acts and persecution. By majority, the Chamber decided to confirm charges against four of the six suspects. First, in relation to Kosgey, the Chamber found that the Prosecutor's evidence failed to satisfy the evidentiary threshold required and the Prosecutor did not establish sufficiently his role in alleged crimes. Second, with respect to Ali the Chamber found that the evidence presented does not provide substantial grounds to believe that the Kenya Police participated in the crimes and since Ali was charged with contributing to the crimes through Kenyan Police, his charges were dismissed. Consequently, Ruto, Sang, Muthaura and Kenyatta were committed to trial. Judge Kaul appended a dissenting opinion in both cases arguing that crimes charged were serious common crimes under Kenyan criminal law not reaching the threshold of international crimes under the ICC jurisdiction. After this decision, the defence teams of the accused filed motions challenging the ICC's jurisdiction contesting the interpretation of the term "organizational policy" (one of the requirements to establish crimes against humanity) by the Pre-Trial Chamber in its decision authorizing the opening of investigation from 2010 that was endorsed in the confirmation of charges decision. On 24 May 2012 the Appeals Chamber rejected the motion ruling that "the interpretation and existence of an 'organizational policy' relate to the substantive merits of this case as opposed to the issue of whether the Court has subject-matter jurisdiction to consider such questions".

Côte d'Ivoire
The confirmation of charges hearing against ***Laurent Koudou Gbagbo***, former president of Côte d'Ivoire, is scheduled to begin on 18 June 2012 before the Pre-Trial Chamber III. Gbagbo is charged as indirect co-perpetrator for crimes against humanity (murder, rape, persecution and other inhuman acts) allegedly committed as part of the post-electoral violence in Côte D'Ivoire between 16 December 2010 and 12 April 2011. Meanwhile, on 22 February 2012, the Pre-Trial Chamber decided to expand its authorisation for the investigation in Côte d'Ivoire to include also crimes allegedly committed between 19 September 2002 and 28 November 2010.

5. Special Tribunal for Lebanon

On 1 February 2012 the Trial Chamber issued a decision authorizing the trial in absentia of the four defendants accused of the attack on the former Lebanese Prime Minister Rafiq Hariri and others. Since its statute includes elements of both Lebanese and international law, the STL is the only existing international tribunal that can hold trials in absentia. The hearing on the defence challenges arguing against the STL's jurisdiction and the legality of its creation is scheduled on 13 June 2012.

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International Justice and History: an imperfect balance

It was a restless night in the northern Ghanaian town of Tamale in late May 2003. Throughout the night, the screaming of flying dogs resonated through the courtyard of the guesthouse. "It sounded like crying babies being smashed against the wall," sighed George the next morning. The Liberian student had fled the killing fields at home. "It is all because of him," he said when the radio

announced that Charles Taylor was coming to Accra for peace talks. George could not have foreseen what would happen two weeks later.

There was confusion in the streets of Accra. Headlines in local newspapers said President John Kufuor felt "embarrassed and betrayed" by a foreign prosecutor. On 4 June, the Special Court for Sierra Leone (SCSL) had requested his government to arrest its guest. But caught by surprise, the Ghanaians gave Taylor a presidential plane to return to Monrovia, where he stepped down and retreated to a luxurious villa in Nigeria.

In 2006, Taylor finally arrived at the fortified compound of the SCSL in Freetown. Before he was flown to The Netherlands, he pleaded not guilty to eleven counts of war crimes and crimes against humanity. "Most definitely, Your Honour, I did not and could not have committed these acts against the sister Republic of Sierra Leone," he said.

But now the SCSL has proved the opposite. Taylor was sentenced to 50 years on 30 May 2012. A month earlier, he was found guilty of planning and aiding and abetting a long list of crimes committed by merciless rebels during the Sierra Leone's civil war (1991 -2002). These included acts of terrorism, murder, rape and sexual slavery, enslavement, pillage, and the conscription and enlistment of child soldiers.

In their verdict – numbering almost 2500 pages – the three judges detailed how Taylor took part in planning attacks on Kono, Makeni and Freetown between December 1998 and February 1999, and instructed rebels of the Revolutionary United Front (RUF) and Armed Forces Revolutionary Council (AFRC) to "make the operation [s] fearful." They further outlined how Taylor had aided and abetted the rebels in committing atrocities by providing arms and ammunition, military personnel, operational support and moral support.

"If the roots of a mango tree are cut, the tree will die," SCSL Chief Prosecutor Brenda Hollis quoted a Sierra Leonean chief. "Mr. Taylor was the root which fed and maintained the RUF and kept the AFRC/RUF alliance alive; without him the rebel movement, with its attendant crimes, would have suffered an earlier death," she continued. However, Taylor's judgement suggests he played a more limited role in Sierra Leone than the prosecution had claimed. The judges did not find that he had superior responsibility over members of the rebel groups, or that he had led a joint criminal enterprise (JCE).

Thus, many questions about Taylor's role in Liberia's and Sierra Leone's conflicts remain unanswered. As a president in the dock, Taylor may have been the jewel in the crown of international justice, but his criminal case was not crystal clear. His trial is emblematic of an erratic balance between history and the law in international trials.
In their case, the prosecution had sketched the following scenario: Taylor forged an illicit conspiracy with RUF leader Foday Sankoh in Libya in the late eighties to conquer west Africa. Their motive: enriching themselves with rough diamonds from Sierra Leone. Their modus operandi: a menacing campaign of terror. Since January 2008, the judges heard how rebels sowed death and destruction, hacking off limbs, raping women and pillaging diamond mines. The prosecution had alleged that Taylor was the "Godfather" of this surreal theatre of atrocity.

But armed with a meagre mandate the prosecution have had an exceptionally demanding job to tie Taylor to this bloodshed. The prosecution therefore called 94 witnesses including experts, crime victims and perpetrators to testify about the horrors in West Africa. But only a third – most of them former enemies or aides - could directly link Taylor to crimes. With this evidence in hand, the prosecution faced the additional hurdle of fighting against time and space.

The court may only deal with crimes committed in Sierra Leone from November 1996 onwards. But at this time, Taylor was not at this crime scene and is rather infamous in the context of more than a decade of bloodshed in Liberia. The SCSL's main shortcoming in this trial is that it could not deal with Taylor's full role in West Africa's atrocious history. Taylor's role in the civil wars in Liberia have been well documented by historians and Truth and Reconciliation Commissions in Liberia (TRC/L: 2007 – 2009) and Sierra Leone (TRC/SL: 2002-2004). The reality is that they remain out of reach of the SCSL and this has caused serious problems in establishing Taylor's alleged criminal record.

Still, while the bench was compassionate towards the prosecution in allowing evidence falling outside the scope of the indictment, no real 'smoking guns' were presented. The most commonly accepted clues to Taylor's role in West-Africa have not been fully unveiled in court. For instance, the exact relationship between Sankoh and Taylor in Libya – the very basis of the criminal charges – still remains shrouded in mist. "The Accused met Sankoh in Libya, although the exact circumstances of their meeting are not known," reads the judgement.

An international court trying a president cannot escape debating politics and history. And indeed two competing diametrically opposed narratives

about Taylor's role in west Africa have come out of the court proceedings. Producing almost 50,000 pages of transcript – including the seven month testimony of Taylor himself - and over a thousand exhibits, the Taylor trial offers a unique insight into Liberian and Sierra Leonean history. It leaves much work for historians. It remains debatable, however, if it has properly closed the books on the cycles of violence in west Africa and answered lingering questions of Liberians like George.

