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Prosecutor v. Mladić (IT-09-92)

Miloš Milinčić

On 17 November, Miloš Milinčić a former teacher and President of the Srbac municipality between 1990 and 1997 testified. Milinčić explained that the non-Serb minority of Srbac was not discriminated and 79 non-Serbs from Srbac were in the Army of Republika Srpska (VRS) during the war, 42 of them being deployed in the Srbac Brigade. Milinčić reported having met Ratko Mladić a couple of times in 1992 and that the General supported his decision not to engage in hostilities with the Croats in Davor. In his statement, Milinčić affirmed that only 60 Muslims had left Srbac during the war and that they had done so for economic reasons. During cross-examination, the witness was confronted with some documents reporting a larger number of Muslims leaving the municipality and he agreed that this could be the case. During re-examination, Milinčić explained that many of those who had left Srbac during the war came back after the Dayton Accords were signed in 1995. According to the witness, their properties were also returned.

During cross-examination, the witness was also confronted with speeches delivered by President Karadžić and explained that his metaphors regarding the different plants of a garden and the relationship between a cat and a dog referred to the coexistence of different ethnicities.

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Also in this issue


Duško Čorokalo

On 17 and 18 November, Duško Čorokalo, member of the 6th Sana Brigade of the VRS, gave evidence. According to Čorokalo, the Muslims started the fighting in Sanski Most, violating the agreement on the division of the municipality. The Serbs only responded to the attack and then took over. In both his statement and testimony, the witness recalled attacks against the Serbs coming from the Muslim inhabitants of Mahala, whom the VRS subsequently disarmed. Disarming operations were also carried out in Vrhpolje and Hrustovo.

Čorokalo also mentioned that the Serb Volunteer Guard led by Željko Ražnatović, also known as Arkan, arrested, mistreated and killed various Muslims in Sanski Most, causing clashes between the VRS and the civilian population. The witness was shown a memorandum sent by Mladić to the Ministry of Interior and the President of Republika Srpska regarding Arkan's behaviour. He recalled that afterwards Arkan was sent to Prijedor to arrest deserters. Čorokalo admitted he knew that some prisoners were killed in Vrhpolje in May 1992. The Defence showed an excerpt from the evidence given by one of the survivors of that incident, reporting that a man with a ponytail and dark glasses committed the crime. Čorokalo explained that no member of his unit matched such a description.


Rajko Šarenac

On 18 and 19 November, Rajko Šarenac appeared before the Court. During the war, Šarenac was the Assistant Commander for Morale and Religious Affairs of the 1st Guards Brigade. During his testimony, Šarenac discussed how his units were occasionally acting jointly with the Sarajevo-Romanija Corp (SRK) and Drina Corp (DK) units, for instance during the operations on the Nišići plateau. Regarding those events, the witness explained that the Croats around Vareš were under the threat of the Muslim forces. The only way out was the road leading to the territory controlled by the VRS (Vareš - Nišići - Brgule road). The VRS ordered this road to be unblocked so that the Croat population and members could be evacuated.

During cross-examination, the Office of the Prosecutor (OTP) referred to the liberation of Kupres in April 1992, alleging that it was part of a broader process of creating a Serbian state in Bosnia and joining it with the Serbs in the Krajina region. Šarenac denied, but the OTP produced a document in which his superior commander, Colonel Stanko Letić, was referring to the unification with the Knin Krajina, saying that "there is no more living in that state for the Ustashas". The witness affirmed that this goal might have been a political motive of some individuals, but certainly not what the army was meant to achieve in Kupres. Moreover, he explained that the document referred to the legitimate fight against the Ustashe paramilitary forces, which was precisely why the Serb soldiers were in Kupres.

The OTP asked Šarenac if he was aware that Muslims were escaping towards Tuzla or Srebrenica during the operations of the 1st Guards Motorised Brigade in spring 1993 in eastern Bosnia. The witness said that they did not fight civilians, even though there might have been civilian damage. The OTP put it to the witness that in fact the VRS units attacked and shelled civilians who were passing through VRS lines. To corroborate its assertion, the Prosecution produced a document of the Zvornik brigade informing the DK Command that a group of civilians had to be hit with all means. The witness affirmed not knowing about this order, as there were many different units in the area.

The witness confirmed receiving orders to liberate Žepa and Goradze, but indicated that this liberation was never completed because international forces entered the town. The OTP produced a document describing "panic amongst the Muslims soldiers and population", but the witness explained that at the time everyone was afraid of the war. However, the document then talked about the fact that Muslims should be prevented from returning to liberated areas and that propaganda should be used to create ghetto-type insecurity for the Muslim population. The OTP accused Šarenac of taking part in this terror propaganda, which he denied.

At the end of his testimony, Šarenac was confronted with the accusation that was made against him during the war for the alleged wilful abandonment of the 1st Guards Brigade Forward Command Post in Ostojići.

The witness proclaimed this order was a forgery, an abuse of authority and power. This accusation was done behind his back and it could not have been ordered by Mladić. During re-direct, he explained that he used to occupy a post with a high authority level within the entire brigade, this position of power brought him hatred from other individuals. He noted that one unit at the battalion level in the SRK deserted once, using him as a scapegoat. However, the witness was unable to provide the names of those who had pointed fingers at him.


Zoran Đerić

The hearing continued on 19 November with the testimony of Zoran Đerić, former member of the Rogatica Brigade Territorial Defence. The witness noted that when he left Rogatica he lived in a part of the town mostly inhabited by Muslims. As he felt that the conflict was "in the air", he preferred to preventively evacuate his family. Đerić confirmed he was under the command of Rajko Kušić. The OTP played a video showing Kušić speaking about the formation of the VRS Rogatica Brigade on 6 March 1992. Đerić explained that he was in Rogatica at the time and only had partial knowledge of the establishment of such a brigade.

On 20 November, Nikola Vračar a former reserve policeman working in the Ključ Public Security Station testified. According to the witness, the attack of the Muslim forces on a Serb patrol in Krasulje on 27 May 1992 marked the beginning of the war in Ključ. However, the witness noted that the interethnic tensions in Ključ did not appear suddenly, but were inherited from centuries-old history. After that event, Muslims and Croats left voluntarily, as they feared the outbreak of war. Vračar affirmed that he never received an order or instructions as a policeman to forcibly expel anyone from the town against their will. Judge Orie asked him why, if non-Serbs were not forced to leave, were they first asked to cede all their property? The witness explained that properties of leaving families were to be put at the disposal of the Serb refugees, both to accommodate them and to prevent abandoned properties from being looted.

Vračar spoke about the massacre in Velagići on 1 June 1992 where 77 Muslim detainees were killed. He found out about these events through rumours that some paramilitary Serbs were taking revenge for the massacres against them, committed during World War II. However, he had no specific details about this because he happened to be on leave that day.


Ostoja Barašin

On 20 and 24 November, Ostoja Barašin testified. During the war, Barašin worked in the Information Office of the 1st Krajina Corps (KK). The task of his unit was to keep the public informed about the events occurring in the area of responsibility of the KK and to welcome foreign and local journalists. Barašin also directed documentaries, such as "Ratlines" and "Genocide Again". The first one deals with the military operations of a group of the Croatian Armed Forces named "Berbir" in Republika Srpska and with the rebellion of the Muslim population of Kotor Varoš, provoked by Muslim forces when that territory was not yet at war. The second documentary covers the atrocities committed by the Croatian-Muslim forces in 1992. Barašin confirmed that the 1st KK press centre published a magazine to be distributed to the troops. The Prosecutor showed the witness an article published in this magazine, consisting of a speech delivered by Karadžić, arguing that all Serbs should live in one state. The witness pointed out that the views expressed in the article were those of the interviewee alone and not those of the editors.

Barašin also affirmed he did not have any knowledge of the crimes committed against non-Serbs in Vrholje and Hrustovo and that he only learned about them from the news after the war. The witness recalled visiting the Trnopolje camp while escorting foreign representatives and journalists there in 1992. To his recollection, the people accommodated in the camp were free to leave. Throughout his testimony, Barašin explained that the Serbs never wanted a war. On the contrary they advocated talks involving all ethnic groups. He alleged that it was the Croats and Muslims instead, who triggered the hostilities.

Momir Deurić, former member of the Territorial Defence and warehouse guard in the Sušica prison camp, was called by the Defence on 24 November. The witness described that when the war broke out in the area, Sušica was not a prison but a reception cen-

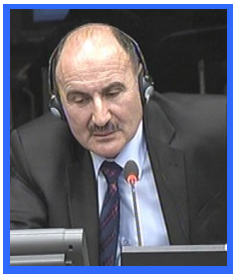
tre for Serb and Muslim civilians who had left their homes. It was in late May 1992 that the army took over the facility and started bringing in Muslims from Vlasenica.

Talking about the conditions of life of the prisoners, Deurić ensured they were given the same rations as the troops. He did not know anything about alleged crimes committed against the detainees, including abuse, murder and forced labour. The OTP questioned his assertion, producing a report from the Organisation for Security and Co-operation in Europe (OSCE) made after a visit to the camp and describing "exhausted, pale and thin" prisoners. Deurić explained that most prisoners were already thin when they arrived at Sušica.

