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NEWSLETTER

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Cases on Appeal

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ICTY NEWS

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

On 15 December, the Appeals Chamber, composed of Judge Pocar, Presiding, Judge Agius, Judge Liu, Judge Ramaroson, and Judge Afanđe, overturned the Trial Chamber's decision to acquit Jovica Stanišić, former Deputy Chief and Chief of the State Security Service (SDB) of the Ministry of Interior of the Republic of Serbia, and Franko Simatović, former Deputy Chief of the Second Administration of the Serbian SDB and special advisor in the SDB. The Appeals Chamber ordered that Stanišić and Simatović be retried on all counts.

Despite initially not being scheduled to attend, both Accused were present for the reading of the judgement. Stanišić was represented by Lead Counsel Wayne Jordash QC and Co-Counsel Scott Martin. Simatović was represented by Lead Counsel Mihajlo Bakrač and Co-Counsel Vladimir Petrović.

The initial indictment against Stanišić and Simatović was rendered on 1 May 2003, and alleged that between April 1991 and 31 December 1995, the two participated in a joint criminal enterprise (JCE) created to enact the forcible and permanent removal of non-Serbs from majority Croat, Bosnian Muslim and Bosnian Croat areas of Croatia and Bosnia and Herzegovina (BiH). The indictment alleged that the JCE involved the commission of murder as a violation of the laws or customs of war and as a crime against humanity, as well as deportation, other inhumane acts (forcible transfer), and persecution (through murder, deportation, and other inhumane acts) as crimes against humanity. The Accused were also charged with having planned, ordered and/or otherwise aided and abetted the planning, preparation and/or execution of the crimes alleged in the indictment.

The Trial Chamber found on 20 May 2013 that many of

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Also in this issue

the crimes alleged in the indictment were perpetrated by Serb forces in the Serbian Autonomous Area of Krajina and the Serbian Autonomous Area of Slavonia, Baranja, and Western Srem in Croatia, as well as in the municipalities of Bijeljina, Bosanski Šamac, Doboj, Sanski Most, Trnovo, and Zvornik in BiH. Still, the Trial Chamber, by majority, found neither Stanišić nor Simatović responsible for committing these crimes through participation in a JCE as it was not established beyond reasonable doubt that they had the requisite intent to further its common criminal purpose. Furthermore the Trial Chamber, by majority, found that it was not proven beyond reasonable doubt that Stanišić or Simatović planned or ordered these crimes or that they aided and abetted them. That being so, the Trial Chamber, by majority, acquitted Stanišić and Simatović under all counts of the indictment.

F. Simatović and J. Stanišić

The Prosecution appealed the verdict on three grounds, including, *inter alia*, that the Trial Chamber erred in law in finding that it was not established that Stanišić and Simatović shared the intent to further the common criminal purpose, without adjudicating or providing a rationale for "essential elements" of JCE liability. As a consequence of granting, in part, the first two grounds of the Prosecution's Appeal and ordering a retrial, the Appeals Chamber found, by majority, that it need not consider the Prosecution's third ground of appeal and dismissed it as moot.

The Appeals Chamber recalled the *Šainović et al.* and *Popović et al.* Appeal Judgements, wherein the Appeals Chamber affirmed that "specific direction" is not an element of aiding and abetting liability under customary international law, and found, by majority, that the Trial Chamber erred in law in requiring that the acts of the aider and abettor be specifically directed to assist the commission of a crime. On the ground of the identified errors, the Appeals Chamber, by majority, found that the case gave rise to appropriate circumstances for retrial pursuant to Rule 117(c) of the Tribunal's Rules of Procedure and Evidence.

The Appeals Chamber ordered that Stanišić and Simatović be detained at the United Nations Detention Unit in The Hague, where they will remain pending further orders.

A comprehensive analysis of the judgement and its implications is forthcoming in the January issue of this Newsletter. For the complete ICTY Press Release, visit: http://tinyurl.com/h688tdk .

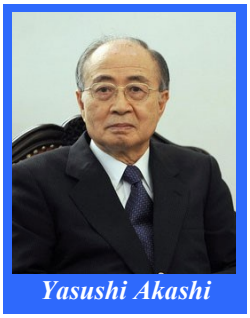
Prosecutor v. Mladić (IT-09-92)

On 17 November, witness Mile Dmicić gave testimony via video-link. Dmicić, a professor and former official of the Bosnia and Herzegovina (BiH) Presidency, discussed working with the Presidency during the war. The testimony focused on the witness's knowledge of Alija Izetbegović and the Islamic Declaration. Dmicić gave evidence relating to the leadership of Izetbegović and whether he implemented what was written in the text of the Islamic Declaration. Dmicić gave evidence claiming that Izetbegović's goal was to create a centralised state to be dominated by Muslims. At the end of the Defence's examination, the witness was asked about the Mujahideen's arrival in Bosnia. Dmicić explained that about 10,000 Mujahideen from various countries, such as Saudi Arabia and Indonesia, arrived at the request of Bosnian politicians.

The following day, 18 November, the Defence called Dragan Vujčić who also testified via video-link in relation to the Tomašica mine. Vujčić was in the Engineering Battalion of the Yugoslav People's Army (JNA) 343rd brigade and the Army of the Republika Srpska (VRS) 43rd Brigade. Vujčić confirmed the contents of his witness statement. He stated that his unit never received any orders relating to the Tomašica mine, nor were the units' machines used to bury bodies. Vujčić stated that any suggestion that he was ever in Tomašica would not be correct because the first time he heard of Tomašica was through the media when the bodies were being excavated.

On 23 November, the Mladić case continued with Yasushi Akashi, Japanese diplomat and former United Nations Special Envoy of the Secretary General (SESG) to Cambodia, who also served in this capacity in the former Yugoslavia. Testifying as Mladić's Defence witness, Akashi spoke about his experience in

the region and his views of the conflict during his term of office as the SESG.


Yasushi Akashi

During examination-in-chief Akashi attributed the blame for the lack of success of peace negotiations to the Bosnian side. Furthermore, when questioned by the Defence, Akashi proceeded to state that the Bosnian side was responsible for violating the agreement and for refusing to sign further long-term ceasefire agreements, the latter refusal being supported by the United States. In relation to the safe areas, Akashi confirmed that the three Bosnian safe areas—Srebrenica, Žepa and Goražde—were not fully and properly demilitarised and that those safe areas were being used by the Bosnian Army (ARBiH) for rest and supply. Furthermore, the Defence argued that due to the fact that the agreements were not observed and that attacks were opened on the Serb army and civilians, the attacks on the areas were legitimate.

During cross-examination, the Prosecutor focused on the crimes, and Akashi confirmed the views he states in his book 'In the Valley of Peace and War', where he claimed that all three parties in the conflict had committed crimes. In addition, with regards to his book and his descriptions of Mladić, Akashi later explains that his assumptions about Mladić were only based on their encounters and that they were merely assumptions as he was just "thinking out loud" and that he is "not a historian".

On 24 November, Akashi testified for the last time before the Tribunal. In 2013, Akashi testified in the *Karadžić* case at Karadžić's request. Thus, excerpts of Akashi's testimony at the *Karadžić* trial were admitted into evidence during his testimony for the *Mladić* case.

