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NEWSLETTER

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ICTY NEWS

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

On 8 April, the Appeals Chamber delivered its Judgement in *Prosecutor v. Tolimir* (IT-05-88/2-A). Zdravko Tolimir was convicted on 12 December 2012 under Article 7(1) of the ICTY Statute, pursuant to his participation in two joint criminal enterprises (JCE) – to murder and to forcibly remove – of genocide and conspiracy to commit genocide, of extermination, persecutions and forcible transfer as crimes against humanity, and of murder as a war crime. He was acquitted of deportation as a crime against humanity. Tolimir's case was severed from the *Prosecutor v. Popović et al.* case in 2006 and arose out of Tolimir's role as an Assistant Commander of the Main Staff of the Army of the Republika Srpska (VRS). Additionally he was involved in the murders of Bosnian Muslim men from Srebrenica and the forcible removal/deportation of the Bosnian Muslim population from Srebrenica and Žepa.

Tolimir appealed his convictions on 25 grounds, requesting a reversal of his convictions or, alternatively, a reduction in his sentence. The Appeals Chamber grouped these into six broader categories of appeal: preliminary matters related to judicial notice of adjudicated facts and the evaluation of evidence, the number of persons killed in Srebrenica, the convicted crimes themselves, the joint criminal enterprise, cumulative convictions and sentencing.

With regard to the preliminary matters (paragraphs 16 to 80), Tolimir argued that the Trial Chamber erred in taking judicial notice of facts adjudicated in *Krstić* and *Blagojević* and *Jokić*, noting that the Trial Chamber failed to make its own findings on the evidence that went to core issues and that its sub-categorisation of

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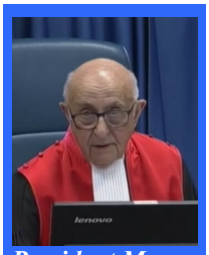
Also in this issue

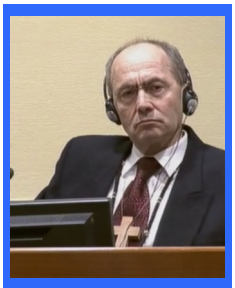
the adjudicated facts in the Decision annex prejudiced the proceedings. Further, Tolimir argued that the Trial Chamber erred in its reliance on intercepted communications for several reasons, its acceptance of Richard Butler as an expert witness due to his prior association with the Prosecution and the Prosecution's failure to disclose his reports in compliance with Rule 94 *bis* (B) (regarding disclosure of expert reports), and its insufficient scrutiny of assessing the reliability and independence of evidence given by Prosecution investigators.


President Meron

The Appeals Chamber found no error in the Trial Chamber's taking judicial notice of the adjudicated facts noting that no specific error was identified in the Trial Chamber's assessment, that the Trial Chamber stated the right standard, and that the use of subheadings to organise the adjudicated facts is not *per se* indicative of predetermined conclusions. However, with regard to adjudicated facts improperly going to core issues, the Appeals Chamber found that one of the 298 adjudicated facts did go to a core issue but, because this fact was not the sole basis for the finding for which it was cited, the error was deemed to be immaterial. It further found no error in the Trial Chamber's assessment of intercepts. While the Appeals Chamber found that the Trial Chamber erred in finding that Tolimir implicitly accepted Richard Butler as a Prosecution expert witness and by classifying his reports as expert reports, it ultimately dismissed this ground anyway because it found that the error caused no prejudice to Tolimir and did not impact his convictions and that the error was thus immaterial.

Tolimir's 9th ground of appeal (paragraphs 81 to 134) related to the Trial Chamber's calculation of the number of Bosnian Muslims killed by Bosnian Serb forces following the fall of Srebrenica in July 1995, which it estimated to be more than 5,749. He submitted that persons killed in incidents outside the scope of the indictment were improperly included in this count, that there were methodological errors (i.e. presumption of unlawful killing rather than other causes of death), as well as specific errors related to four discrete incidents.

The Appeals Chamber agreed with Tolimir that incidents not specified in the indictment cannot be used in support of a conviction as the "incidents charged in the indictment are not mere examples of criminal conduct for which Tolimir is alleged to be responsible but an exhaustive list of specific allegations" (paragraph 89). As such, it found that the Trial Chamber erred in making findings related to the alleged unlawful killing of 779 persons by the Bosnian Serb forces and the related convictions. However, it went on to find that this error did not invalidate the Judgement because this leaves intact at least 4,970 persons unlawfully killed in incidents which were specified in the indictment. The Appeals Chamber found that there is no support for the conclusion that this smaller number would have been insufficient to sustain the protected group element of genocide or that the forcible transfer and killings were deliberately inflicted in order to lead to the physical destruction of the local Bosnian Muslim population. It also found no basis for finding that the reduced number was insufficient to justify the Trial Chamber's assessment of gravity for sentencing. It found all other methodological and inferential errors claimed to be without merit because the Trial Chamber properly assessed the evidence or because it found that Tolimir had failed to show any error.


Zdravko Tolimir

With regard to the crimes themselves (paragraphs 135 to 273), Tolimir challenged his convictions for crimes against humanity (extermination, forcible transfer) and genocide. The errors alleged ranged from application of the wrong legal standard to erroneous and unsupported factual findings. For example, Tolimir challenged his Article 5 conviction for extermination on the basis that the Trial Chamber applied the wrong *mens rea* standard, asserting that the Trial Chamber erred by not requiring that the civilian population be the intended target of the mass murder because Article 5 requires that all crimes against humanity must be directed against a civilian population. However, the Appeals Chamber clarified a nuance in the law here, as developed earlier in the Appeals Judgements in *Martić*, *Popović et al.* and *Mrkšić* and *Šljivančanin*, wherein the *actus reus* of all crimes against humanity require that the crimes occur as part of a widespread and systematic attack directed against the civilian population, the crime victims

themselves need not be civilians. As such, the Appeals Chamber found that "[i]t was sufficient for the Trial Chamber to be satisfied…that the *mens rea* for the crime of extermination was established on the basis of evidence of the intent to kill on a massive scale [not directed against civilians] as part of a widespread or systematic attach directed against the civilian population" (paragraph 142). It did not further develop, however, how the mass-killing of non-civilians would qualify as an attack directed against the civilian population. In the case at bar, the Trial Chamber found that Tolimir intentionally targeted civilians in the mass murder operations, which the Appeals Chamber upheld.

With regard to genocide, Tolimir challenged the finding that the Muslims of Bosnia-Herzegovina (BiH) were a protected group under Article 4 (including whether the Bosnian Muslims of Eastern BiH were a substantial part of the Bosnian Muslims as a protected group), the Trial Chamber's findings on mental harm as the *actus reus*, as well as its findings on physical destruction, and the analysis of the *mens rea* for genocide. Among other findings, the Appeals Chamber granted Tolimir's appeal in part, to the extent that it related to Tolimir's conviction for genocide through causing serious mental harm to the Bosnian Muslims removed from Žepa (it was dismissed to the extent that it related to the Bosnian Muslim population from Srebrenica). In reaching this result, the Appeals Chamber referred to the Trial Chamber's findings that the circumstances in Žepa differed from those in Srebrenica. The Appeals Chamber reiterated the requirement that mental harm, as the *actus reus* for genocide, "results only from acts causing grave and long-term disadvantage to the ability of members of the protected group to lead a normal and constructive life and threatening the physical destruction of the group as such" (paragraph 215). While the Trial Chamber noted the problematic recovery and inability to lead normal lives of following the displacement of the Srebrenica population, it made no such findings with regard to the Žepa population, where it found that fear was spread but made no findings on the long-term consequences of the forcible displacement or link to the physical destruction of the group. Thus, the Appeals Chamber found that no reasonable trial chamber could have found on the basis of the Trial Chamber's findings that the requirement for serious mental harm was met.

Judges Sekule and Güney appended partially dissenting opinions on this point. Judge Sekule's partial dissent addressed the reversal of conviction for genocide through causing serious mental harm to the Bosnian Muslim population in Žepa. He noted that the comparison of harm between Žepa and Srebrenica was misplaced and legally impermissible, as serious mental harm must be assessed on a case-by-case basis. Further, he asserted that the Majority perverts the Tribunal's own jurisprudence by adding in a requirement of long-lasting harm. Judge Güney dissented on the same issue, noting that insufficient deference was given to the Trial Chamber's factual findings and that the Appellate majority contradicted itself when it, on the one hand, found that no reasonable trier of fact could have found that the Bosnian Muslims forcibly displaced from Žepa suffered serious mental harm within the meaning of Article 4 while, on the other, finding that the Bosnian Muslims of Žepa suffered such serious mental harm as members of the same group against which the genocidal acts in Srebrenica were committed.

