

Professor Lu:
Good morning! Everyone!

8:45——12:00

#Functioning of the ICTY, ICTR and MICT#
Professor John Hocking (ICTY 前书记官)

Thank you very much! Professor Lu and Professor Zhang. Judge Liu, we also admire you very much! It is great to be here. I really appreciate you all turning up. For me , it is quite a bit early , 9 o'clock in the morning. ☺

I do not know whether all of realize a significant event happened yesterday in the Hague. How many know what happened in the Hague yesterday in ICTY(International Criminal Tribunal for the former Yugoslavia)

(Audience:The Karadžić.)

The Karadžić !But who is Karadžić? Radovan Karadžić used to be the president of an entity within Bosnian, Bosnian in the former Yugoslavia. He was the political leader and the president of that entity. And he was involved in high level discussions with people like president, other leaders from the world when he was in power. And then there was a break-up, during the break-up of the former Yugoslavia, there were terribly majors of people being murdered. Concentration campus of the second world war, and he was indicted, and he was brought before the ICTY, he was hiding for 15 years, and he was first indicted in 1995. And for the 15 years he was hiding, and I actually met him as the first person for meeting him as he came off the plane in the Rotterdam in the Netherlands, and just yesterday, he was found guilty and sentence to 40 years, the committing amongst other things genocide in Srebrenica, Srebrenica is actually a quite small town compared to Shanghai. This is really a very small town. And the direction of Karadžić were murder or the genocide, so, why it is such a big event as its significance, apart from the course of gravity of the crime. But if I look around this room, most of you were probably born in 1993 or 1994, Am I right?

(YUP!)

Well, you were born basically at the same time that the ICTY was born and the modern international criminal justice has the same age as you. Before you were born, it was unthinkable that someone like Karadžić, the president or the prime minister or a general would get arrested by an international court and face the international justice. ICTY is the first court that was set up after the Nuremburg tribunal or the Tokyo tribunal. It was the security council that did this. The security council in 1993 was seeing what was happening, the international community was seeing this horrible limitation (10,07)what was happening in the former Yugoslavia, and

they(the security council) came up with the idea to establish the first criminal court and to do exactly what we've done and concluded yesterday with the trial judge in Karadžić. I will start from the ICTY, tell you the story and give you an idea as what it is to like at the ICTY. When I started nearly 20 years ago, I went into the court, it was the of the Celebici trial, And we've judge in the moot court in Beijing a few days ago, a number of the students referred some of cases from this Celebici trial. So when I started in court, I had three judges behind me, one from Aerjiliya, one from Costa Rica and one from Palestine, we had the defense counsels from the United Kingdom, from Texas, from Bosnia, and the prosecutors were from Sweden and other European prosecutors. The British defense counsel was wearing his wig. A vast mix of people and a mix of legal systems. It was the first trial, and we didn't have any case law, we had our statute but it's a very short statute, and we had the rules of procedure and evidence the judges has just adopted. We have to sit down and what is the elements of the crime, what constitutes murder, do you use the definition from the UK? Do you use the American definition or the elements of the crime, how do you to defense that , we have to do all of that in those early days. And now we have saying the Karadžić case yesterday, the landscape has been transformed, the ICTY indicted 161 people, everyone had been accounted for we show no matter how high in the hierarchy, a leader maybe if they commit this very serious crimes, they round a very serious that they could end up before an international court, and hopefully, leaders might be think about doing such things will think twice beforehand, and the ICTY not only has been very successful within its own jurisdiction but it also had a knock-on effect globally, so we see the other international court quickly be created in the footsteps of the ICTY, very soon after , in 1994, ICTR was set up, that was because a terrific genocide took place in Rwanda. Nearly million people were murdered in a hundred days in Rwanda, and again the security council decided to set up a tribunal just like the ICTY(very similar to the ICTY). We have the similar tribunals in Sierra Leone, the special tribunal in Lebanon and off course in 1998, the statute adopted for the International Criminal Court which is a permanent court established by treaty and we also had the special chambers for Cambodia for the events that took place in the late 1970s by Khmer Rouge in Cambodia. So all of that started with that first step of the security council in 1993 when you were being born and this was also being born. And I just digress about what is like when you were so young, when you first learnt to crawl, after 6 months you start to learn to crawl, similar to our tribunal, we had to get run straight away and we didn't have much time to jump enough and get to run, we were very young for criminal justice system, just 21 years old, it is very young if you think about your own criminal system here in China, many centuries of growth of the intellectual thoughts that have gone into establishing UN justice system or your own criminal system, this is very small and a very small amount of time.

And I have gave you the example of Celebici, and you are here during the day hear about how the prosecutor, the judges and the contribution they've been made to the case law or the jurisprudence , but I am gonna tell all the rest that goes on, because

all the rest is important. The ICTY is very much stand-alone, it's like a mini justice system established by the United Nations. We have judges, we have prosecutors and we have registry staff.

What do we do in the registry? ——— Witnesses. You can't have a trial without witnesses, our witnesses, most of them live in the former Yugoslavia and we've had 6,000 witnesses come from the former Yugoslavia and they came to the ICTY in the Hague to tell their stories before the judges of the tribunal, many of them came from very small villages, often they didn't have passports, they never traveled or they might haven't even left a village, so we have to help them, literally, we have to send people from tribunal to meet them and brought them from the village to Hague. And this usually involves two flights, some of the witnesses didn't know what to expect, they would come to this completed unknown environment we even had the witnesses who brought their own food with them because they didn't know they would get food in the Hague, and so we helped them all the way, even coming to the courtroom before they would testify, we would explain to them what would happen, who they would see in the courtroom, and where they would sit, what would happen and when they could ask questions. Many of them had suffered terrible atrocities, they might have been raped or seen family members murdered in front of them, and they were psychologically very troubled, and we need to help them so they had the strength to tell their story in the courtroom, because again, the most important thing is that they could speak freely, so they can tell the story and then the judges can decide the guilt on the innocence of the accused person in the courtroom. Therefore, we have specialized staff to help the witnesses throughout this process of testifying and again without the witnesses you don't have trials, so the witness protection is very important, and the witness support is very important. Just one last thing, think about the courage of these witnesses, how incredibly they were and they would have to talk about the very personal things, such as sexual crimes, horrible mutilation, and horribly disturbing things happened to their loved ones, and the people they were testifying about may have been the president of their country or the prime minister or a general, a well-known general in a country, so it takes incredible courage to do that and it is why the international criminal law is so important because it gives them a created structure where they feel safe and they can testify. Just on the conclusion of the witnesses, what we have said about it which is also important for them, many of the witnesses have felt that, by testifying, by telling the stories at the ICTY, it helps them move on from the atrocities, many of the witnesses would returned to the judges at the end of the testimony and say thank you to the judges.

Next, languages, communication. The working languages of the tribunal are English and French. And most of the witnesses do not speak English or French, the accused person, most of them don't speak English or French. But the judges sitting there, they have to work out whether the witnesses are telling the truth or not. Everything have to happen in the simultaneously of interpretation, we have the expert interpreters to interpret other language into English or other languages, and also the

most important documents have to be translated, we get a lot of documents that are in Serbian. And they have to be translated into English and French. And our interpreters, many of them come from the former Yugoslavia, they may have closed family members who died or suffered terribly, some of them suffered terribly themselves, so it is very demanding on them. But they have to help the judges to know whether the persons are telling the truth or not, they really have to embrace the personality of the person telling the story, it's a very demanding job and I actually again was in court, and we were listening to a witness, she was talking about how she came into her room and there was her husband's body lying on the table, he had been murdered and horribly mutilated, and she was crying, the witness was crying as she telling the story, and we were listening to the interpretation, we could hear the tears coming through the interpretation, and it took some time to realize that it was the interpreter herself who was crying, it was so powerful what she was interpreting, she had to hand over to her colleague to continue. So communicating is particularly important.