On 25 November, the testimony of Mitar Kovač, a military expert and former General, was concluded. Kovač began his testimony by describing command problems within the Army of Republika Srpska (VRS). While the fundamentals of command were established within the VRS by 5 June 1992, there were problems in command for the entire duration of the war. Kovač referred in particular to the issue of a lack of sufficient professional personnel. Kovač testified that on the basis of the documents that he consulted in formulating his expert report, Srebrenica never fulfilled the requirements of a demilitarised zone or protected area, and therefore the VRS was not bound by the demilitarisation agreement.

He stated that based on his research, the crimes that occurred in Srebrenica were perpetrated by self-organised groups including mercenaries such as the Scorpions. He stated that senior security services officers such as Drago Nikolić, Vujadin Popović and Ljubiša Beara were also involved. Zdravko Tolimir was Beara's direct superior, making Mladić only an indirect superior of Beara. Ković testified that his research indicated that the Bosnian Serb leadership did not plan crimes in Srebrenica and that instead those crimes were likely planned to foster international support for the killing of Serbs from Croatia and Bosnian Krajina in late 1995. In relation to Directive 7 issued in March 1995, Ković stated that there had been an error in the Directive, which was corrected in Directive 7.1.


Miloš Ković

Finally, Dr. Miloš Ković testified on 1 and 2 December. Ković is a professor in the Department of History in the Faculty of Philosophy at the University of Belgrade. He appeared as an expert witness and was charged with the task of critically analysing the reports of the Prosecution experts. Ković provided two reports. The first report focused on the analysis of a report entitled "The Bosnian Serb Leadership 1990-1992 and the Bosnian Serb Leadership 1993-1995", written by Patrick J. Treanor; the second focused on the analysis of the expert report of Dr. Robert J. Donia on historical events in Bosnia and Herzegovina. Ković criticised the methodological approach of the Prosecution's witnesses, proving that they were not written in accordance with the methodological requirements.

Ković also indicated that the Prosecution experts' failure to use any sources other than Bosnian Muslim ones in their reports unfairly supported the Prosecution's case, and did not meet the requisite methodological rigour. For these reasons, Ković provided alternative Serb sources that had reported on the events during the conflict, thus allowing the Chamber and the public to get a clearer and more balanced picture of the events. Finally, Ković pointed to the fact that the Prosecution experts often analysed events and statements without providing their context and therefore not presenting to the Court the full picture of the circumstances at the time.

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

On 23 November, Judge Carmel Agius, newly elected President of the Tribunal, held a status conference in *Prosecutor v. Jadranko Prlić et al.* (IT-04-74-A), noting humorously that as President, he also took over as Presiding Judge over the Prlić appeal proceedings "whether you like it or not". Four of the Accused, Jadranko Prlić, Bruno Stojić, Slobodan Praljak and Milivoj Petković, were present in court; Valentin Ćorić and Berislav Pušić were not. Counsel for all six Accused were present, though Counsel for Pušić attended via video-link.

After ensuring that all Accused present could understand the proceedings, Judge Agius noted his new position as Presiding Judge and that, on 18 November, he appointed himself Pre-Appeal Judge pursuant to Rules 65*ter* and 107 of the Rules of Procedure and Evidence (RPE). Judge Agius reviewed the requirements and purposes of Rule 65*bis* status conferences and then moved on to enquire about the Accused's health and conditions of detention. No issues were raised in open session by the Accused, though Counsel for Pušić indicated a desire to move to private session if Pušić's health was to be discussed. The conference moved briefly into private session.

Back in open session shortly thereafter, Judge Agius reviewed the briefing history in the case, which saw its first round of Appellants' Briefs filed by all parties on 12 January and the last Reply Briefs filed on 29 May, paying particular attention to the more recent filing since the release of public redacted versions and reclassified filings. As of 21 October, public (redacted) versions of all parties' Appellant's, Respondent's, and Reply Briefs have been filed. Additionally, he noted that on 10 November, Exhibit P02921 was reclassified from confidential to public. Finally, before asking the parties if there were any additional issues to be raised, Judge Agius noted that there are no pending public motions, but that there are a few confidential motions that are currently being addressed by the Appeals Chamber. No further issues were raised. Judge Agius affirmed that the Prlić appeal is "top" on his agenda and that he is working on organising the team for the appeal before adjourning the session.

Prosecutor v. Šešelj (IT-03-67)

Petar Jojić, Jovo Ostojić and Vjerica Radeta have been charged with contempt of the International Criminal Tribunal for the Former Yugoslavia (ICTY) for allegedly having threatened, intimidated, offered bribes to, and otherwise interfered with witnesses in the case *Prosecutor v. Vojislav Šešelj*, and a related contempt case against him (IT-03-67-T and IT-03-67-R77.3). Jojić and Radeta are jurists and have worked for Šešelj's Defence team.

V. Radeta, P. Jojić, J. Ostojić

The ICTY has requested that Serbia hand over the three suspects to stand trial in The Hague, asking that Belgrade "immediately report if they are unable to execute this warrant of arrest and indicate the reasons for such non execution". An 'Order in Lieu of an Indictment' for the alleged contempt was issued confidentially by the Trial Chamber on 5 December 2014, while the warrants for the arrest of the three Accused were issued confidentially on 19 January. On 1 December, the Mechanism for International Criminal Tribunals (MICT) filed an order lifting the confidentiality of both the 'Order in Lieu of an Indictment' and the arrest warrants against Jojić, Ostojić and Radeta.

The head of the Serbian Office for Cooperation with the Hague Tribunal, Rasim Ljajić, said the Tribunal's move was "completely unexpected and surprising", and as Šešelj's verdict is to be announced sometime this year, "it was logical that these people be tried for contempt at that time". As per Serbia's Law on Cooperation with the ICTY, Belgrade is not obliged to comply with all of the court's requests. The Serbian government can deny any request if it believes that it violates Serbia's sovereignty or national security.

MICT News

Prosecutor v. Ladislas Ntaganzwa (ICTR-96-9-I)

On 9 December, authorities in the Democratic Republic of Congo arrested Ladislas Ntaganzwa, a former mayor of Nyakizu Commune in the Prefecture of Butare and one of the nine remaining International Criminal Tribunal for Rwanda (ICTR) fugitives. Ntaganzwa was indicted for genocide and crimes against humanity related to the massacre of thousands of Tutsis at various locations in his locality including at Cyahinda Parish and at Gasasa Hill during the 1994 Rwandan genocide. He was also alleged to have orchestrated sexual violence on a large scale. Ntaganzwa is one of the six fugitives whose cases were referred to Rwanda by the Prosecutor of the ICTR under Rule 11*bis* for trial.

The Prosecutor of the Mechanism, Justice Hassan B. Jallow, informed the UN Security Council of Ntaganzwa's arrest during his briefing the same day. The eight other fugitives—Felicien Kabuga, Augustin Bizimana, Protais Mpiranya, Fulgence Kayishema, Pheneas Munyarugarama, Aloys Ndimbati, Ryandikayo, and Charles Sikubwabo—remain at large, and there is a reward of up to US $5 million for information leading to their arrest and transfer to the appropriate jurisdiction for trial.

Prosecutor v. Drago Nikolić (MICT-15-85-ES.4)

On 23 November, the Registrar of the Mechanism for International Criminal Tribunals (MICT) filed the death certificate of Drago Nikolić, together with other information received from the Republic of Serbia, including confidential and *ex parte* annexes. Nikolić died on 11 October while on provisional release in Serbia.

