



AMSTERDAM LAW FORUM CONFERENCE 2024

INTERDISCIPLINARY DIALOGUES

Can we navigate conflict resolution in the context of international law?

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ALF CONFERENCE REPORT 2024

Can We Navigate Conflict Resolution in the Context of International Law?

The last decade has been marked by the proliferation of armed conflicts in various regions worldwide, causing unprecedented levels of death and displacement for millions of people. This trend has led to a growing demand for justice and accountability for victims of armed conflict, especially amidst organized violence against civilian groups. However, the effectiveness of international, regional, and national legal mechanisms to address atrocities during armed conflicts remains limited.

Against this background, the Amsterdam Law Forum at the Vrije Universiteit Amsterdam hosted an interdisciplinary conference on May 16, 2024 bringing together researchers and practitioners to discuss both the capacities and limitations of legal frameworks in addressing armed conflicts.



Researchers from criminology, psychology and law were joined by practitioners from the organizations UpRights, Yazidi Legal Network, and the Kurdistan Center for International Law, who together shared their views on the capacity of international law to respond to the evolving landscape of global security, using Ukraine and Iraq as case studies.

EXECUTIVE SUMMARY

The conference sessions highlighted the complex relationships between domestic and international perspectives on armed conflict and law, while also pointing to their interdependencies with political, economic, and cultural factors. Notable among these were:

- **Resistance Towards International Criminal Law (ICL) & Impunity**
- **Misalignment of International Legal Framework**
- **Security & Economic Influences**



- **Resistance Towards International Criminal Law (ICL) & Impunity:** The ambiguous and selective engagement of powerful states such as the US and Russia with ICL frameworks negatively impacts the effectiveness and credibility of efforts to enforce international legal standards. Resistance ranging from public defamation over deploying legal measures to threats against prosecution services and other investigating bodies obstruct equal access to justice for victims of international crimes. This has affected international and regional institutions such as those affiliated with the United Nations, the International Criminal Court (ICC), or the European Union (EU) which remain to a large extent unable to mobilize joint action. This lack of "solidarity justice" reinforces erosion of trust and extends to other organizations working in criminal justice.

EXECUTIVE SUMMARY

- **Misalignment of International Legal Frameworks:** International legal frameworks and conflict resolution concepts often do not align with local contexts, potentially causing more harm than good. While countries like Ukraine and Iraq both have invested in efforts to allow for the prosecution of international crimes within their respective domestic legal systems, the question remains what to do in cases where the harm caused by mass violence does not translate neatly into legal terms or across cultures. Cultural biases continue to shape the application and interpretation of legal norms, often leading to arbitrary or hypocritical enforcement of standards. Efforts to train and build capacity for domestic judges and investigators are necessary but not sufficient to address these challenges.
- **Security & Economic Influences:** The diversity of laws and regulations within the international system can enable a selective application of laws, effectively legalizing warfare under certain conditions. Furthermore, the lack of comprehensive and long-term strategies for collaboration, particularly in evidence management, not only hinders the effective investigation and prosecution of international crimes but also potentially puts people who have provided evidence and testimony at risk. While often operating in the background, financial interests and economic strategies influence selective law enforcement, providing legal loopholes for continued violence. Additionally, peace process mechanisms such as Disarmament, Demobilization, and Reintegration (DDR) programs can conflict with other post-conflict mechanisms like Transitional Justice (TJ), reigniting debates over justice versus peace in post-conflict settings.

THE SPEAKERS: CHAIR & OPENING LECTURES



Joris van Wijk directs the research programme Empirical and Normative Studies, directs the master programme International Crimes, Conflict and Criminology at the Vrije Universiteit Amsterdam and is a fellow of the Center of International Criminal Justice (CICJ). Joris served as chair of the panel discussions.



Dylan Drenk is a trained psychologist and current PhD candidate in Criminology at Vrije University Amsterdam with a focus on the role of culture in eyewitness evidence provided to international courts and tribunals. Dylan has previously worked as a former psychosocial expert at the International Criminal Court (ICC) while his views reflect that of his research and do not represent those of the ICC.