The witness admitted hearing stories about abuses carried out by guards on prisoners, but never witnessed any episode of violence. The OTP put it to the witness that at least nine prisoners died in Sušica from June to August 1992, and that upon the camp's closure in September 1992, the remaining prisoners were executed. Deurić denied any knowledge of this. However, the OTP pointed out that Dragan Nikolić ,"Jenki", the prison camp commander, had already plead guilty to the crimes in Sušica and was sentenced to 20 years in prison by the ICTY for the murder, rape and torture of Muslim prisoners.


Dusan Todić

On 25 November, Dusan Todić was called by the Defence. However, neither the Defence nor the Prosecution had further questions. His witness statement pertained to the attack of the illegal Slovenian Territorial Defence on the Yugoslav National Army (JNA). Todić was also a witness of the attack of the illegal Croat forces on the JNA forces and the Serb civilian population in Dalmatia and Knin Krajina. Regarding the pacification of the separation line from Cetina village via Šibenik to Zadar, Todić testified that Mladić, using a megaphone, called on both sides to agree on a cease-fire rather than to continue the conflict. Todić also personally heard of the rape of Serb women in Gorazde and of the assistance provided to an ill Muslim girl at the Military Medical Academy. His testimony concluded that Mladić never ordered an attack on civilian objects in his presence, not even when they witnessed Muslims burning down the house of Mladić's parents.


Slavko Mijanović

On 25 November, the Defence called Slavko Mijanović, former President of the Commission for the Allocation of Property in the municipality of Ilidža. The witness explained that the Commission he worked for was charged with the allocation of abandoned property, based on a database. This database had a complete register and compiled record of information about the structure, the tenant and the owners of the apartments. He noted that no attention was paid to the ethnic background in this database. The rules of procedure on assigning flats for temporary use were drafted by legal experts from the municipality. The OTP, during cross-examination, countered the witness' claim and put it to him that municipal bodies, such as the Commission for the Allocation of Property, were instruments of ethnic cleansing, allocating non-Serb property solely to prevent Muslims from returning. To corroborate this case, the OTP produced two decisions of the municipal authorities from May and April 1992, establishing the prohibition for Muslims and Croats to return for security reasons.

The witness denied any discriminatory intent in the allocation of flats, and affirmed that all ethnicities were accepted. However, there was no reason for Muslims to return to the Serb-controlled Ilidža. As the number of Serb and non-Serb people who moved out from Ilidža was approximately equal, Mijanović explained that the apartments allocated belonged to all ethnic groups. The witness did not recall how many decisions were taken in relation to non-Serbs, but assured there were several.

On 26 November, the Defence called Boško Mandić, former Vice-President of the Executive Committee and a member of the Crisis Staff in Prijedor. In his witness statement he testified about the "peaceful take-over of power in Prijedor", after which there were no armed conflicts until Muslim forces attacked military conscripts in Hambarine on 22 May 1992 and a military convoy in Kozarac two days later. His statement also established that the large number of Serb refugees arriving affected the situation in Prijedor. The non-Serbs who were not violating the law and

wished to leave Prijedor were helped by the local authorities, whilst others were taken to Omarska.

During cross-examination the Prosecution highlighted that on 22 June 1992, the Crisis Staff made a decision that "only personnel of Serbian ethnicity may hold executive posts", a fact unrepresented in the the witness' statement. Consequently, Mandić explained that it was logical for any public security station or the army to replace staff and make new appointments. He pointed out that a man of Muslim faith continued to be a manager in GIK Mrakovica, thus demonstrating a discrepancy between the document and what occurred on the ground. Mandić denied that there was a prior decision to take over power, despite having acknowledged the contrary in his testimony in the *Karadžić* case. The witness confirmed that plans regarding a possible take-over were discussed when a member of a Serb wedding party was killed, but it was the telegrams that initiated this.

Mandić affirmed that the army shelled entire villages in response to the checkpoint incidents at Hambarine and Kozarac. He was not aware, however, that hundreds of Muslims were killed. During re-examination, Mandić explained that he knew of groups withdrawing from Hambarine towards Kurevo who needed to be brought to justice, and that this was the responsibility of the police and the army. It was further established that people were detained at Trnopolje for their own protection whilst the Omarska and Keraterm centres were investigation centres handled by the police. Although he had not witnessed such himself, Mandić had heard that there was torture against non-Serbs in Omarska and Trnopolje. Moreover, he was aware of the "mopping up" by the army and the police in Brdo, Biscani, Ljubija and Brezevo, but he was not aware that a large number of non-Serbs were killed. During re-examination, Mandić confirmed that there were no members of the Army of Republika Srpska in the Crisis Staff and that during his statement he had only testified regarding the main Crisis Staff of which he was a member, rather than all Crisis Staffs in the area.

The Defence called a witness who testified on 27 November under a pseudonym and with image and voice distortion. GRM130, as the witness was referred to during his testimony, first gave evidence about his service in the JNA in Croatia. He then described the attack launched by the Muslim forces of Srebrenica and Žepa against the Serb troops on 26 June 1995.

GRM130 described Mladić as a capable officer, very versed in military affairs and tactics, expert in the theory of warfare and the technical capacities of the weapons. The witness stated that Mladić expected his officers to be as prepared as he was from a military point of view, and that he always encouraged them to know their troops personally. Mladić would also go talk to the soldiers on the front lines. For this reason he had a positive reputation in the Serb army. The rest of GRM130's testimony was given in closed session.

Doctor Simo Bilbija's testimony was heard in court on 27 November and 1 December. During the war, Bilbija worked at the Sokolac Military Hospital and later at the Banja Luka Military Medical Centre. The witness reported that throughout the relevant period the staff of the hospital was ethnically mixed and that, in accordance with Mladić's orders, wounded civilians and soldiers were provided medical assistance without any discrimination based on their ethnicity.

Bilbija recalled that in 1992, Mladić himself ordered him to go to Srebrenica to take care of a Canadian soldier who had set fire to his own uniform and was gravely injured. In April 1993, the Doctor participated into a medic evacuation of wounded civilians and soldiers from Srebrenica, which took place by means of two helicopters and included about 160 patients.

Bilbija reported that the Srebrenica Medical Centre did not look any different from the medical centre where he was working during the war. The people of Srebrenica did not look skinnier or in worse conditions than people inhabiting other areas affected by the hostilities. He recalled talking to a doctor from Srebrenica who explained that they faced occasional shortage of water and medical supplies, but that they received supplies from Doctors Without Borders and via humanitarian air-drops.

The witness was shown a letter he had sent to Mladić and confirmed that, as he wrote to him in 1996, he still shared feelings of love and support for him, who always proved to be an honourable, righteous and brave soldier. During the first half of the testimony given by Bilbija, Mladić was removed from the courtroom for speaking out loudly and followed the remaining testimony via video link. Mladić was allowed

to re-enter the courtroom when the following witness took the stand.


Žarko Cvijić

Žarko Cvijić was called by the Defence on 1 December. He was a member of the Military Police Battalion of the 65th Protection Regiment where he was selected to be part of the escort personnel of Mladić. He recalled that after a few months of serving as his security guard, Mladić practically reversed the order of the Commander of the 65th regiment planning to transfer the witness to the front line. Mladić explained to him then that he had done so for the witness' sake: the witness was very young and it was safer for him to be a security guard than to be sent to the front line.

During cross-examination, Cvijić was asked about the civilian convoy seen in Konjević Polje Serb-held territory. He confirmed that the civilians were fleeing from horrible conditions of life in Srebrenica, but explained he could not give more details as he was only aware of the events occurring in his immediate surroundings. The OTP questioned his lack of knowledge and wondered how he could be unaware of the military advances of his army at that time in Srebrenica, especially since those advances caused the refugee situation that Cvijić witnessed. He repeated that he was only involved in the one episode described and therefore could not speak about others. The witness also confirmed that there were practically no men in the aforementioned civilian convoy. The OTP put it to him that this was because men of fighting age were held back in Srebrenica at the order of Mladić. The witness denied knowledge and recalled that a man was found in the convoy and brought to Mladić. He was scared, but Mladić told him to calm down and that he could continue his journey.

The OTP presented intercepted communications, allegedly showing that Mladić's intention was to kill military aged men. The Accused protested and was asked to leave the courtroom for the second time. The Defence objected the interpretation of the OTP; the Bosnian/Croatian/Serbian (BCS) version stated instead that 'men with weapons' were to be killed. Judge Orie agreed that this was very different to designating 'men of military age' to be killed.


Ratko Milojica

On 1 December, the Defence called its next witness, Ratko Milojica, a member of the VRS deployed in the 343 Prijedor Motorised Brigade. He was involved in the incident on 22 May 1992 at a checkpoint in Hambarine. Milojica, along with five other passengers, arrived in a civilian car. They were stopped and their military identifications and rifles were taken and they were fired upon. The witness testified that Milenko Lulić had attempted to run from the check point but was shot, whilst the others remained in the car, also being shot at. Milojica later discovered that Radovan Milojica and Rade Lukić were killed during the incident and that the other three men involved survived, but were seriously wounded. Despite the Prosecution submitting that the group had refused to surrender their weapons and refused to return to their barracks, the witness was determined that this was an incorrect assertion and that there was no excessive behaviour by the group.

