THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Kate Mackintosh

International Center for Ethics, Justice and Public Life

Brandeis University

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Q1: This is an interview with Kate Mackintosh for the Ad Hoc Tribunals Oral History Project at Brandeis University's International Center for Ethics, Justice and Public Life. The interview takes place at the International Criminal Tribunal for the former Yugoslavia [ICTY] in The Hague, Netherlands, on May 21, 2015. The interviewers are Leigh Swigart, David Briand and Linda Carter.

We were thinking of starting with your introduction to the ICTY. You started working under Judge [Antonio] Cassese in 1998, but I also saw—and I'm just wondering if you could place this in the timeline—that you had done some work in Sarajevo with the OSCE [Organization for Security and Co-operation in Europe].

Mackintosh: Yes.

Q1: Then also you were in Rwanda. Where did that fall in the time period for you?

Mackintosh: Okay, I'll see if I can remember. I think I can. First came Rwanda. I qualified as a solicitor in the UK [United Kingdom] in private practice and then I left for Rwanda pretty soon after that.
Q1: What year was that?

Mackintosh: That was 1995. I arrived in Rwanda in September 1995, one year after the genocide had finished. I went with the High Commissioner for Human Rights at the UN [United Nations], and that was their second field operation. It also hadn't been a High Commissioner previously; it had been a small human rights office, where I think they kind of retired people they wanted to get rid of from the important bits of the UN. Maybe you shouldn't include that. [Laughter] The profile of human rights was rising and they had created the position of High Commissioner, and they'd had their first attempted field presence in Haiti after the elections there in 1993. Their second experiment was in Rwanda, and actually the mission was really focused on the return of the refugees. There was this huge refugee population who'd fled and were over the border in then Zaire, now DRC [Democratic Republic of the Congo], as well as in Tanzania and elsewhere, and the idea was the human rights field operation would stabilize the situation and give the refugees the confidence to return—a slightly weird sort of context, vision for a human rights mission straight after a genocide.

Q2: Did they cooperate with the High Commissioner for Refugees? Were they also there?

Mackintosh: Yes, absolutely. But really the strategic objective of deploying these human rights observers, monitors—which is what I was doing—was to encourage the refugees to return because that was seen as "the" international issue.
Q1: Right, so what was your experience there?

Mackintosh: I had two roles. First of all, for the majority of the time I was in the field, so I was in a town called Ruhengeri with a small team of people and we were basically human rights monitors. The main issues we were looking at actually were detention, because that period was when there were, I mean, hundreds of thousands of people in informal and totally unregulated detention and no legal capacity or judicial capacity to deal with them at all. Responsibilities were divided in the team and I worked on detention issues. There were also some capacity-building projects for training up judges and so on, but the big problem was how to deal with this detainee population. They were not even recorded in most cases, and they were in these informal police holding cells, not necessarily in the big prisons. That was the main issue I worked on in the field.

Other things also came up. We were located in the main town of Ruhengeri, in the North-West of the country, so there would be incidents because it was quite near the border with then Zaire, now DRC. The area had a high Hutu population linked to the former government, so a lot of the people from that area had fled into the camps in Zaire and, as you know, there was a lot of organizing of the former Hutu militia and government forces there. They would come back over the border and carry out acts of sabotage against the [Paul] Kagame government. It was an insecure area generally so we would monitor that as well and send reports to Kigali.
Q1: How do you think this experience informed your experience coming into the ICTR [International Criminal Tribunal for Rwanda]? You were in the appeals chamber there?

Mackintosh: Yes. What happened when I got there—because I'd been doing criminal law in the UK and I'd see the very occasional murder, but usually theft, robbery—that would be generally the kind of stuff we'd be dealing with—grievous bodily harm. Before I went to Rwanda, to prepare myself I compiled a whole load of material including the statute of the International Criminal Tribunal, which I wasn't going to be involved with at all, and I remember reading the statutes and thinking, you're kidding. [Laughter] Seriously, you could work on a case that is about this? That was really in the back of my mind the whole time, I guess.

I can see that I could easily talk to you for hours, but you asked me about the chronology. I didn't really answer that. To be a bit more brief, I went to Rwanda; while I was in Rwanda I decided that I should study some more, so I left after one year and I went and did my LLM [Master of Laws] in international human rights law, which would actually been kind of been good to have done before I went. While I was there I was really drawn to international humanitarian law and international criminal law. It actually goes a bit with having seen this statute before I left and thinking, oh my God, I've been dealing with the 1868 Theft Act. I can deal with the 1948 Genocide Convention? So I focused very much on that.
The exciting thing was that the [Duško] Tadić appeal, the jurisdiction decision—the 1995 decision—had come out of the ICTY, and that was the first bit of jurisprudence, as you all know, on any of this stuff. There was this court set up and it was actually doing these things, so we jumped on it on the course, and everyone was pulling it apart. It was declaring and making concrete, and applying these conventions, and filling in the gaps. It was so exciting. I thought, if I can get a job anywhere I want to get a job there. What was happening here was that there was a program that was actually funded by the EU [European Union] and organized by the International Commission of Jurists. They were sponsoring junior lawyers—it was kind of a secondment—so I sent my CV [curriculum vitae] and I got picked to come and work with Cassese, which of course was really exciting because his was the name on the top of that decision. Then I came and worked with him here, and that was in 1998.

