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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 Criminal Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing Before the ICTY.

ICTY CASES

Cases at Trial

Hadžić (IT-04-75)
 Karadžić (IT-95-5/18-I)
 Mladić (IT-09-92)
 Šešelj (IT-03-67)

Cases on Appeal

Popović *et al.* (IT-05-88)
 Prlić *et al.* (IT-04-74)
 Stanišić & Simatović (IT-03-69)
 Stanišić & Župljanin (IT-08-91)
 Tolimir (IT-05-88/2)

Prosecutor v. Šainović *et al.* (IT-05-87-A)

On 23 January, the Appeals Chamber issued its judgement, mostly reducing the sentences in the Šainović *et al.* case. To recall, the Šainović case concerns the high-ranking Serbian leaders in Kosovo and events taking place between March and June 1999, regarding the forcible displacement of the Kosovo Albanian population from the area.

With respect to Nikola Šainović, Deputy Prime Minister of the Federal Republic of Yugoslavia (FRY), the Chamber granted his fourth ground of appeal and also a sub-ground of his appeal concerning sentencing. The Appeals Chamber noted that despite the error regarding Šainović's presence at the meeting on 13 April 1999, this had no impact on the Trial Chamber's conclusion that Šainović continued to liaise with Serbia. The Chamber noted that he was well aware of the displacement and the crimes committed in Kosovo. The Appeals Chamber noted that the Trial Chamber applied a higher degree of foreseeability with regard to some crimes and therefore, the Trial Chamber erred in assessing that he knew about the commission of murder in several locations. However, the Chamber concluded that he could not have known that the crimes would be committed before 7 May 1999. Therefore, this charge, including crimes at Dubrava, stands. The Chamber also found that it was foreseeable to the Accused that persecution through sexual assault would be committed in several locations, including Priština. The Appeals Chamber, however, reversed his convictions in respect of joint criminal enterprise (JCE) for deportation and inhumane acts as crimes against humanity committed in Tušilje and Turićeva. His sentence was decreased by four years to 18 years of imprisonment.

ICTY NEWS

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Nebojša Pavković's 22 years sentence was affirmed on appeal. The Appeals Chamber reversed his convictions as a participant in the JCE for deportation and inhumane acts as crimes against humanity committed in Turićeva. The Chamber, furthermore, reversed his conviction as a participant in a JCE for murder as war crime and persecution through murder as crimes against humanity with respect to individuals killed around Korenica, Meja and Reka. However, he as a Commander of the 3rd Army of Yugoslavia, was found guilty of participation in JCE persecution through sexual assaults in Priština.

With respect to Vladimir Lazarević, the Commander of the Priština Corps of the Yugoslav Army (VJ), the Chamber reversed his conviction for aiding and abetting deportation and inhumane acts as crimes against humanity committed in Turićeva and Kačanik. The Appeals Chamber dismissed the reasoning in Perišić and concluded that "specific direction" is not a required element for aiding and abetting. Relying on the *Taylor Appeal Judgement* from the Special Court of Sierra Leone, the Appeals Chamber noted that it was obliged to determine which decision to follow in cases of conflicting decisions, or whether there is a need to depart from these for cogent reasons. Judge Tuzmukhamedov dissented from this conclusion; however, he did not express his own views on specific direction as such. The Chamber further dismissed aiding and abetting regarding deportation in Tušilje but found the Accused guilty of aiding and abetting within the JCE for deportation in other places, including Staro Selo. He was sentenced to 14 years of imprisonment, granted one year reduction.

Sreten Lukić, the Head of the Staff of the Ministry of the Interior of the Republic of Serbia in Priština, was sentenced to 20 years, granted two years reduction. His conviction as a member of the JCE to murder

regarding some crime-scenes was reversed. The Appeals Chamber also reversed his convictions as a participant in a JCE for deportation and inhuman acts as a crime against humanity committed in Tušilje, but found him guilty of a JCE aimed at persecution through sexual assault crimes committed in some cities.

The Appeals Chamber was also seized of alleged errors in relation to fair trial, where it noted that no error was found. In relations to alleged errors with the indictment, the Appeal Chamber vacated the convictions for all four regarding the incident in Tušilje on 29 March 1999. Further, the Prosecution's appeal in relation to Lazarević's acquittal of the charges of murder was dealt with. The Chamber affirmed that the Prosecution did not show that the Accused had a required mental element for those crimes. The Appeals Chamber dismissed all of these allegations.

