

SALZBURG LAW SCHOOL on International Criminal Law

Third Summer Session, Sunday 5 – Friday 17 August 2001

The two week course on international criminal law, international humanitarian and human rights law consists of 30 *lectures*, 45 min. each, in general in the morning, 9.00 - 13.00, with time for discussion (including a coffee break) and *practical units*, in general in the afternoon, 14.00 - 17.00, of workshops, case studies closing with reports and discussion in plenary.

Speakers are internationally acknowledged scholars in these fields, for instance Roger S. Clark, New Zealand, Benjamin B. Ferencz, Former Prosecutor at Nuremberg, New York, Gerhard Hafner, Member of the ILC, Vienna, Nicholas N. Kittrie, Washington, William B. Schabas, Ireland, Otto Triffterer, Salzburg, and Sharon Williams, Canada, judge ad litem, ICTY, as well as outstanding legal practitioners, for instance, Judge Claude Jorda, President ICTY, Prof. Michail Wladimiroff, Defense Council ICTY, Patricia Viseur - Sellers and Morten Bergsmo, Office of the Prosecutor, The Hague.

The *first* week is dedicated mainly to the general framework of international criminal law, humanitarian law and human rights law as expressed in the Rome Statute and sets the basis for the *second* week, which deals with key aspects of the establishment of the International Criminal Court (ICC), including the latest drafts of the Preparatory Commission from June 2000 for Elements of Crimes, The Rules of Procedure and Evidence as well as the definition of aggression and the "conditions under which the Court shall exercise jurisdiction with respect to this crime". The lectures and workshops include also questions of ratification and implementation of the Rome Statute into the domestic legal systems.

A social programme is available for the evenings as well as those afternoons without academic programme and the weekend.

PROGRAMME OVERVIEW

First Week: Monday 6 August - Friday 10 August 2001

A. General Framework of International Criminal Law, Humanitarian Law and Human Rights

I. Substantive Law

1. Introduction into the three subject matters
2. Historical context and development
3. Sources and present situation
4. "Core crimes", their notion and relation to "serious crimes of concern to the international community as a whole" and to crimes punishable according to broadly common standards in national criminal justice systems
5. General principles, those defined in the Rome Statute and those contained in other "applicable law"
6. International criminal law – ideal and reality
7. The Draft Elements of Crimes and the endeavours to define aggression

II. Enforcement

1. International Tribunals, in the past, at present and in the future – Direct Enforcement Model
2. Prosecution by national courts, Indirect Enforcement Model
3. Priority or complementarity between the two enforcement models?
4. The role, task, difficulties and limits to prosecute before international tribunals and the ICC
5. International standards of due process
6. Alternatives to prosecution and punishment?
7. The Draft Rules of Procedure and Evidence and their relation to those of the ICTY and the ICTR
8. Ratification and implementation procedures, first steps to prevent and repress "crimes within the jurisdiction of the Court" – as well as other crimes punishable directly under international law
9. Rapprochement and unification, demands for an effective implementation and vertical cooperation with the court?

Second Week: Monday 13 August - Friday 17 August 2001

B. The International Criminal Court

I. Necessary steps to get the Court into operation: Ratification and Implementation of the Statute

- Ratification and Implementation Models – advantages for the States Parties and the ICC
- Adopting the Draft Elements of Crimes, a draft definition of the crime of aggression and drafted regulations for "conditions under which the Court shall exercise jurisdiction with respect to this crime", Art. 9 respectively Art. 5 paragraph 2
- The Role of the Assembly of States Parties, in particular to propose and deal with amendments, Art. 121, and to participate in Review Conferences, Art. 123

II. The Court in action: Possibilities and limits

III. Special aspects

1. Complementarity, notion and consequences for the criminal justice systems of the States Parties
2. Trigger mechanism and preconditions to the exercise of jurisdiction
3. Fair trial and the limits to achieve justice
4. Rights and protection of victims and witnesses
5. International cooperation and judicial assistance
6. Security interests of the international community vs. "protection of national security information", Articles 72 and 98
7. The adversarial vs. the inquisitorial system
8. Possibilities and limits for the Prosecution and the Defence under Common Law and Continental European Law

C. Closing Session: Final discussion and evaluation

ACADEMIC PROGRAMME

Due to the availability of some lecturers their presentations had to be anticipated regardless whether they fit at the respective day precisely into the systematic content of the Course.

