



Proving International Sex Crimes

A seminar organized by the

Forum for International Criminal and Humanitarian Law,
Yale University and the University of Cape Town

on 15 and 16 October 2010, at Yale University, New Haven, USA.

The FICHL, Yale University and the University of Cape Town will co-organize two international expert seminars on international sex crimes. The first seminar examines questions linked to proving such crimes. A follow-up seminar in Cape Town on 7 and 8 March 2011 will analyze the strengths and weaknesses of various justifications for giving priority to the investigation and prosecution of international sex crimes. The purpose of these seminars is to advance the discourse on international gender crimes by addressing one of its weakest links, the effective enforcement of individual criminal responsibility for such violations, in particular for those with higher responsibility.

The Statute of the International Criminal Court represents a significant clarification of the exact scope of criminalisation of sexual violence in international criminal law. This progress in standard-setting has been accompanied by an increased political awareness of gender crimes in armed conflicts, *inter alia*, through UNSC resolutions 1325 and 1888. But the enforcement of criminal responsibility for international gender crimes remains feeble, especially at the national level. Reference is frequently made both at the international and national levels to the difficulties of proving such crimes.

This seminar will analyze in detail the means of proof relevant to the legal requirements of international gender crimes. What are the legal requirements for such crimes for the different forms of participation in their commission? Which requirements are conduct-specific and which refer to the context in which the conduct occurred? How have the different legal requirements been proved in cases? Where do the main difficulties lie and what are the typical excuses? What is the significance of 'systematic' sexual violence, sexual violence as a 'tool or instrument of warfare', and sexual violence as 'persecution'? What can be learned from the prosecution of other international crimes for the prosecution of sex crimes?

To make a sound, scientific contribution to the field as well as to strengthen the basis of arguments and lobbying, the seminar papers will be published as an anthology by the Torkel Opsahl Academic EPublisher in the FICHL Publication Series (www.fichl.org), both as a regular printed book and online.

The seminar is supported by the Norwegian Ministry of Foreign Affairs and the Edward J. and Dorothy Clarke Kempf Fund, Council on Latin American and Iberian Studies and the MacMillan Center for International and Area Studies of Yale University.

Registration:

Seminar participation is free. To register, please send an e-mail message to info@fichl.org by Monday 11 October 2010, indicating your wish to register as a seminar participant. There is a limited number of seats available.

Programme:¹

Friday, 15 October 2010:

09:00 Introductory remarks by:

- Elisabeth J. Wood² (Professor, Yale University); and
- Morten Bergsmo³ (Visiting Professor of Law, Georgetown University).

09:20 *Session 1:*

Presentations followed by discussion:

- David Cohen⁴ (Professor, UC Berkeley): *An Historical Overview of Prosecution and Non-prosecution of International Sex Crimes.*
- Elizabeth L. Hillman⁵ (Professor, University of California Hastings College of the Law): *Sexual Violence in State Militaries.*

¹ The programme is subject to change. The latest version will be available at www.fichl.org/activities. There will be several coffee/tea breaks.

² **Elisabeth Wood** is professor of political science at Yale University. Her current research focuses on sexual violence during war. She is the author of *Insurgent Collective Action and Civil War in El Salvador* (Cambridge, 2003) and *Forging Democracy from Below: Insurgent Transitions in South Africa and El Salvador* (Cambridge, 2000), as well as many scholarly articles. She has been a visiting scholar at the University of Cape Town and the Universidad Centroamericana José Simeón Cañas (San Salvador), and a scholar at the Harvard Academy for International and Area Studies (1995-1997). She is also a Research Professor at the Santa Fe Institute.

³ **Morten Bergsmo** is Visiting Professor of Law, Georgetown University; Researcher, University of Oslo, Faculty of Law; Visiting Fellow, Stanford University (2010-11); and ICC Consultant and Co-ordinator of the ICC Legal Tools Project (2006-). He was formerly Visiting Scholar, UC Berkeley (2010 Spring); Senior Researcher, PRIO (2006-09); Special Adviser to the Office of the Director of Public Prosecution of Norway (2007-08); Senior Legal Adviser and Chief of the Legal Advisory Section, ICC Office of the Prosecutor (2002-05); Co-ordinator of the establishment of the ICC Office of the Prosecutor (2002-03); Legal Adviser, ICTY (1994-2002); and Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to Security Council resolution 780(1992) (1993-94). He represented the ICTY to the UN negotiation process to establish the ICC (1996-2002). He founded and directs the capacity building platform *Case Matrix Network* (www.casematrixnetwork.org) and the *Forum for International Criminal and Humanitarian Law* (www.fichl.org).