Yarin Eski is an Associate Professor in Public Administration at Vrije Universiteit (VU) Amsterdam where he also co-directs the Resilience, Security and Civil Unrest (ReSCU) Lab. Specializing in criminology, public governance, and policing, Yarin has conducted research and published on diverse topics such as his Criminological Biography of an Arms Dealer (2022, Routledge), A Criminology of the Human Species (2023, Palgrave Macmillan). His most recent work focuses on Crime, Criminal Justice & Ethics in Outer Space (forthcoming 2024, Routledge).

THE SPEAKERS - PANEL UKRAINE



Sergey Vasiliev is an Associate Professor of (International) Criminal Law at the Law Faculty of the University of Amsterdam. He is also the Director of the LLM International Criminal Law (Joint Program and International and Transnational Criminal Law tracks) and the inaugural Director of the Amsterdam Center for Criminal Justice. His current research focuses on the institutional, rule-of-law and governance aspects of international (criminal) adjudication. He has published widely in the field of international criminal justice and is part of the authors' team for the leading textbook *An Introduction to International Criminal Law and Procedure*.



Asa Solway is the co-founder of UpRights, a Hague-based NGO working to establish meaningful partnerships with civil society, national authorities, and international organizations to assist those most affected by international crimes, conflicts, or instability. Within UpRights, Asa has worked on the Benchbook on the Adjudication of International Crimes in Ukraine, a resource created in partnership with the Ukrainian Supreme Court and others. Prior to founding UpRights, Asa worked as a lawyer with various international organizations and criminal tribunals, including the OSCE High Commissioner on National Minorities and the Special Monitoring Mission to Ukraine, the International Criminal Tribunal for the former Yugoslavia and the Residual Special Court for Sierra Leone.



Bogdana Cherniavska is an Associate Professor of the Department of Theory and History of State and Law at the National Academy of Management, Kyiv and in the final stages of acquiring a practicing license to work as a Lawyer in Ukraine. Bogdana is also a Visiting Criminology Fellow at the Faculty of Law, Amsterdam where her focus lies on assessing the adaptability of international law amidst evolving global conflict dynamics. In her view, there is a strong need for innovative approaches that address the multifaceted challenges in the context of the war in Ukraine.

THE SPEAKERS - PANEL IRAQ



Jela Keyany is the Co-founder of the Yazidi Legal Network, a non-governmental organization that assists the Yazidis in achieving recognition of and accountability for international crimes committed by ISIS in 2014. She particularly is concerned with how international accountability efforts can be more effectively connected with domestic mechanisms through collaborative investigations, training, and advocacy.



Hossein Mojtahedi is a lecturer and PhD candidate in the Criminal Law and Criminology department at Vrije Universiteit Amsterdam. In his research project ‘Transitional Justice and Prevention of Radicalization in Iraq’s post-IS Landscape’, he combines legal doctrinal analysis and empirical research to explore locally driven transitional justice mechanisms.



Hawre Ahmed is the Co-Founder and Executive Director of the Kurdistan Center for International Law (KCIL), a non-governmental research center that combines advocacy with legal analysis to protect fundamental human rights principles in the Kurdistan Region of Iraq (KRI). Working previously as a human rights lawyer in Iraq and KRI, Hawre knows of the opportunities and obstacles in judicial proceedings seeking to address crimes committed in the region.

