09.15  Opening of the conference
Chair: Patrycja Grzebyk (University of Warsaw, Poland)

09.30-11.00  Panel I Difficulties in prosecution of international crimes before national courts
Chair: Patrycja Grzebyk (University of Warsaw)

Karolina Wierczyńska (Polish Academy of Sciences)
Wrongful application of international crimes’ definitions in domestic jurisdiction in the light of the relation of state and the International Criminal Court

Patrik Rako (Slovak Academy of Sciences, Slovakia)
The difference: when similar legal basis doesn’t mean the same jurisprudential outcome

Patryk Gacka (University of Warsaw, Poland)
From Vaziliauskas to Drėlingas. The European Court of Human Rights on the legality of domestic criminalization and prosecutions in genocide cases.

Harsh Mahaseth (O.P. Jindal Global University, Sonipat, India);
Akhita Tiwary (Government Law College, Mumbai, India)
Covering the divide between national and international criminal law: a look at Nepal’s transitional justice process and the ICC

11.30-13.00  Panel II Comparative perspective
Chair: Hanna Kuczyńska (Polish Academy of Sciences, Poland)

Riccardo Vecellio Segate (University of Macau, Macau)
Resisting domestic courts’ universal jurisdiction over international crimes: A comparative study of China and Italy

Karolina Aksamitowska (Swansea University, UK)
The Domestic Legal Framework for the Prosecution of Core International Crimes in Iraq and Ukraine – A Comparative Perspective

Karolina Sikora (Jagiellonian University, Poland)
The protection of a victim of an international crime in Polish law and the Rome Statute – a comparative analysis

14.00-15.30  Panel III Sexual violence
Chair: Joanna Nowakowska-Małąsecka (University of Silesia, Poland)

Bradey Wright (University of Notre Dame, USA)
Sentencing Rape in Connection with Genocide: The Shortcomings of the ECCC

Barbara Janusz-Pohl (University of Adam Mickiewicz, Poland)
Sexual violence - as a material element of crimes against humanity. Selected issues.

Shayana Sarah Vieira de Andrade Mousinho (GEDAI-UFC/URCA, Brazil);
Arneile Rolim Peixoto (GEDAI-UFC/Uminassau, Brazil)
Women’s vulnerability at armed conflicts and the biopower: a study on Korean sexual slaves of the Pacific war
9.30-11.30 Panel IV Asian Perspective

Chair: Andrzej Jakubowski (University of Amsterdam, the Netherlands)

Ishita Chakrabarty (Quill Foundation, India)
India’s Experience with Mass Crimes: Lessons to Give, Lessons to Take

Aman Kumar (IFIM Law School, India)
Absence of India’s International Criminal Law obligations in its domestic laws

Ayesha Jawad, Sadia Farooq (Kinnaird College for Women, Pakistan)
Pakistan’s Criminal Law and Its Compliance with International Standards

12.00-13.30 Panel V European perspective

Chair: Patrycja Grzebyk (University of Warsaw, Poland)

Bartłomiej Krzan (University of Wrocław, Poland)
The German Code of Crimes against International Law (Völkerstrafgesetzbuch): An External Perspective

Alexandre Guerreiro (University of Lisbon School of Law, Portugal)
Prosecuting international crimes: the Portuguese experience

Tamás Hoffmann (Centre for Social Sciences Institute for Legal Studies, Hungarian Academy of Sciences Centre of Excellence, Hungary)
The Crime of Genocide in Hungarian Criminal Law – A Seemingly Perfect Implementation

Nedžad Smailagić, ([University of Zagreb, Croatia; Sarajevo School of Science and Technology, Bosnia and Herzegovina]
Penalization of International Crimes in Bosnia and Herzegovina: Diversity of Applicable Law and Implications of the Principle of Legality
The Institute of Justice of Warsaw is a state organisational unit subordinate to the Minister of Justice. The Institute performs scientific and research activities in the area of lawmaking and the application, axiology and social operation of law. It also studies the phenomena of crime and social pathology.

Institute of Justice conducts studies of lawmaking and the application, axiology and social operation of law as well as the phenomena of crime and social pathology. The Institute disseminates the results of these studies and engages in legal education. Areas of the Institute’s research include, in particular: the functioning of legal institutions in the practice of the justice system; the effectiveness of legal protection bodies, legal axiology and the professional ethics of legal professions; the role of jurisprudence and grounds for its performance; the system, organisation and functioning of justice bodies, also against the background of social environment; the causes and conditions of violations of law; the size, structure and dynamics of crime and other pathological phenomena and behaviour; the enforcement of legal sanctions and social rehabilitation of offenders; interdisciplinary and comparative studies of the historical development of institutions of Polish law, including those of Polish law’s conformity with the norms and standards of international and EU law. In order to disseminate the results of its studies, the Institute is authorised to organise domestic and international conferences, seminars and engage in publishing and documentation activities.

Conducting its research, the Institute of Justice extensively uses scientific studies of case files of judicial and prosecutorial proceedings, reviewing ca. 10,000 files each year. This significant involvement in case file research distinguishes the Institute from other Polish legal research organisations. The Institute also conducts legal and comparative analyses, compiles statistical and economic reports and performs survey studies. More than 400 papers and 70 books have been written by the staff of the Institute’s five sections (Section of Criminal Law and Process, Section of Civil Law and Process, Section of Family Law, Section of Economic Studies of the Justice System and Section of Fundamental Rights).

