


 The logo for the Forum for International Criminal and Humanitarian Law. It features the text 'Forum for International Criminal and Humanitarian Law' in a purple serif font. The word 'Forum' is larger and positioned at the top left, with 'for International' in a smaller font to its right. Below 'Forum' is the word 'Criminal' in a larger font, and 'and Humanitarian Law' is to its right. The word 'publ' is written vertically in a small font between 'Criminal' and 'and'. The entire logo is set against a light grey background with a subtle starburst effect behind the word 'Forum'.

## Abbreviated criminal procedures for core international crimes cases<sup>1</sup>

An international seminar organized by the  
Forum for International Criminal and Humanitarian Law<sup>2</sup>

*Sarajevo, Hotel Europe, Vladislava Skarića 5  
Friday 9 October 2009, 9:00-17:15*

Armed conflicts and attacks against civilian populations tend to generate many more war crimes and crimes against humanity than the criminal justice systems of the directly affected States are able to investigate and prosecute. International and third state jurisdictions may process a few cases originating in territorial States. But it is not realistic to expect that they will be able to handle many such cases in the foreseeable future. The highest number of perpetrators, victims, witnesses and other evidence can be found in territorial States. The criminal justice system in some of these States has opened core international crimes case files involving substantial numbers of named suspects. This is, for example, the situation in Colombia and Bosnia and Herzegovina, where there are thousands of suspects named in open case files involving allegations of core international crimes in the various prosecutors' offices in the country. The criminal procedure regimes in place do not, however, allow for the processing of more than a relatively low number of cases per year. These cases concern only a small fraction of the global number of suspects in the opened case files. There is in other words a queue or backlog of open case files which can not be dealt with through regular prosecution and trial.

This tension between the overall number of suspects in case files on the one hand, and the capacity of criminal justice systems on the other, entails several fundamental challenges. First, it has proven difficult for some jurisdictions with backlogs of war crimes cases to develop adequate overviews of pending case files. Such *mapping* clarifies the dimensions of the workload to all legitimate stakeholders in the process. It makes it easier to categorise the case files for prioritization in a professional and consistent manner. 'FICHL Publication Series No. 3 (2009)<sup>3</sup>' deals with this aspect of the tension – the seminar on 9 October 2009 does not.

Secondly, in addition to mapping, *prioritization* of the cases that will go to trial first is essential when there is a large backlog of open war crimes case files. If a jurisdiction prioritizes cases that are not considered particularly grave or otherwise representative of the overall criminal victimization, trust in the war crimes process will diminish. Prioritization must be based on criteria which should be legal rather than political in nature. This is the topic of 'FICHL Publication No. 4 (2009)<sup>4</sup> – not of this seminar.

<sup>1</sup> For the purposes of this seminar, the term 'core international crimes' refers to genocide, crimes against humanity and war crimes. Sometimes the term 'war crimes' is used for core international crimes (for example, 'war crimes process').

<sup>2</sup> For more information on the Forum, see [www.prio.no/ficjc/](http://www.prio.no/ficjc/). The Forum would like to thank the Royal Norwegian Ministry of Foreign Affairs for a financial contribution to this seminar; the Norwegian Embassy in Sarajevo, the HJPC Bosnia and Herzegovina and Gorana Žagovec for assistance; Cathrine Bye for helping with the travel arrangements for seminar speakers; and Alf Butenschøn Skre for assisting with the registration of seminar participants and other tasks.

<sup>3</sup> See Morten Bergsmo, Kjetil Helvig, Ilia Utmelidze and Gorana Žagovec: 'The Backlog of Core International Crimes Case Files in Bosnia and Herzegovina', FICHL Publication Series No. 3 (2009), 2009, 175 pp. (all volumes in the FICHL Publication Series are freely accessible at <http://www.prio.no/FICJC/Publications/>).

<sup>4</sup> See Morten Bergsmo (editor): 'Criteria for Prioritizing and Selecting Core International Crimes Cases', FICHL Publication Series No. 4 (2009), 2009, 190 pp. (<http://www.prio.no/FICJC/Publications/>).

