

## **The “Cross-Fertilization” Rhetoric in Question: Use and Abuse of the European Court’s Jurisprudence by International Criminal Tribunals**

On June 5-6, 2014, Edge Hill University (Omskirk, UK) is hosting a two-day international workshop. The event will focus on the legal phenomenon of cross-fertilization between international criminal law and human rights principles developed by specialized supranational bodies. The goal is to critically assess the manner in which widely-recognized standards of human rights have been used (or misused) by international criminal tribunals.

Proposals are welcomed on topics specified in the call for papers below. Interested participants should provide an abstract of up to 500 words and a CV by the 15th of February, 2014 to [mariniet@edgehill.ac.uk](mailto:mariniet@edgehill.ac.uk). Speakers will be informed of acceptance by the 1st of March. Outstanding papers will be selected for publication.

The Organizing Committee:  
Dr. Triestino Mariniello (Edge Hill University)  
Dr. Paolo Lobba (University of Bologna)

### **Call for Papers**

The various fields of international law have become increasingly intertwined, and this process has manifested itself in the “gradual interpenetration and cross-fertilization of previously somewhat compartmentalized areas of international law”.<sup>1</sup> The wider phenomenon is reflected in the field of international criminal law, which appears as a new “open” system based on a network of legal relations between international and national law. This is, in particular, exemplified by Article 21 of the Statute of the International Criminal Court (ICC), which articulates the international penal order as a complex, multi-level structure, and, thus, provides institutional recognition of the emerging interconnection between international criminal tribunals (ICTs) and regional human rights courts.

This interaction has been particularly apparent in the development of a “judicial dialogue” between ICTs and the European Court of Human Rights (ECtHR). For the ECtHR, reference has been made to the jurisprudence of ICTs (see, for example, *M.C. v. Bulgaria*), with a view to interpreting specific provisions of international criminal law and international humanitarian law. For the ICTs, reference has been made to the case law of the ECtHR in order to clarify the content of fundamental rights enshrined in the Convention or in the tribunals’ statutes. The areas of law where these human rights norms have been invoked, re-interpreted, and applied include the right to freedom of expression, *nullum crimen sine lege*, right not to be subject to inhumane or degrading treatment, fair trial rights, right to an effective remedy, sentencing and pre-trial detention, the right to remain silent, self-representation, *ne bis in idem*.

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<sup>1</sup> A. Cassese, *International Law*, Oxford University Press, 2nd ed. 2004, p. 45.

The predominant perspective of academic scholarship on the phenomenon of “cross-fertilization” or “dialogue” among courts belonging to different systems has been positive. The reference of ICTs to human rights principles established by specialized regional bodies is considered to enable the circulation of a common understanding of fundamental rights. For observance of internationally-accepted norms is held to ensure that fundamental rights are not curtailed during proceedings. Their recognition is also considered to foster the rule of law and due process guarantees in post-conflict societies. Finally, since the case law of the ECtHR is recognized as a synthesis of the European civil law and common law systems, its adoption by ICTs is considered to effectively reduce the risk of endorsing one dominant legal model in international criminal law.

The purpose of this workshop is to critically assess the predominant academic consensus on the process of gradual interpenetration and cross-fertilization in international criminal law. It will consider the notion of cross-fertilization, seeking to test the underlying coherence of the idea that legal concepts can be transplanted unchanged from the system of origin into another system. For the notion of “fertilizing” a different field, rather than a neutral designation, ascribes an immediately positive connotation to the process of transplantation. However, if one examines the actual process, through the identification and application of principles by ICTs, the description of the phenomenon can no longer be simply and exclusively positive.

The workshop proposes to undertake this critical assessment by restricting its perspective to one direction in which this gradual interpenetration and cross-fertilization has developed: the use that ICTs have made of ECtHR’s jurisprudence. By concentrating upon this, it intends to determine whether and to what extent ICTs have correctly applied imported human rights principles, thereby identifying eventual areas of discrepancy. Indeed, ICTs and human rights courts pursue distinct institutional aims, are differently structured, and the process of comparison of their jurisprudence requires patient interpretation and qualification.

Therefore, we welcome papers focusing on the following range of research questions: In what manner has the ECtHR’s case law influenced the final decisions of ICTs? Have ICTs misused the human rights jurisprudence – and, if so, to what extent? Are there discrepancies in the interpretation of the same right by the ECtHR and ICTs? If so, can they be justified by institutional differences or other legitimate circumstances? What are the parameters of discretion in the modification of the ECHR in relation to the special context of non-national courts and the most serious international crimes? Is there a realistic way to ensure that ICTs remain in conformity with generally accepted human rights principles? To what extent human rights courts’ decisions have been utilized as *argumentum ad auctoritas*, rather than non-binding source inspiration, to cover up a more restrictive stance adopted by ICTs? Is there any noticeable difference in the recourse that ICTs and the ICC have had to human rights courts’ jurisprudence?