



Campus Law Centre  
University of Delhi



## Quality Control in Criminal Investigation

co-organised by

the Centre for International Law Research and Policy  
and the Indian Law Institute,

in collaboration with Campus Law Centre of University of Delhi, Maharishi Law School,  
Jindal Global University, and the Indian Society of International Law,  
and with financial support from the Norwegian Ministry of Foreign Affairs,

*at the Indian Law Institute, New Delhi, 22-23 February 2019.*

This third leg of CILRAP's broadly-based research on quality control – the Quality Control in Criminal Investigation Project ('QCCI') – concerns the phase from the opening of criminal investigation until the start of trial.<sup>1</sup> Its context, problem-statement, purpose and structure are developed in the concept note of the QCCI Project, published as the policy brief '[Towards a Culture of Quality Control in Criminal Investigations](#)',<sup>2</sup> which all participants should be familiar with (included the sources cited there). Section 3 on 'Seven Bottlenecks' is particularly important, as the project seeks to zoom in on these challenges which give rise to long duration and high cost of many fact-rich cases. The project asks whether we can improve the way we work in these areas.

The project is led by Xabier Agirre, Carsten Stahn, Simon De Smet and Morten Bergsmo, in co-operation with the Indian Law Institute in New Delhi and its Director, Manoj Kumar Sinha. The QCCI Project team has continuously observed work-process problems in international and national war crimes jurisdictions since July 1994, from within the prosecution, the judiciary and academia. The project is funded by the Norwegian Ministry of Foreign Affairs. The organisers are grateful to the Prosecutor of the International Criminal Court for her co-operation on this project.

The conference programme is structured around five main parts. At the end of each session or segment, there are 30 minutes for open discussion. After each lecture, the chair will ask 2-3 questions to the speaker. A film will be made of each lecture, including the chair's questions and the speaker's answers to those questions. We should try not to step in front of the camera or disturb the film editor. All recordings will become freely available in [CILRAP Film](#) and [CILRAP Podcast](#).

<sup>1</sup> The two previous legs concerned '[Quality Control in Fact-Finding](#)' and '[Quality Control in Preliminary Examination](#)'.

<sup>2</sup> See Morten Bergsmo, 'Towards a Culture of Quality Control in Criminal Investigations', Torkel Opsahl Academic EPublisher, Brussels, 2019 (<http://www.toaep.org/pbs-pdf/94-bergsmo/>).

## Programme

### Friday, 22 February 2019:

#### 09:00 Inaugural Function:

*Chair: Manoj Kumar Sinha*<sup>3</sup>

- *Welcome and Introduction to the Conference:*
  - Professor Manoj Kumar Sinha (Director, Indian Law Institute)
  - Mr. Xabier Agirre<sup>4</sup> (Head of Investigative Analysis Section, International Criminal Court)
- *Remarks:*
  - Professor Usha Tandon<sup>5</sup> (Delhi University)
  - Professor Vijender Kumar<sup>6</sup> (Maharashtra National Law University)
  - Professor Narinder Singh<sup>7</sup> (Maharishi University)
  - President P.H. Parikh<sup>8</sup> (Indian Society of International Law)
- *Inaugural Address:*  
Justice Madan B. Lokur<sup>9</sup> (former Judge, Supreme Court of India)

#### 09:40 Part I: The Context of Quality Control in Investigations and Case Preparation

*Chair: Narinder Singh*

1. From Preliminary Examination to Criminal Investigation  
*By Carsten Stahn*<sup>10</sup> (Professor, Leiden University)
2. Rethinking Instruments of Quality Control in the Investigation and Preparation of Core International Crimes Cases  
*By Morten Bergsmo*<sup>11</sup> (Director, Centre for International Law Research and Policy)

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<sup>3</sup> Professor **Manoj Kumar Sinha** is Director of the Indian Law Institute in Delhi, on leave from his position as Professor of Law, West Bengal National University of Juridical Sciences, Kolkata, India. He served as Director of the Indian Society of International Law (2006–09). He holds a doctorate in international law from Jawaharlal Nehru University.

