

COMMON CIVILITY: INTERNATIONAL CRIMINAL LAW AS A CULTURAL HYBRID

28 & 29 January 2011 at the T.M.C. Asser Institute, The Hague

The object of the conference on Common Civility is to contribute to further development of ICL by the exchange of thoughts between legal scholars, practitioners and social scientists. It focuses on the crucial point all kinds of international and internationalised tribunals have in common: Their effectiveness and thus their ability to carry out their task, i.e. to end impunity for the worst crimes known to humanity, depend to a great extent on the functionality of their procedural law. This finding led to an increasing debate on how to guarantee a fair and efficient trial by safeguarding the observance of the rights of the accused and other participants through an operational criminal procedure. The recent discussion is still dominated by the adversarial (common law) – inquisitorial (civil law) dichotomy (cf. J. Jackson, *Finding the Best Epistemic Fit for International Tribunals*, in *Journal of International Criminal Justice* 7 (2009), pp. 17 – 39; C. Kress, *The Procedural Law of the International Criminal Court in Outline: Anatomy of a Unique compromise*, in *Journal of International Criminals Justice* 1 (2003), pp. 603–617, R. Dixon, 'Developing Rules of Evidence for the Yugoslav and Rwandan Tribunals', 7 (1997) *Transitional Law & Contemporary Problems* pp. 81–102 all with further references). Sometimes this clash of legal systems seems to have become an end in itself, resulting in a debate on which system is superior. At least in theory, however, modern international criminal procedural law seems to have overcome the adversarial-inquisitorial dichotomy since it combines features of both common and civil law systems (see K. Ambos, *The Structure of International Procedure: 'Adversarial', 'Inquisitorial' or Mixed*, in M. Bohlander (ed.), *International Criminal Justice: A Critical Analysis of Institutions and Procedures*, Cameron May: London, UK 2007, pp. 429–503, especially at p. 500). This unique compromise structure poses a challenge to the practitioners who – although trained in and influenced by their respective national systems – have to apply the procedural norms at the international level and in doing so to find an appropriate balance between adversarial and inquisitorial features. This is even more challenging since the single elements of the different legal traditions do not fit together seamlessly, leading to myriad, heated disagreements over how to combine them into a single, coherent, workable legal system.

The main objective of the conference is to explore the background and consequences of the civil-common law conflict, to disclose how it affects the daily functioning of international tribunals, which tensions arise from the combination of features from the different legal systems and to discuss how they might best be resolved. Thus, the speakers and participants will have to deal with the following questions on international criminal (procedural) law such as:

1. What have been the respective contributions of civil law versus common law (and attorneys from each legal culture) to the recent development of international criminal law?
2. Why have international criminal courts and drafters of the Rome Statute of the International Criminal Court chosen to adopt common law approaches to certain issues but civil law ones on other matters?
3. Why did the current competition over whose law would be incorporated into ICL come to be so widely understood as one between common and civil lawyers, rather than say North versus South (as would surely have occurred in the 1960s and 70s), French versus German, formal versus customary, or any number of other possible axes of contention?
4. How do lawyers initially trained in one legal culture respond to the challenges of workplace environments at international and hybrid tribunals, where they must collaborate professionally with lawyers trained in the other legal culture? How have such encounters – with their attendant miscommunications and sometimes-heated disagreements – shaped the intellectual development of this burgeoning new field?
5. What are the implications for coherence and workability of the resulting cultural hybrid that the field is thereby coming to embody? Within each legal culture, after all, the effect of a given legal rule is often limited by another rule.

These topics cannot be discussed adequately from a purely legal point of view. Accordingly, the conference is based on a multi-disciplinary approach of the disciplines of international criminal law, public international law, legal anthropology and sociology of law. The speakers and participants consist of legal scholars, judges, and social scientists from various European Countries and the United States. Moreover, in order to guarantee at truly 'universal' cross-cultural exchange of thoughts the organizer will also invite experts from legal traditions which have been neglected in the discussion so far, e.g. representatives of Islamic countries. Another objective and interest of the conference is to start the building of a continuing international network for interchange between the participants to explore a particularly salient and recurrent conflict in the recent development of international criminal law. This innovative initiative could strengthen both national and international research on a highly relevant international societal issue of cross cultural exchange and interactions



The Conference will be hosted by the T.M.C. Asser Instituut, a leading scientific research institute in the field of International Law. The Hague as the seat of the International Court of Justice, the International Criminal Tribunal for the former Yugoslavia and the ICC has become the legal capital of the world and is therefore the perfect venue for such a multi-disciplinary conference on ICL. The conference is co-organized by the Amsterdam Centre of Inter-disciplinary Research on International Crimes (ACIC) at VU University and the Institut für Kriminalwissenschaften of Göttingen University.

The conference will attract the interest of various scholars and practitioners. Dissemination activities regarding the results of the conference will be undertaken on the Asser website.

PRELIMINARY CONFERENCE PROGRAMME AND TIME TABLE

DAY 1: Friday 28 January 2011

- 10.00 h. **Registration and coffee**
- 10.30 h. **Welcome and opening**
- 10.40h **Introductory remarks**
- *Elies van Sliedregt*, VU University Amsterdam
- *Kai Ambos*, Göttingen University
- 11.00 h. **General Introduction**
- *Phil Clark*, Oxford University, "Law, anthropology and international criminal justice"
- *Morten Bergsmo*, Peace Research Institute Oslo, "Legal culture and the development of international criminal justice"
- *Michael Bohlander*, Durham School of Law, "Linguistic-epistemological facets of the Common Law-Civil Law debate"
- 12.30 h. **Lunch break**
- 14.00 h. **Panel 1: Cross-Cultural Misunderstandings**
- *Kirsten Campbell*, Goldsmiths College, University of London, "Culture and the legal regulation of armed conflict"
- *Mohamed Elewa Badar*, Brunel Law School, "An Islamic Perspective on International Criminal Law"
- *Sarah Nouwen*, Lauterpacht Centre for International Law Cambridge, "Culture and Complementarity: Africa and the ICC" (t.b.c.)
- 15.30 h. **Tea & Coffee break**
- 16.00h **Panel 2: International Criminal Procedure**
- *Gerhard Anders*, University of Zurich, "Testifying about uncivilized events: Notes on the representation of African culture in international war crimes trials"
- *Nancy Combs*, William and Mary School of Law, "Fact-finding processes at the SCSL"
- *Göran Sluiter*, University of Amsterdam, "The emergence of a *sui generis* international criminal procedure"
- 17.30 h. **Drinks**

DAY 2: Saturday 29 January 2011

- 9.00 h. **Reception desk open and coffee**
- 9.30 h. **Panel 3: Substantive Criminal Law**
- *Markus Dubber*, University of Toronto, "Legal culture and the shaping of substantive international criminal law"
- *Harmen van der Wilt*, University of Amsterdam, "Contribution of civil/common law to substantive law at the ICC"
- *Larissa van den Herik*, Leiden University, "International Criminal Law and Human Rights Law: Lessons from ECHR jurisprudence"
- 11.00h **Coffee Break**
- 11.15h. **Panel 4: Working in a Cross-Cultural Environment**
- *Judge Howard Morrison*, ICTY
- *Guénaél Mettraux*, Defence Counsel ICTY
- *Rod Rastan*, Legal Advisor OTP, ICC
- 12.30h. **Closure**

Conference fee: € 95,- *

For more information and registration please send an e-mail to:
conferencemanager@asser.nl, subject line *Common Civility Conference*

* The fee includes administration to the conference, receptions, lunches and refreshments as well as conference documents