

# Northwestern Journal of International Human Rights

---

Volume 8 | Issue 3

Article 1

---

Summer 2010

## Atrocity Crimes Litigation During 2009

David Scheffer

Follow this and additional works at: <http://scholarlycommons.law.northwestern.edu/njihr>

---

### Recommended Citation

David Scheffer, *Atrocity Crimes Litigation During 2009*, 8 NW. J. INT'L HUM. RTS. 1 (2010).  
<http://scholarlycommons.law.northwestern.edu/njihr/vol8/iss3/1>

This Introduction is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Northwestern Journal of International Human Rights by an authorized administrator of Northwestern University School of Law Scholarly Commons.

# Introduction: Atrocity Crimes Litigation During 2009

David Scheffer\*

¶1

This special edition of the *Northwestern University Journal of International Human Rights* continues a tradition of recording practitioners' and experts' views on the annual jurisprudence and practice of the international and hybrid criminal tribunals. Each year the Center for International Human Rights at Northwestern University School of Law holds a moderated one-day discussion that addresses the key issues emerging from the tribunals' work product in the immediately preceding calendar year. On February 4, 2010, the Atrocity Crimes Litigation Year-in-Review (2009) Conference convened with a distinguished panel of speakers. The results are recorded both in this special edition and on the web site of the Center for International Human Rights at [www.law.northwestern.edu/humanrights/events.html](http://www.law.northwestern.edu/humanrights/events.html), where the full video and transcript of the discussions are posted.

¶2

The Atrocity Crimes Litigation Year-in-Review Conferences, which I moderate, are unique in the United States. No other institution focuses on the jurisprudence and practice of the tribunals in one calendar year with the participation of the top officials, practitioners, and scholars all sitting together and conversing freely about the performance of the tribunals. As the years toll by, I hope that the annual special edition following each conference helps establish an important historical record of useful contemporary value. The financial sponsor for the 2009 Conference was the John D. and Catherine T. MacArthur Foundation, which also funded the publication of this special edition, for which

---

\*David Scheffer is the Mayer Brown/Robert A. Helman Professor of Law and Director of the Center for International Human Rights at Northwestern University School of Law, and faculty advisor to the Northwestern University Journal of International Human Rights. He is the former U.S. Ambassador at Large for War Crimes Issues (1997-2001). His forthcoming book, *All the Missing Souls: A Personal History of the War Crimes Tribunals*, will be published by Princeton University Press in 2011.

Northwestern University is deeply grateful. The Chicago Council on Global Affairs and the National Security Journalism Initiative at the Medill School of Journalism, Northwestern University, also provided financial and other support for the evening event at the Chicago Club in Chicago, at which journalists and conference speakers joined in a spirited discussion before another large audience.

¶3

The year 2009 was exceptionally eventful and significant in the work of the tribunals, namely the International Criminal Court, the International Tribunals for the Former Yugoslavia and Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts of Cambodia, the War Crimes Chamber of the Court of Bosnia and Herzegovina, and the Special Tribunal for Lebanon. If anyone doubts whether international justice has not only arrived but also deeply entrenched itself in the international community's response to armed conflicts and atrocities, the conference record should dispel those doubts. Seventeen years after the creation of the International Tribunal for the Former Yugoslavia, the unique mixture of laws that governs the tribunals—what I call atrocity law—and the crime of genocide, crimes against humanity, and war crimes, prosecuted before the tribunals—what I call atrocity crimes—have become the new normal. The 2009 Conference and this special edition seek to un-package the new normal and understand precisely what happened during 2009 that advanced or impeded the development of atrocity law, that extrapolated greater meaning out of the atrocity crimes, and that shone a bright light on the due process rights of defendants.

¶4

In addition to the distinguished contributors to the special edition, whom I will introduce shortly, the 2009 Conference benefited from a stellar cast of other jurists. They included International Criminal Court Deputy Prosecutor Ms. Fatou Bensouda, a native of Ghana. She has helped lead the International Criminal Court since 2004 and heads the Prosecution Division of the Office of the Prosecutor. Ms. Bensouda formerly served as senior legal adviser and head of the legal advisory unit of the International Criminal Tribunal for Rwanda. The Prosecutor of the International Criminal Tribunal for the Former Yugoslavia, Mr. Serge Brammertz from Belgium, was Ms. Bensouda's predecessor at the International Criminal Court and then served as the commissioner of the U.N.

