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ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

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Stanišić & Simatović (IT-03-69)

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Đorđević (IT-05-87/1)

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Tolimir (IT-05-88/2)

Krstić Acquitted of Contempt Charges



Radislav Krstić

On 18 July 2013, the Trial Chamber acquitted Radislav Krstić of contempt of court charges relating to his refusal to testify before the Tribunal.

Krstić had been subpoenaed to testify in Prosecutor v. Karadžić (Karadžić case). Defence Counsel filed a motion to stay his testimony due to the effects of Post-Traumatic Stress Disorder (PTSD) and requested for the stay to continue until Krstić was fit and competent to testify. A decision was issued finding that there was no medical reason considered 'sufficient cause' to prevent the Accused from testifying. Still, Krstić persisted in his refusal to testify and, on 27 March, the Karadžić Chamber charged the Accused with contempt under Rule 77(A).

The Accused did not dispute the allegation that he had persistently refused to testify. Therefore, the Chamber had to consider whether the Accused's refusal to testify was 'without reasonable excuse'.

Defence submissions stated that the Accused's involvement in the Karadžić case would cause his health to deteriorate and that he would suffer from depression, nightmares and flashbacks that could be on-going.

The Chamber found, by relying on the expert witness evidence of Ana Najman and Dr. de Man, that the Accused's health had deteriorated since he had received the subpoena to testify in the Karadžić case and, thus, it was a reasonable excuse.

Dissenting, Judge Kwon stated that the additional evidence given by Najman did not provide new information to prove that the Accused's medical condition was a legitimate reason for non-compliance with the

ICTY NEWS

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subpoena. Judge Kwon asserted that additional medical evidence should have been provided. Kwon also stated that assessments of medical issues which could prevent a person from testifying should be carefully considered, especially in regards to PTSD which is experienced by many who are called to testify at the ICTY.

From 1998 to 2001, Krstić was tried at the ICTY for charges relating to events that occurred in and around the Srebrenica enclave between July and November 1995. On 19 April 2004, the Appeals Chamber issued a judgement reducing Krstić's sentence from 46 years to 35 years.

98 bis Judgement: Appeals Chamber Reverses Karadžić Acquittal



President Theodor Meron

On Thursday 11 July 2013, the Appeals Chamber, composed of Judges Theodor Meron, presiding, Patrick Robinson, Liu Daqun, Khalida Rachid Khan, and Bakhtiyar Tuzmukhamedov, unanimously reversed Radovan Karadžić's acquittal for genocide in the municipalities of Bosnia and

Herzegovina, a charge which was entered at the close of the Prosecution's case.

In its decision, the Appeals Chamber noted that the evidence presented by the Prosecution over the course of Karadžić's trial could support a conviction for genocide and, as such, concluded that the Trial Chamber erred in its decision to acquit Karadžić on the count of genocide.

In a prior judgement, delivered on 25 September 2012, the Trial Chamber had acquitted Radovan Karadžić, finding that there was "no evidence, even taken at its highest, which could be capable of supporting a conviction for genocide in the municipalities as charged under Article 4(3) of the Statute". The Trial Chamber had rejected Karadžić's motion for acquittal on the remaining 10 counts of his indictment.

The Prosecution appealed the acquittal on 25 September 2012 and advanced four grounds of appeal: (i) that the Trial Chamber erred by not finding that the killings in the municipalities constituted the *actus reus* of genocide; (ii) that the Trial Chamber improperly created an *actus reus* element by requiring that the serious bodily or mental harm in question achieve a certain level of destructive impact on the group; (iii) that the Trial Chamber erred by failing to

provide a reasoned opinion in relation to its conclusion that the conditions of life in detention facilities in the Municipalities did not satisfy the requirements of genocide under Article 4(2); (iv) that the Trial Chamber erred in law and in fact in assessing genocidal intent.

Granting in part the Prosecution's first, second and third grounds for appeal, the Appeals Chamber noted acts of physical and sexual torture committed against Bosnian Muslim and Bosnian Croat detainees. The Appeals Chamber concluded that this evidence, taken at its highest level, could prove the underlying genocidal act of causing serious bodily or mental harm. The Appeals Chamber found that no reasonable trial chamber could find to the contrary.

Further, the Appeals Chamber noted the inadequate conditions in which Bosnian Muslims and Bosnian Croats were detained. The Appeals Chamber concluded that such evidence could prove Karadžić's genocidal intent, and, again, that no reasonable trial chamber could find to the contrary.

The Appeals Chamber rejected Karadžić's argument that, although the detainees were abused and beaten while in custody, there was no intent to destroy non-Serb ethnic groups. Similarly, the Appeals Chamber rejected Karadžić's argument that reversing the Trial Chamber's judgement of acquittal would disrupt his on-going trial and would be an irresponsible use of public funds. In its decision, the Appeals Chamber noted that there were no exceptional circumstances which would warrant it to refrain from reversing the trial judgement on prudential grounds.

The Appeals Chamber remanded its decision to the Trial Chamber for appropriate further action.

Prosecutor v. Radovan Karadžić (IT-95-5/18-1)

On 2 July 2013, Milenko Karišik, a former Commander of the Bosnian Serb police special brigade who also held several top positions in the Bosnia-Herzegovina Ministry of the Interior (BiH MUP), completed his testimony as a Defence witness. Karišik's position remained that the Srebrenica operation was exclusively under military jurisdiction. Though Karišik admitted there was some cooperation between the MUP and the army, his testimony minimised the role of the MUP. When confronted with allegations of the MUP's failure to investigate, as well as their role in the arrest of US reporter David Rohde in November of 1995, Karišik maintained that these inquiries were misdirected.



