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Word of welcome

Dear Member,

ICLN is currently involved in various activities. It is a pleasure to inform you on our meetings and seminars via this newsletter that also gives the floor to Jan Wouters, new institutional member HIIL and Willy Bruggeman. George Edwards gives us his account of the seminar 'The ICC and the Arab World'.

First of all I would like to inform you that we have a new project manager replacing Madelien Bierema. We want to thank Madelien for her enthusiasm and hard work. We wish her great pleasure travelling through Latin America the next six months and good luck in her professional career thereafter.

On the 6th of April ICLN organised a First Wednesday on the Hague Programme. The meeting was hosted by Clingendael Netherlands Institute of International Relations. The new director of Clingendael, Prof. Jaap de Zwaan, gave his comments on the Hague Programme and triggered a lively discussion among the participants.

ICLN will host her annual reception the **8th of June** at the Carlton Ambassador Hotel in The Hague. The lecture given by Prof. Dr. Jan Wouters will focus on the referral of the Darfur case to the International Court of Justice and more in general on the proceedings of the ICC. Please note the date in your agenda!

On the Hague Programme, ICLN organizes a meeting in cooperation with the Luxemburg Presidency of the EU. Topics of this informal meeting, held in Luxemburg on the 22nd of June, will be the targets and expectations of the Hague Programme and how it is to be implemented and evaluated. You can read more about these and other events in this newsletter. This event is expected to become an annual debate, either in The Hague or in the capital of the EU presidency.

I look forward to meet all of you on future events.

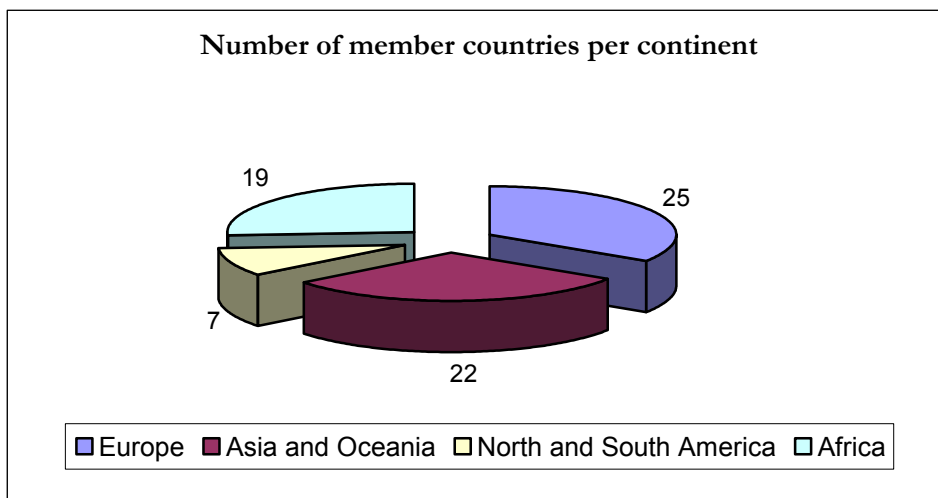
M. Wladimiroff
President

New Project Manager

Let me introduce myself: starting the 25th of April, I am the new project manager of ICLN. My name is Maartje Jansen and I recently graduated from the University of Leiden. I studied International Relations at the Political Science department and I also graduated in contemporary History. During my studies I spend a semester in Stellenbosch, South Africa, studying African History. I did my internship at the Dutch Embassy in Tunis, Tunisia. I'm looking forward to meeting the members of ICLN and to organise interesting events for all of you!

