

Importing core international crimes into national criminal law

An international seminar organised by the

Forum for International Criminal Justice and Conflict¹

at the initiative of the Norwegian Red Cross and PRIO.

**Henri Dunant Hall, Norwegian Red Cross, Hausmanns gate 7, Oslo
Friday 27 October 2006 12:00 – 16:00**

The import of core international crimes (genocide, crimes against humanity and war crimes) into national criminal law is significant due to several reasons in treaty law as well as in the law and practice of international criminal jurisdictions. The Statute of the International Criminal Court (ICC) provides in the preamble that ‘it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes’. As regards treaty law, the States Parties to the 1948 Genocide Convention have undertaken to prevent and punish the international crime of genocide, and to ‘enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the [...] Convention and, in particular, to provide effective penalties for persons guilty of genocide’. The 1949 Geneva Conventions oblige the States Parties to bring persons alleged to have committed grave breaches of the Conventions before their courts, or hand such persons over for trial to other States Parties. The States Parties ‘undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches’ of the Conventions. Moreover, the 1984 Torture Convention provides that each State Party ‘shall ensure that all acts of torture are offences under its criminal law’, including attempt and complicity in torture.

The Statutes of the *ad hoc* Tribunals for the former Yugoslavia and Rwanda (ICTY and ICTR), which give the Tribunals jurisdictional primacy *vis-à-vis* national jurisdictions, respect the principle of *ne bis in idem* (that one should not be tried for the same crime twice). The Statutes do, however, exceptionally provide that the Tribunals can retry an individual who has already been tried by a national court for acts constituting serious violations of international humanitarian law if ‘the act for which he or she was tried was characterized as an ordinary crime’ and not as a core international crime.

Furthermore, the Tribunals have amended their Rules of Procedure and Evidence to facilitate the referral of cases to the authorities of States that have jurisdiction and are willing and adequately prepared to accept such cases. The ICTR Appeals Chamber decided in the Bagaragaza case that it ‘cannot sanction the referral of a case to a jurisdiction for trial where the conduct cannot be charged as a serious violation of international humanitarian law’.

Several States have already imported core international crimes into national criminal law, including Canada and Germany. This would seem to be in accordance with the spirit of the ICC complementarity principle, which provides that the ICC should only be seized of a case in the event that national criminal justice systems are unable or unwilling to genuinely investigate and prosecute the alleged core international crimes. The purpose of the Seminar is to discuss particular challenges in the import of core international crimes into national criminal law.

¹ A debate forum open to individuals interested in issues concerning international criminal justice and conflict, started as an informal initiative under the ENI Programme of PRIO (by its Senior Researcher Morten Bergsmo, in consultation with Dr. Jo Stigen, Department of Public and International Law, University of Oslo). The Forum aims to identify, and facilitate debate on, key issues in international criminal justice and conflict, including accountability-related measures other than criminal justice, and to bring together practitioners, government officials, NGO representatives, academics, students and others with an interest in this emerging field of practice and research. The Forum will not take positions on issues. Information about the Forum and its activities can be found at www.prio.no/ficjc/, and requests to be placed on the e-mail invitation list of the Forum can be sent to ficjc@prio.no (with name, functional title and e-mail address). Suggestions for topics and issues to be addressed by the Forum, feedback on its activities, or offers of assistance can be sent to the same e-mail address.

Programme:

- 11:30 Sandwiches will be served to registered participants from 11:30.
- 12:00 *Introduction*, by Thorvald Stoltenberg (President of the Norwegian Red Cross).
- 12:10 *Overview of ways to import core international crimes into national criminal law*, by Stéphane J. Hankins² (Legal Adviser, International Committee of the Red Cross).
- 12:40 *The Canadian model*, by Joseph Rikhof³ (Senior Counsel, Crimes against Humanity and War Crimes Section, Canadian Department of Justice).
- 13:10 *The German model*, by Professor Claus Kreß⁴ (Professor, University of Cologne).
- 13:40 Break
- 14:00 *Discussion on particular problems in connection with the import of core international crimes into national criminal law*, including (but not necessarily limited to):
- (a) the role of the ICC Elements of Crime document (with a short introduction by Joseph Rikhof);
 - (b) modifying elements of crimes when importing core international crimes (Håkan Friman, Deputy Head of Division, Swedish Ministry of Justice);
 - (c) importing modes of liability from international criminal law (Dr. Claus Kreß);
 - (d) legislative technique and the consideration of other international crimes than core international crimes (Dr. Jo Stigen); and
 - (e) war crimes not included in the ICC Statute (Mads Harlem, Legal Adviser (Norwegian Red Cross)).
- 15:45 *Conclusion*

Registration:

To register, please send an e-mail message before 17 October 2006 to ficjc@prio.no (with 'Seminar 061027' in the subject field), indicating your wish to register as a Seminar participant. Remember to mention your name, functional title (e.g. 'student' or 'Legal Adviser (MFA)') and e-mail address.

² **Stéphane J. Hankins** is a graduate from the Law Faculty of the University of Paris I (Panthéon Sorbonne) and from the Central European University in Prague. He has been working for the International Committee of the Red Cross since 1994 as regional legal adviser based successively in Moscow, Budapest, Bangkok and Kuala-Lumpur. He is currently working with the ICRC Advisory Service on international humanitarian law at ICRC Headquarters in Geneva.

³ **Joseph Rikhof** (BCL, University of Nijmegen, The Netherlands; LL.B, McGill University; Diploma in Air and Space Law, McGill University) teaches the course International Criminal Law at the University of Ottawa. He is Senior Counsel, Manager of the Law with the Crimes against Humanity and War Crimes Section of the Department of Justice, Canada. He has also served as Special Counsel and Policy Advisor to the Modern War Crimes Section of the Department of Citizenship & Immigration between 1998 and 2002. His area of expertise lies in the area of the law related to organized crime, terrorism, genocide, war crimes and crimes against humanity, especially in the context of immigration and refugee law. He has written a number of articles exploring these areas of international criminal law and immigration/refugee law and has lectured on the same topics in Canada, the United States, Europe and the Middle East.

⁴ **Claus Kreß** (Dr. jur. Cologne; LL.M. Cantab.) is Professor for Criminal Law, Criminal Procedure, International Criminal Law and Public International Law. He is Director of the Institute for Criminal Law and Criminal Procedure at Cologne University where he holds the Chair for Criminal Law, Criminal Procedure, European Criminal Law and International Criminal Law. His writings cover most areas of international criminal law and procedure. His prior practice was in the German Federal Ministry of Justice on matters of criminal law and international law. Since 1998 he represents Germany in the negotiations regarding the International Criminal Court. He was member of the Expert Group on the German Code of Crimes under International Law (2000/2001). He acted as War Crimes Expert for the Prosecutor General for East Timor (2001) and as Head of the ICC's Drafting Committee for the Regulations of the Court (2004).