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ICTY CASES

Cases at Trial

Hadžić (IT-04-75)
 Karadžić (IT-95-5/18-1)
 Mladić (IT-09-92)
 Prlić et al. (IT-04-74)
 Šešelj (IT-03-67)
 Stanišić & Simatović (IT-03-69)
 Stanišić and Župljanin (IT-08-91)
 Tolimir (IT-05-88/2)

Cases on Appeal

Dorđević (IT-05-87/1)
 Perišić (IT-04-81)
 Popović et al. (IT-05-88)
 Šainović et al. (IT-05-87)

Prosecutor v. Momčilo Perišić

(IT-04-81)



Momčilo Perišić

On 30 October 2012, the Appeals Chamber heard the arguments of the parties in relation to the appeal lodged by Momčilo Perišić against judgment and sentence. Perišić was the most senior officer and Chief of General Staff of the Yugoslav Army from 1993 to 1998. On 6 September 2011, the Trial Chamber, by majority, convicted Perišić for aiding and abetting crimes which allegedly took place in Sarajevo and Srebrenica as well as for his responsibility as a superior for failing to punish those responsible for the shelling of Zagreb. The Majority sentenced Perišić to 27 years' imprisonment despite the dissenting opinion of Presiding Judge Moloto who would have acquitted Perišić of all counts.

At trial, the Majority found that Perišić oversaw the Yugoslav Army's provision of extensive logistical assistance to the Army of Republika Srpska and the Army of Serbian Krajina, which included large quantities of infantry and artillery ammunition, as well as fuel parts, training and technical assistance. The majority also held that "Perišić was alerted to the fact that the VRS was conducting a campaign of sniping and shelling against civilians during its siege of Sarajevo" and that he was receiving information from a variety of sources concerning the VRS's discriminatory intent against Muslims.

Perišić was nonetheless acquitted of charges for aiding and abetting extermination in Srebrenica because the evidence did not establish beyond reasonable doubt

ICTY NEWS

- *Perišić* : Appeal Hearing
- *Lukić & Lukić* Appeal Judgement
- *Haradinaj et al*: Retrial Judgement
- *Mladić*: Trial continues
- *Hadžić* : Trial continues
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that Perišić could have reasonably foreseen that the VRS would engage in the systematic extermination of thousands of Muslims. The Trial Chamber also acquitted Perišić of command responsibility in relation to the crimes committed in Sarajevo and Srebrenica.

The Trial Chamber's judgement was the first ever handed down against an official of the Federal Republic of Yugoslavia for crimes committed in Bosnia and Herzegovina.

During the Appeal hearing, the Defence reiterated most of the arguments found in Perišić's Appeal Brief, placing particular emphasis on the reasoning of Judge Moloto in his dissenting opinion. Perišić's Defence Counsel explained how the majority erred in its application of the aiding and abetting and command responsibility modes of responsibility and argued that the 27-year imprisonment sentence imposed on Perišić was manifestly excessive. Novak Lukić, Perišić's Lead Counsel, said that he profoundly believes that his client is innocent.

The Appeals Chamber had provided the parties with five questions, four of which focusing on aiding and abetting, which received a lot of attention during the hearing. The Defence argued that 'specific direction' is one of the two essential components of the *actus reus* of aiding and abetting that must be proved beyond a reasonable doubt in every case. The Defence emphasised that ignoring 'specific direction' as the Majority did, would lead to a miscarriage of justice and create an undesirable precedent.

The Defence also alerted the Appeals Chamber to the fact that holding Perišić responsible risked creating a double standard. Last year, Britain and France had intervened in Libya with "impunity" in support of rebel forces which they did not control in order to topple Muammar Gaddafi. "Do we think there will be prosecutions around the world for the United States and its personnel? Or for the U.K or for France? Or for NATO?" asked Defence Counsel, Gregor Guy-Smith. He noted that a problem may

occur quickly creating a rise in impunity, as there will be recognition that there is un-equal treatment under the law.

In regards to the conviction on command responsibility, Stéphane Bourgon, who worked with the Perišić Defence team on appeal, told the Appeals Chamber that the Trial Chamber's reasoning clearly departed from the jurisprudence of the International Tribunal and that its factual conclusions were plainly unreasonable, thus making the Trial Judgement untenable. The Defence argued that on the basis of the evidence, no reasonable trial chamber could have found that a superior-subordinate relationship existed between Perišić and the perpetrators of the shelling of Zagreb in early May 1995. Accordingly, the Defence requested the Appeals Chamber to reverse the Majority's finding and enter a finding of not guilty in relation to counts 5 to 8.

However, the Prosecution insisted that the verdict was "appropriate, considering Perišić's key role". Elena Martin Salgado for the Prosecution said that Perišić had made conscious attempts to conceal his role in the war and that the Trial Chamber had removed that veil of deception, exposing Perišić's position of authority and effective control.

In reply, Novak Lukić disagreed, adding that the Tribunal may have dealt itself a far too ambitious task; the creation of a new precedent in international law.

In his final statement, Perišić told the Appeals Chamber that his sole intention in providing assistance to the VRS was to avoid the conflict in Bosnia from spreading to the Federal Republic of Yugoslavia in accordance with the instructions he received from his political superiors. He added that he could not be held responsible for the actions of an army that was not under his direct control and emphasised that his case still remains unique in the world, as never before has a chief of staff been indicted and convicted for crimes committed by members of another army in another country.