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10 Years ICC

1 July 2012 marks the ten year anniversary of the International Criminal Court, the first ever permanent treaty based court established to try those most responsible for the most serious crimes; it is a milestone in the fight to end impunity for war crimes, genocide, crimes against humanity and, in due time, the crime of aggression. It is therefore an ideal time to reflect on what exactly it has contributed to the world of international justice in its brief history.

The ICC is a pioneering institution for international criminal justice in many ways. It has indicted 28 individuals, investigated 7 situation countries and is conducting preliminary investigations into several others, legally defined aggression, secured a guilty verdict, and furthered the support and desire for international criminal justice. The Court has redefined victim participation by making them a central part of the judicial process, providing unparalleled support and protection when needed, and offering repatriations which may, in part, repair some of the horrendous damages inflicted on communities. It has also proven more than capable of functioning without the support of the world's so-called super-powers.

While there is much to celebrate, the Court's path thus far has not been flawless; it has been heavily criticized, often legitimately so. The trials are exceptionally lengthy and accordingly costly. The ICC is funded by state contributions; in the midst of the current global economic crisis, countries are restricted in what they can contribute, which in turn limits the resources and reach of the ICC. This, coupled with more situations than ever before, creates budgetary concerns and may impact the Court's capacity.

The ICC relies on the double edged sword of State cooperation; on the one hand, as more and more countries sign and ratify the Rome Statute, the consensus that impunity for international crimes will not be tolerated is strengthened. The Rome Statute, which originally had 72 signatories, has grown to 121 members and counting, with even more countries signing but not ratifying, or not formally signing but accepting jurisdiction. Even the United States, which has been firm in its stance against ratification, has increased its support of the Court, including hosting anniversary celebrations this summer in Washington; it is not unreasonable to postulate that in the future other countries, including the US, may become party to the ICC.

Alternatively, the Court has no police force and no independent authority on foreign soil, and consequently is limited in its reach; without the cooperation of States, it is very difficult to effectively investigate, arrest, or try anyone accused of committing such crimes. While the ICC has proven that this is indeed possible to some extent, best exemplified in the ongoing investigation into the uncooperative state of Sudan, the limitations of such conditions are evident in the fact that the President of Sudan is able to remain in power and even travel to countries which are party to the ICC despite an arrest warrant with his name on it.

2012 also marks a milestone for Luis Moreno Ocampo and the Office of the Prosecutor (OTP); with his term ending this past June, he is succeeded by his Deputy Prosecutor, Ms. Fatou Bensouda. Just like the ICC as a whole, the OTP's record is mixed; the competency of Ocampo has been questioned, his successes parallel his failures, and he has often been criticised for being over the top. He has been accused of eroding possibilities of peace for a blind pursuit of justice (e.g. Sudan), targeting only African nations, and making grave prosecutorial errors (i.e. the Lubanga case), among other things. One could argue that he has relished being the face of the Court, a role which in reality rightly belongs to its President, Mr. Song. Nonetheless, Ocampo's persona has garnered the Court attention, fuelled the discourse of international justice, and helped to make the ICC a household name. When his actions were questioned, he matter of factly replied that he was simply doing his job, and he has done just that: the success of the OTP is best exemplified by the guilty verdict of Lubanga.

More than a Court, the ICC, through its principal of complementarity, has created a system of international criminal justice in which states must abide by their obligations to respect human rights and bring justice to those who violate them. Ironically, the ICC's greatest accomplishment would be to render itself obsolete. As a court of last resort, a lack of trials would either mean that deterrence has occurred and such crimes are no

longer being committed, or that all national courts have become genuinely willing and/or able to prosecute criminals. The end of the judicial functioning of the Court would guarantee lasting respect for and enforcement of international justice: true success.

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The civil society and addressing problems of victims of international crimes.

Civil society is one of those terms that are commonly used without much consideration to its detailed meaning and composition. The civil society according to the London School of Economics, Centre for Civil Society, is defined as a '*collective action around shared interests* (…) *distinct from those of the state, family and market'*. When we talk of the contribution of the civil society, we include the role of '*registered charities, development non-governmental organisations, community groups, women's organisations, faith-based organisations, professional associations, trades unions, self-help groups, social movements, business associations, coalitions and advocacy groups'*. The challenges of this definition are related to the fact that it includes a wide range of diverse organisations and lacks a clear distinction between the work of the civil society and that of the state, family and market. The complexity of understanding the civil society is also related to its composition and mission. It is often assumed, based on the mission statements on paper, that civil society represents interests of ordinary folks but sometimes their interests might include partisan domestic politics or international interests.

Another challenge is related to the assumption that needs of victims of international crimes can be addressed. We should not ignore, however, the real challenges affecting post conflict societies. Some needs of victims cannot be met because of the nature of harm suffered or simply because they are mere feelings, perceptions and biases which cannot be addressed through measurable mechanisms. Normally, when we talk of a post-conflict situation, everything is quickly reduced to hundreds of thousands of killings, torture, rape, and social-economic and structural destruction. Whereas this assessment is true, it does not reflect the real impact of international crimes in a post-conflict society; it does not reflect problems and needs of individuals within the society. For instance, immediately after the 1994 genocide, Rwanda was composed of individual victims with specific needs that were both personal and collective in nature and dealing with their needs required responses that are both individual and collective in nature.

The most challenging issue of all is how to reflect the general feelings and perceptions of the whole society in the process of addressing problems of both individual and collective victims. For instance, in addition to the common Hutu, Tutsi and Twa divisions, after the genocide Rwanda was composed of people who perceived themselves as either victors or vanquished, perpetrators or victims, bystanders or new returnees, Francophone or Anglophone, and many more sub-sub divisions. These specific divisions posed challenges because of their different specific expectations and interests on how to reconstruct Rwanda that were either overlapping and often conflicting. It is therefore obvious that such a societal composition which was also reflected in the formation of the civil society affected the understanding of problems of victims.

Therefore, one would easily come to the conclusion that since the neutrality of local civil society was affected with domestic divisions we should have relied on international organizations. However, this was not possible because after the genocide many Rwandans were sceptical about the role of international organisations. The loss of trust was mainly due to the failure of the international community to prevent the genocide or stop it once it had started when it was very possible to do so, and due to the perceived or actual involvement of various countries in the civil war and the genocide. This context has had an impact on the perception and credibility of the international civil society in Rwanda and its role in responding to the needs of victims.

Despite these mentioned contextual challenges, the civil society in Rwanda has significantly contributed to solving problems of victims. The contribution of each organisation depended on the nature of the organization itself. The role of mutual benefit organizations such as victims and survivors associations is different from the role of public interest organizations or international organizations. The significant achievements of the Rwandan civil society can be attributed to the advocacy work towards the government and international community. Rwandan civil society has also benefited from the support of international individuals and organizations in all areas of victims' needs – including justice, housing, health, education and poverty reduction.

It is important to note that for the success of any civil society in post-conflict situations, it is not enough to have a vibrant and strong civil society.

