ADC-ICTY Newsletter, Issue 17

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Head of Office: Dominic Kennedy
Coordinator: Lisa Scott
Contributors: Jovana Paredes, Kushtrim Zymberi, Sofie Breslau, Matthew Odgers and Fernando Dutra

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* The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the International Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing before the ICTY.

Prosecutor v. Hadžić (IT-04-75)

Goran Hadžić

On 20 July, Goran Hadžić was arrested in Serbia. He was the last remaining fugitive indicted by the ICTY to be captured and transferred to the Tribunal. Hadžić has been a fugitive since July 2004 when the indictment charging him with crimes against humanity and violations of the laws or customs of war committed in Croatia was made public. The amended indictment was filed on 22 July 2011.

Hadžić, former President of the self-proclaimed Republic of Serbian Krajina, was indicted for crimes against humanity and war crimes allegedly committed in eastern Slavonia, Croatia, between 1991 and 1992. The indictment against Hadžić alleges that he was a co-perpetrator in a joint criminal enterprise and that the aim of this enterprise was to permanently and forcibly remove a majority of the Croat and other non-Serb population from one-third of the territory of the Republic of Croatia. Among the members of the alleged joint criminal enterprise were Jovica Stanišić, Franko Simatović and Vojislav Šešelj who are currently standing trial at the ICTY, as well as Slobodan Milošević, the former President of Serbia. The indictment claims that the joint criminal enterprise came into existence no later than 25 June 1991 and continued until December 1993.

On 21 July 2011, the case was assigned to Trial Chamber II consisting of Judge Delvoie, Judge Hall and Judge Mindua, with Judge Delvoie presiding. Due to the judicial recess, Judge Kwon appointed himself presiding judge for the purpose of the initial appearance of 25 July. Pursuant to Rule 62(A)(iii), Hadžić was given an opportunity to enter a plea on the charges against him or to defer the plea for 30 days. The accused chose to defer the plea for 30 days. If Hadžić chooses not to enter a plea at his next appearance, a plea of 'not guilty' will be entered on his behalf by the judge.

Prosecutor v. Karadžić (IT-95-5/18-I)

On 11 April 2011 Karadžić filed a "Supplemental Submission: Motion for Subpoena to Interview: General Sead Delić and Brigadier Brnanović". In it, he requested the Chamber to issue, pursuant to Rule 54 of the Tribunal's Rules of Procedure and Evidence, subpoenas to General Sead Delić, the former Commander of the Bosnian Army's 2nd Corps headquartered in Tuzla, and Brigadier Refik Brnanović, the former Commander of the Bosnian Army's Black Wolves Special Forces Unit. The subpoenas would compel them to submit to an interview by Karadžić or his legal advisors. Karadžić argued that there are reasonable grounds to believe that both General Delić and Brigadier Brnanović will have information about arms smuggled into Tuzla in February 1995 which then "found their way to Srebrenica".

It was submitted that Karadžić's Legal Advisor wrote to the BiH Criminal Defence Section to request assistance in facilitating the interviews. General Delić was subsequently contacted, but he declined to be interviewed by the Accused or his legal advisor. On the other hand, efforts to contact Brigadier Brnanović had been unsuccessful by the time the Chamber decided on the motion. On 5 July 2011, the Chamber noted that it was satisfied that there were no other means available to the Accused to obtain information sought through these two individuals. Nonetheless, it only granted the motion in part. It requested more information regarding the efforts made to contact Brigadier Brnanović, while granting the motion to subpoena General Delić to submit to an interview.

Rule 66(B) ICTY RPE

The Prosecutor shall, on request permit the defence to inspect any books, documents, photographs amd tangible objects in the Prosecutor's custody or control, which are materiel to the preparation of the defence, or are intended for use by the Prosecutor as evidence at trial or were obtained from or belonging to the accused

