

**HOW TO ADJUDICATE THE MOST SERIOUS CRIMES?
BEST PRACTICES OF PROCEDURE:**

An Inquiry into Existing Paradigms

This project aims toward attaining a clear picture of the main challenges in the procedures of judging the most serious crimes and toward identifying the most efficient methods for doing so. We attempt to do this by uniting theory and practice, national and international dimensions and by contrasting the various national legal systems.

Introduction:

1) Under the influence of globalization, our world has given rise to new forms of serious crimes previously unheard of and inconceivable. In an environment where human relationships are increasingly international, we are becoming aware that the national frameworks we rely on to deal with the most serious criminal phenomena are not sufficient. The international criminal jurisdictions that have been created are relatively new and it is imperative that we reflect on their activity and efficacy. In addition to this, the dividing line between "domestic" serious crimes, that affect national peace and good social order, and transnational or international crimes, is no longer easily discerned. It is thus both relevant and important to try and think of the best way to tackle the most serious crimes, which requires efficient cooperation between States.

2) All violations of international humanitarian law fall within the category of serious internationalised crimes (war crimes, crimes against humanity, and genocide). This category also includes human trafficking and terrorism, as the harm which they inflict reaches across national borders. Other crimes such as money laundering and firearms trafficking, often go hand in hand with more traditional international crimes and must be addressed from a multinational perspective.

Definition:

3) After discussing the definition of "most serious internationalised crime", this colloquium will move on to concentrate on the trial procedures of such crimes.

4) All these serious crimes share a number of characteristics, some of which are listed here:

- a) An international dimension.
- b) An unstable political environment, influential for the peace, security and stability of the national, regional and international sphere.
- c) A massive scale: the large number of victims, the amount of money at stake, the great number and variety of offences committed, etc.
- d) The complexity of the acts and of the investigations.
- e) Strong media attention.

The procedural challenges:

5) Several international criminal courts or “hybrid” *ad hoc* courts have been created all over the world within the last ten years, such as the ICTY, ICTR, the Sierra Leone ad hoc Court, Bosnia’s War Crimes Chamber, and now the permanent ICC. However, these courts’ respective spheres of competence do not necessarily include all serious international crimes and their existence does not answer essential questions on the procedural level such as, for instance, the extent of jurisdictions: Who is entitled to investigate and judge such crimes? How do we deal with the notion of universal jurisdiction? Taking victims into account will also be a major challenge in the years to come. As such, the judgements these courts pass give rise to new legal issues.

6) What the present project intends to study is not at which level (national or international) those crimes must be prosecuted and tried. Rather we will focus on the problems that arise after such crimes have been prosecuted, no matter which proceedings have been used, and the way they have been solved. We will also draw upon universally accepted principles in criminal proceedings. In particular, we will focus on the right to a fair and expeditious trial, as this is a common objective in all criminal courts, regardless of their national or international nature. Examining the various means in which different procedural systems deal with this principle does not mean making a comparison to determine which one is the best. Rather, we will be searching for the lessons that can be drawn from past experience, so as to identify the most efficient and effective means in judicial investigation and the battle against impunity.

Scope of the debates:

7) The colloquium will open with a general debate on the definition of the most serious crimes which face our world today and the problem of jurisdiction. This debate will allow us to establish the proper global context for the following discussion, which will then examine the challenges which confront those who prosecute and judge such crimes:

- a) How must evidence be collected and dealt with?
- b) How can a fair balance be guaranteed between the various parties during the proceedings?
- c) How can victims be taken into account?
- d) How can political pressures be dealt with and overcome?
- e) How to ensure that a trial is fair, according to the universally recognized human rights standards?

8) The importance of fair and transparent proceedings when judging the most serious crimes cannot be over-emphasized. Designed to ensure the fairness of trials, whatever the case at hand may be, procedural rules make up a fundamental characteristic of any criminal system at national and international levels.

9) Thus, the main topics that will be addressed are:

- a) Investigation, presentation and admissibility of evidence:

How can evidence be produced during the proceedings? What are the general principles governing the examination of evidence? To what extent can parties be compelled to disclose evidence? What rules of procedure shall be accepted for the use of evidence with the view of speeding up the proceedings? What role must/can a judge play? The experience gained in international criminal courts has revealed the numerous difficulties which confront the various parties at the investigation stage, especially when it comes to accessing evidence, which is often destroyed or unavailable. At the national level, it can be even more difficult, when prosecuting these crimes involves transboundary cooperation.

- b) The way a trial is carried out and the role played by the prosecution, defence and judges:

Is the meaning of the phrase “equality of arms” limited to a strict equality in the proceedings or may it imply more judicial intervention before and during the trial? Can the different interpretations and mechanisms which exist within the variety of national legal systems be reconciled?

c) The role of the victims:

Victim participation has been highlighted in the Rome Statute which expressly affords victims the right to participate, with judicial discretion. This right is set against the background of the United Nations Declaration of November 1985. New courts will have to apply these guidelines to their cases and will have to answer some of the following questions: To what extent will victims take part in the proceedings? How is it possible for victims to attend trials themselves or must they be represented in trials? How will judges ensure a fair trial, fully respecting the rights of the accused, while taking consideration of victims and ensuring their safety? Similar problems arise at the national level and ways of treating them vary according to the different legal systems. The national responses may not be transferable for the judging of the most serious crimes.

d) Political environment and the independence of justice:

The most serious crimes are usually committed in a troubled, unstable political environment, where the independence of the judiciary from the executive is a major challenge. Various methods can be used to overcome these obstacles: international courts, joint *ad hoc* courts, and transitional justice mechanisms.

10) This colloquium will conclude with a plenary session on fair and expeditious trials which will address the attempt to balance fairness, speed and human rights in criminal trial procedures. In short, the object of the project is to examine how effective the different responses to such challenges are and how to ensure fair and expeditious trials. We will use this analysis to propose a general framework that could be used in these areas, "The Hague Framework". This framework could contain suggestions for a more efficient national legislation, the establishment of an effective interaction between national and international levels, and the development of transboundary cooperation. Furthermore, it may also become a point of reference for further research and inquiry.