Overall, three judges dissented. Judge Liu Daquan disclosed only a partial dissent and also appended a declaration. Judges Arlette Ramarosan and Bakhtiyar Tuzmukhamedov shared their different views on some matters dealt with. As to the date of the judgement, Šainović spent nearly 12 years, Pavković, Lazarević and Lukić around 9 years in the United Nations Detention Unit. Considering the time spent in prison, and after reviewing the laws of the countries where they will serve the remaining of their sentences, early release might be an option for few already.



Prosecutor v. Vlastimir Đorđević (IT-05-87/1)

On 27 January 2014, the Appeals Chamber pronounced its judgement in the case of Vlastimir Đorđević, confirming his conviction for crimes committed by Serbian forces against Kosovo Albanians during the conflict in Kosovo. It partially granted the appeals of both the Defence and the Prosecution, reducing Đorđević's sentence from 27 years to 18 years in prison.

The case concerned events in Kosovo between 1 January and 20 June 1999. During this time, Đorđević was Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of its Public Security Department.

In 2011, the Trial Chamber convicted Đorđević for committing war crimes and crimes against humanity through his participation in a joint criminal enter-

prise (JCE). It also found him guilty on the basis of aiding and abetting the same crimes.

The Appeals Chamber confirmed the Trial Chamber's finding that during the time relevant to the indictment, Đorđević participated in a JCE, which had the purpose of changing the ethnic balance of Kosovo to ensure Serbian control over the province and was implemented through the crimes of murder, deportation, persecutions, and other inhumane acts.

The Appeals Chamber reversed Đorđević's convictions on the basis of aiding and abetting the crimes committed in Kosovo. It found that "the criminal conduct of Đorđević is fully reflected in a conviction based solely on his participation in JCE".

The Appeals Chamber also reversed certain Trial Chamber findings in relation to Đorđević's responsibility for crimes committed in the implementation of the JCE.

The Trial Chamber's findings on deportation and persecutions through deportation with regard to the displacement of persons from Kosovo to Montenegro were overturned, as the Appeals Chamber found no support for the existence of a *de facto* border, a condition necessary to establish a crime of deportations.

Further, the Appeals Chamber reversed the first-instance findings on Đorđević's criminal responsibility in relation to a limited number of specific incidents. These included deportation from Kladernica/Klladërnice, and Suva Reka/Suharekë town, as well as other inhumane acts at Brocna/Burojë and Tušilje/Tushilë and Ćuska/Qyushk. Moreover, Đorđević's conviction for murder in relation to the killing of eleven individuals at Podujevo/Podujevë town and Mala Kruša/Krushë e Vogël was reversed. The conviction for the crime of persecutions in relation to these incidents was also dissolved.

The Appeals Chamber dismissed the remainder of Đorđević's grounds of appeal, with Judge Güney and Judge Tuzmukhamedov dissenting in part.

The Appeals Chamber further granted the Prosecution's appeal regarding sexual assaults. It found, Judge Güney and Judge Tuzmukhamedov dissenting in part, Đorđević guilty of persecutions through sexual assaults in relation to several incidents, pursuant to the third category of JCE.



Vlastimir Đorđević

Prosecutor v. Radovan Karadžić

(IT-95-5-18/1)

Radovan Karadžić's trial continued on 16 January after the winter recess. The first witness to testify was Vinko Nikolić, a member of the Sanski Most Crisis Staff during the time of the conflict. Nikolić provided important information about the situation in Sanski Most municipality before the war and about the arming of Muslims and the gradual growth of hostilities between the different ethnic groups. In his statement, this former member of the Serb Municipal Crisis Staff (SOS) also stated that the Yugoslav National Army (JNA) did not partake in the infamous liberation of the Sanski Most Municipal Assembly building.

The second witness of the year, Prvoslav Davinić, also took the stand on 16 January. Between 1976 and 1999, Davinić was a United Nations official responsible for disarmament and security issues and testified

about two meetings he held with Karadžić and about his knowledge of the Markale incidents.

On 17 January, Mile Petrović testified. Petrović was a military policeman in the Bratunac Bridge in 1995. During previous testimony, Prosecution witness Momir Nikolić claimed that Mile Petrović had executed six Muslim prisoners, whom he had picked up in a United Nations all-terrain vehicle between Bratunac and Konjević Polje on 13 July 1995. Mile Petrović stated that this testimony is completely false and that he never executed anybody.

On 20 January, Miroslav Kvočka, a former Police Officer who was employed by the police station in Omarska, testified about the workings of the Centre and the hierarchy that was in place back then. Kvočka was cross-examined about the treatment of prisoners

at the Omarska Centre and the efforts undertaken to maintain the rule of law and avoid abuse by any side.