A copy of the death certificate for Nikolić and other official reports concerning his death were submitted along with translations, but were filed confidentially and *ex parte* as they contain medical and personal information that may be unavailable to the Office of the Prosecutor and Counsel for Nikolić.

Drago Nikolić

Nikolić was sentenced to 35 years' imprisonment in June 2010 for aiding and abetting genocide, crimes against humanity and violations of the laws or customs of war committed in and around the Srebrenica enclave in 1995. Though the Appeals Chamber reversed the convictions in part on 30 January of this year, it reaffirmed the sentence. Nikolić was granted provisional release to begin on 24 July and to last until 25 January 2016 on the basis of his severe medical condition.

Prosecutor v. Kamuhanda (MICT-13-33)

On 25 November, Judge Vagn Joensen granted in part a motion to compel disclosure of Witness GEK material in the case of *Prosecutor v. Jean de Dieu Kamuhanda*. The material in question included reports by a former staff member of the International Criminal Tribunal for Rwanda (ICTR), that there were alleged attempts by ICTR employees to offer the witness money to recant her testimony given against Kamuhanda at his trial. In the Appeal Judgement in 2005, the ICTR Appeals Chamber found that the witnesses called for the Defence were not credible, and thus did not discuss the Witness GEK evidence, as it was tendered in rebuttal.

Kamuhanda's recent motion noted that the Office of the Prosecutor (OTP) is in possession of the Witness GEK material, and that it was potentially exculpatory, as it undermined the credibility of the Prosecution's evidence. He further argued that the Prosecution is under an obligation to disclose material that may affect the credibility of the Prosecution's evidence, even after the conclusion of an appeal. In its response, the Prosecution maintained that there is not additional disclosable material, as the OTP reviewed the evidence and found that it was not exculpatory.

In his decision, Judge Joensen held that the Defence had specifically identified the material sought and noted that the assessment of whether material is subject to disclosure is independent of the information's probative value. However, he also ruled that the exculpatory nature of the evidence in question was speculative at the time of his ruling. As a result, he directed the Prosecution to submit the relevant material

to him in an *ex parte* hearing so that he could rule on the issue of disclosure.

On 8 December, the Appeals Chamber handed down its Decision on Kamuhanda's Appeal of the Decision on the Motion for Appointment of an *Amicus Curiae* Prosecutor to Investigate Prosecution Witness GEK. The Appeals Chamber upheld the Single Judge's prior decision and dismissed the Appeal.

Prosecutor v. Lazarević (MICT-14-67-ES.3)

A decision on the early release of Vladimir Lazarević (Milutinović *et al*. case) was made public on 3 December, a redacted version having been made public on 7 September. Lazarević voluntarily surrendered to the International Criminal Tribunal for the former Yugoslavia (ICTY) on 3 February 2005. On 26 February 2009, the Trial Chamber sentenced him to 15 years' imprisonment, which was subsequently reduced on appeal to 14 years. Lazarević was convicted of aiding and abetting crimes against humanity in both judgements.

On 22 December 2014, Lazarević's early release application was filed with the Registry of the Mechanism for International Criminal Tribunals (MICT). The President granted the application for early release in light of the applicable law, including Article 26 of the Statute, Rules 149, 150 and 151 of the Rules of Procedure and Evidence (RPE), the gravity of crimes, the eligibility and treatment of similarly situated prisoners, the demonstration of Lazarević's rehabilitation, Lazarević's cooperation with the Prosecution, and humanitarian grounds.

This decision is to take immediate effect, or as soon as practicable thereafter.

Rule 151
General Standards for Granting Pardon, Commutation of Sentence, or Early Release

In determining whether pardon, commutation of sentence, or early release is appropriate, the President shall take into account, inter alia, the gravity of the crime or crimes for which the prisoner was convicted, the treatment of similarly situated prisoners, the prisoner's demonstration of rehabilitation, as well as any substantial cooperation of the prisoner with the Prosecutor.

Prosecutor v. Orić (MICT-14-79)


Naser Orić

On 4 December, the Prosecution issued a response to Naser Orić's request to dismiss the Prosecution's response to Orić's request that the Court of Bosnia and Herzegovina discontinue criminal proceedings against him. The Prosecution argued that its submission should be considered as the Prosecution is the only party to the proceedings to verify Orić's original motion and has standing before the Court to respond. The Prosecution also argued that Orić's reference to the Žigić decision, which arose in the context of sentence enforcement, would be misplaced and the language of the Practice Direction on Early Release would not be applicable. In reference to Rule 16, the Prosecution argued that on his own argument, Orić lacked standing to file the Original Motion, as Rule 16 is only triggered when crimes previously tried before a Tribunal are subject to proceedings in domestic courts.

Orić's initial request to dismiss the Prosecution's motion was covered in issue 94 of the ADC-ICTY Newsletter.

Prosecutor v. Uwinkindi (MICT-12-25)

On 18 November, the Defence in the case of *Prosecutor v. Jean Uwinkindi* submitted its motion appealing the decision handed down by the Trial Chamber refusing Uwinkindi's request for a revocation of the order referring his case to the courts of the Republic of Rwanda. Having examined the French translation of the decision, the Defence submits that the multiple errors of law are sufficient to invalidate the decision and demonstrate that the Chamber has not correctly exercised its discretion. Accordingly, the Defence calls for the original decision rendered by the Chamber to be reversed and the Accused to be transferred to seat of the Mechanism for International Criminal Tribunals (MICT) in Arusha.

ADC-ICTY Annual Conference
The Situation of Defence Counsel at International Criminal Courts and Tribunals

Keynote Speech: No Justice Without Defence Counsel

The ADC-ICTY Annual Conference on 5 December began with a Keynote Speech delivered by Judge Prof. Dr. h.c. Wolfgang Schomburg, recipient of the Great Cross of Merit of the Federal Republic of Germany and former Presiding Judge of Trial Chamber II and Judge of the Appeals Chambers of both the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

Beginning with the mantra forming the legal basis for the establishment and existence of the *ad hoc* tribunals "there is no peace without justice, no justice without peace", Judge Schomburg elected to utilise his allotted time to set out some evocative observations regarding the current state of international criminal law.

The first of these was the proposition that before the international courts and tribunals there is no justice without mandatory Defence Counsel appearing in the Courtroom. Furthermore, Judge Schomburg emphasised that all judicial proceedings and all judicial decisions should be transparent and available to the public and all concerned parties. He claimed that it is essential that a permanent and completely independent Bar Association for International Criminal Courts and Tribunals (BAICT) is incorporated to represent the interests of Defence Counsel.

Moving to more fundamental observations, Judge Schomburg, on the one hand viewed with some degree of cynicism the apparent political influence on the arbitrary selection of situations and cases before the international criminal tribunals, which appear to be driven by the pursuit of national interests. On the other hand he viewed with satisfaction that, against all odds, the incremental increase in the number of international criminal courts and tribunals demonstrate that the dream of establishing accountability within the framework of a fair trial as defined in the International Covenant on Civil and Political Rights (ICCPR) has come to fruition.