As part of its official business, the Institute works with courts, other justice bodies and the National School of Judiciary and Public Prosecution. The Institute engages in international cooperation, taking part in international research programmes implemented by such bodies as the European Commission, Eurostat and the Council of Europe.
WELCOME

SPEAKERS
Marcin Wielec - Head of the Institute of Justice in Warsaw – a graduate of law at the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw. Since 2003, he has been a research and teaching assistant and since 2008 an assistant professor at the Department of Criminal Procedure of the Faculty of Law and Administration within the Cardinal Stefan Wyszyński University in Warsaw. Now, he is the head of the Department of Criminal Procedure on this Faculty. Author and co-author of several books, a number of scientific articles, as well as expert opinions and legal opinions for public authorities in Poland. A graduate of the MBA - Top Public Executive program at the Business School University of Navarra in Barcelona and the National School of Public Administration Lech Kaczyński in Warsaw. A member of the Program - Scientific Council of the quarterly „Probacja”. Member of the Scientific Council of the Professor Jan Sehn Institute of Forensic Research in Kraków, a member of the Program Council of the Scientific Scriptures „Central European Journal of Comparative Law”, issued by the Institute for Comparative Law Ferenc Mádl in Budapest, lawyer.

Klaudia Łuniewska - polish lawyer. A graduate of law at the Faculty of Law and Administration of the Cardinal Stefan Wyszyński University in Warsaw, author of scientific articles, speaker and organizer of international and national scientific conferences. Her research interests focus on criminal procedure law, criminal law, human rights, international law, law of new technologies.
OUR PANELISTS AND THEIR ABSTRACTS
Although it is normatively necessary that national courts follow the uniform approach to the interpretations of the provisions of the Rome Statute – the practice shows that international law is not uniformly implemented into domestic systems or uniformly interpreted and enforced by different domestic courts. States either apply proper legislation concerning the international crimes, consistent with the provisions of international law, or, what is more often situation - apply unsuitable definitions of international crimes into their penal codes, inconsistent with international law. It definitely brings confusing results at least for the participants of judicial conduct (in extreme situations people were prosecuted for crimes against humanity although their crime did not fulfill the elements of such crime according to international law). Additionally sometimes instead of prosecuting international crimes states adjudge ordinary crimes, although clearly the elements of the crime fulfill the elements of international crimes. It obviously falls under the autonomy of the state, but could cause certain dilemmas bringing inter alia questions whether the state is completely autonomous in shaping its own system of justice and whether the qualification as ordinary crime will reflect the gravity and seriousness of committed crime? etc.

Definitely the lack of uniform definitions of international crimes and prosecuting ordinary crimes instead if international ones says a lot about the state’s approach to international law, and awareness concerning international law of a judge passing the judgement. It could also directly impact the situation of person suspected or accused of committing crimes. The problem put in this research refers mainly to the dilemmas of the ICC and how it should assess such activities of states taking into account its competence to determine the admissibility of the case? Can the ICC properly respond for national wrongful application of definitions of international crimes or lack of application of international law in general?

Wrongful application of international crimes' definitions in domestic jurisdiction in the light of the relation of state and the International Criminal Court.
The year 2018 highlighted the rise of ‘identity politics’ as a global phenomenon. The idea is not new, but what makes the newest iteration of this movement, particularly interesting is the fact that it has become part of mainstream politics. Judges are not immune from this issue either, even though they are not “subject to the weather of the day, they are not immune to the spirit of the era”. Harsh clashes on every level between government leaders in both the executive and legislative branches over narrative have contributed to creating what is now known as the “post-fact truth” phenomenon. Tension between human rights and national security movements have inevitably arisen, and constitutions, along with constitutional judges, are at the center of it. As always in the interconnected world, the tensions have also coincided, not coincidentally in different parts of the world including both Slovakia and International criminal tribunals and courts. The truth though is that similar constitutional background does not assure the same jurisprudential outcome. This paper will identify how common constitutional background of protecting the rule of law give nations the opportunity to prosecute and sentence foreign national terrorists on their own constitutional ground and jurisdiction. Inevitably, the possible judiciary’s attempt to sentence these kinds of perpetrators should lead into the same outcome no matter whether you are in the International criminal tribunals or in Slovakia. Alas that is far from the truth. Examples of this discrepancy based on the recent cases before the both highest Courts: The Cases of International crimes before the Slovak Constitutional Court and Cases of Afghanistan and Situation in Palestine before the International Criminal Court, the outcomes of which confirm this narrative. Moreover, they show that it is not necessarily a matter of the Constitution or a statutory legislation put in place, but that decisions can hinge solely on a legal (mis)interpretation of the constitutional ground and jurisdiction. Inevitably, the possible judiciary’s attempt to sentence these kinds of perpetrators should lead into the same outcome no matter whether you are in the International criminal tribunals or in Slovakia. Alas that is far from the truth. Examples of this discrepancy based on the recent cases before the both highest Courts: The Cases of International crimes before the Slovak Constitutional Court and Cases of Afghanistan and Situation in Palestine before the International Criminal Court, the outcomes of which confirm this narrative. Moreover, they show that it is not necessarily a matter of the Constitution or a statutory legislation put in place, but that decisions can hinge solely on a legal (mis)interpretation of the national constitution or court decisions. As demonstrated by the case before the Slovak Constitutional Court. In this paper, we will examine the circumstances which in the past have led to similar failures on the side of the Slovak Constitutional Court and its implications to the discrepancy in comparison with the recent International Criminal Court decision. This can lead into a matter of a principle, i.e. how having a well-suited judge at the court is essential for the rule of law and legal certainty. Finally, I will argue that that International norms (e.g. the Universal Declaration of the Human Rights), which involve measures on the sentencing of crimes against humanity in the respect of the human rights protection; ensure policy coherence in the intersection between national security and human rights; and allow the general public to measure the legal protection provided by the highest courts of the land through both of these lenses, might provide a framework for responding to the diminishing protection of the human rights consequently holding those actors accountable.