However much I consider the civil society to be the good *porte parole* of the needs of victims, interests of civil society might differ from those of individual victims or communities and since there is no centralized management of civil society their contribution can sometimes even be counterproductive. There is a need for a strong government partner for it to succeed in addressing the needs of victims. There are two reasons why I think having a strong government is important for the success of the civil society. Firstly, in the situation where doing nothing is the worst decision, in cases of conflicting interests, a strong government can take unpopular decisions that are necessary for the national interests which would be against individual or some group interests. The second reason is sustainability. Addressing victims' needs is not something you do and finish in a very short period of time. Since most of the civil society organizations are donor funded, the civil society operates on the high risk of donor fatigue which affects their contribution, so the government should be in a position to take on those crucial activities when donor funding to civil society is drained.

In conclusion, the role of the civil society in addressing the needs of victims of international crimes should be reflected in the context of every situation. Its success depends on its vibrancy and capacity to understand and articulate independently and professionally the needs of victims – however, in order to achieve sustainable and long lasting contribution, the civil society should recognize the valuable partnership of local state institutions.

Alphonse Muleefu
Intervict, Tilburg University

Letter from Togo

For 38 years Togo, in West Africa, was ruled by General Gnassimgbé Eyadéma. During his reign, many human rights violations were committed. After his death in 2005, his political party tried to nominate his son Faure Gnassimgbé as President of Togo, in stark violation of the constitution.

Part of the population wanted to put an end to the dictatorship, and were hoping for a change of power. They tried to stop the inauguration of the new President. The result of this opposition was catastrophic, causing many victims: hundreds of people being killed and mutilated, and property destroyed, during and after the Presidential elections.

Four years later, in 2009, as a response to this political crisis, the Truth Justice and Reconciliation Commission (TJRC) was installed, in order to promote reconciliation amongst the Togolese population. Although the mandate of this commission allows victims to lodge complaints against perpetrators in order to obtain damages in the domain of criminal justice, in practice access to justice was denied to the victims.

A group of victims, with the assistance of the human rights NGO CACIT, the Coalition of Associations against Impunity in Togo, lodged 35 complaints in the Lomé Court of Justice, 35 complaints in Atakpamé and another 7 complaints in Amlamé. Despite these complaints having been lodged in 2006, 2007, 2008 and 2009, so far no legal action has followed the complaints.

The victims' lawyer, Ajavon Zeus, aiming to solve this difficulty, also lodged the complaints before the court of ECOWAS, the Economic Community of West African States. Before this regional court it is not necessary to exhaust internal national procedures to lodge a complaint.

Maître Zeus Ajavon hoped that the International Criminal Court would take up the case of Togo, however, this is unlikely as Togo has not ratified the Rome Statute, and the Government of Togo rejected all recommendations to ratify the statute during the 'Universal Periodic Review' of Togo in October 2011.

During my research in Togo, I could only meet 43 out of the in total 77 victims whose complaints had been lodge by CACIT, as some of the victims are still in exile, and others have died. Most of the victims I met still suffer of the physical and psychological wounds since 2005. Some still have bullets in their body, others are disabled and in need of an operation which they cannot afford to pay.

In this context, not following up on the complaints can be qualified as a denial of justice in violation of Article 19 of the Togolese constitution and human rights instruments which have been ratified by Togo. This situation increases the negative feelings of victims, as if their right to be a victim has been denied, double victimized.

Legal and social recognition is very important for victims. It allows them to mourn and to try to forget. Among the 43 victims who have been interviewed for the study in Togo, 24 of them wish to continue their complaint and seek the conviction of perpetrators by a criminal court; 15 of them are willing to give up on the condition of the acknowledgement by the Government of Togo of the crimes committed by the perpetrators and the government, with the perpetrators showing repentance, and the guaranty of non-repetition. This second group seriously runs the risk of remaining

unsatisfied. During the hearings of the Truth Justice and Reconciliation Commission, the Togolese army refuted all the allegations by witnesses of crimes committed by them. It is as if in Togo there are victims and witnesses alike, but no perpetrators.

Victims have the right to know the truth, the right to justice, the right to damages and the right to be safe of repetition of the crimes. It is the main condition for sustainable peace in a post-conflict society. In that respect Togo is not different from other post-conflict societies.

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Crimes Against Humanity Initiative Update

In 2008, the Whitney R. Harris World Law Institute at Washington University School of Law launched the Crimes Against Humanity Initiative. Crimes against humanity were one of the three categories of crimes elaborated in the Nuremberg Charter. However, unlike genocide and war crimes, they were never set out in a comprehensive international convention. The Crimes Against Humanity Initiative is an ambitious rule of law project whose goal is to complete the Nuremberg legacy by filling this gap.

The Initiative is directed by Professor Leila Nadya Sadat, Director of the Harris Institute and the Henry H. Oberschelp Professor of Law. The Initiative had three primary objectives: (1) to study the current state of the law and sociological reality as regards the commission of crimes against humanity; (2) to combat the indifference and the negative legal consequences generated by an assessment that a particular crime is "only" a crime against humanity (rather than a "genocide"); and (3) to address the gap in the current law by elaborating the first-ever comprehensive specialized convention on crimes against humanity.

The Initiative has progressed in phases, each building upon the work of the last. The publication of a book by Cambridge University Press, *Forging a Convention for Crimes Against Humanity*, containing the *Proposed International Convention on the Prevention and Punishment of Crimes Against Humanity*, along with fifteen collected scholarly articles and a drafting history, represents the culmination of the first three phases of the Initiative: *preparation* of the project and methodological development (I); *private study* of the project through the commissioning of the papers in this Volume, the convening of expert meetings, and collaborative discussion of draft treaty language (II); and *public discussion* of the project with relevant constituencies and the publication of the Proposed Convention (III). Ambitious in scope and conceptual design, the project is directed by a Steering Committee of renowned experts, and has drawn upon the Harris Institute's connections to assemble a truly extraordinary international effort. The book, published in English and in French, recently received the 2011 Book of the Year Award from the American National Section of *L'Association Internationale de Droit Pénal* (AIDP).

The Crimes Against Humanity Initiative has now entered its fourth phase which aims to raise global awareness of the need for an international convention on crimes against humanity, and to encourage the international community to adopt the *Proposed Convention*. The Crimes Against Humanity Initiative recently released a Spanish translation of the *Proposed Convention* and Arabic, Chinese, and German translations are underway. The Crimes Against Humanity Steering Committee has also reached out to national and international policy makers to begin a dialog about the strengths and benefits of the *Proposed Convention* and the responsibility of the international community to prevent and punish crimes against humanity. The Steering Committee has also assembled an Advisory Council of regionally diverse leading scholars and practitioners in public international law and human rights to assist the Initiative in developing strategies for a crimes against humanity treaty and promoting the *Proposed Convention*.

The *Proposed Convention* builds upon and complements the ICC Statute by retaining the Rome Statute definition of crimes against humanity, but has added robust interstate cooperation, extradition, and mutual legal assistance provisions in Annexes 2-6. Universal jurisdiction was retained (but is not mandatory), and the Rome Statute served as a model for several additional provisions, including Articles 4-7 (Responsibility, Official Capacity, Non-Application of Statute of Limitations) and with respect to final clauses. Other provisions draw on international criminal law and human rights instruments more broadly, such as the recently negotiated Enforced Disappearance Convention, the Terrorist Bombing Convention, the Convention Against Torture, the UN Conventions on Corruption and Organized Crimes, the European Transfer of Proceedings Convention, and the Inter-American Criminal Sentences Convention. The *Proposed Convention* provides for State as well as individual responsibility, and would vest jurisdiction in the International Court of Justice to resolve differences

as to interpretation and application of the *Proposed Convention*. For updates and the latest information on the Crimes Against Humanity Initiative, *see* http://law.wustl.edu/harris/crimesagainsthumanity/.