Dragan Radetić also testified on 20 and 21 January and was asked to provide his first hand account on several issues concerning Keraterm and Omarska. During the time in question, he had a law office in Prijedor and thus, had knowledge of specific instances that were of interest to the Defence. His testimony continued for two days, due to the importance of the information he could provide about the Serbs investigating crimes perpetrated during the armed conflict and the situation in Prijedor in general.

Zdravko Torbica testified on 21 January and told what he knew about the activities of the military police and the Public Security Service (SJB) in Prijedor. He was cross-examined about his knowledge of convoys leaving the area, their contents, their destinations and the conditions of the transport.

Boško Mandić testified on the same day and continued on 22 January, describing the situation in Prijedor municipality and his involvement in the Crisis Staff. He provided vital information related to the conditions under which some Muslims left the region, the treatment of their property, which was left behind and the authorities' attitude towards these events.

On 22 January, five witnesses testified. The day started when Ljubiša Beara, Accused in the *Popović et al.*

case, returned to complete his testimony and was cross-examined. Beara used this opportunity to discuss his issues with his verdict and evidence that had gone missing. Following his testimony, Beara and the different parties agreed to lift the confidentiality that had previously been invoked before winter recess.

The same day, Cedo Sipovać, a former member of the Secretariat for People's Defence in Prijedor, testified about the mobilisation process and the efforts to appease any instance of local violence.

Miladin Nedić, the next witness, was one of the founder of Serb Democratic Party (SDS) in Bosnia Herzegovina and was elected to be a representative in the Assembly of Repulika Srpska. During his cross-examination he re-iterated that they had not wanted to wage war but to find a solution suited all the groups.

The final witness of the day was Brane Davidović. During the indictment period Davidović was an Assistant Moral Commander in the 6th Infantry Brigade of Sanski Most. He testified about the events that occurred in Sanski Most and the handover of weapons.



Ljubiša Beara

LOOKING BACK...

International Criminal Court

Five years ago...

On 26 January 2009 the trial in the case of Lubanga Dyilo began. Lubanga was the ICC's first detainee and the first person charged in the context of the conflict in the Democratic Republic of Congo. The start of this trial marked another important event; it was not only the first trial to begin at the ICC, but also the first time in the history of international law that victims were allowed to fully participate in the proceedings.

Lubanga was charged with the war crime of enlisting children under the age of fifteen; conscripting them and using them to actively participate in hostilities.

On 4 March 2012, Lubanga was found guilty and subsequently, on 10 July 2012, sentenced to 14 years imprisonment.

Lubanga appealed the verdict and the sentence requesting acquittal and annulment or a reduction of this sentence. The Prosecutor appealed requesting the sentence to be increased. The appeals are currently pending before the respective Chamber.



Thomas Lubanga Dyilo

International Criminal Tribunal for the Former Yugoslavia

Ten years ago...

January 2004 was marked by a number of provisional releases granted by the ICTY. On 19 January 2004 Enver Hadžihasanović, a high level commander in the army of Bosnia and Herzegovina, who was charged on the basis of superior criminal responsibility for several violations of the laws and customs of war, was granted provisional release on compassionate grounds to attend the funeral of his brother.



Enver Hadžihasanović

Similarly, on 30 January 2004 Mile Mrkšić, a Colonel in the Yugoslav People's Army (JNA) and Commander of the 1st Guards Motorised Brigade and Operational Group South, charged with eight counts of crimes against humanity and war crimes, was also granted provisional release on compassionate grounds to attend his mother's funeral in Belgrade.



Mile Mrkšić

International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago...

On 18 January 1999, the ICTY Prosecutor concerned with the Kosovo investigation, Justice Louise Arbour, travelled to Skopje with the intention to proceed to Kosovo to investigate the atrocities in the village of Račak after a request of the UN Security Council. Despite the fact that NATO previously demanded access for the Office of the Prosecutor to enter Kosovo and conduct investigations into the crimes

committed, the Serbian authorities did not grant such access and the Prosecutor had to return "empty-handed" to The Hague awaiting further developments. Nevertheless, the team of investigators remained in the region gathering evidence and assembling information ready to enter Kosovo when access would be allowed.

NEWS FROM THE REGION



Croatia

Mladen Markač Testifies in Croatian Trial

Former ICTY Accused Mladen Markač testified on 14 January in the case of Igor Beneta, Bozo Krajina and Frano Drlja. The three men are former members of the elite Lučko Anti-Terrorist Unit of the Croatian police and are charged with the murder of six Serbian civilians in Grubori in August 1995. Markač was called to testify due to his position as Deputy Defence Minister during that period.

In his testimony, Markač stated that the main purpose of the Lučko Unit was to combat terrorism. The Grubori killings occurred during a police operation, consisting of over 550 police men, tasked with locating and removing terrorists in areas close to a train route transporting President Franjo Tuđman from Zagreb to Split.

