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The Protection of Victims and Witnesses at International and Internationalized Courts – the Need to Balance the Human Rights of the Accused and those of Victims and Witnesses

Since the 1990s, several international and internationalized criminal courts have been established, including the International Criminal Tribunals for the former Yugoslavia and for Rwanda (ICTY, ICTR), the International Criminal Court (ICC), the Special Court for Sierra Leone (SCSL), the Extraordinary Chambers in the Courts of Cambodia (ECCC) and the Special Tribunal for Lebanon (STL). In fulfilling their mandate to prosecute serious international crimes, these courts are often confronted with competing interests. On the one hand, the courts need to respect the accused's right to a fair and public trial, as set out in various human rights conventions and defined in the tribunals' statutes. On the other hand, the courts must take into account the human rights of prospective witnesses and of victims who wish to participate in the proceedings (a novelty in international criminal law, applied by the ICC, the STL and the ECCC), including their right to safety and security of person and the protection of their personal dignity. Witnesses are often subject to reprisals and threats from the alleged perpetrators, and many victims of serious crimes require protection from re-traumatization caused by their testimony in court. The prosecution may apply to the chambers for protective measures to be ordered for the witnesses. These measures may include the exclusion of the public from part of the proceedings and anonymity of the witness from the public. Before ordering these measures, the judges need to balance the need for witnesses and victims to be protected and the implications of protective measures for the rights of the accused. In particular the order of non-disclosure of the witness' identity to the defense by the ICTY in the *Tadic* trial in 1995 was discussed controversially. It was argued that the accused's right to confront witnesses against him was violated because the defense could not adequately examine the witness without being aware of his/her identity. Since then, the courts have never allowed anonymous witnesses to testify anonymously at trial again. However, more recently, the ICC allowed victims to participate anonymously in the confirmation of charges hearing at the pre-trial stage, and the court indicated that witness anonymity at trial may be possible as well. This shows that the controversy regarding witness anonymity has not been settled yet and that the need to balance the human rights of the accused and those of victims and witnesses remains a delicate exercise for international and internationalized criminal courts.