Milenko Karišik

The session continued with the testimony of Nenad Deronjić, who was a Bosnian Serb police officer during the relevant period. Deronjić denied any involvement in the alleged execution of fifteen men on the banks of the Jadar River on the morning of 13 July 1995, as claimed in the testimony of a protected Prosecution witness.

On 3 July 2013, Mirko Perić, who worked as a police officer in Bratunac, corroborated Deronjić's testimony, calling into question certain details provided by a Prosecution witness on the Jadar River incident. Moreover, Perić testified that the police force, Serb and Muslim officers, worked together but, as the conflict progressed, Muslim and Serb colleagues started to lose trust in each other. Perić elaborated on the breakdown of inter-ethnic relations, but stated that most of the Muslims left Bratunac voluntarily.

Dragan Andan was a police inspector and Chief of the Security Centre of Bijeljina (CSB) until late August 1992. Andan testified that after the elections of 1991, the MUP began to divide along ethnic lines. Andan also testified that local authorities could no longer control the emerging paramilitary units, particularly the Yellow Wasps, who were responsible for committing numerous crimes. Andan stated that the MUP acted promptly to punish such criminals regardless of ethnicity, as supported by evidence of arrests made. Lastly, Andan maintained that the Republika Srpska MUP did not run detention centres or camps, and

that he personally did not have any information about the detention of Croat or Muslim civilians.

On 8 July 2013, Dragomir Keserović, a career officer with the Yugoslavian National Army (JNA) and the Army of Republika Srpska (VRS), served as a military expert witness. Keserović testified that the exodus of non-Serbs was not the product of a systematic expulsion. Rather, in his opinion, the failing economic situation and the reality of military violence drove people to leave of their own accord.

Keserović denied that the reports and the orders of the 1st Krajina Corps serve as any evidence of a forcible transfer. Instead, he interpreted the documents as showing the Corps' intent to comply with the Geneva Convention—specifically, the humane treatment of detainees and protection of the civilian population. Though Keserović acknowledged that crimes were committed, he attributed the atrocities to individuals acting outside of their command. Keserović pointed to Karadžić's order to protect religious facilities and to the removal of entire units from the front lines to show their attempts to prevent and punish war crimes. The Prosecution's cross-examination of Keserović resumed on 23 July 2013.

Radomir Pašić testified on 9 and 10 July 2013. Pašić was the President of both the Municipal Board in Bosanski Novi/Novi Grad and the Serbian Democratic Party Crisis Staff in Bosanski Novi/Novi Grad during the war. His testimony focused on his efforts to stop the illegal arming of both Serb and Muslim paramilitary groups, and to continue negotiations and dialogue with Muslim and Serbian representatives in the municipality to prevent further violence. In particular, Pašić testified that given the deteriorating security situation in Novi Grad many residents, both Serbian and Muslims sought to flee the conflict. Pašić elaborated on his efforts to facilitate their evacuation in a safe and effective manner.

Zvonko Bajagić, the Clerk to the Technical Service Detachment of the Drina Corps, presented evidence on 10 July 2013. Bajagić testified that he met with Karadžić on 13 and 14 July 1995, however there was no indication that Karadžić was informed at that time that pris-



Zvonko Bajagić

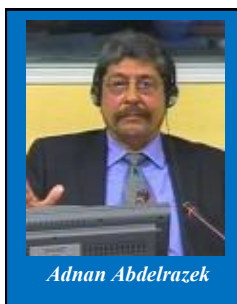
oners had been killed in Srebrenica. Though Bajagić admitted that he had learned of the massacre possibly as early as 14 July 1995, he maintained he never discussed the matter with Karadžić before his departure on that same day.

On 11 July 2013, Savo Ceklić, one of the founders of the Serbian Democratic Party, characterised Karadžić as a 'peacemaker' who was categorically against the

removal of the Muslims or Croats from Serbian controlled territory. During re-examination, Ceklić called into question the authenticity of an unofficial statement presented by the Prosecution. During cross-examination, the Prosecution attacked Ceklić's credibility, citing allegations of forgery. Ceklić insisted that the allegations were nothing more than media propaganda.

Prosecutor v. Goran Hadžić (IT-04-75)

The Prosecution continued its case against Goran Hadžić on 1 and 2 July by examining the evidence of Adnan Abdelrazek, who was a United Nations Protection Force (UNPROFOR) officer in Croatia during the relevant period. Abdelrazek described violence directed against non-Serbs in villages around the Serbian Republic of Krajina (RSK).



Adnan Abdelrazek

Abdelrazek claimed to have met with Hadžić, who stated that he was not involved in any of the violence. According to the witness testimony, the two men agreed that UNPROFOR would be informed of all people leaving the villages in RSK to determine if those leaving were doing so voluntarily. On 20 April, Abdelrazek entered the village of Marinci where he claimed to have spoken to people who were leaving the village out of fear for their own safety.