Next , the trial has to be quite fair and we have some of the most senior people from senior positions facing trial for crimes. And the fairness of the trials is so important because how we treat those people is extremely a symbol for how we are as a society. As we think about the impact of the Nuremburg trials and the Tokyo trials have had, even on us today, they still have its impact and we still talk about the Nuremburg. There were some at the time before the Nuremburg was established, who said why don't we just shoot these people, execute them and move on, but you can see how important the trial have been, and some people were acquitted at the Nuremburg which in itself was very important, so having a fair trial is huge important for the future. To have a fair trial, people accused of those crimes have to have a good defense, and that is another job what we do in the registry, we provide defense counsel. But again, just like when you were born, there were no defense counsels for those types of crimes, so we have to find the defense counsel ,we have to work with them to help them to form an association, to help them to make sure that they have all the facilities they need, even the rooms to sit, to prepare, make sure that they have the access to do all the research, so the library, and today we have a strong association with our association, we support and we have our ethical conduct for this counsel, and so we have a very strong defense counsel, we are going to represent the accused in the proceedings, and actually yesterday, I assigned a defense counsel to Mr Karadžić so that he can for his appeal.

So we have communication languages, witnesses and defense, and now, where we arrest people? We have an inside Dutch prison, we have our own specialized unit where we put all of the detained persons, they have to go to trial and need to be prepared for their defense, they need to be physically and mentally fit. But many of them are quite old, they have had their best of lives, they may have been involved in a wall, just like the Karadžić, [maladic](#), they all have been hiding for many years, so they came to us and not always in their best state of health, so we do everything we

can to make sure that they get the best medical care and they have the best facilities. Maybe you will ask why do we give this to these people. Because what I said before, the fairness of the trial, we have to make sure the fit of the maximum extent they can participate in the trial proceedings. So our prison and detention units meet international standards, the each have their own cell, some of the accused want to represent themselves, and so we give them an extra cell so they can work on their cases during the day, and they have kitchen facilities, they can ordering food, specially ingredients so they can make their own food a bit more what they used to, like the Dutch food, we look after them very well. You know after the second World War, the Nuremburg, and the Tokyo trials, there has been a big growth in human rights law, one of the areas relates the rights of the accused. In the ICTY statute and ICTR statute, it included the International Covenant of the Civil and Political Rights, such as, not only the right to defense counsel, but also the right to represent yourself. So Karadžić himself in this trail, he represented himself, he was his own lawyer, but we are the registry and judges have confirmed to make that right realistic, you have to give them facilities to do that, you can't just say "yes, you can represent yourself but we are not gonna help you when you want to do that during your detention ", that is why we give them all the facilities which can make it reasonable, and also in the Karadžić trial, we pay him for the legal assistants, so lawyers can work with him on the team. Once, if a person found guilty, so let us take the Karadžić, he is gonna found an appeal, but if his sentence is finally confirmed, what happens? What do we do with the convicted persons? We don't have a prison, we don't have a police force, so we enter into arrangements with states, so that convicted persons could go into the domestic jails, and in Europe, with the former Yugoslavia Tribunal, almost all of our convicted persons certainly sentence in jails around Europe. And they were going to different states, we choose to do it in Europe, so it is close enough for their families to come to visit them and even if they do not have a lot of money, they can usually get there by bus, and sometimes for them who really struggle the international committed rule helped them and helped them out, so it actually moves to my next point, which is for international criminal justice that we completely depend on states, we depend on anything without their help of states, so I talk about the arrests, we don't have police force, Karadžić was arrested by police forces in Serbia by Serbian police force, all of our accused they were arrested by domestic police forces . We can't get evidence without state's help, they may be documents in the archives. We need the states to give us the documents to help us with the witnesses to make sure that they can come from Bosnia to Hague and they would not be stopped on the way from Germany.

And the budget, we made the general Assembly to say "yes, we are going to pay for your work" and fortunately the states are incredibly supporting all our work over the last 20 years. I gonna back to when you were born when you couldn't do anything .

(Audience: all laughing)

The ICTY at its early days as we realized as our work was not going to be useful if the people in the former Yugoslavia if they didn't know what we were doing. And we were there in the Hague and all of the victims, all of the groups suffered from these wars, they didn't know what we were doing. And if they didn't know what we were doing, the stories about the tribunal would be distorted. Our second president, the president McDonald, she realized that we have to reach out to the people in the former Yugoslavia to help them know what we were doing and she came up with an idea as what is known as the "out-reach" program, considered as a fundamental part of all international criminal courts, like the International Criminal Court of Rwanda, the International Criminal Court. The Sierra Leone has a very fantastic out-reach program targeted to the particular audience that they trying to reach, and it can involve us like going to schools, engaging with professionals, lawyers, we welcome the groups, hundreds and hundreds of people come to visit the tribunal every year, it is indeed an important part for our role to help the reconciliation in the former Yugoslavia, so that is our out-reach strategy, but we also realized that we have to finish our trials as well at 2002, we are not meant to go on forever, we are not like the other permanent court like the International Criminal Court, we are a hoc tribunal, there is a limited period of time for us but we have so many accused being arrested, we had a lot of work, and we went to the security council for the proposal to speed up our work, because not only does a trial has to be fair, but it has to be **expedient**. Those accused persons need to have a resolution within a reasonable period of time, and what we did are proposed strategies for the Security Council had two elements, the first was we would refer that was we give back, we would give cases to domestic courts, and the second elements was we would joint cases together so we would have a case with multiple accused in just one trial, So the first one, we refer this cases those who is the most senior like Karadžić, but the next level down, we would refer those cases to domestic courts, and during that, we really work with those courts, with the judges, prosecutors, the witness protection to help them run these trials. The second element we brought cases together where the accused persons have the same factual background, they would be tried together, we still have one courtroom, and we will sit all day, we ended up with three courtrooms, so we get two extra courtrooms, and we split the day in half, and we will run six trials everyday, and when we only have one accused a day, we ended up at our peak, having 28 accused in court everyday, and this enable us to move through a case law much more quickly and have a fair and **expedient** precedence, we also amended our rules and this case management things, and we did the judges, ruling is very important reforms to help **expedite** accused, and all of us worked together to speed up our trials.

Now actually, here comes my conclusion, so you looked at what you have achieved in your life in your last 20 years. You all seem very bright students, you are going to move on to the leaders in your fields and modeling governments and the legal professionals around the world, the ICTY is only 20 years old, but in that time, we have transformed the international political environment so as well as 20 years ago,

you could be a military leader, a president, or prime minister of a country who commit horrible crimes against your people without getting too much problems. Nowadays, you can't think that, people who do these would be held accountable for them. So I give you three key things that for me from the last 20 years of the ICTY. First, nobody is beyond the law, no matter how high you are. Secondly, the proceeding with the waive conduct have been unbelievably appropriate fair, no matter how serious the crimes are, the accused would received a fair trial. And thirdly, this transformation is irreversible and it will only grow, those people who are fighting, pushing or hoping to win this change.

Thank you for listening!

(Q&A)

Q1(Professor Zhang): Thank you very much! I have two questions, the first one is, In 2004, when the Security Council decided to complete the ICTY and it is unexpectedly longer than the time for the Security Council to be decided to complete. Based on your excellent career in the last 20 years in the Hague, I just wonder the reason for longer extension for the ICTY.

Q2(Professor Zhang):And secondly, your introduction give us a general picture of the ICTY for me, because as I remember, the ICC does not has its separated building, that is the ICTY has the excellent facility. But for the 20 years and would you highlight briefly what the achievement of the court for the development to the international criminal law or the humanitarian law? These are my two questions.

Professor John Hocking: The first one related to the completion strategy timelines, it's a very good question, the ICTY, we went to the Security Council, we proposed two dates, there were some qualifications to those dates, the first two dates we proposed were one we would no new indictments after December 31st, 2005. We met this time, basically, it is decided all our investigative work trying to find who was the most responsible would have to finish by the 31st December, 2004. But that does not mean people who committed serious would get way out of it, because I have said the domestic courts had been doing this work. The second deadline that we put forward was we would finish all our work by 2010 but it was based on the number of people we had in our custody. So what is important is that, every 6 months, the president of ICTY with the prosecutor, they would go before the Security Council telling them this is where we are, this is what we are doing, this is the status of our work, and the Security Council would allow us to continue. Therefore, the deadline we have now is the end of the next year, we've had that that deadlines, we will try our best to complete our work before that deadline.

