ADC-ICTY Newsletter, Issue 8

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* The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing before the ICTY.

Prosecutor v. Prlić et al. (IT-04-74)

Jadranko Prlić

Closing arguments for the Defence in the Prlić case commenced on the 14 February 2011. Michael Karnavas, Defence Counsel for Dr. Prlić, drawing an analogy between the Prosecutions' closing arguments and how Socrates described the speeches of his accusers in his own closing argument, suggested the Prosecution's collection of evidence was "disquieting" and had seen the Prosecution forsake its role to do justice for the international community, victims and the accused. He forcefully called into question the Prosecution's case based on the manner on which it was investigated and the creative use of the record in developing a narrative that conveniently ignored any evidence that spoiled their story. The thrust of his arguments focused on paragraphs 361 to 526 of Prosecution's final brief.

While the Defence conceded that Prlić, when president of HVO HZ H-B, did sign numerous decisions, it emphasised that such decisions were always of a collective nature and did not signify personal authority on Prlić's part. Arguments were furthered by defending evidence tendered by Prlić's own witnesses. Assertions made in paragraph 3 of Prosecution's Final Brief, specifically those pertaining to the alleged questionability of certain Croat witnesses who were "insiders", were challenged. Karnavas stated that this was alleged to be part of a "dark and unseemly theme" that saw Croats cast as unreliable.

Karnavas urged a less prejudicial assessment of witness credibility – highlighting that the witnesses heard were often of high stature. Karnavas then scrutinised the credibility of the Prosecution witnesses citing various instances which revealed their unreliability. Karnavas highlighted that the Prosecution's witnesses against Prlić were often internationals who were ignorant of fundamental concepts in the former Yugoslavia, such as "constituent peoples," "socially owned property" and the functioning of the financial system. He pointed out the Prosecution's strategy to draft the statements of some of these witnesses over several days and to show them documents with which they were not familiar, therefore putting in question the Prosecution's investigators' motives and witnesses' independent memory. Karnavas stated that the purpose of his closing arguments was not to persuade but to "simply raise the consciousness of scepticism." Karnavas observed that the Defence was given just 5 hours; about one hour for each year of trial.

Michael Karnavas

Karim A.A. Khan

On 15 February, Karim A.A. Khan, Defence Counsel for Bruno Stojić, commenced closing arguments. Khan argued that the Prosecution had failed to prove the elements of a Joint Criminal Enterprise, stating that: "the doctrine is not to be applied so as to give rise to guilt by mere association. That is not enough. All the elements of the offence must be proved by the Prosecution." Khan further stated that the Prosecution's "high rhetoric" of being "strong on adjectives but weak on evidence".

Khan drew attention to examples of Stojić's many interactions and dealings with Muslims, arguing that he could not have been an individual motivated by hate or arrogance. Khan stated that Stojić, "rather than sidelining or overlooking or looking down on his Muslim colleagues", promoted them.

Khan stated that the Prosecution failed to present direct evidence of the existence of a joint criminal enterprise in this case.

Senka Nožica furthered the arguments of Khan, stating that Bruno Stojić did not have any authority to implement mobilisation and furthermore, that he always believed that a joint fight of the HVO and the BH Army against the common enemy was possible. She also focused on the unreliability of certain Prosecution witnesses.

Nožica addressed Prosecution rhetoric regarding the victims of atrocities in Bosnia-Herzegovina and stated that victims do "not want just anybody to be found guilty of charges. If that happens, those people stop being victims."

Defence arguments for Slobodan Praljak, Milivoj Petković, Valentin Ćorić and Berislav Pušic will be presented over the coming days.

"How you must felt, O men of Athens, if hearing the speeches of my accusers I cannot tell, but I know that their persuasive words almost made me forget who I was, such was the effect of them, and yet they have hardly spoken a word of truth."

- Socrates -

Prosecutor v. Stanišić & Simatović (IT-03-69)

On 1 February 2011, the "Urgent Stanišić Motion for Equality of Arms and Immediate Suspension of the Trial" (Other than the Examination of Remaining Prosecution Witnesses) was filed by Jovica Stanišić. Defence Counsel for Jovica Stanišić filed the motion seeking an order from the Trial Chamber to compel the Registry to provide adequate finances to facilitate a fair trial. The Defence requested (1) that the Registry not be allowed to reduce the Defence budget any further and, (2) until adequate resources are given, a suspension of all aspects of the trial process, other than the examination of the remaining Prosecution witnesses, be granted. It is argued that the suspension would enable the team, which, due to financial constraints imposed by Office of Legal Aid and Detention Matters (OLAD), is comprised of only one Counsel and three full-time support staff, to complete the examination of the witnesses.

