

Public Annex A

This Annex contains the letters and statement provided by the following individuals along with their *curriculum vitae*:

A1 Letter from Michael Mansfield QC., dated 14 January 2012

- Michael Mansfield QC., is a leading member of the English Bar and Head of Took's Chambers. He has been involved in some of the major Civil liberties and human rights cases in England and Wales over the past thirty years. He has considerable experience in international criminal and human rights law.

A2 Letter from Rt. Hon. Sir Desmond de Silva PC. QC., dated 25 January 2012

- Rt. Hon. Sir Desmond de Silva PC. QC., is the former Chief Prosecutor of the Special Court for Sierra Leone and currently a leading member of the English Bar.

A3 Letter from Professor Michael Newton, dated 25 January 2012

- Professor Michael Newton, is the Professor of the Practice of Law at Vanderbilt University. Professor Newton specialises, *inter alia*, in the areas of international humanitarian law, international criminal law, and special tribunals.

A4 Statement in Support from William J. Fenrick, dated 27 January 2012

- William J. Fenrick, was a member of the United Nations Commission of Experts whose Report (further to Security Council Resolution 780 (1992)) was a precursor to Security Council Resolution 827 (1993) and the establishment of the ICTY. Mr Fenwick is a former Senior Legal Adviser in the Office of the Prosecutor at the ICTY where he served under Prosecutors Goldstone, Arbour and Del Ponte from 1994-2004. After retiring from the ICTY, Mr. Fenrick taught international criminal law and international humanitarian law at the Schulich School of Law at Dalhousie University in Halifax, Canada from 2005 to 2011.

A1

tooks

Karim A. A. Khan QC
Lead Counsel for Abdallah Banda & Saleh Jerbo
The Hague, The Netherlands

14 January 2012

**The Chambers of Michael Mansfield QC
& Patrick Roche**

81 Farringdon Street · London · EC4A 4BL

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Dear Karim,

Having reviewed the defence's filing for a temporary stay of proceedings (ICC-02/05-03/09-274) in the case of Mr. Abdallah Banda and Mr. Saleh Jerbo before the International Criminal Court, I write to express my serious misgivings about the predicament of your clients.

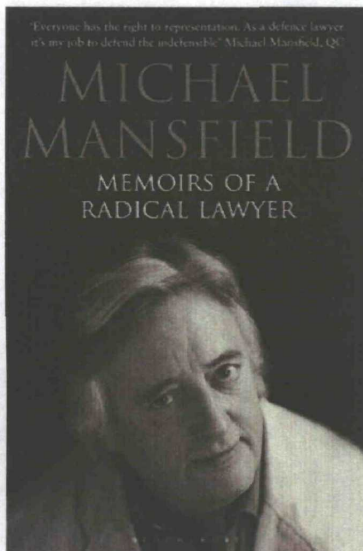
There is in this case a flagrant breach of the rule of law by the Government of Sudan both by the violent activities of its agents and by its non-cooperation with the institutions of justice authorised by the United Nations. The legitimacy of referral to the ICC has been recognised by these two defendants but not by the Sudanese Government. By denying access and investigation to the defence the Government is deliberately thwarting the interests of international justice. A prerequisite in any system of fair trial is an ability to prepare and mount a defence. In this case this cannot be accomplished without research and evidence gathering at ground level in the country concerned.

Until this situation is remedied by the combined efforts of the Court and the UN Security Council no trial should be countenanced which carries the risk of a substantial miscarriage of justice.

Sincerely,



Michael Mansfield QC
Tooks Chambers London



Michael Mansfield QC

Called 1967 (QC 1989)

Legal Aid Lawyer of the Year Award for Outstanding Achievement 2010

The Monitoring Group Lifetime Achievement Award 2009

Chambers & Partners Lifetime Achievement Award 2008

Association of Muslim Lawyers Lifetime Achievement Award 2007

Professor of Law at City University

Fellow at Kent University

Honorary Degrees in Law at a number of United Kingdom Universities

Background

Michael Mansfield QC was born in 1941 and educated at Highgate School and Keele University. Called to the Bar in 1967, he established Took's Chambers, in 1984 and became Queen's Counsel in 1989. Michael has represented defendants in criminal trials, appeals and inquiries in some of the most controversial legal cases the country has seen, particularly where issues of Civil Liberty have arisen.

Barry George, accused of killing TV presenter Jill Dando; **the family of Stephen Lawrence** both in the private prosecution for murder and the Public Inquiry and the families of victims at the on-going **Bloody Sunday Inquiry** in Derry and London. He also chaired an Inquiry into the "Shoot to Kill" policy in the North of Ireland at Cullyhanna.

