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ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

Šešelj (IT-03-67)

Cases on Appeal

Popović *et al.* (IT-05-88)

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Tolimir (IT-05-88/2)

ICTY NEWS

Prosecutor v. Hadžić (IT-04-75-T)

On 26 August, the cross-examination of Goran Hadžić focused on the policy of the Republika Srpska Krajina (RSK) which aimed to minimise the number of expulsions occurring in April 1992. Hadžić was asked about the meeting with Dobrosav Vejzović, the Foreign Minister of RSK and Stevo Bogić, the Vice-President of the RSK government. Vejzović stated that the return of the non-Serb population would be allowed only on a reciprocal basis and only if they had received a list of those who had been expelled, a point that was later confirmed by eyewitnesses and victims. Hadžić explained that the government had at that time just been established, the Yugoslav People's Army (JNA) had still been present and the United Nations Protection Force (UNPROFOR) had not taken the territory yet. He denied that it was the priority of the RSK government to hasten the departure of the non-Serb population before the arrival of the UNPROFOR peacekeepers.

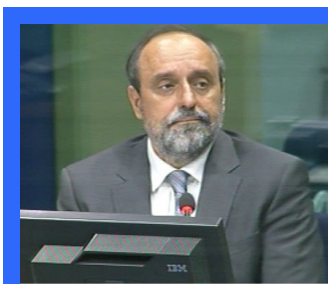
Another topic was Hadžić's visit to Belgrade in late 1991 where he spoke about the situation in the Serbian Autonomous District Slavonia, Baranja and Western Srem (SBWS). Hadžić stated that all the information about the military situation that he shared at the meeting, he had obtained either as an ordinary citizen from the media or from friends and the meetings he attended. At that time he did not want to admit that he had no official information because this would have harmed his political position. He denied getting information from military and political people he was meeting or having a special information service during this period.

ICTY/MICT NEWS

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Goran Hadžić

Hadžić was also questioned about the idea of creating a Serbian army and his involvement in the transfer of volunteers into the SBWS. He denied organising volunteers or supporting their training in Prigrevica.

“inciteful statements” in interviews meant only that those responsible for crimes should be put on trial, regardless of their ethnicity. Hadžić added that wearing a military uniform did not mean his support for the separation and explained that he had worn it for practical reasons and the general war situation. Regarding the meeting held at Velepromet, Hadžić stated that the meeting was not a session of the government as there was no official meeting agenda, nor were all government members present.

On 27 August, the Office of the Prosecutor (OTP) shifted their attention to the prisoners kept in Dalj in autumn 1991. Hadžić denied knowing about these prisoners, the crimes happening against them, or discussing their exchange. According to the OTP evidence, after the organs of the new government had been established in Dalj, a large number of arrested people were killed and thrown in the Danube River. One of the incidents involved the killing of 40 prisoners by Željko Ražnatović, known as Arkan, which nobody contested and to which Arkan later confessed. Hadžić explained that the government was still in the process of formation at that time and had no real power to stop these actions and, further, that the JNA was solely responsible for these incidents.

The Prosecutor also questioned Hadžić about the lack of effort on the part of the SBWS and RSK judiciary to address expulsions and other crimes related to ethnicity until the UN peacekeepers arrived in April 1992 and pressured them to do so. According to the OTP, the RSK had the capacity to prosecute such crimes, but only crimes against the Croatian and Hungarian people were prosecuted. Hadžić explained that it was all under military control and that military courts of the JNA “were supposed to do everything”. Hadžić explained that the government was established only during September, October and November in 1991 and only then had the civil courts become operational. He added that, as soon as some civil institutions had been established, those crimes began to be prosecuted.

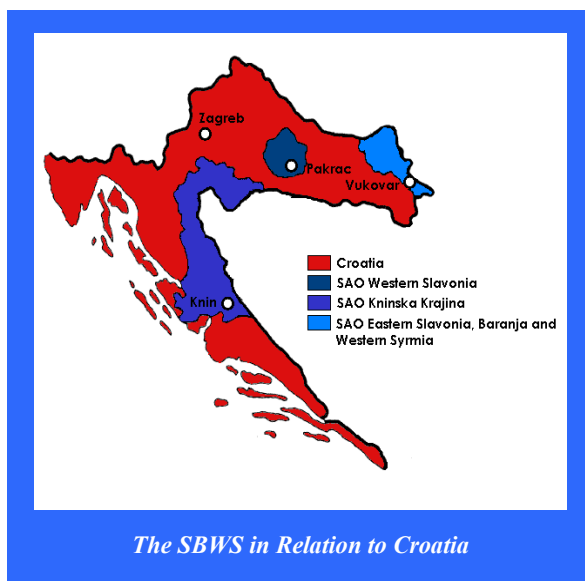
On 28 August, the main topics of the cross-examination were the RSK government sessions and Hadžić’s influence on the judicial proceedings against prisoners, as well as Hadžić’s powers under the RSK Constitution. Hadžić denied having any influence on the judicial proceedings against those who had allegedly committed crimes and explained that his

Hadžić also testified on his visits to prisoners held in Sremska Mitrovica and the exchange of prisoners that he had allegedly arranged. After the OTP had showed the video footage of Hadžić’s statement about an all-for-all exchange, Hadžić admitted that he might have been involved in this matter.

Another topic of the cross-examination that day was Hadžić’s powers under the Constitution of RSK. The disputed power was the power to “control” the military forces. Hadžić clarified that he understood this power in a realistic way in the sense that he was aware of his lack of experience and knowledge. He added that his powers were mainly representative. Part of the argument was also the fact that the English word “control” did not match the original word used in the Constitution.