Patrik Rako, JUDr. PhD., LL. M (Hongkong), LL. M (Emory) studied law (Bc., Mgr., JUDr.) at trnava University, Faculty of law, Criminal Legal Studies(Ph.D.) studied at Paneuropean University where he defend his Thesis – Right to a Fair Trial in the Sources of Criminal Law. Postgraduate studies finished in ADR, Investment Law, Banking a China Foreign Trade Law at City University of Hong Kong (LL.M 2014). During his studies taught criminal law at Paneuropean University where he published almost 40 studies, articles and conference papers. After his studies in Hong Kong was accepted to Advanced Legal Studies at Emory University School of Law in Atlanta, USA (LL.M 2016). Immediately started to work as research associate in the Center for the study of Law and Religion at Emory Law School, where he participates on project implementation Restoring Religious Freedom from European and international view. Consequently, became a member of the team which prepared three Amicus Briefs to the SCOTUS in Little Sisters of the Poor, David A. Zubik v. Sylvia Burwell and Knight v. Thompson. Also was a team member to the Special Assistant Attorney J. Sekulow in case of Scott v. State of Georgia before Supreme Court of Georgia. Served as supervisor to the moot court team of Emory Law. Furthermore, he was in the Kessler-Edison programme with National Institute for Trial Advocacy to improve his trial skills, as well as in course organized by Center for Dispute Resolution, focused on Fraud against the Government and Whistleblower Actions. He also served in the The Carter Center in the project Countering Daesh, during his stay at Emory Law School received Pro Bono Medal 2016, as well as Certificate of Recognition for Excellence in Scholarship and Dedication to the Field, from the Center for Study of Law and Religion. In his academic work, he presented at conferences in Venice, Oxford, Israel, California or Berlin. Lastly served as Special Counsel for European Center for Law and Justice in Situation in Islamic Republic of Afghanistan No.: ICC-02/17 OA OA2 OA3 OA4 before ICC in Hague.
The article deals with the practice of prosecuting the crime of genocide (allegedly) committed by individual former state agents of the Soviet communist regime against the Lithuanian population in the 1940s and 1950s. The presentation reflects on judgments of both Lithuanian courts and the European Court of Human Rights in two related cases of Vasiliauskas and Drėlingas.

In the paper, I defend the position that the attacks against the partisans (pro-independence underground) in the mid-1950s on the territory of current Lithuania should not have been regarded by the Lithuanian courts as genocide. This contention stems from the fact that the definition of this crime adopted in the Lithuanian legislation in the 1990s was and remains broader in scope than the definition currently in force in international law. The Lithuanian definition of genocide covers not only four groups mentioned in the 1948 Genocide Convention, but also political groups. National courts, in turn, do not have the power to extend international criminalization (retrospectively, and prospectively for that matter).

Against this backdrop, it could be argued that acts committed by the Soviet apparatus were directed primarily at a political, rather than a national or an ethnic group. As such, they were not crimes of genocide pursuant to the international definition of this crime, and – in effect – the convictions of Vasiliauskas and Drėlingas violated the principle of legality enshrined in Article 7 ECHR.

Finally, in the paper I also defend the general thesis according to which the adoption of broader definitions of international crimes (genocide and others) in the national legislation, while using the same labels to describe them, is undesirable (fair labelling) as it leads to the state of criminal eclecticism in horizontal and vertical terms. In addition to the general confusion about whether a given crime is still international or not, it may also have a negative impact on the protection standards (e.g. Article 7 ECHR) derived from international human rights law.

Patryk Gacka – PhD Candidate at the University of Warsaw (Poland) where he pursues the PhD project concerning the status of victims in the proceedings before international criminal tribunals. Patryk’s academic interests lie in the field of international and comparative criminal law. ORCID: 0000-0002-0762-7418.

From Vasiliauskas to Drėlingas. The European Court of Human Rights on the legality of domestic criminalization and prosecutions in genocide cases.
As of January 2020, 122 countries are State parties to the Rome Statute of the International Criminal Court (‘ICC’). Out of those 122 countries, only 18 are from the Asian continent. Many Asian nations consider criminal law and justice a sovereign matter that falls within domestic jurisdiction. Hence, they are against external intervention.

Nepal is one such nation. With the civil war ending over thirteen years ago, Nepal’s transitional justice process is still in a state of flux. The Nepalese peace process includes a Truth and Reconciliation Commission and a Commission on the Investigation of Disappeared Persons to address violations of rights. While the two separate commissions were established in 2014, the inherent flaws in the laws, political interference in selecting the members of the commissions, inadequate resources and non-cooperation of stakeholders have significantly impeded their work. Therefore, the promises for truth, justice, and reparation to the victims of the armed conflict remain unfulfilled. The culture of impunity at the root of the conflict remains firmly in place and continues to act as an impediment to real progress. Neither the 2006 Comprehensive Peace Accord nor the 2007 Interim Constitution mentions criminal justice specifically as part of a transitional justice process. Despite Supreme Court rulings demanding proper redressal, and international organizations even condemning the Government’s inaction in this aspect, no significant steps have been taken.