Leila Sadat
Washington University
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14th International Symposium – World Society of Victimology from 20-24th May 2012 in The Hague

The World Society of Victimology organizes a conference every three years. This year's conference theme was "Justice for Victims: Cross-cultural perspectives on conflict, trauma and reconciliation" and was organized by Victor Jammers (Slachtofferhulp the Netherlands), Stephan Parmentier (LINC, Belgium) and Rianne Letschert (INTERVICT, Tilburg University) and took place at the World Forum in The Hague. The Conference was opened in the Hall of Knights a.o. by the President of the World Society of Victimology Marc Groenhuijsen and the President of the International Criminal Court Mr. Sang-Hyun-Song. A large number of key note speakers and paper presentations dealt with mass victimization specifically. Five out of 10 plenary speakers are experts in forms and manifestations of mass violence and mass victimization. The first key note speaker on this issue, Jeremy Sarkin focused on the issue of reparation for violations committed in the past. Some argue that there is no obligation to pay reparation for violations of human rights that were committed a long time ago. However, Sarkin does not agree and explained that the right to reparation has been recognized for at least 100 years. Sarkin furthermore raised the question as to whether western states should pay reparation for the period of colonization and slavery of which the effects are still felt today. Sarkin argued in favour of such reparations as 'old matters do not end with the passage of time.' José Zalaquett focused on the need to support victims of human rights violations and stressed that victims should be central in transitional justice periods. Truth telling, memory preservation, acknowledgement, reparation and criminal justice are all important issues. The overall purpose is to build a fair society and address the past. Zalaquett however also stressed that each case is unique. Rama Mani spoke about applying an holistic approach ("integral justice") to dealing with human rights violations, which would include looking at political, legal, social, cultural, ecological and spiritual aspects. She stressed that each victim is unique and is capable to transform his or her victimhood into something positive. The next plenary speaker was Alex Hinton, a genocide scholar and expert on the Cambodian genocide who focused on the transitional justice imaginary and showed how Cambodian pamphlets deal with the ECCC in Cambodia and tell the story of Cambodia as personified by uncle San, aunty Yan and the Khmer Rouge Tribunal. The last key note speaker whose paper related to mass victimization was Harvey Weinstein, who wrote many books on transitional justice and who in his plenary speech raised many questions. Weinstein noted that there are limits to what international criminal justice can do and that one should always ask: whose justice? Whose truth? Whose interests are met? Weinstein made his audience think about what it means to live next door to the perpetrators and whether closure and reconciliation is really possible or an illusion.

Next to these plenary speakers 22 out of 109 working shop sessions and no less than 55 papers dealt with mass victimization, transitional justice, the rights of victims within the international criminal justice system and reparations. A particular interesting session was the plenary in which ICC judge Christine van den Wyngaert noted that in her view the participation for victims system which operates at the ICC right now is not in the best interest of the victims (see also the Klatsky lecture she gave November 21 last year and which is readily available on the internet). Like many participants at the conference Van den Wyngaert noted that the idea of victim participation is a sympathetic one but that it does not seem to work (yet) in practice. From her experience as an international judge handling and deciding on the many applications costs a lot of money and resources while the actual role of the victims in court proceedings do not really seem to have an added value (most will not come to the court to participate due to the large number of victims in conflict situations). Van den Wyngaert launched the ideas of having separate non-legal in situ hearings where only victims could speak about their ordeals, allowing victim participation in the pre-trial phase only and to change the Trust Fund for Victims into a Reparation Fund. Jonathan O'Donohue from Amnesty International responded to Judge van den Wyngaert's speech and highlighted rather the importance of providing a role to victims in the ICC's proceedings. He mentioned that the rights to victims were agreed upon in the Rome Statute of the ICC to reflect the Court's important goal not only to prosecute the perpetrators of international crimes, but also to give a voice to those who were victimized by such crimes in the first place. O'Donohue stressed that the glass was not half empty, but half full. According to him, the participation of 129 victims in the Lubanga case was overall successful and meaningful to victims. Although he recognized some of the problems raised by Judge van den Wyngaert, he felt that it is

better to think about ways to improve the system for participating victims (e.g. by rethinking the concept of group applications for participating victims). In the discussions it was generally noted that the victim participation at the ICC is an important step forward but that it does not seem to work fully yet and that international criminal lawyers together with victimologists and others need to work on figuring out means as to how to make the system work.

All in all the conference was of a high academic standard and very inspiring for scholars from many different background including genocide scholars, criminologists, psychologists, national and international criminal lawyers and victimologists. As victimology tries to combine all of these disciplines the discussions and papers were extremely interesting for all participants. In the closing sessions a number of prizes were awarded and it was announced that Marc Groenhuijsen was re-appointed as President of the World Victimology Society and that the next conference will be in three years time in Perth, Australia. We certainly look forward to it!

Anne-Marie de Brouwer & Alette Smeulers
University of Tilburg

SELECTED NEW PUBLICATIONS

Compiled by: Alette Smeulers

In this section we list a number of books and articles of interest which were published recently. We do not pretend to present a complete list but rather rely on books which we think are worthwhile or which have been recommended to us.

BOOKS

Balint, J. (2012). Genocide, state crime and the law – in the name of the state, New York: Routledge.

Genocide, State Crime and the Law critically explores the use and role of law in the perpetration, redress and prevention of mass harm by the state. In this broad ranging book, Jennifer Balint charts the place of law in the perpetration of genocide and other crimes of the state together with its role in redress and in the process of reconstruction and reconciliation, considering law in its social and political context. The book argues for a new approach to these crimes perpetrated 'in the name of the state' – that we understand them as crimes against humanity with particular institutional dimensions that law must address to be effective in accountability and as a basis for restoration.

Focusing on seven instances of state crime – the genocide of the Armenians by the Ottoman state, the Holocaust and Nazi Germany, Cambodia under the Khmer Rouge, apartheid South Africa, Ethiopia under Mengistu and the Dergue, the genocide in Rwanda, and the conflict in the former Yugoslavia – and drawing on others, the book shows how law is companion and collaborator in these acts of nation-building by the state, and the limits and potentials of law's constitutive role in post-conflict reconstruction. It considers how law can be a partner in destruction yet also provide a space for justice.
An important, and indeed vital, contribution to the growing interest and literature in the area of genocide and post-conflict studies, Genocide, State Crime and the Law will be of considerable value to those concerned with law's ability to be a force for good in the wake of harm and atrocity.