During cross-examination Milojica confirmed that he was present in the car when Ivica Pavlović murdered the local catholic priest of Donja Ravska. The witness was interviewed about this murder by the investigative Judge of the Banja Luka Military Court in 1993, but testified that the statement shown in court, signed by him, was not his statement and that he had been threatened both before and during his interview. Subsequently, Milojica confirmed that his brother was on trial in 2006 in Banja Luka for another murder that he committed in August 1992 of a Muslim near Prijedor and that he appeared as a defence witness in this trial. Although the Prosecution highlighted that his testimony regarding his brother's beard appears incorrect, it was established that his re-direct evidence pertained to the fact his brother did not have a beard when they met on 23 July and that in other respects his evidence was factually correct.

The testimony of Milorad Sajić, who previously testified in the *Brđanin* case and in the *Karadžić* case, was heard in court on 2 and 3 December. In spring and summer 1992 Sajić was, *inter alia*, Commander of the Banja Luka Territorial Defence and member of the Crisis Staff of the Autonomous Region of Krajina

(ARK). In his statement and during his testimony, Sajić reported being present at the 16th Assembly of the Socialist Republic of Bosnia, where he saw Mladić asking the Minister of Defence, Bogdan Subotić, not to interfere with the organisation and functioning of the Bosnian Serb Army. On cross-examination, the witness admitted that one of the goals set out during the 16th Assembly was the separation of the Serbs from the other two national communities. Sajić also admitted that Brđanin, President of the ARK Crisis Staff, ordered that the Croats and Muslims holding leading posts in social and public organisations be replaced by "persons devoted to the Serbian people". The witness, however, explained that in many cases the Croats and Muslims kept working with the same companies but in less important positions. He also claimed that the Crisis Staff had no means to implement this order and to punish those who would not comply with it.

The witness acknowledged that the ARK Crisis Staff issued decisions on the rules governing the departure of people from the ARK and these decisions mainly dealt with accommodating the Serbs who had to move out from Slavonia and other areas. However, the Crisis Staff reportedly opposed any attempt to forcibly remove the population in violation of the law.


Vojislav Kršić

On 3 December, the Defence called its next witness, Vojislav Kršić, whose testimony continued on 4 December. Kršić, an officer in the Kotor Varoš Brigade, primarily testified that it was Serb civilians, rather than the army, who killed 150 Muslims in the village of Grabovica in November 1992. Kršić denied that the troops had killed the men, blaming instead Serb civilians who were seeking revenge. In both his statement and his testimony Kršić stated that in early November 1992, the Grabovica company captured a large group of Muslims from the village of Večići. Acting as Dušan Novaković's Assistant for Operations, Kršić went with him to Grabovica to help "bring in the column". Kršić testified that a group of men, women and children were taken to a football field where Commander Novaković was waiting. Subsequently, they were transferred to a local elementary school where women and children were put in rooms on the ground floor and men were taken upstairs. Kršić made a list of the women and children present, totalling around 40, and then of the men, totalling around 150. Moreover, Kršić claimed that no one was beaten in the school and that the prisoners' hands were not tied with wire. He noted that the following day the women and children were transferred to Travnik.

Since the witness was subsequently ordered to go back to Kotor Varoš, he had no first-hand knowledge of the fate of the Muslim men held in the Grabovica School, although he heard that there were "scenes of chaos there" and he was made aware that those people had been killed. In response to questions from the Judges, Kršić stated that he had no knowledge of the Bosnian Serb army having ever conducted a proper investigation into the crime in Grabovica. The Prosecution showed the minutes of the meeting of the Kotor Varoš War Presidency on 4 November 1992, which stated that "150 fighters and civilians" surrendered and that their fate would be decided by, *inter alia,* the Commander of the Kotor Varoš Brigade, Dušan Novaković. Kršić confirmed that Novaković was in charge of the prisoners in Grabovica, but only for as long as the prisoners remained there.

Prosecutor v. Hadžić (IT-04-75)

The trial in the *Hadžić* case has been adjourned for the past few weeks due to Goran Hadžić's ill health. The preparation for his Defence case has been ongoing. During the past few weeks, motions were granted for the admission of evidence for several witnesses, including Dušan Knežević, Nebojša Pavković, Ljubomir Novaković, Vitomir Devetak, Dušan Starević and Milan Knežević. Furthermore, new documents were sought to be added to the Defence to the Rule 65 *ter* exhibit list, including documents from the Beli Manastir Criminal Court. The proceedings are scheduled to resume on 12 January 2015.

Prosecutor v. Tolimir (IT-05-88/2-A)


Judge Nyambe

On 12 November, the Appeals Chamber heard arguments of the parties in relation to the appeal lodged by Zdravko Tolimir against the Trial Chamber's Judgement of 12 December 2012. The Majority, Judge Prisca Matimba Nyambe dissenting, had found that Tolimir participated in two Joint Criminal Enterprises (JCEs), including a JCE to murder the able bodied men of Srebrenica and a JCE to forcibly remove the Bosnian Muslim population from Srebrenica and Žepa. The Chamber had found the Accused guilty of genocide, conspiracy to commit genocide, extermination, murder, persecution and inhuman acts through forcible transfer and had sentenced Tolimir to life imprisonment.

The Defence argued 25 grounds of appeal. The Prosecution did not file any appeal. At the appeals hearing, arguments were presented in relation to seven questions posed by the Appeals Chamber in its *Addendum to the Scheduling Order for Appeal Hearing* of 31 October 2014. In accordance with the Decision of the Appeals Chamber of 20 July 2014, Aleksandar Gajić, Tolimir's Legal Advisor, made oral submissions on the Accused's behalf.

Answering the first question posed by the Appeals Chamber, whether the Bosnian Serb operations in Žepa constituted genocidal acts if viewed separately from the killings in Srebrenica, the Defence argued that regardless if perceived separately or together with the operations in Srebrenica, the operations of the Arm of Republika Srpska (VRS) in Žepa cannot be considered as acts of genocide. There is no evidence that would serve as a proper basis to conclude that there was a genocidal intent with regard to the population. Further, there is not a single act that would constitute the *actus reus* of genocide.

The Defence argued that the Majority committed an error in law by considering forcible transfer as an *actus reus* of genocide and in defining "serious mental harm" in the context of Article 4 of the ICTY Statute. Indicating that the Chamber relied on the First Draft of the Genocide Convention in which the notion of genocide was substantially different from the definition in the Statute of the ICTY and the final Genocide Convention, the Defence argued that in terms of the Genocide Convention a notion of serious mental harm cannot be defined as harm that makes an individual unable to lead a normal and constructive life. Instead, the harm has to be serious enough in order to pose a threat to a total or partial destruction of a group, understood in terms of its biological or physical survival, namely "permanent impairment of mental facilities".

The Defence argued, *inter alia*, that not a single act of the Army of Republika Srpska (VRS) in Žepa can be qualified as an *actus reus* of genocide and that there is no evidence on the basis of which genocidal intent can be inferred. The Defence underlined that those two operations are different and can be qualified, from a legal point of view, in different manners. The Trial Chamber should have established whether the population of Žepa was exposed to acts that constitute genocide separately from the population of Srebrenica.

The Defence further argued, *inter alia*, that the population of Žepa was transferred to a territory on which an identical national, ethnical, religious and racial group resided and which was under the control of the government "which they considered to owe loyalty to and in which they were not exposed to circumstances conducive to their destruction". The Trial Chamber found that the very transport was executed with the escort of the United Nations Protection Force (UNPROFOR) troops and that all those who were transported were listed by UN representatives and local Muslims. Furthermore, it was argued by the Defence that General Ratko Mladić ordered that all Muslims transported may not be maltreated and that nothing may be "taken away from them". Tolimir's behaviour and role during the Žepa operation and the transport of the civilian population from Žepa was positive, as evidenced by the public announcement made on 20 July, inviting the population to return to the enclave, which was ordered by Tolimir.

The second question posed by the Appeals Chamber was, whether the Trial Chamber erred in finding that the Bosnian Serb Forces killed Mehmet Hajrić, Amir Imamović and Avdo Palić with the specific intent of

destroying part of the Bosnian Muslim population as such. The Defence indicated that the Majority's decision contained a number of factual and legal errors in relation to findings concerning the killings of these three members of the Žepa War Presidency.

According to the Defence, the Majority's finding is not in line with the jurisprudence of the ICTY, stating that the act of genocide, by its very nature, requires "intent to destroy at least a considerable, that is significant, part of a group". The Defence argued that in the absence of any proof of the circumstances of their death, such as who, when and why they killed them, one cannot arrive at a reliable conclusion that they were killed with genocidal intent. Addressing alleged erroneous findings of the Majority, the Defence noted that inferences based on the moment of their alleged killing and the fact that these persons were not of significant importance for the survival of the Žepa Muslims before or after the transfer of the population, do not show that their alleged murder satisfies the standard formulated by the Trial Chamber as "intentional destruction of a limited number of persons selected for their influence".

