



Voices from the Rwanda Tribunal

Official Transcript: Everard O'Donnell (Part 3 of 14)



Role:	Deputy Registrar
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Interviewer:	Donald J Horowitz
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Interpreter:	None

Interview Summary

Everard O'Donnell discusses the unique characteristics of ad hoc tribunals and the challenges of coordinating multinational ad litem judges. He notes that the ICTR has been effective at tracking and capturing international fugitives such as Jean-Paul Akayesu. Although the ICTR has been criticized for providing 'victor's justice,' O'Donnell stresses its efforts to deliver justice impartially. He reflects on the case of Mika Muhimana who was convicted of genocide, but later had his conviction overturned by the Court of Appeal.

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Part 3

00:00 Donald J Horowitz: When you talk about the President in a lot of cultures, that's not understood. Is that, was that the President judge?

00:07 Yes.

00:08 DJH: Okay.

00:09 Yes, the, the, the judges, the permanent judges of the tribunal – in those days, there were only permanent judges – elect from amongst themselves a presiding judge, who's called the President, and a Vice President.

00:21 DJH: And is there some term of office, either by custom or by regulation or statute?

00:28 No, there is a term of office. Each judge has a mandate of four years, and a President has a, a mandate of two.

00:36 DJH: Okay. And are they renewable?

00:41 Yes.

00:42 DJH: Both the President and the other terms?

00:45 Yes.

00:46 DJH: Okay. So the President judge didn't know you were coming?

00:52 No, I, I, I mean, I think, I think the, the President, at that time, there was a considerable conflict between the Presid-, the President and the Registrar, the then Registrar, and there was a considerable lack of communication between the two poles of the tribunal. If I can explain . . . ?

01:11 DJH: Sure.

01:12 As you know, if you've looked at the statute of the two ad hoc tribunals, you'll see that it, it, it's a, it's essentially a compromise between the mission model and between the way a court functions. You have the Secretary General's representative, who's the Registrar, and he, in the statute, is given responsibility for the administration of the tribunal.

01:38 DJH: You're talking about the statute which creates this ad hoc tribunal?

01:42 Right. It's the one passed by the Security Council, incorporated in the original Security Council Resolution, which then became our, to some extent, you could say, our constitution.

01:51 DJH: Okay.

01:51 And . . .

01:52 DJH: And i-, so, this is not a court that is formed by treaty between or among nations?

01:58 No, not like the ICC. No, I mean, obviously we are a treaty creation in the sense that the original United Nations charter is the treaty which set up the Security Council. The Security Council then set up the ad hoc tribunals as subsidiary bodies of itself. So we are, in fact, an organ of the Security Council.

02:17 DJH: And an ad hoc tribunal means what?

02:21 It means that it lives, and then it dies. It, it's a temporary court. It's an unusual situation, because, you know, as you know, in all national courts, we're not used to short-term courts. The Star Chamber, I can, I can remember, in the United Kingdom's experience, was a short-term court.

02:39 Courts set up for specific ex-, events and particular experiences usually are frowned upon, I think, in jurisprudence. It, it, it smacks a little bit too much of non-routine justice. It smacks of setting up a structure for a particular event. And that's one of the reasons why the ICC was set up to be a permanent institution.

03:04 DJH: Okay. And by ICC . . . ?

03:07 The International Criminal Court in The Hague.

03:09 DJH: Okay. And that was set up by treaty, when?

03:11 It was set up in . . .

03:15 DJH: Approximately.

03:15 . . . it became effective in July 2001, when there were enough signatories to the actual treaty.

03:21 DJH: And so, that came after the two ad hoc tribunals.

03:26 Yes. The two ad hoc tribunals were set up in 1993-4, when you have these two m-, massacre events in the ex-Yugoslavia and in Rwanda, inaction by the Security Council, general feeling – I mean, obviously there was action in due course by NATO in the ex-Yugoslavia, but it was felt to be very much too late in the day.

03:57 There was total inaction in Rwanda, withdrawal of the UNAMIR forces. The United Nations was generally seen to be impotent, and the Security Council in particular impotent.

04:09 And so, there was a sense after each of these events, “Well, how can we be seen to be acting, you know, so that it looks as if we've made some response rather than just wringing our hands and weeping crocodile tears.” Or real tears. Who knows? I mustn't be too cynical.

