

The 2011 Edition of the Moot Court Competition on the International Criminal Court in the Spanish Language

Héctor Olásolo
Ingrid Dekkers*

1. Introduction

On 10 June 2011 the Final Round of the 2011 edition of the Moot Court Competition on the International Criminal Court in the Spanish Language (the ‘ICC Moot Court Competition’) was held at the seat of the International Criminal Court (ICC) in The Hague. Judge Silvia Fernández de Gurmendi from Argentina presided over a panel of three ICC judges including herself, Judge Sylvia Steiner from Brazil and Judge Elizabeth Odio Benito from Costa Rica. Students from the universities Carlos III (Spain), del Rosario (Colombia) and Sergio Arboleda (Colombia) presented oral arguments in the roles of Prosecution, Representatives of State and Regal Representatives of Victims in a fictitious case written by Héctor Olásolo, Professor of International Criminal law and International Criminal Procedure at Utrecht University, and his team at the Utrecht School of Law Clinical Programme on Conflict, Human Rights and International Justice. This was the first hearing ever held in the Spanish language at the ICC since its establishment. It was also the first hearing ever held in the Spanish language before any international criminal court or tribunal.

The 2011 Edition of the ICC Moot Court Competition was organized by the Latin American Council of Scholars of International and Comparative Law, Mexico (COLADIC MX) and Utrecht University, supported by the Human Rights Commission of Mexico City (CDHDF), the ICC and the Inter-American Court of Human Rights (IACHR). The Final Round followed an

* Prof. Dr. Héctor Olásolo, Professor of International Criminal Law and International Criminal Procedure, Willem Pompe Institute for Criminal Law and Criminology, Utrecht University School of Law, Utrecht (the Netherlands); Director of the Utrecht Clinical Programme on Conflict, Human Rights and International Justice; Chairman of the Ibero-American Institute of the Hague for Peace, Human Rights and International Justice (IIH); LLM Columbia University; PhD Salamanca University; e-mail: H.Olasolo@uu.nl; web page: www.uu.nl/H.Olasolo. The views expressed here are those of the authors alone and do not necessarily reflect the views of the ICC, the ICTY, the United Nations in general or the Spanish Government.

Ingrid Dekkers, LLM Criminal Law & Public International Law (Utrecht University), Head of the External Relations Committee of the Board of Ad Informandum 2010-2011, Study Association for Criminal Law and Criminology, connected to the Willem Pompe Institute for Criminal Law and Criminology, Utrecht University School of Law (the Netherlands); e-mail: Ingrid_Dekkers@live.nl.

eight-month process that started on 1 October 2010 with the publication of the fictitious case relating to the ICC Prosecutor's request for an authorisation, according to Article 15(3) of the ICC Statute, to initiate an investigation into the situation in the *Republica of Almeres*.

2. Origins and goals of the ICC Moot Court Competition

The Public Announcement of the 2011 Edition of the ICC Moot Court Competition, which was originally named after Mexican Professor of International Law at the Mexican Autonomous National University (UNAM) Victor Carlos García Moreno, states:

'(...) this inter-university competition, whose first edition dates back to 2002, is the first global contest that focuses on the proceedings of the judicial institution that nowadays plays a vital role within the international community, the International Criminal Court.'¹

However, its purpose is more than to just familiarize participants with the legal framework and activities of the ICC. This is highlighted by Article 3 of its Regulations, which defines its goals in the following terms:

'The ICC Competition is aimed at encouraging university students to have better knowledge of the ICC mandate and rules, by simulating its proceedings to address a hypothetical case. In addition, the diffusion of the mandate, functions and jurisprudential advances of the ICC and other bodies adjudicating situations of international crimes, in particular the Inter-American Court of Human Rights ("IACHR"), is sought for, as well as building a strong relation between the Universities, the ICC, and the other institutions supporting the ICC Competition.'²

Furthermore, the competition also aims to promote international criminal law, international law of human rights, international humanitarian law and public international law.³

3. Special features of the 2011 ICC Moot Court Competition

Since 2009, the ICC Moot Court Competition has acquired a more academic profile by establishing a network of academic partners and organizing a series of Academic Programmes for all rounds (national, international and final). These Programmes are about cutting edge topics in international criminal law and the other fields it intends to promote. They are attended by academics, judges, prosecutors and counsels as well as by representatives of governments and international organizations, civil society and the media. Their goal is to increase the participants' knowledge and understanding in the above-mentioned fields of law, and to offer a platform where different views on society can be presented and openly discussed.