The third question posed by the Appeals Chamber was, whether the Trial Chamber erred in relying, *inter alia*, on Tolimir's position as the Chief of the Sector for Intelligence and Security Affairs and his professional control of subordinate security and intelligence organs in finding that Tolimir: (i) was aware of his subordinate's involvement in the JCE to commit murder; and (ii) intended to participate in the JCE to murder. The fourth question was, whether the Trial Chamber erred in finding that the only reasonable inference from the evidence on the record was that Tolimir: (i) intended to participate in; and (ii) significantly contributed to the JCE to commit murder.

The Defence addressed a number of errors in fact and law allegedly contained in the Trial Chamber's Judgement. An important determining factor of all findings concerning Tolimir's alleged knowledge of the operation to murder, intention to participate and contribution to the JCE to commit murder, was Tolimir's institutional position within the VRS and his relationship with Mladić. The Defence argued that the Trial Chamber confused the notions of basic military principles and rules, including the concepts of command, direction and control. Furthermore, the Defence noted that the way the Trial Chamber made inferences is contrary to the standard established by the Tribunal, as for example in the *Krstić* case. In the absence of any proof of the communication between Tolimir and members of the intelligence and security organs during the relevant period concerning the operation to commit murder, the Trial Chamber cannot conclude beyond reasonable doubt that "it would be inconceivable that Tolimir had not been aware of the operation to kill people". The Defence argued that Tolimir's acts in the relevant period cannot provide a reasonable basis for inferences that he contributed to the JCE to commit murder but rather as evidence which provides reasonable grounds to believe that Tolimir had no information about the alleged operation to commit murder.

The Defence argued that the Trial Chamber's reasoning contained an error in law that is based on the assumption that when somebody in the army issues an unlawful order, it is executed in a military way according to the normal hierarchy and the standard procedures in the army. It was pointed out that the VRS was not an army that was based on obedience but on duty. It was the duty of the officers to refuse an unlawful order. Relying on the evidence concerning Tolimir's reputation, Gajić asked whether "[c]onsidering that a criminal act was being committed, would somebody who was known to wish to protect Prisoners of War (POWs) be informed that harm was going to be done to these prisoners?"

The fifth question of the Appeals Chamber was, whether Tolimir could be held liable for his role in the Srebrenica killings under a mode of liability other than commission through participation in a JCE. The Defence argued that since in the relevant period Tolimir did not know about the operation to commit murder, did not participate in it and did not intend to participate, there is no ground to convict Tolimir under other modes of liability.

The sixth question of the Appeals Chamber addressed, whether Tolimir could remain convicted of genocide through his participation in the JCE to forcibly remove. The Defence, *inter alia*, emphasised the jurisprudence of the Appeals Chamber in the Srebrenica cases, where it ruled that the operation of forcible removal does not sufficiently demonstrate the

intent of the principal perpetrators to destroy a protected group, meaning that forcible removal in and of itself does not constitute genocide.

Answering the seventh question of the Appeals Chamber, namely whether the Trial Chamber erred in relying on Prosecution Exhibit 488 to infer Tolimir's genocidal intent, the Defence drew attention to a number of very serious errors in the translation of that document. Even if the translation remains unchanged, this document does not provide a basis for the inference that the objective of the alleged proposal was the destruction of the Bosnian Muslim population in Žepa. Exhibit P488 contains a proposal that was not and could not be implemented. Looking at the totality of events in Žepa, there is a conspicuous absence of any objective to destroy the civilian population.

The Prosecution began their oral arguments by answering the question posed by Judge Theodor Meron, concerning the finding in the *Popović et al.* Trial Judgement, that the forcible transfer operation was not found to be a condition deliberately imposed to bring about the physical destruction of the group. The Prosecution's answer was that the difference between the findings by in the Trial Judgement in *Popović et al.* and *Tolimir* is explained by the fact that those two cases were charged differently.

In answer to the question of the Appeals Chamber concerning Tolimir's alleged participation in the JCE to commit murder, Peter Cramer from the Prosecution argued, *inter alia*, that Tolimir's acts, conduct and knowledge need to be viewed in light of his position and role as the Chief of the Sector for Intelligence and Security Affairs, and that his position was a relevant factor in determining the scope of the Tolimir's participation in the common purpose. Addressing the nature of the crime, the Prosecution argued that the VRS acted in accordance with the line of subordination and principle of unity of command, particularly underlining Tolimir's close relationship with Mladić. Asked by Judge Meron to provide "the strongest argument [...] for genocidal intent on Žepa alone", Kremer argued that this is "the first case where Žepa evidence has been fully integrated into a finding of genocide" and that "instead of looking at it contextually as a whole", he was "unfortunately being asked to look at this piece after -- without -- and ignore everything that went before, and it is the context of the entire operation". The Prosecution noted that there were two genocidal acts, namely "the killing of three leaders and [...] the mental harm to the people who were transported out". Kremer indicated that "this case has to be looked at through the lens of the forcible transfer operation and the murder operation and evaluated as a whole".

Kyle Wood from the Prosecution addressed the issue of alternate modes of liability, arguing that there is a place for conviction of Tolimir for aiding and abetting genocide and convictions under other modes of liability in accordance with Article 7 of the Statute. In arguing commission by omission, Wood particularly emphasised the duty of Tolimir as an Assistant Commander to protect Srebrenica's POWs.

In reply, the Defence particularly emphasised the proper understanding of the role of Assistant Commander and that the alleged professional subordination does not involve real-time control of security and intelligence officers from various levels of command. As noted by a witness in the case, "all orders follow the system of command, whereas security organs from the lower command do not receive orders from the higher command".

The Defence criticised that the Prosecution views the whole case through the prism of killings in Srebrenica and argued, *inter alia*, that this was not a systemic operation that lasted for a long period, but only for a few days, and that everything was organised during those few days. At that time, Tolimir was heavily involved in the Žepa operation and there is no direct or circumstantial evidence that Tolimir was informed about any operations to commit murder.

The appeals hearing ended with a personal address of the Accused, who stated that the ICTY applied various and different criteria "to various sides on the conflict because of the partiality of NATO commanders, UNPROFOR commanders, and all the relevant international structures which were engaged in the former Federal Republic of Yugoslavia".

Prosecutor v. Prlić *et al.* (IT-04-74-A)

On 18 November, the President of the ICTY, Judge Theodor Meron, pursuant to Rule 19(A) of the Rules of Procedure and Evidence, assigned Judge Bakone Justice Moloto to replace Judge Patrick Robinson. The Bench in *Prosecutor v. Jadranko Prlić et al.* is now composed as follows: Presiding Judge Theodor Meron, Judges Carmel Agius, Fausto Pocar, Liu Daqun and Bakone Justice Moloto.

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

On 28 November, President Theodor Meron, considering Articles 12 and 14 of the Statute of the Tribunal and Rule 19 (A) of the Rules of Procedure and Evidence, ordered that Judge Arlette Ramaroson replace Judge Khalida Rachid Khan in the *Stanišić & Simatović* case. The Appeals Chamber is now composed of Judges Fausto Pocar (Presiding), Carmel Agius, Liu Daqun, Arlette Ramaroson and Koffi Kumelio A. Afanđe.

LOOKING BACK...

International Criminal Court

Five years ago…

On 10 December 2009, the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, visited the Democratic Republic of the Congo (DRC). It was the first visit of the ICC President to the DRC. The visit lasted five days and provided an opportunity to strengthen the country's cooperation and to enhance local awareness in order to fulfill the ICC's mandate in the DRC.

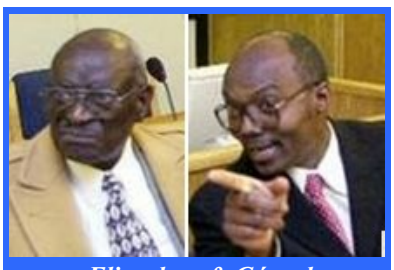
President Song addressed the members of the Parliamentarians for Global Action (PGA) during its conference on Justice and Peace in the Great Lakes' Region and Central Africa. He then traveled to Bunia, the capital of the Ituri District in eastern Congo, where he met with members of communities affected by the crimes under investigation before the ICC and with local authorities, members of local tribunals and human rights organisations and journalists.

He concluded his journey in Fataki, one of the sites of conflict in 2003, with a town-hall style meeting with the general public, including local authorities, religious and traditional leaders, teachers, women's groups representatives and local media.

International Criminal Tribunal for Rwanda

Ten years ago…

On 13 December 2004, the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR) upheld the convictions of a senior Pastor of the Seventh Day Adventist Church in Mugonero, Elizaphan Ntakirutimana, and his son, Gérard Ntakirutimana. Their sentences of 10 and 25 years in prison, respectively, pronounced by the Tribunal's Trial Chamber I on 19 February 2003, were also confirmed.



Elizaphan & Gérard Ntakirutimana

Elizaphan and Gérard Ntakirutimana appealed all factual findings against them and also alleged a number of legal errors. The Prosecution presented six grounds of appeal including errors of law relat-

ed to the genocide convictions Elizaphan and Gérard Ntakirutimana. The Prosecution requested that the Appeals Chamber increase the sentence of Elizaphan Ntakirutimana to 20 years and that of Gérard Ntakirutimana to life imprisonment.