Chief of Staff, General Cervenko, contacted Markač in an attempt to obtain information on the situation in Grubori. He alleged that he had no knowledge of the Grubori killings at the time and only received information the day after. Markač contacted the Commander of the Lučko Unit, Željko Sačić, by telephone but claims Sačić was also unaware of the killings. Markač ordered him to obtain information at the police station in Knin. In 2012, Markač was acquitted alongside his Co-Accused Ante Gotovina in the "Operation Storm

Case” at the ICTY. Operation Storm took place in the beginning of the Croatian war and was aimed at the recovery of Serbian seized territory. The Appeals Chamber stated that it could neither be proven that Markač substantially contributed to the crimes committed by the police unit, nor that he held effective control over the unit.

Croatian Defence Council Members Acquitted of War Crimes

On 13 January, the State Court in Sarajevo acquitted two Bosnian Croat men in the trial for crimes in Stolac and Čapljina. The Accused Ivo Raguž and Veselko Raguž were charged with several war crimes committed against detainees in July and August 1993 in the Dretelj detention camp, located in the municipality of Čapljina. Other accusations against them include the forcible transfer of Bosnian children and women and torture of civilians.

Veselko Raguž was Commander of the Fourth Brigade of the Croatian Defence Council, and charged with the detention and abuse of Bosnian soldiers in Stolac. The Court could not conclude beyond reasonable doubt that he carried command responsibility for these crimes. It could neither be proven that the perpetrators of these abuses were actually part of the Fourth Brigade, nor that Ivo Raguž, despite being a member of the Croatian Defence Council, was a member of the Fourth Brigade.

In December 2013, the Defence lawyers had requested the release of the Accused in their closing statements. They emphasised that several witness statements indicated that the Accused did not commit any of the alleged crimes. Furthermore, witnesses denied each other’s statements and could not specifically recall who was commanding the arresting officers. These contradictory witness testimonies were one of the main reasons for the acquittals in this case.



Bosnia and Herzegovina

First Indictments in the New Year

In January, the Court of Bosnia and Herzegovina confirmed two indictments covering war crime charges brought against Bosnian men. Bosnian law demands that the Accused respond to their charges within fifteen days.

Four of the Accused (Fikret Mrkonjić, Mirza Dedić, Miralem Čolić and Esed Kočić) were part of the Public Safety Station and Territorial Defence forces in Banovići during the war. They are charged with crimes committed in their capacity as soldiers against Serb detainees who were held captive in a railway building in Banovići. The crimes include torture and mutilation of prisoners, and additionally the four are believed to have participated in the murder of one Serb detainee. The indictment covers the period of May to July 1992.

The second indictment in a separate case relates to crimes committed against a Croat prisoner held in the Battle of Neretva Museum in Jablanica. Three men (Enes Maksumić, Jusuf Hindić and Azem Ibrović) tortured and thereby critically injured a prisoner of war in the detention facility. The men were members of the 44th Brigade of the Bosnian Army and part of the Public Safety Station in Jablanica. They were acting in the capacity of policemen when commit-



NEWS FROM OTHER INTERNATIONAL COURTS



International Criminal Court

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

As presented in issue 57 of the Newsletter, the case *Prosecutor v. Jean-Pierre Bemba Gombo* had a surprising overturn when Judge Cuno Tarfusser issued a warrant of arrest for alleged offences against the administration of justice for Aimé Kilolo Musamba (Lead Counsel), Jean-Jacques Mangenda Kabongo (case manager), Fidèle Babala Wandu (member of the Parliament of the Democratic Republic of the Congo and Deputy Secretary General of the Movement for the Liberation for the Congo) and Narcisse Arido (Defence witness).

The Defence has applied for the provisional release of Bemba's Lead Counsel and case manager, both currently detained at the ICC detention centre in Scheveningen.

The Defence submitted, *inter alia*, that a summons to appear for the Lead Counsel would have been the appropriate means and sufficient to ensure his appearance before the Court. They also amended their application for provisional release submitting addi-

tional documentation comprising: i) two attestations to his reputation, certified by Belgian lawyers; ii) his Belgian passport; iii) additional documents regarding his wife's health status and with respect of his nationality; and iv) a clarification on the schooling of his children.

As for Bemba's case manager, the Defence submitted that his detention was causing serious prejudice to his personal, familiar and professional life.

Mangenda Kabongo's "Requête de mise en liberté" of 8 January challenges the legality of his arrest warrant and alleges that the requirements for his arrest are no longer met (Article 58, Rome Statute).

The decisions regarding the Defence's submissions have not been rendered yet, among other things, because the views of the relevant authorities from the United Kingdom and the Kingdom of Belgium are still pending, the two home countries of Bemba's Lead Counsel and case manager, respectively.