On 7 July 2011, the Chamber issued a decision on the Accused's "Motion to Compel Inspection of Material Affecting the Credibility of Expert Witness Christian Nielsen", filed publicly on 30 June 2011 and the "Prosecution's Motion to Reclassify Document Status and Response to Karadžić's Motion to Compel Inspection of Material Affecting the Credibility of Expert Witness Christian Nielsen", filed confidentially on 1 July 2011. The Accused requested the Chamber to order the Prosecution pursuant to Rules 66(B) and 68 of the Rules of Procedure and Evidence of the Tribunal, to allow him to inspect "all memoranda of communications, or the communication themselves, with Ari Kerkannen concerning the reports he authored that were attributed to Christian Nielsen" Karadžić submitted that his would serve him to prepare his defence and challenge the credibility of Prosecution's proposed expert, Christian Nielsen. The Prosecution responded immediately by requesting to reclassify the Accused's motion as confidential because it claims that the Accused is attempting "to publish information which is grossly misleading, to the point of being defamatory". Further, the Prosecution requested the Chamber to deny the motion in its entirety because the Accused failed to make a prima facie showing of its materiality for the preparation of his defence and because the request was untimely.

Radovan Karadžić

The Chamber denied the Prosecution's request to reclassify the document in question, noting that the Accused is free to challenge the credibility of witnesses in his case as he sees fit, save for the use of obscene or offensive language. The Chamber also denied the Accused's request, noting that it has sufficient information at its disposal to challenge the credibility of the expert witness, Christian Nielsen. Finally, the Chamber noted that Karadžić was in possession of most of his information since March 2011 and only decided to file the motion the day before Nielsen was scheduled to testify.

The Prosecution was once more found to be in violation of rules related to disclosure, with the 7 July 2011 Chamber decision on the Accused's Fifty-first and Fifty-second Disclosure Violation Motions. The Prosecution failed to disclose interviews and witness statements of Nebojša Ristić, one of the Accused's former security detail. However, it denied the relief sought by the Accused, namely the suspension of the trial and appointment of a special master, as well as the requested postponement of or exclusion of Ristić's testimony. The Chamber reasoned that the documents in question were "not of such significance or so voluminous that their late disclosure has had a detrimental impact on the Accused's overall preparation for trial or the approach to his defence".

There has been a complex exchange of correspondence between the Accused, the Chamber, the Creation government and Miroslav Tudman related to the Accused's request to obtain information either from the government of Croatia or Miroslav Tudman, former director of the Croatian Intelligence Service ("HIS"). The information sought by Karadžić deals with alleged arms smuggling, especially through the use of UN convoys, which made their way into Srebrenica. Finally on 14 July 2011, the Chamber issued a decision on the Accused's Motion to Subpoena Tudman, granting it and ordering Croatia to comply with instructions of the decision.

Prosecutor v. Šešelj (IT-03-67)

The Registrar of the Tribunal filed a submission on 11 July 2011 in response to claims made by Vojislav Šešelj during his initial appearance at his third contempt of court case. At the hearing of 6 July, Mr Šešelj claimed that persons assisting him with his defence could not attend the hearing as the Registry had refused to cover their travel costs.

Vojislav Šešelj

In the submission, the Registrar clarified that only accused who have been declared indigent or partially indigent are entitled to public funding for their defence. The Registrar noted that the decision to provide Šešelj's Defence 50% of resources usually allocated to a totally indigent accused pertains only to the main case against Šešelj, and not to the third contempt case. Furthermore, that decision was based on considerations related to the fairness and expeditiousness of the main trial and not on a finding of indigence. Consequently, that decision cannot be relied upon as legal basis for the distribution of funds in the third contempt case against Šešelj.

The initial indictment for **Vojislav Šešelj** was made public on 14 February 2003, followed by his surrender on 23 February and his transfer to the ICTY on 24 February 2003. The trial initially commenced on 27 November 2006 in the absence of Šešelj who had been on hunger strike for 26 days. Due to Šešelj's health, the trial was adjourned until 7 November 2007. The presentation of evidence commenced on 11 December 2007. Since then, the trial has been suspended twice due to previous contempt cases and is one of the longest cases pending before the ICTY.

Stanišić and Župljanin (IT-08-91)

On 11 April, the Stanišić Defence opened their case. In its opening statement the defence emphasized that it would, unlike the context presented by the prosecution, present the Trial Chamber with the proper context by explaining the fundamental processes which took place in BiH and former Yugoslavia at the time. The defence insisted it would show that the state of lawlessness which existed in BiH in the eve of the interethnic clash, played a significant role in the events that ensued.

