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## ICTY CASES

### Cases at Trial

Hadžić (IT-04-75)  
 Karadžić (IT-95-5/18-1)  
 Mladić (IT-09-92)  
 Prlić et al. (IT-04-74)  
 Šešelj (IT-03-67)  
 Stanišić & Simatović (IT-03-69)

### Cases on Appeal

Đorđević (IT-05-87/1)  
 Popović et al. (IT-05-88)  
 Šainović et al. (IT-05-87)  
 Tolimir (IT-05-88/2)  
 Stanišić & Župljanin (IT-08-91)

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

On 7 May 2013, former commander of the Sarajevo-Romanija Corps, Stanislav Galić, continued his evidence stating that there was not a single written order issued by any of the Corps's officers to attack civilians with snipers and artillery, thus the Bosnian Serb army was not responsible for the civilian casualties in Sarajevo. Galić did admit that disproportionate use of force was in some cases used when his troops responded to the attacks from the city.



Stanislav Galić

On 8 May, Galić stated that the Judges should distinguish between 'planning and actual operations'. Galić explained that there were planned orders: this means that those areas were to be attacked only if the enemy opened fire from those locations. Galić replied to the prosecution that this was the case when he issued orders to his troops to shell residential areas in Sarajevo without clearly defining military targets. Galić further stated that the footage made by BBC reporter Jeremy Bowen in 1992, showing the shelling of a cemetery during the funeral of two children killed by snipers, was a set up to encourage propaganda.



Milan Martić

On 9 May, former President of the Republic of Serbian Krajina, Milan Martić, contested the allegations from Milan Babić's previous testimony and statements.

Martić stated that Babić was clearly mentally ill and that he

## ICTY NEWS

- Karadžić: Defence continues
- Mladić: Prosecution continues
- Hadžić: Trial continues
- Đorđević: Appeal Hearing

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suffered from paranoia. Karadžić according to Martić never participated in a plan to expel Muslims from parts of BiH. Martić explained that he nor Karadžić could have participated or could be part of a joint criminal enterprise because no plan existed to expel non-Serbs from Croatia and BiH.

On 13 May, Martić's statement that Babić was mentally ill was dismissed as the the Trial Chamber concluded that there was no evidence that Milan Babić suffered from any personality disorder that might bring into question his credibility as a witness. Also dismissed was Karadžić 's motion for the disclosure of psychological and psychiatric assessments of Milan Babić's mental health.



Zorica Subotić

On 14 May, Zorica Subotić, a forensic expert on ballistics from the Serbian Justice Ministry, said that the modified air bombs were very accurate.

Subotić claimed that there would have been far more casualties and no survivors if indeed 'aerosol bombs' were used as claimed by prosecution expert Dr. Berko Zečević. Subotić further said that Sarajevo investigators wrongly determined the direction from which the mines came in the Alipasino Polje neighbourhood incident on 22 January 1994 . She noticed Latin alphabet letters on the mine remnants, adding that VRS mines were

### Prosecutor v. Ratko Mladić (IT-09-92)

On 1 May 2013, the trial of former Bosnian Serb army commander Ratko Mladić resumed with prosecution witness Paul Groenewegen, a former member of the Dutch peacekeeping battalion deployed in Srebrenica.

Groenewegen told the Tribunal about the killing of a man, which allegedly occurred shortly after the enclave fell to Bosnian Serb forces in July 1995. Groenewegen recalled the situation, during which a cordon of "Dutchbat" soldiers from the United Nations peacekeeping force had tried to form a buffer between Bosnian Muslim refugees and Bosnian Serb forces on 13 July 1995. Despite their efforts, Groenewegen claimed to have seen how a man had been separated from the group and had been executed behind one of the houses. Three men were allegedly involved, wearing mili-

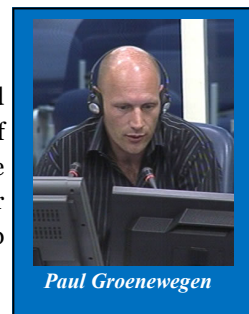
marked with Cyrillic alphabet letters only, thus they were fired from the direction of positions held by the Army of Bosnia and Herzegovina. Furthermore a distorted mirror image of the Sarajevo artillery incidents was a result of investigators who misinterpreted the evidence at the scene and made mistakes when establishing the bearings as the places of the mortar incidents were 'contaminated'.

On 15 May, Subotić stated that the killings at Markale open market in Sarajevo in February 1994 was not caused by a mine-thrower grenade, but by "statically activated" planted explosive because the grenade could not have hit the ground without hitting the roof of a market stall and exploding. Subotić further said that the mine-thrower grenade could not have possibly caused the second explosion in front of Markale closed market in August 1995 without it being registered by an UNPROFOR radar and the firing sound being heard. Subotić denied the allegation that five mines exploded in the vicinity of Markale on that day and that the last one caused the murder of civilians, saying that none of the 70 witnesses "heard any of the explosions" and that such explosions "must have been heard".

