

LAW FIELD TRIP TO EUROPE FEBRUARY 2013

Miles Tarrant with Xander Hindson

The ICC: Miles Tarrant

On 11 February 2013, a group of second and third year law students touched down in Amsterdam, 60 kilometres south was our first destination; The Hague. In the monolithic Maanweg district of The Hague sits the International Criminal Court (ICC), with the International Court of Justice (ICJ) being situated a short drive towards the Zorgvliet parks. Due to a combination of time restrictions and security procedures in force at the courts, each student was given a choice as to which court they would visit. Despite being taught the law of the European Union at the time, I had written an essay covering war crimes and crimes against humanity in the human rights module of my first year, and therefore decided that visiting the ICC would be more focused.

The 1998 Rome Statute, which came into force in 2002, established the ICC and endowed it with the 'power to exercise its jurisdiction over persons for the most serious crimes of international concern,' including genocide, war crimes and crimes against humanity. Sometimes called the 'Court of last resort,' the ICC sets out to complement the national criminal jurisdictions of state-parties. As long as the internal judicial system of a state-party can successfully hold perpetrators accountable for international crimes, the ICC will not override that nation's jurisdiction. The court only has jurisdiction when a state-party is unable or unwilling to pursue justice at the national level. Cases can come before the ICC through three channels. First, the UN Security Council can refer cases to the ICC. Second, a state-party can refer a case from its own jurisdiction for consideration by the ICC. Third, the ICC can initiate its own investigation.

Arriving at the ICC is odd. The building looks like nothing of the archetypal courts of England, rising into the sky in sharp blocks of concrete, glass and steel, mirroring the old and the new of the business district's architectural style. Subject to a brief security check, we were inside the building, standing in the foyer which had served as a car park for the building's previous owners, the Dutch Telecom giant KPN. The tour of the ICC commenced with a presentation of the Court's chronological investigations and subsequently the trials that have come forth from the Chief Prosecutor. Following this, a session was held with a paralegal investigator from the United States, whom was watching a number of war crimes cases in Northern Africa. Questions of how he became involved in the ICC and specifically what departments he was, and had been, working in were asked. However one question that was left

unanswered was why the US is not a party to the Rome Statute, yet still holds one of the five seats of the UN Security Council (which, as above, can refer cases to the ICC). Maybe there is a reason, maybe it is politics, maybe it is just a glaring hypocrisy within the system.

The tour concluded with a look at one of the Trial Chambers, with our guide explaining the seating arrangements and also the formalities involved when conducting a trial at the ICC. Although the trials are usually held in public, there are many safeguards for both witnesses and the public; from witness confidentiality agreements through to completely blocking the public eye from a trial. And in these regards, it is quite easy to draw parallels between the Court's system and our own national judicial system. Our guide told us that when he wasn't busy during the day he could sit where we were and watch the trials behind the glass.

We left the frost of The Hague on the same day, travelling by coach to Strasbourg. Located on the French-German border along the Maginot Line, Strasbourg is the home of several European institutions, consisting of the Council of Europe, the European Parliament and perhaps most importantly the European Court of Human Rights. Our time in Strasbourg was to be split over the course of two days with the first spent in the European Court of Human Rights and the University of Strasbourg, and the second in European Parliament.

Visiting the European Court of Human Rights on 13 February was of great significance, for the case of *Janowiec v Russia* was to have its first hearing. The case dates back to May 1940, wherein Soviet officials (whom originally blamed the Nazi Party in the Nuremberg Trials) executed over 20,000 Polish prisoners of war in the Katyn forest. The hearing revolved around the closure of a Russian investigation into the massacre in 2004, and why any findings had been kept confidential. The alleged breaches of the European Convention of Human Rights were that of Art.2 and Art.3; the rights to life and the prohibition of torture, inhuman or degrading treatment or punishment. The case was brought by both the Polish government and family members of the victims against the Russian government, and in this respect it was interesting to see that it was two completely separate parties, with different submissions, against the defendant government, yet still being in the same case. As well as this, the calibre of counsel for the parties was surprising; counsel were primarily from the Polish Ministry of Foreign Affairs rather than being dedicated barristers or members of the court. The *Janowiec* case has since been concluded, and unfortunately (but not surprisingly) the Court found that they did not have the authority to rule on the atrocities because firstly, the Convention was only in force from 1953 and secondly, Russia had chosen to ratify the Convention but not until 1998, and because of this the time lapse between the massacre and

