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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 Criminal Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing Before the ICTY - And Representing Counsel Before the MICT.*

## ICTY CASES

### Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

Šešelj (IT-03-67)

### Cases on Appeal

Prlić *et al.* (IT-04-74)

Stanišić & Župljanin (IT-08-91)

### Contempt Cases

Jojić *et al* (IT-03-67-R77.5)

## MICT CASES

### Cases at Pre-Trial

Stanišić & Simatović (MICT-15-96)

## ICTY NEWS

### Prosecutor v. Mladić (IT-09-92)

Mile Matijević, former employee of the Banja Luka Security Services Centre (CSB) testified for the defence in the ongoing trial of Ratko Mladić. Matijević has recently been appointed as the Dean of the Law Department at the Business and Financial Studies School in Banja Luka. He testified that in the course of his duties and by the nature of his job, he had direct cooperation with military authorities, and in particular the security organs of the 1<sup>st</sup> and 2<sup>nd</sup> Krajina Corps. He also described the system of command and control at the CSB Banja Luka during the war. He testified about his impressions of the operation and work of the Public Security Centre (SJB) in Prijedor and the working manner of the chief, Simo Drljača, who wanted to bypass the CSB Banja Luka when making decisions even though he was meant to consult with the CSB.



*Mile Matijević*

Matijević testified that there were also situations when Drljača did not inform the CSB about certain occurrences in the territory of the SJB Prijedor. In connection to a reference to his name in the diary entries made by Mladić on 27 May 1993, he stressed that he is personally unaware of any meeting comprised of the people listed in the diary entry. He stated that he was surprised to see his name mentioned in the context of a meeting as he was not aware any meeting ever took place. Matijević was asked by the Prosecutor about ethnic cleaning in Jajce to which he responded that there was no ethnic cleansing and that people from all ethnicities were leaving Jajce because of the ongoing conflict. The Defence will continue its case on 29 February 2016 and until that time there will be only one special hearing on 16 February.

## ICTY AND MICT NEWS

- Mladić: Defence Case Continues
- Karadžić: Motion Filed for the Immediate Assignment of Counsel on Appeal

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## MICT NEWS

### Prosecutor v. Karadžić (MICT-13-55)



Radovan Karadžić

On 13 January 2016 Radovan Karadžić, who during the trial represented himself, filed a motion for the review of the decision on the immediate assignment of Counsel on Appeal. This request was previously denied by the Registrar on 11 January 2015. Despite this, Karadžić maintains he is entitled to Counsel on Appeal before the Trial Chamber delivers its final Judgement. His main argument, based on the equality arms, is that he should be assigned Defence Counsel in the same way that the Prosecution has been allocated to the case.

In response, the Registrar filed a submission advocating for Karadžić's motion for review to be wholly dismissed due to the ICTY Trial Chamber having not yet rendered its Judgement; nor has an Appeal been filed. In any event, it is argued that the President of the Mechanism for International Criminal Tribunals (MICT) does not have the jurisdiction to review the decision. The ICTY and the MICT cannot both rule on the same case at the same time. In Karadžić's reply he reiterates his argument that the President does indeed have jurisdiction, citing the *Ndindiliyimana* case.

A decision by the President of the MICT is currently pending.

## LOOKING BACK...

### The International Criminal Tribunal for the former Yugoslavia

#### Fifteen years ago...

On 20 February 2001, the Appeals Chamber of the ICTY delivered their Judgement in the *Čelebići* case. The four Accused: Zejnir Delalić, Zdravko Mucić, Hazim Delić and Esad Landžo, were charged with numerous counts of grave breaches of the Geneva Conventions of 1949 under Article 2 of the Tribunal's Statute and of violations of the laws or customs of war under Article 3.

Delalić was found not guilty on all counts on the basis that he did not have sufficient command and control

over the Čelebići camp and its guards. Mucić, Delić and Landžo were found guilty by either their direct actions or through their personal criminal responsibility and sentenced to 7, 20 and 15 years' imprisonment respectively. On appeal, Delić had his sentence reduced from 20 years to 18 years. He was granted early release on 24 June 2008. Landžo's sentence of 15 years was affirmed. He was released on 10 April 2006. Mucić had his sentence extended from 7 years to 9 years imprisonment. He was granted early release on 18 July 2003.

### International Criminal Tribunal for Rwanda

#### Ten years ago...

On 8 February 2006, the Appeals Chamber of the ICTR unanimously rejected the Prosecutor's Appeal in the case against André Ntagerura and Emmanuel Bagambiki. The Appeals Chamber upheld the Judgement handed down on 25 February 2004 by Trial Chamber III.