Although funding issues are within the primary competence of the Registrar, it is established jurisprudence that a Trial Chamber may intervene where the funding issue may impact the Accused's right to a fair trial. Under Articles 20 and 21 of the ICTY Statute, the Trial Chamber has the power and inherent duty to ensure a fair trial and a proper administration of justice. Furthermore, these Articles include the right to a fair and expeditious trial, including an equality of arms.

Bruno Stojić

ICTY
Rule 92 *ter*

(A) A Trial Chamber may admit, in whole or in part, the evidence of a witness in the form of a written statement or transcript of evidence given by a witness in proceedings before the Tribunal, under the following conditions:

(i) the witness is present in court;
(ii) the witness is available for cross-examination and any questioning by the Judges; and
(iii) the witness attests that the written statement or transcript accurately reflects that witness' declaration and what the witness would say if examined.

(B) Evidence admitted under paragraph (A) may include evidence that goes to proof of the acts and conduct of the accused as charged in the indictment.

The Motion argues that the funds allocated to the Stanišić Defence Team are insufficient to provide reasonable compensation for an adequate team comprised of two Counsels and sufficient support staff. This had been outlined in a letter to the Registry on the 19 November 2010. The Registry having failed to respond for two months eventually replied on the 28th January 2011, refusing to consider increasing the budget, claiming it had no discretion to take into account any of the factors relied upon .

Jovica Stanišić & Franko Simatović

Stanišić's team argues that they are unable to provide the Accused with an adequate Defence within the limits of the available resources. Furthermore, the motion argues that "it is not within the reasonable discretion of the Registrar to interpret the Legal Aid Policy without reference to its obligations to ensure adequate funding and an equality of arms."

In response to the Registry's justifications for its funding decisions, the Defence stated that "OLAD's current assessment of the lump-sum payable to the Stanišić Defence is seriously deficient". Counsel for the Accused stress that the Stanišić and Simatović case is not a part-time commitment, as the existing funding decisions suggest. The Motion points out that despite the reduction in court sitting days, there has not been a reduction in the workload; and a comparison as such, is manifestly wrong. "The failure to take the non-sittings days into account (either as work days or as days where the team is nonetheless expected to be available to attend court at any time) is an error of law that is at the heart of the underfunding of the Stanišić Defence."

The Defence further argued that the Office of the Prosecutor in the Stanišić and Simatović case makes more use of 92ter statements than any other case before the Tribunal. Although 92ter statements reduce time spent in court, they require a correspondingly large amount of work outside of court and the funding of the Defence must take this work into account.

The Registry failed to take into account other factors such as the amount of disclosure received due to the prolonged nature of the proceedings. "It is logical that the longer a case lasts the more disclosure is received and the more work arises during the case." As the Defence phase of the case is set to begin in a couple of months, an expeditious decision by the Trial Chamber was requested.

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

Testimony:

Court proceedings have seen the conclusion of civilian victims' testimony and the commencement of expert witness testimony with regards to incidents occurring in Sarajevo. Protected witness KDZ477, a crime scene technician in the Sarajevo Security Services, who partook in investigations of shelling and sniping incidents, which occurred in Sarajevo from 1993 to 1995, testified on 1 February 2011. The witness referred to two shelling incidents cited in the indictment: 22 January 1994, where six children were killed and five others injured, and to 26 May 1995, where a modified air bomb in Pavle Goranin estate inflicted grave injuries on two people and caused minor injuries to fifteen others. In cross-examination Karadžić focused upon his allegation that all such investigations in Sarajevo were "inadequate".