the ratification was far too large.¹ After the hearing, we were taken through to a conference room where a lawyer from the Home Office gave a short talk about the hearing and then opened up another Q and A session. Being in the European Court of Human Rights, the questions revolved around the recent cases of Abu Qatada² and also the expected outcome from the hearing from the perspective of a state not directly involved. From what was said, the speaker had gone to the Home Office after passing his Bar examinations, and subsequently became involved in the foreign affairs side of the law, namely travelling to the European Court of Human Rights frequently to oversee and deliberate the Home Office caseload.



In the afternoon of the 13th, we travelled to the centre of the city to the University of Strasbourg; the second largest university in France with strong ties to the European Union; the Grand Hall of the University's Palace was used for the first Council of Europe assembly. We were given an excursion around the university, visiting lecture theatres and the law library. We were then invited to an informal presentation from two English students studying French Law, and their route as part of an inter-university exchange programme. Discussing the differences between both French and English Law and also the differing student lifestyles as part of the transfer, it became apparent that it had been a risk for them to take, but once they had taken that risk they hadn't looked back. Once the presentation had concluded, I walked back through Strasbourg rather than getting the coach back to the hotel. It was cold, but the town was alive, a mixture of glass storefronts with wooden houses atop

¹ *Janowiec and Others v Russia*, 55508/07 29520/09 [2013] ECHR 1003

² *Othman (Abu Qatada) v UK*, 8139/09 [2012] ECHR 56.

lined the streets, and it felt like the (almost) one million people of Strasbourg were gathered around the focal point of the town; la Cathedrale Notre Dame de Strasbourg.

If there was one thing that changed the outlook on my own future, it was the visit to the ICC. It showed me that you do not have to be a top-level barrister to earn your place within its walls, or any legal institution, international or national. In fact you do not even have to be a lawyer. If you wanted to be directly involved in the courtroom then that would become somewhat a necessity, but there is a lot happening behind the courtroom drama that goes unaired – from the travelling investigators all the way through to the ‘guides’ of the ICC building. Come the summer when I have finished my degree I may love the law, I may not, as of yet I am still undecided. But what I do know is that I do not have to be a lawyer to influence the law, but rather I can enjoy it from a distance and yet still be a part of its functioning.

The European Parliament: Xander Hindson

The European Parliament in Strasbourg is as ostentatious as could be expected from an institute in the modern legal world which sought to join the sovereign states of the most powerful nations in the modern world under one roof; from the Da Vinci designed staircases, to the circular seats which exclude all outside sound from the humble dweller, it combines the modern and the traditional, the old and the new, the future, the past and the progressing present, the place itself is architecturally wondrous, it stands as a stupendous self-reflection of its own purpose, and few who walk within walls forget its wondrousness.

Upon arrival we were given a warm welcome from the tempest of winter raging outside, and after a brief security check were given a tour of the building. We were led to a small room which had no more than 40 seats facing inwards, here was where the law was given its girth – or so we learnt. There we sat in the seats where our aspirations may one day lead us, we listened to the process by which that grand institute makes the decisions that affect all those under the roof of Europe’s legal umbrella, and learnt how arduous that process can be. We sat high, for a while, at the back of the dome in which the members of the European Parliament are usually seated. There we listened to four distinguished speakers who would usually be part of the deliberations in Parliament, explain to us the process which is undergone to make the decisions. I do not know what most people would remember so long on from that experience, my most vivid memory however was the thought; ‘so, so many seats’ and indeed that thought is the one which resonates most profoundly within me still;

the grandeur of that place was not in its beautiful architecture, not its faultless design, but rather in the collection of so many diverse and different peoples from all over Europe, that that place more than any other represents the coming change of future generations, that single state sovereignty no longer dictates our motivations, but that we have had a political revolution which most people barely notice, the vehicle for future change has been established, and its seat is Strasbourg.

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