The Right to Self-Representation in International Criminal Jurisdictions

Tilburg University, The Netherlands

The right of the accused to a fair trial is not only a fundamental human rights, but also one of the basic principles of criminal justice.

Judith Akebe Administrative No (ANR) 6032256
September 21, 2011
FOREWORD

The Yugoslav and Rwanda Tribunals when created by the United Nations were considered novel efforts to hold fair and impartial international trials of persons indicted by the tribunals. When the international community and the UN begin enforcing the rule of law and protecting peace and security, States are more likely to follow than if law instability and atrocities were ignored. At the national level, legal systems have developed over time. But much remains to be done even in countries that pride themselves on being democracies under the rule of law. To develop societies under the rule of law is a continuing challenge for mankind. Today we all must realize that the rule of law cannot halt at national borders. Much of the work of the United Nations should be seen against this background.

One of the principles of the rule of law is that all persons should be equal under the law and before the institutions that are charged with applying it. At the national levels, slowly but gradually, superiority and arrogance have had to yield to the rule-based, predictable exercise of public authority. The same should hold true among states. In a state under the rule of law everybody, including the powerful, must bow before the law. So it should be at the international level too. This is the lesson that should be learned from both the Yugoslav and Rwanda Tribunals.

ACKNOWLEDGMENTS

I would like to express my gratitude to the entire staff of the Department of International and European Law at Tilburg University for providing me the space to grow as an academic. I am indebted to Mrs. Nicola Jagers who first confirmed and gave me the permission to go ahead with my thesis research. Clearly, this thesis could not have come into being without the guidance of my supervisors: Dr. Anna Meijknecht and Ms. Stefanie Jansen. A special word of thanks goes to both of them, for their helpful advice and patience. In particular, their vital support and encouragement from the initial to the final level enabled me to write this thesis. My supervisors also shared their thoughts and provided much-needed inspiration. They not only helped to read my paper but also substantially took their time to give valuable feedback, arrangement meetings, and it was a delight to work under their supervision. Mention should be made of Professor Dr. W.J.M. van Genugten, Mrs. Karlijn van Blom, Mrs. C.r.j.j. Rijken, and Mr. Raymond Kubben who deserve particular thanks. Ms. Tessa Barten advice and concern has been a real inspiration to me and I will always treasure our meetings. Above all, I am grateful for my late mother who invested in my education. I trust that this thesis will find its way to scholars and students alike.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>FOREWORD</td>
<td>2</td>
</tr>
<tr>
<td>ACKNOWLEDGMENTS</td>
<td>2</td>
</tr>
<tr>
<td>GENERAL INTRODUCTION</td>
<td>4</td>
</tr>
<tr>
<td>METHODOLOGY</td>
<td>5</td>
</tr>
<tr>
<td><strong>CHAPTER 1</strong>  SELF-REPRESENTATION IN INTERNATIONAL LAW</td>
<td>5</td>
</tr>
<tr>
<td>1.1  INTRODUCTION</td>
<td>5</td>
</tr>
<tr>
<td>1.2  DEFINITION OF SELF-REPRESENTATION</td>
<td>5</td>
</tr>
<tr>
<td>1.3  THE RIGHT TO SELF-REPRESENTATION</td>
<td>7</td>
</tr>
<tr>
<td>1.4  SELF-REPRESENTATION IN INTERNATIONAL LAW</td>
<td>8</td>
</tr>
<tr>
<td>1.5  SELF-REPRESENTATION IN VARIOUS HUMAN RIGHTS INSTRUMENTS</td>
<td>10</td>
</tr>
<tr>
<td>1.6  ELEMENTS OF THE RIGHT TO SELF-REPRESENTATION</td>
<td>16</td>
</tr>
<tr>
<td>1.6.1 HOW THE ELEMENTS ARE USED IN CASE LAW OF OTHER COURTS</td>
<td>18</td>
</tr>
<tr>
<td>1.7  PRELIMINARY CONCLUSION</td>
<td>21</td>
</tr>
<tr>
<td><strong>CHAPTER 2</strong>  HUMAN RIGHTS LAW AND STATUTES OF THE TRIBUNALS</td>
<td>21</td>
</tr>
<tr>
<td>2.1  INTRODUCTION</td>
<td>21</td>
</tr>
<tr>
<td>2.2  THE LINK BETWEEN HUMAN RIGHTS LAW (IHRL) AND THE TRIBUNALS</td>
<td>21</td>
</tr>
<tr>
<td>2.3  A SHORT HISTORY OF THE YUGOSLAV AND RWANDA TRIBUNALS</td>
<td>25</td>
</tr>
<tr>
<td>2.4  THE RIGHT TO SELF-REPRESENTATION IN STATUTES OF THE TRIBUNALS</td>
<td>26</td>
</tr>
<tr>
<td>2.5  PRELIMINARY CONCLUSION</td>
<td>27</td>
</tr>
<tr>
<td><strong>Chapter 3</strong>  THE USE OF SELF-REPRESENTATION IN CASES OF THE TRIBUNALS</td>
<td>27</td>
</tr>
<tr>
<td>3.1  INTRODUCTION</td>
<td>27</td>
</tr>
<tr>
<td>3.2 1 RWANDA TRIBUNAL</td>
<td>27</td>
</tr>
<tr>
<td>3.2 2 YUGOSLAV TRIBUNAL</td>
<td>28</td>
</tr>
<tr>
<td>3.3  END OF CASES</td>
<td>32</td>
</tr>
<tr>
<td>3.4  LIMITATION OF THE RIGHT TO SELF-REPRESENTATION</td>
<td>33</td>
</tr>
<tr>
<td>3.4.1 LIMITATION OF THE ACCUSED RIGHT TO CHOOSE COUNSEL</td>
<td>34</td>
</tr>
<tr>
<td>3.4.2 THE CHOICE OF COUNSEL AND CONFLICTS OF INTERESTS</td>
<td>36</td>
</tr>
<tr>
<td>3.4.3 IMPOSITION OF COUNSEL</td>
<td>36</td>
</tr>
<tr>
<td>3.4.4 LIMITATION DUE TO OBSTRUCTIONIST BEHAVIOUR</td>
<td>38</td>
</tr>
<tr>
<td>3.5  DIFFERENCES IN LIMITATIONS BETWEEN THE YUGOSLAV AND RWANDA TRIBUNALS</td>
<td>38</td>
</tr>
<tr>
<td>3.6  VIOLATION OF THE RIGHT TO SELF-REPRESENTATION</td>
<td>41</td>
</tr>
<tr>
<td>3.7  PRELIMINARY CONCLUSION</td>
<td>42</td>
</tr>
<tr>
<td><strong>CHAPTER 4</strong>  FINAL CONCLUSION AND RECOMMENDATIONS</td>
<td>43</td>
</tr>
<tr>
<td>4.1  INTRODUCTION</td>
<td>43</td>
</tr>
<tr>
<td>4.2  FINAL CONCLUSION</td>
<td>43</td>
</tr>
<tr>
<td>4.3  RECOMMENDATIONS</td>
<td>44</td>
</tr>
<tr>
<td><strong>BIBLIOGRAPHY</strong></td>
<td>46</td>
</tr>
<tr>
<td>TABLE OF MAJOR TREATIES AND INSTRUMENTS</td>
<td>46</td>
</tr>
<tr>
<td>TABLE OF CASES</td>
<td>47</td>
</tr>
<tr>
<td>TABLE OF DECISIONS</td>
<td>48</td>
</tr>
<tr>
<td>ACADEMIC ARTICLES</td>
<td>49</td>
</tr>
<tr>
<td>OTHER DOCUMENTS</td>
<td>50</td>
</tr>
</tbody>
</table>
THE RIGHT TO SELF-REPRESENTATION IN INTERNATIONAL CRIMINAL JURISDICTIONS

GENERAL INTRODUCTION

The main argument in this research is the problem of the right to self-representation. The issue of the right to self-representation in international criminal trials has recently generated a significant degree of interest and opinion in the academic circle. The trials of senior level officials wanting to self-represent themselves before international criminal tribunals have heightened awareness and opinions of the trials and procedures surrounding them.

This research aims at explaining the problem of self-representation in international criminal tribunals. The problem is that it is not clear as to what extent the right to self-representation is acknowledged or limited in courts. The legal problem with the right to self-representation lies in the application process of the law. International criminal tribunals have established as a general principle that the right is not absolute. This principle raises difficult questions of application that are still being worked out in the jurisprudence.

This debate therefore raises the question whether to what extent the right of an accused person to self-representation can be considered a human right which can be limited, and how the right is used in the International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). The reason why I have chosen to focus on both tribunals is because; their case laws have extensively dealt with cases of self-represented accused or defendants.

In order to answer this question, firstly, I will give a definition of self-representation, and then explain the right to self-representation, and self-representation in international law. I will also explain self-representation in various human rights instruments, and analysis elements of self-representation and how the elements are used in case law of other courts. A preliminary conclusion will then summarize the findings of this chapter. In chapter two, I will explain the link between human rights law and the tribunals, and then provide a short history of the two tribunals, I will then explain the right to self-representation in the Statutes of the tribunals. What is gathered from this chapter will be made clear in the preliminary conclusion.
In chapter three, I will explain how the right to self-representation is used in cases before the two tribunals, and a brief conclusion of the cases. Next, I will explain the limitations of the right to self-representation, and the differences in limitation between both tribunals. I will then explore whether there exists a violation of the right to self-representation. A preliminary conclusion of chapter three will then be provided. Lastly, in chapter four, I will offer some recommendations on the right to self-representation, and a general conclusion will be offer as to whether the right to self-representation is a human right which can be limited.

**Methodology**

The method I will use to answer this research question will be based on library and online research, case law from international and regional instruments, with an analysis of case law study of cases dealt with before the Yugoslav and Rwanda Tribunals.

**Chapter 1 Self-representation in International Law**

1.1 **Introduction**

This chapter will explain what self-representation means, where it comes from, and why the concept exists. The aim is to understand why self-representation is significant in criminal proceedings.

1.2 **Definition of Self-Representation**

Self-representation is the privilege and opportunity an accused may come to enjoy, to varying degrees, at different times, and under case specific conditions, of addressing a court, or through the court, by examining or cross-examining witnesses or engaging with the prosecutor’s counsel in court. This means acting on one’s own behalf before a court rather than being represented by a lawyer. Recent scholars have established that the practice of self-representation began as a feature of the primitive common law jury system. When the common law jury practice fully developed an accused right of counsel became vital to the fair trial. It also enabled the development of other defendant’s rights upon the presence of counsel, such as the right to remain silent at trial. Self-representation resulted from the denial of any other right of fair trial or representation.
As the accused slowly gained greater trial rights mainly the right to be represented by counsel, self-representation continued as the default position only because most defendants could not afford counsel and there was no effective right to assigned counsel.¹ The gradual ending of self-representation began among the privileged classes who were the first to afford for defence counsel.² The recognition of this practice as a fundamental right supporting the interests of the accused fully became recognized in the case of *Faretta v. California*³ before the Supreme Court in America. However, there are differences between the approach taken by the common-law and civil-law states in interpreting self-representation.

Within the common law jurisdictions, self-representation has been interpreted that an accused has the right to act as the sole counsel that is by conducting his case entirely. By contrast, civil-law jurisdictions require that in serious criminal cases an accused must not appear in court without the assistance of defence counsel. The accused in such circumstances are generally allowed to speak at their trial and intervene.⁴ This is because a defence counsel is considered as assisting rather than representing the accused.⁵

The positions of the Yugoslav and Rwanda Tribunals are different to both systems. The Tribunals Statutes in words similar to the International Covenant on Civil and Political Rights (ICCPR)⁶ appears to allow the accused a choice to self-representation or to be assigned counsel. If the accused person chooses self-representation, the International Criminal Tribunal for the former Yugoslavia (ICTY) has interpreted this as meaning the accused may act as lead counsel but may be assisted. For example: one element that is usually linked to ‘self-representation is the option for a defendant to not use any legal counsel. In the leading case of Seselj, the defendants for example tried to make use of this option but the court denied the defendants request to represent himself.