Tolimir was convicted on the basis of his participation in two JCE's – to murder and to forcibly remove. On appeal (paragraphs 274 to 598), he challenged not only the existence of the JCEs and his contribution in them by virtue of his position and knowledge and the foreseeability of the extended form JCE crimes, but also the Trial Chamber's acceptance of JCE as a mode of liability under customary international law. With regard to the latter challenge, the Appeals Chamber dismissed this in full, noting its recent reaffirmation of JCE as a form of commission under customary international law in both *Popović et al.* and in *Đorđević*. The Chamber noted that in those cases it did not merely rely on prior Tribunal jurisprudence but also undertook a re-examination of the sources of law analysed in *Tadić*. The Appeals Chamber found no material error, if at all, in the Trial Chamber's other JCE findings. With regard to the Trial Chamber's finding that the only reasonable inference to be drawn from the totality of the evidence was that possessed genocidal intent, thus convicting him of genocide through his JCE participation, the Appeals Chamber agreed that a reasonable chamber could have found that the harbouring of genocidal intent (more stringent a test than for other inferences) was the only reasonable inference from the evidence that Tolimir and his subordinates' use of derogatory terms com-

bined with other relevant circumstances.

The test for cumulative convictions (paragraphs 600 to 623) was established in *Čelebići*, which provides that multiple convictions for the same conduct are permissible only where each of the crimes contains "a materially distinct element not contained in the other" (cited at paragraph 601). Tolimir argued that this test is incomplete, relying on the dissent and domestic law, arguing in favour of a test which includes not just consideration of overlapping elements but also comparison of those that do not. For example, Tolimir argued that while genocide and extermination contain materially distinct elements, the substance of these elements is so similar in nature that cumulative convictions for these counts ought to be impermissibly cumulative. However, the Appeals Chamber again noted that, in the interests of certainty and predictability, the Appeals Chamber will follow its precedent unless there exist cogent reasons in the interests of justice to depart from it. Here, the Appeals Chamber found that Tolimir did not offer any cogent reasons for departure and applied the *Čelebići* test for cumulative convictions. As a preliminary matter, it is of note that the Trial Chamber declined to enter a conviction for murder as a crime against humanity as it would have been impermissibly cumulative with the conviction for extermination. No other pairs of convictions advanced by Tolimir were accepted by the Appeals Chamber as being impermissibly cumulative.

Legal Advisor Aleksandar Gajić

The Trial Chamber sentenced Tolimir to life in prison and Tolimir appealed this sentence arguing that it is manifestly excessive and disproportionate (paragraphs 624 to 648). The Appeals Chamber upheld the life sentence after a review of the Trial Chamber's assessment of the gravity of crimes, aggravating and mitigating factors, and alleged abuse of the Trial Chamber's discretion. Finally, the Appeals Chamber summarily considered the effect of the several convictions reversed on Tolimir's sentence. It held that in light of the remaining convictions, particularly those for genocide in Srebrenica, no reduction in sentence was warranted.

Judge Antonetti appended a lengthy separate and partially dissenting opinion. As a general matter, Judge Antonetti dissented from the dismissal of Tolimir's remaining grounds of appeal but did not dissent, as did Judges Sekule and Güney, from any of the reversals of conviction. He made some preliminary observations about the case and several related cases, including the Judgements in *Popović et al.* and *Krstić*, among others, and then offered separate and partially dissenting opinions aligned with the structure of the Judgement itself – that is, preliminary issues relating the evaluation of evidence and adjudicated facts, expert witness Butler and other Prosecution investigators and the number of deaths. He followed this with a review of Tolimir's appeal of the crimes against humanity and genocide, followed by the JCE and Tolimir's criminal liability before commenting on the sentence. The opinion is currently only available in French.

Appeals Chamber

Ultimately, the Appeals Chamber granted two grounds of appeal (Grounds 10 and 12), reversing Tolimir's convictions for Count 1 (genocide) regarding the killing of three Žepa leaders and for Counts 1 (genocide), 3 (extermination as a crime against humanity) and 5 (murder as a war crime) regarding the killing of six Bosnian Muslim men near Trnovo. It further granted an additional two grounds of appeal in part (Counts 6 and 10). Tolimir's conviction for Count 3 (extermination as a crime against humanity) was reversed to the extent it related to the killing of the three Žepa leaders. Additionally, the Appeals Chamber reversed convictions for genocide through causing serious mental harm to the Bosnian Muslim population of Eastern BiH (to the extent that the conviction was based on the alleged forcible transfer of Bosnian Muslims from Žepa) and through inflicting conditions of life calculated to destroy that population. It dismissed the remainder of Tolimir's appeal, upholding the remaining convictions and unanimously upheld his life sentence.

Prosecutor v. Mladić (IT-09-92)


Milorad Pelemiš

On 26 and 30 March, Milorad Pelemiš, Commander of the Army of Republika Srpska (VRS) 10th Sabotage Detachment during July 1995, appeared for the Defence. In his statement, Pelemiš testified in relation to the structure and functioning of the 10th Sabotage Detachment, including its activities in Srebrenica. Pelemiš also testified that he was absent from his unit after 12 July 1995 due to injuries sustained in a car accident that same day, and only later discovered that members of his unit had participated in the liquidation of prisoners at Branjevo Farm on 16 July 1995. Pelemiš testified that no one from the hierarchical structure of the 10th Sabotage Detachment, i.e. Petar Salapura, Mladić and himself, exercised command over these members in relation to their conduct at Branjevo Farm.

During cross-examination, Pelemiš agreed that Dražen Erdemović and members of his unit summarily executed hundreds of Muslim men at the Branjevo Farm in July of 1995, but stated that he did not issue an order for these executions and later made best efforts to investigate those involved in the killings. Pelemiš agreed with the Prosecution's figures as to the number of persons buried at Branjevo Farm on the basis that those statistics were official and correct, but was unable to comment on whether the six men from the 10th Sabotage Detachment executed all of them, or provide further details regarding their involvement.

On 31 March, Edin Garaplija, agent of the State Security Service of Bosnia and Herzegovina, appeared before the Chamber to testify. His appearance was compelled by subpoena. Garaplija's statement and testimony both elaborate on the secret activities carried out by a paramilitary unit called Ševe. The witness learned about those activities when he took part in an operation targeting Nedžad Herenda. The operation was carried out in May and June 1996 and it was codenamed "Operation Eagle". According to the witness, the unit was involved in assassinations, planting explosives, sniper operations and other jobs for which the Serb side was blamed.

When asked by the Defence why he decided to testify in The Hague, Garaplija said he wanted the truth to be known. This prompted Judge Orie to ask him why then it was necessary to issue a binding order to get him to testify. Garaplija said he did not want the media to paint him as a witness who testified in the Defence of Karadžić and Mladić.

The Prosecutor, during cross-examination, tried to impeach the witness's character in order to challenge his credibility. In 1996, Garaplija and his two colleagues were put on trial for Herenda's attempted murder. It was the Prosecution's view that, since 1998, the witness has been accusing everyone of conspiracy against him. The conspiracy aimed at preventing him from making public Herenda's information about the Ševe's activities.

On 1 April, the Defence called Nikola Erceg, who had been President of the Executive Committee of the Autonomous Region of Krajina which conferred automatic membership of the Autonomous Region of Krajina's Crisis Staff once it was established. He also had previously testified in the Karadžić case and stood by his prior testimony with minor clarifications.

During direct examination, Erceg said that there was little communication between Pale and Banja Luka or the two sides of the Sava River. Because of this, the Crisis Staff and the Krajina area were established in the western part of the Republika Srpska to deal with the situation. During cross-examination by the Prosecution, Counsel contended that the communication to establish the Crisis Staff demonstrates that there was no breakdown of communication. Erceg said that he was unsure about the instructions to establish the Crisis Staff but that as far as he could remember, they had instructions of some kind in 1992. He also said the list of Crisis Staff members includes key figures in the Autonomous Region Krajina (ARK) institutions and that the group provided a forum for them to coordinate, monitor and calm the situation. The witness stated in addition that they allowed vulnerable categories of persons, which comprised of children, women and the elderly, to

move out voluntarily and that in practice, all who wanted to could move out.

Pero Andrić testified on 2 April. He was a member of military police in the Bratunać Brigade. During examination-in-chief, he spoke about one of his tasks taking place from 11 July 1995 onwards, to secure the road so that the military officers and personnel, together with Mladić, could get through. He recollected that the vehicles with the Army of Republika Srpska (VRS) officers went from Bratunac via Sandići, Konjević Polje, Kasaba and Vlasenica. He confirmed that during several stops Mladić spoke with the refugees and provided them with drinks and food. While in Srebrenica, Mladić ordered the convoy to take on board some elderly Muslim women.

During cross-examination, the Prosecutor tried to prove that the convoy also stopped at other places which resulted in collision with some civilians and Bosnian-Serb policemen. Andrić admitted that he is not able to recollect the details at the moment and that he did not remember receiving any orders from Momir Nikolić. He also stated that neither did he observe anything unlawful in the conduct of Mladić nor did he receive any order to do anything unlawful.

