> Colloquium of Prosecutors of International Criminal Tribunals | 

The Challenges of International Criminal Justice

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The Challenges of International Criminal Justice

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For three exciting days in November 2004, the ICTR -OTP (International Criminal Tribunal for Rwanda–Office of the Prosecutor) was honoured to host on its premises in Arusha, Tanzania the first meeting of the Prosecutors of International Criminal Tribunals. Dubbed the “Colloquium of Prosecutors” it brought together the Prosecutors and their senior officials as well as scholars and practitioners involved in international criminal justice.

Together, we reviewed the process of and our experiences in international criminal investigation and prosecution. We identified the successes and challenges. Out of this we agreed on the development of a “Best Practices Programme” that would provide a guide for future practitioners in this difficult terrain. Beyond that, we were united by our recognition, drawn from the experience of the past decade, that despite numerous challenges, the process of international criminal justice is feasible; it is equally desirable for the maintenance of international peace and security. There is, nonetheless, room for improvement in terms of expediting trials and bringing international criminal justice to within reasonable limits.

The Joint Statement of the Prosecutors highlights our many concerns on what needs to be accomplished by the individual states and by the international community in order to preserve and strengthen this emerging system of international criminal justice.

By all accounts the Colloquium was a success; so much so that we decided we should be meeting regularly to share experiences and ideas on improving the mechanisms of international criminal justice. Many played a key role in this success: my colleagues, Prosecutors Carla del Ponte (ICTY), David Crane (SCSL), Luis Moreno Ocampo (ICC) as well as their officials; staff in the Office of the Prosecutor (OTP) ICTR and the Tribunal as a whole who prepared the ground for the meeting; the Organising Committee of the Colloquium; the paper presenters; the panelists; Judge Erik Mose and Adama Dieng, respectively President and Registrar of the ICTR, for their support of the initiative. Finally, the Ford Foundation and the Open Society Institute, who provided the funding for the meeting. To each and every one we say thank you.

We hope the Arusha Colloquium was marked an important contribution to the permanent system of international criminal justice and that the process of consultation between the Prosecutors will continue to provide valuable input to system.

Justice Hassan Bubacar Jallow
Prosecutor, ICTR
As international prosecutors, we have been entrusted with the responsibility of bringing to justice individuals accused of genocide, crimes against humanity, and war crimes.

We represent all the regions of the world. Our institutions were variously founded by treaty, by the United Nations Security Council, or by agreement between the United Nations and national governments.

Having reviewed the challenges of international criminal justice, we have concluded that the ideal behind the establishment of each of our institutions is the same: to end impunity for the most serious crimes that plague humankind, and to contribute to peace and the prevention of future crimes.

These tribunals have made great progress. Heads of state or government have been brought to justice. Other major perpetrators have been indicted, arrested, and tried; many have been convicted; trials are ongoing. These institutions have recognized that genocide can be committed through acts of sexual violence; they have found that the use of child soldiers is a crime against humanity, they have brought the weight of law to bear on the evils of ethnic cleansing. But because many people continue to suffer from these crimes throughout the world, we affirm that only a sustained commitment to accountability will deter these atrocities.

The ultimate success of these tribunals depends on the continued political support of the international community. Resources, cooperation, and assistance are essential to enforce the principle of accountability and the rule of law.

The resolve of the international community will also be measured by its willingness to deliver indictees for trial, even if politically difficult International criminal justice must apply to indicted fugitives such as Radovan Karadžić, Ratko Mladić, Ante Gotovina, Félicien Kabuga, and Charles Taylor. To permit individuals accused of the gravest of crimes to evade justice would reinforce the culture of impunity that fuels conflict and atrocities.

National legal systems have a vital role in the prosecution of these grave crimes. International institutions need to step in only when national systems lack the strength or impartiality to hold the most serious offenders to account. Combined national and international efforts will be a guarantee of impartial justice.

We reaffirm our commitment to the task that has been entrusted to us. We call upon all national and international authorities to strengthen their dedication to justice.

We believe that the people of the world are entitled to a system that will deter grave international crimes and hold to account those who bear the greatest responsibility. Only when a culture of accountability has replaced the culture of impunity can the diverse people of the world live and prosper together in peace.

Signed on this 27th day of November 2004.

Luis Moreno Ocampo
Prosecutor of the International Criminal Court

Carmen de la Ponte
Prosecutor of the International Criminal Tribunal for the former Yugoslavia

Hassan Bubacar Jallow
Prosecutor of the International Criminal Tribunal for Rwanda

David Crane
Prosecutor of the Special Court for Sierra Leone
Colloquium of Prosecutors of International Criminal Tribunals on “The Challenges of International Criminal Justice”

1. Introduction

From 25 November to 27 November 2004, the International Criminal Tribunal for Rwanda (ICTR) hosted a colloquium for the Prosecutors of the International Criminal Tribunals at the Arusha International Conference Centre in Tanzania. It was the first colloquium. Three international criminal courts were represented besides the ICTR: the International Criminal Tribunal for the former Yugoslavia (ICTY), the Special Court for Sierra Leone (SCSL), and the International Criminal Court (ICC). In addition, national prosecutors, investigators, government representatives, legal scholars, defence attorneys, and observers engaged in the international criminal justice system from a number of countries were in attendance. These countries included Rwanda, Tanzania, Kenya, South Africa, Cameroon, Nigeria, The Netherlands, Germany, Belgium, the United Kingdom, Australia, and the United States.

The objectives of the Prosecutors’ Colloquium were:

(a) To hold a three-day colloquium as part of the on-going programme to commemorate the 10th anniversary of the Rwandan genocide of 1994.

(b) To share ideas with personnel from other international criminal tribunals and learn lessons on the challenges faced by international criminal tribunals in investigating and prosecuting violations of international criminal law as well as imprisoning persons convicted by the tribunals.

(c) To review the jurisprudence, achievements, and challenges of the ICTR, and identify the underlying causes of success and setbacks and document lessons to be learned.

(d) To provide a springboard for regular interface among the international Prosecutors and senior management of the various tribunals that will be represented at the Colloquium.

(e) To provide a vehicle for enhancing the understanding by the international community regarding the achievements of the ICTR as well as the challenges that the tribunal has to overcome for a successful completion of its mandate.

(f) To develop workable common strategies and a ‘Best Practice model’ geared towards achieving the Completion Strategies of both the ICTR and the ICTY.

(g) To highlight achievements and future plans in order to explain them to the international community, thereby creating a better understanding of the tribunal and improved support for its work. The concrete result will therefore be an increased awareness by the international community of the work and challenges of the ICTR and greater support for the work of the tribunal.

(h) To provide a forum for the exchange of ideas and information on issues relating to the referral of cases to competent national jurisdictions and the formalisation of concrete arrangements to achieve this mandate.

(i) To initiate a firmer commitment from those States that is critical for the success of the ICTR. This will also go a long way towards assisting the tribunal to successfully complete its work and achieve its mandate within the time limits set in Security Council Resolution 1503 of 2003.

Against the backdrop of beautiful Mount Meru, participants gathered in Arusha to discuss, in a frank and constructive manner, the challenges that currently face the international criminal justice system and, in particular, the prosecutorial domain. This colloquium was the result of the tireless efforts by ICTR Chief Prosecutor Mr. Hassan Bubacar Jallow and his staff. The arrangements for the Colloquium were flawless, which allowed participants to concentrate fully on the important topics addressed during this innovative and substantive meeting.
The Colloquium consisted of five forums and was attended by 23 delegates, 12 observers, and 19 participants all from various stages of the prosecution process. A panel of distinguished persons headed each of these forums. The panels addressed issues relevant to the topic discussed. The Prosecutors of the various Tribunals who were present moderated these forums in turn. The topics discussed at these fora included:

(a) The Challenges of Conducting Investigations of International Crimes;

(b) The Dynamics and Challenges of International Prosecution;

(c) The Service of Sentence for International Crimes;

(d) The Challenges of Proper Implementation of the Completion Strategy; and

(e) Challenges of the Administration of International Criminal Tribunals.
In his welcome and opening remarks, Chief Prosecutor, Mr. Hassan Bubacar Jallow noted that 10 years earlier, to the month, the UN Security Council adopted Resolution 955, thereby establishing the ICTR. Since that time, one more ad-hoc criminal court (i.e. the Special Court for Sierra Leone,) has been created, as well as the permanent International Criminal Court, which was just now beginning its first investigations. These courts have a common mandate: to contribute to the consolidation and enhancement of international justice and the international rule of law by bringing to account, in an international forum, those persons bearing the greatest responsibility for the most egregious violations of international humanitarian law. Since such persons are all too often beyond the reach of unwilling or unable national systems of justice, there is a need for international criminal tribunals to share their experiences and learn from one another, thereby improving the effectiveness of the international criminal justice system. The aim of this colloquium, Mr. Jallow noted, is to identify the constraints and challenges that international criminal courts face in investigations, prosecution, and administration, as well as in the detention of those who are ultimately found guilty and to explore, in the light of experience how such challenges could be effectively overcome.

It is an appropriate moment to take stock of how international criminal courts are performing, noted Mr. Jallow. The two United Nations ad-hoc tribunals are currently implementing completion strategies, and the ICC will soon assume the mantle of leadership in the prosecution of violations of international law. Participants are encouraged to look at what the ICTY and ICTR have accomplished despite the formidable constraints they have faced, which include: absence of judicial models to follow, a lack of resources, problems of logistics, and a jurisprudential vacuum. Mr. Jallow suggested that future opinion would recognise the important contributions the international criminal tribunals will have made on several fronts. For example, in the elaboration of rules of practice, procedure, and evidence; the acquisition of substantial experience in the conduct of international investigations as well as the selection of cases for prosecution; the establishment of international standards for fair trial; and the enrichment of the jurisprudence of international law.

Mr. Jallow stressed, however, that the Colloquium should not serve as an exercise in self-congratulation. Participants must be bold and courageous in identifying the shortcomings of the international criminal justice system so that it can continue to strive for greater efficiency and expediency in the delivery of justice. He reminded the audience that no national legal system, or any legal tradition, could claim to be perfect, even though some have existed for centuries. The international criminal justice system is barely a decade old and is still finding its way.

Yet, the power of this system to establish peace and justice has been demonstrated through the reactions of victims and survivors in Rwanda and the Balkans. It is clear that many of the violations of international humanitarian law committed in these places could not have been dealt with effectively in national judicial systems. The international penal option must always be retained, urged Mr. Jallow. But for this option to work there must be the fullest international co-operation in matters relating to resources, investigations, the apprehension and transfer of fugitives, witness protection and relocation, and, eventually, the transfer of appropriate cases to national jurisdictions. The current level of international support in these matters poses a serious challenge to the work of international criminal tribunals, which is a subject that participants should collectively address during the colloquium, among other pressing items.
In his keynote address, Chief Prosecutor of the ICC, Mr. Luis Moreno Ocampo acknowledged the significant milestone that the ICTR has reached with its 10-year anniversary. Perhaps most important, he noted, is that the experience of the court demonstrates that although humanity can perform terrible acts, it can also learn from those acts. Some of the lessons learned from the work of the ICTR are: that a head of state can be arrested, indicted, and convicted for genocide; that the act of rape can, under certain circumstances, be considered an act of genocide; and that those persons who incite acts of genocide through the media can be held responsible, like political or military leaders, for the resulting violence.