On 3 July, a former official in the Serbian Ministry of

Defence, Milosav Đorđević testified in front of the tribunal. Đorđević described how he was responsible for a group in the Yugoslav Ministry of Defence that maintained links with the autonomous regions in the RSK. He also described how the Yugoslav National Army was used as a buffer between the two ethnic groups in the region until the political situation could be resolved. Further, Đorđević testified that the Yugoslav Ministry of Defence held a meeting which Hadžić and paramilitary leader Željko Ražnatović attended. Đorđević said that Hadžić's lack of military knowledge was evident at the meeting.

On 3 and 4 July, Jozo Knežević testified about events in Tenja, Croatia, during the relevant period. An ethnic Croat, Knežević stated that he witnessed Hadžić in military uniform in Tenja urging the mainly Serb population of the town to defend themselves against a Croat attack. Knežević later fled Tenja after ethnic tensions rose, leaving behind his parents and aunt, who he said he found in a mass grave after the war. Knežević denied that he confused local Serbian Democratic Party leader Mladen Hadžić for Goran Hadžić.

Prosecutor v. Ratko Mladić (IT-09-92)

In the case of The Prosecutor v. Ratko Mladić, Prosecution witness RM-316 testified on 2 July 2013. RM-316 was an operator of the State Security Service in Bosnia and Herzegovina (BiH) and intercepted conversations between Bosnian civilian and military leaders during the war. RM-316 was able to identify the voice of General Mladić several times in conversations which occurred during the Srebrenica operation.

Dražen Erdemović testified on 2 and 3 July regarding the executions which occurred at Branjevo farms on 16 July 1995. Erdemović stated that the number of people killed was 1,000–1,200 over a period of six

hours. Erdemović was a member of the 10th Sabotage Detachment attached to the Army of Republika Srpska (VRS) in July 1995.

Witness RM-254 testified on 4 July regarding his experiences in Srebrenica in July 1995. He stated that after Srebrenica was attacked by the VRS, he and his father left with approximately 1,000 other men towards territory held by the BiH Army. Upon his capture by VRS forces, he was taken to Kravica where he witnessed the summary execution of 12 detainees.

He escaped but was recaptured and taken to a field near Konjević Polje. Soon after, he was transferred to

a bus with other boys and taken to Bratunac military barracks. Witness RM-254 and the other boys were then released after being taken to Kalesija.

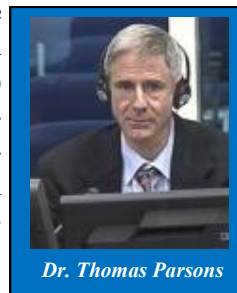
Witness RM-254 testified that he had been taken to a room and interrogated by a man identifying himself as Ratko Mladić but was unable to identify him in court. Defence Counsel raised issue with various conflicts between his previous statements and current testimony.

On 5 July, Mićo Gavrić, a member of the Bratunac Brigade of the VRS, testified. Gavrić had been ordered to assist in the clean-up operation near Konjević Polje and 30 Bosniaks were captured. Gavrić stated that four boys who had been separated from the 30 people captured were taken to the Bratunac barracks and exchanged the next day. Upon cross-examination, Gavrić stated that he had seen a large number of bodies who were part of the 28th Division of the BiH Army – most of them had committed suicide. Defence Counsel has previously raised issue with the number of dead from Srebrenica, contending that many Bosniaks died in combat or by their own hand.

On 8 July, Petar Skrbić, an officer in the VRS Main Staff during the relevant period, testified about the evacuation of women and children from Srebrenica. Skrbić testified that he ordered the mobilisation of 50

buses on 12 July 1995, but that he did not know what kind of evacuation the buses would be used for.

Dr. Thomas Parsons from the International Commission on Missing Persons testified on 9 and 10 July. Parsons has testified before about the identification of Srebrenica victims in front of the Tribunal and appeared in the Mladić case to give the latest figures on the



Dr. Thomas Parsons

number of persons identified. As of June 2013, 6,767 bodies were identified using a DNA matching method, and 124 cases are still pending.

Following Parsons' cross-examination on 10 July, Dean Manning took the stand and continued testimony into 11 July. From 1998 to 2004, Manning coordinated the exhumation and identification of mass graves in Srebrenica conducted by the Prosecution. Based on findings presented by those involved in the exhumations, Manning concluded that the bodies recovered from the mass graves were mostly the victims of executions. He cited as evidence that the remains were blindfolded with their hands tied behind their backs. On cross-examination, the Defence questioned Manning's objectivity in his reports as an investigator for the Prosecution.

NEWS FROM OTHER INTERNATIONAL COURTS



International Criminal Court

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Criminal Court.

ICC Calls on Nigeria for the Immediate Capture of Al Bashir

The International Criminal Court (ICC) recently issued a press release concerning the capture of Omar Al Bashir, President of Sudan. The ICC submitted a warrant for Al Bashir's arrest in 2006, but he has yet to be captured due to Sudanese police forces' refusal to arrest him.

The press release for his immediate capture came on 16 July 2013 when word of Al Bashir's travels to Nigeria for an international AIDS conference reached the ICC. Pre-Trial Chamber II immediately requested Nigeria to assist in Al Bashir's capture and delivery to The Hague.

In the past, other State Parties to the ICC, such as

Uganda and South Africa, have refused Al Bashir entry. In stark contrast, Nigeria, which has been a State Party since 2001, greeted him with a warm welcome upon his arrival on Sunday 14 July.

In 2009, the African Union voted to disregard the accusations against Al Bashir. Thus, Nigeria's decision to permit him entry indicates loyalty to the African Union.

