ADC-ICTY Newsletter 13 July 2016

STANIŠIĆ & ŽUPLJANIN

ISSUE 103

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ICTY News

Stanišić & Župljanin (IT-08-91)

On 30 June 2016, the Appeals Chamber delivered its Judgement on the case of The Prosecutor v. Mico Stanišić and Stojan Župljanin. The case relates to the series of events which occured in the territory of Bosnia and Herzegovina (BiH) in 1992. At the relevant time, Stanišić was the Minister of Interior for Republika Srpska and Župljanin was the Chief of the Regional Security Services Centre (the Appellants).

The Trial Chamber found that the Appellants took part in a Joint Criminal Enterprise (JCE) with the objective "to permanently remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state". It found that this objective was realised through the commission of serious crimes that affected thousands of victims.

The Trial Chamber found the Appellants criminally responsible for crimes against humanity and violations of the law or customs of war and sentenced them to 22 years of imprisonment. Both Defendants and the Prosecution appealed the decision.

Stanišić raised 16 grounds of appeal, Župljanin raised six grounds of appeal and the Prosecution raised two grounds of Appeal. The Appeal Hearing took place on

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16 December 2015. The Appellants submitted that their right to fair trial by an independent and impartial court was violated as a result of the participation of Judge Frederik Harhoff in the trial proceedings, which should invalidate their convictions. Judge Harhoff was removed from the Šešelj case in 2013 for a letter he wrote, which was published by the media.

The Appeals Chambers stated that the Appellants failed to rebut the presumption of impartiality and failed to provide a reasonable appearance of bias on the part of Judge Harhoff. Thus, the ground of appeal related to fair trial was dismissed.

The Appellants argued that the Trial Chamber erred in law in defining the common criminal purpose of the JCE, in particular, by amalgamating the legitimate political goal for Serbs to live in one state with the criminal objective of the JCE. The Appeals Chambers stated that it was clearly determined that there existed a common purpose amounting to or involving the commission of crimes in accordance with the Statute of the Tribunal. Thus, the Appellants failed to demonstrate that the Trial Chamber erred in defining the common criminal purpose of the JCE.

Stanišić' argued that the Trial Chamber erred in finding that he participated in a JCE. He alleged that he could not reasonably have been found to have participated in a JCE because the Trial Chamber erred in law and fact by not according probative value of his interview; the Trial Chamber did not apply the correct legal standard for contribution to a JCE through failure to act; the Trial Chamber failed to give a reasoned opinion on how the acts of Stanišić furthered and are relevant to the JCE; the Trial Chamber erred in finding that he possessed the requisite intent for liability under the first category of JCE.

The Appeals Chambers agreed, stating that the Trial Chamber had failed to provide a reasoned opinion for their conclusions on this point and had committed factual errors in assessing Stanišić's knowledge of the crimes. Nevertheless, the Appeals Chamber, after assessing the Trial Chamber's findings and relevant evidence, concluded that beyond reasonable doubt Stanišić significantly contributed to the JCE. The errors of the Trial Chamber therefore did not impact its conclusions.

Župljanin also appealed the Trial Chamber's findings on his alleged participation in a JCE. He argued that the Trial Chamber made errors of law and facts in relation to his responsibility pursuant to the first category of JCE; the Trial Chamber erred in relying on his knowledge of and role in the unlawful arrests and detentions to establish his contribution to the JCE and his intent; the Trial Chamber applied an incorrect standard for the subjective element of the first category of JCE; the Trial Chamber errors of law and fact in relation to his responsibility pursuant to the third category of JCE on the crime of extermination.

The Appeals Chamber, *propio motu* found that the Trial Chamber erred in law by failing to make a clear finding on whether the principal perpetrators of the Sanski Most Incident possessed the required *mens rea*. Furthermore, that the Trial Chamber erred in relying on evidence to find that Župljanin knew of the Sanski Most Incident. However, the Appeals Chamber found beyond reasonable doubt that Župljanin acted with the required *mens rea* and that a reasonable trier of fact could have found that Župljanin was informed of the incident and that extermination was foreseeable to him, and that he willingly took, and continued to take the risk that extermination could be committed. Thus, the Trial Chamber's errors did not invalidate the Judgement. The Prosecution submitted that the Trial Chamber made an error of law by failing to enter convictions for the crimes of murder, torture, deportation, and other inhumane acts (forcible transfer) as crimes against humanity in addition to the convictions it entered for the crime of persecutions as a crime against humanity for the same underlying acts.

The Appeals Chamber agreed, stating that as jurisprudence holds that convictions for the crime of persecution and other crimes against humanity based on the same conduct are permissibly cumulative. However, the Appeals Chamber declined to enter new convictions.

The Appellants alleged that the Trial Chamber committed numerous errors of law and fact in relation to their conviction. The Prosecution stated that the Trial Chamber imposed inadequate sentences on the Appellants. The Appeals Chamber found no discernible error in sentencing and dismissed the ground of appeal raised by both the Appellants and the Prosecution.

Ultimately, the Appeals Chamber dismissed Stanišić's appeal in its entirety, dismissed Župljanin's appeal in its entirety and affirmed the sentences of 22 years of imprisonment imposed by the Trial Chamber for both.