Patrick Rechner

On 2 February 2011, the Chamber heard testimony from Patrick Rechner, a Canadian national and UN Military Observer who was among approximately 200 other UN military observers who were arrested in Pale in May 1995 and allegedly held by Serb forces. The witness stated that he was arrested on 26 May 1995 and used as a

Until 2 February 2011, the Prosecution had called 59 witnesses, of which one was an expert and 11 were protected witnesses. The testimony of the 60th witness, Patrick Rechner, was heard on 2 February 2011.

human shield against NATO air strikes. During cross-examination, Rechner admitted that panic among civilians was high as a result of the NATO air strikes. Rechner also stated that he and his colleagues were told twice that they were being held as Prisoners of War and that after some time had elapsed their requests to be seen by a doctor and Red Cross representatives were granted by the Serb forces. Rechner and the other UNMOs were also permitted to make phone calls to their families. Karadžić suggested that the fact that these privileges were granted showed that the UN forces were being held as Prisoners of War, rather than as hostages.

Barry Hogan

On 3 February 2011, Barry Hogan, an OTP investigator who carried out investigations of sniper and artillery, used a GPS device to provide his expert opinion as to the exact location of 16 sniper incidents cited in Karadžić's indictment. In cross-examination Karadžić challenged the general validity of investigations carried out in Sarajevo and the GPS device and eyewitness information upon which Hogan relied to draw his conclusions.

On 8 February 2011, General Rupert Smith, the last commander of UNPROFOR in Bosnia and Herzegovina, began his testimony. Smith asserted his view that when Mladić's forces attacked Srebrenica in July 1995, UN on-field officials dismissed the situation as merely a "local clash" whereby there was a Serbian response to a previous Muslim attack and thereby "failed to understand this attack would lead to the total collapse of the enclave". Additionally, an important part of Smith's testimony was his recount of the Markale Market incident on 28 August 1995. In a 12-hour cross-examination Karadžić questioned Smith's ordering of NATO air strikes on 25 May 1995 on Bosnian Serb military targets on the basis of allegedly conclusive evidence from UNPROFOR's investigation team that these mortar shells had been fired from VRS positions.

During the suspension of proceedings in the Karadžić trial from 21 March 2011 until 5 May 2011, the Accused and his team will have to review "1725 items totaling an estimated 32,000 pages and 142 videos". The items are estimated to contain 200 hours of material. The Prosecution was ordered to complete its disclosure of potentially exculpatory materials pursuant to Rule 68 by 31 March 2011.

Procedural matters:

In procedural matters, Karadžić has been granted a six week suspension of his trial beginning 21 March 2011. Following Karadžić's original application for a three month suspension to review the 32,000 pages of documents disclosed to him in January and the Prosecution's subsequent opposing of suspension for any longer than one week, Kwon finally granted a six week suspension, adding that it was "regrettable that it is necessary". This suspension follows three of a similar nature last year – in November, late September and last August – when Karadžić had previously received vast amounts of material from the Prosecution.

In other matters, Professor Berko Zečević, an expert witness from the Mechanical Faculty in Sarajevo's University, was arrested in Sarajevo and brought to The Hague. This was following an order by the Trial Chamber after Zečević resisted a subpoena to testify as a Prosecution witness against Karadžić in the current trial. Zečević, who previously testified as an expert witness in the trials of Slobodan Milošević and Stanislav Galić, will be compelled to testify in the Karadžić trial next week.

Berko Zečević

News from International Courts and Tribunals

Extraordinary Chambers in the Courts of Cambodia

David Fagan, Legal Intern, Defence Support Section

Kaing Guek Eav's initial hearing was on 17 and 18 February 2009. The substantive part of the trial commenced on 30 March 2009 and was concluded on 27 November 2009. During the trial, 9 expert witnesses, 17 fact witnesses, 7 character witnesses and 22 Civil Parties testified. The trial attracted more than 31,000 visitors who followed the proceedings at the court.

Case 001- KAING GUEK EAV, alias DUCH

On 9 February 2011, the Defence Support Section (DSS) replied to the Co-Prosecutors' response to a DSS request for the Supreme Court Chamber (SCC) to invite amicus curiae briefs from independent third parties to assist in the determination of the appeal in Case 001. The DSS argued that the Co-Prosecutors' assertion that the DSS "appears to encourage the *de facto* appointment of international counsel for the Accused" mischaracterised the DSS request. Rather, the DSS argued, the request explicitly deferred to the discretion of the Supreme Court Chamber in deciding the nature and scope of any invitation for *amicus curiae* and sought only to ensure that all issues raised in the Co-Prosecutors' appeal are addressed in written submissions. The DSS further noted that the Co-Prosecutor's contention, that it would not be appropriate for the SCC to request that an *amicus curiae* argue on behalf of the Accused in general, implied a limit on the discretion of the SCC, which was inconsistent with the ECCC Internal Rules and was not supported by jurisprudence from other international criminal tribunals.

