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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 & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

ICTY NEWS

Prosecutor v. Hadžić (IT-04-75)

The trial in the case *Prosecutor v. Goran Hadžić* has been adjourned since October 2014. On 13 February, pursuant to the Trial Chamber's order, two Rule 74 *bis* experts submitted their medical reports answering very specific questions, posed by the Chamber and the parties, concerning Hadžić's health. Nearly two weeks later, the experts were called to court to clarify the information they provided in their reports. On 25 February, a closed session hearing was held where Dr. Cras, an expert in neurology, answered questions relating to the expert medical report he had written.

On 26 February, Dr. Seute, a neuro-oncologist, testified in open session. She opined that Hadžić's wellbeing and his fitness to stand trial can only be determined after assessing the results and impact of the chemotherapy he will be undertaking. She stated that it is very difficult to predict anything at this stage. Hadžić suffered from a serious blood count drop after the first treatment phase (which was combined with radiotherapy) and one must be cautious as a continuous drop could pose a serious threat to his life. It was clarified for the Chamber that the side-effects of chemotherapy are most likely to occur during the recovery phase, not during the intake of chemotherapy medication. Possible side effects include fatigue, lack of concentration and serious amnesia. Seute also noted that, despite the fact that it is hard to predict anything for the long-term, it is very likely that Hadžić's ability to attend trial proceedings will diminish, as he will develop both cognitive and neurological dysfunctions.

Seute confirmed that the estimated life expectancy of a person suffering Hadžić's illness is between 12-14

ICTY NEWS

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months and, depending on the circumstances of the case, it can expand to two years.

The Trial Chamber sought the expert reports as they wanted more detailed information about Hadžić's health situation. Accordingly, the Trial Chamber has now been apprised of all the relevant information, including the uncertainties arising from Hadžić's condition. The decision on the urgent provisional release motion, filed on 22 January, is expected shortly.

On 25 February, the Trial Chamber issued a decision on the second urgent request for interim provisional release, whereby it denied the second interim motion and remains seized of the motion for provisional release. On 2 March, the Prosecution filed a motion to proceed with the Defence case.

Prosecutor v. Mladić (IT-09-92)

On 17 to 19, 23 and 24 February, Milenko Jevdjević, Commander of the Army of Republika Srpska (VRS) Drina Corps Signals Battalion throughout most of the war, appeared for the Defence. He testified on a range of subjects, beginning with the situation in Podrinje on the eve of the VRS attacks in Srebrenica and Žepa. He disputed reports that Serb soldiers forced the Muslim population to withdraw in panic on 3 June 1995 in Zeleni Jadar, given that the Corps units did not fire any rounds and no civilians were living in the village.

Milenko Jevdjević

Jevdjević corrected a Bosnia and Herzegovina (BiH) Army map showing Drina Corps radio relay communications purportedly based on intercepted conversations of the VRS officers, explaining that most of the information was inaccurate. This supported the Defence's position that the intercepts of the BiH Army, particularly in regard to the Srebrenica operation, were not authentic.

Jevdjević also testified about Operation Krivaja 95 (launched by the VRS to capture Srebrenica in June 1995), where he set up a communications centre in Prebicevac and followed the VRS when they entered Srebrenica. Jevdjević described how, on the evening of 11 July 1995 after dismantling the communications centre, he went to Bratunac for a meeting chaired by Mladić who "expressed the idea" for all the Corps Units to launch Operation Stupcanica 95, with the goal of capturing Žepa. Following Mladić's orders, Jevdjević established a communications centre in the new Drina Corps forward command post in Krivača on 12 July 1995, and waited for the officers who would lead the Žepa attack.

During cross-examination, the Prosecution claimed that those events happened a day later, with the Bratunac meeting having been held on 12 July and the Krivača forward command post having been established on 13 July 1995. Trivić's war diary, a Drina Corps command order, reports by special police commander Ljubomir Borovčanin and a UN member, and intercepted conversation records were used to support this submission. Jevdjević did not alter his testimony, adding in re-examination that he remembered the meeting occurring on 11 July as it was the last day of the Saint Peter's fast and fish was served. In response to the Prosecution evidence which showed that fish was also eaten on 12 July, Jevdjević noted if 12 July 1995 was a Wednesday or Friday (it was a Wednesday), it was possible Orthodox followers would also eat fish on that day.

Under further cross-examination, Jevdjević denied being part of the intercepted conversation on 2 August 1995 between Krstić (Drina Corps Commander) and Obrenović (Chief of Staff of the Zvornik Brigade) where Krstić told Obrenović to kill the Muslims in Srebenica and "not leave a single one alive". According to some versions of the intercept, Obrenović then supposedly asked for Jevdjević to discuss herding the cattle out of Srebenica. Jevdjević maintained this was not him as his job was restricted setting up the communications systems and the nickname used, Obrenović, was not his.

Miodrag Dragutinović testified before the Tribunal on both 25 and 26 February. He was a former assistant to the Zvornik Brigade Chief of Staff. During examination-in-chief, he spoke about the Zvornik Brigade

which participated in the attack on Srebrenica, with a tactical group consisting of about 400 men. At the beginning of July 1995, the group broke through towards Srebrenica to reach the Zeleni Jadar region on 11 July 1995. Dragutinović testified that on the morning of 12 July 1995, he headed towards Srebrenica together with Vinko Pandurević, the Zvornik Brigade Commander. Pandurević then told him that he had attended a briefing in Bratunac the previous night. The presence of Mladić in the meeting on 11 July was, according to Dragutinović, obvious.

During cross-examination, the Prosecutor tried to prove that Dragutinović only knew about the meeting since the evening of 12 July and not from his talk with Pandurević on 11 July, adding that it does not seem probable that Mladić would issue an order to go to the Žepa sector at that time. The Prosecutor also tried to prove that Dragutinović was influenced by the previous witness Milenko Jevdjević. Dragutinović admitted that they talked but Jevdjević did not remind Dragutinović about any facts. Dragutinović explained that the units knew about Žepa on the morning of 12 July, and he did not understand why Jevdjević did not mention it before.

