



Voices from the Rwanda Tribunal

Official Transcript: Erik Møse (Full Transcript)



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Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Erik Møse addresses the mission of the ICTR, his role and contributions as both judge and Vice President of the court. He speaks about the various lessons learned by the institution; the need to increase efficiency by adding trial judges and establishing a separate prosecutor dedicated to the ICTR and not shared with the ICTY, and amending the court rules of procedure and evidence. He discusses the relationship between common and civil law, and between judges and court interpreters. He speaks about the cases he has been involved in, and about the role of victims in the justice process.

The transcript of the interview begins on the following page.

Part 1

- 00:00** Robert Utter: Let me introduce myself as Justice Robert Utter, formerly of the Washington State Supreme Court where I was Chief Justice for a while, and then some 34 years total in the courts of Washington State. We had about 750 judges at all levels, nine on the Supreme Court; terrible number to have to deal with but it worked out and an interesting time with them.
- 00:29** RU: I was in charge of both the administrative as well as the judicial end as Chief Justice and hopefully made some changes that were a benefit to the court. My involvement in the United States has been chair of a number of organizations dealing with judicial efficiency and administration.
- 00:51** RU: My work in foreign countries is essentially that of working with them on administrative issues and on constitutional issues. I taught constitutional law in a law school in the United States for about eight years. There's much I don't know but I've experienced a great deal and I can share that with others.
- 01:13** RU: I'm here on behalf of the ICTR and their Information Heritage Project and that's why I'm here. It's my great pleasure to speak with my host here, Judge Møse and, Judge, I might start out by asking your background in as much detail as you would care to give it – how did you get here, why did you get here? And then we'll follow from there.
- 01:40** Well, at the national level I started in the Ministry of Justice, the Department of Legislation which is the department which is responsible for drafting acts, draft projects to parliament and also to give the legal opinions whenever the governmental authorities are in doubt about legal matters.
- 02:08** Then I went on after about ten years there to become an attorney, a, a barrister before the Supreme Court pleading cases for the Attorney General's Office for Civil Affairs. With other words, pleading for the government. This was about seven years and we covered the whole range of country, the, the entire country bo-, both the Supreme Court, the courts of appeals and the first instance courts.
- 02:39** So we were traveling around in the country pleading, but mostly in Oslo, the capital of course. Then another six, seven years in the court of appeals in Oslo and then to the ICTR.
- 02:58** But let me simply say that this was the national background, but in addition to that I've always worked internationally because of my human rights interest. Partly in Strasbourg in connection with the Council of Europe, partly in Geneva and New York in connection with the United Nations committees, supervising the implementation of states' human rights obligations.

03:25 **RU: That's a marvelous background for work here. How did you become involved with the ICTR?**

03:33 Well, I suppose that because of my background, the Ministry of Foreign Affairs thought that it would be a good idea to ask me whether I would be willing to accept standing for election and possibly be elected. And I said yes. The reason was that I think that if you mean something with your human rights commitment you should act if the opportunity is there.

04:03 I remember being a bit worried when I was told that the term was for four years. I thought that was a long time in East Africa coming from a Scandinavian country even if I had had a few missions in Africa before, but the irony of the case is of course now that I've been here for almost ten years. I was so captivated by this work that I haven't been able to give it up.

04:30 So I accepted another four years and then another year and another year after that. So I'm approaching my ten years' anniversary here in Arusha.

04:39 **RU: And what was your role initially with the ICTR?**

04:44 Well, I arrived in May 1999 and after the pl-, a, a few days we had the plenary here in May '99. And I was asked whether I was willing to become the Vice President in addition to being a judge here at the ICTR, so having been elected by the General Assembly . . .

05:09 **Note: Gap in interview (Approx. 1 minute in duration) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.**

05:23 So having been elected by the General Assembly in November '98, I took up office here in May '99 as a judge. And we had the plenary in May '99 and I was asked whether I was willing to be the Vice President under Judge Pillay, who was then about to become the President. And I said yes to that and we were both elected by our colleagues. And I was Vice President from '99 to 2003 and then later became President from 2003 to 2007, May 2007.

Part 2

00:00 **RU: What did you see as the mission or role of the ICTR in general?**

00:08 Well, this is of course an international criminal court and as such its main task is to show that international justice works. We have a special responsibility to prove that, because some time has elapsed since Nuremberg and Tokyo. These are new institutions, the ICTR and ICTY, and it was not obvious that these institutions would become a success.

00:43 I think they have succeeded fairly well and the main task therefore would be to show that these two institutions and the Arusha tribunal is fulfilling its task as an independent,

impartial court which delivers justice within the requirement of fair trial guarantees established by international law. That is, I think, is the main task.

- 01:11 But you can also broaden the perspective of course and see this more generally as important human rights work. It supplements the state responsibility for human rights violations with individual responsibility, maybe the criminal responsibility when the state cannot or will not act against mass violations.
- 01:35 And in addition, clearly, the fact that we have control over about 65 indictees brought here to Arusha, one prime minister and 14 ministers, show that we have been able to address the question of whether these persons were guilty or innocent for what happened in 1994. With other words, we have the main portion of the leadership in 1994 here in Arusha.
- 02:14 I think that's a main achievement and it is important that the task to decide on their guilt and innocent is done in an – performed in an impeccable way.
- 02:26 RU: What do you feel has been your major contribution to the process here?**
- 02:32 I think we are all here to contribute. I think it's a great privilege to be part of this process. It's a once of a li-, once in a lifetime experience. I'm lucky to be at the age I am now when these two tribunals are existing, and my tribunal in particular. I've done as best as I can, like most of us, in order to make a contribution and I think in all modesty that I've done so both as a judge and as an administrator being President and Vice President.
- 03:08 RU: I had the privilege of reading some writings you did on work here with the tribunal. There was a chapter in one of your writings on Lesson Learned, Lessons Learned. What were those lessons for the camera and I'd appreciate your comments on it?**
- 03:25 Well, there are many lessons learned and, and, and it's almost an endless list you could begin with. But just to focus, first of all we have learned that there was a need to amend the statutes in various ways in order to make the tribunal more efficient because of the complexity of the cases. They are so demanding that there was a need for more than the six judges originally envisaged.
- 04:13 As you know, we have later increased them to nine and then afterwards to 18 trial judges through the ad litem judges who have performed an excellent, have performed excellent work together with the permanent judges. In practice there is no difference between the contributions of the two groups.
- 04:34 Another statutory amendment of course relates to the need for a separate Prosecutor for the ICTR. That was an important reform. Now I understand very well the need in the beginning of the existence of the tribunal to opt for the solution where the Prosecutor was common to both tribunals. It was important to ensure the same prosecutorial policy for these two tribunals that were new . . .

05:04 **RU: And you refer there to the Yugoslav tribunal and the Rwandan tribunal? I'm sorry to interrupt . . .**

05:08 Yes, yes, yes. So it followed from the statute that the ICTY and the ICTR had the same Prosecutor. In the beginning, Richard Goldstone that you know, followed by others later on. But, but we found out in 1999 approximately or a bit later – 2003, 2003 – that it would be better if the ICTR got its own Prosecutor.

05:44 By then, case law, a prosecutorial policy had to some extent been established and the work load for the Prosecutor of one tribunal is tremendous . . .

05:59 **RU: Yes.**

05:59 . . . let aside two. So even if the previous Prosecutors – Goldstone, Arbour, del Ponte – did their very best and traveled between the two tribunals, The Hague and Arusha, as best as they could, it goes without saying that it would increase the focus and I think also the efficiency, the daily focus and efficiency, within the prosecution if you have your own prosecutor.

06:26 So that's also an important lesson learned and I'm very happy with the way the present system has worked since 2003 with our own Prosecutor. So these were the two main lessons learned at the statutory level I think – increasing the number of judges and splitting the Prosecutor.

06:48 And of course we still have the same appeals chamber so the end result is still guaranteed. There will still be the same case law coming from the two tribunal. There is no risk of divergent legal opinions.

07:06 Apart from that, there has been a huge learning experience in terms of amending our rules of procedure and evidence, and there I could mention very many examples.