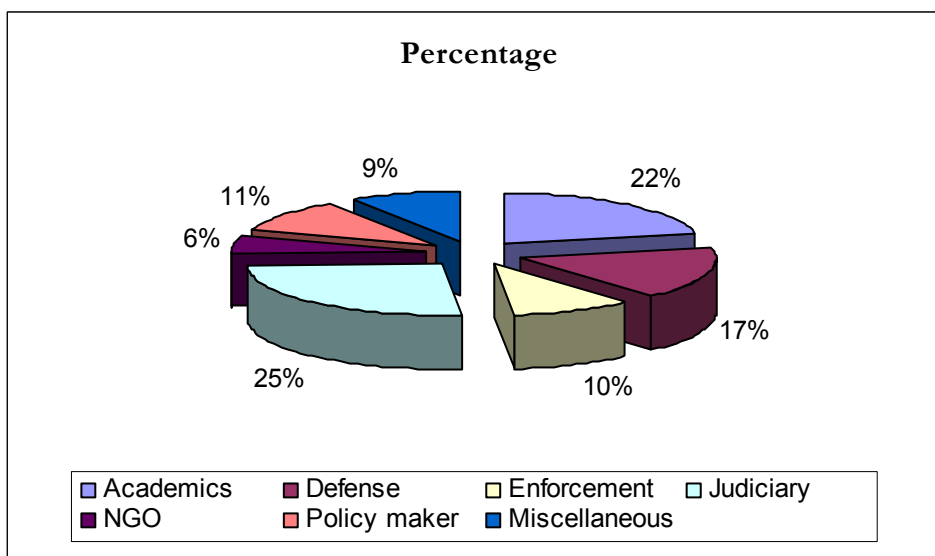


Number of member-countries per continent



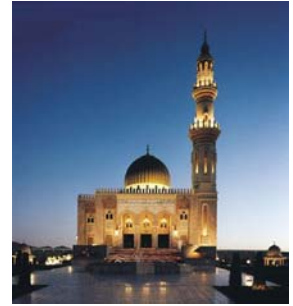
Total Number of members: 377
Total number of Countries: 73

Members of ICLN



The ICC and the Arab World

ICLN organized a seminar to be held in Amman, Jordan February 14-16th called "**The ICC and the Arab World**". The Regional Human Security Centre at the Jordan Institute of Diplomacy in Amman was a partner in the organisation and implementation of the seminar. This event was sponsored by the Ministries of Foreign Affairs of Canada, Germany, Denmark, Switzerland and Ireland. ICLN is very grateful to *George E. Edwards*, Professor of Law and Director of the Program in International Human Rights Law at the Indiana University School of Law at Indianapolis for the following summary on the seminar in Jordan. The whole report is to be found on the website.



The International Criminal Court in the Arab World: An ICLN Seminar

The February 2005 International Criminal Court (ICC) seminar in Amman, Jordan sought to promote ICC anti-impunity principles throughout the Arab World and encourage acceptance of the court's jurisdiction in a region that has been passive regarding the new court. Governmental, non-governmental and inter-governmental sector participants and facilitators fostered understanding of the ICC and emphasized the consequences of non-ratification of the treaty that created the ICC.

This article discusses the seminar, which was entitled "The ICC and the Arab World," and describes its background, participants and facilitators. It also presents seminar highlights, including the simulation exercise during which the thirty participants conducted a mock ICC proceeding against fictional soldiers charged with crimes against humanity and war crimes for engaging in a 10-day bombing raid purportedly against rebel groups but that killed 300 innocent civilians.

Seminar Background

The ICLN coordinated the Amman seminar with the following four goals in mind: to promote further theoretical understanding of the general consequences of the ICC; to offer insights into roadblocks to ICC ratification in the Middle East; to offer practical knowledge of the ICC and its operations by means of a simulation exercise; and ultimately, to promote ratification and implementation of the ICC Treaty.

The genesis of the seminar was the Intergovernmental Arab Regional Seminar held in Sana'a, Yemen in January 2004, which had many state sponsors. The Amman seminar built upon the Yemen seminar, and sought further to encourage ratification. Though many countries in the immediate region have signed the ICC Statute, only Jordan has ratified it, which rendered Amman an appropriate seminar venue.

The seminar was held in cooperation with Columbia Law School and was sponsored by the Ministries of Foreign Affairs of Canada, Denmark, Germany, Ireland and Switzerland. Organizers included the International Criminal Law Network (The Netherlands) and the Regional Human Security Centre at the Jordan Institute of Diplomacy (Jordan).

Seminar Participants & Facilitators

The ICLN invited to the seminar representatives from countries in the region that have either expressed positive support towards ratifying the Rome Statute or are generally known to be inclined to ratify. The thirty participants, who hailed from Iraq, Jordan, Oman, Qatar, Syria, United Arab Emirates, and Yemen, were governmental policymakers and parliamentarians, judicial officials, prosecutors, attorneys general, military representatives, international defense lawyers, academics, and diplomats.

Seminar Highlights

Papers and Panels. Highlights of the seminar included vocal plenary and break-out sessions on a wide range of ICC topics, including: ICC prosecution policy; irrelevance of official capacity in ICC prosecutions; judicial assistance under the ICC; sentencing and application of national penalties; the principle of complementarity and the conditions for the exercise of jurisdiction; implications for military strategy; Rights of the accused and other internationally recognized human rights in the ICC statute; the ICC and victims; command responsibility; and the ICC and peacekeepers.