Furthermore, despite participating in the 1998 Rome Conference, Nepal has still not signed the Rome Statute. It is argued that misconceptions about the retroactivity effect of the Statute, an inefficient internal criminal justice system, and a fragile political transition have seriously hampered its accession process. There is also a tendency to withdraw criminal charges on the basis of politically motivated crimes, which questions Nepal’s commitment to national and international standards of rule of law. Notwithstanding its own transitional justice process, it is crucial for Nepal to sign the Rome Statute. This would be helpful in addressing impunity within the country, given that the transitional justice system and the ICC could work complementarily.

Hence, this paper will explore the inconsistencies between international criminal law principles and domestic legislations while addressing questions of impunity, using Nepal as an example. The authors intend to examine the key causes of the failure of the transitional justice process. In doing so, they will analyze the judgments delivered by the Supreme Court of Nepal, and the steps taken by the Government, the media and the NGOs to uphold the international standards that Nepal has committed to. The reasons behind Nepal’s disinclination to join the ICC will also be examined. Ratifying the Rome Statute would play an important role in the ongoing development of international law in the country, and lead to greater recognition of human rights, international justice and accountability, thus, further emphasizing the importance of the rule of law. It is submitted that the benefits of ratifying the Rome Statute outweigh any disadvantages, real or perceived, and thus, domestic steps need to be undertaken for eventual ratification.

Covering the divide between national and international criminal law: a look at Nepal’s transitional justice process and the ICC

Harsh Mahaseth is an Assistant Lecturer at Jindal Global Law School, and a Research Analyst at the Nehginpao Kipgen Center for Southeast Asian Studies, Jindal School of International Affairs, O.P. Jindal Global University. He completed his Master of Laws (LL.M) in Asian Legal Studies from the National University of Singapore.

Akshita Tiwary is a 3rd year student at Government Law College, Mumbai. She is highly interested in public international law and human rights. She also serves as the Co-Managing Editor of JURIST Commentary Service.
The prosecution of international crimes by specialised non-domestic courts and tribunals raises several concerns, not least in evidentiary assessments; thus, the future of international criminal justice shall be relocated to domestic trials by reliance on universal jurisdiction (“UJ”). While a few “Western” jurisdictions have recently started to employ this legal device, “Eastern” jurisdictions have consistently voiced suspicion at this trend, while other Western jurisdictions seem not yet ready to embrace it, either. Among those jurisdictions which declare themselves unwilling or unready to face this relatively new challenge, the PRC and Italy stand out, owing to their regional appeal, their involvement in (alternative?) discourses on global justice, and their millenary intertwined roots as legal civilisations. Hence, the present study investigates these two jurisdictions comparatively, as far as their stances regarding UJ’s applicability over international crimes (and practice thereto) are concerned. As for China, the overarching reason why it refrains from exercising UJ over international crimes rests with geopolitical self-restraint, expressed through the respect for third jurisdictions’ sovereignty (and, where applicable, related officials’ immunities), the principle of non-interference, as well as the principle of state consent in IR. To exemplify, China objected to the inclusion of war crimes in NIACs within the scope of mentioned Statute’s rules, arguing that UJ should be grounded in codification rather than progressive development of international customs. Mirroring its stance vis-à-vis the ICC, China is wary of deferring to UJ even at the domestic level. China’s reluctance to exercise UJ can also be inspected on a crime-by-crime basis; for instance, with regards to genocide, political arguments from the Chinese standpoint can be posited both against to and in favour of a deeper engagement with UJ. Contrary to China, Italy’s lack of UJ practice can be explained through the lenses of its overenthusiastic support for the ICC as the most appropriate forum for prosecuting international crimes. In fact, the exercise of UJ by Italian domestic courts is hindered by a series of obstacles, and Italian legislation does not satisfactorily cater for international crimes. Although the immediate reasons why China and Italy resist UJ in theory and practice differ, these two countries’ approaches to international justice in fact converge at a deeper foundational level around core historical conservative preferences.
The conflicts in Eastern Ukraine and Northern Iraq, ongoing in parallel in recent years, ravaged the regions of Donbas and Sinjar among others, with few international accountability efforts undertaken to date to deliver justice to the victims of mass atrocities. With the impeding perspective of lasting impunity – stemming from the lack of initiatives concerning the creation of criminal tribunals at the regional or international level, or the referral to the International Criminal Court by the United Nations Security Council – the domestic authorities in Iraq and Ukraine have recently taken decisive legislative and institutional steps at the domestic level to prosecute perpetrators of core international crimes. These initiatives include the creation of a specialised department within the General Prosecutor’s Office in Ukraine tasked with, among others, the prosecution of war crimes committed during the ongoing conflict in Donbas and the initiative of the Kurdistan Regional Government in Iraq to establish a hybrid criminal tribunal to try perpetrators of international crimes. Building upon the important work undertaken by the civil society organisations, as well as the author’s own doctoral research and contribution to the MATRA Project on ‘Strengthening Ukraine’s Capacity to Investigate and Prosecute International Crimes’, this paper explores the domestic legal framework for the prosecution of core international crimes in Iraq and Ukraine.