On 7 April, the Defence called Slavoljub Mlađjenović, a former police commander in Bratunac. As first the platoon command of the Teritorijalna Odbrana (TO) unit and then the company commander, he carried out various assignments including taking Kunarac. Afterwards, he took up the duties at the Ministry of Internal Affairs (MUP) preceding the then commander Ljubisa Borovćanin. He recalled what he observed in Srebrenica and the Muslims found in Srebrenica whom he ordered to have transferred to the United Nations Protection Force (UNPROFOR) base by bus. The witness did not recall any destruction in the town, apart from a body and a crater he found. The witness also recalled visiting Bokčin Potok in early 1996 and recalled accounts he heard about the events that occurred in the area.

The Prosecution challenged the witness with statements made by Mlađjenović's former neighbour from Krasanpolje. Mlađjenović recalled the neighbour had a friend who often talked to him and his son, and responded that he could not conceive of why he would give the statements as quoted by the Prosecution. The witness maintained his position that the Bošnjak had left Krasanpolje voluntarily throughout his testimony.

On 8 April, the Defence called Mirko Perić, former police officer in the Republika Srpska MUP. Perić testified largely about his role working on the checkpoint in Konjević Polje from around 10 – 13 July 1995. He maintained he was only informed about Operation Srebrenica after arriving at the checkpoint when he was told to expect an influx of Muslims passing through over the hill. Despite this warning, Perić recalled only small groups of four to six Bosnian Muslims passing through. One of these groups included Rešid Sinanović, the chief of the Bratunac police station, who surrendered. Perić then passed him over to the communications centre. Consistent with his testimony in *Karadžić* and in conflict with the testimony of witness RM 314, Perić claimed he never saw Nenad Deronjić, nor witnessed the ill-treatment of Bosnian Muslim detainees in Konjević Polje. During cross-examination, he also maintained he never saw Mladić at the check-point.


Nebojsa Jeremić,

The witness who testified on 8 and 9 April, Nebojsa Jeremić, is a lawyer by training and was a military police officer in the Zvornik Brigade, under Chief of Security, Drago Nikolić. He had formerly testified as a Prosecution witness in the trial against Drago Nikolić who received a 20 year sentence by the Tribunal. Within the remit of his role as a previous military police office he was involved in investigating misdemeanours and breaches of military discipline. He testified about his deployment in Zvornik in July 1995 and about the information he received concerning the situation in Srebrenica that summer. He confirmed that there was little official information coming out of Srebrenica; they only knew about the movement of an enormous column of Muslims. He testified about the arranged transport of prisoners of war, specifically about the men, women and children who were being transported by the soldiers of Republika Srpska along the main road leading to Bijeljina.

The Prosecutor questioned Jeremić about his participation in an incident involving the arrest of two Bosnian Serb soldiers (father and son, Neško and Slobodan Djokić) who were charged with helping the

enemy. While questioning them, Jeremić learned that the four Muslim men that Neško and Slobodan had attempted to help were offering them remuneration in exchange for assistance. These four Muslim men were subsequently captured and Jeremić stated that he did not know what action was taken against them or what became of them thereafter, upon insistent questioning by the Prosecutor on this topic. He reiterated that there was little official information being received and that most of what he learnt was hearsay, through rumours or *post hoc* through unofficial communication with colleagues. Thus, he concluded his two day testimony.

Prosecutor v. Hadžić (IT-04-75)

On 13 April, the Appeals Chamber delivered its unanimous decision quashing the Trial Chamber's decision and provisionally releasing Goran Hadžić. In its published reasons, the Appeals Chamber held that the Trial Chamber had placed insufficient weight upon the terminal nature of Hadžić's illness and his limited life expectancy. It found that the Trial Chamber had placed too great an emphasis on the capacity of the United Nations Detention Unit (UNDU) to treat Hadžić's condition and had thereby failed to properly consider the compelling humanitarian factors militating in favour of his release. The Appeals Chamber, noting that trial proceedings had been effectively adjourned since October 2014 and that Hadžić was unlikely to be fit to attend any hearings until at least May 2015, further found that the Trial Chamber had failed to adequately identify how a period of provisional release would impact upon the expeditiousness of the proceedings. Considering the time requested for the provisional release, and the time already spent on the adjudication of this motion, the Appeals Chamber ordered that Hadžić be released as soon as practical, subject to various conditions and contingent upon his return to the Netherlands prior to a date specified in confidential annex.

The provisional release is temporary and the Trial Chamber has to now decide on the continuation of the trial. In its 13 March decision, the Chamber noted that it will continue to evaluate Hadžić's health condition. As a result of this, on 1 April, the Trial Chamber ordered further medical examination of Hadžić, and subsequent hearing on his fitness. It requested that the Registry appoint an independent neuropsychologist, and sought that this neuropsychologist, together with Dr. Seute and the Reporting Medical officer from the UNDU submit reports on Hadžić's condition. In doing so, it also sought that the parties are prepared to make submissions on fitness to be delivered four days post-after the hearing. The date of this hearing is yet to be scheduled.

Further, on 9 April, the Chamber granted in part the Defence's request for reclassification of medical expert reports as public. On 10 April, the Chamber granted in part the Defence's motion for more detailed medical reporting, recognising that the Defence has a role in ensuring that Hadžić is receiving adequate and appropriate medical care while detained in the UNDU. The Trial Chamber ordered the Registry to, *inter alia*, submit more detailed information on Hadžić's health situation and the monitoring thereof in future medical reports. It also requested the Registry to address the Defence's concerns in respect of the visits and medical check-ups; make a clear distinction between the symptoms suffering during the week; and update the parties on Hadžić's weight loss.

The Trial Chamber has also several pending motions before it. First, the Prosecution filed two motions: one seeking that the continuation of the Defence case; and the other urging that the any continuation of the case be conducted in an expedited manner. The motion seeking the resumption of trial proceedings and the continuation of the Defence case was filed on 2 March; and the proposal for expediting the Defence case on 24 March. The Defence vigorously opposed the Prosecution's proposal to continue the Defence case in the absence of the Accused.

On 24 March, the Defence filed a motion seeking the voluntary withdrawal or disqualification of all three judges from determining the Prosecution's motion to proceed with the Defence case. The Defence based its submission on the appearance of bias which arises from the judicial tenure of the judges, which is dependant on the continuation of the case.

Prosecutor v. Šešelj (IT-03-67)

On 30 March, the Appeals Chamber issued its decision in the case of *Prosecutor v. Vojislav Šešelj* on the *Prosecution Appeal against the Decision on the Prosecution Motion to Revoke the Provisional Release of the Accused*. The Prosecution submitted that the Trial Chamber had erred in its Decision to dismiss the Prosecution motion to revoke provisional release.


Vojislav Šešelj

The Trial Chamber (here after the Chamber) had ordered Šešelj's provisional release to the Republic of Serbia *proprio motu* and considered that since his release was strictly on humanitarian grounds only, there was no need to impose on him any other condition besides not to influence witnesses and victims, and to appear before the Court when ordered. However, following public statements made by Šešelj upon provisional release, the Prosecution had requested the termination of his provisional release and a hearing to be held, during which the parties and Serbia could be heard.

Upon dismissal, the Prosecution argued that the Chamber erred in law by, first, failing to consider whether pre-conditions for provisional release remained satisfied, in view of Šešelj's statements that he would not voluntarily return to the Tribunal and threat people who cooperated with the Prosecution. Second, for failing to consider whether, in view of new facts given by the Prosecution, Šešelj would still be imposed only minimal conditions governing his provisional release. Šešelj replied that the Prosecution failed to submit any legal arguments in support of its contentions and requested the Appeals Chamber to dismiss the Appeal as unfounded and politically motivated, and to initiate disciplinary proceedings against the Prosecutor.

Regarding the first alleged error, the Appeals Chamber found, Judge Tuzmukhamedov and Judge Afande dissenting, that Šešelj's public statements eroding the essential pre-conditions for provisional release had not been addressed by the Chamber. According to the Appeals Chamber, provisional release may only be granted when the Chamber is satisfied that the Accused will appear for trial and, if released, will not endanger any victim, witness or other person. It found that ongoing compliance with the two conditions of Rule 65 (B) of the Rules is required and the Chamber should have addressed whether the pre-conditions for provisional release remained fulfilled in light of the new information.

Regarding the second alleged error, the Appeals Chamber, Judge Tuzmukhamedov and Judge Afande dissenting, dismissed the Prosecution's arguments without further consideration as arguments related to conditions governing provisional release are not relevant at this stage. The Chamber must revoke his provisional release first in order to determine whether such release was justified.

In light of the foregoing, the Appeals Chamber, Judge Tuzmukhamedov and Judge Afande dissenting, granted the Appeal in part and ordered the Chamber to immediately revoke Šešelj's provisional release and return to the United Nations Detention Unit (UNDU), after which Serbia and the Netherlands must be given an opportunity to be heard in accordance with Rule 65 (B) of the Rules and a *de novo* assessment of the merits of Šešelj's possible further provisional release must be conducted.

