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ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-1)

Mladić (IT-09-92)

Šešelj (IT-03-67)

Cases on Appeal

Đorđević (IT-05-87/1)

Popović *et al.* (IT-05-88)

Prlić *et al.* (IT-04-74)

Šainović *et al.* (IT-05-87)

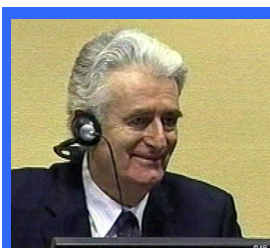
Stanišić & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

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

The trial of Radovan Karadžić continued on 29 October after a two-month recess. Karadžić was given two months to prepare his defence to the second genocide charge dating from 1992 that was reinstated in July 2013.



Radovan Karadžić

On 30 October, Milenko Živanović testified to the Court. Živanović was a Commander of Drina Corps of the Bosnian Serb Army from November 1992 to July 1995, after which his Chief of Staff, Radislav Krstić, took over. While Živanović was never indicted by the Tribunal, his successor Krstić was sentenced to 35 years for aiding and abetting the genocide in Srebrenica. Živanović's written statement notes that he never sent any reports to Karadžić, his supreme commander, detailing plans to execute the prisoners, nor stating that any executions were underway or that any executions occurred. In his testimony he said the Drina Corps wished to defend Serbs in the Podrinje area, after Muslims expanded the borders of Srebrenica to link it with Zepa and smuggle weapons. He stated that "no one ever said that Muslims would be killed", and that Karadžić would never have approved the execution of prisoners.

Former adviser Jovan Zametica in his testimony on 29 and 30 October told Karadžić in Court that "you were a weak president whose power did not reach far. Other factors were more powerful, for example the army, which often did not submit to you. I believed you did

ICTY NEWS

- Karadžić: Defence Case Continues
- Mladić: Prosecution Case Continues
- Tolimir: Status Conference
- Šešelj: New Judge Appointed

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not have control over the police either, Members of the Parliament, even your own wife and daughter. You had very little control over the chaos called Republika Srpska”.

On 31 October and 1 November, former Bosnian Serb Minister of Police, Tomislav Kovač, claimed in his testimony that the ‘mastermind’ of Srebrenica was military security chief Ljubiša Beara. He said Beara wanted the Serbian Ministry of Internal Affairs (MUP) troops to assist the army in killing the captives, and that the executions in Srebrenica were “the worst thing that could happen to the Serb people”. Kovač stated that he had various meetings with Karadžić before and after the fall of Srebrenica and told the Tribunal that “I am sure Karadžić had no idea prisoners would be executed”. He claimed that the original plan was to take the Srebrenica prisoners to a military barracks in Zvornik, and the fact that the killing occurred so quickly indicated that Beara acted alone.

The following witnesses, Mile Dmičić and Miroslav Toholj, testified denying that Karadžić had known about the crimes in Srebrenica. Dmičić, who was Karadžić’s war-time Head of Office for civil affairs, claimed that Karadžić would never endorse such crimes because he was a ‘humane person’. While

Dmičić’s job was to deal with incoming correspondence into the President’s office, he said he did not see letters sent by UN officials Mazowiecki and Akashi, protesting against possible executions.

Information Minister in the wartime Bosnian Serb government, Miroslav Toholj, gave evidence on 4 and 5 November. He claimed that Karadžić did not know about the crimes against Muslim captives and stated that the allegations against Karadžić about a ‘cover-up’ of the Srebrenica massacre were a ‘farce’ and that because foreign media began reporting the massacre before it was finished, this indicated that a ‘propaganda claim’ implicating Karadžić in the genocide was prepared in advance.

Karadžić’s next witness on 5 and 6 November was former Drina Corps Security Chief, Vujadin Popović. Popović was sentenced by the ICTY in 2010 to life for his involvement in the Srebrenica genocide. The appeals hearing in the case *Popović et al.* is scheduled for December 2013.

The next witness called was Momčilo Krajišnik, the former President of the Assembly of Republika Srpska. Krajišnik was sentenced by the ICTY to 20 years imprisonment in 2009 and was released in 2013 after having served his sentence.

Prosecutor v. Ratko Mladić (IT-09-92)

On 22 October, witness RM401, a French officer and former ‘blue-helmet’, testified with protective measures. The witness’ evidence related to the disarmament of an United Nations Protection Force (UNPROFOR) unit on 27 May 1995 by the Army of Republika Srpska (VRS). The witness also spoke about his experience of being held hostage in two different Serb controlled locations. During cross-examination by the Defence, it was established that the French battalion were not captured by regular Serb forces, but by ‘fanatics’ reporting to Slavko Aleksić Vojvoda. Witness RM401 confirmed this, but also insisted that some regular Serb army soldiers were present. He stated that he and his men were treated well while held in the military barracks in Lukavica.

On 23 October, the scheduled witness, Patrick Rechner, was reported to be ill and unable to attend Court to testify. His appearance was rescheduled for the

following week.

Trial resumed on 25 October, with the testimony of Jonathan Riley. Riley was the Commander of the 1st Battalion of the Royal Welsh Fusiliers, who served with UNPROFOR during May 1995. Riley gave evidence that 33 of his soldiers were taken hostage by the VRS, with 27 used as ‘human-shields’ around VRS depots. Riley testified that the objective of taking hostages was to prevent NATO from engaging in an air campaign against Serb positions. Riley himself was not taken as hostage.

