THE AD HOC TRIBUNALS ORAL HISTORY PROJECT

An Interview with

Howard Morrison

International Center for Ethics, Justice and Public Life

Brandeis University

2015
Q1: This is an interview with Judge Howard Morrison 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 and Linda Carter.

So we are very interested to know why you decided to put your name out there as a potential defense counsel for the ICTY and ICTR [International Criminal Tribunal for Rwanda].

Morrison: I was just at home one day after a busy day in court and I distinctly remember seeing a copy of Counsel Magazine, and it had an ad in it saying, "Would You Like To Be Defense Counsel at the ICTY?" I didn't have a clue what the ICTY was, so I looked it up and it looked very interesting. This was pre-Internet, so I filled in the form and sent it off by post and forgot all about it. About two or three months later I got a phone call from The Hague, and in very bad German—even worse than mine—it was a Croatian at the detention center in The Hague who had been convicted on the Čelebići case but was looking for someone else to do the appeal. We got on, and I came to The Hague and saw him, and thought it was an interesting case, and he was an interesting guy, and that was it.
Q1: What language did you communicate in with him?

Morrison: We started off working in German, basic German—schoolboy German for me and schoolboy German for him. These were not technical conversations [Laughter], but it very soon became apparent that that wasn't going to work, so we had in a professional interpreter, interpreting from what I have to call now for political correctness "BCS"—Bosnian-Croatian-Serbian, and everybody else still thinks it's Serbo-Croat—and English. We got on fine. He was actually a Bosnian-Croat, which was unusual because most of the defendants had been Bosnian-Serbs.

Q2: Which of the defendants did you represent?

Morrison: I represented him—that was [Zdravko] Mucić—and that led to the case of Dragan Nicolić and Vladimir Kovacevic. Nicolić ended up in a plea. Nicolić was actually the first person ever to be indicted at the ICTY, and the indictment ran to eighty-eight counts and it was as thick as a small novel. To be honest, and with great respect to whoever drafted it—well, I know who drafted it—it was just completely over the top. No way was that indictment ever going to be the subject of a full trial, and even less was it likely to be a full plea.

After two years of negotiating and deliberations, the OTP [Office of the Prosecutor], under pressure, cut it down from eighty-eight counts to eight, which covered the bulk of
the alleged defending, and he pleaded guilty, saving a lot of money, and a lot of heartache. It shouldn't have taken two years to get to that point, but one of the reasons it did was that I originally had to take instructions on the eight-eight counts on the indictment, and through interpretation, it was a long—I spent hundreds of hours doing that, inevitably. It was an object lesson in having short, focused indictments.

Q1: Were you doing this over the telephone or were you coming to The Hague?

Morrison: I was in The Hague. I was staying in The Hague; I had to. And I was in the detention center; that became my office for months on end, going to the detention center virtually every day, going through the voluminous papers in the case. It was of course at fifty percent speed because everything had to be interpreted and translated; all the documents had to be translated or interpreted to him, and then back to me, and so on and so forth.

Q2: Do you remember what your initial impressions were of the tribunal when you came on the Mucić case?

Morrison: Everybody wanted to do it the way they'd done it at home. If you were British, you wanted to do it the British way; American, the American way; French, the French way, and so on and so forth. In the very early days of the tribunal there wasn't really a homogenized system because people were still doing it the way they were used to,
inevitably, which did mean there was conflict—conflict between civil and common law systems, but it was also conflict between national systems.

For instance, I remember standing up in the Čelebici case, and I was halfway through a submission and a rather shrill American voice came out from the prosecutor—"I object!"

You don't do that in the UK [United Kingdom]; you wait until somebody's finished their submissions and then you raise the objection. Not only did it take me by surprise, it irritated me. So I said something like—I can't remember exactly what—"If my little friend sits down and shuts up she'll hear the whole of my submission." There was a Nigerian judge who was a common law judge who upheld that, so I immediately thought he was wonderful. But you had that antagonism then because at the UK bar where I both prosecuted and defended as a barrister in equal measure, there's much more collegiality between prosecutors and defenders. You don't have this "them and us" as you do much more, I think, in the States—

Q2: I think that's right.

Morrison: —where defense counsel are regarded as untrustworthy and prosecutors are regarded as "born again" prosecutors. That collegiality wasn't here either amongst those systems in the beginning; I think it improved—like everything else for the defense—improved radically over the next five, six years. Now, just as the place is about to shut, of course, it's a very well established system.
Q1: With your defendants, did you have any cultural obstacles when you were trying to work with them, in addition to the obvious linguistic ones, misunderstandings about how the process worked, the legal principles, or anything of that nature?

