

The International Criminal Court and the Shortcomings of Domestic Legislation: Introductory Note

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In this issue the section on the International Criminal Court (ICC) contains two articles with a special focus on problems related to implementing legislation and co-operation with the Court (Zsuzsanna Deen-Racsomány's 'Lessons of the European Arrest Warrant for Domestic Implementation of the Obligation to Surrender Nationals to the International Criminal Court' and Héctor Olásolo's 'The Lack of Attention to the Distinction between Situations and Cases in National Laws on Co-operation with the International Criminal Court with Particular Reference to the Spanish Case') as well as a general article by Anne-Marie de Brouwer, 'Reparation to Victims of Sexual Violence: Possibilities at the International Criminal Court and at the Trust Fund for Victims and Their Families'.

The first two contributions have one point in common; they highlight certain gaps or shortcomings at the level of domestic legislation. Deen-Racsomány examines the practice of European states in relation to the surrender of nationals under the European Arrest Warrant (EAW) and its implications for the co-operation of states under Part 9 of the ICC Statute. She argues that many of the challenges raised in the context of the EAW may become relevant in the context of surrender of nationals to the ICC, and concludes her analysis with a number of recommendations for domestic policy-makers. Olásolo examines some of the consequences of the distinction between situations and cases for domestic implementing legislation. Pre-Trial Chamber I clarified this distinction in its decisions of 17 January 2006¹ and 10 February 2006.² Olásolo concludes on the basis of the Spanish implementing legislation that domestic authorities have not paid enough attention to the distinction between situations and cases in three areas: the transmission of communications to the Court, challenges of admissibility under Articles 18 and 19, and the treatment at domestic level of admissibility rulings by the Court.

De Brouwer provides an overview of the regime of reparation under the Statute. She submits that the existing instruments establish a good framework for restorative justice to victims of sexual violence, and stresses the need to pay special attention to the concerns of victims of sexual violence in the first practice of the Court.

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1 Pre-Trial Chamber I, *Decision on the Applications for Participation in the Proceedings of VPRS-1, VPRS-2, VPRS-3, VPRS-4, VPRS-5 and VPRS-6*, ICC-01/04, issued on 17 January 2006.

2 Pre-Trial Chamber I, *Decision on the Prosecutor's Application for a Warrant of Arrest, Article 58*, ICC-01/04-01/06, issued on 10 February 2006.

The articles contained in this issue highlight some of the future areas of interest of the ICC section. The Court has entered into its operational phase and is about to develop its first jurisprudence and practice. This phase is of particular interest from a scholarly perspective since the first choices and decisions made by the Court are likely to shape the future architecture and directions of international criminal law, both domestically and internationally. The editors have therefore decided in coming issues to place a special focus in the ICC section on the first practice of the Court. The aim of this focus is to gather commentaries and insights from different scholars on various aspects of the law and practice of the Court, including (but not limited to) the charging practice of the ICC, the status and rights of victims, the concept of interests of justice, and potential avenues for review of the Statute.

The editors have launched a call for papers ('Mapping the law and practice of the ICC'), in order to stimulate this debate. This call can be found at the journal's website (<http://www.ljil.leidenuniv.nl/index.php3?c=214>). It is our hope that this coming focus of the ICC section will facilitate a rich and informed debate about the initial steps of a novel institution that is about to leave its first footprints in the international arena.