Moreover, in order to obtain a comparative view, the same topics are dealt with in all Academic Programmes that are organized in the same edition of the ICC Moot Court Competition. As a result, the Academic Programmes organized in Bogotá, Caracas, Madrid, Tucumán and Mexico DF in 2011 all addressed the following topics: (i) reparation for victims of gross and

1 The Public Announcement of the 2011 Edition of the ICC Moot Court Competition can be found on <www.uu.nl/iccmootcompetition>.

2 Regulations of the ICC Moot Court Competition. Available on <www.uu.nl/iccmootcompetition>.

3 See the Public Announcement of the 2011 Edition of the ICC Moot Court Competition, available on <www.uu.nl/iccmootcompetition>.

systematic violations of human rights; (ii) definition and scope of crimes against humanity; and (iii) outcome of the First Review Conference of the ICC Statute, which took place in June 2010 in Kampala (Uganda).⁴ All these Academic Programmes are open to the participating teams as well as to the public. The proceedings of all Academic Programmes are published in a combined publication sponsored by the European Union and the International Criminal Court.

The organization of the series of Academic Programmes that took place in 2011 was made possible by the network of institutions and organizations that support the Competition and that has grown rapidly since 2009. As a result, in addition to the organizers, the 2011 Edition of the ICC Moot Court Competition had the academic support of around one hundred and twenty five Faculties of Law,⁵ Human Rights and/or International Law Legal Clinics,⁶ as well as a number of Research Centres, institutions and organizations.⁷

4. The case of the 2011 edition

The ICC Moot Court Competition started on 1 October 2010 with the publication of a fictitious case relating to the ICC Prosecutor's request for an authorisation, according to Article 15(3) of the ICC Statute, to initiate an investigation into the situation in the *Republica of Almeres*. After that, a hearing was convened on 28 March 2011 with the Prosecution, the Representatives of the

4 <<http://mootcourt.icc-cpi.info/the-moot-court/spanish-competition/>>.

5 Alcalá de Henares (Spain), Alicante (Spain), Americana de Asunción (Paraguay), Azuay (Ecuador), Autónoma de Barcelona (Spain), Autónoma de Colombia (Spain), Autónoma de Madrid (Spain), Los Andes (Colombia), Buenos Aires (Argentina), Bolonia (Italy), Carlos III (Spain), Castilla la Mancha, Sede Toledo (Spain), Católica Andrés Bello (Venezuela), Católica de Córdoba (Argentina), Católica del Norte, Sede Coquimbo (Chile), Católica del Norte, Sede Antofagasta (Chile), Católica de Pernambuco (Brazil), Cauca (Colombia), Chile (Chile), CIDE (Mexico), Comahué de la Patagonia (Argentina), Complutense (Spain), Concepción (Chile), EAFIT de Medellín (Colombia), El Norte (Colombia), El Salvador (El Salvador), Estadual de Río de Janeiro (Brazil), Externado (Colombia), Federal de Paraná (Brazil), Federal de Rio Grande do Sul (Brazil), Federal de Río de Janeiro (Brazil), Federal de Sao Paulo (Brazil), Genova (Italy), Ibagué (Colombia), Ibero-americana de México, sede Mexico DF (Mexico) Ibero-americana de República Dominicana (Dominican Republic), ITAM (Mexico), Jaume I (Spain), La Coruña (Spain), La Rioja (Spain), La Sabana (Colombia), Leon (Spain), Libre (Colombia), Libre de Derecho (Mexico), Málaga (Spain), Militar Nueva Granada (Colombia), Modena (Italy), Montevideo (Uruguay), Nacional de Colombia (Colombia), Nacional de Tucumán (Argentina), Palermo (Argentina), Peking (China), Piamonte Oriental, 'Amedeo Avogadro' (Italy), Pompeu Fabra (Spain), Pontificia Universidad Bolivariana de Medellín (Colombia), Pontificia Universidad Católica Madre y Maestra (Dominican Republic), Pontificia Universidad Católica de Perú (Peru), Pontificia Universidad Católica de Sao Paulo (Brazil), Pontificia Universidad Javeriana de Bogotá (Colombia), Roma III (Italy), Del Rosario (Colombia), Rovira i Virgili (Spain), Salamanca (Spain), San Carlos/Centro Universitario de Occidente (Guatemala), San Francisco, USF (United States), San Martín de Porres (Peru), Santo Tomás (Colombia), Sergio Arboleda (Colombia), Sevilla (Spain), Stetson (United States), Sydney (Australia), Thesalonica (Greece), Trento (Italy), UNAM (Mexico), Valle de México, Sede Lomas Verdes (Mexico), Valle de México, Sede Lago de Guadalupe (Mexico), Valparaíso (Chile), Washington University in St. Louis (United States).