More recently he has successfully represented, **Fatmir Limaj, the Deputy Prime Minister of Kosovo** at the International Criminal Tribunal for the Former Yugoslavia in The Hague; successfully represented clients in the notable **"Ricin" Trial**, and **"Shaken Baby" Appeals** and **Nabeel Hussain** in the so-called **"Fertiliser plot"** trial; has acted for **the family of Jean Charles de Menezes**, shot by the Metropolitan Police in 2005 and **Mohammed Al Fayed** in his pursuit of the truth surrounding the death of his son, Dodi, and Princess Diana in Paris in 1997 as well as being involved in helping the family of solicitor **Patrick Finucane**, shot by agents of the British state, to seek a public judicial inquiry. Currently representing the family of **Laurence Rush** whose wife was killed in the Omagh bombing in his action against the Police in Northern Ireland and the Secretary of State for Northern Ireland.

Michael has represented many families at Inquests, including **Tom Hurndall** and **James Miller**, two British journalists murdered by the

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Michael Mansfield QC

Israeli army, the **Marchioness** Disaster, the **Deptford/New Cross Fire**; the **Lockerbie/ Dublin Monaghan** bombings, and **Michael Barrymore**.

Notable Cases

Michael's past clients include: **Angry Brigade**; **Phone Freak Network**; **Endell Street Squat**; **Incitement to Disaffection**; **Welsh Arson Conspiracy**; **QEII Conspiracy**; **Price Sisters**; **Persons Unknown**; **Armenian Dissidents**. **Angela Cannings**, the acquitted 'cot death' mother; **Tahira Tabassum**, acquitted widow of the first British suicide bomber in Israel; the **Orgreave** miners who were unjustly accused of riot during the miner's strike in 1984 and **Arthur Scargill**. The **Birmingham Six**, who were released in 1991, nearly sixteen years after being wrongly convicted followed by the **Cardiff Three**; the **Tottenham Three**; the **Winchester Three**; the **Bridgewater Four**; the **Cardiff Newsagents** murder Appeal. Those in the **ABC Official Secrets** case and the **Operation Julie** drugs trial; **Searle and others** (cannabis joint possession); **Ameer and Lucas** (cannabis recycling). **James Hanratty**, hanged in 1962 for murder; **Mattan** executed for murder but exonerated on Appeal; **'spy' Michael Bettany**; **Frank Critchlow** and the Mangrove; the **Bradford 12** and the **Newham 7** against the National Front; **Tottenham Riots** trial; **Dr O'Shea**; **Brighton Bombing and Resorts Conspiracy**, **Sikh Conspiracy** to murder Indian Prime Minister. Robbers in the **Knightsbridge Heist**; **Ronnie Knight**; cases related to **Operation Countryman**; **Colin Wallace**. The **'Camberwell'**, **'Torso'**, **'Big H'**, **M25**, **Eddie Gilfoyle**, **Morris** murder trials and Appeals; **Judith Ward**; **Iraqi dissidents** fleeing Saddam Hussein; **Turkish and Kurdish exiles**; **Palestinians** charged with the Israeli Embassy bombing in London and **Ruth Ellis**, the last woman to be hanged in Britain.

Prison cases – the **White Moor** escape; **Risley** riots; **Strangeways** riots. The **Cambridge Two** (community workers); the **Veal Crate Protest**; **Poll Tax** riots.

Advising the **McLibel Two** and the **Sea Empress** disaster. **Saajid Badat**; **Patel**.

Cases involving issues of forensic science – **Angela Weir** (hand-writing); **McFadden**, **McNamee** and **McNamara** (all fingerprint cases); **Kempster** (ear prints); **Kevin Callan** (neuro-pathology); **Simon Hall** (fibres); **Ian & Angela Gay** (salt poisoning); **Lorraine Harris and four others** (SIDS and shaken-baby). **Pendleton** (fresh evidence House of Lords); **re. 'P'** (similar fact evidence joint trials House of Lords); **Deen and Hanratty** (DNA); **Power, Ward** (explosives). And **Superintendent Ali Dizaei** in two Trials and an Appeal.

Current Commitments

In the Spring of 2009 Michael was part of an independent lawyers mission to the Occupied Palestinian Territories (OPT) investigating the operation of the military court system, a legacy of the British Mandate

In December 2009 he participated as an expert in a conference on Transitional Justice organised at the European Court of Human Rights in Strasbourg.

Chair of the White Paper Conference 2009 and 2010, Surveillance on Security Matters.

Michael is a member of the jury panel on the Russell Tribunal inquiry into the legal ramifications of Israel's human rights and humanitarian law violations in Palestine. Part 1 was heard in Barcelona in March

Michael Mansfield QC

2010, Part 2 was heard in London in November. There are to be three more hearings, the next is to be in South Africa in November 2011.

Michael is currently engaged in assisting a team of Canadian lawyers mounting a challenge in relation to the **Tar Sands** environmental disaster on behalf of the Cree Nation.