On 1 September, the cross-examination focused on Hadžić being a fugitive from the time he was indicted in 2004. The OTP believed that Hadžić never intended to come to The Hague voluntarily and that he fled to Novi Sad in 1997 because he had found out about the arrest of Dokmanović that happened on the same day. According to the evidence presented by the OTP, Hadžić threatened to use force if somebody intended to arrest him. Hadžić denied these allegations and explained that he moved to Serbia as many other Serbs and that there was no indictment against him at that time. The OTP showed, in response, that Dokmanović was arrested on a secret indictment and that Hadžić could not have known whether there is such an indictment against him too.

On the same day, Hadžić’s Counsel started the re-direct which focused on clarifying the issues of peaceful reintegration of the SBWS and Hadžić’s limited powers in relation to the Vance plan. Hadžić explained that he was powerless and that the reintegration of Knin Krajina and Western Slavonia was forced



ble as the Croatian side simply cleansed these territories and separated Croats from Serbs. Hadžić spoke about the fear of the Serbian people during 1992 and 1993 if the bodies of RSK stopped existing and the fact that the Serbian people would not have stayed if there had been no Serbian government, as they did not trust Croatian institutions. With regard to the Vance plan and Hadžić's position in relation to it, Hadžić explained he was not the lead negotiator; rather that position was headed by the Socialist Federal Republic of Yugoslavia and Slobodan Milošević. He added that these negotiations took place between Zagreb, Belgrade and the UN, and he was not in a position to influence the content of its provisions.

On 2 September, the Defence proceeded with the redirect, focusing on the position of Arkan and Hadžić's respective powers in relation to the judiciary. Hadžić denied that Arkan was in charge of his security and claimed that Arkan would have not been in the SBWS against the will of JNA and the police that had come from Serbia. Hadžić also said that he had no knowledge at that time about Arkan being a criminal. He explained that he had heard about Arkan only in the media, but had never heard of any official indictment against him. He only realised that Arkan was wanted by Interpol after hearing about it in the Croatian media, but he paid hardly any attention to the allegations because the Croatian media called everybody criminals at that time. The Defence also clarified the powers that Hadžić had in relation to the judiciary, whereby Hadžić explained that the judiciary was

completely independent of him and that he could not influence their work in any way.

On 3 September, the OTP undertook further cross-examination focusing on two main issues. The first was whether Hadžić knew in 1991 that Arkan was a criminal. Hadžić reiterated what he said the previous day, that he had only heard that from the Croatian media. He also noted that the fact that the Australian Prime Minister visited Arkan at that time confirmed that he was not considered a criminal and that the Croatian media was, most likely, spreading misinformation. He also believed that Serbia or Yugoslavia, as members of Interpol, would have arrested him if he had been wanted by Interpol. The second issue was Hadžić's use of sharp language in relation to Herzegovina Croats. He is quoted as having said that Serbs and Croats cannot live together "in the brotherhood and unity type of co-existence introduced 50 years ago". Hadžić explained that he had been responding to similar statements in relation to Serbs coming from the Croatian leaders.

On the same day, another Defence witness was brought in, an English woman, Amanda Čelar, who was married to Ilija Čelar, a Serb who was a member of special police forces in Baranja. According to the witness the special forces that her husband belonged to were a small group of people who came together to attempt to defend themselves. The witness was a resident in Beli Manastir during the war and had frequent contacts with refugees from Baranja, the Knin area, Western Slavonia and the Vukovar area, especially in early 1992. One of the topics the witness spoke about was the biased media coverage of the events in Croatia, in particular coverage by western sources; for example, stories about Croatian churches being blown up, Serbs not being permitted to leave Baranja or a report stating that 99 percent of victims are non-Serbs in UN zones. The witness also claimed that the UN forces were biased too, as most of the people working for the UN Belbat Peacekeeping Forces were Croats.

The OTP's questions were related to the rhetoric from the Serb side about the Greater Serbia and Baranja not being Croatian. One piece of evidence presented by the OTP was a rally in Plitvice where Vojislav Šešelj called for defending the Serb cause and the "revenge of Serbian blood". The witness recalled that

there were a lot of rallies and that the people of Baranja wanted some sort of autonomy after the fighting had already begun, but not as part of either Serbia or Croatia. She added that there were no distinctions being made between Croats native to Baranja and those who came after World War II.

On the following day, the cross-examination of the same witness focused on the information that the witness obtained from her husband who was on the frontline in Beli Manastir in 1991. The witness stated that the whole group of 16 people, together with her husband, were arrested by order of Rade Kostić. Her husband, together with three other people, was found guilty of killing a man by the name of Stevo Pulić and convicted *in absentia* to serve ten years in prison. In addition, Croatia had initiated an international search for him for the maltreatment and murder he is alleged to have committed against detainees in Beli Manastir.

Another topic was the measures taken by the Baranja authorities regarding the termination of employment

and prohibition of return and stay in Baranja for all persons who were “in the enemy forces and people who helped them and their immediate families”. According to the OTP evidence, people were being notified through the media that they had to leave. There was also a decision to ban all people regardless of their ethnicity from coming back to Baranja if they had not already returned by 25 September 1991. The witness denied having heard about these practices and stated that a lot of people came back later. She specifically knew a Serb, a Croat and a Hungarian that came back after this date.

At the end of her cross-examination, the witness was questioned about the threats and explosions happening in April 1992 in Beli Manastir, around the time when UNPROFOR was supposed to resume responsibility in that area. According to the Prosecution, there was a spike in violent crimes against non-Serbs in this period. The witness explained that there was a lot of crime in general such as stealing from people and stealing cars, but not specifically against non-Serbs.

