



# Old Evidence and Core International Crimes

An international expert seminar organized by the  
Forum for International Criminal and Humanitarian Law  
in co-operation with the UC Berkeley War Crimes Studies Center  
and Amir & Amir Law Offices,

*on 11 September 2011 09:30-17:30, Dhaka, Bangladesh.*

International criminal law does not recognize statutes of limitation for war crimes, crimes against humanity and genocide. Prosecution services should not – according to international law – lose their authority to prosecute these crimes even if several decades have passed. For this reason and as part of an international trend of increased use of accountability for such crimes, some serious violations that occurred during World War II, in Indonesia in the 1960s, in Bangladesh and Cambodia in the 1970s, and in Iraq in the 1980s are currently being investigated and occasionally prosecuted. The suspects are old and frequently frail. Victims and their family members are old. Although there are open wounds that undermine deeper reconciliation in societies affected by the crimes, the younger generations may have limited knowledge of the victimization caused by them. Political support for trials may even be unstable in several countries or at different times.

None of these challenges in criminal cases for core international crimes that occurred decades ago are the topic of this seminar. Rather, the focus here is on more technical questions caused by the existence and use of old evidence in core international crimes cases. Witnesses are old. Their memory may be affected. They may have told their story many times, including in the form of interviews that may have been made public. They may have spoken extensively with other victims or potential witnesses. Documents and other physical evidence may have passed through many hands. The chain of custody may not be clear. Archives may have been broken up, destroyed or become illegible. Mass-graves and crime scenes may have been interfered with. Experts and other persons with particular knowledge of the context in which the crimes were committed may have died. Potential witnesses may have moved on to such an extent in their lives that they do not wish to reopen a traumatic past by co-operating with criminal justice.

These are among the concrete issues that this expert seminar will deal with, drawing on the expertise of speakers who have worked on old-crime cases in Cambodia, Indonesia and linked to World War II. The FICHL is pleased to place the issue of old evidence and core international crimes on the agenda for further discussion and research by conceiving and convening this seminar.

## **Registration:**

Seminar attendance is free, but there is only a limited number of seats available for non-speakers. To register, please send an e-mail message to [info@fichl.org](mailto:info@fichl.org) by 1 September 2011, indicating your wish to register as a seminar participant, your name and e-mail address. Confirmation e-mail responses will be sent. Foreign non-speakers must make their own travel and accommodation arrangements.

## Programme:<sup>1</sup>

09:30 M. Amir-Ul Islam<sup>2</sup> (Senior Advocate, Bangladesh Supreme Court; Senior Partner, Amir & Amir Law Associates):  
*Welcome and Introduction to the Seminar.*

H.E. Shafique Ahmed<sup>3</sup> (Minister of Law, Justice and Parliamentary Affairs):  
*The Seminar Topic and its Importance.*

Morten Bergsmo<sup>4</sup> (Georgetown University, University of Oslo and Stanford University):  
*Placing Old Evidence and Core International Crimes on the Agenda of the International Discourse on Criminal Justice for Atrocities.*

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<sup>1</sup> The final and updated versions of the programme will be available at [www.fichl.org/activities](http://www.fichl.org/activities).

<sup>2</sup> **M. Amir-Ul Islam** is Senior Advocate, Bangladesh Supreme Court, and Senior Partner in the leading Bangladesh firm Amir & Amir Law Associates. He was in the Chambers of Mr. John Platts-Mills Q.C. (1961-1963). He founded, organized and designed the Continuing Legal Education Program (CLEP) for lawyers in 1994. He is Vice Chairman of the Bangladesh Bar Council; Chairman of the Legal Education Committee of LawAsia; and Chairman of the Legal Education and Training Institute (LETI), Bangladesh Bar Council, and Honorary Chairman of the Faculty. He is Visiting Member, Faculty of National Law School University of India (1995); Law and Development, Tufts University (1977). He was Special Envoy (1972-1973) and Law Officer (1977-1979), United Nations, New York, UNCITRAL. He was Member of the drafting committee of the Bangladesh Constitution (1972). He served as Minister of Food (1973-1974). He is Founder and Honorary Secretary General of the Bangladesh Institute of Law and International Affairs (BILIA) (1972-); President of the Asia Pacific Organization on Mediation; President of the South Asian Association for Right to Development; Country Chairman of the Union International Des Advocates; President of the SAARCLAW; Vice Chairman of the ILA Bangladesh and the IFA Bangladesh; and Country Correspondent and Contributor for Lloyd's International Ship Arrest, and Euromoney's Laws on International Banking and Security.