In its Judgment, the Appeals Chamber affirmed the conviction of Elizaphan Ntakirutimana for aiding and abetting genocide and entered a conviction for aiding and abetting extermination as a crime against humanity after reversing his acquittal for the events which occurred in Bisesero. However, his conviction for aiding and abetting genocide for his participation in events which occurred at Mugonero was quashed. In the case of Gérard Ntakirutimana, the Appeals Chamber affirmed the conviction of genocide and entered a conviction for murder as a crime against humanity in relation to the killing of Charles Ukobizaba. Gérard Ntakirutimana was also convicted by the Appeals Chamber for aiding and abetting extermination as a crime against humanity for the procurement of gendarmes and ammunition for the attack on the Mugonero complex. On 6 December 2006, Elizaphan Ntakirutimana became the first person convicted of genocide to be released from prison after completing his sentence. He died the following month.

Since Gérard Ntakirutimana had served more than two-thirds of the sentence and had shown signs of rehabilitation, President Theodor Meron granted his early release on 24 April 2014.

International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago…

The Judges of the International Criminal Tribunal for the former Yugoslavia (ICTY) held their 21st Plenary Session on 15, 16 and 17 November 1999, during which they amended 28 Rules and adopted three new Rules for the Tribunal's Rules of Procedure and Evidence. On 7 December 1999, these changes came into effect.

In general, the changes were aimed at speeding up the proceedings and making more efficient use of court time. In particular, Rule 15 *bis* was amended regarding the procedure to be followed when a Judge is unable to continue sitting on a part-heard case in order to provide some flexibility in appropriate circumstances. The amendment removed the requirement of permission from the President or agreement by the parties to take a deposition in the absence of the Judge, but still provided that the parties must be heard. The amendment also provided for the hearing of the case to continue in the absence of that Judge for a period not exceeding three days. Subsequently, another Judge might have to be assigned to the case, or the proceedings adjourned.

Rule 65 was amended to remove the requirement of 'exceptional circumstances' from the conditions of provisional release. Prior to the amendment, detainees had to establish the existence of 'exceptional circumstances' that warranted their provisional release. The requirement of 'exceptional circumstances' was also removed from Rule 71, making the taking of depositions easier.

NEWS FROM THE REGION

Bosnia and Herzegovina

Milorad Trbić Released

The Constitutional Court of Bosnia and Herzegovina (BiH) has quashed the verdict under which Milorad Trbić, Assistant Chief for Security with the Zvornik Brigade of the Republika Srpska Army, was sentenced to 30 years imprisonment for the 1995 Srebrenica genocide. Trbić was initially sentenced by the Court of BiH in January 2011 for taking part in illegal arrests, detention, executions, burial and concealment of bodies of Bosniaks from Srebrenica from 10 July to 30 November 1995. He was the first person sentenced for genocide. In quashing the Bosnian State Court's verdict, the Constitutional Court found that the rights of the appellant under the European Convention were abused due to the incorrect application of the law. The Con-

stitutional Court found that the Bosnian State Court incorrectly applied the Bosnian Criminal Code. The Constitutional Court has released 19 other persons sentenced by the Bosnian State Court who were also incorrectly tried under the Bosnian Criminal Code. In those cases, the Bosnian State Court renewed the trials and pronounced shorter sentences. The renewal of the trials followed a ruling by the European Court for Human Rights in the case of *Maktouf and Damjanović* that the Bosnian State Court violated the accused persons' rights by retroactively applying the 2003 Bosnian Criminal Code.


Milorad Trbić

Trbić was initially indicted by the ICTY in March 2005 and represented by Lead Counsel Colleen Rohan, ADC-ICTY President. He was transferred to the State Court of BiH in June 2007 in accordance with Rule 11 bis.

Croatia

Croatia Indicts Soldier for Operation Storm Killings

Former soldier Rajko Kričković was charged with shooting two Serbian civilians and burning another civilian alive in the village of Kijani after the Croatian Army's Operation Storm in August 1995. Kričković was indicted for shooting a brother and sister, Radomir and Mire Sovilj, and seething their house on fire with their 73-year-old mother, Mara Sovilj, inside. The crimes were committed in the village of Kijani, near Gračac in the central Lika region, which was also where Kričković was born. Some have speculated that his crimes were an act of revenge, because Kričković came to Kijani to find the whole village burned except the house of the Sovilj family, which he regarded as proof of their collaboration with Serbian forces. Operation Storm saw Croatian troops and special police forces take back a large part of Croatian territory from Serbian control, killing over 600 civilians and resulting in the expulsion of more than 200,000 Serbians.

The Croatian judiciary has so far delivered only one final judgment for war crimes committed during and after Operation Storm. Former Croatian soldier Božo Bačelić was sentenced in May to seven years imprisonment for killing two civilians and one prisoner of war in Prokljan.

Kosovo

Kosovo Ready for New War Crimes Court

Kosovo Prime Minister Hashim Thaci has told the United National Security Council (UNSC) in New York that Priština was now ready to set up a new Special Court to deal with serious allegations against top Kosovo Liberation Army officials. Prime Minister Thaci told the UNSC session on Kosovo that "we will establish the special court to reveal the truth about the suspicions of war crimes. Kosovo believes in justice". The new Court is to be set up in The Netherlands and will hear cases arising from the recent European Union Special Investigative Task Force report, which stated that unnamed Kosovo Liberation Army officials would face indictments for a "campaign of persecution that was directed against the ethnic Serb, Roma and other minority populations of Kosovo and toward fellow Kosovo Albanians" believed to be collaborators with the Belgrade regime. The alleged crimes include killings, abductions, illegal detentions and sexual violence.


Hashim Thaci

The new Special Court was expected to begin its work in January 2015, but the political crisis and lack of government since national elections in June have delayed the establishment of the new court. The new Special Court will be based in the Netherlands and its Prosecutors and Judges will be international. However, it will operate under Kosovo's laws. President Atifete Jahjaga has already promised that the laws concerning the establishment of the new court will be adopted as soon as possible and will be first on the agenda of the new Parliament. On 11 December, it was announced that United States lawyer David Schwendiman will be the Chief Prosecutor of the new Special Court. He was last in charge of investigating fraud and corruption in Afghanistan.

NEWS FROM OTHER INTERNATIONAL COURTS

International Criminal Court

Aimel Yousfi-Roquencourt, Office of the Public Counsel for the Defence

The views expressed herein are those of the author alone and do not reflect the views of the ICC.

The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08)

Trial Chamber III: Defence Request for Relief for Abuse of Process

Jean-Pierre Bemba Gombo

On 25 November, Jean-Pierre Bemba Gombo's Defence filed a request for relief for abuse of process before Trial Chamber III. The Defence submitted that Bemba's "right to a fair, impartial and independent trial have been irreparably ruptured". It is argued, *inter alia*, that the "Prosecution has engaged in actions which violated Bemba's right and/or the right of his Defence to: (i) privileged communications, as protected by rule 73(1) of the Statute; (ii) privileges and immunities, as protected by Article 48(4) of the Statute; and (iii) receive timely disclosure of Article 67(2) and Rule 77 information, as pertains to Prosecution witnesses and the Defence case". Moreover, the Prosecution is said to have "abused its prosecutorial powers to the detriment of Bemba's rights under Statute, including the right to equality of arms, and adversarial proceedings".

The Defence submits that the Article 70 investigation has affected the *Bemba Main Case* in allowing the Prosecution to have access to privileged information through different avenues (State authorities, the Detention Unit, the Independent Counsel), thus enabling them to use such information in the *Main Case* and to make *ex parte* submissions, leaving the Defence "completely in the dark".

Furthermore, the Defence points to a failure of safeguards to ensure that the information obtained through the Article 70 investigations was not used in the *Main Case* as "the [Article 70] Single Judge failed to take any steps to protect such information from disclosure to the Prosecution". They deem the appointment of an Independent Counsel by the Single Judge to review privileged material constitutes an "abuse of judicial discretion" as not supported by the ICC texts; further, the Defence submits that this Independent Counsel "failed to act as an independent, impartial, and most importantly, effective filter as concerns the transmission of privileged materials to the Prosecution".

As a consequence, the Defence states that there is now "an appearance of complete unfairness and lack of transparency" such that the proceedings in the *Main Case* are irretrievably compromised. The Defence therefore calls for a permanent stay of the proceedings and Bemba's immediate release to Belgium.

Rome Statute

Article 70

The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally:

(a) Giving false testimony when under an obligation pursuant to article 69, paragraph 1, to tell the truth;

(b) Presenting evidence that the party knows is false or forged;

(c) Corruptly influencing a witness, obstructing or interfering with the attendance or testimony of a witness, retaliating against a witness for giving testimony or destroying, tampering with or interfering with the collection of evidence;

(d) Impeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties;

[…]

This Defence filing consisted of 87 pages and, as over the standard 20-page limit for motions, it contained a request for leave to exceed the page limit. The Chamber has since rejected this filing (along with an addendum filed by the Defence), and ordered the Defence to re-file a consolidated motion and addendum, not to exceed 40 pages.

The Prosecutor v. Thomas Lubanga Dyilo (ICC-01/04-01/06)

Letícia Borges Thomas, Lucy Turner, Aimel Yousfi-Roquencourt,
Office of the Public Counsel for the Defence

The views expressed herein are those of the author alone and do not reflect the views of the ICC.