Judge Schomburg

Reverting to his opening remarks, in order for truth and justice to drive the achievement and maintenance of international peace and security, Judge Schomburg, considered it mandatory that Defence Counsel appear in the Courtroom. He viewed with some consternation the "waste of time and energy" that the ICTY has committed to the topic of self-representation and considers mandatory representation to be amongst the primary means by which international courts and tribunals can effectively carry out their mandate of seeking the truth.

Judge Schomburg also used his address to stress the fundamental importance that the Prosecution and the Defence must be on an equal footing, with equality of arms being present in all proceedings before the international criminal courts and tribunals.

He proposed a new procedure of evidence before the tribunal to streamline and increase the efficiency of cases at the trial and appeals phase. Judge Schomburg concluded by emphasising that he was looking forward to the panel regarding the establishment of the BAICT and that one of its tasks should be to promote the fact that acting as Defence Counsel before the international courts and tribunals should be seen as acting in the judiciary, allowing more Defence Counsel to stand as judicial candidates and safeguard the future of an international independent judiciary worthy of its name.

Panel I: The Role of Defence Counsel at International Criminal Courts and Tribunals

The first panel covered "The Role of Defence Counsel in International Criminal Courts and Tribunals". Though defining this role in international criminal proceedings is no easy task, the panel of esteemed speakers spoke authoritatively and passionately on the subject. This panel was comprised of Judge Janet Nosworthy of the Special Tribunal for Lebanon (STL), Judge Alphons Orie of the ICTY, and expert international Defence lawyers—and ADC-ICTY members— Christopher Gosnell and Marie O'Leary.

Judge Nosworthy opined the importance of adequate preparation by the Defence. A well-equipped Defence Counsel is vital for the effective fulfilment of an Ac-

cused's right to fair trial. This was made particularly clear when Judge Nosworthy mentioned the "momentum of representation". She explained that part of mounting a robust and fearless defence is continuous representation.

Similarly, Judge Orie spoke about the role of Defence in ensuring the proper administration of court and tribunal proceedings. He noted his personal experience as a Judge and the feelings of discomfort at having to tolerate sub-par Defence Counsel. He used a German expression loosely translated as "less is more" to describe the Defence's need to focus on quality evidence and to "eliminate the background noise". However, this must be balanced against having a weighty and well-rounded case. This balanced approach was aptly (and humorously) summarised by Christopher Gosnell as the paradox of "size matters" but "sometimes less is more".

In contrast to the other panellists, Marie O'Leary instead focused on the unseen role of Defence. She argued that the obligations Defence Counsel owe to the accused are neither singular nor clear cut. Indeed, the

Christopher Gosnell, Judge Nosworthy, Judge Orie, Marie O'Leary

relationship between an Accused and their lawyer span years due to the lengthy proceedings that characterise international criminal law. In these situations clients are detained, isolated and far from home. Defence Counsel do so much more behind the scenes, which is not often talked about. They visit, counsel, and assist with complaints. It is for this reason that O'Leary emphasised the importance of ADC-ICTY members educating others on the role of Defence Counsel and the international criminal law system as a whole.

Panel II: The Necessity of a Defence Office from the International Perspective

The second panel discussed the topic of "The Necessity of a Defence Office from the International and National Perspective". The panel consisted of special guests Héleyn Uñac, Nina Kisić and Xavier-Jean Keïta, with ADC-ICTY moderator Jens Dieckmann.

Héleyn Uñac, Jens Dieckmann, Xavier-Jean Keïta and Nina Kisić

Héleyn Uñac, Deputy Head of Defence Office at the Special Tribunal for Lebanon (STL), as the first panellist provided an overview of some of the main advantages inherent in the Independent Defence Organ at the STL, which acts in full independence from the Registry. She argued that as legal aid is administered independently by the Defence, its independent status enables the Defence Office to enter into cooperation agreements with states—most notably with Lebanon—and that it disposes of its own budget. The latter allows it to conduct its own outreach programmes as well as annual colloquia and training.

Nina Kisić discussed the challenges faced by the Defence Organ before the Court of Bosnia and Herzegovina, sharing her experiences having worked for many years as a Senior Legal Advisor in the Criminal Defence Section of the Ministry of Justice of Bosnia and Herzegovina (OKO). According to Kisić, to date roughly two hundred cases have been completed before the Sarajevo Court, while another three hundred cases are currently at pre-trial or trial stage. A remaining three to four thousand cases are expected to be initiated at some point in the future.

In view of the large number of cases and with practically all of the Counsel operating on legal aid, the accused persons are, save for cases involving genocide, only entitled to a single Defence Counsel. It was therefore initially also cost considerations that led to the creation of the OKO as an essential source of support to Defence Counsel. The role of OKO as the institutional memory of the Court is more important given that the Court does not provide access to filings or decisions from the other cases. Recently, the OKO was

downsized to nine people, whereas the workload could warrant a staff of 25-30 people.

Xavier-Jean Keïta, Principal Counsel for the Defence Office (OPCD) at the International Criminal Court (ICC), spoke about how to avoid conflicts of interest when supporting a large number of Defence teams. He referred to the role of the Defence organ as balancing the knowledge of a Prosecutor that prepared a certain case for at least three years on the one side and a newly arriving Defence Counsel on the other. The OPCD supplements the Defence, but does not supplant it. As a rule, it does not intervene in questions of strategy of individual Defence teams and also not in matters of evidence, in order to avoid contamination and potential conflicts between Defence teams in multi-Accused cases. Among its main roles is the provision of tailor-made memoranda to the 20 current Defence teams before the ICC as well as general manuals on repetitive issues. The scope of work of OPCD is seen as complementary to that of an envisaged Bar Association.

Panel III: The Future of Defence Counsel on the International and National Level

The third panel discussed the topic of "The Future of Defence Counsel on the International and National Level". The panel consisted of special guest Judge Howard Morrison and ADC-ICTY members Novak Lukić, Gregor Guy-Smith, and moderator Dragan Ivetić.

Judge Howard Morrison from the International Criminal Court (ICC) and the International Criminal Tribunal for the former Yugoslavia (ICTY) was first to speak. He noted a number of areas of disparity between the Prosecution and Defence and made a series of recommendations as to how to deal with this unfairness.

Dealing first with the international level, Judge Morrison noted that in order to avoid being labelled as "helping the criminals", there is less of an incentive to introduce measures to help Defence teams. This results in a lack of funding as well as institutional problems, such as the fact the Defence Office is rarely included as a recognised organ of international tribunals. Judge Morrison did, however, argue that the Prosecution faced a more difficult task in proving that an Accused is guilty beyond reasonable doubt. He cited this as reason for why they may require higher levels of financial support.

Judge Morrison, a previous practitioner on the Oxford and Midland Circuit in the United Kingdom, then referenced the future of the Association of Defence Counsel on a National Level. He criticised the continued cuts to legal aid and argued that such measures risk eroding the human rights of defendants. Proposing solutions to these problems, Judge Morrison argued that defenders of human rights must make arguments that are "persuasive", rather than merely being "loud". He noted that it is necessary to stay up to date with the law and to fight fearlessly against procedural impropriety.

Following the contribution of Judge Morrison, Novak Lukić took the floor. He is former ADC-ICTY President and was Lead Counsel at the ICTY in the cases against Miroslav Tadić, Veselin Šljivančanin and Momčilo Perišić. He was also a member of the team of the state of "Republic of Serbia" in the case *Serbia v. Croatia* before the International Court of Justice (ICJ). In his presentation Lukić highlighted the importance of continuous training and the necessity to maintain constructive and informed discussions among Defence lawyers.