Prosecutor v. Milan Lukić & Sredoje Lukić (IT-98-32/1)



Milan Lukić

The Appeals Chamber, Judge Mehmet Güney, Presiding, affirmed on 4 December 2012 convictions for both Milan and Sredoje Lukić, but reduced Sredoje Lukić's sentence by three years. Milan Lukić will serve a life sentence, and Sredoje Lukić 27 years, with adjustments for time served.

Milan Lukić Appeals

The Appeals Chamber dismissed all of Milan Lukić's grounds of appeal, but granted two sub-grounds, relating to possible credibility issues with the "Women Victims of War Association," and relating to testimony on the number of victims actually killed in the fire at the Omeragić house on 14 June 1992, which it found should be adjusted from 59 to 53 victims.

The Appeals Chamber dismissed his challenges to the Trial Chamber's rejection of the alibi for the murder of five persons on the Drina River and Varda factory incident; agreed with the Trial Chamber's finding he was directly responsible for the murder of Hajra Korić; agreed that he had set fire to the Omeragić house, in which 53 persons were killed, the vast majority of those inside; and found the Trial Chamber did not err in holding him responsible for the fire at Bikavac.

The Appeals Chamber also noted that it was satisfied with the Trial Chamber's holding that the killings of 60 persons in Bikavac, and the killings at the Omeragić house on Pionirska Street met the massiveness threshold for extermination. The Appeals Chamber, Judge Morrison dissenting, also found that the Trial Chamber did not err in assessing the population density of the area of origin when addressing the massiveness requirement. Judge Morrison argued that subjective elements such as population density and victim vulnerability should not be taken into account as they "threaten to erode the very *raison d'être* of the crime of extermination" – a simple objective assessment of the volume of deaths, which is often numerical – but he found that in this case the threshold was met nonetheless.

Sredoje Lukić Appeals

The Appeals Chamber also dismissed all of Sredoje Lukić's challenges to the accuracy of witnesses placing him at the Pionirska incident on 14 June 1992, first at Jusuf Memić's house and later at the transfer to the Omeragić house.

Judge Morrison strongly dissented to this ruling and not-

ed that while facts should rarely be turned over on appeal, Deference to the Trial Chamber "should not be infinite". In this case, Judge Morrison noted, the fundamental identification was based entirely on hearsay and lacked any primary indicia of reliability. Judge Morrison cited a series of Trial Chamber and Appeals Chamber precedent on un-sourced hearsay being unreliable in principle and in practice, and on problems that related to layers of hearsay, particularly when the evidence was not subject to corroboration from other sources. According to Judge Morrison, "Never before has hearsay evidence with so little by way of substantive indicia of reliability been relied upon, and the Majority's conclusion, as well as its failure to explain its significant divergence from historic jurisprudence in this regard, is, with respect, unfathomable".

Judge Güney dissented as well, and argued for a reversal of the finding that Sredoje Lukić was present during the transfer to the Omeragić house where the burning occurred, but accepted the finding on his being present and armed during the crimes committed beforehand at Jusuf Memić's house.

In relation to the Sredoje Lukić's conviction for aiding and abetting the crimes on Pionirska Street, the Appeals Chamber further noted that there had been no finding on substantial effect of any of Sredoje Lukić's actions at the scene, but only mere presence of "someone in a position of authority," and that there certainly had been no requirement of "specific direction," but that this did not invalidate the Trial Chamber judgment.

Judge Güney wrote a separate opinion on this point. In Judge Güney's assessment the requirement of specific direction is clearly established in several Appeals Judgments and is likely implicit even in the one case it is not mentioned. However, he noted that Sredoje Lukić's armed presence in this case was specifically directed at supporting the crimes, so this was not a good test case.

Judge Carmel Agius also wrote a separate opinion similarly supporting an element of specific direction in aiding and abetting liability based on prior jurisprudence, but arguing that such discussion did not apply to this case.

With regard to the charges of aiding and abetting persecutions and inhumane acts in relation to beatings at Uzamnica Camp, the Appeals Chamber granted



Sredoje Lukić

Sredoje Lukić's grounds of appeal and questioned the credibility of the main prosecution witness on this topic, Nurko Dervišević. It thus reversed all of Sredoje Lukić's convictions in relation to Uzamnica camp.

Prosecution Appeals

The Appeals Chamber dismissed as moot one ground of appeal by the Prosecution attempting to reestablish a persecution conviction for Uzamnica camp incidents. It

dismissed another ground of appeal for aiding and abetting extermination in relation to the Pionirska Street incident, because – after careful assessment of the individual opinions of the Trial Chamber judges on the matter – there had not been a “majority of judges” in favor of conviction, as required by the Rules and the Statute.

Both Milan Lukić and Sredoje Lukić will remain in the custody of the Tribunal until arrangements are made for their transfer.

Prosecutor v. Haradinaj et al (IT-95-5/18-1)



Ramush Haradinaj

On 29 November 2012, Trial Chamber II acquitted of all charges Ramush Haradinaj, a former commander of the Kosovo Liberation Army (KLA) in the Dukagjin area in Western Kosovo, Idriz Balaj, a former member of the KLA and commander of a special unit known as ‘the Black Eagles’, and Lahi Brahimaj, a former member of the KLA then stationed at Jablanica .

This is the second acquittal for in this case. The three accused were charged as members of a JCE or, alternatively, under other modes of individual criminal responsibility, with crimes allegedly committed by them or by other members of the KLA in 1998.

