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NEWSLETTER

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Prosecutor v. Popović *et al.* (IT-05-88-A)

On 30 January, the Appeals Chamber issued its Judgment in the case of the *Prosecutor v. Popović et al.,* upholding the convictions of Vujadin Popović, Lubiša Beara, Drago Nikolić, Radivoje Miletić and Vinko Pandurević. All five Accused were senior Bosnian Serb military officials at the time of the conflict and were charged with crimes perpetrated in July 1995 following the takeover of the protected areas of Srebrenica and Žepa, Podrinje.

In relation to these events, on 10 June 2010, the Trial Chamber had found the five Accused guilty of various crimes, including genocide, through their participation in a Joint Criminal Enterprise (JCE) to murder Bosnian Muslim men from Srebenica, as well as to forcibly remove the Bosnian Muslim population from the above-referred areas. Both the Prosecution and the Defence of the five Accused appealed the Trial Judgment .

Vujadin Popović

The Trial Chamber had convicted Popović and Beara of committing murder, genocide, murder as a violation of the laws of customs of war, extermination and persecution as crimes against humanity through the JCE. Both Popović and Beara were sentenced to life imprisonment.

Further, the Accused Nikolić was convicted at Trial of committing, through the JCE, extermination and persecution as crimes against humanity, and murder as a violation of the laws and customs of war. He was fur-

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Also in this issue

ther found guilty of aiding and abetting genocide. The Accused Miletić was convicted of committing forcibly remove, murder, persecution and forcible transfer as crimes against humanity through the JCE. Nikolić and Miletić were sentenced to 35 and 19 years imprisonment respectively.


Drago Nikolić

Lastly, Pandurević was convicted by the Trial Chamber of aiding and abetting murder as a violation of the laws and customs of war. The Appeals Chamber further found him guilty of murder, persecution and forcible transfer as crimes against humanity under both, aiding and abetting liability and the command responsibility doctrine. He had consequently been sentenced to 13 years imprisonment.

The Appeals Chamber dismissed most of the challenges raised by the Appellants, with the exception of the appeal of Radivoje Miletić, whose conviction was reversed in relation to helping men cross the Drina river. The Majority further reversed the convictions of Popović, Nikolić and Beara regarding the killing of six Bosnian Muslim men near Trnovo. Miletić's appeal on sentencing was also granted on the ground the Trial Chamber erred in law by considering the use of his authority within the Army of Republika Srpska (VRS) Main Staff as an aggravating circumstance.


Vinko Pandurević

In deciding on the law, the Majority, Judge Niang partially dissenting, noted that "specific direction" is not a necessary element of aiding and abetting under customary international law, dismissing Pandurević's challenge thereof. Responding to Nikolić's claims, the Chamber further recalled and acknowledged that a state policy is not legally required for establishing genocide.

As for the Prosecution's appeal, the Majority granted most grounds and entered convictions of conspiracy to commit genocide for both Popović and Beara. It further reversed, Judge Niang dissenting, Pandurević's acquittal for aiding and abetting and command responsibility for crimes against humanity and violations of the laws and customs of war. Lastly, Miletić was convicted, Judge Pocar dissenting, for the additional ground of murder as a violation of the laws and customs of war in relation to killings in Potočari.

Consequently, the life sentences of both Popović and Beara were affirmed, as well as Nikolić's and Pandurević's sentences of respectively 35 and 13 years imprisonment. Miletić was sentenced to 18 years imprisonment instead of the 19 years, as originally decided by the Trial Chamber.

Noteworthy, the Appeals Chamber was divided in rendering its Judgment, resulting in Partially Dissenting Opinions issued by Judge Robinson, Judge Pocar and Judge Niang.

Of interest to human rights advocates, Judge Pocar dissented with the Majority's decision to enter new convictions on Appeal, on the basis that such practice would violate the Accused's fundamental human rights, as enshrined in, *inter alia,* Article 24(2) of the ICTY Statute and Article 14(5) of the International Covenant on Civil and Political Rights.


Appeals Judgement

Judge Niang added to the lasting debate on the legal characterisation of "aiding and abetting", by stating that the review of domestic and international practices fails to conclusively define the elements of such mode of liability. He posited that many operative criteria may be applied, as conditioned to the circumstances of each case. He further rejected the differentiation made by the Appeals Chamber between JCE and conspiracy, thereby equating the two notions and casting further shadow on the legitimacy and scope of the already controversial doctrine of JCE liability.

Prosecutor v. Mladić (IT-09-92)

On 19 January, the trial resumed with the first witness of the year, Zdravka Karlica, President of the Organisation of the Families of Killed Fighters and Missing Civilians in the Prijedor municipality. At the out-break of war, Karlica was living with her family in Prijedor and her late husband was mobilised and deployed in Croatia as a reserve officer. During her testimony, Karlica contended that the first incident in Prijedor was the murder of the policeman, Radenko Djaa, who was killed by Muslim extremists, resulting in a lot of unrest in the area. Her husband had participated in the negotiations in Kozarac in an attempt to resolve the crisis in a nonviolent manner. He had told her that the main problem was how to disarm paramilitaries that existed in Kozarac. The witness had knowledge of the departure of the non-Serbian population from the municipality of Prijedor, where even before the war a large number of Muslims left the municipality.


Zdravka Karlica

After being questioned by Judge Orie, the witness stated that there was a meeting near Sanski Most attended by Serbs and Bosniaks from Prijedor and it was here that she heard for the first time that a lot of women and children had been killed around Prijedor, information which was a great shock to her. During cross-examination, Prosecutor Zec pursued the issue of the re-naming of streets, however, the Trial Chamber noted that this was irrelevant evidence. Later, the witness claimed that nobody had touched non-Serbs in villages such as Cela and Puharska, describing the situation there as calm. The Prosecution mentioned a mosque that was destroyed in the area of Puharska. Karlica was familiar with the mosque but she was not aware that anyone had died in the explosion and deemed the area outside the parameters of Puharska. In fact, the mosque was in Donja Puharska, which is a different place.

On 19 and 20 January, former President of the Kljuc Crisis Staff, Rajko Kalabić, testified for the Defence. According to Kalabić, Muslim soldiers under the command of Omer Filipović attacked several buses of unarmed Serbian soldiers returning from military service on 27 May 1992. The same day, Deputy Police Commander Stojaković was ambushed and killed at Krasulje and several police were injured at the hands of the Muslims. Kalabić also testified that he was informed of the incident in the village of Velagići, where Muslim detainees were killed on 1 June 1992. Colonel Galić had requested two buses to be sent to Velagići to transport the detainees to Manjača. However, half an hour after the buses were sent, the two bus drivers returned and reported that when they arrived in Velagići they found that the detainees had been killed. The witness stated that the perpetrators of the killings were arrested and prosecuted under Colonel Galić's orders.


Rajko Kalabić

During cross-examination, the Office of the Prosecutor (OTP) put to the witness that what happened in Velagići was just an example of the many horrible war crimes demonstrating that Muslim civilians were not treated in line with the law, contrary to what the witness had claimed in his statement and testimony. The witness agreed with the OTP that what happened in Velagići was a war crime, however, he stressed that it had not been planned. The crime was committed by individuals who were not acting on anyone's orders and who were duly prosecuted. Kalabić was not aware that the perpetrators of the Velagići incident were released soon after their arrest and that no-one was actually convicted of the crime.

In his statement to the Defence, Kalabić noted that non-Serbs had left Ključ voluntarily. The OTP showed the witness a Crisis Staff decision of 4 June 1992 which states that the municipal authorities will allow those who agree to depart "'for good" to leave without the possibility to return. Kalabić explained that the term was in fact used to persuade people to stay because people would be willing to leave if it was temporary, but not "for good".

Velimir Kevac, former Commander of the Ključ Brigade, appeared for the Defence on 22 and 23 January. Kevac testified about the ambush of a column of unarmed soldiers by Muslim forces on 27 May 1992. The

incident prompted an action against Muslim extremists who were headed by Omer Filipović. The Muslim members of the Territorial Defence were issued an ultimatum to surrender. They first refused to do so, but when Serbs fired a "warning volley", the Muslims changed their mind and surrendered their arms. The witness recalled that some of them fled into the woods. The witness also testified that non-Serbs enjoyed protection and "were able to live in peace". Those Muslims who voluntarily wished to leave had their safety guaranteed so long as they surrendered their weapons. Military action was taken against those who did not do so.

In the first part of the cross-examination, the OTP put to the witness that in late May 1992, after the attack on the unarmed Yugoslav People's Army (JNA) column by Muslim forces, there was a retaliatory attack on the Muslim villages. The OTP alleged that about 900 Muslims were detained. Kevac responded that he did not know the exact number of the Muslims who ended up in detention, but he was sure that all those who had surrendered or had been captured in combat remained under the jurisdiction of the civilian police, not the army. The witness stated that he was aware only "of isolated crimes" that were not part of any plan implemented by the military and police.

The OTP alleged that the events in May and June 1992 resulted in the exodus of non-Serbs from Ključ. Kevac responded that Muslims had left Ključ because they were afraid of war, which also led Serbs to leave the municipality of Ključ.

On 23 January, Savisa Sabljić, a professional journalist, appeared before the Chamber to testify. Before being mobilised into the 2nd Krajina Corps in June 1992, the witness worked for Oslobodjenje daily newspaper. He notably reported on the beginning of fighting in Croatia and in the Kupres area. In his capacity as a soldier, the witness had several encounters with Mladić, and was present when Mladić was wounded on the front line. The witness stated that Mladić had prohibited his soldiers from wearing the Serbian nationalistic insignia.

During cross-examination, Sabljić discussed the attack in Kijevo of 26 August 1991, personally commanded by Mladić. He explained the attack was executed in co-ordination with members of the Territorial Defence of the former JNA. Confirming the town was demolished as a result of the attack, the witness, however, noted Kijevo was less damaged following the combat than when he returned about a month later. Further, the witness did not know whether the towns of Zadar and Šibenik were destroyed.

Sabljić refrained from discussing further Prosecution materials, arguing he did not personally witness or have knowledge of the events and opinions described. The Chamber noted that the Prosecution's methods somewhat departed from the rules for cross-examining a witness. The Prosecution ended its questioning as lacking other usable materials.