07:17 **RU: Please do. This is for history so (____) them if you can.**

07:20 Alright, alright. Well, first of all i-, in the beginning, the tribunal had to decide all motions in writing. It was only '99 that we changed the rule so as to allowed for – I have to take that again. In the beginning, all motions had to be decided orally. They had to be pleaded. And it was only '99 that we realized that of course that was a very unpractical way of doing it.

08:05 It should have been in writing, so it was only in '99 that that change was made to allow for written pleadings. And that increased the efficiency enormously. You can imagine what an unpractical situation for lawyers coming from West Africa, New York or London to plead a small little motion in Arusha. Of course it wasn't practical. So that's one.

- 08:28 Also the possibility that only one judge can decide on a motion, not the most important ones in practice, of course, but when they are routine methods, very important. The ma-, the issue of increasing the efficiency of the trial chambers in everyday work, very many amendments have been made in the rules of procedure and evidence there as well.
- 08:56 One of them for instance allowing judges, in case they are ill for a few days or indisposed, to be away and the case carries on with two judges. Of course we still will have it all in the transcripts and we also have it on our video and the judge will immediately see what happened when he comes back or she comes back.
- 09:18 But the fact that the case doesn't stop is something which was also new. And again that was a learning lesson and that has increased our efficiency.
- 09:27 RU: What year did that change take place?**
- 09:29 In '99.
- 09:30 RU: Nine-, '99.**
- 09:32 Yes.
- 09:33 RU: Please continue. These are very helpful.**
- 09:36 Or let me be certain about the date. The written procedure was in '99. The single judge was in '99. Maybe the issue of allowing the five days lapse of absence was a little bit later. I don't have that on the top of my head now but it was pretty early. Very many changes in the rules of procedure but that becomes a bit formal and maybe a bit boring.
- 10:13 Could I say – I think it's a learning process also in the courtroom to see how international proceedings should be conducted, which is not necessarily exactly the same way as you do it in the national proceedings because of the different languages involved, the different culture involved, the different legal systems involved, this of course being a mixed system.
- 10:39 And I have found it particularly fascinating to try to work out how you can most fairly and efficiency ensure that the persons in the courtroom feel that this is an efficient and fair court of law in spite of their different backgrounds and perception of justice. Of course we all as lawyers have more or less the same ideas, but when it comes to everyday life, there may be changes. That's something I found fascinating.

Part 3

- 00:00 RU: Trying to think of some other issues that I'd stumbled across. Was the issue of translation of documents a challenge to this court?**

- 00:14 Translation and interpretation has of course been huge challenges. When it comes to translation it should be recalled that many of the legal terms we use did not exist in the Kinyarwanda language originally.
- 00:34 So they had to be invented in Kinyarwanda and then translated into English and French having been adapted to be – there is a whole legal vocabulary which, which had to be worked out in Kinyarwanda and that translation area is certainly supplemented by very many problems concerning interpretation.
- 01:11 You know in the beginning – in the beginning we had consecutive interpretation. It means that the witness spoke Kinyarwanda, one Kinyarwanda interpreter sat next to the witness, took notes on a little notepad and when the witness had completed a little sequence of say four to ten to 15 sentences, the interpreters or the interpreter gave, have, the Kinyarwanda interpreter gave the French version of what the witness had just said and that was then translated or interpreted from French into English and we then we got it in our headsets.
- 01:58 Now that was of course an extraordinary cumbersome procedure, so the next step was to have a system where the Kinyarwanda interpreter could sit in the booth but this required knowledge and experience. It had never been done before.
- 02:16 RU: Yes.**
- 02:16 It to-, required practice, training. So, so the next step was that the witness was sitting there in the witness box, he spoke and then the Kinyarwanda interpreter will gradually start translating simultaneously with the witness talking Kinyarwanda.
- 02:37 And then the English interpreter takes over. But still it's a two-steps procedure. And then the third step was where we had achieved a level where the witness speaks Kinyarwanda and there are now two teams of Kinyarwanda interpreters who can then, or two persons who can then manage to hear the Kinyarwanda version and con-, simultaneously interpret that into both English and French.
- 03:07 I found that a marvelous huge step forward and, and I think our, the time for each question and each answer probably was reduced with 60, 70 percent.
- 03:26 RU: Mm.**
- 03:27 It's still more slowly than in the national level where we are all only operating in one language but, but it's now quite workable. So this tribunal has come an enormous way. We've gone a long way in order to simplify and increase our efficiency and it took time.
- 03:46 RU: Did you have to set up a separate training process for interpreters . . .**

- 03:51 Yes.
- 03:52 RU: . . . to reach this level (___)?**
- 03:52 Yes, and I'm absolutely certain that if you talk with some of our pillars in the translation department, they will tell you about training projects. There was a lot of time invested in that process.
- 04:10 RU: It's a remarkable skill. I've had the privilege of being in a number of different countries. One particularly was with Iraqi judges and going through the process of interpretation of Iraq to Czech to English and the same marvelous quality that these interpreters produced is miraculous. They sit in the booth, they listen intently and sometimes signal you to speak more slowly.**
- 04:40 Yes, yes. And that's coming back to how to conduct trials.
- 04:44 RU: Yes, yes.**
- 04:45 Speed, clarity, brevity. We all want clarity, brevity, simplicity in life but in the international context it's vital. And if people don't observe the rules for good courtroom behavior at the international level there will easily be confusion and the transcripts will be unclear, the interpretations will not be correct, et cetera.
- 05:11 Let me share with you, let me simply say that I totally share your, your praise of interpreters. Our interpreters here are, are just extraordinary. You know, they don't only interpret. They also listen . . .
- 05:25 RU: Exactly.**
- 05:26 . . . and if they realize that the witness is in the process of revealing his identity, the interpreter will say, "And the witness is about to tell his location," or "the witness is just about to tell his profession. I don't know whether I shall interpret that."
- 05:44 Of course he shall not, so they take responsibility because they've been here so, for so long. And another example, if, if someone makes a mistake in the courtroom, our best interpreters will then in a very gentle diplomatic way add, "Says the witness."
- 06:03 RU: Ah.**
- 06:03 It being understood that this is what he says but it's not correct what he's saying. And that is also some kind of a contribution to the process and it, it will be reflected in the transcripts as a new paragraph, "The English interpreter, colon, 'Says the witness,'" and for posterity, it will be very easy to see that a mistake was made.

- 06:29 And as a presiding judge, I've been presiding judge in very, very many cases, the cooperation between the bench and the interpreters and also with the court reporters by the way is extraordinary, inspiring.
- 06:45 **RU: How do you educate the judges about the problems of cooperating with the interpreters in a way that both can function?**
- 06:55 Well, I think the main wa-, way, or the best way of, of learning the tricks of the game, as always, is by practical experience. Gradually, one will realize that there is a better way of doing it. In addition, there is institutional knowledge floating around and we talk with each other, so I, I, it is my feeling that generally the knowledge is circulating.
- 07:33 I'm sure you will hear from some quarters that there are individual differences like every, in every profession about how people go about both in the courtroom, room and outside the courtroom, but it's nothing special with that. But let me come back to experiences and what we have learned. Something I'm very pleased with was the fourth courtroom.
- 08:03 When I was President I realized that not only was the problem the number of judges, so in my time we increased the number from nine to 18. We added the ad litem judges. But I also realized that because of the fact that we only had three courtrooms – and by the way, in the beginning there were only two. The third courtroom came in '99.
- 08:30 The fact that we only had three courtrooms also slowed us down. So I got in touch with my own government, the Norwegian government, and also with the British government to where I had a very dear friend from the time when I was working, when I was negotiating treaties for Norway and pleading cases in Strasbourg, y-, you, you knew people.
- 08:53 And, and, and the British and the Norwegians funded that courtroom through volunt-, voluntary contributions. And, and that courtroom, which is now on the ground floor, is, has really been a tremendous contribution to our completion strategy. Suddenly we could go on and we de-, de-, deliberately created it in a low cost way.
- 09:21 So we will see there is no luxury there but it's quite nice, absolutely functional. There is no video there in order to save money but the fourth courtroom was a, a good experience. And th-, they still haven't got that in, at the ICTY. Yes. No, that was, that was another learning experience. More capacity was needed.

