

## EDITORIAL: WINTER ISSUE

1 July 2002 is a date of historical significance. On that day an international treaty came into force which created a permanent international criminal court that could potentially hear any case of mass atrocity anywhere in the world. The court is a unique institution in the history of mankind. International criminal tribunals had been created before, however their jurisdiction was always limited to certain specific conflicts. As was the case after the Second World War, some tribunals were even limited to prosecuting just one party to a conflict. The International Criminal Court marked a clear breaking point from this: irrespective of political outcomes, it would bring perpetrators of international crimes to justice.

The reader may already hear the drums and trumpets in the distance. However, is the International Criminal Court a success? This year is the 10<sup>th</sup> anniversary of the Court's creation. A good opportunity to celebrate, but also to reflect on the question where the Court stands today. Although a large number of states have ratified the Rome Statute over the past years, major political powers such as the United States, Russia and China still have not. Moreover, a notorious fugitive of the court, Sudanese president Omar al Bashir, has not been arrested even though he has travelled to states that were under the obligation to do so. To put it mildly, the Court's authority is not universally accepted yet.

The Court is currently investigating six situations where atrocities have allegedly been committed. It is clearly trying to live up to its global reach by running many cases at the same time. However, the Court, in particular the Prosecutor, has been criticised for practicing neo-colonial politics by focusing primarily on African countries. Does this indeed affect the legitimacy of the Court? Moreover, no trial has been completed yet. Protracted trials have been a focal point of critique at the tribunals for Rwanda and the Former Yugoslavia. Can international criminal justice ever be delivered swiftly? More questions can be added to this: is victim participation a success? Is the recently adopted definition of the crime of aggression a good idea? How does the court function in ongoing conflicts? Is it a catalyst or an obstacle to peaceful settlement?

On 14 May Amsterdam Law Forum will host its third annual conference at VU University's campus themed: *The International Criminal Court at 10: Where do we stand?* During the conference these and other questions will be discussed by leading practitioners and academics in international criminal law. We have a promising line-up of speakers and a detailed program will be released

shortly. For updates, please watch our website and registration opening or subscribe to our email LISTSERV on our homepage.

*In this issue*

The first edition of volume four of Amsterdam Law Forum is a reflection of the many different issues international law touches. Nadine Peuchguirbal discusses what position international relations and international law give to women in post-conflict societies. She argues that in this world dominated by men, the needs of women are not properly addressed. Though this is not a completely new issue, Puechguirbal stresses how little progress has been made since it first appeared on the agenda.

Uladzislau Belavusau discusses the European Union's law on freedom of speech and how it can be helpful in addressing hate speech. Given the increasingly racist overtones in the rhetoric of right wing political parties his article is an interesting contribution. In The Netherlands Gerard Spong, legal representative of the plaintiffs, announced that he is considering appealing the acquittal of Geert Wilders of speech crimes at the European level. Gemma Pinyol-Jimenez addresses another issue of European integration: border control and its relation to security. She argues however that although the two have become intertwined, migration is not managed by law enforcement but by cooperation in development of emigration countries.

Guillermo Otálora Lozano and Sebastian Machado take us to another continent: South America. In their article they discuss the objective versus the subjective approach to the existence of a Non-International Armed Conflict and how two successive governments of Columbia have dealt with this in relation to their struggle against the FARC.

In our opinion section Geert-Jan Knoops shares his views on the appropriateness of the arrest warrant issued by the ICC against the late Colonel Gadaffi and his sons. He questions whether this was a matter of justice or of politics. We hope to hear more on this during the upcoming conference in May. Wietse Buijs discusses the recently passed act of the US Congress that enables the American president to detain suspected terrorists indefinitely and without trial. He fears that with the current composition of US federal courts the rights of detainees are unlikely to be improved in the near future.

In the discussions section Srini Sitaraman also vehemently opposes the treatment of terrorist suspects by the American government. He presents an overview of various cases he argues were in violation of international law and he addresses the implications for the rule of law and politics and security. Tamar de Waal presents an article with a review of Hannah Arendt's work and

coverage on the Eichmann trial. She explores and analyses Arendt's understanding of the way in which mass atrocity is committed. De Waal offers that Arendt's philosophy has important implications for international criminal justice. We end this issue with a reply by Michal Onderco to Fred Grünfeld's *International Law and International Relations: Norm and reality or viceversa*.<sup>1</sup>

Louis Middelkoop  
Editor-in-Chief

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<sup>1</sup> Fred Grünfeld, 'International Law and International Relations: Norm and reality or viceversa,' *Amsterdam Law Forum* 2011-3, pp. 3 -14.