Forensic anthropologist Fredy Peccerelli testified on 28 October. Peccerelli gave evidence about leading an exhumation of a mass grave near Orahovac in the summer of 2000. Peccerelli and his team located and exhumed the graves. The first site, dubbed ‘Lazete 1’, contained 127 bodies. The second site, ‘Lazete 2’, con-

tained 16 bodies and some bullet casings. The exhumation team also found linen blindfolds. Peccerelli said he believed the graves had been ‘robbed’ at some point in time, with bodies moved to ‘secondary graves’ in other locations.

During cross-examination, the Defence, outlined how the first exhumation at Lazete 2 was started by Physicians for Human Rights and was not conducted in line with the rules established for forensic examination by the investigators for the Prosecution. Because proper procedure was not followed, the Defence stated that this now left room for speculation that the bullet casings found by Peccerelli and his team could have been dumped at the site any time between 1996 and 2000. Peccerelli replied that he was not at the site at that time and could therefore not draw conclusions.

When questioned about the linen blindfolds found on some of the bodies, Peccerelli was shown pictures of Bosnia Herzegovina (BiH) Army soldiers wearing linen headbands and armbands. Peccerelli said the only similarity he could see between the linen bands in the pictures and the bands found in the graves, was that they were both made out of fabric.

Patrick Rechner testified on 29 October. Rechner was the head of a team of UN military observers during June 1995, and was one of a number of UN personnel taken hostage and used as a human shield to prevent NATO air strikes. During direct examination, Prosecution

played a video showing Rechner and two of his colleagues being handcuffed outside of an ammunition depot. Defence Counsel Miodrag Stojanović declared that these were not the actions of the VRS but a paramilitary unit. Rechner stated on a questionnaire after his detention, that he and his colleague had been taken by paramilitaries, with one of their captors identifying himself as such.

On 31 October and 1 November the trial was conducted in closed session to facilitate the testimony of two protected witnesses – RM 507 and RM 280. RM 280 continued his testimony until Monday 4 October.

The next Prosecution witness to be called was mortar expert, Richard Higgs. Higgs’ testimony primarily concerned the shelling of Markale Market in Sarajevo on 28 August 1995. The shelling killed 43 people and injured 75. Higgs has produced two reports about this incident, one for use in the Karadžić trial and a second for Mladić proceedings. During cross-examination, Counsel for the Accused, Branko Lukić, highlighted differences between the two reports. Lukić stated some mistakes had been made in the production of the first report, which Higgs tried to ‘adjust’ in his analysis for the Mladić report. Higgs confirmed that he had made mistakes in the original report which he then tried to amend, but in his view, the differences were ‘minimal’. Higgs’ cross-examination continued on 7 November.

Prosecutor v. Zdravko Tolimir (IT-05-88/2)

On 28 October, a status conference in the *Tolimir* case was convened pursuant to Rule 65 bis (B) of the Rules of Procedure and Evidence. During this conference, Presiding Judge Theodor Meron issued an oral decision, granting a seven-day extension to the appellant in order to file its reply to the Prosecution’s response regarding the amended Notice of Appeal. The reply is due on 7 November. The Chamber also noted that Tolimir will have ten days to file an amended reply to the Prosecution’s Response following the receipt of the official BCS translation of the Prosecution’s Response, if required.

To recall, the motion for variation of the grounds of appeal and amendment of Tolimir’s appeal brief was granted by the Chamber on 4 September. The Chamber ordered Tolimir to file an amended Notice of Appeal, which was filed on 9 September. The Prosecution filed its response on 16 November.



Ždravko Tolimir

Prosecutor v. Vojislav Šešelj (IT-03-67)

On 31 October, ICTY Vice-President Carmel Agius issued an order assigning Judge Mandiaye Niang to sit on the bench in the trial of Vojislav Šešelj. Judge Niang is replacing Judge Harhoff who was disqualified from the bench on 28 August.



*Judge Mandiaye
Niang*

On 9 July, Vojislav Šešelj filed a motion seeking to disqualify Judge Harhoff from all further proceedings in his case. The motion was upheld and Judge Harhoff was disqualified from the case. The decision to recuse Judge Harhoff from the Šešelj case, taken by a specially constituted chamber, follows the wake of the publication of a letter that had been leaked in June 2013. The decision, which was

confirmed in October, left an opening on the bench.

In his order Judge Agius emphasised that in his opinion the Judges on the case should now consult with Šešelj on whether to rehear the case or to continue proceedings with the newly appointed Judge, as envisaged in Rule 15*bis*. The decision further considered that it is ultimately for the Judges of the Trial Chamber to decide whether the trial shall proceed or not.

The appointment of Judge Niang is an interesting development within the ICTY as Judge Niang has recently been appointed as permanent judge of the International Criminal Tribunal for Rwanda and his mandate is not set to expire until December 2014.

Judge Niang will sit on the bench together with Judges Antonetti and Lattanzi.

LOOKING BACK...

International Criminal Tribunal for Former Yugoslavia

Ten years ago...

On 4 November 2003, Milan Simić was released from the Tribunal's custody, after having complied with the necessary requirements for the consideration of an early release. These include the detainee showing a good behavior while in custody, remorse for the crimes committed and positive perspective on the re-integration in the society. Milan Simić was a member of the Bosnian Serb crisis staff and the Presi-

dent of the Municipal Assembly of Bosanski Šamac, in Bosnia and Herzegovina. He was convicted of torture as a crime against humanity on 17 October 2002 and was sentenced to 5 years imprisonment.