Part 4

- 00:00 **RU: Has the combination of civil and common law created any problems for you?**
- 00:09 Well, not personally and we can split this between the institution and the person. Let me start with my own personal approach to this. I come from a Scandinavian country which is

some kind of a mixed system. We have the features of common law and features of civil law.

00:30 I have felt very comfortable in this system even if I have of course, since this system is very common law inspired, learned many of the ways the common law judges would behave.

00:48 Like objections, sustained, overrule, all these techniques – we, we don't use them so much at home. And many of the terminology issues are different i-, in my country but, but I've enjoyed working in this tribunal and I don't have found it difficult at all to be part of this mixed system with its two elements.

01:14 Now, more generally we have of course in this tribunal judges from all systems, both common law . . .

01:23 RU: Yes, yes.

01:23 . . . civil law and mixed systems. And the next issue then will be whether that has created any problems and my answer is very little. First of all, I want to stress something, and that is that it is a bit superficial when some people sometimes say that there are two blocks of systems.

01:45 Within each block there are very many individual variations and also not only in terms of law but also in terms of how people behave within the system, the role of the judge. And therefore to, for instance, say that in one system the judges are more passive than in the other system, that doesn't coincide with my own experience watching my colleagues coming from the various systems.

02:23 I think we both as (____) groups can be comfortable here. I haven't, in my own personal experience, found it difficult at all to work with any judges coming from a different system. I think we all reason pretty much alike even if our point of departure may be different.

02:47 I mean, this issue about hearsay evidence which is shocking to some countries. Of course on the other hand here, we will, even if we allow it, give it minimal weight so it boils down to very little.

03:01 Or there are also quite a few other differences which on the face of it may seem significant but when you analyze it further you will see that the differences are not so significant after all.

03:25 Sometimes I've asked myself, "Have I ever disagreed with another judge because of the system we come from?" That's the ultimate test I think. And, and my answer is no.

03:38 First of all, we have very few dissenting opinions here both in judgments and in decisions, the many judgment and the thousands and thousands of decisions and I think that's a very

interesting observation to make that there are – well, I haven't in my ten years ever had a situation where the dissenting opinion could reasonably be ascribed to the fact from which system you come from.

04:07 It depends on the personality, not the nationality. And that's a view I hold very strongly based on practical experience in everyday life. So now the brief answer – has it caused problems? In my view, no. It's more an inspiration.

04:25 RU: Yes.

04:26 It's, it's, it's fantastic to sit here at an, as an international judge and be able to draw on the experience and different approaches of many countries and try to, to some extent find the best of them all. Always being inspired by what is fair and what is efficient. I, I think that is a privilege with this job.

05:00 RU: It's been interesting to me to listen to your comments on administration because so often, we learn from each other about administrative practices that apply across the board to every court in every country you come to. If you were to rewrite the process for ICTR to perhaps function better for future tribunals, how would you change?

05:30 Well, first of all I would have adopted the rules we have today and not the rules we had ten years ago.

05:38 RU: Yes, yes. Mm-hmm.

05:40 That's the short story. And here I want to add a little observation namely sometimes it's argued that it is strange that judges adopt and change the rules. Judges should not be legislators. They should be judicial officers. That's been a criticism.

06:01 Of course this is absolutely true at the inter-, at the national level. We all know the clear-cut division into three of the powers at the national level. But here I will really stress how useful it has been for the judges to be able to do just that, because that has made it possible for us to adapt and adopt based on experience when we see the lacuna, when we see the need for change we do it.

06:37 And I don't think we can really say that that has caused any unfairness to anyone. These has, have been changes made with the sole purpose to improve the quality of the process. If this had to go to a meeting of state parties for instance, or to some kind of an international legislative assembly, it would have been extremely slow. Now the fact that we can once a year adapt it, that is a good, has been a good system.

07:21 I think that is my short answer to your question, "How I would rewrite it." I would, I would start where we are today. Because if we now look at our changes in the plenary sessions, now in 2008 and the last few years, it is an interesting feature that the changes have

become less and less, which shows I think that the need for legislative change has decreased and that we are more or less where we should be in terms of procedural rules.

08:06 **RU: The underlying principle that we look at in the United States is that of the courts retaining the rulemaking power and that if there's one principle that I cherish, I think that's it. If the court can determine the rules that apply in their court then the independence of the judiciary is more guaranteed.**

08:32 **RU: It's a revelation to go to judges from some other countries who come from a much more restrictive judicial atmosphere, to think that they might have the rulemaking power, but it's a marvelous process. I'm glad to hear that the tribunal has adopted that as well.**

08:49 Yes. We have of course ensured a certain participation in this process by including not only the judges in this process but also hearing the views of the prosecution and the defense, because that is important to the legitimacy of the process. This is not a one-way process. It has been an open – and let me also say that quite a few of these changes, while adopted by the judges, have come from the defense . . .

09:26 **RU: Yes.**

09:26 . . . or from the prosecution. So we must not create a bad impression here. It's only that the plenary of the judges, that's the legitati-, legista-, legitlative, legislative organ but, but the process in my view has been reasonably inclusive, transparenc-, transparent and legitimate.

09:48 **RU: When I first came on our Supreme Court where we have rulemaking power, we went through a change of almost all our rules of court, but your observation that it is wise to include all the parties affected in discussing of the rules and making recommendations is one I think that applies throughout the world.**

10:08 Mm-hmm.

10:09 **RU: You talk to the people who were involved, you listen to them, sometimes adopt their ideas, sometimes cannot, but the fact that they had participation leads both to wisdom for the judges and acceptance by the part of all people. That's a universal process, I think, that we all, all look to . . .**

10:29 And when adopting our rules, we have of course often been inspired by the ICTY rules but we have not always followed them. And sometimes we have fol-, avoided following them because we think, having listened to some defense objections, that we, we would, based on our experience particularly here in Arusha, not walk that particular . . .

10:55 **RU: Yes.**

10:55 . . . step. This does not in any way imply criticism of the other system. It only shows what I will call ‘the open mind.’

Part 5

00:00 RU: Is there anything else in the administrative area that you would like to comment on before we go to some other subject?

00:14 I can’t think of anything. Well, first of – well, I could mention many things in particular in view of my work as President and Vice President if you are interested to, to, to hear about that.

00:34 RU: Please do. This is for history. The small matters are . . .

00:39 Alright.

00:39 RU: . . . are, are not small at all.

00:41 Yes. Well, in addition to rules and, and, and statutory changes which we have talked about now, I think that so much in life does not only depend on rules but on practice, on way, how people behave, on how we interact in everyday life. And, and with that perspective in, in mind that there is a need to make processes smooth.

01:15 Just a few catch words, we sat down a translation facilitation committee a few years ago where we gave advice as to how we could best accelerate the translation process because in an extraordinary complicated tribunal – with three branches, prosecution, chambers and the registry – and in our branch, the chambers, three chambers and even more benches, how do you prioritize?

01:49 How do you ensure that the most important cases are translated first or the documents that are urgent? You need some kind of a, of a system for that so – and, and, and you need, you need some kind of, of, of a close cooperation between the, those who want translation and those who provide translation.

02:13 RU: Yes.

02:14 So our translation working group, which I felt it was a privilege to be part of, came up with suggestions as to how to make that process better. Style – how do you write in a tribunal where people come from all these different traditions?

02:36 RU: Exactly.

02:37 The establishment of a style guide. It’s not obvious when you have American, European and many other different ways of writing, and I’m not thinking only about the, the issues of spellings and superficial things like that . . .

02:55 **RU: I understand.**

02:56 . . . but many other things. There must be, even if you have diversity, some kind of common style in an institution. These are important points. Courtroom behavior – people t-, has, have a tendency to think that what they are about to say is the most important in life. We are all egocentric.

03:20 **RU: It's a universal rule.**

03:21 It's a universal rule but actually, you have to speak one by one.

03:25 **RU: Yes.**

03:26 You have to speak slowly. You have to be, speak clearly. You can't suddenly mix languages just like that and maybe even with a little wish to show that you know many languages. You confuse not only the interpreters but also the court reporters and everyone involved.