¹John H. Langbein, The Origins of Adversary Criminal Trials (2003).  The rationale for the rule against defense counsel was to pressure the accused to serve as an informational resource at trials.
⁶Article 21 Statute of the ICTY similar to Article 14(3)(d) of the ICCPR, recognizes that a defendant is entitled to a basic set of “minimum guarantees in full equality,” including the right “to defend himself in person or through legal assistance of his own choosing.”
1.3 The Right to Self-Representation

According to international criminal law the right of self-representation is defined as the right of anyone charged with a criminal offence to defend himself in person or through legal assistance of his own choice. The right is to provide a fair and reliable determination of guilt or innocence at trial proceedings. It involves not only the interests of the accused but also the institutional interests of the judicial system. The right to self-representation first began during the post-Nuremberg era. It later became recognized in international law through the common law system. It was then adopted in the International Covenant on Civil and Political Rights (ICCPR) as one of the standard “rights of the accused.” Lately, the right became effective in international law during the creation of the various war crime tribunals of the last two decades.

The purpose of the right to self-representation is to assure an accused the right to participate in his defence, including directing the defense, rejecting appointed counsel, and conducting his or her own defense under certain circumstances. The right of an accused person to self-representation is embodied in many of the regional human rights conventions. Article 14(3)(d) of the ICCPR and is similar to Article 8(2)(d) of the American Convention on Human Rights (ACHR), Article 6(3)(c) of the European Convention on Human Rights (ECHR); and Article 7(1) of the African (Banjul) Charter on Human and Peoples’ Rights.

Its application in the human rights regime has generally yielded an interpretation of there being a right to self-representation which reposes in an accused, but that this right is and can be limited for various reasons. These regional human rights conventions are important when dealing with the right to self-representation and are considered in more detail in section 1(4). However, the motivation of asserting a right to self-representation may vary. Some accused simply do not trust the lawyer to do the job properly. Others appear to have a plan mainly political that goes beyond defending themselves on the charges against them. The election of the right to self-representation must be made by an accused who is literate and competent.

---

7 Art. 14(3) (4) ICCPR.
8 Art. 14(3)(d) of the ICCPR
9 Art. 8(2)(d) of the ACHR
10 Art. 6(3)(c) of the ECHR
Whatever the motive, the right to self-representation must be exercised voluntarily, unequivocally and intelligently. The rationale behind this qualified exercise is to ensure that a defendant is protected to the fullest extent possible. Based on international human rights instruments the elements of the right to self-representation are identified as: the right to a fair trial; an accused right to defend himself or through legal assistance of one’s own choice; assignment of counsel or legal assistant; imposed counsel; standby counsel or amici curiae and privilege communication which are a part of the right to self-representation as will be later explained in due course of this research.

1.4 Self-Representation in International Law

This section will explain self-representation in international law. The aim is to understand the legal basis of self-representation. International law is an entire legal system by which rules are created. It acknowledges the development of legal rules. Within this legal system are for example, criminal laws and laws about obligations which are included under the name ‘international law.’ Whilst self-representation is a fundamental right enshrined in international law which states that all criminal trials should be conducted fairly. International law maintains that representation by counsel should be the norm only in exceptional circumstances and only to the extent that the trial can still be rendered fairly and expeditiously.

It was recognised in Baragawiza’s case at ICTR that assignment of counsel to an unwilling defendant is acceptable under international law and is sometimes necessary to safeguard the legitimacy of the proceedings. A defendant in a war crime trial has an absolute right to self-representation under conventional and customary international law. Accused’s that have been allowed to represent themselves have been disadvantage to the efficient conduct of trials and hindering the courts ability to ensure a fair trial.

---

13 Faretta v. California, 422 U.S. 806 (1975), in the Joint Opinions of Judge McDonald and Judge Vohrah attached to the Appeals Chamber’s Judgment in Prosecutor v. Drazen Erdemovic, Case No. IT-96-22-A, 7 October 1997, and in the context of the validity of a guilty plea, the Judges constructed the word “voluntary” for a statement made by an accused where mental state allows him to understand the consequences of his choice and who is not making a choice forcefully.

---

-- In relation to “not equivocal”, the Judges considered a statement not equivocation if not accompanied by contrary words (para. 8). In US v. Denno, (1965) 348 F. 2d 12, 16, the court found equivocation where an accused had failed to “unmistakably commit himself” to the alternative of conducting his own defence.

-- In Faretta v. California, 422 U.S. 806 (1975), the court said that a statement is intelligently made if made in full awareness of the possible consequences of waiving the opportunity for skilled legal representation. Case No. IT-96-23/2-PT.
The development of the law relating to self-representation has been less than satisfactory in the Seselj proceedings at ICTY. Starting with a poor legal ruling of the Appeals Chamber on the Trial Chamber’s decision to impose counsel upon Milosevic case, in an effort to maintain an unworkable regime of representation. The current position before the ICTY is one of a forceful right to self-representation. The Appeals Chamber has interpreted Article 21(4)(d) of its Statute as granting the right of an accused to self-representation, and accepts the concept as an ‘indispensable cornerstone of justice’. This thought was first set out in Milosevic case and has been reaffirmed in Seselj and Krajisnik cases. The series of decisions taken by the tribunal in Seselj’s case indicates that, even where an accused appearing pro se obstructs the proceedings, his right to self-representation will still be preserved. Also, the tribunal stresses that an accused’s right to self-representation might be limited in unusual circumstances, but it must be to protect the courts interests in assuring a reasonably expeditious trial.

Despite the tribunal’s thought of allowing an accused to appear self-represented, the right is not absolute. According to the Appeals Chamber statements, the right can be limited if the self-represented accused is intentionally or unintentionally, and ‘substantially or persistently’ obstructing or hindering the proper and expeditious conduct of the trial. Unfortunately, such statements of general principle by the Appeals Chamber are not allowed in its rulings concerning particular cases: It has always overruled Trial Chambers who is better placed to determine the exercise of this right to the fair and appropriate conduct of the proceedings, and established a confusing unsatisfactory standard of rules.

This authority began with the Appeals Chambers reversal of the Trial Chambers imposition of defence counsel on Milosevic case. It could not be concluded that the Trial Chamber abused its discretion in imposing defence counsel upon Milosevic, but that the ‘restrictions’ of the decision placed on Milosevic role ‘were an error of law.

14 Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel Milosevic (IT-02-54-AR73.7), Appeals Chamber. 1 November 2004, p. 11.
15 Reasons for Decision (No.2) on Assignment of Counsel, Seselj (IT-03-67-PT), Trial Chamber, 27 November 2006; Decision on Assignment of Counsel, Seselj (IT-03-67-PT), Trial Chamber, 21 August 2006; Reasons for Oral Decision Denying Mr. Krajisnik’s Request to Proceed Unrepresented by Counsel, Krajisnik (IT-00-39-T), Trial Chamber, 18 August 2005.
16 Milosevic Appeal Decision on Representation, supra note 6, p. 17.
18 Ibid., p. 11
19 Ibid., p. 13.
20 Appeal Milosevic, Decision on Representation, p. 15
The Trial Chamber failed to recognise that any restrictions on Milosevic’s right to represent himself must be limited to the minimum extent necessary to protect the tribunal’s interest in assuring a reasonably expeditious trial.21 In its decision, the Appeals Chamber found that the Trial Chamber’s restriction on Milosevic right to self-representation was not proportionate to the tribunal’s interest in an expeditious resolution of the case, and referred in support of this position to a principle of ‘proportionality’.22 The Appeals Chamber relied upon an unusual variety of authorities in support of this principle, with a variety of subject-matter unrelated to assignment of counsel.

Indeed, these decisions are based on constitutional law that have no bearing on international criminal trials, which define and maintain fair trials for an accused.23 In relation to its wide application to international criminal law cases concerning self-represented accused, the Appeals Chamber decision creates real challenges for attempting to effectuate the imposition of counsel in Milosevic case. In law and in principle the chambers decision is not persuasive. However, there are times when the role of international law may be limited when the issues of power are involved as seen in the decision of Milosevic case.

1.5 SELF-REPRESENTATION IN VARIOUS HUMAN RIGHTS INSTRUMENTS

This section will explain and compare self-representation in various human rights instruments. The aim is to identify how the regional case law have played out in practice. Self-representation in the texts of human rights conventions, enable the right of anyone charged with a criminal offence to defend himself in person or through legal assistance of his own choice is universally guaranteed by:

a) The Human Rights Committee (HRC)

Article 14(3)(d) of the ICCPR24 provides:

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

---

21 Ibid., p. 17.
22 Ibid.
23 The authority referred to is: McConnell v. Federal Election Comm’n, 540 US 93 (2003), in which the US Supreme Court considered whether the Bipartisan Campaign Reform Act of 2002 violated the US constitutional guarantee of freedom of speech and association.
By reflecting on Article 14(3) in the case of *Michael and Brian Hill v. Spain*, where the Spanish court denied one of the accused’s the right to defend himself in person. The Human Rights Committee (HRC) noted that the accused’s right to self-representation had not been respected. Contrary with the ICCPR meaning it is doubtful to understand if any rule requiring the assignment of defence counsel in civil law system could be implied. In other words, the Committee does not go so far as to explain an absolute right to self-representation.

In reality, the right to self-representation need not be incompatible with the requirement of assistance provided to the defendant, and not to deny the opportunity to play a part in trial proceedings. The Hills case is distinguished on its facts which reveal that, assigned counsels were incompetent and the accused received an unfair trial in numerous respects. The Committee found that an accused had the right to defend himself pursuant to Article 14(3)(d) of the ICCPR even where assistance was required.

*b) The European Court of Human Rights (ECHR)*

Article 6(3)(c) of the ECHR follows:

> (3) Everyone charged with a criminal offence has the following minimum rights: (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require.

Concerning a right of an accused to self-representation, the ECHR case law has shown a relatively restrictive stance and affirmed the rights of states to assign a defence counsel against the will of the accused in the interest of administration of justice. A right of the accused to self-representation under ICCPR is understood through its drafting process that, all persons charged with a criminal offence have a primary and unrestricted right to present themselves at the trial and defend themselves and they can instead make use of defence counsel.

---


26 The Trial Chamber noted that the Secretary General in his report on the Statute (Report of the Secretary-General Pursuant to Paragraph 2 of Security Council Resolution 808, 3 May 1993, S/25704) stated that “the International Tribunal must fully respect internationally recognized standards regarding the rights of the accused at all stages of its proceedings, which are contained in Article 14 of the ICCPR.”


29 Article 6(3)(c) of the ECHR.


The Human Rights Committee of the ICCPR (HRC) stated in paragraph II of its General Comment No. 13\textsuperscript{32} that:

The accused or his lawyer must have the right to act diligently and fearlessly in pursuing all available defences, and the right to challenge the conduct of the case if they believe it to be unfair. When exceptionally for justified reasons trials in absentia are held, strict observance of the rights of the defence is all more necessary.

The HRC also issued a view that it is a violation of Article 14(3)(d) where the domestic law has not authorized to defend an accused in person, which meant that the accused is entitled to choose whether he or she wishes to defend him or herself or to have a lawyer.\textsuperscript{33}

Neither the HRC, which monitors compliance with the right to self-representation in ICCPR Article 14(3)(d), nor the European Court of Human Rights (ECHR), which has jurisdiction over violations of the identical language in the European Covenant on Human Rights Article 6(3)(c), has ever developed a line of cases which really reject the laws and practice in those countries. The single case before the HRC which did uphold a right to self-representation is the \textit{Hill v. Spain}\textsuperscript{34} which was decided on the limited basis of an exceptional set of facts.

Despite the fact that self-representation is not recognized in continental European countries, most of such countries have national laws which permits compulsory representation by counsel. This case shows the importance of recognising the accused as a subject of the proceedings that is, a human being actively participating in the proceedings.

The jurisprudence of the European Court of Human Rights (ECHR) is above all helpful because of its abundance case-law which relates to alleged violations of Article 6(3)(c) of the ECHR. A number of judgements have explicitly addressed the right of an accused to self-representation on appeal. It is clear from the ECHR jurisprudence that, this right must be considered in particular with a view to the overarching right of an accused to fair trial proceedings.

---


\textsuperscript{33} M. and B. Hill v Spain (526/1993).

