

International Criminal Law at The Hague

Internship report by Jeremy Shelley



Jeremy Shelley

I found my experience interning with International Criminal Law Services (ICLS) very rewarding. Over the course of the internship, we had cause to meet a number of the 'ICLS Experts'. They are all very senior officers at the international criminal courts and tribunals, as well as senior academics and other experts. It was a privilege to talk with these people and have their input on our work at ICLS and to share their understanding of the law, but also the nature of the institutions which give effect to it.

During our time at ICLS, Giselle Diego (the other Castan Centre intern) and I did basic administration, maintained the website, and worked on three main projects. The first was the adaptation of international criminal law (ICL) training materials for legal practitioners in Kosovo. A series of training materials had already been developed for practitioners in Serbia, Bosnia and Herzegovina, and Croatia. Our task was the adaptation of these materials to the Kosovar context. While much of the material on ICL was substantially the same, the main work was in researching the interaction between international and municipal law in Kosovo. This necessitated an understanding of all the constitutional systems which have been in place in Kosovo during the relevant period. In contrast to Australia which has had a single constitution since federation with very few amendments, Kosovo's constitutional history is somewhat different. For the period in which we were interested, Kosovo was subject to Yugoslav,

Serbian, UN and now, its own constitutional arrangements. It was necessary to establish the role of all of these instruments in terms of importing international law into the domestic legal order, and determining the applicable criminal law. This process caused us to develop a significant understanding of Kosovar legal history and its implications for international criminal justice.

The second project to which we contributed at ICLS was a guide to ICL for business people. ICLS recognises the increasing support for effective ICL accountability mechanisms which address the involvement of businesses and business people in atrocity crimes. Given many armed conflicts are closely linked to natural resources, the involvement of business is of no surprise, but there has been limited exploration of possible accountability mechanisms. Our role was to do preliminary research to determine how the business community could best be informed as to potential liabilities and how they could best avoid them. My research focused on enterprise risk management (ERM) as a framework, familiar to business, which could be used to assess and avoid risks associated with ICL. This aspect of the guide could be framed as a tool to assist risk management specialists to implement reporting or internal control systems which are broader in scope than those dealing with financial risks only. On the other hand, characterising international criminal liability either of individual company members or of the enterprise as a whole, as a financial risk allows ICL awareness to be incorporated into traditional ERM structures. By assessing this kind of corporate behaviour in this way it is hoped that the guide will be a highly accessible tool for businesses and reduce the instance of business involvement in war crimes, crimes against humanity and genocide. This project largely took up the third month of the internship though we spent time on it during the first two months as well to break up work on the Kosovo project.

Finally, we spent a couple of weeks on a new ICLS project, gathering materials on trial monitoring practice and ethics. ICLS will be training NGOs in Croatia how to monitor war crimes trials. These organisations currently monitor the war crimes trials in Croatia and are seeking training in more advanced aspects of this endeavour. Our work in support of this project focused on assessing the current expertise of these organisations and developing preliminary materials to guide development of a training course to improve their existing capacities. This project commenced very late in our time in The Hague and we spent only the last couple of weeks working on it.

It can be seen that the work of ICLS is broad and fascinating. For me, the chance to contribute to capacity building in conflict affected states and especially to work so closely on the Kosovo training materials allowed me to understand the place of institutions like the ICC and the International Criminal Tribunal for the Former Yugoslavia (ICTY) in post-conflict and transitional justice processes. The ability of these institutions to publicly and internationally bring the perpetrators of the most serious crimes of concern to the international community to justice is crucial, but it is just one aspect of the exercise. The work of organisations like ICLS needs to be supported to ensure ICL has real meaning for directly affected communities.