This landmark case is the first international criminal case in which a retrial has been ordered after acquittals were returned at the original trial.



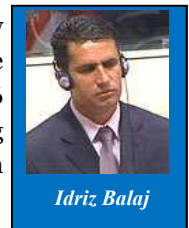
Lahi Brahimaj

Haradinaj, Balaj and Brahimaj were originally charged with 37 counts of crimes against humanity and war crimes. On 3 April 2008 Haradinaj and Balaj were acquitted of all charges. Brahimaj was convicted of two counts and sentenced to six years imprisonment. The Prosecution appealed

the judgment, arguing, in part, that the Trial Chamber breached its right to a fair trial by not allowing it additional time, after the nine-month original trial, in which to secure the evidence of two additional witnesses, both of whom were claimed to be critical to the Prosecution case.

On 21 July 2010, the ICTY Appeals Chamber, with Judge Robinson dissenting, granted that appeal in part, reversing six counts of the original 37 and ordering a retrial on those counts so that testimony from the two witnesses could be presented.

The partial retrial began before a new Trial Chamber on 18 August 2011. The Prosecution presented evidence from 56 witnesses at the partial re-trial, including the two witnesses with respect to whom the partial re-trial was ordered.



Idriz Balaj

In returning the acquittal after the partial re-trial, the Trial Chamber found the testimony from crucial witnesses, including one of the witnesses who triggered the partial retrial, was inconsistent and not reliable. The Chamber held that ‘the Prosecution presented no direct evidence to prove that the established crimes were committed as part of a joint criminal

The Trial Chamber ordered their immediate release.

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

On 14 November 2012, Karadžić called Dušan Zurovac to testify. Zurovac was an officer in the 4th Company of the 2nd Battalion of the 1st Sarajevo Brigade. He testified about the positions held by his unit as well as opposing units of the 1st Corps of the ABiH. He stated that the SRK mainly engaged in defense activities and that it had no intention to cause civilian casualties during combat or terrorize the civilians under the control of Muslim authorities. Zurovac also testified about civilian facilities being misused for military purposes by the 1st

Corps of the ABiH as well as the presence of paramilitaries in the zone of responsibility of the 1st Sarajevo Brigade.

On 15 November 2012, Željka Malinović, a medical technician who worked at the Novi Grad-Otoka Clinic until 2 May 1992, testified about Muslim paramilitary formations who made lists for parts of the town and apartment buildings where Serbs lived and searched them under the pretense of looking for radio transmitter sets and weapons. She also testified about the role of mem-

bers of the Green Berets who searched her apartment, whilst threatening to kill her and her family, and took a man away and tortured him by having nails hammered under his fingernails. She further stated that a Serbian man was taken to a public square where he was stoned by a crowd of Muslim men and women.

Malinović stated that armed Green Berets' members would fire with automatic rifles from a clinic's windows in the direction of the Viktor Bubanj Barracks where a JNA unit was billeted. She stated that she met many Serb girls and women who had been raped by Muslim forces. Malinović also testified about Muslim forces that fired at her unit's ambulance whenever they had the opportunity, regardless of the fact it was marked with the Red Cross in line with regulations.

On 15 and 27 November 2012, Miladin Trifunović, who was the Commander of the Vogošća Light Infantry brigade during the war, testified about the situation in Vogošća before the outbreak of the war and the combat operations afterwards. He testified about the precautionary measures taken by his unit to avoid firing on civilian facilities. He stated that his unit did not have any intention during battle to cause civilian casualties or conduct a terror campaign against civilians. He further stated that there was no obstruction of humanitarian aid to the Muslim side in the zone of responsibility of his brigade. He also testified about the existence and production of modified air bombs and underlined that his unit did not have any.

On 28 November 2012, three witnesses testified. First, Velimir Dunjić, who was commander of the Igman Brigade, SRK, testified about the positions held by the Igman Brigade and its strength, as well as about the positions of Muslim forces in Igman and Sarajevo. He stated that there was a permanent order for his battalion to open fire only in response to enemy fire and only at observed firing positions. He further stated that he had no intention of causing civilian casualties or terrorizing civilians during combat and that he never received any verbal or written orders from superior command to attack civilians in the part of the city under the control of Muslim authorities.

Second, Mile Sladoje, who was a member of the 1st Battalion of the Ilidza Brigade, testified about the

attack by Muslim paramilitaries under the leadership of Dragan Vikić on Nedžarići on 8 April 1992.

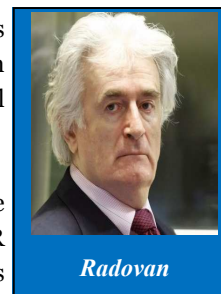
Sladoje stated that his brigade complained to UNPROFOR about the frequent enemy attacks from civilian zones and testified about incidents 'G-5', 'G-6', 'F-7' and 'F-9'.

Third, Zoran Kovačević, former member of Krajina Corps stated that his unit always took precautionary measures to avoid firing on civilian facilities.

On 3 December 2012, Vlado Lučić, former commander of the 2nd Mountain Battalion in the 216th Mountain Brigade (later 1st Romanija Brigade) under the command of Dragomir Milošević, testified that his unit was very careful not to target civilian objects in the zone of responsibility of the 1st Corps of the ABiH. He further testified on the use of artillery and snipers in his unit, as well as their use by the ABiH.