Morrison: Yes. Because you dealt with Yugoslavia as a republic, you forgot how diverse a place the Balkans was, and I didn't really know how diverse it was until I got into it. You didn't realize that were of course the essential differences between the Bosnians who are essentially Muslims, the Croats who are Roman Catholic, the Serbs who are Orthodox, and how Tito—who was in fact a Croat, not a Serb as many people think—held the whole lot together is quite extraordinary. When it broke up and the rule of law started to dissipate—of course that always happens quickly and with a vengeance. Understanding those cultural dilemmas and differences and religious dilemmas and differences for a newcomer was quite hard, and it took a long time. I've been dealing with the Balkans one way or another since 1997, and people say, "Oh, you must be an expert." I say, "No, I'm not. I know more than most people but I'm no expert," because you can't be an expert on the Balkans unless you come from the Balkans. I'm sure of that.

Q2: Thinking of the early years also, and maybe continuing it on somewhat through present times, what was it like to be a defense counsel? What was the role and the reaction to defense counsel at that time?

Morrison: When I first came here there was a feeling of some hostility and some suspicion. I suspect that was generated in part by having a lot of U.S. attorneys in the
prosecuting office. In those days, in the early days, the defense weren't allowed to use the library without being escorted by a staff member, and we couldn't use the canteen, in case you sort of "contaminated" people with your defense thoughts. You definitely felt in the early days like a second-class citizen. That changed and it changed completely, but it took a long time. The defense room, which was equipped with computers that nobody else wanted, had a sign on the front door saying "Computer Museum," because that's what it was. We definitely felt that we were fighting uphill all the way.

Q2: Where did you do most of your work?

Morrison: You couldn't really do it in the defense room because there were simply too many people in too small a space. Those were also the days when people smoked inside, and I'm a non-smoker and I found that just drove me straight out the room. I actually did most of my preparation work at home; you just have to rig up a computer at home and get on with it. That was an equally difficult—it was very difficult in those days to get external access to the internal computer systems because of the fears of breaches of security, so I worked mainly off paper, as I still do because I'm a dinosaur.

Q1: I imagine that the group of defense counsel was very international. What were the nationalities that that covered?

Morrison: Defense counsel were mainly from the region, for linguistic purposes. Most of the counsel they employed were from common law systems—most of them, not all of
them. There were some French, and French Canadians, but it was either Americans or
British in the main, or Australians, because they wanted someone who understood an
adversarial system, which it was without a jury.

Q1: Did that lead to issues with the—were you on a team with defense counsel from the
Balkans? Sort of mixed teams?

Morrison: Yes, I actually had an American lead counsel in the Čelebići appeal case who
was from a Croatian family, so he spoke the language. He was an American defense
lawyer from Milwaukee, and we got along famously, and that was easy. There was some
resentment from the sort of Balkan bar, but I think the Balkan lawyers probably naturally
developed closer personal contacts with the defendants than we could because of the
linguistic and cultural similarities. Again, that ironed itself out. There were some very
good lawyers from the Balkan region; they were just struggling a bit to start with issues
like cross-examination, which simply wasn't natural for them.

Q2: Do you think it was a good call to have the ICTY be such an adversarial process?

Morrison: I think it would have been very difficult to have a purely inquisitorial court if
you wanted to have a real mix of jurisdictions. I think the adversarial system mixes more
easily than the inquisitorial system does; that's the view I've come to over the years. It's
interesting that that's now also flowed into the ICC [International Criminal Court], which
has a much stronger civil influence through the Rome Statute and through things like the
pretrial chamber, but is still nevertheless an adversarial court, although they won't call it cross-examination.

Q2: Why do you think it's easier in that direction than the other?

Morrison: I simply think that most people understand that system better. It may sound almost trite, but if you look at any film or TV [television] production, ninety percent of them emanate from the States or from common law systems, albeit that they're jury trials. People understand—they like this idea of cross-examination, of pinning the defendant down or pinning a witness down. It seems more exciting. I think that sort of flavor is easier for people to understand. I may be entirely wrong about that but my own personal perspective is that the adversarial system does mix more easily. A lot of civil systems have an element of the adversarial system in it, so even in France in some cases you have jurors. In international law now, a lot of the cases involve countries with common law jurisdictions, particularly for instance in Africa.