Mr. Ocampo expressed his willingness to learn from his fellow prosecutors at this Colloquium—from Mr. Jallow who has greatly expedited ICTR prosecutions during his mandate, and from Mr. Crane of the SCSL who has had close interactions with the victims of the crimes he is prosecuting. Mr. Ocampo noted that the ad-hoc and mixed tribunals have given the ICC legal frameworks that it can use and a body of jurisprudence that puts substance where there were once only broad principles. The international criminal justice system, Mr. Ocampo observed, is building its way toward universal procedures that no longer respond to the labels of either common or civil law.

The Chief Prosecutor then noted three areas of concern that he has identified as the ICC takes its first steps as an institution of international criminal justice. All of these issues are encapsulated in the following quotation from Nelson Mandela on the subject of prosecution:

*The challenge for the modern prosecutor is to become a lawyer for the people. It is your duty to build an effective relationship with the community and to ensure that the rights of the victims are protected. It is your duty to prosecute thoroughly and effectively in accordance with the rule of law and to act in a principled way without fear, favour or prejudice. It is your duty to build a prosecution service that is an effective deterrent to crime and is known to demonstrate great compassion and sensitivity to the people it serves.*

The primary areas of concern for the ICC, noted Mr. Ocampo, are how best to investigate the kinds of crimes that will come before it, how to ensure the protection of victims, and how simultaneously to act independently and inter-dependently.

Although inspired by the excellent investigations carried out by the ICTR in Rwanda, Mr. Ocampo noted that the ICC would face serious challenges during this phase of its own work. The court is bound to encounter States that are unable or unwilling to assist in the investigation of crimes committed on their territory. The ICC, of course, has no police of its own, and neither does it have formal authority over law enforcement bodies in the countries where investigations are held. The ICC thus requires the voluntary co-operation of many different entities in order to investigate crimes. It may even someday be called upon, like the Sierra Leone court, to investigate a sitting Head of State who is unlikely to grant permission for an inquiry into his own actions. Such a scenario presents a problem to which, Mr. Ocampo stated, he has yet to find an answer.

Yet, the past investigatory work of the ad-hoc and mixed tribunals suggest some solutions. For example, there is now a body of knowledge about ammunition dealers around the world and how they transport their goods. Such knowledge will help the ICC to frame its investigations of conflicts and how they are supplied. However, such an investigation will necessitate the sharing of information between national and international prosecutors. The Prosecutors’ Colloquium, which has both of these groups in attendance, represents an ideal opportunity to brainstorm other solutions to the difficulties of international criminal investigation.
The problem of victim protection is equally thorny. Again, Mr. Ocampo noted the excellent job that the ICTR has done in setting new standards for the treatment of victims and in finding ways of helping them to come forward. Mr. Ocampo noted that the victims of massive crimes suffer terribly and it is incumbent upon the international justice system that they not be traumatised further. At the same time, they need to be identified and contacted for the eventual prosecution of those most responsible for the crimes being investigated. The ICC also has a new duty: victims need to be informed that they can participate in trials and seek compensation.

While this new role for victims is a positive development, in Mr. Ocampo’s view, it also raises some new and challenging questions. Who counts as the victim of a crime and thus can ask for compensation? Is it only victims of violence, or can those displaced by violence be counted also? If so, how can they all be compensated? What about the victims whose cases were investigate but whose testimony is ultimately not included in the prosecutor’s proceedings? Should they be compensated? If so, how can their compensation be determined if their cases do not figure in the trial?

Mr. Ocampo would like to see a community solution to the compensation problem. In other words, individual victims would not be compensated but instead larger populations, through the provision of schools, hospitals, and other needed resources. In this way, justice will also reinforce development.

The push for international criminal courts to leave behind a legacy responds to a similar question: what happens in post-conflict societies after justice is achieved? Mr. Ocampo quoted UN Secretary General Kofi Annan, who suggested that any future criminal tribunal must consider its intended legacy in the country concerned. This sets very high standards, indeed, for international justice, remarked Mr. Ocampo. According to this scenario, the evaluation of criminal tribunals, including the ICC, may not be based on their procedures, convictions, or decisions, or on their ability to investigate and prosecute, or even on the skill of legal argument used in the courtroom. They may be evaluated instead on the impact they leave “on the ground.”

While Ocampo is sympathetic to those who call for a local impact—he thinks it is an understandable expectation—he also considers that such an impact is not necessarily the work of a court. How can a judicial institution transform a lawless situation, in which massive crimes have been committed, into one where the rule of law is respected? A court cannot do this alone.

This is where the calculus of independence and inter-dependence comes into play. International criminal tribunals must be independent in the way they perform their work, faithful to their mandates and impervious to undue outside influence. Yet, they must also foster inter-dependence with national entities in order to perform their important work. Mr. Ocampo pointed out that he has a huge jurisdiction. He can investigate and prosecute crimes committed in 97 states in the world. Yet, in the absence of inter-dependence, none of his work can be carried out.

In terms of the legacies to be left by international criminal tribunals, a lasting impact in the societies where crimes occurred can only be achieved if local leaders and institutions do their part alongside the courts. Prosecutors, judges, and lawyers have their own particular mandate to fulfil. It is up to other actors to rebuild countries. These legacies are thus a joint enterprise, and they rely on a spirit of inter-dependence. Mr. Ocampo feels that courts have to explain this to the societies where they operate and to the international community at large. In the same way, nations around the world need to understand that without their co-operation, investigations cannot take place, arrests cannot be made, and indicted criminals cannot be prosecuted. If none of this happens, it will not be a failure of the courts but instead of the global community that has not understood its own obligation to act inter-dependently.

Mr. Ocampo ended his keynote address with some astute observations on the role of international justice. Whereas peace agreements were once the default mode for ending conflicts, international criminal courts have “now made justice an option.” He urged political leaders to take note of this fact. They acted to create these tribunals, and in so doing, they have set new standards for themselves by agreeing that there will be no immunity for top leaders if they have perpetrated crimes against humanity. Now they have to get on board and put international justice on a par with national justice, where justice is not an option but a mandatory response to crime.

The challenge of bringing international justice work to diverse local communities was also raised. Even in the course of its first investigation of crimes in Uganda, the ICC has encountered perceptions of justice that differ...
from those accepted in the international community. In the West, amnesty suggests impunity. But to local leaders in Uganda, extending amnesty to those who have perpetrated crimes against them would simply mark the end of the Western solution and the beginning of a customary one, which aims at truth, reconciliation, and compensation. Such a traditional response, Mr. Ocampo remarked, may appear too “soft” by Western standards. At the same time, some national courts may insist that the death penalty is the only proper sentence for those convicted of crimes against humanity, whereas the Western sentence might be serving life in a protected prison with medical treatment and other amenities. In this case, the Western response to crime is deemed too lax.

Mr. Ocampo asked his audience to think about what a truly international model of justice would look like. He urged his colleagues to look at a system like the gacaca courts in Rwanda, from which Westerners have much to learn. Gacaca may not fulfil Western notions of a fair trial, but on the other hand, it is not trying to. Mr. Ocampo compared gacaca to a huge community plea bargain, which he finds it could be an effective response to the large number of suspected criminals currently in detention. On this point, Mr. Ocampo concluded by noting that variations in how people around the world conceive of justice go far beyond the minor differences that exist between civil and common law systems. If practitioners of international justice wish to be truly inter-dependent, they should learn from local communities and respect their views.

Mr. Ocampo concluded by noting the need for local and global communities to be both served and linked through standards of international justice. The cases prosecuted by international criminal tribunals may seem remote from the everyday experience of citizens living in democratic and peaceful states. However, these citizens need to understand that there is no safe haven for life and freedom if we fail to protect the rights of any person in any country in the world. Mr. Ocampo quoted from the preamble to the Rome Treaty, which underscores the need to punish and deter the most serious crimes and declares that this must take place through both national and international action and co-operation. Mr. Ocampo declared that this is our common duty and that the prosecutors’ colloquium will allow those gathered to fulfil this duty more effectively.
4. Challenges of Conducting Investigations of International Crimes |

Moderator
Mr. Hassan Bubacar Jallow, Prosecutor, ICTR

Presenters
Mr. Bernard Muna, Former Deputy Prosecutor, ICTR; Hon. Navanethem Pillay, Appeals Judge, ICC; and Ms. Binaifer Nowrojee, Lecturer, Harvard Law School and Senior Researcher, Human Rights Watch

Panellists
Mr. Richard Renaud, Chief of Investigations, ICTR; Mr. Gavin Ruxton, Chief of Prosecutions, ICTY; Mr. Serge Brammertz, Deputy Prosecutor (Investigations), ICC; and Dr. Alan White, Chief of Investigations, SLSC

Presentations
This first session of the Prosecutors’ Colloquium addressed some of the common challenges that arise during the investigation of crimes by international courts and tribunals. Participants had the opportunity to exchange experiences and suggestions for improving the crucial work that they carry out in the international justice system. The session consisted of three presentations on topics relevant to the session theme, followed by the remarks of four individuals intimately involved in the investigative work of their courts.

> “The Early Challenges of Conducting Investigations and Prosecutions before International Criminal Tribunals,” presented by Mr. Bernard Muna

Mr. Bernard Muna began by noting that ad-hoc tribunals were political creations and, as such, raised expectations in the international community that were not always realistic. Speedy results were expected but investigations encountered many obstacles that do not exist in domestic jurisdictions. Most of those suspected of mass crimes had fled Rwanda and it was not a simple task to track them down. The ICTR does not have a police force and thus has to depend upon the co-operation of national police forces and enforcement systems. While some States co-operated in the ICTR’s investigatory work, some others did not. In contrast, the ICTY had an advantage in that it had the assistance of NATO forces in locating and arresting suspects. Mr. Muna expressed the hope that the ICC will receive more co-operation from States and national systems in their investigation of criminals.

The ICTR was created in the image of the UN General Assembly. Staffs were recruited from around the world. While such geographic representation seemed like a good idea, this diversity brought a number of challenges in the creation of an investigation team, including those related to language, culture, and professional training and background. In contrast, the ICC has the opportunity to draw upon a more experienced pool of staff as many professionals have already worked with the ad-hoc tribunals. The coming together of different legal systems has also created some difficulties for the ICTR. Practitioners trained in different systems may have markedly different perspectives on issues such as statements by the accused, which may ultimately influence decisions and sentences.

