

# Report from the Conference

## “Lubanga: Lessons Learned”

Creation of international and mixed tribunals lean towards the punishment of perpetrators of most horrific crimes, but also towards the prevention of such crimes and reconciliation of society, where they have been committed, thus also improving the safety of this area and of international society in general.

The International Criminal Court Student Network organised a conference on Thomas Lubanga Dyllo, in The Hague, the Netherlands, on 8<sup>th</sup> and 9<sup>th</sup> March 2012. Lubanga is the first accused before the permanent International Criminal Court (ICC), against whom the Trial Chamber has already delivered a guilty judgment. Conference was organised on the eve of the promulgation of the judgment (14<sup>th</sup> March 2012) and was attended by participants from around the world. It was divided into several thematic sections and included also eminent key-note speakers from the field of international criminal law (for example, a representative of the Coalition for International Criminal Court, the largest non-governmental organization in this field, the representatives of the Victim’s Fund and the Office of the Prosecutor, American Ambassador for Global Justice, etc.).

After the welcoming speeches, the conference was opened by Laura McKoy from Melbourne presenting her paper on the complementarity of the ICC. The ICC has jurisdiction only when a state is unwilling or unable to effectively lead criminal proceedings, but the Rome Statute itself does not specify when a state is unable or unwilling and there has not been any case law of ICC on this subject yet. The author is proposing the application of the criteria of the European Court of Human Rights, which requires effective, independent and impartial investigations in the cases of potential violations of human rights.

Tarek Bilani from Lebanon summed up experiences and lessons for ICC personnel and other participants, which resulted from the criminal proceedings against Lubanga. This has been to date the first completed process, so it has opened many unanswered legal and non-legal questions. It created case law, which will be helpful in new procedures. The author considers it would wise in the following procedures to establish a unit for victim assistance quicker, since the subsequent establishment in Lubanga case contributed to lengthening the proceedings. The next lesson was that the controversial participation of victims in criminal proceedings, especially in regards to the presumption of innocence and to the work of the Office of the Prosecutor. The next important lesson was the ICC’s connection to local areas. The ICC was constantly informing the public of the progress of the proceedings (outreach activities); otherwise the ICC would seem to be the sole actor, which in no way affects the daily lives of the local population, including the victims of these crimes.

The next section focused on the victims. According to Erice Maylee from Central Michigan University, restorative justice could be an additional argument for the active participation of victims in criminal proceedings, which is allowed

by the Rome Statute. Representatives of the victims have already had positive influences on the operation of the proceedings. Sometimes they get more precise answers from the victims as the Prosecutor. They were also very active in trying to add additional indictments against Lubanga for sexual violence. The Trial Chamber can alter the legal qualification of the crimes on the basis of the facts in the indictment, but this should not widen the scope of the facts. Representatives of the victims were trying to achieve such a change, but were denied by the Appeals Chamber, because it would introduce new facts.

Francesca Maria Benvenuto (Seconda Università degli studi di Napoli/ Université Paris 1 Panthéon Sorbonne) raised the question whether victims have a right to a trial. She concluded that a victim may not demand or achieve the introduction of the procedure and also cannot oppose the decision of the Prosecutor to or not to initiate the proceedings. According to the author, the victim therefore does not have the right to process, only a right of access to the justice.

Michael Liu from Remnin University (China) defined the victim, who has the right to participate in proceedings before the ICC. This might only be a natural person who was damaged by the crime in the jurisdiction of the ICC, if there is a causal link between the crime and the damage. The Appeals Chamber has decided that this applies only for those crimes, which are actually dealt with in the proceedings.

Interesting were also the key-note note speakers Vedrana Mladina from the Office of the Prosecutor, who cooperates with investigators as a psychologist and assists them in questioning the victims, and Kristina Kalla, the head of the Victim's Fund. This fund is a novelty in the context of the ICC and allows for the reparation of victims of specific crimes for which the accused is convicted, and of all the other victims of crimes in certain situations (for example, in the Congo). The latter form of reparation is quite broad. The Fund currently has in Uganda and Congo 34 different projects which involve emotional and physical rehabilitation, as well as material assistance. Lubanga's Trial Chamber, however, still has to decide, how, and to whom, and in what manner the damages would be paid to victims of specific crimes, for which he was convicted.

These have only been some of the more interesting papers from the conference. The date of the conference could not have been better conceived; five days after the completion of the conference, the ICC's Trial Chamber No. 1 pronounced the guilty verdict against Lubanga for being a co-perpetrator in war crimes related to the recruitment and use of children under 15 years of age in non-international armed conflict. It also turned out that the Conference participants saw the majority of the concerns, problems and issues which were later emphasised by the Trial Chamber in its judgment. The conference and the promulgation of judgment also revealed that the proceedings against Lubanga, in spite of the *ad hoc* tribunals' rich experience, had paved the path for a new criminal proceeding before a new international forum, where its participants had faced new (legal) issues and thereby had formed many experience for the management of the new procedures before the ICC.

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