Dragutinović also testified that on 12 July, the tactical group arrived in Srebrenica. He mentioned the visit of Mladić and Krstić on 13 July and described the fight between the BiH Army and the lines of the Defence on 16 July, which was very intense.

Goran Krćmar

On 26 February, 2 and 3 March the Defence called Goran Krćmar, formerly a member of the Commission for the Exchange of Prisoners in the VRS 1st Krajina Corps. Krćmar is currently working at the State Centre for War and War Crimes Research and Tracing Missing Persons. He provided the Chamber with evidence which explains the procedure to exchange prisoners of war during the conflict, crimes allegedly committed in Kotor Varoš and variations in the BiH and Republika Srpska's data regarding the death toll of the conflict.

Krćmar explained that during the war, the VRS primarily conducted defensive operations and therefore, did not have the opportunity to capture enemy soldiers, meaning that exchanges were negotiated on a one-for-one basis rather than an all-for-all arrangement.

Krćmar identified discrepancies in the data of deceased persons collated by BiH, explaining that BiH used "units" to count remains, each "unit" comprising of a bag of bones, not necessarily an entire body. The effect of such methods is that they are inaccurate and exaggerated figures. Through the course of his post war work, the witness also indicated that he came to know of crimes committed by the Burće Unit in Vrbànjci, however, when pressed, he could not provide the Chamber with further information as to what crimes were committed, or the source of his knowledge.

During cross-examination, Prosecutor Traldi reviewed the witness's evidence, in particular noting that he served in the special unit of the Banja Luka Security Services Centre in June 1992 and was present in Kotor Varoš when crimes were committed against the non-Serb population. The Prosecutor showed Krćmar the minutes from a meeting of the Kotor Varoš Crisis Staff held on 26 June 1993. The minutes make mention of the crimes committed by the special unit. Krćmar's response to this evidence was that he did not know about the alleged crimes, nor any others committed in the region.

Traldi then pressed the witness further, particularly in relation to his evidence relating to the exchange of civilian and military prisoners of war. Traldi proposed that the Civilian Exchange Commission was a part of the machinery of ethnic cleansing in Kotor Varoš. Speaking perhaps at cross purposes, Krćmar was certain that civilians were not "exchanged" but "left voluntarily in organised fashion" and he was adamant that he was not involved in or aware of crimes committed by the Civilian Commission.

On 3 March, the next Defence witness, a former Commander of the Doboj Garrison, Milivoje Simić was called to the stand to testify about the military activity around Doboj and his personal meetings with Mladić. Simić testified that he had witnessed artillery attacks on the town of Doboj even before the decision was made to establish the Army of Republika Srpska. Additionally, Simić was aware of Muslim and Croat intentions to cut off the western part of Republika Srpska from its eastern part through Doboj. He re-

layed this matter first to Momir Talić and then to both Mladić and Radovan Karadžić, after which a decision was made to embark on the breakthrough of the corridor. Simić also testified regarding his meeting with Mladić after the fall of Srebrenica, wherein Mladić recounted to him "people, something happened that should not have happened, something I could not even imagine. About 200 Muslims were killed during the night. Somebody did it without my knowledge and approval…".

During cross-examination, Simić maintained the truthfulness of his account of his meeting with Mladić and suggested that at the time he had found the suggestions in the media that 8,000 people had been killed incredible. He believed that 2,000 prisoners had been executed without Mladić's knowledge or permission.

Mladen Blagojević testified on 4 and 5 March. Blagojević was a member of the Military Police Platoon with the Bratunac Light Infantry Brigade, with Mirko Janković as his direct superior. The witness was cross-examined about the event in Konjević Polje where Janković, Mile Petrović and Momir Nikolić drove in an UNPROFOR vehicle. He maintained that he did not see them that day, although he heard that that was the case. The witness was also questioned about 13 July 1995 in Nova Kasaba, when he escorted Mladić to speak to the prisoners in the field. The witness maintained that there was no one killed during this event, at least not when Mladić and the witness were present. The witness was further questioned about his guard duty at the Vuk Karadžić school in Bratunac on the evening of 13 July 1995.

This witness was convicted of immigration fraud in the United States (U.S.) because he did not report his involvement in the war when he was filing an application form for a U.S. visa. He was then deported on his request and served a sentence imposed by a domestic court. This resulted in multiple interviews of the witness conducted by U.S. authorities, on which the Prosecution based many of its questions. The witness maintained his position on his account of the events of 13 July 1995.

On 5 March, Branko Volaš, a former soldier of the 13th Krajina Brigade in the Yugoslav People's Army (JNA). During the conflict, Volaš was a resident in the Ključ area and stated that the first incident of unrest in this area occurred on 27 May 1992. During this event, Dušan Stojaković, the Deputy Commander of the Ključ Police Station was ambushed and killed by Muslim extremists on a bus. However, there were reliability concerns which arose over this particular statement made by Volaš. Initially, he stated that it was his wife's brother who had passed the location of where the bus was attacked prior to the incident and stated that the group of armed Muslims who killed Stojaković stopped his vehicle and let him go. Later in the re-direct, Volaš stated that he was aware of the death of Stojaković from a gentleman whom he was on a trip with. There were also concerns over the credibility of Volaš commenting on the incidents in the indictment since he was not physically present at any of the incidents and could not remember which events he was asked about in his statement.

During cross-examination, the Prosecution began by bringing up the point that the witness was replaced and reassigned in a number of positions. When asked for the relevance of this line of questioning, the Prosecution responded by saying that this information was a clear example of command and control being executed by the Accused. The Chamber decided to allow the Prosecution the ability to proceed with such questioning but the Prosecution felt that the issue was sufficiently dealt with and moved on. Another major issue raised by the Prosecution was that many were leaving the Ključ area. The witness stated that he was aware of this occurrence but was unaware of any policy which made this movement a requirement.