03:47 Now, one initiative I took together with others was to improve the rules for courtroom behavior. If you go to the courtroom you will see a list of how you act, "Don't speak two at a time, don't – remember to switch on your button, remember to do . . ." Now, these are so simple things but I can tell you that you would lose so much time if they are not followed.

04:17 And I've seen this through experience that if in some courts you don't follow these rules, the efficiency is reduced immediately. Let's take court reporting, an extremely important part. I come from a system where we do not have court reporters, unlike for instance the American system.

04:46 We are sitting like judges making our own notes. Here, everything is recorded. I don't know how we could survive without it in these extremely complicated cases. The multi-accused cases, I've been in one case 405 days in the courtroom, I mean, impossible to remember all this of course. It all has to be, all has to be jotted down in two languages.

05:13 And the revolution that happened when the court reporting system accepted real time, it came from their own registry branch, namely that we can look at the screen in the same moment as the word is spoken and see what was said.

05:34 In the beginning here, I remember there were often discussions about what was said five minutes or ten minutes ago, all these ridiculous discussions where everyone was saying "According to my notes, he said," and the other one said, "No." Totally, it's been all abolished. We just scroll back and we say very nicely, "Well, if you look at, at 9:44:27, at that time indication you will see what was said." And then the debate is over.

06:05 **RU: Yes.**

- 06:06 Increased our efficiency again. These are just a few of the administrative changes which I think have added to our efficiency and also to our fairness.
- 06:22 And also the introduction of video system in the courtroom. When I came in '99 there was no video system. I remember in my case, Bagilishema, we were the first, we were the first to start using it. When Bagilishema started, it was new. Of course in the beginning, people were a bit confused suddenly to be on the screen but, but, but that becomes a habit.
- 06:50 And, and the fact that it can be communicated out to the press and to the persons working around in their offices and more generally, when there are important events, by satellite to Rwanda and the outside world, in-, that too has been an important innovation.
- 07:14 RU: Is the basic principle there, one that courts belong to the public . . .**
- 07:18 Yes.
- 07:19 RU: . . . not the judges?**
- 07:20 . . . yes.
- 07:21 RU: And that seems to me to be one if you take that view point . . .**
- 07:24 Yes.
- 07:25 RU: . . . then a number of things change.**
- 07:26 Mm. I like that expression.
- 07:28 RU: Well, it's encouraging to hear that it is recognized . . .**
- 07:31 Yes. Yes.
- 07:32 RU: . . . in other (____) as well.**

Part 6

- 00:00 RU: Let's talk about cases if we may for a while. What do you feel have been the most significant cases the tribunal has decided and if I may ask, what your role has been in those?**
- 00:12 You're now talking about cases I've been involved in?
- 00:15 RU: Yes.**
- 00:15 Yes.
- 00:17 RU: And then I'll go to others you have not been involved in.**

- 00:19 Yes. I have been involved in I think around nine or ten trials involving almost 20 accused and I've been presiding judge in all except three, I think, two or three. If you were to distinguish between them, I would say that I have been in two multi-accused cases; the Media case where Judge Pillay was presiding, the former President, and the Military One case, Bagosora et al, where I was presiding.
- 01:08 These were my two multi-accused cases. Of course, I also presided a case which is interested in the United States perspective, namely father and son Ntakirutimana. The father was as you know surrendered by the U.S. authorities to, to the tribunal. The pastor, Ramsey Clark was his defense counsel. We had an excellent Canadian defense counsel for the son.
- 01:41 So these were the more than one accused cases I've been in, these three. Then, very many single-accused cases, and there is clearly a huge difference between the multi-accused cases and the single-accused cases, both in way of their – the way you conduct them and the way, and the time that is needed to complete them.
- 02:14 RU: Is there a particular rule of law that has come from these cases that you feel has been significant? If so, tell me about them if you will.**
- 02:24 Well, the most well known of the cases I have been in has, of course, been the Media judgment . . .
- 02:33 RU: Yes.**
- 02:34 . . . which I think speaks for itself. It was about drawing a borderline between on the one hand freedom of expression and on the other hand prohibition about racial or, or ethnic discrimination or incitement to genocide.
- 02:53 RU: Incitement, that's the word.**
- 02:56 Not an easy borderline and there is no – it's clear that – and it hasn't been – there hadn't been any such case since Julio Streisel in, in Nuremberg. So it comes as no surprise that there was a need to, to, to think carefully both at the trial level and at the appeal level in order to hammer out the right balance there between the two both legitimate ideas.
- 03:25 RU: I feel back home and talking about things that I've experienced myself. What about cases the court has decided that you have not been involved in? Do you feel () has established significant issues of law?**
- 03:40 Everyone agrees that Akayesu was . . .
- 03:42 RU: Yes.**

- 03:43 . . . the, the groundbreaking decision here. I was not on that one because I wasn't here the first four years. I came in '99. Because of its impact on the first genocide . . .
- 03:56 RU: Yes.**
- 04:00 . . . definition, the rape issue – is all well known, its historical importance. I think that quite a few cases about sexual violations have been very important in this tribunal. It is the policy of the Prosecutor to try to bring this to the fore to, to make sure that this important part of the Rwandan genocide ends up in court.
- 04:40 It's not always easy and in the beginning, the Prosecutor had some problems in bringing many cases here, but if you sum them up now you will see that there are quite a few. Muhimana is one where I was not sitting which I thought was quite significant in that field, just to mention one.
- 05:06 RU: For the benefit of those who are watching that haven't had the background that we have had, tell me about that case and what was involved, the Muhimana case.**
- 05:16 Which case do you want?
- 05:18 RU: That one that you last referred to.**
- 05:19 Oh yes, but in that one I was not sitting myself. That was just, that was not, some kind of a leader at the provincial level who, who, who was convicted for, for, for rapes and the way – and, and his case was special in the sense that there were so many alleged rapes.
- 05:43 And the trial chamber spent quite some time in the judgment on, on these issues and it had been sometime since we last had had that kind of a case so that's why I'm mentioning that single accused case which I'm not part of. But of course Akayesu was the main one.
- 06:02 RU: Yes.**
- 06:02 There can be no question about this. I'm just trying to illustrate the continuity of our work.
- 06:10 RU: Have there been any subsequent charges and trials involving rape as a part of genocide since the Akayesu?**
- 06:17 Yes, many.
- 06:19 RU: And that (_____).**
- 06:19 Many. And that is the good news. Those who say that this tribunal has not sufficiently taken into account rape in this activity are simply wrong. There have been very many such cases and when this tribunal closes in a year or two, it will be seen how many of our cases that actually at the end of the day included this horrible aspect of the Rwandan genocide.

Part 7

- 00:00** RU: Our visions of what law should be, what we should be sensitive to, seem to change as time passes by. We see more facts, we see more areas where law has not considered other interests.
- 00:14** RU: One of these is in the area of victims. Another aspect that at least has helped me in looking that the role of law, is that victims should be the clients of the system rather than the d-, criminal defendant.
- 00:29** RU: If you were to change the focus of some of the laws on in-, international tribunals, is there a way we could change them and give the victims more opportunities to express their views, more participation in the process?
- 00:50** Let's first agree on the situation here.
- 00:52** RU: Yes.
- 00:53** They have no procedural standing as such. This does not mean that the victims are unimportant. The trials are for them just as the trials are for the accused. And very many of our witnesses are indeed victims and through our processes, ou-, the victims are given their say. They participate in the process. They contribute to the process so they are not invisible.
- 01:28** They are visible even if they testify under pseudonym and perhaps are not seen because they are behind a curtain. Now, and, and we do take – we do give priority to making sure that victims are dealt with with respect and with empathy when they tell their stories.
- 01:54** Turning to the more procedural aspect of your question, we, we see how the ICC now has broadened the status of victims . . .
- 02:04** RU: Yes.
- 02:04** . . . and it will be very interesting now to see how that important development, which I think is a welcome one, how that can be best adapted to an efficient judicial system at the ICC, because it's clear that it will complicate the proceedings.
- 02:19** RU: Yes.
- 02:20** On the other hand, it is probably a price to pay . . .
- 02:24** RU: Yes.
- 02:24** . . . but you have to find the right balance.
- 02:26** RU: Exactly.