Further, the defence suggested that Mico Stanišić as Minister of Interior of Republika Srpska as well as his aides at the Ministry of Interior, instructed and continued to insist on consistent and strict implementation of the law and regulations for the benefit of all citizens irrespective of their ethnicity and specifically maintaining law, order and security .

The Defence concluded its opening statement by saying :

> *".....crime is the last thing Mico Stanišić would justify, regardless of who committed it and what the motives were. As he, himself, has said on several occasions, his conscience is clear. He has been saying from the moment he was indicted that the Prosecution allegations and charges are unfounded. He asserts that these allegations and charges are without foundation and utterly erroneous. Stanišić believes that the evidence that has been adduced so far and that which has yet to be presented to the Chamber will give a clear picture and completely answer all the charges against him, and that at the end of this trial you will acquit him of these charges".*

From 12 April to 21 April, Andrija Bjelošević took the stand as the first Defence witness. As chief of the CSB Doboj since 1991, Bjelošević testifed regarding the functioning of the CSB Doboj before and after hostilities broke out and the problems he faced at the time.

On 2 May to 10 May, Prof.. Mladen Bajagić testified as the Defence's first expert witness. As a police expert, Bajagić testifed regarding the structure of the Ministry of Internal Affairs of both the Socialist Republic of Bosnia and Herzegovina (SRBiH MUP) and of the RS MUP. Bajagić's expert report described the creation of the RS and its organs, including the powers and responsibilities of the Minister for Internal Affairs and other members of the MUP and the disciplinary system that existed within the RS MUP.

Prof. Stevo Pašalić testified from 10 May to 13 May as a demographics expert. His report contained information about the ethnic composition of Bosnia and Herzegovina, tracing the history of migrations particularly during 1992. Pašalić's report concluded that the extensive demographic changes in Bosnia and Herzegovina occurred due to the migrations of the population from 1992 to 1995 included both voluntary and spontaneous movements and forced migrations. These migrations were not exclusively forced migrations.

Dragan Andan former Chief of Police of RS testified from 26 May to 3 June. Andan spoke of Stanišić's reputation for being strict regarding professionalism and Stanišić's insistence in treating everyone the same. Andan described the RS MUP activities regarding the arrest of a paramilitary formation called the Yellow Wasps.

The initial indictment of **Mico Stanišić** was made public on 10 March 2005.The indictment alleges that from 1 April 1992 Stanišić was Minister of the newly established Serbian Ministry of Internal Affairs in Bosnia and Herzegovina (RS MUP). According to the indictment, Stanišić and Župljanin participated in a joint criminal enterprise (JCE) as co-perpetrators. The objective of the alleged JCE was to permanently remove Bosnian Muslims, Bosnian Croats and other non-Serbs from the territory of the planned Serbian state by means which included the commission of crimes under Article 3 and 5 of the ICTY Statute. The defence of Stanišić and Župljanin deny all the charges.

Milomir Orašanin testified from 6 June to 10 June. He was an inspector in the Crime Prevention Administration of the RS MUP in 1992.. He described inspection tours to Foča, Rudo, Višegrad, Zvornik, Skelani, Doboj and Banja Luka.

From 11 June to 24 June Simo Tuševljak, current Chief of RS MUP department for investigations of war crimes, testified about his experience being a professional policeman and coordinator of general crime prevention in Sarajevo before the war. Tuševljak continued to work in Sarajevo after the split in the MUP and became chief of crime prevention of the CSB Sarajevo. He described the situation in Sarajevo preceding the split in the MUP and described the area's descent into chaos.

From 6 July to 19 July Goran Mačar testified about his time spent as Chief of General Crime Prevention in the Sarajevo SUP and as Head of the Crime Prevention Administration in the RS MUP in the second half of 1992. Mačar attended an address by Stanišić at Sokolac Stadium where Stanišić addressed the legality of the formation of the Serbian MUP on 30 March 1992. Stanišić stressed professionalism and asked the police to perform their duties irrespective of politics. In his speech he urged the Serbian MUP to protect all of its citizens. As an extension of this ideal, Mačar described the Serbian MUP's policy to investigate crimes regardless of the ethnicity of the victims. He also discussed the problems the RS MUP faced due to lack of documentation shortage of personnel, and communications problems.