Furthermore, attention was paid to crimes under the ICC, most notably war crimes and crimes against humanity.

Simulation Exercise. Of particular interest at the seminar was a simulation exercise in which participants conducted an animated mock ICC proceeding involving fictional characters and events leading to an ICC prosecution of soldiers on war crimes and crimes against humanities charges. The simulation case involved armed conflict between the central government of a fictional country ("Sweetland") and rebels, a failed peace agreement, deployed UN peace-keepers from "Whiteland" and "Blueland" who were attacked in Sweetland by unidentified persons, and Whiteland and Blueland retaliatory bombing of purported insurgent headquarters in Sweetland causing death to 300 adult and child civilians. Whiteland and Blueland soldier pilots of the bomb-dropping planes appeared before the ICC to answer for their alleged crimes.

The simulation exercise, which was drafted by Professor Roy S. Lee (Columbia Law School) with an "answer key outline" drafted by Professor George E. Edwards (Professor of Law & Director of the Human Rights Program & the Master in Laws Track in International Human Rights Law, Indiana University School of Law at Indianapolis), gave participants a hands-on opportunity to work with the ICC Statute and other ICC Rules in resolving a hypothetical case. It exposed participants to how the ICC will function when it becomes fully operational with formal charges being laid and answered, followed by trials.

Conclusion

The ICC in the Arab World Seminar, which was held 14-16 February 2005 at the Radisson SAS Hotel in Amman, Jordan, successfully introduced the ICC to government officials, academics, ngos, diplomats and others in the Arab World. The seminar provided an excellent opportunity to exchange ideas on the purposes and efficacy of the ICC and to generate and reconfirm support for the new court. With informed panelists drawn from the UN, the ICC, government, academia and private practice, conference participants walked away with broadened insights into an international institution that some in the Arab World view with skepticism. The educational nature of the seminar cannot be underestimated, as the thirty community leaders returned to their respective countries armed with increased knowledge about the ICC and the need for ending impunity for international crimes that abound throughout the globe, including in the Middle East. The seminar was a major step forward in impressing upon Arab leaders the importance of concerted efforts to support the ICC's permanent international criminal jurisdiction over perpetrators of the most serious international crimes. A narrative of personal seminar observations prepared by Ms. Madelien J.Th. Bierema can be found at www.icln.net, along with a copy of the simulation exercise and sample answer key outline.

First Wednesday, April 6th, Clingendael Institute

Given the current developments in the field of European cooperation in Justice and Home Affairs, ICLN chose to discuss: "*The Hague Programme, strengthening freedom, security and justice in the European Union*". On this topic, Jaap de Zwaan, Professor of European Union Law at the Erasmus University of Rotterdam and Director of the Clingendael Institute starting the 1st of September, held a lecture.

The Hague Programme was adopted under the Dutch Presidency of the EU in November 2004 to give a new impetus to the development of Justice and Home Affairs within the European Union up to 2010. The Council has now invited the Commission to present an Action Plan in 2005 (June) in which the aims and priorities of The Hague Programme are converted into specific actions.

This 1st Wednesday had the objective to launch a discussion between our members and invitees concerning the content and potential of The Hague Programme. What are the priorities and how are they to be achieved? Special attention was given to central aspects in the field of Justice and Home Affairs: namely, border management and visa policy, asylum and immigration policy, police cooperation and criminal law cooperation.

The Hague Programme 22 June 2005

The Hague programme is a five-year programme for closer co-operation in justice and home affairs at EU level from 2005 to 2010. It aims to make Europe an area of freedom, security and justice.

ICLN is organising the First Annual Hague Programme Debate, together with the Luxembourg Presidency of the Union and the General Secretariat of the Council of the European Union, Europol, Eurojust and NCIPS. The meeting will take place in Luxembourg.

For this debate policy makers, practitioners and academics are invited to discuss the Hague Programme in an informal setting in order to stimulate a free discussion on the topics. The debate aims to launch discussion between experts concerning the content and potential of the Hague Programme. The purpose of the meeting is creating a framework for discussing a measurable annual progress of the Hague Programme. Special attention will be given to central aspects of the Programme; Law enforcement cooperation and judicial cooperation.



