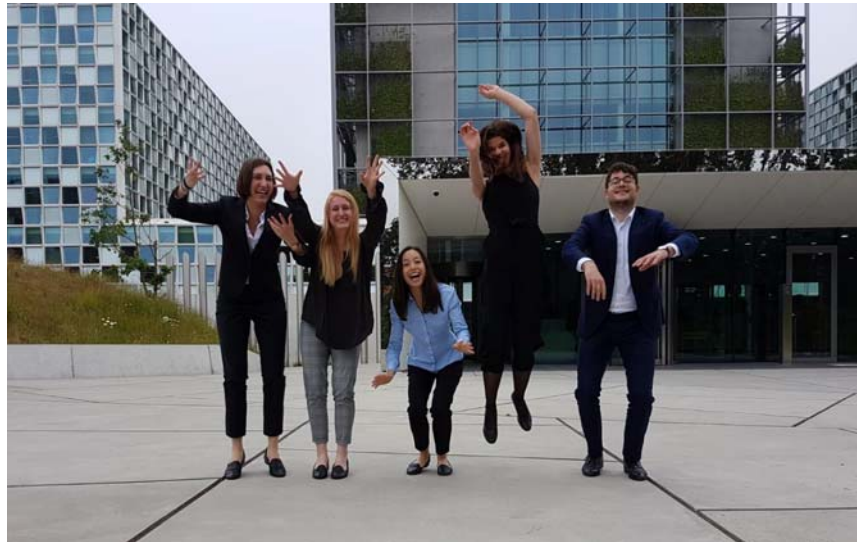


## The ICC Moot Court Competition, 27 May – 1 June 2018, The Hague, The Netherlands: A Report of the St. Gallen Team

For nine months we worked towards the 2017-18 edition of the International Criminal Court Moot Court Competition, which took place at the end of May 2018 in The Hague, the international city of peace and justice, where every day people in many international organizations and offices do their utmost to enhance the world we live in.

The 2017-18 ICC Moot Court Team of the University of St. Gallen consisted of five students from the MIL, MIA and MLaw programs: Julia Sifringer, Fiona Hensel, Anna Ahn, Gina Moll and Manuel Rodriguez (from left to right on the photo), arguing on behalf of the Counsel for the Defendant, the Counsel for the Prosecution, and the Legal Representative of the Victims. At first only strangers who merely saw each other



occasionally at the University, they became, in the course of a lengthy and intensive preparation phase, a smooth-running team who spent a memorable time together during the competition days.

Isabelle Maurer and Professor Bardo Fassbender of the Chair in Public International Law, European Law and Public Law supported us throughout the whole time and gave us helpful guidance and feedback, which has been very much appreciated by all of us. Again, a big thank-you for coaching our team!

We were full of anticipation when the case came out on October 20<sup>th</sup>, 2017, which meant the actual start of our work. The fictional *Situation Relating to Crimes against Humanity in Westeros* constituted several “firsts” in a case to be analyzed in accordance with the rules of the ICC Statute. The submissions to be made concerned three issues: firstly, whether the crime of human trafficking can be considered a distinct crime against humanity; secondly, whether a CEO of a private company can be held individually responsible before the ICC for failing to exercise proper control over a subsidiary; and thirdly, as a procedural problem, the defense of the *ne bis in idem* principle.

Writing the memorials for each of the three Counsels, setting forth the legal arguments in the context of the interlocutory appeal by the Defendant, took us some time and nerves until we became familiar with the issues raised by the case. However, after putting much effort into research and overcoming some setbacks, we got acquainted with the law and practice of the ICC, which allowed us then to start preparing our oral pleadings.

From the spring semester on, in our weekly meetings with our coaches, we began to present our arguments orally, and to practice answering questions to be expected from the judges. After a few weeks one could see first progress. From week to week, the pleadings were changed and enriched with case law and arguments from legal literature. Beside our legal knowledge we also could improve our presentation and debating skills, as we benefitted from training sessions with different academics acting as judges.

And then, on the last weekend of May, the long awaited trip to the Netherlands started. In the open ceremony, on Sunday, May 27<sup>th</sup>, we enjoyed the initial broadcasting of the film *Prosecuting Evil: The Extraordinary World of Ben Ferencz*, in the presence of the 97 years old protagonist. Benjamin Ferencz was an investigator of Nazi war crimes after World War II and the Chief Prosecutor for the United States



Army at the "Einsatzgruppen" Trial, one of the twelve military trials held by the U.S. authorities at Nuremberg, Germany. Later, he became an advocate of the establishment of an international rule of law and of an International Criminal Court. Emotions overcame us. Ferencz' vision of "Law Not War" and his fight for justice over several decades with such an incredible energy left a lasting impression on our minds – a highly recommendable movie! (The photo to the left shows a bench recently put up in the

Hague in honour of Professor Ferencz, depicting the words "Law Not War".)