Thirdly, proper mapping and prioritization do not alone resolve the problem of large backlogs of cases – far from it. In some jurisdictions the annual capacity to process core international crimes cases is so low compared to the total number of open case files that most suspects and witnesses will die before their cases come to trial. This seems to be the situation in for example Bosnia and Herzegovina, where the Council of Ministers adopted a ‘National War Crimes Strategy’ on 28 December 2008 which limits the process of war crimes prosecutions to 15 years from the time of adoption of the Strategy.<sup>5</sup>

In such situations the cases against the majority of the core international crimes suspects are likely not to be prioritized. The existing criminal procedures are simply unable to process all cases, despite the best intentions and efforts by the criminal justice professionals concerned. What should be done with the open case files that are left unprocessed? Should they just linger and be closed when suspects die or become too frail to stand trial? Should they be transferred out of the criminal justice system to alternative, non-judicial mechanisms, despite the fact that they have an established case file name or number?

Moving open case files out of the criminal justice system may significantly undermine trust in criminal justice in the country concerned. It may be seen as a statement of lack of ability on the part of the criminal justice authorities. This seminar is *not* about alternatives to the processing of core international crimes cases within the criminal justice system. Such alternatives obviously have their merits, but they fall outside the focused scope of this seminar.

Rather, this seminar explores *whether abbreviated criminal procedures can be designed to process higher numbers of core international crimes cases within the criminal justice system in ways that deal more effectively with large backlogs of opened case files*, especially cases involving less serious core international crimes. Is innovation required to ensure that already opened core international crimes cases are processed by prosecutors and judges, rather than by non-judicial staff in alternative mechanisms? The seminar is not directly concerned with the situation in those territorial States (such as South Africa) where many core international crimes have been committed but no or very few case files are opened.

The seminar will consider four specific topics: (a) the need for abbreviated criminal procedures for core international crimes, in particular in territorial States directly affected by crimes (this will be discussed in Panel 1); (b) an overview of some existing abbreviated criminal procedures (Panel 2); (c) key elements of possible abbreviated criminal procedures for core international crimes (Panel 3); and (d) a tentative discussion on abbreviated criminal procedures for core international crimes in Bosnia and Herzegovina (Panel 4).

By introducing the subject of abbreviated criminal procedures for core international crimes in this manner, the Forum for International Criminal and Humanitarian Law shows its willingness to continue to raise for discussion some of the most problematic aspects of transitional criminal justice.

### **Registration:**

To register please send an e-mail message to [ficjc@prio.no](mailto:ficjc@prio.no) (with “Seminar 091009” in the subject field) by 2 October 2009, indicating your wish to register as a seminar participant. Remember to include your name and, for the purpose of the list of participants, your functional title (for example, “student” or “Legal Adviser (MFA)”) and e-mail address. Seminar participation is free.

There will be an organized visit to Srebrenica on Saturday 10 October 2009, the day after the seminar, departing from Hotel Europe at 09:00, returning to Sarajevo mid-afternoon that day. If you are interested in participating in the tour, please send an e-mail message to [ficjc@prio.no](mailto:ficjc@prio.no) prior to 25 September 2009.

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<sup>5</sup> The document appears as Annex 2 in ‘The Backlog of Core International Crimes Case Files in Bosnia and Herzegovina’, *op. cit.*

## Abbreviated criminal procedures for core international crimes cases<sup>6</sup>

Sarajevo, Hotel Europe, Vladislava Skarića 5, Friday 9 October 2009.

*Interpretation provided.*

### Programme:<sup>7</sup>

09:00 Opening of the seminar:

- **Welcome** by Ambassador Dr. Jan Braathu<sup>8</sup> (Ambassador of Norway to Bosnia and Herzegovina).
- **Introductory remarks** by High Representative Valentin Inzko<sup>9</sup> (High Representative and European Union Special Representative to Bosnia and Herzegovina).
- **The challenge of the current backlog of war crimes cases in Bosnia and Herzegovina**, by Milorad Novković<sup>10</sup> (President, High Judicial and Prosecutorial Council of Bosnia and Herzegovina).

09:30 Morten Bergsmo<sup>11</sup> (Senior Researcher, PRIO): ***The relevancy and importance of the seminar theme.***

<sup>6</sup> For the purposes of this seminar, the term 'core international crimes' refers to genocide, crimes against humanity and war crimes.

<sup>7</sup> The programme may change. The latest version will be posted at <http://www.prio.no/FICJC/Forum-activities/>.

<sup>8</sup> **Jan Braathu** is Ambassador of Norway to Bosnia and Herzegovina since 28 August 2006. He holds a Ph.D. in political science from the University of Oslo. Between 1978 and 1984, he worked at the Norwegian Institute of International Affairs; 1985-1990, Executive Officer, International Energy Policy Division, Norwegian MFA; 1990-1993, Norwegian Embassy in Kuwait; 1993-96, Acting Counsellor for Economic Affairs, Norwegian Embassy in London; and during 1996-2006, he served in different capacities on Balkan Affairs in the Norwegian MFA.