\textsuperscript{34} Ibid.
In the case of Granger v. United Kingdom, the ECHR emphasized that, the rights as guaranteed in Article 6(3) are specific aspects of the right to a fair trial in criminal proceedings as regulated in Article 6(1) of the Convention,\textsuperscript{35} which provides that “everyone is entitled to a fair and public hearing.”\textsuperscript{36} The ECHR concluded that it was “appropriate to examine the applicant’s complaints from the direction of paragraphs 3(c) and (1) of Article 6 together.”\textsuperscript{37} Further, the ECHR held that as a basic principle those rights as guaranteed in Article 6 of the Convention apply to any part of the proceedings including appellate proceedings.\textsuperscript{38}

In the United Kingdom v. Monnell and Morris, the ECHR ruled that when applying Article 6 in relation to appellate proceedings, the special features of the proceedings had to be taken into consideration. The ECHR stated that “account must be taken of the entirety of the proceedings conducted in the domestic legal order and the role of the appellant.”\textsuperscript{39} In order to determine whether the procedure met the needs of the right to a fair trial, the ECHR considered the scope of powers of the court of appeal, and the manner in which the applicant’s interests were actually presented and protected before the court of appeal.\textsuperscript{40}

Similarly, in Tripodi v. Italy, the ECHR emphasized that the manner in which Articles 6(1) and (3)(c) of the Convention were applied depended on the “special features of the proceedings in question.”\textsuperscript{41} The ECHR took into consideration that the Italian court of cassation decided on points of law, that its proceedings were essentially written and that at the hearing the appellant’s lawyer was only allowed to present arguments in relation to submissions already made in the appeal brief and memorials.\textsuperscript{42}

\textsuperscript{35} Granger v. The United Kingdom, ECHR, App. No. 11932/86, 28 March 1990, p. 43.
\textsuperscript{36} Art. 6(1) of the ECHR reads as follows:
“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent impartial tribunal established by law. Judge shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interest of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”
\textsuperscript{37} Granger v. The United Kingdom, ECHR, App. No. 11932/86, 28 March 1990, p. 43.
\textsuperscript{39} Monell and Morris v. United Kingdom, ECHR, App. No. 9562/81; 9819/82, March 2, 1987, p. 56.
\textsuperscript{40} Ibid.
\textsuperscript{41} Tripodi v. Italy, ECHR, App. No. 13743/88, 22 February 1994, p. 27.
\textsuperscript{42} Ibid., p. 28.
Interestingly, Article 6(3)(c) of the ECHR provision directly link the phrase “interests of justice” with the right to free legal assistance, whereas the other provisions cited above are more vague, suggesting that the phrase “interests of justice” can have a broader relevance function. The ECHR interpreted Article 6(3)(c) of the European Convention as allowing a defence counsel to be imposed on the accused person. It noted in the case of Croissant v. Germany\(^{43}\) that, it was not concerned with an accused seeking to represent himself, but rather an accused who was objecting the appointment of defence counsel by the court.

The Human Rights Committee was seized of a case only at the trial level. The Committee found Article 14 to be violated in *Michael and Brian Hill v. Spain* because Hill’s right to defend himself had not been respected. However, the Hill’s case is not comparable to the case at hand as it relates solely to proceedings at trial and not on appeal. The holding of the Human Rights Committee merely relates to a specific case where the defendant was not allowed to cross-examine, call witnesses, or to participate in the proceedings at all. On the other hand, this case shows the importance of recognizing the accused as a subject of the proceedings, *i.e.* a human being actively participating in the proceedings.

Under the ECHR, an accused does not have an absolute right to represent himself either at trial or on appeal. Both the ECHR and the Human Rights Committee held that Article 6(3)(c) of the ECHR must be interpreted entirely, considering the right to self-representation in overarching a fair trial guarantees, thus sometimes restricting the right to self-representation in the interests of a fair trial.\(^{44}\) The jurisprudence shows that, it is not only the behaviour of an appellant during the proceedings that may justify the imposition of counsel, but also the nature of those proceedings as well.

**c) The American Court of Human Rights (ACHR)**

Article 8(2) of the ACHR\(^{45}\) provides:

> 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilty has not been proven according to law. During the proceedings, every person in entitled, with full equality, to the following minimum guarantees: (d) the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel.


\(^{45}\) Article 8 of the American Convention on Human Rights (ACHR).
The American Convention on Human Rights protects “the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing” in Article 8(2)(d). This provision co-exists with legislation in countries (which are signatories to the Convention) requires an accused to be represented in certain circumstances.\textsuperscript{46} Moreover the inter-American Court of Human Rights has allowed for legislation to limit an accused’s right to represent himself, by stating that “a defendant may defend himself personally, but it is important to bear in mind that this would only be possible where permitted under domestic law.”\textsuperscript{47} In the wordings of the Inter-American Court in this context, what factors determine whether legal representation is necessary for a fair trial? As recognized in the Croissant case,\textsuperscript{48} the length and size of the case, their legal evidentiary and procedural complexities are relevant.

Similarly, the seriousness of the case, as identified in domestic law by reference to the severity of the maximum punishment plays a role. Even English law recognises that in serious cases the accused will normally require the mouthpiece of an advocate. It was also highlighted in the Croissant case that, because of the legitimate interest of the court, every measures possible should be ensured that trial proceedings are conducted in a timely manner without any interruptions or disruptions.

The Inter-American Court of Human Rights (IACHR) assumed that the right to self-representation could be limited by domestic legislation without violating the rights guaranteed under Article 8 of the American Convention of Human Rights (ACHR) as long as the general requirements of a fair trial is observed.

\textbf{d) The African Charter on Human and Peoples’ Rights (ACHPR)}

Article 7(1)(c) of the African (Banjul) Charter on Human and Peoples’ Rights\textsuperscript{49} provides: “Every individual shall have the right to have his cause heard. This comprises: (c) the right to defence, including the right to be defended by counsel of his choice”.\textsuperscript{50}

\textsuperscript{46} Addendum to the Prosecution’s Response to the Confidential Observation by the *Amici Curiae* on the Health of the Accused and the Future Conduct of the Trial, 20 November 2002, pp. 3-6.

--The Prosecution refers to legislation in Costa Rica, Paraguay, Argentina, as well as to Model Code of Criminal procedure for Latin America.


\textsuperscript{49} Art. 7(1)(c) the African Charter of Human and Peoples’ Right was adopted on 27 June 1981.

\textsuperscript{50} Rachel Murrey, Decisions by the African Commission on individual Communications under the African Charter on Human and Peoples’ Rights, 46 INT’L & COMP. L.Q 412, 429 (1997).
From these wordings, it is clear that the right to self-representation is not explicitly included in the Charter.\textsuperscript{51} The African Commission on Human and Peoples’ Rights held that, if defendants at a criminal trial are not represented by counsel for all or part of the trial, this will violate the right to defence as stipulated in its Article 7(1)(c).\textsuperscript{52} Finally, the United Nations Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment states in Principle 11, “a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law.” \textsuperscript{53}

1.6 \textbf{ELEMENTS OF THE RIGHT TO SELF-REPRESENTATION}

The jurisprudence of ICTY, and ICTR entitled the elements of an accused “to defend himself in person or through legal assistance of his own choice.”\textsuperscript{54} Also all human right instruments contain the right of self-representation.\textsuperscript{55} These elements include the following:

\textit{a) The Element of Fair and Expeditious Trial}

Fair trial rights belong to an accused and are applied as a guarantee to ensure that he or she receives a fair trial. On the other hand, expedition is a consideration which reflects more to the interest of the community (the international community in cases of international criminal trials) in seeing that proceedings are brought to a conclusion in an acceptable time.

\textit{b) Defending Oneself in Person}

The right to represent oneself is to secure for the accused a fair trial. Fundamental to that is ensuring that the accused has the opportunity and facility to present his defence fully and effectively. It is clear that where the claim by an accused on representing himself has the effect of compromising the interests of justice, a court has a duty to remove the right so as to ensure that the interests of justice are met.\textsuperscript{56}


\textsuperscript{54} Provisions upholding the Right to Self-Representation have also been included in the Statutes of the ICTR Article 20(4)(d); Article 21(4)(d) Statute of the ICTY; Article 67(1)(d) Rome Statute of the ICC; Article 17(4) Statute of SCSL; Article 16(4)(d) Statute of STL and ECCC Statute Article 35(d).

\textsuperscript{55} Article 14(3)(d) of the ICCPR; Article 6(3) of the ECHR and Article 8(2)(d) of the ACHR.

\textsuperscript{56} This is the basis upon which the Seselj and Barayagwiza decisions proceeded.
c) **The Amici Curiae Model**

The *amicus curiae* literally means ‘friend of the court’. The friend of the court is recognised in many legal systems and increasingly in international proceedings. In such case, a non-party to the dispute provides the court or tribunal with its ‘special perspectives, arguments, or expertise on the dispute, usually in the form of written *amicus curiae* brief or submission’. 57

d) **Court Assigned Counsel**

A court might assign counsel where the accused’s behaviour involves in obstructionist misconduct especially, where an accused refuses to participate at all in his trial, where interruptions and delays are caused by the accused physical condition and where an accused appears with other co-accused.

e) **Privilege Communication**

Privilege stems from the attorney-client relationship. This includes all communications between the lawyer and his client. Where an accused has opted to self-represent instead of to have a counsel represent him the privilege will be removed.

f) **Imposition of Counsel**

This method of representation clearly lacks the standard and key element of defence counsel representation, that an accused cooperating with the instructing counsel. Like the use of standby counsel, the imposition of counsel on an unconsenting accused creates another layer of representation over the accused’s self-representation.

g) **Standby Counsel**

The concept of standby counsel refers to an attorney who is appointed to assist a self-represented accused. The standby counsel is supposed to act in the interests of justice even against the wishes of the accused. The role of a standby counsel is not to interfere with the accused control over his defence, but to actively engage in the case and be prepared to take over if the accused behaves badly. The right to self-representation and appointment of standby counsel does not exclude an accused’s right to obtain legal advice from counsel of his own choosing.

---

1.6.1 HOW THE ELEMENTS ARE USED IN CASE LAW OF OTHER COURTS

This section will analyse how the elements falling under the right to self-representation are used in case laws of other courts. The aim is to comprehend how these elements are used in other courts.

a) Defending Oneself in Person

The relevant provisions in the statutes of international criminal tribunals have generally been interpreted as providing an accused with a right to self-representation, a position that is consistent with that of most common law jurisdictions. In the United States, where the Supreme Court has upheld the right to self-representation as a constitutional right, the treatment of the issue focused on an excessive respect for the individual’s free will.

In the case of Faretta v California, which has never been reversed and is still considered good law, the US Supreme Court held in its federal courts, that the right to self-representation had been protected since 1789. In 1942, the US Supreme Court found that the Sixth Amendment right to the assistance of counsel totally embodies a correlative right to dispense with a lawyer’s help. The precedents set by Faretta stands for the proposition that, in the US Supreme Court, an accused has a constitutional sanctioned right to self-representation in order to protect the individual defendant’s right of free choice.

However, in these jurisdictions, limitations and qualifications have developed such that there is a trend towards greater judicial control of the circumstances in which the right may be exercised. Even in America the Supreme Court has confined its holding in Faretta to a defendant’s right to self-representation at trial, not extending to appeal. It further reasoned that, ‘the right to self-representation is not absolute’ and ‘even at the trial level, the government’s interest in ensuring the integrity and efficiency of the trial at times overweighs the defendant’s interest in acting as his own lawyer’.

---

58 For the United States, see Article (V1.), Amendments to the Constitution of the United States of America; Faretta v. California, 422 US 806 (1975).
60 Ibid., 812.
61 Ibid., 854.
62 Ibid., 851
63 Evidence Act 1906 (WA), s. 106G. For New Zealand, see Evidence Act 1908 (NZ), s. 23F.
65 Ibid., p. 161-162.
Whereas in England and Wales, Canada, Australia and New Zealand, there are statutory prohibitions on pre se accused cross examining rape victims and other categories of protected witnesses.\textsuperscript{66} In Scotland an accused ’charged with a sexual offence is prohibited from conducting his defense in person at the trial,’ and must appoint a lawyer. If they fail to do so, dismiss the lawyer or if the lawyer withdraws, the court shall at its own account appoint a lawyer to act on behalf of the accused. A lawyer so appointed ’is not to be dismissed by the accused or obliged to comply with any instructions by the accused.’\textsuperscript{67} Subject to this, it is the duty of the lawyer to act upon the instructions of the accused, and where the accused gives no instructions to act in the best interests of the accused’.\textsuperscript{68}

\textbf{b) Assistant of Defense Counsel}

In contrast to the common law countries to self-representation, the criminal codes of civil law countries routinely provide for the imposition of defence counsel on an accused charged with serious criminal offences. The consent of the accused is not required and the imposition of counsel is normally codified as mandatory in circumstances where the charges are serious in nature.