The ICLN Annual Reception 8 June 2005

On the 8th June 2005 Prof. Jan Wouters will give a lecture at the annual reception of the ICLN in The Hague on "The ICC and Darfur: Expectations, Possibilities and Difficulties"

The Referral of the Darfur Case to the ICC: Challenges Ahead

On 31 March 2005 the Security Council adopted Resolution 1593, thereby referring the situation in Darfur to the ICC. At first glance, this may seem surprising in light of the position of some of the Security Council's permanent members, in particular the United States, vis-à-vis the ICC. A careful reading makes apparent that many compromises had to be struck in order to have the U.S. only abstain (and not exercise its veto right) during the voting of the resolution. Firstly, States not party to the Rome Statute are not obliged, but only "urged", by the Council to "cooperate fully" with the ICC. Secondly, the resolution excludes nationals from a contributing State outside Sudan which is not a party to the Rome Statute from the ICC's jurisdiction; they are even brought under the exclusive jurisdiction of that contributing State. Thirdly, no expenses will have to be borne by the UN; this puts the financial burden on the parties to the Rome Statute.

Having said this, we believe the positive consequences of the referral to the ICC, the first one ever by the Security Council, by far outweigh the negative sides. Firstly, the very fact of the referral creates hope for an end to the impunity of the perpetrators of crimes against humanity against the civilian population in Darfur. Secondly, even though the environment may be hostile and many difficulties lie ahead (in spite of the obligation imposed on the Government of Sudan to "cooperate fully and provide any necessary assistance to the Court"), the Darfur case can be a good learning school for the Office of the Prosecutor. Most importantly, the referral can enhance the momentum of the ICC if the Court succeeds in bringing the main perpetrators to justice. In fact, succeeding is the only option, since a failure would significantly affect the credibility and legitimacy of the ICC. The Court's opponents could use such a failure to accuse the ICC of incapacity or incompetence. Moreover, it could give them an excuse for refusing to refer situations to the ICC through the Security Council in the future. Finally, such failure might slow down the process of worldwide ratification of the Rome Statute. However, if the ICC handles the situation in Darfur with due care – and the authors are confident it will – and provided all States live up to their obligations, success can be achieved. This will send a strong message to the world that the ICC is one of the most adequate instruments to combat genocide, crimes against humanity and war crimes even for non-party States on which territory the crimes occur. It will further discourage future genocides, crimes against humanity and war crimes. Last but not least, the opponents of the ICC will lose a significant argument against the Court and will in the future be less able to halt Security Council referrals.

Prof. Dr. Jan Wouters
Sten Verhoeven

Institute for International Law
Leuven University Belgium

www.internationallaw.be

We gladly welcome a new institutional member: HIIL

Hague Institute for the Internationalisation of Law

The *Hague Institute for the Internationalisation of Law (HIIL)* is a newly founded research institute. It was set up in January 2005 through generous funding by the Dutch Ministry of Education, Culture and Science and Netherlands Organisation for Scientific Research.

The Hague Institute for the Internationalisation of Law conducts fundamental research into the internationalisation of national law in a world where borders in the traditional sense are eroding and where the interconnectedness of societies across borders is becoming a fact of life. It further disseminates the results of that research to relevant policy makers where relevant and useful.

The work of HIIL is based on the *Research Programme*, which takes national legal systems as its point of departure and is at this initial stage built around three main pillars:

- (a) Unity and coherence of legal systems;
- (b) Rules of law and accountability;
- (c) Unification and differences between (legal) cultures.

The research and knowledge transfer agenda of the Institute departs from a multidisciplinary perspective, involving both the legal science and the social, behavioural and economic sciences.

The Hague Institute for the Internationalisation of Law operates by coordinating and supporting international research through the provision of grants, by acting as a conduit between academia and practice, and by providing other forms of support. It operates by building and coordinating a high level knowledge network in which research is principally carried out through and at the institutions which receive support.

More information on HIIL is available on the website, www.hiil.nl

HIIL: tel: 070-3494402
fax: 070-3494400

News

ICC Newsletters

As the ICC moves from the preparatory to the judicial phase and the workload steadily increases, it is crucial for the Court to keep the diplomatic corps, representatives of the international legal community, civil society and other interested parties informed of ongoing developments within the organisation.

For this purpose the ICC Newsletter has been created as the latest vehicle for keeping observers updated on the work of the Court and to promote the understanding of the Rome Statute.

To be published in both English and French, the Newsletter consists, mostly, of articles relating to ongoing activities within each organ of the Court. In addition, the Newsletter will contain a list of the latest ICC legal filings, ICC staffing figures, and any amendments made to the ICC basic documents.