International Independent Investigation Commission into the murder of former Lebanese Prime Minister Rafik Hariri.

¶15 Mr. François Roux, of France, defended Kaing Guek Eav (alias Duch) in 2009 before the Extraordinary Chambers in the Courts of Cambodia, and is now the head of the Defence Office of the Special Tribunal for Lebanon, based in The Hague. His long career in criminal law and human rights includes work before the International Criminal Tribunal for Rwanda and the International Criminal Court. Mr. Courtenay Griffiths is defense counsel to former Liberian leader Charles Taylor before the Special Court for Sierra Leone. He is a British barrister born in Jamaica and has had extensive experience in the major Crown Courts in England.

¶16 Ms. Christine Graham is the senior appeals counsel in the Appeal and Legal Advisory Division of the Office of the Prosecutor at the International Criminal Tribunal for Rwanda. She led the prosecution in the *Kalimanzira case*<sup>1</sup> and was a key player in the prosecution of the *Bagosora case*.<sup>2</sup> Judge Erik Møse of the International Criminal Tribunal for Rwanda also participated in the 2009 Conference by videotape. Mr. Christian Wenaweser, who was the keynote speaker at the 2009 Conference, is the U.N. Permanent Representative for the Principality of Liechtenstein. He is also the President of the Assembly of States Parties of the International Criminal Court and served for many years as the chairman of a special working group on the crime of aggression. Some of his remarks are recorded in the abridged transcript of the 2009 Conference in this special edition.

¶17 The individuals who participated in the 2009 Conference and also have contributed outstanding articles to this special edition include Mr. Göran Sluiter, a professor of international criminal law at the University of Amsterdam and the distinguished academic commentator for the conference and special edition. He is also a judge at the Utrecht and The Hague district courts. Professor Sluiter is the scholar one imagines fits the mold of a “qualified publicist” in Article 38 of the Statute of the International Court of Justice;

---

<sup>1</sup> Prosecutor v. Kalimanzira, Case No. ICTR 05-88-T, Judgement (June 22, 2009).

<sup>2</sup> Prosecutor v. Bagosora, Case No. ICTR 98-41-T, Judgement and Sentence (Dec. 18, 2008).

namely, someone whose writings one consults for authoritative pronouncements of international law.<sup>3</sup>

¶8

Mr. David Schwendiman, was, until recently, the deputy chief prosecutor and head of the Special Department for War Crimes in the Prosecutor's Office of Bosnia and Herzegovina. His rich legal background includes a series of top prosecutorial posts in the United States, particularly with the state of Utah and the U.S. Department of Justice, where he has returned to serve as an Assistant U.S. Attorney. Mr. Alain Werner is a Swiss lawyer and senior counsel at the International Justice Program of the Aegis Trust in England. He had a five-year career as a prosecutor at the Special Court for Sierra Leone, including working on the Charles Taylor case,<sup>4</sup> and then, in 2009, represented civil parties before the Extraordinary Chambers in the Courts of Cambodia during the Duch trial.<sup>5</sup> His co-author is Ms. Daniella Rudy, an associate at a New York law firm and a Legal Advisor for Civil Parties Group I in the Duch case.

¶9

Set forth in this special edition are three articles and the abridged transcript of the 2009 Conference. Each of the articles advances strongly held views about particular issues confronting the tribunals in regard to due process rights, victim representation, and the challenge of international support for national judicial prosecutions of atrocity crimes. These are scholarly advocacy essays of great interest and significance to the international community of prosecutors, defense counsel, tribunal administrators, government officials, and academic observers. They seek to transform future practice at the tribunals by looking back at the experiences of 2009.