On Monday morning, the three days of the Preliminary Rounds began. Quite nervous but also excited, our Victims' Representative had to compete in the first session against the Defence Counsel of the Ukrainian team and against the Prosecution Counsel from Tanzania; and in the second session against Australia and Kenya. In the following sessions, our team pleaded in the role of the Defense Counsel against Singapore, India, Iran, and Bosnia, while in the role of the Prosecution against colleagues from Pakistan, Hungary, the United States and Turkey. We were astonished how much the course of the proceedings varied depending on the composition of the bench. Some judges drilled the teams with questions while others hardly ever intervened, which made it very difficult to assess our overall performance. It also happened that a judge had to suppress his laughter because of great amusement during a session. However, no reason to get confused!

The teams that could proceed to the quarter-finals were announced on Wednesday evening. We reached rank 28 of 65 teams in total. Two members of our team, Gina Moll and Manuel Rodriguez, achieved in two sessions the score representing "best performance". Unfortunately, by a narrow margin we did not succeed in belonging to the group of 27 (!) teams which made it to the next round. Nevertheless, all of our sessions were a great experience. Taking part in the ICC Moot Court Competition was indeed a unique chance to gain valuable practical experience in international (criminal) law.

On Friday afternoon, we eagerly watched the finals taking place in the official ICC premises and speculated about which one of the three finalists (the Singapore Management University, the West Bengal National University of Juridical Sciences [India], and the Honorable Society of the King's Inns [Ireland]) would be the first-placed. The team from Singapore finally won the competition, outpacing their Indian and Irish contestants.

65 teams from all over the world participated in an extensive six-day educational and social program that came to an end with a high-spirited BBQ at the beach of Scheveningen – an evening full of stimulating talk and dance. During this week we came into closer contact with several teams, and once again we understood that in spite of our diverse backgrounds and cultures we share the same interest in international criminal law and related fields of international law, and experienced ourselves as much more like-minded than initially expected. As our friend Muhammad from the Bahria University Islamabad Campus exclaimed: "It was lit af!"

### **A Researcher's Perspective: Anna Ahn**

"Being a researcher in the St. Gallen team of the ICC Moot Court Competition was a unique experience, even though I did not plead in The Hague. I was responsible for both the prosecutor's and the victims' perspective and therefore mainly supported the two speakers acting in these functions. We worked closely together, and it was enriching to see how our arguments, a bit shaky at the beginning, developed into solid legal submissions. In the first semester of the course, we all had the same task of writing the memorials; only in the second semester our responsibilities changed a bit more. Instead of learning the pleadings by heart, I prepared and summarized the knowledge that would support our oral submissions in The Hague (e.g. case summaries, potential questions of judges, etc.). Overall, I can only recommend participating in this course, as I have not only learned a lot about international (criminal) law, but also built close friendships with my moot team as well as with students from all over the world who came together in The Hague."



### **A Speaker's Perspective: Manuel Rodriguez**

"Personally, I was able to gain so much out of this opportunity and would definitely recommend the ICC Moot Court to everyone who likes to improve his/her speaking and presentation skills but also wishes to find new friends and to meet intriguing people from all over the world. When I watched the ICC Moot Court finals of the previous year, I was blown away by the performance of the oralists. There are worlds between the first draft of the pleading at the beginning of the second semester and the final one which you present in The Hague. After each oral session in St. Gallen we were given new input from the team and our coaches. This enabled a continuous process, and one always tried to make the arguments as good and strong as possible. As a prosecutor, I personally found the rebuttal the most challenging part. The defence has 5-10 minutes to rebut the pleadings of the victim's council and the prosecution. Since the prosecution speaks directly after the defence, you have only 5-10 minutes to prepare the counter arguments for the main issues the defence mentions in its rebuttal. It is also a challenging task because you need to be flexible in your argumentation and able to speak rather freely without the frame and structure of your well-prepared pleading. The first time when I had to stand up and speak in front of the judges in The Hague, I felt rather nervous. But after some minutes and some good answers you were able to give you realize how well you are prepared and that you actually are able to withstand the critical questions of the judges. It was very rewarding to have strong opponents and judges who really tried to challenge you and bring you to the next level. In these two semesters I was really able to learn how to change arguments to my favour, how to focus on the main points in a very short period of time, and finally how to keep calm when answering critical questions from very smart people. It was a lot of work, but you learn a lot more on top of the theoretical background of international criminal law."