Kaing Guek Eav

Case 002 - NUON CHEA

On 28 January 2011, the Trial Chamber delivered a decision in response to an application from the Ieng Sary defence team, requesting the disqualification of Trial Chamber Judge Nil Nonn. The application and an accompanying request for investigative action related to a 2002 interview with a documentary film maker in which Judge Nil Nonn – then President of the Battambang Provincial Court – purportedly admitted receiving gifts from litigants following the determination of cases.

In its decision the Trial Chamber found that the application did not allege or seek to establish actual bias on the part of Judge Nil Nonn in relation to Case 002 and, therefore, did not justify disqualification in accordance with the ECCC Internal Rules. The Chamber found that recourse to domestic mechanisms was the appropriate remedy for allegations relating to the fitness of individuals to serve as judges and noted that the ECCC lacked both the mandate and mechanism to directly address any alleged deficiencies in the mechanisms designed to uphold the independence of the judiciary.

On 1 February 2011, the Defence team for Ieng Thirith filed an application for the disqualification of Trial Chamber Judges Nil Nonn, Silvia Cartwright, Ya Sokhan, Jean-Marc Lavergne and Thou Mony on the basis that this composition of the Trial Chamber had already determined certain points – including the existence of an international armed conflict in Cambodia in the period encompassing the temporal jurisdiction of the ECCC – which, while not disputed by the Defence in Case 001, would be contested in Case 002. The Defence team argued that having already made decisions on important factual issues in Case 001, without hearing arguments from the Defence, there would be an unaccep-

table appearance of bias against the Accused in Case 002 should these matters be decided by the same judges in Case 002.

Nuon Chea

On 4 February 2011, the Defence team for Ieng Sary filed a motion requesting that the Trial Chamber reject torture tainted evidence in the trial for Case 002, except where such evidence is used against a person accused of torture as evidence that the statement was made. The Defence team observed that the Closing Order of 16 September 2010 appeared to rely upon confessions for an impermissible purpose in terms of Article 15 of the Convention against Torture and also relied upon several secondary sources which rely on potentially torture-tainted confessions for the truth of their contents. The Defence team argued that torture tainted evidence includes preliminary biographical evidence, derivative evidence, and secondary sources.

Between 11 and 14 February 2011, the Defence teams for Ieng Sary, Ieng Thirith, and Nuon Chea filed preliminary objections in anticipation of the trial in Case 002. The Ieng Sary defence team argued that the statute of limitations in the 1956 Cambodian penal code precludes the application of the ECCC's purported jurisdiction in relation to grave breaches of the Geneva Conventions.

The preliminary objection of the Ieng Thirith team related to the jurisdiction of the ECCC to prosecute their client for certain crimes and according to certain modes of liability, relying primarily on the principle of *nullum crimen sine lege*.

The Nuon Chea team argued that the 2003 agreement between the United Nations and the Royal Government of Cambodia guaranteed the primacy of Cambodian law and that the original adoption and subsequent amendments of the ECCC Internal Rules by ECCC plenary sessions were unconstitutional and *ultra vires*. The team argued that continued application of certain Internal Rules, particularly those relating to trial and appellate proceedings, would infringe their client's right to a fair trial and legal certainty.

On 15 February 2011, the Pre-Trial Chamber (PTC) issued the reasons for its decision on the appeals by Nuon Chea and Ieng Thirith against the Closing Order. The PTC had provided the reasoning for its decision on Khieu Samphan's appeal against the Closing Order and the reasons for the continuation of provisional detention of all accused in Case 002 in decisions on 21 January 2001.

On 16 February 2011, the Trial Chamber delivered its decision on the urgent applications for the immediate release of Nuon Chea, Khieu Samphan and Ieng Thirith. The Trial Chamber found that the PTC's failure to provide reasons to accompany its initial decisions on the appeals against the Closing Order amounted to a procedural defect that impacted on the fundamental rights of the Accused to legal certainty and clarity. However, the Trial Chamber found that this defect was insufficient on its own to invalidate the decisions on the Closing Order and their detention portions. The Chamber concluded, therefore, that the circumstances of the case did not warrant the extreme remedy of immediate release. Rather, the Chamber could consider other appropriate remedies at the conclusion of the trial, after hearing the parties' submissions.