Prosecutor v. Mladić (IT-09-92)

On 25 August, the Defence called Goran Šehovac, a Bosnian Serb Army (VRS) soldier and military policeman as its first witness. The witness recalled his anti-terrorist unit assisting and protecting about 3,500 Croatian civilians fleeing from fights in Vareš. The witness insisted that the civilians wanted to leave Vareš because they were driven out by the Army of Bosnia and Herzegovina (ABiH) and that the VRS protected them instead of forcing them out as implied by communications from the Croatian leadership. The witness was not aware of the fights between Muslims and Croats at the time and had also no knowledge of the Bosnian Serb leadership wanting to help the Croats in 1993 to force the Muslims to divide Bosnia. Šehovac also experienced personally how a humanitarian transport by the United Nations Protection Force (UNPROFOR) contained hidden weapons and ammunition that he recognised as NATO ammunition. This event was covered by the media and the witness assumed that this was not the only time such an incident happened.

On 26 August, Ratko Adžić, President of Ilijas municipality, testified about the establishment of a Crisis

Staff. In the municipality, Serbs, Muslims and Croats negotiated and decided to organise their respective territories and set up police services as well, Muslim policemen were for example allowed to carry weapons in order to maintain security within their territory. Cooperation became more difficult and some agreements, such as making hospitals available to other ethnic groups, could not be kept because of the tensions. When tensions increased, many Serbs left Ilijas along with Muslims and Croats, but the witness denied any plan for the expulsion of Muslims or Croats. The witness organised population exchanges and the Red Cross was involved in these exchanges. In order to protect the property of those who left, including



Ratko Adžić

Muslims and Croats, the witness as Municipal President, decided not to allow the registration of property sales or transfers of property deeds. The witness denied having any military position during the war, despite

him signing letters where it is implied that he is the Commander of the armed forces in Ilijas. Finally, he stressed again that Bosniaks were free to leave and did not need his permission to leave the territory, and again, the Red Cross was involved in the population movements.

As the Court had recently confirmed that due to the health situation of Mladić, the Court would only be in session from Mondays to Thursdays, the next witness, Milorad Bukva was called by the Defence on Monday, 1 September. As a professional soldier, Bukva testified about his role as Head of the Security Department in the Sarajevo-Romanija Corps (SRK). The witness testified extensively about the situation in Sarajevo after the political decision of the Yugoslav People's Army (JNA) to depart from Sarajevo. It took months after the JNA's departure to build up an effective VRS, including the SRK, and due to that fact that the Serbs were attacked many times, but did not launch any attacks on their own. He further personally obtained reliable information that the Serbs used civilian facilities for military purposes and identified for the Court the positions of the different brigades in Sarajevo. Bukva continued his testimony on 2 September and stated that in his work for the Security Department he and his unit would gather information from many sources including from interviews with people who had left Muslim territories and switched to the Serb side. Notably, the witness shed light on the organisational distinction between security services and intelligence units to explain how he gained his information. Finally, Bukva testified on the Vaso Miskin incident, an assassination attempt on Joza Leutar, Deputy Minister of the Federal Police, and on the alleged murder of his son who did not stop short of discovering the truth about this incident.

After Bukva, Milenko Indić, VRS Liaison Officer for Cooperation with International Organisations, especially UNPROFOR, testified for the Defence on 2 and 3 September. Due to his position, he attended a series of meetings supervised by UNPROFOR forces to reach agreements on cease fires between Muslims and Serb forces. He also forwarded and directed documents and requests between different actors, including transmitting oral and written requests to Mladić. Indić agreed that he had several conversations with Mladić during the war, generally because he was present during meetings attempting to find a political

settlement to the war, and sometimes acting as an interpreter.

The witness provided information on the existence of many civilian facilities used as command posts for the ABiH, and that many artillery shells were identified by UN-

PROFOR Commander General Michael Rose as having been fired from these civilian positions. This assertion was challenged by the Prosecution as Rose was not present in Sarajevo that year, so they argued that the witness's recollection concerning this event is not entirely reliable. He indicated that he received a large number of complaints and requests from UNPROFOR during the course of the war, related both to small day-to-day events and to bigger incidents covered in the media. In particular he received objections concerning the shelling of civilian areas of Sarajevo.

Indić denied the accusation from the French Press Agency in Paris that medical evaluation in November 1993 had been denied by Bosnian Serbs and he does not recall any medical evaluation ever being denied. With regard to these documents, Branko Lukić, Lead Counsel for the Accused, complained that there had been a disclosure violation by the Prosecution.

The witness received complaints related to the supply and delivery of utilities for Sarajevo (electricity, water, gas) and was asked whether Bosnian Serb leaders (political and military) used these utilities as leverage. Indić responded he had no knowledge of that fact, and his assertion was challenged by the Prosecution who alleged that he must have known.

Referring to an event that occurred on 26 May 1995 where Indić had opened fire on French peacekeepers, Indić specified that he had an agreement to do so with a French officer in order to provide him with an alibi to surrender. Furthermore, he added that these troops were not to be considered as peacekeepers any longer as they had lost their neutral status at this point. The Prosecution asked whether Indić threatened to kill some of the French hostages, as seems to be evidenced by a letter presented, which he denied, arguing that the Indić referred to was not him. Final-



Milenko Indić

ly, Indić described his relationship with Mladić during the war. He affirmed having great esteem for Mladić as an army leader.

Similarly on 3 September, Boško Gvozden, former Commander of the Gradiška Light Infantry Brigade of the VRS, testified about the command communications system utilised by General Mladić and commanders of the VRS, as well as about attacks by the Bosnia and Herzegovina Army on VRS radio relay stations. As Commander of the communications regiment of the VRS, he monitored the lines of command and had access to all documents sent from the Main Staff to subordinate units. The witness testified that he never received nor saw any documents or orders from the Main Staff that deviated from the international conventions or laws governing the army. Finally, the witness testified that General Mladić enjoyed a great professional reputation and was held in the highest esteem by members of the VRS. The witness was not subject to cross-examination by the Prosecution.