Michael will lead the prosecution at the Ecocide mock trial – Thursday 30th September at the Supreme Court with Jane Russell <http://thehamiltongroup.org.uk/common/ecocide.asp>

Michael has been invited to stand as a candidate for the office of Chancellor of the University of Cambridge, by a number of academics. Voting will be in person on 14th & 15th October 2011 at Senate House, Cambridge. See press release in the [News](#) section for more information.

Publications

Michael's latest book is *Memoirs of a Radical Lawyer*, published by Bloomsbury, 2009. (See book signings under [Events](#)).

'A fascinating and passionate record of the author's major cases in courts, inquests and public inquiries, whose context will be as familiar to the general reader as to the lawyer, and which concerned or raised issues beyond the narrowly legal'

Spectator

'I hugely admire him ... This book is not just a show-off catalogue of his greatest hits. It is a shaming, chilling list of injustices.'

A.N. Wilson, Daily Mail

'A fascinating insight into the mind of a man who has devoted his life to securing the liberty of others ... It is in the transcripts of his cross examinations where the book really comes alive'

New Statesman

'An in-depth insight into the skills that make an outstanding barrister ... Mansfield is refreshingly lacking in pomposity - surprising in any barrister, let alone such a successful one'

Time Out

'Probably the biggest household name at the criminal Bar is Michael Mansfield QC, a sure-fire role model for students wondering about a career in criminal (or civil rights) law.'

The Times Online, 20 October 2008

'There is no question that he has been a force for good in this country, and has kept the flag of civil liberties flying when governments would have been very happy to have seen it suppressed. He can't retire - his country needs him. Carpentry must wait.'

Lynn Barber, 'A Law unto Himself', Observer, Sunday 19 January 2003

'Michael Mansfield QC is a die-hard grand old rebel. He has rejected the Labour Party, dismisses Blair as a Tory, and thereby disqualifies himself from the headlong rush of so many of his senior legal contemporaries to sup in the Labour Government trough of power.'

Guardian, 25 October 1997

'The radical lawyer has become an icon in a disenchanted age ... (Mansfield's) high profile victories take on a hallowed significance: the good guys against the rotten state... with a flourish of his insolence and a refusal to shut up... they flock to him, the disaffected, the inner city victims, Arthur Scargill, and he looks after them all. The Establishment loathes him.'

Lesley White, 'One of the Good Guys', Sunday Times, 6 June 1993

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Michael Mansfield QC

Articles to date in 2011 include: *The Guardian Online* 'Why we are marching on 26th March', *The Guardian Online* 'Barristers Right to Comment', *The Guardian* and *The Guardian Online* 'The French Resistance', *Government Gazette* January 2011 two articles Legal Aid and Russell Tribunal, *Politics First* Control Orders, *Electoral Reform Society* Alternative Vote 'A Purple Spring' (publication date unknown) and the Role of the CCRC (yet to be published), Professor of Criminal Justice - Kate Moss foreword for book 'Human Rights: Human Wrongs' (publication date unknown), *Financial Times* CCF article 'How to Give It', *Sunday Times* magazine 'Relative Values' article 17th April 2011.

Articles in 2010 include: *The Times* on the Chilcot Inquiry into the Iraq war; two articles on the Russell Tribunal on Palestine for *The Times* and *Socialist Lawyer*; an essay for the *Justice Gap* edited by Jon Robbins; a print debate with Melissa Benn for *Red Pepper* on the general election. In addition: Forewords to two books - one on the Ricin Trial and the other on the Tichborne Claimant.

Michael has presented a number of television documentaries and series, including *Presumed Guilty* for BBC1. He is a regular contributor to television and radio current affairs programmes and was a panel member of *The Moral Maze* for many years. He has also published numerous articles for all the major broadsheets and law journals, a children's book *The Whale Boy* and *The Home Lawyer* - a legal handbook. Over the last few years he has also given a number of successful talks at theatre venues around the country in a series entitled "An Audience with..."

In 2011 he participated in a number of TV and film documentaries – on Bloody Sunday, Legal Aid, Lockerbie, Human Rights Act and Forensic Science.

Societies

President of the Haldane Society of Socialist Lawyers, founder of Interights, President of Amicus, President of the National Civil Rights Movement, Patron of several other organisations including Viva!, Cambodian Children's Fund, Lawyers for Palestinian Human Rights.

A2



The Chambers of
Harendia de Silva QC

Karim A. A. Khan QC
Lead Counsel for Abdallah Banda & Saleh Jerbo
The Hague, The Netherlands

25 January 2012

Defence Request for a Temporary Stay of Proceedings in *Prosecutor v. Abdallah Banda Abakaer Nourain & Saleh Mohammed Jerbo Jamus*

Dear Karim,

I write in support of the request for a temporary stay of proceedings which your Defence team filed on 6th January 2012 in the case of *Prosecutor v. Abdallah Banda Abakaer Nourain & Saleh Mohammed Jerbo Jamus* (ICC-02/05-03/09).

