

OIAD takes action to promote International Criminal Justice Day: interview with Clara GERARD-RODRIGUEZ, lawyer at FTMS Avocats who, on the list of deputy counsel qualified to practice before the International Criminal Court

On the occasion of the International Criminal Justice Day, OIAD had the opportunity to interview Clara Gérard-Rodriguez, associate lawyer at FTMS Avocats, consultant for Global Rights Compliance and on the list of deputy counsel of the International Criminal Court.

Answering our questions, Ms. Gérard-Rodriguez shed light on the practice and implementation of international criminal justice, which is sometimes faced with complex challenges.

After graduating with a master's degree in international public law in Amsterdam, Clara Gérard-Rodriguez began her career at the ICC, where she worked for 4 years as a legal officer, first as part of a defense team (in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*), then as part of the victims' representation team in the *Al Mahdi* case, which was about the destruction of the Timbuktu mausoleums. At the end of this trial, Clara left the ICC to return to France. She joined the Paris Bar in 2019.

Clara is now an associate at FTMS Avocats and advises on general criminal and business law cases. Clara also works on cases involving human rights violations and international cooperation in criminal matters.

Alongside this, she has been assisting the Global Rights Compliance organization since

November 2022, which provides legal expertise on international criminal justice issues to the Prosecutor General of Ukraine, in the context of investigations into war crimes committed by the Russian army in Ukraine.



How would you describe the mission of international criminal justice?

“The aim of international criminal justice has always been to give practical effect to the prohibitions contained in the Geneva Conventions and other international conventions that regulate weapons, means and methods of warfare. International humanitarian law provides a framework for armed conflict, and the repressive aspect of these prohibitions is implemented through international criminal justice. Today, the populations affected by conflict have very high expectations of a criminal response to the crimes committed. For a long time, the judicial response was initiated by States or international organizations, such as the United Nations, but increasingly, proceedings are being opened on the initiative and at the request of the victims, who have high expectations that the judicial authorities will

be able to establish the truth, recognize their status as victims and fight against the impunity still enjoyed by the perpetrators of international crimes.”

What challenges do you see international criminal justice facing today?

“International criminal justice is currently faced with a **lack of coordination and harmonisation**, a **lack of resources and procedural obstacles** that vary from one situation to another. For example, in the case of the International Criminal Court, the possibility for the Security Council to submit certain situations to the ICC is limited by the right of veto of the permanent members. In France, universal jurisdiction is limited by the monopoly on prosecutions held by the Public Prosecutor's Office, among other procedural obstacles.

In sum, these challenges mean that procedures take a very long time and certain cases are prioritized on the basis of objectives that are often more political than legal. Overall, we are witnessing a **politicization of international criminal justice**, which has concrete consequences for the way in which cases are handled: it has evolved into a two-speed justice system based on geopolitical issues.”

So, what are the positive points in the implementation of international criminal justice?

“In my opinion, one of the major recent advances is the nationalization of international criminal justice: trials for international crimes are increasingly being held before national courts, whether the courts of the States in which the crimes took place (as in Ukraine, for example, where trials are currently being held for war crimes committed in the context of the current conflict) or before the courts of other States, particularly through the mechanism of universal jurisdiction.

This nationalization is a response to the feeling of detachment from international criminal justice. For a long time, international tribunals were virtually the only ones to apply international criminal law, and they did so in a way that was very disembodied and far removed from the facts and the populations affected. It is time for international criminal justice to become more tangible, more concrete and more real for the people affected. Things are also changing in international courts: to address this situation, the ICC has shown its willingness to open national offices in the countries concerned, to get closer to the populations affected.

Generally speaking, the development of ICJ is a **major step forward in the fight against impunity**. One of the original aims of the IPJ was to show that there is a criminal justice response to international crimes and that the perpetrators do not go unpunished. But in reality, the response is still very minimal and often very late.”

Do you think that international criminal justice should be modelled on the European criminal justice system?

“I do not believe that international criminal justice should be "modelled" on an existing judicial system. It must be able to be applied locally, according to the legal and cultural specificities of the country in which it is applied. Otherwise, international criminal justice will continue to be described as imperialist justice.

On the other hand, I believe that **the establishment of a common and coordinated international criminal justice system at European level would be a major step forward**. One of the limitations of international criminal justice today is the lack of coordination and harmonization of procedures. In Europe, certain criminal cooperation mechanisms are extremely effective, such as the European arrest warrant, the mutual recognition of judicial decisions, the coordination of judicial actors through Eurojust or Europol... But these mechanisms need to be taken to their logical conclusion; 27 States with the same rules of jurisdiction and the possibility of sharing and exchanging information and evidence effectively would already make a major contribution to the harmonization of the international criminal response.”

Do you think that international criminal justice can be harmonized?

“Harmonizing international criminal justice does not mean implementing a single justice system that would be the same everywhere, with no room for local particularities. It is important for international criminal justice **to be able to adapt to the legal and cultural context in which it operates**. On the other hand, procedural differences - and in particular the different rules on jurisdiction - often create legal gaps that become a source of impunity. More than harmonization, international criminal justice perhaps needs better cooperation to limit these legal voids.

The example of Ukraine proves that **better cooperation is possible when there is political will**: quickly after the Russian invasion of Ukraine, the international and national authorities mobilized funds and resources to ensure that things moved forward, that investigations were carried out, that trials were organized... The authorities seem ready to cooperate much more quickly and effectively than before. It's all a question of will.”

If you could change anything about international criminal justice, what would you change?

“The great difficulty with international criminal justice is that **it is not as international as it seems**. It is applied more or less effectively depending on the situation and the State in which the crime was committed.

Today, there is a great deal of criticism of the **speed with which national and international courts have dealt with the crimes committed in Ukraine**. In my opinion, this speed is to be welcomed: we are dealing with atrocious crimes and justice must take hold, procedures must move quickly and investigations must be carried out in real time. But I can understand the criticism that comes from people who wonder why what is being done for Ukraine is not being done for Syria, Afghanistan or Palestine, for example. These criticisms should not be ignored; it is true that some investigations are progressing much more slowly than those in Ukraine, and this situation is **unfavorable in several ways**: for the victims first of all, because the perpetrators of the crimes are not being brought to justice, but also for international criminal justice itself, because this calls into question its legitimacy and its *raison d'être*.

The main challenge would therefore be to **deal with all cases equally**, in a purely legal and depoliticized manner. Of course, it's idealistic to think that we can put the political and diplomatic agenda to one

side: the IPJ is a judicial system that has always been imbued with political considerations and I find it hard to see how we could bypass that.

On the other hand, we could resolve the very real issue of the resources allocated to investigations. If the same resources, the same budget, were allocated to all cases, we could already avoid some of these pitfalls. In very concrete terms, the ICC would not have to de-prioritize certain situations in order to focus on crimes committed in Ukraine, as it does at present. What applies to international tribunals also applies to national justice systems. In France, investigations are bogged down and are not carried out effectively because of a lack of resources.

So, if I can't depoliticize international criminal justice, if I could change one thing, I would change **the way the justice system is funded**, increase its budget, make it more **independent** and therefore more **effective.**"