Q1: And that was as a legal associate.

Mackintosh: Exactly. At that time the chambers were—there were three UN lawyers on contracts. One of them is John [Hocking], who's the registrar now, and two others, Yvonne Featherstone and Olivier Fourmy. Then each judge had one person on this construction that I came on, and that was the legal support basically in the chambers. I came in to do that. That program finished the following summer, so I left, and after an interim period doing something else, I then went to Bosnia with OSCE.

Q1: That was afterwards. Okay.
Mackintosh: Yes, that was afterwards.

Q1: What was your impression coming into the ICTY compared to your work at ICTR?

Mackintosh: No, I hadn't been to ICTR yet. That was later.

Q1: Oh, I see. This was the other way around.

Mackintosh: Yes, so I did Rwanda, ICTY, Bosnia, and ICTR.

Q2: There must have been a lot of people at the beginning working at the ICTY who had legal expertise but had never been in a site where there had been atrocities, like you had been in Rwanda?

Mackintosh: Yes.

Q2: I wonder what you brought to this that perhaps other people didn't have.

Mackintosh: I don't think anybody else I worked with had been in Bosnia or Rwanda. I was working in chambers. I think in the prosecutor's office that would not be the same, of course, because they were mostly working in the region anyway. It was all about investigations then, so they went on regular missions and they were all working there. In
chambers I don't think there was anyone else—also because they were quite young. I was a bit older actually because I'd gone back to do my LLM, and then through that I'd come here, but some people hadn't worked before doing this. They had very little experience of much at all, actually, apart from their academic work. There was quite a disconnect there, I think. In the institution generally there were people, the prosecution and so on—it didn't feel like the whole institution was disconnected from the field reality, but definitely in chambers it was extremely academic, and young people. Most of them wanted to go to the field, actually. A lot of people were looking to move on from this to go and do something more practical at that time.

Q2: Interesting.

Mackintosh: Yes.

Q1: What was your experience of adapting to working in international tribunals? You had had international experience, but now you're coming in to international courts. How did you learn on the job, and what did you learn?

Mackintosh: Compared to Rwanda or compared to working in like a London law firm?

Q1: Either one.
Mackintosh: The bigger contrast would be between these first two things. [Laughs] I think the lack of a common standard was very noticeable. You talked about trying to pull the two procedures together, but it's on every level. You have people who have different educations, completely different ways of studying law, different levels of degrees. Even the qualifications, what you've done—there was really no common way of judging even what people's expertise is, would be something that I remember.

Cassese had just moved to a trial chamber. That's when I joined him. He was working with two other judges—Judge [Richard] May, a British judge, so I completely understood where he was coming from. Just by chance we happened to be in the same chamber—and Judge [Florence Ndepele Mwachande] Mumba, from Zambia. Judge Cassese had never worked as a judge before—I don't know how much he'd even sat in a criminal trial—and he was presiding. Judge May was very experienced—fortunately, to be honest. They worked very well together.

I had worked in courts in the UK, where it's all very clear what the standards are, what's allowed, what's not allowed, what kind of principles you have to bear in mind, what the point is, what the training is, who's got more experience than who, all of this. We had none of that here. We had a presiding judge who'd never sat in court but was an acknowledged expert on the substance. We had people working here who had completely different experiences. Some had never worked in criminal law before, and some had. I think for everybody that was a big challenge. Not a challenge—that was a big part of the work, was to pull that together. I think it was very effectively done, actually—probably
due to the personalities and the leadership of the judges. Someone like Cassese, for example, was so open to comments and input from everybody.

Q2: Was Cassese's dominant language in the court French or was it English?

Mackintosh: We were in an English chamber. There was a French chamber and an English chamber, and this was the English chamber so the language was only English.

Q2: Linda, did you want to ask a question?

Q3: It fits in here, I think. What was it like on a personal level working with Judge Cassese?