On 3 and 4 December 2012, Dragan Maletić, former commander of the 1st Unit of the 3rd Battalion of the 1st Romanija Brigade during the war, testified about the situation and events in Sarajevo before the outbreak of the war. He stated that there was no obstruction of humanitarian aid to the Muslim side and that there was a black market where goods from humanitarian aid were sold. He further stated that many civilian facilities were being abused for military purposes by the Muslim side.

On 4 December 2012, both Blaško Rašević and Zdravko Čvoro testified. Rašević testified that he and his colleagues were molested by Green Berets and members of the Patriotic League whose task was to spread fear among Serbs. He stated that in March 1992 barricades were set up by both ethnicities. Čvoro, former President of the Crisis Staff of the Pale Municipality, testified that there was no plan to expel Muslims from the municipality of Pale. He further testified about the preservation of property rights of those Muslims who did leave and about the relationship between the local authorities and the RS Presidency.



Radovan

Prosecutor v. Mladić (IT-09-92)



Ratko Mladić

The trial of Ratko Mladić resumed this week after a week and a half hiatus with the testimony of Refik Sokolar, a Bosniak Police Inspector from Novi Grad. The witness testified to numerous shelling and sniping incidents, especially in the Dobrinja area, which according to the witness came from Nedzarici. On cross, Defence Counsel Branko Lukić questioned the witness extensively on military targets in Dobrinja, and the problem of ABH military forces not wearing uniform.

Prior to the recess, on 20 November witness RM-63, a victim of KP Dom in Foča, testified to maltreatment and abuse in the camp. The Defence attempted to show that Pilipovići was in fact taken over by non-military units, with beards and long hair, who were dressed in a variety of outfits, and were not responsible to the army. The Defence also presented documents suggesting the camp itself was under the control of the local Foča Crisis Staff.

Lt. Col. John Hamill of the Irish Defence Forces testified on 21 November. Hamill was a UN Military Observer in Sarajevo during the summer of 1993, who returned in February of 1994 as a technical advisor to the UN team tasked with investigating the first Markale incident on 5 February 1994. He testified to significant shelling and sniping incidents, and also that local armed gangs headed by Vasilje Vidović prevented UN access to parts of the city, and suggested that these gangs answered to General Josipović of the VRS northern sector. Defense Legal Consultant, Dra-

gan Ivetić questioned the accuracy of the witness's analysis of the Markale incident, as well as his 1993 Dobrinja football stadium crater analysis.

Witness Nedzib Džozo, a BiH police officer from Sarajevo testified on 22 November to the BiH careful process of reporting incidents in the war log of the Stari Grad police station. He also suggested that VRS targets were deliberately chosen to increase civilian casualties; even suggesting that the Markale 2 incident on 28 August 1995, had involved two months of attempts to shell targets closer and closer to the marketplace. The Defence responded with questions to show that the prior incidents were also ambiguous as to the source of the shelling and weapons used, thus proving little; and further led with cross-examination on evidence of numerous military targets within the city.

The Prosecution has again attempted to add the 11 reportedly newly discovered documents to its 65 ter list, because they allegedly show Mladić's responsibility for the policies behind the sniping of Sarajevo. The Trial Chamber denied, without prejudice, the request to add the documents as potential associated exhibits for witness Richard Philipps, but the Prosecution is now seeking to amend the list so that it can use the documents in relation to other witnesses. The Defence strongly opposed

the request, because of a lack of good cause for delay, and a lack of due diligence, especially since the documents were only disclosed to the Defence on 1 November 2012. The documents are a series of SRK command orders and reports relating to sniping activity in late October and early November of 1993.

Prosecutor v. Hadžić (IT-04-75)

On 19 November 2012, Prosecution witness Milan Miladinović testified, telling the court how he came to learn about Arkan's killings. He was one of a series of witnesses over the past month who has given evidence about the activities of Arkan's Tigers in Croatia. Miladinović, a Croat who worked in an agricultural plant in Dalj at the time, explained how Croat civilians had been expelled from Dalj and how he had been forced, on a number of occasions, to bury those who had been killed by Arkan's paramilitary group.

During cross-examination, Miladinović was asked whether there was coordination or agreement between JNA and the Croatian side for the evacuation. He said that he did not know. He also stated that almost all the Serbs were associated with the SDS and that it was not necessary to know someone personally to know that they were a member.

On a couple of occasions, the witness was not able to provide answers to the questions posed by the De-



Goran Hadžić

fence.

Three Prosecution motions have been granted in the past two weeks for the admission evidence of protected witnesses GH-036, GH-128 and GH-024 pursuant to Rule 92 *ter*.

The Defence did not oppose the motion for GH-036 but made submissions for the motions of GH-128 and GH-024.

In relation to GH-128, the Defence opposed the admission of an exhibit which, although used in the witness' testimony in the *Mrksic et al* case, was neither tendered nor admitted. The Trial Chamber supported the Defence's submission, ruling that the witness statement would not become incomprehensible or have less probative value without the admission of this document. It therefore ordered the admission of GH-128's evidence, with the exception of the above-

mentioned document. GH-128 will testify about the alleged evacuation of Ilok and Vukovar inhabitants and the alleged attacks on the towns of Vukovar, Lovas, Mohovo and Bapska.