<sup>4</sup> **Xabier Agirre** is the Head of Investigative Analysis Section of the Investigations Division of the Office of the Prosecutor, International Criminal Court ('ICC'). He has previously worked as a senior analyst at the Office of the Prosecutor, International Criminal Tribunal for the Former Yugoslavia ('ICTY').

<sup>5</sup> **Usha Tandon** is Professor of Law and Professor-in-Charge, Campus Law Centre, University of Delhi. She has 28 years of teaching experience, and is a recognised scholar in human development, focusing on women empowerment and environmental protection.

<sup>6</sup> **Vijender Kumar** is Professor and Vice Chancellor, Maharashtra National Law University, Nagpur.

<sup>7</sup> Ambassador **Narinder Singh** is a Professor at Maharishi Law School, Maharishi University, Noida. He was [formerly](#) the Legal Adviser of the Ministry of External Affairs of India and Chairman of the UN International Law Commission. He has also served as Secretary-General of the Indian Society of International Law.

<sup>8</sup> Shri **P.H. Parikh** is President, Indian Society of International Law; and Senior Advocate, Supreme Court of India.

<sup>9</sup> Honourable Mr. Justice **Madan B. Lokur** has been a judge of the Supreme Court of India (2012-2018). He was educated at the Modern School, New Delhi; St. Stephen's Collegiate, Allahabad for ISC examination; History (Hons.) from St. Stephen's College, Delhi University; and law degree from Faculty of Law, Delhi University. He was enrolled at the Bar in 1977 and practised in the Supreme Court of India and at the Delhi High Court.

<sup>10</sup> **Carsten Stahn** is Professor of International Criminal Law and Global Justice and Programme Director of the Grotius Centre for International Studies, Leiden University.

<sup>11</sup> **Morten Bergsmo** is [Director](#), Centre for International Law Research and Policy (CILRAP). He was previously Senior Legal Adviser, ICC-OTP, and Legal Adviser, ICTY-OTP. In the latter capacity, he played a key role in designing the early strategy of the ICTY-OTP on documentary evidence, insider witnesses, and use of analysis expertise.

10:30 **Part II: Evidence and Analysis**<sup>12</sup>

*Chair: Xabier Agirre*

3. Interviewing Witnesses, in Particular Insiders  
*By Trond Myklebust (The Norwegian Police University College) and Gavin Oxburgh (Newcastle University)*<sup>13</sup>
4. Quality Control in Witness Protection  
*By Christopher B. Mahony*<sup>14</sup> (World Bank)
5. Analysis of Organisational Structures and Quality Control of Case Development  
*By Christian Axboe Nielsen*<sup>15</sup> (Aarhus University)
6. On How Analysis Can Enhance the Quality of Investigation and Case Preparation  
*By Xabier Agirre*

13:00 Lunch

13:45 **Part III: Systemic Challenges in Case-Preparatory Work-Processes**

*Segment A: Challenges in Factual Work-Processes*<sup>16</sup>

*Chair: Eleni Chaitidou*<sup>17</sup>

*Commentator: Viplav Kumar Choudhary*<sup>18</sup>

7. Loss of Overview and In-Depth Analysis of Evidence During the Preparation of Fact-Rich Cases  
*By Olympia Bekou*<sup>19</sup> (Professor, The University of Nottingham)
8. Enhancing the Quality of Reasoning about the Link Between Evidence and Factual Propositions  
*By Simon De Smet*<sup>20</sup> (Cambridge University)

15:15 *Segment B: Challenges in the Formulation of Criminal Responsibility*<sup>21</sup>

*Chair: David Re*<sup>22</sup>

9. Prevention of Factual Confirmation-Bias During Offence-Driven Investigations

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<sup>12</sup> Thirty minutes is reserved for open discussion at the end of the session.

<sup>13</sup> **Trond Myklebust** is Assistant Chief of Police, Research Department, The Norwegian Police University College. He holds a Ph.D. from the Department of Psychology, University of Oslo. He is the Co-Founder and Co-Director of the International Investigative Interviewing Research Group. **Gavin Oxburgh** is Professor of Applied Forensic Psychology, Newcastle University. He is a registered Expert Witness with the BPS, providing advice in legal cases. He was formerly a senior detective in the Royal Air Force Police specialising in child protection and sexual offences.

