

Prosecuting war crimes

A challenge within your reach



By Jennifer Holdstock, Solicitor, Russell Kennedy

The next time Felicity Hampel SC attends The Hague, she will be preparing and arguing appeals on behalf of the Office of the Prosecutor (OTP) at the International Criminal Tribunal for the former Yugoslavia (ICTY) in the Netherlands.

Previously, Professor Hampel has provided unpaid advocacy training to bright young international lawyers from all over the world at both the ICTY and the International Criminal Tribunal for Rwanda (ICTR). Over the past two years, Professor Hampel and her husband, former Supreme Court Justice Professor George Hampel, have provided advocacy training on four occasions. In the past, they have taught advocacy skills in England, Scotland, Singapore, Hong Kong and Malaysia.

The ICTY was established by the United Nations Security Council in 1993. Resolution 827 was passed as a response to the threat to international peace and security posed by violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991. The ICTY is bound by the Statute of the Tribunal.¹ The ICTR was established by United National Security Council Resolution 955 in 1994.²

The ICTY employs more than 1200 staff from 84 different countries and is a fully operational legal institution rendering judgments and setting important precedents of international criminal and humanitarian law.

The mission of the ICTY is to:

- bring to justice persons allegedly responsible for serious violations of international humanitarian law;
- render justice to the victims;
- deter further crimes; and
- contribute to the restoration of peace by promoting reconciliation in the former Yugoslavia.³

The ICTY has authority to prosecute and try offences in relation to:

- grave breaches of the 1949 Geneva Conventions;
- violations of the laws or customs of war;
- genocide; and
- crimes against humanity.⁴

Professor Hampel describes the tribunals as being an unusual hybrid of both civil law and common law which have developed their own rules of practice and procedure and body of jurisprudence since their establishment.

Office of the Prosecutor (OTP)

The OTP operates independently of the UN Security Council, of any state or international organisation and of the other organs of the ICTY. Its members are experienced police officers, crime experts, analysts, lawyers and trial advocates.



The OTP conducts investigations (by collecting evidence, identifying witnesses, exhuming mass graves), prepares indictments and presents prosecutions before the judges of the relevant tribunal.

The rules of procedure and evidence⁵ guarantee that ICTY proceedings adhere to internationally recognised principles of fair trial.

Professor Hampel comments "These cases are extraordinarily complex and difficult . . . [because you are] dealing with mass human tragedy on a scale that is very hard for any of us to imagine" and describes her role as including "teaching a level of detachment so as to be able to explain the horror and the enormity of what's happened and yet still

retain that level of objectivity that a lawyer has to have".

Professor Hampel teaches skills of analysis, elucidation and persuasion in order to help the prosecutors "present arguments in a way that will best bring out the essence of the case".

The challenges faced by the prosecutors include having to deal with mass forensic evidence, military intelligence and intercepts, political history, chains of command, isolating the controlling minds and managing the sheer amount of data cases like this create.

Professor Hampel says that the hardest thing is to deal with the inhumanity of it all and "not to become too desensitised to lose sight of individual human tragedy and mass diminishing of humanity that killing on this scale produces".

Opportunities for young lawyers

The ICTY and ICTR and United Nations have internship programs for young lawyers to complete a short-term stint working for one of the tribunals or another area within the UN generally.

Young Australian lawyers can also apply for more permanent positions working in judges' chambers or in the OTP. Positions are available as judges' associates, prosecutors, defence counsel or in the registry.

Professor Hampel says Australian lawyers are in high demand as interns and employees because we are seen to be well trained and hard working. We have a well-deserved reputation for hard work and are well regarded as compared to our counterparts from the US and UK

because of the quality of our legal training.

For more information go to:

- <https://jobs.un.org/>;
- <http://www.ictr.org/default.htm>;
- <http://www.un.org/icty/jobs/internship.html>;
- or
- <http://www.un.org/icty/jobs/jobs.htm>. ■

1. Resolution defining the jurisdiction, organisation and functioning of the Tribunal.
 2. Fact Sheet No 6, <http://www.ictr.org/default.htm>.
 3. Fact Sheet on ICTY Proceedings, <http://www.un.org/icty/cases/factsheets/generalinfoindex-e.htm>, updated 23 June 2004, accessed 19 August 2004.
 4. Note 3 above.
 5. Rules governing the conduct of proceedings (from the pre-trial to the appeal phase), the administration of evidence and the protection of witnesses, <http://www.un.org/icty/legaldoc/index.htm>.