Mackintosh: Interesting, yes. My experience of working with him was that he was going to make a decision in quite a short period of time whether I was somebody he was going to pay attention to or not, and if the decision was not, that would absolutely be it. That was my sense with him. Fortunately, I managed to convince him that I was on the right side of the line, but it was quite stressful when you arrive. I sensed this could really go either way with this guy. Somehow I'm going to have to prove to him that I have something to say or that I can help him. He was quite like that—in or out, interested in you or not interested in you.
Q2: What was the work like with him when you were a legal assistant? What did it consist of?

Mackintosh: It was absolutely fascinating. I had this bit of anxiety at the beginning, not necessarily because of his reputation actually, but just because I realized that that's how it was going to be when I met him. Having passed whatever test I had to pass, it was just such a pleasure. He was so curious, dedicated, hard-working, completely open to comments, once you passed the line. Status was completely irrelevant, so it didn't matter if you were a twenty-four-year-old graduate or you were a fellow judge, it didn't make any difference.

I remember for example his attitude to the translators. We had two fantastic translators. He appreciated this straight away—you draft something, you try to be as thorough as possible, someone starts translating your work, they see it at a whole deeper level, so they would come and they'd say, "We're not sure exactly what you mean here because in the paragraph before you said this." He'd say, "Oh my God, you're right." For example, he would say, "The translators, bring them in. Tell me, tell me." He was like that with me as well—"Give me feedback." If you say something, he would say, "That's really interesting. Write that up for me." It was fantastic. You were sort of pulled into his curiosity and enthusiasm.

He worked harder than anyone I've ever worked with. He understood that not everyone worked as hard as him, so he didn't expect me to work as hard as him. I worked all the
time, but he didn't sleep as much as me, so he always worked more, and I was twenty-eight or something and he was sixty. He really worked all the time, so he expects people to work a lot, even if it's less than him. He still works more than most of us, but that was completely fine. I just dived into it. It was absolutely, really inspiring, incredibly motivating.

What it actually consisted of was collaborating on everything. We'd be listening to the evidence, the judges would all make their own notes but we would also be following it, and then we would have a project—we would sit together and say, "Okay, this is how we are going to approach this—." We'd also be working on the legal stuff in the background as the trial was going on, so we could say, "These are the issues we're going to have to work on." He would divide it up. We would identify with him what the legal issues are; he would ask us to do some research; we would come back at some point; he would ask me to draft something, and that was really exciting.

I remember a couple of issues where I felt like I have this really strong idea about this and I wonder if he'll go with it. I would draft and give it to him, and then he would say either yes or no. In a couple of instances he said, "What do you mean about this? Why would it go like this?" And I'd explain, and he would say, "Okay, yes, I'm interested," and then he would add to that his panoply of knowledge and precedents and whatever might strengthen it, or he'd say, "You should look at this to follow that idea." It felt like we were collaborating on developing this law, which was great.
Q2: That's exciting.

Mackintosh: Very exciting.

Q2: This is when he was a trial judge.

Mackintosh: Trial judge, yes. It was January 1998 when he started.


Mackintosh: He had the [Slavko] Dokmanović trial. Dokmanović killed himself about a week before we issued the judgment. We had the [Anto] Furundžija trial, we had *Kupreškić et al.*, and we also had the Tadić appeal going on in the background as well. We had some others too.

Q2: But you also worked as an assistant for the appeals chamber?

Mackintosh: Yes, when he was on the appeals chamber. You mean when I worked for Cassese? I worked also on the Tadić appeal because he was also on that simultaneously, yes.

Q2: I see. Then you worked for the ICTR appeals chamber.
Mackintosh: Yes, exactly. When I left after working with Judge Cassese, I went to Bosnia. Then I came back on a different post. They had just created a support—two lawyers to support the appeals judges in the ICTR case that had just begun.

Q2: How did you compare the experience working on an appeals case with ICTY and ICTR? You were in The Hague still, right?

Mackintosh: I was in The Hague and the judges were the same. It's the same chamber.

Q2: Of course.

Mackintosh: I'd say there was no difference to working on it, apart from the logistical challenges. The judges were here, the tribunal of course was in Arusha, so in terms of getting documents and so on it was really cumbersome—they used to fax documents to us. I'm just thinking there was me standing by the fax machine and they'd be feeding pages in, and it would come out and you were not always able to read—

Q2: And the connection would be lost—

Mackintosh: —and we'd lose a connection. Extraordinary when you think about now how much easier it is to transmit all that stuff. We've got this unified judicial database we're setting up now where Arusha, Kigali and here will just be on the same network, but then we didn't even transmit stuff by email, bizarrely.
Q1: Was that a bit of a disadvantage, the ICTR having to go through that versus the ICTY having everything in The Hague?