Judge Morrison, Dragan Ivetić, Novak Lukić and Gregor Guy-Smith

The final speaker was Gregor Guy-Smith, a member of the ADC-ICTY with extensive experience both in the practice and the teaching of international criminal law. He took issue with Judge Morrison on the matter of equality of arms, advocating for material equality throughout the whole process, including the pre-trial phase. Furthermore, he pointed to promising tendencies at the ICC, including directives and budget plans that take a more realistic account of the needs of Defence teams. In addition, he raised the issue of the difficulties in training, proposing that interns should be allowed right of audience, for the mutual benefit of both the Defence teams and the young professionals.

On this last point a question was raised by a member of the audience, as to what changes can or should be

made to allow interns to gain more experience from their internships and what more can be done to increase diversity at the entry level of international criminal law.

Panel IV: The Importance of a Bar Association for International Criminal Courts and Tribunal

The fourth panel discussion focused on "The Importance of a Bar Association for International Criminal Courts and Tribunals". The panel consisted of special guest Fiana Reinhardt and ADC-ICTY President Colleen Rohan, Michael Karnavas, and moderator Dominic Kennedy.

Colleen Rohan commenced with a discussion on the importance of a Bar Association to prevent imbalance between the Prosecution and Defence. Rohan stated that Prosecutors investigate for years before the case reaches the relevant international criminal court or tribunal, leaving new Defence lawyers "outgunned". The institutional memory created by a Bar Association helps to remedy the imbalance. Bar Associations can create manuals and databases and provide training to new lawyers, such as mock trials. Rohan emphasised the need for proper training due to the fact that upon arrival, new lawyers encounter a new set of laws and rules that are different from their domestic jurisdictions (for example, the presence of three judges and no jury in the courtroom). Therefore, training from experienced and qualified professionals in the field is vital.

Another important role for a Bar Association is the provision of ethical advice. Should a lawyer later be questioned about his or her conduct in relation to a client, witness or the Registry, possession of advice from a Bar Association "arms" the lawyer. Rohan emphasised the importance of a Bar Association in terms of the creation of a "community of lawyers", noting to the lack of response by international criminal Defence lawyers in relation to the arrest and prolonged custody of Defence Counsel in *Bemba* case at the International Criminal Court.

Rohan emphasised that a Bar Association could play a role in dealing with issues that arise with respect to the emerging use of private firms and investigators in documenting crimes in post-conflict areas. Rohan noted that the use of these firms privatises what is ultimately a public function, creating risks of evidence being compromised and raising ethical questions and issues of accountability. While these firms may have made publicly available manuals detailing the processes observed with respect to chain of custody and the taking of statements, Rohan noted that these processes may not correspond to legal standards – for example, the definition of a "leading question".

Fiana Reinhardt, Head of the ICTY Office of Legal Aid and Defence Matters (OLAD), suggested that there should be a single Bar Association that transcends individual international criminal courts and tribunals. Reinhardt stated that whilst courts and tribunals may be geographically dispersed and have different concerns, many international criminal lawyers practice before multiple tribunals. Reinhardt emphasised that a single institution may create "strength in numbers" and lead to greater information sharing, networking, training and public education. She suggested the creation of a centralised internship program. A single Bar Association could also be easily consulted if a new international criminal court or tribunal were to be established, ensuring that a strong role for the defence would be established from the beginning.

Colleen Rohan, Dominic Kennedy, Michael G. Karnavas and Fiana Reinhardt

Reinhardt also provided an overview of the emergence of the ADC-ICTY, noting that originally Defence lawyers had no access to the cafeteria or library of the ICTY. According to Reinhardt, institutional neglect of the Defence at the ICTY led to delays and concerns about the adequacy of Defence. Lawyers from civil law countries faced difficulties in grasping the adversarial process. The emergence of the ADC-ICTY has enabled Defence Counsel to have a voice with respect to changes to rules on assignment of Counsel, procedure and evidence, and ultimately enhances the credibility of the ICTY.

The third panellist, Michael G. Karnavas, Chair of the Working and Drafting Committee for the establishment of an ICC Bar Association and ADC-ICTY member, discussed the work of the Drafting Committee.

Karnavas explained that each tribunal already has a list of criteria and a disciplinary mechanism, creating the risk that state parties might perceive calls for a Bar Association as simply demands for money to help lawyers create a union. Thus, the ICC Draft aims to reinforce the importance of proper representation of both defendants and victims and the importance of independence and professional standards.

Karnavas stated that while at the ICTY there was a "critical mass" of Defence lawyers in the early years of the tribunal, the situation at the ICC is different, as Defence lawyers from different legal traditions are working on cases from different geographical areas.

Karnavas envisages a Bar Association for the ICC comprised of a number of committees, including separate committees for Defence and victims' Counsel. While both Counsel share similar concerns with respect to issues such as funding, they may diverge with respect to their views on other issues. Support staff who are not on the list ought to be able to be part of the association and able to vote, with a separate committee set up for support staff. Additional committees could include, for example, a professional standards advisory committee. Unlike Reinhardt, Karnavas stated that an overarching Bar Association would not be appropriate as each court or tribunal wants their own association that is dedicated to that particular court or tribunal and which can be a "player" in the internal affairs of that court or tribunal.

The ADC-ICTY expresses its gratitude to the numerous organisers, volunteers and members of the various ADC-ICTY Committees for their invaluable contribution and outstanding support in organising this year's Conference.

For photos from the Conference: http://tinyurl.com/gvya3kk
For photos from the Annual Party: http://tinyurl.com/zvmv3k8

ADC-ICTY General Assembly and Election of President and Committees

Branko Lukić

On 6 December, the ADC-ICTY held its General Assembly. During the Assembly many issues related to both the past year and the upcoming one were raised and discussed, and the members elected new committees. Branko Lukić, Lead Counsel in the case *Prosecutor v. Mladić*, was elected President. Lukić has also served as Lead Counsel for police general Sreten Lukić and former Prijedor Mayor Milomir Stakić, and as Co-Counsel for Miroslav Kvočka and Dragan Jokić. He also briefly represented Mićo Stanišić, Mitar Rašović and Momčilo Gruban, and has a long history of commitment to and leadership within the ADC-ICTY. Serving with him are this year's Vice-Presidents: Jens Dieckmann, Wayne Jordash, Marie O'Leary, and Slobodan Zečević. The new committees look forward to good collaboration with all the ADC-ICTY members during their tenure.

For a complete list of the new ADC-ICTY committees, please visit: http://tinyurl.com/nbjbdsh

ADC-ICTY Annual Training

The General Assembly was preceded by this year's Annual Training, also held on 6 December, which focused on issues surrounding the Mechanism for International Criminal Tribunals (MICT). The training was given by Fiana Reinhardt, Head of the Office for Legal Aid and Defence Matters (OLAD) and Gregory Townsend, Chief of the Court Support Services Section (CSS). Their informative presentations covered the structure, function and mandate of the MICT, as well as the topic of legal aid and other issues pertinent to Defence Counsel.

Fiana Reinhardt and Gregory

The ADC-ICTY expresses its sincere gratitude to both speakers and to participants for an insightful discussion and constructive comments.