The trial continued on 26 January with the testimony of Nedo Blagojević via video-link from Belgrade. Blagojević was the Chief of Communications in the Army of Republika Srpska (VRS) Drina Corps. His statement and testimony contested the authenticity of conversations intercepted by the Bosnia and Herzegovina Army surveillance service in July 1995 involving VRS officers. The intercepts were conducted at the time of the Srebrenica operation. In his statement to the Defence, Blagojević noted that it was impossible to intercept the Drina Corps communications. He personally installed anti-surveillance devices in the radio relay station in the VRS Drina Corps forward command post in Pribicevac. In Blagojević's opinion, the site was additionally protected from surveillance by a very steep slope which was 100 to 150 meters long.

During cross-examination, the OTP put to the witness that it was indeed possible to intercept radio communications. Blagojević was shown documents in which Mladić, Drago Nikolić and Vujadin Popović warn their subordinates that the enemy was taking advantage of the recklessness of the Serb communications officers to mount large-scale surveillance operations. The witness responded that there were some exceptions and such things "did happen from time to time". Blagojević also noted that the jamming devices prevented the enemy from listening to both speakers at the same time.

The OTP noted that a Prosecution witness had testified that sometimes both speakers could be intercepted even when the communications were protected by jamming devices if both speakers spoke loud enough

so that the voice of one speaker would be audible from the headphones of the other. Blagojević did not think this was possible.


Milorad Žorić

On 27 January, a wartime journalist supplying Reuters with video footage during the war and defectologist by training, Milorad Žorić, testified for the Defence. He was a resident in the town of Bihać and was forced to leave in 1991-92, together with an estimate of about 17,000 other Serbs. In his statement he indicated that, *inter alia*, in the period prior to his departure from Bihać, the Muslims were organising and arming themselves in mosques, were marking Serb apartments with little crosses near doorbells and deploying derogatory slurs towards the Serbs. As a reaction the Serbs started organising themselves so that armed incidents between the two ethnic groups were a frequent occurrence.

Also in his statement, specifically commenting on his impression of Mladić and his demeanour at the front lines, Žorić said it was Mladić's principle to have nothing of the VRS activities concealed, that he urged him to broadcast via Reuters circumventing the blockade on Republika Srpska. He was sympathetic to the plight of women and children, always bearing their well-being in mind, was a motivational leader to the soldiers he lead, reminding them of the suffering of the Serb people and that they had a duty to alleviate such through their bravery.

During examination-in-chief, the witness asked for extensive changes to be made to his statement, about which he was questioned by the Judges. He was then cross-examined and in line with his journalistic role he was unable to answer questions dealing with the specifics of Serb armament, the establishing of a border on the Una River and questions about the objectives and goals of the Serbian political leadership. He had, however, given some detailed information about the arming of Muslims in Bihać which lead Judge Orie to raise the question of his bias - he responded by saying it was only natural for him to have greater interest in the movement of the enemy, which led to him keeping better track of their on going than those of the Serbs.

Following the testimony of Žorić, Dragan Karac, a JNA Reserve Officer, was called to testify. After 1 April 1992 he was transferred to Sanski Most, where the role of his brigade was to keep peace between armed Muslim and Serb groups. Dissatisfied with losing the elections, Muslims took over the municipal building by force, using weapons and renegade police forces composed of Muslims and the Green Berets. The Serb Democratic Party (SDS) recaptured the municipal building with the help of the Serb forces; the witness' brigade did not participate in this. The witness testified that for the sake of the security of the civilian population, JNA and later VRS units had to disarm the Muslim extremists who were forming checkpoints from which they killed soldiers and policemen. Having been transferred to the 17 Ključ Brigade in late July 1992, Karac witnessed that after Bihać was declared a safe area, members of the Bosnia and Herzegovina Army regularly attacked VRS positions from within it.

According to an article produced by the Prosecution, the witness' brigade had participated in the "liberation" and "mopping up" of Bosanska Krupa, Hambarine, Kozaruša and Kozarac near Prijdor, as well as Sanica, Krasulje, Hrustovo and Vrhpolje. The witness confirmed that parts of the brigade, although not the entire brigade, took part in the disarming of paramilitary units of the Muslims in these areas. Upon further questioning the witness asserted that he "really wouldn't know what the motives were of the Muslim representatives" in taking over the municipality building. The witness was also not aware of whether his brigade secured the areas around the municipality building in order to allow for other Serb forces to take them over. Karac described the situation in Mahala, where the brigade, more than once, issued appeals for people to surrender their weapons. The witness insisted that he never heard appeals to kill or destroy people, but only for people to surrender their weapons. Without excluding the possibility of this ever having happened, he suggested that this would have been in individual cases, however, all those who did not hand in their weapons were a legitimate target. The witness also recognised that by the end of May 1992, most non-Serbs had left these villages out

of fear, however, he emphasised that many Serbs were also scared for their safety.

Branko Predojević, testifying for the Defence on 28 January, was a Reserve Officer of the JNA and a teacher of defence towards the end of 1991. In the summer of 1992 he took over the duty of Battalion Commander in the 6th Sana Brigade in Sanski Most. Given his experience in this capacity, he spoke of the attitude of the VRS towards paramilitary formations and stated that the VRS was never involved in moving out the civilian population from Sanski Most. Neither did he ever receive an order asking him to act in contravention of the law or customs of war.

The Defence also called up a document showing that a criminal report was filed against a member of Predojević's brigade. The person was not prosecuted however, he returned to the unit, which was common practice, on the assumption that legal measures would be taken after the war had concluded. He went on to say that this practice was instituted by superior command and a frequent occurrence. It was opined that a greater punishment would be for the suspected individual to be in the unit, fighting on the ground, rather than in jail.

During cross-examination, the Prosecution raised the issue of two soldiers under Predojević's command, who took part in a mass murder on the Vrhpolje Bridge on 31 May 1992. They were Željko Ilić and Jadranko Palija. The witness agreed that he could vaguely recall them, that he knew of the unfortunate incident but nothing more as he was away at the time. Palija was later sentenced to 28 years for the commission of a war crime by the BiH State Court and the Appellate Panel confirmed the verdict. The Defence did not re-examine the witness, which concluded his testimony.

On 29 January, the Defence called Milenko Stanić, President of the Vlasenica municipality and Crisis Staff and later appointed as President of the Serbian Autonomous Oblasts (SAO) Birać Assembly.

In his statement, Stanić explained that the problems in eastern Bosnia were caused by the Party of Democratic Action (SDA), who wanted to break up Yugoslavia and declare an independent and unitary Bosnia and Herzegovina. In this regard, the SDA undertook a series of unconstitutional acts through the use of mass gatherings, such as preventing the requisition of files and demanding the provision of travel to Zalužani by coercion.

Stanić referred to two meetings with Mladić that took place in 1992. At both meetings Mladić insisted that the problems caused by the Serb paramilitaries in Zvornik would be dealt with by the VRS. Stanić stated that he never noticed or observed Mladić issuing any kind of instructions to expel Muslims after military attacks nor any type of commission of war crimes.


Milenko Stanić

On the subject of the naming of the Autonomous Region of Birać, Stanić explained that at the Assembly session a number of deputies had asked for the area to be called the “Serbian autonomous region”, however, at the request of the deputies from other parties, the reformist party and the SDS, it was decided that the area should be left open for all Muslims. Stanić explained that the addition of the word “Serb” into official documentation was done in error by the clerks of the meeting. He insisted that this region was not solely there for the protection of Serb interests.

The Prosecution brought up an order issued by Major Andrić on 31 May 1992, which made reference to the Prime Minister of the Birać Serb Autonomous Region (SAR) and the exchange of prisoners. The bench questioned Stanić on whether this was a reference to himself. However, Stanić explained that the position he definitively held was that of President of the Municipal Assembly of Vlasenica and that it was difficult to tell what his position was in regard to Birać SAR because the Assembly had stopped functioning around this time.

On the issue of the detention of Muslims, Stanić explained that one of the reasons for the people being held in Sušica and a school in Vlasenica was because of an order given by Major Andrić. This order was given due to the fact that the growing numbers of Muslims in detention had become a problem. Stanić continued by stating that Sušica was not a camp but a reception centre.

Prosecutor v. Hadžić (IT-04-75)

On 22 January, the Trial Chamber rendered a public redacted version of a decision in the *Prosecutor v. Goran Hadžić* case, granting in part the Prosecution's request to appoint independent experts to examine the Accused pursuant to Rules 54 and 74 *bis* of the Rules of Procedure and Evidence (Rules). These experts shall, as argued in the Prosecution's submissions, examine Hadžić, provide detailed medical reports and address, *inter alia*, Hadžić's health condition and his ability to attend trial, either in person or through other means, such as the use of a video -conference link.

The Defence objected to this motion, noting that there is no justification provided by the Prosecution to appoint additional medical personnel, in particular when considering that the Medical staff of the United Nations Detention Unit relies on an expert team of specialists.

Considering the fair and expeditious administration of justice, the Trial Chamber ordered the Registry to appoint two independent experts, who will each examine the Accused and submit, no later than 13 February, detailed written reports. These reports will have to answer a number of questions posed by the Trial Chamber as to Hadžić's current state of health, his capacity to physically attend and participate in trial proceedings, the risk of detrimental consequences to his health caused by the participation and attendance in trial proceedings and alternative options available in light of Hadžić's medical condition.


Goran Hadžić

On the same date, the Trial Chamber granted the Prosecution's second renewed motion for the admission of Rule 65 *ter* document 00656 and the substitution of translations of admitted exhibits. The Prosecution sought to admit Rule 65 *ter* number 00656, which was used during Reynaud Theunens's testimony but, due to an oversight, had not yet been admitted. The Prosecution also sought to substitute a number of translations of admitted exhibits. The Defence did not object to the motion but suggested further revisions for clarification. Similarly, the Trial Chamber also granted the Prosecution's motion to correct the clerical error of Exhibit L00057.

On 28 January, Hadžić filed a public redacted version of his urgent request for provisional release. Hadžić, relying on Rule 65 (B) of the Rules, requested provisional release on humanitarian grounds for twelve weeks starting on or about 29 January. Hadžić submitted that considering his health situation, the conditions of the detention and the absence of a flight risk the conditions for his provisional release are fulfilled.