In a joint dissenting opinion, Judge Tuzmukhamedov and Judge Afande contended, amongst others, that the Prosecution had failed to show that force will be required to bring Šešelj back and how his attendance at this stage, if provisional release is revoked, would be secured rather than an order to appear before the Tribunal at a later stage. Additionally, they argued that the Chamber had anticipated such behaviour, as Šešelj had declared in advance that he will publicly criticise the Tribunal as an illegal international court upon release. They also found the Majority's dismissal of the Prosecution's remaining arguments to be unsupportive of ordering a *de novo* assessment. Finally, even if they were to accept that the Chamber erred, they contend that the matter should have been remanded to the Chamber to exercise its discretion accordingly.

MICT News

Prosecutor v. Pandurević (MICT-15-85-ES.1)

On 9 April, Vinko Pandurević was granted immediate early release by the President of the Mechanism for International Criminal Tribunals (MICT), Judge Meron.

Pandurević was sentenced to 13 years imprisonment at the beginning of June 2010 after voluntarily surrendering to the ICTY in March 2005. In January, the Appeals Chamber dismissed Pandurević's appeal in its entirety and his sentence was affirmed to 13 years imprisonment.

An application for early release was filed by Pandurević shortly after that. With regard to the eligibility and treatment of similarly-situated prisoners, it was recognised that Pandurević has served more than nine years of his 13 years sentence and therefore, he has served two-thirds of the overall sentence.

To demonstrate his rehabilitation, the United Nations Detention Unit Commanding Officer stated that Pandurević was continuing to show respect to the staff members of the Detention Unit, integrated well and posed no threat to other detainees or himself. Pandurević's statement was similar, stressing that he demonstrated exemplary behaviour as a detainee. Therefore, Pandurević was deemed capable of reintegrating into social life if he were to be released. The Prosecution's Memorandum stated that Pandurević should not be granted early release since he did not cooperate with the Office of the Prosecutor (OTP) at the ICTY, when after his indictment he refused to face the charges.

In addition to Judge Meron, two of the remaining Judges of the sentencing Chamber agreed to the early release on the basis of Article 26 of the MICT Statute. Only one Judge was not in favour of the early release. According to Article 26, convicted persons are eligible for pardon or commutation of sentence, if the President of the Mechanism agrees on the basis of the interests in justice and the general principles of law. Rule 150 of the Rules provides that the President of the Mechanism shall consulate with any other Judge who was in the sentencing Chamber and determine whether a pardon of sentence or early release is appropriate. Pursuant to Rule 151 and to determine this decision, the gravity of the crime for which the prisoner was convicted on, the treatment of similarly-situated convicts, the prisoner's demonstration of rehabilitation and any substantial cooperation with the OTP need to be considered.

LOOKING BACK...

International Criminal Tribunal for the Former Yugoslavia

Five years ago…

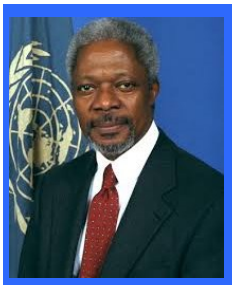
On 29 April 2010, Vojislav Šešelj made an initial appearance before Presiding Judge O-Gon Kwon for contempt of court, allegedly having published information about protected witnesses in violation of the Trial Chamber's order. This case was reopened by a confidential decision of the Appeals Chamber in December 2009, which overturned the Trial Chamber's decision against contempt charges in August 2009 with regard to one of the three books authored by the Accused and which contained sensitive information. This was Šešelj's second time facing contempt charges, after having been sentenced to 15 months of imprisonment for a contempt charge of the same nature for which he was convicted on 24 July 2009 and which was affirmed on 19 July 2010 by the Appeals Chamber.

Šešelj is facing three counts of crimes against humanity and six counts of violations of the laws or customs of war in his main case at the ICTY. He is currently on provisional release granted by a *proprio motu* decision by the Trial Chamber on the grounds of his health on 6 November 2014. The Appeals Chamber recently overturned this decision on 30 March, based on Seselj's statements made upon provisional release.

With regard to the contempt charge, Šešelj was convicted by the Trial Chamber on 31 October 2011, which was affirmed by the Appeals Chamber on 28 November 2012.

Extraordinary Chambers in the Courts of Cambodia

Ten years ago…



UN Secretary General Kofi Annan

On 28 April 2005, the United Nations Secretary General Kofi Annan informed Cambodian Prime Minister Hun Sen by letter that the legal requirements on the UN side for a treaty between the UN and Cambodia had been met. The following day, the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea entered into force, creating the Extraordinary Chambers in the Courts of Cambodia (ECCC). The ECCC's mandate is to try senior leaders of Democratic Kampuchea and those who were most responsible for the crimes and serious violations allegedly committed between 17 April 1975 and 6 January 1979, during Pol Pot's rule.

The Court has faced a number of challenges, including initial and ongoing difficulties in securing funding, and the fact that the incidents under investigation are alleged to have taken place up to thirty years before the ECCC was established. Many of the Accused were by this time either deceased or advanced in age. Uniquely, the ECCC is set up as a national court, but is composed of both local and international judges and employs local and international staff. Its first judges were not sworn in until over a year after and the first hearing did not begin until late 2009. The ECCC currently has four cases before it.

International Criminal Tribunal for Rwanda

Fifteen years ago…

On 27 April 2000, General Augustin Ndindiliyimana, the former Chief of Staff of the Rwandan Gendarmerie Nationale, pleaded not guilty to ten counts of genocide, crimes against humanity and violations of the Geneva Conventions. Fourteen years later and after eleven years in pre-trial detention, in February 2014, Ndindiliyimana was acquitted of all charges on appeal on the grounds that he did not have effective authority over gendarmes suspected of participating in the 1994 genocide. His Co-Accused François-Xavier Nzuwonemeye was similarly acquitted, while the Appeals Chamber reduced the sentence of Innocent Sagahutu from 20 to 15 years.

NEWS FROM THE REGION

Bosnia and Herzegovina

Serbian Soldiers Charged over Štrpci Massacre

On 13 April, former Bosnian Serb Army troopers Luka Dragićević, Boban Inđić, Obrad and Novak Poluga, Dragan Šekarić, Oliver Krsmanović, Petko Inđić, Radojica Ristić, Vuk Ratković and Mićo Jovičić were indicted for having kidnapped 20 passengers from a train at Štrpci station in eastern Bosnia on 27 February 1993. The train was on its way from Belgrade to Bar when it stopped at the Štrpci station.

The Prosecution alleges that the Bosnian Serb Army soldiers took the passengers to the Višegrad area and killed them. Most of the people killed were Bosnian citizens of Serbia and Montenegro, although one Croat and another person described as Arabic were also among them, the Prosecution alleges. The remains of four of the victims were found after the war, while the remains of the other 16 victims have yet to be found.

The Defendants were arrested in a joint operation by the Bosnian State Prosecution and the Serbian War Crimes Prosecution on 5 December 2014. Five more suspects were arrested in Serbia and were indicted at the beginning of March.

Kosovo

Kosovo Leaders Affirm Commitment Kosovo War Crimes Court

Atifete Jahjaga

On 20 April, Kosovo's President, Atifete Jahjaga, and Prime Minister, Isa Mustafa, assured the United States Ambassador-at-Large for War Crimes Issues in the Office of Global Criminal Justice, that Priština will establish the new Court which is intended to try ex-Kosovo Liberation Army officials for serious crimes committed during and after the 1998/99 war. The assurance came during Ambassador Rapp's official visit to Priština. During the meeting, President Jahjaga insisted that Kosovo's institutions remain committed to fulfilling this international obligation. President Jahjaga also stressed that the Court would not undermine the legitimacy of the Kosovo Liberation Army's (KLA) armed struggle against Serbian forces, "the special court will not try the liberation war of Kosovo's people but it will determine individual responsibility for the charges that are filed", she said.

Last week Kosovo's Constitutional Court ruled that amendments to the constitution allowing the establishment of the new Special Court were acceptable. The constitutional amendment still has to be approved by Kosovo's Parliament, which will open the way for the draft law on the Special Court to be voted on as well.

The Court is to be set up in The Netherlands and will hear cases arising from the recent European Union Special Investigative Task Force report. This report stated that unnamed KLA officials would face indictments for a campaign of persecution that was directed against the ethnic Serb, Roma and other minority populations of Kosovo and toward fellow Kosovo Albanians believed to be collaborators with the Belgrade regime. The alleged crimes include killings, abductions, illegal detentions and sexual violence.