Morrison: Mugenzi, yes.

Q2: What was it like to be a defense counsel there? What are your memories of that experience compared to the ICTY?
Morrison: From a practical point of view, it was a bit more difficult because there was less infrastructure in Arusha than there was in The Hague and less sophistication in terms of just the general facilities, which was inevitable. I think it was a wise decision to put the Rwanda tribunal in Africa, and Arusha was probably as near to Rwanda as you were possibly going to get. The court buildings themselves were perfectly adequate; they were large buildings that lent themselves to putting courts in. Arusha was big enough to absorb—the economy of Arusha was transformed by the ICTR for a number of years; $100 million was flowing into as it were the expanded economy of a small town, which was also growing at the same time through an expansion of the tourist industry because Arusha was central for the tourist industry for northern Tanzania. The infrastructure of the town improved as a result of that in straightforward ways—the roads got better because they had to and the air links became more frequent because they had to.

The judges—there's not much to choose because they were all international judges. The defense counsel—a lot more local defense counsel, more African defense counsel, but that was an advantage from a linguistic and a cultural point of view. The Balkans was contained, but it wasn't contained as much as Rwanda was contained. The issue was relatively small, not in terms of the number of poor people who were killed but it was a more narrowly defined indictment each time; you were just dealing with two factions—the Hutu and Tutsi—as opposed to multi-factions in the Balkans.

Q2: Did you go to Rwanda?
Morrison: I did, yes.

Q2: What was that experience like?

Morrison: To be fair, the Rwandans made it easy. I didn’t have any complaints about my treatment in Rwanda at all—far from it. They were as cooperative as you could expect them to be. My principle reason for going there was to interview witnesses. Some were happy to be interviewed and some were not, but the ones that were not were just—. It's like witnesses everywhere—you get people who willing to cooperate, people who are more nervous about cooperating. It was a relatively easy place to move around in, and compared to some places I've been to, a relatively safe place in terms of personal security. It was sad still, because the aura of gloom and depression of the genocide still hung over the place very much in the late 1990s and early 2000s. Possibly it still does but I don't know, I've not been there.

Q1: More recently, there's been some hostility on the part of the [Paul] Kagame government toward defense counsel at the ICTR. Do you think that hadn't developed yet in the early years?

Morrison: I suspect that it depends very largely upon the individual defense counsel as to how diplomatic or not their approach would be to the Rwandan authorities. It was an enormous sensitivity in Rwanda to the question of what might be thought to be genocide
denial in the sense that if you are defending a génocidaire, and you alleging that there wasn't as a matter of law a genocide, it would be relatively easy to mistake that respectable legal argument, in terms of intellectually respectable to a sort of social comment. I think that may have triggered some dispute. It was very soon as a matter of law established that it was a genocide and it was not an argument that really benefited from being over-emphasized after that, and was bound to lead to difficulties.

Q2: I assume you had co-counsel from an African country, and here you had co-counsel from Croatia, from Bosnia. Were there any differences in how you worked with the different lawyers?

Morrison: I had legal assistance from a Rwandan who was a remarkable man, but in fact counsel in the case were English. There was myself and Ben Gumpert, who has since become a prosecutor at the ICC. We worked together on the case, and then when I left Ben became lead counsel and someone else from England became co-counsel. So Justin Mugenzi was represented by UK counsel throughout, until the final appeal stage when he was represented by counsel from Canada and Australia. We had a star of a German legal researcher who organized us brilliantly. She walked into the office when we were first there, looked with horror at the chaos, and within three months everything was in files, everything was cross-referenced. [Laughter] It was brilliantly done, absolutely.

Q2: Every team needs somebody like that.
Morrison: Every team needs one, yes. She was a girl who went back to Germany and then defended in fact the first Rwandan tried in German national courts under their—not quite universal jurisdiction, but under the law that comes close to that.

Q1: Have you found yourself in the position where you have to explain to your social circle at home, or your friends and family, why it is that you were defending people accused of such heinous crimes?

Morrison: No, people understand. When I was in the UK as defense counsel I was representing murderers, child rapists, people who you wouldn't want to go away for the weekend with by and large. Part of human rights is obviously an adequate defense and a properly well-funded independent defense, and if you don't have that then whatever system you have is going to suffer. Still, the usual dinner party questions would come up—"How can you represent someone you know is guilty?"—and you have to explain that you don't know they're guilty. It's only the court that decides guilt or innocence; you don't do it. There still a surprising level of misunderstanding at all levels of society about that, which is a little bit depressing sometimes. Obviously, if a guy tells me he's guilty, I tell him that I can only represent him if he pleads guilty, and that's it. But if he tells me he's innocent I fight the case on that basis and let the jury make up their minds.