Nigerian human rights activists are furious with their government's decision and have since filed a lawsuit with the Federal High Court in Abuja for the immediate arrest of Al Bashir and his subsequent extradition to the ICC in The Hague.

Al Bashir fled Nigeria on Monday afternoon, missing the last day of the AIDS conference, for fear of being captured. Al Bashir is charged with five counts of crimes against humanity, two counts of war crimes and three counts of genocide. Al Bashir remains in denial of these charges, and violent conflict continues in Darfur today as tribes fight military troops loyal to Al Bashir's government.



Special Tribunal for Lebanon

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Special Tribunal for Lebanon.

A possible interference with the administration of justice at the Special Tribunal for Lebanon (STL) is under investigation as three events concerning allegations of contempt come to light. The events surround the unlawful publication of witness identities by still unidentified sources. On 29 April 2013, Contempt Judge David Baragwanath called for the investigation to begin and earlier this month Stéphane Bourgon, ADC member, was appointed *amicus curiae* with the task of investigating the aforementioned contempt charges.

Information concerning a number of STL witnesses has been leaked in the past few years, and therefore, the Tribunal is now taking a stand and demanding answers.

One online news source, "Journalists for Truth", is being targeted in particular. Their posting of three

separate lists of secret witnesses for the STL has been reposted on various websites by an unidentified hacker. The witness lists included passport photos, dates of birth and places of employment leading the United Nations to state that the lives of these witnesses are now in danger.

All Lebanese journalists are currently under investigation: their phone and SMS records, as well as their Facebook accounts are being accessed without warning. According to Ayman Mhanna, Executive Director of the Samir Kassir Center for Media and Cultural Freedom (SKeyes), no specific law protects journalists in Lebanon from the STL probing for their sources.

A report describing whether there is "sufficient evidence" to begin contempt hearings is expected within the next few months.

LOOKING BACK...

Five years ago...

International Criminal Court

On 14 July 2008, the Prosecutor submitted an application for the issuance of a warrant of arrest for the Sudanese president Omar Al Bashir. The ICC filed 10 charges of war crimes against Sudan's president, for allegedly leading a campaign of murder, rape and mass deportation in Darfur. Former ICC Prosecutor Luis Moreno-Ocampo had presented evidence showing Al Bashir "masterminded and implemented a plan to destroy in substantial part" three tribal groups, namely the Fur, Masalit and Zaghawa because of their ethnicity.

Al Bashir became the first sitting head of state to be indicted by the ICC when Pre-Trial Chamber I issued a warrant of arrest on 4 March 2009. The Pre-Trial Chamber had indicted Al Bashir as an indirect (co-) perpetrator for five counts of crimes against humanity and two counts of war crimes. The situation in Darfur was originally referred to the Prosecutor by the United Nations Security Council on 31 March 2005, in Resolution 1593.

Five years ago...

International Criminal Tribunal for the former Yugoslavia

On 24 July 2008, the ICTY Trial Chamber convicted Kosovo journalist Baton Haxhiu of contempt of Tribunal committed during the trial of the former Kosovo Albanian military leader Ramush Haradinaj. The Trial Chamber fined him 7,000 euro for the offense. Haxhiu had revealed information about a witness who testified under protective measures during the trial of Ramush Haradinaj *et al.* Despite his knowledge that he would be in violation of court order, Haxhiu revealed the identity of the witness, as well as his supposed

whereabouts, in an article he wrote and published in Kosovo.

Haxhiu was one of three individuals charged with contempt for revealing confidential information about this witness during the trial of Haradinaj *et al.* The two others were Astrit Haraqija and Bajrush Morina.

NEWS FROM THE REGION



Bosnia and Herzegovina

Srebrenica Commemorative Ceremony

On 11 July 2013, more than 50,000 persons attended the commemorative ceremony of the 18th anniversary of the Srebrenica massacre. 8,000 men were killed in July 1995, a period during which Srebrenica was a UN protected enclave.

The commemoration was marked by the symbolic burial of the remains of 409 victims, found in a mass grave in the eastern Bosnian region since the last anniversary. The remains of 5,657 victims, identified through DNA tests, have already been buried in the memorial centre in Potocari since the process started a decade ago. Thousands of people remain missing.

In his speech, Ćamil Duraković, the president of the commemorative board stated “All of you here, I ask you not to forget us tomorrow, I plead that you use your influence and work to make Srebrenica a place of peace and tolerance”.



Kosovo

Parliament Adopts Amnesty Law

Pursuant to the European agreement on the normalisation of relations with Belgrade, the Pristina Parliament adopted a controversial amnesty law on 11 July 2013. The amnesty law aims to prevent people who resisted the Pristina authorities in the past 14 years from being subjected to any prosecution. Contrary to the first version of the bill, the government of Hashim Thaci stated that “criminal offences which have resulted in bodily harm and murder will not be amnestied”.

Denounced as being highly controversial, this law resulted in a wave of peaceful protests outside the Parliament building on the day it was adopted. In addition, the Kosovar Institute for Policy organised a petition against the law. The Self-Determination Movement, a political party, has gone so far as to characterise the amnesty as a pardon to criminals.

Contrasting the national response, representatives of the international community have observed that the law is an important step toward the normalisation of relations between Serbia and Kosovo and toward the safe integration of all citizens into Kosovo institutions.



