

## ***ESIL Interest Group on International Criminal Justice***

### **Annual Report 2020-2021**

#### **I. ACTIVITIES**

##### **A. Year 2020/2021**

###### **1. Webinar: *Torture by Non-State Actors: Rationale(s), Legal Frameworks and Implications***

30 March 2021, 12h00-13h45 (CET)

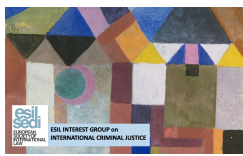
In legal discourse, ‘torture’ is a term used to broadly describe the deliberate infliction of severe physical or mental pain and suffering upon a person. One controversial aspect of the legal definition of torture has been the *status of the perpetrator/actor*, that is, *whose* acts are relevant for the purposes of the torture definition under international law. Article 1 of the Convention against Torture (CAT) recognizes that torture must be punishable when committed by a public official or a person acting in an official capacity, or when committed by a private person subject to the active or passive involvement of a public official or other person acting in official capacity. While the CAT considers the official capacity of the actor to be an element of the legal definition of torture, this is not the case under international humanitarian law and international criminal law. Current developments in domestic and transnational settings push us to reassess the reach of the concept of torture against unprecedented factual scenarios. This conference, organized by the ESIL Interest Group on International Criminal Justice and co-sponsored by the Grotius Centre for International Legal Studies (Leiden University) and the *Journal of International Criminal Justice* (JICJ, OUP), revived the question of ‘whose’ acts may amount to acts of torture under the CAT and, more broadly, under international and transnational law relating to the prohibition, prevention and repression of this crime, on the basis of ‘which rationales’ and with ‘what wider implications’.

The workshop was organized following a symposium on the topic, which will be published in the second issue of the JICJ in 2021. Two members of the IG Coordinating Committee – Ginevra Le Moli and Cheah W.L. – took part in the symposium and intervened in the conference, along with leading scholars in the field of international criminal justice, namely Andrew Clapham (IHEID), Tatyana Eatwell (Doughty Street Chambers), Paola Gaeta (IHEID), Emilie Pottle (Temple Garden Chambers) and Steven Powles QC (Doughty Street Chambers). Prof. Salvatore Zappalà, Editor-in-Chief of the JICJ, delivered the opening address of the conference.

###### **2. Online Roundtable: *History and International Criminal Justice***

23 June 2021, 15h00-17h00 (CET)

Within the field of international criminal justice, appeals to history have been made from multiple perspectives. There are, in fact, at least three ways in which the relationship between history and international criminal justice has been conceived. First, histories of international criminal justice have constructed narrative accounts of the origins and trajectory of the field. Such accounts range from evolutionary progress narratives of the field’s institutional development to more critical perspectives that seek to disrupt the field’s conventional assumptions and framings. A separate body of literature – focused on international criminal justice in history – has sought to surface the influence of international juridical practices on the course of history within particular societal contexts. Studies within this strand of scholarship have revealed, for example, how international criminal justice institutions can become implicated in governmental projects within the domestic political sphere,



including the delegitimization of political rivals or the legitimization of military campaigns against adversaries. Thirdly, growing attention has also been directed towards international criminal courts as sites of historical production. Focusing on the narrative and expressive functions of international criminal courts, explorations of history in international criminal justice have sought to reveal how history has been constructed and contested by different actors participating in and/or impacted by international criminal processes in different institutional contexts.

This online roundtable aimed to put into conversation four scholars (Prof. Kamari Clarke, The University of Toronto/UCLA; Dr Grietje Baars, City, University of London; Dr. Zammit-Borda, Anglia Ruskin University; Dr Barrie Sander, Leiden University) who have recently published monographs that engage in different ways with the relationship between history and the practice of international criminal justice. The panel was chaired by Ass. Prof. Zinaida Miller (Seton Hall University). Building on insights from their research, the roundtable examined this relationship from a diversity of angles, including a critical exploration of what the historical narratives constructed by international criminal courts reveal about their emancipatory limits and potential, how law's relationship to capital might help make sense of corporate human rights and war crimes trials across space and time, the extent to which emotionally-charged rights discourses and anti-colonial histories shape conceptions of justice, and whether a 'responsible history' normative framework for international criminal courts is possible.

### **3. Joint-Workshop: “The Evolution of the Principle of Non-Refoulement in International Law: What Role for New Types of International Law-Making?”**

16th Annual Conference of the European Society of International Law (ESIL) (Stockholm, 8-11 September 2021)

In the framework of the 16th Annual Conference of the European Society of International Law (ESIL) (Stockholm, 8-11 September 2021), the ESIL Interest Group on Migration and Refugee Law, the ESIL Interest Group on International Criminal Justice, and the Human Rights Research League organized a workshop on the evolution of the international legal norm prohibiting refoulement.