6 Cornell (United States), George Washington (United States), Québec (Canada) and Texas (United States).

7 International Law Students Association of Kyoto University (Japan), Law and Criminal Justice Centre of the University of Durham (United Kingdom), Ecuadorian Centre for Criminal Law and Criminology (Ecuador), Criminal Law Centre of the University of Talca (Chile), Scientific Research Centre for Criminal Law of the Northwest University of Political Sciences and Law (China), Irish Centre for Human Rights (Ireland), Centre for Global Law and Policy of the University of Santa Clara (United States), University Centre of Brasilia (Brazil), International State Crime Research Consortium of the University Old Dominion (United States), Human Rights Department of La Paz University (Costa Rica), Foreign and International Criminal Law Department of Göttingen University (Germany), Fundação Getúlio Vargas (Brazil) Human Rights Institute Bartolomé de las Casas (Spain), Human Rights Department of Chile University (Chile), Human Rights Institute of the University of Diego Portales (Chile), Human Rights Institute of the University of Ghent (Belgium), Human Rights Institute, Human Rights Clinic and Transitional Justice Network of Essex University (United Kingdom), Economics and Criminal Law Institute of Palermo University (Italy), Netherlands Institute of Human Rights (the Netherlands), Inter-American Institute of Human Rights (Costa Rica), National Institute of Penal Sciences (Mexico), Willem Pompe Institute for Criminal Law and Criminology (the Netherlands), Observatory of Human Rights of the National University of Tucumán (Argentina), Latin-American Programme of Seattle Law Faculty (United States), Latin-American and European Network on Human Rights, LAEHR (the Netherlands), Coalition of NGOs for the International Criminal Court (CICC), Democracy and Law Global Foundation (Dominican Republic), European Commission, IKV- Pax Christi (the Netherlands), International Association of Penal Law, International Centre of Transitional Justice (United States), International Committee of the Red Cross (Switzerland), International Federation of the Rights of the Man (France), Latin-American Group of Experts in International Criminal of the Konrad Adenauer Foundation (Germany), Legis Publisher (Colombia), Tirant lo Blanch Publisher (Spain), United Nations Dominican Association (Dominican Republic).

Republica of Almeres and the three national and international organizations that represented victims in order to address – in a nutshell – the following issues:⁸

- whether certain actions taken by the security forces of the *Republica of Almeres* against the demonstrators could amount to any of the crimes against humanity provided for under Article 7 of the ICC Statute;
- whether the violence that took place in the *Republica of Almeres* was of sufficient gravity to justify the initiation of an investigation in light of Article 17(1)(d) of the ICC Statute;
- an assessment of the (in)admissibility of the situation in the *Republica of Almeres* and whether the opening of an investigation would be in the interest of justice.

All this while taking into account the impact of the national judicial proceedings, the activities of the Inter-American Commission of Human and the Law on Reparations for Victims.