Bennet, T., E. Brems, G. Corradi, L. Nijzink, M. Schotsmans (Eds.) (2012). African Perspectives on tradition and justice, Antwerp: Intersentia

This volume aims to produce a better understanding of the relationship between tradition and justice in Africa. It presents six contributions of African scholars related to current international discourses on access to justice and human rights and on the localisation of transitional justice. The contributions suggest that access to justice and appropriate, context-specific transitional justice strategies need to consider diversity and legal pluralism. In this sense, they all stress that dialogical approaches are the way forward. Whether it is in the context of legal reforms, transitional processes in post-war societies or the promotion of human rights in general, all contributors accentuate that it is by means of cooperation, conversation and cross-fertilization between different legal realities that positive achievements can be realized. The contributions in this book illustrate the perspectives on this dialectal process from those operating on the ground, and more specifically from Sierra Leone, Mozambique, Malawi, South Africa, Uganda and Rwanda. Obviously, the contributions in this volume do not provide the final outcome of the debate. Rather, they are part of it.

Derluyn, I., C. Mels, S. Parmentier & W. Vandenhole (Eds.) (2012). Re-Member: rehabilitation, reintegration and reconciliation of war-affected children, Antwerp: Intersentia.

The recruitment and operations of child soldiers have been hitting the headlines in politics and the media for many years. However, a much broader circle of children is affected by armed conflicts. Hence, the many challenges to deal with youth

affected by armed conflict exceed by far the issue of the recruitment and demobilisation of child soldiers, but also extend to questions of rehabilitation, reintegration and reconciliation processes of all children and youths.

In stark contrast to the complex reality of armed conflict and the involvement of children therein, academic work thus far has taken a rather narrow view on the matter. International children's rights law has mostly focused on age limits for the recruitment of children and international criminal law has dealt with the prosecution and punishment of child recruiters. The disciplines of psychology and pedagogical sciences have merely emphasised the effects of and recovery from traumatic exposure by individuals, with some attempts for a more psychosocial perspective. Finally, studies in the field of transitional justice have paid remarkably little attention, until very recently, to the role of children in transitional justice mechanisms, both as victims and offenders.

This book brings together for the first time a wide range of leading scholars from three disciplinary perspectives (children's rights, psychosocial studies and transitional justice). It aims at enhancing a multidisciplinary and comprehensive approach to the rehabilitation, reintegration and reconciliation processes of children and adolescents affected by armed conflict. The 22 chapters are specifically written for this volume and deal with theoretical perspectives, empirical findings and country reports. The book also contains prefaces from two distinguished academics and policy makers in the field of international children's rights. It will therefore not only be of interest to academics, but also to policy makers, practitioners, non-governmental organisations, the media, and every citizen interested.

Dewulf, S. (2011). The signature of evil – redefining torture in international law, Antwerp: Intersentia

In *The Signature of Evil,* the notion of torture in international law is explored, with the intention of discovering the precise meaning of this most infamous and yet still very prevalent practice. By devouring a wealth of international legal sources, and combining this with personal field research and a look at the historical, philosophical, cultural, political and social background of torture's use and abolition, this book's first ambition is to define the term. This leads to an extensive and impressive overview, in which torture's constituent elements are carefully identified, thoroughly and meticulously scrutinised, and critically evaluated. On the basis of this synthesis and analysis, in which all possible uncertainties, problems and evolutions are highlighted and discussed, a redefinition is proposed, which does not shy away from setting foot on new terrain and trying what might be revolutionary roads. Some thought provoking ideas are suggested, and at times controversial choices are made, but all this is done in order to attain one all-important goal: enhancing torture's absolute and non-derogable prohibition, and strengthening the international legal framework against unlawful abuse.

Drumbl, M. (2012). Reimagining child soldiers, Oxford: Oxford University Press.

The international community's efforts to halt child soldiering have yielded some successes. But this pernicious practice persists. It may shift locally, but it endures globally. Preventative measures therefore remain inadequate. Former child soldiers experience challenges readjusting to civilian life. Reintegration is complex and eventful. The homecoming is only the beginning. Reconciliation within communities afflicted by violence committed by and against child soldiers is incomplete. Shortfalls linger on the restorative front.

The international community strives to eradicate the scourge of child soldiering. Mostly, though, these efforts replay the same narratives and circulate the same assumptions. Current humanitarian discourse sees child soldiers as passive victims, tools of war, vulnerable, psychologically devastated, and not responsible for their violent acts. This perception has come to suffuse international law and policy. Although reflecting much of the lives of child soldiers, this portrayal also omits critical aspects. This book pursues an alternate path by reimagining the child soldier. It approaches child soldiers with a more nuanced and less judgmental mind.

This book takes a second look at these efforts. It aspires to refresh law and policy so as to improve preventative, restorative, and remedial initiatives while also vivifying the dignity of youth. Along the way, Drumbl questions central tenets of contemporary humanitarianism and rethinks elements of international criminal justice. This ground-breaking book is essential reading for anyone committed to truly emboldening the rights of the child. It offers a way to think about child soldiers that would invigorate international law, policy, and best practices. Where does this reimagination lead? Not toward retributive criminal trials, but instead toward restorative forms of justice. Toward forgiveness instead of excuse, thereby facilitating reintegration and promoting social repair within afflicted communities. Toward a better understanding of child soldiering, without which the practice cannot be ended. This book also

offers fresh thinking on related issues, ranging from juvenile justice, to humanitarian interventions, to the universality of human rights, to the role of law in responding to mass atrocity.

Isaacs, T. & R. Vernon (Eds.)(2011). Accountability for collective wrongdoing, Cambridge: Cambridge University Press.

Ideas of collective responsibility challenge the doctrine of individual responsibility that is the dominant paradigm in law and liberal political theory. But little attention is given to the consequences of holding groups accountable for wrongdoing. Groups are not amenable to punishment in the way that individuals are. Can they be punished – and if so, how – or are other remedies available? The topic crosses the borders of law, philosophy and political science, and in this volume specialists in all three areas contribute their perspectives. They examine the limits of individual criminal liability in addressing atrocity, the meanings of punishment and responsibility, the distribution of group punishment to a group's members, and the means by which collective accountability can be expressed. In doing so, they reflect on the legacy of the Nuremberg Trials, on the philosophical understanding of collective responsibility, and on the place of collective accountability in international political relations.

Kristjánsdottir, E., A. Nollkaemper & C. Ryngaert (Eds.) (2012). International law in domestic courts: rule of law reform in post-conflict states, Antwerp: Intersentia.

States that are in transition after a violent conflict or an authoritarian past face daunting challenges in (re)establishing the rule of law. This volume examines in detail attempts that were made in certain significant post-conflict or post-authoritarian situations to strengthen the domestic rule of law with the aid of international law. Attention is paid in particular to the empowerment of *domestic courts* in such situations. International law may serve these courts as a tool for reconciling the demands for new rights and responsibilities with due process and other rule of law requirements.

The volume contains case studies of the role of domestic courts in various post-conflict and transitional situations (Balkans, Iraq, Afghanistan, Nepal, East Timor, Russia, South Africa, and Rwanda). Each of these case studies seeks to answer questions relating to the exact constitutional moment empowering domestic courts to apply international law, the range of international legal norms that are applied, the involvement of international actors in bringing about change, the contextualization of international legal norms in states in transition, tension within such states as a result of the application of international law, and the legacy of domestic courts' empowerment in terms of durable rule of law entrenchment.

Neelen, H. &. J. Claessen (eds.) (2012). Beyond the death penalty: reflections on punishment, Antwerp: Intersentia.