Serbia

Žarko Čubrilo Acquitted of Murder of Croatian Villagers

On 6 April, the Department for War Crimes of the High Court in Belgrade acquitted former member of the Tenja Territorial Defence Force, Žarko Čubrilo, of the murder of eleven Croat civilians in Tenja, Eastern Croatia, in the summer of 1991. Čubrilo was accused of taking eleven civilians from an improvised prison near the local cattle cemetery outside the village Bobota (Croatia) and killing them. The bodies of the murdered villagers have never been found.

Presiding Judge Dragan Mirković said the Court could not rule without reasonable doubt that Čubrilo committed the murders listed in the incitement. He said, "the statements from the witnesses were contradictory, while some of the witnesses were changing [their] statements during the course of the trial". Judge Mirković added that the Trial Chamber also could not establish if Čubrilo was at the scene of the crime at the time it happened. The case was transferred from Croatia to Serbia on the basis of an agreement on cooperation in the prosecution of war crimes, crimes against humanity and genocide signed between the Prosecution offices of the two countries in 2006.

NEWS FROM OTHER INTERNATIONAL COURTS

Extraordinary Chambers in the Courts of Cambodia

Clare Slattery, Legal Intern on Im Chaem Defence Team.

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

Judicial Update

In March, the Defence Teams for Nuon Chea and Khieu Samphan continued to attend and participate in the first segment of *Case 002/02* relating to the Tram Kok Cooperatives and Kraing Ta Chan Security Centre. The Nuon Chea Defence Team requested and participated in a Trial Management Meeting discussing issues arising from its recent receipt of thousands of pages worth of statements disclosed in *Case 002/02* from *Case 003* and *004* currently under investigation at the Extraordinary Chambers in the Court of Cambodia (ECCC). Both Defence Teams requested an adjournment in order to have adequate time to examine the additional documents. Meanwhile, the teams filed the Khmer translation of their Appeal Briefs in *Case 002/01* and now await the response from the Office of the Co-Prosecutors.

Nuon Chea and Khieu Samphan

In *Case 003* the International Co-Investigating Judge Mark Harmon charged Meas Muth *in absentia* on 3 March. In March, the Defence Team for Meas Muth continued to file submissions to protect their client's rights and interests. The team has also started reviewing the Case File now that they have access to it.

In *Case 004*, the International Co-Investigating Judge charged Im Chaem *in absentia* on 3 March. In March, the Defence Team for Im Chaem filed submissions to protect their client's fair trial rights. The team has also begun to review the Case File, which includes in excess of 65,000 pages of documents in English alone.

In *Case 004*, the International Co-Investigating Judge issued a summons for Ao An (alias "Ta An"), and on 27 March, Ao An complied with the summons and appeared before the Judge. At the initial appearance, Judge Harmon charged Ao An with the premeditated homicide, as a violation of the 1956 Cambodian Penal Code, and crimes against humanity, including murder, extermination, persecution on political and religious grounds, imprisonment, and other inhumane acts (namely inhumane conditions of detention), allegedly committed at Kok Pring execution site, Tuol Beng Security Centre, and Wat Au Trakuon Security Centre. In addition, he granted Ao An's Defence Team access to the Case File. The team is now reviewing the evidence in the Case File so that Ao An, through his Co-Lawyers, can participate in the investigation. Ao An maintains that he is not criminally responsible for the alleged crimes and continues to contest the Tribunal's personal jurisdiction over him on the basis that he was not among the senior and most responsible Khmer Rouge *cadres*, as required for Prosecution under ECCC law.

The remaining Defence Team for a Suspect in *Case 004* continues to closely follow the *Case 002/02* trial proceedings. The Defence Team has opposed the use of *Case 004* Case File documents in *Case 002/02* on the basis that this violates their client's rights. Furthermore, the Defence Team continues to research relevant substantive legal issues and otherwise seek to protect their client's fundamental fair trial rights using publicly available sources.

Special Tribunal for Lebanon

STL Public Information and Communications Sections.

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

The Prosecutor v. *Ayyash et al.* (STL-11-01)

On 3 March, Defence Counsel for Merhi and Sabra concluded the cross-examination of Ghaleb El-Chammaa via video-conference link. El-Chammaa testified about the statement he gave to the United Nations International Independent Investigation Commission (UNIIIC) in 2006, about his knowledge of payments allegedly made to Brigadier-General Ghazi Kanaan. El-Chammaa could not confirm such payments, as he did not deal with them himself. El-Chammaa also gave evidence based on his previous witness statement to the UNIIIC regarding the construction works in the Beirut St. Georges's area prior to February 2005. El-Chammaa confirmed that after the assassination, many people came to him and provided information on the construction works there. El -Chammaa did not verify the details of such information himself, but told the UNIIIC. El-Chammaa also testified about his recollection of a commemoration ceremony held in October 2002, where the former Lebanese Prime Minister (PM), Rafiq Hariri honoured Ghazi Kanaan, the former Chief of the Syrian Military Intelligence in Lebanon who was replaced by Rustom Ghazaleh, by handing him the key to the city of Beirut. When asked by Defence Counsel what this gesture meant, El-Chammaa responded that Hariri was dealing with the Syrian presence in Lebanon as if it was a matter of fact and a reality with which he had to deal with to maintain good relations with Syria. Counsel for Sabra questioned the witness about the possibility of Hariri having hired staff from the Al-Ahbash. El-Chammaa confirmed that if anyone associated with Al-Ahbash were in Hariri's security team or entourage, they would have been dismissed.

On 10 March, Dr. Ghazi Youssef, a member of the Lebanese Parliament since 2005, testified before the Trial Chamber in person. Youssef holds a PhD in Economics and worked on electoral and economic issues with Hariri in the years preceding the former PM's assassination. During his testimony, Youssef described how the Syrian regime imposed candidates on the PM's list of candidates for the 2000 legislative elections and recalled the conditions under which his own candidacy was rejected by Ghazi Kanaan. In his testimony, Youssef stated that Hariri was clearly against the extension of Lebanese President Lahoud's mandate. He also noted the position of the international community at that time, which, according to the witness, wanted the "salvation of Lebanon" through the election of a new president. In addition, Youssef stated that Hariri had perceived United Nations Security Council (UNSC) Resolution 1559 as a cause for confrontation between President Lahoud and the Syrians, on one side, and the international community, on the other. During his testimony, he also told the Trial Chamber of a meeting in which he had participated in December 2004 with Ghassan Salameh, a former Lebanese Minister of Culture and Advisor to the United Nations Secretary-General. During that meeting, Salameh had asked Youssef to warn PM Hariri to be more cautious about his personal security. Salameh said to Youssef "the Syrians want [ed] his political assassination or otherwise".

On 11 and 12 March, Youssef spoke about the new electoral law introduced in the autumn of 2004 and Hariri's electoral lists for the elections in 2005. In addition, audio recordings of a meeting held on 9 January 2005 were played in the courtroom. Youssef identified the three men who could be heard in the recording as Hariri, Brigadier-General Rustom Ghazaleh and Charles Ayoub, Editor-in-chief of the Lebanese daily Ad-Diyar. The voice recognised as Ayoub was heard as saying that he felt Hariri had a wish and will to maintain an excellent relationship with Syria while the voice that is recognised to be Ghazaleh described Hariri as a dear friend and ally of Syria. In the recording, Ghazaleh is heard saying that Hariri used to tell him that Lebanon could not be ruled without Syria's consent. Hariri is heard saying that there should be co-ordination between the two countries, but Lebanon should have a bigger role in ruling itself. The Taif Agreement was subsequently discussed between the three men. Hariri could be heard arguing that the implementation of the Taif Agreement should serve as a basis for Syrian-

Lebanese relations. He could also be heard saying that he will not be opposing the new electoral law if it would be adopted by the executive power and later by the legislative power. In the same meeting, Hariri is also heard discussing with Ghazaleh the referral of the October 2004 assassination attempt against the Member of the Lebanese Parliament, Marwan Hamade, to the Lebanese Judicial Council.

Youssef provided his commentary on the content of the audio recording by asserting that the purpose of the meeting was for Ghazaleh to remind Hariri that he came to power with Syria's consent and that Lebanon could not be governed and ruled against Syria's will. When asked to explain why it would be Ghazaleh who would refer the attempted assassination of Hamade to the Judicial Council, Youssef responded that the Lebanese Ministers at that time used to implement orders given by Ghazaleh.

On 13 March, the Office of the Prosecutor presented documentary evidence that was already admitted into evidence by the Trial Chamber. The documents related to a large number of mobile phones including 18 phones associated with nine subscribers creating the so-called set of green network phones that the Prosecution alleges were used to direct the attack against Hariri. The Prosecution requested the Lebanese Government to confirm 51 names attributed to various phone numbers. Some individuals were identified and interviewed and it is alleged that their identities were attributed to phone numbers without their knowledge. In other cases, the persons whose identities were attributed to phone numbers simply do not exist.

