"Serious International Crimes, Human Rights, and Forced Migration Symposium," Osgoode Hall Law School, York University, Toronto, Ontario, Canada
Thursday, May 30th, and, Friday, May 31st, 2019

Symposium Summary

Introduction

The "Serious International Crimes, Human Rights, and Forced Migration Symposium," co-sponsored by the Jack and Mae Nathanson Centre for Transnational Human Rights, Crime and Security, Osgoode Hall Law School, and McLaughlin College, Faculty of Liberal Arts & Professions Studies, and the Vice-President of Research and Innovation, York University, was held at the Helliwell Centre, IKB 1014, Osgoode Hall Law School, on Thursday, May 30th and Friday, May 31st, 2019. Please see our Symposium website for further details on the Call for Papers, the organization of the Symposium, the program, and other details at http://sichrfms.info.yorku.ca/.

Over the two days of the Symposium there were two keynote speakers, six plenary panel sessions, five judicial plenary panel chairs, eight original plenary panel papers, and some 30 participants in total. The Symposium began with a keynote address each morning and then was followed by three plenary panel sessions, one in the morning and two in the afternoon. The keynotes and the plenary panel sessions were organized on the three interrelated Symposium themes of serious international crimes, human rights, and forced migration.

The first day of the Symposium was focused principally on national and transnational law and the second day of the Symposium was focused primarily on international law. Hence, each of the three interrelated Symposium themes were thoroughly addressed, as much as reasonably possible, at the national, transnational and international levels, that is, with a multi-level legal analysis. Day one of the Symposium provided the foundation for considering the international law dimensions of these three inherently interrelated Symposium thematic areas of focus: the pivotal four serious international crimes; the severest breaches to our core human rights; and, ultimately, their direct consequences of, most typically, mass forced displacement or migration. Day two of the Symposium focused on the international law issues and concerns related to these three overlapping and synchronous thematic areas. This innovative symposium structure and format worked well and offered the Symposium participants with an interesting and engaging program to address the most important legal issues within each of the Symposium's three thematic areas and the present state of the law, in its totality.

Another important feature of the Symposium program was that it included jurists, practitioners, and legal scholars as keynote speakers, plenary panel chairs, and, paper presenters. The Justices who were in attendance, from Canada and several other countries such as the United Kingdom, Belgium, and, The Hague, The Netherlands, chaired each of the plenary panel sessions. One of the paper presenters was not only an academic legal

scholar, but, also a part-time Immigration Judge as well as a legal practitioner from the UK. However, the paper presenters for the plenary sessions were largely legal scholars, advocates, and practitioners.[1] This created an interesting dynamic for the plenary panel session discussions, questions, and debates that ensued. The judicial plenary panel chairs could offer their unique perspectives and experience deciding cases from the bench, while the legal scholars, advocates and practitioners brought their own theoretical approaches, research analysis and findings and points of view on the jurisprudence and commentaries. Bringing the jurist/decision-maker and the researcher, advocate, and legal scholar/theorist together in this way was intended to stimulate discussion and debate while at the same time, hopefully, gaining further insight that could result in the generation of novel ideas and suggestions for how the legal issues and concerns could be addressed constructively. This type of format and structure for the Symposium worked very well.

What follows in this Symposium Summary is a brief account of the two keynote speakers' presentations and the eight papers that were presented over the two days of the Symposium. It does not provide a summary of the discussions, questions or debates that took place at the Symposium following the keynote addresses or plenary panel sessions. The Symposium was held under the Chatham House Rule or, in short, what was discussed and debated at the Symposium remains with the Symposium participants and is not open to the media or the public. There are plans, however, to publish an edited volume based on the Symposium. The chapters for this edited volume will include, hopefully, the papers that were presented at the Symposium but revised to take into consideration, and to be informed by, the debates, questions, and discussions that took place at the Symposium, both formally and informally.

We should like to thank all those who participated in the Symposium and who made their contribution through their keynotes, paper presentations, and/or dialogue and debates that took place over a highly interesting, engaging and exciting two days of the Symposium that focused on some of the most pressing issues and concerns in public law, whether on the national, transnational, or the international stage. Special thanks are also extended to our staff colleagues, Lielle Gonsalves, Research Centre Coordinator, Jack and Mae Nathanson Centre, Osgoode Hall Law School, and Sanja Begic, Web Development Specialist, eServices Office, Faculty of Liberal Arts & Professional Studies, for all their support and assistance with our Symposium.