<sup>9</sup> **Valentin Inzko** is currently serving as the High Representative for Bosnia and Herzegovina, a role which he assumed on 26 March 2009. In 1967, he enrolled at the University of Graz, where he studied law and Slavic philology. Between 1972 and 1974, he attended the Diplomatic Academy in Vienna, entering Austrian diplomatic service in 1974. During his diplomatic career, he has served in Belgrade, New York and Prague, as well as being Austrian Ambassador to Bosnia and Herzegovina and Slovenia. He also served as Head of the Department for the Middle-East, Southern Europe, Central-Asia and Southern Caucasus in the Austrian Ministry of Foreign Affairs between 1999 and 2005.

<sup>10</sup> **Milorad Novković** was born on 16 February 1950 in Srbac, Bosnia and Herzegovina. He graduated from the Law School in Sarajevo in 1975, passing the bar exam there in 1977. That year he was appointed Municipal Court Judge in Tuzla; in 1983, a District Court Judge in Tuzla; in 1990, President of the District Court in Tuzla. From 1994 to 2001, he lived and worked in Belgrade as a lawyer. In 2001, he was appointed an Appellate Court Judge in Brčko District of Bosnia and Herzegovina. From 2004, he was President of Banja Luka District Court. He was elected a member of the HJPC by the judges of district and basic courts in *Republika Srpska* in 2006.

<sup>11</sup> **Morten Bergsmo**, Senior Researcher, International Peace Research Institute, Oslo (PRIO) (2006-); formerly Senior Legal Adviser and Chief of the Legal Advisory Section, Office of the Prosecutor, ICC (2002-05); Legal Adviser, ICTY (1994-2002); Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to UNSC resolution 780 (1992) (1993-94); represented the ICTY to the UN negotiation process to establish the ICC (1996-2002). He has advised on core international crimes investigation and prosecution processes in several countries, including Bosnia and Herzegovina, Cambodia, Canada, Denmark, Indonesia, Macedonia, the Netherlands and Serbia, and has had several international consultancies in international criminal justice. He has published extensively in international criminal law.

09:45 **Panel 1:** *The need for abbreviated criminal procedures for core international crimes, in particular in territorial States directly affected by crimes:*

- Ilia Utmelidze<sup>12</sup> (Legal Adviser, Norwegian Centre for Human Rights, formerly Legal Adviser, Human Rights Department, OSCE Mission to Bosnia and Herzegovina): *The statistical or capacity argument for abbreviated criminal procedures*; and
- Mark A. Drumbl<sup>13</sup> (Professor, Washington and Lee University): *The two illusions of all-embracing criminal justice and exclusively extra-judicial responses to mass-atrocity*.

10:30 Break

11:00 **Panel 2:** *Some existing abbreviated criminal procedures:*

- Kai Ambos<sup>14</sup> (Professor, Georg-August-Universität Göttingen): *Existing abbreviated procedures in ordinary criminal procedure: a structural approach with a view to the prosecution of international crimes*;
- Philip Clark<sup>15</sup> (Research Fellow, University of Oxford): *The Gacaca courts and abbreviated criminal procedure for genocide crimes in Rwanda*; and

<sup>12</sup> **Ilia Utmelidze**, Legal Adviser, Norwegian Centre for Human Rights; formerly Legal Adviser in the Human Rights Department of the OSCE Mission to Bosnia and Herzegovina, advising on institution-building in areas such as domestic war crimes prosecution mechanisms (including the development of a national strategy for war crimes prosecution), specialised investigative commissions for Srebrenica and Sarajevo, establishment of a single state-level ombudsman institution (2004-2008); Norwegian Refugee Council, Azerbaijan: capacity building of local NGOs in the field of human rights protection and advocacy; consultant on development of human rights education and peace programs within the educational system of Azerbaijan (2001-04); Norwegian Centre for Human Rights: minority policy and law research project (2000-01).

<sup>13</sup> **Mark A. Drumbl** is the Class of 1975 Alumni Chair Professor at Washington & Lee University, School of Law, where he also serves as Director of the Transnational Law Institute. He has held visiting appointments on several law faculties, including Oxford University, Université de Paris II (Panthéon-Assas), University of Ottawa, University of Western Ontario, and Trinity College-Dublin. His research and teaching interests include public international law, international criminal law, and transitional justice. His book, *Atrocity, Punishment, and International Law* (Cambridge University Press, 2007) has been widely reviewed and has won awards from the International Association of Criminal Law (U.S. national section) and the American Society of International Law. Drumbl has taught in various jurisdictions, including Uganda, Pakistan, Italy, Brazil, Argentina, and Finland; has worked in criminal defence in Rwanda; has served as an expert in U.S. courts; and his scholarship also has been cited by courts in Canada and the United Kingdom.