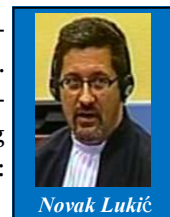
Regarding GH-024, the Defence submitted that certain paragraphs of the witness' statement describing events that occurred after August 1994 were irrelevant to the Indictment. It therefore opposed those paragraphs and five associated exhibits which relate to those paragraphs. Again, the Trial Chamber concurred with the Defence's submission (with Prosecution also accepting not to tender those paragraphs but lead certain portions during the witness' testimony). The Trial Chamber ordered the admission of GH-024's evidence, with the exception of the paragraphs and the five related exhibits. GH-024 will testify about the alleged arming of Serbs, and the events in Dalj, Borovo Selo and Lovas, as well as the command structure and activities of paramilitaries.

ADC-ICTY Training Conference and General Assembly

On 30 November and 1 December, the ADC-ICTY held its annual training conference. The topics which were covered this year included; Best Practices of Defence Counsel, Ethical Considerations for Defence Counsel, The Mechanism for International Criminal Tribunals, Review of Appeal Judgements and the Legal Legacy of the ADC-ICTY. Speakers included; Judge Orié, Colleen Rohan, Martin Petrov, Novak Lukić and Stephane Bourgon. The conference was attended by around 30 defence counsel from the ICTY and proved to be a valuable experience. For photos from the event: <http://gallery.adc-icty.org/#10.0>

ADC-ICTY General Assembly and Election of New President

On Saturday 1 December the ADC-ICTY held its annual General Assembly. During the assembly many issues were discussed and elections for the 2012-2013 committees occurred. Mr. Novak Lukić was elected as President and the Vice-Presidents are: Christopher Gosnell, Dragan Ivetić, Jelena Nikolić and Zoran Zivanović. The new committees look forward to working for all members of the ADC-ICTY during their tenure. For a full list of ADC-ICTY committees: <http://adc-icty.org/adcgovernance.html>



Novak Lukić

ADC-ICTY Celebrates its 10th Anniversary

The ADC-ICTY was established in 2002 and remains the only independent bar association which is officially recognised by an international tribunal. On 30 November a drinks reception was held for all members of the ADC-ICTY and officials from the international courts and tribunals. On Saturday 1 December the ADC-ICTY Annual Party also took place with many staff from the Tribunal attending to celebrate the association's 10 year anniversary. For photos from these events: <http://gallery.adc-icty.org/11.58>



Former Presidents of the ADC-ICTY

From Left to Right:

Michael Karnavas, Gregor Guy-Smith, Stephane Bourgon, Jelena Nikolić, John Ackerman, and Slobodan Zečević

NEWS FROM OTHER INTERNATIONAL COURTS



The Extraordinary Chambers in the Courts of Cambodia

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Extraordinary Chambers in the Courts of Cambodia (ECCC)

Julianne Romy, Legal Intern on the Ieng Sary Defence Team.

After two months in hospital, Mr. Ieng Sary was released on 7 November 2012 following a report by Professor Campbell, a geriatrician appointed by the Trial Chamber (TC) to examine Mr. Ieng Sary's health. Hearings were held by the TC on 8 and 12 November to examine the report. While Professor Campbell concluded that Mr. Ieng Sary was able to concentrate and participate in his trial, the Ieng Sary Defence orally requested the TC to contact another doctor to independently evaluate Mr. Ieng Sary's health. On 26 November 2012, the TC rejected this request and decided that Mr. Ieng Sary was capable of meaningful participation in his defence and, therefore, fit to stand trial.

Following an appeal by the Office of the Co-Prosecutors (OCP) against the TC's decision on reassessment of Ms. Ieng Thirith's fitness to stand trial, the Supreme Court Chamber (SCC) held a hearing on 13 November 2012 on whether the conditions sought by the OCP should be imposed upon her release and, if so, how they could be implemented and enforced. The Ieng Thirith Defence argued that restrictions on Ms. Ieng Thirith's liberty had no justifiable legal basis given the TC's findings that there is no reasonable possibility that she will become fit to stand trial in the foreseeable future. The SCC's decision is pending.

The Nuon Chea Defence, joined by the Ieng Sary Defence, objected to the OCP's request to place more than 1400 written statements or transcripts before the TC *in lieu* of oral testimony and examination. The two Defence teams argued that many of the OCP's proposed documents are inad-

missible or excludable under the standards established by the ICTY and adopted in Case 002/01. Both teams argued that the TC should exercise discretion as to the admissibility of these documents.



Ieng Thirith

Concerning the OCIJ's alleged practice of conducting unrecorded interviews with witnesses, the three Defence teams argued that this practice violates their clients' fair trial rights. The Ieng Sary and Khieu Samphan Defence teams requested the TC to hold a public hearing on this matter.

Lastly, the Ieng Sary and Nuon Chea Defence teams replied to the OCP's appeal concerning the scope of Case 002/01. Both Defence teams argued that the appeal is inadmissible because appeals filed pursuant to Rule 104(4)(a), such as the OCP's appeal, are only admitted against decisions that have the effect of terminating the proceedings, which is not the case with the TC's decision. The SCC granted the Khieu Samphan Defence team an extension of time to respond to the OCP's appeal. The OCP then requested a public oral hearing on the appeal. The Ieng Sary Defence team responded that the request is inadmissible before the SCC because the OCP's request should have been made as part of its original appeal and that, since all relevant arguments were set out in the appeal, the request should not be granted.

NEWS FROM THE REGION



Bosnia and Herzegovina

BiH Court quashes first-instance verdict in the case of *Marko Adamovic et al.*

On 27 November 2012, the War Crimes Chamber of the BiH court's Appellate Division quashed the first instance verdict of accused Marko Adamović and Bosko Lukić, ordering a retrial before the Appellate Division.