Mico Stanišić

The Defence filed "Mr. Stanišić's Motion for Provisional Release During the Upcoming Summer Court Recess" on 1 June. The Prosecution responded by saying that Stanišić posed a substantial flight risk and that no compelling humanitarian grounds were listed for the provisional release. In its decision the Trial Chamber found there were no guidelines for deciding what is appropriate to do in these circumstances. Instead, the Chamber found that in Tribunal's jurisprudence, most decisions have been guided by policy concerns and not necessarily internationally applicable legal standards, such as the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Trial Chamber held that Stanišić always abided by the terms and conditions of his provisional release and in the opinion of the Chamber would appear for trial and would not pose a danger to any victim if released. However, the Trial Court felt bound "due to the overriding effect of [the] Appeals Chamber's precedent [...] that the Motion must be denied for lack of 'compelling humanitarian grounds.'" The Defence appealed the decision on 8 July. The Decision of the Appeals Chamber is still pending.

The Stanisic Defence called in its case a total of 5 witnesses plus 2 experts . Their testimonies took over 80 hours of direct and over 70 hours of cross examination. After almost 60 court days the Defence closed its case, subject to a bar table motion, which was filed on 22 July 2011.

Appeals Chamber Affirms Florence Hartmann's Contempt Conviction

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

In September 2009 the Trial Chamber found Hartmann guilty of disclosing the contents, purported effect and confidential nature of two Appeals Chamber Decisions from the *Prosecutor v. Slobodan Milošević* case in her book entitled *Paix et Châtiment* in 2007 and in an article entitled 'Vital Genocide Documents Concealed' in 2008. The Trial Chamber sentenced Hartmann to pay a fine of 7,000 Euros.

The Appeals Chamber held that Hartmaan had knowingly and willfully interfered with the administration of justice by disclosing information in violation of an order of the Appeals Chamber dated 20 September 2005 and an order of the Appeals Chamber dated 6 April 2006, by writing the book and the article. In dismissing Hartmann's appeal the Appeals Chamber stated that the confidential issuance of a decision by a Chamber constitutes an order for non-disclosure of the information contained therein. Only the Chamber can determine what aspects of a confidential decision may be disclosed. This determination cannot be made by a party to the case. Equally, this determination can-

not be made by third parties. Both the Appeals Chamber decisions used by Hartmann remained subject to an order of non-disclosure. The Appeals Chamber stressed that Hartmann was in contempt for revealing the confidential legal reasoning contained in those decisions.

The Appeals Chamber addressed the allegations that the right of Hartmann to freedom of expression as a journalist was being infringed. It held that the restrictions contained in the two Appeals Decisions were prescribed by law (as the protective measures were granted pursuant to Rule 54 *bis*), they were proportionate and were necessary to protect against the dissemination of confidential information necessary for the protection of public order. Because of these considerations, these restrictions came within the ambit of Article 19 of the International Covenant on Civil and Political Rights (ICCPR), which allows restrictions to the freedom of expression.

Florence Hartmann

In upholding the judgement of the Trial Chamber, the Appeals Chamber agreed with the Trial Chamber's finding that Rule 54 *bis* of the Tribunal's Rules permits the Tribunal to impose confidentiality in an effort to secure the cooperation of sovereign states and that the actions of Hartmann may hinder state cooperation with the Tribunal in relation to the provision of evidence.

The judgement of the Appeals Chamber can be found at:

http://www.icty.org/x/cases/contempt_hartmann/acjug/en/110719_judgement_hartmann.pdf

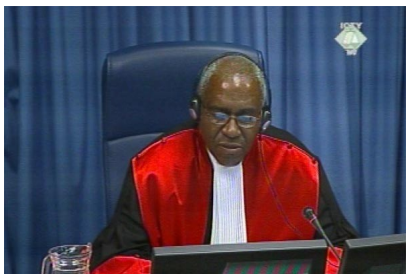
Rule 77

Contempt of the Tribunal

(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, including any person who:
(ii) discloses information relating to those proceedings in knowing violation of an order of a Chamber;

Prosecutor v. Krajišnik (IT-00-39)

On 11 July 2011, President Robinson issued a decision denying Momčilo Krajišnik's motion for early release. Krajišnik was a high ranking member of the Bosnian Serb leadership and was convicted of deportations, forcible transfer, and persecution of non-Serb civilians committed during the conflict in Bosnia and Herzegovina. He was sentenced to 20 years imprisonment by the Appeals Chamber on 17 March 2009 and was transferred to the United Kingdom to serve the remainder of his sentence on 4 September 2009.