Special Tribunal for Lebanon

By the STL Press Office

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

Opening Statements by the Prosecution

On 16 January, the Trial Chamber opened the trial in the *Ayyash et al.* case. The hearing began with a brief introduction by Presiding Judge David Re, followed by the reading of the charges against Salim Jamil Ayyash, Mustafa Amine Badreddine, Hussein Hassan Oneissi and Assad Hassan Sabra. The four stand accused of various crimes under Article 2 of the STL Statute and the Lebanese Criminal Code for their

Opening Statements

Statements made at the start of trial by the Prosecution, the Legal Representatives of Victims and Defence counsel. The opening statements outline the party's legal position and preview the evidence that will be produced throughout trial.

alleged role as co-conspirators in the 14 February 2005 attack that killed 22 individuals, including the former Lebanese Prime Minister Rafiq Hairiri, and injured more than 200 persons.

The hearing continued with the opening statements of the Prosecution. The Prosecutor, Norman Farrell, stated that the people of Lebanon are entitled to have the trial, hear the evidence, and seek the truth. He added that, despite the perpetrators' efforts to conceal their involvement in the attack, the truth left its traces. According to the Prosecutor, the evidence, including a considerable volume of telecommunications data, records the marks left behind, and reveals the activities, communications, and true identities of the

Senior Prosecution Trial Counsel Graeme Cameron then addressed the judges about the bulk of the second and third sections of the Prosecution's case. In particular, he spoke about the different telephone networks allegedly involved in the preparatory acts leading to the formation of the conspiracy, which suggested that began in October 2004.

The Prosecution will present its case in three sections. The first concerns the events on 14 February 2015, while the second and third parts relate to telecommunications evidence.

On the second day, Cameron continued the Prosecution's opening statement by overviewing alleged conspiracy of the four Accused from 21 December 2004 until shortly after the 14 February 2005 attack. In this period, the Prosecution argued, the surveillance of Hariri's motorcade continued, and the Mitsubishi Canter van, which was allegedly used to carry and deliver the explosive device, was purchased from Tripoli. Moreover, telephone activities during this timeframe suggest that Abu Adass, who is later believed to have made a false claim of responsibility for the 14 February 2005 attack, was identified and later disappeared. The activities of the telecommunications network also suggest that the video broadcast of Abu Adass' claim of responsibility was coordinated immediately after the explosion.

In the course of the second day, Cameron also detailed the alleged phone activities of the co-conspirators prior to the assassination of Rafiq Hariri, which are in tandem with the movements of his motorcade. Cameron provided background information about the four Accused, and described the suspected chain of communication between them. According to the Prosecution, Badreddine was at the apex of the hierarchy, directing both Ayyash and Hassan Merhi. Ayyash supervised the surveillance team, whereas Sabra and Oneissi reported to and were directed by Merhi.

Opening Statement by the Legal Representatives of Victims

After the Prosecution's opening statements, the Legal Representatives of Victims (LRV) presented their statements. Co-Legal Representative of Victims, Nada Abdelsater-Abusamra, first addressed the judges, highlighting the importance of justice and the rule of law. She reminded the court that in Lebanon, the as-

sassination of public figures and opinion formers has been used as a means to subjugate freedom since the 1970s. She considered the STL as a lever of justice, which should promote the rights of the victims, as well as the fight against impunity in Lebanon and worldwide through applying the highest standards of international justice.

Co-Legal Representative of Victims Mohammad Mattar then described the situation in Lebanon shortly after the 14 February 2005 attack. He deemed the crime that targeted the former Prime Minister as an event that united the Lebanese, as the country has, and continues to see assassinations that target various segments of the population. In response to this trend of violence, Mattar said that the STL contributes to the noble cause of punishing such acts. Mattar also saw in the STL a chance to advance justice in Lebanon and the Arab region.

Peter Haynes, the Lead Legal Representative of Victims, stated that it is the legitimate right of the victims of a criminal offence to participate in the trial of those accused of crimes against them, as reflected in the framework governing the STL. Moreover, he noted that the victims were the catalyst for the creation of the Tribunal through their discussions with the Lebanese authorities and the international community. Haynes added that it is necessary for the victims to know the truth behind the attack of 14 February



Opening statement of the LRV

65 victims are currently taking part in the *Ayyash et al.* proceedings.

16 of the victims are injured survivors

49 of the victims represent the rights of those who died in the attack.

Ten victims were present in the courtroom at the start of trial.

2005. In referring to the victims in the *Ayyash et al.* case, Peter Haynes concluded: "Their hope is that this Tribunal [...] can shed light on what happened [...] on 14 February 2005, which darkened all their lives".