The second question, one is that we've had these trials which I think is the biggest achievement, when we looked back in 1993, when the ICTY was set up, it was a great vision for the Security Council but I don't think anyone really knew what was going to happen, whether would us get any arrests. We contribute enormously to develop the

procedural law as well as the rules of evidence. The jurisprudence, what is genocide, crime against humanity, all of these difficult legal issues have a solid case law there over the last years with the success of all of you, your work is not easy, how look after the witnesses, we know now if there is a witness who suffered terrible sexual offences, you really need to be sensitive how to approach these witnesses and we develop the whole body there dealing with the expertise. It is not just the international community, the domestic courts also have to do a lot if not the vast majority of the work, there are thousands and thousands people who might have committed crimes and they have to face the justice as well, and we need domestic courts, so we have lots of programs cooperate with domestic courts to help them conduct those trials as well.

Q3: You talk a lot about the rights of the accused. But how about the acquitted ones? Do you think the tribunal has that enough to protect the rights of the people acquitted? Whether will there people get compensation for unreasonable detention or will the tribunal find the host states to take it? Thank you.

Professor John Hocking: It's a very good question. Acquittals are really important, you really make this point, I remember we have had a number of acquittals, so the questions of compensation have to come with these cases. What is really important is the procedure has to be fair. Actually there is no rules about this in the statute of ICTY or ICTR, there have been some decisions about this in ICTY or ICTR, not a great deal, and our judges recognize there can be some compensation under the international law if the fundamental human rights has been violated, because just someone is held detention for a long time but eventually acquitted doesn't mean there is a necessarily violation of the fundamental rights. Back to what Professor Zhang asked about the contribution of the ICTY, this is an area that we didn't really think about in the very beginning, but now the ICC statute has made some provisions on this.

Q4: I wonder how ICD can make sure of a very trial when it has its own prosecutors but at the same time support the defense counsels of the accused, I am not sure whether it is responsible for the ICD.

Professor John Hocking: It's an interesting question, what we do is to establish a list of qualifications, what you need to meet the minimum qualifications if you are going to be a defense counsel. A certain number of years of experience, you have to make certain ethical qualifications as well, we established the framework, then we get a list of a defense counsels who put their name on. So when someone was arrested, like Mr Karadžić, when he was arrested, we offered him that list. But if they say "I don't wanna anyone on that list, I want this person who has been my lawyer from my home", as long as they meet our qualifications, we help the lawyer to get on that list. There is a separation between the registry who assign the defense counsels and the prosecutors, the prosecutors are independent who are appointed by the Security

Council under a different selection, and Judges appointed by the General Assembly. The registry, my decision which deny counsels can reviewed by judges who can go to the president or extra trial chamber or appeals chamber. So they keep an eye on me as well. We will pay for the counsels for defense as long as the accused without enough money, and we investigate how much money they have and some of them we don't pay for them, they pay completely for their own counsels because they have enough money to do so.

Q5: As we all know that the testifying evidence is very important and as professor you said, the language of the judges and the language of the witnesses are different, so there is a huge dependence on the interpreter. As long as we use the simultaneous interpretation, it's very great for the interpreter to keep 70% to 80% of information in their interpretation which means that even for a professional interpreter. There tends to be 20% of information that may be lost. During the interpretation, it's a proceeding of taking in the information and then producing the information again, so there might be some reshape of the information during this proceeding, I wonder if there is any concern for the judges about this kind of problems?

Professor John Hocking: Again, it's a really good question! Firstly, you are completely right, but who we choose to be the interpreters are high qualified specialists in this area, just like the example I've given to you, there had been an interpreter crying during the process because she got so involved. Secondly, we would have a check. As an interpreter, everything she had said in the courtroom would be written down at the same time. They made a transcript, and the judges, the prosecutors, the accused, they would all watch it. And then they take the transcript at night and they look at the transcript for certain number of days to come back with the comments on the transcript. Sometimes we also film everything that is going on, so we had the entire proceedings on digital. If there is a question, we could look back at the tape.

Q6: We've learnt that the Mr Karadžić case, in domestic law, once a person committed a certain crime, he would get a certain sentence. Is the ICTY also having such rules for judges to follow? If the answer is yes, who make this rules, if not, how do the judges make their decisions?

Professor John Hocking: Our statute which is adopted by the security council says "on sentencing, the maximum is life imprisonment instead of the death sentence", and the judges have to take into account the sentencing practices of the former Yugoslavia, so the judges have to look at the case law. It's clear they are not bound by the practice in the former Yugoslavia because we start very different.

Q7: You have talked about asking the witnesses to come to court to testify and you've also talked about the sensitivity is required to approach them because they might have suffered the PTSD. My question is have you ever consider how you ask

them to testify or ask them to expose to the second time trauma, if the ICTY provide any psychological assistance to them which leads to the fundamental questions? Victim reparation, have you ever considered in the ICTY? I guess that the ICTY as well as the ICTR are both facing the same question, you have talked about the justice, but have you every think about the most important part for the victims to move on is the reparations.

Professor John Hocking: We have witnesses support unit as trauma experts trained exactly in this area, they are not lawyers but the specialists, the very concerned and try to help those people who had suffered, we support them before, during and after the trial and we also have special protection sometimes in the courtroom, because sometimes the witnesses don't want to be known by the public, they don't want their neighbors to know what happened to them, sometimes they may testify with a [suitnes](#). As for the reparation, we don't have this in our statute but it's an ICC addition.

Q8: My question is about the funding of the ICTY and you mention the preparatory work is to be done, such as the translation and the preparing witnesses so I wonder whether the founding is 100% from the General Assembly. If that is the case, I wonder whether some of contribution of the countries are registered while the others are not, whether there are any countries designated as specifically donors for the ICTY, if it is , which country is the main donor for the ICTY.

Professor John Hocking: The founding is almost entirely form the General Assembly process, just a few we get from our out-reach programs, for example, the European Union founded us our out-reach program pretty much since the beginning for about the last 16 years, so it's the EU money pays for that. You asked about the member states and the contribution, I have to define the budget before the General Assembly and it's the combination of the countries that regular budget and then I do something with the DPKO (Department of peacekeeping operations) budget, but basically it's more or less the same as the contributions that member states make to the regular budget of the UN, the highest contributor in the UN is the United States.

#Practice of the ICTY and ICTR in 2015#

Judge Liu Daqun (ICTY 法官、副院长)

Dear professor Zhang Naigen and Dear Professor Lu Zhian, firstly , I give my sincere thanks to the law school of Fudan University to invite us to participant in this great gathering called a seminar of the International Justice and Human Rights —— Practices of the International Tribunals. I think exactly two years ago, I came here with another member of the team, professor Cohen, to participate in a conference of the trials of the Japanese of the war criminals after the world war II which is a very successful conference, and the paper will be edited by professor Zhu in both English and Chinese.