During the eight-month process – culminating eventually in the Final Round – teams from Argentina, Brazil, Colombia, Chile, Ecuador, Spain, Mexico and Venezuela participated, representing their universities.⁹ Four national rounds were organized from the end of February 2011 until the beginning of March 2011 in Argentina by the National University of Tucumán, in Colombia by Legis Publishers and the universities of Del Rosario, Santo Tomás and Sergio Arboleda, in Spain by University Carlos III and in Venezuela by Catholic University Andrés Bello. The three best teams of these four national rounds, together with the teams coming from countries where no national round took place, participated in the international round organized from 28 March until 1 April 2011 in Mexico DF by COLADIC MX, the Human Rights Commission of Mexico City and UNAM. The three best teams of the international rounds qualified for the Final Round that took place as part of ‘The Ibero-American Week of International Justice and Human Rights’ organized in The Hague and Utrecht between 6 and 10 June 2011 by Utrecht University, the Ibero-American Institute of the Hague for Peace, Human Rights and International Justice (IHH), Radio Netherlands, the Spanish Embassy, the Cervantes Institute, the Spanish Development and Cooperation Agency and Ad Informandum, with the institutional support of the International Criminal Court.

5. The Final Round and the Ibero-American Week of International Justice and Human Rights

5.1. The Final Round

The best three teams of the International Round were eligible for participation in the Final Round, which was held in the courtroom of the ICC. The teams that qualified for the Final Round

⁸ The case (in Spanish) can be found on <www.uu.nl/iccmootcompetition>.

⁹ During this eight-month process, the following teams from Argentina, Brazil, Colombia, Chile, Ecuador, Spain, Mexico and Venezuela participated representing their universities: University of Bahía Blanca (Argentina), National University of Tucumán (Argentina), Catholic University of Tucumán (Argentina), University of Buenos Aires (Argentina), Autonomous University of Barcelona (Spain), Autonomous University of Madrid (Spain), University Carlos III of Madrid (Spain), University of Leon (Spain), Autonomous University, Campus Bogotá (Colombia), Free University, Campus Bogotá (Colombia), University of Del Rosario (Colombia), University of Los Andes (Colombia), University Santo Tomás, Campus Bogotá (Colombia), University of Medellín (Colombia), University Sergio Arboleda (Bogotá), Catholic University Andrés Bello (Venezuela), University de Azuay (Ecuador), University of Chile (Chile), University of Guadalajara (Mexico), Ibero-American University of Mexico DF (Mexico), University of El Valle (Mexico) and State University of Rio do Janeiro (Brazil).

were: University Carlos III, University del Rosario and University Sergio Arboleda.¹⁰ They took on, respectively, the role of the Office of the Prosecutor, representatives of the *Republica of Almeres* and Legal Representatives of Victims.

The fictitious hearing was heard by three ICC judges, who decided which team had best defended their arguments in the fictitious case: Elizabeth Odio Benito, Sylvia Steiner and Silvia Fernández de Gurmendi. The hearing was open to the public and was broadcasted via the ICC website in order to make it possible for everyone around the world to watch the Final Round. The Office of the Prosecutor opened its case and explained why the State of Almeres was, in their opinion, liable for the atrocities committed. In their turn, the State of Almeres stressed why they were not liable. Lastly, it was up to the Legal Representatives for the Victims to argue that the victims should receive reparation. After all three teams had presented their arguments and answered the judges' questions, it was time for a rebuttal, after which the judges took the time to deliberate and decide which team was the best.

In this year's edition, the University del Rosario won the ICC Moot Court Competition. The University Carlos III and the University Sergio Arboleda came, respectively, second and third. The award for the Best Speaker went to Natalia Suarez Sanchez from the University del Rosario. The prizes were handed out during the ceremony following the Final Round. According to Judge Elizabeth Odio Benito, while presenting the award to the winning team: 'The decision has been difficult, all participants were very well prepared'.¹¹ The judge stimulated the participants to keep studying and to take part in the next editions of the Competition. The ICC Registrar, Silvana Arbia, and the Deputy Prosecutor, Fatou Bensouda, presented the awards to the teams that came second and third. Julián Guerrero, Chargé d' Affaires ad interim Embassy of Colombia, presented a trophy to the Best Speaker of the competition. The coach of the winning team won the Francisco de Vitoria scholarship which was presented by Ige Dekker, Dean of the School of Law of Utrecht University.