Adamović and Lukić are charged with crimes against humanity, committed between April and December 1992. They, along with other high-ranking military and political officials, allegedly participated in the preparation, organisation and execution of a widespread attack against the non-Serb civilians in the municipality of Kljuc.

Lukić was commander of the Kljuc Territorial Defence and a member of the Kljuc Crisis Staff, while Adamović was a member of the Crisis Staff, commander of the Kljuc Municipal Defense and deputy commander of the Kljuc Battalion. Both men were acquitted because it was not proven beyond reasonable doubt that they committed the crimes they were charged with.



Croatia

NGO *Documenta* fighting for war rape victim of Croatia.

Human rights NGO *Documenta* has warned that war rape victims are neglected in Croatia and is seeking a legal reform and changes in social attitudes to bring justice and dignity back to the victims. *Documenta* emphasised in a public report on Monday how vital it is for war rape victims to have adequate protection during criminal procedures. The absence of state support is currently one of the main reasons why the exact numbers of war rape victims remains unknown.

LOOKING BACK...

International Criminal Tribunal for the Former Yugoslavia

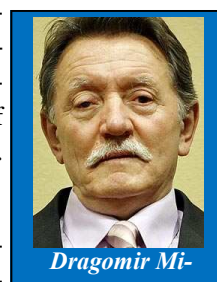
5 years ago...

Dragomir Milošević sentenced to 33 years' imprisonment for crimes committed in Sarajevo

The Tribunal found Dragomir Milošević, a former Bosnian Serb Army General, guilty of a range of crimes committed against civilians during the final months of the 1992-1995 siege of Sarajevo. The Trial Chamber sentenced him to 33 years' imprisonment.

Milošević was found guilty of crimes against humanity and of a violation of the laws or customs of war. He was convicted on five counts of terror, murder and inhumane acts conducted during a campaign of sniping and shelling which resulted in the injury and death of a great number of civilians in the besieged Bosnian capital. Two counts of unlawful attacks against civilians were dismissed.

In the summary of its judgement, the Trial Chamber found that under the command of Dragomir Milošević, the Sarajevo-Romanija Corps (SRK) of the Bosnian Serb Army (VRS) encircled and entrapped the city of Sarajevo over a 15-month period up to the end of the conflict in November 1995. As commander of the SRK, Milošević "...held a tight chain of command..." ensuring that he was "...kept abreast of the activities of his units".



Dragomir Mi-

Dragomir Milošević surrendered to the ICTY on 3 December 2004. His trial began on 11 January 2007 with closing arguments taking place on 9 and 10 October 2007.

International Criminal Court

5 years ago...

ICC Prosecutor: "Massive crimes continue to be committed in Darfur today, Sudan is not complying with Security Council resolution 1593 and is not cooperating with the Court"

On 5 December 2007 in New York, the International Criminal Court (ICC) Prosecutor, Luis Moreno-Ocampo, told the United Nations Security Council that the Government of The Sudan is not cooperating and asked the Security Council to send a strong and unanimous message to the Government of the Sudan, requesting compliance with Resolution 1593, requesting the execution of the arrest warrants.

"Sudan has not arrested Harun and Kushayb" the Prosecutor said. In his statement to the Council, the Prosecutor reiterated the fact that the Government of The Sudan, as the territorial state, has a legal duty to arrest and surrender Ahmad Harun and Ali Kushayb to the ICC.

Special Court for Sierra Leone

5 years ago...

Former CDF Militia Leaders Sentenced by Special Court

Two former leaders of Sierra Leone's Civil Defence Forces (CDF) militia received prison sentences following their convictions in August 2007 for war crimes committed during the country's decade-long civil conflict.

Justice Itoe said that while both Prosecution and Defence had recommended single, "global" sentences, the Court had decided to hand down separate sentences on each count for which the two accused had been found guilty.

Moinina Fofana, who was convicted on 4 counts of the 8-count indictment, received sentences of 6 years for Count 2 (murder), 6 years for Count 4 (cruel treatment), 3 years for Count 5 (pillage) and 4 years for Count 7 (collective punishments).

Allieu Kondewa, who was convicted on 5 counts, received sentences of 8 years for Count 2 (murder), 8 years for Count 4 (cruel treatment), 5 years for Count 5 (pillage), 6 years for Count 7 (collective punishments), and 7 years for Count 8 (conscripting or enlisting children under the age of 15 years into armed forces or groups or using them to participate actively in hostilities).

DEFENCE ROSTRUM

The Relationship of the United States with the International Criminal Justice System Lecture by Harold Koh, Legal Adviser, U.S. State Department

16 November 2012

By Samuel Shnyder

Harold Koh, Legal Adviser to the State Department under Barack Obama, gave a lecture at the same time as the meeting Assembly of State Parties was being held in The Hague. While the lecture was clearly intended as an outreach effort, it came across as scripted, and failed to address significant concerns of members of the audience about American foreign policy, or to give a clear picture of how the position of the administration towards the ICC and international criminal law has changed.

An accurate and substantially identical full text of the lecture, given in New York City on 8 November 2012 is available as a press release from the State Department, at <http://www.state.gov/s/l/releases/remarks/200957.htm>.