The last witness of the week was Radovan Glogovac who testified on 4 September. As Vice-President of the local Serbian Democratic Party party in Zenica and Head of the Agency for the Exchange of Property he negotiated between Muslims and Serbs and managed for example to reach an agreement that around 1500 Serbs civilians could leave Zenica. The Muslim attitudes towards the Serbs changed in December

1993 to become more conciliatory. According to Glogovac, this was primarily because the Muslims had clashes with the Croats in western Bosnia and therefore wanted to restore some peace with the Serbs. This attitude was a local attitude and did not reflect the Sarajevo government's view towards the Serbs. Upon questions by the Bench, Glogovac testified having seen Mladić's orders on how to receive refugees and that Mirko Trivić, his Commander, made sure the treatment of refugees and Croat officers was in line with these orders as well as with the Geneva Conventions. With regard to exchanges of persons, the International Committee of the Red Cross and United Nations High Commissioner for Refugees were also informed about the progress of the witness's Exchange Agency.

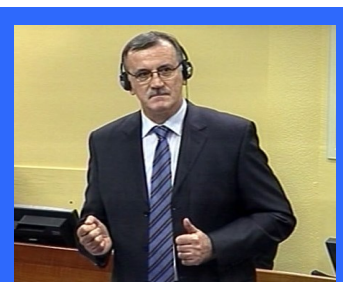
Furthermore, the fact that able-bodied men were held back initially and treated differently from other Croats who departed from the area is to be explained by the checks the authorities were conducting to find war criminals among those men. In the end, the men were allowed to depart just like the rest of the Croatian civilians. They were in Manjača for six days, but they were treated as civilians not like prisoners of war. The witness testified having read about the treatment of other prisoners at Manjača in 1992 but did not believe the stories at the time, as many reports were manipulated and he only found out about the truth about Manjača later through ICTY testimonies.

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

As reported in [Issue 73](#) of the ADC-ICTY Newsletter, on 22 August, the Pre-Appeal Judge in *Prlić et al.* (IT-04-74-A) granted a 15 day extension for the filing of the Appeals Briefs, such that the filing deadline for all six Accused and the Prosecution is 4 November. Following this Decision, the Defence for Corić and the Prosecution filed motions for reconsideration of the Decision. Corić claimed that "the time granted in the Subject Decision [was] unreasonable and insufficient, in light of the size and complexity of the Trial Judgement, and the extensions of time that were granted to other 'mega-trials' at the Tribunal, which had smaller judgments". Corić went on to offer arguments on the fairness of treatment with other appellants in other cases, mentioning the size and complexity of the trial record, and requested a recon-

sideration of his original request for an extension of two months from the deadline or three months from the Bosnian-Croatian-Serbian translation, which has yet to be completed. The

Prosecution, focusing in part on the length of time provided for their response brief, noted that the prior decision gave no reason for failing to adhere to the schedule agreed upon by all the parties, highlighting many substantive and procedural factors making the limited extension "manifestly insufficient" and unrea-



Valentin Ćorić

sonable.

The Defence for the other Accused, Prlić, Stojić, Praljak, Petković and Pusić submitted motions joining Corić's Motion for reconsideration, and noted further the exceptional volume and complexity of the case, the number and complexity of the grounds of appeal and the agreement of all parties that a two-month extension was warranted and desirable. Praljak additionally highlighted the impact of his recent reassignment of Counsel, which had the effect that his Counsel received the English translation of the Judgment two months later than the other teams.

The Pre-Appeal Judge, ICTY President Theodor Meron issued a new decision on 5 September, in which he reviewed the arguments in brief of the parties, noting

that "reconsideration is permitted if the requesting party can demonstrate that the impugned decision contains a clear error of reasoning [...] justifi[ing] its reconsideration in order to avoid a miscarriage of justice". Judge Meron considered that no parties demonstrated a clear error of reasoning or new facts that justified disturbing the finality of the decision on extension, though he stated that the Prosecution raised valid concerns related to staffing and resources, such that the deadline for the filing of the Respondent's Briefs should be moved. Again, noting the importance of harmonised briefing, President Meron denied all Defence Motions but granted the Prosecution's Motion in part, such that the deadline for the Appeal Briefs remains 4 November, but the deadline for both Defence and Prosecution Respondent's Briefs and Reply Briefs will be 13 February 2015

LOOKING BACK...

Special Tribunal for Lebanon

Five years ago...

On 3 September 2009, the STL and the International Criminal Police Organisation (INTERPOL) signed an interim agreement, initiating a cooperation between the two institutions in the investigation of crimes that fall under the jurisdiction of the STL.

The Agreement, which became active on 24 August 2009, was signed by STL President Antonio Cassese and Ronald K. Noble, Secretary-General of INTERPOL. The document aimed to enable the STL "to request assistance from INTERPOL for the purposes of the ongoing investigations carried by the Office of the Prosecutor of the Tribunal and other proceedings undertaken by the Tribunal..."

Ensuring that the Agreement was implemented was a responsibility of the Office of the Prosecutor of the STL and the Operational Support Directorate at INTERPOL's General Secretariat.



INTERPOL has also cooperated in the past with the International Criminal Tribunal for the former Yugoslavia, as referenced in Rule 39(iii) of the ICTY's Rules of Procedure and Evidence, that the ICTY may request INTERPOL's help in conducting investigations.

International Criminal Tribunal for the Former Yugoslavia

Five years ago...

On 14 September 2009, the trial against Mičo Stanišić and Stojan Župljanin commenced at the ICTY in The Hague.