Nuon Chea, known as Brother No.2, was placed in provisional detention on 19 September 2007 and was charged with crimes against humanity and war crimes. The Co-Investigating Judges of the ECCC concluded their investigation on 14 January 2010. Chea was indicted on 15 September 2010. On 13 January, the Pre-Trial Chamber of the ECCC ordered the Accused (Ieng Sary, Ieng Thirith, Khieu Samphan and Nuon Chea) to be sent for trial and to continue to be held in provisional detention until they are brought before the Trial Chamber.

Special Court for Sierra Leone

The Prosecutor vs. Charles Ghankay Taylor

Michael Herz and Logan Hambrick, Charles Taylor Defence Team

The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations. It is mandated to try those who bear the greatest responsibility for serious violations of international humanitarian law and Sierra Leonean law committed in the territory of Sierra Leone since 30 November 1996.

Thirteen indictments were issued by the Prosecutor in 2003. Two of those indictments were subsequently withdrawn in December 2003 due to the deaths of the accused.

Courtenay Griffiths Q.C., Lead Counsel for Charles Taylor, walked out of court just before the start of the Prosecution closing oral arguments on 8 February 2011. His refusal to participate in the closing arguments was a result of the Trial Chamber's majority decision rendered the previous day, which rejected the Defence Final Trial Brief for being late. The background building up to this act of protest, made in order to preserve Taylor's right to present closing arguments if his brief is accepted on appeal, is recounted below:

At a status conference on 22 October 2010 shortly before the close of the Defence case (in a trial which has lasted over three and a half years), the Trial Chamber ordered that the parties' "well-reasoned and comprehensive" final trial briefs, must be submitted on 14 January 2011. However, after that deadline was set but before the said date, several important issues arose *ex improviso* which were relevant to the substantive arguments to be made in the final brief, namely the credibility of Prosecution witnesses and the impartiality of the proceedings. These issues, two of which were being adjudicated at appellate level, were not likely to be (and indeed, were not) resolved by 14 January 2011.

It was not possible for the Defence to file a *final* trial brief with substantive and fundamental issues outstanding. Indeed, it is unheard of in legal proceedings for a final address to be made to a jury or court when important legal issues are yet to be decided. Therefore, on 10 January 2011, the Defence requested a stay of proceedings pending the resolution of the outstanding decisions or alternatively a one month extension – requests which were flatly rejected on 12 January 2011, without even hearing the Prosecution's submissions on the matter.

Consequently, on 14 January 2011, the Defence did not submit a final brief and refused service of the Prosecution's brief. Instead, it filed an urgent motion seeking leave to appeal the 12 January decision and another stay of proceedings pending that leave to appeal.

At the Defence's request, a status conference was held on 20 January 2011. Therein, the majority of the judges reiterated that its original order, setting the filing date for the briefs at 14 January 2011, was upheld. Yet, the Trial Chamber stopped short of stating that it would refuse the Defence Final Trial Brief, if and when filed. Comments made by Justice Sebutinde, dissenting, were indicative of how the majority was leaning on the issue: "the bottom line is that the accused ought, at the very minimum, to be afforded an opportunity to prepare his final defence with all the pieces before him, and in my view, it is not fair to ask him to prepare piecemeal defences."

In

in the following weeks, the Trial Chamber and Appeals Chamber delivered decisions at an extraordinary rate; the last of the pending decisions was rendered on 3 February 2011. Accordingly, and compliance with Rule 86(B), which states that a party must file its final brief no later than five days before its scheduled date for oral arguments, the Defence filed its final trial brief the same day. Acknowledging that the brief was "late" in terms of the Trial Chamber's order, the Defence humbly requested the Trial Chamber to accept its final brief "in the interests of justice."

Charles Taylor

On 4 February 2011, the Prosecution filed a revised and refined version of its own final brief to be considered in the event that the Trial Chamber accepted the Defence brief. The Prosecution focused on fairness to the parties rather than advocating for the complete rejection of the Defence brief.

However, on the day before the Prosecution oral arguments, the Trial Chamber, by majority, issued a decision rejecting the 547-page Defence brief as being out of time, with no consideration for the impact this might have on the rights of the accused. Justice Sebutinde stated in her dissenting opinion: "to ultimately strike out on a procedural basis [Taylor's] Final Trial Brief that essentially contains his Defence to the charges in the Indictment is to deny him his fundamental right to defend himself."