I am very proud to be a judge in the ICTY because at the very beginning I did not expect myself to be a judge in such successful tribunals, ICTY or ICTR, which is just beyond my imaginations. Take the ICTY for example, as John has already told you, that the prosecutor indicted 161 individuals for allegation of committed in the territory in the former Yugoslavia, all those 161 individuals has been arrested or has been found which is a remarkable achievement. In 2010, I went to Chongqing where I met a tribunal of a security, Chongqing is supposed to be the most effective and the social order which fight against the organized crimes, I asked him(Wang Lijun) what the rates of their arrests in your city, he told me that they got the best rate in the whole country which is at 40%. In china, there may be someone deem that the international law is useless which is obviously not true, taking an example of our tribunal, we do not have the police, we do not have the law enforcement mechanism, but all the 161 fugitives have been arrested which is remarkable, and I believe that most of the cases have been finished with only few going on. You may know, yesterday, the ICTY rendered a most important judgment on the Karadžić's case, we haven't got the chance to read the judgment but I got the news on CNN last night. Therefore, in the Tribunal, we have a few cases left for the Hadžić's case. We believe we could see the end within few months, I haven't received the latest information about this case but I believe that the picture would be more clear. By the end of June, we will only have two cases left such as the Mladić's case. I believe that The ICTR also make a great contribution to the International Criminal Law with 93 individuals indicted, 61 have been tried and sentenced, we only have 8 people, and some of the cases have been referred to the domestic jurisdictions. On 14th December, 2015, the ICTR appeals chamber delivered the last judgment. I am not going to tell these ongoing cases which is improper, I'll talk about what is ICTY and ICTR do last year, in my personal opinion, with nothing to do with the tribunals, last years, these two tribunals undertook 4 cases with a lot of legal issues, some of them are quite complicated, I'll take about 3 of them instead of all of them, the first is undue delay, the second is about the cumulated conviction, the conspiracy genocide and genocide, the last one is the ...direction. On the 14th December, 2015, the appeals chamber of ICTR delivered its final judgment in the case of the prosecution on Nyiramasuhuko, complicatedly involved 6 accused, from this arrests to the final judgments, the hates last to them to 17 to 20 years, these is the longest case before the ICTR. I think in China, the most complex case would last for 20 days, the tribunal has the responsibility to guarantee or ensure that the accused get an appropriate trial to protect their legitimate rights during all the proceedings. There might be a lot of facts that may delay a case, for instance, the length of the delay, the complexity of the proceedings, the conducts of the parties as well as the conducts of the relevant

authorities or might even the prejudice. The decision of the trial chamber found that all those delay was not unreasonable, but the appeal chamber held that the trial chamber was erred in its conclusion, the appeals chamber found that the proceeding was too long to ensure the rights of the defendants for staying in the detention unit. As for the complexity of the case, the trial chamber believes that all those cases referred to the tribunals are complex involving a lot of witnesses, documents, investigations. However, it is the prosecutor who should have known before all our case having been started and should have prepared the indictment very well. Once they submitted the indictment, it means they are ready for a trial other than they were the first to submit the indictment later on and engaging in the investigation, we are the ICTY instead of the ICC, there is no authorization by the pre-trial chamber to begin the investigation, in this case we also care about the authorities, I believe that the Appeals Chamber implied that some delay was caused by the trial chamber because of the shortage of the judges, several judges sit in many cases, that is also why it involved the undue delay. And the appeals chamber for the first time makes it explicitly that it is wrong for the authorities to do that because the rights of the accused is jeopardized. As for the prejudice that the appeals chamber clearly said that the prolonged detention constitute prejudice itself.

The second issue is about the cumulative convictions that is the conspiracy to commit the genocides and the genocide itself, the jurisprudence of the tribunal we called conspiracy to commit a genocide as an inchoate crime, what is an inchoate crime? It is a crime that does not require the results which means as long as you did the things whether the genocide happened or not, it is a crime for the conspiracy to commit a crime. This is called inchoate crime which is completely new concept in Chinese law. So in the Kupreškić's and the others, they were found guilty by the trial chamber for their conspiracy to commit a genocide, as well as for the genocide itself. However, the appeals chamber held that the trial chamber was wrong because the conspiracy to commit a genocide is different, they required different material elements with the genocide itself, so the trial chamber has the responsibility is obliged to enter a conviction for both conspiracy to commit a genocide and the genocide itself, although the person did from no planning of the genocide as well as the specific act later on that is genocide. It is a super complicated issue therefore I am not going to details. The third issues is about the specific direction which is a controversial issue known before our tribunal for quite a while. On 15th December, 2015, it renders its judgment with 3 legal points thereof. The third one is the ingredients of the actus rea. Maybe it seems a little bit abstract for you, but I believe all of you have read a case in China named “快播”, a Chinese media involved in spreading some phonographic pictures of films and the defense counsel said that “I am just a media, those phonographic things are not produced by me, I don't know most of them. You have to show me that I am specifically to directed to spread those materials so that you could convict me.” It is an interesting argument. According to the jurisprudence of our tribunal, the act and baker carry out some acts

to assist and encourage and let moral support to the perpetrator of the crime and this support has a substantial effect upon the perpetration of the crime and the mens rea requires that he has the knowledge of that acts performed before exist as an connection of the crimes . As I see, it is a low threshold, most of the acts should have a substantial effect upon the commission of that crime, in my view, that is enough. If it is at a specific direction element unit, there may be a high threshold, for instance, a country provides weapons to the anti-government organization in Syrian, those weapons could be used to engaged in the legitimate of a fight or they also could used to kill the innocent people to commit a crime, it is difficult to distinguish which is specifically directed to the commission of the crime, in our daily life, if you have a car and you lend it to your neighbors, your neighbors could use your car to come to pick up his child from the kindergarten or use this car to rob a bank. The only problem here is the threshold here is too high, and there are only two situations as I know could fulfill that requirement, one is that you are providing the weapons which is prohibited by the International law, for instance, you provide the chemical weapons, nuclear weapons with the mere purpose of using them to commit a crime, this is the specific direction for the crime. The second scenario is that you provide the certain weapons to a very notorious group whose purpose is to commit a crime. Only in the situations above could one distinguish that it is specifically directed to the commission of a crime, but it will make the international criminal law unworkable especially for some high officials who are in a remote area.

(Q&A)

Q1(Professor Zhang):I think not only for myself but for the whole china society, we are pleasant that you were elected as the vice president of the ICTY. My question is relevant to your position because you are now the vice president of the ICTY and for the next two years, actually for the final working of the ICTY, I wonder for your career since 2001, would it be different between the work now and the work in the next two years? Also, I wonder from your perspective, for the jurisdiction of the ICTY, as the unique event in 1990s, the Security Council decided to establish the tribunals, now towards the closing of the courts, but we also have the ICC with the supplementary jurisdiction. How to make an assessment in the historical aspect that the international criminal law could help us to make an assessment for the court or the jurisdiction, since now we have the universal jurisdiction overlapped with the special tribunal. Overall, how to make the assessment of the issue related to the jurisdiction future for the international community, shall we have a permanent court such as ICC and we preferred the domestic courts to take the cases, we do not have this kind of special court forever so I am not sure whether you have something for assessment. Thank you!

Judge Liu: Thank you so much! Your question is an interesting but also a difficult one. Let me introduce the function of the vice president. It is my honor to be elected as

the vice president of the ICTY last year. Once I took over this job, I found that it was a very difficult job. As a vice president, my main job is to assist the president in every aspect of the work, and I have to deal with the staff issues and the court proceedings which are the two most difficult issues in the ICTY, especially in the completion strategies. The problem is when the tribunal is closing, many people are looking for another jobs. Many people living in one boat, when the boat began to sink, everyone wants to come out of the boat. We have no reason to keep them, so a lot of experienced staffs leaving, we only have to hire some temporary staff with the contract with two men, almost nothing about the case, it is uneasy for them to take over the person who have that kind of experience. It is a big challenge.

As for your second question, the jurisdiction of ICTY and ICTR are limited, they only have the jurisdiction of the crimes happened in the former Yugoslavia from 1991 or for the ICTR from 1993 to 1994. Upon until now, there is no tribunals with the universal jurisdictions which is far beyond the expectation of the international communities. After the closure of the ICTY and ICTR, if something happened in the non-contracting state parties of the ICC could be under the jurisdiction of the ICC, it is a serious thing. I believe the Security Council will take some measures to do that, for instance, we have the residual mechanisms for international tribunals and if the Security Council give the mandate to recognition to take over a case that happed in Somali, the ISIS crimes. I believe this mechanism is capable of taking over this problems and it will be simplified in the procedures and all the judges might not need to sit in the Hague, without so called permanent judges and they only called upon whether there are cases going on. I think Professor Willow will talk about this thing in details this afternoon. Thank you very much!

