ADC ICTY TPIY

NEWSLETTER

ISSUE 62

28 February 2014

Head of Office: Isabel Düsterhöft
Assistants: Vesselina Vassileva and Laura Burmeister
Contributors: Kristina Belić, Nelleke Hoffs, Martijntje Holscher, Dennis Lazarus, Jolana Makraiová, Lucy Turner and Fabienne Wong-Chung
Design: Sabrina Sharma

ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

Šešelj (IT-03-67)

Cases on Appeal

Popović *et al.* (IT-05-88)

Prlić *et al.* (IT-04-74)

Stanišić & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

Prosecutor v. Hadžić (IT-04-75)

On 20 February, the Trial Chamber issued its oral decision on Goran Hadžić's motion for acquittal on counts 2-9 of the indictment. The Chamber dismissed the Defence submissions that an acquittal could be entered on specific charges within the counts. The Chamber examined the approaches taken by other Trial Chambers and, while "not indifferent" to criticisms of current interpretations of the Rule in practice, confirmed that only counts, and not individual charges, could be dismissed at the 98 *bis* stage; as long as evidence of one charge exists to support a specific count. As the Defence did not challenge entire counts, the motion for acquittal was dismissed.

In addition, after the Chamber's assessment of the evidence it has determined that the Trial Chamber could, according to 98 *bis*, enter a conviction of the charges specifically relating to crimes in Lovas, Opatovac, Ovčara, and Velepromet. In practice, the 98 *bis* standard does not require an assessment of the evidence's reliability; it bases its evaluation on the evidence as a whole. The Chamber found that there was some evidence supporting the challenged charges, such that they were sustainable at the 98 *bis* stage regardless of the Defence's submissions. The Chamber also declined to determine, at this stage, the Defence's arguments that international humanitarian law could not apply to charges relating to the detention centres in Serbia unless and until the Prosecution made an averment as to the nature of the armed conflict in the Serbian Autonomous District of Slavonia, Baranja and Western Srem (SAO SBWS)/Republic of Serbian Krajina or (RSK) between 1991 and 1993.

ICTY NEWS

Also in this issue

The Chamber, following the dismissal of the 98 *bis* submissions, issued an order indicating the commencement of the Defence case on 24 June. A pre-defence conference will be held a week before that. A Rule 65 *ter* conference will be held on 29 April.

Prosecutor v. Radovan Karadžić

(IT-05-95-T/18-I)

On 11 February, the Karadžić trial started with the testimony of Mitar Rašević, the Head of the Guard Service of the Kazneno-Popravni (KP) Dom in Foča. Rašević provided information about the treatment of prisoners in the KP Dom in general and in relation to ethnicity.

Furthermore, Gojki Kličković testified on the same day and continued on 12 February. He held numerous positions including being resident of the Serb Democratic Party (SDS) Municipal Board in Bosanska Krupa, member of the SDS Main Board, member of the SDS Presidency, Vice-President and President of the Executive Committee of Bosanska Krupa, President of the Municipal Assembly of Krupa on Una, President of the Crisis Staff of the Municipality of Krupa on Una, member of the War Presidency of the Prijedor subregion, member of the War Presidency of the Autonomous Region of Krajina (ARK), and twice Prime Minister of the Serb Republic (RS) Government. He mainly testified about the intentions of the SDS and about the establishment of the ARK. Kličković also gave information about the situation in the Bosanska Krupa Municipality during the war with respect to, among other things, the evacuation of Muslims and their property rights.

On 17 February, KW586, a Security Guard to President Alija Izetbegović, testified under protective measures about a Bosnian Muslim plan to get international military involvement on their side, the staging of incidents and the provoking of the Serb side.

Vladimir Glamočić also testified that day. He was the Chairman of the Executive Committee of the Kneževo Municipal Assembly from 1991 until 1993 and later worked at the Directorate of Roads of the Republika Srpska. Glamočić provided information about the incident at Koričanske Stijene on 21 August 1992.