On 16 May, Subotić replied to the Prosecution that all the investigations into the cases, which were conducted by Sarajevo police and "blue helmets", incorrectly determined the direction from which the grenades came and the distance from which they were fired.

tary attire.

Groenewegen also described being present as thousands of Bosnian Muslims fled to the UN compound in Potocari after Srebrenica fell to Bosnian Serb forces on 11 July. Asked by the Prosecution about the state refugees were in when they arrived in Potocari from Srebrenica, the witness replied that they were frightened and undernourished. Due to lack of space, thousands remained just outside the compound, when priority was given to injured. This allegedly led people, according to Groenewegen, to inflict injury on themselves.



Paul Groenewegen

Groenewegen furthermore enlarged on the separation of men from their families, which he witnessed on 12 July 1995, with all negative feelings associated as fear and desperation. As to his weapon, he testified he had to surrender it under duress to the Bosnian Serb army, as they held a clear numerical and power advantage.

Concerning the presence of Mladić in Potocari on 12 and 13 July 1995, Groenewegen confirmed his presence without being able to provide a number how many times he had seen him.

During the cross-examination, Mladić's lawyer, Branko Lukić, pointed out a discrepancy between Groenewegen's testimony in this trial and former statements. Beginning with the number of people, who had surrounded the man being killed, to the number of people armed, Lukić asks Groenewegen whether he was not present at all during this incident, which was rejected by Groenewegen. The witness had to admit he could not remember how many people there were exactly, as he had solely focused on the one who shot the refugee. Asked about the presence of other Dutchbat soldiers, the witness negated this, as he had strayed from the road further down alone.

On 2 May 2013, Dutch General Cornelis Nicolai testified about UNPROFOR commanders' wrong conclusions in July 1995 about the



*Cornelis Nicolai*

VRS attack on Srebrenica. Nicolai, former UNPROFOR chief of the staff in BiH, admitted that there was disagreement between high ranked UNPROFOR officials about the objective of the Serbs. The opinions ranged from the belief that Serbs would stop once they held the southern part of the enclave to estimations they would take over the entirety of the enclave. Still on 9 July 1995, according to Nicolai, the UNPROFOR command refrained from calling in close air support as they feared the Serb forces' response, as it happened earlier, with the artillery attacks on Tuzla on 25 May 1995 as the most prominent example, during which 80 civilians were killed and around 200 were wounded.

From 8 to 12 July 1995, Nicolai undertook efforts in negotiations with VRS Main Staff generals Gvero and

Tolimir, who denied any involvement of the Serb army in the offensive and threatened Nicolai after air strikes had been launched.

On 3 May 2013, during the cross-examination, Nicolai, Mladić's defence questioned that in the summer of 1995, UNPROFOR was not neutral. UNPROFOR 'sided with' the BiH Army and thus, both UN and NATO, became a 'warring side' in Bosnia and Herzegovina.

Mladić's Legal Consultant, Dragan Ivetić, first showed an order issued to the Dutch Battalion in July 1995 instructing the Dutch soldiers to take up 'blocking positions' in the southern part of the Srebrenica enclave and to counter any attempts by the Serb forces to break through the line. According to the defence, the conflict with the Serb troops was to provide a 'pretext' for UNPROFOR for calling in close air support from NATO. Whereas Nicolai explained the deployment of troops in the south as a strategic decision, Ivetić rather saw it as proof of a bias towards the BiH Army to allow them to fight shoulder to shoulder. While Nicolai denied that, he weighed in that the Serb side could have interpreted this. While Ivetić saw the use of heavy weaponry from collection points as another indicator pointing to a bias, Nicolai explained that this was the only possible scenario, as the VRS used all their strength, including heavy artillery, for days to storm the enclave.

Ivetić questioned the reason behind UNPROFOR command's decision to call in air strikes against Serbs in May 1995 despite both sides constantly violating UN Security Council resolutions. Nicolai said the violation of the UNSC resolution was not the decisive factor, but that the Serb side refused to comply with the demands to return the seized artillery.

Furthermore, Ivetić noted that General Rupert Smith thought the air strikes in May 1995 failed to achieve the goal, and that UNPROFOR was on the verge of becoming an ally of the Bosnian government and gave up their unbiased position with that. General Smith, the witness explained, warned that the use of force meant the crossing of borders and that it could be interpreted as the UNPROFOR siding with the BiH Government.

Mladić's trial also heard the same week from a former Dutch UN peacekeeper that said that Bosniaks in Srebrenica had no other choice but to accept the evacua-



Robert Franken

tion ordered by the Serb forces. Robert Franken, the assistant commander of the Dutch Battalion of UNPROFOR in Srebrenica, said Bosniaks were forced to accept the evacuation organized by the VRS, after 11 July 1995.