Mackintosh: Oh, it was certainly, yes. It took up a huge amount of our time fixing all that stuff. We really depended on colleagues in Arusha to provide everything for us. It was definitely more kind of clunky to get stuff done. Then of course we would go to Arusha for the hearings. That's when I met Judge [Fausto] Pocar. I think he arrived and was immediately put on this appeals case and sent to Arusha. I remember the new Italian judge arrived when we were in Arusha the first time.

Q1: Can you take us through that experience in Arusha?

Mackintosh: Yes. The judges would go for the hearing, and I think we went a couple of days before. It was me and someone called Chile Eboe-Osuji.

Q2: Who was at the—

Mackintosh: He's at the ICC [International Criminal Court]. Exactly, the Nigerian judge. Chile and I were the two lawyers—he was the senior lawyer and I was the junior lawyer supporting the ICTR judges here in The Hague. We had that first hearing, so I think Chile and I went a few days before, maybe a week before, to prepare, and one of the main things we had to do was to get a whole load of stuff that had not yet been translated,
which the judges needed translated to get it done. The idea was if we were actually there we can go and see the translators, because it was only done in Arusha, and ask them for the translation and try to kind of push this along. There's actually a funny story about that because my mother is an interpreter.

Q1: Oh, really?

Mackintosh: Yes, a conference interpreter. She ran a course in London for eight or nine years, when I was a teenager, training interpreters. Anyway, I went to see the translators to basically harass them for this work. We'd been harassing them on email for months, or someone had, so I wanted to introduce myself. I did not get a good reception, basically. I know the translators think "no one understands us. They think we can just produce this stuff. They don't understand how difficult it is, how complicated". I started trying to ingratiate myself to them by saying, "I really understand. I know it takes a long time," and this and that, and they would be looking at me like, "Ugh." I'm clutching at straws, and I said, "You know, my mother is an interpreter. I really understand." Then somebody said, "What's her name?" I said what her name was and they said, "Are you Jenny's daughter?" And they'd all studied with my mother! [Laughter]

Q1: Oh, wow.

Mackintosh: It was fantastic. I got asked to dinner—
Q1: You were in.

Mackintosh: I was in. I had a great time in Arusha with all these interpreters who'd studied with my mum, so that was fun.

Q2: That was the English/French translation.

Mackintosh: That was the English/French translation, yes, exactly. That was the kind of thing we were sent to do beforehand; then the judges arrived and we did our usual work. You work with the judges to identify what are the key—you've had the briefs. We helped the judges think about what questions they're going to ask. They've got their own questions, but you try to discuss with them, "Is there anything else—?" Then they might want you to prepare some material to do some research prior to them asking the questions, or to make sure they have the stuff in front of them in court they want to refer to—that kind of thing. Then you sit in during the hearing, take whatever notes you want. Then you've been there to help them with drafting the judgment. You actually were there during the proceeding so you can support their discussions about that between themselves.

Q2: Did you have a sense, even though you were in and out of Arusha briefly, how the working environment at the ICTR compared to the working environment here at the ICTY?
Mackintosh: Yes, it was a real eye-opener to go because we got very frustrated about things like not getting these documents, frustrated about, "Oh, things don't seem to be working in Arusha." When I went to Arusha I met the documents management assistants and so on and saw the conditions they're working in, and it was a real eye-opener. Number one, I realized what incredibly smart, dedicated, hard-working, committed people they were. You get into, "Ugh, it's again gone wrong," and you start thinking, what's the matter with them? They're not professional. Especially those document management assistants—they were a really outstanding group of people. Then I saw the conditions they're working in with the power cuts.

Q2: That's what I was wondering.

Mackintosh: I think one of the problems they had with the documents is that they were infested. That kind of thing.

Q2: Infested with insects?

Mackintosh: Yes, they were being eaten. [Laughs] It's like the level of challenge. I suppose something here could also be infested, but the likelihood of it happening in Arusha is probably a thousand times more. It was also much more similar to the situation I'd had working in Kigali and in Rwanda; it felt like a field operation, whereas this really doesn't. Actually, a lot of people that I knew from Rwanda—from the human rights field operation—moved to the ICTR, because of course you had all these lawyers working in
human rights and they were often recruited into the ICTR. So I still know people. I went to Kigali for the first time last year for John for the Mechanism [United Nations Mechanism for International Tribunals] and I met colleagues from 1995 in Rwanda who were still in Kigali, now working with the Mechanism. One had been with the ICTR.

Q2: Africans or Europeans or people from all over the place?

Mackintosh: Who did I meet? Someone from Fiji, a couple of Africans. The people also—you stay in the region, life's accidents happen and you get another job in the same location and it's with whatever, and it's a bit related. It felt much more similar—the environment in Arusha to working in Kigali, although of course it wasn't a post-conflict situation. But it felt much more like that. People had the big Toyota Land Cruisers, and people hung out together like they do on mission, which is still the case I think in Arusha because Arusha society is much smaller and much less accessible for expats than The Hague society.