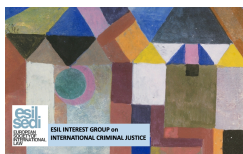
It is a fundamental principle of international refugee law that refugees and asylum-seekers shall not be expelled or returned to persecution. Yet this principle has also become incorporated in international human rights law and international humanitarian law, prohibiting states from transferring or removing individuals within their jurisdiction when there are substantial grounds for believing that this would expose the individual to irreparable harm upon return.

The aim of the joint workshop was to discuss and analyse the evolution of the prohibition of refoulement within and beyond the traditional context of forced migration. The co-organizers welcomed contributions with a focus on the legal fora, law-making techniques, and actors in which developments (both universally and regionally) can be discerned or could take root to share their ideas for discussion at the joint event.

## **B. Year 2021/2022**

### **1. ‘The Health-Environment Nexus and the Systemic Implications of Environmental Crimes’, 19 November 2021 17h-19h (CET)**

The ESIL Interest Group on International Criminal Justice and the Cambridge Centre for Environment, Energy and Natural Resource Governance (‘CEENRG’, University of Cambridge) will welcome scholars and practitioners to the online conference titled ‘The Health-Environment Nexus and the Systemic Implications of Environmental Crimes’, which will take place on Zoom on 19



November 2021. The conference is organized in collaboration with the ESIL Interest Group on International Health Law, the Grotius Centre for International Legal Studies (Leiden University) and the Platform on International Energy Governance.

Human health and well-being are intimately linked to the state of the environment. Clean air, a stable climate, adequate water, sanitation and hygiene, safe use of chemicals, protection from radiation, healthy and safe workplaces, sound agricultural practices, health-supportive cities and built environments, and a well-preserved nature are all prerequisites for good health. Environmental risks to health include environmental physical, chemical, biological and work-related factors external to a person, and all related behaviours. Climate change is increasing the frequency and intensity of heatwaves, droughts, extreme rainfall and severe cyclones in many areas, and modifying the transmission of food-borne, water-borne and zoonotic infectious diseases (such as COVID-19), resulting in large impacts on health. Moreover, current approaches to environment-related risks fell short to efficiently mitigate such risks, to impact sustainability and, importantly, to examine the complex interaction between environment, climate change and health from an international legal perspective. The conference intends to address the question on how to bridge the nexus between health, environment and climate change and to critically discuss the role of international law and institutions as well as of political cooperation in building such a nexus. The aim of the conference is also to provide a platform to debate the outcome of the 2021 United Nations Climate Change Conference, also known as COP26, which will be held in Glasgow from 1 to 12 November 2021 under the presidency of the United Kingdom.

2. Further activities, currently under development, will be organized in 2022.

## **II. GOVERNANCE**

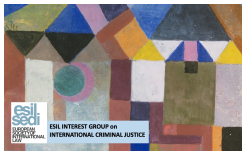
A. Current Members of the Coordinating Committee are:

- i. Diane Marie Amann, Regents' Professor of International Law, Emily & Ernest Woodruff Chair in International Law and Faculty Co-Director of the Dean Rusk International Law Center, University of Georgia School of Law
- ii. Michelle Burgis-Kasthala, Senior Lecturer in Public International Law, University of Edinburgh
- iii. Cheah Wui Ling, Assistant Professor, Faculty of Law, National University of Singapore
- iv. Ginevra Le Moli, Assistant Professor, Grotius Centre for International Legal Studies, Leiden University
- v. Letizia Lo Giacco, Assistant Professor, Grotius Centre for International Legal Studies, Leiden University
- vi. Barrie Sander, Assistant Professor, Faculty of Governance and Global Affairs, Leiden University

During the first year of the IG's activities (2020/2021), Dr Ginevra Le Moli has acted as Chairperson and Dr. Letizia Lo Giacco as Co-Chairperson.

During the second year of activity of the Interest Group (2021/2022), Dr Barrie Sander will act as Chairperson and Dr Michelle Burgis-Kasthala as Co-Chairperson.

B. We set up a website (<https://esilicij.com>) and a Twitter account (@esilicij) with interesting IG-related and external events. We are proud to say that our Twitter presence has increased - we currently have 342 followers - and seems to have become a forum for international criminal justice enthusiasts



to share information on relevant news, publications, etc. Ms Raghavi Viswanath kindly volunteered to support the IG's activities in the role of Media coordinator.