Mr. Muna believes that the accusatorial legal system is not as well suited as the inquisitorial system for examining “the collective responsibility of a government that becomes a predator on its people.” The accusatorial approach also may lead to lengthy proceedings that may result in taking up a lot of time and resources.

Mr. Muna stressed that the international justice system must promote a consciousness of the importance of international courts, even among populations far removed from the kinds of conflicts examined by international criminal court. He remarked “If it is not our turn today, it might be ours tomorrow.”

It has been noted that the ICTR has yet to resolve its credibility problem in the eyes of the Rwandan people. This is because the trials are taking place outside the territory in which the crimes were committed. Mr. Muna suggested that cases that remain after the tribunal closes could be transferred to the new African Court for Human and Peoples’ Rights as well as to national jurisdictions.
> “Jurisprudence on Sexual Violence in International Tribunals,” presented by Hon. Judge Navanethem Pillay

Judge Navanethem Pillay began her presentation by noting that, as a judge, she cannot tell prosecutors how to advance their investigations. She stressed that judges need to be balanced since they hear cases from the point of view of both prosecutors and defence.

Judge Pillay feels, however, that one area of criminal investigation that has not received sufficient attention is that of crimes of sexual violence. Crimes of sexual violence require a particular approach since they are surrounded by feelings of shame and stigma on the part of victims.

In early ICTR cases, the charge of rape was sometimes added at a late stage of the prosecution in response to witness testimony. This was due, in part, to investigations that did provide the evidence to support a charge of crimes of sexual violence in the original indictment. At times, investigators have also lacked awareness of the importance of investigating these crimes and sensitivity in collecting evidence about them.

Judge Pillay pointed out that jurisprudence from the ad-hoc tribunals has influenced the definitions of rape and other sexual crimes and consequently the nature of evidence that has to be collected to prosecute these crimes. She concluded by asserting that rape and other sexual crimes are as serious as other types of international crime. As such, they ought to be accorded the same attention.


The central issue raised in Ms. Binaifer Nowrojee’s presentation was that the prosecution of crimes of sexual violence has not been as consistent or thorough as it could be in international criminal courts. Ms. Nowrojee identified the following measures that could be taken to address the problem:

- Creating political will on the part of the prosecutor;
- Designing a prosecution strategy for rape at the outset of the court’s activities;
- Training all staff so that they understand the complex issues surrounding sexual crimes and their investigation;
- Dedicating a staff specialised in the investigation of sexual crimes;
- Care for the well-being, safety, and dignity of rape victims. This requires that sufficient information be provided to victims, that they have the agency to decide how they want to proceed vis-à-vis the judicial process, that they are properly prepared to testify, and that they receive appropriate support and protection services;
- Creating an enabling courtroom environment for victims of sexual crimes.

Ms. Nowrojee concluded her presentation by pointing out that the evidence necessary to prosecute perpetrators of crimes of sexual violence exists. Prosecutors need to improve their methods of obtaining it.
Comments by Panelists

Mr. Gavin Ruxton, Chief of Prosecution, ICTY, observed that there are differences between the nature of investigations immediately following the creation of the ICTY and those taking place as it approaches the end of its mandate. Investigations now support the work of prosecutors instead of leading to indictments. He reiterated some of the challenges laid out by Mr. Muna in the ICTR, including the lack of co-operation of States in investigations. Other challenges facing investigators are lack of familiarity with the context and facts, and the fact that the evidence is collected long after the events are investigated.

It is also sometimes difficult for the OTP to know when to stop collecting evidence, or when a case is “trial-ready.” Limited resources suggest that investigators need to move on to a new case within a reasonable amount of time. Finally, Mr. Ruxton described the need to “package” cases in such a way that they can be dealt with readily by other jurisdictions when transferred.

Dr. Alan White, Chief of Investigations, SCSL, shared the best practices of his court. He identified the following “best practices”:

- A court needs a well-defined mandate so that investigators can be properly focused.
- Gender crimes were included in the investigation plan from the outset.
- Investigators and prosecutors worked side by side.
- The SCSL identified as their client the people of Sierra Leone and reached out to them through town meetings so that they understood the court’s mission.
- The right staff should be hired at the beginning of the court’s work.
- Witnesses should be taken care of before, during, and after testimony. The SCSL created a witness management unit to this end.
- Donor fatigue will quickly ensue if there is not a “product.” Focused work on investigations will help in countering such fatigue.

Mr. Serge Brammertz, Deputy Prosecutor (Investigations), ICC, acknowledged that the challenges cited by Mr. Muna still exist today. The ICC has encountered similar difficulties in the management of expectations on the part of the international community (speedy justice). Victims’ associations may have different expectations from the international community (full justice), and yet, national governments have different ones (local capacity building). Effective communication can help with expectation management.

Mr. Brammertz also stressed the difficulty of investigating crimes. While the ad-hoc tribunals have recourse to UN Security Council Chapter 7 powers, the ICC does not. Supporting the creation of the ICC is not the same thing as supporting its work on a day-to-day basis. ICC investigations will also sometimes be carried out in dangerous environments, sometimes with continuing conflict. With regard to crimes of sexual violence, he explained that the ICC has a specialised unit in the investigation division responsible for initiating policy, conducting training, and planning investigations on gender crimes.

Mr. Richard Renaud, Chief of Investigations, ICTR, stressed the importance of the frank comments offered during the session. Witnesses are a crucial resource in the international justice process and should be treated accordingly. The ICTR could also benefit from “insider witnesses.” Plea-bargaining as a method for expediting the judicial process should be explored further. Many of the challenges brought up by Mr. Muna are still relevant, Mr. Renaud noted, in particular the need for co-operation by States in the investigation process. Mr. Renaud also agreed that the treatment of gender crimes and female witnesses is of the utmost importance and that there is a strong need for specialised staff.
Participant and Audience Member Questions and Comments

The existence of Sierra Leonean staff at the SCSL has made an enormous contribution to the work of the Prosecutor. In contrast, the ICTR made the choice to not employ Rwandans in the OTP and has not had comparable benefits. Local staffs have the advantage of knowing the complete context of the crimes investigated, the language, and the culture. Sierra Leoneans have been particularly useful in getting direct testimony from sexual crime victims instead of going through an interpreter.

With regard to protecting witnesses in Rwanda, it is not possible to have a watertight system of witness protection because identities of Rwandan witnesses often become known despite ICTR measures to ensure anonymity. The visibility of ICTR investigations in the localities where witnesses reside reveals their participation. A system of witness protection should be reconsidered; having witnesses known could be a better guarantee of their security than their anonymity. In the current system, both the prosecution and defense teams know the identity of anonymous witnesses, and the possibility for leaks of this information cannot be excluded. In some cases, witnesses have lost their lives.

The achievements of the ICTR are not widely known in Rwanda. This information should be made available to the Rwandan population so they see that progress is being made and that justice is being provided. If the court proceedings were taking place where the crimes occurred, as they do in Sierra Leone, the successes of the court would have a higher profile.

The ICC is based in The Hague but has worldwide jurisdiction. Thus, the judicial process will often be carried out far from the localities where the crimes occurred. The ICC will also face challenges of witness protection, especially as it may try criminals as conflict continues.

Many international tribunals have no "coercive powers"—police force, right to subpoena witnesses, and other enforcement powers. The hybrid courts have the advantage of being able to rely on national enforcement systems. Perhaps the ICC should have incorporated a provision that States are required to assist the prosecutor in the investigation and prosecution process.

When the ICTR Office of the Prosecutor was established, the conflict in Rwanda had just ended. It was unclear exactly what role the Rwandan nationals should play in the staffing of the ICTR. Although it is easy in hindsight to criticise some of the decisions made by the ICTR, the policies were made in good faith.

Several participants noted that, even though the mandate of the ICTR is coming to an end, it is not too late to make procedural changes that would facilitate its work and mission to serve the Rwandan people.
In international criminal justice systems, the process for fact-finding is very different than in many domestic systems where police conduct the fact-finding and then pass it onto the Prosecutors. In the ICTY, Mr. Ruxton noted, cases evolve factually and prosecutors often find themselves scrambling for information at the trial. The need to be better prepared in advance is apparent. Mr. Ruxton suggested that one possible solution would be to develop more of a dossier. Also, using systems such as Case Map is worth consideration.

An enormous amount of energy is dedicated to the disclosure of exculpatory information in big cases. This is documented in the final reports at the end of the prosecution’s case in the Milosevic trial. The ICTY is now moving to an Electronic Disclosure Suite—an open book approach. With this format, defence counsels can access both the general collection of materials and a second collection that is specifically developed for their case. It is done over the Internet. The rules have changed so that it is the prosecutor’s obligation to provide the defence with any exculpatory material that is “within our actual knowledge,” a term that must be defined internally.

Per the Security Council resolutions, there are now attempts to control the number of indictees. Many judges want to determine which charges should be subject to evidence, the number of witnesses, and deadlines for the length of cases. Serious attempts are being made to have pre-trial judges resolve issues that can be fixed prior to the trial. However, in certain situations this can intrude into the discretion and independence of the prosecutor.

The length of the cases must be reduced. Although there were reasons for establishing multiple charges in an effort to create historical record, prosecutors should now restrict the scope of what they undertake to prove. Mr. Ruxton addressed the following ways of dealing with the excessive length of cases.

There must be a way to establish some crime-based issues—such as ethnic cleansing in Bosnia or genocide in Rwanda—as a starting point. There is a tremendous amount of time spent repeatedly proving that these crimes occurred. In response to the overwhelming amount of evidence with such crime-based issues, prosecutors have encouraged the use of written statements over oral evidence. However, since this method places more pressure on staff and judges—to prepare and read respectively—it has not been enthusiastically adopted. Furthermore, written statements were incorporated in the Milosevic case and both the press and public were unhappy. Many witnesses had their statements tendered and were only cross-examined. Also the press and staff found it difficult to follow the trial.

In a system such as the ICTY, it is an enormous undertaking for any single person to run his/her own defence. The Milosevic case illustrates the difficulties that can occur, such as when health issues intervene. The task is clearly beyond one person to do it at constant speed.

Mr. Ruxton concluded his presentation by noting an issue that is still, to his dismay, open for debate—proving joint criminal enterprise between top leaders. The issue raises many questions, especially when those of different military ranks are involved. At this point, he explained, there should be a resolution to such a fundamental issue.
In discussing his paper, Mr. Crane focused on the lessons he has learned from the SCSL. He asserted that the mandate for the SCSL is both politically and legally achievable, that is, to prosecute “those who bear the greatest responsibility” for war crimes, crimes against humanity, and other serious violations that took place in Sierra Leone after November 1996. Mr. Crane noted that “Those who bear that greatest responsibility” includes less than two dozen individuals. However, if one were to change “greatest responsibility” to “most responsible,” that would include 300 to 400 individuals. Go one step further—moving from “greatest” or “most responsible” to “those responsible for these war crimes and crimes against humanity”—and the trials would go on indefinitely. As this illustrates, it is very important to get a mandate and a mission statement that allows the organisation to achieve its goals in a time frame that the people, the victims, the towns, and the districts can appreciate. He also recommends that a war crimes tribunal does its work in five years or less, otherwise it can become a political problem for the region.