- 04:29 DJH: Okay. So let's get back to where you were talking. You said there were some problems between the President, the ju-, the judiciary or the, the judges, and, and the Registrar?**
- 04:38 Right. Right. The Secretary General appoints the Registrar, who's an Assistant Secretary General. And there you have, to some extent, the peak of the pyramid in the United Nations staffing table. And to all intents and purposes, when you look at the statute, the Registrar looks as if he's at the apex of the pinnacle.
- 05:01 But then you've got the judges. The judges appointed, they're Under-Secretaries General, so they, they elect the President from amongst themselves and the President is a person who's actually meant to be running the scheduling of the court hearings, running the sittings of the judges, the appointments of the judges – you know, basically handling the whole of the judicial side of things.
- 05:25 And you've got an obvious area of conflict there. I've spoken to the original architects of the statutes, and they both have under-, undertaken that this would never b-, have been done, if it had been done again, had they seen what the result would have been. Because, well, what happened was after the rules – the rules under the statute – the, the judges were entitled to make rules of procedure and evidence . . .
- 05:53 DJH: And there were two statutes, one for the former Yugoslavia, and one for Rwanda.**
- 05:56 Yugoslavia, yeah. That's right.
- 05:58 DJH: Were they pretty identical?**
- 05:59 Yes. Pretty identical.
- 06:00 DJH: Okay.**
- 06:01 There are, there are differences in the definitions of crimes because of the difference in the nature of the massacres in the former Yugoslavia. We have a, a – basically our basic crimes are targeted towards internal crimes rather than international crime. So there were special provisions made for that. But apart from that, basically the statutes are the same.
- 06:29 And the Yugoslavian judges had been given a rule-making power under one of the statutory provisions. And they had met together in plenary even before our creation, and had developed, abou-, just over a hundred rules of procedure and evidence.
- 06:45 And it was obviously quite early on that the fact that the judges felt that they should be in a supervisory role over the secretariat side of things, became manifest. Because the judges passed a rule making it clear that the supervisory function would be performed by the President over the Registrar. And that is expressed in two of our rules now.

- 07:17 We took over the rules, again, from Yugoslavia, and so we have the same supervisory provisions. So although it doesn't appear in the statute, in two places in the rule, it says the Registrar shall be supervised by the President.
- 07:31 So you can see that there, there was – the judges i-, in effect made it perfectly clear that as far as they were concerned, and no matter what the statute said, they were going to be exercising the governance of the tribunal. And it caused conflicts in the early days of the, certainly this tribunal.
- 07:52 Because the Registrar felt that there were certain responsibilities that he had as the senior staff member responsible to the New York, to the General Assembly, to the Secretary General, that he could not just do whatever it was that the President wanted him to do.
- 08:11 Whereas the President felt that she had a right to say, “I want this, I want, you know, this, and I want this person recruited,” and so on. “And I want it done now.” And the UN rules, you know, don't work like that. They work very fairly and they work slowly, it has to be said.
- 08:29 DJH: Are they – and this affected you in, or your initial experience?**
- 08:34 It did. Because when the Registrar told me, “Oh, you're going to be the Chief of the chambers,” I then relayed that information to the President and her immediate response was, “I don't think so. No, you're not.” So . . .
- 08:50 DJH: So what happened then?**
- 08:51 Well, I made my excuses and left, bowing backwards as you know, showing obeisance. And went back to the Registrar and the, the, the matter continued i-, in – with a little bit of a, a delay. In due course, what I – I was able to slowly develop a rapport with the senior judges and in due, in due course, the conflict between the Registrar and the President was resolved.
- 09:23 The Registrar was removed and replaced by the present Registrar, Adama Dieng, who has always had a very good working relationship with the judges and with the presiding judge. Complete change.
- 09:36 And basically, our system, our bipolar system, can only work if there's a close working professional, and one hopes sometimes friendly, relationship between the two poles. And that's been the case ever since the appointment of Adama Dieng.
- 09:55 DJH: And when – and was that in 2000 or 2001?**
- 09:57 2001.
- 09:58 DJH: Okay. So what did you do in the mean time?**

- 10:01 Just slowly developed, inch by inch, warm relations with people. Diplomacy. Just, in, in, in – so often in the United Nations, personal relationships matter. And the United Nations in this particular continent, one would say they matter even more.
- 10:23 So you can't just rely upon your formal function and say, "But this is my position. I therefore expect you to do this, this, and this." You have to develop relationships here. And that was a good lesson for me, because previously I had not really been able to work like that.
- 10:39 DJH: 'kay.