On 16 March, Bassem El-Sabeh, Deputy President of the Future Movement and a long-time friend, confidant, and political ally of Hariri, testified before the Trial Chamber. El-Sabeh was an elected member of the Lebanese Parliament in 1992, 1996, 2000 and 2005. El-Sabeh's evidence focused on certain meetings Hariri held with Syrian officials in 1999, 2003 and 2004, and the developing ideas that emerged during the Bristol Group meetings, which he had attended. El-Sabeh told the Trial Chamber that he had accompanied Hariri during his first meeting with Bashar Al-Assad in Damascus in 1999, describing a sense of unease and uncertainty that the former PM had felt after meeting with Bashar Al-Assad, who would later become the Syrian President. In particular, the witness recalled Hariri's words following the 1999 meeting: "Syria will be ruled by a child [...] [T]hings will not be comfortable in the future". El-Sabeh also testified about another meeting held between Hariri and Bashar Al-Assad in December 2003. That particular meeting had been attended by Syrian officials Brigadier-General Ghazi Kanaan, Lieutenant-General Rustom Ghazaleh and Brigadier-General Mohammed Khallouf. Some specific requests were made to Hariri relating to the extension of the mandate of President Lahoud, the Premier's shares in An Nahar newspaper and his advisor on patriarchal affairs and his ties with the opposition (Qornet Shehwan). Hariri had then informed El-Sabeh of the accusations against him and the overall feeling of insult he felt during that meeting. El-Sabeh subsequently discussed the meeting held between Hariri and Al-Assad in August 2004. According to the witness, Hariri had interpreted Al-Assad's comments during the meeting as clear instructions to Hariri regarding the extension of President Lahoud's term. El-Sabeh then spoke about Hariri's decision to, on one hand, support the extension of President Lahoud's mandate, and, on the other hand, become part of the opposition through the Bristol Group. The Bristol Group was considered at that time to constitute a form of national reconciliation project which was aimed at reject the Syrian presence in Lebanon and requested a strong, democratic parliamentary system in the country.

On 17 March, El-Sabeh was asked to provide specific comments on a press article published in the Lebanese daily Al-Mustaqbal on 3 February 2005, which in part reported the results of what had occurred during the third Bristol Group meeting. The witness explained that the opposition represented at the Bristol Group had been supportive of international resolutions, including UNSC Resolution 1559. El-Sabeh also stated that UNSC Resolution 1559 had created a crisis between the Lebanese government and the UNSC. El-Sabeh then commented on a video of an event held at the Maronite archbishopric on 10 February 2005. After the meeting, Hariri expressed his position towards the upcoming elections and sent a clear political message to support the opposition. Commenting on a picture of Hariri and himself in the Parliament on the day of the former PM's assassination, El-Sabeh said that Hariri had sought to show up at the Parliamentary session with a big smile to prove to his opponents that his bloc was at ease. When asked by Judge Lettieri about the role of the Hezbollah in the political discussions with Hariri, El-Sabeh said that Hezbollah had not been at the forefront of the political confron-

tation with Hariri at the time; rather, they had been engaged in a dialogue, the witness testified.

On 17, 18 and 19 March, El-Sabeh was cross-examined by the Defence Counsel for Sabra. The Defence mainly focused on Hariri's relationship with former President Lahoud and El-Sabeh's knowledge of Al-Ahbash and its link to the Syrian-Lebanese security apparatus. El-Sabeh was also asked to provide additional information about the media campaign that had allegedly been organised by President Lahoud and Jamil El Sayed, the Director-General of General Security in Lebanon, against Hariri in 2004 to prevent his victory at the upcoming elections.

On 20 March, the cross-examination of Youssef, who had initially testified before the Trial Chamber in the week commencing 9 March, was concluded by the Defence Counsel for Ayyash, Badreddine and Sabra. After the conclusion of the cross-examination, the Trial Chamber heard further submissions by the parties in relation to a motion filed by Counsel for Sabra on 8 January 2015 requesting the Trial Chamber to make a finding of non-compliance to the Government of Lebanon.

Fouad Siniora, a former Prime Minister of Lebanon, testified before the Trial Chamber in person from 23 until 26 March. Siniora was a long-time friend and political ally of Rafiq Hariri. He had served as Minister in each of Hariri's cabinets from 1992 to 2004 before becoming PM from 2005 until 2009.

In his testimony on 23 March, Siniora described Hariri's relationship with the Syrian regime during the Presidencies of Hafez Al-Assad and Bashar Al-Assad, and the formation of Hariri's third cabinet in 1997. Siniora testified that Hariri had considered the Syrian Intelligence Service's interference in the cabinet formation process in Lebanon unacceptable.

On 24 March, Siniora told the Trial Chamber about an event that had happened in either late 2003 or early 2004, during which Hariri said that he had been the target of several assassination attempts by Hezbollah. Siniora was then questioned by the Legal Representative of the Victims (LRV). The LRV asked the witness about the importance of the establishment of the Special Tribunal for the victims, his role as PM in the creation of the STL and the atmosphere in Lebanon following the 14 February 2005 attack.

Siniora was cross-examined by the Defence for Badreddine, Oneissi, Sabra and Merhi from 24 to 26 March. The Defence asked about Hariri's development projects in Downtown Beirut, Hariri's meetings with Hezbollah representatives and the establishment of the Special Tribunal. With regard to the Special Tribunal, Siniora denied the assertion by the Defence that he had used it as a tool to achieve a Syrian withdrawal from Lebanon in his contacts with influential States such as the US, France, the UK, Russia and China.

Siniora also testified that the decision to transfer certain telecommunications data to the UNIIIC had been taken by Marwan Hamade, the Minister of Telecommunications at that time with the knowledge of the Cabinet. In addition, Siniora was questioned about the supervision of the crime scene of the 14 February 2005 attack and allegations that the Syrian–Lebanese security apparatus had been tampered with it, the possible tapping of Hariri's phones, Hariri's access to security-related documents, the arrest of four Lebanese Generals following Hariri's assassination and his knowledge of President Lahoud's security arrangements during his Presidency.

Siniora denied any knowledge of the meeting described in a leaked American diplomatic cable between the then Justice Minister Charles Rizk and the then US Ambassador to Lebanon Jeffery Feltman, in which both men had discussed the legal manoeuvring required to deflect the blame from Siniora's government should the Generals be released. Siniora was then asked by Defence Counsel whether he was aware of the alleged arbitrary nature of the detention of the four Generals and whether he had taken practical measures to bring about their release, especially after the United Nations Office of the High Commissioner for Human Rights issued a memorandum in November 2007 which declared the detention of two of the Generals as arbitrary. In response, Siniora told the court that some indeed thought their detention had been arbitrary, but he was relying on the opinion of the Lebanese judiciary, which had ordered their arrest.

On 26 March, Siniora's cross-examination was adjourned. He will return to complete his testimony at a later date.

Contempt Case against AL JADEED [CO.] S.A.L./NEW T.V.S.A.L (N.T.V.) and Karma Mohamed Tahsin Al Khayat (STL-14-05)

On 4 March, the Contempt Judge, Judge Nicola Lettieri, granted the Amicus Curiae Prosecutor's *Amicus* motion and admitted into evidence the audio-visual recording and written transcript of Khayat's suspect interview.

On 12 March, the Contempt Judge issued a decision, allowing the *Amicus* to amend the witness and exhibit lists. The Contempt Judge dismissed the *Amicus'* motion and motion's addendum in all other respects.

On 13 March, the *Amicus* submitted on behalf of the parties a table of agreed facts, listing 22 facts related to the indictment which the *Amicus* and the Defence agreed may be taken as proven. On 20 March, the *Amicus* applied for protective measures for three witnesses and requested that their identities be protected from disclosure and that their testimony be heard in closed session. On 30 March, the Defence responded that they did not oppose the use of pseudonyms for the three witnesses and that identifying information related to these witnesses be redacted from public documents. The Defence, however, opposed the *Amicus'* request for the witnesses to provide their testimony in closed session arguing that there are no proper grounds to justify such testimony.

On 25 March, the *Amicus* requested the Contempt Judge to order the redaction from its exhibits all names, email addresses or other internet accounts and telephone numbers of actual or former STL employees. He also sought the redaction of all names and signatures of persons employed by the Tribunal in the exception of those whom the *Amicus* intends to call to testify and the names of senior STL officials who are public figures and whose involvement in these matters is known or reasonably presumed. The *Amicus* further requested the redaction of all names and signatures of persons employed by the Tribunal appearing on witness statements and the transcripts of suspect interviews.

The *Amicus* also requested that:

- all parts of the Al Jadeed broadcasts of 5 to 10 August 2012, during which the identities of purported witnesses are exposed, to be played in closed session and be redacted from the transcripts of these broadcasts;
- all identifying information of these alleged witnesses be mentioned in closed session and redacted from public records;
- all identifying information of the alleged confidential Tribunal's witnesses be redacted from Al Akhbar's articles of 15 and 19 January 2013 and the Lebanese National News Agency article.