At the time of the genocide in Rwanda, Emmanuel Bagambiki was the préfet of Cyanguga prefecture in Rwanda. It was alleged that Bagambiki was responsible for distributing arms to militia, preparing lists of

civilians to be killed and inciting the killing of Tutsis. André Ntagerura was the Minister for Transport and Communications in the Interim Government established after the death of President Juvénal Habyarimana. It was alleged that Ntagerura attended meetings in which preparations were made for the genocide of the Tutsi population of Rwanda, provided transport and arms to Interahamwe militias, and gave support to Yussuf Munyakazi and Emmanuel Bagambiki in overseeing the activities of the Interahamwe.

In October 1997 and January 1998 respectively, Ntagerura and Bagambiki were indicted on charges of genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity and war crimes. Although indicted separately, their trials were joined in September 2000. On 25 February 2004 both Ntagerura and Bagambiki were acquitted of all charges against them. The Prosecution appealed the decision and requested the Appeals Chamber to overturn the verdict of the Trial Chamber. However, the Appeals Chamber reconfirmed the acquittal in a unanimous decision.

## International Criminal Court

### Five years ago...

On 25 January 2011 Callixte Mbarushimana, a 47 year old Rwandan national, surrendered and was transferred to the ICC by French Authorities following a warrant of arrest issued by the ICC's Pre-Trial Chamber I on 28 September 2010.

Mr. Mbarushimana was charged with criminal responsibility under article 25(3)(d) of the Rome Statute for the ICC for crimes against humanity and war crimes which were alleged to have happened in the context of armed conflict in the Kivu Provinces of the

Democratic Republic of the Congo in 2009.

The case against Mr. Mbarushimana was dismissed on 16 December 2011 by a two-to-one majority, on the grounds that there was insufficient evidence for assuming that he contributed to the war crimes in North and South Kivu. The Prosecutor's appeal against an immediate release was rejected on 23 December, and Mbarushimana was released the same day.

## NEWS FROM THE REGION



### *Bosnia and Herzegovina*

#### **Radosav Milovanović Acquitted of Committing War Crime**

The District Court in Bijeljina has acquitted ex-fighter Radosav Milovanović of committing a war crime in Sase, a village near Srebrenica. Milovanović was accused of raping a Bosnian Croat woman in May 1992. However, according to the Court, Sase was not an area where military activities were taking place at the time.

The Court stated therefore that it is not possible to establish a connection between the war in Srebrenica in 1992 and the rape. For this reason, the charge cannot fall under the definition of a war crime. Moreover, it could not be established that the woman was raped because, as the Court said in a statement, "the evidence demonstrates that she did not fear the defendant". The Prosecution stated that it will appeal the Judgement.



### *Kosovo*

#### **EULEX Court Judgement in Ivanović Trial**

On 21 January 2016, Judges from the EU's Rule of Law Mission (EULEX) at the Basic Court in Mitrovica found Oliver Ivanović guilty of committing war crimes in 1999. Ivanović was the first senior Kosovo Serb official to be prosecuted by EULEX in Kosovo. He was a former Serbian government official and also head of the Kosovo Serb "Freedom, Democracy and Justice" Party.

On 14 April 1999, according to the Judgement, Ivanović ordered paramilitary forces to murder nine ethnic Albanians in Mitrovica. He was sentenced accordingly to 9 years' imprisonment. However, the Court found Ivanović not guilty of inciting the killings of Albanians by the so-called Bridge Watchers on 3 February 2000 in Mitrovica. Four other men, Dragoljub Delibašić, Aleksandar Lazović, Nebojša Vujičić and Ilija Vujičić, were also found not guilty of the same offence and were acquitted of all charges. Ivanović's Defence team has stated that it will appeal the decision.



## Montenegro

### NATO to Assist with Ammunition Destruction Plan

The North Atlantic Treaty Organisation (NATO)'s armaments procurement agency, the NATO Support and Procurement Organisation (NSPO), has signed an agreement with Montenegro, which states that NATO will give technical and financial assistance to help with the destruction of large amounts of weapons and ammunition that are still left in Montenegro. The fifteen-month programme will decommission 416 tonnes of surplus ammunition and explosives. Montenegro does not have the resources to dispose of these without support, and is therefore satisfied with the help of NATO.