President Robinson

In the decision, President Robinson noted that Krajišnik has "displayed some – albeit very limited - evidence of rehabilitation". However President Robinson considered that the crimes committed by Krajišnik are of a "very high gravity". Additionally, President Robinson stated that the practice of the Tribunal is to only consider prisoners who have served two-thirds of their sentence as eligible for early release. Mr. Krajišnik will have served two-thirds of his sentence in August 2013.

News from International Courts and Tribunals

Extraordinary Chambers in the Courts of Cambodia

Christopher Ford, Legal Intern, Defence Support Section

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Case 002 – Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith

On 29 June 2011, the Initial Hearing for Case 002 continued, concluding the debate on issues regarding the applicability of the domestic statute of limitation to grave breaches of the Geneva Conventions and on whether grave breaches of the Geneva Conventions had reached the status of a *jus cogens* norm under international law. Next, the parties made submissions on whether the ten-year statute of limitations in the 1956 Cambodian Penal Code would prevent the prosecution of the domestic law offenses of murder and torture. The discussion then turned to the means of reparations available to the civil parties under Internal Rule 23 *quinquies* 3(b).

Also on 29 June 2011, the Defence for Ieng Thirith filed an objection to the Trial Chamber's decision to put the medical report by Dr. A. John Campbell concerning the Accused Ieng Thirith's health on the confidential portion of the case file. The Defence asserted that the report should remain on the strictly confidential portion of the case file so as to protect Ieng Thirith's right to a confidential relationship between doctor and patient. If the report was to be placed on the confidential portion of the case file, it would then be available to all parties in the case, including the numerous civil parties. On 6 July 2011, the Nuon Chea Defence adopted the Ieng Thirith objection in its entirety and joined the Ieng Thirith Defence in seeking specific relief with respect to Dr. Campbell's medical report on the Accused Nuon Chea.

Ieng Thirith

On 30 June 2011, the Initial Hearing for Case 002 continued with discussions of the proposed witness list. The Defence Teams raised their concerns that important witnesses were being left out of the proceedings, and the Accused Khieu Samphan addressed the court to express his concerns that only the prosecution's witnesses were being admitted.

Ieng Sary

On 1 July 2011, the Pre-Trial Chamber issued a decision on the reconsideration of the admissibility of civil party applications. The Pre-Trial Chamber decided to grant civil party status to several Khmer Krom (ethnic Cambodians who had been living in Vietnam) applicants, on the grounds that upon their return to Cambodia, it was likely that they suffered persecution from the Democratic Kampuchea government as suspected Vietnamese sympathizers. The applications were decided on an individual basis, and 1728 new civil parties were added in total.

On 7 July 2011, the Ieng Sary Defence requested that Dr. Campbell's geriatric report regarding Ieng Sary be made public. The Defence wished to promote transparency in the proceedings and to explain to the public that, due to his poor health, the Accused Ieng Sary frequently needs to leave the courtroom during the proceedings. Throughout the initial hearing, Ieng Sary frequently left the court room to use the restroom and at times was permitted to view the hearing from a holding cell.

On 11 July 2011, the Defence for Khieu Samphan filed a request to add witnesses to the tentative list for the first phases of trial. The request expanded upon the Accused Khieu Samphan's concerns raised during the initial hearing, specifically that 93.75% of approved witnesses have been proposed by the Co-Prosecutors. The Defence requested that Khieu's proposed witnesses be approved for the first four phases of trial and failing that, that they be summoned during the later phases of the trial instead.

Khieu Samphan

Case 003

On 13 July 2011, the Pre-Trial Chamber, presiding over Robert Hamill's appeal against the Co-Investigating Judges' order to reject his application under Rule 23 *bis* to be constituted as a Civil Party in Case 003 proceedings, notified the parties that the Chamber will decide on the appellant's request to suspend the deadline for his appeal pending access to Case Files 003 and 004, at the same time as its decision on the substance of the appeal.