Serbia

Bosnia and Serbia Cooperate to Investigate War Crimes

Prosecutors from Bosnia and Serbia met in Belgrade to discuss a joint effort to bring approximately 30 alleged war criminals believed to be hiding in Serbia to justice. The meeting comes just five months after a protocol was signed to facilitate cooperation, especially in regards to transferring evidence. These efforts have previously been frustrated by jurisdictional problems.

Bosnia and Herzegovina has promised to do everything possible to assist in finding the bodies of 19 people believed to have been abducted in Strpci and later executed in Bosnia. In a statement, the Bosnian prosecutorial team stressed, “this regional cooperation is a positive move in the fight against impunity”.

DEFENCE ROSTRUM

The Morales Plane Incident and Western Attitudes toward International Law

by Eoin Murphy

The fallout resulting from Edward Snowden's leaking of classified National Security Agency information reached new and unexpected heights on Wednesday 3 July as the Bolivian government plane carrying President Evo Morales from Moscow to La Paz was forced to make an emergency landing in Austria after being denied access to airspace in France, Spain, Italy and Portugal. To add to the insult, Morales' plane was searched by Austrian officials who were led to believe Snowden was on board.

While a precise account of the events that transpired is currently in dispute, most analysts, and Morales himself, believe that the European nations closed their airspace to the Bolivian President's plane at the behest of the United States of America, in attempt to extradite Snowden back to the US. Unsurprisingly, Latin American governments have reacted in fury towards their European and US counterparts, with Argentinean President Cristina Kirchner saying the incident was one of "colonialism that we thought was completely overcome". While the denial of airspace to Evo Morales' plane was undoubtedly a brazen diplomatic snub, one that would never conceivably be perpetrated against any government in the West, this incident also demonstrated how international law can fail to provide adequate protection to developing countries against the interests of richer, more powerful nations.

The two-tiered nature of international law can be seen in the contrasting ways in which America has treated the current Bolivian President Evo Morales, who is a vocal critic of US policy in the region, and how they shelter one of his predecessors, former Bolivian President Gonzalo Sánchez de Lozada.

Sánchez de Lozada was President of Bolivia on two occasions, from 1993-1997 and 2002-2003. Seen as a staunchly pro-US leader in a region that was rapidly shifting to the left of the political spectrum, Sánchez de Lozada even had three top Democratic Party advisors help him formulate his 2002 election strategy. Sánchez de Lozada resigned from the Bolivian presi-

dency after a spurt of civil violence, known locally as the "Gas Wars", resulted in a harsh crackdown by his regime against protestors. Currently living in political exile in Maryland, USA, Sánchez de Lozada is wanted by the Bolivian authorities on charges of genocide relating to his ordering fully armed military units to crush a riot in a poor neighbourhood of La Paz (it is worth noting that genocide under Bolivian law is defined differently than genocide under international law). The figure of those killed by the military during this incident is 67, and over 400 men, women and children were injured. When presented with an extradition request to try Sánchez de Lozada for the genocide charges levelled against him, the US authorities refused to comply.

While it is worth considering that Sánchez de Lozada may or may not have been directly responsible for the chaotic scenes in La Paz, and that the charges laid against him may be politically motivated, the fact of the matter remains that the West reserves for itself the rights that it is aggressively working to deny Bolivia. These are, namely, the right to extradite and try criminals, the right to offer asylum from persecution and the integrity of national sovereignty.

This lack of respect for the sovereignty of other nations is evident in how Morales' plane was treated during the incident. Although, unlike civilian flights, State airplanes have to request permission before entering the airspace of another country, not one country has refused a sitting head of state entry since 1945. Furthermore State airplanes are treated under international law as the territory of the country of provenience, similar to how an embassy or consulate is treated. Upon landing in Vienna, Austrian officials and the Spanish ambassador to Austria reportedly tried to board the plane to see if Snowden was on board.

Demanding entry in such circumstances is a clear breach of sovereignty against Bolivia and it is inconceivable that an airplane carrying a member of any Western government would be subjected to the same treatment. Secondly, it calls into question the integrity of the system of asylum that has operated for over five decades. Although accustomed to welcoming ref-



Edward Snowden

ugees fleeing persecution from foreign regimes, Western governments have shown a marked hesitancy in adhering to international law when one of their own citizens seek refuge abroad.

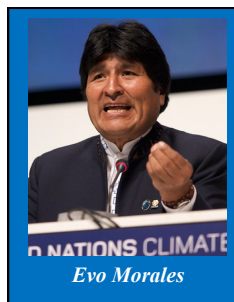
Under the principle of non-refoulement every country has the obligation not to return an individual back to their home state if they are at risk of persecution there. While it may seem at first glance far-fetched to believe that the US government would actively persecute one of its own citizens, all one has to do is look at the present circumstances of another American whistleblower, Bradley Manning, to realise the danger Snowden could be exposed to if he is returned to the US. Since being arrested in 2010, Manning has awaited trial in solitary confinement, under conditions which the United Nations special rapporteur for torture has described as cruel and inhumane.

By applying diplomatic pressure (and potentially economic pressure as Ecuadorian President Rafael Correa has intimated) against any country considering entertaining Snowden's asylum requests, the USA has shown a blatant disregard for the fundamentals of modern asylum law. This aspect was not lost on Uruguayan President, José Mujica, who, when comment-

ing on the incident, declared "First, it seems that there are world powers that want to apply a kind of ideological terrorism over the right to asylum, an institution that all fighters of the world's history defend. In the name of those that have been persecuted and will continue to be persecuted, the right of asylum is sacred and it's a principle that we must uphold for humanity".