Q2: The same is true in the United States in terms of the misunderstanding of the system. Talking about pleading guilty, you were saying that Nicolić ended up pleading guilty. What are you thoughts about plea bargains in international criminal courts?
Morrison: It's a contentious issue, I think for two main reasons. First of all, you have to be very careful to make sure why somebody's pleading guilty. Have they been made offers behind the scenes that you know nothing about back in the home jurisdiction? That remains a possibility. I'm not saying it's happened, but that's something over which you'd have no control. Secondly, in some jurisdictions it's almost essential. I'm told in the States, if you didn't have plea bargains, the system would collapse—

Q2: I think that's true.

Morrison: —because there just aren't enough courts and judges or jurors to deal with everybody if they all pleaded not guilty. The same is true in the UK, but it's to a less of extend that it happens. But ninety-six percent of the cases in the UK are dealt with by non-jury courts—by magistrates courts—so I mean it's only the top few cases that get in front of a jury.

All the cases in international courts and tribunals are going to be egregious cases, and in reality the prosecution should not be embarking upon them unless they have a compelling case. One would say that there is a possibility of pleas being tendered because of the fact that the case ought to be compelling before it gets to the court door. Ergo, there ought to be strong evidence theoretically in that case so there's probably statistically a greater chance of a guilty plea. That doesn't seem to have happened as a matter of fact, so that theory may be flawed, but I think what we're going to have to do in international courts is
look much more closely at plea-bargaining as a structured way of dealing with cases, at
the ICC in particular.

The ICC has eighteen judges and three courtrooms. You can't do that many cases. When I
was sitting as a judge in Birmingham in the UK, I think there were seventeen courtrooms.
This is just one courtroom in one city and probably twenty or thirty judges—much more
if you count the civil judges. There are going to have to be serious thoughts about how
you would incorporate a plea system. This is something I think is also should be
attractive from a budgetary point of view. I'm not a bean counter so I put that to one side,
but there are plenty bean counters out there and a lot of beans to be counted.

Q1: Have you ever dealt with an accused who felt himself—I think they were all men that
you dealt with—felt himself not prepared emotionally or psychologically to undergo a
trial?

Morrison: [Sighs] When I first met Dragan Nicolić, he had been effectively kidnapped,
banged on the head, put on the plane and flown from Tuzla to The Hague. When I saw
him the next day, he was in a complete state of bewilderment. That's one of the reasons I
couldn't start talking to him rationally for two or three weeks, because he was shell-
shocked. He really was. He'd been kidnapped and knocked unconscious. So, yes, the
people who are taken out of their comfort zone and brought to a new, strange city, under
tremendous security, yes, it's got to have an impact on anybody, whatever level of society
they are. I think everybody starts off here in a state of—not bewilderment, but it's going
to take time to get used to the system. The people that are representing them—defense counsel—you've got to be aware of that, as you are in a national jurisdiction. You don't walk into the room when somebody's charged with being a serial killer and simply sit down and say, "Right, let's go through pages one to a hundred of the indictment." You lead it on. There's a lot of psychology in it.

Q2: I was thinking we should perhaps switch somewhat into the judge role. What are your memories of when you first came here as a judge?

Morrison: I'd been a judge in the UK, so unlike some people who come to the tribunals or the ICC who'd been academics rather than judges, I'd been through the system. I sat as a part-time judge in the UK for many years in civil, family and criminal matters. I'd been a chief magistrate in Fiji, so you sat alone doing the most serious cases without a jury and without any other judges. I was used to that idea of the law and how to practice it.

I'd started off at the Special Tribunal for Lebanon, and what happened was that we were mainly concerned in the beginning with drafting the rules of evidence and procedure, which I did together with Nino Cassese, [? Birch Vouts ?] and one or two other people. I'd only just about finished that when [Iain Bonomy] Lord Bonomy, who was the UK judge here and was destined to be part of the [Radovan] Karadžić trial, decided that it was time to retire. I was asked to change horses at very short notice and to come here, which suited me fine because I knew jurisprudence of the place and the Karadžić trial was obviously going to be an interesting trial. I remember asking the front office when
did they want me to go The Hague, and the answer, after a short pause, was "Tomorrow."