When Montenegro split from Serbia in 2006, Montenegro was left with 12,136 tonnes of wartime ammunition and 74,639 weapons, including heavy artillery. The former Yugoslav Peoples' Army (JNA), which stored its ammunition in Montenegro for emergency situations, left these weapons behind.

## NEWS FROM OTHER INTERNATIONAL COURTS



### *Extraordinary Chambers in the Courts of Cambodia*

Michael Elizondo, Legal Intern, Ao An Defence Team

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### Judicial Update

#### Case 002

In December, the Defence team for Nuon Chea was fully engaged in the Case 002/02 trial, participating in hearings of witnesses testifying as to the treatment of the Vietnamese. The Defence team filed a series of requests to the Trial Chamber seeking to admit portions of the Human Rights Watch report, "30 Years of Hun Sen", ten written records of interview into evidence at trial, and issue summons to three additional witnesses.

In December, the Defence team for Khieu Samphan continued to prepare and attend the hearings in Case 002/02. The Defence team also objected to the International Co-Prosecutor's requests to admit several documents into Case 002/02 and to hear several new witnesses from the ongoing investigations in Cases 003 and 004.

#### Case 003

In December, the Defence team for Meas Muth filed two appeals to the Pre-Trial Chamber. The Defence team also filed two requests to the Co-Investigating Judges; firstly, to reclassify it as a public decision because the reasoning in the Decision would be of interest and of assistance to the Defence teams in the

other cases. The Defence team also filed a second request to the Co-Investigating Judges, which is currently classified as confidential. On 14 December 2015, the Defence team attended an Initial Appearance with Muth.

In early January 2016, the Defence team for Muth filed two appeals and one reply to the Pre-Trial Chamber, each of which has been classified by the Chamber as confidential. The Defence team has also responded to a request by the International Co-Prosecutor for an extension of time to respond to one of the team's appeals. The team has also requested that one of its motions to the Co-Investigating Judges, and the International Co-Investigating Judge's decision on this motion, be reclassified as public, since they contain no confidential information relevant to the ongoing judicial investigation. The Defence continues to review material on the Case File and to file submissions where necessary to protect Muth's fair trial and procedural rights.

#### Case 004

In December, the Defence team for Im Chaem filed a number of requests to the Office of the Co-Investigating Judges regarding several matters in this case. Also in December, the Office of the Co-

Investigating Judges notified all parties of their Notice of Conclusion of Judicial Investigation against Chaem. Further, the Defence team continues to review the evidence in the Case File and to prepare submissions to protect Chaem's fair trial and procedural rights.

In December, the Defence team for Ao An filed three requests to the Office of the Co-Investigating Judges, most notably a Request to Place Certain Documents on the Case File. Also, the Defence team filed one appeal to the Pre-Trial Chamber, specifically an Appeal against the Decision Denying An's Fifth Request for Investigative Action. Finally, the Defence team continues to review all the evidence on the Case File

in order to further prepare An's defence and safeguard his fair trial and procedural rights.

On 9 December 2015, following the issuance of a Summons, Yim Tith voluntarily attended his Initial Appearance at the ECCC. He was assisted by his Defence team. During the hearing, International Co-Investigating Judge Bohlander charged Yim Tith with genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949 and violations of the 1956 Cambodian Penal Code. The Defence for Yim Tith has now been granted access to the Case File and is analysing the contents thereof in order to participate in the investigation, prepare Yim Tith's defence and seek to protect his fair trial rights.

## DEFENCE ROSTRUM

### **10<sup>th</sup> Annual Meeting 2016: Defence Counsel at International Tribunals Organised by International Criminal Defence Lawyers (ICDL) Germany**

*By Dragan Ivetić*

On 23 January 2016 the International Criminal Defence Lawyers (ICDL)-Germany e.V. welcomed its member attorneys from all across Germany and guests drawn from the legal profession outside of Germany to the Hotel InterContinental in Berlin, to participate in its 10<sup>th</sup> Annual Meeting, which was also sponsored by the Vereinigung Berliner Strafverteidiger e.V. Prominent among the speakers and attendees of the 2016 Annual Meeting were several current ADC-ICTY members. The participants first gathered for a fire-side discussion and private cocktail party in the "Library Bar" of the Hotel InterContinental on the evening of 22 January 2016, where President Jens G. Cordes and Vice-President Detlev Stoffels discussed the events that inspired the formation of the ICDL-Germany e.V. a decade ago, and participants exchanged views on current events and developments in their various legal communities and endeavours.