Describing the choice facing tens of thousands of refugees from Srebrenica who sought shelter in the vicinity of the UN compound in Potocari, Franken said they could either stay in the crowd without food and water in very hot weather and die slowly or leave. Franken said he personally saw the separation of Bosniak men from women and children. He further claimed the VRS had previously prevented the blue helmets from protecting the separated men.

On 9 May 2013, at the trial of Ratko Mladić, two surviving witnesses described the execution of Bosniaks from Srebrenica in July 1995 by Bosnian Serb forces.

Protected witness RM-297 described the execution of about 1,000 Bosniaks from Srebrenica by Bosnian Serb forces in Orahovica village, near Zvornik, on 14 July 1995.

The witness said that following the fall of Srebrenica, he tried to break through to Bosnian Army territory by walking through the woods towards Tuzla but surrendered to Serb soldiers two days later, on 13 July 1995. Mladić addressed the captives in a meadow near Sandici village on that same evening, the witness recalled. Mladić allegedly greeted them and reassured them that they would be exchanged the following day, promising them water but no dinner.

The same evening the captives were transferred to Bratunac, where some were killed during the night, according to the protected witness and the following day, on 14 July 1995, they were transported to Orahovac by truck under verbal attacks and threats by Serb soldiers. Upon the arrival in Orahovac, Bosniak captives were blindfolded and provided with a small cup of water before loading them onto truck.

The protected witness could survive the shooting, which occurred after a stop of the truck, because he fell down whilst hearing gunfire without being hit. During cross-examination, Mladić's defence counsel,

Branko Lukić, asked the witness whether he recognised Mladić in Sandici or heard that he was present there. Witness RM-297 confirmed that he had never seen Mladić before Sandici and that the news, that it was him, spread among the captives.

The same day, another protected prosecution witness testified under codename RM-314 and said he survived the shooting carried out by members of the VRS, on the banks of the Jadar River near Konjevic Polje.

RM-314 said that he was among several thousand men who were trying to get to Tuzla through the woods following the fall of Srebrenica. The witness said that he was captured on 13 July 1995 and that Serb policemen abused him and others physically. After being held in a warehouse near Konjevic Polje, the witness was ordered to get onto a bus together with other Muslims.

The witness described the events prior to the shooting, as four soldiers and a female driver got on the bus with them, including soldiers, who prior to that beat them up in the warehouse. As they were ordered to get out of the bus, they were lined up at the river and shot at. The protected witness said he was hit in the left hip, fell into the river and managed to flee from the scene.

On 10 May 2013, former member of the VRS Bratunac Brigade military police Mile Janjić testified that the military police only secured the prisoners. Following the orders of Bratunac Brigade security chief Momir Nikolić, Janjić and a group of military police were sent on 12 and 13 July 1995 to Potocari to assist Colonel Radoslav Janković, an intelligence officer in the VRS Main Staff, with Janjić's task being the count of refugees who were removed on trucks and buses from Potocari to the territory under the BiH control.

Asked by Presiding Judge Orić what securing prisoners implied, Janjić replied that securing the prisoners meant 'protecting them from harm, keeping them safe from anyone who might be a threat to them'.



Mile Janjić



Zlatan Celanović

On 14 May 2013, Zlatan Celanović, he was a desk officer for morale, religious and personal affairs in the VRS Bratunac Brigade. At three previous Srebrenica trials before the Tribunal, Celanović described what happened in Bratunac in the night of 13 July 1995. The Muslims captured after the fall of Srebrenica were brought on buses and trucks to Bratunac. He confirmed the authenticity of his testimony at the Srebrenica Seven trial in 2007. The relevant parts of the transcript from that trial were admitted into evidence. He provided information about the area of Bratunac, about the history of one of the detainees, who happened to be his friend, and about the situation of prisoners.

As he answered questions put to him by Mladić's defence, Celanović described the attacks of the Muslim forces on the Serb villages in the Srebrenica and Bratunac area. Killings, looting and arson were a constant companion of the entire war. His responsibility to document attacks on Serb villages allowed him to confirm that only two villages in that area had not been attacked during the war. Also the proclamation of a demilitarized zone did not improve the security

situation and halt attacks.

On 16 May 2013, two women from Srebrenica testified that members of their family were killed by Bosnian Serb forces after the fall of the enclave in 1995. Justice Report BIRN Sarajevo Mirsada Malagić testified that she saw her husband and two sons for the last time on the road towards the village of Potocari on the day of the fall of Srebrenica.

According to Malagić, her husband and older son joined some other men who were walking through the woods towards Tuzla, while she, her father-in-law and younger son went to the UN protection force's compound in Potocari.

Malagić, who was hit in the hand by shrapnel, said she saw Mladić in Potocari the same day. She said that he assured the refugees that no harm would be done to anybody and that they would go to Kladanj. Saliha Osmanovic also spoke about losing her husband and 18-year old son.

She said that a cousin told her that her husband Ramo left the column of men walking through the woods on 13 July 1995 in order to see us passing by and then was captured.