YARIN ESKI

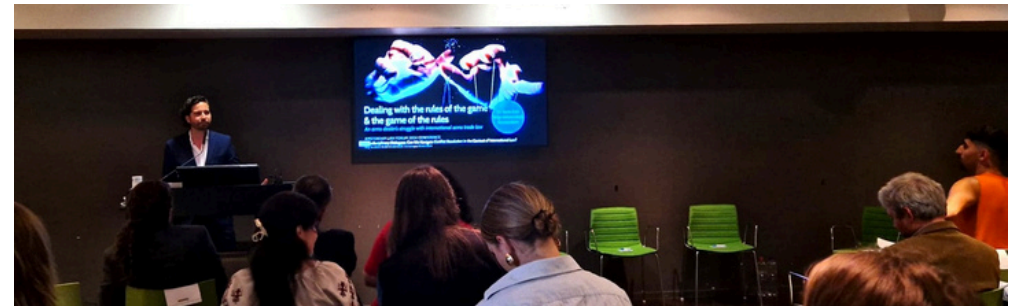
DEALING WITH THE RULES OF THE GAME AND GAME OF THE RULES

In his presentation, Yarin Eski positioned the motivations, challenges, and ethical considerations expressed by the international arms dealer Constantine against the wider international political dynamics of today's armed conflicts.

To contextualize his research, Yarin first elaborated on his ethnographic approach as the 'biographer in the background' who seeks to "portray Constantine's life through his own eyes" while stressing that doing so necessarily required sharing parts of his own biography in the process.

The result is an intersubjective rather than objective account of today's war industry, whereas subjectivity is intentionally used in the research design to highlight the ambiguities of moral judgments.

While Constantine refers to his own "heartlessness" and "lack of moral compunction" as reasons for why he is involved in arms dealing, he also struggles at times with his involvement in what society deems 'controversial industries', despite operating strictly within the law.



At the same time, society's own ambiguous and contradictory attitudes towards the trade and use of weapons in conflicts such as Ukraine or Gaza illuminate the more systemic flaws of international laws and legal practices that have the potential to escalate rather than regulate armed conflicts.

According to Yarin, incoherent interpretations and selective applications of existing arms trade laws fail to effectively inhibit the trade of weapons used against civilian populations during armed conflicts. Furthermore, legal loopholes enhance opportunities for manufacturers and governments to economically benefit from exporting these weapons.

Echoing Constantine's comparison of the period before export embargoes to the commercialized "Black Friday" phenomenon, Yarin concludes that it is the entire system that is flawed—the laws embedded in the system, as well as the political and economic interests that drive it.

DYLAN DRENK

TESTIFYING ACROSS CULTURES - TRIALS AND TRIBULATIONS

In his presentation, Dylan shared insights from his current research on the different ways culture influences the relationships between witnesses of international crimes, investigating authorities, and court practitioners, and with what effects.

Drawing from his experience as a former psychosocial expert at the International Criminal Court, he explained how language issues, cultural biases and witnesses' unfamiliarity with legal cultures significantly impact judgments in legal proceedings, with severe consequences for witnesses, victims, and perpetrators of mass violence.

Furthermore, Dylan pointed out that expert witnesses called to testify about cultural practices can perpetuate cultural stereotypes, while legal defenses building on the cultural specifics of a case are susceptible to invoking negative cultural stereotyping, with no standardized way to assess and thus question their validity.

Likewise, legal practitioners' own cultural frameworks regularly lead to misinterpretations of testimonies about mass violence, as can be also frequently observed in asylum hearings.

Interpreters, essential for avoiding miscommunication and conveying cultural nuances between languages, face the delicate task of not only providing literal translations but also mediating communication between witnesses and investigators - a role that is in itself prone to risks of misrepresentation.

Overall, Dylan's presentation highlighted the mismatch between the lived experience of people during armed conflicts and the available legal means to adequately understand and represent them, emphasizing the need for more culturally sensitive approaches to enhance the outcomes of criminal justice efforts.



PANEL I: LEGAL IMPLICATIONS OF THE CONFLICT IN UKRAINE



The panel started with a discussion on the capacities and limitations of the International Criminal Court (ICC). Some panelists pointed to the limited budget and the need for increased donations from state parties to enhance its investigative capacity.

At the same time, and while the ICC is not allowed to accept funding earmarked for specific situations, the "power of the purse" is also seen as a threat that can potentially undermine the Court's legitimacy and credibility.

The discussion also highlighted the political influences exerted over international courts and tribunals, ranging from defining whose prosecution is not in the interests of justice (Afghanistan) to the intimidation of ICC personnel by powerful nations such as the U.S. and Russia when their interests are threatened.