[Laughs] It was rather a sudden departure from the UK bench.

Q1: Did you have any misgivings about coming into the ICTY in a different role?

Morrison: No, and I think it helped usually to know the system. I wasn't the first judge—the Dutch judge, Judge [Alphans] Orie, had been defense counsel in the [Duško] Tadić case. It helped to know the system, and that's what you do in a domestic situation—you go from either being a prosecutor or a defense counsel onto the bench, or both. So I didn't see anything strange about that at all.

Q2: You've had such a range of experiences—you've been defense counsel, you've been a judge, you've been in the domestic system, you've been in the international system. I know in an interview you gave you mentioned that you had done a lot of reading about Nuremberg and Tokyo. When you look at this whole picture of international criminal justice, starting from Nuremberg to now, what are your impressions, thoughts, and reflections on that?

Morrison: Nuremberg and Tokyo were criticized—possibly rightly so—for having a strong element of victor's justice about it and an appeal system that left something to be desired, but I think it was very necessary that it happened. The horrors of the Nazi regime and the Japanese military regime and the ruthlessness of it had to be matched by some sort of reaction. You couldn't simply say, "It's all over now. We'll forget about it." I think
setting the deterrent example was very important in those days. It was a harder society. These were societies that had just been through four or five years of brutal war, so things like the death penalty were not as contentious as they would be now and people were much more hardnosed about passing those sorts of sentences.

But if you actually look at Nuremberg, there were acquittals, and in the Tokyo tribunals there were acquittals, so the system wasn't a rubber stamp for conviction by any means. The death sentence obviously is the death sentence, but some of the imprisonment and the commutation of some of those sentences afterwards showed an element of understanding and mercy. But I think it was important.

Of course it all went into a sleep after that, until this tribunal was set up, and the ICTR. I sometimes wonder what would have happened to international justice if that hadn't happened, if the United Nations hadn't girded up its loins and the Security Council set up the ad hocs. My own view is that we owe a huge debt to Nino Cassese, because if he hadn't got this place going, I don't think the impetus would ever have been there for the ICC. I think Nuremberg, a big gap, ICTY, Nino Cassese, ICC, and who knows what the future may bring.

Q2: My next question was, if you look into a crystal ball, what do you think the future is of international criminal justice?
Morrison: Sometimes a student will say, "Has it plateaued out?" and my answer to that is, it's far from it. I think the biggest problem that the human race faces is overpopulation. Overpopulation is going to bring with it some pretty disastrous consequences, both societal and environmental. I'm not leaving it aside, but put aside for second climate change, which has disasters all of its own incorporated with it, but when you get an overcrowded society and diminishing natural resources, you're going to go from the sort of wars we've always had—territorial, theological, wars of pure greed—we're going to have water wars, we're going to have food wars, we're going to have living space wars, we're going to have wars about how many fish you can take out of the sea, whether or not you can enforce fishing zones, free trade zones.

All of this is going to happen, and we're going to have to consider at some point whether or not we expand serious environmental crimes and transnational corporate crimes into crimes against humanity. Whether that's possible—and probably not in my lifetime, but I can see that that could happen. As the population keeps on getting bigger and bigger and the world unfortunately stays the same, these are going to be very serious problems in the next two or three generations, so international law has got to grow and mature to cope with them. The fact that the state responsibility is really what underlines the effectiveness of international criminal law and humanitarian law, that's going to have to get more defined and states are going to be less able to be rabidly nationalistic or claim sovereignty where sovereignty doesn't help. I think this is really a lesson in human maturity as much as anything else. If we lose that battle, we lose everything.
Q1: I know you've just started your real work at the ICC, and I'm wondering if already you're seeing institutional differences, things that surprise you?

Morrison: Yes, the obvious difference between the ad hoc tribunals and the ICC is the ad hoc tribunals have the backing of the United Nations Security Council and the whole of the United Nations in terms of enforcement. The ICC is limited to the members of the Rome Statute, the Assembly of States Parties. Its relationship with the Security Council is a special relationship as it is described, but it's only in effect the ability of the Security Council to refer cases to the ICC that's going to have any real impact on that. The big players who are in effect members of the ICTY and were members of the ICTR family—United States, Russia, China, India, Israel, and other big countries—are not signatories to the Rome Statute, and some will never be. Some are more hostile than others. That for starters is an enormous difference.