Milan Simić

International Criminal Court

Five years ago...

On 31 October 2008, Trial Chamber III of the ICC set a new date for the confirmation hearing in the *Bemba* case. Jean-Pierre Bemba Gombo was the President and Commander-in-Chief of the "Mouvement de Libération du Congo" (MLC) and is the former Vice-President of the Democratic Republic of



*Jean-Pierre
Bemba Gombo*

the Congo (DRC). On 15 June 2009 Pre-Trial Chamber II confirmed the charges of crimes against humanity (rape and murder) and war crimes (rape, murder and pillaging) against Bemba, sending his case to trial. The trial began on 22 November 2010 and is ongoing.

NEWS FROM THE REGION



Bosnia Herzegovina

Bosnian Soldiers File Appeal of Seven Year Sentence

Ex-security officer Muhidin Bašić and ex-military policeman Mirsad Sijak appealed against the seven-year sentences they were given in January 2013 for raping a Croat woman at a prison in Vares in 1994. The Defence lawyers for Bašić and Sijak appealed against the verdict on 5 November, on the grounds that criminal procedures had been violated and the key witness who was allegedly raped by the Accused had lied. The Appeal from the Defence requested an acquittal or retrial.

Kerim Celik, Bašić's lawyer, claims that the woman lied in most of her testimony and that the Court had relied on assumptions and speculations to convict the Accused. Bašić, while addressing the Appeals Court, went so far as to say that he would agree to a higher sentence if the Court found anyone who could testify or prove that he was present at the alleged location that day. Fahrija Karkin, lawyer for Sijak, argued that a Bosnian Army military log clearly showed that Sijak was not in Vares on the day of the incident.

The Prosecution has also filed an appeal against the Court's verdict with respect to the sentence awarded. The Prosecution has appealed for longer prison sentences for the two Accused, arguing that the original verdict had failed to take into consideration aggravating circumstances.

Selimović *et al.* Appeal their Conviction

On 4 November, Bosnian ex-soldiers Mehura Selimović, Adil Ružnić and Emir Mustafić appealed against their conviction for war crimes by a Bosnian court. The Accused were convicted in September 2012 for physically and mentally abusing Serbian prisoners in Bosanska Krajina. The Accused worked as interrogators in the Luka, Adil Bešić and Hotel Park detention centres in the north-western town of Bihać, as well as the Rad auto-repair shop in Cazin between 1994 and 1996.



Selimović et al.

Selimović and Ružnić have been sentenced to eight years imprisonment, while Mustafić has been sentenced for nine years. The Defence lawyers requested a retrial while Ružnić's lawyer alternatively requested for an acquittal. At the same time, the Bosnian Prosecution has asked for a retrial and a lengthier sentence for the Accused. The Prosecution claimed that Ružnić and Selimović were responsible for the situation in the detention centres in Krajina.

During the time period of the incident Selimović was a Desk Officer for Counter-Intelligence Affairs and the deputy Head of the Security Department of the Fifth Corps of the Bosnian Army. The Accused Ružnić was a Deputy Commander in the Security Services and Mustafić a military policeman. Asim Crnalić, Selimović's lawyer claimed that the interrogation conducted was legal and that the Accused did not commit any violation and further, that the Court had not established that the witnesses suffered any emotional trauma.

Alaga Bajramović, Defence lawyer for Ružnić, stated that the Court did not take into consideration the statements of the Defence witnesses for Ružnić. The Appeals Court has yet to make a ruling.



Serbia

Yugoslav Army Commander Indicted

Former Yugoslav commander Toplica Miladinović was indicted in a case against eleven Serbian fighters on 6 November 2013 for allegedly ordering the attacks on the four Kosovo villages of Čuška, Ljubenić, Pavlan and Zahac, which led to the killing of at least 100 Albanians in the spring of 1999.

Miladinović was the Commander of the 177th squad of the Yugoslav Army at the time of the incident and has been accused of ordering the attacks on the four villages. The indictment states that the aim was to forcibly remove the ethnic Albanian population from the area. The case against the former Serbian fighters, who were members of the 177th Yugoslav Army squad, territorial defence forces and the Jackals paramilitary unit, is at present the largest war crimes trial in the Belgrade court.

The indictment states that Miladinović and the soldiers were responsible for killing, looting and expelling a large number of Albanians from the area around the town of Peja during the conflict with the Kosovo Liberation Army. The indictment also makes additional allegations against some of the soldiers as well as lists the names of five other people who are currently under investigation in relation to suspicions of their participation in the attacks, including Krstović, who is the current Commander of the Serbian Special Police.

The case has been on-going for the past three years but it is expected that the closing arguments will be heard by the end of this year. The trial will resume on 25 November.



Croatia

Vukovar Bans Cyrillic After Protests

Vukovar Council has banned the official use of Cyrillic script and excluded the city from the country's minority rights law amid a dispute over the introduction of Croatian-Serbian bilingualism, Balkan Insight reports. Right-wing parties on the Council voted in changes to the city's statute, proclaiming Vukovar a "city of special significance" exempt from Croatian minority rights legislation because of the suffering it underwent when it was besieged and destroyed by Serb forces in 1991.

The move came after months of protests sparked by the official introduction of bilingualism, as envisaged by the law in places where a minority makes up more than 30 per cent of the population, as Vukovar's Serb community does.