### Prosecutor v. Goran Hadžić (IT-04-75)

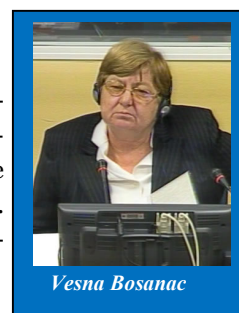
After a one-month break, the trial of Goran Hadžić resumed from 8 April until 10 April 2013 with the testimony of Vesna Bosanac, the head of Vukovar hospital during wartime. She witness stated that the bombings of the hospital were unremitting and incessant. "Despite being protected by the Red Cross, it was a constant target for JNA missiles. The sky looked like it was full of fireworks" said Bosanac. She testified about the fall of Vukovar, namely about the mass execution of hospital patients. During cross examination, Bosanac supported the defence argument according to which paramilitary formations in Vukovar were "controlled and protected by the JNA".

On 10 and 11 April, Višnja Bilić gave testimony about the missing persons and detainees during the war in Croatia. This prosecution expert witness provided the Court with a report containing a collection of facts and observations concerning crimes that the accused

Hadžić is charged with.

Hicham Malla, a former detainee of the Stajićevo prison resumed his testimony in the Hadžić trial on 11 and 12 April. This prosecution witness testified about the events in the area of Vukovar. When describing the inhuman conditions in detention, the doctor insisted on how the prisoners were humiliated without any reasons.

On 1 May, protected witness GH-071 insisted on the fact the perpetrators of the suffering were JNA soldiers. When asked in cross-examination about their choice to remain silent instead of trying to protest, the protested witness answered that "there was no way of doing that, and even if there was a way, there would



Vesna Bosanac

be no purpose".

On 2 May 2013, the Czech Ambassador Petr Kypr gave his testimony concerning the expulsion of Croatian civilians in Eastern Slavonia and qualified it as a "joint attempt by the JNA and local Serb paramilitaries to expel as much as possible of the Croatian population". This former member of the European Community Monitoring Mission (ECMM) in Croatia declared during cross-examination that they did not have contact with Hadžić's civilian authorities but only with the JNA. This assertion led Hadžić defence

to exclude the responsibility of Hadžić's civilian authorities by arguing that only the JNA was responsible for the described situation.

The prosecution military and intelligence expert, Reynaud Theunens, commenced testifying on 10 May 2013.

#### European Community Monitoring Mission (ECMM)

The EUMM is a program initiated by the European Union to monitor borders, inter-ethnic relations, refugee traffic, and political and security developments. The EUMM began operating in July 1991 in the former Yugoslavia and consisted of 75 field specialists.

### Prosecutor v. Vlastimir Đorđević (IT-04-75)

On Monday 13 May, the Appeal hearing for Vlastimir Đorđević took place. Đorđević was sentenced to 27 years in 2011. Both parties filed an appeal.

Đorđević was originally charged under Article 7(1) of the Statute of the Tribunal with planning, instigating, ordering, and otherwise aiding and abetting the alleged crimes. He was also charged under Article 7(1) with committing these five crimes by participating in a Joint Criminal Enterprise, the purpose of which was to change the ethnic balance in Kosovo. It was also alleged in the Indictment that Đorđević is responsible, under Article 7(3) of the Statute, for failing to prevent the offences committed by police under his command, and for failing to ensure the offenders were punished for the offences they committed.

The Trial Chamber found that Đorđević's participation in the joint criminal enterprise was crucial to its success. As Head of the Public Security Department and Assistant Minister of Interior, Đorđević would have had lawful and effective control over the police in Kosovo and "played a key role in coordinating the work of the forces of the Ministry of the Interior of the Republic of Serbia (MUP) in Kosovo in 1998 and 1999.

The defence argued Đorđević could not have ordered the then MUP Serbia Headquarters commander in

Kosovo, Sreten Lukić. Đorđević also stated that he had not been a member of the Serbian MUP and Yugoslav Army joint command in Kosovo

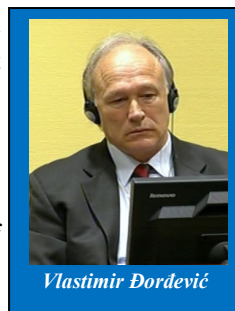
In its extensive Appeals Brief the Defence requested reduction in Đorđević's sentence, as the Trial Chamber failed to explain why, having taken account of the sentencing practices, the sentence could be justified.

Defence Counsel, Russell Hopkins stated "We say that Djordjevic's liability for crimes in Kosovo has been overstated and his sentence is too harsh".

Hopkins also argued, allegations concerning the Podujevo massacre, that Serbian medical teams arrived and tried to save lives. Đorđević found out about the killings right away, and two days later, an investigative judge arrived at the scene."

"There is no cover-up. Instead, all of the bodies were buried properly in a local cemetery," Hopkins said.