This book contains a selection of papers that were presented during the multidisciplinary conference 'Beyond the Death Penalty: Reflections on Punishment', organised by the Maastricht Centre for Human Rights. The event marked the 150th anniversary of the *de facto* abolition of the death penalty in the Netherlands.

As the title suggests, the scope of this volume moves beyond the death penalty. After a first cluster of chapters with a strong focus on capital punishment, an intriguing mixture of topics in relation to punishment is presented, including chapters on the populist context of contemporary crime control, reconciliation and rehabilitation, prison life, and efficiency and effectiveness.

The aim of the conference was to reflect on punishment from a variety of angles and, additionally, to give some food for thought to the contemporary debate on crime and punishment. Undoubtedly, this book will have the same impact on its readers. It will match the interest of many academics, including legal scholars, criminologists, penologists, legal philosophers, sociologists, psychologists, and historians.

Nelken, D. (ed.) (2011). Comparative criminal justice and globalization, Ashgate.

In this exciting and topical collection, leading scholars discuss the implications of globalisation for the fields of comparative criminology and criminal justice. How far does it still make sense to distinguish nation states, for example in comparing prison rates? Is globalisation best treated as an inevitable trend or as an interactive process? How can globalisation's effects on space and borders be conceptualised? How does it help to create norms and exceptions? The editor, David Nelken, is a Distinguished Scholar of the American Sociological Association, a recipient of the Sellin-Glueck award of the American Society of Criminology, and an Academician of the Academy of Social Sciences, UK. He teaches a course on Comparative Criminal Justice as Visiting Professor in Criminology at Oxford University's Centre of Criminology.

Contents**:** Introduction: comparative criminal justice and the challenge of globalisation, David

Nelken; Part I Studying Criminal Justice Comparatively: Making sense of punitiveness: the 2008 Wiarda inaugural lecture, David Nelken; Comparative criminology, globalization and the 'punitive turn', David Downes; Comparing criminal process as part of legal culture, Chrisje Brants. Part II The Globalization of Crime and Punishment: Globalization and states of punishment, Joachim J. Savelsberg; On globalisation and exceptionalism, John Muncie; Exit: the state. Globalisation, state failure and crime, Susanne Karstedt. Part III New Disciplinary Agendas: Critical cosmopolitanism and global criminology, René van Swaaningen; Transnational and comparative criminology reconsidered, James Sheptyki; Comparative criminology and global criminology as complementary projects, David O. Friedrichs; Afterword: studying criminal justice in globalising times, David Nelken.

Oette, L. (Ed.) (2011). Criminal Law reform and transitional justice – human rights perspectives for Sudan, Ashgate.

Sudan has been undergoing profound changes characterized by an uncertain transition from conflict to post-conflict society and the separation of the country in the midst of ongoing human rights concerns. This book examines the nature, policy aspects and interrelationship of Sudanese criminal law and law reform in this context, situating developments in the broader debate of international human rights, rule of law and transitional justice. For the first time, Sudanese, national, regional and international experts and practitioners are brought together to share experiences, combining a range of legal and policy perspectives. The book provides valuable lessons on how relevant standards and experiences can be used to inform criminal law reform in Sudan. It also considers what broader lessons can be drawn for reform initiatives in other societies facing similar challenges. This includes the type of violations that need to be addressed in reforms as a prerequisite for enhanced human rights protection, challenges experienced in this regard, and the contribution of civil society in this process.

Olasolo, H. (2011). Essays on international criminal justice, Hart Publishing.

Crimes of atrocity have profound and long-lasting effects on any society. The difference between triggering and preventing these tragic crimes often amounts to the choice between national potential preserved or destroyed. It is also important to recognize that they are not inevitable: the commission of these crimes requires a collective effort, an organizational context, and long planning and preparation. Thus, the idea of strengthening preventative action has taken on greater relevance and is now encompassed in the emerging notion of 'responsibility to prevent.' International courts and tribunals contribute to this effort by ending impunity for past crimes. Focusing investigations and prosecution on the highest leadership maximizes the impact of this contribution. The International Criminal Court (ICC) has an additional preventative mandate, which is fulfilled by its timely intervention in the form of preliminary examinations. Moreover, when situations of atrocity crimes are triggered, its complementarity regime gives incentive to states to stop violence and comply with their duties to investigate and prosecute, thus strengthening the rule of law at the national level. The new role granted to victims by the Rome Statute is key to the ICC's successful fulfillment of these functions. This collection of essays on international criminal law and procedure - which includes the author's unpublished inaugural lecture at Utrecht University - examines these issues and places particular emphasis on: the additional preventative mandate of the ICC, the ICC complementarity regime, the new role granted to victims, and the prosecution of the highest leadership through the notion of indirect perpetration.

Palmer, N., P. Clark & D. Granville (eds.) (2012). Critical perspectives in transitional justice, Antwerp: Intersentia.

In the last twenty years, the field of transitional justice has moved from being a peripheral concern to an ubiquitous feature of societies recovering from mass conflict or repressive rule. In both policy and scholarly realms, transitional justice has proliferated rapidly, with ever-increasing variety in terms of practical processes and analytical approaches. The sprawl of transitional justice, however, has not always produced concepts and practices that are theoretically sound and grounded in the empirical realities of the societies in question.

Critical Perspectives in Transitional Justice takes stock of this burgeoning field and, in gathering the views of scholars and practitioners from a wide range of national and methodological backgrounds, explores four key concerns with current trends in transitional justice: the under-theorisation of the field, its disconnect from core academic disciplines, its tendency towards advocacy rather than analysis, and its emphasis on technical institutional responses without clear articulations of their objectives.

This vital book – edited by Oxford Transitional Justice Research – is designed to deepen theoretical and empirical discussions within transitional justice

by providing critical perspectives on common concepts, issues, methodologies, institutions and mechanisms. Its purpose is to clarify key terms, challenge core assumptions and highlight important tensions, inconsistencies and disagreements in the field with the ultimate aim of harnessing the enormous energy of transitional justice for more fruitful ends. The breadth of debates in this volume highlights the scope, inclusiveness and ambition of this field but also underscores that – despite its geographical, conceptual and disciplinary expanse – consistent questions arise regarding contextually appropriate objectives, the balance between individual and collective needs and interests, and securing the legitimacy of transitional processes among those affected by past violations.

Rothbarte, D., K. Korosstelina & M. Cherkaoui (eds.) (2012) Civilians and modern war: armed conflict and the ideology of violence, Routledge

This book explores the issue of civilian devastation in modern warfare, focusing on the complex processes that effectively establish civilians' identity in times of war.
Underpinning the physicality of war's tumult are structural forces that create landscapes of civilian vulnerability. Such forces operate in four sectors of modern warfare: nationalistic ideology, state-sponsored militaries, global media, and international institutions. Each sector promotes its own constructions of civilian identity in relation to militant combatants: constructions that prove lethal to the civilian noncombatant who lacks political power and decision-making capacity with regards to their own survival.
Civilians and Modern War provides a critical overview of the plight of civilians in war, examining the political and normative underpinnings of the decisions, actions, policies, and practices of major sectors of war. The contributors seek to undermine the 'tunnelling effect' of the militaristic framework regarding the experiences of noncombatants.
This book will be of much interest to students of war and conflict studies, ethics, conflict resolution, and IR/Security Studies.

Schabas, W. (2012). Unimaginable atrocities – justice, politics and rights at the war crimes tribunals, Oxford: Oxford University Press.