Courts and tribunals need to be located in the community where the crimes occurred for two main reasons. Most importantly, it allows victims and their families to see justice in action. Second, it focuses the work of the court, reminding all why they are doing this work. Every day one can taste, touch, feel, and smell the agony that the people of Sierra Leone have experienced.

Outreach and legacy programmes are keys to success. In Sierra Leone, a successful outreach program provided the staff with a true appreciation for what took place in “Salone” (Krio language term for Sierra Leone). More importantly, it gave victims the opportunity to be heard by prosecutors who would indict those who did such terrible things. A tribunal is for the people being served, and therefore, something other than just convictions must be left after the trials are completed. There must be a legacy. For example, the SCSL will leave the region with trained individuals to carry on the work of the tribunal. Also, the tribunal has a duty to ensure the safety of witnesses and victims, which includes providing assistance for their psychological and physical needs. Lastly, proper outreach and legacy programmes prove that the law is the cornerstone of a proper democratic and peaceful future. For decades, the law has been a threat to the people of West Africa. With these programmes, the SCSL leaves the message that law is fair, that nobody is above the law, and that the rule of law is more powerful than the rule of the gun.

As demonstrated in Sierra Leone, truth commissions are important for a just and sustainable peace. Although the Court could not prosecute 30,000 people, its clients were assured that it would seek justice. People needed a formal setting where they could testify about what happened to them. Over 9,000 people testified before the TRC.

In May 2002, an academic consortium was created by using law schools from all over the world to create an education program for law students to directly support the Prosecutor’s office. It was an incredible effort that proved to be of great benefit for all parties. The initial intent was to show law students that they should consider international criminal justice as a future profession. However, it also saved the court a tremendous amount of time and money and students benefited by actually doing war crimes work.

The biggest challenge facing the court is international indifference. Most people are either ignorant or do not care about the tragedies that have occurred in West Africa. Therefore, it is critical that the international community realises how these events impact the rest of the world. They have a ripple effect and with Al Quaeda, Hamas, and Hezbollah operating freely in West Africa, everybody is vulnerable. If the international community remains indifferent, these groups will return and wreak havoc.

In conclusion, Mr. Crane explained the criteria for the selection of targets and indictees. Criteria are based on case theory and adjusted accordingly, as new information becomes available. In addition to standard procedures such as examining the facts and law, interviewing victims, and consulting with all staff, he emphasised that prosecutors need to consider the diplomatic and cultural aspects of indictees. Mr. Crane cautioned that by not doing so, one could destabilise a whole region. In addition, he noted the need to reach out to civil society by working with NGOs.
Mr. Jallow highlighted the challenges and constraints that the ICTR has faced. The ICTR only prosecutes those most responsible for serious violations of international humanitarian law in Rwanda and the neighbouring States during the specific period of 1st January 1994 to 31st December 1994. It has succeeded in prosecuting those who bore the greatest responsibility or engaged in committing serious violations of international humanitarian law. In order to develop criteria to determine whom, in the words of Security Council, “played a leading role in the genocide of Rwanda or who committed a serious violation of the law,” the ICTR held a workshop of senior trial attorneys. Nevertheless, with the decision on the Completion Strategy by the Security Council, ICTR had to in February 2004 focus on the issue of selecting cases for prosecution.

Once faced with the deadlines, the OTP had to conscientiously determine what cases to retain, prosecute, transfer, or discontinue. It was concluded that three factors were critical: the status of the accused in Rwanda at the time (e.g., whether he was senior military or government figure?) and the extent of his or her participation. Geographic spread was also established as a consideration, so as not to exclude certain parts of the country. That could give rise to issues of discriminatory selection and impede the prospects for national reconciliation. A third factor was the nature of the offence itself. Offences of sexual violence or those directed against children would be given priority in prosecution where the evidence and law permitted.

The prolonged nature of the investigations—ongoing 10 years after the event, and due to conclude only by end of 2004—posed a challenge to prosecution. With the lapse of time, questions as to quality of results may arise.

Unlike in the ICTY, the ICTR Bureau should not have a role in deciding whether an indictment will go forward for confirmation. The Bureau does not have access to sufficient information, such as the entire database of targets, to enable it determine what cases are more serious than others. Only the Prosecutor (who is aware of the entire database) is in a position to do so. The arrangement also raises constitutional questions relating to the exercise of Prosecutorial discretion.

At present, multiple-accused cases are posing a great challenge for the court. Therefore, the OTP is moving toward single-accused cases. Existing multiple-accused cases have been ongoing for years and remain unfinished. In such cases, there are multiple defence counsels and witnesses. This often leads to more delays due to the absence of one or more of the actors.

As a result, current policy has shifted to the strategy of single accused cases. Single accused cases tend to proceed more quickly. The new indictment policy also requires that before an indictment is submitted for confirmation, all steps must be taken to ensure that the case is trial ready upon confirmation.

In order to maintain a unified case theory of the genocide, the OTP needs to improve co-ordination among trial teams. With nine trial teams, all headed by enthusiastic senior trial attorneys, this has been a challenge. Staff must avoid taking conflicting positions with regard to the overall case theory. The position taken by one trial team should not hurt another.

It is quite easy to fall into the error of dealing with each of the trials at the ICTR as an isolated case, whereas in truth there was a single genocide. All the cases are merely intended to establish the involvement of each of the accused in that single event. It is essentially one case and the several trial teams have to be conscious of this.

Mr. Jallow concluded his presentation by reiterating some of the challenges that the ICTR shares with other courts, such as disclosures, witness protection, translation issues, and another challenge is international co-operation; and international support with regard to resources, production of evidence, apprehension and transfer of fugitives, and the acceptance of referrals for prosecution at the national level.

The rules placed an onerous burden of disclosure on the Prosecutor, which continued at all stages of the judicial process and even well after its conclusion. Discharging such an obligation required better organisation in the analysis, classification, and access to the huge mass of material collected by investigators over the years. Trial attorneys were sometimes unaware of some of this, due to no fault of theirs.
Witness security was becoming a key issue at the Tribunal. State support in providing protection and relocation of witnesses and in the apprehension and transfer of fugitives was well below what was required. The referral of cases to national jurisdictions for trial was a very important element of the Completion Strategy of both the ICTY and the ICTR. In the case of the ICTR, very few States had demonstrated a willingness to take on such cases.

The success of international criminal justice depended on the one hand on the internal efforts of the tribunals to expedite the process of delivering justice in an efficient and fair manner and on the other, the effective support of the international community for the tribunals. As creations of the international system not anchored to any national system, these tribunals depend significantly more than national institutions, or even mixed tribunals, on the individual and collective solidarity of member states.

Comments by Panellists

Ms. Melanie Werrett, ICTR Chief of Prosecutions, noted that many of the issues that arise in the ICTR and ICTY are because these types of tribunals, even after 10 years, do not fit neatly into the UN system. Some of that responsibility falls on the courts. Rather than asking the UN “What to do?” they should have said, “This is what we are going to do.” Werrett also addressed the need for “proper” resources in order for courts to operate effectively. There is a serious need for many types of training. For example, there tends to be a dehumanising attitude toward those before the court and it must be addressed. Therefore, training must include educating staff on how to treat witnesses and victims as people and not just as “resources.”

Mr. Luc Coté, SLSC Chief of Prosecutions, commented on several points made during the presentations. He explained that the specificity of the SCSL, which was created by a bilateral treaty between the UN and the Sierra Leone government, makes it possible for the court to be in the country where the crimes were committed. He noted, however, that it is naive to think that this can always be possible for a variety of reasons including continuing conflict and the unwillingness of many countries to surrender sovereignty.

Mr. Coté also addressed the issue of limiting the number of witnesses, which was raised numerous times. He noted that this could be an issue because prosecutors often develop personal relationships with potential witnesses. It can be hard for them to then explain that one’s testimony is not ultimately “needed.” Lastly, with regard to the political reality facing the international justice system, Mr. Coté contends that transparency is essential; the changing criteria of the courts’ completion strategies, such as the ICTR and ICTY, should be made public.

Ms. Fatou Bensouda, ICC Deputy Prosecutor, reflected on the unique situation of the ICC. It is limited by neither geographic nor time constraints; thus, a completion strategy is not an issue. However, the court is faced with its own issues. Currently, the ICC is in the process of investigating. Such investigations often take place under dangerous circumstances, with uncooperative governments, and alongside concurrent peace negotiations. Deeply involved in the investigations, prosecutors serve as team leaders. The ICC has a duty to investigate both inculpatory and exculpatory matters. It cannot just later disclose exculpatory material. Prosecutors have the duty to present evidence of a “unique investigating opportunity” to the pre-trial chamber. There are also clear protocols with regard to handling witnesses and the accused. She concluded by noting that the joint prosecution/ investigation approach is critical.

Mr. Gavin Ruxton, ICTY Chief of Prosecutions, commented on the ICTY’s investigation and prosecution strategies. With constant media images and information in Europe, the ICTY had to gather witnesses. The early work was experimental and focused on establishing the structures of the military and militia. Efforts were concentrated on the regional and national level. If lower level perpetrators fit into the picture they would be indicted, however, the focus was always on leaders. Since much of the information coming out of the Balkans was not credible, the court carefully considered the entire public material and material coming from the Serb side.

Mr. Ruxton concluded his comments by noting an oversight in the colloquium’s discussion—the appearance of inactivity. Although gaps in the court’s proceedings cannot always be controlled, they do present the public with a negative image. To address this criticism and use the courts most effectively, he proposed that courts be creative in filling time with pre-trial issues.
Participant and Audience Member Questions and Comments

In response to the question of whether the ICTY could have developed a written strategy in the beginning, it was noted that it would have been very difficult. Even if a strategy had been developed, the Tribunal would have diverted from it as events unfolded.

Panellists addressed questions on ICC provisions for compensation, stating that there will be a trust fund for compensation overseen by an independent international panel of directors. A community approach will be used to make decisions, with the judges having the final say on who receives compensation and in what amounts. The Genocide Survivors Assistance Fund in Rwanda was proposed as a workable model.

Participants responded to audience questions about the tribunals’ rationale to draft indictments without sufficient evidence. They emphasised the tremendous international pressure to arrest high level targets whose whereabouts were obvious. In Nairobi, genocide suspects were walking the streets and there was pressure to arrest them. Although cases were not ready, the courts had to start the process to keep the international community comfortable. Also, in many cases, once there was any evidence, a person was arrested and an indictment had to be prepared. After the confirmed indictment, evidence was examined to assemble a more proper indictment. Cases were often not ready, and though it did seem backward, it was a way to establish credibility with NGOs and the media.