Opening Statements by Counsel for Badreddine and Oneissi, and Remarks by the Defence Office

On 20 January, Counsel for Badreddine and Oneissi presented their opening statements. They were preceded by the Head of the Defence Office, François Roux, who addressed the Trial Chamber on the case against Hassan Habib Merhi, which is currently separate to the Ayyash et al. proceedings.

Roux declared that trial is commencing much later than it ought to have, yet too early since the Defence team for Merhi was not present in the courtroom. Roux deemed this a procedural challenge and, considering that Merhi was indicted in June 2013, he argued that it was impossible for the Merhi case to proceed to trial in the present circumstances. Moreover, Roux voiced his concern about hearing witnesses in the first section of the Prosecution's case when Merhi's Defence team would not be able to cross-examine them, especially since the witnesses are likely to implicate Merhi with respect to telephone communications.

In response to Roux's remarks, Presiding Judge Re affirmed that Counsel for Merhi will have the right to make an opening statement when Merhi's case proceeds to trial. In this context, Judge Re also noted that the Trial Chamber had not yet received any application to adjourn the trial on the basis of Roux's purported procedural challenge.

Counsel for Badreddine, Antoine Korkmaz, then presented his opening statement. Korkmaz argued that the alleged motives of the Accused, as well as the superiors behind the attack, are unknown, and that the

Accused were mere intermediaries. The Lead Counsel asserted that the Prosecution filed a first indictment in June 2011, more than two years after the STL was established and more than seven years after the UN International Investigation Commission started its work. He further explained that the Defence has been kept on the sidelines, saying that its representatives were only appointed in February 2012 and that much of the relevant evidence that the Prosecutor intends to use during trial was only made available to Defence Counsel in November 2012. Korkmaz expanded that in absentia proceedings infringe the rights of the Accused and make the work of Defence Counsel difficult (as Counsel have no direct or indirect contact with the Accused).

Counsel Oneissi followed Korkmaz. Lead Counsel. Courcelle-Labrousse's statement focused largely on the differences in the resources available to the Prosecution and the Defence. He further questioned why the Defence teams received the Lebanese case file relating to the 14 February 2005 attack in 2012, when that file had been in the possession of the Prosecution since 2009. Courcelle-Labrousse also urged for more openness regarding disclosure of documents from the Prosecution.

Co-Counsel for Oneissi, Yasser Hassan, asked why the attack against Hariri was a catalyst for establishing an international tribunal while Lebanon has witnessed many other attacks. On this point, he stressed that justice cannot be selective. Hassan asserted that the Prosecution's indictment insinuates that Hezbollah was responsible for the assassination of Rafiq Hariri. He argued that the Prosecution should expressly accuse Hezbollah if this was its intention.



For a periodical overview of the judicial developments at the STL, please check the Judicial Brief at <http://www.stl-tsl.org/en/media/judicial-brief>

DEFENCE ROSTRUM

The Twelfth Defence Symposium

By Nelleke Hoff

On 24 January, Michael Karnavas, Defence Counsel at the ICTY and ECCC, gave a lecture on judicial ethics. His lecture was part of the Defence Symposia lectures series, organised by the ADC-ICTY and was attended by around 45 interns and staff from across all sections of the Tribunal. The focus was on conflicts of interest arising during proceedings, and more specifically, when it is appropriate to file a Motion for Disqualification of a Judge.

During the lecture ample examples illustrated that there are certain ethical expectations judges have to fulfil. A striking one was Alternate Judge Sow's publicly declared dissenting opinion in the Charles Taylor Judgment hearing. After the judges read out the judgment, Judge Sow felt obligated to state his findings as "[t]he only moment where a judge can express his opinion is during the deliberations or in the courtroom, and pursuant to the Rules, when there is no serious deliberations, the only place left for me is in the courtroom". His microphone was shut off before he could finish and his words removed from the transcript. He stated to "disagree with the findings and conclusions of the other judges, because for me under any mode of liability, under any accepted standard of proof, the guilt of the accused from the evidence provided in this trial is not proved beyond reasonable doubt by the prosecution. And my only worry is that the whole system is not consistent with all the principles we know and love, and the system is not consistent with all the values of international criminal justice, and I'm afraid the whole system is under grave danger of just losing all credibility, and I'm afraid this whole thing is headed for failure". One could question whether the Alternate Judge had a proper chance to fulfil his ethical obligation.

