I
INTRODUCTION

1.1 SAFEGUARDING THE RIGHT TO AN EFFECTIVE DEFENCE

Slobodan Milošević's decision to represent himself before the International Criminal Tribunal for the Former Yugoslavia sparked a lively discussion in and outside of the Tribunal. Could proceedings before an international criminal court be fairly conducted without defence counsel representing the accused? Must a defence counsel be appointed to represent an accused charged with war crimes, crimes against humanity and genocide, the wishes of the accused notwithstanding? This is permissible in civil law systems. Alternatively, should a common law approach of honouring the defendant's wishes to represent himself be followed? Although the right to self-representation is enshrined in the Statute of the Tribunal, this issue, it turned out, had not been carefully considered. Milošević's decision laid bare the legal Achilles heel of international criminal proceedings, *i.e.* how to conduct a trial when proceedings are a hybrid of different legal cultures? This predicament, whether to adopt a civil law approach or a common law approach, not only raised academic debate, but was also responsible for delaying the trial. It could be argued that this clash of legal cultures was partially to blame for the fact that Milošević's trial proceedings were still on-going when he died. In consequence, this vital case never reached a verdict.

It is one thing for the international community to decide that it wants to set up international criminal tribunals. It is a completely different thing to arrange for proceedings that safeguard the right to an effective defence.

1.2 APPRAISING THE POSITION OF THE DEFENCE

International criminal courts are established through international political efforts. The main purpose of these efforts is to ensure that serious violations of human rights and humanitarian law that shock the international community do not remain unpunished. It needs to be shown to the victims of these crimes, to the international community, to perpetrators as well as to future perpetrators of similar crimes that justice will be done. The importance of punishing perpetrators of atrocities is evident. It should be ensured that this goal is realized through just means. Justice can only be done if the appearance of victor's justice is avoided. Fair trials are essential for all involved.

The right to effective legal assistance is one of the most important prerequisites of the right to a fair trial.[1] However, the appointment of a lawyer alone

[1] See for instance, ECHR, *Lala/ Pelladoah v. The Netherlands* (Appl. No. 14861/89), 22 September 1994, § 34; ECHR, *Artico v. Italy* (Appl. no. 6694/74), 13 May 1980, § 33; ECHR, *Goddi v. Italy* (Appl. no. 8966/80), 9 April 1984, § 27; HRC, *Saidova v. Tajikistan*, CCPR/C/81/D/964/2001 (20 August 2004), § 6.8. See also *Shukurova v. Tajikistan,* CCPR/C/86/D/1044/2002 (26 April 2006), § 8.5;

does not ensure effective assistance. Once appointed, a lawyer 'may die, fall seriously ill, be prevented for a protracted period from acting or shirk his duties.'[2] This study seeks to determine to what degree international criminal courts provide the conditions for suspects and accused to receive effective legal assistance. Additionally, it sets out to outline and explain what happens to the position of defence counsel when different legal cultures are welded together as is the case for international courts, using the Yugoslavia and Rwanda Tribunals as well as the International Criminal Court as its main examples.

One problem is how to determine whether or not the defence at international criminal courts is effective. As the international criminal justice system is a system *sui generis*,[3] assessing the standards by which the position of the defence is evaluated is essential.

To ensure their compliance with human rights treaties, national courts are monitored by specialized bodies, such as the European Court of Human Rights (ECHR) [4] or the Human Rights Committee (HRC). [5] The International Criminal Tribunals for the Former Yugoslavia (ICTY) and Rwanda (ICTR) [6] and the International Criminal Court (ICC) operate without the monitoring of the fairness of their proceedings. Nonetheless, as will be illustrated in this study, the Chambers of the so-called *ad hoc* Tribunals (the ICTR and the ICTY) regularly apply the standards that the ECHR and the HRC have developed in their jurisprudence.[7] Moreover, the ICC Statute specifically provides that the Chambers should apply and interpret the law in accordance with internationally recognized human rights.[8] Therefore, the effectiveness of the defence may be evaluated by comparing the jurisprudence of international criminal courts with that of the ECHR and the HRC. It should be realized however, that internationally recognized human rights standards were established so as to be applicable to all kinds of national jurisdictions. Given the fact that international criminal proceedings are a hybrid, this seems an advantage. Nonetheless, these standards are minimum standards that may be broadly based and open to different

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Sultanova v. Uzbekistan, CCPR/C/86/D/915/2000 (19 April 2006), § 7.4; *Brown v. Jamaica*, CCPR/C/65/D/775/1997 (11 May 1999), § 6.8; *Robinson v. Jamaica*, CCPR/C/35/D/223/1987 (4 April 1989), § 10.3.
See also *infra,* Chapter II.