⁴ **David Cohen** has taught at the University of California, Berkeley since 1979. At UC Berkeley he is the Ancker Distinguished Professor for the Humanities and the founding Director of the Berkeley War Crimes Studies Center. Since 2000 he has collaborated on human rights projects in Asia with the East-West Center in Honolulu, a federally funded Asia-Pacific research center. There he serves as Director of the Asian International Justice Initiative and as Senior Fellow in International Law. He is also a Fellow at the Hoover Institution at Stanford University since 2009.

⁵ **Elizabeth L. Hillman** is Professor of Law at the University of California Hastings College of the Law in San Francisco. Her work focuses on United States military law and history since the mid-20th century and the impact of gender and sexual norms on military culture. A veteran of the U.S. Air Force, she taught history at the Air Force Academy and at Yale University before joining the faculty at Rutgers University School of Law, Camden in 2000. She now teaches military law, constitutional law, legal history, and estates and trusts. Professor Hillman is the author of *Defending America: Military Culture and the Cold War Court-Martial* (Princeton University Press: 2005) and co-author of *Military Justice Cases and Materials* (with Eugene R. Fidell and Dwight H. Sullivan, LexisNexis: 2010; 1st ed., 2007). She has testified before Congress on military sexual violence and in federal district court as an expert on sexual orientation.

- Elisabeth J. Wood (Professor, Yale University): *Variation in Wartime Sexual Violence: An Overview*.
- Amelia Hoover Green⁶ (Ph.D. candidate, Yale University): *Statistical Evidence of Patterns of Sexual Violence and the Challenges of Expert Witness Testimony*.

13:00 Lunch

14:30 *Session 2:*

Presentations followed by discussion:

- Kai Ambos⁷ (Professor, Georg-August-Universität Göttingen): *The Legal Elements of International Sex Crimes*.
- Morten Bergsmo (Visiting Professor of Law, Georgetown University): *The Legal Requirements under other Modes of Liability than Perpetration for International Sex Crimes*.
- Kelly D. Askin⁸ (Senior Legal Officer, International Justice Program of the Open Society Justice Initiative): *The Significance of 'Systematic' Sexual*

discrimination in military law and history. Her recent work includes "Front and Center: Sexual Violence in U.S. Military Law", *Politics & Society* (2009).

⁶ **Amelia Hoover Green** is a Ph.D. Candidate in the Department of Political Science at Yale University, and a Consultant to the Human Rights Data Analysis Group at Benetech, Inc. During the summer of 2010 and academic year 2010-2011, she is finishing her dissertation, which documents and attempts to explain micro-level variations in the types – as distinct from the levels – of violence against non-combatants. More generally, her research interest lies in how, and how effectively, behavioral norms get transmitted through hierarchical organizations.

⁷ **Kai Ambos** has been Chair of Criminal Law, Criminal Procedure, Comparative Law and International Criminal Law at the Georg-August-Universität Göttingen since May 2003 and Dean of Student Affairs between summer 2008 and 2010. He is also Member of the Office of Examination (Justizprüfungsamt) of the Ministry of Justice of Lower Saxony and freelance consultant on the issues of international criminal law, transitional justice and judicial reform in Latin America to the Deutsche Gesellschaft für technische Zusammenarbeit (GTZ-German agency for technical cooperation), the Konrad Adenauer Foundation and other organisations. From 1991 to 2003, he was senior research fellow at the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg im Breisgau, Germany) in charge of the International Criminal Law and Spanish-speaking Latin America Sections. On behalf of Germany, he has participated in the negotiations on the creation of the International Criminal Court and later became a member of the expert working group of the German Federal Ministry of Justice on implementing the Rome Statute. He has also worked extensively in Latin America on human rights, drug-related issues and criminal law reforms. He has written widely on international criminal law and procedure in German, English, Spanish and Portuguese. He is a member of editorial boards of several international criminal journals in Europe and Latin America. His educational background includes: study of law and political science at the Universities of Freiburg (Germany), Oxford (United Kingdom) and Munich (Germany); 1st and 2nd state exams; doctoral studies and "Habilitation" (post-doctoral qualification for a professorship) in criminal law, criminal procedure, criminology, comparative law and public international law at the Ludwig Maximilian University Munich (Germany).

⁸ **Kelly Dawn Askin**, BS, JD, Ph.D. (law) is Senior Legal Officer for International Justice in the Open Society Justice Initiative. She was also 2004-2005 Fulbright New Century Scholar on the Global Empowerment of Women. Since 1995, Askin has taught or served as a visiting scholar at Notre Dame Law School, American University's Washington College of Law, Harvard's Kennedy School of Government, Yale Law School, and Oxford University. She also served as executive director of the International Criminal Justice Institute and American University's War Crimes Research Office. Askin served as a legal advisor to the judges of the International Criminal Tribunal for the former Yugoslavia and for Rwanda from 2000-2002, and for over ten years has also served as an expert consultant, legal advisor, or international law trainer to prosecutors, judges, and registry at the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda, the Serious Crimes Unit in East Timor, the International Criminal Court, the Special Court for Sierra Leone, and the Extraordinary Chambers in the Courts of Cambodia. Her books include *War Crimes Against Women: Prosecution in International War Crimes Tribunals* (1997) and the three-volume treatise *Women and International Human Rights Law* (1999, 2001, 2002, co-editor), and she has authored dozens of law review articles and book chapters.