Karnavas emphasised the importance of Article 15 of the ICTY Rules of Procedure and Evidence, which requires full disclosure on part of the judge. This means that a judge is obliged to notify the Court when a conflict of interest arises. In Karnavas' experience however, these conflicts often have to be raised by Defence Counsel. An example that was given was Judge Robinson who was appointed to a case in the Special Court for Sierra Leone. He had to adjudicate facts that he previously covered in a book he wrote

about the conflict in Sierra Leone. The recusal had to be raised by lawyers, even though he was under a clear obligation to disclose this information in order to avoid the apprehension of bias.

The applicable standard for determining judicial bias was established in the *Furundžija* Appeal Judgement. "A Judge should be not only subjectively free from bias" but also, "there should be nothing in the surrounding circumstances which objectively gives rise to an appearance of bias." This standard is crucial to consider when filing a Motion for Disqualification. Karnavas warranted against alleging bias without sufficient grounds to substantiate the claims. However, during the lecture the importance of raising ethical issues on the spot was emphasised.

An example of the *Čelebići* case illustrated the obligation that rests on lawyers to be pro-active in addressing possible ethical issues arising during proceedings. In this particular case the Presiding Judge (in the first instance hearings) was asleep during a vast amount of time. Footage of the hearings was available so that the exact amount of sleeping hours could be indicated. During the first instance hearings this issue was never formally raised with the Chamber, only with the Registry and President of the Tribunal. Therefore, on Appeal, when the error was addressed, the Appeal Chamber indicated that a record of errors was never kept and thereby the lawyer waived this particular error. Therefore, Karnavas stated that in order to increase chances of being granted relief or receive an administrative remedy it is crucial to act instantly.

To conclude, Karnavas repetitively emphasised the need to build a record during trial, already for the purpose of appeal. He noted that a complete trial record is sometimes the only successful option available to a Defence lawyer in case of apparent bias.



ADC-ICTY Intern Field Trip to the ICJ and PCA

By Nelleke Hoff's

On 10 January, a group of Defence interns visited the Peace Palace in The Hague. The morning started with a presentation by Boris Heim, an information officer of the International Court of Justice (ICJ), in the Great Hall of Justice where court hearings usually take place.

The ICJ is a judicial organ of the United Nations and holds as primary objective to offer peaceful solutions to states and thereby prevent escalation of inter-state conflicts. It is a free forum for states to address their legal disputes and voluntary acceptance of the Court's jurisdiction is paramount to its functioning. Essentially, states abandon their sovereignty when submitting their dispute to the Court as ICJ decisions are final with no possibility to appeal. Consequently, there are major differences between the Court and other international justice mechanisms such as the ICTY. One of the highlighted differences was the fact there is no Prosecutor as no one can force states to solve their dispute through the ICJ.

Most cases before the Court concern frontier disputes, maritime borders, the protection of diplomats, the use of force and violation of bi-lateral or multi-lateral international treaties. Interns questioned the average time for a case to be concluded, which is between one to four years and only two per cent above ten years. Nevertheless the Court is mandated to take binding provisional measures, as occurred in the LaGrand case.

The interns questioned the effectiveness of ICJ judgments and Boris Heim clarified that the judgments are only diplomatically enforceable through the Security Council. A discussion arose amongst the interns, considering that in cases brought against one of the five Permanent Members it is very likely they will exercise their veto. However, in ninety-nine per cent of the cases States comply with the Court's judgment without additional political pressure being necessary.

After the educational and entertaining presentation of Boris Heim, the group was invited for a talk by the Permanent Court of Arbitration (PCA), for which The Peace Palace was originally built. The talk was given in the PCA's court room and started with a short, informative outline of the history and structure of the PCA. The PCA comprises of a tripartite structure: the

Administrative Council, the members of the court (four arbitrators per country) and the International Bureau.

Next, the unique nature of arbitration was illustrated. Arbitration is heavily dependent on the wishes of the parties that submit a dispute before it. Not only are the parties free to appoint their own arbitrators, but they also have complete freedom in determining the location and procedural timetable of the proceeding. PCA arbitration can roughly be divided into two categories: state versus state arbitration and mixed arbitration, which concerns a dispute between a state and private entity.

The interns were curious about the length of an arbitration proceeding and were informed that the average length was one to two years. However, for a short case it can be as little as six months and long cases occasionally go up to seven years. Recently, there has been an enormous growth in the amount of cases submitted to the PCA which can be explained by the UNCLOS (United Nations Convention on the Law of the Sea, ratified by 140 states). This Convention stipulates that in case disputes arise under this mechanism, the default option for solving them is submitting it to the PCA.

The talk was concluded by a reflection on the evolution of the PCA. The most recent developments, such as the UNCITRAL Model Law on International Commercial Arbitration (United Nations Commission on International Trade Law) suggest that transparency in arbitration proceedings needs to be increased. At the moment, only thirty per cent of cases are public, whereas the majority is of a confidential nature and remains unknown to the public.



BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Gregor Guy-Smith, **The ICC, Standing at the Crossroads**, 12 January 2014, available at: <http://tinyurl.com/mjs7ckw>.

Geraldine Coughlan, **Hariri Trial Opens With Empty Docks**, 18 January 2014, available at: <http://tinyurl.com/kd4lffk>.

Chantal Meloni, **Can the ICC investigate UK higher echelons' command responsibility for torture committed by the armed forces against Iraqi detainees?** 19 January 2014, available at: <http://tinyurl.com/mhh6dcl>.

Alex Fielding, **Sainovic Appeal rejects 'specific direction', but was it necessary?**, 24 January 2014, available at: <http://tinyurl.com/oyrpfuz>.

Online Lectures and Videos

"*A Day with Defence Counsels*", published by International Criminal Court on 10 January 2014, available at: <http://tinyurl.com/prp4sr4>.

"*International Law in a Multi-polar and Multi-civilizational World of the 21st Century*", published by the Audiovisual Library of International Law, available at: <http://tinyurl.com/ovgrjtq>.

"*Marc Goodman: A vision of Crimes in the Future*", published by TED, on July 2012, available at: <http://tinyurl.com/6orxbr2>.



"*Introduction to International Criminal Law*", an 8-weeks course presented by Michael Scharf - start: 1 March 2014, visit: <http://tinyurl.com/pjg2xe8>.

PUBLICATIONS AND ARTICLES

Books

Philippe Leroux-Martin (2013), *Diplomatic Counterinsurgency: Lessons from Bosnia and Herzegovina*, Cambridge University Press.

Kai Ambos (2014), *Treatise on International Criminal Law: Volume II: The Crimes and Sentencing*, Oxford University Press.

Ronald J. Bacigal, Mary Kelly Tate (2014), *Criminal Law and Procedure: an Overview*, 4th edition, Cengage Learning.

Timothy William Waters (2014), *The Milosevic Trial: an Autopsy*, Oxford University Press.

Articles

Hirad Abtahi, Odo Ogwuma & Rebecca Young (2013), "The Judicial Review Powers of the Presidency of the International Criminal Court: Safeguards for the Protection of Human Rights", *The Law & Practice of International Courts and Tribunals*, Vol. 12, No. 3.

Simon Chesterman (2014), "The International Court of Justice in Asia: Interpreting the Temple of Preah Vihear Case", *Asian Journal of International Law*, Vol 1. No. 1.

Karen J. Alter, Laurence R. Helfer & Jacqueline R. McAllister (2014), "A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice", *American Journal of International Law*, Vol. 107, No. 4.

CALL FOR PAPERS

 The **Journal of International Criminal Justice** is inviting submissions for use in a special issues dedicated to the interplay between international humanitarian/criminal law and refugee/immigration law.

Deadline: 28 February 2014

More Info: <http://tinyurl.com/p7gh9nb>.

The **Utrecht Journal of International and European Law** is inviting submissions for use in its general edition on International and European Law.

Deadline: 30 March 2014

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

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

GOODBYE

The ADC-ICTY would like to express its sincere appreciation and thanks to Shubhangi Bhadada and Katka Velická for their hard work and dedication to the Newsletter and the ADC-ICTY. Katka has been the ADC Head Office intern for the past six months and has been an invaluable help to the office. She was instrumental in organising the ADC-ICTY Legacy Conference and has coordinated the newsletter over the past months. We wish both of them all the success in their future.

EVENTS

Distinguished Speaker Series: Jan Peter Balkenende

Date: 4 February 2014

Location: The Hague Institute for Global Justice, The Hague

More Info: <http://tinyurl.com/ox27edg>.

Assessing Developments in the Israeli Military Juvenile Courts

Date: 7 February 2014

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

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

Nuclear Knowledge Summit

Date: 21-22 March 2014

Location: Novotel City, Europaboulevard 10, Amsterdam

More Info: <http://tinyurl.com/mf94o6s>.

OPPORTUNITIES

Organisation for Security and Cooperation in Europe (OSCE) - High Commissioner on National Minorities, The Hague

Closing Date: 11 February 2014

Situation Analyst (P-3), The Hague

International Criminal Court (ICC) - Jurisdiction, Complementarity and Cooperation Division

Closing Date: 13 February 2014

Associate Legal Officer (P-2), The Hague

International Criminal Court (ICC) - Counsel Support Section

Closing Date: 20 February 2014

Associate Legal Officer (P-2), Arusha

Mechanism for International Criminal Tribunals (MICT) - Chambers

Closing Date: 26 February 2014