In short, Sudan's opposition to the ICC fundamentally undermines your team's ability to properly investigate your clients' defence. I firmly believe that to proceed to trial without ever having been accorded an opportunity to conduct defence investigations and witness interviews in Darfur would be a denial of justice and would render meaningless the defendants fair trial rights.

From your filing, I understand that you and your team have valiantly tried to pursue other avenues of investigation and have succeeded in conducting some interviews with Sudanese citizens outside Sudan. However, it appears that these interviews have been achieved at considerable risk to the individuals involved. The risks are also ongoing as I understand that these persons have returned to Sudan where no protection is available. Should their involvement with the Court be discovered, then the consequences could be extremely serious and involve at the very least criminal prosecution. Obviously, should your team wish to call these people as witnesses at trial, then, unless there is some radical change in the current security situation in Darfur and in the Sudanese Government's stance towards the Court, these persons will be asked for a second time to undertake an extremely dangerous journey, this time to The Hague.

To pursue international justice in these circumstances is unheard of. As the former Chief Prosecutor of the Special Court for Sierra Leone, I firmly believe that those called to appear before international courts to account for their actions must heed that call. However, their rights must be fully respected. They must have the ability to properly present their defence and to call witnesses without fear that such call will place their witnesses in serious danger. Indeed, the Court has an obligation to ensure the safety and security of those who appear as witnesses to assist in its truth finding function.

I salute Mr Banda and Mr Jerbo's recognition of the international criminal justice process and their willingness to appear before the Court, despite otherwise being able to remain beyond the Court's reach by Sudan's non-recognition of the Court. Mr Banda and Mr Jerbo have placed their trust in the Court that they will be offered the opportunity to answer the charges laid against them.

5 Bell Yard, London WC2A 2JR

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The Chambers of
Herendra de Silva QC

To preserve the integrity of international justice and simply to do justice in this case, I believe this case must be stayed until the Defence's complaints regarding their ability to investigate and present a complete defence case are properly and substantially answered.

Should it assist, I confirm that this letter can be filed publically with the Court.

Sincerely,

Rt Hon Sir Desmond de Silva PC. QC.
Argent Chambers, London

5 Bell Yard, London WC2A 2JR

T: [Redacted] F: Redacted DX: LDE - 494





Embracing a new era of legal

Rt Hon Sir Desmond de Silva PC. QC.

Member

Rt Hon Sir Desmond de Silva PC. QC. is one of this country's leading Queen's Counsel with particular expertise in Business Crime, Clubs & Vice, Espionage Trials, Extradition, Human Rights, Kidnap & Blackmail, Large Scale importation of Drugs, Money Laundering, Murder, Sports Law, Tax & VAT Fraud, Terrorism, Treason, War Crimes and White Collar Fraud. The high standing in which he is held has been underlined by the honour of a Knighthood that has been conferred upon him in the New Year Honours of 2007.

In recent years he has either acted for, or advised many leading sporting personalities from the worlds of football, rugby and horse racing; they include, John Terry, Ron Atkinson, Hans Segers, Lawrence Dallaglio, Graham Rix, Lee Bowyer, Jamie Osborne and Jaqui Oliver.

Outside England and Wales, he has appeared in many jurisdictions where he has been instructed to prosecute or defend. His work has also involved advising Heads of State and Governments. When he was appointed the Chief Prosecutor of the UN backed international criminal court he became one of just four incumbent international Chief Prosecutors in the world. As a defence counsel he has been credited by "The Times" with having saved more people from capital punishment in the Commonwealth than any other London-based practising member of the English Bar.

His success at the bar has been built on an ability to get to the heart of the matter, be it the evidence of a witness or a case and as a forceful and persuasive jury advocate.

In July 2005, when The Secretary General appointed him Chief Prosecutor of the UN backed court in Sierra Leone, he was appointed at a level of an Under-Secretary General of the UN. He has, therefore, first hand insight into the operation of public international law, international criminal law and crimes against humanity.

Professional Associations

- Called to the Bar by the Middle Temple 1964
- Member of the Criminal Bar Association
- Member of International Association of Prosecutors
- Appointed as Deputy Prosecutor for the new UN backed international criminal tribunal for Sierra Leone in 2002
- Appointed Chief Prosecutor for the Special Court for Sierra Leone in 2005 by the Secretary General - Kofi Annan



Departments:
Fraud and Financial Crime
Terrorism
VAT Tribunals
Serious Crime
Extradition
Human Rights

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- Knighted 2007
- Bencher of the Middle Temple 2008
- Counsel to HM Revenue & Customs before VAT and Duties Tribunals 2008

Some of the many cases of Interest include:

- R v Sir Rupert Mackeson Extradition
- R v Roger Levitt City of London Fraud
- R v Lord Brockett Insurance Fraud
- R v Hans Segers Football Corruption
- R v John Terry Chelsea & England Premier League Footballer accused of GBH
- R v Jack Bennett Ostrich Farming Fraud
- R v Newell A son's murder of his parents in Jersey. A trial that spawned four books.
- R v Bailey Blackmail of a member of a Royal House
- R v Bowyer Premier League Footballer charged with GBH
- R v Bowles An owner of a cargo airline prosecuted for multi million VAT fraud (May 2009)

Rt Hon Sir Desmond de Silva PC. QC. other interests include Politics, Forensic Medicine and numerous charities.

