

# International Courts

## Court Technology Conference (CTC 2009)

Denver, Colorado  
September 22-24,

### SS-9 Solution Sharing Session

Host: Chief judge Stein Schjolberg, Moss Tingrett Court, Norway

#### 1. The host introduce himself.

*I have been a regular attendee to the CTC's since 1999, and have twice been a lecturer at the conferences. The topic was Judicial Decision Support Systems, a kind of artificial intelligence and law.*

*I was in 1999-2001 appointed as a member of The International Think Tank on Global Court Technology, by the National Center for State Court and its President Roger Warren. This year is the 10th year anniversary for the establishment of the Think Tank, even though it was closed down in 2001.*

*For more than 30 years, I have been a lecturer and expert for several global and regional international organizations, such as United Nations, Interpol, Council of Europe, The World Bank, and was in 2007-2008 appointed as the Chairman of a global High Level Experts Group (HLEG) on cybersecurity and cybercrime at the International Telecommunication Union (ITU), a United Nations institution in Geneva. The Report and Recommendations were delivered in 2008.*

*I am currently working on a proposal for a Global Protocol on Peace and Security in Cyberspace.*

*If you are interested in cybercrime legislation and the development of a Protocol, or access Supreme Court/High Court decisions around the world or a way of finding them, you are invited to visit my websites,*

[www.cybercrimelaw.net](http://www.cybercrimelaw.net)

[www.globalcourts.com](http://www.globalcourts.com)

#### 2. Background on the International Courts

The purpose of the session is allowing the attendees to meet one another, network, ask questions, and seek answers to their questions in an informal setting. The session will then function as a kind of forum.

Before I open up for comments or questions, let me give you a brief background.

I will focus on four International Courts:

- A. The International Court of Justice (ICJ)
- B. The International Criminal Court (ICC)

- C. The International Criminal Tribunal for the former Yugoslavia (ICTY)
- D. The International Criminal Tribunal for Rwanda (ICTR).

All the Courts are United Nations organizations, based in The Hague, The Netherlands, except for the Rwanda Tribunal.

I have visited the Courts in The Hague in 2005, and in October this year my court with 7 judges and 7 staff members shall visit the ICTY on a study tour.

We shall visit the Tribunal together with Lillehammer Tingrett Court, another Norwegian Court. Our guide at the court will be judge Stole, a Norwegian Supreme Court Judge currently on leave of absence serving as a ICTY judge.

A. The International Court of Justice, originates from the early 1900s, based on The Hague Peace Conventions in 1899 and 1907. It became in 1913 the Permanent Court of Arbitration, and moved into the Peace Palace in The Hague, that was built by contributions from Andrew Carnegie.

After the World War 1, the League of Nations established the court as The Permanent Court of International Justice, but it was never a part of the League. The Court did not function after the outbreak of the World War 2, but met for a last time in October 1945.

The International Court of Justice was established by the Charter of the United Nations, which provides that all members of the United Nations are parties to the Courts Statute. The Court is the principal judicial organization for the United Nations and started working in 1946.

The International Court of Justice functions as a world court. The Court consists of 15 judges elected for a 9 year period by the United Nations General Assembly and the Security Council sitting independently of each other. No nations may have more than one judge, and elections are held every three years for one third of the judges. A State party to the case may appoint a judge *ad hoc* for the purpose of the case.

The jurisdiction is:

The Court decides, in accordance with international law, disputes of a legal nature that are submitted to the Court by agreement between the States parties to the case. The Court give advisory opinions on legal questions only at the request of the organs of the United Nations and 16 specialized agencies authorized to make such a request. If any doubts occur on the jurisdiction, it is the Court itself which decides.

The judgements are final and without appeal.

B. The International Criminal Court was established in 1998 at a conference in Rome. The Rome Statute of the International Criminal Court was adopted and it entered into force on July 1<sup>st</sup>, 2002.

The International Criminal Court (ICC) is the first ever permanent, treaty based, fully independent international criminal court established to promote the rule of law and ensure that the gravest international crimes do not go unpunished. The Court do not replace national courts, the jurisdiction is only complementary to the national criminal jurisdictions. It will investigate and prosecute if a State, party to the Rome Statute, is unwilling or unable to prosecute. Anyone, who commits any of the crimes under the Statute, will be liable for prosecution by the Court.

The jurisdiction of the International Criminal Court is limited to States that becomes Parties to the Rome Statute, but then the States are obliged to cooperate fully in the investigation and prosecution.

Article 5 limits the jurisdiction to the most serious crimes of concern to the international community as a whole. The article describes the jurisdiction including crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

Individual States may be unwilling or unable to exercise jurisdiction on a case. According to article 17, unwilling is a State whenever it appears to be a lack of genuine will to investigate or prosecute the crime. A State is unable whenever it appears to be a total or substantial collapse of its judicial system, or by some reason is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings due to its unavailability.