ICC Appeals Chamber Upholds Lubanga's Conviction and Sentence


Thomas Lubanga Dyilo

On 1 December, the Appeals Chamber upheld the 14 March 2012 conviction of Thomas Lubanga Dyilo for enlisting and conscripting of children under the age of 15 years into the *Force patriotique pour la libération du Congo* [Patriotic Force for the Liberation of Congo] and using them to actively participate in hostilities in the context of non-international armed conflict during 2002 and 2003 (Article 8(2)(e)(vii) of the Rome Statute). The Appeals Chamber also affirmed the previous sentence of 14 years (ICC-01/04-01/06-2901) and refused both the Prosecutor's appeal to raise the sentence and the Defence appeal to reduce it.

The substantive decision was issued by a Majority, with two dissents. Judge Anita Ušacka dissented on the basis of insufficient evidence regarding identities, ages and service within the Union of Congolese Patriots; in the Judge's view, Lubanga's conviction could not stand. Judge Sang-Hyun Song partially dissented, relating to an interpretation of Article 8(2)(e)(vii). Judge Song also appended a partial dissent to the Sentencing Decision related to factors of consideration and in conjunction with his dissent on the interpretation of Article 8(2)(e)(vii).

A fuller analysis of this Appeals Judgement and Sentencing Appeal will be published in an upcoming issue of the ADC-ICTY newsletter.

The Prosecutor v. Uhuru Kenyatta (ICC-01/09-02/11)

Office of the Public Counsel for the Defence

The views expressed herein are those of the author alone and do not reflect the views of the ICC.

Trial Chamber V (B): Charges Against Kenyatta Dropped

The ICC Prosecutor has withdrawn all charges against Uhuru Kenyatta, President of Kenya. The Prosecutor dropped the charges on 5 December, following the Trial Chamber's rejection of the Prosecutor's request for further adjournment of the case in which the Chamber directed the Prosecution to either withdraw the charges in the case or certify that the evidence was sufficient to take the case to trial. Earlier this year, the Trial Chamber had vacated the trial commencement date of 5 February 2014 to allow the Prosecution to conduct further investigations. The intervening time period saw cooperation discussions between the Prosecution and the Government of Kenya; however, the Trial Chamber held that, in the interests of justice, it would not be appropriate to grant a further adjournment in the case.


Uhuru Kenyatta

The Prosecution has withdrawn the charges "without prejudice", leaving the possibility of the Office of the Prosecutor to bring new charges against Kenyatta at a later date if warranted by additional evidence.

Special Tribunal for Lebanon

STL Public Information and Communications Section

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Prosecutor v. Ayyash *et al.* (STL-11-01)

On 13 and 14 November, the parties discussed the admission of documents related to the second part of the Prosecution's case and to the testimony of Marwan Hamade. The Trial Chamber issued an oral decision on 14 November ruling that it will hear the evidence of Marwan Hamade in the week of 17 November as foreshadowed.

Hamade is a member of the Lebanese Parliament and a former minister in different cabinets. He survived an assassination attempt on 1 October 2004. Hamade testified about relations between Syria and Lebanon from the Taif Agreement up to 2004, as well as the political situation in Lebanon during this period. He also described his relationship with Hariri, and the rapport which Hariri had with both Lebanese and international officials. Hamade detailed the deteriorating relations between Hariri and Lebanese officials focusing on meetings which Hariri had with Syrian officials, including President Bashar Al-Assad, in December 2003, and in Damascus on 26 August 2004.

In addition, Hamade testified about a number of important political events in 2004. These included discussions to extend the mandate of the then President Emile Lahoud by amending the Lebanese Constitution, the passing of United Nations Security Council Resolution 1559 on 2 September 2004 and the resignation of a number of ministers from Hariri's cabinet including Hamade, Ghazi Aridi, Abdullah Farhat, and Fares Boueiz. The Prosecution witness also described his political activities after his resignation from the Council of Ministers. The direct examination and cross-examination of the witness continued on 8 December 2014.

On 6 November, the Pre-Trial Judge granted the status of victims participating in the proceedings (VPP) to two individuals following the filing of applications by the Registry's Victims' Participation Unit on 28 October this year. The total number of VPPs in the *Ayyash et al.* proceedings is 70.

The 12 sections of the next phase of the Prosecutor's case presented in the 11 November hearing are:

1. Background evidence of certain political events and developing tensions.
2. Evidence relating to Hariri's movements and meetings during the relevant period.
3. Materials related to the origin and nature of the network of phones that are allegedly implicated in the conspiracy to assassinate the former Lebanese Prime Minister.
4. Evidence related to Abu Adass, the alleged author of the false claim of responsibility for the attack, and his subsequent disappearance.
5. The purchase of the Mitsubishi Canter van, which the Prosecution claims was used to conceal and detonate the explosives on the day of the attack.
6. Evidence taken from the business records of Alpha and MTC group, the two Lebanese mobile telephone service providers, in the form of call sequence tables, cell tower locations, and the best predicted server cover associated with each cell site.
7. Expert evidence relating to cell site analyses.
8. The underlying components of a piece of demonstrative evidence which the Prosecution proposes for use in coordinating, organising and displaying the conduct of the Accused through their phone use.
9. Materials related to the use of the network of phones in the surveillance of Hariri, those who visited him, and in the preparations for the assassination including the abduction of Abu Adass.
10. Evidence regarding the delivery of the false claim of responsibility.
11. Proposed expert evidence regarding the operation participated in by the five Accused and their co-conspirators.
12. Expert evidence as to the falsity of the video delivered to the Al Jazeera offices during the afternoon of 14 February 2005.

Contempt Case against AL JADEED [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V.) Karma Mohamed Tahsin Al Khayat and (STL-14-05)

During the status conference on 3 November in the contempt case against *Al Jadeed S.A.L. and Khayat* the Contempt Judge, Judge Nicola Lettieri, made an oral order on the Defence motion of 24 October 2014 that sought the disclosure of certain documents and filings.[1] In his order, Judge Lettieri denied the request for disclosure of the reports submitted by the *Amicus Curiae* Prosecutor (*Amicus*) to Judge Baragwanath in his capacity as the initial Contempt Judge, noting that Judge Lettieri himself does not have access to those reports as they were part of the preparation of the case. Moreover, Judge Lettieri clarified that there is a distinct difference between the investigation phase of this contempt case and that of the main proceedings.

However, the Contempt Judge agreed with the Defence that a review of other filings in the case that have remained confidential and *ex parte* is appropriate. Judge Lettieri therefore ordered the *Amicus* to review all the confidential and *ex parte* filings in case number 14-05 and submit to him a list of all confidential and *ex parte* filings. Judge Lettieri also requested proposals on whether each filing can be reclassified as confidential or public, as well as proposals of any necessary redactions by 14 November. The *Amicus* accordingly filed his submissions on 12 November.

President Judge Baragwanath was seized of a request filed by the Defence for Al Jadeed S.A.L. and Al Khayat pursuant to Rule 32 (B) of the Rules of Procedure and Evidence (RPE), seeking the disclosure of (i) all information and documentation about any trainings, seminars or meetings that were held in the Chambers of the Tribunal on the subject of whether the Tribunal may exercise jurisdiction over legal entities, including on whether the Rules could be amended; and (ii) any papers or other documentation circulated within the Chambers on this topic. On 13 November, the President ruled that the Defence had no right to the material sought and therefore dismissed the request. The President found that the Defence has not demonstrated any right to the material it seeks nor has it shown the existence of any exceptional circumstances which militate in favour of disclosure.

With respect to two *Amicus* witnesses, witnesses AP05 and AP06, the *Amicus* sought (i) protective measures *vis-à-vis* the public and the media and (ii) non-disclosure of parts of their witness statements to the Defence.[2] The Defence did not oppose the requested protective measures concerning the public and the media, but opposed non-disclosure to the Defence and requested the disclosure of both statements in non-redacted form. On 17 November, the Contempt Judge granted the motion in part, and ordered the *Amicus* to disclose to the Defence within seven days of this decision the non-redacted witness statements of witnesses AP05 and AP06. In addition, Judge Lettieri ordered that a number of protective measures be in place for witnesses AP05 and AP06.

On 28 November the Contempt Judge granted the urgent motion filed by the *Amicus* requesting the reconsideration of part of the decision of 14 November 2014 in part, and partially reconsidered the Decision of 14 November. The Contempt Judge ordered i) the *Amicus* to disclose to the Defence within seven days the witness statements of witnesses AP05 and AP06 with the redactions and counterbalancing measures as set out in paragraph 16 of the decision and ii) to notify the Contempt Judge of such disclosure once completed. He also reminded the Defence of its confidentiality obligations and dismissed the motion in all other respects.

[1] For more information on the Defence request see the October Month Bulletin at http://www.stl-tsl.org/en/media/stl-bulletin.

[2] Read more about the *Amicus*' request in the October Monthly Bulletin at http://www.stl-tsl.org/en/media/stl-bulletin.

Contempt Case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin (STL-14-06)

On 6 November, Contempt Judge Lettieri has ruled that the STL has jurisdiction to hear cases against natural persons in the case against *Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin*. Judge Lettieri also concluded that under Rule 60 *bis*, the Tribunal does not have jurisdiction to hear cases of obstruction of justice against legal persons (corporate entities).

