



Voices from the Rwanda Tribunal

Official Transcript: Philippe Larochelle (Part 5 of 8)



Role:	Defense Counsel
Country of Origin:	Canada
Interview Date:	23 October 2008
Location:	Arusha, Tanzania
Interviewers:	Lisa P. Nathan John McKay
Videographer:	Nell Carden Grey
Interpreter:	None

Interview Summary

Philippe Larochelle reflects on his experience as Defense Counsel, speaking to the many areas where he perceives the ICTR to have failed. He draws attention to allegations that the Tribunal has been politicized by its reluctance to prosecute members of the RPF. He observes that international pressure to secure timely convictions has been prioritized over the genuine pursuit of justice. He addresses the inequities between defense and prosecution teams, as well as the difficulties of securing political asylum for the acquitted.

The transcript of Part 5 begins on the following page.

Part 5

- 00:00** John McKay: I'm John McKay. I'm a former Federal Prosecutor in the United States and currently a Professor of Law at Seattle University Law School. Thank you very much, and I just wanted to turn to follow up on some of Lisa's questions. You've talked a quite a bit about your relations with the Office of the Prosecutor.
- 00:20** JM: I want to move a little bit more to what you have observed. You've been here for a long time and you, you've had an opportunity to see the way in which the international community here at ICTR . . .
- 00:31** Note: Gap in Interview (Approx. 2 minutes in duration.) Gaps occurred due to interruptions during the interview, technical issues, or corrupted data files.
- 00:46** JM: But, but you've observed the, some of the development of the legal theories advanced by the prosecution and allowed by, by the tribunal. Would you want to comment on, on any of those?
- 00:58** JM: And I, I have in mind for example, the – we would simply say conspiracy elements here but the, the joint enterprise, I think they call it Joint Complicit Enterprise in this, in this tribunal, which we understand people have called "Just convict everybody." Wh-, what, what – do you have any, any thoughts on the development and use of, of, of legal theories here?
- 01:19** Well, most certainly I think I can – what I can say from our prosecutors anyway is that they have – they are certainly are, are not the one that created those theories but they always are very happy to exploit them. (___), they are reacting rather than creating legal theories.
- 01:38** We – our case is interesting in that you're dealing with four ex-ministers which don't know each other, okay? When I started this case, Joint Criminal Enterprise is not even pled in the indictment, and it's a bit like conspiracy. I was, I did a case in the Supreme Court of Canada on conspiracy and they, they called it like the, "the bomb in the prosecutor's tools," you know?
- 02:03** I pretty much, many, when you're not, and these are evolving. They started in Tadić couple of years back and they're not, they're still not well-defined. They, they are, they are, still very few, few people perfectly understand what they're all about and you can read that when you read the, the jurisprudence about them.
- 02:26** And what I could say about that is that it's – we're, we're in a case – my own experience is the Prosecutor introduced that, you know, after – while they were presenting their evidence and all of a sudden, they – but in, in our case anyway, they have not, they, they have not prepared at trial to try to establish that there existed an, an, a criminal enterprise in Rwanda.

- 02:49 Far from that, they are now saying basically, they are putting things in reverse order. They are saying – there was a genocide, there was a government. The only possible rational conclusion is that the government was responsible. And they're trying, they're trying now to fit that equation in all kind of boxes, amongst them, Joint Criminal Enterprise.
- 03:14 But since – in the brief, in their final brief, they only cite Tadić which is the initial case where Joint Criminal Enterprise was created. They don't go beyond that. They stopped there. It's, it's terrible that you're dealing with people who should be professional prosecutors in the forefront of, of what is happening, especially here.
- 03:36 This is, these are the forums where, where, where these legal theories are, are being developed. Whether we are working on it now, I think it's, it's, it's, it has way too far reaching theories because you are getting – my, my, my impression personally is that you are getting into the realm of holding people accountable by virtue of the fact that they were belonging to organizations or collective, or, or groups, which I think is a mistake.
- 04:02 And, it actually runs contrary to what, what the initial resolution says which you want to – if, if you find someone guilty, you have to demonstrate their own, you know, guilt intent and, and, and guilty acts. You cannot held someone guilty by the fact that they belong, merely for the fact that they belong to a government, a political party or an organization.
- 04:22 You, you still need to demonstrate their own guilt and, you know, it's a short cut. Joint Criminal Enterprise here is a short cut: "You were in the government, the government has some blood in its hands; therefore you have some blood on your hands."
- 04:36 And that's, to me, it's very dangerous because we're, we're, we're, we're circumventing, you know, individual criminal responsibility by that of collective criminal responsibility, which, I think, is a bad, bad thing.
- 04:48 JM: Do you have any thoughts about some of the other legal theories such as the media cases involving incitement to genocide or the, the development of rape as a part of, of genocidal acts?**
- 05:02 Rape as a part of genocidal act – I mean this is, I think, a welcome, you know, advancement because it's – we had an expert in our case which stated something that everybody sort of, you know, know that when in, in, in context of war and civil war or, or, you know, there is always, there is always an unfortunate prevalence of rapes and, and sexual infractions that are committed. So, I have no difficulty with that. I certainly welcome that.
- 05:33 Inciting – I think it's very interesting to, again, you always have to – it's interesting to have legal theories but you have to see how well they are – you can, you know, demonstrate the, the guilt of, of the various accused here before this tribunal.

- 05:48 And I was – as I was stating earlier, there is, there is this assumption that there were incitation there without having – the, the Prosecutor is actually holding on their broadcast and material which would allow an objective and, and proper examination of whether incitation took place.
- 06:08 And if y-, if you read the appeals judgment in Nahimana, his conviction now stand on a very, very weak fact, you know. Everything has been – he’s been cleared of pretty much everything. There is just one witness now on which they rely, or one event, I’m not quite sure, but . . .
- 06:24 You need, before advancing these new legal theories, you need to have solid and concrete facts, and this is, this is – to me, this is what is worrying is the quality of the evidence that’s being advanced here to support these different legal theories.