Prosecutor v. Stanišić & Župljanin (IT-08-91-A)

On 9 March, Pre-Appeal Judge and Tribunal Vice-President Carmel Agius held a status conference in *Prosecutor v. Stanišić and Župljanin (IT-08-91-A)*. After taking appearances from the parties and ensuring that the Appellants could hear the proceedings in a language they understand, Judge Agius reviewed the requirements and purposes of Rule 65 *bis* status conferences. He then moved on to enquire after the Appellants' health and conditions of detention. Stanišić reported no changes to his health, noting it

was in accordance with his age. Župljanin similarly reported he had "nothing to boast", but noted that prison is difficult and that, already in his seventh year in custody, things were not easy but that he had no objections to the health services or personnel in the Detention Unit. Judge Agius responded that the Appeals Chamber is doing its best to expedite the process, but their release remains subject to the final judgement of the Appeals Chamber.

Judge Carmel Agius

Judge Agius then reviewed the recent procedural history, including the replacement of Judge Robinson on the Appeals Chamber due to his recent election to the bench at the International Court of Justice (whom Judge Agius congratulated), the Chamber's dismissal of Stanišić's motion to admit testimony given in the Karadžić trial as new evidence on appeal, and the recent confidential motion filed to reschedule the present status conference.

Finally, Judge Agius offered the parties the opportunity to raise any additional questions or concerns. Stéphane Bourgon, appearing as co-counsel for Stanišić expressed apologies for rescheduling the conference, to which Judge Agius responded that the apology was appreciated but not necessary as the issue was handled transparently. The Prosecution renewed its request for two months advance notice of the Appeals Hearing, when scheduled. At this point, a rare glimpse into the practical ramifications of the downsizing of the Tribunal for active cases was shown.

Judge Agius admitted anticipating this request, also raised at the last status conference in this case, and expressed his commitment to offer the parties "fair, good and sufficient notice" of the Appeals Hearing when scheduled. By way of an update, however, Judge Agius indicated that, contrary to earlier expectations, the Appeals Hearing is unlikely to be held before the summer recess, though he hoped the preparatory document would be available shortly before the recess. Thus, pushing the Judgement issuance into next year. He indicated that the staffing issues discussed in the previous status conference had worsened, with persistent problems finding (and holding on to) P-5 attorneys for the case – even those available are working on several other cases. Thus, while he indicated that the drafting team has "worked wonders" and made great progress in the preparatory document, there is limited staff to supervise and ultimately review the work. He then described his team as "decimated" and "headless" though it is expected that a new, full-time P-4 would take over by the end of this month, or early next month. Though the scheduling of this case has been significantly impacted by the loss of difficult-to-replace staff, Judge Agius discussed this openly with the parties and expressed continued dedication to finding solutions.

LOOKING BACK...

International Criminal Tribunal for Rwanda

Five years ago…

On 18 March 2010, the Appeals Chamber of the ICTR reversed a number of convictions of Simèon Nchamihigo and reduced his life sentence to 40 years. Nchamihigo was Deputy Prosecutor in Cyangugu prefecture in 1994.

Simèon Nchamihigo

The Appeals Chamber reversed the convictions of Trial Chamber III on 24 September 2008, for genocide and murder as a crime against humanity for adding and abetting the killing of Joséphine, Hélène and Marie Mukashema. It also reversed his conviction for genocide relating to instigating killings of Kamarapaka refugees on 16 April 1994 and at Shangi and Hanika parish. Finally, it reversed his convictions for genocide and extermination as a crime against humanity relating to instigating the Mibilzi parish and hospital massacre and the Nyakanyinya school massacre.

The Appeals Chamber affirmed Nchamihigo's other convictions.

International Criminal Court

Ten years ago…

On 15 March 2005, Kenya ratified the Rome Statute of the ICC, bringing the total number of States that were party to the Statute to 98 at that time. Supporting ratification of the Rome Statute is crucial to making membership in the ICC truly global and universal. In order for the ICC to succeed, a growing majority of the world's nations must support the Court, the Rome Statute and actively cooperate in areas such as providing evidence, surrendering indicted individuals and holding national trials. For most nations, the key challenge in convincing governments to consider ratification is an educational one.

Interestingly, the government of Kenya appealed to the United Nations Security Council and the ICC regarding the admissibility of the cases brought in as a result of the violence observed in Kenya after the elections in 2007. Current President Uhuru Kenyatta and Deputy President William Rutor were formally charged with crimes against humanity that were allegedly committed after the 2007 Presidential elections in Kenya. In 2007 according to the BBC, more then 1.000 people were killed and 600.000 were forced out of their homes. The Kenyan government took steps to withdraw from the ICC and was able to gain some support from other African states via the African Union. The charges against the President and Deputy President were dropped in December of 2014 and Kenya continues to be a state party to the Rome Statute.

International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago…

On 29 March 2000, Trial Chamber III of the ICTY found the Accused Milan Simić and his Counsel Branislav Avramović not guilty of contempt. On 25 May 1999, the Prosecution filed an *ex parte* confidential request for a hearing on "bribery, intimidation of witness and suborning perjury of witness" said to have been committed by Simić and Avramović. The hearings lasted from 29 September to 2 December 1999. It was alleged that Simić and Avramović conducted a programme of harassment and intimidation, supported by bribery, in an effort to persuade a possible defence witness, "Witness Agnes", to testify on behalf of Simić. Witness Agnes eventually contacted the Office of the Prosecutor in May 1999.

Trial Chamber III unanimously found the allegations against Simić nor Avramović had not been "established beyond reasonable doubt" and therefore neither Respondent was found to be in contempt of the Tribunal.