The French Code of Criminal Procedure requires that an accused charged with a serious crime must be represented by counsel. Article 274 of the code requires that, in criminal proceedings after the presiding judge questions the accused, the accused is then invited to choose an advocate while the judge appoints one ex officio to act for him. This appointment is cancelled if the accused later chooses an advocate. While Article 317 of the code provides if appointed or chosen counsel does not appear the judge should appoint another.\textsuperscript{69}

The German Code of Criminal Procedure Section 140(2)\textsuperscript{70} requires mandatory assistance of defense counsel if the accused is charged with serious criminal offence,’ and Section 141 requires that counsel shall be assigned to an accused immediately taken in for questioning. The choice of defence counsel depends with the judge, if counsel fails or decides to leave. In this case the judge may appoint another counsel or suspend the hearings.\textsuperscript{71}

\textsuperscript{67} Criminal Procedure Scotland Act (1995), s. 288D (3).
\textsuperscript{68} Ibid., s. 288(D)(4)
\textsuperscript{69} Article 274 and Article 317 of the French Code de Procédure Pénale.
\textsuperscript{70} Sections 140 (2), 141 and 142 of the German Code of Criminal Procedure
\textsuperscript{71} Ibid. S. 288(D)(4).
In the legal system of Serbia and Montenegro, and the Federal Republic of Yugoslavia it is mandatory for the accused to be represented by defence counsel in serious criminal charges. Article 71(1)\textsuperscript{72} of the Criminal Procedure Act of Serbia and Montenegro, it is mandatory representation is granted for a term of imprisonment for more than ten years, or where the accused is ‘unable to defend himself.’

c) Imposition of Counsel

In the case law of other common law jurisdiction and the United States in the case of \textit{Fayette v. California} the US Supreme Court held that, forcing a lawyer upon a defendant who is literate, competent, and who voluntarily exercises his informed free will by waiving his right to the assistance of counsel, would be a breach of the accused’s constitutional right to conduct his own defence, but also that self-representation by a defendant who deliberately engages in serious misconduct may be terminated. \textsuperscript{73}

d) Standby Counsel

The concept of standby counsel was first developed in domestic US law. The case on this mechanism in the US Supreme Court decision was \textit{McCaskey v. Wiggins}.\textsuperscript{74} In this case, the Appellate Court had reverse the denial of \textit{habeas corpus} relief to a petitioner inmate, finding that an accused’s right to self-representation was violated by the unwanted participation of standby counsel, and that a court appointed standby counsel was generally for advisory purposes only.

The accused argued before the US Supreme Court that his right to present his defense was impaired by the distracting, intrusive, and unwanted participation of counsel throughout the trial.\textsuperscript{75} The Court reversed the appellate decision concluding that the accused was accorded all the rights included within the right to self-representation, the right to make motions, the right to argue points of the law, and question witnesses. It further held that participation by standby counsel did not interfere with the accused’s right to present his own defence, and that the accused was given ample opportunity to present his own positions to the trial court on every matter discussed.

\begin{footnotesize}
\begin{enumerate}
\item Article 71 (1) of the Criminal Procedure Act of Serbia and Montenegro
\item \textit{Faretta v. California}, 422 U.S. 806 (1975).
\item \textit{Feratta v. California}, 422 US 806 (1975).
\end{enumerate}
\end{footnotesize}
The model gives the impression of allowing an accused to represent themselves, while at the same time provide the court with some comfort that counsel is acting in the interests of the accused, even if uninstructed, counsel is present and can able to step into the proceedings in some capacity, thus assisting the court in its obligation to ensure a fair trial. However, the role of standby counsel in trial procedures, and the manner in which counsel can and should act raises serious questions as to whether, it is a suitable form of representation in international law.\textsuperscript{76}

1.7 Preliminary Conclusion

This chapter indicates that human rights values are universally accepted in the legal practice of criminal proceedings. An accused’s right to self-representation is recognised during criminal trials. Lastly, in all criminal cases where a court or tribunal seeks to impose counsel, assigned counsel or standby counsel, however, in all criminal cases problems of implementation and effectuation of the right do exist.

Chapter 2 Human Rights Law and Statutes of the Tribunals

2.1 Introduction

This chapter will explain the link between human rights law and the tribunals. Next, a short history of the tribunals will be explained, and then the right to self-representation in Statutes of both tribunals. The goal is to illustrate how these principles interact with the right to self-representation.

2.2 The Link Between Human Rights Law (IHRL) and the Tribunals

IHRL was introduced for “the promotion of universal respect and observance for human rights,”\textsuperscript{77} and as universal norms the law needs to be applied by international criminal tribunal during court proceedings. Further, human rights impact upon and interact with the legal operation of the tribunals in a number of different ways. The application of human rights provision set out in Statutes and Rules of the tribunals are an obvious example. In establishment of ICTY, the UN Secretary General observed in his report that, “it is obvious that the tribunal should fully respect international law standards relating to the rights of the accused at all stages of its trial proceedings.”\textsuperscript{78}

\textsuperscript{76} Because standby counsel is appointed primarily to assist a self-represented accused, it is possible that it is not strictly speaking a form of representation.


Since international criminal tribunals deal with cases arising from inter-states or political conflicts, they are often face challenges on their legitimacy by defendants, state and nationals which defendants belong to as well as critiques. In order to establish their legitimacy, international criminal proceedings should not only comply with IHRL, but also should pursue higher standards in human rights than those in international human rights law (IHRL). Thus, Statutes of the ICTY and ICTR as well as other international criminal courts and tribunals make strong commitment in compliance with international human rights law. Nevertheless, international criminal proceedings unanimously adopted the same norms as that in international human rights law.

Article 20(4) (d) of the ICTR Statute and Article 21(4) (d) of the ICTY Statute guarantee the right to defend himself in person or through legal assistance of his own choosing. Article 67(1) (d) of the Statute of the International Criminal Court (ICC) does so as well. Further, international criminal trials are to be conducted fairly. The fair trial belongs to an accused and is applied as a guarantee to ensure he/she receives a fair trial.

The right to a fair trial is a fundamental element of international human rights law as it applies to the criminal trial process at both domestic and international level. The fair right is reflected in Article 20 of ICTR and Article 21 of ICTY and Rules of Procedure and Evidence. Under the Rules there is a presumption of innocence in favour of an accused; the accused is entitled to legal counsel at the expense of the tribunal where he or she is indigent; a right to public hearing; the accused has a right to test the prosecution evidence and present evidence on his or her own behalf; there is a right to be protected against self-incrimination; and, the Prosecutor is required to provide pre-trial disclosure.

---

79 Statutes of ICTY and ICTR respectively prescribed specific rights of the accused, while the Statute of ICC prescribes general compliance with IHRL in article 21 (3) in addition to listed specific rights of the accused.
80 Article 20(4)(d) Statute of the ICTR; Article 21(4)(d) Statute of the ICTY and Article 67(1)(d) Statute of the ICC
82 Article 20 Statute of the ICTR and Article 21 Statute of the ICTY
84 Rules 62 and 87 of the ICTY Rules of Procedure and Evidence.
85 Rule 42.
86 Rule 78.
87 Rule 85.
88 Rule 90.
89 Rule 66 requires extensive disclosure and Rule 68 provides for disclosure of exculpatory evidence.
Indeed, most fair trial rights and minimum guarantees accorded to an accused persons before ICTY and ICTR are duplication of the International Covenant on Civil and Political Rights (ICCPR),\(^90\) regional human rights conventions, such as the European Convention on Human Rights,\(^91\) the American Convention on Human Rights,\(^92\) and the African Charter on Human and Peoples’ Rights.\(^93\) Finally an accused fair trial right is also mentioned in Articles 9(3) and 14 of the ICCPR.\(^94\)

\(a\) Requirement that the Proceedings be Public

Article 21(2) of the ICTY Statute\(^95\) provide that ‘in the determination of charges against him, the accused shall be entitled to a fair trial and public hearing, subject to article 22 of the Statute,’ which provides in turn, that the Tribunal:

Shall provide in its rules of procedure and evidence for the protection of victims and witnesses. Such protection measures shall include, but shall not be limited to, the conduct of in camera proceedings and the protection of the victim’s identity.

In a decision at Tadic case,\(^96\) the Trial Chamber stated that the point of a trial being public was to assist in ensuring fairness. Also, that the right to public hearing is the right which attaches to the accused, being a means by which fairness is achieved.\(^97\) This proposition has been repeated in the jurisprudence of ICTY,\(^98\) and has also been acknowledged in Milosevic case. Whereas, Article 14(1) of the ICCPR and Article 6(1) of the ECHR\(^99\) states that everyone is entitled to a fair and public hearings. The European Court of Human Rights (ECHR) has stated that by ‘rendering the administration of justice visible, publicity contributes to the aim of a fair trial the guarantee of which is one of the fundamental principles of any democratic society.’\(^100\)

\(^90\) GA Res 2200 A(XX1)21 UN GAOR Supp. (no. 16) at 52, UN Doc. A/6316 (1966), entered into force 23 March 1976 (ICCPR).
\(^91\) ECHR entered into force 3 September 1953.
\(^92\) ACHR entered into force 18 July 1978.
\(^94\) Article 9(3) and Article 14 of the ICCPR.
\(^95\) Article 21(2) and 22 Statute of the ICTY
\(^99\) Art. 14(1) of the ICCPR and Article 6(1) of the ECHR.
The ICTY and ICTR like all other international criminal courts provides for circumstances in which parts of the trials, either its hearings may be closed to the public. The protection of victims and witnesses required by Article 22 of the Statute includes the conduct of in camera proceedings, and the protection of a victim’s identity. A number of Rules from both tribunals also provides for victims and witnesses protection.

b) Adequate Time and Facilities to Prepare a Defence

This principles is reflected in Article 21(4)(b) of the ICTY Statute and Article 20(4)(b) of the ICTR Statute. It expresses the requirement to provide ‘adequate time and facilities for the preparation of an accused’s defence’, like Article 14(3)(b) of the ICCPR and Article 6(3)(b) of the ECHR. The fair trial right must be assessed according to the facts of each case. The right of the accused to adequate time and facilities must be attached from the moment the accused is taken into custody by a court. It must be balanced with the right to trial without undue delay and the requirement that the trial be expeditious.

These tensions have often been experienced in complex international criminal trials as was during Milosevic trial, the accused constantly complained he had not and been given sufficient time or facilities to enable him to prepare his defence. The ICTR Appeals Chamber referring to one of its case stated that, ‘procedural time limits have to be respected and they are indispensable to the proper functioning of the Tribunals fulfilment of its mission to justice, and violations of these time limits unaccompanied by no good cause will not be tolerated.

c) The Equality of Arms

The principles shows that specific rules on the appointment, qualifications and assignment of defence counsel and codes of conduct are at odds with the right to self-representation. The accused representing himself is to face the best of the public prosecutors and the multi-member prosecution team.

---

101 Art. 21(4)(b) Statute of the ICTY and Article 20(4)(b) Statute of the ICTR.
102 Art. 14(3)(b) of the ICCPR and Article 6(3)(b) of the ECHR
103 Zappala, Human Rights, 124.
104 Prosecutor v. Milosevic, hearing on 29 November and 8 December; Prosecutor v. Milosevic, Decision in Relation to Severance, Extension of Time and Rest,’ Case No. IT-02-54-T-12 December 2005, p. 13.
106 Ibid., p. 39.
Article 21(1) of the ICTY Statute\textsuperscript{108} similar to Article 14(1) of ICCPR\textsuperscript{109} states that, “all persons shall be equal before international criminal tribunals.” Article 21(4)(e) of the Statute\textsuperscript{110} further embodies the principle of equality of arms, requiring that as a minimum guarantee, an accused shall be entitled ‘in full equality to examine or have examined the witnesses against him, and examine witnesses on his behalf under the same conditions as witnesses against him.’

The ECHR has held that the right to a fair trial implies an equality of arms.\textsuperscript{111} The tribunals have therefore adopted the approach that the fair trial issue, as it relates to the equality of arms, is resolved by an assessment of the time and resources available to the parties involved, to prepare and bring their cases before the tribunals. It is therefore clear that, tribunals when addressing the issue of fair trial ensures an accused right to fairness as a fulfilment with human rights law standards. In sum, tribunals have protected the rights of the accused while setting minimum standard with which any legitimate international criminal tribunal must comply.

