

## Expert Meeting on Complementarities between International Refugee Law, International Criminal Law and International Human Rights Law

*Arusha, 11-13 April 2011*

### Agenda

#### *Day 1*

**9:00 – 9:30**                    **Welcome**

Hon. Mohamed Chande Othman, Chief Justice of Tanzania  
Oluseyi Bajulaiye, UNHCR Representative for Tanzania

**9:30-10.00**                    **Opening Remarks**

Adama Dieng, Registrar, ICTR  
Volker Türk, Director of international protection, UNHCR

**10.00–11.30**                    **Session 1 - Setting the Scene: Fragmentation and  
Cross-Fertilization in International Law**

This panel will examine the nature of fragmentation in international law focusing on the interaction between specific international legal regimes of relevance to forced displacement.

- How has the International Law Commission of the United Nations framed the debate on fragmentation?
- What is the rationale for international refugee law, international criminal law and international human rights law to consider rules from other international legal regimes?
- What may be the limits to this cross-fertilization? Where and/or how does one draw the line?

Co-chairs:                    H.E. Judge Dennis Byron, ICTR - Volker Türk, UNHCR

Speakers:                    Jean d'Aspremont, University of Amsterdam  
Mona Rishmawi, OHCHR  
Agnès Hurwitz, UNHCR

**11.30-11.45**                    **Coffee break**

**11.45-13.00                      Session 2 - International Crimes and Forced Displacement:  
Deportation and Forcible Transfer**

This panel will examine relevant legal developments with respect to the criminalization of *deportation* and *forcible transfer* as war crimes and crimes against humanity, and as they relate to a general prohibition on arbitrary displacement.

- How have *forcible transfer* and *deportation* been defined and distinguished in the jurisprudence of the international criminal tribunals?
- What is the relationship between *ethnic cleansing* and these two crimes?
- How do these crimes relate to the general prohibition on arbitrary displacement, derived from the right to freedom of movement, to liberty, and security of the person, and other rights under international human rights law?

Chair:                      Lawrence Masha, former Minister of the Interior of Tanzania

Speakers:                      Guido Acquaviva, Special Tribunal for Lebanon  
Shadrack Gutto, University of South Africa

**13.00-14.00                      Lunch**

**14.00-16.00                      Session 3 - The Meaning(s) of Persecution**

This panel will consider the scope and nature of the concept of *persecution* as it has developed under international criminal law and international refugee law respectively, including consideration of international jurisprudence in relation to gender persecution and violence.

- What is the historical and legal significance of persecution as a core concept of international criminal law? How has this crime been defined in international criminal jurisprudence?
- How has the concept of persecution in international refugee law evolved over time and how has it been defined?
- To what extent are the definitions of persecution under international refugee law and international criminal law compatible? Are the findings of international criminal tribunals on persecution transferable to international refugee law, and vice versa?
- How has gender violence and persecution been understood under international criminal law and international refugee law respectively? In what ways has international human rights law informed such understandings? What lessons can be learned from these interpretations and approaches?

Co-chairs:                      H.E. Judge Florence Rita Arrey, ICTR - Volker Türk, UNHCR

Speakers:                      Guido Acquaviva, Special Tribunal for Lebanon  
Guy S. Goodwin Gill, University of Oxford  
Alice Edwards, UNHCR

**16.00-16.15                      Coffee Break**

16:15-18:00

#### Session 4 - Armed Conflict and Civilians

This panel will focus on two questions where international criminal law, international refugee law, and international humanitarian law, and to some extent, international human rights law intersect, namely the definitions of *international* and *non-international armed conflict*, and of *civilian* or *protected persons*. The session will examine how these terms are understood and interpreted and what consequences flow from these definitions and usages.