Prosecutor v. Mladić (IT-09-92)

On 14 June, the Defence continued its case with the examination of witness Andrey Demurenko, a former Chief of Staff for the Sarajevo Sector of the UNPROFOR mission in Bosnia and Herzegovina. During his work he conducted an investigation into the so-called 'Markale 2 incident', which took place on 28 August 1995 in Sarajevo. After the incident Demurenko and his team went into the field and investigated the source of the shell indicated. Demurenko testified that it is reasonable the Markale 2 incident was not perpetrated by the VRS as they could not have fired the shell. He stated that his UN Commander never accepted this outcome, instead agreeing with the previous report that it was the actions of the VRS. During his testimony the discussion concentrated on technical issues such as the line of direction and the number of possible firing places. The Prosecution tried to undermine the evidence of Demurenko by showing data from other similar mortar shells and arguing that more than six firing positions should have been investigated.

Demurenko repeatedly stated: "our objective was not to find the firing positions". He testified that the focus was to determine if the previous investigation into the incident was correct. Ultimately, his investigation showed that this was not the case.

Another topic that Demurenko addressed was the bias of the UN in favour of the Bosnian Muslims and Croats and against the Serbs, particularly during the Markale 2 incident. Approximately, 60 per cent of UN personnel perceived the Serbs as the aggressors, which was presented to them by their commanders and the media. Demurenko also testified about Sarajevo itself and stated that the VRS did not want to destroy or terrorize the civilian population of the town of Sarajevo. Moreover, he testified that life in the Serb side of Sarajevo was exactly the same as in the Muslim part of the city.

On 16 June, Demurenko did not appear in the courtroom. According to information given by the Court, he had left the Netherlands. Consequently, the Prosecution could not continue with its cross-examination and the Defence did not have a chance to re-direct the witness. The Defence and Prosecution have filed motions on this topic and the Chamber will make a decision in due course. The Defence submission on the matter has been filed by the Registry in a "heavily redacted" form, which leads to questions of transparency regarding this important issue.

On 8 July, a Status Conference was convened at the request of the Prosecution. Monday 3 October 2016 was set as the new preliminary date for filing of the final briefs, however, the final decision on this date will be taken once all evidentiary matters have been concluded.

The Prosecution outlined two categories concerning undecided evidentiary matters. Firstly, any further submissions related to the bar table motions and secondly, the possibility of additional witnesses arising from rulings in connection with the bar table motions. Regarding both categories, the Prosecution felt that a one-week deadline, slightly varied depending on translations or decisions of the Chamber, would be appropriate for motions to be filed in response. In the Prosecution's view, this would not impose an unreasonable burden on the Defence and will accelerate the conclusion of the case.

The Prosecution raised issues related to witness Demurenko, whose testimony is expected to recommence and conclude on 16 August. The Prosecution urged the Trial Chamber to make a decision on the admission of the associated exhibits prior to the date of the witness's testimony in order to avoid a decision being made afterwards that might trigger more bar table litigation.

The Defence responded that some of the evidentiary matters raised by the Prosecution's first category are being delayed due to late translations and the other documents are being addressed by a joint submission between the parties, which requires further discussion before filing. As to the additional witnesses the Defence stated there may be two individuals to be called; conditional upon pending decisions of the Trial Chamber. For any documents associated with those witnesses the Defence suggested a two-week deadline following the decision of the Chamber. Finally, the Defence clarified another joint filing for one witness's testimony, under Rule 92 quater, however this filing cannot be completed until a translation is received. With regard to the last filing the Prosecution and Defence agreed that they would deal with the outstanding excerpt when a translation becomes available but nothing precludes finalising the remainder of the submission. As to the additional witnesses the Trial Chamber imposed a deadline of three business days for motions seeking leave to call these witnesses by the Defence.

MICT News

Prosecutor v. Karadžić (MICT-13-55)

RADOVAN KARADŽIĆ

On 1 June 2016, Radovan Karadžić filed on the record a letter addressed to President Meron, in which he offers assistance with the Registrar's inquiry into the allegation of frequent malignancy at the United Nations Detention Unit (UNDU). The issue was raised by Karadžić during a hearing held on 6 April 2016. President Meron requested that the Registrar of the MICT look into this allegation and, on 21 April 2016, the Registrar filed a Submission in Relation to Comments Made During the Hearing Held on 6 April 2016 in the case of Karadžić.

He stated in the Submission that the conditions of detention at the UNDU remain at the level of best practice in international detention management and added that the Registry of the Mechanism has contacted both the International Committee of the Red Cross and the UNDU Commanding Officer to request guidance on what further assessments of the conditions of detention could be undertaken. In a 17 May 2016 letter, Karadžić expressed his concern about the quality of the food and the conditions at the UNDU, which, according to him, could have caused the malignancy.

UN DETENTION CENTRE

Stanišić & Simatović (MICT-15-96)

The Trial Chamber issued an amending Decision on Jovica Stanišić's Urgent Motion for Provisional Release on 24 June 2016. It considered the Registry's recommendations on improving the medical reporting requirements and was seized of the Prosecution Motion to Revoke Stanišić's Provisional Release, filed confidentially and *ex parte* on 10 June 2016.

JOVICA STANIŠIĆ

On 22 December 2015, the Trial Chamber granted Stanišić's urgent request for provisional release to Serbia. Following Stanišić's provisional release, the United Nations Detention Unit (UNDU) Medical Service submitted regular reports in compliance with the Decision. In January 2016, the UNDU Reporting Medical Officer encouraged Stanišić to request a full medical check-up. By the end of April 2016, the UNDU Deputy Medical Officer had not yet received any related reports. On 22 April 2016, the Trial Chamber requested the Registry to file submissions providing any relevant information on the need, if any, for varying the monitoring and reporting regime of Stanišić's health condition established in the Decision on Provisional Release and, if so, to make relevant proposals. The Prosecution and Stanišić were also requested to file submissions on the matter.