5.2. *The Francisco de Vitoria Scholarship*

At the Awards Ceremony of the 2011 Edition of the ICC Moot Court Competition, Ige Dekker stressed that the strong commitment of Utrecht University to Latin America 'is in a very modest way expressed by the Francisco de Vitoria Scholarship'.¹²

The Francisco de Vitoria Scholarship covers the tuition fee and travel and accommodation expenses for the six-week Summer Institute for Global Justice course in June/July 2012. The scholarship is granted by the School of Law of Utrecht University, and its partners, which are the Schools of Law of Washington University in St. Louis and Case Western Reserve University, and is presented to the coach of the winning team of the ICC Moot Court Competition. By awarding the scholarship to the coach, recognition is given to the person who played a decisive role in guiding and educating the members of the team. Furthermore, as the Public Announcement of the Scholarship expressly sets out:

'The scholarship aims to highlight the importance that those who play such a role maintain their commitment to promote the activities of the International Criminal Court and the

10 The following universities did not qualify for the Final Round but attended the Academic Programme and the Final Round as observers: Autonomous National University of Mexico; Autonomous Technological Institute of Mexico and the Catholic University of Córdoba (Argentina).

11 <<http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/pr684>>.

12 Speech by Ige Dekker at the Award Ceremony of the ICC Moot Court Competition held at the ICC Press Room on 10 June 2011, on file with the authors.

Inter-American Court of Human Rights in their own countries and to promote the development and application of international criminal law and international human rights standards at the national level. This purpose is underlined by the fact that the scholarship is named in remembrance of Francisco de Vitoria, who undoubtedly is not only one of the fathers of modern international law but applied his law of nations to all – we would now say – mankind. Starting at sovereigns, this law individually in their consciences bound their counsellors and others responsible for the foreign relations of the state to individual persons on a worldwide scale'.¹³

5.3. The Academic Programme relating to the Final Round: the Ibero-American Week of International Justice and Human Rights

The Academic Programme for the Final Round was held from Monday 6 June until Friday 10 June 2011, and consisted of a week of events about Ibero-America and its relationship to International Justice and Human Rights. This is the reason why some refer to it informally as the first edition of 'The Ibero-American Week of International Justice and Human Rights'.

The Academic Programme was structured in such a way as to fully inform the participants of all the opportunities regarding international criminal law that the Netherlands offers to the Spanish-speaking community. Visits were paid to the most important international judicial organizations based in The Hague: the International Court of Justice, the International Tribunal for the Former Yugoslavia and the ICC. At these organizations, the students were able to meet with different persons from the Spanish-speaking community, who informed the students about the organizations and the different career options they offer.

Another part of the Academic Programme was an event at the Cervantes Institute on 'Media, International Justice and Human Rights', which was open to the public. Speakers were José Zepada, Special Representative for Radio Netherlands Worldwide in Latin America and the Caribbean; Edwin Koopman, journalist and Professor of Journalism at the University of Lovaine and Héctor Olásolo. The participants also got to enjoy a concert of classic music in the Santa Teresa of Avila Church, offered to them by the Embassy of Spain.

5.4. The commitment of Utrecht University to Ibero-America

As part of the Academic Programme, the participants also paid a visit to Utrecht University, which is well known for its commitment to Ibero-America, of which this Competition is only one example. At the Awards Ceremony of the 2011 Edition of the ICC Moot Court Competition, Ige Dekker stressed:

'(...) the commitment of Utrecht University to work with Latin-American universities and institutions and to carry out activities in the Spanish language in general, and the importance of this moot court, as an outspoken example of a multi-linguistic and multicultural activity, for Utrecht University in particular.'¹⁴

13 Public Announcement of the Francisco de Vitoria Scholarship for the 2011 Edition of the ICC Moot Court Competition, on file with the authors. See also the speech by Ige Dekker at the Award Ceremony of the 2011 Edition of the ICC Moot Court Competition, on file with the authors.

14 Speech by Ige Dekker at the Award Ceremony of the ICC Moot Court Competition held at the ICC Press Room on 10 June 2011, on file with the authors.