In order to facilitate the proper administration of the contempt trial which was due to start on 16 April 2015, on 26 March the Contempt Judge gave detailed directions on the conduct of the proceedings in accordance with Rule 130 (A) of the Tribunal's Rules of Procedure and Evidence (RPE).

Contempt Case against Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin (STL-14-06)

On 5 March 2015, the *Amicus* filed the pre-trial brief (PTB), together with the witness and exhibit lists in the case against Akhbar Beirut S.A.L. (Akhbar) and Ibrahim Mohamed Ali Al Amin. In its PTB, the *Amicus* argued that by publishing identifying information on purported confidential witnesses in the *Ayyash et al.* case, the Accused committed contempt and obstruction of justice, punishable under Rule 60 *bis* (A) of the RPE (*see next page*).

On the same day, pursuant to Rules 149 and 155 of the RPE, the *Amicus* requested the Contempt Judge to admit into evidence the statements of four witnesses in lieu of *viva voce* testimony and the associated exhibits.

On 9 March, Counsel appointed to represent Akhbar and Al Amin responded to the *Amicus'* motion, filed on 27 February 2015, seeking permanent non-disclosure of parts of the statements of two witnesses to the Defence and the interim non-disclosure of these witnesses' identities to the Defence. The Defence requested the Contempt Judge to dismiss the *Amicus* motion in all points and grant the Defence a

reasonable time to prepare its case following the Prosecution's disclosure pursuant to Rule 110 of the RPE.

STL Rules of Procedure and Evidence

Rule 60 *bis* (A)

The Tribunal, in the exercise of its inherent power, may hold in contempt those who knowingly and wilfully interfere with its administration of justice, upon assertion of the Tribunal's jurisdiction according to the Statute. This includes, but is not limited to, the power to hold in contempt any person who:

(i) being a person who is questioned by or on behalf of a Party in circumstances not covered by Rule 152, knowingly and wilfully makes a statement which the person knows is false and which the person knows may be used as evidence in proceedings before the Tribunal, provided that the statement is accompanied by a formal acknowledgement by the person being questioned that he has been made aware about the potential criminal consequences of making a false statement;

(ii) being a witness before a Chamber refuses or fails to answer a question without reasonable excuse including the situation described in Rule 150 (F);

(iii) discloses information relating to proceedings in knowing violation of an order of the Pre-Trial Judge or a Chamber;

(iv) without reasonable excuse fails to comply with an order to appear or produce documents before the Pre-Trial Judge or a Chamber; 65

(v) threatens, intimidates, causes any injury or offers a bribe to, or otherwise interferes with, a witness who is giving, has given, or is about to give evidence in proceedings before the Pre-Trial Judge or a Chamber, or a potential witness;

(vi) threatens, intimidates, offers a bribe to, or otherwise seeks to coerce any other person, with the intention of preventing that other person from complying with an obligation under an order of the Pre-Trial Judge or a Chamber; or

(vii) threatens, intimidates, engages in serious public defamation of, by statements that are untrue and the publication of which is inconsistent with freedom of expression as laid down in international human rights standards, offers a bribe to, or otherwise seeks to coerce, a Judge or any other officer of the Tribunal.

On the same day, Counsel requested the Contempt Judge to order the *Amicus* to disclose to the Defence the *Amicus*' confidential and *ex parte* reports referred to in the Decision of 31 January 2014 which would be useful for the preparation of the Defence case. The Defence further requested the Contempt Judge to order the *Amicus* to review the reclassification of all confidential and *ex parte* documents, as soon as possible. In the event that the request is denied, the Defence requested the Contempt Judge to certify the request for appeal. On 17 March, the *Amicus* filed the response to the Defence motion requesting disclosure of the *Amicus* confidential and *ex parte* reports referred to in the Decision of 31 January 2014. The *Amicus* requested that the Contempt Judge dismiss the Defence motion.

On 20 March, the Contempt Judge granted the *Amicus*' confidential application for non-disclosure filed on 19 February 2015 (first motion). In this respect, Judge Lettieri permitted the *Amicus:*

- to withhold from the Defence the identities of the witnesses identified in the respective annex to the first motion until further order; and
- to redact the statements of the said witnesses as proposed in the respective annex.
- The Contempt Judge dismissed the first motion in all other respects.

The Contempt Judge further granted the *Amicus*' application for non-disclosure of portions of witness statements and postponement of disclosure, filed on the 27 February 2015 (second motion). He ordered that the *Amicus* was permitted:

- to permanently withhold from the Defence certain parts of the statements of the two witnesses referred to in the second motion;
- to permanently redact these parts of the statements of the witnesses as proposed in the respective confidential and *ex parte* annex to the second motion;
- to withhold from the Defence the identities of the two witnesses referred to in the second motion until further order; and
- to further redact the statements of these witnesses as proposed in the respective confidential and *ex parte* annex to the second motion until further order.

The *Amicus* was ordered to provide the redacted statements of the two witnesses to the Defence immediately.

The Contempt Judge dismissed the second motion in all other respects.

On 23 March, Counsel appointed to represent Akhbar and Al Amin responded to the *Amicus* motion for Admission of Written Statements under Rule 155 of the RPE, which sought the admission of four witness statements in lieu of their oral testimony. Counsel requested the Contempt Judge to reject the *Amicus*' motion or, alternatively, to grant the Defence the possibility to cross-examine these four witnesses.

On 30 March, Counsel for Akhbar and Al Amin filed its PTB, in which it argues, as a preliminary matter, that the statements of many key Prosecution witnesses have still not been disclosed to it in non-redacted form which hinders its preparations before trial. The Defence also argues that the Prosecution as not disclosed any evidence to support the contempt charge brought against both the Accused under Rule 60 *bis* (A).

DEFENCE ROSTRUM

Charles Taylor: Denial of Motion to Serve Sentence in Rwanda

By Daynelis Vargas

On 28 July 2014, the ADC-ICTY published an article on ex-Liberian President Charles Taylor in the Rostrum section of its newsletter. The article discussed Taylor's 2014 motion in which he requested that he be transferred from Her Majesty's Prison Frankland, near Durham in the United Kingdom, to Mpanga Prison in Rwanda. Taylor is serving a 50 year sentence after being convicted on Appeal by the Special Court for Sierra Leone (SCSL). He was convicted on eleven counts of war crimes, crimes against humanity and other violations of international humanitarian law committed during the Sierra Leone Civil War (1991-2002). After being part of the First Liberian Civil War (1989-1996), Taylor was elected to the presidency of Liberia in 1997.

By 2003, Taylor had lost control of a large percentage of Liberia. Later that year he resigned his presidential duties and went into exile in Nigeria. The Accused was taken into the custody of the Court in 2006 after Liberian President elect Ellen Johnson Sirleaf formally demanded that Taylor be extradited to Sierra Leone, where he was detained by UN Authorities.

The motion was submitted to the Residual Special Court for Sierra Leone (RSCSL) and consisted of three principle claims. The first being that Taylor's conditions are such that he is held in isolation as he resides in the prison hospital wing as a precaution for his own safety. The second claim was that there has been at least one threat to Taylor's life in the form of a letter from within the prison on which Taylor had not received adequate information or protection during the time the motion was filed. Lastly, the motion argued that Taylor's right to family life is being violated. Taylor's family has been unable to enter the United Kingdom because they have not been allowed into UK territory upon various visa applications, despite stating that they intend to leave the UK after their visit.

The Prosecution opposed the motion and argued that if Taylor were to be imprisoned in Rwanda, this would "increase the possibilities available to Taylor to undermine peace, security, stability and good order in Liberia and the West-African sub-region [...]".

The Defence motion was rejected in its entirety on 30 January (released publicly on 25 March), on the grounds that the Appeals Chamber found that the location in which Taylor is being kept does not infringe on his rights, given that the conditions are intended to secure him and the conditions of imprisonment are in accordance with international standards.

The Appeals Chambers also noted that prisoners do not have the right to choose the place were they are imprisoned. Furthermore, the Appeals Chamber cited UN Security Council resolution 1688, parts of which claims that the presence of Taylor in the West Africa Sub-Region could threaten the peace and hinder the security of the region.

Lastly, on the claims that Taylor's rights to family life are being violated, the Appeals Chamber found that this was not violated. According to the Appeals Cham-

ber's findings, the inability of Taylor's family to obtain a visa to the UK was a result of the family's failure to provide information showing that they intended to leave the UK after their visit. This is in contrast to his detention in The Hague, during which his family was able to visit on many occasions.

Charles Taylor is represented by ADC-ICTY Vice-President Christopher Gosnell and John Jones QC.

Career Development Committee Lecture

By Karolina Mikulska

On 9 April, ADC-ICTY interns participated in a brown-bag event, sponsored by the Career Development Committee (CDC), a group which is composed of Prosecution, Defence and Chambers inters of the International Criminal Tribunal for the Former Yugoslavia (ICTY). The CDC was created in 2013 and is an organisation committed to advance the careers of young professionals.