The Trial Chamber recalled that the ability of the UNDU Medical Service was to effectively assess Stanišić's medical condition and fitness to travel and is an essential element of the current regime, the purpose of which is to mitigate the risk of a serious disruption of the trial proceedings. In accordance with the recommendations submitted by the Registry, it decided that it was appropriate to vary the conditions of Stanišić's provisional release and ordered that Stanišić identifies a treating physician who would regularly report to the UNDU Reporting Medical Officer on his medical condition and recommend examinations and treatment in consultation with UNDU Medical Service.

Although, Stanišić agreed with the first recommendation, he opposed the second request of the Registry on the basis that the role of the UNDU Reporting Medical Officer does not extend to imposing specific treatment. The Trial Chamber dismissed this argument and dismissed the Prosecution's Motion, because they were not persuaded that the information before it demonstrates that Stanišić breached the conditions of his provisional release. It further found that, although the UNDU Reporting Medical Officer was unable to contact Stanišić on two occasions in June 2016, Stanišić has indicated his availability to be contacted immediately and provided an explanation for the purported miscommunication.

Finally, the Trial Chamber reminded Stanišić of his obligation to strictly comply with the monitoring, treatment and reporting regime set out by the Trial Chamber.

Prosecutor v. Laurent Semanza (MICT 13-36)

LAURENT SEMANZA

On 9 June 2016, President Meron issued a decision on the early release of Laurent Semanza. Semanza who was arrested on 26 March 1996 in Cameroon and in November 1996 was transferred to the United Nations Detention Facility in Arusha, Tanzania.

On 13 December 2005, he was convicted of complicity to commit genocide and aiding and abetting extermination, murder, rape, and torture as crimes against humanity. He was sentenced to 24 years and six months' imprisonment which later was reduced by six months due to violations of his fundamental rights during pre-trial.

In June 2016, the President denied his early release for failure to demonstrate the existence of exceptional circumstances as requested by Rule 151. The President decided that even if the prisoner could be eligible of an early release under the domestic law of Mali, the early release of persons convicted by the ICTR falls exclusively within the discretion of the President pursuant to Article 26 of the Statute and Rules 150 and 151.

Rule 151 states that in deciding on an early release the President shall take in consideration the gravity of the crimes for which the person was convicted, the treatment of similarly situation, the prisoner's demonstration of rehabilitation and the substantial cooperation of the prisoner with the Prosecutor.

As for the first requirement, the crimes for which Semanza was convicted have a high gravity nature. Semanza encouraged a crowd to rape a Tutsi woman, he repeatedly struck a Tutsi man with a machete and furthermore, he also supported Interahamwe soldiers by providing substantial support to the principal perpetrators who were murdering the Tutsi civilians.

The second requirement took in to consideration the treatment of a similar situation. The President explained that a convicted person having served two-thirds of his or her sentence shall be merely eligible to apply for an early release, but not entitled to it. However, Semaza has not yet served the two-thirds of his sentence, this will be completed on 26 March 2019.

As for the third requirement (demonstration of rehabilitation), the President recognised Semanza's behaviour as being calm and courteous, as endorsed by the letter of the Ministry of Justice and the Human Rights of Mali. The Psychiatric report, suggested that Semanza would be capable of reintegrating into society if he released.

The President, explained for the last requirement that Semanza had never shown signs of particular cooperation with the Prosecution at any point of the proceedings.

For these reasons and also because Samanza's health conditions are not so severe, the President concluded that there did not exist exceptional circumstances warranting the early release prior to Semanza having served two-thirds of his sentence.

News from other International Courts

Extraordinary Chambers in the Courts of Cambodia

Celia Nourredine, Legal Intern, Meas Muth Team

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

Nuon Chea Defence

During May, the Nuon Chea Defence Team continued to be engaged in Case 002/02 hearings on S-21 Security Centre. Alongside participation in daily hearings, the team also filed a series of motions to the Trial Chamber, as detailed below.

On 3 May, the team filed a reply to the Co-Prosecutors' response to its request to admit evidence in relation to the late King Father Norodom Sihanouk. This evidence, admission of which the Co-Prosecutors opposed, relates to the Case 002/02 trial topic concerning the treatment of the Vietnamese. The Chamber has yet to decide on this request.

On 5 May, the team filed observations on the admissibility of a Choeung Ek forensic bone study and external evaluation, a study which the team first brought to the Chamber's and parties' attention on 21 April 2016 during hearings on S-21. On 23 May, the Trial Chamber decided to admit certain parts of the study into evidence in Case 002/02.

On 9 May, the team filed a request for investigative action in respect of the expert witness and anthropologist Alexander Laban Hinton, who testified during the treatment of Vietnamese segment of the trial. The team sought for Hinton to provide it with the records of interviews he undertook and other related material used in preparation for his book *Why Did They Kill?* The Co-Prosecutors opposed the request. The Chamber has yet to issue its ruling on this regard.

On 12 May, the team filed a combined reply to the Co-Prosecutors' and Civil Party Lead Co-Lawyers' responses to the team's request to use certain S-21 Security Centre statements (i.e. "confessions") where it could be demonstrated that there was no real risk that the statements were obtained by torture. On 19 May, the Trial Chamber issued a summary decision dismissing the team's request with reasons to follow "in due course".

On 19 May, the team circulated a courtesy copy of a request to the Trial Chamber to reconsider its 3 May decision of partially granting an adjournment in trial proceeding in order to protect Nuon Chea's rights to having adequate time to prepare, to examine witnesses, and to equality of arms. The team sought, among other things, a delay in the commencement of its examination of the two last scheduled S-21

NUON CHEA

witnesses: former documentation unit head Suos Thy and former chairman and key Case 002/02 witness Kaing Guek Eav, alias Duch. On 23 May, the parties made oral submissions on the matter. The Trial Chamber delivered its ruling on the same day, and ordered a further one-week adjournment of Case 002/02, with the proceedings to resume on 2 June 2016. On 8 June, the Trial Chamber informed the Nuon Chea Defence that it was not necessary to formally file its request as the Request had been presented orally.