- 02:26 And, and that is a fascinating challenge for the ICC now. And I think we should give that initiative our support and give them the very best of luck when they are developing their approach there.
- 02:46 RU: I hear my colleague clearing his throat. Does that mean my friend that it's time for recess?**
- 02:51 Donald J Horowitz: Well, I was thinking that you've gone about an hour and you perhaps would like to take a little break and we can talk about (_____) . . .
- 02:59 You do as you like. If you, if you want to break it's fine, yes, yes.
- 03:04 DJH: I think it would be helpful. Just a few minutes. And . . .**
- 03:05 Yes, okay, yes.
- 03:08 DJH: . . . because I, I don't know what your time, time constraints are, and . . .**
- 03:13 No, no. But I, I've set aside this morning for you. Yeah.
- 03:15 DJH: Okay, okay, all right. That's good to know. Very good, so why don't we just take a few minutes.**
- 03:21 RU: This has been . . .**
- 03:22 DJH: I think it's, th-, some of the recess is also for . . .**
- 03:25 Max Andrews: Yeah. It's . . .
- 03:25 Yes, yes.
- 03:26 DJH: He, he needs to do some things.**
- 03:28 MA: We can, we can go, I mean if we stop right now it'll be like a 15 minute break.**
- 03:32 DJH: 15 minutes . . .**
- 03:32 MA: So if you want to go, we can go for five more minutes and that'll cut the break down to ten because I can, I have ten more minutes on here, so . . .**
- 03:38 DJH: Alright . . .**
- 03:38 MA: . . . if you want to ask one more question . . .**
- 03:39 DJH: Yeah. Or (_____)**
- 03:41 MA: . . . or we can take longer (_____).**

- 03:42 DJH: (____) Why don't we, why don't we go another five minutes if, if that . . .**
- 03:45 Okay.
- 03:45 DJH: . . . will help the mechanical . . .**
- 03:46 MA: Yeah.**
- 03:46 DJH: . . . part of things.**
- 03:48 RU: May I say before we start again that this has been delightful for me. It's like going back with old friends and talking about what we do, so thank you so much.**
- 03:58 It's been delightful to be subjected to such intelligent and well-planned cross-examination.
- 04:08 RU: Thank you. What can I say? Let's talk . . . Now my (____) held on until just then. Let's talk about reconciliation.**
- 04:22 Yes.
- 04:23 RU: And whether this is a part of your charge and if so, how you have handled that in your cases?**
- 04:29 Yes. Reconciliation is mentioned in a preamble paragraph in our statute. It is clearly the aim of the whole process to ensure that by establishing justice we will establish the truth. We will make a determination as to guilt and innocence, and by doing this in a fair and transparent way we will contribute to reconciliation in an area which needs it. That is the thinking.
- 05:12 Of course I'm in favor like all, everyone, of this. I think it's very important. This said, I think we all have to realize that reconciliation must come from inside the country. Reconciliation cannot be imposed from outside.
- 05:29 And it goes without saying that an international tribunal sitting in a different country, with international judges, about one hour or one and a half hours' flight from the Rwandan territory, will not so easily be seen inside Rwanda where still some are illiterate and many live in the countryside without television, and maybe where there is so, not so much coverage of what the tribunal is doing.
- 06:01 So this is the perspective here. We are doing our best to contribute to reconciliation in Rwanda. We have our outreach program, which has worked for years. The Registry will be able to talk for hours about what has been done in that area.

- 06:23 We have our Umusanzu Center in Kigali – the word in Kinyarwanda means reconciliation – where a, a d-, a building with a library with material about our work is accessible to the Rwandan public.
- 06:40 The statistic shows that there are hundreds of people coming every months, every month, that there are school children coming every day. We are accessible in Kigali and we are trying to make our voice known and contribute to reconciliation.
- 07:03 So we do as best as we can within our resources, knowing that we are outside the country – but we had to be outside the country. There hasn't been – because when the Secretary General in February 1995 sent out the three member's mission to decide where the tribunal should be located, there were three possible scenarios: Kigali, Nairobi or Arusha.
- 07:31 And the unanimous opinion of the Secretary General's Commission was that Kigali was not a possible option because of lack of infrastructure, lack of distance to the conflict and security concerns. So it couldn't be in Kigali in '94, '95 unfortunately.
- 07:50 And since then, we have been here. Nairobi later was not a viable option, so it was Arusha which has been as close as possible to Rwanda which, where we had to build up everything from scratch as – but at least the infrastructure here was better than in Kigali and the security situation of course much, much, much better.
- 08:16 So the fact that we are outside Rwanda is a function of the situation in '94, '95, '96 – it, and it couldn't later be changed. It would have disrupted the work of the tribunal and would have decreased our efficiency completely. And as many know, many witnesses testifying before the ICTR might also have been afraid to go to Rwanda if we had been there.
- 08:46 So it's not obvious that such a solution would have been viable even many years afterwards. This is the situation we find ourselves in. But it is my view that through objective information about what we are doing, we are contributing and we will continue to contribute to reconciliation.
- 09:14 And I think that it is very important, once the tribunal's activities cease, that the information about what the ICTR did continues. There should be a continuation of the outreach about explaining what the ICTR did, also when we are winding down later – because there will always be a battle of mind. There will always be a need for constant drips of information.

Part 8

- 00:00 **DJH: Judge Møse, I am Donald Horowitz and I'm a retired trial court judge from the state of Washington in, in the United States and I get to have the second round with you. And I think it'll be probably a shorter round, and we'll, we'll touch on some things just as Justice Utter I think covered many, many things that were important.**

- 00:25** DJH: I want to go back to some of your earlier before you became a judge. As I understand it, you, you talked about being involved working with the UN and with others and, and, in the Stra-, in Strasbourg and in that general area.
- 00:44** DJH: And perhaps you can tell us a bit about some of the things you're proud of having participated in at that period of time. You mentioned being in Strasbourg which of course was a significant thing. And any other things in your own background that we, you'd like for us to know that you think may be important.
- 01:04 Let me say that before I started at the ICTR, I had never lived permanently abroad except for maybe a year in Geneva for study purposes and a year in Britain to write a book. So, so my human rights work was based in Norway but I travelled to Strasbourg, travelled to Geneva or to New York in order to represent Norway before the international institutions.
- 01:35 And if I were to briefly summarize that in a nutshell I will simply say that first I had the pleasure of participating in the drafting of additional protocols to the European Convention on Human Rights.
- 01:51 I chaired many committees in the Council of Europe concerning human rights promotion, the European Convention on Torture, prevention of tor-, torture which established the Torture Committee which visits prisons and psychiatric institutions in all European countries – that convention was drafted by a committee I chaired.
- 02:18 So that was the legislative aspects of my international engagements. Then, there was also a more pleading or barrister-like aspect in the sense that I pleaded cases before the European Court of Human Rights and the European Commission of Human Rights.
- 02:37** DJH: Was that, let me inter-, was that as a representative of Norway . . .
- 02:41 Yes.
- 02:41** DJH: . . . as an Assistant Attorney General?
- 02:43 I, I, I was what we call in the European vocabulary, I was the agent of the government.
- 02:50** DJH: Okay.
- 02:50 Yes, s-, so – and, and in addition to that, when there were Norwegian reports presented to the Human Rights Committee under the Civil and Political Rights Covenant or the Economic, Social and Cultural Rights Covenant or the Racial Discrimination Convention, very often I represented the country there and presented the position and answered question about legislation and practice.
- 03:24 So that was generally – but, but I had a few interesting trips to, to Africa, Ethiopia, to, to, to assist with the, the constitution there, to Morocco to assist with the human rights program

there, and to Russia to assist teaching judges there. It's been an interesting life and these are just a few of the activities.

03:49 DJH: Could you just give us generally the years, like wh-, when were you in Moro-, Morocco, when you were in Africa? Just so we can put a context.

03:58 In the '90s.

03:59 DJH: In the '90s, and likewise with, with Russia?

04:03 In the '90s.