NEWS FROM THE REGION

Bosnia and Herzegovina

Five Bosnian Serbs Accused of War Crimes Released to House arrest by Bosnian Court

On 6 March, the Bosnian State Court in Sarajevo ordered Boban Inđić, Petko Inđić, Radojica Ristić, Obrad Poluga and Nocak Poluga to be released on house arrest. The five Accused are former members of the Bosnian Serb troops alleged to have participated in the abduction and killing of twenty passengers on a train in Štrpci, Bosnia and Herzegovina (BiH) on 27 February 1993. It is alleged that members of the Avengers Paramilitary Unit, lead by Milan Lukić (sentenced to life in prison for unrelated crimes at the ICTY, IT-98-32/1), ordered the station manager in Štrpci to halt the train on its way from Belgrade to Bar (Montenegro) and forced eighteen Bosniaks, one Croat and one unidentified man off the train. They are alleged to have taken the passengers to Prevolo (near Višegrad) and to have robbed and assaulted them before killing them. The remains of three have been located. Nebojša Ranisavljević, another alleged participant, was sentenced to 15 years for his involvement in the so-called Štrpci massacre by the Bijelo Polje (Montenegro) Supreme Court in 2002.

They join five other suspected co-perpetrators (Oliver Krsmanović, Luka Dragičević, Dragan Lakić, Vuk Ratković and Momir Nikolić) who have already been released on house arrest. All were initially taken into custody during a Bosnian-Serbian joint operation in December 2014 and were remanded due to fear that they might engage in witness tampering. Five additional former members of the Bosnian Serb troops (Gojko Lukić, Ljubiša Vasiljević, Duško Vasiljević, Jovan Lipovac and Dragana Đekić) were indicted days earlier on 3 March in Serbia for involvement in the same crimes.

Furthermore, on 9 March, BiH's war crimes prosecutions marked their 10th anniversary, noting more prosecutions in the past two years than ever before. The Prosecution claims to have indicted 453 Accused since beginning ten years ago and boasts an 80% conviction rate. However, representatives of Bosnian and Serb victims have been slow to endorse the Prosecution's success, noting first that few high-level perpetrators have been indicted and second, that the Prosecution has quietly refused to bring perpetrators to justice for crimes against Serb victims.

Croatia

Trial Begins Against Former Member of Scorpion Unit in Croatia

The trial against Milorad Momić began in the Osijek County Court in Croatia on 9 March. Momić is accused of war crimes stemming from his alleged participation in the execution of six Bosniak prisoners including three teenagers from Srebrenica in Godjinska Bara (near Trnovo, BiH) in July 1995 as a member of the Scorpion Unit. The incident was apparently filmed and the video was tendered during the trial of Slobodan Milošević at the ICTY (IT-02-54). Four alleged co-perpetrators were convicted in the Serbian Supreme Court in September 2008 and received sentences ranging from five to twenty years.

Momić is also on trial for alleged crimes committed in Berak (near Vukovar, Croatia) in 1991, wherein he allegedly assaulted a Croatian civilian. He was convicted in the first instance but his conviction and three-year sentence was overturned. The Trnovo case began in Serbia but was transferred to Croatia in 2014, as Momić was already in custody for other charges. Momić was extradited to Croatia from France in March 2011.

Serbia

Retrial Ordered for Serb Volunteer Fighter Accused of Sexual Violence in 1992

The Special Court in Belgrade ordered a retrial in the case against Miodrag Živković, a wartime Serb volunteer fighter convicted in 2012 for crimes allegedly committed in Bijeljina, BiH in June 1992. The Special Court ordered a retrial in order to allow the Defence to tender new evidence and witnesses, including police inspectors who interrogated Živković shortly after the crimes.

According to the Prosecution's indictment, Živković and three other volunteer fighters entered a Bosniak home near Bijeljina, took money and property and repeatedly raped two women, who they drove to another village and left without clothes on the roadside. One of the Co-Accused was also accused of killing the owner of the house. In the first instance, the four Co-Accused were sentenced to a total of forty-three years. Živković's (individual) re-trial is scheduled to begin on 9 April.

NEWS FROM OTHER INTERNATIONAL COURTS

Extraordinary Chambers in the Courts of Cambodia

Tibor Bajnovič, Defence Team Intern.

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Defence Support Section, Judicial Update

In Case 002/02, the Defence Team of Khieu Samphan remained fully engaged in trial, questioning new witnesses and civil parties during the proceedings. The Defence Team filed a request objecting to the submission of documents by the Office of the Co-Prosecutors and Civil Party Lawyers.

The Defence Team of Noun Chea also remained fully engaged in the Case 002/02 trial proceedings, focusing on witness testimony regarding the Tram Kok Cooperatives and Kraing Ta Chan Security Centre.

In Case 003, the International Co-Investigating Judge Mark Harmon charged *in absentia* Meas Muth on 3 March. Over the past two years, the Meas Muth Defence Team filed a number of submissions to protect Muth's rights and interests, including a number of requests to access the Case File and to participate in the judicial investigation. These submissions were classified as confidential by the Co-Investigating Judges and Pre-Trial Chamber. The Co-Prosecutors and Civil Parties had access to the Case File during this period, while the Defence did not. On 3 March, the Meas Muth Defence was granted access to the Case File, allowing them to scrutinise the work of the Co-Investigating Judges. The Team is now reviewing the material on the Case File and considering further actions in light of the new developments.

In Case 004, Judge Harmon charged *in absentia* Im Chaem on 3 March. The Im Chaem Defence Team has also been given access to the Case 004 Case File and is allowed to participate in the investigation. The team is now reviewing the contents of the Case File, which totals over 65,000 pages of documents in English alone.

The Defence Teams for the other Suspects in Case 004 continue to closely follow Case 002/02 trial proceedings. One team has opposed the use of Case 004 Case File documents in Case 002/02, as this violates their client's rights. Furthermore, the Defence Teams continue to protect their clients' fair trial rights by reviewing publicly-available sources and researching relevant substantive legal issues.

Special Tribunal for Lebanon

STL Public Information and Communications Sections.