On 20 May, the team requested the admission into evidence of an article published in a Rutgers University magazine in relation to expert witness Alexander Laban Hinton's testimony before the tribunal. The team argued that this article demonstrated that Hinton had already pre-judged Nuon Chea's guilt before

testifying. The Co-Prosecutors also opposed this request. Finally, on 27 May, the team filed a request to the Trial Chamber seeking the recall of one of the witnesses who testified before the Chamber on S-21 Security Centre, former S-21 interrogator Prak Khan. The team argued that it required additional time to elicit testimony from Prak Khan on a range of key issues of relevance to the charges at issue with respect to S-21 and the Defence's case overall. The Trial Chamber has yet to rule on this request.

Khieu Samphân Defence

In May 2016, the Khieu Samphân Defence Team remained fully engaged in preparing and attending the hearings in Case 002/02. The team focused on the upcoming testimonies of several important witnesses related to the S-21 security center segment, including the testimony of Kaing Guek Eav, alias Duch. Further to several requests, the Trial Chamber granted additional time in order to allow the parties to analyze extensive documents recently disclosed by the Office of the Co-Investigating Judges regarding S-21, and newly admitted in Case 002.

KHIEU SAMPHÂN

Throughout the month, the team also filed a request seeking the admission into evidence of new documents related to an upcoming expert witness testimony, and submissions regarding the admission into evidence of an osteological study of the Choeung Ek crime site. In addition, the team opposed a request filed by the International Co-Prosecutor to admit into evidence a number of documents issued from Cases 003 and 004.

Meas Muth Defence

In May, the Meas Muth Defence Team filed a request to reclassify submissions and documents related to the Defence's effort to obtain UN archival material relevant to the issue of the ECCC's personal jurisdiction as public. The team also filed submissions on the question of whether an attack by a State against its own military could constitute an attack against a civilian population for purposes of crimes against humanity. The team also filed two additional motions that have been classified as confidential. The team continues to review material on the Case File and to prepare and file submissions where necessary to protect Meas Muth's fair trial rights.

Ao An Defence

In May, the Defence Team for Ao An filed the following submissions with the Office of the Co-Investigating Judges: a request for investigative action; a submission on whether an attack by a state or organization against members of its own armed forces could qualify as a crime against humanity under customary international law in 1975-1979; and a submission regarding facts under investigation in Case 004. In addition,

MEAS MUTH

before the Pre-Trial Chamber, the team filed a response to an appeal by the Co-Prosecutors concerning closed session testimony of Case 004 witnesses in Case 002. Finally, the team continued to review all the evidence on the Case File and prepare other filings to safeguard Ao An's fair trial rights.

Yim Tith Defence

In May, the Yim Tith Defence Team continued to analyze the contents of the Case File in order to participate in the investigation, prepare Yim Tith's defence and protect his fair trial rights.

Im Chaem Defence

The Im Chaem Defence Team continues to review the evidence in the Case File in order to prepare Im Chaem's defence and endeavor to safeguard the client's fair trial rights in the remaining proceedings of the pre-trial stage of Case 004/01.

News from the Region

Bosnia and Herzegovina

Bosnian Army Commander Naser Orić Trial Stopped

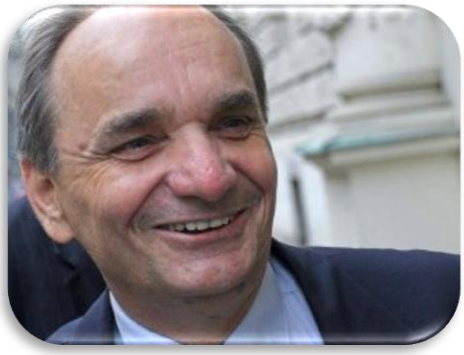
On 28 June 2016, the state court in Sarajevo stopped the trial of former Bosnian Army Commander Naser Orić and former Bosnian Army soldier Sabahudin Muhić because of the "unacceptable behavior" of prosecution witness Ibran Mustafić. According to the charges, Orić was the commander of Bosnian Army territorial defence units in Srebrenica and Muhić member of his forces, both being accused of killing Slobodan Ilić in the village of Zalazje and two other Bosnian Serb captives in the villages of Lolici and Kunjarac in 1992.

Presiding Judge, Saban Maksumic stated that he decided to stop the trial because the witness was behaving unacceptably and he had to protect the dignity and authority of the court. "If the prosecution believes this witness is important, then they should examine his health", concluded Judge Maksumic. Before the witness entered the courtroom, Orić's defence mentioned that they had information that Mustafić was a "disabled person because of mental illness". Prosecution responded that has no evidence of this. After the witness entered, he gave comments while the presiding judge was explaining the rules of the courtroom. When told that false testimony is a crime, witness Mustafić responded that is ready to be criminally prosecuted. Asked how he felt, the witness stated "I feel great, today is a joyous day". Judge Maksumic then warned the witness. After the first question of the prosecutor, the witness stood up with a book in his hand and the judge stopped the hearing. "You are not letting me express myself", witness Mustafić complained. After a short recess, the judge Saban Maksumic stated that he would not continue the hearing in light of the witness' behavior and the information that the defence offered about his mental health.
The trial will resume on 12 July 2016.

