

Fifth Summer Session, Sunday 10 – Friday 22 August 2003

International Criminal Law in Action and First Cases Presented to the Court

The programme for this year focuses on the present situation in the development of international criminal law and its enforcement. Since 1 July 2002, when the Rome Statute entered into force, the permanent International Criminal Court is (slowly) getting into operation. At the same time national criminal jurisdiction as the indirect enforcement model has received a new, much more important role: Domestic jurisdiction has, at least in principle, primacy compared to the jurisdiction of the Court under the new complementarity regime as established according to Preamble paragraph 10 and Article 1, as well as 13 and 17 Rome Statute.

But exactly at that date, substantive international criminal law as such has already started to get into action more than ever before in its development. By establishing the ICC with its competence for an international criminal responsibility, the law, as defined in and confirmed by the Rome Statute, is creating awareness all over the world and threatening potential perpetrators for “the most serious crimes of concern to the international community as a whole”, listed in article 5 and, with the exception of aggression, already defined in articles 6 – 8 Rome Statute. The aim of the Rome Statute, “to put an end to impunity” is, as a contribution to the prevention of such crimes, in particular, targeting at those persons in power-positions, who are tempted to abuse their power for committing or participating in such core crimes, Preamble, paragraph 6 and 3, in connection with the headings in article 7 paragraph 1 and article 8 paragraph 1.

This new global perspective of accountability, prosecution and punishment demands to structure the programme no longer, as it was in the first four sessions of Salzburg Law School, according to theoretical concept, the notion and contents of international criminal law and its enforcement. We rather focus at our fifth (small) anniversary mainly on problems that have already arisen in the context of establishing the ICC or that may come up, when the Court progresses with getting into operation and the Prosecutor, just sworn in on 11 June 2003, starts investigations, dealing with specific situations or persons.

Nevertheless, one part of our programme 2003 is dealing with the status quo of international criminal law as a “mobile system”. Under this heading, referring to an institution, well known in legal theory, we will summarize occasionally what has been pieced together in the history of this new field of international law, what can we do and achieve with its help, where are the weak points in the present situation and where are the needs and possibilities to compromise, in order to keep the system going and the Court predictable, reliable, impartial and effective. We have to put an end to impunity for the above mentioned group of perpetrators, in order to contribute with all means of the international criminal justice system to the prevention of those violations of international criminal law, which are causing the most serious harm to individual victims, women, children and men, equally, but at the same time threaten the basic values of our international community as a whole, namely “the peace, security and well-being of the world”, as expressed in the Preamble of the Rome Statute paragraph 3.

Besides, the First Assembly of States Parties to the Rome Statute made it very clear that this Court has and ought to have a different attitude towards women. It is for the first time provided in an international statute establishing a tribunal or a court that the States Parties, when electing the judges, “shall ... take into account the need ... for a fair representation of female and male judges”, article 36 paragraph 8 lit a (iii). This means that there ought to be an equal number of

male and female candidates, or, at least, so many qualified female candidates, that easily half of the judges could be women. The experience with the development of international criminal law as well as the proceedings and the jurisprudence of Nuremberg, the ICTY and the ICTR, have demonstrated that men have dominated the whole scenery, reaching from law-makers to judges sitting over male perpetrators: Men make war and prosecute abuses of power. Women don't make war and perhaps their stronger representation among the judges of the ICC will have not only a positive influence on international criminal justice in cases where women victims are concerned, but in general when it comes to evaluating "the gravity of the crime and the individual circumstances of the perpetrator"; both aspects play an important role within the sentencing procedures, article 78. paragraph 1 Rome Statute. In addition, the slowly increasing role of women, participating in – so far – typical male domains, like law-making in international criminal law, has confirmed the necessity to support women engagement and activities in this field in order to achieve the aim of international criminal law, to make the world more humane.

We will also deal, for instance, with the role of non-governmental organizations and the Coalition for an International Criminal Court in the past and in the future. The importance of both has been emphasized at the end of the First Assembly of States Parties quite often by several Delegates. It deserves consideration that this Coalition, established only in 1995, has become most powerful in the process of drafting and adopting the Rome Statute as well as for the promotion of its ratification and implementation. What is its role now, after the work of the Preparatory Commission on drafting "proposals for practical arrangements for the establishment and coming into operation of the Court", as provided in the Final Act to the Rome Statute under F 4, has come to an end? Shall the Coalition and/or its members continue to engage with regard to the nominations of candidates and elections of the Organs of the Court and their staff members?

These questions have to be considered against the background that the President of the Assembly of States Parties has seen sufficient reason to openly remind the Delegates at the First Session in September 2002 "to refrain from the practice of 'reciprocal agreements' concerning the nomination and election of judges" (UN Press Release L/3013). In addition, what are the possibilities and limits for the Coalition and its members, assisting in collecting evidence and "presenting" cases to the domestic jurisdictions and to the Court?