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

On 3 February, Defence Counsel for Assad Hassan Sabra, Hassan Habib Merhi and Hussein Hassan Oneissi completed the cross-examination of Salim Diab. The Defence's cross-examination focused on Diab's knowledge of a number of individuals allegedly linked to the Syrian regime, as well as his awareness of Hariri's political alliances and intentions for the 2005 Lebanese legislative elections. The cross-examination also tackled the former Prime Minister's relationship with Hezbollah and its Secretary-General, Hassan Nasrallah.

On 4 February, four witness statements were read onto the record in accordance with Rule 155 of the STL's Rules of Procedure and Evidence (RPE). The four witnesses were part of a larger group of eight

witnesses from the Tripoli area. The identity of each of those witnesses is believed to be falsely used in applications submitted to the Lebanese Alfa company for SIM cards, which led to the creation of what the Prosecution calls the Red Network of phones used by those allegedly responsible for the surveillance and assassination of Hariri. All eight witnesses denied being the users of the phones bought in their names.

After the conclusion of the reading of the four witness statements, the Trial Chamber heard legal arguments from the parties in relation to the Prosecution's request to call two witnesses to testify simultaneously. The two witnesses are experts who co-authored reports in 2010 and 2012 on the crater resulting from the 14 February 2005 attack. In their reports, they support the view that the damage to the buildings caused by the explosion that killed Hariri could only have been caused by an overground explosion. The Prosecution argued that having both witnesses present in the courtroom concurrently would be the most efficient method of receiving and testing their reports. The Defence objected to hearing two witnesses simultaneously as there is no such precedent in international criminal proceedings.

On 10 February, Ghaleb El-Chammaa testified before the Trial Chamber. El-Chammaa was a close friend and business associate of Hariri. His testimony revolved around Hariri's relationship with Syria throughout the 1990s during the Presidencies of Hafez Al-Assad and then his son Bashar Al-Assad. The witness tackled the former Prime Minister's role in the development of the Taif Agreement that ended the Lebanese Civil War. El-Chammaa also spoke about some of the meetings Hariri held with officials such as the Syrian President, Bashar al-Assad, the former Chief of the Syrian intelligence services in Lebanon, Rustom Ghazaleh, and the leader of Hezbollah, Hassan Nasrallah. El-Chammaa described the relationship between the former Prime Minister and Bashar Al-Assad as aggressive, dominant and one of great provocation. According to the witness, Hariri considered the adoption of the United Nations Security Council (UNSC) Resolution 1559 to be an opportunity towards the implementation of the Taif Agreement. El-Chammaa also told the Court that Hariri would discuss the issue of Hezbollah's arms between the Lebanese and find a solution within Lebanon. He added that Hariri considered Hezbollah a main component of the Lebanese Republic and that he thought that Nasrallah was a person with whom he could communicate and reach agreement.

On 11 February, the examination of El-Chammaa continued. El-Chammaa recalled a meeting Hariri held with Charles Ayoub, the editor-in-chief of the Lebanese daily Ad-Diyar, and Rustom Ghazaleh on 9 January 2004, during which Hariri purportedly expressed his determination to run for the 2005 legislative elections and to have his own electoral lists in all Lebanese regions. Notably, El-Chamma discussed the monthly payments he prepared for Ghazaleh on behalf of Hariri from 1993 to 2005. In 1993, the witness said, the monthly amount asked by Ghazaleh was USD 40,000, and it reached USD 67,000 in 1994. In addition, El-Chammaa, who prepared the payments, asserted that additional money asked by Ghazaleh was provided to him, sometimes exceeding hundreds of thousands USD. According to El-Chammaa, Hariri aimed to maintain normal relations with Ghazaleh through payments such as these.

El-Chammaa was later cross-examined by Defence Counsel for Mustafa Amine Badreddine, whose questions were related to El-Chammaa's statement given to the United Nations International Independent Investigations Commission (UNIIIC), Hariri's projects and the alleged fight against corruption in Lebanon. In addition to his relationship with Wissam El-Hassan, the former Chief of the Information Branch in the Lebanese Security Forces.

The Trial Chamber issued a decision on 17 February, ruling that the Prosecution demonstrated that the hearing the two witnesses concurrently would be more efficient then hearing them individually. It therefore decided to hear the two witnesses separately.

Defence Counsel for Merhi also cross-examined El-Chammaa and will complete their questioning in early March by video-conference link.

On 23 and 24 February, Professor Daniel Ambrosini testified before the Trial Chamber.

Professor Ambrosini is the Head of the Experimental Dynamics Division in the Structural Mechanisms and Seismic Risk Institute at the University of Cuyo in Argentina. He holds a PhD in Engineering and a Masters degree in Structural Engineering. In 2010 and 2012 the Prosecution expert witness co-authored two reports with Professor Bibiana Luccioni. Luccioni

gave evidence after the conclusion of Ambrosini's testimony.

Ambrosini focused on his two reports, which presented and analysed several scenarios explaining the size of the crater and the structural damage caused to the surrounding areas. Ambrosini explained how he and his colleague worked on ascertaining the quantity of the explosives as well as their location in terms of height above ground of the explosive mass. This analysis was carried out to determine whether the explosives were buried, sitting on the ground surface, or at some point above the ground. During his testimony Ambrosini told the court that the Syrian authorities carried out blast experiments in Syria, the results of which were voluntarily shared with the UNIIIC in June 2006. The witness testified that the results of the Syrian experiment were of little use to him and his colleagues because of discrepancies in the size of the diameter of the crater.

On 25 February, Ambrosini was cross-examined by Defence Counsel for Badreddine and Merhi. Ambrosini was questioned about his contact with Israeli authorities, his participation in a conference in Haifa in 2009 and the possibility that the explosion of 14 February 2005 might have been caused by an air missile. In the two reports that Professor Ambrosini co-authored it is claimed that the damage to the buildings caused by the explosion could only have been caused by an overground explosion.