Croatia

Croatian General Glavaš's War Crimes Re-Trial Opens

Croatian wartime general, Branimir Glavaš, was in the Supreme Court again to decide on his sentence for war crimes against Serb civilians in 1991. Nonetheless, his guilt will not be questioned.



BRANIMIR GLAVAŠ

On 2 June 2016, the Croatian Supreme Court began a retrial of Glavaš after the Constitutional Court of Croatia overruled a Supreme Court judgment in January 2015 which found Glavaš guilty of war crimes against Serbs and sentenced him to eight years in prison. The Constitutional Court ordered new proceedings, as well as an inquiry into whether Glavaš's human rights had been violated in the judicial process.

Effectively the first instance verdict given in May 2009 of the Zagreb County Court of ten years' imprisonment is currently applicable to Glavaš. He, along with five other people, was found guilty of illegally arresting, torturing and killing seven Croatian Serb civilians in the eastern city of Osijek in 1991, in two cases known as "Duct Tape" and "Garage".

During the war, Glavaš was a commander of the Osijek defence forces in 1991-92 and obtained the rank of general. He is a former high-ranking member of the Croatian Democratic Union, HDZ party, who has previously served as a member of parliament for the HDZ and as the Osijek-Baranja County Mayor. After he left the HDZ in 2005, he founded the Croatian Democratic Alliance of Slavonia and Baranja (HDSSB) and he won a seat in Parliament at the elections in November 2015. On the day of the initial sentence in 2009, Glavaš fled Croatia to the neighboring country Bosnia and Herzegovina. After the Supreme Court upheld the conviction in July 2010, the verdict was confirmed by a Bosnian Court and he was placed in prison.

The Constitutional Court of Croatia then overturn the verdict, ruling that both the Supreme and County Courts had used the wrong legal conventions in the cases against Glavaš. The new Supreme Court trial will rectify this in its verdict. Glavaš was released from prison in Mostar in 2015 and then returned to Osijek, where he continued his political career. The Supreme Court accepts that he is guilty but could change his sentence.

Glavaš stated after the hearings "If I say that I believe in the Croatian judiciary, it would be sheer platitude" adding that if re-convicted he would go to the European Court of Human Rights in Strasbourg.

Serbia

Sonja Karadžić-Jovičević comments on her Father's Trial

Sonja Karadžić-Jovičević conducted two interviews in June 2016 with the media. In early June, the Serbian weekly *Ekspres* published an interview where she stated that her father was a highly-respected psychiatrist with honest political intentions which has been pushed to assume a leadership position and later sold to the Americans by former Serbian President Slobodan Milošević. Also, she claimed that the figures and the crimes by Bosnian Serbs have been manipulated and exaggerated. She made the example of the number of rapes purportedly occurred during the conflict, suggesting that only two months after the eruption of the conflict the media received reports about rapes and especially births. She also claimed that she discovered later that some of these women gave birth to mixed-race children in private clinics in Switzerland.

The representatives of Bosnian Muslim victims reacted to Sonja Karadžić-Jovičević's declarations recalling the relevant findings by both the ICTY Trial Chamber in its verdict and by domestic courts.

Sonja Karadžić-Jovičević also commented on the denial of a provisional release requested by Radovan Karadžić. The former President of the Republika Srpska filed a motion for a provisional release in order to attend the memorial service of his brother but the MICT Appeals Chamber denied it arguing that the guarantees for the release were provided only by the Serbian authorities but not by the BiH or by the Republika Srpska, the place where Karadžić would have spent his release. The Chamber based its decision also on the fact that he was sentenced to 40 years of prison and a considerable portion still has to be served, hence with a strong incentive to flee. The daughter has therefore accused the Presiding Judge Meron of "*lying and deliberately creating confusion*" and has also accused both the Presiding Judge and the Tribunal itself of having "*touched bottom*".

SONJA KARADŽIĆ

Looking Back…

International Criminal Tribunal for the former Yugoslavia (ICTY)

Five years ago…

On 19 July 2011, the Appeals Chamber of the ICTY affirmed the conviction against Florence Hartmann, a former spokesperson for the Tribunal's Prosecutor for contempt of the Tribunal.

Hartmann was found guilty by the Trial Chamber of knowingly and willfully interfering with the administration of justice by disclosing the contents, purported effect and confidential nature of two Appeals Chamber Decisions from the case against Slobodan Milosevic in her book entitled Paix et Chatiment in September 2007 and in a subsequent article entitled Vital Genocide Documents Concealed in January 2008.

She was ordered to pay €7,000. Hartmann refused to pay the fine and as a consequence the fine was converted to a term of imprisonment of seven days. She was arrested on 24 March 2016, the day of the Karadzic judgment, outside the Tribunal, and served her seven-day sentence in the UN Detention Centre, located in Scheveningen.

International Criminal Tribunal for Rwanda (ICTR)

Ten Years Ago …

On 7 July 2006, the Appeals Chamber of the ICTR reduced the sentence of Samuel Imanishimwe from 27 years to 12 years. Imanishimwe, a lieutenant in the Rwandan army, was indicted alongside Emmanuel Bagambiki, the Prefect of Cyangugu region, for genocide, complicity in genocide, conspiracy to commit genocide, crimes against humanity and serious violations of Article 3 common to the Geneva Conventions and of the Addition Protocol II (the Convention).

Specifically, he was accused of having held a large number of meetings to instigate and prepare for the genocide in Rwanda and preparing lists of people to eliminate. He was also accused of having participated in the training, arming and instruction of the Interahamwe, who later committed massacres of the civilian Tutsi population.