Coupled to that, the Rome Statute is pretty much set in stone and very difficult to amend, whereas we have had the advantage here of the judges being able to, for instance, amend the rules of evidence and procedure on a case-by-case basis where the interest of justice demanded it. Some people are critical of that, but they forgot that the ad hocs didn't have a parliament. We don't have a body of lawmakers. We had to do it ourselves or you live with the same inefficient rules forever, and that's not justice.

But there are significant differences, and of course the huge difference is that the ICC isn't dealing like the ad hocs with relatively confined geographical areas and relatively
confined cultural and linguistic areas. Some people criticize the ICC because in the first ten years of the ICTY, it did X number of cases, and the first ten years of the ICC it did one or two. First of all, that was inevitably going to be the case, and secondly you're comparing apples and oranges because the ICC doesn't have the United Nations behind it, and it has no police force. It relies completely on [? mature ?] state cooperation. Not all states are member partners.

I would think you've got to look at the ICC as each trial being like an ad hoc tribunal. Even though all the cases at the moment that are active are in Africa, they're all extremely different—different parts of Africa, different languages, different cultures, different problems involved in cooperation and investigation. It isn't a global homogenous court like a domestic court; it's got to adapt to each of the different situations in a completely individual way. If you look at the ICC as it were as a series of ad hoc trials, and if you like almost like ad hoc courts, it's a much more realistic way of looking at it.

Then the comparison in terms of the numerical comparison makes even less sense. This court has done a hundred and sixty-one cases. It's going to take decades before the ICC has done a hundred and sixty-one cases. We've got to remember the whole problem with the ICC in the eyes of some people is sovereignty, and that's where complementarity comes in. Complementarity is misunderstood, but the less cases that the ICC does and the more cases the individual countries do themselves, the better. It's not a numbers game.
Q1: You raised an interesting question when you said that even after all these years working at the ICTY, you don't know everything about the Balkans. I'm wondering, as you start your work at the ICC, how do you bring yourself up to speed on the various appeals cases, for example, that you're doing now? That must be a tremendous challenge.

Morrison: It is. There's no two ways about it. Fortunately you've got a fairly confined procedural set of rules that you look at and a relatively few number of decided cases to act as authoritative precedent, but that's going to expand. In a sense, at the appellate level, you're not so much dealing with cultural differences, you're dealing with legal argument, so I think the real challenge will be for the trial chamber lawyers who know nothing about some mythical country—"Astroland"—and when the case against Astroland comes to court, the language of Astroland is only spoken by a series of clicks and snapping your fingers. I'm exaggerating hugely but you know what I mean. That's going to require leaps of faith and preparation. That's another problem for the ICC. That's what's going to happen at the ICC—the ICC is going to get cases from very different places as situations develop.

Q1: I think the Darfur case is one that has already been a big challenge from the linguistic point of view.

Morrison: Absolutely. Although there is an enormous commonality between a lot of lawyers as to what's acceptable and what you can expect from a system of law, and what amounts to the rule of law, there are still enormous differences. Sharia law is very
different from the law in Ireland. That's always going to be the case, but you can't say that one's good and one's bad; you can only say they're different because they've grown up to suit the different cultures and different imperatives where they've grown up. That's what all law does. Law should reflect the society in which it's developed and be there to assist its development. Not always the case, of course.

Q1: You sound like an anthropologist. [Laughter]

Morrison: The reality is that what you have to avoid is any sort of form of cultural imperialism when it comes to the law, and saying that this system of law is inherently better than your system of law. It may be in some ways more humanitarian if it doesn't have the death penalty or if it doesn't pass draconian sentences, but you could make those sort of comparisons between UK law and U.S. law.

Q1: Yes, you could.

Morrison: Yes.

Q1: Do you think that your experiences in Fiji have informed your way of looking at the kinds of cases that you've done in international jurisdictions?

Morrison: Well, it was a fascinating jurisdiction. I was chief magistrate, coroner, and prison visitor. [Laughs] It was wonderful. The Fijians are exceptionally robust people.
There were all sorts of societal problems in Fiji as a result of the history of what had happened, about sugar cane being imported as a cash crop, about a lot of people being brought in as indentured labor from India, the expansion of the Indo-Fijian population, the resentment which that caused, and the problems and difficulties that generated. Very sad problems too. Fortunately, that seems to be slowly resolved over the last few years and there's a move back to a more democratic government and a more integrated society, but that was a very real problem. But you had to be aware of that when you got there that this was going to be an issue. That's what led to the coups in the late 1980s. I was there when that happened, so I saw them first hand.