The lecture compared international justice to five stages in the development of computer software. International Criminal Justice 1.0 was the International Military Tribunals (IMT) of Nuremberg and Tokyo. These tribunals were remarkable in what they achieved, and benefited from four basic values: Legitimacy, Professionalism, Cooperation and Legality, which made them a tribute to the power of reason over force. The tribunals established principles relating to individual criminal responsibility, non-immunity for crimes committed as member of a government order, fair trial rights and elements of basic international crimes. They established the operating software for International Criminal Justice.

After 40 years of dormancy, the ad hoc tribunals came into being as International Criminal Justice 2.0. Despite critique, they followed through in the tradition of the IMT and IMTFE, and their jurisprudence has been influential on other courts.

International Criminal Justice 3.0 was the establishment of the hybrid and internationalized tribunals which addressed the need to have states investigate crimes and cooperate with the mechanisms of international justice. According to Mr. Koh, the SCSL, the ECCC, and the STL tribunals are examples of how this has been achieved. The SCSL, for example, established a

novel approach to amnesty and liability, and that the domestic amnesty does not block international justice; it also was the first to convict a former head of state.

International Criminal Justice 4.0 was the first permanent standing institution, the ICC. The U.S. was an early supporter of the establishment of an ICC, but in 1998 it had serious reservations on the final draft of the Rome Statute. This resulted in delay in signing the treaty, which Bill Clinton only finally signed in 2000 but did not submit for ratification. The effect of the signature was later denied by the Bush administration in a note to the U.N. Secretary General in May 2002, soon after the proposal of the American Service-members Protection Act (ASPA) which required the U.S. to protect all U.S. military from prosecution before the ICC. (The ASPA - also labelled "The Hague Invasion Act" - passed into law in August 2002, and has not been repealed.)

Mr. Koh noted that U.S. hostility towards the tribunal has ebbed and flowed. But he added that the U.S. public has always been and will always be in favour of the punishment of perpetrators of serious war crimes, crimes against humanity and genocide. According to Mr. Koh, U.S. interests also are aligned with the establishment of the Rule of Law and the U.S. has much to gain from the advancement of this principle of justice.

Mr. Koh noted that the U.S. and the ICC have "common goals" and that the U.S. should be judged by its actions and not its words. He gave examples (most in the gray area between words and action) of how the attitudes have changed: Hillary Clinton had endeavoured to end hostile rhetoric towards the Tribunal; the U.S. had abstained over the Darfur referral; the U.S. has engaged with the Assembly of State Parties and shown diplomatic and multilateral cooperation with the office of the Prosecutor, lent judicial and legal support, and referred the situation in Libya to the ICC through the Security Council (the first overt U.S. referral); Obama also praised the Lubanga judgement. Thus, according to Mr. Koh, the focus

should be less on abstract debate and more on the question of whether ICC efforts complement U.S. interests. The U.S. supports the basic values of the ICC, as it did in Nuremberg; in this respect it was important to avoid unnecessary collision, and he expressed gratitude that the jurisdiction over the crime of aggression will take place only on 1 January 2017.

International Justice 5.0 is about enhancing the “culture of accountability” which will be achieved through the menu of options and basic platforms that are available. This is in tune with the smart power approach taken by the State Department in other matters. The basic question remains: Are the worst criminals held accountable?

The lecture thus sought to position the ICC as an intermediate stage in a twenty-first century arena where justice will become increasingly more decentralized and multi-platform, but that the Rule of Law will be enhanced, and accountability will be strengthened, and the U.S. interests and ICC interests will become more confluent.

A first brave questioner stood up and asked about how all of this fit with the U.S. drone program. Citing a New York Times article (see <http://www.nytimes.com/2012/07/19/world/middleeast/us-officials-sued-over-citizens-killed-in-yemen.html>) the questioner asked if it was in fact administration policy to target civilians and to effectively reverse the burden of proof on defenders to show who was not a lawful target. Mr. Koh responded that “you should not believe everything you read,” and reminded the audience of the basic paradox Obama had alluded to in his acceptance of the Peace Prize that there was some irony in receiving a prize for peace at the moment of becoming the Commander in Chief of the armed forces. Mr. Koh said – “all killing is horrific, and not all killing is illegal”; new technology posed problems for existing law; and the administration had done its utmost to articulate legal principles behind its policy. It had also changed the “global war on terror” rhetoric. It dealt with “cases” not with “labels.” All of its actions were framed in the context of armed conflict. Furthermore, there had been no allegations of torture by U.S.

officials during this administration. Mr. Koh also added a few interesting comments on the problem of cyber conflict.

Other questioners asked about U.S. refusal to contribute to the financing of the Darfur as a referral by the Security Council which the U.S. did not support; he answered that the U.S. had participated in the debate, and was engaging by raising legitimate concerns. Two others asked specifically about the American Servicemembers Protection Act (ASPA) and Koh generally avoided the issue, but noted that repeal was not a priority. With regard to Guantanamo bay closure, he noted that the commitment was still there, but that it had not been possible as yet.

Ask about the crime of Aggression and possible American violations, he added that it was important to remember that the use of force “can prevent human rights violations,” and to face that bluntly. But was the degree of aggression defined with precision? What provisions were in place for complementarity? Was the OTP equipped to deal with such cases and did it have appropriate tools? In one of his most truthful moments, Mr. Koh added that the U.S. has servicemen all over the globe, dealing with complex engagements every day; and therefore it could not allow any outside judicial body to interfere with its day-to-day decision making, since lives were at stake.