The paper re-interprets the initial assessment of the legacy of the first historic Iraqi High Tribunal in the context of contemporary accountability and investigative mechanisms (including hybrid courts and domestic war crimes trials, as well as UN investigative mechanisms), adopts a TWAIL framework and relies methodologically on the functional-institutional legal comparative method, to argue that despite their shortcomings, the contemporary domestic/hybrid accountability efforts in Ukraine and Iraq have the potential to conduct successful international criminal investigations and prosecutions, as well as secure convictions for core international crimes. Moreover, these accountability initiatives could bring the sense of “justice ownership” to the affected communities in Eastern Ukraine and Northern Iraq and, in the long run, generate more respect for international humanitarian law.

Karolina Aksamitowska is a PhD Candidate in international criminal law at Swansea University with previous experience at the Extraordinary Chambers in the Courts of Cambodia, the International Residual Mechanism for Criminal Tribunals and Global Rights Compliance. In addition, she has worked for the Netherlands Institute of Human Rights, where she is also the previous Editor-in-Chief of the Utrecht Journal of International and European Law. She is the author of Digital Evidence in Domestic Core International Crimes Prosecutions – Lessons Learned from Germany, Sweden, Finland and the Netherlands, OUP 2021; Traditional Approaches to the Law of Armed Conflict: Disseminating IHL through the Receptor Approach, Brill 2020.

The Domestic Legal Framework for the Prosecution of Core International Crimes in Iraq and Ukraine – A Comparative Perspective
The notion of providing victims of crimes with proper protection throughout the criminal trial, as well as compensating the damage and injury incurred as a result of a crime is becoming a popular research topic nowadays. Shifting perspective from the perpetrators’ and the need to guarantee them a fair trial, to the victims’, is forcing legal experts to analyse the current national and international legislation, and make sure it is properly adjusted to protect the victims of a crime. Such constatation is consistent with the acknowledged functions of criminal law, such as the protective and compensatory function.

The purpose of the paper is to take a closer look on the Polish penal legislation, such as the Criminal Code of 1997 and the Criminal Procedure Code of 1997, as well as the Rome Statute, and reconstruct the basic standard of the victims’ protection system according to the Polish and international criminal law.

Firstly, I shall attempt to establish the normative basis for victims’ protection in the Polish criminal procedure and in the proceedings in the International Criminal Court. Furthermore, the paper will be divided into two sections: the first regarding the protection of the victims’ safety during the criminal trial, and the second – compensating the victims’ damage and injury incurred as a result of a crime. Thirdly, I shall attempt to establish whether the standard of protection provided by Polish legislation is consistent with international standards – the Rome Statute, in particular. Finally, as a conclusion I will present my own reflections on the said standard – whether anything requires improvement, and if so – what kind.

Karolina Sikora – law student at Jagiellonian University in Krakow, graduating this year (2021) with a master’s thesis: Cultural Defense from the perspective of guilt in Polish criminal law. Specializes in criminal law and criminal procedure, especially relations between criminal law and culture. Member and Vice-Coordinator of Legal Team at Civic Initiative Association “Pro Civium”, a non-governmental organization specializing in resocialization and human rights in criminal procedure.

The protection of a victim of an international crime in Polish law and the Rome Statute – a comparative analysis
After almost four years of bloodshed and terror, Vietnam invaded Cambodia putting an end to Pol Pot and the Khmer Rouge’s reign in 1979. Pol Pot caused the deaths of over 1.5 million Cambodians and left the country broken and scarred. The psychological and emotional trauma resulting from the genocide became aggravated for those who fell victim to rape and forced marriages. Forced marriages became prevalent under Pol Pot’s totalitarian rule as part of the complete restructuring of families and society. The first two cases under the Extraordinary Chambers in the Courts of Cambodia (ECCC), established to try the crimes committed by the Khmer Rouge, analyzed rape and forced marriages attributable to the command of each leader. The ECCC had multiple examples it could have followed with its treatment and sentencing of sexual violence. Instead of choosing the International Criminal Court’s (ICC) definition of sexual violence, the ECCC opted for a more limited meaning by developing a middle stance between those found in the previous international ad hoc tribunals for the genocides in Rwanda and Yugoslavia. Further, the ECCC failed to follow the guidelines in the Rome Statute of the ICC calling for the separate recognition of each sentence for every individual crime before combining the rulings into one representing the totality of the crimes. Regrettably, they delivered one sentence encompassing the penalty for all of the crimes each person committed. In light of Cambodia’s collectivistic society, the ECCC needed to provide justice and a sense of reconciliation or, in Khmer terms, phas phsa meaning “putting broken pieces back together.” Reconciliation and the restoration of dignity, the importance of which is seen through Cambodian cultural ideals and Buddhist beliefs, was pivotal for the healing of the nation and required direct acknowledgment by the perpetrators. When a leader refused to confess or regret his actions, the ECCC had a duty to the victims to acknowledge the significant harm they endured by outlining the specific punishment the leader received as a result of his actions. This style of sentencing becomes even more important with sexual violence and the resulting stigmatization of its victims. The ECCC needed to follow the ICC guidelines to afford greater visibility and recognition of forced marriage and rape in its sentencing to provide the victims with the legitimacy and particularized justice they so necessarily deserve.