Courtenay Griffiths Q.C.

Given that the Defence brief had been rejected, the Defence determined that this would undermine Taylor's fair trial rights to participate in closing arguments. It was not possible for the Defence to fully argue its case and respond meaningfully to the Prosecution brief in the 6-8 hours allocated for that purpose. Griffiths indicated to the Court that the Defence would not participate in oral arguments until such time as the issues surrounding the Defence brief were resolved. The Defence thereafter requested leave to appeal the majority's refusal of the brief.

On 11 February 2011, the Trial Chamber, by majority, granted the Defence's request for certification. The question as to whether or not the Defence final brief will be accepted, and whether or not the Defence retains the right to present its closing arguments, is now before the Appeals Chamber.

Charles Ghankay Taylor, former President of Liberia, was indicted under seal on 7 March 2003 and transferred to The Hague on 30 June 2006, a location chosen due to security reasons.

The Prosecution opened their case on 4 June 2007. However, Taylor boycotted the proceedings and decided to dismiss his legal team. After he was assigned a new counsel, the Prosecution opened witness testimony on 7 January 2008, presenting testimony from 91 witnesses until 27. February 2009.

The Defence opened their case on 13 July 2009 and concluded it on 12 November 2010, after having called 20 witnesses.

Special Tribunal for Lebanon

Appeals Chamber delivers interlocutory decision on applicable law

Adam Gellert, legal intern, Defence Office

The Appeals Chamber issued the interlocutory decision on the fifteen questions of law that had been submitted by the Pre-Trial Judge with remarkable swiftness. After less than four weeks from the transmittal of the questions, the Appeals Chamber has delivered its 154-page decision. In this regard, Judge Cassese emphasised at the hearing that the Appeals Chamber has been preparing itself for the legal issues for over a year.

The panel of five judges, Judge Cassese as Judge Rapporteur, declared that there is convincing evidence that a customary rule of international law has evolved on the definition of terrorism in time of peace, requiring the following elements: (i) the intent (*dolus*) of the underlying crime and (ii) the special intent (*dolus specialis*) to spread fear or coerce authority; (iii) the commission of a criminal act, and (iv) that the terrorist act be transnational.

The Appeals Chamber has also found that a broader norm outlawing terrorist acts during times of armed conflict may also be emerging.

However, the Tribunal will only apply Lebanese law as interpreted and applied by Lebanese courts, unless such interpretation or application appears to be unreasonable, might result in manifest injustice, or appears not to be consonant with international principles and rules binding upon Lebanon.

Quite importantly, the Appeals Chamber laid down a defence-friendly framework on cumulative charging. In their view, the Pre-Trial Judge should allow cumulative charging (1) only if separate elements of the charged offences make the offences truly distinct; (2) when an offence encompasses another, the Pre-Trial Judge should always choose the former and reject pleading of the latter; (3) the modes of liability for the same offence should always be charged in the alternative.

The Appeals Chamber appears to have upheld the customary law status of Joint Criminal Enterprise III (JCEIII), but declared that, contrary to the practice of the ICTY, the better approach under international criminal law is not to allow convictions under JCE III for special intent crimes like terrorism.

The Pre-Trial Judge is now expected to review the material submitted by the Office of the Prosecutor and issue a reasoned confirmation decision.

It is worth highlighting that pursuant to Rule 176bis (C) a future accused has the right to request reconsideration of the interlocutory decision without the need for leave from the Pre-Trial Judge within 30 days after having received the disclosure material which accompanied the indictment.

The Building of the STL in Leidschendam (Netherlands)

JCE III

The "extended" Joint Criminal Enterprise holds an individual, who intentionally participates in a common plan to commit an international crime, responsible for any crimes committed outside of this if he was aware that they might be committed.

This notion of Joint Criminal Enterprise was developed in the first ICTY case, Prosecutor v. Tadić (IT-94-1).

Defence Rostrum

Three Guilty of Attacking Radislav Krstić

Radislav Krstić, sentenced to serve 35 years by the ICTY for aiding and abetting genocide at Srebrenica, has told Leeds Crown Court (UK) how he was the victim of a revenge attack at Wakefield high security prison.