At the Appeals hearing Đorđević expressed his compassion to the families of those who were killed by Serb forces during the conflict in Kosovo and said "I hope the future of the region will be one of peace".



Vlastimir Đorđević

**Statute of the Tribunal****Article 7(1)****“Individual criminal responsibility”**

(1) A person who planned, instigated, ordered, committed or otherwise aided and abetted in the planning, preparation or execution of a crime referred to in articles 2 to 5 of the present Statute, shall be individually responsible for the crime.

Đorđević also stated in his address to the appeals judges that he did “not oppose the cover up” carried out by Serbian police.

Đorđević said the reason he did not plead guilty in his original trial was because “the prosecution says I am responsible for absolutely everything that happened in Kosovo”. He further stated, “I did play a role, and for that I accept I

reality of my role. I beg you to review my role and actions objectively. The judgement places too much blame on me”.

Defence argued that Đorđević should not have been convicted under the two modes of “joint criminal enterprise” and “aiding and abetting”.

In March, appeals judges overturned Perišić’s conviction for aiding and abetting crimes in Bosnia because they found that based in Belgrade, he had been “remote” from events on the ground, and that it had not been proven that his aid for the Bosnian Serb army was specifically directed towards the commission of crimes. Also Đorđević was mainly based in Belgrade and only visited Kosovo a few times during the conflict.

must be punished, but the trial judgement distorts the

## NEWS FROM THE REGION

### *Bosnia and Herzegovina*

#### **Police Officers Arrested for War Crimes**



On 16 May 2013, two Bosniaks were arrested by the police officers from Banja Luka on orders from the war crimes department of the district prosecutor’s office. The two are suspected of having committed war crimes against Serb civilians near Prijedor in 1992.

Semir Alukić and Fikret Hirkić are suspected of killing four Bosnian Serb civilians on 29 August 1992, in the village of Kozarac near Prijedor in Bosnia’s Serb-dominated Republika Srpska entity.

#### **Monika Karan-Ilić found guilty**

On 17 May 2013 a court in Brcko found Monika Karan-Ilić guilty of torturing and abusing detention-camp prisoners in Brcko and was sentence to four years in prison.

Karan-Ilić, 17 years old at the time, was convicted for torturing and the inhumanly treating and mentally abusing non-Serb prisoners between May and mid-June 1992 in the Luka prison camp and the police station in the northern Bosnian town.

Several witnesses gave statements that she had poured acid on one prisoner’s body and eyes at the Luka camp and that she had cut four prisoners with a broken bottle, however this was not fully proven according to the Trial Chamber. Karan-Ilić stated that she was not a criminal but a victim of the “tyranny” of her boyfriend Goran Jelisić, who was sentenced to 40 years in prison for war crimes in Brcko at the ICTY in 2001.



*Monika Karan-Ilić*

### Mirsad Karić testified at the trial of Savo Babić

On 20 May, Mirsad Karić testified at the trial of Savo Babić, then commander of the Bratunac military police. Babić is on trial for war crimes in Bratunac, he is alleged to have ordered, committed and failed to prevent the imprisonment of non-Serb civilians at the primary school in May 1992.

Karić stated that the Vuk Karadžić primary school in Bratunac, where prisoners were detained by Serb fighters, was turned into a “slaughterhouse”. He witnessed the murder of prisoners by Arkan’s paramilitaries in the gym.

The indictment alleges that around 400 detained civilians were beaten and tortured every day, and several dozen were killed or died as a result of the conditions at the school.

## LOOKING BACK...

### Extraordinary Chamber in the Courts of Cambodia

Ten years ago...

On 6 June 2003, after several years of intense and fraught negotiations, an agreement was signed by H.E. Deputy Prime Minister, Sok An, and United Nations Under-Secretary-General, Hans Corell, at Chaktomuk Theatre in Phnom Penh. This historical agreement in the realm of international criminal justice was referred to as “the ECCC Agreement”. Signed by the Royal Government of Cambodia and the United Nations, this symbolic accord aimed to prosecute under Cambodian Law the crimes committed during the period of Democratic Kampuchea, from 17 April 1975 to 6 January 1979. Moreover, through this agreement, a real framework for international participation to the ECCC was provided. For the development of international criminal law, this agreement symbolized a considerable cooperation between a national entity and the United Nations.

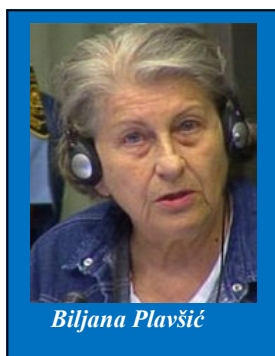
#### ECCC Agreement

#### The Law on the Establishment of Extraordinary Chambers

Article 2.1.: The present Agreement recognizes that the ECCC have subject matter jurisdiction consistent with that set forth in “the Law on the Establishment of the EC for the Prosecution of Crimes Committed During the Period of Democratic Kampuchea” as adopted and amended by the Cambodian Legislature under the Constitution of Cambodia. The Agreement further recognizes that the Extraordinary Chambers have personal jurisdiction over senior leaders of Democratic Kampuchea and those who were most responsible for the crimes referred to in Article 1 of the Agreement.

