The Legitimacy and Effectiveness of International Criminal Tribunals Conference

PluriCourts, University of Oslo, August 30-31 2014

Call for Papers

The establishment of International Criminal Tribunals (including the ICTY, ICTR, and the ICC), and hybrid or internationalized tribunals (including the SCSL, ECCC, East Timor and Kosovo Panels and others) has been hailed as a great achievement within international law. They are characterized as institutions which promoted peace and reconciliation by seeking to prevent and deter war crimes, crimes against humanity, and genocide. Legal scholars cite the substantial normative evolution within the field as proof of the value of these institutions. Nevertheless, there is a need for multi-disciplinary evaluation to assess legitimacy and effectiveness of these tribunals. Legitimacy may be assessed by examining the institutions in terms of their origins, function, or output. Aspects include their fairness, selection and composition of judges and staff, prosecutorial discretion, etc., by their upholding legal standards such as methods of interpretation and due process, by assessing the role and interaction with institutional and individual stakeholders, such as victims, communities, states, IOs, and NGOs. Effectiveness may be assessed by contrasting the stated purpose of the international criminal tribunals (ICTs) with their outcomes.

This conference seeks papers pursuing empirical, normative, comparative or theoretical approaches. We welcome contributions from law and social science, including philosophy, sociology, criminology, psychology and history.

An aim of this conference is to assess the legitimacy of the ICTs, and pursue identification of lessons learned from comparative studies of the tribunals: best practices that may be applied by ICTs and other relevant mechanisms. Below are some suggested topics, but we welcome submission of abstracts addressing other related issues.

Fairness, Application of Legal Standards, and the Relationship to the Security Council

Crucial to the legitimacy of criminal justice is procedural fairness. Are international prosecutions fair? To what extent do ICTs ensure due process or transparency?. Is there need to improve the qualification of judges and staff appointed to ICTs?

We are interested in papers discussing prosecutorial independence and discretionary powers. There have been charges of selective geographical engagement; hence we seek papers examining the selection of situations and cases before ICTs. Are the ICT judges finders or makers of ICL and how dynamic should they be in their interpretation? In particular, ICTs are considered to have contributed to the identification of sexual violence as war crimes, what is the impact of this jurisprudence in practice? How can we streamline the process of indictment, arrest, and prosecution while upholding fair trial standards? What is

the impact of UN regulations on arrests in practice?   How can we improve support and protection of witnesses and evidence? We welcome papers that examine the perceived legitimacy of the tribunals in relation to other political institutions, such the UN Security Council.

We are also interested in papers exploring and contrasting the purpose and effects of hybrid and ad-hoc tribunals with ICC. Further, we welcome studies comparing the differing degrees of democratic control of ICTs. What is the regional representation within ICT staff?

Evaluating the Effectiveness of ICTs

The measure of the legitimacy of international criminal tribunals is complex. We seek empirical studies which assess compliance with ICT decisions and others that measure impact upon victims, relatives, and society. What impact have these tribunals had in relation to the societies which experienced violations? Different constituents have different perspectives. Have ICTs improved the lives of those directly affected by the crimes? Have they contributed to the healing and reconciliation of post-conflict societies? Have they prevented or deterred international crimes from being committed? Do ICTs promote the preservation of history, the right to the truth, or restoration of peace? Or are ICTs primarily symbolic markers of shared values? Do the prosecutions produce an adequate historical record of gross human rights violations? Or is the framework of a trial too narrow to allow an in-depth analysis of the events? How does geographic/national background affect output? And what about victims of crimes not prosecuted; what impact do the tribunals have upon them? Whose justice does ICTs serve? What are the key dilemmas with respect to compliance with ICTs?

Are ICTs agents of social change? Are they dispassionate dispensers of criminal justice? Are they neither, or both, as the case may be? Should they be?

We seek studies exploring the perception of ICTs in national legislatures, courts, and executive agencies- how does this affect funding, support, and compliance?

Cross-Fertilization of ICT with Other Regimes and Complementarity

To what extent have the ICTs impacted each other in terms of procedure and substantive outcomes? We also invite comparative studies that discuss whether the ICTs have impacted other areas of international law, is there harmonization or competition with human rights courts or other courts (including between different ICTs)? What is the relationship between ICTs and other institutional stakeholders, such as the UN Security Council, General Assembly, and regional organizations, including the EU, AU, and NATO.

We also welcome papers which will analyze the relationship between ICTs and national courts via the principle of complementarity. What is the impact of ICTs on national penal systems? Do national courts influence the reasoning of ICTs? Are ICTs and national courts

functioning as if they are integrated? Is there migration of legal reasoning, concepts, principles, etc. between the different levels?

Further, we welcome perspectives exploring whether other mechanisms – such as truth and reconciliation commissions – may prove more effective or legitimate? Have ICTs diverted attention from these institutions?

Towards the Future: Facing Funding and Legitimacy Challenges

There is a need to review how procedures and staffing may be amended to improve effectiveness and quality. Should ICTs be strengthened? The international criminal tribunals currently face funding challenges. What is the impact of funding on the design and function of ICTs? How can we improve the qualifications of judges and staff members of the ICTs while facing funding cuts? What is the role of NGOs vis-à-vis ICTs?

Finally, we are interested in studies examining compliance with ICT decisions in different geographic regions. Is ICL viewed as a type of "legal imperialism"?

Paper proposals should be e-mailed to c.m.bailliet@jus.uio.no by **1 November 2013**, with an abstract no longer than 500 words. Please include your CV. All proposals will be answered by 1 December 2013. Draft papers should be submitted by **May 31st 2014**. Conference papers will be selected for publication in a comprehensive anthology on the legitimacy of international criminal tribunals.