The Contempt Judge's decision comes after Counsel assigned to represent the rights of the Accused filed a preliminary motion on 18 August, challenging the Tribunal's jurisdiction to hear cases of contempt against *Akhbar Beirut S.A.L. and Al Amin*. The response by the *Amicus*, which argued to the contrary, was filed on 29 August.

On 13 November, the *Amicus* submitted his interlocutory appeal against the decision on the Defence motion challenging the STL jurisdiction. The certified question on appeal is whether the Tribunal in exercising its inherent jurisdiction to hold contempt proceedings pursuant to Rule 60 *bis* has the power to charge Akhbar Beirut S.A.L., a legal person, with contempt. The *Amicus* requested that the jurisdiction decision be reversed and the charges against Akhbar Beirut S.A.L. be reinstated. The Defence response was submitted on 24 November.

On 14 November, in accordance with Rules 60 *bis* (M) and 30 (B) of the RPE and Article 2 of the relevant Practice Direction, the President designated an Appeals Panel to look into the interlocutory appeal filed by the *Amicus*. The Panel is composed of Judge Afif Chamseddine (Presiding), Judge Janet Nosworthy and Judge Ivana Hrdličková.

All filings in the Case STL-14-06 are available at http://www.stl-tsl.org/en/the-cases/stl-14-06

International Criminal Tribunal for Rwanda

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

20th Anniversary of the ICTR

On 5 December, the ICTR celebrated its 20th Anniversary and establishment of its new legacy website in the lobby of the International Criminal Tribunal for the former Yugoslavia (ICTY) in The Hague. Roman Boed from the Appeals Chamber Support Section opened the event as the Master of Ceremonies with a moment of silence in honour of the victims of the Rwandan genocide.

Judge Joensen

The first speaker of the morning, ICTR President Judge Vagn Joensen, touched on the accomplishments of the ICTR and emphasised that it is important to reflect on the work of the Tribunal and on what occurred in Rwanda. President Joensen, noted that the ICTR was the first Tribunal to define the crime of rape in international law and its staff, Judges and interns helped the Tribunal develop over time. President Joensen concluded his speech by highlighting the importance of maintaining the legacy of the ICTY alive with a new online platform.

Jean Pierre Karabaranga

The Ambassador of the Republic of Rwanda to the Netherlands, Jean Pierre Karabaranga, focused his speech on the Rwandan genocide. He indicated that the genocide had a heavy physical and psychological toll. Karabaranga stated that it is important to "honour those who perished and give comfort to those who survived". He noted that the creation of the ICTR positively influenced the Rwandan legislation, leading to the abolition of the death penalty in 2007 and the frequent transfer of ICTR cases to the Rwandan Courts. However, Kara-

banga reminded that there remain various concerns regarding the ICTR's work. He noted that there are still many fugitives at large and implied the lack of effort from national jurisdictions to apprehend and prosecute them. Karabanga finalised his speech highlighting the importance of providing people with information about the genocide and stated that the archives of the ICTR belong to the people of Rwanda.

Hassan Bubacar Jallow, ICTR Chief Prosecutor gave a brief overview of the creation of both the ICTY and the ICTR, which are in his view synonymous of international law. He indicated that it is essential that fugitives are arrested and that there is a "legal responsibility on all states to persecute and extradite fugitives" in order to achieve closure.


Judge Agius

ICTY Vice-President, Judge Carmel Agius, noted that the ICTR and ICTY share a common purpose of prosecuting crimes, as well as the Appeals Chamber and most importantly the same commitment to uphold the Rule of Law. He noted, that many observers doubted the purpose of both Tribunals and despite the Tribunals having faced many challenges throughout the years, they have achieved far more than many expected. Judge Agius concluded his speech touching upon the creation of the the Mechanism for International Criminal Tribunals, noting that its creation shows a very clear message, that the closing of the ICTY and ICTR does not translate into impunity.

Sander Janssen, representing the Ministry of Foreign Affairs of the Netherlands, shared the experience of being a host nation to a great number of tribunals and international organisations. He explained that as a host nation, the Dutch Ministry of Foreign Affairs assists and intervenes when necessary with the various national governmental bodies. Janssen emphasised that the international Tribunals have changed the world also contributing to the expansion of the international community in The Hague.


Kate Mackintosh

Kate Mackintosh, the ICTY's Deputy Registrar, was the last speaker of the event. She shared her experience when arriving in Rwanda, "[g]rasping the horror was the real challenge" in order to help prosecute the crimes. Mackintosh saluted the courage of the witnesses, the work of the staff and the contributions of the Defence in the work of the Tribunals. Mackintosh, concluded her speech by emphasising that the creation of a user friendly platform for the public is essential and that today accessing the ICTR information has never been easier.

The ceremony was concluded with a 10 minute video about the work of the Tribunal and an introduction to the ICTR's new website available at: http://www.unictr.org/. The event was attended by ADC-ICTY President Colleen Rohan and ADC-ICTY members who have practiced before the ICTR.

DEFENCE ROSTRUM

Expert Initiative on Promoting Effectiveness at the International Criminal Court

By Molly Martin & Bas Volkers

On 2 December, the report of the Expert Initiative on Promoting Effectiveness at the International Criminal Court was launched at The Hague Institute of Global Justice. The Expert Paper was the result of an experts meeting held in Glion, Switzerland on 3-5 September 2014, by invitation of the Swiss government to discuss the topic "Strengthening the Proceedings at the International Criminal Court (ICC)".

The final report was drafted by a group of international criminal law experts: Guénaël Mettraux, Judge Shireen Avis Fisher, Dermot Groome, Alex Whiting, Gabrielle McIntyre, Jérome de Hemptinne, and Göran Sluiter. It contains almost 200 recommendations aimed at promoting effectiveness of the workings of the ICC, with the Court itself and its senior management making up the target audience.

The Initiative's recommendations are clustered around ten themes: investigations; the confirmation of charges procedures; disclosure; presentation and admission of evidence; interlocutory appeals; focus on oral submissions; victim's participation; Defence issues of effectiveness; institution building and administration; and State cooperation and witness protection.

These recommendations focus on concrete and practical adjustments in the practice of Chambers, the Presidency, the Registry, the Office of the Prosecutor (OTP), the Defence, States and the Assembly of States Parties, and the Security Council. For example, the Expert Initiative recommends a more effective investigative model be created at the Office of the Prosecution. However, at the same time, the Pre-Trial Chamber is recommended to more actively seek to control and regulate the process of confirmations so as to ensure prompt and effective resolution. Chambers and OTP are also both recommended to ensure a more consistent and uniform approach to disclosure management.

The Court was advised to more actively learn from and rely upon the experience of other international tribunals in dealing with large-scale evidential records. The Initiative also noted that the amount of time the Court spends on interlocutory appeals is excessive. As a further measure to expedite the proceedings, it was recommended that the Court depend less on written decisions and motions, and settle more disputes through oral submission of arguments.

The Initiative additionally focused on further institutional development and reorganisation of the ICC. For example, the Court ought to clarify the role of victims with a view to ensuring more expeditious proceedings and involve the Defence more in its decision-making processes. Other recommendations were made to similarly promote institution-building. Finally, the Expert Initiative addressed the need for cooperation with States that provide information to the Court and the importance of guaranteeing the safety and well-being of potential witnesses.

The Expert Initiative, though full of perhaps an overwhelming number of recommendations, seems to offer some optimism, noting several positive recent developments in Court practice and, simply by providing practical suggestions, demonstrating hope that the Court can can improve and fulfil its promise. However, expectations ought to be tempered, as Expert and ADC-ICTY member Mettraux noted at the report's presentation: "the International Criminal Court has a very, very, very difficult task, and it needs very, very, very good people to make it work. The ICC needs to fix itself. Pick up the pieces and try to do better".

The full report is available here: http://tinyurl.com/myxgou9.

The Hague Institute for Global Justice

Career Development Committee Lecture: UN Field Missions

By Fábio Kanagaratnam

On 25 November, the ICTY Intern Career Development Committee (CDC) organised a lecture on United Nations (UN) Field Missions. Two speakers shared their experiences of field missions with an audience composed of Chambers, Defence and Prosecution interns. The first speaker was Bob Reid, the Prosecution's Chief of Operations at the ICTY. He was one of the first investigators to arrive at the ICTY and noted that there were only seven investigators at the beginning and the small group had to build a large database of information.

Reid described how investigations have essential phases that build on each other. In 1996, he was asked to do crime scene investigations in Prijedor; in the field the team created diagrams, maps and videos of the situation. This later led to further investigations in 1997. However, this type of mission differed as it was a search and seizure mission. According to Reid, they were able to raid military barracks, police stations and municipal buildings based on the data collected in 1996, in order to collect more information.

Reid concluded that it is important to "start on the ground", referring to the relevance of first planning the investigation, then working on a local level in order to move up to a municipality level, afterwards regional and then federal level to build an effective investigation.

Carry Spork, the second speaker, has been at the ICTY since 1996 and differentiated between existing types of field missions: short term missions and long term missions. Spork mainly talked about long term missions and shared some of his experiences in the Democratic Republic of Congo (DRC). He emphasised that during a long term mission one has to set up a new life and understand that it will be difficult to stay in touch with family. In the DRC, Spork was part of a team investigating sexual exploitation, which according to him was a "challenging situation". Spork described his participation in the mission as one of the most valuable experiences he had in his life.