If necessary, additional changes will be announced on a day to day basis.

SUNDAY, 5 August 2001, 15.00 - 22.00

Welcome and registration of participants and lecturers at the Hotel Kolpinghaus, Adolf - Kolping - Straße 10, Ph.: xxxx or xxxx (Tobias Triffterer, Executive Director)

Lectures will take place at the Law Faculty (in the Old Town), Churfürststrasse 1, Toskana Trakt, Room HS 209 (Plenary), Workshops HS 208, 209 and 213; exact locations and schedule of additional workshops will be announced later.

The cafeteria of the Faculty of Law, Salzburg is located directly besides the lecture hall.

MONDAY, 6 August 2001

10.00 a.m., Sala Terrena, Toskana Trakt

Opening Ceremony Third Summer Session, SLS on International Criminal Law:

Welcome: **Vice - President of Salzburg University**, Prof. Dr. Heinrich Schmidinger, rektor electus

Dean of the Law Faculty, Prof. Dr. Walter Berka

President of ELSA Salzburg, Tobias Triffterer

Introduction to the academic programme, Prof. Dr. Otto Triffterer

11.00 a.m. Key note speaker: Judge Claude Jorda, President ICTY

Les enjeux actuels du Tribunal Pénal International pour l'ex - Yougoslavie, une question parmi d'autres: le statut de la victime

(a written English summary of the presentation will be available)

12.00 a.m. Reception, Foyer 2nd floor HS 209**First Session: 14.00 - 15.00, HS 209****A. General framework of international criminal law, international humanitarian and human rights law**

I. Substantive Law

Speakers: Prof. Sharon Williams, Canada, judge ad litem, ICTY, and Prof. Otto Triffterer, Salzburg

1. *Introduction: Conceptual framework*

- a) Survey on the interrelation between international criminal, international humanitarian and human rights law
- b) Basic doctrines and conceptual framework of international criminal law, including jurisdiction and procedure
- c) Relationship of international criminal law to national legal systems

Discussion

Coffee break 15.00 - 15.30

Second Session: 15.30 - 17.00, HS 2092. *Historical development and future perspectives*

Speaker: Prof. Benjamin B. Ferencz, USA, Former Prosecutor at Nuremberg:

Can Aggression be deterred by Law? – The Vision of Nuremberg in 1945: World Peace through World Law

The ICC: A new dimension of international criminal law - An appeal to future generations

The speaker together with Prof. Otto Triffterer will also deal with

- a) First endeavours at the end of the First World War
- b) The league of Nations and Nuremberg: Affirmation or retreat?
- c) Post war codification efforts and conventional law
- d) The failure of national enforcement, amnesties and impunity
- e) Increased national and international efforts towards the end of the Cold War: The two Ad Hoc International Tribunals, ICTY and ICTR
- f) Establishing the permanent International Criminal Court
 - The ILC Draft Statute 1994
 - The Ad - hoc Committee 1995 and the endeavours of non - governmental organisations, in particular the Updated Siracusa Draft 1996
 - The Preparatory Committee 1996 - 1998
 - The Rome Conference 15 June - 17 July 1998
 - The Preparatory Commission 1999 - 2001 and its Drafts to be presented to the Assembly of States Parties
- g) Present endeavours to find and apply alternatives to prosecution and punishment
- h) Endeavours to establish new *ad - hoc* Tribunals or to install conflict solving institutions