Furthermore, Dušan Janković testified on 18 February. He was Logistics Chief at the Public Security Station (SJB) Prijedor from September 1991 to March 1993, after that he was Chief of the SJB in Prijedor, thereafter the Assistant Chief of the police station in Prijedor, and from April 1994 Assistant Chief of the Security Services Centre (CSB). Janković testified about the situation in Prijedor at the outbreak and during the war in respect of *inter alia* the Omarksa and Keraterm collection centres, the Serb investigations into crimes, the destruction of religious buildings and the problems with communication between Prijedor, Banja Luka and Pale.

On 19 February, Dušan Mudrinić, the Deputy Commander of the Serbian Defence Forces (SOS) in Sanski Most, testified. He gave information about the situation in Sanksi Most the role and activities of the SOS in Sanski Most, and the relationship between the SOS unit and other Sanski Most units, such as the Crisis Staff.

Momčilo Gruban testified on the same day and continued on the next. Gruban worked for the reserve police forces from September 1991 until the end of the war. He was appointed to the Omarska Collection and Investigation Centre in June 1992 as Security Duty Officer. He testified about the Omarska detention site, the conditions which the prisoners were held in, how the prisoners were treated and the role and activities of the Territorial Defence (TO) and the reserve police formation at the Omarska detention site.

After this last testimony in the third week of February, the hearing took an interesting turn when Karadžić informed the Trial Chamber that he has decided not to testify in his own case. The hearing is adjourned until 3 March.

Prosecutor v. Stanišić and Župljanin (IT-08-91)

On 7 February, the Acting President of the Tribunal appointed a special panel in the Stanišić and Župljanin case, to consider the merits of the *Motion for Recusal.*

The initial *Motion* was filed by the Defence for Župljanin on 21 October 2013, after a Chamber convened by order of the Acting President decided by majority, Judge Liu Daqun dissenting, to disqualify Judge Frederik Harhoff as a Judge in the *Seselj* case. The *Motion* requested recusal of Judge Liu Daqun from adjudication of a motion filed by the Zupljanin Defence to vacate the Judgement in this case. It was denied by the Acting President on 3 December 2013.

On 13 December, the Zupljanin Defence field a request for appointment of a panel to adjudicate the *Motion for Recusal*, which was joined on 23 December 2013 by the Stanišić Defence. The panel, consisting of Judges Christoph Flügge, Howard Morrison and Melville Baird, denied this motion on 24 February , noting that it considers as insubstantial the argument of the Defence that Judge Liu is not in a position to adjudicate the Motion to vacate the Trial Judgement without an unacceptable appearance of bias. The panel concluded that the Defence has not demonstrated a reasonable apprehension of bias on the part of Judge Liu from the standpoint of a reasonable observer.

Prosecutor v. Lukić and Lukić (IT-98-32/1)

On 6 February, Counsel for the Defence, Rodney Dixon, filed a *Motion for Review* of the Trial Judgement dated 20 July 2009 on behalf of Milan Lukić, arguing that there are new facts available, which have not been discovered during the trial and on appeal. It was argued that a Trial Chamber should be reconstituted to assess the evidence in light of these new findings. Alternatively, Lukić seeks that the Appeals Chamber hears the evidence of the additional witnesses mention in the motion. The application is based on four witnesses, a fifth one has come to light recently and his statement is currently being finalised with him.

The newly discovered facts relate to the Drina River incident, the Pionirska Street incident, the Bikavać incident and the Varda Factory incident. Considering the severity of Lukić's sentence, life-imprisonment on appeal, the Defence believes that this evidence warrants the review in accordance with the Rules of the Tribunal, and in particular Article 26 of the Statute and Rules 119 and 120 of the Rules of Procedure and Evidence.

The Motion for Review was lodged before the Mechanism for Criminal Tribunals (MICT), pursuant to Article 3(2) of Annex 2 of the Statute of the MICT. The President assigned an Appeals Chamber to decide on the *Motion,* consisting of Judges Meron, Antonetti, Sekule, Agius and Liu.