Bilingual Latin and Cyrillic signs installed on state buildings in Vukovar have been repeatedly torn down by opponents of bilingualism. Goran Bosnjak, a councillor from the Social Democratic Party, which abstained from the vote on the issue, said that "the statute change cannot stand the assessment of legality". He argued that the move contravenes constitutional law, which is "stronger than the city statute".

NEWS FROM OTHER INTERNATIONAL COURTS



The International Criminal Court

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

On 30 October 2013, the Prosecutor of the ICC, Fatou Bensouda, issued a statement regarding the renewed fighting in eastern Democratic Republic of Congo (DRC). Bensouda reminded all those involved that she is monitoring the developments on the ground, and that all those involved in the fighting must refrain from committing any crimes. Bensouda warned that she will not hesitate to broaden her investigation in the region, if necessary, and recalled that the victims remain her number one priority. She emphasised that the DRC can only break free of this spiral of violence through justice.

On the same date, the Trial Chamber decided to postpone the commencement of the trial in the case

against Uhuru Muigai Kenyatta. The new date was set for 5 February 2014, upon the agreement between the parties which indicated that there is some basis for this delay. To recall, Kenyatta is charged, as an indirect co-perpetrator with five counts of crimes against humanity in between 2007-2008. This is the third ICC case related to the Kenyan situation.

Further, ICC President Sang-Hyun Song provided the UN General Assembly with an update of the recent developments at the ICC. In total, there are three ongoing trials, two are scheduled to start soon. The President stressed the importance of the state cooperation, and thanked the UN for its support in the past year.



Special Tribunal for Lebanon

By Rosalyn Saab, Press Office, Public Affairs Section

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Special Tribunal for Lebanon.

Judicial Developments in the *Prosecutor v. Hassan Habib Merhi*

On 10 October 2013, it was made public that the Pre-Trial Judge (PTJ) at the Special Tribunal for Lebanon (STL) confirmed an indictment of 31 July against Hassan Habib Merhi. Merhi is a Lebanese national accused of being involved in the 14 February 2005 Beirut attack which killed 22 persons, including the former Lebanese Prime Minister Rafiq Hariri, and which injured 226 others.

As part of its public advertisement campaign, the STL delivered to the Lebanese authorities a poster of the fifth accused Hassan Habib Merhi. In addition to the poster, the STL has issued a public service announcement. The Lebanese authorities were requested to advertise the poster and the radio message to notify the public and



to call on the Accused to surrender to the Tribunal.

Judicial Developments in *Ayash et al.*

The Trial Chamber convened its first pre-trial conference on 29 October, one day after the Pre-Trial Judge transferred the *Ayash et al.* case to the Trial Chamber. Presiding Judge David Re opened the public hearing by stating that it is the intention of the Trial Chamber to start trial on 13 January 2013.

During the conference, the Prosecution stated that it intends to present its case in three "chapters".

The first will relate to what

Important Dates

15 November – The Prosecution submits applications for the intended 170 witnesses who will present evidence in written statements.

20 November – The Prosecution submits the list of the witnesses related to the first section of the case.

27 November – The Defence replies about the above-mentioned list.

13 January 2014 – Intended date for the start of trial.

happened in and around the area of the explosion on 14 February 2005. The second chapter will focus on the preparation of the bombing as well as the acts and attempts to falsely attribute the attack. In the third part of the case, the Prosecution will present evidence attributing responsibility to the four Accused.

In contrast, the Defence highlighted a number of

outstanding issues as a result of which they expect not to be ready by the intended date for the start of trial.

New STL Document: Judicial Brief

The STL has started disseminating a new communications document: the Judicial Brief. The brief provides an overview of public filings and hearings at the STL on a regular basis. The brief is available at: <http://www.stl-tsl.org/en/media/judicial-brief>



Extraordinary Chambers in the Courts of Cambodia

By Eric Husketh, Legal Officer, Defence Support Section

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.

In closing arguments this month, both the Khieu Samphan and Nuon Chea Defence Teams argued for the acquittal of the Accused.

Khieu Samphan's Defence argued that he had dedicated his life to social justice, the struggle against corruption, and Cambodia's independence. As a victim of an authoritarian regime, he came to join the Khmer Rouge resistance movement when he was forced to abandon his governmental and parliamentary functions and flee into the maquis to save his life. Considered by the Khmer Rouge leaders as a petit-bourgeois intellectual who had come late to the movement, he was confined to nominal functions without any real power and was not part of the decision-making processes. Instead, he was only informed of what he needed to know in order to perform his representative functions. He was only aware of the Communist Party of Kampuchea's (CPK) desire to improve the living conditions of Cambodians and strengthen the country's independence after years of war and misery. Accordingly, Khieu Samphan forcefully refuted all accusations that he had participated in any sort of criminal plan to mistreat the Cambodian people.

Nuon Chea contested his criminal liability for all of the crimes charged in Case 002/01. Although he conceded that he was the Deputy Secretary of the CPK, he denied that the CPK's policies were criminal. Those policies were not malicious, discriminatory or unlawful under the standards which existed in 1975. Instead, the CPK's policies were at the core of its effort

to institute Marxist-Leninist theory in a country coping with unprecedented wartime destruction and multiple acute existential military threats. Nuon Chea also did not deny that crimes were committed in Democratic Kampuchea. He acknowledged that, in light of his position of authority in Democratic Kampuchea, he bears moral responsibility for those crimes. Yet, he maintained that these crimes were committed not pursuant to, but in contravention of, the instructions of the CPK leadership. His position is corroborated by evidence of widespread discretionary conduct by cadres at all levels of the CPK and the factionalism and infighting which persisted within the Party over the course of its existence.