2.3 A short history of the Yugoslav and Rwanda Tribunals

After receiving nearly two years of consistent reports of widespread and systematic murder, rapes, and other crimes committed in the Balkan conflict, the International Criminal Tribunal for the former Yugoslavia (ICTY) was formally established by the United Nations (UN) Security Council in 1993.\textsuperscript{112} Indeed, just over a year after the Yugoslav Tribunal was created, the International Criminal Tribunal for Rwanda (ICTR) was established by the UN Security Council to prosecute individuals accused of serious crimes during the Rwanda genocide in 1994.\textsuperscript{113} The establishment of the Yugoslav Tribunal in 1993 and then the Rwanda Tribunal in 1994 represent the first United Nations efforts to enforce international humanitarian law (the law of war) by holding international trials for individuals accused of war crimes, crimes against humanity and genocide.

\textsuperscript{108} Art. 21(1) Statute of the ICTY
\textsuperscript{109} Art. 14(1) of the ICCPR
\textsuperscript{110} Art. 21(4)(e) Statute of the ICTY
The Tribunals are *ad hoc* that is temporary courts, and will cease to function once they have fulfilled their limited mandates. The Yugoslav and Rwanda Tribunals have international judges, prosecutors, and defence attorney, and when created by the United Nations (UN), they were considered novel efforts to hold fair and impartial international trials or persons accused by the tribunals. Previous efforts to hold international war crimes trials were principally limited to the post-World War II trials held in Nuremberg and Tokyo in the mid-late 1940s.

### 2.4 The Right to Self-Representation in Statutes of the Tribunals

The right of an accused person to self-representation is embodied in Article 20(4)(d) of the ICTR Statute, and Article 21(4)(d) of the Statutes of ICTY. The right is also present in the Statutes of other international criminal tribunals. The relevant provisions when considering the right of an accused person to self-representation before the ICTY is Article 21(4)(d) of the Statute. A plain reading of this provision indicates that there is a right to defend oneself in person. This interpretation is supported by the adversarial nature of proceedings at the tribunals.

Article 21(4)(d) of the ICTY Statute provides that:

4. In the determination of any charge against the accused pursuant to the present Statute, the accused shall be entitled to the following minimum guarantees, in full equality:

(d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right, and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.\(^{114}\)

Article 21(4)(d) is often referred to as the “fair trial provisions” of the Statute, which entitles an accused to defend himself; or to be assisted in his defense by counsel of his own choosing (in practice, if he can pay for this legal assistance); or if he is indigent and the interests of justice so require (which they almost certainly will), to have legal assistance provided free of charge. Another important provision dealing with the right to self-representation is Article 20(4)(d) of the ICTR Statute.\(^{115}\) This provision contains an identical right to self-representation as to that of Article 21(4)(d) of the ICTY Statute mentioned above.

---

\(^{114}\) Art. 21(4)(d) Statute of the ICTY

In the Statutes of other international criminal tribunals, the right to self-representation is also mentioned. For example, Article 17(4)(b) of the Special Court for Sierra Leone (SCSL); Article 67(1) Rome Statute of the International Criminal Court (ICC) and the Iraqi Special Tribunal all contain identical rights to self-representation.

2.5 **PRELIMINARY CONCLUSION**

This chapter confirms can international human rights law play a vital role in international criminal tribunals during trial proceedings. The element of fair trial and the accused right to self-representation is of importance. Finally, international criminal tribunals are obligated to respect international law standards at all stages of their trial proceedings.

**Chapter 3 THE USE OF SELF-REPRESENTATION IN CASES OF THE TRIBUNALS**

3.1 **INTRODUCTION**

This chapter will explain how the right to self-representation has been used in cases before the ICTY and ICTR. I will also explain what limitations of the rights were in these cases, and the differences in limitation between the two tribunals.

3.2 **HOW THE RIGHT TO SELF-REPRESENTATION IS USED IN CASES BEFORE THE YUGOSLAV AND RWANDA TRIBUNALS**

The right to self-representation has taken place in several cases at the ICTY and ICTR, although before the ICTR no jurisprudence on self-representation has been developed and situations where an accused has expressed a wish to represent him or herself are rare.

3.2.1 **RWANDA TRIBUNAL**

a) **Jean-Bosco Barayagwiza Case**

The ICTR first face the question of a defendant’s right to self-representation in the case of Jean-Bosco Barayagwiza holding that defense counsel could be assigned over the objection of the accused. Later counsel was imposed on Barayagwiza.

---

In Barayagwiza proceedings, the defense counsel themselves asked to be withdrawn from the case as a result of the accused refusal to appear in court, and his instructions to counsel not to represent him in any respect during the trial. The request was rejected by the tribunal on the grounds that Barayagwiza was merely boycotting the trial and obstructing the course of justice, and that withdrawal of counsel was not reasonable. It was in this context that Judge Gunawardana, in a concurring and separate opinion, advocated the proceedings of court-appointed standby counsel in certain circumstances before the ICTR. The Judge referred to Article 20(4)(d) of the Statute as “an enabling provision for the appointment of a ‘standby counsel’” and highlighted the court’s power to control its own proceedings.

Subsequently, the tribunal adopted a provision in its Rule 45 quater, which is to be invoked in the most exceptional circumstances to safeguard the integrity of proceedings. The reasoning behind this provision was to enable the tribunal to act even if the accused decided to remain silent or refused to appear before the court. In addition, the enforced provision allowed counsel to be appointed over the objection of the accused whenever it would be in the interests of justice. The rule was created to give the tribunal the power to apply “in cases where the accused person has either declined to engage a lawyer to defend him, or is indigent and has declined counsel assigned by the tribunal.”

3.2.2 YUGOSLAV TRIBUNAL

a) Slobodan Milosevic Case

In Milosevic, the trial chamber ruled proprio motu against the wishes of the accused that the right to a fair trial required it to appoint amicus curiae “not to represent the accused, but to assist in the proper determination of the case”. The Trial Chamber went one step further and imposed defence counsel on the accused justifying the imposition of counsel to the excessive delays of trials caused by the

---

121 Ibid., pp. 8-11.
122 Ibid., p. 10.
123 Rule 45 quater, an Additional provision in the ICTR Rules of Procedure and Evidence introduced the “Assignment of Counsel in the interests of Justice,” provides: “The Trial Chamber may, if it decides that it is in the interests of justice, instruct the Registrar to assign a counsel to represent the interests of the accused.” This provision was added in 8 July 2002 as a response to the specific experience of the ICTR and is the only such provision in the rules of procedure and evidence of an international criminal tribunal.
accused’s ill health. In support of the decision, the Trial Chamber held that “the right of an accused person to represent himself is not unfettered, and in the circumstances of this case, it is both competent to assign counsel to the accused and also in the interests of justice to do so”. While upholding the trial chamber’s decision, the appeals chamber ordered the trial chamber to amend the order on modalities, and give greater priority to the accused’s right to conduct his defence.

b) Vojislav Seselj Case

In Seselj, the Trial Chamber imposed a standby counsel upon the accused. The Trial Chamber held that that the conduct of the accused amounted to disruptive and obstructionist behaviour, and demonstrated deliberate disrespect for the rules, and included intimidated comments about witnesses, all of which led it to conclude that “there is a strong indication that his self-representation may substantially and persistently obstruct the proper and expeditious conduct of the trial.”

This decision was overturned on appeal for failing to give a proper and specific warning to the accused before assigning standby counsel but, in the view of the Appeals Chamber, “should his self-representation subsequent to this decision obstruct the proper and expeditious proceedings in his case, the trial chamber will justified in promptly assigning him counsel after allowing Seselj the right to be heard with respect to his subsequent behaviour”. The accused appealed the decision to impose standby counsel but it was not granted because the Trial Chamber considered that the appointment of standby counsel “would not, affect the conduct of the proceedings”.

The Trial Chamber explained that the accused’s status had not been changed by appointing standby counsel and that his right to self-representation remained intact. The role and level of involvement of standby counsel would mainly be determined by the accused, the only exceptions being where the chamber would request standby counsel to address the tribunal or where the accused would be obstructionist.

127 Prosecutor v. Milosevic, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, November 1, 2004; p. 17.
128 Prosecutor v. Seselj, Decision on Assignment of Counsel, August 21, 2006, p. 79.
129 Ibid.
130 Prosecutor v. Seselj, Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel, October 20, 2006, p. 52.
In any other situation, any assistance in the preparation and presentation of
the case “would be solely at the request of the accused”. Standby counsel would only
be allowed to temporarily take over the case “if the accused is engaging in disruptive
conduct or conduct requiring his removal from the courtroom”, and to permanently
take over “if the accused’s conduct is substantially obstructing the proper and
expeditious proceedings”. The Chamber can only order standby counsel to question
witnesses “in the event of abusive conduct by the accused”.132

Having issued three warnings to the accused who failed to turn up during a
Status Conference, due to him been weak as a result of his hunger strike, the chamber
temporarily asked standby counsel to take over in the accused’s absence.133 Having
offered the accused the opportunity to be heard on the possibility of removing his
right of self-representation, to which he made no response, the Trial Chamber
imposed proper defence counsel on the accused.134 The Appeals Chambers accepted
an appeal from the accused despite the fact that it was filed against the Appeals
Chamber’s directions. This was due to the extraordinary circumstances of the case.135
The Appeals Chamber described the situation as being the accused’s hunger strike
which seriously damaged his health.

The Appeals Chamber received and accepted an appeal from the accused
despite that it was filed against the Appeals Chambers practice directions due to the
unusual circumstances of the case. The Appeal Chambers described the
extraordinary circumstances as being the accused’s hunger strike which seriously
damaged his health and with consequences. The Appeal Chamber, however, insisted
that its decision to allow the accused’s appeal “should in no way be seen as evidence
of the Appeals Chamber rewarding Seselj’s behaviour, rather the tribunal recognised
that, he does not have a right to appeal the decision, and the resolution of this issue is
of importance to Seselj and the interests of the tribunal. It is also in recognition of the
fact that after days of refusing to take food and medicine, Seselj condition is unable to
comply with the practice direction due to his own actions”.136

132 Ibid.,
134 Prosecutor v. Seselj, Reasons for Decision (No.2) on Assignment of Counsel, November 27, 2006.
135 Prosecutor v. Seselj, Decision on Appeal of the Trial Chamber Decision (No. 2) on Assignment of
136 Ibid., p. 15.
On the merits of the decision, the Appeals Chamber did not dispute the appointment of defence counsel, given the circumstances where the accused refused to attend the trial, but rather disagreed with the Trial Chamber’s earlier decision to impose standby counsel immediately after the Appeals Chamber decision had been rendered.\textsuperscript{137} In the view of the Appeals Chamber, its decision had fully restored Seselj’s right to self-representation.\textsuperscript{138}

Accordingly, while the Appeals Chamber did not state that the Trial Chamber was prohibited from imposing standby counsel, the Appeals Chamber finds that the Trial Chamber’s decision to do so immediately upon the issuing of its decision, and without establishing any additional obstruction by Seselj, did have the practical effect of undermining the practical implementation of that decision. The Trial Chamber was fully aware of Seselj’s opposition to standby counsel throughout his case, and its decision to order standby counsel, and the Registry decision to appoint the assigned counsel removed by the Appeals Chamber decision to the position of standby counsel created a situation where, to all intents and purposes counsel removed by the Appeals Chamber were still permitted to be part of the proceedings.

In this circumstance, Seselj’s objection that his right to self-representation restored by the Appeals Chamber was not being respected by the Trial Chamber has merit.\textsuperscript{139} While appreciating the Trial Chamber’s efforts to ensure a fair and expeditious conduct of the trial, the Appeals Chamber found that, the trial chamber “abused its discretion by immediately ordering the imposition of standby counsel, without first establishing additional obstructionist behaviour on the part of Seselj permitting that imposition, with the option to take over the proceedings. Consequently, the Trial Chamber failed to give Seselj a real opportunity to show to the Trial Chamber that despite his conduct pre-trial, and the conduct leading up to the imposition of assigned counsel, he now understood that in order to be permitted to conduct his defence, he would have to comply with the Rules of Procedure and Evidence of the Tribunal and that he was willing to do so. It was this opportunity that the appeal decision intended to agree to Seselj.\textsuperscript{140}

\begin{flushright}
\textsuperscript{137} Prosecutor v. Seselj, Decision on Appeal against the Trial Chamber Decision on Assignment of Counsel, October 20, 2006. \\
\textsuperscript{138} Prosecutor v. Seselj, Decision on Appeal against of the Trial Chamber Decision (No. 2) on Assignment of Counsel, December 8, 2006, p. 26. \\
\textsuperscript{139} Ibid., p. 26. \\
\textsuperscript{140} Prosecutor v. Seselj, Decision on Appeal of the Trial Chamber Decision (No. 2) on Assignment of Counsel, December 8, 2006, p. 27.
\end{flushright}
In *Krajisnik*, his request for self-representation during the trial proceedings was denied due to the potential disruption which would be caused by granting this request, given that it would disrupt the trial proceedings. The Chamber noted that, according to ICTY case law the assertion of a right to self-representation will succeed or fall depending on the factual context\(^{141}\) and that a relevant factor is the likely disruption to proceedings that self-representation may cause. The Trial Chamber found that when a request for self-represented is made during trial, the Judge has a broader discretion to reject it, because the factual assessment as to the extent to which the requested change in status will disrupt trial proceedings enters the calculation.