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A3



January 25, 2012

Defense Teams Representing Adballah Banda & Saleh Jerbo
 Trial Chamber IV, International Criminal Court
 The Hague
 The Netherlands

To Whom It May Concern:

The procedural barriers encountered by the Defense Team and detailed in the Defense Request for a Temporary Stay of Proceedings dated 6 January 2012 are severe and persistent. To my mind, the quintessential measure of regularity in the pursuit of justice is that the rights of Messrs. Banda and Jerbo are demonstrably defended at all stages of the proceedings. Article 67 makes clear that the rights of the defense are non-waivable and in the aggregate form the minimum benchmark for a fair process administered "in full equality" before an impartial Bench. The institutional vitality of the Court is most reliant on the engaged intervention of the Trial Chamber at the precise point that the external circumstances encountered by a Defense team become so onerous that the ability to prepare for a fair trial becomes a functional impossibility.

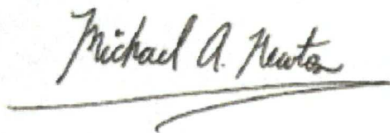
The serious and sustained adverse conditions described in the Request for a Temporary Stay of Proceedings are, to my mind, sufficient to support the finding that a continuation of proceedings would represent an affirmative injustice until such time as the conditions have changed. The rights reflected in Article 67 cannot be relegated to the status of aspirational goals or optional niceties. On the contrary, the quintessential role of the defense team is to be diligent in seeking to gather the materials necessary for a trial to represent a viable forum for dispensing justice based on evidence and regularized process rather than the pretense of preordained process. In this quest, the Chamber should be an indispensable ally in ensuring the requirements of procedural fairness. The Defense Request demonstrates the persistent efforts of the defense team to gather available evidence needed to ensure the integrity of further judicial process. The present barriers to those efforts are the result of extraneous factors beyond the control of the defense.

Given the inability of the defense to enter the territory of the state in which the charges are alleged and the barriers to the independent collection of evidence, the fundamental right to prepare a defense "in full equality" appears to be illusory at the present time. Granting a

temporary stay of proceedings in this case should not be seen as undermining the credibility of the International Criminal Court. On the contrary, the role of the bench as the guardians of the procedural rights of Messrs. Banda and Jerbo mitigates in favor of such a temporary stay pending determination that the conditions surrounding the defense efforts to collect available evidence have materially shifted. A temporary stay in this case would represent a courageous decision made by a Chamber confident in its powers and committed to securing the rights of the accused when its intervention becomes necessary.

I have had long experience providing operational support to the extant international and internationalized domestic tribunals, and therefore do not lightly recommend such a temporary stay of proceedings. Nevertheless, the systematic quest to seek justice and the unyielding commitment to the regularity of process in defense of the rule of law lead me to support such a cessation in this instance.

Sincerely,

A handwritten signature in dark ink, reading "Michael A. Newton", with a horizontal line drawn underneath it.

Michael A. Newton
Professor of the Practice of Law
Vanderbilt University Law School
Nashville, Tennessee



Michael A. Newton

131 21st Avenue South, Room 298, Nashville, TN 37203

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Professor of the Practice of Law, Vanderbilt University Law School –

<http://law.vanderbilt.edu/newton>

Director, Vanderbilt in Venice Academic Program --

<http://law.vanderbilt.edu/academics/vanderbilt-in-venice/index.aspx>

Current Courses: International Criminal Law & International Law Practice Lab, for information see

<http://www.law.vanderbilt.edu/academics/academic-programs/international-legal-studies/international-law-practice-lab/index.aspx>

Other Expertise: Comparative Counterterrorism, International Humanitarian Law, Foreign Relations Law, National Security Law, Criminal Law, Human Rights Law, Current Top Secret Clearance

Previous Academic Positions:

Associate Professor, U.S. Military Academy Department of Law, West Point, N.Y.