On 26 February, Bibiana Luccioni testified before the Trial Chamber. The expert witness is a civil engineer who obtained her PhD in Engineering from the National University of Tucuman and has a Masters degree in Structural Engineering. The evidence presented by Professor Luccioni dealt with the damage that was caused in the areas surrounding the 14 February 2005 crime scene. Given the parameters of the crater, she testified that the damage observed, measured and numerically modelled could have only been created by an overground explosion. She asserted that the load of the explosives used was the equivalent of between 2,500-3,000 kg TNT and that the bomb was placed above ground at a height of 50-80 centimeters from pavement surface, which is compatible with the observed crater and structural damage.

On 27 February, Luccioni was cross-examined by Defence Counsel for Badredinne and Merhi.

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

On 16 February, the *Amicus Curiae* Prosecutor *(Amicus)* requested the admission of non-testimonial evidence prior to the start of trial on 16 April 2015 for the purposes of facilitating the efficient conduct of proceedings and judicial economy.

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

On 29 January, the *Amicus* requested an extension of time until 6 March for the filing of the referred documents in the Contempt Judge's Scheduling Order on Pre-Trial Proceedings dated 27 January 2015. The Defence filed its submissions on 3 February, requesting an extension of deadlines for the filings of the Defence pre-trial brief and the responses to the *Amicus* motions pursuant to Rules 155 and 156, as well as additional time for the disclosure of any expert statements.

On 6 February, the Contempt Judge ordered the *Amicus* to file a pre-trial brief, as well as any motions for admission into evidence of Rule 155 or Rule 156 written statements, by 6 March 2015;

The *Amicus* to disclose, subject to the Rules, expert statements and any witness statements covered by the "Decision on the *Amicus Curiae* Prosecutor's Application for Protective Measures and Non-Disclosure" of 26 August 2014 to the other Party in non-redacted form by 23 March 2015;

The Defence to file any response to an *Amicus* motion for admission into evidence of Rule 155 or Rule 156 written statements by 23 March 2015;

The Defence to file a pre-trial brief by 30 March 2015;

Any notice in response to expert witness statements under Rule 161 (B) to be filed by 8 April 2015.

On 18 February 2015, the Contempt Judge dismissed the request by Defence Counsel assigned to represent Akhbar Beirut S.A.L. and Al Amin, which sought reconsideration of a previous decision denying counsel's request to order the *Amicus* to make disclosure not only to Counsel, but also to the Accused directly. The Contempt Judge concluded that counsel's arguments for reconsideration are manifestly unfounded.

New STL President Elected

On 19 February, Judge Ivana Hrdličková of the Czech Republic was elected President of the Special Tribunal for Lebanon (*sic*), succeeding Judge Sir David Baragwanath of New Zealand. Judge Ralph Riachy of Lebanon was re-elected Vice-President. The Judges of the Appeals Chamber elected Judge Hrdličková and Judge Riachy for a period of 18 months, starting from 1 March. On 24 February, the Trial Chamber Judges re-elected Judge David Re Presiding Judge of the Trial Chamber for the same period.

Judge Hrdličková

DEFENCE ROSTRUM

T.M.C. Asser Instituut Lecture— What is an International Crime

By Ruby Axelson

On 3 March, various interns attended a lecture at the T.M.C. Asser Instituut titled "What is an International Crime?". During this lecture Kevin Jon Heller clearly demonstrated his research on the topic, arguing that the positive basis for the creation of international crimes find little foundation in reality, forcing us to confront the naturalist origins of international law. The lecture began by Heller asking two primary questions; firstly, which acts qualify as international crimes and secondly, what is it that makes these acts distinctive?

Following the famous declaration in Nuremburg that crimes against international law are committed by men not by abstract entities, and only by punishing individuals who committed such crimes can the provisions of international law be enforced, international crimes have commonly been considered those acts which are directly criminalised by international law. This direct criminalisation thesis rests on various assumptions, beginning with the idea that an international crime is a crime regardless of whether a domestic state criminalises such conduct or not. Moreover, such crimes are considered universally criminal acts and only acts which are universally criminal constitute international crimes. However, according to Heller the assumption of the direct criminalisation thesis, that an international crime is universally criminal despite the absence of state criminalisation, is impossible to defend.

Indeed, a positivist answer, focusing on state practice and *opinio juris*, does not definitively support the direct criminalisation thesis. National legislations and prosecutions provide almost no support for the creation of international crimes, nor is there sufficient evidence of the ratification of multilateral treaties. For example, there was no pre-Rome Statute treaty on aggression or crimes against humanity, and the Genocide Convention provides obligations on states to domestically criminalise specific acts. Moreover, although the International Law Commission (ILC) Draft Codes do provide support for the domestic criminalisation thesis, having not been adopted by a General Assembly Resolutions, they fail to demonstrate sufficient *opinio juris*. Additionally, the direct criminalisation thesis cannot be satisfied by simply proving universal jurisdiction over an act only in so far as states are obliged to criminalise it, therefore it is difficult to imagine how universal jurisdiction could operate without depending on domestic obligations to criminalise.

Instead, Heller proposed a national criminalisation thesis arguing that custom better defines a customary obligation to domestically criminalise. The national

criminalisation thesis can rely on four sources of international law; suppression conventions (such as the Genocide Convention and the Rome Statute), national legislation, national prosecutions and United Nations General Assembly resolutions. Utilising the national criminalisation thesis under a positivist framework, gave breach of the Geneva Conventions would amount to international crimes since all states are obligated to criminalise such acts. Beyond this, Heller suggested the remits of international crimes are merky, with genocide offering the strongest argument due to the customary obligation on states to criminalise such acts. The suggestion that crimes against humanity amount to international crimes under this analysis would necessitate a week reliance on the Rome Statute and aggression would represent the hardest argument, there is no treaty which requires domestic criminalisation. Considering a variety of intriguing questions, this lecture utilised both theoretical analysis and state practice in order to formulate the national criminalisation thesis as an answer to the question "what is an international crime".