Q2: The UN secretary Ban Ki-moon have said: "After the war, the president of Bashir will take the responsibility." Do you think it is possible to bring him to the International Criminal Court?

Judge Liu: It is completely out of my knowledge, if there is somebody from the ICC, you could ask him about it. For me, as a judge, what I could say is that his is innocent before any tribunals find him guilty. It depends on the corporation of the International communities.

Q3: How to distinguish between crimes and mode of liability? I recently read the Bemba judgment which said that the command of responsibility in ICC was surely a mode of liability, but the ICTY said it was a crime. So the ICTY said it was a crime while the ICC said it was a mode of liability. How to distinguish?

Judge Liu: Crime means the acts or the conducts by the accused which specifically lead to those terrible things. But the mode of the liability is just a linkage between the accused and the crime in which way the accused involved in this crime, such as his contribution to it. It is a difficult problem for the Chinese students to understand

according to the Chinese Criminal law. In the Chinese Criminal Law, we don't have the liability, they are all crimes instead of the mode of the liability.

Q4: My question is about the enforcement of the sentence, since you said just now, there is no prison, no jail and no police in ICTY, so enforcement of the sentence would be in the domestic countries. Is there any possibility for the prisoners to obtain a commutation or the release back in the domestic countries? Since the enforcement is conducted in the domestic countries, is there is a supervision mechanism to keep an eye on the enforcement of the sentence?

Judge Liu: For us, we only have the detention unit in the Hague from the Dutch Authority, therefore, we will sign an agreement with those countries who would accept the convicted. The content is about the arrangement for serving the sentence in their countries and the standards should be consistent with ours, if their standard is lower than us, we won't sent those convicted there. The registry has the responsibility to monitor the prison conditions which ought to be above the minimum international standard.

#Administration Tribunal of the United Nations#
Hafida Lahiouel (联合国行政法庭书记官长)

Thank you so much! I am going to talk about the contribution of the International Criminal Court to other fields of law, particular to the International Administrative law.

Firstly, I am going to talk a little bit of the history. The league of Nations in 1927 which might be familiar to the students studying the Public International Law, with UN Convention on privileges and immunities.

After the Second World War, the league of Nations tribunal, the UN General Assembly in 1949, UN Charter silent, we only created the International of Justice, and nothing else in the judicial, therefore we intended to establish the UN Administrative Tribunal set up with unpaid judges and volunteers. And you know now, a tribunal with volunteers is impossible.

And in 1999, we have the European Court of the Human Rights, there was a ruling of a named Waite and Kennedy decided that the waiver of immunity of International Organizations could happen and should happen if internal justice systems were ineffective or contrary to human rights law. The ICTY and the ICTR have won incredible success, just as John Hocking explained just now that how to go to the committee dealing with the administrative budget as well as how do the tribunals ask for money to fund their operations. There is an undeniable success of the ICTY or ICTR as model courts and rule of law inspiration.

In 2007, UN Redesign Panel of experts, what is interesting thing of the UN Redesign Panel of experts is that one of the judges in the panel is a president of Sierra Leone, which means the UN internal system of administration of justice violates basic international human rights.

2.Operational contributions:

Therefore, in 2009, the General Assembly have to set up a new system, like the ICTY, the ICTR or the hybrid courts in Sierra Leone or in Cambodia which reform of the UN internal justice system. They need the professional judges, which means that the professional bench vetted by an internal justice counsel and elected by the UN General Assembly. As a lesson learnt from the ICTY and ICTR, the second decision of the General Assembly was that we were not going to have a big court, rather, we would have lean and efficient Tribunals. These courts would have the unique judge at the first instance level and panel of three judges at the appeal stage.

Set up of Court registries to provide the substantive, administrative and technical support to judges in a number of aspects, they decided to contribute a case management system to make sure all the cases have its electronic forms form at the beginning. Although it would cost a lot of money, I think it worth it. (lesson learned from the UNAKRT ECCC)

A big change is the Legal Aid System, one of the major issue at the time is why our staff of the UN having to help themselves when they want to challenge the decisions made by the Security administration, but you have the defendant before the International court, we have the legal aid paid for them which is not a small amount, so we decided to provide the court for the Office of staff legal assistance.

As for the contributions of International Criminal Courts to the sources of law of international administrative courts. Traditional sources of law of international administrative courts includes the Internal staff and financial regulations and rules, policy like the 1980 ICJ advisory opinion advising that under general rules of international law, UN bound to write precise and straightforward laws that are readily understandable and which reflect customary international human rights rules. And the contract of employment and terms of appointment-unclear sources of contract and labor laws.

General Principles of Law-International Organizations as products od public international law bound by customary international law (1949 ICJ decision in reparation for injury case-Sanwidi case (2010-UNAT-084): fairness, reasonableness, legality, propotionality. International Human Rights Law-checks and balances necessary.

When it comes to the rules of procedure, we use the rules of the ICTY rule on case

management and filings during pre-trial phase including : joint statement of matters of fact and law which are not in dispute; joint statement of contested matters of fact and law; list of exhibits the parties intend to offer stating where possible whether the other party has any objection as to authenticity or relevance; the list of witnesses each party intends to call.

Initial objections from parties on use of case management a giving investigative powers to the Tribunal. And the 2013 case law recognizing jurisdictional power essential for dispensation of justice.

And the general rules of evidence, what principles to use in the absence of rules of evidence? As we know, learn from the ICTY principle of fair determination of the case and it should be consistent with the Statute and general principles of law. The relevancy-probative value is determined by the judge. Burden of proof-the party is rest upon the allegation proves it with legal test of preponderance of evidence.

Witness testimony added the hearings at the heart of the new UN system of administration of justice. However, there are some problems, for examples, the dispute of facts in majority of case, lack of paper trails or documentary evidence held by the Administration and judicial control over examination of witnesses-inquisitorial versus adversarial systems and the truth discovery principle.

Let me talk a little about the power of judges to order production of evidence. When do judges have too much power and can judges order production of additional evidence when the rules are silent on this? I think there three ways, first, use of ICTY rules of evidence to provide judges power to proprio motu summon witnesses and order their attendance. Second, use of ICTY legal test of legitimate forensic interest in the production of evidence. Third, use of protective or confidentiality measures.

Hare comes my last past: the contempt of court, do judges have the inherent power to hold a party in contempt of court when the rules are silent on this? What can a judge do when the Administration refuses to comply in the absence of rules of evidence? In 2012, the Igunda case concluded that a party is not allowed to refuse execution of an order under pretext it is in excess of jurisdiction because it is not for a party to decide about these issues.

Are there only pragmatic reasons for the contributions of international criminal courts to other UN courts? My conclusion is that the capacity of International courts to address issues such as equality of arms, fairness through their rules of procedure and evidence is really important. And so does the Interest of other international and regional administrative courts in the rules of procedure and evidence of the UN Court, for instance, the July 2013 case of the Hague District Court

on waiving the immunity of the European Patent Office because it is unable to respect the right of the staff.

(Q&A)

Q1(Professor Zhang): As we known, China is one of permanent members of the the United Nations, and there must be some Chinese staffs working in UN. I am not sure whether there is any dispute involved Chinese nationality staffs. Another question is, compared to the International Labor Organization and also some parallel organizations such as the IMF, the World Bank or even the special agents which is originally from the United Nations, the WTO but this is relatively independent organization within the United Nations. For your experience, I wonder that the United Nations like the tribunals with other similar mechanisms in the other organizations how to get the jurisprudence there and the organizations to improve your mechanisms?

Hafida Lahiouel: We have very famous cases involves the Chinese citizen, a case from Miss Chan. This is the first issue of the source of law, particularly, Miss Chan is in Geneva Belief and she worked in the interpret services, you know the UN has six official languages and one of the six official languages is Chinese obviously. She had come to the tribunal saying that her position in the other units dealing with other UN official languages had been upgraded but not hers, so she said that five other official languages had been upgraded in a high level but not hers (She is a Chinese translator). She complained the tribunal about that, she wanted to know why her position was not reclassified.