Stojan Župljanin was a subordinate of Mičo Stanišić, who was the Minister of the Interior in the Republika Srpska. He was also "the most senior police officer in

the Autonomous Region of Krajina (ARK) in north-western Bosnia and Herzegovina". At a later time he also served as an advisor to Radovan Karadžić.

The two Accused were indicted on the counts of "persecution, extermination, murder, deportation and torture of non-Serb civilians in various areas of Bos-

nia and Herzegovina between April and December 1992". Both Mičo Stanisić and Stojan Župljanin were alleged participants in a Joint Criminal Enterprise (JCE) whose foremost goal was the permanent removal of non-Serbs from the territory of the "planned Serbian state", according to the indictment. Other alleged members of this JCE were Momčilo Krajišnik, Radovan Karadžić, Biljana Plavšić, General Ratko Mladić, Momir Talić and Radoslav Brđanin.

Mičo Stanisić and Stojan Župljanin were believed to have had control over the "Serb forces which were involved in implementing the plan". The individual charges for Stanisić were regarding crimes committed in the northeastern, eastern and central municipalities of Bosnia and Herzegovina. The crimes commit-

ted in northeastern Bosnia and Herzegovina against Župljanin included the following towns: Prijedor, Banja Luka, Ključ, Skender Vakuf and Teslić.

The Prosecution insisted that the two Accused held superior positions and because of that they were not only aware of the committed crimes, but by failing to prevent them, they actually encouraged them.

The initial indictments of the ICTY against Mičo Stanisić and Stojan Župljanin were in 2005 and 1999, respectively. Stanisić surrendered on 11 March 2005 and Župljanin was arrested in 2008. a Trial Judgement was issued in 2013, and the case has since been on appeal.

International Criminal Tribunal for Rwanda

Fifteen years ago...

On 18 September 1999, the former Bourgmestre of Mabanza, Ignace Bagilishema, pled not guilty to his amended indictment which included counts of genocide, crimes against humanity and serious violations of the Geneva Conventions. According to the amended indictment the Accused was alleged to have assisted in the murder of thousands of Tutsis in Mabanza, Gitesi, Gishyita and Gisovu Communes in the Kibuye prefecture.

The Prosecution accused Bagilishema of allegedly arming people and instigating attacks against Tutsis, who resided in the Kibuye prefecture. It was also believed that the Accused had personally "attacked and

killed persons residing and seeking refuge in Mabanza commune, Gatwaro stadium in Kibuye and Gitwa hill in the area of Bisesero".

On 3 July 2002, the Appeals Chamber of the ICTR, unanimously confirmed the acquittal of Ignace Bagilishema after reviewing the testimonies and the documentary evidence presented during the proceedings. The Chamber concluded that the Prosecution had presented inconsistent and contradictory evidence, failing to prove its case beyond reasonable doubt. The acquittal of Bagilishema was the first in the history in the ICTR.

NEWS FROM THE REGION

Bosnia and Herzegovina



Bosnian Army Serviceman Granted New Trial

Squad Kapić, a former Bosnian Army serviceman, has been granted a new trial to address his sentence killing four Serb prisoners of war in Sanski Most in 1995 when he was 17 years old. Kapić was acquitted during his first trial in 2008, but convicted on appeal a year later and sentenced to 17 years. The sentence was upheld in 2010, despite the myriad mitigating factors, such as his good behaviour and remorse, his age at the time of the offence, his family situation and this lack of prior convictions.

The Bosnian Constitutional Court has since held that the wrong criminal code was used at Kapić's trial – the newer Bosnian code, which is stricter, rather than the more lenient criminal code of the former Yugoslavia – and thus overturned the sentence, remanding the case for retrial solely on this issue.

Four Members of the Bosnian Croat Croatian Defence Counsel Indicted for Crimes

Four members of the Bosnian Croat Croatian Defence Counsel (HVO) were arraigned in the Bosnian State Court in Sarajevo on 4 September for crimes allegedly committed in Odžak (northern Bosnia) during the war in 1992. All four Accused have formally pled not guilty. The indictment alleges that Marijan Brnjić, Martin Barukčić, Pavo Glavaš and Ilija Glavaš were members of the 102nd Brigade of the HVO and assaulted Serb women in the Odžak area in 1992.

All four were arrested by the Bosnian State Investigation and Protection Agency in April and an indictment was issued and confirmed in July. During earlier hearings related to pre-trial remand to custody, both Brnjić and Pavo Glavaš denied being in Bosnia-Herzegovina during the indictment period and, as both are citizens of Bosnia-Herzegovina and Croatia, they presented a minimal flight risk. The Accused were ordered into custody in April and extended for two months in May, though were briefly released in July prior to the confirmation of the indictment.

No date has yet been set for the trial.



Bosnia and Serbia



Djurić's Defence Team Re-enacts 1995 Attack on Tuzla

On 4 September, the Defence team of Novak Djukić, a former Army of Republika Srpska officer, re-enacted the 1995 attack on Tuzla, in an effort to tangibly demonstrate that it was not plausible that a grenade landed in Tuzla, killing 71 people. On 12 June 2009, Djukić was convicted and found guilty of war crimes against civilians and sentenced to 25 years in the Court of First Instance in Bosnia-Herzegovina for his role as the Commander of the Ozren Tactical Group during what the Court found to be a direct and indiscriminate attack against civilians in Tuzla in May 1995. At that time, he was also acquitted of charges that he ordered shelling of Tuzla with artillery projectiles due to a lack of evidence.