Once the factual assessment is made the legal determination to accept any disruption should ‘take into account the general interest in an expeditious trial, and the accused’s right to self-representation must be made.'\(^{142}\) The chamber concluded that allowing the accused to take over the conduct of his defence would mean disruption to the proceedings.\(^{143}\) The assertion of the right to self-representation did not outweigh the interest in an undisruptive trial. In general, a request for self-representation that has been made after the trial begins will be treated less favourably than a request before trial.\(^{144}\) However, on appeal, Krajisnik was allowed to represent himself.\(^{145}\)

### 3.3 END OF CASES

The lesson to be learnt from these cases in particular the Milosevic and Seselj cases, is that high-level accused in complex international criminal trials should not be allowed to continue representing themselves where there is sufficient evidence that self-representation will threaten the fairness of the trial or its reasonable expedition.

\(^{141}\) Ibid., 24.

\(^{142}\) Ibid., p. 31.

\(^{143}\) Ibid., p.34.

\(^{144}\) *Prosecutor v. Krajisnik*, Reasons for Oral Decision Denying Mr. Krajisnik’s Request to Proceed Unrepresented by Counsel, August 18, 2005.

3.4 LIMITATION OF THE RIGHT TO SELF-REPRESENTATION

Decisions of both ICTY and ICTR upheld the right to self-representation. While critics of the right to self-representation stress that fair trial can be best guaranteed by appointment of distinguish standby counsel;\(^{146}\) there are those who adopt a different position in this respect. According to supporters of the right, “respect for the individual is the lifeblood of the law”\(^{147}\) and the right should be respected as much as possible.\(^{148}\) They mean that the assignment of defence or standby counsel against the will of the accused is counterproductive. Without instructions and help from the accused, counsel is unable to fulfil his role as “the mouthpiece of the accused.”\(^{149}\)

By not being able to be a true assistant to his client, counsel breaches his own professional standards. That may hurt the integrity of the legal profession. Scholars call imposed defence as “a mere legal fiction”\(^{150}\) and “a tool being used by the court to facilitate the appearance of the court to render a ‘fair trial.’”\(^{151}\) In Milosevic’s case court assigned counsel who requested leave to withdraw, due to his inability to abide with ethical obligations as lawyer was refused to do so by the Court,\(^{152}\) and instead ordered to make the best professional efforts possible on the behalf of the accused.\(^{153}\)

The independence of imposed defence counsel is heavily questioned as imposed counsel has to act solely on the basis of court orders not being bound by a code of conduct.\(^{154}\) It is also argued that the functions that are left for the court assigned counsel bear suspicious similarity to those initially assigned to the *amici curiae*.\(^{155}\) Therefore, one may conclude that appointment of *amici curiae* complementing a self-representing defence renders the defence more transparent.\(^{156}\) A proper client-counsel relationship is not necessary for the *amici* to function appropriately.

---


\(^{147}\) Tuinstra Temminick Jarinde (2006) Assisting an Accused to Represent Himself: Appointment of Amici Curiae as the most appropriate option, *Journal of International Criminal Justice*, p. 6

\(^{148}\) Ibid., p. 16.

\(^{149}\) Ibid., p. 13.

\(^{150}\) Ibid., p. 11.

\(^{151}\) Ibid., p. 15.

\(^{152}\) Ibid., p. 13.

\(^{153}\) Ibid., pp. 15-16.

\(^{154}\) Ibid., p. 14.

\(^{155}\) Ibid., p. 16.

\(^{156}\) Ibid.
The function of *amici curiae* does not oblige him to be mandated by the accused and receive any instructions from the accused. The *amici curiae* can still make submissions on defence issues and thus ensure that the interests of the accused are adequately taken into account by the Judges without the legal fiction of imposed defence counsel.\(^{157}\) The *amici curiae* will also least interfere with the accused’s right to self-representation.\(^{158}\)

Another issue raised by scholars is the transformation of the *amici curiae* into defence counsel that has taken place in Milosevic case. The *amici curiae*’s knowledge about the case and his ability to handle the case without wasting time in familiarization with it have been a crucial factor for the subsequent appointment of the *amici curiae* as defence counsel.\(^{159}\) The change of role is likely to cause difficulties for the *amici curiae* when he switches to a new role of defence counsel. Subsequently, the changes of roles to undermine the independence of the new defence counsel. The reason thereto is that *amici curiae*’s role is to act in the best interests of the court while as defence counsel has to represent the interests of the accused.\(^{160}\)

### 3.4.1 Limitation of the Accused Right to Choose Counsel

The jurisprudence of both *ad hoc* Tribunals have stipulated that the right of free legal assistance/ legal aid does not include the right to choose assigned counsel. Their relevant jurisprudence demonstrates that when the circumstances oblige, limiting the choice of legal aid counsel are acceptable provided that the decision was not unreasonable. This is the position of the judiciary at the tribunals despite explicit provisions contained in the relevant Directive at the ICTR and in the Statute of the ICTY, which specifically states that an indigent accused has a right to counsel of choice.\(^{161}\) The tribunals have also deemed it necessary to limit the right under certain circumstances.

Before the ICTY free legal assistance by counsel does not confer the right to choose one’s counsel; this is most pronounced in cases dealing with indigent accused. For instance, in the case of Hadzihasanovic,\(^{162}\) the tribunal considered that it is the duty of the Registrar, and not the accused to determine the assignment of counsel.

---

\(^{157}\) Ibid., p. 17.
\(^{158}\) Ibid.
\(^{159}\) Ibid., p. 15.
\(^{160}\) Ibid., p. 14.
\(^{161}\) Art. 4 Directive on the Assignment of Defence Counsel (ICTR); Art.21(4)(d) ICTY Statute
\(^{162}\) Prosecutor v. Hadzihasanovic et al., Case No. IT 01-47-PT, March 26, 2002.
Significantly, in the case of Blagojevic\textsuperscript{163} where one of the issues to be decided was if the right to counsel allows an accused the right to counsel of one's own choosing, the chamber articulated the following: In principle, the right to free legal assistance of counsel does not confer the right to counsel of one’s own choosing. The right to choose counsel applies only to those accused who can financially bear the costs of counsel.\textsuperscript{164}

Other significant jurisprudence have made similar reasoning: to be sure in practice an indigent accused may choose from among counsel included in the list, and the Registrar generally takes into consideration the choice of the accused. In the opinion of the appeals chamber, the Registrar is not necessarily bound by the wishes of an indigent accused. He has wide discretion which he exercises in the interest of justice.

In a similar decision in the case of \textit{Dusko Knezevic}\textsuperscript{165} at ICTY, the Trial Chamber faced with an indigent accused freedom of choice to counsel formed its reasoning as follows: “the right of the indigent accused to counsel of his choosing is not without limits; that the decision for the assignment of counsel rests with the Registrar having to take into consideration the wishes of the accused, unless the Registrar has reasonable and valid grounds not to grant the request.”

Decisions of ICTY are similar with the findings of the ICTR. In the case of Akayesu at ICTR, it was stated that, “the right to free legal assistance of counsel does not confer the right to counsel of one’s own choosing. The right to choose counsel applies only to those accused who can financially bear the costs of the legal counsel”\textsuperscript{166} Similarly, in the case of Jean Kambanda, the same tribunal decreed a decision, comprising a most comprehensive section at its paragraph 12 of its Directive of Assignment of Counsel and following on the “right to counsel of one’s own choosing,” concluding that:

In light of a textual and systematic interpretation of the provision of the Statute and the Rules, read in conjunction with relevant decisions from the Human Rights Committee and the organs of the European Convention for the Protection of Human Rights and Fundamental Freedom, that the right to free legal assistance does not confer the right to choose one’s counsel.\textsuperscript{167}

In both tribunals all accused have the right to counsel as a basic entitlement, but the indigent accused does not have the right to select a counsel of his choice. While treating the right to choose counsel is an essential component of a fair trial, the Registrar of the court although not obliges by the accused preference takes the wishes of the accused into account.

\textsuperscript{163} Prosecutor v. Blagojevic et al., Case No. IT-02-60-PT, December 9, 2002.
\textsuperscript{164} Ibid., pp.16-18.
\textsuperscript{165} Prosecutor v. Dusko Knezevic, Case No. IT-95-4-PT / IT-95-8-1-PT, September 6, 2002.
\textsuperscript{166} Prosecutor v. Jean-Paul Akayesu, Case No. ICTR -96-4-A, I June 2001, pp. 61-62.
It is within the Registrar’s discretion to override that preference if consider it is in the interest of justice to do so. As such, refusal to assign counsel of choice to the accused should always be guided by the need to preserve the interest of justice. The refusal, however, must be well-justified, employed exceptionally when required to secure the best interests of the accused through the assignment of a competent counsel. Although freedom of choice of counsel is well-established in Articles 20(4)(d) and 21 of the Statutes of the tribunals as a holy right of the accused, the Registrar of the Court, in line with the position of the tribunals is of the view that this right is not unconditional. As mentioned above the jurisprudence of the tribunals unequivocally confirmed that the right to freely choose counsel is not absolute.

3.4.2 THE CHOICE OF COUNSEL AND CONFLICTS OF INTERESTS

At both tribunals, conflict of interests is viewed as a possible ground where limitation of the right to counsel of choice can be justified. The view amongst counsel and accused persons are that, the decisions whether a conflict exists is to be made by the counsel and not the Registrar or the tribunal. ICTY codes of professional conduct for counsel places a positive obligation on counsel to inform their clients of conflict of interests, or either withdraw from representing a client with the consent of the chamber, or seek the consent of all potentially affected clients before continue with the representation.”

In addition, the same code stipulates that counsel shall not represent a client: “if the case is related to another case in which counsel or his associates formally represented another client, and the interests of the clients are incompatible with the interests of the former client, unless the client and the former client consent after consultation.” The jurisprudence of the tribunal discloses that the accused’s consent is not determinative. Where a real conflict of interests has been found to exist, counsel has been instructed to withdraw in the interests of justice. This had happened in the case Radovic Stankovic at the ICTY, where the Registrar learnt that the assigned counsel was engaged in professional misconduct and was suspended to represent the accused.

3.4.3 IMPOSITION OF COUNSEL

This model of representation clearly lacks the standard of defence counsel representation, because an accused might not wish to cooperate with or instruct the defence counsel. Like the use of standby counsel, the imposition of counsel on an uncooperative accused creates another layer of representation over the accused’s self-representation.
In both Milosevic and Seselj cases counsel was imposed after a considerable period of obstruction and delays. In Milosevic the tribunal determined that the medical condition of the accused required imposition of defence counsel. Even then, the overturning rulings by the Appeals Chamber led to further trial delays. Where an accused is motivated not just to mount a case but to assert a political position, it is difficult to ensure that the trial is fair and expeditious. Yet the current mechanism for allowing self-representation challenges the tribunal’s ability to meet these crucial objectives.

Although this is fundamental legal right guaranteed in the instruments of the tribunals, jurisprudence and experience of national and international jurisdictions have established that the right is not absolute and can be limited when warranted. The right may be curtailed on the grounds that “a defendant’s self-representation is substantially and persistently obstructing the proper and expeditious conduct of his trial.”

It does not matter whether the obstructionist behaviour is intentional or not. Several factors have been pointed out as contributing “individually and cumulatively” to the appointment of counsel against a defendant’s wishes. This includes:

- the defendant’s ill health, the complexity and the length of the case including the gravity of the charges, the number of witnesses, the magnitude of a joint trial,
- the interruptions already caused and or the high potential for such interruptions,
- the public interest in the expeditious completion of the trial,
- the defendant’s unwillingness to cooperate and or appear before the court,
- the defendant’s incompetence.