¶10

Professor Göran Sluiter offers a provocative thesis in his article, "Atrocity Crimes Litigation: Some Human Rights Concerns Occasioned by Selected 2009 Case Law."<sup>6</sup> Sluiter argues that prosecutorial objectives in the tribunals are overriding minimum standards of due process for the defendants. His concerns cover four areas: the right to be tried without undue delay, the right to effective representation, the objective of fighting impunity as an interpretative

---

<sup>3</sup> See Statute of the International Court of Justice art. 38(1)(d), June 26, 1945, 59 Stat. 1055, 3 Bevens 1153.

<sup>4</sup> See generally *Prosecutor v. Taylor*, Special Court for Sierra Leone, available at <http://www.sc-sl.org/CASES/ProsecutorvsCharlesTaylor/tabid/107/Default.aspx>.

<sup>5</sup> See, e.g., Civil Parties' Co-Lawyers' Joint Submission on Reparations, Case No. 001/18-07-2007-ECCC/TC (Sept. 14, 2009).

<sup>6</sup> See Sluiter, *infra* at 248.

tool for sources of international criminal law, and persistent problems in securing the right to liberty.

¶11 Looking to the International Criminal Tribunal for Rwanda as the most egregious example of unreasonably long detentions of defendants prior to judgment at trial, Sluiter focuses on the Trial Chamber judgment in the “Military I” case, which was delivered in December 2008 but published in 2009 as a document available for detailed study.<sup>7</sup> He finds the Trial Chamber’s endorsement of twelve years of pre-judgment detention “absolutely shameful.”<sup>8</sup> What, he asks, is the upper limit of unreasonable pre-judgment detentions: fifteen years? twenty years? Sluiter recommends setting out basic parameters under international human rights law to determine what constitutes undue delay in the holding of such trials and the consequent impact on the prolonged detention of defendants, whose innocence is presumed until proven guilty.

¶12 Sluiter identifies at least four errors in the Trial Chamber’s judgment in the Military I case. He criticizes the Trial Chamber’s 1) refusal to compare its practice with that of domestic criminal courts, 2) uncritical reliance on the complexity of such atrocity crimes cases as an excuse for prolonged pre-judgment detention, 3) laziness in protecting individual rights, and 4) “puzzling finding” that no prejudice could be found in such long detentions for two accused who received life sentences. All of this “does a disservice to proper respect of human rights norms,” Sluiter writes.<sup>9</sup> He recommends that remedies could have been provided in the judgment to reduce the sentences imposed on the defendants.

¶13 Regarding the second of Sluiter’s objections to tribunal practice that impinges on human rights norms, he criticizes the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia for its judgment in the *Krajišnik* case on March 17, 2009,<sup>10</sup> as well as earlier decisions in other cases, on the matter of ineffective representation. Sluiter believes the bar has been set too high to establish that a defendant’s counsel has violated his client’s fundamental human rights, with the Appeals Chamber requiring a

---

<sup>7</sup> See Prosecutor v. Bagosora, Case No. ICTR 98-41-T, Judgement and Sentence (Dec. 18, 2008).

<sup>8</sup> Sluiter, *infra* at 250.

<sup>9</sup> *Id.* at 252.

<sup>10</sup> Prosecutor v. Krajišnik, Case No. ICTY IT-00-39-A, Judgement (Mar. 17, 2009).

finding of “gross incompetence” that would “demonstrate that there was a reasonable doubt as to whether a miscarriage of justice resulted.”<sup>11</sup> Sluiter looks to other standards, particularly the International Covenant on Civil and Political Rights, and urges that the tribunals use the standard under that treaty applicable to death penalty cases. This would require the International Criminal Tribunal for the Former Yugoslavia, in Sluiter’s view, “to ensure that legal assistance is effective. Simply too much is at stake.”<sup>12</sup> The effectiveness standard the defense counsel would need to meet were the ICCPR standard imposed would be lower than the high bar set by the Appeals Chamber, which appears to discourage disruptions in the trials by making it more difficult to discredit incompetent defense work. However, Sluiter leaves one pondering whether the result of the current standard is inadequate protection of the defendant’s basic due process rights.