Genetic Privacy: The Ethics (and Legality) of DNA Collection

By Soo Choi

On 2 March, the ICTY's Career Development Committee hosted a Brown-Bag Professional Development Series lecture titled "Genetic Privacy: the Ethics (and Legality) of DNA Collection". The discussion was lead by Counsel Luke Fadem, who practiced as the Deputy Attorney General for the Criminal Division of the California Department of Justice before joining the Appeals Division of the Office of the Prosecution at the ICTY. Fadem opened the debate by asking to what extent the government should have rights over the DNA of its citizens in the context of criminal law, considering that most nation states have legislation in place to collect DNA samples of those arrested for serious and violent crimes. He then asked attendees to express their opinion and while doing so to take into consideration the role of DNA in not only convicting but also in exonerating accused persons.

In the United States, the DNA sample collected from persons arrested on charges of extremely violent crimes is also cross-checked weekly to a state based database of DNAs collected from crime scenes. This method helps solve crimes committed by the same individual even if the individual was arrested for a different crime. In the United States this cross-check yields approximately 1% match, leading to around 37,000 convictions annually.

Fadem provided a few facts about the procedure of DNA collection by police officials and then asked the audience to think of the pros and cons of collecting DNA for investigative purposes. The DNA sample from the cheek swab collects thirteen markers, which is sufficient for identification of the individual (with almost 0% margin of error), but the original sample is kept. The original sample contains a person's full DNA material which can also provide other information about the individual: such as genetic diseases, and other genetically related issues that may come in the future. This latter information about the individual is stored in a separate data storage which is not accessed unless there would be a challenge from the individual about whether the DNA data is correct. The DNA identification data is accessed only by limited personnel of the police force and any misuse will lead a to criminal conviction. There has not been a reported instance of such misuse as of yet.

If the individual arrested were to not be convicted, the DNA information is still kept; if the arrest itself was wrongful the DNA information is erased, but the police is still free to keep the photographs and the fingerprints collected.

Fadem also discussed the US Supreme Court case of *Maryland v King (2013)* which concerned a challenge to a Maryland legislation that enabled the police to take DNA evidence of those arrested for certain serious crimes, on the basis of the Fourth Amendment. After weighing the government interest in the measure against the intrusion of the measure on the individual, the Court determined that since the government has the right to identify anyone under unreasonable arrest – and often does so with other harsher measures such as a strip search, there is little extra harm in doing the cheek swab. Faden commented that the government did not raise the objective of investigation when arguing its case and that the Court seemed to have allowed this objective of investigation

even though it was not argued in court.

After clarifications, the audience engaged in a discussion of arguments for and against allowing the measure to be implemented. The foremost argument for the measure was that it has been shown to be effective in solving crimes. On the other hand, the first argument raised against the measure was that there was potential for the government to abuse this information; one audience member voiced her concern that while she does not necessarily distrust the government, she does not trust all employees of the government and that the DNA evidence can be sold at a high price to insurance companies, for instance. As Fadem put it, DNA information is the “most intimate information about a person”. The argument that Fadem drew the audience’s attention to was that the cross-comparison of crime scene and arrested persons’ DNA evidence circumvents the ordinary requirement of “probable cause” for a search and seizure of a person. It was also mentioned that DNA collected might switch who the burden of proof falls on. For example, If the DNA of an individual arrested matches that of a crime scene, is it still a matter of innocent until proven guilty?

The tentative conclusion of this debate was that at the end of the day, the government will “probably win” due to the investigative purpose that DNA collection serves. Whether the court will directly weigh this investigative purpose against the mentioned circumvention of the probable cause requirement, however, we are still yet to see.

This lecture was organised by the intern lead Career Development Committee (CDC) from Chambers, Prosecution and the ADC-ICTY. The CDC is committed to advance the careers of young professionals and was established in 2013.

ADC-ICTY Intern Field Trip to the OPCW

By Annabelle Dougherty

On 27 February, a group of ADC-ICTY interns visited the Organisation for the Prohibition of Chemical Weapons (OPCW). The OPCW’s mission is to implement the Chemical Weapons Convention (CWC) in order to achieve a world that is free of chemical weapons and the threat of their use. The OPCW was awarded the Nobel Peace Prize in 2013 for its extensive efforts to eliminate chemical weapons.

During their visit the ADC-ICTY interns received a tour through the building. The interns visited the Executive Council Chamber as well as viewed the Nobel prize. The tour was followed by a presentation.

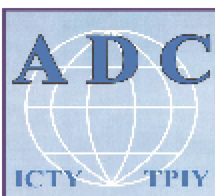
Yasmin Naqvi, a Legal Officer for the Office of the Legal Advisor, gave an engaging presentation on the basic legal aspects of the CWC and the OPCW. Chemical weapons were discussed which are: defined as choking agents, blood agents, skin agents, and nerve agents, which through their chemical action can cause death, temporary incapacitation or permanent harm to humans or animals.

The interns learned that the CWC is the first global disarmament regime banning an entire category of weapons of mass destruction. A notable feature of the CWC is its near-universal ratification: there are 190 Member States and only six non-Member States. The CWC has four pillars, disarmament, non-proliferation, international cooperation, assistance and protection. There are extensive verification mechanisms to ensure compliance with the CWC provisions which include declarations, monitoring and inspections.

ADC-ICTY Interns

A recent successful implementation of the CWC is the OPCW-UN Joint Mission in Syria. The Mission was sparked by the use of the nerve agent “sarin” on civilians in Ghouta, near Damascus, in August 2013. Syria acceded to the CWC following this chemical weapon attack and the OPCW designed an urgent timetable to eliminate the Syrian chemical weapons programme by mid-2014. This resulted in the first shipment of chemical weapons out of Syria conducted on 7 January 2014. The OPCW-UN Joint Mission completed its mandate on 30 September 2014, and the OPCW continues to support Syria in the destruction of chemical weapon production facilities.