168 Decision on Appeal against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, Seselj (IT-03-67-AR73.4), Appeals Chamber, 8 December 2006, p. 19.
169 Decision on the Application of Samuel Hinga Norman for Self-Representation under Art. 17(4)(d) of the Statute of the Special Court, Norman (SCSL-04-14-T), Trial Chamber, 8 June 2004, p. 27.
171 Ibid., p. 6.
172 Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, Norman, Case No. SCSL-04014-T, Trial Chambers, 8 June 2004, p. 26.
173 Reasons for Decision on Assignment of Defence Counsel, Milosevic, Case No. IT-02-54-T, Trial Chambers, 22 September 2004, p. 56.
174 Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, Norman, Case No. SCSL-04-14-T, Trial Chamber, 8 June 2005, p. 26.
175 Ibid.
176 Decision on Appeal Against the Trial Chamber’s Decision (No.2) on Assignment of Counsel, Seselj, Case No. IT-03-67-AR73.4, Appeals Chamber, 8 December 2006, p. 2.
177 Decision on the Application of Samuel Hinga Norma for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, Norman, Case No. SCSL-04-14-T, Trial Chamber, 8 June 2004, pp. 13, 15 - 26.
- the limited time span of the court,\textsuperscript{178} the negative effect on the rights of the co-accused to a fair and expeditious trial,\textsuperscript{179} the timing of the request for self-representation.\textsuperscript{180}

Before the court assigns a counsel when thus refusing to maintain the right to self-representation, a defendant has to be heard and or warned about his obstructionist conduct.\textsuperscript{181} In addition, a defendant has to be given an opportunity to select duty counsel or defence counsel himself from a list of counsel provided to him. If a defendant fails to select counsel on his own, then the court may appoint counsel of its own choosing.\textsuperscript{182} International jurisdictions stress that the assignment of counsel against a defendant’s wishes is made not only in the interests of justice, but also in the interests of the accused\textsuperscript{183} and the public.\textsuperscript{184}

3.4.4 Limitation Due to Obstructionist Behaviour

Limitation to the right to self-representation has been employed with those accused who have engaged in obstructionist behaviour. In Seselj case, the tribunal restricted his right to self-representation at the pre-trial stage due to his obstructive behaviour.\textsuperscript{185} An accused’s refusal to conduct any defence at all could be seen as a logical implication of the right to self-representation raises serious concerns regarding a certain standard of effective defence. In such a situation, counsel may be imposed to conduct a defence against the wishes of the accused. This model was employed by ICTR in the case of Barayagiwiza.\textsuperscript{186}

3.5 Differences in Limitation between the Yugoslav and Rwanda Tribunals on the Right to Self-Representation

As will be illustrated in this section the two tribunals differ in limitation of the right to self-representation in decisions taken in some of their cases. The intervention can take different forms: assigned counsel “representing” the accused; standby counsel “assisting” the accused; and counsel appointed to assist an accused on a specific issue alone.

\textsuperscript{178} Ibid., pp. 16 - 26.
\textsuperscript{179} Ibid., p. 26.
\textsuperscript{180} Ibid., pp. 17-18.
\textsuperscript{181} Decision on Appeal against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, Seselj, Case No. IT-03-67-AR73, Appeals Chamber, 8 December 2006, p. 2.
\textsuperscript{182} Ibid., p. 28.
\textsuperscript{183} Reasons for Decision on Assignment of Defence Counsel, Milosevic, Case No. IT-02-54-T, Trial Chamber 22 September 2004, p. 66.
\textsuperscript{184} Decision on the Application of Samuel Hinga Norman for Self-Representation under Art. 17(4)(d) Statute of the Special Court, Norman, Case No. SCSL-04-14-T, Trial Chamber, 8 June 2004, p. 26.
\textsuperscript{185} Seselj decision, supra note 6.
\textsuperscript{186} Prosecutor v. Blagojevic et al., Case No. IT-02-60-PT, December 9, 2002.
In Milosevic decision the ICTY chose to clearly ignore the “interests of justice” as a legal basis for its rulings.\textsuperscript{187} Whereas the ICTR in Barayagwiza,\textsuperscript{188} decision base the right to impose counsel on the condition that the interests of justice be met.

The assignment of counsel implies that a trial may continue in the absence of the accused when he falls ill. In this respect, ICTY proposed that a live video link should be established in Milosevic’s cell, so that he may remain there and followed up his trial, while imposed counsel question witnesses.\textsuperscript{189} This situation is different from ICTR where Barayagwiza the accused who boycotted his trial was regarded as having waived the right to be tried in presence.\textsuperscript{190}

Furthermore, the modalities by which counsels were to act distinguish Milosevic approach from the approach taken by the ICTR. Instead of making use of standby counsel in Milosevic case, ICTY removed the accused from the control panel of his case, and required imposed defence counsel to take responsibility for the conduct and presentation of the defence case. Whereas, the ICTR in Barayagwiza case, suggested that the accused counsel could be assigned as standby counsel, to relieve the court from the difficulty placed upon them by the accused, and ensuring the accused who had absented himself from the trial to be represented.

The model used by ICTY in Milosevic case and Seselj’s decision differs from that of ICTR. The ICTY is unable to accept the Prosecution’s proposal that it would allow assign defence counsel for the accused against his wishes in the present circumstances.\textsuperscript{191} Meanwhile, in Barayagwiza\textsuperscript{192} case at ICTR counsel was allowed to represent the accused against his wishes. In addition, at ICTR counsel is supposed to represent the accused and conduct the case to finality. This is a provision which is not part of the regulatory structure of the ICTY.

\begin{flushright}
\textsuperscript{187} Second Milosevic Decision, p. 66.
\textsuperscript{188} Barayagwiza Decision, concurring and separate opinion of Judge Gunawardana.
\textsuperscript{189} Decision, \textit{supra} note 1., at pp. 22.
\textsuperscript{190} \textit{Supra} note 6.
\textsuperscript{191} Prosecutor v. Milosevic, ‘Reasons for Decision on the Prosecution Motion Concerning Assignment of Counsel’, Case No. IT-02-54-T, 4 April 2003.
\end{flushright}
A Further limitation at ICTY in Seselj case is where standby counsel played a role to substitute the accused. The tribunal stated that should circumstances such as obstruction occur standby counsels would step up and take full control of the defence case. While at ICTR appointment of standby counsel was allowed due to withdrawal of counsels, when the accused refuse to attend his trial proceedings. At ICTR a form of standby counsel was imposed to represent the accused Ntahobali.\textsuperscript{193}

Moreover, in Milosevic case his right to self-representation was limited due to his ill-health condition. The court gave genuine effect to the role of defense counsel while making it possible for the accused to be involved with the conduct of a fair trial, and always allowed him the possibility of requesting that counsel of his own choice be assigned to represent him. While at ICTR the accused Barayagwiza request for counsel not to represent him was not permitted. The court was determined to proceed in his absence, requiring his lawyer to attend court, even though the accused had instructed them not to participate in his defense and not to attend court on his behalf.

Finally, at ICTY in Milosevic case an order was issued in which the accused’s role was set out to continue participating in conducting his case, examining witnesses and following examination by court assigned counsel. The approach taken by ICTR is different. For example, in Ntahobali’s case because of the seriousness of charges and the prosecution’s submission about the accused directly cross-examining victims of rape,\textsuperscript{194} the court instead appointed a ‘duty counsel’ to assist the accused in the conduct of his defence.

\textsuperscript{194} Ibid., p. 8.
3.6 VIOLATION OF THE RIGHT TO SELF-REPRESENTATION

This section will explain whether the Tribunals have in any way violated the right to self-representation. The aim is to identify what might initiate a court to violate an accused fundamental human right.

a) Mandatory Assignment

Several states, particularly in civil law jurisdictions have mandatory assignment system of defence counsel\(^{195}\) imposed on the defendant in serious cases. It is required in many cases for the benefit of the accused but in some cases it prejudices the accused rights. It sometimes happened in military court trials and such appointment prevented the accused from appearing at the trial. In a number of cases, the Human Right Court (HRC) found such treatment as a violation of the accused right to be present at the trial.\(^{196}\)

Since the accused before ICTY, the ICTR and the International Criminal Court (ICC) are entitled to legal assistance, and may freely choose his or her counsel from a list of counsels with required criteria\(^{197}\) such problem can be avoided.\(^{198}\) Thus mandatory assignment against an accused’s will is a violation of the right to self-representation which hinders the accused to choose counsel of his or her choice freely. It is also rather doubtful that the assistance of counsel can serve any useful purpose if the accused is strictly opposed to it.\(^{199}\)

b) The Nature of the Right to Self-Representation

As already introduced, the ECHR assume that it is not absolute that a state may require the accused to be assisted by a counsel in the name of interests of justice, while the Human Rights Committee (HRC) has taken a more strict approach on the concept. It was emphasized in Milosevic case that, the case law of the ICTR, the ICTY and the Special Court for Sierra Leone (SCSL) “recognizes that there may be circumstances where it is competent, and appropriate for the tribunals to stand

\(^{195}\) Article 289 of the Criminal Procedure Code of Japan prohibits the court from opening a trial without counsel for charges resulting in death penalty, indefinite imprisonment or imprisonment for more than 3 years, and obligates the court to assign an ex-officio counsel for such cases if the accused has no counsel.


\(^{197}\) Rule 21-2 of the Rules of Procedure and Evidence (The ICC Rules) and Regulations 75 of the Regulation of the Court (the ICC Regulations).

\(^{198}\) At ICTY, it is the Registrar’s duty to try to accommodate the accused’s wishes for assistance as much as possible in choosing a legal counsel unless it has reasonable and valid grounds not to grant the request.

firmly that the defense is presented by counsel and not by the accused in person. This case law from the three tribunals clearly suggests that the right of an accused to act on his own behalf as embodied in the Statute of the ICTY is not unqualified.” 200 The courts should be careful and discouraged to undermine the right of self-representation easily under pretext of the interests of justice. However, such specific rights are guaranteed to ensure a fair trial, although there may be circumstances to restrict such right with the aim of achieving a fair trial.

c) **The Scope of the Discretion of the Court to Assign Counsel**

The ICTY Trial Chamber held in Milosevic case that such circumstances “have to be determined on the case-by-case basis, having regards to the particular circumstances of the case as a whole, including such factors as the ability of the accused to conduct his own defense, as well as his attitude and actions.” 201 This view is regarded as that the court has a wide discretion to find circumstances to restrict the right to self-representation.

However, the ICTY appeals chamber took a more strict view and disagrees to the decision of trial chamber III. 202 It held that “the trial chamber failed to recognize that any restrictions on Milosevic’s right to represent himself must be limited to the minimum extent necessary to protect the Tribunal’s interests in assuring a reasonably expeditious trial. The Appeals Chamber considers that a proportionality principle of this sort was clearly called for in the circumstances.” Both “minimum” standard and “a proportionality principle” are reasonable to restrict one of fundamental rights of the accused. At the same time, it should be examined whether a fair trial is still taking place under such restrictions.

### 3.7 Preliminary Conclusion

The jurisprudence shows that interference with the right to self-representation is based on balancing the interests of justice. Factors that have been found to the balance in favour of qualifying the right includes the risk that the accused will engage in obstructionist misconduct, and the assertion of the right at a late stage in the proceedings, coupled with the seriousness, complexity and magnitude of the cases.

200 Ibid., note.
201 Ibid.
CHAPTER 4  FINAL CONCLUSION AND RECOMMENDATIONS

4.1 INTRODUCTION

This chapter will offer a final conclusion and some recommendations which international criminal tribunals might use as future references when dealing with self-represented cases.

4.2 FINAL CONCLUSION

Based on the research question whether to what extent the right of an accused person to self-representation can be considered a human right which can be limited, and how the right is used in cases of the Yugoslav and Rwanda Tribunals, this is what I can conclude from it. International Criminal Tribunals still do not have any clear rules on self-representation drafted. What provides guidance in the meantime is case law. The case law shows that exclusive self-representation is rare. It is rather common to complement the self-representing defence by means of legal associates (Milosevic), standby or duty counsel (Seselj, Ntahobali) and amicus curiae (Krajisnik). In the course of proceedings, it is also common that one function evolves into another. By the decision of the Court, a standby counsel becomes an assigned defence counsel (Seselj). An amici curiae evolves into an assigned defence counsel (Milosevic).

By rendering these decisions, the courts primarily aim at ensuring an expeditious conduct of proceedings. In the meantime, scholars question this transformation of functions and these modes of representation as damaging the integrity and independence of the legal profession. Standards for counsel representing an uncooperative accused are not set by any codes or other basic legal documents of international tribunals.