Q2: Last time I was there I realized that there was a prosecution bar and a defense bar.

Mackintosh: Oh yeah? Is that right?

Q2: They didn't drink in the same place.

Mackintosh: [laughs] Oh, interesting.
Q2: But they both drank a lot. [Laughter]

Mackintosh: Which one was more fun?

Q2: The defense. There's more of an edge there.

Mackintosh: In the defense one? Yeah.

Q1: So when you were back at the ICTY, 2000 to 2003, you were working on the [Miroslav] Kvočka trial?

Mackintosh: Yes. I came back in 1999 on the ICTR appeals chamber and then worked about a year and a half, and then moved over to ICTY trial. There were a couple of reasons—one was that it felt weird after a while to be in this building, to be working on appeals, which tend to be more on the law than the facts—or if they are on the facts it concerns Rwanda. I was working on international law, international criminal law issues, and seeing these people coming in and out of the building that you could tell weren't members of staff because you didn't recognize them. They're less well-dressed, they're possibly not very happy, and I'm thinking they're witnesses in the trials. To have this sense that something really major is happening in this building and have no clue about it.
Meanwhile, I'm working on the definition of genocide, which is great and everything, but after a while it felt a bit odd and I thought maybe I'd actually like to work on a Yugoslavia trial again because I felt a bit out of it. I moved back to the trials in 2000 and then I think I moved on to appeals before I left as well—briefly back onto appeals because actually after a while in a trial you think, get me back onto the international law issues. [Laughs]

Q1: Really?

Mackintosh: Yes.

Q2: Can you talk about that a little bit? What was it like when you were involved in the day to day?

Mackintosh: Yes, back in the trial. Well, you know they—

Q1: Before that, can you give us a little primer on the case itself?

Mackintosh: I'm sorry, the Kvočka case. It was two cases actually. Then I moved actually onto the French trial chamber, which had then two cases—one was Kvočka and one was [Radislav] Krstić.

Q2: Who were the judges on that trial?
Mackintosh: Judge [Almiro] Rodrigues was the presiding judge, the Portuguese judge; Judge [Patricia] Wald, the American judge, was absolutely fantastic; and Judge [Fouad] Riad, the Egyptian judge. That was a pretty interesting collection of people. It was the French trial chamber. Judge Wald didn't speak any French, which was odd.

Q2: She has written about that.

Mackintosh: Why on earth they didn't put her on the appeals chamber with all her experience—why they decided that she should be the not-presiding judge on the French chamber I have no idea, but it was only to my benefit because I got to work with Judge Wald, which was fantastic. Can I tell you a quick anecdote about Judge Wald?

Q1: Please.

Mackintosh: At this point they had a bit more staff. Each judge had an assistant, and then you had a coordinator, so I was a coordinator. It was a kind of promotion. Judge Wald's assistant—I didn't work with her like that—was somebody called Michelle Jarvis, who's now the senior lawyer in the prosecution here, by the way. Anyway, Michelle had previously worked on—and still does work a lot on—the issue of sexual violence. We were dealing with those issues, so Judge Wald said to her, "I need to get up to speed on this sexual violence issue, this criminal issue. Have you got anything I could read?"

Michelle gave her a number of books and articles and references that she could read and
Judge Wald took them home. Then the next morning at 8:00 AM, Michelle got a call from Judge Wald saying, "Okay, I've read all the material. Can you come to my office and discuss?" [Laughter] That's what she was like. She was phenomenal.

I was more involved in Kvočka. The way we arranged it was each judge had their assistant, and then there was a P-3 position which was me, and there was a P-5 leading it, so he was in charge. He coordinated the Krstić case and he delegated to me to coordinate the Kvočka case.

Q1: Who was that?

Mackintosh: He was called Olivier Fourmy. He was one of the three UN staff at the beginning when I came, so John, Olivier, and someone called Yvonne Featherstone were the three lawyers in chambers. We were all on these other EU posts. Olivier gave—it was a kind of weird way around because Kvočka had six defendants and Krstić obviously only one. Kvočka was the Omarska camp case, so it was a range of people from guards to someone who just came into prisons to beat people up every now and again, and people in the municipal authority around the Omarska camp. That was the primer. Krstić was the first genocide—the first prosecution related to the Srebrenica case. I think he was the colonel. He was not a general at the time, but he was military under [Ratko] Mladić.