In the final diplomatic conference in Rome other serious crimes such as terrorism crimes were discussed, but the conference regretted that no generally acceptable definition could be agreed upon. The conference recognized that terrorist acts are serious crimes of concern to the international community, and recommended that a review conference pursuant to the article 123 of the Statute of the International Criminal Court consider such crimes with the view of their inclusion in the list within the jurisdiction of the Court.

The International Criminal Court may have a role to play in the fight against terrorism even today under the current jurisdiction in force. According to article 93, paragraph 10, the Court may upon request “ cooperate with and provide assistance to, a State Party conducting an investigation into or trial in respect of conduct which constitutes a crime within the jurisdiction of the Court, or which constitutes a serious crime under the national law of the requesting State.” Terrorism qualifies undoubtedly as a “serious crime”.

C. The International Criminal Tribunal for the former Yugoslavia (ICTY) is a United Nations court of law, established in accordance with Chapter VII of the United Nations Charter. The Tribunal was established by the Security Council by passing Resolution 827 on May 25, 1993. The Tribunal’s authority is to prosecute crimes committed in the territory of the former Yugoslavia since 1991 and has jurisdiction on issues as follows:

- Grave breaches of the 1949 Geneva Conventions
- Violations of the laws or customs of war
- Genocide
- Crimes against humanity

The Tribunal has concurrent jurisdiction in relation to national courts, but may claim primacy over national courts and take over investigations and proceedings at any stage.

The Chambers consists of 16 permanent judges and a maximum of nine *ad item* judges, all appointed by the United Nations General Assembly. The judges are divided between 3 Trial Chambers and one Appeals Chamber. The judges are elected for a period of 4 years. The judges have ensured a fair and open trial, assessing the evidence to determine the guilt or innocence of the accused. The Tribunal has proven that efficient and transparent international justice is possible, and has been setting important precedents of international criminal and humanitarian law.

The Appeal Chamber consists of 7 permanent judges, five from the permanent judges of ICTY and two from the permanent judges of the International Criminal Tribunal for Rwanda (ICTR). These 7 judges also constitute the Appeal Chamber for the ICTR, but each appeal is heard and decided by five judges.

The Tribunal was the first international war crimes tribunal since the Nuremberg and Tokyo tribunals.

The Tribunal has investigated and brought charges against individuals from all ethnic background in the conflicts. The Office of the Prosecutor operates independently of the Security Council, of any State or international organization or other organs of the ICTY. Investigations are initiated by the Prosecutor at his/her own discretion on the basis of information received. Indictments must be confirmed by a judge prior to becoming effective.

The accused are held in the ICTY Detention Unit, located in The Hague. The maximum sentence that may be imposed is life imprisonment. Sentences are served in one of the States that have signed such an agreement with the United Nations.

The judges have also regulatory functions, such as draft and adopt the legal instruments regulating the functions of the Tribunal.

It is estimated that the Tribunal will be functioning into 2013, and the final trial is so far against Karadzic.

D. The International Criminal Tribunal for Rwanda (ICTR) was established by the Security Council Resolution 995 on November 8, 1994, in accordance with Chapter VII of the United Nations Charter. It was decided in 1995 that the Tribunal should have its seat in Arusha, Tanzania.

The Tribunal consists of 11 permanent judges appointed in the same manner as the ICTY. The Tribunal has 3 Trial Chambers, and 3 judges serve in each case. The Appeal Chamber consists of 7 permanent judges, five from the permanent judges of ICTY and two from the permanent judges of ICTR. Each appeal is heard and decided by five judges.

The judges have also regulatory functions, such as draft and adopt the legal instruments regulating the functions of the Tribunal.

The jurisdiction on issues is similar to the ICTY.

The jurisdiction otherwise is the prosecution of persons responsible for genocide and other serious violations of international humanitarian law in the period of January 1 and December 1994, committed by Rwandans in the territory of Rwanda, and in the territory of neighbouring States as well as non-Rwandan citizens for crimes committed in Rwanda.

High-ranking individuals, including a former Prime Minister, have been called to account before an international court of law for the first time in history, for massive violation of human rights in Africa with more than 500.000 victims.

### **3. Discussions**

Are there any comments or questions you want to share with the whole group?  
I will ask you to introduce yourselves when you make comments, suggestions or ask questions.

In the discussions that followed some main observations were made:

a. Should regional international courts be established when the individual regional States were unwilling or unable to exercise jurisdiction on a case?

Consensus was made on comments that outside Europe, difficulties would occur trying to establish a regional court due to greater differences in cultures within the other geographical regions.

Consensus was made that international courts should continue to be established on the United Nations level.

b. Comments on the fact that the USA does not recognize the International Criminal Court. A broad agreement was reached that also USA should sign and ratify the Rome Statute. It was mentioned that American experts were heavily involved in the drafting process of the Statute in the 1990s.

c. With a reference to the Rome conference, is it recommended expanding the Statute to include terrorism? It was mentioned that the International Criminal Court could also have a role in the fight against international terrorism.