Photos from the training are available at: http://tinyurl.com/go4h20e

LOOKING BACK...

International Criminal Court

Five years ago…


Saleh Jerbo

On 8 December 2010, Pre-Trial Chamber I of the International Criminal Court (ICC) heard the parties' submissions on the confirmation of charges against Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus. Banda and Jerbo were charged with war crimes with regard to an attack against African Union Mission in Sudan (AMIS) on 29 September 2007. It is alleged that Banda, as leader of the Justice and Equality Movement Splinter Group, and Jerbo, as leader of the Sudan Liberation Army-Unity, were co-perpetrators of the attack which killed 12 peacekeeping personnel. The charges were confirmed on 7 March 2011 and a warrant issued for Banda's arrest on 11 September 2014. The proceedings against Jerbo were terminated on 4 October 2013 due to evidence pointing towards his death, and Banda is currently awaiting trial.

International Criminal Tribunal for Rwanda

Ten years ago…

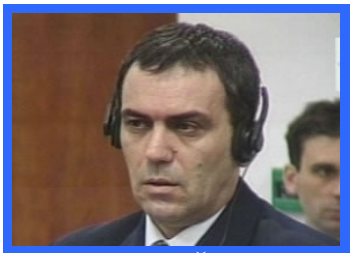
On 7 December 2005, Paul Bisengimana pleaded guilty before the Trial Chamber of the International Criminal Tribunal for Rwanda (ICTR) to aiding and abetting murder and extermination as crimes against humanity. Bisengimana was bourgmestre of Gikoro commune during the genocide of 1994. The Chamber granted the Prosecution motion for withdrawal of the remaining counts of genocide and rape as a crime against humanity as part of a plea agreement, but denied a motion for acquittal of the remaining counts on the basis that the Prosecution failed to provide sufficient reasons to justify such an acquittal.

Earlier on 17 November, the Chamber had rejected a plea agreement on the ground that there had been discrepancies between the indictment and agreement. On 13 April 2006, Bisengimana was sentenced to 15 years' imprisonment.

The International Criminal Tribunal for the former Yugoslavia

Fifteen years ago…

On 5 December 2000, the Trial Chamber of the ICTY rejected a motion by the Defence Counsel for Zoran Žigić requesting the ICTY to suspend decisions on questions pending before the International Court of Justice (ICJ). Žigić submitted that questions with respect to the nature of the armed conflict in Bosnia and Herzegovina (BiH), the identity of the parties to the conflict, and whether crimes that were committed in the course of that conflict were subject to determination by the ICJ. Referring to an application filed by BiH on 20 March 1993 alleging violation of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (CPPCG). Therefore, Žigić submitted that there was a risk that the ICJ and ICTY would hold opposing views on the same factual or legal questions.


Zoran Žigić

The Trial Chamber rejected the motion on the grounds that many issues identified by Žigić as subject to determination by both the ICJ and ICTY had already been pronounced upon by the ICTY and that a stay of the proceedings would run contrary to the purpose of the ICTY as established by Security Council resolution 808 (1993).

NEWS FROM THE REGION

Bosnia and Herzegovina

Call for Reforms of the Constitutional Court of Bosnia and Herzegovina

The call for immediate reform of the Constitutional Court of Bosnia and Herzegovina has become louder, with the Bosnian Croat parties joining their Bosnian Serb counterparts in calling for immediate changes to the law to limit the Constitutional Court's mandate and remove foreign Judges.

Milorad Dodik, the President of Republika Srpska, has previously vowed to hold a referendum on the issue following the Court's ruling that the public holiday, Bosnian Serb Republic Day, was unconstitutional because it discriminates against non-Serbs. On 29 November, the leaders of Republika Srpska stated that they would give the Bosnian Parliament 120 days to adopt changes to the law to limit the Constitutional Court's mandate and remove foreign Judges. If this fails to occur, they will pursue other avenues.

The Bosnian Constitution currently requires that three of the nine Constitutional Court Judges should be foreign citizens selected by the President of the European Court of Human Rights, in consultation with the Bosnian Presidency. Initially, foreign Judges were to be appointed for a term of five years, at which point a law was to be passed regulating their selection. This failed to materialise, resulting in claims that the foreigners are no longer legitimate Judges of the Court.

Kosovo

Appeals Court of Kosovo Review Appeals Motion for Fatmir Limaj

On 2 December, the Appeals Court of Kosovo reviewed a motion filed by EULEX against the acquittal of Fatmir Limaj and nine others in 2013, over alleged abuses at the Kosovo Liberation Army's Klecka Detention Camp. This is the second motion filed for an appeal on the verdict. The first, which resulted in an appeal in 2014, ended two weeks into the hearing when the Defence accused the Judges of bias and successfully asked for the disqualification of the sitting Judges.

The alleged charges against Limaj et. al. are the unlawful imprisonment, torture, cruel treatment and murder of Albanian civilians suspected of collaborating with the Serbian regime, Serbian civilians, Serbian police, and Serbian military personnel. Limaj was indicted by the ICTY in 2003 on similar charges. He was found not guilty on all counts in November 2005.

NEWS FROM OTHER INTERNATIONAL COURTS

International Criminal Tribunal for Rwanda

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

On 14 December, the Appeals Chamber of the ICTR rendered its Appeal Judgment in the *Nyiramasuhuko et al.* ("Butare") case, officially bringing an end to the Tribunal's judicial activity.

On 24 June 2011, Trial Chamber II convicted Nyiramasuhuko (Minister of Family and Women's Development in 1994), Ntahobali (student and part-time manager of Hotel Ihuliro in Butare-ville), Nsabimana (Prefect of Butare), Kanyabashi (Bourgmestre of Ngoma Commune) and Ndayamaje (Bourgmestre of Muganza Commune) of genocide, crimes against humanity and of serious violations of Article 3 common to the Geneva Conventions and of Additional Protocol. It sentenced Nyiramasuhuko, Ntahobali and Ndayambaje to life imprisonment and imposed sentences of 25, 30 and 35 years on Nsabimana, Nteziry-

ayo and Kanyabashi.

The Appeals Chamber was composed of Presiding Judge Fausto Pocar, Judge Carmel Agius, Judge Liu Daqun, Judge Khailda Rachid Khan and Judge Bakhtiyar Tuzmukhamedov. The Chamber reduced the life sentences of Nyiramasuhuko, Ntahobali and Ndayambaje to 47 years. It also noted errors in the Trial Chamber's determination of the sentences for Nsabimana (reduced to 18 years), Nteziryayo (reduced to 25 years) and Kanyabashi (reduced to 20 years). The Chamber further ordered the immediate release of Nsabimana and Kanyabashi, considering the time already served.

Judges Pocar, Agius, Liu and Khan appended partly dissenting opinions. Judge Agius also appended a separate opinion, and Judge Khan a declaration.

DEFENCE ROSTRUM

ASP Side Event on the Creation of an ICC Bar Association

By Isabel Meyer-Landrut

On 23 November the International Criminal Court's (ICC) Assembly of State Parties (ASP) held a side event on the Creation of an ICC Bar Association in the World Forum. The event was co-hosted by Guatemala, the Netherlands and the Drafting Committee for the Constitution of an ICC Bar Association, with the support of the ICC Registry.