The next day, the 2016 Annual Meeting was convened in the Schöneberg Event Room of the Hotel InterContinental by President Jens G. Cordes promptly at 9:00h, and lasted until just past 19:00h, including several coffee breaks and a lunch attended by all participants. The Annual Meeting consisted of several panels of guest speakers, as well as presentations of ICDL-Germany e.V. member practitioners on various topics of interest to the legal community, moderated by two of the vice-presidents of the ICDL-Germany e.V., Christian Kemperdick, and Mike Sturm. The



*Michael G. Karnavas*

morning session included a presentation by ADC Member Michael G. Karnavas, in his capacity as the Chairman of the Drafting Committee for a Con-

stitution for an ICC Bar Association (ICCBA). Karnavas recalled that earlier efforts -- in 2007 with several ICDL-Germany e.V. members -- to approach the Registrar of the International Criminal Court (ICC) to establish an Association of Counsel were not met favourably, but that the climate in the Registrar's office of the ICC had changed positively towards such an initiative. He recalled that this was due to a new Registrar and a new feeling among the counsel practicing before the ICC. Karnavas stressed that he believed he had 100% support from the current Registrar of the ICC for the work of the Drafting Committee. He spoke about a side-event at the recent Assembly of State Parties by the Drafting Committee where the Registrar had promised space in the new ICC building for the to-be formed association. Likewise, Karnavas added that States Parties were aware of the efforts, but still had not signed on the venture to create such an association, and were reluctant to provide funding for any association that would allow lawyers to organise



themselves into a union to demand more money and rights. He stated that lawyers had to be creative to find a way to make it work, or the entire concept of an association would die on the vine, and that full recognition of the association was essential. A very lively discussion ensued with the other participants.

After a coffee break, Kemperdick moderated a panel consisting of two speakers. First the Chief of the Legal Office of the ICC Registry, Thomas Henquet, spoke about the efforts to organise List Counsel at the ICC. He remarked that States Parties had anticipated the role of an organisation as that described by Karnavas, the first speaker, as can be seen from various references in the ICC's core documents, including the Rules of Procedure. Indeed, he highlighted that the Registrar is tasked with making sure that attorneys can do the work required to represent their clients, and further that Rule 20 obliges the Registrar to work together with an association to train counsel appearing before the ICC. Since there has not yet been an association formed, the Registrar has done their best to fulfil these duties through the Office of Public Counsel for the Defence (OPCD) and the Office of Public Counsel for Victims (OPCV) and Counsel Support Section (CSS). He also announced that the "ReVision" process at the ICC was finished, with the recommended merger to get one Defence Office and one Victims Office still outstanding.



Richard Harvey

The second speaker of that panel (third overall) was ADC member Richard Harvey who spoke on the right of self-representation and the role of stand-by counsel in such circumstances. He started off by presenting a fictionalised scenario about the arrest of Omar al-Bashir and his transfer to the ICC, where

President al-Bashir had chosen to defend himself. Harvey's point was that it was only a matter of time before self-representation was brought before the ICC as a live issue. He highlighted that Slobodan Milošević made legal history with self-representation before the ICTY. He stressed that these complex war-crimes cases are difficult and stressful enough for attorneys acting as counsel, let alone by an accused doing the same work while imprisoned. Harvey posited that the right to self-representation is there, but it is not unconditional in nature, and highlighted many criticisms from the *Šešelj* case. He stressed that in his role of stand-by counsel in the *Karadžić* proceedings

he did not have a client, as he was not retained by Karadžić, who had his own legal team. However he had to, at all times, be ready and prepared to take over and defend the rights of the Accused if called upon to do so by a refusal of the Accused to proceed. He said it was a very difficult role, and especially so because the right to remuneration was only won late in the case. He commented that Karadžić had sought additional time for preparation, including review of late disclosed material from the Office of the Prosecutor (OTP), and that with his appointment as stand-by counsel, since the court had to give him the time to prepare, his appointment actually gave Karadžić the benefit of the additional time that had been sought but likely would not have been granted otherwise. A very positive and engaged discussion followed.