[2] ECHR, Judgment, *Artico*, § 33.

[3] Cf. *infra,* Chapter IV, paragraph 4.1.

[4] This is the monitoring body of compliance of states with the European Convention on Human Rights (ECHR).

[5] This is the monitoring body of compliance of states with the International Convention on Civil and Political Rights (ICCPR).

[6] Hereinafter: the *ad hoc* Tribunals.

[7] For instance, in *Barayagwiza*, the ICTR Appeals Chamber argued: 'The International Covenant on Civil and Political Rights is part of general international law and is applied on that basis. Regional human rights treaties, such as the European Convention on Human Rights and the American Convention on Human Rights, and the jurisprudence developed thereunder, are persuasive authority which may be of assistance in applying and interpreting the Tribunal's applicable law. Thus, they are not binding of their own accord on the Tribunal. They are, however, authoritative as evidence of international custom.' ICTR App. Ch., Decision, *Barayagwiza* (Case No. ICTR-97-19), 3 November 1999, § 40.

[8] See Article 21(3) ICC Statute.

interpretations. They will therefore mainly serve as guidelines as to whether or not defence rights have been or may be violated in international criminal justice.

Whether the defence can be deemed to be effective depends on whether counsel is enabled to perform the necessary duties. The role of the defence in proceedings relates to the *nature* of the proceedings involved. In proceedings of a European Continental civil law country, the defence will generally not actively engage in investigative activities such as fact finding missions. The prosecution is supposed to search for exculpatory as well as incriminating evidence. The defence is not expected to undertake a fact-finding mission. In common law proceedings, if defence counsel is not sufficiently zealous in making an effort to assemble or examine evidence, he[9] is not providing an effective defence to the accused. This illustrates that an effective defence hinges upon the character of the procedural system in which counsel practises. To determine whether or not the defence in international criminal proceedings is effective, the nature of the procedural system of international criminal courts must first be determined.

To what degree the nature of international criminal proceedings resembles civil law or common law proceedings has been subject to debate. Because the judges amend the procedural rules of the *ad hoc* Tribunals on an ongoing basis - at the ICTY this is at an average rate of almost three times a year -, its precise nature could be difficult to establish.

It may not be immediately obvious to defence counsel appearing before an international criminal court whether he should conform to the investigative zealousness of a common law advocate or whether it is safe to rely on his experience in a civil law system, or even, whether or not he should take a completely different attitude in the proceedings. In other words, according to which or what professional standards of conduct should counsel conduct the defence at international criminal courts?

It appears that international criminal courts have not developed a clear cut role for the defence in their proceedings. Neither did these courts envisage what the right to legal assistance should encompass. The Statutes of the *ad hoc* Tribunals and the ICC are concise, even trite, with respect to this issue. They provide that judges should guarantee that proceedings are fair and expeditious with due regard to the rights of the accused. In addition, the accused is entitled to conduct his defence in person, or, through legal assistance of his choice, and to be assigned legal assistance freely by the court where the interests of justice so require or if he lacks the resources. These provisions are no more elaborate than the fair trial articles of human rights treaties, such as Article 6 of the European Convention on Human Rights (ECHR) and Article 14 of the International Convention on Civil and Political Rights (ICCPR). How the proceedings should be conducted is primarily prescribed by the Rules of Procedure and Evidence (RPE). Nonetheless, even though there are clear differences between the Rules of the ICC and those of the *ad hoc* Tribunals, they do not specify what the

[9] The habit of explaining why the male pronoun "he" is used when referring to actors who can be both male and female presupposes that without that footnote gender would indeed be an issue. The same can be said about academics who routinely use the female form for advocates. I feel we have reached a moment in time where any reader not aware of the fact that the sexes are equal is such an abnormality that he or she must be considered a lost case.

right to legal assistance includes in terms of how many counsel may be provided to an accused or whether he is entitled to an investigator.

The position of the defence is further complicated by the special circumstances that are involved in the conduct of international criminal cases.[10] The unique features of international criminal justice [11] may involve the need to accommodate defence rights in a different way than in the context of domestic proceedings.