Prosecutor v. Karadžić (IT-95-5/18-I)

A Status Conference was held in *Prosecutor v. Karadžić* on 28 January. The Trial Chamber took appearances from the parties, including Karadžić, who is self-represented and was accompanied by his Legal Advisor, Peter Robinson. Presiding Judge Kwon referenced a Trial Chamber decision of 11 June 2014, which confirmed that Rule 65 *bis* (A) on Status Conferences at the Pre-Trial phase does not require that they be held after the start of trial.

However, Karadžić requested a Status Conference on 9 December 2014 to discuss the Prosecution's disclosure obligations, already a subject of much litigation in the case and health issues. The Trial Chamber is of the position that the Prosecution's disclosure obligations have been sufficiently litigated and thus did not warrant being addressed in the Status Conference. However, a Status Conference was scheduled to allow Karadžić to address the Court, in public or private session, on his health and conditions of detention.

Karadžić informed the Tribunal that he has, generally, a cooperative professional relationship with Detention Unit management, but that there are more systemic institutional issues that such cooperation cannot resolve, namely a decline in his "perfect health" and "perfect test results" that he entered the Detention Unit with, but that have since significantly deteriorated, claiming that this is a problem for others in the Detention Unit as well. Karadžić signed an

authorisation at the Medical Service's request to send his test results to the Trial Chamber, though it seems no such medical records have yet been received. In essence, Karadžić suggested that the food has caused him and several other detainees to have difficulty metabolising sugars and to develop diabetes; he further asserted that the occurrence of malignant diseases among the detainee population is disproportionate, again suggesting the circumstances of detention, "health of the building", or the food as the cause. He suggested a need for investigation into the matter.

In addition to these health concerns, Karadžić raised the issue of restrictions on contact with the media, now that he has more time because his trial is over. In particular, he indicated that his use of the Internet, which is monitored, should only restrict his communication with others but should otherwise be unlimited in allowing him to access material from the Internet. In particular, he expressed an interest in audio-recording proper pronunciation of the Serbian language. In addition to these primary requests, he noted that the International Criminal Court detainees housed in the same facility were subject to more lenient restrictions and received better food. He was concerned about the differential treatment experienced by convicted Balkan persons sent to former communist countries versus those sent to European countries to serve their sentences. Judge Kwon stopped Karadžić here as exceeding proper scope and further opined that he was unsure "what role this Trial Chamber can play" in addressing the medical and detention issues raised by Karadžić. Rather, he suggested Karadžić liaise with the medical officer and detention authorities and "then come back to the Chamber, if necessary, when his fair trial right is infringed". Legal Advisor Robinson was then asked for input and noted that Karadžić has already been in touch with these people but felt it important that the Trial Chamber was put on notice of these issues, even if they were unable to intervene.

The Trial Chamber did not really address the resolution of any of Karadžić's complaints, noting that there is a regime in place to address detention and medical issues and that the Trial Chamber would look into matters further "when required". Judge Kwon then moved into private session to deal with a final issue and adjourned. There is no requirement of Status Conferences between the close of trial and the publication of the Trial Judgement, expected in October in this case; as such, it is unclear whether there will be any further Status Conferences prior to the Judgement.

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

On 21 January, Judge Theodor Meron presided over a status conference in the case *Prlić et al.* Judge Meron announced that on 19 January, Berislav Pušić had filed his consent to hold the Status Conference in his absence. Judge Meron also noted that on 13 January, Jadranko Prlić filed a waiver of his right to be represented by his Counsel and Co-Counsel during the Status Conference.

Judge Meron reviewed Rule 65 *bis* B, reminding that it requires that a Status Conference be convened within one hundred and twenty days after the last Status Conference. He explained that there are two primary reasons for this:

- To allow the appellant the opportunity to express concerns related to their appeal, including the detention conditions and for the Tribunal to inquire about the health condition of the detained person; and

- An opportunity to update the appellants.

Judge Meron reminded that the last Status Conference was held on 23 September 2014.

He then addressed the matter of the health of the Appellants and the status of detention conditions. As no Accused expressed a desire for the Status Conference to be in closed session at Judge Meron's prompting, it continued as an open session. None of the Accused raised any health issues or problems with the detention conditions.

Judge Meron then proceeded to the update and said that all Appellant Briefs had been filed on 12 January, that the Responding Briefs had to be filed by 7 May, and that Defence and Prosecution Replies had to be filed by 29 May. Judge Meron asked whether any party had any issues to discuss, but observed that neither Defence nor Prosecution had issues they wanted to raise. Since there was no other matter to be discussed, the conference was adjourned.

LOOKING BACK...

International Criminal Court

Five years ago…

On 26 January 2010, the President of the Assembly of State Parties (ASP), Christian Wenaweser, visited Uganda for a three-day mission in preparation for the Review Conference of the Rome Statute which took place in Kampala from 31 May until 11 June 2010.

Christian Wenaweser

The Outreach Unit of the ICC partnered up with No Peace Without Justice, the Human Rights Network of Uganda and the Uganda Coalition for the International Criminal Court and organised a community outreach meeting in Tingkidi village, in the Acholi sub-region of northern Uganda. The collaboration was organised in an effort to promote the Review Conference. Over 800 people from the surrounding villages attended the meeting at Tingkidi village. Christian Wenaweser noted that it was crucial to allowing war-affected communities to have a platform that provides victims with the opportunity to share their views and concerns with the work of the ICC.

He also emphasised that in addition to the crime of aggression, which was defined during the Review Conference, a key agenda item should be a stocktaking exercise to discuss the impact of the work of the Court on victims.

Pertinent issues raised by members of the community included the cooperation of State Parties in enforcing arrest warrants issued by the ICC; the provision of adequate resources to assist the rehabilitation processes of victims; and questions as to why the ICC is targeting only African countries for prosecution.

International Criminal Tribunal for Rwanda

Ten years ago…

On 23 March 2005, the ICTR the data base was handed over to Rwandan Judicial authorities. 35 Rwanda nationals completed a training conducted by the UN Tribunal on legal documentary techniques, use of library management software and online legal research.

The then-Registrar of the ICTR, Adama Dieng, expressed his gratitude for the current existing cooperation between the government of Rwanda and the Tribunal. He described that the Tribunal faced many difficulties and a lack of resources to carry out its task. This training was seen as an indication that the government for Rwanda appreciates the work of the Tribunal. The Register further noted that the training was timely and aimed at strengthening the Rwandan judicial system.

ICTR Premises

The Minister of Justice and Institutional Affairs, Eda Mukabagwiza, thanked the ICTR for its continuing efforts in enhancing the cooperation between the Tribunal and Rwanda. She expressed appreciation for the training offered to Rwandan legal officers and students. This would assist librarians to efficiently protect legal archives.

She said she was very happy with the case law access and she was sure it will help Rwandans to understand what is happening in Arusha. She added that she looks forward receiving continuing support by the ICTR to build programmes benefitting the Rwandan judicial sector.

International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago…

On 9 February 2000, the Appeals Camber of the ICTY, consisting of Judge Richard May (Presiding), Judge Florence Ndepele Mwachande Mumba, Judge Wang Tieya, Judge David Hunt and Judge Patrick Robinson, heard the oral arguments on the appeals filed by the parties against the Judgement rendered by Trial Chamber I on 7 May 1999 in the case *Prosecutor v. Aleksovski* (IT-95-14/1).

Aleksovski appealed on four grounds including, (1) the Trial Chamber's failure to establish a discriminatory intent, necessary to convict him under Article 3 of the Statute; (2) the lack of gravity of the conduct proved (violence against the detainees) as to warrant a conviction under Article 3 and secondly its justification by reasons of necessity; (3) the fact that the Trial Chamber erred in relying on evidence which was inherently unreliable and did not meet the standard of proof required for conviction, as well as; (4) the Trial Chamber's erred Judgement in finding that the appellant was in a position of superior responsibility.

The Prosecution appealed on three grounds: (1) the Trial Chamber erred in law in deciding that Article 2 of the Statute was inapplicable because the Bosnian Muslims who were held in the Kaonik prison were not protected persons within the meaning of Article 4 of the Geneva Conventions; (2) the Trial Chamber erred in law and fact in holding that the Accused did not incur responsibility under Article 7(1) of the Statute for mistreatment suffered by the detainees outside the Kaonik (central Bosnia) prison compound; (3) the Trial Chamber erred in sentencing the Accused to a term of two and a half years imprisonment. Ordered Aleksovski's immediate return to custody.

On 7 May 1999, the Trial Chamber found Aleksovski guilty of outrages upon personal dignity (Article 3 of the Statute) committed in 1993 in a prison facility at Kaonik. Aleksovski was the commander of this prison and was convicted on the basis of individual and superior responsibility.

He was sentenced to two years' and six months' imprisonment. However, under sub-Rule 101(D) of the Tribunal's Rules of Procedure and Evidence, the Chamber considered that Aleksovski was entitled to credit for time already served. Therefore, it ordered his immediate release, notwithstanding any appeal.

NEWS FROM THE REGION

Croatia and Serbia

Reactions to the ICJ Judgement in the Case *Croatia v. Serbia*

The reactions by both Croatia and Serbia in response to the recent Judgement by the International Court of Justice (ICJ) about the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* in both countries were similar and the outcome to no surprise for the government officials.

Josip Leko

Croatian parliament speaker, Josip Leko, said on 3 February that the Judgement of the ICJ was not disappointing. However, he pointed out that even though that what happened is not to be seen as a genocide it is still a serious war crime. The ICJ's ruling should be accepted in a civil way. He said it was important that the Court urged both States to do everything in their power to find those who have gone missing in the Homeland War 1991-95 and "mark our victims in a dignified manner". About the future relationship between Serbia and Croatia he added that it is important to move on and to find common interests for the future.

According to Serbian Justice Minister Nikola Selaković, this ruling was to be expected. He said that Serbs from Krajina would still expect a court epilogue for the committed crimes. Further, Selaković stated that this was probably the most important event in the relationship between Croatia and Serbia, which would leave them to advocate a future beneficial relationship as neighbours.

A complete analysis of the ICJ Judgement will be published in the next newsletter issue.