During October, the Case 003 Defence submitted 13 motions to the Office of Co-Investigating Judges (OCIJ), addressing a number of legal and procedural issues. The team continues to review publicly available material concerning Case 003, as it does not yet have access to the Case File. The OCIJ has only recognised the OCP and Civil Parties as parties to the case and thus entitled to access the Case File.

During October, the Defence team for a suspect in Case 004 filed a motion with the Pre-Trial Chamber requesting permission to submit an additional source on the clarification of the meaning of "charged person" in their continued efforts to access the Case File. A letter of independent expert assessment was also sent to the OCIJ in support of the ethics of Defence Counsel's conduct in Case 004.

DEFENCE ROSTRUM

Career Development Committee - Lunchtime Seminar

By Aoife Maguire

On 6 November the first Career Development Lunch Meeting organised by the newly established Career Development Committee (CDC) took place. The CDC is an intern led initiative 'dedicated to advancing the careers of the ICTY's budding young professionals'. Working in conjunction with the ICTY's Career Transition Office, the CDC have organised two monthly lunchtime training sessions, the first of which took place on Wednesday.

Rob Oliver, a consultant in international career development, delivered an engaging seminar where he advised the attendees on 'utilising career tools'. During the session Oliver encouraged participants to take a critical look at their current CVs and pinpoint areas for improvement. He also offered advice on completing personal history profiles, widely used for recruitment by international organisations.

A practical, but often overlooked suggestion was to have a 'long version' of one's CV prepared, so it can be adapted and tailored for job applications as they arise. So often, it is usually the traditional '2-page' CV that people save, which may have to be radically re-drafted for different applications. By keeping a 'long version' of their resume, people can keep better track of their work history and achievements, and not forget a crucial piece of information when hurrying to submit a CV before a deadline.

Advice was also offered on how to avoid some of the common pitfalls of CV writing. He advised against the mistake of focusing too much on one's 'duties' in their job descriptions, instead of emphasising their achievements in that role. One excellent suggestion for the attendees was to realise that one's CV is not the tool that will win them the job. It is a tool that should enable them to progress to the interview stage. Therefore, it is crucial that people be meticulous in checking their CVs for error – the HR selector will initially be looking for reasons to reject CVs, as they will usually be dealing with a huge number of job applications. The trick is to not give the selector any reason to eliminate a CV due to poor spelling, the use of jargon or long-winded, technical sentences.

When advising on writing a standout cover letter, Oliver was clear about one of the most common mistakes made by job applicants – a cover letter which repeats the CV. The cover letter is the opportunity for the applicant to focus on how they match the job description and to focus on their strengths for the job. Attendees were advised to distinguish between duties and achievements and to emphasise their achievements in their applications along with any skills, expertise and relevant experience. The use of 'key words' from the vacancy announcement was also suggested as well as the necessity of simplifying information so as not to overload the reader.

In summing up CV and cover letter preparation, Oliver encouraged attendees to do their own "30-second test", on their CVs, to see if the information they want the reader to retain is actually what the reader will gain in the brief overlook that most CVs usually receive. He asked interns if the five things they really want their CV to emphasise can be remembered after looking at their CV for twenty to thirty seconds. This is where the design and visual impact of the CV is important, as selectors may well be put off a CV by sloppy presentation and big chunks of bullet points.

Oliver gave some straightforward advice about what to expect when applying to international organisations as a graduate while also identifying the common mistakes in resume preparation. He encouraged interns to think about their skills and achievements, even suggesting people ask for regular feedback from colleagues and supervisors. He also suggested interns keep a log of their experience and tasks during their internship, to enable them to give a detailed description in the future.

Oliver emphasised the importance of preparation and research for job interviews as well as challenging attendees to think of the tricky questions that may be asked of them when they finally secure a coveted interview. He spoke about the new trend of international organisations moving from the 'competency based interview', to a hybrid model investigating strengths and competencies, and how essential it is that people practice for any interviews. Here, Oliver suggested

LinkedIn as a valuable tool for both job networking as well as interview preparation and encouraged interns to “manage your online professional presence”, and update it regularly.

The seminar, “Utilising Career Tools” will be repeated on 10 December. The next Career Development Lunch Meeting will take place on 28 November, titled “Unlocking your Potential: building your networks and skills for the future”.

For further information and guidance on CV preparation, interns are encouraged to check Rob Oliver’s website <http://cvwritingcourse.blogspot.nl/> and its companion site of interview resources at <http://interviewworkshop.blogspot.nl/>.

Please note, both sites are currently undergoing a migration to a new single website which will include new material and resources on career development.

Intern ADC-ICTY Field Trip to the International Criminal Court

By Emma Boland

On 4 November, twelve interns from the ADC-ICTY participated in a field trip to the ICC. They received an introductory lecture, and attended part of the hearing of *Prosecutor v William Samoei Ruto and Joshua Arap Sang*.

The lecture, presented by a Legal Assistant from the Office of the Prosecutor at the ICC, focused on the structure, mandate and activities of the Court, the current cases before the Court and the new permanent premises of the Court which are to be completed by 2015. It was discussed how the ICC is a Court of last resort, meaning it can only exercise its jurisdiction where national courts are unable or unwilling to prosecute or investigate genocide, war crimes and crimes against humanity.