Rule 23 *bis*. Application and admission of Civil Parties

1. In order for Civil Party action to be admissible, the Civil Party applicant shall:

a) be clearly identified; and

b) demonstrate as a direct consequence of at least one of the crimes alleged against the Charged Person, that he or she has in fact suffered physical, material or psychological injury upon which a claim of collective and moral reparation might be based.

Defence Rostrum

Dutch Government found liable for actions of Srebrenica Peacekeepers

On 5 July 2011, the Court of Appeal's in The Hague found that the State of The Netherlands was responsible, through the actions of Dutchbat, for the deaths of three Bosnian Muslim men during the evacuation from Srebrenica 1995.

The case was brought by relatives of an electrician for Dutchbat and a Dutchbat interpreter, who lost his father and brother, against the State of the Netherlands. The interpreter and the electrician, along with their families, had sought refuge in the Dutchbat compound during the evacuation from Srebrenica in 1995. Dutchbat expelled the brother of the interpreter and the electrician from the compound and the father of the interpreter voluntarily left the compound with his son. The three men were killed after leaving the Dutchbat compound.

General Janvier

On 10 September 2008, the District Court in The Hague denied the claim against the Dutch State. The District Court found the acts and omissions of Dutchbat during the evacuation in Srebrenica should be considered as those of the United Nations. The court went on to say that the State would be liable if Dutchbat had followed the orders of the national authorities or if the State had order Dutchbat to back out of the structure of the UN. However, based on the assertions and facts put forth by the claimant, the District Court "could not find for attribution to the State of The Netherlands and thus, denied the claim".

On 5 July 2011, the Court of Appeal in The Hague overruled the lower court's decision. The State brought the defence that the Dutchbat military was not responsible for the actions of Dutchbat because they had acted under the auspices of the UN. The Court of Appeal held that Dutchbat was acting under the command of the UN, however, after the fall of Srebrenica the Dutch Government became more actively involved with Dutchbat and with the evacuation of the refugees. The Court of Appeal ruled that this created an extraordinary situation in which the effective control of Dutchbat was transferred from the UN to the Dutch government.

Colonel Karremans

On 11 July 1995, the Dutch government, together with the UN, decided to evacuate Dutchbat and the refugees. This was an important start of the transition period due to Dutchbat's assistance in the handling of the refugees. During a meeting on the 12th of July 1995, Colonel Karremans, the commander of Dutchbat, and General Mladic agreed that the local personnel of Dutchbat could go with the Dutchbat evacuation. The court showed the involvement of the Dutch by referring to a meeting in Zagreb between Van Ball and Van de Breemen, representing the Dutch government, and General Janvier, representing the UN, on the evening of 11 July 1995.

In addition, the court looked at the double role of general Nicolai who was the negotiator on behalf of both the Dutch government and UNPROFOR. Nicolai did not usually receive orders from the Netherlands but during the evacuation of Dutchbat, that changed. Nicolai forwarded the instructions that he received on 13 July 1995 to Dutchbat. The court found that the treatment of the aforementioned Muslim men by Dutchbat is directly connected to the instructions and decisions of the Dutch government. The Court of Appeal found that if the Dutch government had ordered Dutchbat to take the refugees with them they would have followed these orders. The Dutch government's instructions contradicted the instructions of General Gobillard who had specifically ordered Dutchbat to, "take all reasonable measures to protect refugees and civilians in your care".

In view of this involvement, the Court of Appeal judged that the State had effective control over the treatment of the local employees of Dutchbat and was responsible expelling the Muslim men. The Court of Appeal ordered the Dutch government to pay compensation to the relatives of the deceased.

The Court explicitly considered that this judgment is exclusively related to the specific situation of the two individuals in this case. The position of other refugees from the enclave, which differs in certain aspects from the case at hand, was "not at issue in this procedure". Despite this warning this successful action could pave the way for further similar claims before the Dutch Courts.