Kosovo

Kosovo Memory Book Published

The International Humanitarian Law Center (HLC) presented on 4 February the Kosovo Memory Book. This book contains data on those missing and killed in Kosovo from 1998 to 2000. Each reported death has several sources such as statements, photographs, media items, personal documents and court documents. Statements taken down have been compared with other sources to verify them.

Nataša Kandić

In total, 13,517 people who were killed are documented, including Albanians, Serbs, Roma, Bosniaks and others. The founder of HLC, Nataša Kandić, says that this book will be of great help for the courts to find those having given orders and having committed crimes. Patrick Ball, the Director of Human Rights Data Analysis Group, who has examined and analysed the database says that the HLC's databases have enormous quality.

Serbia

Serbia and the European Union

On 4 February, Prime Minister Aleksandar Vučić of Serbia was in Germany to deepen the economic relationship between the countries. The German Baden-Wurttemberg Minister for Europe and International Affairs, Peter Friedrich, opened the forum and pronounced that Serbian's economic development needs to be strengthened in order to help to process of joining the European Union. Investment into the Serbian economic market is one of the first steps of the long process in joining the European Union and therefore should be started immediate.

Aleksandar Vučić

Further, Friedrich said that companies in Germany have recognised the development of Serbia's economy and have invested into new developments in Serbia. Vučić presented economic and legal reforms all aimed to heal Serbia's economy. He expressed gratitude and pointed out that Serbia already has free trade agreements with the European Union, the Russian Federation, Kazakhstan, Belarus and Turkey which make up a "billion people market".

NEWS FROM OTHER INTERNATIONAL COURTS

International Criminal Court

Konstantinos Papastergiou, Intern, Office of the Public Counsel for the Defence, ICC.

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

Prosecutor v. Joseph Kony *et al.* (ICC-02/04-01/05)

At the initial appearance of Dominic Ongwen, the Single Judge Ekaterina Trendafilova welcomed the attendees and invited the parties and the Registrar to introduce themselves. Defence Duty Counsel, Hélène Cissé, introduced herself, and so did the suspect, Dominic Ongwen. Ongwen stated that he comes from North Uganda, Gulu city, Amuru district, Kilak county. He said he was born in 1975 and was abducted in 1988, when he was taken to the bushes. He is currently unemployed. Ongwen also stated that he is proficient in the Luo-Acholi language only. The Single Judge then confirmed that the suspect had been informed of the charges and his rights and provisionally set the date of 24 August 2015 for the commencement of confirmation hearings. In setting this date the Judge explained that the Chamber had taken into account, *inter alia*, the inveteracy of the case and the right of the suspect to be tried with no undue delay. Further, Judge Trendafilova informed the parties that she will be issuing a set of decisions governing disclosure, redactions and victim participation. Duty Counsel underlined that the suspect speaks very basic English and asked for the translation into Acholi of all documents, especially witness declarations, in order to prepare his defence. Judge Trendafilova will decide whether absolutely every document will be translated. Finally, the Single Judge thanked the attendees and pronounced the hearing closed.

Extraordinary Chambers in the Courts of Cambodia

Flora Defolny, Defence Team Intern.

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DSS Judicial Update for January 2015

In January, the Nuon Chea and Khieu Samphan Defence Teams were back in the courtroom for Case 002/02 hearings.

In Case 002/01, Khieu Samphan's Defence Team filed responses to the Co-Prosecutors' filings to the Supreme Court Chamber, arguing in particular that the Co-Prosecutor's appeal against the Judgment is inadmissible. In Case 002/02, the Defence Team filed motions to the Trial Chamber while attending the hearings. They expressed strong disagreement regarding the presence of court-appointed Standby Counsel in the courtroom. They consider this measure as being unfairly punitive, unnecessary and as putting unjustified pressure on their client while he is already effectively represented by his own Counsel. They stated that this measure affected Khieu Samphan's health. Furthermore, despite the Trial Chamber's decision of 19 December 2014, they are waiting for their respective Bars to rule on their so-called "misconduct" for "boycotting" the trial during the drafting of their appeal brief. The Trial Chamber officially referred to the French and Cambodian Bars on 26 January only.

The Nuon Chea Defence Team prepared and filed their response to the Co-Prosecutors' appeal brief against the Judgment in Case 002/01, which mainly concerns the applicability of the third form of Joint Criminal Enterprise (JCE III) as a mode of liability. In relation to the trial of Case 002/02, the team filed several motions to the Trial Chamber. In one of them, the team raised objections to certain practices in the questioning of witnesses and civil parties in Case 002/02, including showing witnesses and civil parties their previous statements prior to their appearance in

court, leading questions in examination-in-chief, the Defence not being given necessary leeway to challenge evidence, and civil parties giving testimonies on relevant facts without taking an oath. In another motion, the team requested to add into the case file five documents relating to the credibility of civil party Oum Suphany who appeared in court this month.

On 7 January, the Case 003 Defence filed submissions to the ECCC Plenary concerning proposed Rules 66 *bis* and 89 *quater*. These proposed Rules allow the Co-Investigating Judges to reduce the scope of judicial investigation and the Trial Chamber to reduce the scope of a trial. The Case 003 Defence argued that these proposed Rules contravene Cambodian civil law procedure. However, the 11th ECCC Plenary adopted these amendments. The Case 003 Defence also requested to intervene in the appeal proceedings in Case 002/01 or in the alternative to file an *amicus curiae* brief on the issue of JCE III applicability. The Defence asserted that the matter is of great interest for their client because he is alleged by the Co-Prosecutors to be a member of a Joint Criminal Enterprise and to have committed crimes imputed to him by way of JCE III. A decision on this issue in Case 002/01 is of general concern and will more particularly impact Case 003, and as such their direct intervention should be granted or the *amicus curiae* brief accepted. Alongside those events, the Case 003 Defence continues to prepare submissions to protect their client's fair trial rights and to review publicly available material, since the case file remains inaccessible.

Similarly, Defence teams in Case 004 filed submissions to the ECCC Plenary concerning the proposed Rules 66 *bis* and *89 quater*. The Teams continue to prepare their clients' defence and protect their clients' rights using publicly-available sources and researching the substantive law applicable at the ECCC.

Special Tribunal for Lebanon

STL Public Information and Communications Section.

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

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

On 8 January, Faisal Salman testified before the Trial Chamber via video teleconference. Salman is one of the journalists who was present at the Place de l'Etoile café in Beirut, where the former Prime Minister, Rafiq Hariri, greeted journalists after the parliamentary session on 14 February 2005. In his testimony Salman told the Court that Hariri had a distinctive relationship with the journalists. Salman went on to explain that Lebanon was politically divided into two groups, one led by the former Prime Minister, Rafiq Hariri and his allies, with the former President, Emile Lahoud, who was close to Syria, at the forefront of the other group. In this context, Salman testified that the former Prime Minister was confident of winning the 2005 legislative elections despite the political disputes in the country. According to the Prosecution witness, Hariri enhanced the security arrangements around his place of residence, Quraitem Palace, two months prior to his assassination. Defence counsel for Ayyash cross-examined Salman on a number of issues that were raised in his testimony.

On 9 January, the Prosecution read onto the record summaries of the evidence of five witnesses. These statements related to photographs of Hariri and testimonies relevant to Hariri's international and local movements at the material time.

Ghattas Khoury appeared before the Trial Chamber in person on 15 January. Khoury was a political ally and a personal friend of Rafiq Hariri. He is a surgeon by profession, and was a member of the Lebanese parliament from 2000-2005. His testimony focused on the views of various Lebanese parties in relation to the extension of the Prime Minister's mandate in mid-August 2004 and after his visit to Damascus that month. In his testimony Khoury also spoke about his own stance on the extension of the mandate of the former President, Emile Lahoud. Khoury also elaborated on the discussions he had with Hariri in certain political meetings (especially the Bristol Group). Additionally, the witness testified regarding the candidates whom the Prime Minister was willing to accept onto his electoral list of 2005, before speaking about

his activities on the day of the assassination.

Khoury's testimony is an attempt to strengthen the domestic front within Syria following the US invasion of Iraq. The witness added that Hariri saw the need to secure a new Lebanese government, which would be able to deal with the new regional dynamics.

Khoury stressed the role that the former Lebanese Maronite Patriarch, Nasrallah Boutrous Sfeir, played in calling for the pull-out of the Syrian forces from Lebanon after the withdrawal of Israel from Southern Lebanon. He also testified about the deteriorating relations between Syria and Rafiq Hariri, and recalled the meeting between the Syrian President Bashar Al-Assad and Rafiq Hariri in August 2004. During this meeting, the former Prime Minister understood the seriousness of the message Syria was trying to convey to him in approving the mandate renewal of the Lebanese President. In the alternative, he would risk having Lebanon "broken" over his and Druze leader Walid Jumblatt's heads. In this context Khoury explained that Rafiq Hariri was initially opposed to the renewal of Emile Lahoud's term. However, the witness testified that after the August 2004 meeting in Damascus, Hariri's position changed radically.

Khoury emphasised that Hariri was struck by the received threats, interpreting them as potentially targeting downtown Beirut and the whole country. Khoury further testified that regardless of the fact that he was subject to personal threats, he was the only individual in the Beirut parliamentary bloc who did not approve the mandate renewal. Khoury added that security institutions dominated by Syrian intelligence and its Lebanese allies at the time failed to investigate the threats against his life.

Khoury then recalled the discontent of Rustom Ghazale (the former Head of Syrian intelligence in Lebanon) and the insults that were addressed to Khoury following a TV intervention that he had made.

On 16 January, Ghattas Khoury continued his testimony before the Trial Chamber. It was focused on the former Prime Minister Hariri's political allegiances, which were aligned with the emerging anti-Syria opposition following the extension of President Emile Lahoud's mandate in September 2004. Khoury explained that Syrian officials understood the reasons for Rafiq Hariri's political realignment, when he opposed the inclusion of six pro-Damascus candidates in his 2005 electoral list.

Khoury also recalled the will of the former Prime Minister not to have the same line-up as in the 2003 cabinet. Hariri decided at the time to reach a compromise in light of the tense regional and international circumstances, especially with the US presence in Iraq, by accepting the imposed candidates on his lists.