04:04 DJH: Yes.

04:04 Whereas the Strasbourg, Geneva activities were in the late '70s, '80s and early '90s.

04:15 DJH: And let's even step back a bit further to your edu-, legal education. Where, where, where did you get your education and in what years? And what was the extent of your education?

04:25 I graduated from the University of Oslo as a lawyer in 1976 and later I studied one year in Geneva at the Institute des Haute Etudes International in, which is an institution which has a certain standing in humanitarian law and human rights law. I'm also a fellow and an honorary doctor at University of Essex in Britain, so these are I think the three main academic matters.

05:05 And of course I've been teaching at the University of Oslo since 1977 human rights law and I've written the main book on human rights in my country.

05:16 DJH: In what year was that published?

05:18 It was published in 2002.

05:24 DJH: You are also a judge on the Court of Appeals in Norway. When, what were those years and what were the duties, what were your duties in that court?

05:35 This was from '93 to '99, with other words just until I left for the ICTR. As you may know, the courts in Norway has general competence which means that a Court of Appeal, the Second Instance Courts consider civil cases, criminal cases, administrative cases as well as constitutional cases. We, we, we have all kind of cases brought before us and we sit in benches of three and that's in short what they do at that level.

06:18 DJH: Is that the court of last resort or an, or an, or a-, an appellate court that's in the (____) . . .

06:22 It's an appellate court. At, it's a, at, it's the, it's the penultimate court.

06:28 DJH: It's . . .

06:28 It's not the Supre-, Supreme Court. It is the Second Instance Court.

06:32 DJH: Okay. So an appeal from a trial court, if I may . . .

06:36 Exactly.

06:37 DJH: . . . would come to the Court of Appeals.

06:38 Yes.

06:39 DJH: And perhaps a special case would go to the Supreme Court.

06:43 Yes.

06:43 DJH: Okay.

06:44 And yes, that's the situation.

Part 9

00:00 DJH: Where were you, if you can remember, in April 1994?

00:06 That's . . .

00:06 DJH: And what were you doing?

00:08 That is a question I've asked myself many times because, and I can't tell you. I have no idea and I think, and the reason why I've asked myself that question is we have all been struggling with the fact why the international community did so little and I've been asking myself, "What was your own attitude in that period? Did you notice?"

00:34 And I can't really remember noticing so much what was going on. There was all these bombardments of other matters happening at that point in time, so I can't say that the genocide in Rwanda was so close to me when it happened that I can tell you what I did on that day.

01:00 It's different with the murder of Kennedy. You can tell what happened, where you were, but, but when it comes to that huge event, I mean a genocide there, astonishing enough, I cannot recall what I did that month or that year.

01:14 DJH: Okay. What were some of the, to put it in context, what were some of the other, as you put it, bombardments that were going on at about that time in 1994? In your memory?

- 01:25 There has been research on this and I think that if we look at some of the articles written about it, in particular by Thompson, the professor from Canada and some others I think, you will find a very good overview of what the other matters were. If you ask me now to list them, I will be amiss.
- 01:47 DJH: (___).**
- 01:48 I don't remember now.
- 01:49 DJH: Okay.**
- 01:49 But, but of course one had had Somalia the year before . . .
- 01:53 DJH: Yes.**
- 01:54 . . . and there were other matters going on but apart from remembering that of course I was in the Court of Appeal and busy with the everyday work there, the human rights work, et cetera. The exact competition in the media between the genocide and other matters, I'm not able to, to be precise there.
- 02:15 DJH: Okay. When did the genocide or the Rwanda situation first come big in your, in your attention, big to your attention, approximately? I don't need exact.**
- 02:28 It became close when I was asked to contribute. I think that is the answer. I knew of it as a human rights lawyer but it was more distant, theoretical, not close emotional. So it was really from 1998 when the election question arose and from the elections in November ni-, '98 and onwards until taking up the position here in '99, those months were when I gradually became immersed in it.
- 03:12 Of course with detachment and objectivity and neutrality, but that's when the distance between a theoretical event, that we all knew of, to something which you had to become more interested in. That's when the change happened.
- 03:31 DJH: It would be helpful for us to know the process by which a person, or the person like yourself or others, becomes a judge or be-, or became a judge of the ICTR because you mentioned election and etc, etc. And it's a, it's a unique situation I think, or maybe not unique but at least not a usual situation.**
- 03:56 DJH: Can you tell us – now you were approached, I think you said, by your Foreign Ministry of, of, of the government of Norway to ask would you be interested in, in, in becoming a judge here at the ICTR. What is the process? Others may have gotten to that different ways but the ultimate process of becoming a judge?**
- 04:19 Well, it's partly the formal aspect of the question . . .

04:23 DJH: Yes.

04:23 . . . and partly the reality of the question.

04:25 DJH: Okay, and I'd like to hear both.

04:26 Now the formal aspect of the question is that the country of which you are a national proposes you to the, for election at the General Assembly. There will be discussion amongst member states and the General Assembly will then by a majority of votes decide on which judges to choose, and there are always more judges than, or more candidates than actual judgeships positions, so there is always competition. That is the short story.

05:02 And of course the, this is a process which involves both the Security Council and the General Assembly so it starts with pr-, proposals, I think, being sent to the Security Council which is the father organ of this tribunal. But the elections take place in the General Assembly. So that's a formal thing. The substantive approach to that question is that – and now I'm speaking more about my own experience . . .

05:31 DJH: Good, okay.

05:32 . . . the – you are approached because probably your country think you could be useful. It, there will be contact between your own country and like-minded countries to see whether, for instance, there would be Nordic support for the candidate. And once that is settled, it may be even more generally European support.

05:57 I'm happy to note that I was the main European candidate during those elections and I'm also pleased that it was a successful result from all continents of the world and that's of course an expression of confidence for which I was grateful.

06:19 DJH: Okay, so you were actually, in a way you went through, you were nominated. Your qualifications and so forth went through the Security Council. You were then sent, I guess your candidacy was sent to the General Assembly. There was in the nature of discussions about the various candidates by various countries and then there is a vote and the top X number become judges of the court.

06:47 DJH: And, and permanent judges. And then there were all – there are also the ad litem judges . . .

06:52 Yes, and that came of course later in the sense . . .

06:54 DJH: Yes.

06:55 . . . that we were at that stage nine trial judges to be elected for the ICTR and it was only around 2003 and that was during the presidency that I suggested that also the ICTR should

have not only four, five ad litem judges but nine ad litem judges and that we should get them and, and, and then they were elected. But the process is very similar.

07:38 DJH: Yes, that's what I was (_____).

07:39 Yes, the process is similar.

07:40 DJH: Yes, and in the term of offices is different but then they can be renewed, I gather, the ad litem judges.

07:50 Both permanent and ad litem judges are elected for four years but because of the completion strategy, there has been a change towards the end of the tribunal's mandate with yearly extensions.

08:03 DJH: Okay, and again to clarify terminology, you were Vice President of the court from '99 to 2003 and then you were President of the court for a four-year term from 2003 to 2007. Is that, that's correct?

08:21 Yes, and you are elected for two years so I was first elected for two years and then reelected for the other two years which is the maximum period.

08:30 DJH: In each case as Vice President and as President, in each case you're elected, reelected . . .

08:36 That's true.

08:36 DJH: . . . for the maximum term. In our c-, in our courts, we don't call them President Judges that's why I wanted to make clear. You would be a – when you are President of the court you'd be like our Chief Justice. Is that c-, . . .

08:49 Yes.

08:50 DJH: . . . that's correct . . .

08:51 Yes.

08:51 DJH: . . . is it not? Okay.

Part 10

00:00 DJH: I want, I want to talk a little bit about the personal side not just the judicial side, if I may, and is there, wa-, was there any training that was available or provided?

00:16 DJH: We, you know, different judges came from different backgrounds. Some of the judges were not judges before. They were distinguished lawyers or whatever but was there training offered to the, for the judges to become, to help them do their jobs?