Although the crimes under the jurisdiction of the Yugoslavia Tribunal were committed in the former Yugoslavia, the Tribunal is seated in The Netherlands. The Rwanda Tribunal is situated in Tanzania. The main purposes of locating the Tribunals away from where the conflict took place are safety and convenience. As a result, it may be challenging for the defence to gather evidence.

Cases before international criminal courts generally involve crimes that were committed on a large scale, that being a common feature of war crimes, crimes against humanity or genocide. Such violations of international humanitarian law are rarely addressed in domestic courts. This renders the trials more complicated, and prolongs them and produces an enormous workload for the defence. Since conflicts of a large scale may lead to forced migration, witnesses may be scattered all over the world and may therefore be difficult or even impossible to track down. For instance, where a potential witness resides somewhere in a temporary refugee camp in the middle of the African bush, the defence will be unlikely to succeed in finding him. This may prevent the defence from retrieving evidence essential for a proper defence. The Prosecution (OTP) generally has better investigative resources and facilities. In addition, state authorities and international organisations tend to be more cooperative with OTP members than with defence team members acting on behalf of alleged war criminals.[12] This may put the defence at a substantial disadvantage in comparison to the prosecution, which could endanger the principle of equality of arms.

What may further complicate proceedings is that the accused is often held responsible for crimes that were physically committed by persons other than himself,[13] such as his subordinates. At the ICTY, persons are regularly held criminally responsible under the construction of joint criminal enterprise[14] or on the basis of command responsibility.[15]

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[10] An "international criminal case" in this study implies a case tried by an international criminal court, as opposed to a case tried by a domestic court.

[11] In this study, "International criminal justice" refers to the administration of justice of international and internationalized criminal courts. Cf. *infra,* note 17.

[12] Cf. Göran Sluiter, International Criminal Adjudication and the Collection of Evidence: Obligations of States (Antwerp-Oxford-New York: Intersentia, 2002), p. 133.

[13] In *Tadić*, the ICTY Appeals Chamber held: 'responsibility for serious violations of international humanitarian law is not limited merely to those who actually carry out the *actus reus* of the enumerated crimes but appears to extend also to other offenders'. ICTY App. Ch., Judgement, *Tadić* (Case No. IT-94-1-A), 15 July 1999, § 189.

[14] The Appeals Chamber in *Tadić* noted that most crimes under the ICTY's jurisdiction 'constitute manifestations of collective criminality: the crimes are often carried out by groups of individuals acting in pursuance of a common criminal design. Although only some members of the group may physically perpetrate the criminal act […], the participation and contribution of the other members of the group is often vital in facilitating the commission of the offence in question.' *Ibid.,* § 191. For an evaluation of the construction of joint criminal enterprise vis-à-vis other modes of collective

In a domestic system, one may presume that all lawyers are familiar with the system they work in. A large pool of lawyers will be available to the accused to choose from. When an individual appears before an international criminal court, it may seem that any lawyer in the world could represent him. However, few lawyers have gained experience in the legal practice at international criminal courts. As the proceedings of these courts are *sui generis*, lawyers who are unfamiliar with international criminal practice cannot simply draw on their experience in their domestic practice. The extraordinary complexity of international criminal cases means that not every lawyer is competent to become a defence counsel at an international criminal court. Therefore, these courts must install mechanisms that guarantee a "standard of quality representation" upon assignment, for instance, by only admitting counsel who meet particular requirements.

All this mandates a need for a thorough evaluation of the position of the defence at international criminal courts. First of all, the contours and nature of proceedings and organisational structure of international criminal courts should be defined. Once so defined, it will be easier to evaluate whether the conditions under which the defence operates in international criminal proceedings render it effective. Secondly, the special circumstances of international criminal justice should be given due consideration in evaluating the position of the defence. Thirdly, this study should include an overall evaluation as to whether improvements could be made to maximize the chances of an effective defence.

1.3 THEORETICAL FRAMEWORK

Views on the rights and obligations of the defence are closely related to the procedural model the defence is operating within. If the nature of proceedings conducted by international criminal courts was more clearly defined, it would provide more understanding as to what the right to an effective defence entails. Therefore, a theory needs to be established to explain the nature of international criminal proceedings and to provide a starting point from which the position of the defence at international criminal courts can be properly evaluated.