The Trial Chamber acquitted Imanishimwe of conspiracy to commit genocide and complicity in genocide but found him guilty of four crimes against humanity, one count of genocide and one count of serious violations of the Convention. He was sentenced to 27 years' imprisonment. On Appeal, the Appeals Chamber quashed Imanishimwe's convictions for genocide, extermination as a crime against humanity and serious violations of Article 3 of the Convention. Consequently, his sentence was reduced to 12 years and he was released on 8 August 2009.

International Criminal Tribunal for the former Yugoslavia (ICTY)

Fifteen years ago…

On 5 July 2001, the Appeals Chamber affirmed the sentence of Goran Jelisić, who was sentence to 40 years' imprisonment for his role at Luka camp during the conflict in Bosnia and Herzegovina. He was indicted on one count of genocide, sixteen counts of violating the customs of war and fifteen counts of crimes against humanity.

The Trial Chamber considered that in order to convict an accused of genocide, it must be proven that the accused had the intent to destroy, at least in part, a given group, or that the accused had at least the clear knowledge that he was participating in genocide. The Trial Chamber did not believe that the evidence led by the Prosecution was sufficient to sustain a conviction on these grounds and accordingly acquitted Jelisić Genocide. Jelisić pled guilty to committing crimes against humanity and violating the customs of war. The Appeals Chamber affirmed conviction and he was transferred to Italy.

Defence Rostrum

Trials *in Absentia* in International Criminal Justice, IBA Roundtable Discussion

By Emily Ghadimi and Christina Voulimenea

On 8 June the International Bar Association (IBA) Hague Office hosted a roundtable discussion at Hague Institute of Global Justice on the theory and practice of trials in absentia in international criminal proceedings.

Judge Ivana Hrdličková, President of the Special Tribunal for Lebanon (STL), opened the event with a keynote address. Judge Hrdličková highlighted the divisiveness of trials *in absentia*, that on one hand many argue such proceedings can never conform to human rights standards and on the other hand, they are still a useful tool to ensure the effective administration of justice. She noted that the rationale in favour of trials *in absentia* is that the accused should not be allowed to frustrate the proceedings by simply not appearing. Judge Hrdličková recognized the differing approaches to trials *in absentia* across national systems and the various international courts and tribunals, and posed the question of whether a trial *in absentia* was better than no trial at all. She emphasised that the purpose of international criminal justice is not only to punish individuals, but also to bring justice or compensation to victims and end impunity for grave crimes. These purposes can be achieved with trials *in absentia* as long as they are conducted in a way which protects the rights of the accused.

The first panel discussion, moderated by IBA Executive Director Dr. Mark Ellis, focused on the human rights law and judicial process of trials *in absentia*. Dr. Brianne McGonigle Leyh discussed the law on trials *in absentia* from the Human Rights Committee and the European Court of Human Rights, noting that three key standards emerged from the jurisprudence – that trials *in absentia* were undesirable but permitted if 1) the accused was given actual notice of the proceedings, 2) competent and experienced counsel was appointed to represent the accused, and 3) there is a right to a full retrial of the case at a later point. François Falletti continued with an insight into trials *in absentia* in France. He was followed by Dr. Guido Acquaviva who presented some interesting conceptual questions on the issue, such as the differing meanings of the term "jurisdiction" in common and civil law systems, and whether a physical conceptualisation of "jurisdiction" even made sense in practice. He also noted that if there is no trial *in absentia* the public perception can be that the accused is being rewarded for not attending the proceedings, and that this can frustrate the broader purpose of achieving justice. The final panelist, Geoffrey Robertson QC, discussed trials *in absentia* in the context of the International Crimes Tribunal in Bangladesh and the STL. He was critical of the idea that trials *in absentia* could in fact provide a fair proceeding for an accused, highlighting that a retrial is not satisfactory to preserve the rights of the accused. The first panel gave rise to a lively Q&A with the audience, discussing among others how an absolute right to retrial would work if the convicted person is apprehended when the court which sentenced them no longer exists and whether victims would be satisfied by an inquiry mechanism rather than a full trial *in absentia*, in order to avoid the problems therein.

The second panel, moderated by Dr. Jill Coster van Voorhout, examined the issues of effective representation and ethics in trials *in absentia*. Dr. Héleyn Uñac outlined the ethical concerns facing defence counsel at the STL, for example how defence counsel can deal with representing an accused who they are prohibited from having any contact with. Thomas Hannis continued the discussion from the perspective of defence counsel practicing at the STL, where ordinarily counsel would make strategic and tactical decisions following discussions with their client, at the STL this is not possible. Counsel must make such decisions themselves and remain constantly aware of any decision which might prejudice the accused's right to a retrial. Toby Cadman went on to address the problems with the International Crimes Tribunal in Bangladesh in more detail, in particular the obstacles faced by international counsel who represent accused before the Tribunal and the fact that the proceedings do not meet any of the necessary human rights requirements for trials *in absentia*. The final panellist, Dr. Kinga Tibori-Szabó, discussed the STL proceedings from the perspective of the victims and noted that at the beginning there was a positive feeling that justice was being served, but now the victims are concerned that any judgment by the STL will

be difficult to enforce to recover any reparations or compensation for the crimes committed. Once again this discussion drew interesting and challenging questions from the audience, in particular on the professional and ethical problems associated with representing a client who cannot instruct counsel and how counsel in international trials *in absentia* can reconcile these issues with their own national professional responsibility obligations.

One thing was clear from the two panel discussions and the input from the audience members. The problems associated with trials *in absentia* in international criminal proceedings are far from being resolved.