What was really interesting for me when I first got to sentence people in Fiji was the importance of local cultural remedies and sentencing practices. If a young man, for instance, had got drunk and assaulted somebody in the village, instead of sentencing him to a fine or to imprisonment, you could make him go through a formal traditional apology in the village.

Q1: Is this bulubulu?

Morrison: Yes, absolutely.

Q1: I read about this.
Morrison: It works, and it works well. It consolidates relationships within the village rather than causing divisions. As often as I could, if it wasn't a really serious case, I'd get the young man—and it usually was a young man; there were very few women defendants in Fiji—to go through a traditional form of reconciliation rather than send him up to prison for six months—of which they serve three, and who benefits from that?

Q1: I know there had been some issues with bulubulu being proposed as a remedy for rape, for example.

Morrison: Yes. That I wouldn't do, it's as simple as that. That's when you have to be very aware of the differences between what one might describe as a western reaction to an offense, or a more global reaction to offense, as opposed to a bit more national or more local reaction to an offense. When I first went to Fiji, the sentences of imprisonment for rape were incredibly low, sometimes months rather than years. Actually, while I was there, the chief justice of Fiji followed a practice direction from the law chief justice of England for the minimum sentences for rapes, and the whole thing went up very considerably. The minimum then was only four years.

Q2: Howard, do you think that, with all these experiences that you've had, from being in England, and then being at the ICTY, and including Fiji—has this changed your thinking about how international criminal justice should be approached? Perhaps not just judicial trials. Has it shaped your thinking?
Morrison: From a practical point of view, we're only ever going to be able to deal with the smallest number of cases. The annual budget of the ICC looks big if you're an outsider or you're a farm worker in rural Africa; $100 million a year just is a figure that you can't believe, but that's half the cost of an F-35 fighter. If you bring in the development cost, it's probably about a third of the cost of an F-35 fighter—one aircraft. So you get what you pay for. I prefer to put it the other way around—you get what you don't pay for. From a purely venal and pragmatic point of view, if you can only deal with the most egregious cases in international law, what are you going to do with the less egregious cases? Are you going to have a series of ad hocs? Are you going to have truth and reconciliation committees? Are you just going to forget about it and sort of pretend it didn't happen—which never works—and move on? I think, yes, there's going to have to be a far more structured view.

I don't think the world of the ad hocs is finished by any means, and I suspect that maybe an ad hoc for Syria is quite possible. There are actually difficulties with Syria and the ICC—not simply the expensive and difficulties in investigation and difficulties in actually physically bringing people who are not members of the Assembly of States Parties to the court in the absence of a Security Council resolution. There are enormous difficulties, and it may be that it would be better off having a local court with largely Arabic-speaking staff and judges, and one or two international judges to, as it were, iron out, hopefully, cultural prejudice and differences. I think that may be a better answer than simply shifting everything to the ICC, which can't happen anyway.
Q2: I was wondering about your own experiences and thinking—if you think of where you are now and what you're doing at the ICTY and ICC, and you think back to your very first experiences, when you look back at those experiences when you came to the ICTY after you got that phone call saying, "Do you want to represent me," how have you changed?

Morrison: [Sighs] When I first went into the law, I was pretty much like everyone else who was going into the law—it was a way of earning a living. You went into the law because it was interesting, but it was a pretty reasonable way to earn a pretty reasonable living using your brain and using skills that you developed as an advocate along the way. You get into the mortgage, you get into the children, you get into paying the school fees, and like most people you start to dig your own little rut along which you walk. It's inevitable. There's nothing wrong with it. But once you've got outside that it's very difficult to get back into it, or even to want to get back into it, and that's what's really the effect on me. Each time I did something different, I wanted to do something even more different. It's the only game in town for me now. I couldn't possibly go back.

Q2: Has it been more personally satisfying for you?

Morrison: Yes, I think it has. I've done the domestic stuff; I was a prosecutor; I was defender; I was a judge, and I enjoyed it and I think it's wonderful when people do settle into it and stay doing it forever and have this sort of institutional memory and the rest of
it. It's not for everybody. Once you've ridden a faster horse, it's difficult to get back to a slower one. That's the way I feel about it.

