

## **IHRP Summer Internship Report – Andrew Max**

International Criminal Court – Prosecution Division – May 1 to Sept 5, 2011

The timing of my legal internship at the International Criminal Court this summer could not have been better. A few days ago I was at the Prosecution's table in court while our team's lead counsel cross-examined a witness. That evening the Prosecutor, Louis Moreno-Ocampo, stopped by our office to discuss the case. The day before that the Prosecution set out the case-in-chief, using text that I was fortunate to be able to help draft. Closing submissions in the ICC's first case, *The Prosecutor vs. Lubanga*, were days earlier. One of the Prosecution's presenters was 92-year-old Benjamin Ferencz, previously a prosecutor at Nuremberg. Earlier in the summer, our team filed the charging document in a case that regularly captured the front pages of a country's newspapers. Before that my other team filed its closing brief in the *Lubanga* trial. I also saw arrest warrants requested and issued in the *Libya* situation, and the excitement and criticism that went with it.

The ICC was established with the signing of the Rome Statute, which entered into force in 2002. It has jurisdiction over the most serious crimes against humanity and war crimes that are not being properly tried in domestic courts. The Office of the Prosecution ('OTP') is one of the court's organs. It investigates crimes under the jurisdiction of the court and prosecutes individuals.

I interned for the Prosecution Division, which is the section of the OTP that actually prosecutes people in court (as opposed to other sections of the OTP which, among other things, conduct general legal research, investigate situations and collect evidence, monitor media and prepare press releases).

Initially, I was assigned to the *Lubanga* case. The accused, Thomas Lubanga, is charged with conscripting, enlisting and using child soldiers. The trial-phase was wrapping up as I arrived and our team was preparing the 250-page closing brief, summing up a trial that lasted nearly two years. Reporting to the trial lawyers, I assisted with the drafting of the brief – conducting legal research, searching through evidence admitted at the trial and verifying the accuracy of assertions made in the brief (1500 footnotes!).

This was a very exciting time to be part of the case. The team was small and we worked together closely, at times crowded around the trial lawyers' desks into the early hours of the morning. The period immediately before the filing deadline was hectic. This was the first case before the court and our submission had to be perfect. On the eve of the deadline, the whole team ate dinner together after everyone else had gone home, and then went back upstairs to hunt for errors until the early morning. After a few hours of sleep, we returned early to work the next day. About one hour before the deadline, the fire alarm went off in our building. Hoping it was an ill-timed drill, our team barricaded itself in the office of the supervising lawyer and kept working until an angry fire warden forced us out of the office at the last

minute. We filed the brief on time and celebrated with senior members of the OTP, including the Prosecutor.

For the remainder of the summer I was assigned to another case. Because of the nature of the work, I cannot fully discuss the particulars of my assignments. I had the opportunity to draft a number of filings which were decided upon by the Chamber, to assist with drafting more substantial submissions to the court, to perform legal research and analysis, to analyse victim applications for participation in the proceedings and to draft observations on the applications, and to work closely with the Investigative Division to analyse evidence and plan for future investigations. As our time in court drew near I had the opportunity to analyse defence evidence and to help prepare for court. At the end of the summer I was able to attend the court appearance that we had spent so much time preparing for. In court, I took notes and provided information to lawyers for use during arguments. This was incredibly interesting and exciting.

Throughout the summer, I was struck by the importance of the ICC's work. In terms of consequence, it aims to deter the gravest violations of human rights in the future by punishing offenders today. Deontologically, the ICC dispenses justice in accordance with a rule of law in places where justice is traditionally denied. The ICC is a game-changer in the latter respect. For example, some of the most prominent Kenyan politicians have been called to account in The Hague, with their domestic power and influence unable to affect the unflinching judicial process of the ICC. The impact of this on Kenya, on Kenyans and on observers in other countries is enormous. As the investigative capacities of the OTP grow and as more resources become available to protect witnesses from being intimidated and killed, the ability of the ICC to fulfil its mandate will increase.

There are criticisms about the ways in which the OTP and its personnel attempt to secure these aims, frequently levelled by lawyers, academics and journalists. My work this summer put these in perspective. While many of these criticisms have a degree of truth, we should bear in mind the novelty of the ICC's mission, its unsettled procedures and its limited resources. I saw first hand how the pressure on the people *actually making* these impugned decisions is unrelenting. Dizzying and unavailable resources are required to gather evidence, protect witnesses and comply with the ever-increasing duties imposed on the Prosecutions by judges of the court (e.g. to create and disclose a 20,000 page chart analyzing the evidence disclosed to the Defence). The domestic and international political considerations that lie behind many decisions the OTP makes are extraordinarily complicated, down to nitty-gritty questions of whether to use certain pieces of evidence at trial.

This summer I also saw what unique opportunity it is to work at the ICC. Aside from working on the most high profile criminal cases in the world, people at the ICC are pioneering a new legal regime. Jurisprudentially, the ICC is in its infancy – especially with respect to procedure. There are fundamental questions that need to be answered for which there is very little precedent. What exactly is a Confirmation of

Charges hearing if not a mini-trial? What is the burden of proof that the Prosecution must meet to have charges confirmed? What are the nature of the Prosecution's disclosure obligations? What should the remedy be for improperly effected Defence disclosure? Can a video show, beyond reasonable doubt, that a person is under 15 years old and thus a child-soldier? These are issues I had the opportunity to think about and work on this summer. Their novelty meant that finding answers wasn't merely about looking up precedent: there was great opportunity for creative thinking.

My colleagues this summer included lawyers, professors and law students from all over the world with incredible expertise. Socially, it was exiting to meet such a diverse group of people. During my two weeks of holiday I travelled to Paris, Normandy and Barcelona. My roommate (also a U of T Law student) and I drove to a music festival in Germany one weekend. We also attended two festivals in Amsterdam – Queen's Day and the Pride Parade – both of which are not to be missed.

I would like to thank the IHRP for such an incredible summer experience!