Furtheron, after drafting this programme, there may come up other aspects to deal with, one of which already became visible during the discussions of the Security Council in October 2002, dealing with the situation concerning the existence of weapons of mass-destruction in Iraq: What are the conditions for and limits to collective self-defence? How do we put and end to impunity for aggression, in general committed together with crimes against humanity and/or war crimes, as long as we don't have an accepted definition of aggression? How does the international community handle, for instance, the situation in the Democratic Republic of Congo after 1 July 2002?

These and all other issues, concerning international criminal law and its enforcement, you want to deal with will be discussed during the Fifth Summer Session of SLS.

ACADEMIC PROGRAMME

Due to the availability of some lecturers their presentations had to be anticipated or postponed, 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, 10 August 2003

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

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.

Please bring your Rome Statute, Elements of Crimes and Rules of Procedure and Evidence

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

MONDAY, 11 August 2003

10.00 a.m., Opening Ceremony Fifth Summer Session, SLS on International Criminal Law, Humanitarian and Human Rights Law, Sala Terrena, Churfürststrasse 1, Toscana Trakt

Welcome: **President of Salzburg University**, o. Univ.-Prof. Dr. Heinrich Schmidinger

Vice-Dean of the Faculty of Law, o. Univ.-Prof Dr. Georg Graf

10.30 a.m. Key note speakers for the Summer Session 2003.
International Criminal Law in Action and First Cases Presented to the Court:

Transferring experience from the ICTR to the ICC

HE Navanethem Pillay, Judge ICC, former President of the ICTR

(postponed to Wednesday, 13 August)

Post 9/11 international criminal law

HE Justice Richard J. Goldstone, Justice of the Constitutional Court of South Africa, former Chief Prosecutor for the ICTY and ICTR

(postponed to 17.00)

The situation in the Democratic Republic of Congo after 1 July 2002, a matter of concern to the ICC?

David Donat-Cattin, Ph.D., Assistant Professor for Criminal Law, University of Teramo/Rome, Senior Programme Officer & European Coordinator for International Law & Human Rights Programme, Parliamentarians for Global Action

11.45 a.m. Introduction into the academic programme

Prof. Otto Triffterer, Professor for Austrian and International Criminal Law and Procedure, University of Salzburg

12.15 a.m. Reception

Lunch: 13.00 - 14.00, Cafeteria

First Session: 14.00 – 17.45, HS 209 (with coffee break and discussion)

Workshops or panel discussion:

The Court getting into operation: status quo, the First Session of the Assembly of States Parties, election of judges and the Chief Prosecutor — his Draft Preliminary Papers serving as guidelines for all future activities of the Court?

Dr. David Donat Cattin

Prof. Roger Clark, Board of Governors Professor, Rutgers University School of Law

Prof. Otto Triffterer

Protecting the integrity of the Rome Statute of the ICC
Dr. David Donat Cattin

Post 9/11 international criminal law
HE Justice Richard J. Goldstone

Dinner: 18.30 - 19.00, Hotel Kolpinghaus

TUESDAY, 12 August 2003

Third Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)

The long way towards the establishment of the ICC
Prof. Otto Triffterer

“General Principles of international criminal law” and basic structures for defining crimes

Prof. Roger Clark
Prof. Otto Triffterer

Crimes within the jurisdiction of the Court
Prof. Roger Clark
Prof. Otto Triffterer

Lunch: 13.00 - 14.00, Cafeteria

Forth Session: 14.00 – 17.00, HS 209 (with coffee break and discussion)

Individual criminal responsibility under international law. Ius cogens and obligations erga omnes – limiting power positions as well as rights and duties of states and individuals

Prof. Otto Triffterer
Prof. Wolfram Karl, Professor for International Law, University of Salzburg

Selected issues of procedural international criminal law:

Principles of the execution of the discretion of the prosecutor
Dr. David Donat Cattin

Extradition between States Parties and surrender to the Court
Prof. Roger Clark

Judges ad litem at the ICTY and ICTR, election, position and influence – a possibility for the ICC?
Prof. Otto Triffterer

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

WEDNESDAY, 13 August 2003

Morning: FREE, social programme, guided city tour available,
or time at the disposal of participants