I should also like to acknowledge and recognize the wonderful contribution and participation of my co-organizer and collaborator in our Symposium, Professor Dr. Elies van Sliedregt, School of Law, University of Leeds, United Kingdom. Her collaboration was vital to the success for this endeavor.

We should also like to thank the Dean of the Faculty of Law, Mary G. Condon, for officially opening our Symposium on "Serious International Crimes, Human Rights, and Forced Migration." Her welcome and opening comments helped to set the right tone and to frame our Symposium and emphasizing the importance of seeking to address some of the most challenging issues in international law that directly impact millions of lives in the world

[1] A number of the participants were also graduate and undergraduate students.

today. We are most grateful for Dean Condon's welcome, opening remarks, and participation in our Symposium.

The First Day of the Symposium

The first day of the Symposium, that concentrated on national and transnational law on each of our three thematic themes, commenced with a keynote address by Professor Elies van Sliedregt, Chair in International and Comparative Justice, School of Law, University of Leeds, United Kingdom. The title of Professor van Sliedregt's keynote address was "International Crimes, International Outlaws, and the Interface Between International Criminal Law and International Refugee Law," and her address focused on the requirement of States to fulfill their obligations to end impunity by prosecuting those who are responsible for war crimes, genocide, crimes against humanity, and serious violations of international humanitarian law. With reference to recent judgements of the International Criminal Court (ICC) and references to the *Malabo Protocol* she made a number of points with respect to the jurisdiction of the ICC and the Exclusion Clauses, specifically, Article 1F(a), of the *1951 Convention relating to the Status of Refugees* and the exclusion of those involved in serious international crimes from refugee protection.

This was followed by a presentation by Lorne Waldman, OC, who focused his remarks on "The Case of Verdanov and its Lessons." The first plenary panel session was chaired by Senior Immigration Judge, Judith Gleeson, Upper Tribunal, Immigration and Asylum Chamber, United Kingdom, in lieu of Justice Isaac Lenoala, Supreme Court of Kenya, who was, unfortunately, unable to attend and preside at this panel session. Professor Waldman's presentation dealt with the case of a Moldovian police officer who was attached to a unit that tried to control pickpockets. Mr. Verdanov testified that he would arrest pickpockets and take them to the police station, but they would pay a bribe to the senior police officers and would be released without charges. He testified that he was never directly or indirectly involved in torture. However, the documentary evidence presented from human rights organizations indicated that the police ill-treated, beat, and tortured prisoners during arrests and interrogations. The Minister found the appellant was inadmissible to Canada because he was complicit in crimes against humanity because he knew or ought to have known that the arrested suspects that he brought back to the police station would be tortured, given the documented widespread use of torture in Moldova. The legal issues raised in this case included complicity, and whether someone of Mr. Verdanov's low rank and the limited years of service in the Moldovian police force, should lead to a finding of being complicit in crimes against humanity and found inadmissible to Canada. The case had gone through the Immigration Division and the Immigration Appeal Board of the Immigration and Refugee Board of Canada, and the Federal Court, not once, but, on two occasions. Professor Waldman argued that it seems patently unreasonable that someone of Mr. Verdanov's low rank and limited years of service in the Moldovian police should be found inadmissible. One of the lessons that should be drawn from this case is that the Minister ought to be setting clear standards on who falls within the inadmissibility category and, thereby, limit the range of discretion of Canada Border Service Agency personnel on matters of inadmissibility.

The second plenary session on the first day of the Symposium was chaired by Justice Anne MacTavish, now with the Federal Court of Appeal in Canada, and featured Professors Fannie Lafontaine, Faculty of Law, University of Laval, Quebec City, Quebec, Canada, and Joris van Wijk. Executive Director, Centre for International Criminal Justice, Faculty of Law, Criminology, UV, Vrije Universiteit, Amsterdam, The Netherlands.

Professor Lafontaine's paper, titled, "Come Together: Can Immigration/Refugee Law and Criminal Justice Work Hand in Hand in the Fight Against Impunity for International Crimes?," concentrated on the necessity of international criminal law and international refugee law to work together in the fight to end impunity for serious international crimes. Professor Lafontaine argued that while the current international normative system obligates States to investigate, prosecute and/or extradite those who are responsible for international crimes, it is outdated, inefficient, and does not foster effective cooperation among and between States. Reforms are necessary to foster greater cooperation amongst States to ensure that those responsible for serious international crimes are brought to justice. A number of ideas were proposed for what types of reforms would be needed to remedy the current situation.

