



**Gesellschaft für Völkerstrafrecht e.V.
International Criminal Law Society**

German Section:
Berliner Allee 54
13088 Berlin
Deutschland
Tel. +49 30 92 70 68 0
Fax +49 30 92 70 68 99
organisation@icls.de
www.icls.de

Dutch Section:
van Bleiswijkstraat 35
2582 KZ Den Haag
The Netherlands
Tel./Fax: +31-70-383 87 51
organisation@icls.de
www.icls.de

Final Report about the conference

The Republic of Kosovo and the International Criminal Court

- Pristina on 8 and 9 June 2012 -

1. This conference was organised by the International Criminal Law Society (ICLS) in cooperation with the German Foundation for International Legal Cooperation (IRZ)¹, the Pristina office of the Friedrich Ebert Foundation (FES)² and the Law Faculty of the University of Prishtina.³
2. During the two days more than 100 participants, international and Kosovar judges and prosecutors, international and domestic lecturers, as well as legal professionals from Kosovo and international organisations deployed to the Republic of Kosovo as well as law students, attended the conference at the Grand Hotel in Pristina.
3. Hajredin Kuçi, then Vice Primeminister and Minister of Justice of the Republic of Kosovo, opened the conference. Further words of welcome to the participants were expressed by Professor Dr. Bajram Ukajj, Dean of the Law Faculty of the University of Prishtina, Dr. Erich Reichel, Ambassador of Germany, Wulf Lapins, Director of the Pristina Office of the FES and Jan MacLean on behalf of the IRZ.
4. Referring to Pristina's Grand Hotel as the conference location, Nikola Gillhoff, executive board member of ICLS, reminded during her introduction to the conference participants that the Grand Hotel had served during the internal conflict in 1999 as the basis of the 3rd Corps of the Serbian Army. Also witnesses testifying at the ICTY had seen Arkan's men who were involved in the atrocities in Pristina in this hotel which nowadays served as a

¹ For more information please see <http://www.irz-stiftung.de/index/getlang/en> .

² For more information please see <http://www.fes-prishtina.org/wb/pages/english/home.php> .

³ For more information please see <http://juridiku.uni-pr.edu/> and <http://www.uni-pr.edu/Ballina.aspx?lang=en-US> .

location for international conferences, such as this conference on international criminal law and human rights.

5. Several high ranking persons including but not limited to Dr. Ibrahim Gashi, the Deputy Foreign Minister of Kosovo, and the President of the Constitutional Court of the Republic of Kosovo were present as well.
6. In the panel on “implementation of substantive law of the ICC Statute into domestic law” Professors Ukaj and Hajdari reported about the current status of the Penal Code of the Republic of Kosovo namely regarding the international humanitarian law offences of genocide, crimes against humanity and war crimes.
7. The second panel was devoted to the question of “statehood of Kosovo”. Professor Qerimi diligently listed the number of states which had recognized the statehood of the Republic of Kosovo along with those international organizations in which this new state was a member of. Yet, the Republic of Kosovo is not yet a member of the United Nations, its specialized agencies or the International Court of Justice. Prosecutor Neuner referred to the decision of ICC Prosecutor Moreno Ocampo not to open an investigation in the situation in Palestine because he considered Palestine not to have acquired statehood yet. Ocampo’s decision would reflect a variant of the constitutive theory of recognition. In order for a new state to become a member to the ICC this entity would have to either apply for membership to the United Nations or to approach the ICC’s Assembly of States Parties (AoSP) and seek recognition there after having participated as an observer in AoSP sessions. Lecturer Dr. Gleider Hernandez discussed the Advisory Opinion of the International Court of Justice which declared the declaration of Independence of Kosovo as “not illegal”.
8. The afternoon panel consisted of a presentation by ICC judge Ekaterina Trendafilova who highlighted recent decision of the ICC, including one decision regarding the confirmation hearing in which the ICC judges restricted each party to call only a maximum of two witnesses *viva voce* and otherwise tender other witness statements in writing. Judge Trendafilova had dissented from this decision of the Pre-Trial Chamber. In the same panel Professor Däubler-Gmelin, former Minister of Justice of the Federal Republic of Germany assessed the first ten years of the International Criminal Court. Drawing a comparison to the *ad hoc* Tribunals Däubler-Gmelin argued that the permanent International Criminal Court based on a multilateral international treaty would have been constituted on more solid grounds than each of the *ad hoc* Tribunals whose creation would be based on political decisions mainly by the Security Council.

9. In the morning of the second day of the conference, judge David Re from the Special Tribunal for Lebanon gave an outline of the international criminal trials from Nuremberg up to the International Criminal Court. In the same panel, judge Orié highlighted a particular feature of certain international or national criminal proceedings, trials *in absentia*. In particular he referred to the trial in Nuremberg *The Prosecutor against Martin Bormann* and certain jurisprudence of the European Court of Human Rights which generally accepted the practice of trials *in absentia* in its members states The Netherlands, France and Italy.
10. Hans Bevers, Head of the Legal Advisory Section in the Office of the Prosecutor of the ICC, introduced the participants to the principle of complementarity and Professor Heinsch distilled element by element the different requirements for genocide, certain crimes against humanity and certain war crimes.
11. In the concluding panel, Rod Dixon, Co-Counsel for the Prime Minister Ramusch Haradinaj, reported about his experiences as a defence counsel at international criminal tribunals, including in the Kenya case at the ICC. Furthermore, Francesco Florit, Head of the Assembly of EULEX judges reported about the problems of EULEX to retain a status of neutrality in Kosovo. This issue arose when certain EULEX judges remained hesitant to apply the Penal Code of the Republic of Kosovo, but preferred instead to apply a section of the former Federal Republic of Yugoslavia Penal Code. Finally, in 2010, the Constitutional Court of the Republic of Kosovo decided that the EULEX judges have to apply the laws adopted by the Republic of Kosovo. Francesco Florit, Head of the Section of War Crimes, introduced the new Law on Witness Protection as adopted by the parliament of the Republic of Kosovo. He criticized that the decision whom to accept into the witness protection program would be made by a commission which would in the majority consist of members of the police and not of the prosecution who would finally need to use these witnesses at trial.
12. Following intense discussions, the two day conference concluded finally in the early Saturday evening, 9 June 2012.
13. The TV and print media of the Republic of Kosovo reported about this conference, namely about the dialogue between international and domestic legal experts.