<sup>14</sup> **Kai Ambos** has been Chair of Criminal Law, Criminal Procedure, Comparative Law and International Criminal Law at the Georg-August-Universität Göttingen since May 2003 and Dean of Student Affairs since summer 2008. He is also Member of the Office of Examination (Justizprüfungsamt) of the Ministry of Justice of Lower Saxony and freelance consultant on the issues of international criminal law, transitional justice and judicial reform in Latin America to the Deutsche Gesellschaft für technische Zusammenarbeit (GTZ-German agency for technical cooperation), the Konrad Adenauer Foundation and other organisations. From 1991 to 2003, he was senior research fellow at the Max-Planck-Institute for Foreign and International Criminal Law (Freiburg im Breisgau, Germany) in charge of the International Criminal Law and Spanish-speaking Latin America Sections. On behalf of Germany, he has participated in the negotiations on the creation of the International Criminal Court and later became a member of the expert working group of the German Federal Ministry of Justice on implementing the Rome Statute. He has also worked extensively in Latin America on human rights, drug-related issues and criminal law reforms. He has written widely on international criminal law and procedure in German, English, Spanish and Portuguese. He is a member of editorial boards of several international criminal journals in Europe and Latin America. His educational background includes: study of law and political science at the Universities of Freiburg (Germany), Oxford (United Kingdom) and Munich (Germany); 1st and 2nd state exams; and "Habilitation" (post-doctoral qualification for a professorship) in criminal law, criminal procedure, criminology, comparative law and public international law at the Ludwig Maximilian University Munich (Germany).

<sup>15</sup> **Philip Clark** is a Research Fellow in Courts and Public Policy at the Centre for Socio-Legal Studies, University of Oxford, and co-convenor of the Oxford Transitional Justice Research Group. An Australian by nationality but born in Sudan, Dr. Clark is a political scientist specializing in conflict and post-conflict issues in Africa, particularly questions of

- Maria Paula Saffon<sup>16</sup> (Faculty Fellow, Columbia University): *Limitations and potentialities of the Colombian Peace and Justice Law as an abbreviated criminal procedure for core international crimes.*

12:00 Lunch

13:30 **Panel 3: Key elements of possible abbreviated criminal procedures for core international crimes**, by

- Gilbert Bitti<sup>17</sup> (Senior Legal Adviser, ICC Chambers);
- Marieke Wierda<sup>18</sup> (Director, Prosecutions Program, ICTJ);
- Judge Hanne Sophie Greve<sup>19</sup> (Judge, Gulating Court of Appeals, formerly Judge, European Court of Human Rights).

15:00 Break

15:15 Richard Dicker<sup>20</sup> (Director, International Justice Program, Human Rights Watch): *Abbreviated criminal procedures and the international criminal justice agenda.*

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peace, truth, justice and reconciliation. He has a DPhil in Politics from Balliol College, University of Oxford, where he studied as a Rhodes Scholar. He was previously an RCUK Post-Doctoral Fellow at the Transitional Justice Institute, University of Ulster. Dr. Clark's current work focuses on international, national and community-based responses to mass violence in Rwanda, Uganda, Burundi, the Democratic Republic of Congo (DRC) and Sudan.

<sup>16</sup> **Maria Paula Saffon**, Faculty Fellow in the Department of Political Science at Columbia University, she holds a bachelor (Magna Cum Laude) in law and an LL.M. degree of Universidad de Los Andes (Bogota, Colombia). She is an associate researcher of the Colombian Center for the Study of Law, Justice and Society (DeJuSticia). For several years, she was a law lecturer at Universidad de Los Andes and Universidad Nacional de Colombia. She does research on transitional justice, the rights of victims of atrocities, internal forced displacement, and international human rights, among others. She has published several articles on the subjects, as well as a co-authored book titled *Transitional Justice without transition? Truth, Justice and Reparations for Colombia*.

<sup>17</sup> **Gilbert Bitti**, Senior Legal Adviser to the Pre-Trial Division, ICC (2005-); Chair, *ICC Legal Tools Advisory Committee* (2005-); Member of the French Delegation during the ICC negotiations in the Ad Hoc Committee (1995), Preparatory Committee (1996-1998), Rome Conference (1998) and Preparatory Commission (1999-2002); Counsel of the French Government before the European Court of Human Rights (1993-2002); former Professor assistant at the Faculty of Law in Paris.