- 00:34 The answer is no. Let me first say . . .
- 00:38 DJH: Sure.**
- 00:38 . . . that if one looks more carefully at the membership of the ICTR, there has been a clear dominance of judges a-, at the national level in particular when you look at the period from the second mandate onwards. So . . .
- 00:59 DJH: The se-, the second mandate . . .**
- 01:01 Which other words, with other words from '99.
- 01:04 DJH: From '99, okay.**
- 01:04 Yes, yes. So if you look at the first – and, and, and there has always been a majority of judges but I think you could say that that majority has become dominating, I mean, almost no one else.
- 01:22 DJH: Okay.**
- 01:23 And, and if you look at the trial judges now, the 18 trial judges here in Arusha . . . my recollection is that 16 of the 18 were judges at home.
- 01:39 DJH: Okay.**
- 01:39 Which is a part of the answer to your question, "Was there any training?" Because the need for training of course will to some extent depend on whether you have exercised the profession truly under different conditions and in a national context, but still.
- 01:58 DJH: Mm-hmm. Okay. That having been said, and it's not just about, because sometimes a lawyer can immediately become a wonderful judge and, you know, without previous experience as such, but as you pointed out, there wa-, there was a lot, there were, lot that came from the national context.**
- 02:16 DJH: Was there any – I gather there was no special training to bring you, you know, in international justice, or wi-, and I, I'm not saying it's good or bad, I just wanted to understand.**
- 02:27 Yes. You are absolutely right and that's something I noted. If you look at some of the judges here, some had been very much exposed to international work. For instance like myself . . .
- 02:42 DJH: Yes.**
- 02:42 . . . and some others, but there were others that to a lesser extent have been. And, and that's where your point comes in. My own response to that would be that as a practical

matter, I have been impressed by how fast also those not originally used to the international intricacies and vicissitudes have adopted to a life as an international judge.

03:26 DJH: Okay.

03:27 This doesn't mean that one could not in the best world have envisaged a training program but that has not so far been the case before any international court and we are now talking 2008. And if you look at the elections both in relation to the two ad hoc tribunals – Cambodia, Sierra Leone and the Lebanon tribunal – the UN simply hasn't done it.

03:54 DJH: If you were going to recommend for a future tribunal, we've talked before about the design of, you know, if you could make the world as you would like it of course there would be no need for tribunals but would you, would you include some training now on, on the experience of previous tribunals and generally the body of I-, of jurisprudence that has come out?

04:24 Yes. Let me fi-, I th-, I think I would start in a different end.

04:28 DJH: Okay.

04:28 First of all, I would start with the selection process.

04:31 DJH: Yes.

04:32 I think it's very important that only persons in excellent health are chosen. Secondly, only persons with a certain knowledge of international and national experience. Th-, that's an advantage, I think. Thirdly, persons with excellent or very good knowledge of as many of the official languages as possible.

05:13 In addition to that, I think there is always as, a difference between law in books and law in action in the sense that a CV will not always truly reflect the personalities of those involved.

05:32 So I believe in, in, in interview processes and transparency in elections just to make sure that you get those that are totally committed, workaholics with great idealism, if you understand what I mean.

05:55 DJH: Of course I do.

05:55 Now, I, I'm not at all saying that any, that we don't have them here. We have them but, but that is how the system should be devised. We are very pleased that we have been so lucky in spite of the shortcomings of the election process. Of course states will usually propose only their best people for these things but there is no guarantee.

06:17 So, so I think that is an important way if you look at the future, and for instance in the Lebanon tribunal, I was very pleased when the Secretary General asked me together with two others to be part of an interview panel for the new judges in the Lebanon tribunal. And we interviewed 20 judges and we do think, in all modesty, that that was a useful process.

06:41 DJH: How many judges did you choose from . . . ?

06:42 11.

06:44 DJH: Okay. Let me ask you about – I’m going to get back to one of the criteria you talked about, but also about diversity, the, the diversity of the judges. Do you have comments about that? Is that a, a desirable quality in terms of the body of judges and, and how would one go about doing that?

07:08 Diver-, diversity is ambiguous. If you mean persons coming from different continents, different legal systems with different experience, then my answer is a clear, “Yes, it is absolutely positive.” And I will say a prerequisite for legitimacy.

07:29 DJH: Well, that was what I was talking about. And, and, and your answer is clear. I was also interested when you said, when you said to Justice Utter that working with people of different backgrounds was not difficult for you. It was a, an inspiration. I think that’s a fair quote.

07:49 DJH: And I, I would only comment that my experience with diversity i-, is that it enables me to think new ways and gets me out of sometimes patterns that are s-, can get a little thoughtless.

08:06 DJH: You know, you do things automatically and that’s not a very good thing especially for a judge. So I, I couldn’t agree more with, with what you are saying.

Part 11

00:00 DJH: You talked about excellent health as a criterion and I’d like to ask you to comment on why you think that should be a criteria.

00:11 Again in this there is absolutely no criticism against anyone . . .

00:14 DJH: (____) understood.

00:14 It’s only the fact that just like any high office also within the political field, I think it’s important that candidates in so demanding positions where there is so much work to do, really will not suffer from the job or be forced to resign because the pressure is too high.

00:42 And we have had examples of this here. We have unfortunately had colleagues who passed away and that created a problem and we are back to the rule change which was mentioned

previously. What do you do if suddenly a colleague passed away and you are in the middle of a trial after 200 days in court?

- 01:02 The answer is you have to continue the case with a new judge who has to acquaint himself or herself with that trial. Now that is totally unusual in many national jurisdictions, but here it's vital to make sure that an enormous trial does not collapse.
- 01:23 We didn't have that rule originally. That is another example of learning lessons in addition to what I mentioned previously.
- 01:32 Now these kind of problems sh-, well, no one can guarantee anything in life, but, but if you have as a relevant consideration the need to be able to support huge stress and workload, that will reduce the problem for the tribunal later if unfortunately something would happen.
- 02:09 Let me say that the persons we lost were excellent people and no one could really have foreseen it maybe, but it's still a relevant consideration of principle which I think one should take into account, and after all, we do that at the national level.
- 02:28 And here in the UN, as a staff member, you are s-, requested when you apply for a position as a legal officer or as a witness protection person to, as an international staff, to present your medical attestation and examination to the UN before you are employed. For the judges, there is no such thing.
- 02:52 **DJH: You talked about the stresses of the job and one of them of course is the workload and, and, and the complexity of many of the cases. What other stresses would you – and you've been sitting here a long time not, and not just in the traditional judicial role in a case but also as a major administrator of this court.**
- 03:18 **DJH: We can talk about your stresses or the stresses of judges who have not been the President. What, what other stresses are there on the judges that would lead you to this concern?**
- 03:28 Talking generally, I think that it is an unusual situation for a human being if you are assigned to a multi-accused case to sit in a case for between 250 or 400 days. That's not something you will usually do at the n-, national level. There are almost no such cases. We do not sit so many days in the courtroom because we are inefficient or not productive.
- 03:59 We sit so many days in the courtroom because it's necessary in order to achieve a good and fair result in a situation where the complexity of the case is immense as you just indicated. That is a stress factor. In addition to that, I, I think without exaggerating the point, that hearing genocide cases is in itself not a very easy thing to do day out and day in.

