



Sovereignty and Individual Criminal Responsibility for Core International Crimes

The 2012 LI Haopei Lecture and Seminar

A seminar organized by the

Forum for International Criminal and Humanitarian Law
and China University of Political Science and Law,

2-3 April 2012, Beijing.

The purpose of the LI Haopei Lecture Series is to honour the international law service and contributions of the late Judge LI Haopei (1906-1997), a distinguished Chinese jurist, diplomat and academic. Judge LI was a leading authority on international law. From 1963 to 1993, he was concurrently Legal Adviser to the Ministry of Foreign Affairs of China and Professor of International Law at Peking University. Judge LI became China's main representative at international conferences and tribunals. From 1993 to 1997, he was a Member of the Permanent Court of Arbitration. In the same period, he served as Judge at the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and Rwanda (ICTR).

The 2012 LI Haopei Lecture will be given by Judge LIU Daqun (Judge, Appeals Chamber of the ICTY and the ICTR).

The broadly formulated theme of this year's Seminar is 'Sovereignty and Individual Criminal Responsibility for Core International Crimes'. Many members of today's international criminal justice movement seem to assume that State sovereignty takes a decisive second place to the principle and practice of individual criminal responsibility for core international crimes.¹ It is correct to note that two of the existing *ad hoc* international(ized) criminal jurisdictions (the ICTY and ICTY) enjoy a legal basis that rests on Chapter VII of the UN Charter. Their judges can and have issued binding orders to States. And when conducting statutory investigations on the territory of States, the prosecution services of these Tribunals have not sought *permission* as such from the States concerned. This particular and significant feature of contemporary international criminal justice has empowered Tribunal investigators and prosecutors, and perhaps emboldened some of them, as well as other members of the international criminal justice lobby in their calls for individual accountability for core international crimes at the international or national level.

But all the *ad hoc* jurisdictions – the two Tribunals included – will cease to exist as active criminal jurisdictions within a few years. The only permanent international criminal jurisdiction – the International Criminal Court (ICC) – cannot base its orders and decisions in the same manner on Chapter VII of the UN Charter. The implementation of its work depends entirely on States, both *de facto* and *de jure*. Add to that the fact that three permanent members of the UN Security Council – China, Russia and the United States – are among a number of

¹ For the purposes of this Seminar, 'core international crimes' mean war crimes, crimes against humanity, crimes of genocide and crimes of aggression.

powerful States that are not members of the ICC system. Whereas the Security Council established the ICTY and ICTR in execution of its own UN Charter powers, the ICC can only occasionally rely on the Council, and even then not to the same extent.

Against this general background, the 2012 LI Haopei Lecture and Seminar will consider the tension between sovereignty and individual criminal responsibility for core international crimes along three specific tracks. First, when evidence of core international crimes incriminates State officials and there are calls for criminal investigation, State immunity concerns will continue to be voiced. The immunity of State officials from criminal jurisdiction for core international crimes will therefore be considered in some detail at this Seminar. Secondly, the closing down of the *ad hoc* international criminal jurisdictions is likely to shift more attention to the exercise of national criminal jurisdiction over core international crimes, which would include jurisdictional exercise by States not directly affected by the said crimes. This raises issues linked to the scope of universal jurisdiction for such crimes. Thirdly, the amendments of the ICC Statute at the 2010 Review Conference with regard to the crime of aggression may at one stage enable the ICC to investigate and prosecute such crimes. How could this affect non-States Parties and States Parties that do not agree with these amendments? Could the activation of these aggression amendments and the ICC's work exacerbate tensions between the interests of State sovereignty and accountability?

Registration:

All available seats at this seminar have now been reserved, so it is no longer possible to register as a participant. Inquiries can be addressed to info@fichl.org. Only persons whose registration is confirmed can participate.