I grew up traveling; of course that's part of the problem. My dad was an air force pilot, so I got used to the idea of moving about, and we moved about every two and a half or three years as a child. I was what you call in the States a "military brat"—I lived in Egypt, I lived in Germany, I lived in Cyprus, and other places. It wasn't until I actually settled into secondary school that I stayed for more than three years anywhere. I loved it. My sister, on the other hand, hated it, and as soon as she could, she got married, settled down, lived in only two houses for the rest of her life. [Laughter] But I've lost count of the number of places I've lived in. I really have. I have no idea, couldn't tell you. You sort of develop what you inherit to some extent, and I certainly inherited that bug. I'm very grateful, I have to say, and there are plenty of places I haven't been to that are still on the list, but I've been very lucky enough to lecture worldwide, and I look forward to it.

Q1: We're getting to the end of our time, but I wanted to ask a question about your transition to the ICC. Now you're working alongside judges, some of whom probably have not had international criminal tribunal experience. What do you think that your long years here can contribute to your work at the ICC? Are there disadvantages?

Morrison: I would say this—I say it unashamedly and I'm not going to change my views on this—the ICC is not a human rights institute, although we apply human rights principals; it's not a PhD factory; and it's not an employment agency. It's a serious
criminal court, and it's got to be viewed as such and staffed as such. With great respect, I think you are taking a chance if you employ judges who don't have what I would call cold-faced criminal legal experience. Some do very well; others don't manage it quite so well. Although there's a lot of room for academic input, I think it's essential that the bulk of the judges—the vast majority of the judges—should come from solid criminal background experience as advocates and as judges. I don't think the International Criminal Court was designed to be a place where people started learning the art of judging. They should know quite a bit about it before they get there. That's my personal view, and it always has been. Now, views digress, obviously, because that isn't the system.

Q1: Do you feel that the jurisprudence of the ad hoc tribunals is setting precedent, or will set precedent, or will be referred to, or will be taken into account in the ICC's work?

Morrison: Watch this space. [Laughter] Yes, I think it'd be complete nonsense to reinvent the wheel on every occasion, and it's not necessary. The ICTY in particular of the ad hoc tribunals has produced some very, very good jurisprudence and you ignore that at your peril. If you get a case where it is proper to incorporate it and refer to it, then I would have no hesitation in doing so. It has happened already; it's not as if it hasn't happened. The idea that there should be no jurisprudential legacy from this place is nonsense. You've only got to look at the volumes of decided cases and the sheer volume of thought and material that's gone into it. It's just staggering, it really is. Twenty years—and some
of the judgments run to a thousand pages. I'm not saying they should, but it's very
difficult in a big case to make it less than that. Sometimes it's going to be more.

Q2: One of the key differences of course is that victims are represented by counsel. Do you have any thoughts about that?

Morrison: It's a lovely idea, but it's actually very hard in practice because victim representation—[Sighs] you can incorporate a certain number of victims in twenty-one proceedings, or any one trial, but there are huge practical limitations in terms of length of trial, in terms of expenditure, in terms of how many—. It would be nonsense to suggest that each victim is entitled to separate representation; that would just be unmanageable on any budget. So we're going to have to work our way through that very, very carefully indeed, and there are divergent views as to how you do that. It's going to come out high. Victim representation and reparations are an essential way forward, but it's going to have to be done in a way that works, and the theory and the practice at the moment—there's quite a wide gap between them.

Q2: Is there anything that we haven't covered that you would like to say before we finish here?

Morrison: I'd just say this, and this is really aimed at younger people. We've got to continue to get a body of younger people coming into the arena because the people who've been judges here are going to die off, the people who've had hardcore experience
of international criminal law—those prosecutors and defenders are going to die off, and there's going to be less jobs in the future because if everything goes to the ICC and there aren't any other ad hocs in the foreseeable or in the short term, you're going to have people who don't give up simply because there aren't that many jobs but still are concerned. That's where the future lies, of course, with young people. We're the present and I hope to some extent the future, but the real future lies in today's twenty, twenty-five-year-olds.

Q2: I would agree.

Q1: Thank you so much.

[END OF INTERVIEW]
Bonomy, Iain 15

Cassese, Antonio 15, 17

Gumpert, Benjamin 11

Kagame, Paul 10

Karadžić, Radovan 15

Kovacevic, Vladimir 2

Mucić, Zdravko 2, 3

Mugenzi, Justin 8, 11

Nicolić, Dragan 2, 12, 14

Orie, Alphans 16

Tadić, Duško 16