As a footnote to Mr. Jallow’s comments on geographical distribution, it was noted that the OTP did a very important job by drawing from different sectors of the Rwandan population while identifying those who participated in the genocide. Members of the military, politicians, religious figures, and even musicians (who were very good mobilisers during the time of genocide,) have been prosecuted.

Some audience members noted that in addition to international indifference, there is also an international incoherence of policies related to the way that similar issues are addressed across regions. Although the international community is spending many resources on Rwanda, it is not addressing issues in the Congo. These are two very different approaches to a very similar problem.

The excessive length of trials was discussed throughout the presentations. One participant proposed the following: is it possible that basing defence compensation on the hours spent in courtrooms will be an incentive for “delays?” He asked if there might be another method of ensuring fair representation. Participants noted that there is an approach that grades the cases by complexity. Lawyers are given a lump sum payment according to the complexity of the case. One participant noted that plea-agreements are another sensitive issue as there is no financial incentive for the defence.

Conclusion

In concluding the session, Mr. Ocampo commented on independence, interdependence, and innovation. He emphasised the need for the ICC to maintain independence. At the same time, it is a complementary court. Therefore, it has an obligation to support others in the international justice system. With regard to innovation, the ICC must actively seek knowledge from both the international and domestic systems. In particular, it should examine the demonstrated success of creative approaches in nations such as Argentina and Chile, and alternatives such as gacaca in Rwanda.
6. Service of Sentence for International Crimes |

Moderator
Mr. David Crane, Prosecutor, SCSL

Presenters
Dr. John Hocking, Deputy Registrar, ICTY and Mr. Lovemore Munlo, Deputy Registrar, ICTR

> "Lessons Learnt on Enforcement of Sentences: The ICTY Experience," presented by Dr. John Hocking

Dr. Hocking has been Deputy Registrar for the ICTR for only two months. He was previously Senior Legal Officer in the Appeals Chamber, dealing with both ICTR and ICTY appeals. He noted that colloquium participants are commemorating a horrific episode in human history, this being the tenth year following the genocide in Rwanda. He continued by outlining the important achievements in international criminal prosecution.

It has been just over 10 years since the ICTY has been created. It had been the dream of international lawyers after Nuremberg and Tokyo to create an international criminal court, and it was realised with the ICTY. This court paved the way for the ICTR, SCSL, East Timor, and, it is hoped, Cambodia, and, finally, the ICC, the first permanent international criminal court.

By 1997, the ICTY had completed one trial, Tadic, and it was about to start the Celebici trial. The tribunal had 11 judges. Now it has 25 judges and runs six trials every day in three courtrooms on a split shift. Thousands of victims have testified and nearly 40 accused have had their processes completed.

The ICTY also created the first international court of criminal appeal, there having been no appeals from the Nuremberg or Tokyo Tribunals. The Appeals Chamber handles cases from both ICTY and ICTR. Last year it delivered 350 written decisions on topics such as evidence, jurisdiction, procedure, and final appeal judgements from judgements of the Trial Chambers.

There has also been an evolution in other areas, such as victim and witness support, as well as interpretation and translation (overcoming the difficulties of translating legal concepts from English into Bosnian/Serbian/Croatian and French). An international criminal defence bar has also been established, as well as a solid legal aid system. Finally, there are now state-of-the-art courtrooms as well as a detention facility.

How did this all come about? In Dr. Hocking’s opinion, it was due to the critical effort of key individuals, such as the Prosecutor, the Registrar, and the President, who refused to give up. Within one year of its establishment, the ICTY had Rules of Procedure and Evidence, an arrest, and its first trial (Tadic). However, all of these accomplishments have involved a process of learning and struggle.

The Tadic trial played a critical role in the development of the Tribunal, since trials have a momentum and it is important to get them going. They are still learning from trials at the ICTY, and it is not possible to foresee all the problems that will arise. It is important to get trials started with commitment, creativity, and flexibility.

The ICTY and ICTR are criminal courts set up within the UN administrative structure. The UN had never operated a criminal court before. An example of one issue that had to be overcome was to deal effectively with protected witnesses. State cooperation is also important in many areas, such as investigations, arrests, prosecutions, relocating witnesses, and the enforcement of sentences.

The ICTY detention unit was established as part of the normal Dutch prison in The Hague. It is a model prison, with education possibilities, facilities for exercise, and much else.
Article 27 of the ICTY Statute governs in relation to the service of sentence. The tribunal is entirely dependent on the cooperation of States to take its prisoners. The ICTY has entered into agreements, and it has not been an easy task. The ICTY is asking States to take prisoners convicted of the most serious crimes, such as genocide, crimes against humanity, and war crimes, with the only compensation being the honour of serving the international community.

There are 10 agreements in place, all with European countries: UK, Denmark, Germany, Spain, France, Sweden, Austria, Norway, Finland, and Italy.

Domestic regimes apply with respect to early release, which has to be authorised by the President of the ICTY after consultation with the judges.

Twenty-four persons have gone to serve the sentences in participating States. Ten have completed their sentences. Fourteen are still in detention.

Pursuant to the completion strategy, all indictments at the ICTY must be finalised by 31 December 2004. There are 20 fugitives still at large. There are about 60 accused in custody, although some are on provisional release. It is estimated that each of the 10 States, which have agreements with ICTY, may be expected to take on five more prisoners.

It is not easy to take on these prisoners, who often do not speak the language of the State involved, and whose families are far away. The ICRC organises visits of family and friends to detained persons, but this is difficult.

ICTY will close in 2010 with the last appeals. There will have to be residual powers in some body that will be charged to take over. This will require an amendment of the Statute.

Part of the completion strategy is the use of Rule 11 bis, under which low and middle level offenders are handed back to courts in the former Yugoslavia. There is also an obligation to hand over the great expertise that the ICTY has developed. Dr. Hocking feels that this is very important.

One failing of the ICTY has been the failure to reach out to the local community. An Outreach Programme has been established with EU funding. Dr. Hocking shared an experience he had in relation to the Outreach initiative. One of the criticisms of the ICTY had been its failure to follow up with witnesses. Outreach and the Helsinki Committee started a programme called “Bridging the Gap,” relating to the Celebici trial.

The camp that was at the centre of that trial is an hour or so from Sarajevo. Bosnian Serbs were held there as prisoners by Bosnian Muslim forces. It was a horrific place. There were murders, rapes, torture, and violent assaults on prisoners. Persons from the ICTY, who had worked on a trial, went to the place. It was cold, snowing, and the hall was packed. Most of the victims had come in from Republika Serbska. From 9:00 a.m. until 5:30 p.m., the ICTY people spoke about the trial, beginning with the lead investigator, who explained the investigation process and why four persons were indicted, while others were not. They moved on to the trial itself, showing two hours of trial footage, interspersed with comments from those involved.

It was a moving experience. Dr. Hocking remembered particularly the reaction to the video shown of the camp. Three elderly men sitting at the front nodded agreement with everything that was said.

This was the first chance for the community to see the outcome of the trial and the appeal, and to know the sentence. Most people cannot get to The Hague to watch trials. After they testify, witnesses do not know what comes afterward. This experience was like closing the circle of that trial.

In some cases, the ICTY may have failed to meet the needs of victims, witnesses, and communities. The alternative of not holding a trial at all, in Dr. Hocking’s view, was not acceptable.
Mr. Munlo opened by pointing out that the enforcement of sentences at the ICTR is a challenge. The ICTR Statute restricts the powers of the Tribunal. The tribunal has no police power, no sovereign authority, and no territory where it could take convicted persons. Under the host agreement in Tanzania, as soon as a person is convicted, he must leave Tanzania as soon as practical. However, Mr. Munlo asked, “where should they be taken?”

Article 26 of the ICTR Statute governs the service of sentence, and provides for the service of sentence in Rwanda or a State willing to take the convicted person. The problem, however, is that few countries will take ICTR prisoners. Thus far, the ICTR has succeeded in getting only six countries to take prisoners.

The ICTR has a model agreement, which is subject to modification depending on the particular country. In order to maintain minimum international standards, the Tribunal may have to help a country to meet such standards.

Article 26 also speaks about the responsibilities the accepting State has and what is expected from the ICTR. The Tribunal has only a supervisory capacity, with the governing law being that of the host country. However, who will have supervisory powers after the ICTR’s completion strategy is successfully concluded in 2010?

Mr. David Crane observed that SCSL was facing the same issues on sentence enforcement that were being faced by ICTY and ICTR. The SCSL legislation provided that a sentence could be served in Sierra Leone “or elsewhere.” They were putting much emphasis on “elsewhere” in an effort to protect prisoners.

Mr. Crane commented that part of the SCSL exit strategy addresses what to do with records, convicted persons serving sentence, and other matters. The court has thought about establishing a residual office that would deal with records, monitor indictees, and so on. He suggested that there could be a “UN war crimes residual office,” where individuals from the various tribunals would work, and which would have librarians, records, and other facilities. The tribunals ought to consolidate and work together to make this happen.

Mr. Roland Amoussouga supported Mr. Munlo’s comments with respect to engaging the UN. The model agreement that the Office of Legal Affairs (OLA) had sent to ICTR had been amended, since most African States were unable to meet the required standards, and ICTR had to meet certain costs. The OLA agreed to the amendment, but refused the financial support. The General Assembly approved the ICTR request and made the money available, but the OLA opposed the expenditure of the money by the ICTR, on the basis that it was not competent to spend the money. The ICTR was blocked for two years and only now has authorisation. He concluded that the long-term financial obligation of the UN in sentence enforcement is a serious issue for African countries.
Mr. Samuel Akirimo posed the question: What did we aim to achieve in the enforcement of sentences? He spoke about two criminological theories of punishment: (1) the consequentialist theory, under which punishment is to lead to reform of the convict and his reintegration in society; and (2) the retributive theory, under which, regardless of the result, punishment must occur. He said he subscribed to a third theory, which was a hybrid. Punishment should occur, but should also bring about reform and lead to reintegration. He asked if participants agreed with the need for this third category. It would ensure punishment, but also to reintegrate perpetrators into the community.

Dr. John Hocking explained that at the ICTY, all convicted persons serve their time in western European prisons, all of which had provisions for early release. The general rule was that release would occur after two-thirds of the sentence was served. All prisoners came back to the President when they hit the two-thirds mark. It was pretty much of a given that they got out an early release.