On 20 January, Khoury continued his testimony before the Trial Chamber recounting the details of events that took place on the days before the assassination of Hariri. Khoury revealed that the now-deceased Minister Bassel Fleihan had warned the former Member of Parliament Hariri about the seriousness of the threats against the lives of him and Walid Jumblatt. He further testified that these claims were made public in an article published in the pan-Arab newspaper, Al Hayat, allegedly based on information from British intelligence. Khoury recalled that although Hariri took the threats seriously, he also noted that Arab and regional officials had advised Syria not to resort to assassinations in Lebanon following the attempted assassination of the Lebanese MP Marwan Hamade in October 2004.

STL Rules of Procedure and Evidence
Rule 155 (A)

Subject to Rule 158, the Trial Chamber may admit in lieu of oral testimony the evidence of a witness in the form of a written statement, or a transcript of evidence which was given by a witness in proceedings before the Tribunal, which goes to proof of a matter other than the acts and conduct of the accused as charged in the indictment. (amended 30 October 2009 and 10 November 2010) (iii) special circumstances exist warranting such release.

After the conclusion of Khoury's testimony on 21 January, three witness statements were read onto the record in accordance with Rule 155. These statements were part of a group of eight statements. These individuals were identified by the Prosecution as being the subject of an alleged network formed by eight telephone SIM cards. The identity of each of these witnesses were used in applications submitted to the Lebanese Alfa Company for SIM cards, which led to the creation of what the Prosecution calls the Red Network of phones used by those allegedly responsible for the assassination. All eight witnesses denied

being the users of the phones bought in their names.

Khoury then recalled the day of Hariri's assassination. He testified that Hariri was attending a parliamentary session focusing on a new parliamentary law. After leaving parliament Hariri went to the Café de l'Etoile, where Khoury spoke to him for the last time. Khoury then went to the American University Hospital to treat an emergency patient. Shortly afterwards the explosion took place and the bodies of the victims began to arrive in the hospital. Khoury and his colleagues identified the body of Hariri and were told that Fleihan was among the injured.

After his direct-examination Khoury was cross-examined by Counsel for Jamil Ayyash, Counsel for Badreddine and for Oneissi. This cross-examination continued on 21 January when Khoury was questioned by Emile Aoun, Iain Edwards and Mohamed Aouini (Counsel for Habib Merhi).

On 22 January, Salim Diab testified before the Trial Chamber in person. Diab is a businessman and politician. He has also been a close friend of the Hariri family since 1979. From 1996-2000 he was a Member of Parliament for the Future Movement. From 2000 onwards, Diab was the election manager of the former Prime Minister. His testimony focused on the mechanisms in place for the 2005 elections, the aftermath of the meeting between the Syrian President Bashar al-Assad and the former Prime Minister Hariri in August 2004, as well as the so-called ''olive oil incident'' in which Hariri was accused of bribing voters.

Diab mentioned that the extension of the mandate of the Lebanese President, Emile Lahoud led to a heightened tension in the relations between Bashar al-Assad and Rafiq Hariri. He also testified that Hariri was not willing to acquiesce to Syria's demands concerning candidate lists for the 2005 elections. Diab gave the examples of Adnan Arakji, Bahaa Itani and Muheieddine Dorghan who were, according to the witness, pro -Syrian candidates that were imposed onto Hariri's electoral lists in 1996.

Diab then recalled the general atmosphere in the months before the assassination of Hariri in February 2005. He described the existing political tensions after the assassination attempt against the MP, Marwan Hamade, in October 2004, which, according to the witness, was interpreted as a message to Hariri. Diab also recalled the numerous times that the Brigadier General at the Lebanese Internal Security Forces (ISF) Wissam Al Hassan, and Rafiq Hariri's close protection officer, Yahya Al Arab, asked him to warn the former Prime Minster about the risks associated with visiting Hamade.

Diab testified that Hariri started sensing that his phone was being intercepted, which the reason why he preferred using a secure line in his Quraitem residence, which he felt was safer.

Diab testified about the "olive oil incident" in which Hariri was accused of bribery a few months before the May 2005 elections. He stated that Rafiq Hariri had planned the distribution of olive oil through his organisation Tanmiya when he learned that there was a shortage of purchasing power in buying olive oil. This distribution resembled all other food distributions that were carried out by the organisation during the Ramadan period, Diab asserted. Diab mentioned that he last saw Hariri on 13 February 2005.

He was then examined by the Legal Representative for Victims (LRV) before being cross-examined by Defence Counsel representing Mustafa Badreddine. The LRV mainly questioned Diab on the logistical assistance that was provided to voters, whereas the Defence's questioning focused on the information provided by Diab to the United Nations International Independent Investigation Commission (UNIIIC) and the role played as general coordinator of Hariri's party.

In his testimony, Diab admitted that he had told the UNIIIC in 2005 that he had heard a rumour about an individual (PRH009) who was supposedly paid USD 500,000 to change the route of Hariri's convoy on the day of his assassination. When asked about the source of that information, Diab apologised for not remembering the source.

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

On 23 January, the Appeals Panel in the case STL-14-06 unanimously decided that the Tribunal does have jurisdiction to hear cases of obstruction of justice against legal persons.

Following an appeal by the *Amicus Curiae* Prosecutor, the Appeals Panel – composed of Judge Afif

Chamseddine (presiding), Judge Janet Nosworthy and Judge Ivana Hrdličková – reversed the Contempt Judge's previous decision on jurisdiction where he held that Rule 60 *bis* of the Tribunal's RPE, which governs contempt and obstruction of justice offences, only applies to natural persons.

The Appeals Panel found that the Contempt Judge erred in his ruling that there is no ambiguity in the term "person" under Rule 60 *bis*, and that his consideration of the *nullum crimen sine lege* ("no crime without law") principle was mistaken as the Appeals Panel's decision in the case against New TV S.A.L. and Al Khayat did not create a new offence. The Panel emphasised that the same reasoning of the New TV S.A.L. Jurisdiction Appeal Decision (2 October 2014) applies since the legal issue is the same in both cases. As a result, the Appeals Panel ordered that the charges against Al Akhbar Beirut S.A.L. be reinstated. Judge Chamseddine issued a separate opinion and Judge Nosworthy issued a separate and partially dissenting opinion.

DEFENCE ROSTRUM

IBA International Criminal Law Conference

By: Ruby Mae Axelson, Agnès Hugues, Fábio Kanagaratnam, Molly Martin

Eleanor Pahlow, Margaux Raynaud

Panel I: Respecting State Sovereignty and the ICC – Unwilling or Unable?

On 31 January and 1 February, the International Bar Association (IBA) organised its Annual Conference on International Criminal Law at the Peace Palace, which centred around the International legal challenges for 2015. The event was attended by 300 delegates from all around the world and was co-chaired by Steven Kay QC, 9 Bedford Row, and Alex Whiting, Harvard School of Law.

The first panel of the Conference addressed the relationship between states-parties to the Rome Statute (RS), third-states, and the International Criminal Court (ICC). This multi-disciplinary panel, moderated by Sir Geoffrey Nice QC, Professor of Law, focused on the challenges presented by cooperation and surrender, complementarity, as well as on the effectiveness and legitimacy of the institution. Nice prefaced the debates by stating that while the “world citizen” has come to expect that there will be accountability, ICC indictments may sometimes be perceived as a stain in the concerned area. He noted the role of the Prosecutor and Judges in safeguarding the rule of law while strikingly omitting to mention the Defence’s part in this regard. Principal Counsel Xavier-Jean Keïta of the Defence (OPCD) at the ICC observed later in the debates the difficulty for the Defence to find its place in an institution, which stated its purpose is the fight against impunity.

Dr. Amrita Mukherjee, Lecturer at Leeds University School of Law, outlined the practical and geopolitical issues surrounding the ICC mandate. She observed the Prosecutor’s inclination to prosecute political and military leaders of developing states that generally reject the scope and application of the RS. She insisted that the international community must adopt a consistent approach to the ICC’s role, for the system to be perceived as impartial, indiscriminate and accessible.

Ambassador Helmut Tichy, Legal Adviser to the Austrian Ministry for European and International Affairs in Vienna, preferred a realistic approach to the ICC. He noted the latter’s influence of states parties and third states and expressed his satisfaction with the institution’s current state of development.

On complementarity, Dr. Dan Plesch, Director of the Centre for International Studies and Diplomacy in London, emphasised the large gap between the expectations of the international community and the existence of questionable local practices. He advocated the use of complementarity that he trusts to constitute a viable monitoring process, to positively file such gap.

Dr. Paola Gaeta, Professor of International Criminal Law at the University of Geneva distinguished between passive complementarity, which is a way to reassure the state, and proactive complementarity through self-referral. She explained that an ICC investigation into situations and cases may induce state

efforts, and domestic prosecutions thereof. Gaeta further raised the yet to be answered question of the extent to which the Court has priority to try or may request the transfer of an Accused that is charged with a different crime at the domestic level, the RS being silent of the issue of different conduct.

On the issue of cooperation and immunities, Ambassador Tichy considered that states targeted by Security Council (SC) Resolutions establishing the jurisdiction of the Court are to be treated as parties to the RS, meaning they would be subjected to similar obligations. Dov Jacobs (Leiden University) expressed his disagreement in commenting that a SC Resolution may not create obligations under a Treaty. The Ambassador, however, expressed the difficulty for waiving immunities of international organisations.

Closing the debate, Nice advanced the Kantian-inspired statement that there should be an "expectation of accountability". The question of whether the rule of law trumps state sovereignty however remains unanswered.

Panel II: Russia and Ukraine

The second panel, led by Moderator Federica D'Alessandra, a Fellow at the Carr Center for Human Rights Policy, Harvard University, Cambridge MA and Co-Vice Chair of IBA War Crimes Committee, approached the effectiveness of international criminal law in the annexation and aggression occurring in Ukraine. The Panellists included David Cattin Secretary-General of Parliamentarians for Global Action in New York, Mikhail Kasyanov former Prime Minister Of Russia, David Satter Senior Fellow at Hudson Institute, Journalist and Author and Dan Saxon a former Prosecutor at the ICTY and Assistant Professor and Tutor Leiden University.