International criminal proceedings, although hybrid, are frequently compared either to common law or civil law proceedings. Although these concepts may be useful at times, the nature of international criminal proceedings should be established in a more individual way. In his work *The Faces of Justice and State Authority*, legal theorist Mirjan Damaška asserted a relation between a state's legal procedural system and the way it is organized. Damaška has constructed two basic models of legal procedure that fit two archetypes of government.

The policy-implementing model fits a state whose main objective it is to implement state policy through justice: the activist state. On the grounds of its

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criminal responsibility, see Wilt, Harmen van der, 'Joint Criminal Enterprise. Possibilities and Limitations', 5 *JICJ* (2007), pp. 91-108.

[15] For a thorough examination of the concept of individual criminal responsibility for violations of international humanitarian law see Sliedregt, Elies van, *The Criminal Responsibility of Individuals for Violations of International Humanitarian Law* (The Hague: T.M.C. Asser Press, 2003).

organisation, hierarchical structure and its aspiration to reach governmental goals through its justice system, the policy-implementing model is the most suitable for an activist government. The second model is the conflict-solving model that is connected to a state whose objective it is to remain neutral, and whose only goal is to help its citizens solve their disputes: the reactive state. The basic presumption is: "That government is best which governs least."[16] Hence, conflict-solving proceedings would be the most successful procedural form. Each type of these two main models produces different views on justice and thus on the role of the participants in the proceedings, including defence counsel.

Part II of this study will examine whether the procedural arrangements of international criminal courts match these courts' aspirations and their structure of authority. To this effect, Damaška's theory will be applied to the *ad hoc* Tribunals and the ICC to the extent that this is feasible. The reality that these courts do not operate in the framework of a nation state and the effect that that may have on the basic principles along which a defence is to be conducted will be taken into account.

The main goal of the academic exercise undertaken in Part II is to establish how the procedural system of international criminal courts and the position of the defence therein can be evaluated. It is a reasonable assumption that the more effectively a defence can be conducted, the fairer a trial will be. Providing a legal environment that is most likely to produce fair trials will not only benefit the accused, but it will also add to the legitimacy of international criminal courts.

Apart from serving as a foundation for thoroughly evaluating the position of the defence, Part II of this study seeks to provide an overall explanation for some of the difficulties encountered by the defence as a result of the lack of a cohesive philosophy behind the procedural system of international criminal courts. It will not attempt to determine what procedural arrangements are most effective to adopt in the context of conducting international criminal trials.

1.4 SCOPE

This study of the defence in international criminal cases focuses on the right to legal assistance and the ability of defence counsel to efficiently provide his client with an effective defence.

This study concentrates on the *ad hoc* Tribunals for the Former Yugoslavia and Rwanda and the ICC. The Special Court for Sierra Leone (SCSL), which Statute and Rules of Procedure and Evidence strongly resemble those of the *ad hoc* Tribunals, receives attention where its arrangements as to the defence substantially differ from those at the *ad hoc* Tribunals. For instance, in Chapter III, concerning its "Office of the Principal Defender". Other international(ized) courts[17] such as Crimes Panels of the

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[16] Henry David Thoreau, Resistance to Civil Government, 1849. Henry David Thoreau, *Civil Disobedience,* first paragraph, *Walden and Civil Disobedience,* ed. Owen Thomas, p. 224 (1966). This essay was first published in 1849.

[17] Internationalized criminal courts aspire to be a mix of national and international courts. National authorities are narrowly involved in the establishment and administration of justice of these courts. See for an overview of this issue, Cesare P.R. Romano, André Nollkaemper, and Jann K. Kleffner

District Court of Dili in East Timor, the "Regulation 64" Panels in the Courts of Kosovo, the Extraordinary Chambers in the Courts of Cambodia and the Special Tribunal for Lebanon (STL) may occasionally be mentioned, but are not particularly included in this study.

The Nuremberg and Tokyo Military Tribunals that were established after the Second World War by the Allied Forces are outside the scope of this study.[18] The later international criminal courts form a new generation that have deliberately decided to depart from the format of "victor's justice" that did not pay apparent attention to the position of the defence. Moreover, international human rights law was nonexistent when the Nuremberg and Tokyo Tribunals were operating.