Bradey Wright - Recent graduate of the University of Notre Dame Law School and Note Editor for the Notre Dame Journal of International and Comparative Law. Paper titled “Vietnam, Cambodia, and International Law” presented at the Conference on Faith and History at Regent University. Degrees also include a Bachelor of Arts in History from Huntington University and a Master of Science in History from the University of Edinburgh. Will join Ice Miller LLP in Indianapolis, Indiana as an associate attorney in September 2021.
My paper deals with sexual violence as part of international crimes. I will present the evolution of the elements of crimes against humanity as a form of sexual violence. The judgments of the International Tribunal for Rwanda and the International Tribunal for the former Yugoslavia will therefore be crucial. The elements of sexual violence included in the legal definition of crimes against humanity contained in the Rome Statute will be discussed. Therefore, selected judgments of the ICC and ad hoc tribunals create the basis for my considerations. Especially, the recent approach to prosecuting sexual crimes related to gender discrimination in ICC case law creates a new perspective. Consequently, the thesis that the Rome Statute promotes gender equality through accountability for sexual and gender-based crimes will be examined. The development of the penalization of sexual violence at the international level is seen as a very important element of international criminal justice as well as a cultural question.

Barbara Janusz-Pohl – Associate Professor at Department of Criminal Procedure (Adam Mickiewicz University), an expert in Criminal Law and Procedure and General Theorie of Law. Visited Professor at Sulayman Demirel University 2020-2021 with the lecture International Criminal Law. Author of numerous publications, including 5 monographs (e.g. Definitions and Typologies of Acts in Criminal Procedure, Perspective of Conventionalisation and Formalisation, Adam Mickiewicz Law Books, no 4, 2017, Juvenile Justice Systems (ed) PeterLang 2021) and over 70 articles/chapters (the most recently published: Dopuszczalności wykorzystania w postępowaniu przed Komisją odpowie- dzialności konstytucyjnej nagrania audialnego uzyskanego w toku kontroli procesowej [art. 237 k.p.k.], https://doi.org/10.31268/ ZPBAS.2019; O zasadach obliczania terminów procesowych, DOI: 10.32041/pwd.4102; Uwagi o doniosłości koncepcji domnie- mania relevantnych prawnokarnie, DOI: 10.32041/pwd. 4302). ORCID identifier 0000-0002-7135-4960

Sexual violence - as a material element of crimes against humanity. Selected issues.
In the Second World War barbarous facts happened. One of them was the Japanese “comfort stations”, which made approximately 200 thousand sexual slaves - about 80% Korean women. That was officially instituted because the Japanese thought sex was a kind of luck charm to keep winning battles. These “comfort women” were meant to extinguish the rape in the occupied cities so they could spend less with sexually transmitted illness while getting rid of spies and anti-japanese opinion into these regions. In this situation, these women were submitted to torture and widespread violence while coerced to maintain forced sexual relations daily repeatedly times. However, even if this conduct was reprehensible at that time into the international scene, Japan still converted it into a legal practice directed to a species of soldier’s improvement.

Since pieces of evidence came to light, multiples agreements were negotiated to end the poor situation the victims are facing since the war’s ending. Yet, the Japanese did not take responsibility for what happened even if it was an authentic politic of war instituted by the high ministers and the emperor. So why will they not admit this war crime even if all the international society keeps agreeing to their fault?

On this basis, this article is intended to analyze this Japanese politics under Foucault’s biopower and how it can be correlated to understand why they cannot agree they were wrong. In addition, it is enlightened the clash between political instrumentalization of sex and power, nationalism, and class’ structures. On the other hand, it is studied their imputability until nowadays while those women are dying in degradation and shame in their social circles because of the stigmatization and ostracism. Beyond that, considering the Japanese conception of utilitarianism, this paper aims to understand their reasons to outstand one of the worst war crimes against women in global history.

Thus, it was concluded that the case fully fits into the theme of biopower, which can be observed in line with Japanese utilitarian philosophical thinking very clearly. Plus, it can be highlighted the instrumentalization of women’s bodies in favor of the desired political objective - at that time, the better conditioning of soldiers. This paper is sustained by the necessity of the civil female figure in the catastrophes of the Second World War that remain unpunished, persecuted, and not much discussed.
Mass crimes in South Asian states, including India, predate and continue beyond the colonial period. These however have received far less attention in the international criminal law framework, than say, mass crimes arising within the African continent, or the more recent investigations into western interventions in the global south. Amongst South Asian states too, India’s perception as a democratic law-abiding state, has precluded any legal as opposed to political analysis of the almost ritualistic nature of violence.

Relative to its South Asian counterparts, a majority of the Indian territory is in a state of conflict - Sikh insurgency, naxalite movements, anti-occupational movements in Kashmir. The narrative of riots, counter-terrorism and internal disturbance has been used to justify combined law enforcement and military exercises of force. With the onset of populist regimes at different points in history, several acts amounting at least to persecution have been committed under the garb of legitimate exercise of legislative and executive powers, especially against religious minorities.

This Paper is not a political account of this institutionalized and ritualistic violence in India that abounds in current literature. Rather it seeks to supplement political theory with legal determinations. It was only in 2017 that the Indian Supreme Court - the apex constitutional body with the power in certain matters to even override the elected representatives - recognized the dearth of substantive legislations in outlawing acts amounting to international crimes. Building on this concern, the Paper does a concomitant analysis of both, political accounts and judicial observations around situations that have traditionally been termed as ‘riots’ or internal disturbances. In doing so, it tries to find out whether the judiciary, even subvertly, applies an international criminal framework to these situations, considering the state’s dualist model of legal system and strong resistance to internationalism. Further, it takes the Indian example to propose expanding the scope of international crimes to situations amounting to pogroms and ethnic cleansing, where the state machinery is clearly involved.