After the lunch break, Sturm moderated the afternoon panels of speakers. The first was ADC member Dragan Ivetić, who praised and spoke positively about the history and work of the ICTY while focusing on the realities of defending General Mladić in the last case before the ICTY, and certain difficulties or concerns in same. Ivetić spoke about his experiences in prior ICTY cases and how the magnitude and media attention to the *Mladić* case was different than those prior cases, leaving him feeling at times caught by surprise and continuously learning, despite his decade of prior experience at the ICTY. He recalled watching the Mladić initial appearance over CNN before he was on the case and remarking how the proceedings lasted longer than any of the initial appearances he had previously participated in. Ivetić also discussed the non-disclosure of millions of pages of Rule 68 and Rule 66 material by the Prosecution until shortly before trial that led to a 5 week continuance of the trial, giving the Defence the seemingly impossible task of reviewing that new material during that time. Ivetić stressed the Mladić case incorporated a vast amount of material from many prior ICTY cases that needed to be reviewed. He also relayed comments made to him by other legal practitioners upon hearing of the *Popović* Appeals Judgment in January 2015, which apparently made multiple and serious legal findings of criminal responsibility as to General Mladic, even as the trial proceedings in his own case were still underway. Ivetić also spoke about the affirmative obligation and duty of Defence counsel at the ICTY to speak positively of the work of the Tribunal, as promulgated in a well-known Disciplinary Board decision, and how said decision included a dissent by the two Defence members of the Disciplinary Board.

The next speaker was Sarah Bafadhel, a barrister at 9 Bedford Row, and one of the Defence Counsel for Saif Al-Islam Gaddafi at the ICC. She summarised the developments in that case over the past years and how, despite the passage of time, things were still very uncertain and access to Gaddafi was still not effectuated. She recalled that while the laws were changed to permit Gaddafi to appear via video-link in domestic Libyan proceedings, said video-link was not used for the entire duration of the hearings, and was only used for 3 days of the entirety of the proceedings, calling into question ability of such video-link access to ensure the fairness of the proceedings. Further, as to 36 co-accused, the Libyan court based their prosecution solely on confessions of various co-accused, with no other evidence, despite evidence of torture. She recalled threats to lawyers representing these the co-accused, and reports that some were in fact killed, such that only a smaller number were present for the proceedings. At the beginning there was international monitoring of the proceedings via the United Nations Support Mission in Libya (UNSMIL), until a UNSMIL monitor was arrested and charged for "black magic" at which time UNSMIL was forced to evacuate and relocate to Tunis, and now monitoring was done via news broadcasts covering the trial. The death penalty had been issued against Gaddafi, and the ICC has asked that Libya not proceed with the death penalty. Bafadhel concluded by expressing her concerns and questioning which forum would permit Gaddafi to exercise his rights, and if there was any hope of withdrawal to the ICC for that purpose. A very supportive discussion ensued.

After the last coffee-break, German Police investigator Olaf Kopischke spoke about his experiences in South Sudan as a police officer under the auspices of the United Nations Mission. He indicated that it was easier to send police from Germany than soldiers, and thus the practice was instituted that police officers from Germany were sent to South Sudan for up to one year total in mission before returning to their domestic duties, and being replaced by the next German officer. He spoke of the many difficulties encountered in the field, especially since the United Nations Police (UNPOL) and United Nations Mission in Sudan (UNMIS) were not permitted to operate during the

evenings, and thus often only saw the aftermath of incidents that occurred during the nights. Also he stressed there are 60 customary tribal laws in the region, and there was no pre-mission training to advise about any of these laws. He also gave details and demonstrative illustrations of the AMREF Case, Mary B Case, and the Jonglei crisis that occurred and were investigated during his tour of duty.

The last part of the Annual Meeting consisted of practitioner reports from several members of the ICDL-Germany e.V., including ADC member Jens Dieckmann. During this session, Bettina Spilker reported on the progress at the Special Tribunal for Lebanon, where she has worked 3.5 years as legal support in a Defence team. She highlighted that the main part of the Prosecution case relates to telephone networks and evidence obtained from these networks. She stressed it was difficult working without a client, and that counsel are pushed to work in a limited and complicated environment. Dieckmann spoke of his work as Victims' Counsel at the ICC in the Banda Case. He reported that the trial still had not commenced but that 103 victims were allowed to participate in the court proceedings. A maximum of 2 lawyers were to represent them, and he was selected with a Senegalese attorney for the role. He stressed that victims are not parties, but are participants in the proceedings, and chronicled 2 missions to the African region organised by the Registry to permit them to meet with all the victims, finished just recently. The last presentation was by Natalie von Wistinghausen, as to her experiences defending a genocide case against a Rwandan national in the German courts. The case is now on appeal, and did not have a favourable first instance result. Whereas the client was initially convicted in 2014 only as to aiding and abetting, this was partly quashed on appeal, but the objective facts were confirmed and could not be challenged on re-trial. This led to a re-trial where no evidence or witnesses were heard, and the court just considered the findings in the judgment, and then convicted the client as a main perpetrator of genocide, and imposed a life sentence. She expressed that there was little hope available under the existing system to correct this apparent farce of a proceeding that led to an unfair determination.