Any developments in the field of international criminal justice after 1 August 2007 are not taken into account. One notable exception involves the analysis by Bert Swart of international criminal justice in light of Damaška's Faces of Justice, the core issue of Chapter IV.[19]

1.5 Central Research Questions

A vital question to resolve is what constitutes an effective defence in international criminal proceedings. An obvious follow up issue is what conditions need to be provided to facilitate this? This includes whether or not the defence should be an independent organ of the court, and, correspondingly, what measures should be implemented to attract competent counsel to represent indigent accused. How many counsel, resources and facilities should an international criminal court provide to a suspect or accused? How should defence counsel's professional privileges be safeguarded? What body should administer disciplinary proceedings to safeguard the professional integrity of counsel? To what degree must defence rights be guaranteed, where this may be detrimental to the interests of victims or witnesses, or may endanger the expeditious conduct of a trial? How to accommodate the defence of an accused who refuses to be represented by defence counsel?

As stated, the central questions in this study are whether or not international criminal courts provide the proper conditions for the defence to be effective in their

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(eds), *Internationalized Criminal Courts: Sierra Leone, East Timor, Kosovo and Cambodia* (Oxford: Oxford University Press, 2004) pp i–viii, 1–491.

[18] For an account of the role of defence counsel in the proceedings of the Nuremberg and Tokyo Tribunals, see Wilson, Richard J., A History of the Role of Defense Counsel in International Criminal and War Crimes Tribunals, in Bohlander, Boed and Wilson (ed), *Defense in International Criminal Proceedings. Cases, Materials and Commentary* (Ardsley, NY USA: Transnational Publishers, 2006), pp. 31-66; Mettraux, G. and Čengić, A., The Role of a Defence Office: Some Lessons from Recent and not so Recent War Crimes Precedents, in Michael Bohlander (ed), *International criminal justice: a critical analysis of institutions and procedures* (London: Cameron May, 2007), pp. 391-428. For more general insights as to the relation between Nuremberg and the *ad hoc* Tribunals, see, for instance, Destexhe, Alain, et al., *De Nuremberg à La Haye et Arusha* (Brussels: Bruylant, 1997); see Röling, Bert V.A., The Nuremberg and the Tokio Trials in Retrospect, in Bassiouni and Nanda (ed), *A Treatise on International Criminal Law* (Springfield, Illinois: Charles C. Thomas, 1973), pp. 590-608; B. V. A. Röling and C. F. Rüter (eds), The Tokyo judgment: the International Military Tribunal for the Far East (I.M.T.F.E.), 29 April 1946-12 November 1948 (1977).

[19] Bert Swart, Damaška and the Faces of International Criminal Justice, 6 *JICJ* (2008), pp. 87-114.

proceedings and whether or not the features unique to the international criminal law practice impinge upon the rights and position of the defence.

The first part of this study seeks to determine to what degree the right to effective legal assistance is guaranteed by the *ad hoc* Tribunals and the ICC. It will be examined whether or not the relevant legal provisions and the practice of international courts meet international human rights standards. In addition, it will be determined how the defence is organized at international criminal courts and whether this will be efficient in guaranteeing an effective defence in terms of sufficient independence and integrity of the defence and in terms of equality of arms.

The second part will consider the nature of the procedural system of the *ad hoc* Tribunals and what this implies for the role of the defence.

The third part will examine whether any ambiguity of the procedural system of the Tribunals as scrutinized in Part II causes problems for the defence and whether, overall, defence counsel in international criminal proceedings are enabled to provide an adequate and effective defence. Finally, concrete alterations are suggested to render the position of the defence at international criminal courts more effective.

1.6 METHODOLOGY

This study explores procedural perspectives on the defence. It attempts to test whether international criminal courts sufficiently enable defence counsel to effectively represent an accused's interests. The right to legal representation, the standards of professional conduct for defence counsel, the principle of equality of arms and the right to self-representation will be scrutinized.

It assesses whether or not the existing procedural rules and their applicability to the case law of international criminal courts are fair according to human rights standards and enable defence counsel to provide an effective defence. To do this, standard legal research methods will be applied. The legal instruments and case law of international criminal courts will be examined. As a normative framework, human rights instruments and the case law of the supervisory bodies of these instruments, such as the European Court of Human Rights and the Human Rights Committee, will be employed. Domestic views on the rights and responsibilities of the defence will be included when this may help to illustrate a procedural perspective.

In addition, the results of interviews conducted with defence counsel, other defence team members and staff members of international criminal courts are included in this study.