The paper however suffers from two limitations - considering the breadth of the issues, it confines itself to religious minorities. Also, since lower court decisions suffer from inaccessibility, the paper limits itself to an analysis of constitutional court decisions.
India’s relationship with international is unique. Ever before formally coming into existence in 1947, it had signed the Covenant of the League of Nation and Charter of the United Nation as their original member. The Indian constitution also recognizes ‘promotion of international peace and security’ as one of the Directive Principles of State Policy. Its article 253 provides the Parliament ‘power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body’. This provision has been understood to mean that India follows theory of dualism while incorporating international law to its domestic sphere. However, authors have highlighted that despite this article, there is no formal mechanism in India to incorporate international law. Therefore, rather than the legislature, it is the Executive which makes international law applicable in India. With this background, this paper will highlight how the international criminal law mechanism is practically inapplicable in Indian domestic circuit and suggest ways in which this situation can be remedied.

India has not signed the Rome Statute of the International Criminal Court. It argued against the framing of ILC’s draft articles on Crimes against Humanity. But it has ratified the Genocide Convention, though there is no domestic legislation in this regard. Therefore, the crime of Genocide is not mentioned in Indian penal laws. There have been incidents in India which can be classified as Crime against Humanity, like the 1984 Sikh Riots. Though the crimes were classified as riots, the Delhi High Court (a federal court), while ruling on the incident observed that “(n) either “crimes against humanity” nor “genocide” is part of our domestic law of crime. This loophole needs to be addressed urgently.” Despite the judgment, the government has not taken any action to make the international law in this regard a part of India’s domestic law. In the sphere of human rights and international environmental law, it was the Indian judiciary which has been proactive in domesticating India’s international law obligations. As such, this paper suggests that it is the Judiciary which will have to take mantle of domesticating India’s obligations under international criminal law too.
In recent years, the world has seen a profusion of institutions and binding laws regarding the state’s obligations to prosecute internationally recognized crimes. However, the rise in non-compliance by states at large whether cloaking it behind sovereignty or lack of infrastructure has undoubtedly complicated the authority of international laws. The jurisdictional focus of this research paper is the criminal law of Islamic Republic of Pakistan, and its obligations under International law. Pakistan’s laws are governed primarily by the 1973 Constitution and a myriad of laws – most of which are inherited from the British rule over the country and the underlying Islamic principles. Along with the discussion on the relevant and applicable laws of the country (including the Constitution and the Pakistan Penal Code, 1860), this research will also discuss and highlight the absence of any specific piece of legislation relating to Crimes of Aggression, War Crimes, Genocide and Crimes against Humanity in detail in Pakistan’s national legislation. Pakistan has been alleged for committing Genocide in the past and still has neither resolved the legislation issue, nor, has clearly defined the above mentioned terms under its prevailing laws. Pakistan is party to all the main and important Conventions putting a positive obligation on the States to prosecute and punish violations of international law crimes including the Convention on the Prevention and Punishment of the Crime of Genocide, 1948. However, dilemma is its inability to draft any specific national laws or provisions to deal with this heinous crime. This study principally is concerned with the failure of Pakistan’s Government to comply with internationally set standards regarding prevention of Genocide and its miscarriage of legislation by not terming Hazara Massacre as genocide. Ratifying the Genocide convention in 1957, Pakistan has been alleged twice for not preventing Genocide and not enacting laws on its territory regarding prevention of Genocide crime. Pakistan’s history since the Partition of East Pakistan and crimes taking place against Hazara Community raised questions to Pakistan’s seriousness in implementing and respecting its international criminal laws’ obligations. This research reviews the relevant and applicable laws of the country (including the Constitution and the Pakistan Penal Code), while focusing on the absence of any specific piece of legislation incorporating the punishment and prosecution of international crimes in Pakistan. This paper, therefore, is primarily concerned with the Genocide as legal norm and further discusses the need of a specific law to be incorporated in national legislation of Pakistan on prevention of Genocide. For this purpose, this research will dichotomize the scattered provisions of Pakistan’s national legislation and obligations and its compliance under International Criminal law with specific focus on Crime of Genocide. This research will give argument for recommendations, de lege ferenda.

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The Code of Crimes against International Law (CCAIL), in force since June 30, 2002, gives German courts universal jurisdiction over genocide, crimes against humanity, and war crimes. Thus, not only would the Federal Republic of Germany adapt its substantive criminal law to the provisions of the Rome Statute of the International Criminal Court, but is, more importantly, one of the few States that may exercise genuine universal jurisdiction its purest, least restrictive form, i.e. without any connection between international crimes committed abroad and Germany. Yet, prosecutors enjoy broad discretion and may decline to investigate (German Code of Criminal Procedure, §153f), which attracted considerable attention and criticism.