<sup>3</sup> H.E. **Shafique Ahmed** was appointed Minister of Law, Justice and Parliamentary Affairs of Bangladesh on 6 January 2009. He passed Matriculation in 1953 from Comilla Govt. Zilla School in first division, Intermediate in 1955 from Dhaka College in first division. He obtained his honors and Master's degree in Geography from Dhaka University in 1958 and 1959 respectively. He secured first position in second class in both BA (Hon's) and MA examinations. He passed LLB from Dhaka University in 1963 and LLM from King's College, London in 1967. He received his Barrister-at-Law degree from Lincoln's Inn, London in 1967. Barrister Shafique Ahmed was enrolled as an advocate in the High Court in 1967. He was elected President of Bangladesh Supreme Court Bar Association for 1999-2000 and 2008-2009. He was Chairman of Executive Committee of Bangladesh Bar Council and Vice Chairman of Bangladesh Bar Council. He was part time Lecturer of Law Department of Dhaka University from 1969 to 1973. He was Principal of Dhaka City Law College from 1973 to 2005, Syndicate Member of Dhaka University from 1989 to 1991. He was President of Democratic Lawyers Association of Bangladesh affiliated to International Association of Democratic Lawyers and an NGO named Dhustha Shasthya Kendra. He was Secretary General of Law Teachers Association of Bangladesh.

<sup>4</sup> **Morten Bergsmo** is Visiting Professor, Georgetown University; Visiting Fellow, Stanford University; Senior Researcher, University of Oslo; and ICC Consultant and Co-ordinator of the ICC Legal Tools Project. He has been Fernand Braudel Senior Fellow, EUI (Spring 2011); Visiting Scholar, UC Berkeley (2010 Spring); Senior Researcher, PRIO (2006-09); Special Adviser to the Office of the Director of Public Prosecution of Norway (2007-08); Senior Legal Adviser and Chief of the Legal Advisory Section, ICC Office of the Prosecutor (2002-05); Co-ordinator of the establishment of the ICC Office of the Prosecutor (2002-03); Legal Adviser, ICTY (1994-2002); and Legal Adviser, UN Commission of Experts for the Former Yugoslavia established pursuant to Security Council resolution 780(1992) (1993-94). He represented the ICTY to the UN negotiation process to establish the ICC (1996-2002). Since 2005, he has worked extensively with national capacity building, knowledge-transfer and legal empowerment in the area of core international crimes. He founded and directs the capacity building platform *Case Matrix Network* ([www.casematrixnetwork.org](http://www.casematrixnetwork.org)) and the *Forum for International Criminal and Humanitarian Law* ([www.fichl.org](http://www.fichl.org)).

- 10:30 David Cohen<sup>5</sup> (UC Berkeley and Stanford University):  
*Remarks on Some War Crimes Trials in which Old Evidence was Used.*
- 11:00 Tea
- 11:15 Md. Shahinur Islam<sup>6</sup> (Registrar, International Crimes Tribunal – Bangladesh):  
*The International Crimes Tribunal – Bangladesh, Act No. XIX of 20 July 1973, and the Applicable Rules of Evidence.*
- 11:45 Alphons M.M. Orié<sup>7</sup> (Judge, International Criminal Tribunal for the Former Yugoslavia):  
*Adjudicating Core International Crimes Cases in which Old Evidence is Introduced.*
- 12:30 Lunch
- 13:30 Andrew Cayley<sup>8</sup> (International Co-Prosecutor, Extraordinary Chambers in the Courts of Cambodia):  
*Prosecuting and Defending in Core International Crimes Cases using Old Evidence.*

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<sup>5</sup> **David Cohen** has taught at the University of California, Berkeley since 1979. At UC Berkeley he is the Ancker Distinguished Professor for the Humanities and the founding Director of the Berkeley War Crimes Studies Center. Since 2000, he has collaborated on human rights projects in Asia with the East-West Center in Honolulu, a federally funded Asia-Pacific research center. There he serves as Director of the Asian International Justice Initiative and as Senior Fellow in International Law. He is also a Fellow at the Hoover Institution at Stanford University since 2009.

<sup>6</sup> **Md. Shahinur Islam** is a senior member of the Bangladesh Judicial Service which he joined in 1983. He has served as District and Sessions Judge the last eleven years. He has served as Judge of the Administrative Tribunal, Dhaka. Since April 2010, he has been the Registrar of the International Crimes Tribunal, Bangladesh (ICT-BD). He also served as a Director (on deputation) in the Office of the Prime Minister (2000-01), dealing with anti-corruption matters. He is the first vice-president (for 2011) of Bangladesh Judicial Service Association. He is also an adjunct faculty of the department of law, Stamford University Bangladesh. He has published in Bangladesh law journals. He is a Fellow of the National Defence College (NDC), Dhaka. He has participated and lectures in various workshops, seminars and training sessions at home and abroad on legal issues, including violence against women, alternative dispute resolution (ADR), legal aid, case management and court administration, environmental law and human rights. He has attended training courses at the Bangladesh Institute of Law and International Affairs (BILIA), the Judicial Administration Training Institute (JATI), the Bangladesh Public Administration Training Centre (BPATC), and the Bangladesh Environmental Lawyers Association (BELA).