If you are interested in the ICC Newsletter, please visit:

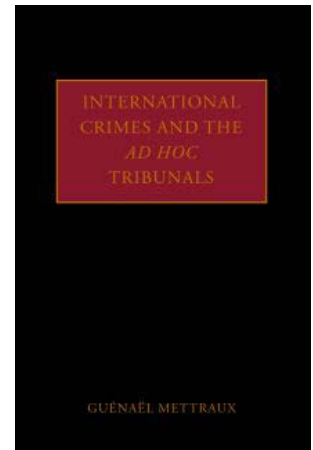
<http://www.icc-cpi.int/about/newsletter.html>

Guénaél Mettraux, *International Crimes and the Ad Hoc Tribunals*

(<http://www.oup.co.uk/isbn/0-19-927155-0?view=lawview>)

The contribution of the ad hoc Tribunals to international criminal law and international justice has been manifold, both academically and historically, and they will continue to influence the findings and decisions of many other courts (both domestic and international), and to provoke discussion for many years to come. This volume provides the first comprehensive analysis of the law of international crimes as applied by the ad hoc tribunals for the former Yugoslavia and Rwanda.

International Crimes and the Ad Hoc Tribunals examines the legal and historical significance of some of the most important judicial developments to occur in the last 50 years in international criminal law. It states the law of the Tribunals, and provides concrete illustrations of the application of the law to a variety of criminal cases, providing a comprehensive and detailed analysis of this voluminous body of jurisprudence. The primary focus is on the jurisdiction *ratione materiae* of the Tribunals: the definition and application of the law of war crimes, crimes against humanity, and genocide. However, it also examines the Tribunals' jurisdiction *ratione personae*, insofar as this enables a full understanding of the law of crimes (for instance, in relation to forms of criminal liability).

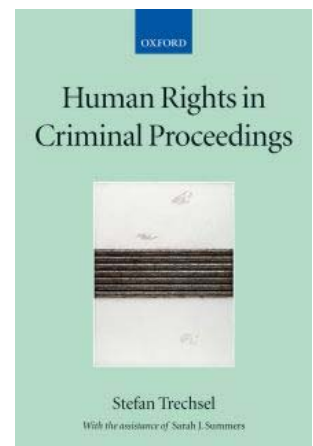


Stefan Trechsel, *Human Rights in Criminal Proceedings*

(<http://www.oup.co.uk/isbn/0-19-829936-2?view=lawview>)

Interest in human rights has grown enormously over the past fifty years. But while the media focus mainly on dramatic issues such as unlawful killings, torture, disappearances, or free speech violations, institutions charged with the implementation of human rights (as set out in international treaties) spend a great deal of their time dealing with alleged violations that take place during criminal proceedings. And in the future such issues will become even more important as a result of the increasing internationalization of the administration of criminal justice.

In this book, the case-law of the most important and influential international bodies dealing with such issues is presented and critically examined by an author who has spent almost a quarter of a century contributing to its evolution. The European Commission and the European Court of Human Rights, in particular, have accumulated a considerable quantity of case-law, which is of particular interest because of its applicability in both Anglo-Saxon and Continental systems of criminal procedure. The law of the European Convention is emphasized because of its advanced procedures and the quality and quantity of its case-law, however the author also gives considerable coverage to the application of the International Covenant on Civil and Political Rights and the American Convention on Human Rights.



**Mike Chandler is the former chairman of the United Nations monitoring group on Security Council sanctions on Al Qaeda.
He wrote this article for the European Security Advocacy Group**

Money is the life blood of terrorism

Almost all the terrorist attacks since 11th September 2001 have cost only a few thousand dollars.

But the terrorists need significant sums of money for recruiting, indoctrination, logistics and travel.

Comprehending the threat! Just as the current threat to global peace and security from trans-national terrorism is difficult to comprehend, so is a clear and detailed understanding of how the terrorists are financed. It is a complex many-faceted subject.

To avoid detection and reduce the impact of interdiction by law enforcement and security services, members of the terrorist networks, their supporters, sympathizers and benefactors have shown themselves to be particularly resourceful. They have demonstrated great flexibility in the way they raise money and move it. What works for one group or regional grouping is not necessarily mirrored in other geographical areas.

In Europe the cells tend to be self-financing, raising money just like the common criminals through credit card cloning and fraud, cheque purchase and cash fraud, car theft, small-time drug trafficking and even, recently, attempts at an insurance scam. Tracking and investigating these crimes requires good police and financial intelligence work and the appropriate legislation to enable the authorities to crackdown on the terrorists.