## Shifting from ‘Possible’ to ‘Probable’: *R v Jogee* and the *Mens rea* Requirement for JCE III

By Sarah Pitney

In October 2015, the Supreme Court of the United Kingdom heard submissions from the parties in *R v Ameen Hassan Jogee* with respect to whether the law of ‘joint enterprise’ has gone too far. Jogee was convicted of murder and sentenced to life imprisonment in 2012 on the basis that, although the fatal stabbing of Paul Fyfe was physically perpetrated by co-accused Mohammed Hirsi, Jogee encouraged Hirsi (both verbally and through physical presence) in the knowledge that Hirsi might use a knife against Fyfe with the intention to kill or at least cause serious bodily harm.

According to Felicity Gerry QC, Counsel for the appellant Jogee, the test for joint enterprise liability ought to be reformulated to require foresight on the part of the accused of the real probability – as opposed to possibility or risk – that a co-participant in the common purpose would commit the crime charged in the course of carrying out the agreed enterprise. It is argued that basing liability on foresight of a ‘possibility’ alone does not align with principles of culpability as it conflates mere foresight of a possibility with authorisation. The Supreme Court has not yet indicated when it will hand down its judgment.

Reformulation of the law of ‘joint enterprise’ in the United Kingdom may have implications for the law of ‘JCE III’ in international criminal law. Officially recognised by the Appeals Chamber of the ICTY in *Tadić* in 1999 as a mode of liability implicit in the words of Article 7(1) of the ICTY Statute, ‘JCE III’ is synonymous with the doctrine of ‘joint enterprise’ or ‘extended common purpose’, popular in common law jurisdictions such as the United Kingdom, Canada and Australia. While in cases such as *Krstić*, the Appeals Chamber used the language of ‘probability’ interchangeably with ‘possibility’, in 2009, the Chamber definitively decided in *Karadžić* that the threshold at the ICTY is foresight of the possibility, not probability, that the co-participant in the relevant enterprise would commit the crime charged. This lower standard has been recently reiterated by the Appeals Chamber in *Tolimir and Popović*.

The Appeals Chamber has often sought to justify recognition of JCE III as a mode of liability in international criminal law by reference to the jurisprudence of nations such as the United Kingdom and

Australia. In *Tadić*, for example, the Chamber specifically referred to the 1991 Privy Council decision in *Hui Chi-Ming v R* and the similar decision of the High Court of Australia in 1995 in *McAuliffe v R* – both decisions that recognise extended liability where the accused foresaw the ‘possibility’ of a co-participant committing crimes outside the scope of the agreed common purpose. While the Appeals Chamber in that case noted that countries such as Germany and the Netherlands did not recognise such liability, the Chamber reasoned that JCE III at least has an ‘underpinning in many national systems’ despite lack of universal support.

However, this ‘underpinning’ has now partially unravelled. In Australia, amendments to the Victorian Crimes Act 1958 (Vic) in 2014 abolished the doctrine of JCE, replacing it with a codified concept of ‘involvement’ of crime that does not recognise liability in cases that would previously have fallen within the doctrine of ‘extended common purpose’. In other Australian states such as Queensland, Tasmania and Western Australia, codifications of modes of liability recognise individual liability only where the crime charged was a ‘probable’ consequence of the original agreed common purpose. There have been proposals for statutory reformulation of the law of ‘joint enterprise’ in the United Kingdom, with the House of Commons Justice Committee reporting on criticism of the doctrine in 2012. Moreover, in 2010, Pre-Trial Chamber of the ECCC in *Ieng Thirith, Ieng Sary and Khieu Samphan* refused to recognise JCE III liability, holding that the authorities relied upon by the Appeals Chamber of the ICTY in *Tadić* did not provide a sufficient basis to conclude that JCE III could be recognised as part of customary international law.

Should the Supreme Court of the United Kingdom rule in *R v Jogee* rule in favour of the appellant, the ‘underpinning’ of JCE III that is purportedly found in domestic legal systems will be further undermined, with corresponding implications for the credibility of doctrine in international criminal law. While in light of the categorical rejection of the ‘probability’ standard by the Appeals Chamber in *Karadžić*, one cannot expect that at this late stage the ICTY will backflip from this position, the case of *R v Jogee* at the very least casts renewed doubt upon the reasoning of the Chamber in *Tadić* and subsequent case law.