If international law is to be effective it must be binding on all parties, not just on those too weak to ignore it. By requesting that Evo Morales' presidential plane be stopped from flying over Europe, the United States has demonstrated that it views international law as subservient

to its own national interests. Furthermore, this seems like a perspective other Western governments are happy to acquiesce to. Such an attitude is problematic because it weakens trust in international institutions that are important factors in mediating disputes and promoting peace. It also sows discontent outside the Western world for what is seen as the unequal treatment of states on the world stage.



Whaling Case at the International Court of Justice

by Ellen Naughton

The International Court of Justice (ICJ) heard the case of 'Whaling in the Antarctic (Australia v. Japan: New Zealand Intervening)' from Wednesday 26 June 2013 at the Peace Palace, located in The Hague.



Peace Palace

This case is based on the alleged breaches of the International Convention for the Regulation of Whaling (ICRW) of which Australia is a signatory.

Under the ICRW, commercial whaling is prohibited but there is a provision for whaling for scientific purposes under Article VIII.

Japan accepted the official position of stopping commercial whaling in 1987. However, they managed to bypass the moratorium by creating the Japanese Whale Research Program under Special Permit in the Antarctic (JARPA) which allowed them to allegedly conduct scientific research until 2005.

Despite facing harsh criticism within the International Whaling Commission (IWC), Japan continued with its poorly disguised commercial operation by launching the second phase of JARPA (JARPA II) in 2005.

Japan's claims that their whaling hauls are for purely scientific purposes were damaged in 2008 after Greenpeace uncovered the practice of smuggling prime pieces of whale meat off the Japanese ship, *Nisshin Maru*, for sale in Japanese supermarkets. The Japanese government spends approximately 10 million euro per year subsidising this research program which continues to draw criticism from the international community as well as from their own constituents.

At the ICJ, the Japanese delegation's submissions over the validity of JARPA II dismissed the allegations of a scientific cover story, stating instead that a research program does not require scientific consensus but merely a scientific purpose.

Australia's final submissions included their request to find Japan in breach of its international obligations and for the ICJ to impose regulations upon Japan to prevent further violations. Australia has asserted that Japan is in breach of the commercial whaling ban, under paragraph 10(e) of the ICRW Schedule.

Professor Alan Boyle, Counsel for Australia, stated that any scientific research should be done in a non-lethal manner. This may be the crux of the issue. Scientific whaling, although limited to approximately 1,000 whales annually, still has a large effect on the worldwide whale population. There are now many more non-lethal research methods available to scientists when compared to 1987 and, as such, the premise of lethal research programs should be relegated to the scrap heap of scientific proposals.

Japan contended that the ICJ does not have the requisite jurisdiction over claims put forth by Australia and in the alternative, asks that the Australian case be rejected, as it asserts that JARPA II adheres to Article VIII of the ICRW.

Professor Payam Akhavan, a former ADC member who is representing Japan, stated that Australia's submission relating to Japan acting unconscionably in regards to its obligations under the IWC amounted to Australia accusing Japan of lying for upwards of 30 years. These strongly worded arguments have led to an interesting atmosphere at the ICJ.

Overall, this case seems to be an opportunity to take

steps towards decreasing whaling. Indeed, the outcome of the ICJ decision will be widely anticipated by the Australian government and its environmentally-conscious supporters. On the other hand, the decision could effectively sanction the continuation of whaling for scientific programs, even where it is an obvious front for commercial activities.

There could be disastrous consequences in the eyes of anti-whaling activists if the ICJ decides against Australia, particularly as the ICJ issues a singular judgement which makes further actions on grounds of dissent difficult. It could also negate any steps the ICRW or other state parties have taken in an effort to persuade the Japanese to cease whaling.

However, even with a decision in favour of Australia and New Zealand, the ICJ has no enforcement powers which would mean that it would rely either on Japan ceasing whaling of its own accord or on states, such as Australia and New Zealand, and independent bodies, such as the IWC, policing the waters themselves.

Taking a more positive outlook, if the ICJ returns a judgement in favour of Australia, it is possible that the political pressure will be sufficient to ensure that Japan desists in its current façade of scientific whaling.

The public hearings for the case concluded on Tuesday 17 July 2013. The decision is forthcoming and to be rendered in a public sitting.

“Is the Media Doing the World Justice?”

by Sarah Coquillaud

This question was debated in The Hague on 16 July 2013. Moderated by former BBC correspondent in The Hague, Geraldine Coughlan, the discussion heard from three law and media experts working at the heart of the international justice structure: Richard Harvey, standby Defence Counsel in the Karadžić case, Iva Vukušić, ICTY expert and researcher at SENSE and Tjitske Lingsma, journalist and author of the new guide to the International Criminal Court (ICC).

What is the role of the media in reporting international justice? Is there enough coverage, accuracy or interest?

In response to these questions, Harvey indicated that

the way the media treats international justice is crucial to the answer. Presidents, Prime Ministers, war lords, and private soldiers need to know they can be prosecuted, and the media needs to convey this information to raise awareness. International justice needs a strong defence so that justice can be done. This does not mean however that Prosecutors should make their case in the media or make a public pronouncement before a judgement has been rendered, as this can contravene the presumption of innocence.