Criminals have to launder 'dirty money'. Most of the terrorists' money is clean until it is used to finance their operations and even the small amounts raised from criminality are used - so do not have to be laundered.

Dealing with the cash thus raised the next problem. Detecting the movement of cash by couriers is extremely difficult, whether or not legal limits exist. But wealthy 'deep-pocket-donors' who are sympathetic to the causes of, for example, the Palestinians or the Chechen 'separatists' and the *jihad* being wage in Iraq do exist. These 'terrorism philanthropists' are always looking for ways of moving the cash to the terrorists. The Eight Special Recommendations and the Action Plan on Terrorist Financing issued by the OECD's Financial Action Task Force (FATF) need to be fully implemented by all countries, not just the FATF members (1).

In other parts of the world, Islamic charities have been a source of finance for terrorist operations and organisations, even if the funds used have been derived by the downstream abuse of money assigned, ostensibly, to genuine projects.

In the Muslim world giving to charity or the *zakat* is one of the five pillars of Islam. It is like a tax and can be levied, not only on cash, but on other items of wealth that can be used for trade. The giving to charity also takes place in mosques at Friday Prayers. That is the good side and a significant proportion of the funds raised are spent sustaining genuine humanitarian projects.

The bad side is that some of the donated funds end-up supporting terrorists. In many countries, be they predominantly Muslim or with a minority Muslim population, Saudi petro-dollars are used to spread the *Wahhabist* form of extremist Islam. Estimates put the figure as high as US\$75 billion over the past thirty or so years (2). This creeping 'missionary' work is one that requires the attention of world politicians.

Giving for charity and the welfare of human beings is one thing; promoting religious intolerance is entirely different and should not be countenanced under any circumstances. Stopping this funding of extremist Islam, which spreads anti-Western sentiment, condones martyrdom and inspires young men to wage a militant *jihad* must become a high priority for politicians in the industrialised world. They need to act now.

(1) See: <http://www1.oecd.org/fatf/>

(2) Statement of David D. Aufhauser, former US Treasury general Counsel, before the Senate Committee on Governmental Affairs: "An Assessment of Current Efforts to Combat Terrorist Financing".

**Document on "Global Justice" presented by Willy Bruggeman at the
International Summit on Democracy, Terrorism and Security in Madrid
March 2005**

Conclusions

Widespread violations of international humanitarian law have become a practice in the contemporary world: violent conflict is one of the biggest threats to security. In this world of growing global threats, global markets and global media, our security and prosperity depend on an effective multilateral approach.

While measured use of force should not be precluded against the rulers of a country who refuse to respond and cooperate with international justice, an open-ended war is ill-conceived, unjust and interminable. A different approach is needed, where legal categories recognisable under international law determine any use of violence in justified conditions.

But just like in a national society, an international legal order is needed to ensure the legal equality of us all, just like a Constitution does in a national state. Growing concerns of the international community resulted in a demand for international prosecution. With respect to criminal sanctions the universality principle provides for jurisdiction both to prescribe domestic laws and to enforce sanctions against crimes or violations that have an independent basis on international law.

International justice has been elevated to the next level by the establishment of the International Criminal Court. But global defence and global justice should be more subject of an integrated approach, making possible a more and better balanced interactivity between national and international fora, making sure that serious violations of crimes against humanity and other serious forms of organised crime and terrorism, become subject of a structural and integrated preventive and repressive approach.

Unfortunately international law enforcement has not advanced so far that the various ad hoc tribunals and the ICC, will be adapted to prosecute support and related crimes more effectively, because of procedural difficulties have been and continue to be surmounted successfully. In addition, international law may be under threat, but it is not at all certain that its role will be significantly diminished.

In the meantime the ICC has to continue to promote such an open and cooperative attitude on a pragmatic basis. International lawyers, foreign experts, and criminologists will increasingly have to become multi disciplinary in their vision and strategic planning, flexible in their ability to form alliances and construct methods to interact with each other and develop their own networks, while deflating those of criminal groups.

And the United Nations must play a more central and systematic role in terrorism and post-conflict situations. Although the UN has often been pivotal in forging the international response to serious human rights crimes, the "justice gap" underscores the need for more systematic UN efforts.

The whole article is to be found on the ICLN website

Contact

If you have any questions regarding the topics named in the newsletter or other questions regarding the International Criminal Law Network, please feel free to contact Maartje Jansen and/or Heleen Maertens at:

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