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LECTURE BY ICC JUDGE NICOLAS GUILLOU AT COMENIUS UNIVERSITY BRATISLAVA: A REPORT ON FIVE CURRENT CHALLENGES FACING THE ICC AND INTERNATIONAL JUSTICE (BRATISLAVA, 14 OCTOBER 2024) / Sára Zsemlyová, Jozef Čentés

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On 14 October 2024, the Faculty of Law of Comenius University Bratislava (hereinafter referred to as "**the Faculty**") hosted a lecture by the Judge of the **International Criminal Court** (hereinafter referred to as the "ICC"), **Mr. Nicolas Guillou**, on the topic: ***Current Challenges of the International Criminal Court in relation to the affirmation of the rule of law.***

The lecture was organised as part of the French Ministry for Europe and Foreign Affairs' **Law Day** activity to promote the important role that law performs in the organisation of society and social relations. The lecture itself was held under the auspices of the French Institute in Slovakia in cooperation with the Department of Criminal Law, Criminology and Criminalistics of the Faculty of Law of Comenius University Bratislava

(hereinafter referred to as "**the Department**"). The lecture was opened by **prof. JUDr. Jozef Čentěš, DrSc.**, Head of the Department, who welcomed the participants and presented the purpose of the lecture in the framework of the fulfilment of the rule of law. The opening speech was delivered by J. E. Mr. **Nicolas Suran**, Ambassador-designate of the French Republic in Slovakia, in which he presented the reasons for the establishment of the ICC, in 1998, by the Treaty of Rome, which was a significant event in the international legal system. He also referred to the current situation in Ukraine, as well as the conflict in the Middle East perpetrated by Hamas terrorists, both of which are relevant to international criminal justice.

In this lecture, Judge Guillou discussed five current challenges facing the ICC and international justice:

1. **Hybridisation:** How can we create a truly hybrid model?
2. **Efficiency:** How can we be faster and more efficient?
3. **Technologisation:** How is the prevalence of automatic weapons in warfare changing and how will international justice change be going forward?
4. **The digitisation of evidence:** How are the dynamics changing in the court room?
5. **Fragmentation:** How can we ensure justice in a world that is more and more fragmented?

Judge Guillou referred to each of the ICC's challenges as follows:

1. **Hybridisation-duality:** criminal codes at the national level generally set out in detail the powers and duties of law enforcement agencies and courts. At the ICC level, where the legal basis is the Rome Statute, which is not as detailed as, for example, the Criminal Procedure Code in the Slovak Republic, we do not find clearly defined ICC procedures. International criminal justice is partly characterised by duality, which is manifested in the following attributes:

- (i) the Anglo-American system (common law) and the continental legal system,
- (ii) international law and criminal law,
- (iii) retributive or restorative justice,
- (iv) the two types of judges at the ICC.

At the level of international criminal justice, we can find elements of two legal systems. If we compare the continental and Anglo-American systems of (criminal) law, we find several similar elements, but also more differences. For example, in the continental system, it is the witnesses who often start to be questioned by the court. In the common law system, the parties question the witnesses. Judge Guillou stated that the activity at the ICC combines and applies two legal systems. He also stated that a judge must be curious in his or her work, must keep an open mind and must not view international criminal disputes through the prism of national law. According to Article 36 of the Rome Statute, ICC judges are classified into so-called Type A and Type B judges. Type A judges are judges who have practiced as judges. Type B judges, on the other hand, are academics, diplomats, professors, etc. The background of the judge consequently determines his/her view on the interpretation and application of the law. Judge Guillou mentioned, as an example, the approach to dissenting opinions of judges on decisions. While judges from academia are in favour of dissenting opinions, judges from practice see them as weakening of the decision. He also perceives a duality in relation to the purpose of the ICC proceedings as such. The use of retributive as well as restorative justice comes into consideration. Should the aim be to achieve justice in the sense of properly punishing the perpetrator or to thoroughly establish the truth and help the

victims? The process is complex, as balance must be found between achieving justice and carefully examining all aspects of the case. The issue of reparations for victims is another challenge: should we focus on individual rights, collective rights or reparations for cultural objects and community reconstruction? All these aspects of hybridisation or duality must be taken into account in ensuring justice at the ICC level. It is important to create a common culture at the international level and achieve justice.

2. Efficiency: according to Judge Guillou, being consistent is crucial in order for the ICC's work to be more efficient and faster. This is especially important in the sense that at the ICC level, the court should not reopen every legal issue that had already been decided on. It is important for efficiency that courts do not revisit previous decisions in every new case as this prolongs the process and also can lead to chaos. Judge Guillou also explained that proceedings at the ICC take lot of time and money and are sometimes decided after 20 years after the crime has been committed. Another challenge to the ICC and its efficiency is the so-called *duty to disclose evidence*. This is because the parties do not have one file in the case. Each party has its own evidence and the parties have the right to request specific evidence. The prosecution must provide evidence that is favourable to the defence. This process can be long and complicated, and court files can have tens of thousands of pages. Better organisation of the evidence and the use of artificial intelligence are essential.

3. Technologicalisation: Military technology is evolving fast and new types of weapons are increasingly being used, such as drones carrying explosives, etc. In this context, Judge Guillou pointed out to the need to deal with the question of who should be responsible for the actions of these weapons, if it should be the manufacturer, the programmer, or the commander? The legislation must respond appropriately to these developments, so that justice can be done, and at the same time, these technologies can be used as evidence in the proceedings. In this context, it is also necessary to consider the more effective enforcement of criminal liability of legal persons at international level, because legal persons are playing even more significant role in war. It is important that the legal framework is sufficiently flexible to cover the possibility of prosecuting perpetrators.

4. Digitisation of evidence: While witness testimonies and reports were prevalent in the 1990s, today we can record crimes using videos, photographs and satellite images. The nature of evidence is changing and evolving, so there is a need to be open to modern technological challenges. From the position of a judge, it is necessary to verify and locate evidence, because nowadays we are dealing with so-called *deepfake* videos, which are indistinguishable. There is also the problem of *disinformation's*, which spreads extremely quickly in society. Judge Guillou said that for a judge it is essential to be prudent, creative, open-minded and, above all, to have the will to deliver justice.

5. Fragmentation: Today, we can see a world that is increasingly divided, with the rise of deglobalisation and tensions between East and West. Southern countries are demanding greater representation and criticising double standards in the application of international law, while feeling ignored. At national levels, there is polarisation between different population groups. However, in the area of the judiciary, the good news is that the boundary between national and international courts is now moving, which means that there is increased cooperation between them. The division of society undoubtedly also affects the work of the ICC and international justice. Therefore, the challenge for the ICC is how to approach this. In this regard, Judge Guillou highlighted the need to involve victims and civil society in investigations.

At the conclusion of the lecture, the members of the Department present thanked Judge Guillou for his inspiring lecture and his substantial answers to the questions raised.

They especially thanked J.E. Nicolas Suran, Ambassador-designate of the French Republic to the Slovak Republic and the French diplomats for their cooperation and co-organisation of the lecture. The high attendance at the lecture proves the correct orientation of the activities of the Faculty, which pays constant attention to the fulfilment of the rule of law in the educational process of the young generation of future lawyers.