Q1: Okay. Can you take us through your experiences, your memories working on those cases?
Mackintosh: That's thing about the grueling nature of the trial, which I remembered from when I was on the trials with Cassese as well. The quality of the advocacy was not great, frankly, so it could take some time for the lawyers to steer the witnesses to the point. The judges were more or less good at marshaling that. The judge in that case was pretty tolerant of—I think he did try to intervene quite often, but still.

Then, every now and again you'd have something that was—pretty often you'd have something that was horrific, but every now and again it would hit you. I think it's probably the same for everybody, you can listen to these stories, or see a film or whatever and it doesn't necessarily touch you, and then suddenly something does, and you can't really predict what it will be. Every now and again something will happen and you'd just really wish that you hadn't heard it, so it can really affect you. It was a mixture of tedium, when the lawyers didn't focus on the evidence, and yet you had to listen to absolutely everything because you never know when the witness was going to say the crucial thing, mention the "red car" or whatever, and occasionally it was intensely upsetting. It's absolutely exhausting, basically; the whole thing is exhausting, trying to concentrate for long periods, not to miss the occasional gem, and occasionally being very upset. It depended a lot on what kind of witness was speaking.

Q2: When you were coordinating this multi-defendant thing, that must have been quite a challenge.
Mackintosh: Yes, coordinating the production of the judgments. Yes, it was. It was also a challenge because I joined after the prosecution case had closed so I didn't hear any of the prosecution evidence, so I took all the transcripts home and I sat at home for a week and just read through everything and made notes. I remember I had a room in my apartment and I just had it everywhere. No one was allowed in because I couldn't move anything.

Q1: You had them all in order.

Mackintosh: Yes, I had all my themes and my whatever, and I had to work through that. It was challenging and it was big, yes.

Q1: It's interesting—you mentioned that different judges were more interventionist, I guess, than others.

Mackintosh: Yes.

Q1: They were coming together from different law systems into this new tribunal with this mixture of common and civil law. What was that adjustment like for you?

Mackintosh: That would be exactly the point. That was more marked for me in the first trial when I first came, actually, because as I said, things are so clear when you are in your national system. I knew that if Judge May had been—but even Judge May didn't really know if he could follow like what he did in the UK because he wasn't in the UK.
All the discussions about evidence—of course in the UK, like in the U.S., the whole rule against hearsay is absolutely fundamental. You spend huge amounts of time learning about it and testing it, and what is, and what isn't, and this, and another. It just kind of went out the window in the first couple of weeks—just admit it and we'll decide later. You can see Judge May kind of go, "Okay," [Spoken hesitantly]. It was really odd.

Someone like Judge May, who was a very experienced criminal trial judge, had he been presiding on the case—which of course he was in [Slobodan] Milošević—had he been presiding, would have been more interventionist, basically, whereas some of the other judges who came from different systems or different backgrounds were not necessarily criminal trial judges—because they were not all that many that were—maybe felt a bit more hesitant about cutting off their witnesses—or the lawyers, more to the point—and telling them to get to the point.

Q2: I'm really curious about something. I'm a linguistic anthropologist and I'm really interested in the role of translation and interpretation in the ad hocs and other criminal tribunals. Since you actually have a mother who was a conference interpreter, I'm curious during the proceedings if you and the judges and other people working on the trials ever thought about the quality of the interpretation and the impact that less than ideal interpretation could make on how you go to judgment, how you viewed the facts, the evidence and all that.
Mackintosh: I've been thinking about that a lot. I'll give you a DVD that I have of something that we did in London recently. We just had this meeting of the heads of interpretation in international organizations here, and we also discussed that.

HINTS—Heads of Interpreting Services from multi-national, international organizations.

Actually, I've been discussing that a lot with our head of language services here.

Q2: And you're in charge of that now, right?

Mackintosh: Yes, exactly. They had asked me to go and speak at this thing in London, which was fascinating because Siegfried Ramler was there, who was an interpreter at Nuremberg.

Q2: At Nuremberg. He was that young, young guy—the only one who is left.

Mackintosh: Exactly. He was twenty-two.

Q2: I've seen him on YouTube.

Mackintosh: Have you seen him on YouTube?

Q2: It's really fascinating.
Mackintosh: I'll give you a DVD, which is him being interviewed by Philippe Sands, and then me—not of course that I live up to either of them, but I do address exactly what you just asked, and it might save some time. It's based all on conversations with colleagues here. That will answer that to a degree. Did we think about the quality of interpretation? Yes, definitely. I think there were a lot of challenges; there were a lot of challenges from the parties as well.

Q2: Challenges during the proceedings?