As international criminal courts and tribunals have proliferated and international criminal law is increasingly seen as a key tool for bringing the world's worst perpetrators to account, the controversies surrounding the international trials of war criminals have grown. War crimes tribunals have to deal with accusations of victor's justice, bad prosecutorial policy and case management, and of jeopardizing fragile peace in post-conflict situations. In this exceptional book, one of the leading writers in the field of international criminal law explores these controversial issues in a manner that is accessible both to lawyers and to general readers.

Professor William Schabas begins by considering the discipline of international criminal law, outlining the differing approaches to the description of international crimes and examining the frequent claims relating to the retroactive application of these crimes. The book then discusses the relationship between genocide and crimes against humanity, studying the fascination with what Schabas calls the 'genocide mystique'. International criminal tribunals have often been stigmatized as an exercise in victor's justice. This book traces how this critique developed and the difficulty it poses to the identification of situations for prosecution by the International Criminal Court. The claim that amnesty for international crimes is prohibited by international law is challenged, with a more nuanced approach to the relationship between justice and peace being proposed. Throughout the book there is a strong historical perspective, with constant reference to the early experiments in international justice at Nuremberg and Tokyo. The work also analyses the growing pains of the International Criminal Court as it enters its second decade.

Sikkink, , K. (2011). The justice Cascade – how human rights prosecutions are changing the world. WW. Norton.

Acclaimed scholar Kathryn Sikkink examines the important and controversial new trend of holding political leaders criminally accountable for human rights violations.
Grawemeyer Award winner Kathryn Sikkink offers a landmark argument for human rights prosecutions as a powerful political tool. She shows how, in just three decades, state leaders in Latin America, Europe, and Africa have lost their immunity from any accountability for their human rights violations, becoming the subjects of highly publicized trials resulting in severe consequences. This shift is affecting the behaviour of political leaders worldwide and may change the face of global politics as we know it.
Drawing on extensive research and illuminating personal experience, Sikkink reveals how the stunning emergence of human rights prosecutions has come about; what effect it has had on democracy, conflict, and repression; and what it means for leaders and citizens everywhere, from Uruguay to the United States. *The Justice Cascade*

is a vital read for anyone interested in the future of world politics and human rights.

Simms, B. & D.J.B. Trim (eds.) (2011). Humanitarian intervention: a history, Cambridge: Cambridge University Press.

The dilemma of how best to protect human rights is one of the most persistent problems facing the international community today. This unique and wide-ranging history of humanitarian intervention examines responses to oppression, persecution and mass atrocities from the emergence of the international state system and international law in the late sixteenth century, to the end of the twentieth century. Leading scholars show how opposition to tyranny and to religious persecution evolved from notions of the common interests of 'Christendom' to ultimately incorporate all people under the concept of 'human rights'. As well as examining specific episodes of intervention, the authors consider how these have been perceived and justified over time, and offer important new insights into ideas of national sovereignty, international relations and law, as well as political thought and the development of current theories of 'international community'

Williams, S. (2012). Hybrid and internationalized criminal tribunals, Oxford: Hart Publishing.

In recent years, a number of criminal tribunals have been established to investigate, prosecute, and try individuals accused of serious violations of international humanitarian law and international human rights. These tribunals have been described as 'hybrid' or 'internationalized' tribunals, as their structure and applicable law consist of both international and national elements. Five such tribunals are currently in operation: the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, Regulation 64 panels in Kosovo, the War Crimes Chamber for Bosnia and Herzegovina, and the Iraqi High Tribunal. The Special Panels for Serious Crimes in East Timor suspended operation in May 2005, while the Lebanese Special Tribunal is being established. Suggestions have been made that this model of tribunal would also be appropriate for the prosecution of atrocities committed in Burundi, the Sudan, Afghanistan, Palestine and the Occupied Territories, and Liberia. The contents of this book include: an examination of the increasing role of hybrid and internationalized judicial institutions in prosecuting international crimes; an outline of the basic features of the existing and proposed hybrid or internationalized tribunals; the definition and categorization of the tribunals; a determination of the jurisdictional basis of each tribunal; an analysis of how the jurisdictional basis affects other issues, such as the applicable law, the application of amnesties and immunities, and the relationship of these tribunals with the host state, third states, national courts, and other international criminal tribunals. The book concentrates on the jurisdictional aspects of hybrid and internationalized criminal tribunals, as this has been the subject of confusion in arguments before the tribunals and in the judgments of the tribunals. In its concluding section, the book examines the future role of internationalized and hybrid criminal tribunals, particularly in light of the establishment of the International Criminal Court and the potential use of such tribunals in other contexts. It also assesses how hybrid and internationalized tribunals fit into a 'multi-layered framework' of international criminal law and transitional justice, which is developing its own normative framework.

Wilson, R.A. (2011). Writing history in international criminal trials, New York: Cambridge University Press

Why do international criminal tribunals write histories of the origins and causes of armed conflicts? Richard Ashby Wilson conducted empirical research with judges, prosecutors, defence attorneys, and expert witnesses in three international criminal tribunals to understand how law and history are combined in the courtroom. Historical testimony is now an integral part of international trials, with prosecutors and defence teams using background testimony to pursue decidedly legal objectives. Both use historical narratives to frame the alleged crimes and to articulate their side's theory of the case. In the Slobodan Milošević trial, the prosecution sought to demonstrate special intent to commit genocide by reference to a long-standing animus, nurtured within a nationalist mind-set. For their part, the defence calls historical witnesses to undermine charges of superior responsibility, and to mitigate the sentence by representing crimes as reprisals. Although legal ways of knowing are distinctive from those of history, the two are effectively combined in international trials in a way that challenges us to rethink the relationship between law and history.

JOURNALS

Genocide Studies and Prevention 2011 6(3) + 7(1) 2012: 60 Years After the Ratification of the Genocide Convention: Critical Reflections on the State and Future of Genocide Studies.

Sixty years after the ratification of the Genocide Convention, Genocide Studies and Prevention dedicated two special issues to take stock of the

development in the field ever since it emerged some thirty-five years ago. The aim of the editors was to include articles of a diverse set of genocide scholars to include many perspectives and a broad range of issues. The first article of issue 6(3) is by Samuel Totten who examines five concerns that are related to genocide prevention and intervention. He discusses for instance the toughest barriers to prevention, UN Security Council reform, the Crimes Against Humanity Initiative and the necessity to cooperate more with scholars from related fields. Thereafter, Colin Tatz's article uses an Australian perspective to highlight some of the disagreements and conceptual challenges in the field and several issues that are under-analysed. Dominik J. Schaller subsequently discusses genocide activism and highlights some methodological and ideological problems inherent in genocide studies. Daniel Feierstein in his article examines some current developments and then focuses specifically on one of the problems also mentioned by Schaller, namely Eurocentrism. He argues the field needs a broader scope and genuine intercultural dialogue. Adam Jones discusses the growing pluralism and internationalization of genocide studies but also acknowledges some of the enduring parochial features of the field. He concludes with a discussion on the increasingly important role for genocide scholars in policy making and humanitarian spheres. Robert Melson makes three central arguments. Firstly, he critiques the notion that modern genocides do not substantially differ from its predecessors, secondly he holds that modern genocides cannot all be contributed to imperialism but that rather there is not one single explanation to explain all genocides. Thirdly, he asserts that the testimonies of victims are crucial to better understand perpetrators and bystanders as well. The last article is by A. Dirk Moses who scrutinizes the relationship between Holocaust studies and genocide studies by revisiting the founding assumptions of both fields of study.

