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Introduction: Common Civility – International Criminal Law as Cultural Hybrid

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On 28 and 29 October 2011, a conference was held in The Hague on International Criminal Law (ICL) as a cultural and legal hybrid. The aim of the conference convenors was to facilitate an exchange of thoughts between legal scholars, practitioners, and social scientists on the nature of ICL and to discuss the role (legal) culture plays in international criminal justice. The recent discussion is dominated by the adversarial (common law)–inquisitorial (civil law) dichotomy and centres on the hybrid nature of the procedure in international criminal law.[1] The debate focuses on how a fair and efficient trial can be safeguarded by observing the rights of the accused and other participants through an operational criminal procedure. Sometimes, this clash of legal systems has become an end in itself, resulting in a debate on which system is superior. At least in theory, however, modern international criminal procedural law seems to have overcome the adversarial–inquisitorial dichotomy, since it combines features of both common- and civil-law systems.[2] This unique compromise structure poses a challenge to the practitioners who – although trained in and influenced by their respective national systems – have to apply the procedural norms at the international level and, in doing so, find an appropriate balance between adversarial and inquisitorial features. This is even more challenging since the single elements of the different legal traditions do not fit together seamlessly, leading to myriad, heated disagreements over how to combine them into a single, coherent, workable legal system.

The main objective of the conference is to explore the background and consequences of the civil law–common law conflict, to disclose how it affects the daily

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1 See, e.g., J. Jackson, *Finding the Best Epistemic Fit for International Tribunals*, (2009) 7 JICJ 17; C. Kress, *The Procedural Law of the International Criminal Court in Outline: Anatomy of a Unique Compromise*, (2003) 1 JICJ 603; R. Dixon, 'Developing Rules of Evidence for the Yugoslav and Rwandan Tribunals', (1997) 7 *Transitional Law & Contemporary Problems* 81, all with further references.

2 K. Ambos, *The Structure of International Procedure: 'Adversarial', 'Inquisitorial' or Mixed*, in M. Bohlander (ed.), *International Criminal Justice: A Critical Analysis of Institutions and Procedures* (2007), 429.

functioning of international tribunals, establish which tensions arise from the combination of features from the different legal systems, and to discuss how they might best be resolved. The conference convenors wish to bring the discussion on legal culture and ICL a step further and see whether there are ways to overcome the common law–civil law divide. It is also felt that the concept of culture should be looked at in a broader way, as encompassing notions of Western versus non-Western culture, of North versus South, and by questioning the universality claim of international criminal justice. The speakers and participants dealt with the following questions:

1. What have been the respective contributions of civil law versus common law to the recent development of international criminal law?
2. Why have international criminal courts and drafters of the Rome Statute of the International Criminal Court chosen to adopt common-law approaches to certain issues but civil-law ones on other matters?
3. How does culture play a role in international criminal trials where defendants from one culture are adjudicated by judges from another culture? Should there be more culture sensitivity on the part of international judges and prosecutors, and, if so, why?
4. Why did the current competition over whose law would be incorporated into ICL come to be so widely understood as one of common law versus civil law lawyers, rather than, say, North versus South (as would surely have occurred in the 1960s and 1970s), formal versus customary, or any number of other possible axes of contention?
5. How do lawyers initially trained in one legal culture respond to the challenges of workplace environments at international and hybrid tribunals, where they must collaborate professionally with lawyers trained in the other legal culture? How have such encounters – with their attendant miscommunications and sometimes heated disagreements – shaped the intellectual development of this burgeoning new field?

These topics cannot be discussed adequately from a purely legal point of view. Accordingly, the conference was based on a multidisciplinary approach to the disciplines of international criminal law, public international law, legal anthropology, and sociology of law. The speakers and participants consisted of legal scholars, judges, and social scientists from different countries. In order to guarantee a truly 'universal' cross-cultural exchange of thoughts, the organizers also invited experts from legal traditions that have been neglected in the discussion so far, such as representatives of Islamic countries.

A selection of the papers presented at the conference will be published in a series in this journal. The first two papers that will be published relate to the hybrid and Western nature of ICL. In the first paper, Bohlander queries the inter-model conversation (common law versus civil law) that is ongoing in ICL and poses the

question as to whether it is not necessary to hold this discussion at a much more fundamental level than has been the case so far. Bohlander does so with the example of the relationship between German and English law. Badar, in his paper, discusses the reception of the ICC Statute in Islamic states. He further compares the Rome Statute to the principles of Islamic law to see whether the latter reflects the norms and standards enshrined in the Rome Statute.