International Criminal Court and Terrorist Offences: Lecture by Professor Tim McCormack

Over the past few years there has been an international debate on what the definition of terrorism is and should be. Though the international community has somewhat tried to fill the void, mostly with domestic legislation, it has led to an information gap. For example, although the United Nations has established a counter-terrorism strategy, this is an anomaly given that terrorism has not been defined. These and other irregularities were discussed at the Asser Institute's "International Criminal Court and Terrorist Offences" lecture with Professor Tim McCormack, who advocated that the International Criminal Court (ICC) should include a definition for terrorism in the Rome Statute. Even if the Court did not, there could be other ways to prosecute terrorist acts, but this might not be satisfactory for the international community as a whole.

Prof. Tim McCormack

McCormack began his lecture by stating that terrorism is the most intensely regulated international crime without a definition. There are thirteen multilateral treaties currently in place, ranging from hostage taking and hijacking to mutual assistance in the fight against terrorism. In 1998 there were proposals to include explicit acts of terrorism, but these proposals largely failed. Arguments against its inclusion included the belief that terrorism lacks a definition, the crime is political in nature, some acts may not be serious and therefore should not be prosecuted and that national prosecution may be more efficient. If the best place for terrorism is on a domestic level, there may be situations where the state itself would be unwilling to prosecute, as in the *Lockerbie* case or situations in which the state itself took part in the terrorism or is unwilling to take up the case.

McCormack then considered how an act of terrorism could be prosecuted in the ICC. Under Article 7 of the Rome Statute, crimes against humanity include murder and other inhumane acts. Using crimes against humanity as a template, terrorist acts such as 9/11, the London Underground bombings and the Madrid bombings all could have hypothetically fulfilled the substantive requirements for crimes against humanity. According to Article 7, crimes against humanity require acts committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The widespread portion looks at the severity or intensity of the attack while systematic considers how planned or coordinated the attack was. Since the phrasing is disjunctive, either one may be shown to satisfy the crimes against humanity requirement, along with showing that there was knowledge of the attack.

Another possibility is prosecuting terrorist acts under a specific subset of war crimes present in treaty law and developed in jurisprudence. Under Additional Protocol I (Article 51(2)) and Additional Protocol II (Article 13(2)) of the Geneva Conventions there appears to be a war crime of intentionally spreading terror, though these provisions are silent on the enforcement mechanism. Jurisprudence shows that there is a specific war crime of intentionally causing terror. The most important of these decisions include the *Brima* decision and the *Galic* decision, both of which talk about campaigns specifically designed to spread terror. Despite the possibility that this has developed to arguably become a part of customary international law, the Rome Statute does not include this subset in their definition of what a war crime is.

The ability to fold terrorism into other crimes has its advantages and disadvantages. The advantages include that terrorism as a crime against humanity means that the purpose of the attack is not required and there is no need for an ideological motive. In those circumstances, all that is needed is the attack and knowledge that the attack was committed. There is no need of an intent to terrorize the civilian population.

Despite this, there are several disadvantages with terrorism not having its own definition or being its own crime. The first is that there is a natural desire for the international community to label specific crimes for what they are. For example, any genocidal act satisfies the requirement for crimes against humanity but the international community wanted to include a specific mental act resulting in a higher threshold for the crime. In 1948 there was a debate about whether the definition for genoccide should be altered into something broader, but this was ultimately struck down because there was a general consensus in genocide being *sui generis*. In its place, an agreement was reached for war crimes to become the broader crime and to include a catch-all provision. Other examples of an international desire to define specific crimes include forced pregnancy as something different than rape and the additional mental element for the war crime of intentionally trying to spread terror. A second disadvantage is that some terrorist attacks may not satisfy the crimes against humanity definition, with the Rafiq Hariri assassination serving as an example where the widespread or systematic requirement might not be satisfied. Finally, in the absence of an agreed definition, states may be able to misuse the label of terrorism. In the absence of an agreed multilateral definition, states are able to abuse and there is no standard for evaluation.

McCormack ended his talk noting the difficulty of coming to an agreement about defining terrorism. He mused that if the international community came together, they probably would not reach an agreement on the definition since there is no evidence of widespread state practice or *opinion juris* for what terrorism is. Though McCormack did not suggest what he thought the definition of terrorism should be, he offered a temporary solution that could be used until the international community can finally decide on something.