D'Alessandra kicked off the session by highlighting the current relationship between Russia and the West and the importance of reflecting on the legal challenges that emerged from the conflict during the Ukraine crisis. Satter offered a general overview of the situation, referring to 2010 when President Viktor Yanukovych became President of Ukraine. According to Satter two events catalysed the Maidan manifestation: the rape of two women and Yanukovych's refusal of the EU agreement. Satter also addressed the propaganda campaigns occurring in Russia, indicating that part of the problem is the fact that Russians do not know their history, noting that helping Russians understand their history is a responsibility of the West. Kasyanov severely criticised President Vladimir Putin's actions. He described Putin's government as intolerant and noted that Putin miscalculated the western reaction to the annexation of Crimea.

Pondering whether international humanitarian law should apply to the conflict, Saxon responded affirmatively but defended that its application would be difficult. Saxon referred to the ICTY's *Tadić* case where the ICTY Appeals Chamber established the criteria for determining the existence of an armed conflict and defended that the difficulty lies on whether the conflict is considered an international armed conflict or not. According to Saxon, in order to be considered an international armed conflict, the direct participation of Russian armed forces needs to be established or it needs to be proven that the Russian state is exercising overall control. Most of the existing proof is fairly journalistic creating difficulties in evaluating whether separatist groups meet the threshold to be considered an international armed conflict.

When questioned whether there was a customary rule for "remedial secession" recognised in international law, Saxon replied that it is still unclear whether it could be supported. Regarding the Crimean referendum both Kasyanov and Cattin stated that there was no legal basis for it and although there was no conflict at the time, there was an apparent coercion which invalidates the Right of Self-Determination.

Touching on international accountability, Saxon defended that further investigation is needed, in particular in regards to who should conduct the investigation and whether there was civil liability when the downing of flight MH17 occurred. Cattin noted that Russia will continue denying its involvement in the conflict which will create difficulties in finding the truth. Kasyanov, emphasised that transatlantic unity needs to be strong and that Putin's regime should end, giving place to a new regime where, separate powers, an independent judiciary body and free elections exist.

The panel closed with a discussion about the role of the ICC in relation to a non-member party. Kasyanov defended that there is a role for the ICC, if Ukraine joined the ICC the crimes committed in the country

would be under its jurisdiction. Due to the complexity of the conflict, Cattin opposed this view and added that the current sanctions for Russia are not effective.

Panel III: Israel, Gaza Sri Lanka and LTTE

The third panel was titled "Israel and Gaza. Sri Lanka and LTTE". Anees Ahmed, Chief of Legal Affairs of the UN Mission in Liberia, was moderator of this panel. The Speakers were Clive Baldwin, Senior Legal Advisor at Human Rights Watch, Professor Michael A. Newton, Professor of the Practice of Law at the Vanderbilt University Law School, Michiel Pestman, International Lawyer at Prakken d'Oliveira, and Gregor Guy-Smith, International Lawyer and Consultant at 9 Bedford Row Chambers, as well as ADC-ICTY member. Ahmed introduced the panel and the issue to be discussed, among which the challenges imposed by non-international armed conflicts (NIACs) and so-called "asymmetrical conflicts". Some of the main discussion topics were whether there is a need to change the Geneva Convention, the issue of terrorism and military objectives.

The general opinion was that International Humanitarian Law (IHL) and international law that protects civilians were more relevant than ever and the general consensus seemed to be that the Geneva Convention did not have to, and even could not change right now. A repeated observation was that there is overlapping between the law of IHL, *jus in bello*, *jus ad bellum* and criminal law. According to Newton, the real question should be where the precise points of frictions of those tectonic plates are. However, he had also acknowledged that those laws have changed in "intricate ways". As a result, the law applies more than ever, but is also more difficult to apply than ever.

The rising problem of terrorism was discussed and in particular its use by states as an excuse to deviate from the Geneva Convention or IHL, which is dangerous. Guy-Smith formulated a general, international, definition for terrorism by paraphrasing the definition of the International Committee or the Red Cross (ICRC). He also cited examples such as the use of napalm in Vietnam, or the bombing of Bagdad during Operation Desert Storm, and explained that it was not called terrorism because they were acts of . Terrorism is associated with groups of loosely organised individuals.

Pestman reminded that terrorism is not something new. States were established by movements which nowadays would be called terrorist. For example, in the United States, the Boston Tea Party was an act of terrorism. In addition, as pointed out by Newton, as soon as issues of terrorism rise, there is a political dimension. In his opinion, we have dealt with terrorism in a "sector" way, and there are now overlapping sectors. There is a highly motivated, structured international system that just needs to be organised.

Newton raised the issue of transnational terrorist organisations, with the related issues of international support and transnational flow of funding. This constitutes a whole other separate domain, with the same subject, but a different topic. Newton was of the opinion that terrorism should not be artificially inserted in the Rule of Law. He pointed out if did not mean acts otherwise defined as terrorism do not fit perfectly within the existing rules. Therefore, he saw no need to artificially extend the law at this point.

Guy-Smith asserted that there is no need for the term of "terrorism" and in his opinion it is a mistake for lawyers to use it. It is used to make a distinction between acts made by a state and by a group of individuals. It detracts from some relatively clear rules under the law, and allows for sloppy prosecution. Pestman mentioned the attacks in London, and the fact that there had been no need of a label of terrorism to prosecute the perpetrators.

IBA Conference

A question that was raised by a member of the audience in regard to terrorist, is whether, when a terrorist does not recognise humanity, he is in any way entitled to human rights law. Guy-Smith answered that to him, a dominant feature of being a human being is treating your fellow human being with the utmost standard of human right's; no matter how they treat you.

In relation to military objectives, Newton asserted that there is no such thing as "indiscriminate bombing". He explained that the military go through a lengthy and complex process, which, most of the time, goes slowly from the perspective of the people

on the ground. He also pointed out that the duty to protect civilians is on all sides. He cautioned that often, on both sides there is a sense of moral rectitude, a belief that "we're the good guys, so don't question us". If lawyers do not question, then who will? Most of the time, it does not happen in the courtroom, but in minute to minute operations. Guy- Smith raised the question of what a military objective can be, presenting examples such as an electric plant used by both the military and civilians, munition transported by a non-military vehicle, a hospital, used periodically to launch military attacks. Using the example of the power plant, Baldwin invoked considerations to take into account such as the principle of proportionality and human rights, but also the long term effect. As he explained, if it is the only power plant, it will affect the population for a long time.

A question from the audience was related to Sri Lanka and the election of January 2015. What change of attitude can be expected of Sri Lanka on the subject of war crimes, investigation and prosecution? Newton pointed out that something has already changed: a movement toward reinvigorating domestic investigation. Whether they will do so internationally is unknown. He pointed out also that in the United States, there is only now a comprehensive report on the CIA, after five years, in the "country of democracy". These things cannot happen rapidly.

Another question from the audience concerned the situation between Israel and Gaza after accession to the RS. Baldwin answered that the crimes examined would be crimes committed both on and from the territory of Palestine. Also examined would be crimes committed by the Palestinian Authorities against Palestinians. Newton said that one of the problems with the ICC use of jurisdiction in the Gaza conflict is that it allows for a very targeted view. He insisted that a two-star General is in charge of an independent force running around in the battlefield, outside the chain of command, to document. There are said to be already 50 prosecutions in process.

Baldwin raised the subject of effective warnings and the fact that just because they have given a warning, it does not mean they can attack. Newton defended that no one does a more comprehensive job of it than the Israelis, which was later challenged by a member of the audience. The latter questioned how one could say that warning someone that their house was going to be destroyed by firing a rocket could be legal. He also wondered where the civilians were supposed to go. Newton mentioned there are cases where civilians are refused the possibility to go, or even do not want to go. He explained that effective warning is very complicated. There are specific requirements, such as sometimes needing eyes on the target. The military is required to do a very precise target by target analysis; every single time, up and down the chain of command, with investigations when there are violations.

Panel IV: ISIS, Supporting Revolution and the International Legal Context of Aiding and Abetting

The final panel of the first day was "ISIS, Supporting Revolution and the International Legal Context of Aiding and Abetting", moderated by Peter Robinson, ADC-ICTY member and Legal Advisor for Radovan Karadžić. The speakers on the panel included Margaret Coker Wall Street Journal, Kate Gibson ICC Defence Counsel, Dov Jacobs Assistant Professor at Leiden University's Grotius Centre for International Legal Studies, and Judge Bakone Moloto ICTY and MICT Judge, though Robinson promised to get the audience involved by using the Socratic method of cold-calling conference attendees in the spirit of the American law school tradition. The resulting panel was dynamic, setting out the basic legal and factual framework and then diving into many relevant and complex issues.

Robinson asked each of the panellists in turn to discuss a particular element of the issue. Coker spoke about the organisation of ISIS (Islamic State) and how they are funded, noting that what began as a militia underwent a theological split from al Qaeda and launched a Blitzkrieg across Syria and Iraq in an effort to establish a global Caliphate. She described the present-day ISIS as an organisation controlling an area about the size of the UK that is high-functioning, very literate and taking over existing government, military, judicial, administrative and infrastructural functions. Regarding funding, ISIS seems to receive a significant amount of its funding from ransom payments and oil smuggling, though they also accrue approximately USD 100 million every six months through the collection of local taxes, tolls, and bribes.

Next, Judge Moloto and Gibson spoke about the elements aiding and abetting at the ICTY and the ICC,

respectively, with particular attention paid to the infamous specific direction element. Judge Moloto first discussed the established *actus reus* and *mens rea* of aiding and abetting before tracing the specific jurisprudence on specific direction, starting with *Tadić and Perišić*. Gibson followed up on this by addressing the debated interpretation of aiding and abetting at the ICC, not yet interpreted by the Appeals Chamber, which revolves around the scope of the phrase to "act for the purpose of" and whether it requires a volitional commitment or desire for the crime or merely intent to help. The ICC jurisprudence has not yet drawn this line for indictable criminality, though Gibson suggested that, because the ICC was never meant to prosecute the full range of culpable actors, a more restricted interpretation is acceptable. Additionally, even if Article 25 (3) (c) of the ICC RS is read narrowly, Jacobs pointed out that Article 25 (3) (d) providing a sort of catchall for any other contribution to a crime or criminal enterprise leaves an alternative mode of liability available, which he termed "JCE on steroids".