Discussion

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

TUESDAY, 7 August 2001**Third Session: 09.00 - 11.30, HS 209 (with coffee break and discussion)**

3. *Sources of international criminal law, humanitarian and human rights law: Present situation and future perspectives*

Speakers: Prof. Wolfram Karl, Salzburg, Prof. Sharon Williams and Prof. Otto Triffterer

- a) Treaty and international customary law and their interrelation
- b) General principles of law recognized by the community of nations
- c) *Ius cogens* and obligations *erga omnes*
- d) Origins and basic principles of international criminal law and international humanitarian law
 - The 'Hague' and 'Geneva' law for the regulation of armed conflict
 - Differentiation between internal and international armed conflicts
 - Common Article 3 of the Geneva Conventions 1949 and Additional Protocol II for internal armed conflicts
 - Prevention and punishment of grave breaches
- e) Human rights and international criminal law
 - Subsidiary protection of Human Rights by International Criminal Law
 - Procedural guarantees
 - Derogation in states of emergency?

11.30 - 13.00 Workshop with Judge Claude Jorda, President ICTY

Lunch: 13.00 - 14.00, Cafeteria

14.00 - 17.00 Anticipated presentations: Prof. Otto Lagodny, Salzburg,

Vertical and (traditional) horizontal cooperation between States Parties and with States not a Party to the Rome Statute

15.15 - 15.45 coffee break

Regulations relating to fair trial, the rights of the defence

Discussion

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

WEDNESDAY, 8 August 2001**Fourth Session: 9.00 - 13.00, HS 209 (with coffee break and discussion)**

4. „Core crimes“

Speakers: Prof. Sharon Williams and Prof. Otto Triffterer

The speakers will deal with:

- a) What makes a 'core crime'? Contrasting piracy, slavery, and treaty crimes with "the most serious crimes of concern to the international community as a whole"
- b) Genocide
- c) Crimes against humanity
- d) War crimes
- e) The Draft Elements for the first three groups
- f) Aggression / Crimes against Peace – present situation defining aggression and the conditions under which the Court shall exercise jurisdiction with respect to this crime, Art. 5 Rome - Statute
- g) Penalties in the sentencing procedure

Lunch: 13.00 - 14.00, Cafeteria

Afternoon: FREE, social programme or time at the disposal of participants

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

THURSDAY, 9 August 2001

Fifth Session: 9.00 - 13.00, HS 209 (with coffee break and discussion)

5. General principles, their development and implementation into national legal systems

Speakers: Dr. Florian Jeßberger, Berlin

Implementing the ICC - Statute into the German legal system, selected problems

Dr. Roland Miklau, Director for criminal legislation, Federal Ministry of Justice, Vienna

Tendencies for a Regional and Global Harmonization of International Criminal Law – The Austrian Implementation of the Rome - Statute, an example?

Prof. Sharon Williams

Ratification and implementation of the Rome Statute in Canada, major problems with respect to substantive and procedural law

Michael Cottier, Bern

Implementing the ICC - Statute in Switzerland, in particular universal jurisdiction and national cases

The speakers, together with Prof. Otto Triffterer, will deal also with

- a) Individual criminal responsibility, actus reus and mens rea
- b) Irrelevance of official capacity, articles 25 and 27 Rome - Statute
- c) Mental Elements and Elements of Crimes, articles 30 and 9
- d) Command Responsibility, article 28
- e) Superior orders and prescription of law, article 33
- f) Immunity?
- g) Status of limitations, defences, and other principles, especially articles 29, 31 and 32 Rome - Statute
- h) Additional aspects of accountability and responsibility for serious human rights violations

Lunch: 13.00 - 14.00, Cafeteria

Sixth Session: 14.00 - 17.00, HS 209 (with coffee break and discussion)

6. International Criminal Law – Ideal and Reality

Speakers: Michael Cottier, Dr. David Donat - Cattin, Rome / New York, Dr. Florian Jeßberger and Prof. Sharon Williams

