



Voices from the Rwanda Tribunal

Official Transcript: Erik Møse (Part 13 of 14)



Role:	Judge
Country of Origin:	Norway
Interview Date:	22 October 2008
Location:	Arusha, Tanzania
Interviewers:	Robert Utter Donald J Horowitz
Videographer:	Max Andrews
Interpreter:	None

Interview Summary

Erik Møse addresses the mission of the ICTR, his role and contributions as both judge and Vice President of the court. He speaks about the various lessons learned by the institution; the need to increase efficiency by adding trial judges and establishing a separate prosecutor dedicated to the ICTR and not shared with the ICTY, and amending the court rules of procedure and evidence. He discusses the relationship between common and civil law, and between judges and court interpreters. He speaks about the cases he has been involved in, and about the role of victims in the justice process.

The transcript of Part 13 begins on the following page.

Part 13

- 00:00 **Donald J Horowitz: Have, have any, have there been any defendants or defense counsel who have challenged the jurisdiction of the court over them, either by legal motion or by d-, some sort of demo-, court demonstration or turning his back to the court or whatever these sorts of things are? Has there been s-, any such?**
- 00:31 Yes, both at the ICTY and ICTR there have been several motions challenging the legal basis of the ad hoc tribunals and this catchword here is the Tadić case at the ICTY and we have had three, four cases here as well. The short story is that these challenges were unsuccessful.
- 01:01 And the point made in those motions was that how was it possible to establish an, a court under Chapter 7 Security Council, not a treaty. Th-, th-, there were many steps and I do not recall the details precisely now.
- 01:21 **DJH: Sure.**
- 01:22 But, so, the legal challenges have been there but of course following case law by the appeal chamber which is common to both ICTY and ICTR, this, the situation was clarified.
- 01:35 When it comes to challenges not of a legal nature but of a more psychological nature or more f-, disputing the legitimacy of the court, there have also been some examples. We have had not the same case as in ICTY where Milosevic made these extraordinary speeches and refused to be represented by counsel, et cetera. We have not had that.
- 02:07 But here we have had situations where one of the accused decided never to attend the courtroom and instructed his counsel not to represent him and then we had to assign a duty counsel for him in the interest of justice.
- 02:25 That was, by the way, also one of the changes we made to the rule of procedure and evidence at some stage. But we did it in view of our inherent competence to ensure the, the, the course of justice.
- 02:42 So the-, there have been such challenges. And, and, and h-, here my comment to that question which – it is, I don't think that is surprising. This is a new system and there is a need to pursue the avenues of legal disputes to, to clarify the legal situation so the judicial problem that's quite legitimate that these are aired and settled.
- 03:15 And when it comes to the other part I don't, namely what we will c-, could call the more political or l-, legitimacy oriented aspects, I don't find that so surprising either. We come at the national level from systems where the judiciary has been established for hundreds of years, where the courts in it-, in their present forms have been functioning of course with a

lot of modernization, but still i-, in roughly a s-, the same way for hundreds or decades, decades, 100, 200 years.

- 03:58 And, and people accept those courts. That's what is available. Whereas here you have an ad hoc tribunal established by a Security Council for only a few conflicts, not all. Now we have ICC which is a permanent and good idea in my view, but the whole establishment process is different.
- 04:20 And secondly I think there is a need for a court, course, a court to show that it is not only a court on paper but also a court in real life – that it behaves like a court, it acts like a court, it treats the actors in the courtroom the way a court does.
- 04:39 Now we have done that, but I think in the beginning, there will be teething problems for those who come from other systems and maybe would wish to test this system and, or in a less Machiavellian approach, simply are not used to it. I don't find this surprising at all.