Finally, Jacobs was asked to consider the specific jurisdictional requirements and challenges present regarding aiding and abetting ISIS. One of the noted challenges related to scope of the situation is whether it would cover the entire territory of Syria and Iraq, which seems overbroad for the targeted crimes, or ISIS-controlled only, which is problematic because a situation cannot be defined by targeting particular people. In terms of aiding and abetting ISIS, the discussion moved onto the plausibility of indicting someone in, for example, France. However, even controlling for jurisdiction, challenges remain, notably complementarity and gravity obstacles to admissibility.

Robinson then moved on to the interactive portion of the panel, where he showed pictures of well-known public figures and asked the panellists and the audience to discuss whether, given certain assumed facts, the figure would be guilty of aiding an abetting ISIS. These examples included President Hollande (France) paying USD 50 million in ransom which ISIS later used to murder civilians, Mark Zuckerberg (co-founder of Facebook) approving a recruitment post from ISIS which successfully recruits 100 people who then commit various crimes against humanity, and King Salman (Saudi Arabia) or other world leaders providing military aid to the rebel forces in Syria generally. Of course, much of the discussion here was dependent on whether and how we incorporate a specific direction requirement into aiding and abetting, and there was substantial commentary on the policy considerations of both sides. Jacobs, joking that it is a rarity, noted that he had no real opinion on this because it is a normative question – where do we as a society want to set the moral limits on criminal liability? – it is only from here that the law should then follow. Other issues raised during this discussion included the principal of legality, with Judge Moloto noting that because the *mens rea* in the ICTY's statute sets a lower bar than specific direction, there is no prejudice to the Accused in including it; and whether it is desirable to discourage the provision of military and other aid in international relations, when this is the primary way the international community promotes peace and security.

Panel V: Challenges in Securing Truthful Witness Testimony in ICL

The fifth session was held on Sunday morning and discussed the challenged in securing truthful witness testimony in international customary law. The panel consisted of ADC-ICTY member Karim Khan QC, a Defence Counsel at the ICC and ICTY, Judge Alphons Orie, Presiding Judge in the Mladić trial at the ICTY, Dr Rod Rastan, Senior Legal Advisor to the Officer of the Prosecutor OTP at the ICC, and Melinda Taylor, Defence Counsel at the ICC. The panel was moderated by Yaiza Alvarez-Reyes, a Legal Advisor in the Special Tribunal for Lebanon (STL), formerly of the ICTY Victims and Witnesses Unit.

Alvarez-Reyes started the session by discussing the fundamental role witnesses play in international criminal law by assisting Judges and providing crucial information regarding the guilt or innocence of the Accused. She also noted the difficulties that both the Defence and the Office of the Prosecutor face in securing truthful witness testimony.

Khan discussed the great dependence of both Defence and Prosecution on state cooperation, especially with regard to assisting with access to the territory concerned. In such circumstances where the Defence cannot access the territory and witnesses or protect the witnesses, the only fair thing for the Court to do, he said, was to stay the case. Khan stated that "sometimes international criminal justice is a fig leaf to political inaction". He finished by stating that good investigating by the Defence and the Office of the

Prosecution should be the litmus test.

Next to speak was Rastan. He started his discussion by noting the interesting paradox involved in state cooperation in securing truthful witness testimony. That is, if the ICC has become involved, it means the national system has failed and is unwilling or unable to try the Accused, but then the ICC also relies on that same state to carry out its work. A fundamental problem for the Court is when the state is unwilling or unable to cooperate. Rastan did note that lack of state cooperation is not always a question of motivation but sometimes of capacity. He suggested that in such cases, the OTP should come up with counter-balancing measures where it can. He provided the example of Darfur, where the parties had to build the case from the outside and interview witnesses that had fled Darfur to other countries.

Judge Orie began by noting the huge risk of obstacles to fairness that may endanger the proceedings at international courts and tribunals. However, he cautioned against giving in too easily because then we are accepting that violence and intimidation rules the law and the courtroom. He cited a Dutch example where a number of witnesses were killed prior to giving testimony and said the Court should consider who killed those witnesses. If it was the Defendant then he may not jump so easily to a funding of an unfair trial. He concluded that the Court must consider at what point it becomes unfair to continue the trial, and he would not easily make such a declaration.

Taylor spoke about the need for the United Nations Security Council to deal better with intransient regimes in its referrals for such countries. She then turned to the issue of self-referrals and noted the unholy alliance of interests between the Court and the state in such cases. She noted that if you allow a state to determine the focus and type of information to be relied upon, you are going to have problems with reliability, especially in relation to the Defendant. She concluded that there are significant issues regarding self-referrals at the ICC.

A member of the public asked the panel whether the methods of investigation used by the Defence or Prosecution are relevant to acquiring truthful testimony. Taylor responded that the types of question that the witness is asked have an influence. She also mentioned the various tools that the Prosecution has at their disposal in relation to acquiring witness testimony that may affect its truthfulness, including witness benefits. Khan added that although the OTP and Defence are on opposing sides, they should be united by one common denominator: ethics.

Panel VI: Expanding the Jurisdiction of the African Court on Human and Peoples' Rights

The final session of the IBA Conference was a panel on the African Court of Human and Peoples' Rights created by the African Union on the 27 June 2014. The panel consisted of Judge Nsereko, Judge at the STL and Former ICC President of Appeals Chamber, Samuel Akorimo Security Adviser United Nations Development Programme (UNDP), ADC-ICTY President Colleen Rohan and Charles Jalloh Associate Professor of Law at Florida International University College of Law, Editor-in-Chief, African Journal of Legal Studies and African Journal of International Criminal Justice. The moderator was Gillian Higgins QC, 9 Bedford Row Chambers. The Court will act as a merger of the existing Courts and expand their jurisdiction to include international crimes. Importantly, the subject matter jurisdiction of the Court acts as an expansion both for the African regional system and international criminal law in general, including transnational crimes seen as relevant particularly for the African continent. Moreover, the African Union has attempted to expand upon or improve existing international crimes for which the Court will have jurisdiction, leading to what Jalloh names the Rome Statute plus. Notably, with regard to genocide the Statute includes the addition of rape as a form of genocide, reflecting international jurisprudence initiated in the *Akayesu* decision but yet to be reflected in international treaty law.

As Nsereko suggested, while legally speaking there is no impediment to the creation of the Court, whether Africa has the resources for the project is questionable. Moreover, that the Statute provides for the creation of a permanent Defence Office as an organ of the Court, equal to the Prosecution, remains a progressive yet unrealistic ideal. A recurring theme within the discussion was that the ultimate destination for responsibility for international justice should be the domestic sphere and as such the Court should compliment both the ICC and the national investigations. Under this rubric both Akorimo and Judge Nsereko noted that the funding commitment should be wider

than the African states, although a focus on national investigations should be continued.

Rohan suggested that there are "massive" amounts to gain from the adoption of the Court, noting that the role of the ICC should not be perceived as the "only" court but as acting as a court of last resort. Not only will the African community benefit from the Court, Rohan also suggested it will be an advancement for international justice as a whole. Jalloh noted that justice is best served when it is closer to the people.

The topic then turned to immunities enshrined in Rule 46 *bis* of the RS immunities, which states that "no charges shall be commenced or continued before the Court against any serving African Union Head of State or Government, or anybody acting or entitled to act in such capacity". Whilst the whole point of international criminal law is accountability for all, Jalloh contended that the immunity issue is overstated. Firstly, he considered the fact that the lack of success in convicting Heads of State in international criminal law and secondly, the fact that immunity only lasts "during their tenure of office", with it also being a criminal act to purposefully extend his time in office to avoid persecution. This demonstrates that the African Union is setting realistic standards towards immunity by recognising the *de facto* experience of international criminal law.

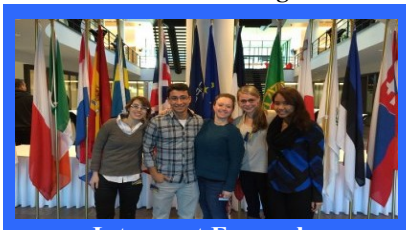
Contrary to these suggestions, Akorimo noted that the future of the Court as envisaged will be severely damaged by the immunities clause, as it does against the basic principles of international criminal law. Judge Moloto made the important point that in the international legal system there is permanent self-styled immunity from the Heads of States from powerful states, most obviously created by the Security Council veto, which acts to create *de facto* immunities for large numbers of people. Indeed, Rohan noted that this is the reality of real power structures of the world system, emphasised by situations such as Guantanamo Bay and CIA torture which face no chance of being prosecuted.

The discussion continued with regard to new areas of jurisprudence such as the provision on unconstitutional changes of government which Judge Nsereko suggests does not generally merit prosecution at the regional or international level since it does not account for situations in which a tyrannical and oppressive government must be overthrown in the interests of self-determination. Jalloh then noted that whilst the draft proposal of Article 28 (e) para. 3 RS noted that no prosecution may arise from the act of people imposing self-determination, this was left out of the final draft, presumably because it was too obvious. The introduction of another crime, that of corporate liability, was seen by Rohan to be "incredibly progressive", especially in the modern world of globalisation and capitalism where the reason behind many failed states is the lack of accountability or control of rich corporations. Jalloh praised corporate liability for attaching to all crimes and highlighted the issue in reality, for example the trade of blood diamonds in the Sierra Leone conflict, which has so far been a blind spot of international criminal law. Judge Nsereko, agreed suggesting this was a welcome progression and could be used even in crimes such as genocide to recognise that a corporation can aid or abet in the genocide and therefore should also be prosecuted and punished. This last panel concluded the successful two-day conference at the Peace Palace.

ADC-ICTY Intern Field Trip to Europol

By: Fábio Kanagaratnam

On 23 January, ADC-ICTY Interns visited Europol. Senior Specialist Howard Pugh offered an overview of the work of Europol. Pugh initiated his presentation by stating that Europol does not have access to everyone's personal information. He added that Europol needs all Member States' (MS) approval in order to collect relevant data. Pugh defined Europol as an "information hub" that aims at fighting organised crime and terrorism. Some of Europol's functions include: collecting, analysing and disseminate information, facilitate information exchange between MS and provide analytical support to law enforcement investigations. Europol has several focal



Interns at Europol

points, each with a team dedicated to a particular issue. Teams have to cooperate often as their investigations might expand to other areas. An example Pugh offered was the department of Organised Crime is frequent cooperation with the various teams present in the agency.