<sup>18</sup> **Marieke Wierda** is Director of the Prosecutions Program of the International Centre for Transitional Justice. A Dutch national born and raised in the Republic of Yemen, Marieke Wierda earned an LLB at the University of Edinburgh in Scotland and an LLM at New York University, specializing in international law and human rights. She has worked with the United Nations, including as an associate legal officer for the International Criminal Tribunal for the former Yugoslavia (ICTY) from 1997 to 2000. Prior to this, Ms. Wierda volunteered with the Office of the Legal Counsel at the UN in New York, the UN High Commissioner for Refugees in London, and Interights in London. She is a member of the New York Bar and has taught international criminal law at the University of Richmond. She has a number of publications, including a book on international criminal evidence, co-authored with Judge Richard May of the ICTY.

<sup>19</sup> **Hanne Sophie Greve** is Vice President of the Gulating High Court, Norway; and President of the Council of Europe Group of Experts on Action against Trafficking in Human Beings. She has previously served *inter alia* as an Expert in the UN Commission of Experts for the Former Yugoslavia established pursuant to UNSC resolution 780 (1992), (1993-94); and Judge at the European Court of Human Rights (1998-2004). In the United Nations she has moreover, held office as a UNHCR assistant protection officer (1979-1981, duty station Bangkok) and as a mediator for the UN Transitional Authority in Cambodia (1992-beginning of 1993, duty station Phnom Penh). She has had several consultancies in and lectured extensively on international law (human rights, refugee law and criminal justice).

<sup>20</sup> **Richard Dicker**, Director of Human Rights Watch's International Justice Program since the program's beginning in 2001; graduate of New York University Law School, LLM from Columbia University. He then spent two years practicing civil rights law in New York. For the past sixteen years, he has worked for HRW, where he first focused on accountability issues in southern Africa and arbitrary detention in China. In 1994-95, Mr. Dicker led HRW's efforts to bring a case before the International Court of Justice charging the government of Iraq with genocide against the Kurds. Starting in 1995, he directed HRW's multi-year campaign to establish the ICC. He represented HRW in the ICC negotiations. He

15:45 **Panel 4:** *Tentative remarks on abbreviated criminal procedure for core international crimes in Bosnia and Herzegovina* by

- Gorana Žagovec<sup>21</sup> (University of Oslo);
- Meddžida Kreso<sup>22</sup> (President, Court of Bosnia and Herzegovina); and
- Judge Hanne Sophie Greve.

17:00 *Conclusion* by Ambassador Jan Braathu.

*Saturday 10 October 2009*

09:00 Departure by bus from Hotel Europe, Sarajevo, for visit to Srebrenica.

15:00 Estimated return to Sarajevo.

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has led advocacy efforts urging the creation of effective domestic accountability mechanisms in the DRC and the former Yugoslavia. He has made several visits to those states to meet with officials and NGOs. Richard Dicker's views appear frequently in the press on international justice issues.

<sup>21</sup> **Gorana Žagovec** holds a bachelor in law from the University of Sarajevo Law Faculty and an LL.M. degree in Public International Law from University of Oslo. She wrote her master thesis on abbreviated criminal procedures for core international crimes. She worked as a Research Assistant at the ICC Legal Tools Programme of the Norwegian Centre for Human Rights (2008-09). Previously she worked as a Rule of Law Monitor at the OSCE Mission to Bosnia and Herzegovina (2007-08). She did her practice in the Legal Department of the Court of Bosnia and Herzegovina, supporting the War Crimes Chambers.

<sup>22</sup> **Meddžida Kreso** graduated from the Law Faculty of the University of Sarajevo in 1970. Having passed the bar exam in 1973, she was appointed Municipal Prosecutor in Mostar where she worked until 1978 when she was appointed District Court Judge there. She served as President of the Labour Court in Mostar from 1989 to 1992. From 1996 to 1998 she worked as an attorney, and from 1998 to 2001 in the legal department of a bank. In 2001 she was appointed as the Deputy Prosecutor of the Federation of Bosnia and Herzegovina and served until the end of 2002. When the Prosecutor's Office of Bosnia and Herzegovina was established in 2003, she was appointed Deputy Chief Prosecutor of Bosnia and Herzegovina in January 2003. On 10 October 2004, Judge Kreso was appointed Judge and President of the Court of Bosnia and Herzegovina.