¶14 One of Sluiter’s more fascinating insights is his blunt assessment of how the fight against leadership impunity for atrocity crimes is creating a significant pro-prosecution bias in international criminal justice at the expense of defendants’ human rights. (Indeed, it is an ironic situation for human rights non-government organizations, which on the one hand vigorously defend due process rights of individuals in domestic trials, and on the other hand effectively ally themselves with the prosecution in atrocity crimes cases before the international tribunals.) In Sluiter’s view, this leads the judges to interpret their constitutional mandates within the framework of putting an end to impunity and closing accountability gaps rather than achieving justice through the protection of due process rights. “This is an accident waiting to happen,” cautions Sluiter.<sup>13</sup> He recommends that aspirational objectives to end impunity “no longer receive interpretative importance,” and that the purpose of “delivering justice” replace the “fight against impunity.”<sup>14</sup>

¶15 Another of Sluiter’s set of concerns centers on the right to liberty under international human rights law and the flawed practice and rules of the International Criminal Tribunal for the Former

---

<sup>11</sup> *Id.* ¶ 42.

<sup>12</sup> Sluiter, *infra* at 255.

<sup>13</sup> *Id.* at 260.

<sup>14</sup> *Id.*

Yugoslavia. He criticizes the Tribunal's Rule 65, which places the burden of proof on the defendant for provisional release prior to trial.<sup>15</sup> The defendant must prove both that he will appear for trial and that he will not pose a danger to others upon release. "This reversal of the burden—viewed in the absence of initial determination that grounds justifying arrest exist—violates human rights law," writes Sluiter.<sup>16</sup> He describes how the law of the International Criminal Court is a strong improvement,<sup>17</sup> placing the burden of proof on the Prosecutor "to not only satisfy the Chamber that there exists sufficient evidence justifying arrest and detention, but also that the arrest appears necessary for specific reasons."<sup>18</sup>

¶16 While Sluiter applauds the Pre-Trial Chamber's treatment of the issue at the International Criminal Court, he examines the flaws in the Appeals Chamber's judgment reversing the initial decision. He explains how human rights law was overlooked and how the unwillingness of any nation to accept a person eligible for release should not deny that person the respect of fundamental human rights norms. Sluiter believes that States Parties to the Rome Statute of the International Criminal Court are obligated to cooperate with the Court to ensure the right to liberty. They should not provide assistance only in the narrow sense of investigations and prosecutions, which demonstrates a pro-prosecution bias.

¶17 Sluiter worries that maybe "the pro-prosecution bias is so much at the heart of the international criminal justice system."<sup>19</sup> He wants the tribunals to focus on justice rather than on fighting impunity, to take human rights seriously, and to explore the possibility of external supervision of their work.

¶18 David Schwendiman presents a compelling case for improved performance in the Special Department for War Crimes ("State Prosecutor's Office") and the Court of Bosnia Herzegovina ("State Court") in his article, "Prosecuting Atrocity Crimes in National Courts: Looking Back on 2009 in Bosnia and

---

<sup>15</sup> Rules of Procedure and Evidence, Rule 65, ICTY, *available at* [http://www.icls.de/dokumente/icty\\_rules.pdf](http://www.icls.de/dokumente/icty_rules.pdf).

<sup>16</sup> Sluiter, *infra* at 261.

<sup>17</sup> Rules of Procedure and Evidence, ICC-ASP/1/3, *available at* [http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules\\_of\\_procedure\\_and\\_Evidence\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf).

<sup>18</sup> Sluiter, *infra* at 261-262.

<sup>19</sup> *Id.* at 267.