Despite the current 'renaissance' of international criminal law and selective cooperation between the ICC and the U.S. leading to the arrest warrants against Kremlin officials, skepticism regarding similar efforts in relation to the situation in Palestine remains, particularly due to U.S. policies that sanction those supporting ICC investigations against its allies.

In this context, the problem of double standards in applying international law was highlighted as a key source of frustration which is detrimental to the notion of 'solidarity justice'.

PANEL I: LEGAL IMPLICATIONS OF THE CONFLICT IN UKRAINE

The panel also delved into the challenges of adjudicating international crimes during the ongoing conflict in Ukraine. Ukrainian judges face the challenging task of 'learning by doing' while remaining unbiased and impartial in a highly politicized environment.

Another significant legal challenge is that crimes against humanity are not criminalized under Ukrainian law, forcing prosecutors and judges to rely on statutes related to war crimes and genocide for the time being.

At the same time, while international support especially in terms of judicial capacity building is deemed crucial, the panel also emphasized the importance of adhering to the principle of legality and that war crimes trials are adjudicated in compliance with the European Court of Human Rights (ECHR)



While the discussion focused mainly on prosecuting international crimes, we were also reminded that the conflict involves multiple fronts beyond military hostilities, including cyberattacks and disinformation campaigns by various non-state actors aimed at shaping public perception and instilling fear.

PANEL II: TRANSITIONAL JUSTICE AND PEACEBUILDING IN POST-IS IRAQ

The panel on Iraq started by discussing the investigations that were conducted by UNITAD (United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL).



These investigations, while important starting points, have been hampered by a lack of resources, effectiveness, and cooperation with the Kurdish government, leading to a “hasty evidence collection” without having in place a proper strategy for how and under what circumstances this evidence will be used, and by whom.

UNITAD’s focus on the crime of genocide and more generally on the persecution of minorities has further complicated the relationships within the population which in addition to multiple perpetrators is also split into various victim groups as a result of needing to fit the narrow legal categories.

Furthermore, geographical, cultural, and educational barriers make it hard for victims to access international investigative bodies and international courts. Hence, panelists underlined the pressing need for capacity building within domestic courts to handle these cases effectively.

The discussion also highlighted the need for increased international collaborative investigations and better coordination between Iraqi authorities and European states, especially given the involvement of large ISIS networks operating in Europe. However, proposals to establish a centralized investigative body or tribunal by the EU so far have been futile.

PANEL II: TRANSITIONAL JUSTICE AND PEACEBUILDING IN POST-IS IRAQ

In the absence of international commitment to establish centralized accountability measures, high responsibility is placed on non-state actors such as the Kurdish government.

A previous attempt by the Kurdistan Parliament to establish a special court for ISIS crimes was declared unconstitutional, expressing reluctance around the inclusion of foreign judges and pointing to the incompatibility of international criminal law's approach to sentencing with Iraq's use of capital punishment.



The panel also discussed the challenges related to Disarmament, Demobilization, and Reintegration (DDR) mechanisms in post-IS Iraq.

The already constrained and overwhelmed Iraqi process of transitional justice finds itself grappling with the aftermath of widespread devastation and the enduring legacies of IS, marked by a significant number of victims, incarcerated perpetrators, and hundreds of thousands of internally displaced persons and IS-affiliated families residing in camps.

In this context, the country faces yet another intractable and thorny political-security dilemma: the DDR mechanisms for the paramilitary groups who fought alongside the government against ISIS.

Various questions were discussed in this regard, such as what the optimal DDR framework for such groups in the context of Iraq is, and whether there is any way to align DDR and TJ to minimize the potential tensions between these two processes.

ABOUT THE AMSTERDAM LAW FORUM

THE AMSTERDAM LAW FORUM IS A STUDENT-RUN INITIATIVE AIMING TO CREATE SPACES FOR DISCUSSION ON EMERGING ISSUES IN INTERNATIONAL LAW. MORE INFORMATION ABOUT ALF'S ACTIVITIES CAN BE FOUND ON OUR WEBSITE:

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