Mackintosh: Yes, during the proceedings. Anybody who's speaking something that is going to be interpreted into a different language, which would be both the parties, usually have somebody who can follow the interpreter who will sit and listen. The defense will have an English speaker who will be listening to the interpreting, and the practice that's evolved is if they hear any error, they interrupt the proceedings, and the judge will read into, and it will all be recorded in the transcript. They'll say, "Sorry, it says here, 'I went.' I think you'll find what I said was, 'I thought about going.'" The judge will ask the interpreter and the interpreter will say, "Yes, correction," and that will all be recorded.

Also, after, when the transcript is received, the parties are asked to check, and then they can put in for an interpretation verification. There's a form that they fill in. It's standard; it happens pretty often. When the interpreting service gets that, they listen to it, they review it, and then they issue a correction, or they affirm what they said. Something comes out and it's filed on the record. We had a challenge in the [Radovan] Karadžić case last year.
where Mr. Karadžić challenged the accuracy of the whole day. He put in his request for a whole day of testimony. We did ask the interpreters to revise it, and they revised it, and the outcome was it was ninety-eight percent accuracy afterwards, so it's very high.

One of the reasons it's high is the interpreters correct themselves in a way that they wouldn't necessarily do in another context. The way they would deal with having made a bit of a mistake would be to correct it later on, to sort of twist what they're saying. In a conference, for example—"I've always said I didn't like white," and they realized, oh God, he said grey, so they carry on—"And when I said white of course I meant grey." They would try and keep it fluid. Here they don't do that; they say, "Correction, interpreter's error," because everyone knows that the transcripts are evidence. The interpreters are actually producing evidence here, which is pretty unusual. In court that's what they're doing. In most cases interpreters are not producing evidence; it's transient, it's words that have gone. It's all about trying to create understanding between people. It's a very different kind of job, and I think the interpreters have adapted to that. We've created these various mechanisms around them to try and get that to be as accurate as possible.

Q2: It's fascinating.

Mackintosh: It is, yes.
Q2: I know that we're running out of time. I know that you left the ICTY and you worked in the international humanitarian field for a number of years. I was really interested to look at your articles about how humanitarian initiatives have to think about how they cooperate with international criminal tribunals.

Mackintosh: Okay, yes.

Q2: After you were in these various places and doing these interesting things, what attracted you back to the ICTY after so many years?

Mackintosh: Actually, a phone call from John, to be honest. I hadn't thought about coming back here; it was just a coincidence. I worked in chambers here. I came back for a very short period and worked in the prosecutor's office in the appeals section of the prosecution for I think three months. It was covering actually Michelle's maternity leave, the person who was Judge Wald's assistant. They called me and said, "Can you come back?" I managed to get leave from my job to do it, telling them that it would be really good to keep me on top of the law. So I came here then.

I also did a defense case as co-counsel on a very short case; it was an appeal for the first case that was referred back to the region under 11 bis—Radovan Stanković. He was the first case to be referred. He didn't want to go; he wanted to appeal it, but his counsel was removed I think for fee splitting or something and he was assigned another counsel, who was somebody I know—a Dutch lawyer who's very experienced in extradition, etc., but
really didn't know how these tribunals worked. He asked me if I'd do it with him, so we did that together. It was his appeal against his transfer, which obviously we lost. He then escaped from [Foca] after he'd been transferred, so it turned out not to be such a good idea. [Laughs] Just to say I'd worked in chambers, and for the prosecution, and very briefly the defense, but I had never worked in the registry. I left my job with Médecins Sans Frontières [Doctors Without Borders] and went to Cambodia because of my husband's work. He was defense counsel working on the ECCC [Extraordinary Chambers in the Courts of Cambodia] there.

Q2: Oh, really?

Mackintosh: Yes, and he'd been on that case for years. Then the trial started, so we had to go. We moved to Cambodia, and then we decided to come back. I had been doing consultancies and working independently, basically really enjoying it—a great lifestyle, flexibility, saw the kids, felt great. We moved back here and I had intended to carry on. I was actually still in the middle of a project.

Anyway, John called me and said, "Would you be interested in this job?" He also said it would be for a couple of years; he suggested it would be for two years because the institution was closing. I kind of "um'd" and "uh'd" a bit, but I thought, actually, I would be really interested to see what it's like from that side, the Registry, trying to make the institution work, because I hadn't worked on that side at all. I'd worked on the substance of the cases and I'd worked in essentially these three different bits of it—and I had no
urge to do that again—but I thought, actually, trying to get the budget from the UN, working out with the host state, and relocating, and how do you make an organization like this work—actually I would be really interested to see how that works, so I decided to go for this.

Q2: Are you enjoying it?

Mackintosh: I'm really enjoying it.

Q2: Is it eye-opening?

Mackintosh: I'm learning so much, yes. I'm really enjoying it. It was a really good decision.