The question and answer session began with an inquiry as to how the ICC compares to specialist tribunals such as the ICTY in dealing with such crimes. Specifically, it was asked whether any cases currently before the ICC, or which could be brought to the ICC in the future, could better be addressed through the establishment of a specialist tribunal. The Legal Assistant responded that while the ICC has a universal mandate, it is limited by certain legal and structural features by comparison to specialist tribunals. As an example, the ICC could not prosecute war crimes and crimes against humanity committed in Syria, unless

Syria declares itself to be a member of the Rome Statute – the treaty establishing the ICC – or the United Nations Security Council refers the conflict to the Court. Accordingly, we could be seeing an additional *ad-hoc* Syrian tribunal set up in the future.

Another question concerned the overlapping functions of the Victims and Witnesses Unit (VWU) within the Registry, and the Office of the Prosecutor. The VWU offers support and protection for witnesses, as does the OTP within its overall investigative strategy. It was responded that while the two do have overlapping obligations, the OTP has an important role in the realm of witness protections because its investigators at the first ones in contact with witnesses, especially in the field. The VWU provides additional, albeit more general, counselling, security arrangements, protective measures and other appropriate assistance to those at risk on account of their testimony.

Attending the trial of Deputy President William Ruto and his Co-Accused radio journalist Joshua Arap Sang came at an interesting time. The two are accused of crimes against humanity in Kenya during the 2007-2008 post-election violence. Ruto was excused from Court for the week due to exceptional circumstances – namely to attend meetings with President Uhuru Kenyatta, which were organised on the understanding that there would be no sittings this week.

How Will the ICC Appeals Chamber’s Ruling That Ruto Must Attend Trial Influence the relation With African Member States?

By Michelle Gonsalves

On Friday 25 October, the Appeals Chamber unanimously reversed the Trial Chamber’s decision, which had ruled that the Deputy President of Kenya, William Ruto, could be excused from continu-

ous presence at his trial in order to remain in Nairobi and conduct the affairs of state.

The Trial Chamber held that Ruto could be absent

from the court room for the entirety of the proceedings, with the exception of the opening and closing statements, victims testimonies, the delivery of judgement, and, if convicted, the sentencing, victims impact hearing, and reparation hearing, as well as any other attendance the Chamber ordered. The Appeals Chamber overturned the Trial Chamber's decision concluding that, while the majority in the Trial Chamber was correct in finding that "in exceptional circumstances, the Chamber may exercise its discretion to excuse an accused person, on a case-by-case basis, from continuous presence at trial", the Trial Chamber had, on this occasion, not properly exercised its discretion. According to the Appeals Chamber, the Trial Chamber's discretion in this regard is limited and must be exercised with caution. But, in its ruling, the Trial Chamber had allowed absence to become the norm, rather than the exception. The Appeals Chamber then set out a number of limitations on the Trial Chamber's discretion when permitting absence. The five Appeals Chamber judges decided that Ruto would now only be excused from his trial under 'exceptional' circumstances. The decision of the Appeals Chamber would seem to be in line with the purpose of the Rome Statute, which does not offer any special treatment to any accused person, irrespective of their social status.

Ruto is charged with inciting and organising the violence that engulfed Kenya following the disputed outcome of a presidential election in December 2007. He is charged with murder, persecution and forcible population displacement. President Uhuru Kenyatta faces similar charges, but is to be tried separately in a different case.

Following the decision of the Appeals Chamber, the Prosecutor has sought reconsideration of the decision of the Trial Chamber of Friday 18 October in Kenyatta's case, where, following the decision of the Trial Chamber in the Ruto case, it had allowed Kenyatta to be excused from continuous presence during his trial. The ruling of the Appeals Chamber means that the decision of the Trial Chamber in Kenyatta's case is clearly wrong.

The decision of the Appeals Chamber has met with critique from African community leaders and political leaders in Kenya, who believe this decision to be an affront to the democratic election of President Kenyatta and Deputy President Ruto in a peaceful elec-

tion earlier this year. It is a valid concern that the absence of the President and his Deputy could jeopardise the efforts to maintain calm in Kenya. Allowing the two leaders to be absent from the court and have them represented by their legal teams would support the healing and continuing reconciliation efforts in the country. Since many challenges are currently facing the Republic of Kenya the two leaders are required in the country to deal with the problems.

For victims, however, the appeals decision in Ruto could be seen as a victory of international justice. A firm stand of the court against impunity is important for the international process of justice. Therefore, it is imperative that the Court continues to take difficult decisions such as the decision requiring the deputy president to attend all his trial, barring exceptional circumstances. If the Court refuses to take a firm stand now, but instead bows to political pressure, the victims of violence may never see justice. Additionally, if the Appeals Chamber had upheld the decision of the Trial Chamber the ICC would always have been seen to have yielded to the unbending position of the African nations. The ICC would then become a political institution that is guided by political consideration, rather than a judicial institution working to maintain international justice.

What does this mean for future relations between the ICC and the African States?

The initial decision of the ICC to prosecute Ruto and Kenyatta led to an extraordinary summit of the African Union (AU) Assembly on 12 October 2013 to debate the future of Africa's relationship with the ICC. The AU together with the Kenyan government, has been actively lobbying to have both Ruto and Kenyatta's cases referred back to Kenya.