There is strong focus on Ibero-America at Utrecht University: Héctor Olásolo works with a number of Universities in Colombia, Venezuela, Peru, Mexico, Brazil, Argentina, Chile and Costa Rica; Damian Zaitch is a Dutch-Argentinean criminologist who works on the Cocoum project in the Cauca region in Colombia and the Amazonia Region. Wil Pansters (cultural anthropology) is specialized in Mexican Studies and Kees Koonings (cultural anthropology) is specialized in the Andinan Region, in particular Colombia and Brazil. Furthermore John Vervaele is the Vice President of the International Association of Criminal Law and has numerous publications in the Spanish language. The latter two, as well as Héctor Olásolo, are board members of the Ibero-American Institute of the Hague for Peace, Human Rights and International Justice (IIH). Wil Pansters and Damian Zaitch are currently members of the IIH Advisory Committee. During their visit, the participants met with all these professors as well as with Michael Scharf, Co-Director of the ‘Summer Institute for Global Justice’ for which the coach of the winning team received the prize covering the tuition fee and free travel and accommodation expenses.

During their visit, the participants also received information from these professors as well as from Annemarieke Beijer, Associate Professor of Criminal Law, on scholarships, summer schools and post-graduate programmes at Utrecht University. Special attention was paid to the LLM on International Law of Human Rights and Criminal Justice and the LLM on Global Criminology. As core component of the first one, the Clinical Programme on Conflict, Human Rights and International Justice¹⁵ enables students to provide pro bono legal services not only to The Hague-based international judicial institutions, but also to the IACHR. During their visit to Utrecht University, the participants had a meeting with the director, supervisors and students of the ‘Utrecht Law Clinic on Conflict, Human Rights and International Justice’. Due to its relation to the LLM on Global Criminology, several projects in the Cauca and Amazonia region were also addressed. Furthermore there was a reception with Henk Kummeling, Dean of the Faculty of Economics, Law and Governance (REBO) of Utrecht University, followed by a meeting with the members of ‘Ad Informandum’.

6. Concluding remarks: the importance of the ICC Moot Court Competition

There is no need to explain the importance of Moot Courts: they make students familiar with trial court procedures, provide them with the opportunity to develop a wide range of skills and apply their knowledge in practice. Furthermore, Moot Courts provide students with a unique opportunity to interact with persons who work in the field. But what makes this particular Competition – held in the Spanish language – so important?

At the moment, Spanish is the official language of approximately twenty countries, some of which are particularly relevant for the International Criminal Court as they have been, or are currently, the subject of a preliminary examination by the ICC Prosecutor.¹⁶ Moreover, Spanish is the mother tongue of over 400 million people.¹⁷ It is the third most widely spoken language in the world, after English and Mandarin. And it is the second language of international communi-

15 The Clinical Programme is supported by Utrecht University’s Willem Pompe Institute and the Netherlands Institute for Human Rights. For more information, see <<http://www.uu.nl/faculty/leg/EN/organisation/schools/schooloflaw/organisation/departments/studieeninformatie/centrummenserechten/cp/Pages/default.aspx>>.

16 See for instance the current preliminary examination on the Colombian situation, or the preliminary examination carried out with regard to Venezuela in 2006.

17 <www.cervantes.es>.

cation and is increasingly being used in economic, political and cultural relations.¹⁸ Most importantly, the ICC Moot Court Competition is an example of the commitment of the ICC to multiculturalism. As the ICC expressly stated in its Press Release of 20 June 2011:

‘(...) It is envisaged that, in the medium and long term, the ICC Moot Court will also be expanded to other official languages of the Court, namely French, Arabic, Chinese and Russian.’

Since this commitment is followed through with a series of Academic Programmes in different States Parties that aim at reaching both university communities and civil society at large, as well as by providing participants with the unique opportunity to come to the seat of the Court in The Hague to compete in the Final Round, the effectiveness of the Programme can come as no surprise. Since the new format of the Competition started two years ago, the number of participants has increased by two and a half, and the academic programmes are now attended by hundreds of participants.

It is in this context, that the statement by Judge Elizabeth Odio Benito after the Final Round of the 2011 Edition of the ICC Moot Court Competition acquires its full meaning:

‘(...) This is a unique competition that contributes to increasing knowledge about the ICC as well as to stimulating debate in the academic world in Latin America’.¹⁹

¹⁸ <www.cervantes.es>. It is also an official language of the ICC (Article 50 ICC Statute).

¹⁹ ICC Press Release, 10.06.2011, available on <http://www.icc-cpi.int/NR/exeres/55219158-CAD9-4073-ACDA-044EE66D3937.htm>.