- a) Purpose, justification and value of prosecution vs. "soft" remedies (amnesties, lustration, reconciliation etc.) – Justification and reconciliation, truth commissions and the ICC – A contradiction? – Dr. Florian Jeßberger
- b) Examples of national prosecution, in particular in Canada – Prof. Sharon Williams
- c) Main tendencies in the Preparatory Commission after its Fifth Session June 2000 and the continuing struggle to get the Court into operation – Michael Cottier and Dr. David Donat - Cattin

This session will partly be conducted as workshop. Alternative or additional workshops may be proposed by participants and lecturers. The participants in the workshops will meet with the plenary from 16.00 to 17.00 for reporting and discussion.

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

FRIDAY, 10 August 2001**Seventh Session: 9.00 - 13.00 HS 209 (with coffee break and discussion)**

II. Enforcement

1. *International jurisdiction, Direct Enforcement Model – Prosecution by national courts, Indirect Enforcement Model*

Speakers: Prof. Sharon Williams,

The role of the Security Council in respect to jurisdiction of the ICC

Michael Cottier, Dr. David Donat - Cattin, Dr. Florian Jeßberger and Prof. Otto Triffterer

- a) Nuremberg and Tokyo, ICTY and ICTR, ICC
- b) New ad - hoc and regional international tribunals?
- c) The preventive and repressive function of the permanent International Criminal Court, of ad - hoc Tribunals and so called “soft remedies”
- d) Common basis and differences between national and international criminal jurisdiction
- e) Legal and political implications of the domestic ratification and implementation process
- f) Universal jurisdiction in treaty and customary law

Lunch: 13.00 - 14.00, Cafeteria

Eighth Session: 14.00 - 17.00, HS 209

Morning Programme continued in Plenary or

Workshops at the disposal of participants with reports and discussion in plenary 16.00 - 17.00

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

SATURDAY, 11 August 2001

FREE, social programme or time at the disposal of participants

SUNDAY, 12 August 2001

FREE, social programme or time at the disposal of participants

MONDAY, 13 August 2001**Ninth Session: 09.00 - 13.00, HS 209 (with coffee break)**

2. *Investigating and prosecuting crimes directly punishable under international law and international standards of due process*

Speakers: Morten Bergsmo, Office of the Prosecutor, ICTY

Prosecuting the international crime of genocide, the Jelesic - Appeal decision, 5 July 2001 and the not yet final verdict against General Krstic, 2 August 2001.

Prof. Michail Wladimiroff, The Hague

Legal and practical difficulties in defending before the ICTY

Dr. Harald Meyer, Expert in Legal Medicine, Salzburg

Collecting evidence on behalf of the ICTY

Lunch: 13.00 - 14.00, Cafeteria

MONDAY, 13 August 2001**Ninth Session: 09.00 - 13.00, HS 209 (with coffee break)**

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Lunch: 13.00 - 14.00, Cafeteria

Tenth Session: 14.00 - 15.30, HS 209 (with discussion)**Speakers: Morten Bergsmo, Prof. Michail Wladimiroff, and Prof. Otto Triffterer**

Fair trial, standards developed since Nuremberg

Comparative case study and analysis: especially *Eichmann, Finta, Öcalan, Lockerbie, Pinochet, Tadic, Jelesic and Krstic, Milosevic, Karadzic and Mladic*

15.30 - 16.00 coffee break

Eleventh Session: 16.00 - 17.00**B. The International Criminal Court****Speakers: Dr. David Donat - Cattin, Prof. Otto Triffterer**

- Necessary steps to get the Court into operation
- Implementing the ICC in Southern Africa
- Rights and Protection of victims and witnesses

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

TUESDAY, 14 August 2001**Twelfth Session: 9.00 - 11.00, HS 209****I. Special Aspects****1. Complementarity****Speakers: Prof. Nicholas N. Kittrie, Washington D.C.,**

Accountability or Impunity, â Criminal Trials or Peace and Reconciliation Commissions?

