

**Cour  
Pénale  
Internationale**



**International  
Criminal  
Court**

Original: English

No.: ICC-02/17  
Date: 14 October 2019

**APPEALS CHAMBER**

**Before:** Judge Piotr Hofmański, Presiding  
Judge Chile Eboe-Osuji  
Judge Howard Morrison  
Judge Luz del Carmen Ibáñez Carranza  
Judge Solomy Balungi Bossa

**SITUATION IN THE ISLAMIC REPUBLIC OF AFGHANISTAN**

**Public**

**Request of Professor Gabor Rona for leave to file observations, pursuant to Paragraph 21 of the Scheduling Order of 27 September 2019, in the Appeal on the 'Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Islamic Republic of Afghanistan'**

**Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:**

**The Office of the Prosecutor**

Ms Fatou Bensouda, Prosecutor

Mr James Stewart, Deputy Prosecutor

**Counsel for the Defence**

**Legal Representatives of the Victims**

Katherine Gallagher

Margaret L. Satterthwaite and Nikki

Reisch

Tim Moloney QC and Megan Hirst

Nancy Hollander, Mikołaj Pietrzak and

Ahmad Assed

Fergal Gaynor and Nada Kiswanson van

Hooydonk

**Legal Representatives of the Applicants**

**Unrepresented Victims**

**Unrepresented Applicants  
(Participation/Reparation)**

**The Office of Public Counsel for  
Victims**

Paolina Massidda

**The Office of Public Counsel for the  
Defence**

**States' Representatives**

**Amicus Curiae**

**REGISTRY**

**Registrar**

Peter Lewis, Registrar

**Counsel Support Section**

**Victims and Witnesses Unit**

Nigel Verill, Chief

**Detention Section**

**Victims Participation and Reparations  
Section**

Philipp Ambach, Chief

**Other**

## I. QUALIFICATIONS

1. I am a Professor of Practice at Cardozo Law School in New York, where I have been teaching International Human Rights Law (IHRL), International Humanitarian Law (IHL) and International Criminal Law (ICL) for five years. I am also a Lecturer at Columbia Law School in New York, where I have been teaching IHL for fourteen years.
2. From 2005 to 2015, I was the International Legal Director of Human Rights First, an advocacy organization in New York. My work focused largely on the application of international legal rules and principles of IHRL, IHL and ICL to U.S. counterterrorism policies, including targeting, detention and trials. In this capacity, I met and communicated frequently with legal advisors and policy makers in the U.S. Armed Forces, Departments of State and Justice, and representatives of the White House and members of Congress. I have also published several articles and have organized and spoken at numerous academic conferences in the United States and abroad on these matters.
3. From 2015 to 2016, I was a member of the Panel of International Experts that wrote the "Tallin 2.0" Manual on the application of international law to cyberspace. My major contribution was in the realm of IHRL.
4. From 2011 to 2018, I was a member, and from 2016-2018, Chair, of the U.N. Working Group on Mercenaries, mandated by the Human Rights Council to conduct country visits, report to U.N. bodies, and make recommendations on international and domestic legal frameworks for preventing mercenary activities and regulating private military and security contractors.
5. In 2010, I served as Chief, ad interim, of the Protection of Civilians Branch of the U.N. Office for Coordination of Humanitarian Affairs (OCHA).
6. From 1998 to 2005, I served as Legal Advisor in the Legal Division of the International Committee of the Red Cross (ICRC) in Geneva, where one of my functions was to analyze U.S. policies, practices and positions; to meet with

government representatives; and to speak and publish materials on the application of IHRL, IHL and ICL to the so-called "war on terror."

## II. THE SUBJECT OF THIS APPLICATION

1. I wish to participate as amicus curiae in this matter on one narrow issue of jurisdiction. The Pre-Trial Chamber determined that events occurring outside of Afghanistan, but on the territory of other States Party to the Rome Statute, are beyond the ICC's war crimes jurisdiction because of an insufficient nexus between such crimes and the conflict in Afghanistan. (Para. 53).

2. This determination, is, in my opinion, erroneous. Arbitrary deprivation of liberty, torture and other inhumane treatment of persons held on the territory of States Party to the Rome Statute fall squarely within the ICC's jurisdiction over war crimes if the victims were detained for reasons related to the armed conflict in Afghanistan.

3. Common Article 3 of the Geneva Conventions (CA 3), cited by the PTC, does nothing to exclude a factual nexus between a conflict in one State and crimes committed in another. To hold otherwise would encourage parties to armed conflict to render persons to an otherwise neutral State in order to circumvent ICC jurisdiction, contrary to the Rome Treaty's object and purpose – to end impunity.

Respectfully submitted,



Dated this 14th of October 2019

At New York, NY.