Blog Updates

- Kristine A. Huskey, Revival of Bangladesh war crimes tribunal, 23 July 2011, available at: http://intlawgrrls.blogspot.com/2011/07/revival-of-bangladesh-war-crimes.html
- Dapo Akande, **The African Union takes on the ICC Again: Are African States Really Turning from the ICC?**, 26 July 2011, available at http://www.ejiltalk.org/the-african-union-takes-on-the-icc-again/
- William Schabes, Contempt at the Special Court for Sierra Leone, 17 July 2011, available at: http://humanrightsdoctorate.blogspot.com/2011/07/contempt-at-special-court-for-sierra.html
- International Justice Desk, Serbia not rid of the UN Court Yet, 26 July 2011, available at: http://www.rnw.nl/international-justice/article/serbia-not-rid-un-court-yet
- Dov Jacobs, 2 June 2011, Khaddafi Arrest Warrant: Some Thoughts on the arrest "obligations" and Crimes against humanity as the new "crime of crimes" available at: http://dovjacobs.blogspot.com/2011/06/khaddafi-arrest-warrant-some-thoughts.html

Milan Lukić

An appeals hearing in the case of Milan and Sredoje Lukić has been scheduled for 14 and 15 September 2011. In July 2009, Milan Lukić was sentenced to life imprisonment, and Sredoje Lukić to thirty years imprisonment for crimes against humanity and war crimes committed in the Bosnian town of Visegrad during the 1992-1995 conflict.

Publications

Books

Eyal E. Benvenisti, 2011. *The International Law of Occupation,* Oxford: Oxford University Press.

Thorsten Benner, Stephan Mergenthaler and Philipp Rotmann, 2011. *The New World of UN Peace Operations: Learning to Build Peace,* Oxford: Oxford University Press.

Michael Waibel, 2011. *Sovereign Defaults before International Courts and Tribunals,* Cambridge: Cambridge University Press.

Frits Kalshoven and Liesbeth Zegveld, 2011. *Constraints on the Waging of War: An Introduction to International Humanitarian Law* (4th Ed.), Cambridge: Cambridge University Press.

Articles

Alejandro Chehtman, 2011. Developing Bosnia and Herzegovina's Capacity to Process War Crimes Cases: Critical Notes on a 'Success Story', *Journal of International Criminal Justice* 9(3), pp 547-570.

Christoph Safferling, 2011.The Rights and Interests of the Defence in the Pre-Trial Phase, *Journal of International Criminal Justice* 9(3), pp. 651-667

Françoise Tulkens, 2011. The Paradoxical Relationship between Criminal Law and Human Rights, *Journal of International Criminal Justice* 9(3), pp. 577-595.

ADC-ICTY

ADC-ICTY
Churchillplein 1
2517 JW The Hague
Room 085.087

Phone: +31-70-512-5418
Fax: +31-70-512-5718
E-mail: dkennedy@icty.org

Any contributions for the newsletter should be sent to Dominic Kennedy at dkennedy@icty.org

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Upcoming Events

Summer Programme on Countering Terrorism in the Post-9/11 World

Date: 22 August 2011 - 26 August 2011
Organiser: ICCT - The Hague and the T.M.C. Asser Instituut
Venue: T.M.C. Asser Instituut

From 22 to 26 August 2011, the International Centre for Counter-Terrorism - The Hague together with the T.M.C. Asser Instituut will organise a one-week Summer Programme on Countering Terrorism in the Post- 9/11 World.

"Public Liability of Private Corporations"

Date: 04 August 2011 - 06 August 2011
Time: 09:00 - 18:00 Organiser: International Law **Students Association (ILSA) Venue:** University College Utrecht, Campusplein 1, 3584 ED Utrecht
Late Registration (July 1, 2011-August 4, 2011):
Conference Only: €50 ($75)

Opportunities

Investigator, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Assistant du conseil/Juriste adjoint, Leidschendam, Netherlands (P-1/P-2)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Assistant/Associate Case Manager, Leidschendam, Netherlands (P-1/P-2)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Communication and Advocacy Analyst (MDG-F), Serbia (SB-4)
United Nations Development Programme (UNDP)
Closing Date: Friday, 05 August 2011

Communication and Advocacy Analyst (MDG-F), Serbia (SB-4)
United Nations Development Programme (UNDP)
Closing Date: Friday, 05 August 2011