Krstić was serving part of his prison term in England when he was attacked with knives or blades in his cell on 7 May last year.

Fellow prisoners Indrit Krasniqi, 23, Iliyas Khalid, 24, and Quam Ogumbiyi, 29, who are all serving life sentences, denied attempted murder and the charge of wounding with intent to commit grievous bodily harm.

Julian Goose QC told the court that the attack was a planned attempt to kill Krstić, the motive being revenge, stating that the defendants are practicing Muslims. He said that Krstić was left with multiple injuries including a 12cm slash across his neck.

The ICTY has Agreements on the Enforcement of Sentences with 17 countries:

Albania: No ICTY convict transferred to date
Austria: 6 sentences (being) enforced
Belgium: 1 sentence (being) enforced
Denmark: 3 sentences (being) enforced
Estonia: 1 sentence (being) enforced
Finland: 5 sentences (being) enforced
France: 4 sentences (being) enforced
Germany (*ad hoc* agreements): 3 sentences (being) enforced)
Italy: 5 sentences (being) enforced
Norway: 5 sentences (being) enforced
Poland: No convict transferred to date
Portugal: No convict transferred to date
Slovakia: No convict transferred to date
Spain: 5 sentences (being) enforced
Sweden: 3 sentences (being) enforced
Ukraine: not in force
United Kingdom: 3 sentences (being) enforced

Radislav Krstić

It is alleged that the three accused entered his cell and held down Krstić while one of them slashed his neck in what the Prosecution called a deliberate attempt to cut vital vessels, while another used a knife or blade to cut his face and forehead.

Radislav Krstić, 62, speaking through an interpreter, told the Leeds Crown Court how he thought he was going to die. Referring to the moment the accused entered his cell he said: "The way they looked at me, it was frightening". "I truly understood they came to kill me". He described feeling blood flowing from his wounds, shouting for help and losing consciousness. "I was just having visions of my family and pictures of them in my mind" he said.

The Prosecution also told the court that Krstić's background was known to other prisoners. It was also revealed that Krstić had a cell on the same landing as Krasniqi.

The Defence for Krasniqi questioned Krstić about his conviction at the ICTY, asking him to confirm that one of the charges was for the genocide of more then 8000 Muslim men and boys. Krstić's response was yes, but he asked the judge to intervene saying he felt he was being tried again for matters already dealt with (at the ICTY), however, the judge asserted that the jury are entitled to know why Krstić was serving a substantial prison sentence.

According to Krstić, he was 80km away from Srebrenica when the killings took place and was "flabbergasted" when he heard about it, but he said "I said I was morally responsible due to the rank that I was".

Krstić had been sent to Wakefield prison under an agreement on the enforcement of sentences held between the UK government and the ICTY. The UK is one of 17 countries to hold such agreements.

The jury delivered its verdict on 18 February and found the three accused guilty of wounding with intent to cause grievous bodily harm but not guilty of attempted murder.

The case is likely to raise questions about the adequacy of attention given to those convicted by the ICTY in The Hague, who are then transferred to a willing country to serve out their sentence. Considering the nature of Krstić's conviction at the ICTY and the ethnic and religious tensions that were seen during the Yugoslav wars, questions have been raised as to why he was housed in the same area as Muslim prisoners.

The UN detention centre in The Hague is only used for holding suspects until a verdict is passed and is not intended as a penal facility for the serving of sentences. National penal systems can vary considerably and there have been calls for closer monitoring of the care of prisoners sent to signatories of enforcement of sentences agreements.

Shortly after the incident, the President of the ICTY, Patrick Robinson, requested a report from the United Kingdom, outlining the incident involving Krstić and the further steps taken to resolve this issue.

Wakefield Prison

Blog Updates

- David Gault, **On Kenya and State-funded Defence of ICC Accused**, 6 February 2011, available at: http://www.legalfrontiers.ca/2011/02/on-kenya-and-state-funded-defences-of-icc-accused/

- Valentina Azarov, **Egypt's Protests, Human Rights Abuses and the Responsibilities of the International Community**, 6 February 2011, available at: http://internationallawobserver.eu/2011/02/06/egypts-protests-human-rights-abuses-and-international-law/

- Gerladine Coughlan, **Human Rights Council - governments failing to protect victims of human rights violations**, 11 February 2011, available at: http://www.rnw.nl/international-justice/article/human-rights-council-governments-failing-protect-victims-human-rights-violations