Tjitske Lingsma highlighted that justice is a topic that has to compete with many other issues, such as politics and economics. She added that trials also last extremely long and one may not have enough manpower or resources to attend each session and follow

the entire trial. Lingsma also stated that a lot of people are confused and do not know the differences between the ICC, the ICTY and the ICJ. She further stated that people do not show extreme interest in these topics as they appear to them as boring and abstruse. Lingsma said that news should not only originate from the tribunals themselves, but also from other sources and countries, such as the countries where some alleged perpetrators are involved.

In relation to the issue of media coverage, Iva Vukušić underlined that the media sometimes forget how important it is to report for victims. Vukušić stated that it is important for journalists to report not only on the substance of the law but also on prosecutorial strategies and accountability.

Is there, at first, interest and then an inevitable drop of momentum?

Harvey stated that there is less interest today in the trials at the ICTY but more interest in when the trials will be finished and how much money has been spent so far. He noted that there is also very poor or no cov-

erage of major cases occurring before the ICJ, such as the Whaling in the Antarctic case (see page 9 of this Issue for more information on this ICJ case).

Lingsma added that being concise and explaining complex judicial issues to the wider public is a difficult task for any reporter – particularly when the reports have to be kept short, as in radio and TV bulletins.

Vukušić added that in relation to the media in general, one should expect more information and less focus on trivial facts. She further stated that the problem is related to the fact that journalists do not always have the resources to understand what is being discussed before the courts.

To conclude, the speakers agreed that international justice lacks visibility on the world stage and that it is the responsibility of reporters to explain the issues to the people in a simple manner. To this end, the media needs to affirm its role as a watchdog and information needs to be given in a balanced way, rid of any emotional, subjective or ethnical considerations.

Third Edition of the Ibero-American Week of International Justice and Human Rights

by Marialejandra Moreno Mantilla

On 8 July 2013, the ICC and the Ibero-American Institute of The Hague welcomed the Third Edition of the Ibero-American Week of International Justice and Human Rights (IIH). The event consisted of a series of lectures and featured speakers including Tiina Intelmann, President of the Assembly of States Parties of the ICC, Dr. Herman von Hebel, Registrar of the ICC and Héctor Olásolo, President of the IIH.

Professor Sergio García Ramírez, former President of the Inter-American Court of Human Rights, gave The Annual 'Luis Moreno Ocampo' Lecture on International Criminal Justice. Specifically, Ramírez lectured on the "Jurisprudence of the Inter-American Court of Human Rights on Grave Violations of Human Rights".

The semi-finals of the Spanish Version of the ICC Moot Court Competition also took place during the Ibero-American Week. In addition to competing, the participating teams attended guided visits at the ICC and at the ICTY. The winning team of the final hearing was the Universidad Autónoma de Madrid team from Spain.



*Universidad Autónoma de Madrid
Moot Court Team with Judges*

Photo © ICC-CPI

ADC Celebrates 50th Issue of the Newsletter

“The best informed regular update on international humanitarian law cases worldwide”.

- Richard Harvey, ICTY Defence Counsel

Facts and Figures

Over the course of 50 Issues...

14 articles covering ADC events and trainings

46 articles published about the Karadžić case

59 Defence staff and interns contributed articles, translations and edits

99 articles written by outside contributors at the ICC, ICTR, SCSL, STL, ECCC and ICJ published

Longest Issue: **Issues 16 & 23** were both **23** pages long

Most Popular Issue Online: **Issue 46**

Top 5 Countries of Online Readership:

- 1. The Netherlands**
- 2. United States**
- 3. United Kingdom**
- 4. China**
- 5. Germany**

With this newsletter, the ADC-ICTY celebrates its 50th Issue. Over three years, this publication has provided its readership with in depth updates of on-going trials, as well as information on topics in international law, local events, recent publications and job opportunities.

Former Head of Office Dominic Kennedy led the publication of the first issue in 2010. The initial issues focused almost exclusively on cases at the ICTY and other international criminal tribunals. Under Dominic's direction, the Newsletter expanded to include news from the region of the former Yugoslavia, a Looking Back section, and a pertinent Rostrum.

Reflecting on the Newsletter's practical benefits in an interview, Dominic Kennedy characterises the publication as “a quick way for Defence staff to keep up to date on proceedings at both the ICTY and other international courts, many of whom were very busy on their own cases to follow in depth the other cases”. However, as Dominic noted, the Newsletter has also had a role in representing the ADC and its members: “I think the newsletter was one way that the ADC could promote itself and show that Defence existed and had a voice. It represented the ADC's membership to the wider world and became something of an external relations tool for all members of the ADC”.

The ADC would like to thank all the people who have contributed to the Newsletter as writers, editors, coordinators, translators, and designers over the years. We would also like to thank the ADC members for their continuous support. As we look forward to the next 50 issues, the ADC aims to continue delivering reliable reports and valuable information in the field of international criminal law as it develops before us.

“The newsletter was successful in a large part to the dedicated interns and staff who have devoted their time to writing and creating the newsletter and the fact it has continued 3 years and 50 issues later, is a testament to their hard work”.

- Dominic Kennedy, former Head of Office

“The newsletter is magnificent. I just wanted to tell you what a great job you are doing with it. We should have started such a publication from the beginning. It makes me proud of the ADC”.

