

IBA holds Expert Roundtable and launches report exploring release at different stages of proceedings

Monday 21 October 2019



The **International Bar Association** (IBA) brought together more than 200 experts in international criminal justice to discuss the long-term issues prevalent in international justice at an event at the Peace Palace in The Hague. In particular, the Expert Roundtable examined the role of states and courts in creating a cooperation-based regime that allows for the execution of judicial orders, as well as upholding the statutory and human rights of individuals charged before an international criminal court or tribunal. During proceedings, the **International Bar Association's International Criminal Court and International Criminal Law Programme** (IBA ICC & ICL) launched its latest discussion paper, titled ***Provisional release, release at advanced stages of proceedings, and final release at international criminal courts and tribunals***.

IBA President Horacio Bernardes Neto, commenting on the importance of the discussions, said: *'At a time when human rights are narrowing, the IBA remains dedicated to supporting multilateral efforts for accountability. Since the founding of the IBA in 1947, our organisation has been dedicated to strengthening the protection of the rule of law worldwide, and as such, the IBA's presence in The Hague has allowed us to support international courts and monitor their compliance with the highest standards of fairness and due process. Support and cooperation for the ICC and other international courts and tribunals is now more vital than ever.'*



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The two-panel event, ***Seeing Justice Through: long-term issues in international justice***, took place today, Monday 21 October 2019, and was organised by the IBA ICC & ICL Programme with the support of the **IBA War Crimes Committee**. The gathered experts represented 40 jurisdictions and include judges, lawyers, diplomats, academics and members of civil society. They addressed questions including:

- What legal regimes govern the situations of individuals released or acquitted?
- Are the legal frameworks adequate and consistent with international standards of fairness?
- What common challenges are faced by international courts and states in achieving a functional level of cooperation with respect to post-trial issues?
- What lessons can be learned based on past and current experiences? and
- How can cooperation be strengthened?

The first panel discussed 'International Criminal Law and Human Rights Perspectives'. Current legal frameworks are consistent with internationally recognised fair trial rights and fundamental human rights including the right to liberty, the right to presumption of innocence and the right to be tried without undue delay. However, bringing individuals before international criminal courts has long-term implications. High-profile trials often receive negative propaganda, with the people involved becoming 'international pariahs' regardless of whether they are subsequently convicted. For example, nine people who were acquitted, or completed their sentences, from the **International Criminal Tribunal for Rwanda (ICTR)** remain in a Tanzanian safe house as they are no longer guaranteed legal representation at the cost of the Tribunal and have no official legal status. They have limited freedom of movement, no legal ability to work and no financial means to facilitate family contact.

The second panel, 'Facilitating Cooperation for the Long Term', focused on the legal frameworks of international criminal courts and tribunals that create state obligations to cooperate with these courts. Witness relocation, interim and final release of persons, and the enforcement of sentences require states temporarily or permanently to allow individuals to be imprisoned or released in the state. Currently, state cooperation is voluntary, not mandatory. As such, the number of cooperation agreements remains low. When international cooperation is insufficient, upholding the rights of persons tried at the ICC becomes problematic and there are logistical issues for the court and the host state.

Dr Mark Ellis, IBA Executive Director, commented: *'International criminal courts and tribunals are built on a foundation of state cooperation. Now that these courts have decades of cases behind them, states are being challenged to continue their cooperation, including when persons are provisionally released during proceedings, acquitted and released, or released after serving their sentences. We need to strengthen both legal frameworks and political will to ensure that individuals' rights can be upheld even after international trials have concluded.'*

Commenting on the launch of the Discussion Paper, *Provisional release, release at advanced stages of proceedings, and final release at international criminal courts and tribunals*, **Kate Orlovsky, Director of the IBA ICC & ICL Programme**, said: *'Drawing on legal decisions and consultations with experts, this Discussion Paper sets out the existing law and practice addressing release at different stages of proceedings. It asks important questions about the consistency of international courts' practices with human rights standards, and suggests ways to strengthen this area of the law.'*

The powers of international criminal courts and tribunals to hold individuals in custody, and to sentence or acquit them, raise a number of issues relating to fairness and the fundamental human rights of the individual. Moreover, such situations bring attention to the role of states. Low levels of state cooperation for provisional, conditional and final release can keep individuals *de facto* detained, contrary to their individual and statutory rights. This Discussion Paper seeks to encourage reflection on these important issues and provide considerations for the strengthening of current practice. This includes developing resources intended to support consistency in jurisprudence, such as practice direction and developing sound practice on issues such as compensation, asset management and recovery.

Following Mr Bernardes opening the event, introductory remarks were delivered by **HE Ambassador Paul van den IJssel**, Permanent Representative of the Netherlands to the Organisation for the Prohibition of Chemical Weapons and the International Criminal Court. **Judge Kimberly Prost** of the ICC gave a keynote address. Closing remarks were made by **Ambassador Stephen J Rapp**, the Sonia and Harry Blumenthal

Distinguished Fellow for the Prevention of Genocide at the United States Holocaust Memorial Museum's Simon-Skodt Center, and a Visiting Fellow of Practice at the Blavatnik School of Government of University of Oxford.

ENDS

Notes to the Editor

1. [Click here](#) to see the programme for 'Seeing Justice Through: long-term issues in international justice' presented by the IBA ICC & ICL Programme Experts' Roundtable on **Monday 21 October 2019** at the Peace Palace, The Hague.
www.ibanet.org/Conferences/Seeing-Justice-Through-long-term-issues-in-international-justice.aspx

2. [Click here](#) to download the Discussion Paper '*Provisional release, release at advanced stages of proceedings, and final release at international criminal courts and tribunals*'.

3. **About the IBA International Criminal Court and International Criminal Law (ICC & ICL) Programme**

The IBA commenced the **ICC & ICL Programme** in 2005. The Programme monitors issues related to fairness and equality of arms at the ICC and other Hague-based war crimes tribunals, and encourages the legal community to engage with the work of these courts. The IBA's work includes thematic legal analysis of proceedings, and ad hoc evaluations of legal, administrative and institutional issues which could potentially affect the rights of defendants, the impartiality of proceedings and the development of international justice.

The Programme also acts as the interface between the Courts and the global legal community. As such, special focus is placed on monitoring emerging issues of particular relevance to lawyers and collaborating with key partners on specific activities to increase engagement of the legal community on ICC and ICL issues.

Programme information is disseminated through regular reports, expert discussions, workshops and other events and expert legal analysis on issues relevant to our mandate.

Based in The Hague, the IBA ICC & ICL Programme consults and interacts with court officials, civil society organisations, academics and international lawyers.

4. The **International Bar Association (IBA)**, *the global voice of the legal profession*, is the foremost organisation for international legal practitioners, bar associations and law societies. Established in 1947, shortly after the creation of the **United Nations**, it was born out of the conviction that an organisation made up of the world's bar associations could contribute to global stability and peace through the administration of justice.

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