2002-2005 Taught: International Law, Law of Armed Conflict, Constitutional Law

Professor of International and Operational Law, *International and Operational Law Department, Judge Advocate General's School, Charlottesville, VA* → 1996-1999

Taught: International Law, Operational Law Seminar, Senior Officer Legal Orientation, Law of War Workshop, & Intelligence Law Seminar

Education:

LL.M., The University of Virginia School of Law, Charlottesville, Virginia (2001)

LL.M., The Judge Advocate General's School, Charlottesville, Virginia (1996)

J.D., The University of Virginia School of Law, Charlottesville, Virginia (1990)

B.S., United States Military Academy, West Point, New York (1984)

Professional Memberships:

Elected Member, International Institute of Humanitarian Law, San Remo, Italy

American Society of International Law (Elected to Executive Council, 2011); International Association of Penal Law [AIDP]; Virginia Bar; International Bar Association

Notable Professional Accomplishments:

International Advisor on Domestic Incorporation of the Rome Statute for the Government of Uganda – 2008-2010

Member, Expert's Panel on the Future of American Policy Towards the International Criminal Court, American Society of International Law, <http://www.asil.org/icc-task-force.cfm> – 2008 – 2009

Expert Advisor: Council on Foreign Relations Reports on ICC Related Projects – 2010 & 2011

Expert advisor to the Genocide Prevention Task Force, United States Holocaust Memorial Museum, American Academy of Diplomacy, and United States Institute of Peace – 2008

This Report led, *inter alia*, to the Conference on Instability Indicators and Genocide Prevention held at Vanderbilt Law School, March 2010 as well as the International Symposium on Preventing Genocide and Mass Atrocities held at the Shoah Memorial in November 2010 [my discussion paper provided the basis for the experts' discussions following the public conference -

<http://www.ushmm.org/genocide/analysis/details/2010-11-15/Paris%20Meeting%20Newton%20Paper%20Logos%20010610.pdf>



Expert advisor: Drafting committee for a comprehensive crimes against humanity convention
 Served as International Law Advisor to the Judicial Chambers of the Iraqi High Criminal Court 2006 & 2007 [extensive advice related to Dujail, Anfal and 1991 cases, and discrete issues from other cases]
 One of the two U.S. delegates who successfully negotiated the Elements of Crimes Document for the International Criminal Court – 1999 – 2001
 Assisted in Drafting and Implementation of the Statute for the Iraq Special Tribunal, 2003 -4
 International Legal Advisor to the Iraqi High Tribunal – 2006-2008 (Trained the judges and investigators both in Baghdad and in other locations, negotiated the Rules of Procedure during two sessions in the United Kingdom and two in Baghdad, active on the Tribunal academic consortium)
 Chairman, Tribunals Subcommittee, International and National Security Law Practice Group, Federalist Society 2003-05
 U.S. representative on the U.N. Planning Mission for the Sierra Leone Special Court – 2002 (Member of the Special Court Academic Consortium 2003-04)
 Coordinated U.S. support for the current *ad hoc* International Tribunals – 1999-2002
 Coordinated U.S. Government Support to the Milosevic Case (to include responsibility for planning and accompanying the FBI forensics deployments into Kosovo – 1999)
 Handled more than 500 cases as a Military prosecutor – 1991-1995
 Operational Lawyer in Northern Iraq – 1991 [deployed on Operation Provide Comfort to aid Kurds]

Notable Educational Achievements:

Designed and implemented one of the most innovative experiential and substantive courses in modern American legal education – <http://law.vanderbilt.edu/academics/academic-programs/international-legal-studies/international-law-practice-lab/index.aspx>
 Active in support of the Kosovar Albanian delegation in sovereignty negotiations in Vienna
 Led international criminal law aspects of the Judicial Training Institute for senior Iraqi jurists in Baghdad – Dec. 2003 [presently active in an advisory role to the Iraqi High Tribunal]
 Wrote, coordinated and led the Law of Armed Conflict Competition for Military Academies, International Institute of Humanitarian Law, San Remo, Italy – 2003, 2004, 2005.
 Senior Member of the Defense Institute for International Legal Studies team teaching Iraqi jurists and drafting a constitution for a free Iraq – Nov. 2000
 Led the first Rule of Law Symposium for Kosovar judges – June 1999 [later provided legal and technical expertise in developing the Transitional Justice mechanisms in Kosovo]
 Planned and executed the Human Rights and Rule of Engagement Training for all Multinational Forces and International Police Officers entering Haiti in support of coalition forces – 1993
 Designed and implemented training for Special Forces counterdrug operations - 1992

Prior Professional Experience:

- * Senior Advisor to the United States Ambassador-at-Large for War Crimes Issues, Office of War Crimes Issues, U.S. Department of State (2001-2002)
- * Special Advisor to the United States Ambassador-at-Large for War Crimes Issues, Office of War Crimes Issues, U.S. Department of State (1999-2000)
- * Professor of International Law, International and Operational Law Department, The Judge Advocate General's School (1996-1999)
- * Brigade Judge Advocate, 194th Armored Brigade (Separate)(1993-1995)
 Administrative Law Attorney, U.S. Army Special Forces Command (Airborne), Fort Bragg, N.C. (1992-1993)
- * Group Judge Advocate, 7th Special Forces Group (Airborne), Fort Bragg, N.C. (1992)
- * Chief Operational Law, U.S. Army Special Forces Command (Airborne), Fort Bragg, N.C. (1991-1992)