The AU Summit went as far as to demand that the trials of President Kenyatta and Deputy President Ruto, should be suspended until the completion of their terms in office. During the debate of the AU Assembly, many expressed the view that the continuation of the ICC cases against Kenyatta and Ruto undermines the sovereignty of the people of Kenya and threatens the process of reconciliation in the country. While the final decision of the AU was not in favour of a withdrawal of African States from the ICC, this is a strong indication of the strained relations between the ICC and the continent that makes up its largest constituency. The ICC's commitment to the continua-

tion of the trials against Ruto and Kenyatta has already led to Kenya's withdrawal from the Rome Statute on 5 September 2013. Kenya's move for withdrawal was primarily motivated by the ICC's refusal to hold the trials at the time and location convenient to both Kenyatta and Ruto. It is the first time that a State has renounced its ratification and will deteriorate relations between the ICC and its African Member States, even more so following the recent appeals decision.

Kenya's move to withdraw from the Rome Statute and the ICC will have a huge impact on the Court as well as the African continent. Although the other parties to the ICC have not vocalised their opinion on the current issue, Kenya's action has indeed sent out a strong message to other State parties and the ICC itself. At the moment, the largest regional membership of the ICC is under threat. While there are 122 States that are party to the Rome Statute, 34 of those States are African States. Additionally, if the ICC would yield to pressure tactics it would set a bad precedent for future cases as the rulers of other African States may try to follow the Kenyan example. However, the ICC's decision to commence with the trial despite the request for referral of the case back to Kenya conveyed a disregard of their voice to many African governments.

The Kenyan case is the first *propriu motu* investigation under Article 15 of the Rome Statute without the referral of the UN Security Council (UNSC) under Article 16. Article 15 provides that a prosecutor may initiate investigations on the basis of information on crimes within the jurisdiction of the Court. As the *propriu motu* investigation remains a contested issue between State parties, the current developments in the cases against Ruto and Kenyatta and the negative reactions towards the recent appeals judgement are therefore unwelcome.

The Appeals Chamber has already been criticised for its decision not to take into account the fact that the accused may stop their cooperation with the Court following its decision. However, in promoting the protection of both the victims and the accused, it is imperative that international judges do not take into account political factors. It is for the States to deal with the politics and change the law if they deem the current regime unsuitable, and it will indeed be interesting to see what happens in the upcoming Assembly

of States Parties 20-28 November.

On the other hand, one can easily relate to the opinion of Judge Eboe-Osuji in the Kenyatta case, which may be more in line with the current situation in international law. Judge Eboe-Osuji indicates that "it may be considered that the judicial attitude of ignoring statements of leaders of States is likely contrary to how international law as such really works". While political considerations should not colour the decisions of judges, he states that "the fact remains that political considerations, in the manner of State practice, often form an ingredient in the formation of customary international law".

In the end, the AU's decision that 'no charges shall be commenced or continued before any international court or tribunal against any serving head of State or government or anybody acting in such capacity during his/her term in office', nor that any serving AU head of State or government shall be required to appear before an international court or tribunal has put the ICC in a very difficult position. The decision of the Appeals Chamber in the Ruto case could mean that AU member States, particularly those with a strong sentiment against the ICC, would intensify their mobilization against the ICC. This may result in the adoption of far-reaching decisions, which may include withdrawal, although it is unlikely that this will be a mass withdrawal.

However, the lack of confidence of the African Member States may lead to strong reluctance on the part of these States to cooperate with



Karim Khan QC and Ruto

the ICC. The recent decision of the Appeals Chamber will only exacerbate this lack of confidence. Therefore, the withdrawal of even one State would severely damage the ICC's ability to effectively and successfully adjudicate these cases. Kenya's withdrawal, if it happens, will not only set a bad precedent for other countries, but might also render the trial of the leaders ineffective. The Appeals Chamber's decision in the Ruto case, however, will possibly strengthen Kenya's resolve to withdraw.

ADC-ICTY LEGACY CONFERENCE

Date: 29 November 2013

Time: 9:00-17:15

Location: Bel Air Hotel, The Hague

Registration: <http://adc-icty.org/LegacyConference2013.html>

The keynote speech will be delivered by H.E. Judge Theodor Meron, ICTY President. Speakers and moderators include The Right Hon. Lord Iain Bonomy, Judge Bakone Justice Moloto, Judge Howard Morrison, as well as renowned Defence Counsel.

Lunch can be served at the Bel Air Hotel on the participants' own expenses for 15 Euros per person.

Join us for the **ADC-ICTY's Annual Drinks**
at Hudson's Bar & Kitchen in The Hague on 29 November 2013
from 8 pm onwards.

For further information please contact Isabel Düsterhöft at
iduesterhoeft@icty.org

The ADC would like to express its gratitude to the Erasmus School of Law as Official Sponsor of the Conference.



