

**INTERNATIONAL CRIMINAL TRIBUNAL  
FOR THE FORMER YUGOSLAVIA**

**INTERNATIONAL CRIMINAL TRIBUNAL  
FOR RWANDA**

**OFFICE OF THE PROSECUTOR**

**MAX PLANCK INSTITUTE  
FOR FOREIGN AND INTERNATIONAL  
CRIMINAL LAW**

**FREIBURG IM BREISGAU**

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**International Workshop**

**on**

**"The Independence and Accountability of the Prosecutor  
of a Permanent International Criminal Court"**

**Freiburg im Breisgau**

**May 28-29, 1998**

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**FREIBURG DECLARATION**  
**ON THE POSITION OF THE PROSECUTOR OF A**  
**PERMANENT INTERNATIONAL CRIMINAL COURT**

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**Freiburg Declaration  
on the Position of the Prosecutor of a  
Permanent International Criminal Court**

The Max-Planck-Institute for Foreign and International Criminal Law, Freiburg im Breisgau, and Justice Louise Arbour, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR), convened an international workshop on "**The Independence and Accountability of the Prosecutor of a Permanent International Criminal Court**" in Freiburg im Breisgau, Germany, from 28th to 29th May 1998.

The participants at the Workshop were distinguished experts representing legal systems from all regions of the globe, as well as representatives from the ICTY, the ICTR, and a number of observers. A list of participants is annexed.

Participants at the Workshop were invited in an individual personal capacity, on the basis of their professional expertise, and not as representatives of Governments. The purpose of the Workshop was to seek to identify fundamental principles relating to the independence and accountability of prosecutors, as recognised and applied in international instruments and in national criminal justice systems, which should also be reflected in a criminal justice institution at the international level.

Having considered the minimum standards of independence that the prosecutor of an international criminal court should enjoy, and the minimum standards of accountability to which the prosecutor of an international criminal court should be subject, the Workshop reached unanimous agreement on and issued the following declaration.

### **Freiburg Declaration**

The Workshop participants,

*Supporting* the establishment of a permanent international criminal court,

*Affirming* that any criminal court must have legitimacy, must guarantee respect for the rule of law, and must have the ability to do justice in cases within its jurisdiction in accordance with international standards,

have reached the following conclusions on the minimum standards *of independence* of the prosecutor of an international criminal court, and the minimum standards *of accountability* to which the prosecutor should be subject:

1. The international criminal court should have a prosecutor that is a separate and independent organ of the court.
2. The prosecutor should have the dual function of both investigating and prosecuting crimes within the jurisdiction of the court.

3. The prosecutor should be mindful of the interests of the international community in the proper and impartial discharge of his or her duties. The prosecutor should exercise his or her functions as transparently as possible, subject to the requirements of confidentiality, giving reasoned public explanations for decisions where appropriate.
4. The prosecutor should exercise his or her functions in accordance with international human rights standards, having regard to the interests of victims.
5. The prosecutor should be equipped with all powers and resources necessary for the effective investigation and prosecution of cases, including the power to secure all relevant evidence, to take measures for the protection of witnesses and for ensuring observance of orders of the court. In particular, the prosecutor may seek the assistance of national authorities, international organizations, non-governmental organizations and other bodies and individuals.
6. Where the powers and functions of the prosecutor are to be exercised through the assistance of national authorities, States should be under an obligation to enable the prosecutor to discharge his or her mandate effectively.
7. Within the jurisdiction of the court, the prosecutor should have full discretion in the initiation *proprio motu* and conduct of investigations and prosecutions, including the selection of appropriate individuals to be indicted and the charges to be brought. General guidelines may be established for the manner of exercise of that discretion. Any referral of jurisdiction by a political body should not limit the discretion of the prosecutor, including the selection of targets and charges.
8. Intrusive and coercive powers of investigation that interfere with individual rights and liberties, in particular detention and search and seizure, should require prior judicial authorisation (*ex ante*) upon application by the prosecutor based on credible and sufficient information.
9. Otherwise, the legality of all prosecutorial actions with respect to investigations and the conduct of proceedings should be subject to judicial review *ex post facto*, including the manner in which authorised powers of investigation were executed.
10. An accused should not be brought to trial unless a judicial authority has reviewed the indictment and determined that there is sufficient evidence to justify a trial of the accused.