* Company Executive Officer, Battalion Support Platoon Leader, and Armor Platoon Leader, 4th Battalion, 68th Armor, Fort Carson, Colorado (1984-1987)

Publications:

Books & Book Chapters

Senior Editor, TERRORISM: INTERNATIONAL CASE LAW REPORTER, Oxford University Press (2007, 2008, 2009, & 2010)[currently developing the framework for the Oxford online Terrorism series]

Terrorism and Crimes against Humanity [co-authored with Michael P. Scharf], in CRIMES AGAINST HUMANITY AND INTERNATIONAL LAW 262 (Leila Sadat, ed., 2011)

The Quest for Constructive Complementarity, in THE ICC AND COMPLEMENTARITY: FROM THEORY TO PRACTICE 304 (Cambridge University Press 2011)

Why Criminal Culpability Should Follow the Critical Path: Reframing the Theory of Effective Control, 40 NETHERLANDS YEARBOOK OF INTERNATIONAL LAW 3 (2010)

ENEMY OF THE STATE: THE TRIAL AND EXECUTION OF SADDAM HUSSEIN [co-authored with Professor Michael Scharf] 2008, St. Martin's Press – see <http://www.enemyofthestatebook.com> [Book of the Year, American Branch of International Association of Penal Law]

Power not Process – The New Frontiers of Internationalized Justice, in PROCEEDINGS OF THE SECOND INTERNATIONAL HUMANITARIAN LAW DIALOGS, AUGUST 25-26, 2008, CHAUTAUQUA INSTITUTION, 40 *Studies in Transnational Legal Policy* 171 (2009)

Implementing International Law: A Qualified Defense of the Al Dujail Trial, in 9 YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 2006, 117 (T. McCormack & Avril McDonald, eds. 2008)

Echoes of Nuremberg, in PROCEEDINGS OF THE FIRST INTERNATIONAL HUMANITARIAN LAW DIALOGS, AUGUST 29, 2007, CHAUTAUQUA INSTITUTION, 101 (April 2008)

Legal Authorities for the Creation of the Iraqi High Tribunal, in SADDAM ON TRIAL – UNDERSTANDING AND DEBATING THE IRAQI HIGH TRIBUNAL (MICHAEL P. SCHARF & GREGORY S. MCNEAL, eds., 2006)[the book also contains nine of my shorter essays on discrete legal issues]

The Iraqi Special Tribunal: A Human Rights & Rule of Law Synergy, in TESTING THE BOUNDARIES OF INTERNATIONAL HUMANITARIAN LAW 243 (Susan C Breau and Agnieszka Jachec-Neale, eds. 2006)

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Facilitator on behalf of the US Agency for International Development and the Public International Law and Policy Group, simulation to advise the government of Sri Lanka on a range of policy alternatives related to key decision points and trends in addressing the ongoing armed conflict, July 11, 2007

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Expert Participant, Global Futures Forum, Washington, D.C. This is an international audience of academics and governmental representatives gathered for the inauguration of a formalized process of consultation and collaboration on a mechanism for identifying and preventing impending genocidal acts, September 14, 2006

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The Law of War in Iraq, Seminar presented to the Iraqi War Crimes clinic, University of Connecticut School of Law, April 27, 2005

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The Iraqi Special Tribunal: Nuremberg to Baghdad and Beyond, Paper presented to the Program in Holocaust and Human Rights Studies, Benjamin N. Cardozo School of Law, Conference on The Nuremberg Trials: A Reappraisal of their Legacy, March 28, 2005

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Coordinator, Terrorism Roundtable, Student Conference on United States Affairs, October 2004

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One hour live broadcast on the NPR Show, The Connection, entitled The Ethical Warrior, on the professional foundations for the U.S. Military derived from the law of armed conflict. Broadcast live on March 4, 2004

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The United States Role in the International Criminal Court Negotiations, U.S. Coast Guard Academy, October 16, 2003

The Law and History of Unprivileged Belligerency, New Wars, New Laws? A Conference on International Humanitarian Law, Co-sponsored by the Cornell Law School Clarke Center for International & Comparative Legal Studies and the Cornell Peace Studies Program, June 21, 2003

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Senior Member of the Joint Team Responsible for Training the Iraqi National Congress, Taught: *The Rule of Law, The International Criminal Court, War Crimes and Crimes Against Humanity*, Defense Institute of International Legal Studies, Nov. 2001

The Law of the Tribunal: The International Criminal Tribunal for the Former Yugoslavia and SFOR Operations, Pre-Deployment Training for 29th Infantry Division SFOR Rotation, Sept. 2001

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Implementing the Law of Armed Conflict in the Context of Military Operations, American Society of International Law, Annual Symposium, January 2001

Investigation of War Crimes in Kosovo, George C. Marshall Center for European Security Studies, Sept. 2000