Mr. Martin Ngoga asked if the minimum standards were written down. For example, in Rwanda’s negotiations with ICTR, the Tribunal seemed to be setting its own standards. If the standards kept changing, could they be applied equally? He also raised the question of how the enforcement of sentences was advancing the goal of reconciliation, if the circumstances of an ICTR convicted person were to be different, not only from those of fellow prisoners in Rwanda, but from those of ordinary law abiding citizens. He also raised the questions about standards for victims. Prisoners with HIV receive care while their victims are left to die. He asked, “How did this advance reconciliation?” Although he recognises that they cannot necessarily provide similar conditions for victims, Mr. Ngoga believed that they should have a minimum policy for survivors.

Mr. Crane said this was also challenge in the SCSL. Many thought that convicted persons should be executed. This was not the international standard, but one had to be respectful to the local community while explaining that execution was not the international standard and that the rule of law was more powerful than the rule of the gun. With regard to victim assistance, he agreed that is necessary because if this were missing from the process, victims would be re-victimised. Those accused in the SCSL were living quite well. Whereas an ordinary person might eat just one meal a day, detainees receive four. This bothered people in Sierra Leone.

Mr. Roland Amoussouga described the issue raised by Ngoga as “very touchy.” The ICTR was bound by international covenant to respect minimum standards. The international community could only help Rwanda to improve standards, and there was a way to go. He believed, as a head of the ICTR delegation to Rwanda, that many of the minimum standards were being achieved. With regard to HIV, the ICTR was at the forefront of activism to bring the plight of victims in Rwanda to attention. The Registry had put forward a programme to help witnesses with HIV. They took a step forward, creating a team with a gynecologist, a psychologist, and a nurse. The ICTR tried to give equal assistance to witnesses, and the money spent on witnesses was far higher than that spent on the accused.

Mr. Bernard Muna raised a concern about the policy of remission of sentence, which seemed to him to be almost automatic at the ICTY. He suggested there should be an additional element, concerning the conduct and recognition by the prisoner—repentance—about the wrong done to society. Some prisoners could go back to their particular community as heroes, having spent time in prison in defence of their group. It would not help reconciliation to give one-third remission of sentence, and then have the person go back as a hero. The prisoner had to accept the reality of what he did. There was a need to assess the attitude of the prisoner, so that he did not aggravate the situation upon his return to society.

Dr. Hocking agreed with Mr. Muna’s point, explaining that there was not an automatic granting of early release, although this might be so in practice. The procedure was complex. Behaviour in detention did count. However, the issue of repentance was not taken into consideration, as this was not the domain of the ICTY.

Hon. Judge Navanethem Pillay asked if States would accept those who were acquitted. She also asked if the place of service of sentence figured on plea-bargaining.
Dr. Hockings responded, noting that both the Trial Chambers and the Appeals Chamber have acquitted some persons at the ICTY. Although it was unclear if there are problems at a State level, it is very possible that there would be problems in the local community. For example, Blaskic’s sentence of 40 years was reduced to nine years on appeal, and he got early release almost immediately. He went back to visit the areas where the crimes had been committed, saying he wished to apologise. He was received with very “mixed” feelings. With regard to Judge Pillay’s second question and the ICTY, plea-bargaining was an issue between only the prosecution and the accused. The Registry, which was not involved, was solely responsible for transferring prisoners to States. Since the Registry had no contact with the Prosecution on the place of service of sentence, it was not part of plea discussion.

Mr. Amoussouga added that the issue of States accepting acquitted persons is the key challenge faced by the ICTR that is not addressed in the Statute or by the international community. Acquitted persons were usually refugees, with no documentation. Convicted persons who have served their sentences became quasi-stateless. Most of them do not want to go back to Rwanda.
7. Challenges of the Administration of International Criminal Tribunals

Moderator
Mr. David Crane, Prosecutor, SCSL

Presenters
Hon. Judge Erik Mose, President, ICTR; Mr. Adama Dieng, Registrar, ICTR; Mr. Martin Ngoga, Deputy Prosecutor General, Rwandan Government; and Mr. Luis Moreno Ocampo, Prosecutor, ICC

> “The Independence of the Judicial Organ of the Tribunal,” presented by Hon. Judge Erik Mose

Judge Mose began his presentation by noting that some might find “independence of the judicial organ” to be an unnecessary topic for discussion. Is not the independence of the judiciary a self-evident principle? It is stated in all human rights conventions and almost all constitutions. Judge Mose presented three explanations for why this topic warrants discussion. The first is that even if the idea is old, its implementation has to be steadfastly continued. There is the continuous task of making sure that independence is safeguarded in the daily activities of any court. The second reason is that the challenges for an international court may well be different from the challenges of a national court. Thirdly, there may be differences between international tribunals—the challenges to the independence of one international criminal tribunal may well differ from the situation in which another tribunal is operating.

Before examining independence from the perspective of the ICTR, Judge Mose explained that independence of the judicial organ could be discerned from the tripartite structure of the tribunal, which includes one dependent organ and two independent. The registry, based in Arusha, is in the hierarchy under the UN Secretariat and therefore dependent. The bench and the prosecutor are independent organs, created by the Security Council to adhere to the principles of judicial independence and prosecutorial independence respectively. The tripartite structure is a necessary consequence of the form of the decision to set up the tribunal, namely, the UN Security Council Resolution under Chapter 7 of the UN Charter.

In the ICTR Statute, there is no reference to the independence of the tribunal. Therefore, the right to be tried by an independent tribunal is not amongst the rights explicitly mentioned in, for example, Articles 19 or 20. This is in spite of the fact that Article 20 of the ICTR Statute is so closely modelled on the covenant, Article 14, which states “Everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.” He noted that it has always been the intention that the judicial branch be independent. This follows from UN human rights conventions, Article 14 of the covenant, general comment 13 of the human rights committee, and all the basic principles on the independence of the judiciary.

In Prosecutor v. Kanyabashi, the Appeals Chamber found that the accused has the right to be tried by an independent and impartial tribunal. The Appeals Chamber distinguished between the concept of judicial independence and the concept of impartiality, stating: “Independence connotes freedom from external pressures and interference…Impartiality is characterised by objectivity in balancing the legitimate interests at play…The two concepts are linked.”

This link between independence and impartiality has often been stressed in human rights case law. Strasbourg cases are a perfect example. When it comes to the case law on the judicial independence and impartiality by the human rights organs, it has been stressed that judicial independence describes an institutional autonomy of judges. The point is separation from what in a municipal legal system would be called executive power. That creates a question mark for those at the ICTR because they do not operate at the national level but instead at the international level. What, then, is the executive power in the international context? Does it exist at all? This is a question for contemplation.

Impartiality is a state of mind, real or perceived, of the judge. It comprises both objective and subjective aspects. Of course, the objective is what a reasonable observer would understand. Judge Mose noted that when it comes to the issue of the objective test and what a reasonable observer might perceive, it is interesting in an international tribunal because people come from so many different legal traditions. Noting that with regard to independence, the challenges at the international
level are very different from the national level, Judge Møse redirected his discussion from a review of general conceptual issue to and examination of the specific challenges facing his tribunal.

He started with the establishment of the tribunal as an ad hoc tribunal. The fact that a tribunal, like the ICTY and the ICTR, is an ad hoc tribunal is, in itself, a challenge. This inevitably gives rise to suspicion. Allegations, all of which are untrue, include questions about “victor’s justice” and the true purpose of the court. The whole notion of “ad hoc” gives rise to questions that are related to the issue of independence. These suspicions do not arise in a national court and probably arise less in a treaty-based, permanent, international court.

With regard to the perception of impartiality, the tribunal should be visible in Rwanda to explain its mission. Promoting understanding of the Tribunal’s work can contribute to reconciliation. The Registry has done, and continues to do, a lot in connection with its outreach programme. To the extent the judges get more involved in this process, the Tribunal will have a stronger impact. However, as the judicial branch gets more involved, there is an increase in the risk of allegations with regard to a lack of independence and impartiality. For example, in 2000, several Trial Chamber judges in Arusha made an institutional visit to Rwanda and met with Rwandan authorities. It was not a judicial visit in connection with a particular case. Shortly thereafter, the accused in the Media case challenged the impartiality of Judge Pillay, Judge Güney, and Judge Møse because they participated in this visit. With regard to the perception of impartiality, the judges emphasised that every effort had been made to conduct the visit in an open and transparent way. It was concluded that there were institutional reasons for the visit, that it was transparent, and that there was not bias on behalf of any judge. It is complicated because institutional judicial visits, such as the one in the example, may increase the understanding of the role of the court, thereby making it easier for the prosecution and the defence to obtain access to evidence and to witnesses. Furthermore, such visits can contribute to judicial independence. However, it is a very precarious line.

Another challenge that may be perceived as relating to independence is the question of non-appearance of the defence in the courtroom. There have been several different scenarios in Arusha, either with an individual boycott or a group boycott by all the accused, or by a strike on behalf of the defence counsel, some or all. It may be argued that this is a threat to the independence of the institution. Judge Møse noted that much depends on how the Chamber reacts to such challenges. In Arusha, the Chambers have been firm but reasonable in this regard and the proceedings have continued. There has never been any acceptance of being held hostage, which could be seen as an issue of lack of independence.

Judge Møse then spoke about management. In a normal national court, everything flows reasonably well. However, in international and ad hoc settings, there are many international players and multiple States, all having to co-operate. Thus, there are more possible problems—both external and internal. This has implied that in order to speed up proceedings the judges may have to be more proactive in terms of problem resolution than they would be at the national level. When a judge becomes a proactive administrative judge—for example, getting in touch with administrative or foreign authorities—can it be argued that his independence is at stake? Could it be argued that the ICTR gets too close to dependence on the executive organ, here being represented by other States or by UN headquarters? His answer to this is that such allegations carry limited weight.

The Registry has the main responsibility of the budget. It is a critical tool for any institution, national or international. When judges are asked, they provide input on the budget. Judges are uniquely qualified to assess the needs of the trials and to objectively weigh the concerns of all parties in the courtroom. Some believe that this could that be seen as getting too close to the executive branch. Judge Møse contends that this is not the case and he has never experienced it as a problem.

Judge Møse concluded his presentation with a brief discussion on completion strategies and the perception that such strategies may constrain the activities of a tribunal. Both ad hoc tribunals have a completion strategy and the question arises whether the deadline set by the Security Council poses a threat to the independence of an ad hoc Tribunal by constraining its activities. Judge Møse contends that the Chambers will continue to perform their functions in accordance with fair trial principles, irrespective of any deadlines. It is more a matter of a reasonable division of work between international and national criminal justice than a matter of independence.
Mr. Dieng began his presentation with the assertion that there is a vast difference between the work of the Registry in a national jurisdiction and in an international jurisdiction. Both are vested with a mission to provide the court and the litigants with administrative services that are necessary for the fair and prompt resolution of cases. However, the real difference lies in the lack of a pre-existing administrative apparatus against which international jurisdiction may lean back to ensure their efficiency.