As for the labor law standards applied to the UN, you can see that the human rights and the labor standards do not apply to the administration but we find apply them. The potential complaint, we have fewer than the IMF or the World Bank, for example, we only had 2 cases last year, but like the World Bank seems have 6 cases annually, I think the reason is the funding issue. We separate them and we don't send these cases to tribunals because we don't want our donors to know about the "dirty laundry" of the organization. So we do that a lot. Although we do use some jurisprudence of those courts, but actually what we use are usually the human rights law which are common. Because the tribunals don't often use each others' case law, if there is some, it must be some law in common as I mentioned.

Ming: Good afternoon.

Pro. David: Thanks, a great many thanks to Fudan Law School, to Pro. Lu for all the preparations you have done, and I've once been here be for with Judge Liu as he mentioned in the morning. Today I'll start the speech "Transitional Justice", a new topic to many countries and worth discussion.

First goes the definition, may I know from you what's transitional justice? Then I'll tell, transitional justice is the legal process conducted for the human and property damages done in former authorities. It invokes the thinking of fairness and justice, and what people should do in future learning from the hard stories in history. Transitional justice leads not only the legal basis of repair, but also the transferring role of government in one domestic country and what the United Nations can do to help the victims recover better and achieve the best of the country.

This happens first in Cambodia and Indonesia, in which the redness legacies once hurt the democracy and administration systems of that political power, and victims and their relatives ask for reparation and a law suit against the people who conducted the suffering for them after the breakdown of that power. The legal process is usually carried out domestically, sometimes supervised by the United Nations, and the law suit is not really professional due to the lack of judges and judicial staff. I think the same occasion also once occurred in China and Japan, even if I don't know whether the similar legal process was once discussed or not.

Sometimes, cooperation is possible when the two domestic parts of the world are sharing the same or similar proceedings and they are both under the supervision of the United Nations. But unfortunately, the cooperation mechanisms seldom happen due to lack of so many necessary conditions, and different sovereign countries will have different circumstances, it's not so ideally easy when we mention the word cooperation.

Perhaps you once heard there exists some commission for international cooperation in transitional justice, and it seems that such cooperation has already been achieved by setting up a commission and some tribunals. But do you know, the creation of that commission is specially designed to set up the international tribunal to face the result that so many victims strongly argued for the judicial status of the former leaders. So actually it fell into a dilemma and both purposes relied on the realization result of the other, and it still remains for dealing with in future.

This reminds me of the presentation this morning, and after Judge Liu finished, one of you once asked a question, what is justice, and it's very hard to give an absolute answer based on the changing world of law and developing history of legal rules. Jurisprudence development sometimes can hardly follow the political affairs. Nobody can deny the trial of ICTY is fair even if some of them are opposite with the Tokyo Trial of 2nd world war. Even if in Indonesia, some challenges have also been put forward aimed at fairness, and different people, even the judges in the same panel have different understandings, and that's exactly I strongly suggest we focus on the spirits and the legal reasoning behind that trial and don't put so many argument on the detail and connect that with the value of fairness. Even if, when we put that at fairness, and we require that fairness asks for the equal judicial decision on the same people in difference courts, things will be easy sometimes, and there is no

significance of doing the appeal suit as well.

(ha-ha) laughed the audience

What's behind the judicial decision, I think there is so many, and right at the hand there can be political reasons, domestic political reasons, historical political reasons, regional political reasons and of course, international and diplomatic political reasons and so on. It needs to be politically well to be certain on dealing with all the political factors and in order to achieve justice, there needs justice resources, in UN, in domestic government and other backgrounds.

Next question is, what is justice? This question also has different answers in different history and different perspectives. First version as history, we can see domestic history served as an important reason for justifying many issues, and however, from an international perspective, all the domestic reasons can be regarded as different excuses. Even if the tribunals set under the framework of UN, when they say, we are dealing with the legal proceedings for the fairness and justice of the local citizens, who knows what's justice for them? We can have judges and legal workers for them and we can deal with so many legal cases, but who knows what they really concern? If we comprehend justice as people's feelings and it varies from person to person, then it's nearly impossible to carry out the function of justice in any judicial decisions.

If the individual is available to influence the value or definition of justice, then what can we do to solve the clear distinction of different people's requirements of different parts of the world? As you see, now the world we are faced is divided, on the one part is the country like Indonesia and Cambodia, with very poor people living under the bridges, with very little construction and infrastructure and very slow media, together with the other part of US or Europe, which owns the great power and very effective construction and people can have nearly whatever they want. They have different understandings of what is justice and it's hard for the international tribunals to make any balance.

The other question now we are faced is in the poor countries as I have mentioned, in Indonesia in 1999 based on one of their actions, one third of the country were forced to go out to the villages to live without their permission, that's why I said it's force, and forced to completely change the way and the place they live and can only enjoy very poor conditions for living and have no other properties after being driven everything out from the government. Everyone has been severely affected at that time and everyone has an asking for justice. But based on a research carried out in the surroundings of that region, when you ask them, what do they want or do they want to carry everyone to justice and let the political figures go into prison or apologize to the victims or their relatives? Do you know what's their answer? Actually, seldom of them really cares how the political leaders at that time who made the

decision is treated, or else, what they really care is the final result of the exact person who kills their sisters, who shot her father to death with his gun, who put everyone in their village to another poor part and derived them of everything of their own, and who set a fire on their farms and destroyed everything in their community. They think justice can be achieved when they know who committed all the crimes above and who can carry out the compensation for them, and the most how those people are treated currently. Are they sentenced to death penalty, or are they living still very well now?

Apart from the individual issue of justice, the other aspect of this same question is peace. What the world is like now? And what can we do to maintain the peaceful situation we are in now? Is the current peace permanent or it's only temporarily existing and it'll suddenly disappear and everything will go back to that time when people are suffering in Cambodia and Indonesia with an evil power on their head? Peace is always the pursuit of every government and definitely, also of every citizen, when pursuit happens, we have the possibility to be disappointed, and peace seems to exist in faith and in future. Undeniable is that there is always something we can do to extend the peaceful period as long as possible and we can only try our best when we have no other choices.

If we are now limited by resources, at the right beginning of tribunal, what we are really concerned is that what we are supposed to do. That is, to try our best to give them money support, to let those with no sheltering have a stable place to stay and to let them have the sufficient choice to feed their family, to help them with everything they need to lead a better life so that they can forget what once happened to them? Or we should focus on the construction of the legal process and do everything to take all the guilty to justice and let the same thing never happen again? We need money to call the judges and let people be here to listen to the hearings of the witnesses, and we also need to cover the fees necessary for the witnesses to come to the court to assist, and so on and so on. Who can tell which is more important, actually there is nobody, and if someone can give an answer and persuade any protestant, there is no need at all to discuss like we do now.

(ha-ha) the audience laughed again

Here comes another subject, when we are dealing with the similar conflicts in our court, there is another object I must drive your attention to. That's the opinion of truth. People usually consider truth to be truly held by someone, any individual or a group, and when we are thinking of what we should do to help the weak and try to comfort the victims who suffered in the history when the authorities made mistakes, we are in pursuit of truth. Truth is different from fairness and justice, but it's also a permanent pursuit people all over the world have been longing for. The concept of truth seems to have some difference to the concept of any other pursuit we are always talking about like justice and fairness as I mentioned before; however, when

we are talking today, we are in pursuit of truth, and when we study about the tribunal, we are in pursuit of truth; when we are trying our best to compensate the victims of the history, we are also pursuing the truth and it seems that we never stop.