1.7 STRUCTURE

Part I, *The Implementation of the Right to Counsel in International Criminal Proceedings*, portrays how the right to legal assistance and the organisation of the defence is accommodated at international criminal courts. Chapter II provides an overview of the right to legal assistance. It includes the development of this right in domestic criminal proceedings and in the case law of human rights treaty monitoring bodies. Particular attention will be given to what these human rights treaty bodies consider to constitute effective legal

assistance. The legal assistance provided to an accused under the legal aid programme of international criminal courts will be examined to determine what that entails and the nature of the resources and facilities that are provided to the defence. Furthermore, this Chapter will examine derivatives of the right to legal assistance, such as the right to communicate with counsel, the right to competent counsel and the right to legal assistance of the accused's choosing. Chapter III provides an insight in how the defence is organized at international criminal courts and which bodies are responsible for defence issues, such as the assignment of legal aid.

In order to provide a basis for a better understanding, the first part of this study contains many details involving the formal legal provisions concerning the defence, some of which will be reiterated in the chapters to follow.

In Part II, *Procedural Perspectives*, the nature of international criminal proceedings will be examined to provide a starting point from which the position of the defence before international criminal tribunals can be analysed. Different procedural systems may imply differing roles of trial participants, including the defence. Chapter IV first explains Damaška's theory further. It will then outline the organisation and goals of the Tribunals, to the extent that this has not been achieved in Part I. By applying that theory, Part II will assess whether or not there is a discrepancy between the goals which international criminal courts aspire and the nature of their proceedings. Finally, it attempts to establish how the procedural arrangements of international criminal courts might influence the position of the defence within those proceedings.

Making use of the analysis of part II of the nature of international criminal proceedings, Part III, *The Role of Defence Counsel in International Criminal Practice*, examines issues regarding the position of the defence and, in particular, of defence counsel, which require differing approaches according to the nature of a procedural system. How international criminal courts with a hybrid system treat the defence while approaching these issues should reveal the proper role of the defence in international criminal cases and whether or not improvement is required.

Chapter V will elaborate on the principle of equality of arms between the defence and the prosecution. This principle is violated when the defence is unreasonably disadvantaged in comparison to the prosecution. Inequality of arms may in varying respects prevent the defence from functioning effectively. Nonetheless, the degree to which the position of the defence will be affected by this inequality depends on the role of the defence in the proceedings. In the civil law system of continental European countries, the prosecution is generally afforded more leeway than the defence, particularly in the investigative stage of proceedings. The accused is deemed an object of investigation. This may tilt the balance of advantages more towards the prosecution than the defence. In Anglo-American common law systems, procedural equality is a keynote. Chapter V will determine whether or not international criminal courts enable the defence to counterbalance the prosecution effectively, or whether the defence is disadvantaged as against the prosecution. If the defence requires better protection pursuant to this principle, positive measures should be implemented. Chapter V examines whether the defence can successfully invoke this principle if it cannot gather evidence as a result of a lack of resources or as a lack of state cooperation.

The perception of how defence counsel should represent his client depends on the legal environment he works in. At international criminal courts, defence counsel, judges and prosecution counsel come from different legal systems. Therefore, clashes of opinion regarding what conduct is appropriate and what is not, are likely to occur. Chapter VI examines whether or not the provisions enshrining counsel's duties and obligations provide sufficient guidance to avoid such clashes. When standards are not clearly articulated, difficulties are likely to arise. While conducting an international criminal case, counsel could be unaware of any misconduct on his part, if that conduct would be perfectly acceptable in his home jurisdiction. Which body or bodies should monitor defence counsel's conduct and what sanctions should be available is also examined in Chapter VI.

Chapter VII concentrates on the right of an accused to represent himself at an international criminal court.[20] Given the scale and complexity of international criminal proceedings, allowing an accused to represent himself might impair the quality of his defence, even if the accused is a lawyer himself. In many civil law systems legal representation is mandatory in complicated cases involving serious crimes. In common law systems, in principle, the accused can act on his own behalf if he has demonstrated a sincere wish to do so and realizes what it entails. Whether or not the measures which international criminal courts have implemented to resolve this issue will guarantee a fair trial and an effective defence is analysed. This examination will include the perspective of the lawyer involved in any potential resolutions.

The final chapter, Chapter VIII, includes recommendations for consolidating the position of the defence at international criminal courts, taking into account the unique circumstances of the field of international criminal justice.

[20] Please note that a previous version of this Chapter has been published. See 'Assisting an Accused to Represent Himself: Appointment of *Amici Curiae* as the Most Appropriate Option', 4 *Journal of International Criminal Justice* 1 (March 2006), pp. 47-63.