- John Ackerman, ICTY Defence Counsel

“Congratulations on the 50th issue of the ADC-ICTY Newsletter! I was privileged to be part of the first ever newsletter team and something I was proud to do for the ADC. The newsletter has gone from strength to strength and continues to be an excellent source of information on proceedings at the international criminal courts and tribunals”.

- Taylor Olson, member of the Newsletter Team 2010-2011

**2011 Newsletter Team****2012 Newsletter Team**

The ADC would like to thank all of the staff, interns, and designers who have contributed to the Newsletter over the last three years:

Ada Andrejević
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Fernando Dutra
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Jana Hoffman
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Samuel Shnider
Brad Sorrentino
Marina Stanisavljević
Jessica Taylor
Becky Tomas
Rens van der Werf
Vivianne Weehuizen
Kushtrim Zymberi

**2013 Newsletter Team**

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Elvira M. Jukic, *et al.*, **Ethnic Divisions Set in Stone**, 25 June 2013, available at:
<http://tinyurl.com/maxhp7v>

William A. Schabas, **Appeals Chamber Reinstates Genocide Charge**, 13 July 2013, available at:
<http://tinyurl.com/moas5xn>

Fabio Andres Diaz, **The UN Arms Treaty - A milestone in peacekeeping or flawed and discriminatory?**, 16 July 2013, available at:
<http://tinyurl.com/lyb9p76>

Julien Maton, **Debate on the Concept of Aiding and Abetting**, 17 July 2013, available at:
<http://tinyurl.com/ot7h82p>

Online Lectures

Africa and the permanent International Criminal Court, 27 November 2012, published by Gresham College:

<http://tinyurl.com/khe58uz>

SCSL Legacy Podcast Series: Fatmata Claire Carlton-Hanciles, Principal Defender, 13 December 2012, published by ICTJ:

<http://tinyurl.com/l5kwxr7>

Legal Process as a Tool to Rewrite History: Law, Politics and History, 4 March 2013, published by Gresham College:

<http://tinyurl.com/n3agxza>

Web Series: Dictator in the Dock, July 2013, published by Skylight:

<http://tinyurl.com/k28mgue>

PUBLICATIONS AND ARTICLES

Books

Helmut Philipp Aust (2013), *Complicity and the Law of State Responsibility*, Cambridge University Press.

Russell Buchan (2013), *International Law and the Construction of the Liberal Peace*, Hart Publishing.

Spyridon Flogaitis, Tom Zwart, and Julie Fraser, Eds. (2013), *The European Court Of Human Rights And Its Discontents: Turning Criticism into Strength*, Edward Elgar Publishing.

John Janzekovic and Daniel Silander (2013), *Responsibility to Protect and Prevent: Principles, Promises and Practicalities*, Anthem Press.

Lucas Lixinski (2013), *Intangible Cultural Heritage in International Law*, Oxford University Press.

Gentian Zyberi (2013), *An Institutional Approach to the Responsibility to Protect*, Cambridge University Press.

Articles

Denis Abels (2013), "Positive obligations and the international criminal tribunals' law of detention: funding family visits and the ICC presidency's Ngudjolo decision" *Netherlands International Law Review*, Volume 60, Issue 1.

Th.M. de Boer (2013), "Netherlands judicial decisions involving questions of private international law: can the United Nations be sued for its role in the Srebrenica massacre" *Netherlands International Law Review*, Volume 60, Issue 1.

Dejan Guzina and Branka Marijan, "Local Uses of International Criminal Justice in Bosnia-Herzegovina: Transcending Divisions or Building Parallel Worlds" *Studies in Social Justice*, Volume 7, Issue 2.

Claire Nielsen, "Prosecution or bust: the obligation to prosecute under the convention against torture" *The Cambridge Law Journal*, Volume 72, Issue 2.

Naomi Roht-Arriaza (2013), "'Just a Bubble'? Perspectives on the Enforcement of International Criminal Law by National Courts" *Journal of International Criminal Justice*, Volume 11, Issue 3.

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Any contributions for the newsletter
should be sent to Isabel Düsterhöft at
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WE'RE ON THE WEB!

WWW.ADCICTY.ORG



*The ADC-ICTY wishes everyone a
lovely summer recess. The ADC News-
letter will resume publication in September
2013.*

EVENTS**Justice Matters: 10 Years of the ICC**

Date: 15 July - 12 August 2013

Location: Spui 70, The Hague

More Info: <http://tinyurl.com/k2yg3rb>

Open Air Cinema at the Humanity House

Date: 18 July - 22 August 2013

Location: Prinsegracht 8, The Hague

More Info: <http://tinyurl.com/kex3b6q>

**Lecture: Individual and Collective Responsibility of
States for acts of International Organizations by James
Crawford**

Date: 19 September 2013

Location: Sophialaan 10, The Hague

More Info: <http://tinyurl.com/luj28ck>

International Law in Practice

Date: 23 - 26 September 2013

Location: 17 Russell Square, London, UK

More Info: <http://tinyurl.com/kl4v2gz>

OPPORTUNITIES**Associate Legal Officer**

Office the Chambers, Special Tribunal for Lebanon
Closing Date: 9 August 2013

International Law Faculty Position

Central European University in Budapest
Closing date: 11 August 2013

Senior Researcher, Conflict Prevention Program

The Hague Institute for Global Justice
Closing Date: N/A

Lawyers for Research and Documentation

European Union Court of Justice
Closing Date: N/A

Assistant Lawyer - Albania

Registry of the European Court of Human Rights
Closing Date: 27 August 2013