An initial appeal resulted in a reduction of Djukić's sentence to 20 years, but Defence Counsel plan to submit the reconstruction results to the Bosnian Court with a request for a retrial. An earlier request for a retrial was denied, and Djukić is set to begin serving his sentence in Foča on 22 September. Djukić is currently receiving medical treatment in Serbia, as indicated by his Counsel following concerns about his absence from the reconstruction. If he were to fail to return to Bosnia-Herzegovina to serve his sentence, there could be local penalties in Serbia, but he would not be subject to extradition as Serbia and Bosnia-Herzegovina do not have an extradition agreement for Serbian citizens.

NEWS FROM OTHER INTERNATIONAL COURTS



International Criminal Court

The views expressed herein are those of the authors alone and do not necessarily reflect the views of the ICC.

Statement of Prosecutor Bensouda on Palestine

On 2 September, Prosecutor Fatou Bensouda responded to recent media reports and commentaries which suggested that, due to political pressure, the ICC had avoided opening an investigation into alleged war crimes in Gaza. In her statement she said that "the simple truth is that the Office of the Prosecutor of the ICC has never been in a position to open such an investigation for lack of jurisdiction". Intervening in the conflict, when clear jurisdictional parameters have not been met, would therefore make for irresponsible judicial action.

Bensouda reiterated that since obtaining the status of a "non-member observer state" at the United Nations General Assembly in 2012, Palestine could accede to the Rome Statute. It did not, however, retroactively

validate its 2009 submission to accept the ICC's jurisdiction. Bensouda noted that Palestine's leaders are currently discussing internally whether to accede to the Rome Statute.

The Prosecutor v. Uhuru Kenyatta (ICC-01/09-02/11)

On 5 September, Prosecutor Bensouda asked the Court for an indefinite adjournment in the case of *The Prosecutor v. Uhuru Kenyatta*. In the filing the Prosecution said the government Kenya had not handed over the bank and phone records the Court was demanding, leaving the Prosecution with insufficient evidence to prove Kenyatta's alleged criminal responsibility beyond a reasonable doubt.

The Prosecution noted that in ordinary circumstances the insufficiency of evidence would be cause for a

withdrawal of the charges. In this case however, it was felt to be inappropriate for the Prosecution to withdraw the charges at this stage in light of: "(i) the Government of Kenya's ("GoK") continuing failure to cooperate fully with the Court's requests for assistance in this case; and (ii) Mr Kenyatta's position as the head of the GoK". The Prosecution therefore submitted that the trial be adjourned until the government of Kenya executes the Prosecution's request for records.



Extraordinary Chambers in the Courts of Cambodia

By Kat Tai Tam, Intern on Case 003, Defence team

The views expressed herein are those of the authors alone and do not necessarily reflect the views of the ECCC.

Case 002/01

The Trial Judgment for the first phase of Case 002 came out on 7 August. The Trial Chamber convicted Nuon Chea and Khieu Samphan of Crimes Against Humanity, specifically Murder, Extermination, Political Persecution and Other Inhumane Acts allegedly committed between 17 April 1975 and December 1977. Nuon Chea and Khieu Samphan were sentenced to life imprisonment.

Preparation for the appeal is underway. On 13 August, the Nuon Chea and Khieu Samphan teams jointly applied to the Supreme Court Chamber to extend the deadline and the page limitation for the notices of appeal and the appeal briefs. The Co-Prosecutors responded on 21 August. The teams jointly replied on 25 August. On 29 August, the Chamber extended the period for all parties to submit notices of appeal to 30 days from that date, and it reserved its decision on the extension of page limitation. For more information refer to ADC-ICTY Newsletter [Issue 73](#).

Additional evidence for the appeal is being requested. On 1 September, the Nuon Chea Defence requested

the Supreme Court Chamber to admit additional evidence for the appeal

Case 002/02

The Nuon Chea Defence is preparing to apply for the disqualification of Judges. On 11 August, the Nuon Chea Defence notified the Trial Chamber of (1) its intention to apply for the disqualification of Trial Chamber Judges in Case 002/01 from future trials in Case 002; and (2) its expectation to file the disqualification application in conjunction with its notice of appeal imminently. In response, on 15 August, the Trial Chamber requested the Judicial Administration Committee (JAC) to convene a panel of Judges to consider the disqualification application when it is made. On 4 September, the JAC convened a panel of five Judges to decide on the disqualification of the Case 002/01 trial Judges from participating in Case 002/02. The decision of the panel is pending.

The Khieu Samphan Defence applied to postpone the trial. On 25 August, the Khieu Samphan Defence applied for the Case 002/02 trial not to begin before (1) the judgement and appellate decisions in Case

002/01 become final; and (2) Case 002/02 receives a new set of trial Judges.

Cases 003 and 004

The identities of the named Suspects and most documents in this case remain confidential. The

Defence teams continue to file submissions to protect the suspects' fair trial rights and continue to review publicly available material, since the case files remain inaccessible to them. Applications for the Defence teams to access the case files and to have the Defence filings placed on the case file are ongoing.

DEFENCE ROSTRUM

The Use of Military Evidence in Counter-Terrorism

By Garrett Mulrain

On 29 August, the T.M.C. Asser Instituut hosted a high-level panel discussion focusing on "The Use of Military Evidence in Counter-Terrorism". The forum was organised by the International Centre for Counter-Terrorism (ICCT), and brought together four qualified individuals to offer their thoughts on the subject matter. According to the conference, the recent trend in counter-terrorism operations has increasingly emphasised civilian law-enforcement operations, as opposed to a "capture or kill" attitude. Each speaker addressed key military dimensions, and how they could best utilise a civilian-court dynamic to usher in a new strategy for counter-terrorism operations.