LOOKING BACK...

International Criminal Tribunal for the Former Yugoslavia

Five years ago...

The Assembly of States Parties to the Rome Statute of the ICC held the second resumption of its seventh session on 13 February 2009. Chaired since 2003 by His Excellency Christian Wenaweser, Permanent Representative of Liechtenstein to the United Nations, the Special Working Group on the Crime of Aggression concluded its discussions on the definition of the crime of aggression and the conditions for the exercise of jurisdiction by the Court over that crime.

The draft provisions on the crime of aggression that went under consideration included a definition of the act of aggression, which was based on United Nations General Assembly resolution 3314 (XXIX).

Christian Wenaweser

International Criminal Tribunal for Rwanda

Ten years ago…

On 25 February 2004, Samuel Imanishimwe, former Military Commander in the Rwanda Armed Forces was sentenced by Trial Chamber III of the International Criminal Tribunal to 27 years imprisonment. He was convicted on six counts of genocide and crimes against humanity, as well as serious violations of Article 3 Common to the Geneva Conventions and of Additional Protocol II.

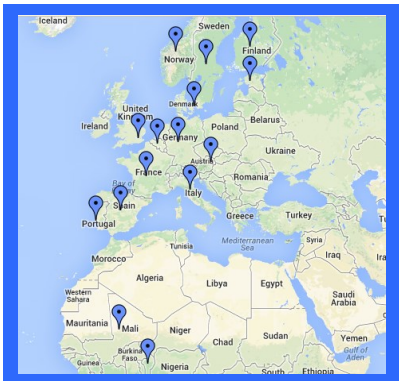
In the same case, André Ntagerura, former Minister of Transport and Communications, and Emmanuel Bagambiki, former Prefect of Cyangugu, were both acquitted of similar charges.

International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago…

On 23 February 1999, Sweden became the fourth country, after Italy, Finland and Norway, to sign an agreement on the enforcement of sentences imposed by the ICTY. Today, sentences imposed by the ICTY are enforced in 13 states.

Sweden has actively assisted the ICTY since its inception through contributions towards the exhumation programmes in 1997 and 1998, by assisting in gathering testimonies and by seconding criminal investigators.



Enforcement of Sentences (MICT)

On 1 July 2012 and 1 July 2013, the Mechanism took over responsibility for the supervision of all sentences pronounced by the ICTR and the ICTY, respectively.

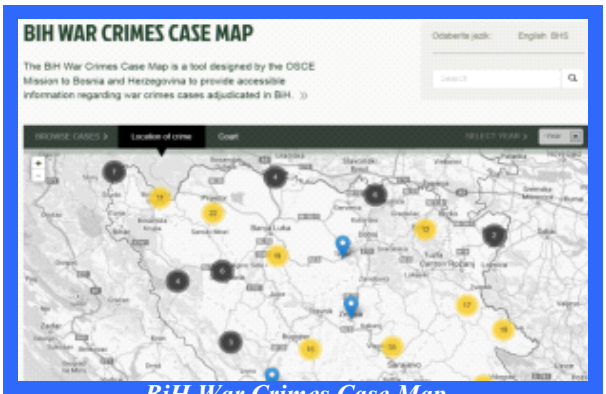
NEWS FROM THE REGION

Bosnia and Herzegovina

OSCE Launches War Crimes Case Map

In February the OSCE mission to Bosnia and Herzegovina launched an online map, showing all completed war crimes cases across the country. This map is meant to enhance the public's trust in the legal processes and is aimed at promoting justice and reconciliation.

The interactive tool allows a wide audience to locate final war crimes proceedings by the municipality where the incidents occurred, as well as by the competent court, which was responsible for adjudicating them. By listing all information about the convicted persons, the details of the crimes that occurred and about the verdicts handed down since 2003, it is expected that this online map creates greater public understanding of the courts' work. In this sense, it is also meant to facilitate the eradication of misinformation spread by the media and generally enhance transparency and public trust.