Professor Joris van Wijk provided an outline of a book project that will deal with those alleged "non-citizens" who are described as "undesirable but unreturnable." Concentrating specifically on those persons labelled as "unlawful enemy combatants," who were held at the Guantanamo Bay Detention Camp, Cuba, by the United States military, he noted that most of the detainees who could not be returned to their country of origin were resettled to third countries between 2014 and 2016. The nationalities of those who were held in Guantanamo Bay and later resettled to third countries were mainly from Yemen, China, Afghanistan, Syria, Tunisia, Libya, and Algeria, in that order. Their countries of resettlement were, principally, Oman, United Arab Emirates, Saudi Arabia, Albania, and Slovakia, in that order. Professor van Wijk also focused on Uruguay as a case study of a host country that is – arguably -- motivated by idealism in accepting the detainees from Gitmo. One of the harsh lessons of the Guantanamo Bay Detention Camp is that there are no easy solutions for those who were arrested as "unlawful enemy combatants," detained, and held in poor conditions and treated badly.

The last presenter on the first day of the Symposium was Professor Satvinder Juss, Dickson Poon School of Law, King's College London, practicing Barrister and part-time Judge of the Upper Tribunal, Immigration and Asylum Chamber, United Kingdom, who's paper was titled, "Indiscriminate Violence in International Refugee Law." This session was chaired by Justice Sir Howard Morrison, Appeal Chamber of the International Criminal Court (ICC). Professor Juss noted that it is generally recognized that the "war refugee" is not covered by the *1951 Convention relating to the Status of Refugees,* except in special circumstances, for example, those who are targeted by combatants on the basis of one of the five grounds of the Convention: race, religion, nationality, political opinion, or membership in a particular social group. The general assumption being that International Humanitarian Law and International Criminal Law are intended to protect civilian non-combatants and, for that matter, combatants, from persecutory treatment and/or serious international crimes. It was noted that with the exacerbation of protracted non-international armed conflict the legal

issues related to the "war refugee" have come to the fore and that jurisdictions have sought ways of addressing the issue such as the European Union's subsidiary protection provisions in its *Qualifications Directive*, and, specifically, Article 15(c), that provides for the grant of subsidiary protection in situations of "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict." Professor Juss's analysis centered on the different notions of "indiscriminate violence" and on the "internal relocation alternative" and the interpretation of Article 15 (c) across jurisdictions within the EU.

The Second Day of the Symposium

The second day of the Symposium commenced with an opening address by Sir Howard Morrison, Justice of the Appeal Chamber of the International Criminal Court, who's keynote address was titled, "International Law – The Road Less Travelled." Justice Sir Howard Morrison gave a personal account of his legal career in criminal law and his non-traditional career path to become a member of the ICC, Appeals Chamber, and, subsequently, serving for a term as its President. He presented a personal account of the working of international law from the perspective of his years as a defense counsel at the International Criminal Tribunal for Rwanda (ICTR) and as a judge of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and, presently, the ICC. Justice Sir Howard Morrison outlined the tremendous challenges of adjudicating cases involving serious international crimes and the prosecution of those indicted for the alleged commission of such "atrocity crimes." In essence, he underscored the point that the work of the ICC is absolutely essential in the advancement of international justice and that the prosecution of those who have committed the world's most serious and unconscionable crimes that shock the conscience of humankind.

The fourth plenary panel session was chaired by Justice Robert Barnes, Federal Court of Canada, and featured Dr. Yao Li, Senior Research Fellow, Chair for German and International Criminal Law, Criminal Procedure and Modern Legal History, Humboldt-Universitaet zu Berlin, Germany, and Professor James C. Simeon, Head of McLaughlin College and Associate Professor in the School of Public Policy and Administration, York University. The title of Dr. Li's paper was "Persecution in International Criminal Law and Refugee Law." Persecution is central to international refugee law, but it is also part of international criminal law and Dr. Li's paper explores the correlation of this key term and concept in both branches of international law. She was especially interested in the similarities and differences in the notion of "persecution" in international criminal and refugee law. Persecution is central to defining who is a refugee; at the same time, it constitutes a crime against humanity in the *1998 Rome Statute*. Dr. Li concluded that in those cases where the international crime of persecution can be established, the victims would most likely qualify as Convention refugees.