- Steven Kay QC, **Meetings to discuss ICTB (International Crimes Tribunal in Bangladesh)**, 13 February 2011, available at: http://www.internationallawbureau.com/blog/?p=2416

- Deirdre Montgomery, **Charles Taylor Trial Extended,** 13 February 2011, available at: http://www.internationallawbureau.com/blog/?p=2408


সাধারণ ক্ষমা অবৈধ
যুদ্ধাপরাধীর বিচার-৩

The Bangladesh International Crime (Tribunals) Act 1973 was originally set up after the 1971 war of independence, which resulted in Bangladesh gaining status as an independent State, separate from West Pakistan.

Publications

Books

Ray Surette, 2011. *Media, Crime and Criminal Justice: Images, Realities and Policies*. Australia/United Kingdom: Wadsworth Cengage Learning

Jonathan Sharpe, 2011. *The European Court of Human Rights: a 50th anniversary portrait*. London: Third Millenium

Ed. Mary L. Volcansek, John F. Stack, Jr., 2011. *Courts and Terror: Nine Nations Balance Rights and Security*. Cambridge: Cambridge University Press

Antonio A. Cassese, Guido G. Acquaviva, Mary De Ming Fan and Alex A. Whiting , 2011. *International Criminal Law: Cases and Commentary*. Oxford: Oxford University Press

Articles

Gideon Boas, March 2011. Self-Representation before the ICTY, A Case for Reform. *Journal of International Criminal Justice,* 9(1), pp.53-58

Anthea Roberts, January 2011. Comparative International Law? The Role of National Courts in Creating and Enforcing International Law. *International and Comparative Law Quarterly*, 60(1), pp.57-92

Valentina Spiga, March 2011. Non-retroactivity of Criminal Law: A New Chapter in the Hissène Habré Saga. Journal of International Criminal Justice, 9(1), pp.5-23

Wilson, Richard Ashby; Wardak, Ahmad Wais; and Corin, Andrew, "Surveying History at the International Criminal Tribunal for the Former Yugoslavia" (2010). Research Papers. Paper6

Opportunities

Legal Officer, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Friday, 11 March 2011

Court Officer, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Sunday, 06 March 2011

Special Assistant to the Deputy Director-General, The Hague (P-5)
Organisation for the Prohibition of Chemical Weapons (OPCW)
Office of the DDG
Office of the Deputy Director-General
Closing Date: Thursday, 31 March 2011

Head, Independent Oversight Mechanism (Investigation), The Hague (P-3)
International Criminal Court (ICC)
Closing Date: Monday, 07 March 2011

Senior Adviser, Hague (P-4)
Organization for Security and Co-operation in Europe (OSCE)
High Commissioner on National Minorities
Closing Date: Sunday, 27 February 2011

Legal Officer, The Hague (P-4)
International Criminal Tribunal for Rwanda
Closing Date: Friday, 11 March 2011

Media and Public Affairs Officer, The Hague (P-2)
Organisation for the Prohibition of Chemical Weapons (OPCW)
Media and Public Affairs Branch
External Relations Division
Closing Date: Friday, 04 March 2011

Upcoming Events

Expert Meeting entitled 'Joint Investigation Teams: Added Value, Opportunities and Obstacles in the Struggle against Terrorism'
Date: 21 February 2011
Time: 13:30 - 18:00
Venue: TMC Asser Instituut
Organiser: ICCT - The Hague

Expert Meeting on the usage of intelligence in terrorism-related court cases
Date: 03 March 2011
Time: 14:30 - 18:30
Venue: Campus The Hague Location Stichthage
Organiser: ICCT - The Hague

Seminar entitled 'Negotiating with Terrorist Organisations'
Date: 10 March 2011
Time: 14:30 - 18:00
Venue: Campus The Hague Location Stichthage
Organiser: ICCT - The Hague

'Is the EU a Human Rights Organisation?'
Date: 17 March 2011
Time: 17:00 - 19;30
Venue: TMC Asser Instituut
Organiser: TMC Asser Instituut and the Embassy of Finland in The Hague

HEAD OF OFFICE

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Any contributions for the newsletter should be sent to Dominic Kennedy at dkennedy@icty.org

WE'RE ON THE WEB!

WWW.ADCICTY.ORG