Violence, Sexual Violence as a 'Tool or Instrument of Warfare', and Sexual Violence as 'Persecution'.

- Sangkul Kim⁹ (Ph.D. candidate, Georgetown University): ***The Means of Proof of the International Sex Crimes.***

Saturday, 16 October 2010:

09:00 *Session 3:*

Presentations followed by discussion:

- Jocelyn Kelly¹⁰ (GBV Research Coordinator for Harvard Humanitarian Initiative): ***Research with Victims and Perpetrators of Sexual Violence in the Democratic Republic of the Congo.***
- Michele Leiby¹¹ (Ph.D. candidate, University of New Mexico): ***Patterns of Sexual Violence by State Forces during Civil Conflicts in Latin America.***
- Inger Skjelsbæk¹² (Senior Researcher and Deputy Director, PRIO): ***Understanding the Perpetrators of and Proving International Sex Crimes.***
- Xabier Agirre¹³ (Senior Analyst, ICC Office of the Prosecutor): ***Using Pattern Evidence and Analysis for the Investigation and Prosecution of International Sex Crimes.***

12:00 Lunch

⁹ **Sangkul Kim** is a Ph.D. candidate at Georgetown University Law Center. He completed his LL.B. at Korea University in Seoul before working in legal departments for multinational corporations for four years. He then obtained a LL.M. in International Legal Studies from Georgetown University Law Center in Washington, D.C., majoring in international criminal law. Until 2009, he worked as Associate Legal Advisor in the Legal Advisory Section and the Prosecution Division of the ICC Office of the Prosecutor for four and a half years. He is an Adviser in the Case Matrix Network and has engaged in capacity building activities in several countries.

¹⁰ **Jocelyn Kelly** is GBV Research Coordinator for Harvard Humanitarian Initiative (HHI) where she designs and implements research projects based in the Democratic Republic of the Congo to examine the experiences and attitudes of community groups regarding sexual violence. She has been conducting health-related research using both qualitative and quantitative research methods for over seven years both in national and international settings. Ms. Kelly's international work has focused on understanding the health needs of vulnerable populations in Eastern and Central Africa and has included working with Uganda Human Rights commission to launch the first office in Africa promoting the Right to Health.

¹¹ **Michele Leiby** is Ph.D. candidate at the University of New Mexico. Her dissertation, entitled "Why Soldiers Rape: Wartime Sexual Violence in Latin America" examines military culture, training and practices to explain sub-national and cross-national patterns of sexual violence during the civil wars in El Salvador and Peru. In addition to her dissertation, Michele is also working on a project comparing the prevalence of sexual violence by Maoist insurgent groups in Peru and Nepal as well as a quantitative analysis of the efficacy of international legal instruments in the prevention of wartime sexual violence.

¹² **Inger Skjelsbæk** is Senior Researcher and Deputy Director at the Peace Research Institute Oslo (PRIO). Skjelsbæk's research focuses on the perpetrators of sexual violence in conflicts, with a special focus on the Balkans.

¹³ Dr. **Xabier Agirre** has served as Senior Analyst at the International Criminal Court since 2004. His earlier experience includes serving as Analyst at the ICTY and Senior Consultant at the United Nations Office of the High Commissioner for Human Rights. In 2009, Dr. Agirre was given the Distinguished Alumni Award by the Notre Dame University Kroc Institute for Peace Studies.

13:00 *Session 4:*

Presentations followed by discussion:

- Patricia L. Wildermuth¹⁴ (US State Department and Department of Defence): *A Prosecutor's Perspective on Real and Imagined Challenges in Proving International Sex Crimes.*
- William H. Wiley¹⁵ (Director, Tsamota Ltd.): *The Investigation of International Sex Crimes.*

14:45 *Session 5:*

Panel presentations and discussion:

- Petra Kneuer¹⁶ (Senior Trial Lawyer, ICC Office of the Prosecutor).
- Julieta Solano McCausland¹⁷ (Trial Lawyer, ICC Office of the Prosecutor).
- Kate Burns¹⁸ (Senior Policy Officer, UN Office for the Coordination of Humanitarian Affairs).
- Letitia Anderson¹⁹ (Advocacy and Women's Rights Specialist, UN Action Against Sexual Violence in Conflict).