Herzegovina.”<sup>20</sup> He describes significant improvements in the State Prosecutor’s Office and the State Court commencing in 2007 that were at risk at the end of 2009, thus “jeopardizing past advances in the investigation and prosecution of war crimes cases.”<sup>21</sup>

¶19 Schwendiman’s primary concern is to ensure that sufficient and timely international oversight, as well as growing local experience, instructs the domestic development of a sustainable atrocity crimes prosecution capability in Bosnia and Herzegovina. The National War Crimes Strategy, adopted by the Council of Ministers in December 2008,<sup>22</sup> is a flawed document, according to Schwendiman. He recounts how the views of civil society and of Cantonal and District prosecutors and courts were cast aside by the Working Group that drafted the Strategy (and on which Schwendiman sat as a dissenting member). The enormous impact of the 1992-1995 Balkans conflict on the people of Bosnia and Herzegovina seems not to have galvanized their national government “to meaningfully deal with the consequences of war crimes,” he writes.<sup>23</sup>

¶20 Nonetheless, since 2006 there have been remarkable achievements in the administration of justice relating to atrocity crimes in Bosnia and Herzegovina. Schwendiman writes that, “with international assistance, the prosecutors, judges, and investigators working on war crimes cases at the national level and in some of the Cantons and Districts have achieved more than any other nation in the region, both in numbers, quality, and credibility of cases undertaken and resolved.”<sup>24</sup> If all of the key national judicial institutions that engage in prosecution of atrocity crimes receive strong national and international support, then Schwendiman is optimistic about the future of such litigation in Bosnia and Herzegovina. But, as explained later in his article, he now has grave doubts that this will be the result.

¶21 The good news is that in 2009 human rights standards were integrated into the mission and mission objectives of the Special

---

<sup>20</sup> See Schwendiman, *infra* at 269.

<sup>21</sup> *Id.* at 270.

<sup>22</sup> National Strategy for War Crimes Processing (Dec. 29, 2008) (Bosn. & Herz.), available at [http://www.adh-geneva.ch/RULAC/pdf\\_state/War-Crimes-Strategy-f-18-12-08.pdf](http://www.adh-geneva.ch/RULAC/pdf_state/War-Crimes-Strategy-f-18-12-08.pdf).

<sup>23</sup> Schwendiman, *infra* at 275.

<sup>24</sup> *Id.* at 283.

Department of War Crimes. This included making the European Convention on Human Rights an integral part of the Constitution of Bosnia and Herzegovina.<sup>25</sup> The State Prosecutor's Office has mandated that achieving the human rights standards set out in the Convention is one of its main objectives. Proposed Internal Rules for the State Prosecutor's Office included draft policies and practice directions aimed at human rights protections, and they began to guide the work of prosecutors. But they were not formally adopted by the end of 2009, leaving Schwendiman deeply concerned.

¶22

The year 2009 saw considerable progress in the investigation of war deaths and disappeared persons. Full responsibility for these tasks fell upon the State Prosecutor's Office. The Digital Archive Project was an important initiative in 2009. Its aim is "to recover and digitally capture crime scene, excavation, exhumation, forensic examination, and personal identification records held by various authorities throughout Bosnia and Herzegovina," explains Schwendiman.<sup>26</sup> Unfortunately, the project was ended and no staff were assigned to it in 2010. Other work establishing accountability for fieldwork and for sorting out responsibility for forensic duties in the field appears to have languished in 2010. Schwendiman contrasts this predicament with the progress on identifying remains through excavation and exhumation made by the Srebrenica team in Trbić following the First Instance verdict convicting Trbić of genocide and other crimes.<sup>27</sup> He fears that failure to continue these new policies "will have serious consequences in terms of Bosnia and Herzegovina's human rights obligations and public perception and confidence in the Special Department."<sup>28</sup>

¶23

Swendiman highlights the significance of a comprehensive survey of the 1992-1995 conflict, completed in 2008, which catalogs information of where and when conduct that was most likely to have

---

<sup>25</sup> See CONST., art. II, ¶ 2 (Bosn. & Herz.), available at [http://www.ccbh.ba/public/down/USTAV\\_BOSNE\\_I\\_HERCEGOVINE\\_engl.pdf](http://www.ccbh.ba/public/down/USTAV_BOSNE_I_HERCEGOVINE_engl.pdf).

<sup>26</sup> Schwendiman, *infra* at 288.

<sup>27</sup> Prosecutor v. Trbić, Case No. X-KR-07/386, First Instance Verdict (Oct. 16, 2009), available at [http://www.haguejusticeportal.net/Docs/NLP/BiH/Trbic\\_Milorad\\_First\\_Instance\\_Verdict\\_16-10-2009.pdf](http://www.haguejusticeportal.net/Docs/NLP/BiH/Trbic_Milorad_First_Instance_Verdict_16-10-2009.pdf).

