



1-1-2017

Forward to the Global Center Symposium on Crimes Without Borders: In Search of Internatinal Justice

Linda E. Carter

The University of Pacific, McGeorge School of Law, lcarter@pacific.edu

Follow this and additional works at: <https://scholarlycommons.pacific.edu/uoplawreview>

 Part of the [Criminal Law Commons](#), and the [International Law Commons](#)

Recommended Citation

Linda E. Carter, *Forward to the Global Center Symposium on Crimes Without Borders: In Search of Internatinal Justice*, 48 U. PAC. L. REV. i (2017).

Available at: <https://scholarlycommons.pacific.edu/uoplawreview/vol48/iss2/7>

This Article is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in The University of the Pacific Law Review by an authorized editor of Scholarly Commons. For more information, please contact mgibney@pacific.edu.

Foreword to the Global Center Symposium on Crimes Without Borders: In Search of an International Justice System

*Linda E. Carter**

I was deeply honored that the University of the Pacific, McGeorge School of Law Global Center chose to use my scholarship as a springboard for discussions about international justice in its annual symposium for 2016. Professors Omar Dajani and Jarrod Wong, and Associate Dean for Faculty Scholarship Raquel Aldana were the driving forces behind the program and I greatly appreciate all of their time and efforts, as well as the support and encouragement of Dean Jay Mootz. Editors and staff of the law review were also major contributors to the success of the symposium and to this collection of essays, with a special thanks to Sarah Kanbar, Kayla Cox, Randy Tong, and Daniella Green.

The theme for the symposium was designed to examine the many facets of international criminal justice and whether there is, or should be, a more coordinated “system” among the various constituencies that currently make up disparate parts of the national and international landscapes. The phrase “crimes without borders” denotes what the world now knows all too well—that genocide, crimes against humanity, war crimes, terrorism, human trafficking, and other similar crimes cross borders in the effect that they have on the world. For example, the Rwandan genocide occurred in Rwanda, but refugees and fugitives arrived in other countries and trials have occurred through universal jurisdiction in, among others, Canada, Belgium, Norway, and France. Even in the United States, cases of immigration fraud and deportation involving Rwandans based on their alleged involvement in the genocide have entered our courts. Perhaps even more importantly, these horrific and far-reaching crimes are without borders in the wrenching effect that they have on our collective conscience. After the Nuremberg and Tokyo tribunals, it was hoped that such atrocities would never occur again. Sadly, we have continued to witness events in Rwanda, the Balkans, Darfur, the Democratic Republic of the Congo, Syria, and other places around the globe. In these circumstances, international justice can play an important role in punishing those who commit atrocities and in contributing to deterrence and peace.

* Distinguished Professor of Law Emerita. My deep appreciation goes to everyone who participated in the symposium, to the law review editors and staff, and to my research assistants, Sarah Kanbar and Alexander McKay. For anyone who would like more detail about the symposium or to watch parts of it, the entire symposium is available on the McGeorge website at: http://www.mcgeorge.edu/Faculty_and_Scholarship/Centers_and_Institutes/Global_Center_for_Business_and_Development/Conferences_Speakers_and_Events/Global_Center_Annual_Symposium_2016.htm.

The second part of the theme, “in search of an international justice system,” raised the question whether there should be a more coordinated effort to react to international crimes and assist post-conflict societies. We currently have many valuable initiatives around the world, such as international trials, national trials, truth and reconciliation commissions (TRCs), and traditional mediation practices. Associated with these initiatives are capacity building efforts in national jurisdictions to handle complex trials that include: developing expertise for judges, prosecutors, and defense counsel; advising on witness and victim protection programs; establishing outreach programs to educate the public about international trials and their basic human rights; and supporting local TRC and other mediation efforts.¹ What is lacking, however, is a comprehensive, coordinated approach that directly addresses the needs of each unique situation and avoids duplication of efforts. The symposium looked at the disparate parts and participants discussed the need for such a “system.”

With these themes as the foundation, there were five parts to the symposium: 1) a keynote address entitled “Wrestling Tyrants;” 2) a roundtable discussion on “International Criminal Justice: More than the Sum of its Parts?”; 3) an “interview” with me on current international justice issues; 4) a panel on “Negotiating Justice: The Role of Plea Bargaining in an International Justice System;” and 5) a panel on “Transitional Justice in National Justice Systems as Part of an ‘International Justice System.’” The six articles in this volume are an excellent representation of the discussion from the symposium.

Professor Christopher Blakesley, who was a colleague and mentor of mine at McGeorge when I first began in academia in 1985 and has continued to encourage and inspire my scholarship, delivered a moving, provocative, and reflective keynote that set the stage for the discussions that followed. His address is included as the first piece in this symposium issue. Drawing from poetry and other literature, Professor Blakesley begins with the powerful commentary of W. H. Auden on society’s tolerance and facilitation of tyrants who commit atrocities and the moving imagery of Goran Simić on the destruction of the National Library in Sarajevo. Professor Blakesley develops the purposes and role of international justice and introduces the complex pieces that need to be woven into a comprehensive system.