When asked about his most interesting experience while working in the field, Spork answered that this would be "experiencing cultural differences and how they created complicated situations". As an example, he shared a story where UN soldiers were becoming intimately involved with the local population. In order to stop this, it was decided to spread the information that there would be financial compensation if people identified which soldiers were taking these actions. While the soldiers were caught, the financial compensation was inexistent, which led to an antagonised local population and an antagonised military body.

Regarding the ICTY, he noted that the Tribunal's missions were extremely interesting and unpredictable, as during the 90's, an investigator had no idea where he would be the day after. Spork also touched upon how important it is to guarantee a witness' security, stating that "it is the responsibility of the investigator to guarantee his or her security".

An intern asked both speakers, whether field missions are recommended, to which Reid replied that they are thoroughly recommended, but the experiences should be varied and in different places. Spork defended that field experience is important and indicated that one good entry point to field missions is the United Nations Volunteer (UNV) programme. However, Reid warned that interns should be careful with the nomenclature used in the contracts, as General Services levels may block access to Professional levels in the future.

The last question of the day touched on security and safety on the field. Reid indicated that it depends on each mission and that working as a team is essential. He concluded his answer by saying, "never, ever leave your common sense at home". Spork state that in solo missions one should be very cautious: "don't be afraid to be afraid, if you are not afraid you're not smart".

The CDC would like to thank Bob Reid and Carry Spork for taking the time to share their insightful experiences and advise with the ICTY interns.

The Career Development Committee (CDC) was established in 2013, as a collective committee dedicated to advancing the careers of the ICTY's budding young professionals. The formation of such a committee is meant to be representative of the Tribunal in its entirety and should further the professional pursuits of all interns. It also includes Hague-based ICTR interns. To achieve these objectives, two or three representatives from each organ act as liaisons and serve as a central source for communicating the objectives of the CDC while collecting suggestions for potential training sessions.

ADC-ICTY Field Trip to the ICJ and PCA

By Fábio Kanagaratnam

On 21 November, the ADC-ICTY interns participated in a tour and presentation of the International Court of Justice (ICJ) and the Permanent Court of Arbitration (PCA).

The interns were first taken on a tour of the premises of the ICJ, where Boris Heim, the ICJ Information Officer, explained that many of the decorations were gifts from various States. After the tour, Heim offered a brief glimpse of the ICJ's history and structure. Heim indicated that Judges can be re-elected various times, noting that "States like known faces". He added that the composition of the Court reflects the world situation, with Judges that represent various regions in the world. At the moment, there are three female Judges at the ICJ. Heim, touched upon the role of the ICJ and explained that the Court always has to be available to resolve disputes. When comparing the ICJ with the PCA, he added that the PCA "is not permanent", nonetheless States still have to make a decision which Court to choose. He added that the ICJ and the Mechanism for International Criminal Tribunals (MICT) will be the only official United Nations (UN) Courts in The Hague after the ICTY finishes its work. He also touched on how the ICJ is underused by the UN Security Council. Throughout the Court's existence, the Security Council only requested one Advisory Opinion.

Regarding the Court's jurisdiction, Heim explained that States have to voluntarily bring a case to the Court, either by accepting the Unilateral Declaration, accepting the problems that are taken to Court, or by bilateral and multilateral agreements with the complaining State. Nonetheless, States have to voluntarily accept the Rules of the Court. Another way to initiate proceedings at the ICJ is through the acceptance of *Forum Prorogato* by both parties, "if a State has not recognised the jurisdiction of the Court at the time when an application instituting proceedings is filed against it, that State has the possibility of accepting such jurisdiction subsequently to enable the Court to entertain the case".

Heim concluded his presentation by noting that States decide the pace of the proceedings. Despite the ICJ's image of being a slow paced court, he defended that 70 percent of the cases were resolved in four years and only seven percent took more than ten years to be resolved.

In the small hall of justice, Rob James from the PCA gave a presentation about the work of the Court. James initiated his presentation by defining arbitration and touched on the historical path of the PCA. He indicated that during the 1919 Paris Peace Conference the idea of arbitration was seen as the solution for war at the time. Today, the PCA's goal is to facilitate the creation of *ad-hoc* courts to solve disputes. James noted that the PCA is taking care of a total of 244 cases, more than half of these cases began in the last ten years, showing the growing relevance of the PCA. James indicated that one of the advantages of the PCA is that by focusing on arbitration, it offers the parties freedom to initiate their own investigations, without worsening the conflicts between the two parties.

James concluded his presentation by enumerating the most recent developments of the PCA. Currently, the Court is negotiating Host Country Agreements as well as Cooperation Agreements with other arbitration institutions. When asked why States would choose the PCA for a dispute instead of the ICJ, James responded that the PCA offers a high level of flexibility and confidentiality when dealing with the cases.

The ADC-ICTY interns would like to thank the ICJ and PCA for taking the time to share their thoughts and provide an invaluable insight into the Courts' functioning and mandate.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Julien Maton, **ICC: Appeals Chamber Upholds Verdict and Sentence Against Thomas Lubanga**, 2 December 2014, available here: http://tinyurl.com/oq56jj3.

Asier Garrido Muñoz , **A German citizen represented by 9BRI Associate Member Jens Dieckmann was given a suspended sentence for supporting FDLR,** 6 December 2014, available at: http://tinyurl.com/l4whjjm.

Elli Goetz, **Forensic Linguistics Institute - Statement concerning the dropping of the charges in the Kenyatta Case**, 8 December 2014, available at: http://tinyurl.com/kccqvu3.

Julien Maton, **UN Special Rapporteur on Human Rights Calls for Prosecution of CIA Officials,** 10 December 2014, available at: http://tinyurl.com/lbnje95.

Online Lectures and Videos

"Foreign Fighters Under International Law", by Geneva Academy of International Humanitarian Lawn and Human Rights, 12 November 2014, available at: http://tinyurl.com/pxdcaxa.

"Reinterpreting the First World War through the Lens of International Law", by Villanova University, 17 November 2014, available at: http://tinyurl.com/jwpz4co.

"International Law and Religion Symposium", by Bringham Young University, 19 November 2014, available at: http://tinyurl.com/p86gmfa.

"Shabtai Rosenne Memorial Lecture", by Tim McCormack, 26 November 2014, available at: http://tinyurl.com/nykykne.

PUBLICATIONS AND ARTICLES

Books

Ilias Bantekas (2014), *Criminological Approaches to International Criminal Law*, Oxford University Press.

Kaj I Hobér, Howard S. Sussman (2014), *Cross-Examination in International Arbitration*, Oxford University Press.

André Nollkaemper (2014), *Principles of Shared Responsibility in International Law*, Cambridge University Press.

Susan Haack (2014), *Evidence Matters,* Cambridge University Press.

Articles

Jeremy M. Farral (2014), "Rule of Accountability or Rule of Law? Regulating the UN Security Council's Accountability Deficits", *Conflict & Security Law,* Vol. 19, No. 3.

Roland Paris (2014), "The Responsibility to Protect and the Structural Problems of Preventive Humanitarian Intervention", *Journal of International Peacekeeping*, Vol. 21, No. 5.

Ronald J. Allen (2014), "Authority without Accountability? The UN Security Council's Authorization Method and Institutional Mechanisms of Accountability", *Conflict & Security Law,* Vol. 19, No. 3.

CALL FOR PAPERS

The **Jean Monnet Chair of European Public Law** at the University of Zagreb, has issued a call for papers for its Seminar on "EU law and Risk Regulation".

Deadline: 15 January 2015 More Info: http://tinyurl.com/m53vfom.

The **Cambridge Journal of International and Comparative Law** has issued a call for papers to be considered for its upcoming conference on "Developing Democracy: Conversations on Democratic Governance in International, European and Comparative Law".

Deadline: 16 January 2015 More Info: http://tinyurl.com/oakox7h.

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Season's Greetings

On behalf of the ADC-ICTY and the Newsletter Team, we wish you a safe and happy holiday season and hope for a prosperous year in 2015.

EVENTS

Gender & Law Lecture
Date: 9 January 2015
Location: The Hague University, The Hague
More Info: http://tinyurl.com/kbq3mso.

ICDL Annual Meeting "Defence Counsel at the International Criminal Tribunals"
Date: 24 January 2015
Location: InterContinental Hotel, Berlin
More Info: http://tinyurl.com/pm3m7bq.

IBA Annual Conference on International Criminal Law: International Challenges for 2015
Date: 31 January - 1 February 2015
Location: Peace Palace, The Hague
More Info: http://tinyurl.com/ng9oqcc.

OPPORTUNITIES

Assistant Prosecutor (P-3), Phnom-Penh
Office of the Prosecutor
Extraordinary Chambers in the Courts of Cambodia
Closing Date: 3 January 2015

Legal Officer (P-2), Arusha
Registry of the Court
International Criminal Court
Closing Date: 10 January 2015

Investigator (P-3), Nairobi
Regional Office
UN Office of Internal Oversight Services
Closing Date: 12 January 2015

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