**LIST OF PARTICIPANTS**

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**International Criminal Tribunal for the former Yugoslavia and for Rwanda –  
Office of the Prosecutor**

- Justice LOUISE ARBOUR, Prosecutor of the ICTY and ICTR, The Hague
- Mr. MORTEN BERGSMO
- Ms. CATHERINE CISSE
- Mr. LUC COTÉ
- Mr. MATAR DIOP
- Mr. GAVIN RUXTON
- Mr. CHRISTOPHER STAKER
- Mr. FRANCK TERRIER

**Max Planck Institute for Foreign and International Criminal Law**

- Dr. Dr. h.c. ALBIN ESER, M.C.J., Director  
Professor of Law, University of Freiburg
- Dr. KAI AMBOS, Research Fellow
- Dr. JÖRG ARNOLD, Research Fellow
- Dr. SABINE GLEß, Research Fellow
- Dr. BARBARA HUBER, Research Fellow
- Dr. OTTO LAGODNY, Professor of Law, University of Dresden
- Ms. ANJE ROST, Research Assistant
- Mr. GUIDO RUEGENBERG, Research Assistant

## LIST OF PARTICIPANTS

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### **Africa**

- Egypt:* Mr. ADEL OMAR SHERIF,  
Judge, Constitutional Court, Cairo
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- Mauritius:* Mr. E. BALANCY,  
Judge, Supreme Court, Port Louis
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- Rwanda:* Mr. SIMEON RWAGASORE,  
Chief Prosecutor, Kigali
- Senegal:* Mr. GUBRIL CAMARA,  
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### **America**

- Argentina:* Mr. GUSTAVO BRUZZONE,  
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Professor of Law, Viceprocurador de la Nación, Bogotá
- Costa Rica:* Mr. DANIEL GONZALEZ,  
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**LIST OF PARTICIPANTS**

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**Asia**

- China:* Mr. FENG YE,  
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- Israel:* Mr. KENNETH MANN,  
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Professor of Law, University of Shizuoka, Oshika  
(Research Guest at the MPI)
- Korea:* Dr. YANG-KYUN SHIN,  
Professor of Law, Chonju  
(Research Guest at the MPI)
- Pakistan:* Mr. S.M. ZAFAR,  
Senior Advocate, Supreme Court
- Singapore:* Mr. SOWARAN SINGH,  
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**Europe**

- Austria:* Dr. OTTO TRIFFTERER,  
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- France:* Mr. JEAN CÉDRAS,  
Professor of Law, Université de Rennes

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<i>Georgia:</i>	Mr. ALEXANDRE SCHUSCHANASCHWILI, Professor of Law, Vice Prosecutor General, Tbilisi (Research Guest at the MPI)
	Mr. GEORGI GLONTI, Senior Researcher, The Institute of The State and Law (Research Guest at the MPI)
<i>Hungary:</i>	Dr. KÁLMÁN GYÖRGYI, Prosecutor General, Budapest
<i>Italy:</i>	Dr. GIULIO ILLUMINATI, Professor of Law, University of Bologna
<i>Netherlands:</i>	Dr. NICO KEIJZER, Professor of Law, Avocate-General of the Supreme Court, Driebergen
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<i>United Kingdom:</i>	Mr. ANDREW SANDERS, Professor of Law, University of Bristol

<b>Observers:</b>	
<i>Amnesty International:</i>	Mr. CHRISTOPHER HALL, London
<i>Instituto Brasileiro de Ciência Criminais:</i>	Mr. FAUZI HASSAN CHOUKR, Sao Paulo
<i>Lawyers Committee for Human Rights:</i>	Ms. JELENA PEJLJE, New York
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