Professor James C. Simeon's presentation was on the subject of "Violations of Fundamental Human Rights, Serious International Crimes, and the Prosecution of Those who Have Been Excluded from Refugee Protection," Under the *1998 Rome Statute*, the ICC has jurisdiction

over four serious international crimes: the crime of genocide; crimes against humanity; war crimes; and, the crime of aggression. Noticeably absent is the serious international crime of terrorism, that is found in the statutes of the International Criminal Tribunal for Rwanda and Special Court of Sierra Leone. It was noted that the UN's Responsibility to Protect (R2P) doctrine obligates all member States of the UN to prosecute the so-called "atrocity crimes:" genocide; war crimes; ethnic cleansing; and, crimes against humanity. The *1998 Rome Statute* provides a detailed definition of the four most serious international crimes, that overlap with the four atrocity crimes in the R2P doctrine. It stands to reason, therefore, that those who are responsible for such crimes should be prosecuted by States and the ICC and other specialized tribunals and courts. States have prosecuted the bulk of the perpetrators of serious international crimes through *active personality* and *universal jurisdiction*. Professor Simeon advanced the argument that the fight to end impunity also involves dealing with the "root causes" of these serious international crimes, protracted non-international armed conflict.

This was followed by two plenary panel sessions that afternoon that were presented by Dr. Maarten Bolhuis, Faculty of Law, Criminology, VU, Vrije Universiteit, Amsterdam, The Netherlands, and Dr. Sarah Singer, Refugee Law Initiative, School of Advanced Study, University of London, United Kingdom, who delivered her paper *via* Skype.

Justice Katelijne Declerck, Council of Alien Law Litigation, Belgium, and the President of the International Association for Refugee and Migration Judges (IARMJ), chaired the plenary panel session where Dr. Maarten Bolhuis's presented his paper titled, "Asylum seekers and security screening of social media and data carriers in Europe." The paper concentrates on the the analysis of social media and content found on mobile devices for the purposes of the security screening of asylum seekers in five European countries: Belgium; Germany; Norway; The Netherlands; and, Sweden. As part of a larger study of security screening during the recent high asylum influx in Europe, Dr. Bolhuis pointed out, that 43 interviews were conducted with public officials in various immigration authorities, aliens police agencies, intelligence and security services, and the European Asylum Support Office (EASO). Some of the findings of their study included the following: new methods such as data carrier extraction and social media analysis are becoming more common place in many jurisdictions; nonetheless, there is a reluctance to use such methods in some countries. A key point that was made is that while social media methods are being embraced, especially by immigration authorities, there is a dearth of cost-benefit analyses and thorough evaluations that have been conducted on the use of these methods for the purposes of security screening of asylum applicants. In addition to the issues with respect to effectiveness and utility of such methods for security screening purposes, there are also several legal, normative, and ethical questions with respect to their use in this context.

Dr. Sarah Singer's paper was titled, "National Security, Criminality and Exclusion from Refugee Protection under the EU Qualification Directive: Expanding the Grounds of Exclusion by the Back Door?" The chair of this plenary panel session was Senior Immigration Judge, Judith Gleeson, Upper Tribunal, Immigration and Asylum Chamber, United Kingdom. Dr. Singer's paper considers exclusion from refugee status on national security grounds under Article 14 of the *EU Qualifications Directive*. Article 14 deals with

"Revocation of, ending of or refusal to renew refugee status" and its subsections 4 and 5, state as follows:

> **4. Member States may revoke, end or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial body, when:**
> **(a) there are reasonable grounds for regarding him or her as a danger to the security of the Member State in which he or she is present;**
> **(b) he or she, having been convicted by a final judgement of a particularly serious crime, constitutes a danger to the community of that Member State.**
> **5. In situations described in paragraph 4, Member States may decide not to grant status to a refugee, where such a decision has not yet been taken. (Article 14 of the *EU Qualifications Directive*)**

Article 14(4) reproduces Article 33(2) of the *1951 Refugee Convention* that states that the benefit of the *1951 Refugee Convention* does not apply to those refugees who are a danger to the security of the Member State or who constitute a danger to the community of the Member State. Dr. Singer points to two judgements, *Dang Vietnam* [2013] UKUT 43 (IAC) and *M (Revocation du statut de refugie)* [2019] EUECJ C-391/16 (14 May 2019), that stand for the proposition that revoking the refugee status of someone under the *Qualifications Directive* does not revoke their refugee status under the *1951 Convention*. This raises a fundamental question: whether there are different refugee statuses in the EU, one under the *Qualifications Directive* and another under the *1951 Refugee Convention*? The jurisprudence appears to indicate that is indeed the case.

Conclusions

The two co-chairs of the Symposium, Professors Elies van Sliedregt and James C. Simeon, provided a wrap-up after each day of the Symposium and made their concluding remarks at the end of Symposium. It was generally agreed that it was a highly stimulating and productive two-day symposium. The discussions were constructive and quite illuminating and certainly contributed to a deeper understanding of the legal issues and concerns dealing with the three interconnected thematic areas covered.

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