Dr. Bibi van Ginkel, the first speaker of the panel, is a Senior Research Fellow at the Clingendael Research Department of the Netherlands Institute for International Relations, as well as a Research Fellow at the ICCT. Van Ginkel started her discussion by proposing the thrust of the conference; if counter-terrorism operations are to have any long-term effect, they should

adopt a rule of law initiative, that works in tandem with local and civilian court infrastructure. The difficult balance remains of accommodating military operations (quick "get-in-get-out" battlefield situations), with the time consuming investigations that take place at a civilian level. Her speech focused on the intervention in Northern Mali, where in January 2013 the French Military conducted Operation Serval, after United Nations Security Council (UNSC) Resolution 2085 authorised the use of force against Al-Qaeda in the Islamic Maghreb (AQIM).

During this operation, a number of arrests were made in the interests of counter-terrorism and evidence gathering. There was no concrete system for securing and transferring the evidence to the civilian authorities, so despite the high number of arrests, van Ginkel notes that there was also a high number of releases, primarily due to inadmissible (or completely inadequate) evidence. Through this example, the international community should note some particular legal challenges to overcome. The military authority generally has a completely different jurisdiction than the local authority, and they often fail to cooperate, even in the more peaceful circumstances. It is also difficult to implement a sufficient means of transferring evidence, since often times ground forces are not trained in civilian investigation methods. Furthermore, vast differences exist in terms of interrogation techniques, methods of obtaining evidence and the matter of transparency used by military and civilian authorities. Overcoming these challenges will be necessary for any civilian infrastructure to effectively work together with the military's counter-terrorism operations.

The next speaker was Dr. David Scharia, a Senior Legal Officer at the UN Security Council Counter Ter-



From Left to Right: Dr. Cristophe Paulussen (moderator), Dr. Bibi van Ginkel, David Scharia, Colonel Joop Voetelink and Bas van Hoek

rorism Committee Executive Directorate (CTED). The operational purpose of CTED is to make sure that that Member States comply with counter-terrorism resolutions, in particular UNSC Resolution 1373, adopted on 28 September, 2001. From his experience, Scharia noted that all actors in the field of criminal justice must act together for these policies to be effective, and many states struggle with this practical challenge. He further noted the landmark United States (US) Case of *Hamdan v. Rumsfeld* (2006), in which the US Supreme Court held that military commissions charged with trying detainees at Guantanamo Bay “violate both the Uniform Code of Military Justice and the four Geneva Conventions”.

What some may not know about this case, however, is that Salim Ahmed Hamdan, a Yemeni citizen who was a personal bodyguard for Osama bin Laden, had a “goldmine of documents” in his possession when arrested. These documents, a small black journal in particular, allowed the US military to seek out high-level officials through the Al-Qaeda terrorist syndicate. This evidence could only be used at a military level, for fear of it being mishandled by civilian authorities, or at the risk of it being inadmissible anyway. These documents have seemingly been used by military courts, however, the fair-trial developments of United States military tribunals have been widely criticised by rule-of-law advocates. From Scharia’s speech, it is clear that the United States will face mounting challenges if it has any hope of utilising civilian infrastructure in the global fight against terrorism.

Colonel Joop Voetelink, the third speaker, served as a Guided Missile Officer and Human Resources Officer in the Royal Netherlands Air Force. In 2013, he was deployed to Afghanistan, serving as Chief of Staff of the NATO Rule of Law Field Support Mission until 30 September 2013. His portion of the discussion focused on what are known as “evidence-based operations”, which are the “process[es] for obtaining a desired strategic outcome or effect on the enemy through the application and full range of military procedures”. Voetelink noted how difficult these operations could be in an Iraqi context, the Iraqi courts would have primary jurisdiction, and gathering evidence is not the highest priority during field missions (let alone in an armed-conflict situation).

The purpose of some of these evidence-based operations was twofold: (1) to officially criminalise the insurgency, and (2) to create support within the central government. Voetelink further stated the same clashing dichotomy that van Ginkel did, that military operations are conducted in quickly timed situations, whereas investigative procedures are often quite extensive. If non-military infrastructure can at all be utilised, he believes it will require an enormous commitment of both visiting forces and host nations.

The final speaker was Bas van Hoek, Head of the Centre of Military Criminal Law at the District Prosecutor’s Office East Netherlands. He was a Legal Adviser to the Royal Netherlands Army, and was deployed in Bosnia-Herzegovina (2002), Uruzgan (2006-2007) and Kunduz (2011). Through his recent ground experience, van Hoek was able to include additional legal challenges that civilian courts would face when coordinating with a military. The military does carry out fact-finding operations, which could be used as a means of gathering evidence, however these facts are often arranged (and classified) solely as military reports, as opposed to court-room documents. Furthermore, a battlefield, is far from the standard of crime-scene that police forces and investigators are used to. There are limited civilian records for witnesses, and often tribal areas create language and translation problems that lessen testimonial credibility.

Van Hoek did suggest how the international community could surmount a few of these legal challenges. First, he believes that the military has an obligation towards the civilian and legal systems that it fights to protect, and it should carry out this obligation with all reasonable and realistic procedures for obtaining evidence to be used in civilian courts. He notes, that while “questioning a suspect is different than interrogating a military opponent”, the latter could adopt methods of the former. Criminal investigators should share procedural methods with military intelligence. While they might not share all information (imagine the US Military Intelligence Corps sharing info with the New York Police Department), a certain amount of collaboration is necessary for cooperative solutions. In some of the final words of the conference, van Hoek addressed the cynical-but-pragmatic feel of the entire discussion: “true, it is not the job of a soldier [to collect evidence], but they may be at the best spot to act “.

Illegal Armed Force as a Crime against Humanity

By Fábio Kanagaratnam

On 2 September, the T.M.C. Asser Instituut in partnership with the Grotius Centre (Leiden University Campus Den Haag) and the Coalition for the International Criminal Court (CICC), presented the lecture “Illegal armed force as a Crime against Humanity”. The event was presented by the esteemed Benjamin Ferencz and was part of this year’s Supranational Criminal Law Series (SCL).

