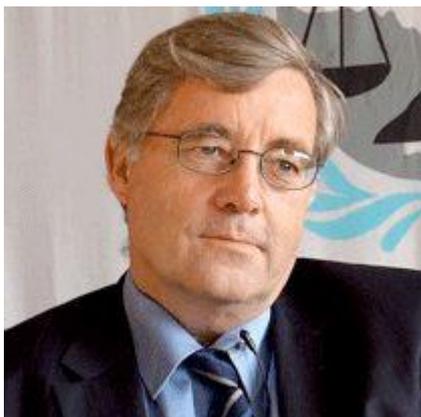


Voices from the Rwanda Tribunal

Official Transcript: Everard O'Donnell (Part 11 of 14)



Role:	Deputy Registrar
Country of Origin:	England
Interview Date:	15 October 2008
Location:	Arusha, Tanzania
Interviewer:	Donald J Horowitz
Videographers:	Max Andrews Nell Carden Grey
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.

The transcript of Part 11 begins on the following page.

Part 11

- 00:00 **Donald J Horowitz: We're, we're reaching sort of the last, last 15 minutes we can give to this today and I'm going to switch over to something () very much be interested in about yourself and your role, whatever it's been, whichever role you've had. What would you tell us is that which you've done which, or been part of, that you're most proud of?**
- 00:30 Keeping it going.
- 00:32 **DJH: Yes. All right.**
- 00:36 No, I think supporting the judges, trying to assist them make a go of it. I mean they are the ones whose job it is to keep it going. There have been times when we've had crises; you know, endless crises, you know, people having problems under pressure. I'm not talking about judges here. I'm talking about legal officers.
- 01:06 And you know you've always got to be ready to put out fires. I think just keeping the whole thing going, just using diplomacy, getting people to continue talking when they wanted to walk off away from each other. We've had, you know, over 80 different nationalities all trying to work here on one system.
- 01:23 And you've got division between the Francophones and the Anglophones. You've got the civil, c-, common law distinction. You've got people who sometimes don't want to understand each other.
- 01:35 You've got all kinds of areas where conflict can arise, daily they arise. And I think more or less getting one's verbal WD-40 out and running around and spraying it and, and just keeping the thing going is, is what I would say, is, is the principal achievement. There are, I can think of many failures. I can think of many things that . . .
- 02:05 **DJH: That was my next question. What, you know, what are those things where you wish you or, or the – or th-, that which you were involved with would have done better?**
- 02:14 I think the quality of the jurisprudence. That has, that's the thing that saddens me most; not being able to get the judges to agree to devote themselves to improving, as a corporate group, our jurisprudence.
- 02:33 **DJH: What, what do you mean by the jurisprudence? I mean, that's a word that lawyers themselves are sometimes imprecise about and we're going to be talking, you're talking right now to . . .**
- 02:43 Yeah.
- 02:43 **DJH: . . . people who are not lawyers.**

- 02:47 International criminal law is actually pretty easy. It's not difficult. There are actual answers to actual problems. There are fairly clear legal answers to most of the issues that arise in our daily, day to day work. And our judges arrive relatively innocent, if I can put it in that way. I mean no disrespect to them. It's very few judges who arrive here with a knowledge of international criminal law.
- 03:24 And they bring with them the wisdom of their years on the bench, their knowledge of their own national law. And a lot of them continue to believe that's enough to deal with any issue that arises. But the truth is that we have now a body, a corpus of law relating to grave crimes, to procedural issues that is actually out there and it's easy to know. It takes effort.
- 03:54 But it, I mean one of the great publishing boondoggles of the last ten years has been enormous quantities of textbooks issued on international criminal law and I would say three-quarters of them are miserable, terrible, but there are some really good ones which are, you know, decisive, clear, comprehensive and if only it were possible to ensure that our jurisprudence, (), by which I mean our judgments, were written in a way that just dealt with the law as it is, as we have now developed it.
- 04:33 We spent – if you look at the two tribunals and the other hybrid tribunals, we must have spent now nearly 40 judge years, if you put them all together – you know, eight years, ten years, and so on, you add it all together. How is it then that we can still make some of the most fundamental errors in our judgments and that really does, I think is one of my great failures.
- 05:00 DJH: Why yours?**
- 05:01 Well, I suppose if I had been more forceful, more like Carla del Ponte, I would have been able to lead all the judges into the promised land. But it's, it's just not been like that. They, they are very much individualists. They still bring their own views to the table. They're not going to be led. They're not going to be – this sounds disrespectful. I don't mean to be.
- 05:30 But they don't feel that the knowledge they have, for example, of French jurisprudence or of the common law jurisprudence is to be thrown out, and other issues – the whole question of the doctrine of precedent for example. I mean we've had civil law judges who simply refused to follow precedent. Point blank, "I don't care what, you know, is being said by the appeals chamber. I'm not going to do it. This is my view." This, it's a s-, fundamental principle. You know, what can you do?
- 06:01 DJH: And you have here some sort of combination of the civil and the common law. (_____).**
- 06:07 Yeah, I mean the, the, the difficulty for the civil law is, is that it's common law triumphant . . .
- 06:12 DJH: Mm-hmm.**
- 06:13 . . . you know, by and large.

06:14 DJH: Mm-hmm, mm-hmm.