Chasing after the truth is not a work of you and of me, and its spread and expansion needs the work of so many generations, and here comes the work of education. Through education, it's the wonderful performance of fairness, justice and truth to the people after us, sometimes different ways of showing in particular, like speeches, lectures and textbooks. As you all know, recently in Japan, similar things also happen in other parts of the world, I'm mentioning Japan only because I think it's most familiar to you. When the government carries out some change in history, and fail to let the latter generation know the true situation and facts in history, it definitely constructs a betraying action to the truth. Educating the latter generations, as well as people of other parts of the world is also important as one of the roles the tribunals and the hybrid court that one did.

Coming after the truth, I want to mention the definition of forgiveness. What's forgiveness is often argued when people talk about the setting up the tribunal and the final destiny of those who once carried out crimes to people. Some people may say forgiveness is to forget, and based on a face-to face interview with a woman whose 7-year-old son was killed by a soldier and she saw everything at that time, she told me every detail of that scene after 20 years ago. She can never forget, and she asks everyone how can she forget. I think someone once asked her to forget and she once tried and she failed, I did not ask her to do so because I think it's against humanity. For these people, what's forgiveness, I think we still need to reflect.

Later on I think I'll continue on the procedure of our tribunal so that you can get a general sense how it proceeds and what it can do to further promote justice and fairness and how it relates truth to them. As to the working process of the tribunal in dealing with cases, the tribunal divides all the causes of the cases into two categories, one is severe crimes and the other is ordinary crimes. If it's severe crimes, it'll directly sent to the tribunal and the people who once committed the crimes will definitely serve the several years' sentence in prison. However, if the suit you brought with the person was concerned as an ordinary crime, then it will be sent to the villages. In the villages it'll face the judges from the countryside, perhaps some of them never serve as judges or even never face higher education, and they negotiate and they hear what the criminals say and they finally determine where they will stay. Such procedures of ordinary crimes have also been criticized since they seem really not professional and it has too much to be blamed for. However, since the tribunal is first aimed at dealing with severe crimes and that's why economic use of resources is always a concern dealing with every issue.

There is another way of dealing with the criminals, which is commonly used to ordinary offenses, that is community service process. Do you know what's that?

Actually, I think it exists in many jurisdictions and it has been used in China too as I know, in criminal law, because sometimes the prison is too full and nobody can be put into it, then it's better to let them work and pay for what they deserve in the prison. How the international framework deals with the community service process, I have been asked about this and unfortunately I don't know so much about how it proceeds and that's why I'm still doing research on this, and it needs time.

Based on my research and my lecture today, I hope to give you a general framework what transitional justice is, what values this concept represents or relates to, and what we can do to promote those values. Again, also, in pursuit of truth, justice and fairness, we need a lot of progress in procedure, since procedural justice is really essential in any leading work of justice as legal workers. Now I finished my argument and you can ask questions if you want. Thank you very much.

Pro. Lu: any questions?

Pro. Chang: Yes indeed.

Thank you for mentioning this concept and giving us the general introduction. Actually, as I know, China has no further research and professional investigation work on this topic yet, and when I hear this topic, I think it's really interesting and it's worth directing some other scholars to research in. As I know, the tribunal set for Cambodia and Indonesia is different from that of the former Yugoslavia where Judge Liu has been working in. As you mentioned, transitional justice is a concept generated from many cases together and it has the legal significance in future jurisdiction. How can this concept explain the considerable difference in different court jurisdiction systems in international stage?

David: Wow, thanks Pro. Chang, different court has different ways of doing affairs, which is certain. And as you mention, court of Cambodia and Indonesia has their special characteristics and it's very hard to duplicate. Sometimes in international transfer work may happen when people committed crimes and similar cases once happened in the other jurisdiction, and similar cases in a near period can be conferred into one based on the tribunal director's instruction but it the condition as the threshold is too high and you can read from its preface that it seldom happens. So the internationalized method of different courts still has a long way to go.

Zhu Qin: thank you Pro. Gogen, as you mentioned, there are different ways to deal with severe crimes and ordinary crimes and the treatment is totally different, may I know where can you draw the line and what is the standard?

David: Actually, it's a very good question, and it's a very hard work and actually I must say I have no clear answer. I think any judgment needs further consideration for particular circumstances. As in hybrid courts, the mixture structure can be justified by

the complicated composing, and thus similar cases may always happen in future and in other courts. So I may say we still need to observe and the future may be more hybrid courts coming and the line between ordinary and severe getting vague.

Tian Qing: I think I don't agree with you when you mention the hybrid court can show the consensus, and I think it's just something people generate for procedure convenience. And I think in future, there maybe a court composed by many hybrid components and similar to ICC, to deal with the issues existing currently. Do you agree?

David: I think the ideal situation you mention will not come, since the ICC already exists and there is no other reason to combine the regional courts now in the world and found one commonly.

Jing Ming: Thank you, Pro Cogen, my question is that the starting point of transitional justice is the repair value for victims, and what if this value gets contradictory with justice as you mentioned? As to community service process, is there some possibility for further international framework?

David: Both very good questions. The first, I think it goes home finally. As to second, I think cooperation only may occur domestically and later on partly international in future, since it's too different in understanding this concept in international framework. I'm sorry to have given a very bad answer to your question, but I think I have no better answer to give you.

(rest, and applause)

Pro. Lu: Now, my honor to introduce Ms. Willow Crystal, administrator in UN secretary office, who once dealt with both political and judicial affairs. She graduated from Harvard Law School, and she once studied in Yale and New York Law School, with an excellent educational background.

Crystal: Thank you Pro. Lu and thanks everyone who helped me here. I have always been speaking too fast and I have asked some of you to help me when you think I go too fast just raise your hand, since my father always said I speak too fast.

Do you know what's the full name of the tribunal where Judge Liu worked? It's very very long. Let's suppose now we have set a new court, and everyone of you has become a judge. First congratulate yourself for getting a new job !!!!!

(ha-ha) audience laughed

When you first come to this new work, you're not so familiar with your work and the cases in front of you. And what will you do then?

Suppose everything is new in front of you, as a judge, what should you do first, and may you first think of? All is in your consideration, since you need too consider the difference in politics, jurisdictions, economics, individual inclinations and else. That's exactly the situation when the tribunal was first set up and that's also the circumstance I and we once faced when we first came to work for United Nations. If some of you later on want to work for United Nations as I'm doing now, I think there is great possibility you'll also face the diverse, complicated and bothering circumstances perhaps ten years later or even more.

Do you know how many judges we have in the court of ICC and of that where your Judge Liu work in? The former is 9 at the beginning, and the other is 11. So you see, everything is new, and it's very hard to compose people from completely different backgrounds.

For instance, political decisions can always influence judicial decisions, especially in domestic court, and how can political affairs between parties affect the proceedings or the results of international court? Still, so many public figures are exactly who our court once faced, who was required to pay for their behavior in history and different countries have different voices but both strong, how will you deal with that? Another influence is legal history influence, since we cannot ignore the historical development of each court, each jurisdiction and each domestic organization that is influential.

Dealing with the judicial affairs, there needs a special treatment to some in special needs, since there is a standard affirming international protection of individuals in court proceedings, especially some religious ones, that is the performance of human rights protection. Since female Islam cannot show their faces in whatever judicial proceedings, and it's generally forbidden to force their to carry out such behaviors.

Later on, the next speaker will introduce for you all our experiences in United Nations working, from internship to official registration, and transferring occupations in different pieces of working branches, and so many of you are really interested in that part, I hope all of you realize your dream in future to work for UN and contribute to our world in a direct way. However, now I'll skip this question and I hope for understanding.

Apart from the issues I have already mentioned, it's important to notify the difference standard in evidence admissibility of individual cases, varying from one to the other, the ICC, ICTY and ICR, they have respective regulation documents and all roads lead to Rome, and respective regulation documents, actually, if you go further and view it carefully, they share a lot in common. The common values, common protection for human beings, and common general principle for who claims, who proves, similar standards concerning individual suits as to how much is required to

bring one person to sentence. As to standards of international courts, ICC is more commonly used since it covers more aspect and it seems more reasonable even if their contents are really similar.