The Registry provides impartial, fair, and transparent support to all parties, harnessing international political and financial support. The role of the Registry is also to provide logistical support, including office accommodations and human resources. Providing human resources has been controversial but the ICC will not have this problem because it is completely autonomous.

The Registry also provides servicing. In national jurisdictions, “servicing” is used to refer to administrative services. However, in the international setting it means something different. The Registry provides internal and external communication. Internally, all communications from judges and parties are channelled through the Registry. It also provides interpretation and translation of proceedings. Externally, it keeps the public records and documents.

The Registry also handles the work of publicity for the Tribunal and manages its judicial archives and recording of public hearings. An external relation section has been established to handle relations with member States, international organisations, and non-governmental groups, and to strengthen co-operation with host country government.

Included in administration of the Tribunal is the management of witnesses and victims. This includes bringing witnesses and providing support for the defence and prosecution. Protective measures are taken for victims and witnesses and the Registry must provide relevant physical and psychological support, including for rape victims, as well as support and protection for life, family, and property.

The other important aspect of the Registry’s work is the medical and psychological support that it provides. It facilitates access to external medical care and payment of related bills, and provides in-house medical care. During the genocide, many were raped and are now infected with HIV/AIDS. The provision of medical and psychological care has raised serious concerns as to how far can the Registry go into providing physical and psychological rehabilitation under Rule 34. For example, the Registry established a medical unit in Kigali with a psychologist, gynecologist, and a nurse psychologist. It also provides HIV/AIDS treatment.

Mr. Dieng concluded his presentation by noting that the Registry has many additional challenges to overcome. These challenges are intimately linked to the Registry’s ability to carry out its mandate. To address them, the Registry must remain impartial, fair, transparent, and effective in the provision of all necessary support to all parties involved in the trial proceedings. It must enlist support to the work of the Tribunal, establish conditions of a co-operation framework, harness political support from member States, and mobilise financial resources. Finally, the Registry must promote and publicise the work of the tribunal in Rwanda, in the Great Lakes region, and throughout the world, thereby contributing to the national unity and reconciliation process in Rwanda.
Mr. Ngoga began his presentation by discussing the legal situation in Rwanda before the genocide. He described Rwanda as having a system of institutionalised impunity, created by amnesty laws. In 1959, major massacres in Rwanda caused a very big section of the population to flee the country. Soon after, in 1963, an amnesty law was passed that granted amnesty to everyone involved in the 1959 massacres. There was a second round of massacres in 1973. Tutsi nationals in the higher learning institutions were the main targets. Like before, an amnesty law passed in 1974, pardoning all that participated in the violence in 1973. There were more massacres in 1990 after the invasion of Rwanda by the RPF. Those accused of being RPF accomplices were targeted, tortured, and killed. Immediately following there was another amnesty law that pardoned everybody who had participated.

Mr. Ngoga believes that if the genocide had not stopped in 1994, Rwanda would currently have another amnesty law. In addition to the history of amnesty laws, the behaviour of governments towards international conventions was also another reflection of the little attention that was paid to the matters of human rights. The Genocide Convention of 1948 was ratified by Rwanda but with reservations related to punishment. It was like saying, “We accept and agree that genocide is a crime, but it does not deserve to be punished.” That is clearly on record.

The 1994 genocide crippled Rwanda’s judicial sector. Before the genocide, Rwanda only had 748 magistrates, 70 prosecutors, and 631 support staff. Appointment to the judicial sector, whether as a magistrate or a prosecutor, did not require legal training. Therefore, 90% of those in the judicial system were untrained. After the genocide, Rwanda faced a lack of human resources in two regards. First, only 244 magistrates and 12 prosecutors survived the genocide. Second, the majority of those who did survive were never properly trained. In response, the government provided the 244 magistrates with six months of training.

Rwanda also did not have a law to punish genocide. Although Rwanda looked to the instruments of ratification of the Genocide Convention, it quickly discovered that it could not punish the crime of genocide under those instruments. In response, the government acted quickly, enacting a law that could be used to punish the crime of genocide. Whether it could apply retrospectively was another question.

In 1996, Rwanda established a system to address the crimes in a classical way. It organised crimes of genocide according to the following four categories: 1) planners and positions of authority; 2) notorious killers; 3) sexual torture crimes; 4) looters and other property crimes. Sentences varied accordingly.

With 120,000 detainees, insufficient evidence, and prison facilities ill-equipped to deal with such vast numbers, the government had to find an additional way to address the crimes. In response, a confession program, known as the Organic Law, was established. It allowed for a reduction of sentence and successfully yielded testimonies that had not come out before. The confession programme helped the process go faster. By the end of 2000, 60,000 cases were completed. Almost 60% of them involved guilty pleas. There were group confessions and trials because the genocide was about a group of people attacking one person. In some instances, there were up to 60 people in one trial.

Although the confession programme addressed 60,000 cases, this was still a small number in light of the reality that there were over 120,000 detainees and many perpetrators were still at large. There were only 12 specialised Chambers in the Rwanda Tribunal of First Instance to deal with 120,000 detainees. Again, to address the huge numbers, the government decided to provisionally release 40,000 detainees who were either elderly or sick. It was a controversial decision among survivors. However, since there is no statute of limitations on these crimes, the government retains the right to prosecute at a later date.

Because of the huge numbers, that classical criminal law system could not address the enormity of the situation in Rwanda. In response, the government decided to look to a traditional means of addressing conflict. Historically, the Rwandan community would have had their own way of solving the conflict, called Gacaca. Gacaca, meaning “grass” in Kinyarwanda, is a traditional dispute resolution mechanism. It was modified to meet this bigger challenge. The Rwandan government drafted Gacaca law using categorisation. Those in category 1 went to Gacaca.
Elections among “people of integrity,” traditionally called inyanganyagai, were also organised. Those elected took part in training programs to prepare for Gacaca. The massive confession programmes also continued.

In order to initiate Gacaca countrywide, it was started in phases. Phase 1 was launched on June 19, 2002. It continued to be set forth in 12 sectors (one in each province). On November 25, 2004, the pilot programme was extended to 106 sectors. The pilot program swelled to 600,000 suspects as the numbers of those wanting to confess in Gacaca grew. To address this growth, a category 1 within category 1 crimes was developed. As the process unfolded, amendments were made to the law. For example, the frank nature of the confessions caused problems, especially with regard to rape. In response, people can no longer openly speak about their involvement in sexual violence.

By 2006, Gacaca will be fully operational countrywide with a body established to oversee sentencing. Originally a branch of the Supreme Court, Gacaca is now an independent organ. This was established after a process of constitution making that involved wide consultation. In addition to Gacaca, the Rwandan government is trying to institutionalise the rule of law by creating institutions and legal structures such as the new constitution, the Commission of Unity and Reconciliation, solidarity camps, and the Human Rights Commission.

> “Current Issues and Development in International Criminal Justice, “presented by Mr. Luis Moreno Ocampo

Mr. Ocampo raised the following question at the onset of his presentation, “How can we harmonise legal standards?” He added that this issue could only be answered by understanding the standards for the court and for the prosecutor. Later in his presentation, he asserted the need for independence and co-operation with regard to these standards.

To fulfil its mission, the ICC will have to be flexible and co-operate. It is not a world supreme court. It exists to help countries and local authorities to do their jobs. The ICC is the global test to apply international criminal law. It must be understood that the ICC is working in an environment that embraces State sovereignty.

Mr. Ocampo asserted that although independence is obviously critical for the operations of the court, it also poses a very real problem. Prosecutors and investigators must do their jobs in an in an independent way. However, to achieve its goals, the court must simultaneously be interdependent. How to be interdependent inside the standards of the prosecutor, with regard to independence, is a challenge that must be mastered. He outlined the following challenges and ways to achieve success.

Complementarity should been perceived as an asset, not a restriction. Hybrids and alternative ways of addressing conflict should be encouraged. For example, a hybrid tribunal for Sierra Leone was in line with the goal of the ICC to not have cases. For the ICC to be without cases would mean that either there is no genocide or that the national systems or the international community has created a solution to the problem.
In a global system, litigation must be focused. Therefore, only those who bear the greatest responsibility should be prosecuted. A system to address this has been developed. It begins with an analysis of only the gravest crimes and then progresses. Then, the groups committing the gravest crimes are identified, as are the most dangerous individuals in these groups.

Mr. Ocampo concluded by returning to the need for increased co-operation and exchange of information between international courts to create a global justice system. This is why he proposed a strategy for the ICC that is both very open and flexible. Not only will courts learn from each other’s experiences, but also with an effective exchange of information, courts will have an increased awareness of policies and activities in other countries. For example, the arms dealers who are involved in massacres in Sierra Leone are probably doing business in other situations.

Participant and Audience Member Questions and Comments

Ms. Barbara Mulvaney, ICTR Senior Trial Attorney, agreed with the need for increased co-operation, noting that currently there is not even co-operation on logistics. For example, getting witnesses to come to Arusha and testify can be a challenge because there is no uniform system. She agreed that global standards, pulled from various traditions and mutually agreed upon, must be set for the ICC to operate effectively.

Mr. Bernard Muna, Former Deputy Prosecutor, ICTR, expressed his concern with the term, “global standards” because many different societies—with different beliefs and traditions—are involved. Instead, he argued, the international justice system should move towards a set of global values. These could be used as a reference for societies as they create their own standards.

Mr. Ocampo responded by supporting his initial comments, asserting that “global values” are not enough. The ICC needs “global standards,” because “global standards” implies agreement. The court has to respect, understand, and learn from, different traditions. By finding a way to develop a common, or global, standard, the ICC demonstrates that is it not just a Western court. Many panelists reiterated the need to stay focused. It was noted that this is also necessary to prevent becoming overwhelmed by the enormity and mass nature of the crimes before the courts.

However, Mr. Adama Dieng, ICTR Registrar, was concerned with Mr. Ocampo’s assertion that litigation must be very focused, fearing that limiting investigations might preclude re-considering a case when new information is uncovered.

Hon. Judge Erik Mase, ICTR President, responded to comments made about judicial administrative activism. He noted that it is subsidiary and only comes into play when there is both a deadlock and a purpose of being efficient. It is a remedy that should be applicable to both parties.

Mr. Charles Adeogun-Philips, ICTR Senior Trial Attorney, asked for clarification on Rwanda’s motivation to re-classify rape as a Category 1 offence when it was originally, in 1996, categorised as Category 4 under the Organic Law.

Mr. Martin Ngoga, Deputy Prosecutor General, Rwandan Government, responded by explaining that there was existing jurisprudence from the ICTR that clearly stated that rape is a tool of genocide. It was a fundamental error to have ever placed the crime of rape in Category 4. The government realised that it was undermining rape victims by placing the crime in Category 4. Mr. Ngoga also believed that initially the government did not realise how widespread the crime had been. Furthermore, there was also a lot of pressure from NGOs and various women’s organisations, which are very powerful in Rwanda. The nation has the largest number of women in parliament. Although the government could not resist that pressure, it also understood the merit of making rape a Category 1 crime, and so the amendment was made.