<sup>28</sup> Schwendiman, *infra* at 290.

violated international criminal and humanitarian law occurred.<sup>29</sup> It has helped with investigation and prosecution strategies and with eliminating unnecessary duplication of investigations. In addition to the survey, Practice Direction No. 1 was used for the first time in 2009. Schwendiman describes its use as managing discretion and streamlining the prosecution of cases: “The policy established in Practice Direction No. 1 results in the use of less court time, fewer witnesses, and less evidence, and ensures that cases that are not viable will not be brought.”<sup>30</sup>

¶24 Finally, Schwendiman explains the controversial practice of plea and plea-bargaining before the State Court. He weighs the benefits to the prosecution, the court, and truth-seeking, against the dissatisfaction of some of the victims regarding plea sentences. He counsels that the plea and plea-bargaining policy implemented in 2008 and 2009 should continue to be enforced; and that if it is not, there should be international surveillance of the practice to keep it from being abused.

¶25 Schwendiman warns: “War crimes work in Bosnia and Herzegovina is at a critical juncture. Policies and practices that were effective in 2009 are in jeopardy of being abandoned.”<sup>31</sup> He calls for continued international engagement in the investigations and prosecutions by the State Prosecutor’s Office and the State Court.

¶26 The third article, by Alain Werner and Daniella Rudy, is entitled, “Civil Party Representation at the ECCC: Sounding the Retreat in International Criminal Law.”<sup>32</sup> The authors address the innovative practice of the Extraordinary Chambers in the Courts of Cambodia of permitting the victims of the atrocity crimes of the Khmer Rouge regime to be represented in the trials. In this instance, the focus is on the first trial, namely of Kaing Guek Eav (alias Duch).<sup>33</sup> Throughout 2009 the rights of the victims as Civil Parties were center stage in the trial. Werner and Rudy explain the

---

<sup>29</sup> Dr. Marko Prelec, “A Crime-Centered Approach to War Crime Case Selection in Bosnia and Herzegovina,” Special Department for War Crimes, Prosecutor’s Office of Bosnia and Herzegovina, Sept. 2008.

<sup>30</sup> Schwendiman, *infra* at 295.

<sup>31</sup> *Id.* at 299.

<sup>32</sup> Werner, *infra* at 301.

<sup>33</sup> See generally Cambodia Tribunal Monitor, available at [www.cambodiatribunal.org](http://www.cambodiatribunal.org) (containing a full record of the Duch trial, including video, transcripts, and blogs).

background to the Civil Party representation rights. The Internal Rules of the Chambers, drafted and approved by the judges, establish such rights and the procedures associated with them.

¶27 During the course of the Duch trial in 2009, the four groups of Civil Parties, numbering a total of 93 victims, exercised their rights to address the Trial Chamber and the defendant. But that process became time-consuming and repetitive, slowing down the trial considerably. Concerned, the judges promulgated a revision of the Internal Rules. The end result, which now governs Civil Party representation in future trials, including Trial 002 of four senior Khmer Rouge leaders scheduled for 2011, requires that Civil Parties be consolidated into one group represented by lead counsels during the trial phase.<sup>34</sup> The old Internal Rules permitted multiple groups of Civil Parties, with each group represented by at least one national and one international attorney. Henceforth, the one consolidated Civil Party will appear in the Trial Chamber. For Trial 002, the victim pool within that group numbers an estimated 3,000 individuals.

¶28 Werner and Rudy point to potential problems with the new Internal Rules on Civil Party representation. They are concerned that “the Internal Rules do not explicitly address victims’ fear that their individual interests will be subjugated in the interest of the common consolidated group during trial.”<sup>35</sup> Since the revised Internal Rules only reference the interests of the consolidated group, the circumstances and injuries of individual victims may be buried under the weight of the group’s core interests. The authors propose that an approach similar to that provided for victims before the International Criminal Court be adopted before the Extraordinary Chambers in the Courts of Cambodia to help ensure that the interests of individual victims are properly represented in the courtroom so as to avoid conflicts of interests among them.