The legal philosophy in ICC and ICTY is developed in the long developing procedure in many years, we can see the similar jurisprudence of the rules, and that could better explain the similarity of the rules.

Next question I'll explain is the enforcement issue as I have mentioned in the morning. Sometimes, it's possible to release persons in advance, and that mechanisms also has reasons behind that. Enforcement speed sometimes rely on how we can take advantage of what we have currently and how much we can rely on the evidence to make the release decision. Thus, rules are usually mentioned for thinking further in jurisprudence.

In conclusion, I just to want to make three points:

Sometimes, judges find it very hard to make decisions when the mechanisms are different and there are some cases to mix together;

Like ICC and ICTY, they have different procedures and proceedings, and they have institutional design each;

At the same time, the issue currently in Serbia and some other countries is that some people are arguing that the rules are not always applicable. For this, I can only say, perhaps many years later, there will be some change.

Pro Lu: any questions?

Crystal: Have you followed me? I know I'm still speaking very very fast.

Pro Chang: Thank you for giving us the lecture, and if possible, I think in future there exist some chance to cooperate with your institution as you mentioned, since this idea needs further field research? And if possible, can the concept of Pro Cogen said expand to other fields, not only governmental abuse, but also economic rights abuse and like now labor suit for tort occurrence during labor procedure. Where is the line, and can you draw the line in different circumstances?

Crystal: Thanks, Pro Chang, closely following the procedure, I think it still takes time, and I may do further research on this later, and we are always welcoming all of you, if anyone here is eager to help. The rules in ICC has been discussed in many rounds, and it has people from different cultural backgrounds to discuss and answer. As to how the judgment finally comes from, it's complicated, but there is strict procedure to make any decision all the time.

Jing Ming: As I know, there is no evidence admissibility rule in ICJ, and I am wondering why the situation it is now. Since ICC, ICTY and many other international

courts share the similar evidence rules. Why ICJ has no rules, and how can the rules in ICC available for use in ICJ?

Crystal: Thanks Ming, actually they are in different systems, and ICJ deals with the state-to state cases, and all the courts like ICC and ICTY as I have mentioned are about individual cases. Since there is an international standard in individual rights, and it's easy to follow the rules for individual cases, but ICJ, the legal reasoning behind that is different. I'll do further research on this, and I'll respond to you later on.

Pro Lu: There is tea break outside, and please have a rest.

.....

(relieved, too tired complaint from the audience)

Pro Lu: Welcome back and I'm honored to introduce the last speaker, last but not the least, Chrara Biagonal, legal officer in ICTR, who once dealt with the cases of Rwanda, and she focused on sexual violation in different jurisdictions. She graduated from Harvard Law school, wow, Harvard, Harvard, Yale, a great degree list.

(applauding, wow, amazing shock from audience)

Pro Lu: Today, she is going to introduce for us, the role of women in international tribunals. Let's welcome.

C B: thanks, thank you very much for being here, for the reception by Pro Lu and the student. I'm honored to be here after working for only several years in the international tribunal of Rwanda, and I hope some of you have interest in my topic even if it seems really mournful. I know so many Chinese girls are so scared to the topic sexual violation and that's why I think now people are much less than that in the morning when Pro Liu is here, I think to understand this in this way.

When we mention the word, raping, do you know what it is? Is there any volunteer?

Jing Ming: I think it's a specific kind of sexual violation, from one person to another, the objective person is forced to....

C B: what kind of sexual violation, this answer is too general. As we should point to, what is the distinguished point between raping and forced marriage apart from time? Yes, of course, some of you may say, forced marriage is similar to marriage, it insists for more than one time and it needs special time consideration to decide whether it composes a marriage or not. Is there any other concern? Of course, there is, or else, I cannot say this.

(ha-ha)laughed the audience

I'm trying to make you laugh more because when I mention this serious topic, nobody can laugh out. Can you imagine a situation where human rights are long lasting violated and people can be murdered any time when they go out or when they even stay at home. People can be raped and forced to marry someone without the permission of both themselves and the permission of their parents. I think all of you stay and live in peaceful period and you can seldom imagine this situation that once happened in the history of many countries. Rwanda, is just a case, and some of you has told me about what was once carried out in history in China.

After the countries suffered, and the world came back to peace again, what can we do in the UN framework to those who once let it go and did nothing to the raping and forced marriage. Actually, they have no action of enforcing the decision and sometimes they can only sit there and watch everything happening due to their embarrassing status in the exact period of time in history. If we look at them, sometimes there are many other concerns apart from the forgiveness as your professor mentioned before in transitional justice.

As to forgiveness, I think it's even more difficult for people once suffered from sexual violation to forget. After research and interviews carried by us with those sufferers, refugees and even witnesses, you know how hard it is for them to forget some details. Here is a testimony from one of them:

"I once saw, what happened to that girl with a white scarf and a black towel on her head, she was forced to the ground and four guys bit her head, she was then derived out of all the clothes and was forced to do everything for them. After being tortured for nearly half an hour, the people shouted at her and then left her in the water and she killed herself I think cos she could not bear the suffering any longer and she cannot imagine what will happen to her later on."

Such testimony can be disgusting, sometimes when we read this article at about 11 AM and then we even felt so harmful for those people and we have no appetite for lunch. Fortunately it is in the afternoon, and even the tea break has already been finished, and I hope this is the reason why I was arranged in the afternoon as the last one, is that Pro Lu?

Pro Lu: Well, ha-ha, Judge Liu gave me the arrangement and I didn't change it.

C B: Not at all, just a joke to cheer everyone up since it's too hard for them to concentrate on this suffering topic.

Next issue is about the UN resolution about sexual violence, which starts due to the legal protection framework to women particularly and they have caused many arguments too as John said in the morning. For personal opinion, oh, I need to say, what I said today and what I'm going to say could only represent my personal

understanding, since as a small office staff, I could never represent an organ or branch.

Personally, I like the resolution and I think it's generally good in faith, in its starting point and its current enforcement consequence, some may say it has no obvious effect till now, but I think when we have no better alternative, the resolution put forward by UN has already become the best. Given days and time, I think the effect of the resolution will go further on this, since the tribunal as John mentioned in the morning, only exist for less than 30 years, the same age with you like 1993, 1994, and it's premature till now as you are now. Perhaps some of you are mature, ha-ha, it's just a contrast.

About the resolution in future, if there is some chance for further progress, I think the focus may go further in detail, like how we can comfort the women who once suffered in forced marriage and what the UN framework can do for those who survived the Rwanda disaster. Currently, the preamble of UN Charter still accounts a considerable length in the whole resolution, and if goes further, you can also see why we always say compromise makes ambiguity, that means, when the consensus is finally achieved, you can see nothing but the consensus itself in the resolution.

Well, at least, since it's not a charter, the resolution still has something to offer praise, like the emphasis put by the special rapporteur of UN on the legal framework to promote the rights of women and cooperation between domestic and international court on litigating proceedings on the exact persons sued for sexual violations.

Now I conclude my speech, and do you have some questions?

Pro Lu: any questions from you?

C B: Oh, I want to recommend to you all a link, that is UN voluntary link, which may be quite useful for you to apply to UN official positions. If you are interested in the work like us, there is very strong possibility you can get a job in UN and later on you can work for the world peace and grace and the benefits for all human beings as you once dreamed of, (ha-ha)

Audience laughed again

C B: but only after some time internship can you know what the work is like and whether you like it or not. When you choose to internship, there is no pay and that's why if you have the economic pressure, I strongly suggest you change another job. When's perfect for you to choose, you are supposed to be completely free of any pressure, at least in money.

Finally, I hope all of you succeed in your study, in your future job application, an in whatever you like.

Pro Lu: Thanks for everyone coming, Judge Liu who was not here, and John, Pro. Cogen and the other three wonderful speakers, also Pro Chang for coming and sharing opinions. Thanks to you all for coming and listening too. Representing center of Fudan University of human rights practice and education, we have prepared some gifts for the guests.

Thanks very much again.

-end-