205 Order concerning Appointment of Standby Counsel and Delayed Commencement of Trial, Seselj (IT-03-67-PT) Trial Chamber, 25 October 2006.
206 Decision on Ntabobali’s Motion for Withdrawal of Counsel, Ntahobali (ICTR-97-21-T), Trial Chamber, 22 June 2001.
207 Decision on Momcilo Krajisnik’s Request to Self-Representation, on Counsel’s Motions in Relation to Appointment of Amicus Curiae, and on the Prosecution Motion of 16 February 2007, Krajisnik (IT-00-39-A), Appeals Chamber, 11 May 2007.
209 Decision assigning Mr. Steven Kay Q.C. as lead counsel and Ms. Gilland Higgins as co-counsel for the Accused, Milosevic (IT-02-54-T), Registrar, 3 September 2004; Decision on Assigned Counsel’s Motion for Withdrawal, Milosevic (IT-02-54-T), Trial Chamber, 7 Dec. 2004.
Instead, orders of the courts provide some guidelines as to how to represent the best interests of the accused in the absence of any help and instructions from the latter. What is required of counsel under such circumstances is that they act in what they perceive to be the best interest of the accused. In the light of this analysis, self-representation is the privileges and opportunities an accused may come to enjoy, to varying degrees, at different times, and under case-specific conditions, of addressing a court or, through the court, examining or cross-examining a witness or engaging with the prosecution’s counsel in court.

4.3 RECOMMENDATIONS

a) The Power and Obligation of the Court

- The court can use its power and obligation to avoid trying an accused in absentia, if an accused representing him or herself failed to appear in the court, the court should take every possible steps to encourage the accused to appear at a trial, and before trying in absentia, the court should resort to assign a counsel.

- In circumstances where self-representation only results in ineffective defense, although it is not clear on whether a court is obligated to ensure an effective defense in case of self-representation, but the court should assume some obligation to take measures to keep such defense from being ineffective and “must be particularly attentive to its duty of ensuring that the trial be fair.”

b) The Methods to Ensure a Fairness and Interests of Justice

- Where an accused refuses to be represented, it is not the only way for fairness and interests of justice to assign a counsel against the accused’s will. Self-representation combined with legal assistance or standby counsel, legal advisor or amicus curiae, and/or investigators might satisfy both the accused’s will and fairness and interests of justice.

---

210 Decision on Assigned Counsel’s Motion for Withdrawal, Milosevic (IT-02-54-T), Trial Chamber, 7 December 2004, p. 19.
212 Prosecutor v. Milosevic, Decision on Interlocutory Appeal by the Amici Curiae against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, Case No. IT-02-54-AR73. 6, Appeals Chamber, 20 January 2004, p. 19.
214 Otto Triffterer, Commentary on the Rome Statute of the International Court, 2000, p. 857;
The court should consider and make available those alternatives before jumping into an assignment of counsel against the accused’s will.

c) What should be ensured Regarding Self-Representation?

The decision by an accused to self-representation may be sometimes caused by a failure to build trust and confidence with a counsel. Where an accused is entitled to freely choose a counsel even at the expenses of the court, the reasonably accused will be strongly encouraged to have a legal assistance.

In case self-representation takes place, rights usually exercised by a counsel should be ensured for self-representation as well and sufficient tools must be granted to the accused so that he or she may prepare his or her defence.215 Such tools include, but not limited to, rights:216

- To have adequate time and facilities for the preparation of his or her defense;
- To examine the witness against him or her and to obtain the attendance and, examination of witnesses on his or her behalf under the same conditions as witnesses against him or her;
- To have, free of any cost, the assistance of a competent interpreter and such translation as are necessary to meet the requirements of fairness; and finally
- To access evidence in the Prosecutor’s possession or control which he or she believe shows or tends to show the innocence of the accused, or to mitigate the guilt of the accused, or which may affect the credibility of prosecution evidence.

Lastly, a clear message to an accused who wants to disrespect and manipulate the trial process is that, the court will not tolerate interference with the trial process which will threatens the fairness and expedition process of any trial. The courts and tribunals are to serve the cause of justice and fairness.

---

216 Article 67 of the Statute of the International Criminal Court (ICC).
**Bibliography**

**Table of Major Treaties and Instruments**

**Conventions**

<table>
<thead>
<tr>
<th>Year</th>
<th>Treaty</th>
<th>Articled/Provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1995</td>
<td>ECHR</td>
<td>arts. 6(1) .... 6(3)(c) .... 6(10)</td>
</tr>
<tr>
<td>1981</td>
<td>ACHPR</td>
<td>art. 7(1)</td>
</tr>
<tr>
<td>1969</td>
<td>ACHR</td>
<td>art. 4(1) .... 4(2)(a) .... 4(2)(b) ....</td>
</tr>
<tr>
<td>1966</td>
<td>ICCPR</td>
<td>arts. 9(3) .... 14(1) .... 14(3)(b) - 14(3)(d)</td>
</tr>
</tbody>
</table>

**Statutes**

<table>
<thead>
<tr>
<th>Organization</th>
<th>ART</th>
</tr>
</thead>
<tbody>
<tr>
<td>SCSL</td>
<td>art. 17(4)</td>
</tr>
<tr>
<td>SIST</td>
<td>art. 19(4)(d)</td>
</tr>
<tr>
<td>ICTR</td>
<td>art. 20(4)(d)</td>
</tr>
<tr>
<td>ICTY</td>
<td>art. 20 .... 21(1) ... 21(2) ... 21(4)(b) ... 21(4)(d) - 21(4)(e)</td>
</tr>
<tr>
<td>STL</td>
<td>art. 35(d)</td>
</tr>
<tr>
<td>ICC</td>
<td>art. 67(1)</td>
</tr>
</tbody>
</table>

**Agreements**

- Amendments to the Constitution of the United States of America. .... art (V1).
- Criminal Procedure Act of Serbia and Montenegro..... art 71(1).
- Criminal Procedure Code of Japan ...... art. 289.
- Directive on the Assignment of Défence Counsel (ICTR) .... art. 4.
- Evidence Act 1906 (WA), s. 106G. New Zealand.
- Evidence Act 1908 (NZ), s. 23F.
- French Code de Procédure Pénale ..... arts. 274, 317.
- Sections 140 (2), 141 and 142 of the German Code of Criminal Procedure.

**Rules of Procedure and Evidence**

- Rule 45 *quarter* of the ICTR
- Rules 42 ... 62, 68, 78, 85, 87 and 90 of the ICTY
- Rules 212 of the Rules of Procedure and Evidence of the ICC
- Regulations 75 of the ICC

**Security Council Resolutions**

**TABLE OF CASES**

Aguas Argentinas S.A. and Others v. Petition for Transparency and Participation
Granger v. The United Kingdom, ECHR, App. No. 11932/86, 28 March 1990, p. 43.
Kremzaw v. Austria, ECHR, App No. 12350/86, 21 September 1993, p. 58
Lagerblom v. Sweden, ECHR.
Mbenge v. Zaire, HRC
Sutter v. Switzerland (1984) 74 Eur Court HR (ser. A) p. 26
United States v. Denno, (1965) 348 F. 2d 12, 16.

Prosecutor v. Blagojevic et al., Case No. IT-02-60-PT, December 9, 2002.
Prosecutor v. Dusko Knezevic, Case No. IT-95-4-PT / IT-95-8-1-PT, September 6, 2002.
Prosecutor v. Hadzihasanovic et al., Case No. IT 01-47-PT, March 26, 2002.
Prosecutor v. Krajsnik, Reasons for Oral Decision Denying Mr. Krajsnik’s Request to Proceed Unrepresented by Counsel, August 18, 2005.
Prosecutor v. Milosevic, Decision on Interlocutory Appeal by the Amici Curiae against the Trial Chamber Order Concerning the Presentation and Preparation of the Defence Case, Case No. IT-02-54-AR73.6, Appeals Chamber, 20 January 2004, p. 19.
Prosecutor v. Milosevic, Decision on Interlocutory Appeal of the Trial chamber’s Decision on the Assignment of Defense Counsel, Case No. IT-02-54-AR73.7, Appeals Chamber, November 1, 2004, p. 19.
Prosecutor v. Milosevic, Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel, November 1, 2004; p. 17.
Prosecutor v. Milosevic, Hearing on 29 November and 8 December 2005.


Prosecutor v. Seselj, Decision on Appeal against the Trial Chamber Decision on Assignment of Counsel, October 20, 2006.

Prosecutor v. Seselj, Decision on Appeal against the Trial Chamber Decision (No. 2) on Assignment of Counsel, December 8, 2006, p. 26-27.

Prosecutor v. Seselj, Decision on Appeal Against the Trial Chamber’s Decision on Assignment of Counsel, October 20, 2006, p. 52.

Prosecutor v. Seselj, Decision on Appeal of the Trial Chamber Decision (No. 2) on Assignment of Counsel, December 8, 2006, pp. 13-14.


Prosecutor v. Seselj, Decision on Assignment of Counsel, August 21, 2006, p. 79.

Prosecutor v. Seselj, Decision on Prosecution’s Motion for Order Appointing Counsel to Assist Seselj with his Defence, case, No. IT – 03-67-PT, 9 May 2003, p. 18.


Prosecutor v. Seselj, Reasons for Decision (No.2) on Assignment of Counsel, November 27, 2006.


### TABLE OF DECISIONS

<table>
<thead>
<tr>
<th>Decision on Appeal Against the Trial Chamber’s Decision (No.2) on Assignment of Counsel, Seselj, Case No. IT-03-67-AR73.4, Appeals Chamber, 8 December 2006, p. 2.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Decision on Appeal against the Trial Chamber’s Decision (No. 2) on Assignment of Counsel, Seselj (IT-03-67-AR73.4), Appeals Chamber, 8 December 2006, p. 19.</td>
</tr>
<tr>
<td>Decision on the Application of Samuel Hinga Norma for Self-Representation under Article 17(4)(d) of the Statute of the Special Court, Norman, Case No. SCSL-04-14-T, Trial Chamber, 8 June 2004, pp. 13, 15 and 26 -27.</td>
</tr>
<tr>
<td>Decision Assigning Mr. Steven Kay Q.C. as lead counsel and Ms. Gilland Higgins as co-counsel for the Accused, Milosevic (IT-02-54-T), Registrar, 3 September 2004.</td>
</tr>
<tr>
<td>Decision on Assignment of Counsel, Seselj (IT-03-67-PT), Trial Chamber, 21 August 2006</td>
</tr>
<tr>
<td>Decision on Assigned Counsel’s Motion for Withdrawal, Milosevic (IT-02-54-T), Trial Chamber, 7 December 2004, p. 19.</td>
</tr>
<tr>
<td>Decision on the Application of Samuel Hinga Norman for Self-Representation under Article 17 (4)(d) of the Statute of the Special Court, Norman (SCSL-2004-14-T), Trial Chamber, 8 June 2004.</td>
</tr>
<tr>
<td>Decision on Momcilo Krajsnik’s Request to Self-Representation, on Counsel’s Motions in Relation to Appointment of Amicus Curiae, and on the Prosecution Motion of 16 February 2007, Krajsnik (IT-00-39-A), Appeals Chamber, 11 May 2007.</td>
</tr>
<tr>
<td>Decision on Ntabobali’s Motion for Withdrawal of Counsel, Ntabobali (ICTR-97-21-T), Trial Chamber, 22 June 2001.</td>
</tr>
<tr>
<td>Decision on Interlocutory Appeal of the Trial Chamber’s Decision on the Assignment of Defence Counsel. Milosevic (IT-02-54-AR73.7), Appeals Chamber. 1 November 2004, p. 11.</td>
</tr>
<tr>
<td>Milosevic Appeal Decision on Representation, <em>supra</em> note 6, p. 17.</td>
</tr>
</tbody>
</table>
Order concerning Appointment of Standby Counsel and Delayed Commencement of Trial, Seselj (IT-03-67-PT) Trial Chamber, 25 October 2006.

Reasons for Decision (No.2) on Assignment of Counsel, Seselj (IT-03067-PT), Trial Chamber, 27 November 2006.
Reasons for Oral Decision Denying Mr. Krajisnik’s Request to Proceed Unrepresented by Counsel, Krajisnik (IT-00-39-T), Trial Chamber, 18 August 2005.

**ACADEMIC ARTICLES**

Karin N. Calvo-Goller, the Trial Proceedings of the International Criminal Court: International Criminal Tribunal for the former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR) Precedents, pp. 234 -236.
OTHER DOCUMENTS

International Centre for Settlement of Investment Disputes (‘ICSID’), Case No. ARB/03/19, 19 May 2005.

Please see also web references in chapter footnotes.