The panel was composed of Michael G. Karnavas, ADC-ICTY member and Chair of the Drafting Committee for the Constitution of an ICC Bar Association (ICCBA), Thomas Henquet, Chief of the Legal Office of the ICC Registry and Herman von Hebel, ICC Registrar.


Judge Fernández de Gurmendi

The well-attended side event was opened by the President of the ICC, Judge Silvia Fernández de Gurmendi, who stressed the importance of the Court's cooperation in the establishment of the ICCBA. She pointed out that the ICCBA will face two challenges in its establishment. These are the representation of the international membership and the representation of both victims and Defence.

Each of the panellists then made a statement before opening the floor for questions and comments. Karnavas pointed out that there are two main obstacles which the Constitution must tackle. One is to meet the demands of the list of international Counsel joining the ICCBA, and the other is to stay within the framework of the ICC.

The ICCBA would take on a disciplinary function for list of Counsel by making it mandatory for Counsel to be part of the ICCBA when practising before the ICC. Henquet continued by referring to the Registrar's mandates regarding Defence and victims' rights as a link between the ICC and the ICCBA.

Finally, the ICC Registrar von Hebel confirmed the ICC Registry's support for the establishment of the ICCBA and said that the work of the ICC and ICCBA can be complementary. For this a direct and continuing line of communication had to be envisioned between the ICCBA and the Court.

After this a lengthy question-and-answer session followed, during which several officials such as the Representative of the Dutch Ministry of Foreign Affairs agreed that the establishment of the ICCBA is very important and should be coordinated with the ASP. Further it was stressed that the interests of the members should be represented, and that the ICCBA should focus on standing up for the Defence in relation to the equality of arms at the ICC. The International Bar Association pointed out that the ICCBA should also be discussed and considered by all state parties of the ASP.

The membership of the ICCBA was then discussed. It was stressed that the ICCBA would have full members as well as affiliate members who would represent the support staff for the Defence teams. Furthermore, the question was raised as to what extent the ICCBA would be an independent association if it were required to go though the Registry. It was argued that engagement with the Registry will give the ICCBA a better ability to be heard within the court as well as to take part in the court decisions and actions.

PILPG ASP Side Event: Documenting Serious Human Rights Violations

By Isabel Meyer-Landrut

On 23 November the Public International Law and Policy Group (PILPG), in conjunction with the Vrije Universiteit Amsterdam, hosted an ASP (Assembly of State Parties) side event focusing on "Documenting Serious Human Rights Violations: A Tool for Civil Society". The panel discussion was hosted by Paul Williams, President of PILPG, who was joined in discussion by H.E. Ambassador Steven Rapp, Colleen Rohan, ADC-ICTY President and by Alison Cole, a Legal Officer at the Open Society Justice Initiative. The United Nations Representative and Consultant of the PILPG, Federica D'Alessandra, was also present and introduced the Field Guide "Protocol on the Investigation and Documentation of Gross Human Rights Violations".

Paul Williams

Williams started the panel discussion by introducing PILPG as an organisation as well as the panellists. He asked the panellists to comment on the engagement of civil society in collecting evidence and its challenges. It was pointed out that institutions like international courts do not have the capacity to collect all evidence in cases like the *Media Case* (International Criminal Tribunal for Rwanda) anymore, as the development of technology has tremendously increased the amount of evidence. Therefore, these institutions would rely on social society actors to collect evidence. The challenge of this is that civil society actors need to show a certain amount of accountability and reliability. Meaning that there needs to be an equal standard among civil society actors in providing reliable services.

Rohan pointed out that an additional challenge for Defence teams is the little time and resources they have to prepare a case. Furthermore, evidence collected by civil society actions is usually not collected for a Defence perspective. She focused on the question of whether or not civil society actions are liable enough, as they could be politically influenced and therefore not provide a neutral review. It was concluded that cases at international courts such as the International Criminal Court (ICC) are growing due to technological development, thus having an increasing amount of evidence. The use of civil society organisations can help to hold the standard of the cases in terms of investigation and evidence finding, but raises the question of reliability and accountability of civil societies, as well as their equal support for Prosecution and Defence.

D'Alessandra then introduced the PILPG field guide, which aims to mitigate these issues and set a standard of security, confidentiality and reliability in collecting evidence. The side event was concluded by a lively question and answer session.

Seminar on Sentencing, Rehabilitation and Perpetrators of International Crimes

By Marie Sherwood

On 30 November, interns from the ADC-ICTY attended an expert seminar at the Vrije Universiteit Amsterdam (VU) on "Sentencing, Rehabilitation and Perpetrators of International Crimes".

The seminar began with an opening introduction by Dr. Barbora Holá and Dr. Joris van Wijk from the VU, who spoke about the day's proceedings. The introduction was followed by the first speaker, Professor Mark Drumbl from Washington and Lee University, who spoke on the topic of "Perpetrators of International Crimes and Sentencing/Rehabilitation".

The second speaker, Professor Alette Smeulers from Tilburg University and the University of Groningen, spoke on "A Typology of Perpetrators of International Crimes". Smeulers claimed that everyone is capable of committing an international crime within a specific context. She describes the individuals who do so as very ordinary people who commit extreme crimes due to their ideological, political and/or institutional contexts, who, after their first crime, usually adapt to the situation and context.

Smeulers described the process of adaptability in four phases, ranging from moral disgust, to cognitive dissonance, to rationalisation, and finally to acclimation and complete lack of empathy toward victims. She then went on to describe the four phases in which perpetrators of international crimes look back, beginning with denial and progressing through hatred,

guilt, and even post-traumatic stress disorder. Smeulers concluded by explaining that if one wants to rehabilitate perpetrators of international crime, they must be taken out of the context in which they committed the crimes in order to acknowledge what they have done.

The third speaker, Dr. Kjeil Anderson from the Institute of War, Holocaust and Genocide Studies (NIOD), spoke on the topic of "Motivations and Rationalisations of Perpetrators of International Crimes – Insights from Perpetrator Interviews". Anderson argued that understanding perpetrator narratives is vital to understanding the moral context of international crimes, which itself is an organising force and principle in communicating norms and decentralising power. Anderson discussed moral neutralisation theory as a way that perpetrators rationalise their ideas as normal. The techniques of neutralisation include appealing to loyalties, denying the humanity of victims, denying responsibility for actions, claims of crimes' inevitability, and claims of relative acceptability, among others. Anderson concluded by positing that rehabilitation can be achieved if the perpetrators are made to think critically about their actions, leading them to take responsibility for the harms done. The perpetrators will need to undergo counselling and reintegration into the community.


Dr. Roisin Mulgrew

After a short break the seminar reconvened with Dr. Roisin Mulgrew from Nottingham University, who spoke on the topic of "Enforcement of International Sentences". Mulgrew discussed the creation of a Centralised National Enforcement Prison for international courts and tribunals, as they do not have their own prisons and rely on state cooperation. She posited that international prisoners being dispersed amongst a range of cooperating states to serve their sentences creates inequality between international and national prisoners. International prisoners lack social interaction with others because of the language and cultural barriers and are either reluctant to engage in social activities or are deemed too dangerous to engage with the general population. Therefore, international prisoners spend a very long time in solitary confinement and sheltered by maximum security.