Q2: From your perspective now in the registry, do you think back to some of the attitudes you might have had when you were in a different part of the tribunals and now you think, I understand now why that works that way?

Mackintosh: Yes, definitely. That's like anywhere. It's just classic, isn't it? The communication and understanding each other, and the assumptions you get about different bits of the—. When I was in chambers I don't think we had any particular view of the registry; I certainly didn't think that they had any interesting to do. [Laughter] I thought, really, there are lawyers in the registry? What the hell are they doing there?
That's also about what you're interested in at different points of your life and your focus. Now I feel like—of course I'm really interested in international criminal law and international humanitarian law, but I'm not interested in trying to produce one of those judgments. I've done that. [Laughs]

Q2: Is this a job that doesn't take over your life quite as much?

Mackintosh: Huh, that's an interesting question. It's probably a bit more manageable, although it does also have its peaks. We're in one right now actually, because we have to send in a budget tomorrow.

Q2: You're really kind to give us this time.

Mackintosh: It has its own demands, but they're different, and they may be shorter term ones. I don't know if it does. It's very unpredictable. It's shorter. I also have to file stuff, as you know—I mean make legal submissions—and then those deadlines tend to be very short because they're about conditions of detention or something to do with legal aid or witness protection or things that are very—it's very operational. The job is incredibly operational. It's just a deadline and we have to do it, and we'll have to stay until whenever to get it done. That does happen. But I think in chambers it would be more like that would be stretched over months. Over at the prosecution you got to file your brief, so the last four weeks you're going to be here all weekend. It's a different rhythm. It doesn't take over my life, though. [Laughs] I still have a life.
Q1: Good to hear. As we're wrapping up, could you give us your perspective on the evolution of the tribunals as you see them, thinking about when you started in the late 1990s and then up to now?

Mackintosh: Yes. I started before the Rome Conference; the Rome Conference happened when I was here, and practically everyone I was working with went. I'm still kind of kicking myself that I didn't, but I was working for Cassese so you couldn't have any time off. [Laughter] Now what's happened, it's amazing. Like I said, I read this statute before I went to Rwanda and I thought, wow, this court's there. When I came here, there were just those two courts, Yugoslavia and Rwanda, and then it still wasn't really clear that it was going to work. It was looking more promising because there were a few accused in custody, but I don't know how many there were in custody when I got here—maybe five or something? But there were definitely still states that had not handed over anybody and it wasn't clear that they ever would. The credibility of this institution and the ICTR managed to pave the way for the explosion in international criminal justice. Then having been outside and having been also in an environment that was critical, especially of the ICC, but also of international criminal justice in general—

Q2: You mean in the humanitarian field?

Mackintosh: Yes, especially in Médecins Sans Frontières—not everybody, but there are elements that were very critical and that are in touch with that rhetoric, that thinking
which sees the ICC as a tool of western hegemony. I see an arc. I feel that maybe international justice has peaked and is going through a more difficult time at the moment. It's funny; you're not in touch with that from inside this institution actually. I'm not sure that people generally here would talk about that. I wonder what it's like if you work at the ICC because that's a much more embattled environment. Here I think there's a general feeling that you can say, "Hey, we're a success." Although, of course there's criticism externally. So as to the evolution, there was this uncertainty, then incredible optimism, and then all those developments with the mixed tribunals, and the establishment of the ICC, and this incredible optimism about what international criminal justice could achieve, and then maybe a bit of an ebbing of that feeling.

Q1: Okay. Any final questions?

Q2: I wanted to ask just one. I'm just kind of curious. On your bio that's from the ICTY, it notes that you're the female first deputy registrar. [Mackintosh laughs] I'm just wondering, is that a significant fact?

Mackintosh: Really, no. I didn't put that in, by the way. The reason it's so insignificant is because we've had a female president, a female prosecutor, and a female registrar. [Laughs] I think this institution is notable for that though because you have such prominence—obviously two prosecutors, Louise Arbour, and Carla Del Ponte, both super high profile; Gabrielle Kirk McDonald as the president; and the registrar when I was here, Dorothy de Sampayo. There's still more men, I guess, but I think the women have
been pretty high profile, so I think it's totally insignificant. I think I'm going to ask them to take that off the website. It's kind of embarrassing. [Laughter]

Q2: Thank you very much.

Mackintosh: You're welcome.

Q1: Is there anything you wanted to say in closing?

Mackintosh: Maybe just to say that I think this is a great initiative. We have discussed it in the Registry, and then I think lots of people within the institution have been thinking about doing some kind of oral history project.

Q2: Oh, is that right?

Mackintosh: Yes, there's even been some proposals, but we've never really had time or resources to make it happen, so I'm really happy that you're doing this.

Q2: Excellent. That's nice to know.

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