- What are the definitions of the terms *armed conflict* and *civilian* under international criminal law and international humanitarian law and what legal consequences flow from them?
- Are there discrepancies in the definition of *international* or *non-international armed conflict* between international humanitarian law and international criminal law? If so, what does this mean for the interpretation and application of international refugee law?
- When does international refugee law refer to the notions of *armed conflict* and *civilian* in ways that are different from the definitions of international criminal law and international humanitarian law? What are the various contexts in which the concepts of *armed conflict* and *civilian* are relevant to the protection of UNHCR's persons of concern?
- How does the notion of *civilian*, as applied for the purposes of safeguarding the civilian and humanitarian character of asylum, differ from the definitions of international criminal law and international humanitarian law?
- As regards the principle of *non-refoulement*, to what extent can international humanitarian law and international human rights law offer answers to the question of return to situations of generalized violence?

Co-chairs: James Arguin, ICTR - Volker Türk, UNHCR

Speakers: Umesh Kadam, International Committee of the Red Cross  
Sandesh Sivakumaran, University of Nottingham  
Andrew Painter, UNHCR

#### Day 2

9:00-10:30 **Session 4 - Armed Conflict and Civilians (continued)**

10:30-10:45 **Coffee Break**

10:45-13:00 **Session 5 – Exclusion, Prosecution for International Crimes and Acquittals**

This session will compare exclusion and prosecution for international crimes, and examine whether indictments and subsequent decisions by international tribunals, including acquittals, have an impact on exclusion.

- To what extent, and on what basis, does the interpretation and application of the exclusion clauses in the 1951 Refugee Convention, and other refugee law instruments, draw on concepts, standards and principles of international criminal law?
- How do the differences between exclusion under international refugee law and criminal prosecution under international criminal law play out in practice? What are the legal and policy considerations that are relevant here?

- What is the effect of an indictment and subsequent acquittal by a criminal tribunal on the application of exclusion under international refugee law?
- How relevant is international human rights law in this context for example as regards procedural fairness or protection against *non-refoulement*?

Co-chairs: Volker Türk, UNHCR - ICTR

Speakers: Sibylle Kapferer, UNHCR  
Chiara Biagioni, ICTR

**13:00-14:00 Lunch**

**14:00-16:00 Session 6 - Exclusion and Individual Criminal Responsibility**

This panel will examine the evolving interpretations of individual criminal responsibility for international crimes and the implications of such interpretations in the application of the exclusion clauses in the 1951 Refugee Convention.

- To what extent should the doctrines on joint criminal enterprise, co-perpetration and other forms of extended criminal liability be used by asylum adjudicators? What are the key differences between them? Are these doctrines applicable to each of the exclusion clauses under the 1951 Refugee Convention?
- In applying the exclusion clauses, what has been the approach followed by asylum adjudicators with respect to individual criminal responsibility as defined and interpreted by international criminal institutions, and as opposed to domestic law understandings of criminal liability?

Co-chairs: H.E. Judge Lee Gacuiga Muthoga, ICTR - Volker Türk, UNHCR

Speakers: Joseph Rikhof, Government of Canada  
Kate Jastram, University of California at Berkeley  
H.E. Judge Flavia Lattanzi, ICTY

**16:00 -16.15 Coffee Break**

**16:15-18:00 Session 7 - Assessing the Evidence: Factual Findings and their Use in Asylum Proceedings**

This panel will consider the impact of an individual's participation in international or hybrid criminal proceedings as a victim or witness on his or her claim for international protection.

- To what extent is evidence adduced in international criminal proceedings relevant for the purposes of refugee status determination for an individual who claims to have been victimized by the crimes which the accused is charged with, or who has acted as a witness for one of the international criminal tribunals/courts?
- Is the specific role recognized to victims in ICC proceedings of particular significance in this respect?

Co-chairs: H.E. Judge Seon Ki Park, ICTR - Volker Türk, UNHCR

Speakers: Adesola Adeboyejo, International Criminal Court  
Moses Chrispus Okello, University of Makerere  
Michael Reed, International Center for Transitional Justice

**Day 3**

**9:00-11:00                    Session 8 - Fragmentation or Complementarity?**

This wrap up session will, based on the conclusions reached in previous panels, identify ways in which different strands of international law of relevance to forced displacement interact and can best complement each other.

Chair: Adama Dieng, ICTR - Volker Türk, UNHCR

**11:00 – 11.15                Coffee Break**

**11:15-12.00                Final Remarks and Conclusions**

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