<sup>14</sup> **Christopher B. Mahony** is [CILRAP Research Fellow](#) and Senior Political Economy Specialist at the Finance, Competitiveness, and Innovation Group at the World Bank. He holds a doctorate from Oxford University.

<sup>15</sup> **Christian Axboe Nielsen** is Associate Professor, Aarhus University. He worked as Research Officer, ICTY-OTP, and Associate Analyst, ICC-OTP. He holds a doctorate from Columbia University.

<sup>16</sup> Thirty minutes is reserved for open discussion at the end of the segment.

<sup>17</sup> **Eleni Chaitidou** is Legal Officer, Pre-Trial Division, International Criminal Court.

<sup>18</sup> **Viplav Kumar Choudhary** is Deputy Inspector General in National Investigation Agency (NIA), India.

<sup>19</sup> **Olympia Bekou** is Professor at the University of Nottingham and Deputy-Director of the Case Matrix Network (CILRAP).

<sup>20</sup> **Simon De Smet** is Affiliate Lecturer at Cambridge University, from where he holds a doctorate, and has worked for many years in international criminal justice.

<sup>21</sup> Thirty minutes is reserved for open discussion at the end of the segment.

<sup>22</sup> **David Re** is a Judge at the Special Tribunal for Lebanon. He was formerly international judge, Court of Bosnia and Herzegovina, and trial attorney and senior prosecuting trial attorney, ICTY, and barrister and solicitor, Sydney, Australia.

*By Moa Lidén<sup>23</sup> (Uppsala University)*

10. Quality Control in Determining Which Formulations of Criminal Responsibility Applies  
*By Matthias Neuner<sup>24</sup> (Trial Counsel, Special Tribunal for Lebanon)*
11. Incisive Hypotheses on Criminal Responsibility in Team Environments  
*By William H. Wiley<sup>25</sup> (Director, Commission for International Justice and Accountability)*

17:15 Tea

17:30 *Segment C: Challenges Involving Quantity<sup>26</sup>*  
*Chair: Simon De Smet*

12. Prioritisation of Suspected Conduct and Cases: From Idea to Practice  
*By Devasheesh Bais<sup>27</sup> (Advocate, High Court of Madhya Pradesh)*
13. Cumulative Charging and Challenges in Charge Selection  
*By Cale J. Davis<sup>28</sup> (Leiden University)*
14. Rethinking Disclosure in Core International Crimes Cases  
*By David Re (Judge, Special Tribunal for Lebanon)*

19:30 End of first conference day.

### **Saturday, 23 February 2019:**

09:00 **Part IV: Investigation Plans as Instruments of Quality Control<sup>29</sup>**  
*Chair: Gilbert Bitti<sup>30</sup>*

15. Nature and Use of Investigation Plans at the International Criminal Court  
*By Markus Eikel<sup>31</sup> (Senior Investigator, International Criminal Court)*
16. Investigation Plans in the Draft Regulations of the Office of the Prosecutor of the International Criminal Court: An Italian Perspective  
*By Antonio Angotti<sup>32</sup> (Attorney)*

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<sup>23</sup> **Moa Lidén** is Lecturer, Department of Law, Uppsala University, from where she holds a doctorate.

<sup>24</sup> **Matthias Neuner** is Trial Counsel, Office of the Prosecutor, Special Tribunal for Lebanon. Previously, he was Trial Attorney, ICTY-OTP, for almost ten years.

<sup>25</sup> **William H. Wiley** directs the Commission for International Justice and Accountability since 2011. He was formerly with the Department of Justice of Canada war crimes programme (1997–1999), ICTY and ICTR (2000–2003), ICC (2003–2005), and Iraqi High Tribunal (2006–2008).

<sup>26</sup> Thirty minutes is reserved for open discussion at the end of the segment.

<sup>27</sup> **Devasheesh Bais** is Advocate at the High Court of Madhya Pradesh, India, and Fellow at the Centre for International Law Research and Policy (CILRAP).

<sup>28</sup> **Cale J. Davis** is a doctoral candidate at Leiden University.

<sup>29</sup> Thirty minutes is reserved for open discussion at the end of the session.

<sup>30</sup> **Gilbert Bitti** is Senior Legal Officer, Pre-Trial Division, International Criminal Court.