Mulgrew argued that this isolation has a significant impact on progression, rehabilitation and ultimately reintegration into society, as social interaction with others, especially those of different ethnicities and cultures, is vital to altering behaviour. Mulgrew concluded that in order for rehabilitation to be successful, suitable programs must be available to and tailored for international prisoners in order to impede the cycle of violence.

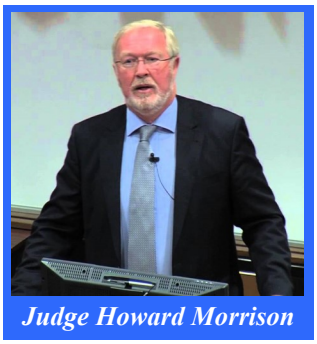
The seminar organisers, Dr. Joris van Wijk and Dr. Barbora Holá, then discussed "Rehabilitation in International Criminal Justice: An Empirical Overview". van Wijk questioned whether or not we still deem rehabilitation relevant within international criminal justice. He argued that due to the relatively short sentences, early releases and diverse penitentiary systems of international prisoners, it can be difficult to rehabilitate all international offenders. He also argued that it is not in the best interest of host countries to rehabilitate international criminal offenders who will eventually go back to their home country, concluding that it would be inherently difficult to create the necessary variety of programmes dedicated to the perpetrators of unique international crimes.

Holá spoke on the topic of ICTY and ICTR prisoners who are granted early release on the basis of good conduct, rehabilitation and compliance with the court. She stated that in reality, the tribunals are only concerned with whether or not prisoners conducted themselves well in prison. She claimed that 90% of all international prisoners who were granted early release were noted to have had good behaviour. 45% of all early release prisoners declared to the court that they have been rehabilitated, and only 36% have actually reflected on their crimes; however, this is not a precondition of early release and will not deny them leniency. Finally, she stated that 17% have been released early due in part to individual circumstances such as family situations.

After lunch, Dr. Bart Claes from Sheffield University argued for the need for victim-offender mediation and repairing the relationships between offender, victim and community. Professor James McGuire added that rehabilitation of international offenders is possible with cognitive behavioural programmes that reduce the risks of re-offending and improve future prospects. He stated that there are about 25 accredited cognitive programmes currently being used in UK prisons that allow prisoners to recognise why they have offended and then change the outlook on what they did. Finally, Eelco Kessels from the Global Center on Cooperative Security, formerly of The Hague's International Centre for Counterterrorism, spoke on the topic of disengagement and deradicalisation programmes within prisons as a means to combat global terrorism.

After a short break the seminar reconvened with Dr. Caroline Buisman, Defence Counsel from the ICTR and the ICC. She spoke on the topic of "A Defence Perspective", arguing that the ICC rehabilitates its offenders in its temporary prison, where there are many different ethnicities living together, cooking together and conversing on a daily basis, which she claimed cannot help but change their perspectives. She posited that this may also be the case in other international prisons and even national prisons. She argued that many prisoners actually do want to change their identity and concluded that rehabilitation is much more than hoping someone does not re-offend; it is about taking responsibility for the perpetrators and teaching them to be productive and contributing members of society.

Finally, Judge Howard Morrison of the ICC and the ICTY spoke on "Reflections and Moving Forward". He argued that international criminals are very unique and are not always rehabitable. He asked the audience, "How do you rehabilitate a 75-year-old president or a 50-year-old general?" He claimed that there is no budget to both imprison and rehabilitate international criminals, stating that most countries cannot even rehabilitate the youth in their own jails in order to prevent them from re-offending. Judge Morrison concluded the event by claiming that the process of feeling remorse and reflecting on one's crimes is not something that can be imposed on individuals; they can only realise it by themselves.



Judge Howard Morrison

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Beth S. Lyons, **" Litigating for Compensation for the Acquitted"**, 21 November 2015, available at: http://tinyurl.com/hjsm366

Vera Padberg, **"ECCC: New Suspect Charged with Genocide in Case 004"**, 9 December 2015, available at: http://tinyurl.com/zee7zka

Paulina Starski, **"Legitimized Self-Defense" – Quo Vadis Security Council?"**, 10 December 2015, available at: http://tinyurl.com/gu4dopl

Online Lectures and Videos

"International Crimes: Crimes Against Humanity", by George Washington University, 22 January 2015 , available at: http://tinyurl.com/jmgasw6

"Maintaining Control of War Crimes Trials", by Case Western Reserve University, 23 April 2015, available at: http://tinyurl.com/olnkzyq

"IHRL in Comparative Perspective: How the Individual Has Been Protected From Both Public and Private Power", by Olivier De Schutter, from 29 February 2016, available at: http://tinyurl.com/oalch32

PUBLICATIONS AND ARTICLES

Books

Baker, Dennis J. and Jeremy Horder (2015), **The Sanctity of Life and the Criminal Law: The Legacy of Glanville Williams,** Cambridge University Press.

Meisenberg, Simon M. and Ignaz Stegmiller (2016), **The Extraordinary Chambers in the Court of Cambodia: Assessing Their Contribution to International Criminal Law,** Springer International Publishing.

Ruggeri, Stefano (2015), **Human Rights in European Criminal Law,** Springer International Publishing.

Articles

Boister, Neil (2015). **"Further Reflections on the Concept of Transnational Criminal Law"**, Transnational Legal Theory, Vol. 6, No. 1.

Jüriloo, Kristel (2015). **"Free Legal Aid: A Human Right"**, Nordic Journal of Human Rights, Vol. 33, No. 3.

Raaijmakers, E. J.W. de Keijser, P. Nieuwbeerta & A.J.E. Dirkzwager (2015). **"Criminal Defendants' Satisfaction with Lawyers: Perceptions of Procedural Fairness and Effort of the Lawyer"**, Psychology, Crime and Law, Vol. 21, No. 2.

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The ADC-ICTY would like to express its sincere appreciation and gratitude to Katarina Bogojević, Aaron Kearney, Matthew Lawson, Claire Smith and Danielle Topalsky for their contribution to the Newsletter; we wish them all the best for the future!

EVENTS

Defence Counsel at the International Criminal Tribunals
Date: 23 January 2016
Location: Hotel InterContinental, Berlin
More Info: http://tinyurl.com/pm3m7bq

IBA Conference: Legal Challenges of Modern Warfare
Date: 30 to 31 January 2016
Location: The Peace Palace, The Hague
More Info: http://tinyurl.com/ng65ldl

Symposium on International Law and Japanese Approaches: The Law of the Sea and International Peace Operations
Date: 26 February 2016
Location: T. M.C. Asser Institute, The Hague
More Info: http://tinyurl.com/gnud2yg
Legal Officer (P-3)

OPPORTUNITIES

International Criminal Tribunal for the former Yugoslavia
Office of the Registrar, The Hague
Closing Date: 23 December 2015

Intern - Legal Affairs (I-1)
International Criminal Tribunal for the former Yugoslavia
Chambers, The Hague
Closing Date: 7 January 2016

Legal Officer (P-3)
Residual Mechanism for International Criminal Tribunals
Office of the Registrar, Arusha
Closing Date: 8 February 2016

Legal Counsel
International Bureau of the Permanent Court of Arbitration
Office of the Secretary-General, The Hague
Closing Date: Ongoing

Season's Greetings

On behalf of the ADC-ICTY and the Newsletter Team, we wish you a safe and happy holiday season and hope for a prosperous year in 2016.