The ADC-ICTY interns would like to thank the OPCW and Counsel Naqvi for providing the opportunity to learn more about this important global organisation.



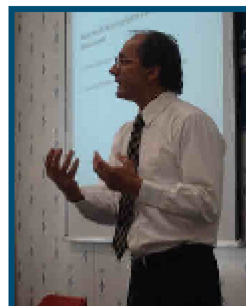
ASSOCIATION OF DEFENCE COUNSEL PRACTISING BEFORE THE ICTY

ADC-ICTY ADVOCACY TRAINING

This all day training will focus on EVIDENCE AND OBJECTIONS including *direct & cross - examination.*

By Michael G. Karnavas

Date: **Saturday 28 March 2015**
Time: **9:30 to 17:00**
Location: **ICTY Pressroom**
Churchillplein 1
2517 JW The Hague



Contact adcicty.headoffice@gmail.com for further information and register by **20 March 2015.**

Only limited space available!

The registration fees are 15 Euros for ADC-ICTY interns, staff & members and 25 Euros for external participants. For further information on ADC-ICTY membership please visit: *http://adc-icty.org/home/membership/index.html.*

CLE credits and certificates are available upon request.

Coffee, tea and biscuits will be provided, lunch is excluded.

Introduction Lecture on Evidence

ADC-ICTY Defence Symposium by Michael G. Karnavas at the ICTY on 12 March 2015 at 16:00.

More Info: adcicty.headoffice@gmail.com

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

B. McGonigle- Leyh and J. Fraser, **"Newest ICC Trial Chamber Decision on Victim Participation in the Case against Mr Bosco Ntaganda: A Step in the Right Direction"**, 25 February 2015, available at http://tinyurl.com/kutp5re

S. Charania, **"Can International Law Change the World?"**, 27 February 2015, available at: http://tinyurl.com/k458kk9

R. Rafin, **"UN Commission of Inquiry on Gaza Asks for Deferral",** 9 March 2015. available: http://tinyurl.com/l6bs839

Online Lectures and Videos

"Introduction to Public Speaking", online course by University of Washington, starting now, available at: http://tinyurl.com/mthf4vw

"Reflections on the Jurisdiction of the International Court of Justice", online lecture by Judge Awn Shawkat Al-Khasawneh starting now, available at: http://tinyurl.com/ojyqoss

"Terrorism and Counter-terrorism: Comparing Theory and Practice", online course by University of Leiden, starting now, available at: http://tinyurl.com/nbnklb9

PUBLICATIONS AND ARTICLES

Books

F. Aleksandar, K. Bachman (2015), **The UN International Criminal Tribunals: Transition without Justice?**, Routledge.

C. Gibson, T. Rajah, T. Feighery (2015), **War reparations and the UN Compensation Commission: Designing compensation after conflict**, Oxford University Press USA.

C. Groeben (2015), **Transnational Conflicts and International Law**, Cologne Institute for International Peace and Security Law.

Articles

K. Hughes (2014), **"The Limits of Freedom of Information and Human Rights, and the possibility of the Common Law"**, Cambridge Law Journal and Contributors.

D. Jacobs (2015), **"Sitting on the Wall, Looking in: Some Reflections on the Critique of International Criminal Law"**, Leiden Journal of International Law, Vol. Issue 1.

K. Tani (2015), **"States' Rights, Welfare Rights, and the "Indian Problem": Negotiating Citizenship and Sovereignty, 1935-1954"**, Law and History Review, Vol. 33, Issue 1.

CALL FOR PAPERS

The University of York has issued a call for papers for the Migration and Asylum Law section of the 2015 SLS Annual Conference.

Deadline: 20 March 2015 More Info: http://tinyurl.com/q3fq89v

The European Society of International Law has issued a call for paper for The European Society of International Law Conference (11 ESIL)

Deadline: 15 April 2015 More Info: http://tinyurl.com/nqkgkpk

The Santander Art and Culture Law Review has issued a call for paper for its second issue 2015, on "Terrorism, Non-International Armed Conflict & The Protection of Cultural Heritage"

Deadline: 20 June 2015 More Info: http://tinyurl.com/omx5h5d

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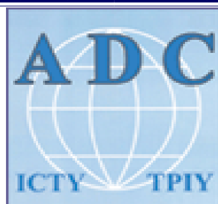

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Any contributions for the newsletter should be sent to Isabel Düsterhöft at iduesterhoeft@icty.org

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For more info visit:

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

or email:

iduesterhoeft@icty.org

EVENTS

Arab Woman resisting ISIS
Date: 19 March 2015
Location: Humanity House The Hague
More Info: http://tinyurl.com/nnat79h

Globalised Conflict Situations: Nigeria's Boko Haram in Perspective
Date: 20 March 2015
Location: African Studies Centre Leiden
More Info: http://tinyurl.com/mbmgekd

ADC-ICTY Advocacy Training on Evidence and Objections with Michael Karnavas
Date: 28 March 2015
Location: International Criminal Tribunal for the Former Yugoslavia
More Info: adcicty.headoffice@gmail.com

Human Rights Violations in Indonesia
Date: 14 April 2015
Location: Humanity House The Hague
More Info: http://tinyurl.com/o6yf77q

OPPORTUNITIES

Programme Officer: Tunis or Amman
Open Society Foundations, Women's Rights Program
Closing Date: Until filled

Legal Research Intern: New York or Washington D.C.
Open Society Foundations, Justice Initiative
Closing Date: 15 March 2015

Information Analyst (P-2), The Hague
International Criminal Court, Protection Strategies Unit
Closing Date: 19 March 2015

Paralegal Assistant Administrator
European Space Agency, ESA
Closing Date: 26 March 2015

Associate Programme Officer (P-2), The Hague
International Criminal Court,
Immediate Office of the Registrar
Closing Date: 2 April 2015