The roundtable followed, led by McGeorge Professors Omar Dajani and John Sims. The participants brought extensive expertise and experience to the discussion. They included Judge Fausto Pocar, Dr. Mark Ellis, Dr. Leigh Swigart, and Professors Charles Jalloh, Stephen McCaffrey, and Beth Van Schaack. The wide-ranging discussion explored factors that have shaped international justice, challenges that affect its efficacy and legitimacy, and how

1. In addition to these activities that are pertinent to a justice sector approach, there are also many other international and national initiatives to achieve peace and security as well as other initiatives designed to build strong democratic institutions in a post-conflict society.

the disparate pieces of justice could be coordinated into a global system of justice. The topics included: the evolution of the normative framework and institutional configuration of international justice from Nuremberg to today; the challenges of diversity in languages and cultures; the role of emerging hybrid, regional and national processes in the broader global justice system; the need for coherence among the pieces of the system to maximize legitimacy and effectiveness; and what the future holds for international justice. Judge Pocar, with whom I have had the privilege to co-teach and co-author a book, and Dr. Swigart, with whom I have worked closely in the Brandeis Institute for International Judges, develop aspects of these developments in their insightful articles in this volume. Judge Pocar examines the importance of joint criminal enterprise as a theory of responsibility for atrocity crimes, a crucial legal tool to hold high-level leaders, organizers and planners of atrocities accountable. Dr. Swigart's article explores the often-overlooked challenges arising from linguistic and cultural diversity in international tribunals, both in proceedings and within the staff, that affect the legitimacy of international justice.

Following the roundtable, Sarah Kanbar, the Chief Articles Editor of *The University of the Pacific Law Review*, Volume 47, interviewed me on topics of international justice that ranged from the work of the International Criminal Court to how students could be involved in international justice efforts. In my view, it is crucial to understand, support, critique, and improve international justice on an ongoing basis. Among other topics, we discussed the important development and purpose of international criminal tribunals to hold high-level individuals accountable, but also the need for additional national judicial and non-judicial processes in order to achieve greater accountability, deterrence and reconciliation. With the multiple layers and actors in international justice, I advocated for recognition and establishment of a more coherent and comprehensive system in order to achieve global justice more fully and effectively. For today's law students, I discussed the many opportunities that they have before them in global justice on both a national and an international level. I believe strongly in the education of the next generation of lawyers, who will hold the future of international criminal justice in their hands, and I have confidence in their dedication and abilities to advance fairness and accountability.

The next part of the program was a panel on negotiated justice or plea bargaining. McGeorge Professor Emily Garcia Uhrig facilitated a discussion of comparative and international approaches to negotiating justice. In the common law system of the United States, plea bargaining is extensively used to resolve cases. This is not the case, however, historically in civil law countries. Professors Cary Bricker, Michael Vitiello, and Jenia Turner presented insights on two civil law-based systems that have now incorporated some plea bargaining (Chile and Italy) and how plea bargaining is used in international criminal tribunals. As Professors Vitiello and Turner explain in their excellent articles in this volume, historically, civil law systems rejected any negotiated justice on the basis of a

principle that all crimes committed by an individual should be punished. Over time, that approach has changed to include modified forms of plea bargaining. Professor Vitiello compares the Italian approach to negotiated justice with the far more extensive dependence on plea bargaining in the U.S. He suggests that here in the U.S., we could benefit from a greater knowledge and understanding of other systems to remedy problems with the negative consequences of the U.S. system, such as the pressure on even innocent defendants to plead guilty. Professor Turner examines the arguments for and against importation of plea bargaining to international criminal courts, taking into account the heinous nature of the crimes, the goals of international justice, and the fairness of plea proceedings.

Associate Dean Raquel Aldana moderated the final panel on transitional justice issues. Vice Dean Linda Keller, Professor Ronald Slye, and Ms. Viviana Krsticevic, Executive Director of the Center for Justice and International Law, delved into issues of a traditional mediation practice in Uganda, the truth and reconciliation process in Kenya, and the need for victims' voices and input to help shape any post-conflict processes. Professor Keller's article in this volume superbly explores the "peace with justice" debate that has permeated many discussions of international justice. She examines the success and failures of international and national developments in Uganda in trials, amnesties, and traditional mediation practices with the rebel group, the Lord's Resistance Army.

Throughout the day, the discussions raised questions, posed possible solutions, and suggested other avenues of research and study. The general consensus was that a more coordinated system should exist to address effectively accountability for atrocity and transnational crimes through multiple mechanisms of judicial and non-judicial approaches. My heartfelt gratitude goes to all who participated and made this symposium possible and to all who continue to contribute to achieving international criminal justice.