Prof. Roger Clark, Prof. William A. Schabas and Prof. Otto Triffterer

- a) Standards and procedures on jurisdiction, preconditions and admissibility
 - 'Unwillingness' and 'inability' of national authorities to proceed "genuinely"
 - Deferral and the preservation of evidence
- b) Security interests of the community of States, basis and justification of an International Criminal Jurisdiction – Relation to article 72

Coffee break: 11.00 - 11.30

Thirteenth Session: 11.30 - 13.00, HS 209*2. Trigger mechanisms and preconditions to the exercise of jurisdiction***Speakers: Prof. Roger Clark and Prof. William Schabas and Prof. Otto Triffterer**

- a) State - Court interactions at the initiation of investigations
- b) Jurisdiction, preconditions to its exercise and "Preliminary rulings regarding admissibility", article 18

Lunch: 13.00 - 14.00, Cafeteria**Fourteenth Session: 14.00 - 15.30, HS 209***3. Fair trial before the ICC***Speakers: Prof. Michail Wladimiroff, N.N. and/or Prof. Otto Triffterer**

- a) Conduct of investigations and the rights of the defence
- b) Defence and prosecution strategies
- c) Arrest and surrender
- d) Trial preparation and disclosure of evidence
- e) The trial and the presumption of innocence
- f) Appeal and review

Coffee break: 15.30 - 16.00

Workshops 16.00 - 17.00: At the disposal of the participants, for instance,

- The media and the right to a fair trial
- Internal vs. international conflict: The political offender – Prof. Nicholas N. Kittrie

Dinner: 17.30 - 18.30, Hotel Kolpinghaus**WEDNESDAY, 15 August 2001****Fifteenth Session: 9.00 - 13.00, HS 209 (with coffee break)****Speakers: Prof. Nicholas N. Kittrie**

The power of law vs. the law of power in the post - Cold War era. Is the contemporary world ready for the rule of law?

Prof. Roger Clark, Prof. William Schabas and Prof. Otto Triffterer

- Experiences with the Ad - hoc Tribunals, ICTY and ICTR
- The obligation to cooperate with *ad hoc* Tribunals and international measures to ensure the enforcement of the duty to cooperate. Rules of Procedure and Evidence for the ICTY and ICTR, especially Rule 61
- Relationship between national enforcement & international jurisdiction – a comparison between implementing national legislation and the demands of the Ad - hoc Tribunals

Discussion**Lunch:** 13.00 - 14.00, Cafeteria

Afternoon: FREE, social programme or time at the disposal of participants

Dinner: 17.30 - 18.30, Kolpinghaus

THURSDAY, 16 August 2001**Sixteenth Session: 9.30 - 13.00, HS 209 (with coffee break and discussion)****5. *Special issues***

Speakers: Patricia Viseur - Sellers, Legal Officer, ICTY, Prof. Gerhard Hafner, Vienna, Member of the ILC, and Prof. Otto Triffterer

- a) Prosecution of sexual offences and jurisprudence of the ICTY and the ICTR
- b) The ICC and Third States
- c) The Assembly of States Parties; Amendments and Review of the Rome Statute

Lunch 13.00 - 14.00

Seventeenth Session, 14.00 - 17.00, HS 209:**Workshops with: Prof. Gerhard Hafner**

Special Aspects of Article 98 Rome - Statute

Patricia Viseur - Sellers

Future Perspectives of Gender Issues in International Criminal Law

Other workshops at the disposal of the participants

16.00 - 17.00: Discussion of the results and conclusions in plenary

Final Dinner 17.30 - 18.30

FRIDAY, 17 August 2001**C. Closing Session: 10.00 - 12.00**

Final discussion

Evaluation of the outcome of the SALZBURG LAW SCHOOL 2001

Distribution of Certificates

Future plans

Departure of participants