The only surviving Nuremberg war crimes Prosecutor and previous World War II combatant offered a peek into his life and how his experiences shaped his view on illegal armed force. While talking about his experiences, the 95 year old Nuremberg Prosecutor emphasised the importance of people instead of country status, “what is important is not what the country is called, but how the people are treated and how people live”.

According to Ferencz, in order to build a peaceful society, there are three basic requirements: laws, courts and a system of effective enforcement. He defended that the majority of this structure was absent before World War II, but emphasised that even today, with the existence of international laws, humanitarian laws



Ferencz Speaking at the Lecture

and the various international courts, this structure is lacking, due to the non-existence of proper enforcement. “We are trying to build a society on a two legged stool”.

One of the strongest statements of the evening was: “glorification of war has always been a triumph of governments”, criticising governments’ infatuation with sovereignty and how it serves as an excuse for powerful nations to engage in illegal armed force. At the end of his speech, Ferencz indicated that the solution lies in the adoption of the Rome Statute at a national level. In order to achieve this, he stated that public support and awareness against illegal armed action is essential.

Ferencz’s lecture touched on how the allegation of sovereign right hinders the effective application of the Rome Statute. The idea defended during the lecture is indeed idealistically positive. If the most powerful nations signed and ratified the Statute, surely it would influence the neighboring countries towards its application at a national level. However, it is unlikely that countries such as the United States or China would be willing to share their constitutional sovereignty with an international judicial system.



Ferencz at the Einsatzgruppen Trial

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Jens Iverson, **The Rights of Women in Armed Conflict**, 31 July, available at: <http://tinyurl.com/kjpvbt3>.

Raphaelle Rafin, **UN Investigation on ISIL War Crimes in Iraq**, 2 September 2014, available at: <http://tinyurl.com/lkkylda>.

Julien Maton, **Kenyan President's Trial Adjourned Indefinitely**, 5 September, available at: <http://tinyurl.com/nczdxnh>.

Sarah Cleveland, **Harmonizing Standards in Armed Conflict**, 8 September 2014 available at: <http://tinyurl.com/pyab8or>.

Online Lectures and Videos

"Symposium - Prosecutor King: Comparing Discretion Across Borders", by Stanford Law School, 4 August 2014, available at: <http://tinyurl.com/qcf2oz9>.

"Supranational Criminal Law Lecture", by the American Society of International Law, 8 september 2014, available at: <http://tinyurl.com/nkmzofg>.

"International Environmental Law", by University of California, 2014, available at: <http://tinyurl.com/m5kk75r>.

"Terrorism and Counterterrorism" by Georgetown University, begins 1 October 2014, available at: <http://tinyurl.com/qd3feq9>.

PUBLICATIONS AND ARTICLES

Books

Malcom Shaw (2014), *International Law*, Cambridge University Press.

Christian Tomuschat (2014), *Human Rights - Between Idealism and Realism*, Oxford University Press.

Martins Paparinskis (2014), *The International Minimum*, Oxford University Press.

Gerhard Werle, Lovell Fernandez, Moritz Vormbaum (2014), *Africa and the International Criminal Court*, T.M.C. Asser Press.

Articles

Federica D'Alessandra (2014), "Israel's Associated Regime: Exceptionalism, Human Rights and Alternative Legality", *Utrecht Journal of International and European Law*, Vol. 30, No. 79.

Harlan G. Cohen (2014), "International Law in a Time of Scarcity: An Introduction", *Georgia Journal of International and comparative Law*, Vol. 42, No. 1/2.

Zachary Douglas (2014), "International Responsibility for Domestic Adjudication: Denial of Justice Deconstructed", *International and Comparative Law Quarterly*, Vol. 63, No. 3.

CALL FOR PAPERS

The **Utrecht Journal of International and European Law** has issued a call for papers for the topic *Privacy under International and European Law*:

Deadline: 30 September 2014

More info: <http://tinyurl.com/o8qk89d>.

The **Hibernian Law Journal** has issued a call for papers for their next issue:

Deadline: 31 October 2014

More info: <http://tinyurl.com/n6eauz5>

The **American University Washington College of Law** has issued a call for papers for its Human Rights Essay Award:

Deadline: 1 February 2015

More info: <http://tinyurl.com/lndqsq>.

HEAD OFFICE



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NEW WEBSITE

GOODBYE

*The ADC-ICTY would like to
express its appreciation and
thanks to Garrett Mulrain and Jérôme
Temme for all of their hard work and
dedication to the Newsletter. We wish
them all the best in their future endeav-
ours.*

EVENTS

'Gbagbo, Katanga and Three Theories of Crimes Against Humanity'

Date: 17 September 2014

Location: T.M.C. Asser Instituut, The Hague

More Info: <http://tinyurl.com/nprfgbl>

'Rethinking International Cooperation in a Complex World'

Date: 23 September 2014

Location: International Institute of Social Studies, The Hague

More info: <http://tinyurl.com/k7ddvvnv>

Evidence on Trial

Date: 2 October 2014

Location: The Hague Institute for Global Justice, The Hague

More Info: <http://tinyurl.com/pq74r6b>

OPPORTUNITIES

Associate Legal Officer, (P-2), Cambodia

Office of the Co-Investigating Judges, ECCC

Closing Date: 3 October 2014

Associate Appeals Counsel, (P-2), The Hague

Office of the Prosecutor, MICT

Closing Date: 8 October 2014

Assistant Appeals Counsel, (P-3), The Hague

Office of the Prosecutor, MICT

Closing Date: 8 October 2014

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