### International Criminal Tribunal for the former Yugoslavia

Ten years ago...



*Biljana Plavšić*

On Thursday 26 June 2003, the only woman accused of war crimes before the ICTY, Biljana Plavšić, was transferred to serve her eleven years sentence in Sweden. Plavšić was the first person to be transferred to a Swedish prison to serve a sentence from the ICTY.

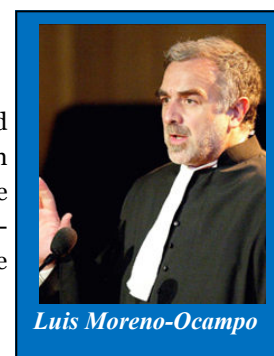
Plavšić was one of the highest ranking officials in Republika Srpska during the war. She admitted her guilt and acknowledged her own responsibility for crimes.



## International Criminal Court

### Ten years ago...

On 16 June 2003, Luis Moreno-Ocampo, the first Prosecutor of the ICC, pledged his solemn undertaking during an open session of the Court. This open session was presided by Judge Philippe Kirsch, President of the ICC, and witnessed by the President of the Assembly of States Parties, H.R.H. Prince Zeid Ra'ad Zeid Al-Husseini of Jordan. This date marked the beginning of a nine-year mandate for the first Prosecutor of the ICC. Moreno-Ocampo was in office from 16 June 2003 until 15 June 2012.



Luis Moreno-Ocampo

## NEWS FROM OTHER INTERNATIONAL COURTS



### International Criminal Court

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

### Ruto and Sang case: Trial Chamber V provisionally postpones trial opening

On 6 May 2013, Trial Chamber V of the International Criminal Court decided to provisionally vacate the date of the trial's start in the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang* and conveyed a public status conference on 14 May 2013.

The postponement of the trial date follows a request submitted by the Prosecution to add five witnesses to its witness list on 12 April 2013 and a subsequent Defence request to vacate the start of the trial "in order to allow the Defence adequate time to prepare its case". The Prosecution further sought an ex

parte hearing.

During the public status conference on 14 May 2013, the parties and participants presented their observations on the Prosecutor's request to add five witnesses to the list of witnesses and the Defence's request to vacate the trial date.

The trial in the case against Ruto and Sang was initially scheduled to start on 28 May. A new date for the trial's opening will be scheduled after hearing the parties and participants' observations during the status conference.

### Kenyatta's team submits observations on ICC trial date

On 14 May 2013, the Defence for Kenyan President Uhuru Kenyatta submitted its "Observations on Estimated Time Required to Prepare for Trial", requesting that Trial Chamber V of the International Criminal Court:

1. order the Victims and Witnesses Unit to identify the date by which protective measures will be implemented in respect of each of five witnesses,
2. order the Prosecution to identify the date

by which it will disclose the un-redacted versions of the transcripts of interview of P-217 and P-152,

3. adjourn the commencement of trial until January 2014.

In the filing, Steven Kay QC and Gillian Higgins, the barristers representing President Kenyatta, argued that the Defence required until January 2014 to prepare adequately for trial.

They argued that such a postponement was needed due to the scale of Prosecution disclosure served after the Confirmation Hearing, the concomitant need for the Defence to investigate witnesses with criminal backgrounds and significant credibility issues, the need for investigation into the credibility of, and substantive allegations made by, five Prosecution witnesses whose identities and un-redacted transcripts of

interview have yet to be disclosed, the fact that the Defence has used its own resources to carry out translations and transcriptions that the Prosecution was under a duty to complete, and the recent service of an updated Pre-Trial Brief and Document Containing Charges.

### **ICC Prosecutor receives referral by the authorities of the Union of the Comoros in relation to the events of May 2010 on the vessel 'Mavi Marmara'**

On 14 May 2013, a delegation from the Istanbul-based Elmadag Law Firm, acting on behalf of the Government of the Union of the Comoros, transmitted a referral "of the Union of the Comoros with respect to the 31 May 2010 Israeli raid on the Humanitarian Aid Flotilla bound for Gaza Strip, requesting the Prosecutor of the International Criminal Court pursuant to Articles 12, 13 and 14 of the Rome Statute to initiate an investigation into the crimes committed within the Court's jurisdiction, arising from this raid".

The Union of the Comoros, acting on behalf of the Comoros state, argued that the crimes that have been committed on the humanitarian aid flotilla, specifically on board the MV Mavi Marmara vessel, fall within the jurisdiction of the Court and that the majority of the crimes have been committed within the territorial jurisdiction of the Comoros, namely, on board the Mavi Marmara vessel.