Programme:

Monday, 2 April 2012:

09:30 Registration and tea

10:00 *Introductory statements:*

- Professor LING Yan² (China University of Political Science and Law)
- Professor Morten Bergsmo³ (Peking University Law School, Georgetown University, University of Oslo, Stanford University)

10:30 *Remarks on the Life and Service of LI Haopei*, by Ambassador WANG Houli⁴ (formerly Legal Adviser of the Ministry of Foreign Affairs of China and Director-General of its Department of Treaty and Law)

² **LING Yan** is Professor at the Faculty of International Law at China University of Political Science and Law (2004-), Director of its Research Center for International Criminal Law and Humanitarian Law (www.rcicl.org/english/index.asp), and Deputy Director of its Institute of Air and Space Law. She has worked as a legal officer for the ICTR (1998-2004).

³ **Morten Bergsmo** is Visiting Professor, Peking University Law School (2012-14); Visiting Professor, Georgetown University (2010-); Senior Researcher, University of Oslo, Faculty of Law; Visiting Fellow, Stanford University; and ICC Consultant and Co-ordinator of the ICC Legal Tools Project. 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 during 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).

- 11:00 *Current Issues in International Criminal Law*, by Dr. ZHOU Lulu⁵ (Director of Treaty Division, Department of Treaty and Law, Ministry of Foreign Affairs of China)
- 12:00 **The 2012 LI Haopei Lecture:**
Immunity of State Officials for Core International Crimes and the ICC Statute, by Judge LIU Daqun⁶ (Judge, Appeals Chamber of the International Criminal Tribunals for the Former Yugoslavia and Rwanda)
- 13:00 Lunch for all registered seminar participants
- 14:00 *Immunity of State Officials from Foreign Criminal Jurisdictions for Core International Crimes*, by Professor JIA Bing Bing⁷ (Tsinghua University)
- 15:00 *The Crime of Aggression and the Amendments to the ICC Statute at the First Review Conference*, by Professor Morten Bergsmo
- 15:45 Tea
- 16:00 *The Crime of Aggression*, by Mr. GUO Yang⁸ (legal expert)

⁴ Ambassador **WANG Houli** has been Legal Adviser to the Ministry of Foreign Affairs, China; President of the China Society of International Law; part-time Professor at the University of Foreign Affairs, Renmin University and Nankai University; Ambassador to Libya and First Secretary at the Chinese Embassy in the former Soviet Union; and Director-General of the Department of Treaty and Law, Ministry of Foreign Affairs. He has led Chinese delegations to attend various international conferences and negotiate with foreign governments for bilateral treaties.

⁵ **ZHOU Lulu** is Director of the Treaty Division of the Department of Treaty and Law, Ministry of Foreign Affairs of China. She graduated from China University of Political Science and Law in 1997. She obtained a Master's degree from Hong Kong University in 2004 and a Ph.D. from Renmin University in 2007. She has represented the Chinese Government or been a member of Chinese delegations on many bilateral or multilateral occasions, such as the negotiation between China and Peru regarding the *Agreement on Mutual Legal Assistance in Criminal Affairs*, the consultation of the UN framework on the *Convention on Protection of all Persons from Enforced Disappearance*. ZHOU has written, co-authored, edited or co-translated several books (including *Research on the Fundamental Principles of Contemporary International Criminal Law*, *The International Criminal Court: A Commentary on the Rome Statute*, and *International Criminal Court*). She has also published several articles (including *Inspiration of the New Development of EU Extradition System*, *Research on the Provisions Regarding the Relationship between ICC and UN Security Council*, *The Obligations Erga Omnes and its impact on International Criminal Law*, *The Legal Impact of the Amendment of Crime of Aggression -- from the Angle of the Conditions of the ICC to Exercise Its Jurisdiction*).

⁶ **LIU Daqun** is Judge at the Appeals Chamber of the ICTY and ICTR (having been a Judge at the ICTY since 2000). He has been Director both of the Private International Law Division, the Law of the Sea Division and the International Law Division of the Treaty and Law Department, Ministry of Foreign Affairs of China, and Deputy Director-General of that Department. He has taught law at Peking University, the Chinese Academy of Social Sciences, China University of Political Science and Law, and Wuhan University. He has participated in numerous delegations of the Chinese Government, including as Deputy Head and Chief Negotiator of the Chinese Delegation to the Rome Conference on the establishment of the ICC. He has been Ambassador to Jamaica.