## New Kosovo Court to be Established in The Hague

*By Hannah McMillen*

On 15 January, the Government of the Netherlands announced that it will host a special court for Kosovo in The Hague. The court, officially named the Kosovo Relocated Specialist Judicial Institution, will function under the auspices and with the funding of the European Union, though remaining officially a part of Kosovo's national judiciary system. Its mandate is to "try serious crimes allegedly committed in 1998-2000 by members of the Kosovo Liberation Army (KLA) against ethnic minorities and political opponents", the Dutch Ministry of Foreign Affairs released in a statement. The Court is expected to begin its work later this year.

Priština has been under pressure to establish such an institution since the release of a 2010 human rights report by Swiss senator Dick Marty, special rapporteur to the Council of Europe, which alleged that KLA members had committed serious crimes during the Kosovo War, including, controversially, the alleged trafficking of human organs. The EU established the Special Investigative Task Force (SITF) in 2011 to pursue the allegations, which also included summary executions, abductions and torture. The first Chief Prosecutor of the SITF, Ambassador Clint Williamson, announced in July 2014 that the task force had gathered enough evidence to issue indictments against many senior KLA members, which it would file as soon as "a judicial mechanism is established to host a fully independent, impartial, transparent and secure trial". As of yet, no indictments have been pub-

licly released.

On 3 August 2015, an 82-member majority of the 120 deputies in Kosovo's parliament voted to establish the so-called "Specialist Chambers" in order to further this end, despite the regional controversy surrounding such a move. Kosovo declared its unilateral independence in 2008, and members of the KLA are widely regarded within Kosovo as participants in a legitimate armed struggle against the Serbs. Many view the Law on Specialist Chambers as an attempt to denigrate the resistance and the legitimacy of Kosovo's statehood. Geert-Jan Knoops, a professor and attorney who has practiced before the ICTY, notes that enlisting state cooperation and the goodwill of Priština officials will therefore be one of the biggest challenges the new court faces.

A further issue the Kosovo Court must handle is that of witness protection. The KLA cases both at the ICTY and EULEX courts encountered allegations of witness intimidations. There is scepticism in Kosovo that international witness protection measures will be sufficient to prevent such allegations at the new court. Despite its many hurdles, the advent of the Kosovo Court has been welcomed internationally. The EU's foreign policy chief, Federica Mogherini, lauded the move, stating, "While recognising that this step by Kosovo Assembly was not easy, it is a sign of responsibility and determination to establish the truth and make decisions compatible with Kosovo's European path".

### Call for Trainers for Upcoming Monthly Advocacy Training Sessions

The ADC-ICTY is seeking interest from those who would like to contribute to a series of full or half day lectures on topics related to the practice of international law. Trainers should have some experience in training professionals in the field of law and legal criminal practice. The training can count for CLE credits.

The advocacy training sessions are aimed at professionals, students and interns in the field of international law in order to deepen their knowledge and strengthen their skills.

Previous advocacy training sessions were attended by approximately 30-40 participants and included the following topics: Evidence and Objections (Direct and Cross-Examination), Drafting Trial Motions, Final Briefs and Appeals, Preparing Oral Arguments and Witness Proofing and Expert Witnesses.

Anyone interested in conducting a training session should complete the short form available at: <http://tinyurl.com/zlnufph>

More information is available on the ADC-ICTY website or contact the ADC Head of Office, Dominic Kennedy, at: [dkennedy@icty.org](mailto:dkennedy@icty.org).

## BLOG UPDATES AND ONLINE LECTURES

### Blog Updates

F. De Jonge, **“War Crimes Investigations in the UK: All is Fair in Law and War?”**, 29 January 2016, available at: <http://tinyurl.com/hxcu32l>

Alexander Kay, **“Kenya’s Proposal for Withdrawing from ICC Adopted by African Union”**, 1 February 2016, available at: <http://tinyurl.com/z9oet6h>

Arpita Goswami, **“Prescriptive or Permissive? A Quick Survey of International Law - Part 1”**, 11 January 2016, available at: <http://tinyurl.com/gw323xt>

### Online Lectures and Videos

**“International Law in Action: A Guide to the International Courts and Tribunals in The Hague”**, by Leiden University, 15 February 2016, available at: <http://tinyurl.com/jmlzynd>

**“Supranational Criminal Law Lecture”**, by Sean D. Murphy, 15 December 2015, available at: <http://tinyurl.com/gqu9aqx>

**“The Court and the World”**, by Justice Stephen Breyer, 30 January 2016, available at: <http://tinyurl.com/jh9sw84>

## PUBLICATIONS AND ARTICLES

### Books

Kuczyńska, Hanna (2015). **The Accusation Model Before the International Criminal Court**, Springer International Publishing.