- 04:33 Of course as a judge you are not going to be emotional. You have to be professional. The point is that you are not there to listen to your own emotions but to focus on the evidence and apply the evidence and the law in a fruitful combination. That's our task. So you will be detached but, but it's not always easy.
- 04:59 **DJH: Yeah, we've heard that, I must say, and I'm glad to hear you, you be forthright about that because we have heard that from other staff members at various levels. When you hear a certain amount of, if I may call poison, and I'm not talking about guilt or innocence, I'm talking about the facts of a case, the evidence in a case, that poison sometimes subtly over time can affect you.**
- 05:28 **DJH: And we, we've talked, we had an interview with the psychologist here on the staff; very interesting. Et cetera, et cetera. E-, even the interpreters who hear so many – and, and you know, we think of interpreters as au-, you know, automatons which they're not. But so, again, judges are people and not just judges, and.**
- 05:50 And judges are there all the time. The others circulate.
- 05:55 **DJH: Yes, yes, yes. Ha-, is there – given the stresses that you've described and perhaps some effects which we try to overcome and be obje-, i-, if not objective certainly impartial. You know, one is not objective about genocide, one must be impartial about "Did the person do the act or, or not," or et cetera, it seems to me.**
- 06:20 Mm.
- 06:21 **DJH: But have there been times when any of the judges have availed themselves of some professional help or, or ma-, maybe a doctor, or. I mean, I (___) talking about the stress part of it, not, or, or, or discussed among themselves some of the issues. And I'm not asking for any private conversations but just the fact of, of discussing this among themselves. What . . .**
- 06:50 I can't recall any judge having raised such problems with me when I was an administrator of the tribunal.
- 07:01 **DJH: Mm-hmm.**
- 07:02 And I'm not aware of it from other sources either.
- 07:04 **DJH: Okay. Have you as a group discussed some of these stresses on, on you and what ca-, and by, that's a plural "you" and what as a, as a group of ju-, of judges you can do to minimize that or to deal with it?**
- 07:24 I can't recall any general discussions about it, but, I think that when the (___), stress is there, the mere fact of collegiality, the cohesion at the bench, the fact that you are in the

same boat so to speak, instead of a general discussion with persons from various chambers which may be in different situations.

08:02 The fact that you may share a day's frustration with your colleagues with whom you've been sitting for 200 days, I think that's the way you can assist one another in the most efficient way.

08:18 DJH: And has that happened from time to time?

08:20 Yes.

Part 12

00:00 DJH: In your years here, is there some, are there one or two things that have surprised you, that you – what you didn't expect both as a person and as a judge? You know, you came here with a hope of contributing, I think as you put it, to, to a just and proper process and, and outcome. Is there anything that surprised you?

00:24 I think there are two matters I would raise which may be (___), at a level of principle. The first that ap-, su-, surprised me when I arrived here was how normal a genocide court is compared to a court at home.

00:47 In spite of the subject matter, you come here with your idea as to how it is to judge genocide. You enter the door of the courtroom. You sit there and suddenly you realize that even if this is a mixed system, different rules slightly, it's amazingly similar to normal court proceedings at home or in any other country you have been in.

01:19 Now that is in itself not surprising. It should be that way because this shows that we are simply a normal court at the international level. But the reason why this is fascinating is that I think that there is this thinking that maybe, because the reality is – we are confronted with – is so inhuman and special, that this will have an impact on the proceedings and with other words, the procedure in the courtroom and the way people behave in the courtroom, et cetera, and it isn't.

02:02 People behave professionally. That is an observation I think is useful to convey.

02:12 DJH: Okay.

02:13 The other observation is maybe drawing in the opposite direction. I now just said how similar it was. Now I'm going to say how different it is compared to the national level. And that is how much more complicated the assessment of the evidence is here. That was I think the second surprise of a principled character.

02:40 At home when you walk out of the courtroom after a day in court or proceedings that have lasted for say three to five days as a maximum . . .

- 02:51 **DJH: Mm-hmm.**
- 02:53 . . . I think you w-, we were all pretty certain about which way the case was blowing, and, and we, we thought we had a pretty good idea about all the issues in the case and exactly which result we were going to reach when we met with the first drafts after sh-, a brief conference a few days later.
- 03:14 Here the situation is much more complicated because when you have heard say 240 witnesses and if you have on your table say 15,000 pages of exhibits or more, the exact combination and weighing of the evidence is quite different.
- 03:35 So you cannot in this, y-, of course after witness you can say, "A-ha. I think this way or that way," but th-, when it comes to the totality of the evidence and, and, and comparing witnesses against one another, that is a more complicated task here. That's my second observation.

Part 13

- 00:00 **DJH: Have, have any, have there been any defendants or defense counsel who have challenged the jurisdiction of the court over them, either by legal motion or by d-, some sort of demo-, court demonstration or turning his back to the court or whatever these sort of things are? Has there been s-, any such?**
- 00:31 Yes, both at the ICTY and ICTR there have been several motions challenging the legal basis of the ad hoc tribunals and this catchword here is the Tadić case at the ICTY and we have had three, four cases here as well. The short story is that these challenges were unsuccessful.
- 01:01 And the point made in those motions was that how was it possible to establish an, a court under Chapter 7 Security Council, not a treaty. Th-, th-, there were many steps and I do not recall the details precisely now.
- 01:21 **DJH: Sure.**
- 01:22 But, so, the little challenges have been there but of course following case law by the appeal chamber which is common to both ICTY and ICTR, this, the situation was clarified.
- 01:35 When it comes to challenges not of a legal nature but of a more psychological nature or more f-, disputing the legitimacy of the court, there have also been some examples. We have had not the same case as in ICTY where Milosevic made these extraordinary speeches and refused to be represented by counsel, et cetera. We have not had that.

- 02:07 But here we have had situations where one of the accused decided never to attend the courtroom and instructed his counsel not to represent him and then we had to assign a duty counsel for him in the interest of justice.
- 02:25 That was, by the way, also one of the changes we made to the rule of procedure and evidence at some stage. But we did it in view of our inherent competence to ensure the, the, the course of justice.
- 02:42 So the-, there have been such challenges. And, and, and h-, here my comment to that question which – it is, I don't think that is surprising. This is a new system and there is a need to pursue the avenues of legal disputes to, to clarify the legal situation so the judicial problem that's quite legitimate that these are aired and settled.
- 03:15 And when it comes to the other part I don't, namely what we will c-, could call the more political or l-, legitimacy oriented aspects, I don't find that so surprising either. We come at the national level from systems where the judiciary has been established for hundreds of years, where the courts in it-, their present forms have been functioning of course with a lot of modernization, but still i-, in roughly a s-, the same way for hundreds or decades, decades, 100, 200 years.
- 03:58 And, and people accept those courts. That's what is available. Whereas here you have an ad hoc tribunal established by a Security Council for only a few conflicts, not all. Now we have ICC which is a permanent and good idea in my view, but the whole establishment process is different.
- 04:20 And secondly I think there is a need for a court, course, a court to show that it is not only a court on paper but also a court in real life – that it behaves like a court, it acts like a court, it treats the actors in the courtroom the way a court does.
- 04:39 Now we have done that, but I think in the beginning, there will be teething problems for those who come from other systems and maybe would wish to test this system and, or in a less Machiavellian approach, simply are not used to it. I don't find this surprising at all.

Part 14

- 00:00 **DJH: With that caveat, I'm going to ask you what would you like to say to the future, okay? And perhaps you've already said it and, and that's fine but ten years from now, 20 years from now, 50 years from now and your grandchildren are watching and so forth, and, and what would you like to say to the future about this court and your impressions of what contributi-, howe-, whatever you'd like to say. I don't want, even want to circumscribe it.**
- 00:45 This court was the first international court at the African continent. It was the first international criminal court at this continent and it was the second one, after the ICTY,

established since the Second World War. With other words, the two ad hoc tribunals were the first to, to practice in this field from the 1990s.

- 01:32 That was an extraordinary challenge and it was inevitable that it would not be unproblematic. You had to build up two courts from scratch, and in particular here in Arusha with limited infrastructure. It was not easy. In spite of that, I think this court has shown that it did a good job after some trial by error in the beginning.
- 02:06 It has become a full-fledged international efficient fair court, fully equipped to deal with the task, namely to decide the guilt or innocence of the leadership of those involved in the 1994 events in Rwanda.
- 02:30 Our institutional knowledge is considerable. The – we were to some extent a transitional period between Nuremberg and Tokyo on the one hand, and the International Criminal Court on the other hand.
- 02:47 It will be interesting to see for the future to what extent ad hoc solutions will be used or whether we were just, together with a few other ad hoc tribunals, a step on the road towards more permanent institution.
- 03:02 I think maybe the trend will be permanent institution with a general competence instead of these ad hoc institution with specific competence.
- 03:16 It has been, again – and this is repetition – it has been an extraordinary experience to be part of this. I say to those who want to listen to us in the future that we did as best as we could. It was a privilege to be part of this.
- 03:38 DJH: Thank you. How has this, if it has, how has this changed you as a person?**
- 03:46 No one can be unaffected by ten years in Arusha.
- 04:04 DJH: Thank you.**