Selected Military Decorations: Legion of Merit, Defense Meritorious Service Medal, Joint Meritorious Unit Award, Army Superior Unit Award, Meritorious Service Medal (four), Army Commendation Medal (four) Global War on Terrorism Expeditionary Medal, Humanitarian Service Medal, Southwest Asia Service Medal, Kosovo Campaign Medal, Armed Forces Service Medal



Selected Recent Media Appearances:

Dozens of broadcast and radio interviews (*inter alia*, CNN American Morning, ABC Good Morning America, Voice of America "The Encounter", BBC Radio 4, Fox & Friends, Reuters TV, Fox News Channel's Special Report with Brit Hume, Canadian Broadcast Service). Quoted in a many print stories (Los Angeles Times, Washington Post, etc)

A4

**STATEMENT IN SUPPORT OF DEFENCE APPLICATION FOR TEMPORARY STAY OF PROCEEDINGS IN
PROSECUTOR V. ABDALLAH BANDA ABAKAER NOURAIN & SALEH MOHAMMED JERBO JANUS (ICC-
02/05-03/09)**

My name is William Fenrick and I was a Senior Legal Adviser in the Office of the Prosecutor (OTP) of the International Criminal Tribunal for the former Yugoslavia from 1994 to 2004. As such, I was responsible for the Legal Advisory Section and for the provision of advice to the Prosecutor on all international law matters. After retiring from the ICTY in 2004, I taught International Criminal Law and International Humanitarian Law at the Schulich School of Law at Dalhousie University in Halifax, Canada from 2005 to 20011.

I have read the letter in support of the Defence Application written by Mr. Justice (Retired) Richard Goldstone and dated December 30, 2011 and I agree with it in entirety. The conduct of cases before the International Criminal Court must be in accordance with the highest standards as set forth in international human rights law and in Article 67 of the ICC Statute. It is extremely difficult to envisage how the Defence Team could possibly exercise the rights to which it is entitled on behalf of the Accused, particularly those set forth in Article 67(1)(b) & (e), without having the opportunity to gain lawful entry to Sudan to visit the sites of the alleged incidents, to conduct investigations, to gather evidence, and to interview witnesses.

During my early years at the ICTY, there were numerous occasions when it was, as a practical matter, very difficult for the staff of the OTP to gain access to crime sites, witnesses, and other relevant information or evidence. Indeed, in our first case, the Dusko Tadic case, we intended initially to rely on satellite photographs and models developed by computer because we did not have access to the crime sites. That, unfortunately, was a simple fact of life and it did make it more difficult to develop firmly based prosecution cases. Fortunately, as time passed and the geopolitical situation in the territory of the former Yugoslavia changed, it became somewhat easier for OTP staff to gain access to crime sites and to gather evidence. For the Defence, however, the situation was considerably different. To the best of my recollection, the Defence always had access to the sites of alleged crimes and access to potential Defence witnesses living in the area.

There is only one appropriate standard for trials before the ICC and that is the standard set out in the Rome Statute itself. If that standard cannot be met, it is respectfully submitted that the proceedings should be stayed until they can be met.

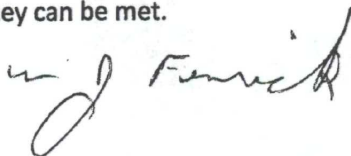
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William J. Fenrick

Mr. Fenrick was a Senior Legal Adviser in the Office of the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia from 1994 until the end of 2004. He was the head of the Legal Advisory Section and the Senior Adviser on Law of War Matters. At the ICTY, he provided international law advice to the Prosecutor and argued at the trial and appeal levels, particularly on matters related to conflict classification, command responsibility, and crimes committed in combat. He was also the main author of the Report to the Prosecutor on the 1999 NATO Bombing Campaign against Yugoslavia. Immediately prior to coming to the ICTY, he was a member of the SCR 780 Commission of Experts investigating war crimes allegations in the former Yugoslavia and, as such, he was responsible for legal matters and for on-site investigations. He was a member of the Canadian Forces from 1962-70 and from 1972-94. He was a military lawyer in the Canadian Forces from 1974 to 1994, specializing in law of the sea, law of war and operational law matters. At various times, he was the Director of International Law, Director of Legal Training, and Director of Operational Law. He was a major participant in the process which produced the San Remo Manual on the Law of Naval Warfare and he also participated in the process which resulted in the development by the ICRC of its guidance on Direct Participation in Hostilities. He has published widely on law of war matters, particularly on matters related to naval warfare and to prosecution of war criminals. He is a graduate of the Royal Military College of Canada (BA (Hons Hist) 1966), Carleton University (MA (CDN Studies) 1968), Dalhousie University (LLB 1973), and George Washington University (LLM 1983). At present he is living in Halifax, Canada, where he co-taught a course in International

Criminal Law (2005-9) and taught International Humanitarian Law (2006-11) at the Schulich School of Law at Dalhousie University.