The ADC-ICTY Mock Trial 2016

By Caroline Nash and Manon Verdiesen

The ADC-ICTY held its annual Mock Trial during the week of 13 – 18 June. There were 22 participants from a variety of nationalities, institutions and universities. In the week preceding the Mock Trial there were five evening training sessions for the participants on topics including oral advocacy, drafting a motion, opening and closing statements and legal ethics. The evening sessions focused on practical skills and expertise and were given by experienced Counsel to prepare the participants for a career in international criminal law. The speakers were Colleen Rohan, Michael Karnavas, Dragan Ivetic, Marie O'Leary, Chris Gosnell who are all ADC members and Abeer Hassan, Legal Officer for the ICTY Office of the Prosecution.

Judge Moloto was present throughout the training sessions and provided the participants with examples and suggestions on developing their skills in the courtroom. The participants then put what they learned into practice during the day of the Mock Trial in courtroom III at the ICTY. The bench of three judges was composed of Stéphane Bourgon. Iain Edwards and Ruben Karemaker. The scenario for the day of the Mock Trial was based on a war crimes trial with various aspects included such as arguments on motions for protective measures and admission of written statements as well as the examination of two witnesses and three accused. Feedback was provided to all participants at the end of the week and the judges stated how impressed they were with the quality of what they had seen throughout the day of the Mock Trial. The complete trial was recorded by Guido Heijblok from the ICTY Audio-Visual Unit and is available to all the participants. A dinner was held with all participants at the end of the week.

Winners of awards and photos are available here.

In Court and Culture, 'Miranda' Endures

Alan L. Yatvin, Popper & Yatvin

ERNESTO ARTURO MIRANDA

On Jan. 31, 1976, Ernesto Arturo Miranda died of stab wounds suffered in a fight over a card game in a dive bar in Phoenix. His passing made for a few lines in papers across the country. The mother of law professor Charles Whitebread clipped the story and sent it to her son with the note "Isn't it a shame, after all he did for us." What he did for us is lend his name to a landmark June 13, 1966, decision of the U.S. Supreme Court, Miranda v. Arizona.

In 1963, when Miranda was arrested in Arizona as a suspect in three rape/attempted-rape cases, suspects being questioned in police custody had the right to remain silent, and the right to an attorney even if they could not afford one. What was not so clear, though, was whether the police had to explicitly tell a suspect of those rights before questioning. Miranda agreed to be placed in a lineup. Two witnesses identified him but were not certain. When he asked how he did after the lineup, the police allegedly told him not very well, whereupon Miranda confessed. He was convicted, and the Arizona Supreme Court upheld his 20 to 30-year-sentence.

A volunteer lawyer for Miranda filed a petition for a writ of certiorari asking the Supreme Court to take the appeal. The justices agreed to hear Miranda's case, along with cases raising the same issues from New York, California, and Missouri. Because Miranda's appeal was listed first, the decision is known by his name. (If the court had listed the New York case first, police could be giving suspects their Vignera rights.)

The consolidated case drew more than a dozen briefs, running hundreds of pages. Ten lawyers argued for more than seven hours, over three days. Former Nuremberg prosecutor Telford Taylor argued for New York and, by special leave, for the attorney generals of 27 states, plus Puerto Rico and the Virgin Islands. Civil rights icon Anthony Amsterdam filed a brief on behalf of the ACLU.

On June 13, 1966, the second-to-last opinion day of the Supreme Court's term, Chief Justice Earl Warren delivered the opinion of the 5-4 majority. The Miranda warnings were born. From that day forth, prior to questioning a suspect in custody, police read those now-familiar rights, containing the key elements of Warren's decision: "You have the right to remain silent. Anything you say can and will be used against you in a court of law. You have the right to speak to an attorney, and to have an attorney present during any questioning. If you cannot afford a lawyer, one will be provided for you at government expense."

Like no other area of the law before or since, the Miranda warnings took off. They became part of standard police procedure nationwide, often routinely recited upon arrest, even when there was no intention to question. The warnings also quickly became part of the popular culture. A year later, the popular police series Dragnet featured Jack Webb's Sgt. Joe Friday and his partner routinely reading suspects "their rights."

In 2000, the Supreme Court considered whether to overrule Miranda. It is apparent from Chief Justice William Rehnquist's opinion in Dickerson v. United States that he would not have sided with Warren's 1966 opinion. However, unlike dissenters Antonin Scalia and Clarence Thomas, Rehnquist concluded that Miranda was deserving of stare decisis (Latin for "to stand by things decided").

The chief justice noted that "Miranda has become embedded in routine police practice to the point where the warnings have become part of our national culture." As even the National District Attorney's Association conceded in a friend of the court brief: "[W]arnings are generally advisable when questioning criminal suspects, and should be embodied in police practices."

Certainly Miranda at 50 no longer has all of its vitality. If a suspect's lawyer tells the police the client wishes to remain silent, police don't have to let that lawyer into the room or stop questioning if the suspect has agreed to speak after Miranda warnings.

Even if a statement is inadmissible due to a Miranda violation, some evidence obtained as a result of that statement may be admissible. A statement obtained in violation of Miranda can still be used to impeach a defendant who takes the stand in his own defense.

There is also an exception for public safety. In 2010, the Supreme Court decided a trio of cases further narrowing the rule of Miranda, declaring: A suspect's request for a lawyer is good for only 14 days after release from custody; and police need not explicitly tell suspects they have a right to counsel during questioning.

In the third case, the court stated that suspects must unambiguously announce to police that they wish to remain silent. Or, to paraphrase the irony noted in Justice Sonia Sotomayor's dissenting opinion, a suspect must break his or her silence to invoke the right to that silence and stop police questioning. Whitebread, the professor whose mother mourned Miranda's passing, believed the Supreme Court would never reverse Miranda.