<sup>7</sup> **Alphons M.M. Orié** (born 23 November 1947 in Groningen, Netherlands) is a Dutch former lawyer specialising in criminal law and is now one of the thirty-two judges at the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Orié spent seventeen years until 1997 on the bar, and then four years as a criminal chamber judge, of the Supreme Court of the Netherlands. On 17 November 2001, he was elected to the ICTY. In 2006, Orié's Trial Chamber sentenced Momčilo Krajišnik, former assistant of Radovan Karadžić, to 27 years imprisonment for committing crimes against humanity during the Bosnian War. Judge Orié is currently presiding over the trial of Ratko Mladić.

<sup>8</sup> **Andrew Cayley** is the International Co-Prosecutor of the Khmer Rouge Tribunal in Cambodia having been nominated by the Secretary General of the United Nations on 18 August 2009 and appointed by the King of Cambodia, His Majesty King Norodom Sihamoni, to that position on 27 November 2009. Prior to this he was a Senior Trial Attorney at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Court in The Hague between 2001 and 2007. At the ICC he was responsible for the investigation and prosecution of serious violations of international humanitarian law in the Darfur region of Sudan. Andrew Cayley was born in the United Kingdom in 1964. He was educated at Brighton College and then University College London (LL.M 1986) and the College of Law Guildford (Law Society's Solicitors Final Examination 1988). He was admitted as a Solicitor of the Supreme Court of the Judicature of England and Wales in 1989. In 2007 he was called by the Inner Temple to the Bar of England and Wales. After a period in private practice, as a solicitor, until 1991 with the law firm Thomas Eggar, he served with the British Army as an infantry platoon commander in Belize (on attachment to the Kings Own Royal Border Regiment) and as a military prosecutor and command legal adviser in Germany and the United Kingdom. He attended the Royal Military Academy Sandhurst.

- 14:15 Sri Yana<sup>9</sup> (Indonesian National Commission on Human Rights):  
*Investigating Core International Crimes in Indonesia using Old Evidence.*
- 15:00 Agnieszka Klonowiecka-Milart<sup>10</sup> (Judge, Supreme Court, Extraordinary Chambers in the Courts of Cambodia):  
*Old Evidence in Core International Crimes Cases in Kosovo.*
- 15:35 Tea
- 15:50 Patrick Treanor<sup>11</sup> (CMN Senior Adviser; formerly Senior Research Officer and Team Leader, Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia):  
*Old Documents and Archives in Core International Crimes Cases.*
- 16:30 Seena Fazel<sup>12</sup> (University of Oxford):  
*Memory and Trauma in Witnesses.*
- 17:10 *Concluding Remarks* by Judge Alphons Orié and M. Amir-UI Islam.

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<sup>9</sup> **Sri Yana** is a senior lawyer in the Indonesian National Commission on Human Rights (Komnas HAM) where he serves as Head of Division of Monitoring and Investigation. He has worked for Komnas HAM since 1993 and has been involved in eight of its *pro justitia* investigations. He holds a law degree from the University of Jakarta, an LL.M. from the University of Hong Kong, and a Diploma in Forensic Medicine from the University of Groningen.

<sup>10</sup> **Agnieszka Klonowiecka-Milart** (Poland) currently serves as an international judge on the Supreme Court Chamber of the Extraordinary Chambers of the Courts of Cambodia (ECCC), a hybrid tribunal for international crimes committed during the period of the Khmer Rouge, 1975-1979. Prior to her appointment to the ECCC she was UN international judge on the Supreme Court of Kosovo, adjudicating among other, charges of genocide and war crimes arising from the conflict 1998-1999 in the former Yugoslavia. Judge Klonowiecka-Milart started her legal career as an Assistant Professor at the Law Faculty of the university in Lublin, Poland. She entered judiciary in 1991 and since was several times seconded to the Ministry of Justice to work on harmonization of Polish laws with international standards. Since 1998, she has been active on the arena of transitional justice, including UN judicial and legal reform programmes in Bosnia and Afghanistan.

<sup>11</sup> **Patrick Treanor** is CMN Senior Adviser. He retired in 2009 as Senior Research Office and Team Leader, Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (1994-2009). He led the analysis team of that Office with more than 30 staff. Prior to that, he was, *inter alia*, Historian and (after January 1989) Senior Historian, Office of Special Investigations, U.S. Department of Justice (1980-1994); Intelligence Analyst, Federal Research Division, Library of Congress (1977-1980). He holds an A.B. with Honors in Russian from College of the Holy Cross, Worcester, MA, USA; M.A. in Russian and East European Studies, Yale University Graduate School; and a Ph.D. in Bulgarian History, School of Slavonic and East European Studies, University of London. He knows eight languages. He has served as an expert witness in several cases before the Yugoslavia Tribunal, most recently in the Karadžić case.

<sup>12</sup> **Seena Fazel** is Clinical Senior Lecturer in Forensic Psychiatry at the University of Oxford. He is an international authority on the mental health of prisoners, their suicide risk, and the relationship between severe mental illness and violence. He studied medicine at the University of Edinburgh, before training in psychiatry at Oxford. He is currently assistant editor of the *Journal of Forensic Psychiatry and Psychology*.