The event was a discussion with current ICTY staff members on how to start a career in international law and what opportunities there are for young professionals in this field.

The discussion was led by ICTY Prosecution staff April Carter, Luke Fadem and Edward Jeremy. The speakers began by summarising their professional backgrounds and explaining how they ended up in their current position. They also explained the different positions that are available for young professional in the area of international law.

Carter talked about the various strategies for landing a job in international law, the importance of internships and networking, the details of the Young Professionals Programme (YYP) exam and the numerous possibilities of gaining some professional experience in the private sector before entering the United Nation (UN) system. Carter pointed out the significance of transferable skills in the constantly changing job market and the positive influence that field experience has on the way a candidate is perceived in the job market.

CDC Lecture

Jeremy shared with the participants his story of looking for a job within the UN. His personal experience shows that the recruitment process in the UN is very competitive, requires many tries and persistence. Thus, some determination is necessary to succeed.

Fadem explained the documents an applicant is required to have in order to be ready for the recruitment process. He focused on the structure of a job application and pointed out the fact that CVs and cover letters have to be original and have to show candidate's creativity, attention for detail and enthusiasm.

ADC-ICTY Intern Field Trip to the STL

By Isabel Meyer-Landrut

On 1 April, ADC-ICTY interns visited the Special Tribunal for Lebanon (STL) in Leidschendam, Den Haag. The interns were able to visit the court room and representatives of Chambers, Prosecution, Defence and Registry gave detailed descriptions about the work of the Tribunal and an in-depth description of the ongoing case at the STL.

The representative of Chambers, Manuel Ventura, talked about the founding of the STL by the United Nations and the special structure of the Tribunal, as well as the legal background. Ventura also gave an overview of the ongoing case *Ayyash et al.* (STL-11-01), which has five Accused who are tried *in absentia*. There are currently three ongoing cases since August 2011, two of which are contempt proceedings.

After this very informative talk, a representative of the Office of the Prosecutor came to speak about the main case *Ayyash et al.* in more detail. After the attack in February 2005 on former Lebanese Prime Minister Rafiq Hariri, several suspects of the case were identified by following up phone calls, SMS contacts and geographical locations. The chain of com-

mand, the strategy of the assassination, as well as the strategy pursued by the Prosecution was explained in detail to the group of ADC-ICTY interns.

The representative of the Defence Office explained that at the STL, the Defence is an independent office within the Tribunal and receives a fixed budget from the UN. The Defence Office of the STL is not, *per se,* defending the Accused, but rather providing support to the Defence lawyers and their teams, who are appointed by the Defence Office. This can manifest itself as support in legal drafting or providing facilities. The establishment of such a separate Defence Office, unlike at the other courts and tribunals, is based on the principles of the right to a fair trial and the equality of arms.

The Registry was the last section of the Tribunal that gave a presentation. The representative explained the role of the Registry within the Tribunal and its division. The Registrar is generally responsible for the external relations, including relations with states and non-governmental organisations. External relations also include public relations and the outreach of the office. Another section of the Registry is the Judicial Support Section, which includes the Victims' Participation Unit, something unique to the STL, the Victims and Witnesses Unit, Court Management Services and the Language Service Section. The Registry is the administrative organ of the Tribunal.

The visit at the STL was very informative and the ADC-ICTY interns were able to compare the ICTY's structure and mandate with that of the STL. The ADC -ICTY would like to express its gratitude to the staff involved in the organisation of this visit.

Upcoming Advocacy Training Sessions

16 May 2015	**Christopher Gosnell**—*Preparing Oral Arguments*
6 June 2015	**Marie O'Leary**—*Witness Proofing*
22 August 2015	**Dragan Ivetić**—*Expert Witnesses*

Time and Location:

9:30 am—5:00 pm, ICTY Press Room

Churchillplein 1, 2517 JW The Hague

Further information is available at:

http://adc-icty.org/home/opportunities/advocacy%20training.html

Certificates are available upon request. The registration fee is 25 Euros, a discount is offered to ADC-ICTY members, Defence staff and Defence interns at the ICTY.

Contact *adcicty.headoffice@gmail.com* to register.

ASSOCIATION OF DEFENCE COUNSEL

PRACTISING BEFORE THE ICTY

ADC-ICTY / ICLB Mock Trial

Date:	Monday 6 to Saturday 11 July 2015
Location:	ICTY, Churchillplein 1, 2517 JW The Hague
Application:	by 15 May 2015 to *adcicty.headoffice@gmail.com*
Further info:	*http://adc-icty.org/home/opportunities/mock%20trial%202015.html.*

Come and join us for a week of hands-on evening training sessions for young professionals in the field of international criminal law. These practical sessions given by experienced Defence Counsel will successfully prepare you for your career in this field.

Experience the atmosphere in the ICTY courtrooms and practice your acquired skills in front of Judges and Counsel from the International Courts and Tribunals!

The Mock Trial is organised with the support of the International Criminal Law Bureau.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Julien Maton, **"ADC-ICTY Advocacy Training Sessions 2015"**, 9 April 2015, available at: http://tinyurl.com/nkroqnv

Michael G. Karnavas, **"Sketches of a Bar of the ICC Counsel"**, 9 April 2015, available at: http://tinyurl.com/kk8m49r

Paul Bradfield, **"Kwoyelo Denied Amnesty"**, 9 April 2015, available at: http://tinyurl.com/olu505y

Online Lectures and Videos

"International Law", by Pierre d'Argent (Universite Catholique de Louvain), 30 April - 25 June 2015, available at: http://tinyurl.com/mljc88k

"Transforming Civil Conflicts", by Modus Operandi and The Network Univerity, 1 - 26 June 2015, available at: http://tinyurl.com/mvhmluv

"The Changing Global Order", by Madeleine Hosli (University of Leiden), Coursera, 1 June - 13 July 2015, available at: http://tinyurl.com/p8kn8w6

PUBLICATIONS AND ARTICLES

Books

Evans, Malcolm & Pethoff, Peter & Rivers, Julian (2015). **Changing Nature of Religious Rights under International Law**, Oxford University Press.

Lomasky, Joren E. & Teson, Fernando R. (2015). **Justice at a Distance, Extending Freedom Globally**, Cambridge University Press.

Nollkaemper, Andre & Jacobs, Dov (2015). **Distribution of Responsibilities in International Law**, Cambridge University Press.

Articles

Kulick, Andreas (2015). **"Article 60 ICJ Statute, Interpretation Proceedings, and the competing concepts of Res Judicata"**, Volume 28, Issue 1, Leiden Journal of International Law.

Nouwen, Sarah & Werner, Wouter (2015). **"Monopolizing Global Justice: International Criminal Law as Challenge to Human Diversity"**, Volume 13, Issue 1, Journal of International Criminal Justice.

CALL FOR PAPERS

The First SELS Global Workshop on for Junior Empirical-Legal Scholars has issued a call for papers for its conference taking place between 17 and 18 December at the Hebrew University of Jerusalem.

Deadline: 30 May 2015 More Info: http://tinyurl.com/lh4n8jz

Fordham Law School has issued a call for papers on the Ethics & Regulation of Lawyers Worldwide: Comparative and Interdisciplinary Perspectives.

Deadline: 1 June 2015 More Info: http://tinyurl.com/o4ujbvn

The Santander Art and Culture Law review has issued a call for papers on terrorism on non international armed conflicts & and the protection of cultural heritage.

Deadline: 30 June 2015 More Info: http://tinyurl.com/k37cdf8

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Any contributions for the newsletter should be sent to Isabel Düsterhöft at iduesterhoeft@icty.org

WWW.ADC-ICTY.ORG

EVENTS

Atrocity Crimes Litigation Year-in-Review (2014-15)
Date: 8 May 2015
Location: The Hague Institute for Global Justice
More Info: http://tinyurl.com/p25cund

ESIL - European Court of Human Rights Conference
Date: 5 June 2015
Location: Strasbourg, France
More Info: http://tinyurl.com/m4le98x

CLSGC Annual Seminar Series: Constructive Links or Dangerous Liaisons? The Case of Public International Law and European Union Law
Date: 25 - 26 June 2015
Location: London, UK
More Info: http://tinyurl.com/mrdrfw6

OPPORTUNITIES

Associate Human Rights Officer (P-2), El Fasher
AU / UN Hybrid Operation in Darfur
Closing Date: 4 May 2015

Assistant Information and Evidence Officer (P-1), The Hague
International Criminal Court, OTP
Closing Date: 14 May 2015

Assistant Evidence Reviewer (P-1), The Hague
Special Tribunal for Lebanon, Registry
Closing Date: 16 May 2015

Intern, Humanitarian Affairs, New York
Office of the Coordination of Humanitarian Affairs
Closing Date: 20 May 2015

The ADC-ICTY would like to express its sincere appreciation and gratitude to Eleni Ntogka, Karolina Mikulska and Matthew Lawson for their contribution to the Newsletter, we wish them all the best for the future!