¹⁴ **Patricia L. Wildermuth** is a career prosecutor and international law attorney with extensive experience in criminal litigation, constitutional and comparative law, international crimes, and law of war, human rights, women's rights, and legislative affairs. Ms. Wildermuth obtained her JD from Arizona State College of Law and her LL.M. in international law (Law of War/Human Rights) from American University, Washington, DC. She served in Baghdad as the international law advisor to the Iraqi High Tribunal (IHT) Judges in the trials of high-ranking Iraqi officials of the Former Regime, including the 1991, *Anfal* and *Marsh Arab* cases. She provided gender and sex offense prosecution and investigation training to the investigative and trial staff at the IHT, resulting in verdicts of guilty on sex offenses in the *Anfal* genocide case. She also served as an international prosecutor and legal advisor at the International Criminal Tribunal for Rwanda (ICTR), where she focused on offenses against women and drafted the first ICTR handbook on *Best Practices: Prosecuting Sexual Offenses at the ICTR*. She prosecuted the sexual offense charges in the case of *Semanza*, resulting in sex offense convictions. She also advised the investigative team in the *Bagosora, et al.* case and prepared this case for trial, resulting in convictions for sexual offenses. Ms. Wildermuth started her legal career in the US Air Force as a judge advocate. While on active duty, she prosecuted over 50 cases, including sexual assault, rape, murder and kidnapping. She has completed Squadron Officers' School and Air War College, and currently holds the rank of Colonel. As a career prosecutor, Ms. Wildermuth has prosecuted over 250 cases.

¹⁵ Dr. **William H. Wiley** is Director of Tsamota Ltd., a firm specialising in the provision of justice- and security-sector capacity-building projects in conflict and post-conflict States; additionally, he provides investigative assistance to defence counsel appearing before the ICC. Prior to the establishment of Tsamota, Dr. Wiley was employed by the Iraqi High Tribunal (2006-2008), the ICC (2003-05), the ICTR (2001-02), the ICTY (2000-01, 2002-03), and the Crimes Against Humanity and War Crimes Section of the Department of Justice of Canada (1997-99). He is an Adviser in the Case Matrix Network.

¹⁶ Dr. **Petra Kneuer** is a Senior Trial Lawyer with the Office of the Prosecutor of the International Criminal Court since January 2008, leading the prosecution of Jean-Pierre Bemba Gombo. Prior to joining the ICC, she spent 15 years as a state and federal prosecutor in Germany. In her capacity as a Senior Public Prosecutor for the Office of the German Federal Prosecutor General she investigated and prosecuted members/supporters of terrorist organizations including Ansar Al Islam and Al Qaida. Following the terrorist attacks of 11 September 2001, she served as Germany's Principal Liaison Officer to the Counterterrorism Section of the United States Department of Justice in Washington, DC from 2002 until 2005. Since 1998, she is a member of the judiciary examining board of the Land Saxony-Anhalt for legal state examinations.

¹⁷ **Julieta Solano McCausland**, Abogada, MJur (Oxon), is a Trial Lawyer with the Office of the Prosecutor of the International Criminal Court. She has worked in the Prosecution Division of the Office of the Prosecutor since 2004 on cases stemming from the situation in the Democratic Republic of the Congo, initially assigned to the case of Thomas Lubanga, and currently to the case of *The Prosecutor v. Callixte Mbarushimana*.

¹⁸ **Kate Burns** is Senior Policy Officer in the Gender Equality Policy Development and Studies Branch of the UN Office for the Coordination of Humanitarian Affairs.

¹⁹ **Letitia Anderson** is the Advocacy and Women's Rights Specialist with the inter-agency network, United Nations Action Against Sexual Violence in Conflict (UN Action), chaired by the Special Representative of the Secretary-General on Sexual Violence in Conflict. In this role she serves as principal speechwriter and liaison between the Office and the ICC.

She also undertakes strategic advocacy in relation to the Security Council and UN system, and popular advocacy to galvanize global condemnation of sexual violence as a tactic of war. She previously worked for UNIFEM in Governance, Peace and Security and in Communications. In this capacity, she conducted training for Security Council members, coordinated a Wilton Park conference on conflict-related sexual violence, and wrote news briefs on women, peace and security issues. She has designed and delivered peacekeeper training for UNITAR in Kosovo, Timor-Leste and Cambodia and trained members of the armed and police forces on women's rights in several countries. She has undertaken field research on sexual violence in the DRC, Liberia and Rwanda. Prior to joining the UN, she worked as Policy Adviser on Women and War to the ICRC in Geneva, Legal Adviser to the ICRC Regional Delegation for the Pacific, and IHL Coordinator for the Australian Red Cross. She has published two ICRC manuals on IHL, a tool for peacekeepers (*Addressing Conflict-Related Sexual Violence: An Analytical Inventory of Peacekeeping Practice*) and articles for *Open Democracy* and the *Journal of International Peacekeeping* on the nexus between sexual violence and international security. Her law thesis focused on the irregular rendition of war crimes suspects.