Lunch: 12.00 - 13.00, Cafeteria

Forth Session: 13.00 – 17.00, HS 209 (with coffee break and discussion)***Transferring experience from the ICTR to the ICC*****HE Navanethem Pillay*****Changing paradigms, the role of victims, in particular of women, in international criminal law: From “protected targets” to constructors and decision makers*****HE Navanethem Pillay****Prof. Otto Triffterer****Dinner: 17.30 - 18.30, Hotel Kolpinghaus****THURSDAY, 14 August 2003****Fifth Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)*****Submissions to the Office of the Prosecution*****Bruce Broomhall**, Ph.D. (King's College, London School of Law), Associate Professor for International Law, Central European University Budapest***Panel discussion or workshops on situations pending before the Court with regard to complementarity, admissibility and referral*****Morten Bergsmo**, Senior Legal Advisor “International Law”, ICC**Bruce Broomhall****Sam Muller**, Deputy Director of Common Services, Coordinator Advance Team ICC**Prof. Otto Triffterer****Lunch: 13.00 - 14.00, Cafeteria****Sixth Session: 14.00 - 17.00, HS 209 (with coffee break and discussion)*****Complementarity vs. independence of the Court?*****Morten Bergsmo*****Non-prosecution strategy*****Sam Muller****Dinner: 17.30 - 18.30, Hotel Kolpinghaus****FRIDAY, 15 August 2003****Seventh Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)*****Misguided fears about the ICC*****Prof. Benjamin Ferencz**, Adjunct Professor of International Law at Pace University and founder of the Pace Peace Center; Former Prosecutor at the Nuremberg War Crimes Trial (Einsatzgruppen)***Panel discussion or workshops on misguided fears and endeavours to protect suspects from being surrendered to the Court*****Prof. Roger Clark****Prof. Benjamin Ferencz****Prof. Otto Triffterer****Lunch: 13.00 - 14.00, Cafeteria**

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

The crime of aggression, where it stands and where it's going
Prof. Benjamin Ferencz

The crime of aggression and its elements, latest developments
Prof. Roger Clark

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

SATURDAY, 16 August 2003

FREE, social programme or time at the disposal of participants

SUNDAY, 17 August 2003

FREE, social programme or time at the disposal of participants

MONDAY, 18 August 2003**Ninth Session: 10.00 – 13.00, HS 209 (with coffee break and discussion)**

Responsibility of states in international law

Prof. Gerhard Hafner, Professor for International Law, University of Vienna, Member of the ILC, Head of the Austrian Delegation to the Rome Conference and the Preparatory Commission for an ICC

Scope and limits of article 25 paragraph 4 Rome Statute

Prof. Gerhard Hafner
Prof. Otto Triffterer

Lunch: 13.00 - 14.00, Cafeteria

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

The ICC and third states

Prof. Gerhard Hafner

Panel discussion or workshops on legal, political and military aspects

Prof. Gerhard Hafner,

Bill Lietzau, Lieutenant Colonel, US Marine Corps, Special Assistant to the General Council, Department of Defence

Prof. Ruth Wedgwood, Distinguished Professor of International Law at Yale University, currently visiting professor of international law and diplomacy and director of the Program on International Law and Organizations at the Nitze School of Advanced International Studies at Johns Hopkins University in Washington, DC; member of the UN Human Rights Committee

Prof. Otto Triffterer

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

TUESDAY, 19 August 2003**Eleventh Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)*****Combatant status: A new category of “unlawful combatants”?*****Gabor Rona**, Legal Advisor in the Legal Division of the International Committee of the Red Cross (ICRC), Geneva***Guantanamo Bay: Development, theory and practice since 2001*****Prof. Nicholas N. Kittrie**, Distinguished University Professor of Law at the American University and chairman of the United Nations Alliance of NGOs on Crime Prevention and Criminal Justice**Prof. Ruth Wedwood**

Lunch: 13.00 - 14.00, Cafeteria

Twelfth Session: 14.00 - 17.00, HS 209 (with coffee break and discussion)***New dimensions of international terrorism: a challenge for international criminal law and its enforcement mechanisms*****Gabor Rona****Prof. Otto Triffterer**

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

WEDNESDAY, 20 August 2003**Thirteenth Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)*****Rights of the accused in international criminal law, in particular before the ICC*****Prof. Michail Wladimiroff**, Defence Council, Professor of Economic Criminal Law, President ICLN, former Amicus Curiae in the case Prosecutor vs. Slobodan Milosevic***Complementarity, admissibility and referral: defence perspectives*****Prof. Otto Triffterer**

Lunch: 13.00 - 14.00, Cafeteria

Fourteenth Session: 14.00 - 17.00, HS 209 (with coffee break and discussion)***Amicus Curiae, experiences from the Trial Prosecutor vs. Milosevic*****Prof. Michail Wladimiroff*****Case presentation and cross examination*****Prof. Michail Wladimiroff**

Dinner: 17.30 - 18.30, Hotel Kolpinghaus

THURSDAY, 21 August 2003

Fifteenth Session: 9.00 – 13.00, HS 209 (with coffee break and discussion)

National implementation of the Rome Statute: some remarks on the German International Criminal Code

Prof. Gerhard Werle, Professor for Criminal Law, Humboldt University Berlin

Truth and Reconciliation Commissions – the example of South Africa compared with the latest development in other parts of the world

Prof. Gerhard Werle

Lunch: 13.00 - 14.00, Cafeteria

Sixteenth Session, 14.00 - 16.00, HS 209 (with coffee break)

Final Discussion with the speakers

Evaluation of the outcome of the SALZBURG LAW SCHOOL 2003

Future plans

Chair: Prof. Otto Triffterer

Closing Session, 16.00 - 17.00, HS 209

Distribution of Certificates

Closing reception

Final Dinner 17.30 - 18.30 and farewell party

FRIDAY, 22 August 2003

Departure of participants