CONFERENCE PROGRAMME - 29 November 2013

09:00-09:30	Registration
09:30-09:40	Opening Remarks – Novak Lukić, ADC-ICTY President
09:40-10:00	Keynote Speech – H.E. Judge Theodor Meron, ICTY President
10:00-11:15	Panel I: Rights of the Accused
10:00-10:05	Introductions by Panel I Moderator – <i>Michael Karnavas</i>
10:05-10:15	Equality of Arms – <i>Mira Tapuškević</i>
10:15-10:25	Right of Confrontation at Trial – <i>The Right Hon Lord Iain Bonomy</i>
10:25-10:35	Right to Appeal – <i>Christopher Gosnell</i>
10:35-11:15	Audience Participation
11:15-11:35	<i>Coffee Break</i>
11:35-12:50	Panel II: Transparent Justice: The Defence Experience
11:35-11:40	Introductions by Panel II Moderator – <i>Slobodan Zečević</i>
11:40-11:50	Witness Protection Measures – <i>Suzana Tomanović</i>
11:50-12:00	Rule 70 – <i>Steven Kay QC</i>
12:00-12:10	The Ethics of Talking to the Media – <i>Gregor Guy-Smith</i>
12:10-12:50	Audience Participation
12:50-14:15	<i>Lunch Break</i>
14:15-15:30	Panel III: Role of the ADC-ICTY
14:15-14:20	Introductions by Panel III Moderator – <i>Dominic Kennedy</i>
14:20-14:30	Importance of Defence Function – <i>Judge Bakone Justice Moloto</i>
14:30-14:40	Role of the ADC – <i>Eugene O'Sullivan</i>
14:40-14:50	Future of Defence Organisations in International Criminal Institutions – <i>Stéphane Bourgon</i>
14:50-15:30	Audience Participation
15:30-15:50	<i>Coffee Break</i>
15:50-17:05	Panel IV: ICTY Legacy
15:50-15:55	Introductions by Panel IV Moderator – <i>Richard Harvey</i>
15:55-16:05	Expectations v. Reality – <i>Colleen Rohan</i>
16:05-16:15	Perceptions from Countries of the Former Yugoslavia – <i>Edina Rešidović</i>
16:15-16:25	Future Challenges for Rights of Defence in ICL – <i>Judge Howard Morrison</i>
16:25-17:05	Audience Participation
17:05-17:15	Closing Remarks – Novak Lukić, ADC-ICTY President
20:00-open end	ADC-ICTY Annual Party at Hudson Bar & Kitchen

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Gentian Zyberi, **The Kenyan Situation before the ICC: The Twists and Turns of a Difficult Process**, 5 November 2013, available at: <http://tinyurl.com/oo7dn9x>.

Michael W. Lewis, **‘Operation: Last Chance’ Dilemmas of Justice and Lessons for International Criminal Tribunals**, 8 November 2013, available at: <http://tinyurl.com/q7s2mwf>.

Cale Jordan David, **Politics & Prosecutorial Discretion at the International Criminal Court**, 6 November, available at: <http://tinyurl.com/pakyrhx>.

Michael Fender, **Rwanda Tribunal Set to Miss Closure Deadline**, 9 November 2013, available at: <http://tinyurl.com/n8bz2as>.

Online Lectures

Why does Cuba systematically violate the rights of its citizens?, 29 October 2013, published by United Nations Watch, available at <http://tinyurl.com/q2v78qw>.

The Function of Judges and Arbitrators in International Law, 6 November 2013, published by the New York University of Law available at: <http://tinyurl.com/qjtqda9>.

Inaugural Segal Lecture: Rachel Barkow, "Criminal Law as Regulation", 8 November 2013, published by the New York University of Law, available at: <http://tinyurl.com/knbuwigx>.

International Society and the Ideal of Justice, published by the Audiovisual Library of International Law, available at: <http://tinyurl.com/kyqnsz4>.

PUBLICATIONS AND ARTICLES

Books

Dace Winther (2013), *Regional Maintenance of Peace and Security under International Law: The Distorted Mirrors*, Routledge.

Roland Portmann (2013), *Legal Personality in International Law*, Cambridge University Press.

Leila Nadya Sadat (2013), *Forging a Convention for Crimes against Humanity*, Cambridge University Press.

Caroline Ehlert (2013), *Prosecuting the Destruction of Cultural Property in International Criminal Law: With a Case Study on the Khmer Rouge's Destruction of Cambodia's Heritage*, Martinus Nijhoff.

Articles

Beatrice Krebs (2013), "Justification and Excuse in Article 31 (1) of the Rome Statute", *Cambridge Journal of International and Comparative Law*, Volume 2, No 3.

Kathryn Sikkink and Hun Joon Kim (2013), "The Justice Cascade: The Origins and Effectiveness of Prosecutions of Human Rights Violations", *Annual Review of Law and Social Science*, Volume 9.

Steven C. Roach (2013), "How Political is the ICC? Pressing Challenges and the Need for Diplomatic Efficacy", *Global Governance: A Review of Multilateralism and International Institutions*, Volume 19, No. 4.

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

EVENTS

MATRA PATROL—Administration of Justice

Date: 17-27 November 2013

Location: Asser Institute, R.J. Schimmelpennincklaan 20-22,
The Hague

More Info: <http://tinyurl.com/n53eqtx>

37th Annual FA Mann Lecture: Secrecy in Justice—can it ever be fair?

Date: 27 November 2013

Location: Lincoln's Inn, Old Hall, London, England

More Info: <http://tinyurl.com/ltq8c3y>

ADC-ICTY Legacy Conference

Date: 29 November 2013

Location: Bel Air Hotel, The Hague

More info: <http://tinyurl.com/q9hm7d6>

OPPORTUNITIES

Legal Adviser and Coordinator for Court Support Ser- vice Section

International Criminal Tribunal for Former Yugoslavia (ICTY)

Closing date: 21 November 2013

Associate Legal Officer / Courtroom Officer

International Criminal Court (ICC)

Closing date: 29 November 2013

Trial Lawyer

International Criminal Court (ICC)

Closing date: 08 December