The request relied inter alia on the Report of the International Fact-Finding Mission, which was convened to investigate violations of international law, including international humanitarian law and human rights law, resulting from the Israeli attacks on the flotilla of vessels carrying humanitarian assistance, (the "Gaza Flotilla Report") submitted to the United

Nations Human Rights Council on 22 September 2010.

It is claimed that the Israel Defence Forces attacks on this humanitarian aid flotilla consisted of eight boats bound for Gaza and were directed to Gaza Strip carrying humanitarian aid.

It is further stated that when the humanitarian aid flotilla was attacked en route to Gaza by the Israel Defence Forces, nine civilians on board the MV Mavi Marmara were killed as a result of the attack.

In accordance with the requirements of the Rome Statute the OTP will be conducting a preliminary examination in order to establish whether the criteria for opening an investigation are met.

#### **Gaza Flotilla raid**

was a military operation by Israel against six ships of the "Gaza Freedom Flotilla" on 31 May 2010 in international waters of the Mediterranean Sea. The flotilla, organized by the Free Gaza Movement and the Turkish Foundation for Human Rights and Freedoms and Humanitarian Relief (IHH), was carrying humanitarian aid and construction materials, with the intention of breaking the Israeli-Egyptian blockade of the Gaza Strip

## DEFENCE ROSTRUM

### ADC-ICTY Educational Visit to the Organisation for the Prohibition of Chemical Weapons



Malik Azhar Ellahi

On Wednesday 15 May, a group of interns from the ADC-ICTY visited the Organization for the Prohibition of Chemical Weapons (OPCW). The visit consisted of a presentation by Malik Azhar Ellahi, Head of Government Relations and Political Affairs, and a tour to the Leper room where all the Executive Council meetings take place.

In his presentation, Ellahi shortly outlined the long history of chemical weapons, from their first use in World War I to the the Iran-Iraq war, were Chemical Weapons were used for the first time against civil society to the terror attacks in Japan by the doomsday cult. Vera Douwes Dekker, an intern on the defence team representing Ratko Mladic said, "I thought the trip was interesting, I liked learning about the history of the OPCW and the mandate under which they are operating".

Concerning the mandate of the OPCW, a lively discussion on the situation in Syria arose. The situation is complicated; the OPCW can dispatch inspectors for controls in member state countries, however, Syria is not a party to the convention. On the other side, the United Nations Secretary General enjoys the power to order inspections. Syria requested such inspections, concerning the use of chemical weapons by rebels. France and the United Kingdom then proposed to inspect the whole country. The Secretary General agreed, but under those conditions Syria denied. Currently the inspectors of the OPCW are stationed in Cyprus and ready in case the circumstances change. Shokriya Majidi, an intern on the Karadzic Stand-by defence team, was curious about the situation in Syria and said "the OPCW has a difficult task on how to deal with the ongoing conflict in Syria. It is impossible to conduct a proper investigation regarding the use of chemical weapons, when the OPCW is not welcome in

the country. Thus I was very curious on how and when it will conduct its investigation and what the result and consequences of it will be."

Next to the legal background of the organization, Ellahi also gave an overview of a few chemical weapons. For instance, mustard gas, which was used in the Iran – Iraq war and caused massive casualties or tear gas, which is an exception to the convention, because it is used to enforce domestic control instead for warfare. Ajje Buhron, an intern on the Karadzic Stand-by defence team said "it was really great experience! I enjoyed the discussion, and learned about the impact on international peace and security law and international humanitarian law. Moreover I was surprised to learn that the chemicals used in the production of pens or fire retardant material for office chairs is made from the same chemical that can be used to produce chemical weapons".

At the end of his presentation, Ellahi outlined the work of the OPCW. Since the establishment of the OPCW, almost 80% of all declared chemical weapons have been destroyed. Ellahi concluded that "the ideal situation would be that states do not have any chemical weapons at all – but unfortunately we don't live in this world. Who knows what will be invented in the future?".



OPCW Head Office

## BLOG UPDATES AND ONLINE LECTURES

### Blog Updates

Kirthi Jayakumar, **Why is sexual violence so common in war?**, 20 May 2013, available at: <http://www.insightonconflict.org/2013/05/why-is-sexual-violence-so-common-in-war/>

Jim Duffy, **Apocalypse soon? The UK without the European Convention on Human Rights**, 19 May 2013, available at: <http://ukhumanrightsblog.com/2013/05/17/apocalypse-soon-the-uk-without-the-european-convention-on-human-rights/>

Elizabeth Santalla Vargas, **Bolivia's Centenarian Maritime Claim before the International Court of Justice**, 14 May 2013, available at: <http://www.peacepalacelibrary.nl/2013/05/bolivias-centenarian-maritime-claim-before-the-international-court-of-justice/>

### Online Lectures

*The Court - Inside the International Criminal Court*, 20 May 2013, published by The Open University:

<http://www.youtube.com/watch?v=PR8qPyCrrsM>

*Deconstructing Prevention: Organizing Government to Prevent Genocide*, 26 February, published by Auschwitz Institute:

<http://www.youtube.com/watch?v=SNwazh9pI6E>

*The Drone Next Door*, 7 May 2013, published by New America Foundation:

[http://newamerica.net/events/2013/the\\_drone\\_next\\_door](http://newamerica.net/events/2013/the_drone_next_door)

*The Convention on the Prevention and Punishment of the Crime of Genocide*, 11 May 2011, published by Institute for Cultural Diplomacy:

<http://www.youtube.com/watch?v=JiArv-IL8c4>

## PUBLICATIONS AND ARTICLES

### Books

Dan Saxon (2013), *International Humanitarian Law and the Changing Technology of War*, Martinus Nijhoff/Brill

William A. Schabas, Yvonne McDermott and Niamh Hayes (2013), *The Ashgate Research Companion to International Criminal Law*, Ashgate

Amos Guiora (2013), *Legitimate Target: A Criteria-Based Approach to Targeted Killing*, Oxford University Press

David Kaye, Bryan Hance, Manal Hanna, Sunny Hwang, Elisabeth Levin, Grace Lo, Esther Yoo and Xiangyu Zhang (2013), *The Council and The Court, Improving Security Council Support of the International Criminal Court*, School of Law University of California

Andre Klip, Goran Sluiter (2013), "Annotated Leading Cases of International Criminal Tribunals—volume 37: The International Criminal Tribunal for the former Yugoslavia 2006", Intersentia.

Philippa Webb (2013), *International Judicial Integration and Fragmentation*, Oxford University Press

### Articles

Heidi Nichols Haddad (2013), "After the Norm Cascade: NGO Mission Expansion and the Coalition for the International Criminal Court", *Global Governance: A Review of Multilateralism and International Institutions*, Volume 19, Issue 2

Kenneth A. Rodman and Petie Booth (2013), "Manipulated Commitments: The International Criminal Court in Uganda", *Human Rights Quarterly*, Volume 35, Issue 11

Pierre N. Leval (2013), "Distant Genocides", *Yale Journal of International Law*, Volume 38, Issue 1

Peter Hilpold (2013), "The International Court of Justice's Advisory Opinion on Kosovo: Perspectives of a Delicate Question", *Austrian Review of International and European Law*, Volume 14

Philip Alston (2013), "Does the Past Matter? On the Origins of Human Rights", *Harvard Law Review*, Volume 126, Issue 7

Lindsey N. Kingston (2013), "A Forgotten Human Rights Crisis": *Statelessness and Issue (Non)Emergence*", *Human Rights Review*, Volume 14, Issue 2

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**WE'RE ON THE WEB!**

**WWW.ADCICTY.ORG**

**EVENTS****SCL Lecture: Sixty-Five Years of International Criminal Justice: The Facts and Figures**

Date: 5 June 2013

Location: The Hague

More info: [http://thehagueinstituteforglobaljustice.org/index.php?page=Events-Events-Upcoming\\_events-SCL\\_Lecture:\\_Sixty-Five\\_Years\\_of\\_International\\_Criminal\\_Justice:\\_The\\_Facts\\_and\\_Figures&pid=123&id=109#.UZt1kaI3COY](http://thehagueinstituteforglobaljustice.org/index.php?page=Events-Events-Upcoming_events-SCL_Lecture:_Sixty-Five_Years_of_International_Criminal_Justice:_The_Facts_and_Figures&pid=123&id=109#.UZt1kaI3COY)

**Immunity of International Organizations: Functional necessity or out of date?**

Date: 9-10 June 2013

Location: Leiden

More info: [http://www.paoleiden.nl/cms2/index.php?option=com\\_content&view=article&id=575:conference-immunity-of-international-organizations&catid=34:algemeen](http://www.paoleiden.nl/cms2/index.php?option=com_content&view=article&id=575:conference-immunity-of-international-organizations&catid=34:algemeen)

**Advanced Summer Programme on Countering Terrorism in the Post 9/11 World**

Date: 26-30 August 2013

Location: The Hague

More info: <http://www.asser.nl/upload/documents/20130416T120917-Brochure%20Advanced%20Summer%20Programme%20on%20Countering%20Terrorism.pdf>

**OPPORTUNITIES****Legal Officer**

World Health Organization  
Closing date: 31 May 2013

**Legal Officer**

Organisation for the Prohibition of Chemical Weapons  
Closing date: 1 June 2013

**University Lecturer Public International Law**

University of Groningen  
Closing date: 2 June 2013

**Humanitarian Affairs Officer**

Office of the Coordinator of Humanitarian Affairs  
Closing date: 16 June 2013



*The ADC-ICTY Newsletter Team would like to express its appreciation and thanks to Dominic Kennedy, who initiated and developed this Newsletter.*

*Thank you Dom, for your all your hard work, assistance, cooperation and dedication to the Newsletter. We wish all the best in your future endeavors.*

*The 2013 Newsletter Team*