On the 20th anniversary of Miranda, he said: "Too many Americans watch television. Everyone knows that when they get arrested they have some rights. They might not know what they are exactly, but they know they have them. This court, no court, wants to be known as the court that took away America's rights."

After the conviction was reversed in 1966, the Arizona prosecutor retried Miranda with other evidence, including a confession to his live-in girlfriend. Miranda was convicted in the second trial. He served a total of 11 years in prison before being paroled.

After his release, he allegedly got police officers to give him Miranda warning cards, which he supposedly autographed and sold for a few dollars each. And the men suspected of stabbing Ernesto Miranda 40 years ago? Each was read Miranda warnings, waived his right to counsel and right to remain silent, and agreed to be interviewed by detectives.

The Creation of the International Criminal Bar Association (ICCBA)

On 30 June and 1 July 2016, the International Criminal Court Bar Association (ICCBA) held its Constitutional Congress and General Assembly at the ICC. The Association has been created to represent the interests of List Counsel and List Assistants at the ICC. The creation of this independent association is a huge achievement which has taken several years to accomplish. The events were attended by approximately 250 List Counsel and List Assistants. On 30 June, two amendments were made to the draft Constitution and it was adopted by 97.5% of those voting.

On 1 July, the three candidates for President introduced themselves and answered questions from the floor. After this a discussion took place about budgets and membership fees. Elections took place for the President and constitutional committees, with the results announced late on Friday evening. The first President elected was David Hooper QC. A number of ADC-ICTY members were elected to the Executive Council including, Jens Dieckmann, Vincent Courcelle-Labrousse, Karim Khan QC, Philiippe Larochelle and David Young.

Other members of the ADC-ICTY were elected to the committees, including Mylene Dimitri, Iain Edwards, David Jacobs and Marie O'Leary. For further information about the ICCBA visit: www.iccba-abcpi.org.

Blog Updates and Online Lectures

Blog Updates

"Making Sense of the Standard & Burden of Proof in Hybrid Courts: Reflections on the Common Law Approaches to Proof", by Michael Karnavas. Blog available here.

"Palestine and Kosovo have become members of the Permanent Court of Arbitration", by Gentian Zyberi. Blog available here.

"The Bemba Trial Judgement- A Memorable Day for the Prosecution of Sexual Violence by the ICC", Niamh Hayes. Blog available here.

Online Lectures and Videos

"Parties to conflict should avoid using heavy explosive weapons in populated areas", ICRC. Lecture available here.

"The Notion of Cultural Heritage in International Law", Judge Abdulqawi A. Yusuf. Lecture available here.

"Victims", Carla Ferstman. Lecture available here.

Publications and Articles

Books

Kim, Sangkul. (2016). **A collective theory of genocidal intent,** Springer.

De Vos, Christian, Kendall, Sara & Carsten, Stahn. (2015). **Contested Justice: The Politics of Practice of International Court Interventions,** Cambridge University Press.

Mulgrew, Roisin (2016). **Towards the Development of International Penal System,** Cambridge University Press.

Peterson, Ines (2016). **Open Questions Regarding Aiding and Abetting Liability in International Criminal Law: A Case Study of ICTY & ICTR Jurisprudence,** International Criminal Law Review.

Articles

Kenny, Cóman. (2016). **"Responsibility to recommend: the role of the UN General Assembly in the maintenance of international peace and security",** Journal on the Use of Force and International Law, Volume 3, Issue 1, pp. 3-36.

Sampaio, Alexandre Andrade & McEvoy, Matthew. (2016). **"Little Weapons of War: Reasons for and Consequences of Treating Child Soldiers as Victims",** Netherlands International Law Review, Volume 63, Issue 1, pp. 51-73.

Cupido, Marjolein. (2016)." **Facing Facts in International Criminal Law: A Casuistic Model of Judicial Reasoning",** Journal of International Criminal Justice, Volume 14, pp. 1-20.

Calls for Papers

The European Society of International Law Research in association with the Granada Law School have issued a call for papers on **"The Neutrality of International Law: Myth of Reality"**. Deadline: 30 September 2016, for more information click here.

The Indian Journal of Arbitration Law has issued a call for papers on **"Arbitration Law".** Deadline 30 September 2016, for more information click here.

Events

Choosing between Arbitration and a Permanent Court - Lessons from Inter-State Cases

Date: 12 July 2016

Location: Auditorium Ivan Pictet, Maison de la Paix, Geneva

For more information, click here.

Human Rights in the Middle East and North Africa Region

Date: 13 July 2016

Location: British Institute of International and Comparative Law, London

For more information, click here.

ADC-ICTY Trial Advocacy Clinic

Date: 23 July 2016

Location: ICTY, The Hague

For more information, click here.

International Arbitration Training Course

Date: 22-26 August 2016

Location: The Grotius Centre for International Legal Studies at Leiden University

For more information, click here.

Opportunities

Legal Assistant (Project Post)

United Nations Human Settlements Programme, Nairobi

Deadline: 15 July 2016

For more information, click here.

Legal Officer (P3)

Office of Legal Affairs, New York

Deadline: 17 July 2016

For more information, click here.

Appeals Counsel, Jurists (P3)

International Residual Mechanism for Criminal Tribunals, The Hague

Deadline: 19 July 2016

For more information, click here.

Legal Officer (P3)

Office of Legal Affairs, New York

Deadline: 8 August 2016

For more information, click here.

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GOODBYE AND THANK YOU!

The ADC-ICTY would like to thank Caroline Nash, Assistant to the Head Office, for all her dedication and hard work towards assisting with the operation of the Association and also the Newsletter. We wish Caroline all the best for the future - she will be missed at the ADC Office!