⁷ **JIA Bing Bing**, D. Phil. (Oxon.), is Professor of International Law at the Tsinghua University Law School since 2004. He was Legal Officer, the Appeals Chamber of the ICTY, 2002-04; Legal Officer, Trial Chamber III of the ICTY, 2000-02; Associate Legal Officer in the Appeals Chambers of the ICTY and of the ICTR, 1998-2000; and Law Clerk in the Appeals Chambers of the ICTY and ICTR, 1996-98. He has published extensively in international law and serves as a member of several editorial boards.

⁸ **GUO Yang** is speaking in his individual capacity as a legal expert. Professionally he has been Legal Advisor, Regional Delegation for East Asia, ICRC, since 2005. He used to be a Legal Officer in Division III of the Department of Treaty and Law, Ministry of Foreign Affairs of China. He has also been with law firms in China and Belgium. He holds a B.A. and an LL.M. from China University of Political Science and Law.

Tuesday, 3 April 2012:

- 09:00 *Universal Jurisdiction for Core International Crimes*, by Judge Erkki Kourula⁹ (Judge, Appeals Chamber, International Criminal Court)
- 10:00 *Universal Jurisdiction*, by Professor MA Chengyuan¹⁰ (China University of Political Science and Law)
- 11:00 Tea
- 11:15 *Universal Jurisdiction before the UN General Assembly: Seeking Maximum Common Understanding in International Law*, by Professor ZHU Lijiang¹¹ (China University of Political Science and Law)
- 12:00 *Sovereignty and Individual Criminal Responsibility for Core International Crimes: Reflections by a German International Lawyer*, by Professor Claus Kress¹² (University of Cologne)
- 13:00 Lunch for all registered seminar participants

⁹ **Erkki Kourula** serves as Judge of the Appeals Chamber of the ICC. He holds a Ph.D. in international law from the University of Oxford. He has held various research positions in international law, including international humanitarian law and human rights, and has acted as a professor of international law. He has been Director General for Legal Affairs of the Ministry of Foreign Affairs of Finland, as well as a judge in Finland dealing with criminal cases. Judge Kourula followed closely the developments leading to the establishment of the ICTY and ICTR and was actively involved in the negotiations of the Rome Statute (1995-98) as head of the Finnish Delegation to the Preparatory Committee and the Rome Conference on the Establishment of the ICC.

¹⁰ **MA Chengyuan** is Professor of Law at China University of Political Science and Law, where he is the Assistant Dean of the Faculty of International Law. He holds a Doctor of Law and Master of Law from this University. He is a Member of the Council of the International Law Association of China. He has been a Visiting Scholar at Nottingham University.

¹¹ **ZHU Lijiang** is Associate Professor, Faculty of International Law, China University of Political Science and Law. He holds an LL.B. (Peking); LL.M. (Lund, Sweden); and LL.D. (Peking). He is editor to the *Chinese Journal of International Law*; associate editor and case reporter on mainland China to *International Law in Domestic Courts*. He offers the *General Course of Public International Law* (in Chinese) and *Introduction to International Humanitarian Law* (bilingual course) to undergraduates, and *International Human Rights Law and China* (in English) to foreign graduates at China University of Political Science and Law. His main research fields cover international human rights law, international humanitarian law and international criminal law, and he has published a number of books and articles at home and abroad, including in the *Chinese Journal of International Law*, *Netherlands International Law Review*, *Asian Yearbook of International Law*, *Journal of East Asia and International Law*, and *Collected Papers on International Humanitarian Law* (Martinus Nijhoff Publishers, 2010). He presides over a national-level research project on the universal periodic review mechanism of the UN Human Rights Council, and has participated in many international sessions, seminars or workshops on international law.

¹² **Claus Kress** (Dr. jur. Cologne; LL.M. Cantab.) is Professor for 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 German, European and International Criminal Law as well as International Peace and Security Law and the Law of Armed Conflict. 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), as Head of the ICC's Drafting Committee for the Regulations of the Court (2004), and as a sub-coordinator in the negotiations on the crime of aggression.