He reminded the audience that the bottom line was that the “signature of Bill Clinton is still there” and this has legal and diplomatic import. Finally, asked about U.S. aiding and abetting liability for NATO’s actions in Libya, and the questions of Belgrade support to the VRS in light of the Perisic case, he said that he would like first “to distance himself from the facts” because they concerned issues of national security. But he noted that the law was far from clear in regard to specific direction and substantial impact of aiding and abetting through funding, and that the law was “not yet at rest.”

Most audience members probably felt the same at the end of Mr. Koh’s remarks.

BLOG UPDATES

- Olga Martin-Ortega, **In Bosnia, prosecuting war crimes at home**, 6 Dec 2012, available at : <http://www.intlawgrrls.com/2012/12/in-bosnia-prosecuting-war-crimes-at-home.html>
- Cecilia Marcela Bailliet, **Read on! *Nordic Journal of International law* publishes special issue on Raoul Wallenberg**, 4 December 2012, available at: <http://www.intlawgrrls.com/2012/12/read-on-nordic-journal-of-international.html>
- William A Schabas, **Why is the practice of Amnesty not condemned by the General Assembly Declaration on the rule of Law?**, 27 November 2012, available at: <http://humanrightsdoctorate.blogspot.nl/2012/11/why-is-practice-of-amnesty-not.html>
- Elli Goetz, **Trying terrorists: Military Tribunals or Civilian Courts?**, 6 December 2012, available at: <http://www.internationallawbureau.com/index.php/trying-terrorists-military-tribunals-or-civilian-courts/>
- Kirsty Sutherland, **ECCC desperate for funds**, 5 December 2012, available at: <http://www.internationallawbureau.com/index.php/eccc-desperate-for-funds/>
- Kevin Jon Heller, **Yes, Palestine could accept the ICC's jurisdiction retroactively**, 29 November 2012, available at: <http://opiniojuris.org/2012/11/29/yes-palestine-could-accept-the-iccs-jurisdiction-retroactively/>
- William A Schabas, **Palestinian statehood and the International Criminal Court: A curious Condition from Whitehall**, 27 November 2012, available at: <http://humanrightsdoctorate.blogspot.nl/2012/11/palestinian-statehood-and-international.html>

PUBLICATIONS AND ARTICLES

Books

- Kevin Jon Heller, *The Nuremberg Military Tribunals and the Origins of International Criminal Law*, (12 Dec 2012), Oxford University Press
- Harry M Rhea, *The United States and International Criminal Tribunals (supranational Criminal Law: Capita Selecta)*, (29 Jan 2013), Intersentia
- Linda E Carter, *International Criminal Procedure: The Interface of Civil Law and Common Law Legal Systems*, (Jan 31, 2013) Edward Elgar Publishing
- Eric A Posner, *Economic Foundations of International Law*, (1 Jan 2013), Belknap Press of Harvard University Press
- Gerald Gahima, *Transitional justice in Rwanda: Accountability for atrocity* (14 Dec 2012), Routledge
- Caroline Fournet, *Genocide and crimes against Humanity: Misconceptions and Confusion in French Law and Practice (studies in International and Criminal Law)*, (7 Jan 2013), Hart Publishing

Articles

- Robert Cryer, (2012), “*International Criminal Tribunals and the Sources of International Law: Antonio Cassese's Contribution to the Canon*”, *Journal of International Criminal Justice*, Volume 10, Issue 5, pp. 1045-1061.
- D.A.Bellemare, (2012), “*Bringing Terrorists Before International Justice: A View from the Front Lines Notes for an address*”, *Criminal Law Forum*, Volume 23, Issue 4, pp. 425-435.
- Matthew Garrod, (2012), “*The Protective Principle of Jurisdiction over War Crimes and the Hollow Concept of Universality*”, *International Criminal Law Review*, Volume 12, Issue 5, pp. 763-826
- Linda A. Malone, (2012), “*The Legal Dilemma of Guantanamo Detainees from Bush to Obama*”, *Criminal Law Forum*, Volume 23, Issue 4, pp. 347-362.
- Emily Haslam and Rod Edmunds, (2012), “*Common Legal Representation at the International Criminal Court: More Symbolic than Real?*”, *International Criminal Law Review*, Volume 12, Issue 5, pp. 871-903.

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WE'RE ON THE WEB!

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EVENTS

Israel and Iran: Countdown to War?

Date: 12 December 2012

Venue: Sheik Zayed Theatre, London School of Economics

More info: http://www.frontlineclub.com/fcbca-israel-and-iran-countdown-to-war/?utm_source=Frontline&utm_campaign=64847ef6ff-3+December&utm_medium=email

Work on! Annual Comparative Law Workshop

Date: 1&2 March, 2013

Venue: University of Illinois College of Law

More info: <http://www.ssrn.com/update/lsn/lsnann/ann12171.html>

Rights, Humanitarianism and international Development Network and the School of Law Annual Lecture

Date: 25 February 2013

Venue: School of Law, University of Edinburgh

More info: <http://rhidnetwork.eventbrite.com/>

Season's Greetings

On behalf of the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia and the Newsletter team, we wish you a safe and happy holiday season and hope for a prosperous year in 2013.



OPPORTUNITIES

Legal Officer

International Criminal Tribunal for Rwanda

Closing date: 20 December 2012

Associate Arabic Translator

Special Tribunal for Lebanon, the Hague

closing date: 29 December 2012

Rule of Law officer, Warsaw

Organisation for Security and Co-operation in Europe

Closing date: 4 Jan 2013