There was an intense discussion on the RPF soldiers and the crimes they are alleged to have committed, the philosophy of “victor’s justice,” and the steps taken by the military justice system in Rwanda. Several panelists also commented on the compromises that were made in Rwanda to stabilise the society and the prominent role that NGOs played in the aftermath of the genocide.
The Mandate of the Tribunal is to prosecute persons responsible for genocide and other serious violations of international humanitarian law committed in the territory of Rwanda. This colloquium commemorating the 10th anniversary of the Tribunal’s existence provided a forum for the exchange of ideas and information on various issues. It afforded a rare opportunity for the ICTR to highlight its achievements and more importantly, learn from its setbacks. This allowed for all institutions present, to develop strategies that would lead to a more effective and consistent approach in the Prosecution of International Crimes. All tribunals have acknowledged that at their inception, they were sailing uncharted waters. The voice of international criminal law had not yet been defined. The Colloquium allowed for all parties concerned to redefine, bear witness to, and enhance the understanding of the international criminal law.

Mr. Moreno-Ocampo in his keynote address quoted Mr. Nelson Mandela stating:

‘The challenge for the modern prosecutor is to become a lawyer for the people. It is your duty to build an effective relationship with the community and to ensure that the rights of the victims are protected. It is your duty to prosecute thoroughly and effectively according to the rule of law and to act in a principled way without fear, favour or prejudice. It is your duty to build a prosecution service that is an effective deterrence to crime and is known to demonstrate great compassion and sensitivity to the people it serves.’

The Colloquium afforded the opportunity to expound on how to fulfil this duty and thereby fully achieved the objectives espoused in its proposal to the donors. Faced with various constraints and the fulfilment of a completion strategy, it was reaffirmed that the tribunals must not neglect their duty to the victims. The need to share common experiences, fears and concerns in accomplishing this tremendous task becomes even more apparent. It is for this reason that Mr. Crane’s invitation to assemble in six months in Freetown, Sierra Leone was warmly accepted and adopted by the delegates.

In addition, Mr. Jallow emphasised the necessity to network and to create a forum where prosecutors can regularly consult each other in between events such as the Colloquium with a view to continuously improve this international criminal justice system. Mr. Jallow’s proposal to set up a task force comprising staff to be identified by each Prosecutor and with the responsibility of establishing a best-practice Program for international criminal prosecution was adopted. This task force will be responsible for identifying international standards of practice in the areas of investigation, trial practice, and special subject areas such as violence against women, deployment of minors as soldiers, and illegal importation of weapons to name but a few.

The major challenge ahead however remains for the ICTY and the ICTR remains the positive completion of their mandates. As Mr. Ruxton suggested, everything from now on must pass a double test. It must both contribute to the mandate and the completion strategy. The Colloquium demonstrated that efforts have been, and continue to be made, to fulfil the mandate and to ensure a positive completion strategy. However, the implications of rushing the work of the tribunals risks leading the quality of prosecutions astray. Whilst committed to the deadlines set by the Security Council this should not be at any cost. Too much has been invested in the tribunals to allow their momentum to be lost.

In his closing address, Mr. Jallow thanked the Ford Foundation and Open Society Institute whose support had been vital to the Colloquium’s inception and success. The first Colloquium of International Prosecutors concluded with the issuing of a unanimous declaration from all International Prosecutors reaffirming their commitment to end impunity for the most serious crimes that plague humankind, and to contribute to peace and the prevention of future crimes.
> Appendix A: List of Participants

A. Delegates

- Mr. Justice Hassan B. Jallow, Prosecutor, International Criminal Tribunal for Rwanda
- Mr. Luis Moreno Ocampo, Prosecutor, International Criminal Court
- Mr. David Crane, Prosecutor, Special Court for Sierra Leone
- Dr. Silas Ramaitie, National Director of Public Prosecution of South Africa
- Mr. Martin Ngoga, Deputy Prosecutor General of Rwanda
- Ms. Fatou Bensouda, Deputy Prosecutor (Prosecutions) International Criminal Court
- Mr. Serge Brammertz, Deputy Prosecutor (Investigations) International Criminal Court
- Mr. Bernard Muna, Barrister, former Deputy Prosecutor, International Criminal Tribunal for Former Yugoslavia
- Mr. Gavin Ruxton, Chief of Prosecutions, International Criminal Tribunal for Former Yugoslavia
- Mr. Luc Coté, Chief of Prosecutions, Special Court for Sierra Leone
- Dr. Michael Bohlander, Professor of Law, University of Durham
- Dr. Alan White, Chief of Investigations, Special Court for Sierra Leone
- Ms. Binafer Nowrojee, Lecturer, Harvard Law School and Senior Researcher, Human Rights Watch
- Dr. John Frederick Hocking, Deputy Registrar, International Criminal Tribunal for Former Yugoslavia
- Mr. Lovemore Munlo, Deputy Registrar, International Criminal Tribunal for Rwanda
- Mr. Roland Amoussouga, Chief of External Relations and Strategic Planning Section International Criminal Tribunal for Rwanda
- Ms. Simon Monasebian, Principal Defender, Special Court of Sierra Leone
- Advocate Leonard McCarthy, Head: Directorate of Special Operations, South Africa

B. Special Guests

- Hon. Judge Erik Mose, President, International Criminal Tribunal for Rwanda
- Hon. Judge Andresa Vaz, Vice President, International Criminal Tribunal for Rwanda
- Hon. Judge Navanethem Pillay, Appeals Judge, International Criminal Court
- Mr. Adama Dieng, Registrar, International Criminal Tribunal for Rwanda

C. Observers

- Dr. Leigh Swigart, Associate Director, International Center for Ethics, Justice and Public Life, Brandeis University, USA
- Mr. Ken Fleming, QC, Barrister, former Senior Trial Attorney, International Criminal Tribunal for Rwanda
- Mr. Alute Mughwai, Deputy 1st Secretary representing Mr. Bahame Tom Nyandunga, President, Tanganyika Law Society
- Ms. Alice Naye bare, Legal Officer, East African Law Society
- Mrs. Sybille Decartier, Belgium Embassy, Kigali
- Ms. Susana Sacuto, Director, War Crimes Research Office and Professorial Lecturer, Washington College of Law
- Mr. Augustino Shio representing Mr. Andrew Chenge, Attorney General of United Republic of Tanzania
- Prof. Yemi Osinbajo, Attorney General, Lagos State, Nigeria
- Ms. Ruth Kok, Department of Criminal Law, School of Law, University of Amsterdam
- Mr. Yves Sarakobi, Spokesperson, International Criminal Court
- Mr. Rety Hamuli, President of the Association of Defence Council, ICTR
D. Staff of the Office of the Prosecutor, ICTR

- Mr. Justice Hassan Bubacar Jallow, Prosecutor
- Ms. Werrett Melanie, Chief of Prosecutions
- Mr. Renaud Richard, Chief of Investigations
- Dr. Alex Obote-Odora, Special Assistant to the Prosecutor
- Mr. Adeogun-Philips Charles, Senior Trial Attorney
- Mr. Akorimo Samuel, Commander, Investigations
- Ms. Arbia Silvana, Senior Trial Attorney
- Mr. Ba Cire Ali, Senior Trial Attorney
- Mr. Egbe William, Senior Trial Attorney
- Mr. Karyegeza Richard, Senior Trial Attorney
- Mr. Kwende Alfred, Commander, Investigations
- Mr. Moses Jonathan, Senior Trial Attorney
- Ms. Mulvaney Barbara, Senior Trial Attorney
- Mr. N’G’ara Paul, Senior Trial Attorney
- Mr. Nkole Maxwell, Commander, Investigations
- Mr. Stephen Rapp, Senior Trial Attorney

- Mr. Stewart James, Senior Appeals Counsel
- Ms. Warren Maria, Head, Information and Evidence Support Section
- Mr. Webster Don, Senior Trial Attorney
- Mr. Wallace Kapaya, Senior Trial Attorney
- Mr. Van Alphonse, Senior Trial Attorney
- Ms. Adelaide Whest, Trial Attorney
- Ms. Holo Makwaia, Trial Attorney
- Mr. Justus Bwonwonga, Trial Attorney
- Mr. Cheikh T. Mara, Legal Advisor
- Ms. Amanda Reichman, Legal Advisor
- Mr. Khaled Ramadan, Legal Advisor
- Ms. Dior Fall Sow, Legal Advisor
- Mr. Hamidou Maiga, Investigator
- Mr. Mohammed Lejmi, Investigator
- Ms. Sola Adeboyejo, Trial Attorney
> Appendix B

Guest Editors
- Leigh Swigart, Ph.D., Associate Director, International Center for Ethics, Justice and Public Life, Brandeis University, USA
- Melissa Blanchard, Communications Specialist, International Center for Ethics, Justice and Public Life, Brandeis University, USA

Rapporteurs
- Chief Rapporteur: Dr. Alex Obote-Odora, Special Assistant to the Prosecutor, ICTR; assisted by Ms. Adeboyejo Adesola, Trial Attorney, ICTR

- Challenges of Conducting Investigations of International Crimes’ Forum
  Dr. Leigh Swigart, Associate Director, International Center for Ethics, Justice and Public Life, Brandeis University, USA; assisted by Mr. Samuel Akorimo, Commander, Investigations, ICTR

- Challenges of International Criminal Prosecutions’ Forum
  Mr. Wallace Kapaya, Senior Trial Attorney, ICTR; assisted by Ms. Florida Kabasinga, Case Manager, ICTR.

- Service of Sentence for International Crimes Forum
  James Stewart, Senior Appeals Counsel, ICTR

- Challenges of the Administration of International Criminal Tribunals’ Forum
  Mr. William Egbe, Senior Trial Attorney, ICTR; assisted by Ms. Binaifer Nowrejee, Lecturer, Harvard Law School

- Challenges of Completion Strategy Forum

Mr. Bernard Muna, former Deputy Prosecutor; assisted by Karyegesa Richard, Senior Trial Attorney, ICTR

> Appendix C

Organizing Committee: ICTR
- Dr. Alex Obote-Odora, Special Assistant to the Prosecutor - Chairperson
- Mr. Wallace Kapaya, Senior Trial Attorney - Member
- Ms. Adesola Adeboyjeo, Trial Attorney - Member
- Ms. Renifa Madenga, Trial Attorney - Member
- Mr. Dennis Mabura, Case Manager – Member/Secretary
- Ms. Beatrice Moukamba-Kimuna, Administrative Assistant - Member
- Ms. Lucy Mussau, Bi-Lingual Secretary - Member
- Ms. Fatoumata Traore, Bi-Lingual Secretary - Member