<sup>31</sup> **Markus Eikel** is a Senior Investigator, ICC-OTP. Formerly, he worked at the ICTY and the Canadian Department of Justice. He holds a Ph.D. from Hamburg University, and an LL.M. from Leiden University.

<sup>32</sup> **Antonio Angotti** is Attorney in Florence, Italy, and Fellow of the Centre for International Law Research and Policy (CILRAP).

17. Use of Investigation Plans in Indian Criminal Justice: The Crime of Human Trafficking  
*By Usha Tandon (Professor, University of Delhi) and Shreeyash Uday Lalit<sup>33</sup> (Advocate, Delhi High Court)*
18. Investigation Plans as Management Tools in Norway  
*By Alf Butenschøn Skre<sup>34</sup> (Norwegian Government)*

12:30 Lunch

13:15 **Part V: Prosecutorial and Judicial Participation in Investigation and Case Preparation<sup>35</sup>**

*Chair: Carsten Stahn*

*Commentator: Dr. M.C. Borwankar<sup>36</sup>*

19. The Role of Lawyers in Ensuring Adequate Quality Control in the Investigation and Preparation of Core International Crimes Cases  
*By Alex Whiting<sup>37</sup> (Professor, Harvard University)*
20. Quality Control in Case Preparation and the Role of the Judiciary of the International Criminal Court  
*By Gilbert Bitti (Senior Legal Officer, Pre-Trial Division, International Criminal Court)*
21. The Role of the Judiciary in the Enhancement of Quality in the National Investigation and Preparation of Core International Crimes Cases  
*By Leïla Bourguiba<sup>38</sup> (Legal Advisor, The Impact of International Law on MENA Countries)*
22. The Judiciary and Enhancement of the Classification of Alleged Conduct  
*By Eleni Chaitidou (Legal Officer, Pre-Trial Division, International Criminal Court)*

15:45 **Concluding Session:**

*Chair: Manoj Sinha Kumar*

23. Synthesis of Conference Papers and Deliberations

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<sup>33</sup> **Shreeyash Uday Lalit** is Advocate, High Court of Delhi. He holds law degrees from University of Delhi and Cambridge University.

<sup>34</sup> **Alf Butenschøn Skre** is Secretary for Legal Issues, The Public Committee on the Norwegian Drug Policy Reform (reporting to the Norwegian Government). He was previously Assistant Public Prosecutor, Office of the Director of Public Prosecutions in Norway; Associate in a leading Norwegian law firm; and has served in various capacities in CILRAP.

<sup>35</sup> Thirty minutes is reserved for open discussion at the end of the session.

<sup>36</sup> **Dr. M.C. Borwankar** is a retired officer of the Indian Police Service (IPS). In her distinguished police service she held various positions including that of the Director General Bureau of Police Research and Development, Director General National Crime Records Bureau, Commissioner of Police, Pune, and the Chief of Crime Branch, Mumbai.

<sup>37</sup> **Alex Whiting** is a Professor of Practice at Harvard Law School. Formerly, he served as Investigations Coordinator and later Prosecutions Coordinator, ICC-OTP. He has also worked for the ICTY and as a federal prosecutor in the United States.

<sup>38</sup> **Leïla Bourguiba** is Legal Advisor, The Impact of International Law on MENA Countries (iReMMO). She was formerly Legal Officer, Genocide, Crimes against Humanity and War Crimes Unit, French Ministry of Justice; and Associate Legal Officer, Chambers, International Criminal Court.

As of 190221.

*By Gregory S. Gordon<sup>39</sup> (Professor, Chinese University of Hong Kong)*

- Narinder Singh
- Xabier Agirre
- Gilad Noam<sup>40</sup> (Ministry of Justice, Israel)
- Usha Tandon
- Manoj Kumar Sinha

16:30 End of conference.

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<sup>39</sup> **Gregory S. Gordon** is Professor at the Faculty of Law of the Chinese University of Hong Kong, and [CILRAP Research Fellow](#).

<sup>40</sup> Dr. **Gilad Noam** is Senior Director, International Justice Division, Office of the Deputy Attorney General (International Law), Israeli Ministry of Justice.