¶29 The revised Internal Rules also fall under Werner and Rudy’s scrutiny on the issue of co-representation by national and international lawyers. The consolidated group of Civil Parties now mandated by the Rules must be represented by a national and an

---

<sup>34</sup> Internal Rules, Extraordinary Chambers in the Courts of Cambodia, (rev. 5) (Feb. 9, 2010), *available at* <http://www.eccc.gov.kh/english/cabinet/fileUpload/121/IRv5-EN.pdf>.

<sup>35</sup> Werner, *infra* at 305.

international Lead Co-Lawyer. Acting together, they are tasked to represent the interests of the collective group of Civil Parties. The authors point out that there is no effective conflict mechanism between the two Lead Co-Lawyers. Those conflicts are probably inevitable with the existence of more than 3,000 Civil Parties in Trial 002. Werner and Rudy propose that a better formula would be that used for the Defence Support Section. One Head of Office, elected on merit, oversees the work of two deputies, one a Cambodian national and the other an international lawyer. This has minimized internal conflicts, and the authors believe that this model could improve the leadership of the Victims Unit and the representation of the Civil Parties.

¶30 Werner and Rudy concede the need to reform how Civil Parties are represented before the Extraordinary Chambers in the Courts of Cambodia, but they are deeply concerned and critical of the new arrangements established in the revised Internal Rules. Adjustments in the Rules “should not be at the expense of the Civil Parties, such that their presence is rendered void of all purpose,” they write.<sup>36</sup> Potential conflicts between Co-Lead Lawyers, and between them and individual Civil Party Lawyers threaten the viability of the path-breaking endeavor to ensure that victims are properly represented. Trial 002 may be as much a laboratory for victims’ rights as was Trial 001 of Duch.

¶31 The abridged transcript of the 2009 Conference highlights some of the most interesting exchanges.<sup>37</sup> These include views on the prospects of the International Criminal Court charging President Omar Hassan Ahmad Al-Bashir of Sudan with genocide (which came to pass in July 2010),<sup>38</sup> joint criminal enterprise findings by the Special Court for Sierra Leone, tribunal completion strategies, the archiving of tribunal records, the defense counsel’s view of the

---

<sup>36</sup> *Id.* at 309.

<sup>37</sup> *See generally* Transcript, *infra* at 310.

<sup>38</sup> *See* Prosecutor v. Al-BashirAl-Bashir, ICC-02/05-01/09-94, Second Decision on the Prosecution’s Application for a Warrant of Arrest, Pre-Trial Chamber I (July, 12, 2010), *available at* <http://www.icc-cpi.int/iccdocs/doc/doc907142.pdf>; *see also* Prosecutor v. Al-BashirAl-Bashir, ICC-02/05-01/09-73, Judgment on the appeal of the Prosecutor against the “Decision on the Prosecution’s Application for a Warrant of Arrest against Omar Hassan Ahmad Al-BashirAl-Bashir,” Appeals Chamber (Feb. 3, 2010), *available at* <http://www.icc-cpi.int/iccdocs/doc/doc817795.pdf>.

Duch trial before the Extraordinary Chambers in the Courts of Cambodia, the difficulties in handling witnesses in the Court of Bosnia and Herzegovina, and outreach programs. The abridged transcript also records discussion about African views of the International Criminal Court, the utility of victims' representation in the tribunals, genocide charges in the Extraordinary Chambers in the Courts of Cambodia, how to reconcile arrest warrants with a peace process, plea agreements, equality of arms for defense counsel, and the challenges confronting journalists covering atrocity situations. In the last respect, Pulitzer Prize winning journalist Roy Gutman, Foreign Editor of the McClatchy Newspapers, joined the evening discussion on February 4, 2010, to add his perspective.

¶32

By the summer of 2010, developments in the tribunals already demonstrated a very dynamic year that will fully engage the forthcoming Atrocity Crimes Litigation Year-in-Review Conference scheduled for early 2011.