In the second part of this special issue 7(1) Alex Hinton argues the time has come for the field to be more self-reflective and explore its own presuppositions, decentre its biases and identify its own blind spots. In doing so he opens the discussion on what might be called "critical genocide studies". Sheri Rosenberg in her contribution wants to further the debate on "genocide by attrition" by emphasising genocide should be viewed as a process. According to Rosenberg genocide does not have to involve the immediate death and murder of individuals, but as in Darfur the annihilation can be brought about slowly through indirect methods of mass killing. This processional nature, she argues, should also be taken into account in genocide prevention and early warning systems. Subsequently, Jacques Semelin focuses on intervention in relation to the concept of genocide. According to Semelin the failure to intervene should not be solved by stretching the concept of genocide to continuously cover new cases but rather through the development of a convention on crimes against humanity. Hannibal Travis on the other hand rather notes that genocidal intent is often interpreted too narrowly. Thereafter, Evgeny Finkel and Scott Straus argue that more attention should be paid to the meso and micro levels of research and identify several research problems common to the field of genocide studies. Uğur Ümit Üngör likewise identifies several problems and pitfalls in the field. He suggests a model with which to analyse genocide that focuses on all three levels of analysis. The next article by Ernesto Verdeja proposes greater emphasis on comparative genocide research to gain more insight into the factors that result in large scale and group-oriented violence. Elisa von Joeden-Forgey suggest that a gendered understanding of genocide is central for intervention and early warning strategies. Israel W. Charny then proposes an International Peace Army, although he acknowledges the world is not ready yet for such a development and in the final article Henry C. Theriault critiques several trends in genocide studies. He examines for instance the role Lemkin continues to play in the field, the "theory-practice" distinction and warns the reader for the growing militarization of genocide studies. In addition, he critically analyses the debate surrounding "memory politics", "cycles of violence" and other diverse issues and concepts like gendercide, dehumanization and prevention.

Maartje Weerdesteijn

Journal of International criminal Justice (2011) nr.5 and nr. 1 + 2 (2012)

In the last issue of 2011 two articles deal with the controversial decision of the Special Tribunal for Lebanon of February 16, 2011 in which it defined terrorism. One of the authors Ventura concludes: "due to its far-reaching implications, the decision merits the attention of scholars and practitioners alike as it has the potential to affect both domestic and international approaches to, and prosecution of, terrorism for many years to come." In his contribution Van der Wilt dismisses the criticism of African states in relation to Western states which rely on the principle of universal jurisdiction in order to prosecute international crimes. Van der Wilt notes that western states have relied on obligations *erga omnes* and have contributed to the development of international criminal law. In the next contribution Murunga explains why the African Union should let go of its intention to set up a criminal chamber as this would be in breach of

their obligations under the Rome Statute. Van Steemberghe discusses the obligation to extradite and prosecute. He concludes that it is a rule of customary law but only valid in relation to international crimes and to the extent that it leaves the discretionary nature of extradition unaffected. The obligation furthermore only requires the state to present the case to the competent authorities. Next three national cases are commented upon: the El-Masri case in German in relation to a case of extraordinary rendition. An Italian case related to the Second World War and the possibility to get compensation. Nollkaemper then discusses the decision by a Dutch court that the Netherlands "committed a wrongful act by expelling four Bosnian nationals from the protected compound of Dutchbat. After the fall of Srebrenica."

The first issue of 2012 is a special issue on the Review Conference at Kampala and the definition of the crime of aggression. The first part of the issue provides an historic overview of the attempts to criminalize the crime of aggression (Sellars). Weigend discusses the application of crime against peace as applied by the Nuremberg tribunal and the so-called Kampala compromise by which preparing for and waging an aggressive war is considered a criminal offence. Policy issues are addressed in the second part of the special issue. Creegan argues that "aggression should not have been codified in the Rome Statute." The topic of Wills contribution are quasi-international armed conflicts and the challenges such conflicts pose to defining aggression. Braun and Micus explain why they are afraid of 'selectivity and political interference in the decision-making of the court' and thus give voice to the concerns of some human rights organizations. Complementarity and the crime of aggression is the central focus of the article by Van Schaack. In the third part legal issues are central. Milanovic focuses on aggression and legality. O'Connell and Niyazmatov compare the ius ad bellum with the definition of aggression in the ICC statute. Zimmerman questions compatibility of the procedures used in Kampala and international law and Heller focuses on the uncertain legal status of aggression understandings and lastly individual civil responsibility for the crime of aggression is the main focus of Rosenfeld. In the last part Mauro Politi former judge of the ICC closes the discussion by looking back and ahead in a contribution entitled 'the ICC and the crime of aggression.'

Two articles of the third issue focus on the situation in Libya. Jessberger introduced the section and Alkande discusses what the effects of Security Council Resolutions are on the obligations of a state to cooperate with the ICC. Carsten Stahn focuses the issue of complementarity in relation between Libya and the International Criminal Court. McCarthy tackles the problem of victims redress within international criminal justice. Clark's central theme is reconciliation in Croatia, more particularly Vukovar. While Grewal addressed the challenge of defining rape under the International Criminal Court. Sarvarian goes way back to the Nuremberg trials in order to discuss the ethical standards applied at the time. Margetts and Kappos discuss the current developments at the ad hoc tribunals with specific attention to the residual mechanism which starts working in Rwanda.

Journal of transitional justice – Volume 5 issues 1-3 (2011) and volume 6 issue 1 (2012).

The journal of transitional justice presents its usual mixture of case studies and more general articles in which specific issues are discussed. There are articles on Rwanda's gacaca system; the Balkans; Sri Lanka, Nepal, Guatemala in the first issue of volume 5. There is also a specific article on accountability for famine before the extraordinary chambers in the courts of Cambodia (DeFalco). The more general article in the first issue of volume 5 focus on the role of forgiveness (by Saunders). In the second issue of volume 5 case studies focus on post-Soviet Russia and South Africa. The more general articles focus on a literary theory on political transition; the institutionalization of civil society; transitional justice and displacement and lastly the role of the European Court of Human Rights. The third issue focuses on case studies within Argentina, Rwanda, East Timor and Guatemala, while the more general articles cover civil society and documentation. In the first issue of 2012 the focus of the case studies is on Burundi, Indonesia, East Timor and Bosnia-Herzegovina. General articles focus on armed opposition movement and justice advocacy.

Human Rights and International Legal Discourse 2012, 6 (1) – special issue on Business and Human Rights in conflict zones.

This peer-reviewed law journal encourages the critical study of the increasing influence of human rights law on international legal discourse. The editorial board consists of experts from the Belgian law faculties, Antwerp, Brussels, Ghent and Leuven. This special issues consists of 8 articles which focus on the role of businesses in conflict zones. There is one article on human rights challenges for multinational corporation. One article on corporate complicity under international criminal law and one on corporate human rights violations and private international law. There are two articles on private military and security companies. One on conflict minerals and one on diamond and gold jewellery in conflict effected areas.

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MISCELLANEOUS

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