The goal of the paper is to provide an overview of the respective regulation, being a paragon for other States. As may be claimed, “Germany has taken a courageous, but also a lonely path in comparison with other countries”. Additional attention is to be paid to its application over almost two decades since its inception. In particular, it sheds light on much discussed trial before the Higher Regional Court (Oberlandesgericht) of Frankfurt (the case of Onesphore R), as well as the more recent “Al-Khatib-Proceedings” in OLG (Higher Regional Court) Koblenz. Testing the CCAIL against the practical background offers the possibility to draw more general and comprehensive conclusions on the German approach to the prosecution of international crimes.

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The German Code of Crimes against International Law (Völkerstrafgesetzbuch): An External Perspective
Because of its nature, some crimes can have a negative impact on the conscience of humanity. If these crimes are also able to pose a threat to international peace and security, such acts can be part of jus cogens, thus creating a legal obligation for all States to adopt the necessary measures in order to prevent and punish international crimes with such quality.

The differences between international crimes as a whole and those international crimes that rise to the level of jus cogens influences Portugal’s policy of recognizing the need to enact legislation on types of crimes as well as the need to draw a legal strategy in order to combat and pursue crimes with jus cogens status when committed outside the Portuguese domestic jurisdiction.

Concerning the obligatio erga omnes deriving from jus cogens crimes, Portugal has assumed the commitment to introduce the amendments needed on its legal framework that would allow the Portuguese authorities to expressly define international crimes with the same elements of crimes as defined in international treaties and conventions although such commitment is conditioned to the limitations imposed by the Portuguese Constitution.

Still, over the last decades, obligations deriving from international treaties or from the emergence of costumary principles concerning international crimes have had a strong impact in Portugal’s justice system, inspiring lawmakers to create more and more exceptions to the core values enshrined in the Portuguese legal order since 1976. For instance, one of the major examples of this is the fact that all crimes are defeasible, including homicides, except those considered to be “against International Law” such as the crime of genocide, crimes against humanity, war crimes and the crime of aggression.

Therefore, one can reach one conclusion: although crimes against life, crimes of military nature and criminal offences against state security are considered to be the most serious crimes of concern to the Portuguese society, jus cogens crimes are seen as justifying a greater level of protection as such crimes overstep the interest of one country or the Portuguese national community as a whole: jus cogens crimes are a matter of concern for all human kind.

Here, the accession of Portugal to the Rome Statute played an important and decisive role due to the fact that article 29 of the Rome Statute states that “the crimes within the jurisdiction of the Court shall not be subject to any statute of limitations”. Hence, full cooperation between Portugal and the International Criminal Court could only be assured if Portuguese authorities adopted measures in order to comply with its international obligations.

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Hungary ratified the Genocide Convention in 1952 and it crimina-
lized the crime of genocide in all its Criminal Codes (adopted
regulates the crime under Art. 142 and the legislator publicly
declared that one of the main objectives of the new Criminal
Code was to perfectly align the domestic definitions of interna-
tional crimes with the international definitions. Consequently,
the Hungarian definition of genocide should be identical to the
one defined in Art. II. of the Genocide Convention and conform
to its generally accepted interpretation.

However, in my paper I intend to prove that even though the
Hungarian domestic definition only suffers from a minor flaw,
the absence of the qualification “as such”, the lack of interna-
tional criminal law expertise of Hungarian criminal lawyers led
to the emergence of such interpretations of the text that widely
diverge from the international standard. This includes the inter-
pretation of mens rea, the question of a policy requirement, or
debates whether the killing of single person could amount to
genocide.

Ultimately, this paper attempts to demonstrate that while adequ-
ate textual implementation of international crimes is obviously
important, the content of international criminal norms can dra-
stically change through implementation, therefore domestic la-
wyers should receive the assistance of international lawyers in
these situations.

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Two substantive criminal codes are applied by courts in Bosnia and Herzegovina (BiH) in cases involving allegations of international crimes committed during the 1992-95 war: the 2003 Criminal Code of BiH (2003 CC BiH) and the 1976 Criminal Code of the Socialist Federal Republic of Yugoslavia (1976 CC SFRY) as the code tempore criminis. The purpose of this paper is two folded. In the first place, it aims at the analysis of the scope of penalization of international crimes in the two codes with specific reference to the catalogue of crimes, sentencing, and modes of liability. In the second place, it examines implications stemming from the principle of legality, as one of key principles of modern criminal law, in the context of differences between the two codes and their interchangeable application by the domestic judiciary, including the retroactive application of the 2003 CC BiH. The 1976 CC SFRY provides neither for provision on crimes against humanity as a crime under customary international (criminal) law nor the specific reference to command responsibility. In relation to sentencing, the two codes also significantly differ both regarding the catalogue of criminal sanctions and sentencing frameworks. Whilst the ECtHR shed some light on the applicability of the aforementioned codes in context of the lex mitior principle under Art. 7 ECHR in its judgment in the case of Maktouf and Damjanović v. BiH of 18 July 2013, major issues remain. The paper consists of three parts: while the first part provides for an overview of national prosecutions of international crimes in BiH, the second part outlines the scope of penalization of international crimes in the applicable domestic legislation. Implications of the principle of legality, as provided in the third part, shows that interchangeable application of the said two codes puts into question legal certainty and equality before the law. Further, it shows that prospects for harmonization of case law in this matter is limited due to constraints stemming from the country’s complex constitutional and judicial system. The paper concluded that the potential of wider application of 2003 CC BiH – which reflects customary law and treaty law – is unrealistic due to requirements of Art. 7 ECHR and is limited to cases involving allegations of crimes against humanity.
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