Europol's agenda is tightly connected to the European Union Law Enforcement Policy Cycle, which sets the priorities of the agency for the next three years. When asked about the level of cooperation between Europol and Eurojust, Pugh explained that the agency obtains the most relevant information enabling Eurojust to coordinate its judicial efforts more effectively.

Pugh offered some insight into how Europol tackles illicit tobacco trade, which costs 10.9 billion Euros foe tobacco companies worldwide in 2013.

He described how tobacco smuggling extends to different types of crime. Some of the examples Pugh gave included the financing of terrorist activities and organised crime. He further added that small tobacco companies are the most affected by tobacco smuggling. Pugh concluded his presentation reflecting on Europol's multidisciplinary approach, "we do need to make some hard decisions on what to focus in the future". The ADC-ICTY interns would like to thank Europol and Howard Pugh for the informative presentation and generosity with their time.

Palestine's Ratification of the Rome Statute

By: Daynelis Vargas

The International Criminal Court (ICC) provides states with weak judicial systems a platform to bring domestic criminals who violate international law to court and to bring justice to the victims. Like many international bodies, the ICC has a founding charter that dictates what the organisation is capable of doing.

According to the Rome Statute (RS), in order for an entity to be able to ratify the statute and thus surrender their jurisdiction to the Court, allowing the Court to prosecute individuals within their territory, the so called "entity" needs to be a state recognised by the international community. If the entity is not a state then the United Nations Security Council (UNSC) is able to grant permission to ratify the RS. This article will not discuss the legal difference between a territory that is recognised as a state, a nation and or some other more arbitrary term, but this article will acknowledge that the terms, although at times used interchangeably, do have different definitions under the law.


Mahmoud Abbas

In November 2012, the UN General Assembly (GA) recognised Palestine as a non-member observer state and in January 2015, the Secretary General of the United Nations, Ban Ki-Moon, announced that the ICC will recognise the Palestinian Authority under the Rome Statute. The Palestinian Authority President Mahmoud Abbas signed the Rome Statute on 31 December 2014, only a day after the resolution demanding independence for Palestine failed at the UNGA.

The Secretary General of the UN went on to explain that Palestine will be a full member of the Court as of 1 April 2015. The jurisdiction of the ICC over the Palestinian territories is expected to start from 13 June 2014, and therefore would include the 50 day war between Israel and Palestine which took place between July and August 2014. Palestine accepted the Court's jurisdiction retroactively under Article 12(3) of the Rome Statute.

The Office of the Prosecutor (OTP) at the ICC has initiated a preliminary examination as of 16 January 2015. The examination is being lead by Chief Prosecutor Fatou Bensouda. This examination can take years and is expected to take into consideration individuals who violated international laws prosecuted by the ICC in the Palestinian Territories indiscriminately. Therefore, the Prosecutor is able and, if a case is open, will investigate the violations of international law committed by both member of Hamas and the Israeli defence Forces (IDF). To clarify, on 8 January 2015 the Royal Institute of International Affairs reported that, "Palestine's accession will confer jurisdiction on the Court in relation to crimes committed within the territory claimed by Palestine. Although Israel has not

ratified the Rome Statute, crimes allegedly committed by Israeli nationals in the territory claimed by Palestine will fall within the ICC's jurisdiction".

The recognition of the Palestinian Territories by the ICC has a number of implications for the world of international law. The implications of the decision will be discussed followed by a brief discussion of the significance of the implications for international law and international institutions.

John Quigley's article "The Palestinian Declaration to the International Courts: The Statehood issue" outlines the different challenges that the Palestinian Authority and the Palestinian Liberation Organisation (PLO) underwent to be able to ratify and be recognised by a number of treaties and conventions that traditionally have only been available to territories recognised as a state. Quigley cites some of the most notable attempts of the PLO to get recognition in the international arena from both institutions and governments including but not limited to when the PLO applied to join the World Health Organisation (WHO) in 1989 and to ratify the Geneva Conventions of 1949.

Given the questionable legal status of the PLO in 1989 the Swiss Government delayed granting the Palestinian Liberation Organisation the ability to ratify the Geneva Convention. The Swiss government added in a public statement that "Due to the uncertainty (sic) within the international community as to the existence or the non-existence of a state of Palestine and as long as the issue has not been settled in an appropriate framework, the Swiss Government, in its capacity as depositary of the Geneva Convention and their Protocols, is not in a position to decide". The WHO took a similar stand on the issue particularly after facing pressure from some of the key budget contributors to not accept Palestine.

Since 1989, the Palestinian Authority has made progress regarding their standing in the international community, even if just a small amount. Most notably the UNGA's admission of Palestine as a non-member observer state provided the legal grounds for Palestine to partake in institutions such as the ICC. The UNGA's decision set the stepping stone for Palestine to apply for other international courts and international institutions.

Furthermore, it goes without say that the Palestinian Authority's admittance into the ICC Assembly of State Parties can increase tensions in the region. The Prime Minister of Israel, Benjamin Netanyahu, has openly opposed the decision. Jessica Schulberg's article for New Republic explains that the state of Israel has frozen USD 127 million in Palestinian tax revenues which is normally given as aid to the PA . The infrastructure of Palestine is rather poor after the 50-day war in the summer of 2014, and a cut to the already limited aid for Palestinians is expected to increase tensions in the region.

Benjamin Netanyahu

Some issues still remain unsolved. The primary challenge Palestine will face is the questioning of whether it is a state or not. Given that although the OTP at the ICC has started an investigation, if the statehood status of Palestine is challenged, there is a possibility that this accession may be overturned by the Court itself. Notably, some of the most influential states in the international system both in economics and political influence do not recognise Palestine and most importantly oppose granting the Palestinian Authority recognition at international institutions, particularly the ICC. While the process has started, it will take some time for the logistical aspects of ratification to be completed as it usually does but this time with heavy opposition from the exterior. The RS will enter into force for Palestine on 1 April 2015.

Now that Palestine has signed and ratified the RS, the geographical focus of the jurisdiction of the ICC has "changed" because it has traditionally focused on Africa, which the Court has often been criticised for. Whether Palestine will be able to fully implement the RS remains to be seen, mainly due to the lack of international recognition of the status of Palestine. The ICC Assembly of State Parties might face external pressure to stop or to revert the agreement.

As of now, the United States and Israel have criticise the OTP for accepting the PA's application. Whether successful or not, this process will set the grounds not only for Palestine but territories with similar uncertain status in the international system.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Michael G. Karnavas, **"The fiction of JCE III in customary international law"**, 26 January 2015, available at http://michaelgkarnavas.net/blog/.

Vera Padberg, **"ICJ Dismisses Croatian and Serbian Genocide Claims"**, 3 February 2015, available at: http://tinyurl.com/ovw2ofm

Marko Milanovic, **"On the Entirely Predictable Outcome of Croatia v. Serbia"**, 6 February 2015, available at http://tinyurl.com/nqpumpv

Online Lectures and Videos

"Accountability through Transparency and the Role of the Court of Justice", by Marios Costa of City University London, 28 January 2015, available at: http://tinyurl.com/.nercuko

"The Magna Carta and its Legacy", Online course by University of London, 12 January to 6 March, available at: http://tinyurl.com/lmvf8c9.

"International Human Rights", Online Course by Oliver De Schutter, 3 February to 7 April, available at: http://tinyurl.com/m8ewpqn.

"Genocide and International Law", Online lecture by William A. Schabas, available at: http://tinyurl.com/osmwxsg

PUBLICATIONS AND ARTICLES

Books

Ramcharan, B. G. (2014), **International Law and Fact-Finding in the Field of Human Rights**, Revised and Edited Reprint, BRILL.

Hilpold, P. (2014), **Responsibility to protect: A new paradigm of international law?,** Martinus Nijhoff.

Gaja, G., & Stoutenburg, J. G. (2014), **Enhancing the rule of law through the International Court of Justice,** Martinus Nijhoff.

Articles

Hobbs, P. (2015), **"Contemporary Challenges in relation to the Prosecution of Senior State Officials before the International Criminal Court"**, International Criminal Law Review, Volume 15, Issue 1.

Munivrana Vajda, M. (2015), **"Ethnic Cleansing as Genocide – assessing the Croatian Genocide Case before the ICJ"**, International Criminal Law Review, Volume 15, Issue 1.

CALL FOR PAPERS

The University of Hull has issued a call for papers for its conference on "Making International Custom More Tangible"

Deadline: 15 February 2015 More Info: http://tinyurl.com/ny9fsph

The Irish Centre for Human Rights, National University of Ireland has issued a call for paper for their conference-workshop "Taming Power in Times of Globalization: What Role for Human Rights?"

Deadline: 15 March 2015 More Info: http://tinyurl.com/n4bzygd

The Utrecht Journal of International and European Law has issued a call for paper addressing any aspect of International and European law to be published in its 8 edition on 'General Issues' within International and European law

Deadline: 30 April 2015 More Info: http://tinyurl.com/l98spxr

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OPPORTUNITIES

Legal Officer (P-3), The Hague
International Criminal Court
Legal and Enforcement Unit, Presidency
Closing Date: 22 February 2015

Research Coordinator, Nuremberg
The International Nuremberg Principles Academy
Closing Date: 31 March 2015

Intern, Administration (I-1), Sarajevo
International Criminal Tribunal for the former Yugoslavia
Closing Date: 30 June 2015

EVENTS

Dutch Humanitarian Summit
Date: 12 February 2015
Location: Humanity House Den Haag
More Info: http://tinyurl.com/o3rthd5

From Divided Memories to Reconciliation, Transformation in the Western Balkans and the Middle East
Date: 12 February 2015
Location: University Leiden
More Info: http://tinyurl.com/k9lcawe

Combatting Corruption: A Human Perspective
Date: 19 February 2015
Location: Humanity House Den Haag
More Info: http://tinyurl.com/m5u7dds

The Armenian Genocide Legacy: 100 Years on
Date: 5 March 2015
Location: The Hague Institute for Global Justice
More Info: http://tinyurl.com/n6fzcvd

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