Larsen, Kjetil M., Camilla G. Cooper and Gro Nystuen (2016). **Searching for a Principle of Humanity in International Humanitarian Law**, Cambridge University Press.

McDermott, Yvonne. (2016). **Fairness in International Criminal Trials**, Oxford University Press.

Ryngaert, Cedric, Ige F Dekker, Ramses A Wessel, and Jan Wouters (2016). **Judicial Decisions on the Law of International Organizations**, Oxford University Press.

### Articles

Lyons, Beth S. (2015). **“Litigating Human Rights: Fair Trial and International Criminal Justice”**, Africa Law Today, Issue 2.

Szydło, Marek (2015). **“Reduction of Life Sentences Imposed by International Criminal Tribunals after the Galic Decision: Is There Need for Further Improvement?”**, Journal of International Criminal Justice, Volume 13 Issue 5.

Riach, George and Zoe James (2016). **“Strengthening the Rule of Law on the Margins: Experiences from Za’atari Refugee Camp, Jordan”**, The International Journal of Human Rights, Volume 20 Issue 1.

## CALLS FOR PAPERS

**The PluriCourts Conference on Strengthening the Validity of International Criminal Tribunals** has issued a call for papers on the topic ‘Making the Processes of International Criminal Justice More Effective.’

Deadline: 29 February 2016

More Info: <http://tinyurl.com/hmtxt22>

**The 24<sup>th</sup> Annual Conference of the Australian and New Zealand Society of International Law** has issued a call for papers on the topic ‘International Law of the Everyday: Fieldwork, Friction and Fairness.’

Deadline: 26 February 2016

More Info: <http://tinyurl.com/z437gne>

**The Utrecht Journal of International and European Law** has issued a call for papers on ‘General Issues of International and European Law.’

Deadline: 18 April 2016

More Info: <http://tinyurl.com/o8qk89d>

## HEAD OFFICE



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Any contributions for the newsletter  
should be sent to Dominic Kennedy at  
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## EVENTS

### HILAC Lecture on The Accountability of Armed Groups under International Law

Date: 11 February 2016

Location: T.M.C. Asser Institute, The Hague

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

### Conference on the Protection of Persons in Times of Disaster: International and European Legal Perspectives.

Date: 3 to 4 March 2016

Location: International Disaster Law Project, Rome

More Info: <http://tinyurl.com/z38gnuj>

### Training on the Protection of Human Rights and Environment

Date: 7 to 11 March 2016

Location: Geneva Academy, Geneva

More Info: <http://tinyurl.com/zmq7ls>

### Technology and Criminal Law: Manifestations and implications Moot Court

Date: 20 to 25 March 2016

Location: Inter-University Centre, Dubrovnik

More Info: <http://tinyurl.com/j3e4pyj>

### 11<sup>th</sup> International Association for Court Administration Regional Conference

Date: 18 to 20 May 2016

Location: World Trade Centre, The Hague

More Info: <http://tinyurl.com/jzqbg74>

## OPPORTUNITIES

### Associate Legal Officer (P2)

Mechanism for International Criminal Tribunals  
Chambers, The Hague

Closing Date: 18 February 2016

### Associate Legal Officer (P2)

International Criminal Court  
Division of Judicial Services, Office of the Registrar, The Hague  
Closing Date: 21 February 2016

### Legal Internship

International Criminal Tribunal for the former Yugoslavia  
Association of Defence Counsel, The Hague  
Closing Date: Ongoing

Join Us!

### ADC-ICTY

#### Affiliate Membership

For more info visit:

<http://adc-icty.org/home/membership/index.html>

or email:

[dkennedy@icty.org](mailto:dkennedy@icty.org)

GOODBYE

*The ADC-ICTY would like to express its sincere appreciation to Sarah Pitney for her contribution to the Newsletter; we wish her all the best for the future!*

*The ADC would to thank Isabel Dusterhöft, former ADC Head of Office, for her dedication and commitment to the ADC and her tireless contribution in bringing the Newsletter together. We wish her all the best for the future; she will be truly missed!*