BiH War Crimes Case Map

Kosovo

Fatmir Limaj Faced With New Indictment

The European Union mission has prompted a new indictment against former Minister of Transport Fatmir Limaj and four others for charges related to corruption.

Fatmir Limaj

The second indictment, raised by Johannes Pickert, Prosecutor for European Rule of Law Mission in Kosovo (EULEX), accuses Limaj and four other Defendants of "organised crime, misappropriation in office, entering into harmful contracts, abusing official position or authority, accepting bribes and other corruption related offences". The Prosecution alleges that these offences, related to road building tender, occurred in 2008 during Limaj's time as Minister of Transport, claiming damages to the budget of the Ministry worth over 890.000 Euros.

According to EULEX, the Defendants are alleged "to have manipulated tender procedures, engaged in giving and receiving bribes and obstructing evidence with regard to the conduct of two tenders under the authority of the Ministry of Transport".

The mission further stated, "these defendants are alleged to have committed these offences for personal material benefit. Two defendants are alleged to have engaged in misuse of economic authorisations, as well as the criminal offence of giving bribes".

The ICTY and the EU justice mission have previously cleared Limaj of war crimes in 2007 and 2013, respectively.

Serbia

Nine Ex-Paramilitaries Convicted and Two Acquitted of Kosovo Killings

On 11 February, Serbia's War Crimes Tribunal in Belgrade jailed nine and acquitted two other members of a paramilitary group. The individuals were accused of killing more than 120 ethnic Albanian civilians in May 1999 during the Kosovo 1998-1999 conflict. The convicted men received prison sentences of between two and twenty years.

The paramilitary group has been known as "The Jackals" and each of the eleven former members had been on trial for the mass killing of ethnic Albanian civilians throughout four villages in Kosovo, which were then a province of Serbia. The paramilitary group had served under the command of the then Yugoslav Army, according to the court. The acquittals of two of the members received criticism from the Prosecution team, who will be appealing against the decision.

The conflict amongst the Pro-independence fighters of the Kosovo Liberation Army and security forces loyal to Serbia's president Slobodan Milošević took place between 1998-1999. It is thought that as many as 10.000 people, mainly ethnic Albanians, were killed during this period.

NEWS FROM OTHER INTERNATIONAL COURTS

International Criminal Court

The Appeals Chamber, Situation in the Republic of Côte d'Ivoire
In The Case of The Prosecutor v Laurent Gbagbo (ICC-02/11- 01/11)

Judgement on the Appeal of Mr Laurent Gbagbo Against the Decision of Pre-Trial Chamber I of 11 July 2013 Entitled "Third decision on the review of Laurent Gbagbo's detention pursuant to article 60(3) of the Rome Statute", rendered on 29 October 2013

Emma Ferguson, Intern, Office of Public Counsel for the Defence, ICC

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

On 3 June 2013, Pre-Trial Chamber I adjourned the hearing on the confirmation of charges against Laurent Gbagbo to allow the Prosecution to consider providing further evidence or conducting further investigation with respect to all charges. On 11 July 2013, the Pre-Trial Chamber issued a decision finding that, despite the Defence submission calling for (provisional) release, Gbagbo should remain in detention. The Defence filed an appeal against this decision. However, the Majority of the Appeals Chamber, in its Judgement of 29 October 2013, held that the Pre-Trial Chamber decision was not materially affected by any error. The appeal was dismissed with Judge Ušacka dissenting and Judge Kourula providing a separate opinion.

In its determination, the Majority recalled that when considering appeals in relation to granting or denying interim release, it will not review findings of the Pre-Trial Chamber *de novo* but rather intervene only where clear errors of law, fact or procedure are shown to exist and vitiate the impugned decision. The appellant is obliged to set out the alleged error and also indicate how the error would have materially affected the impugned decision .

The Defence's preliminary argument purporting insufficient reasoning of both the impugned decision and another Pre-Trial Decision of 13 July 2012 was rejected. Regarding the decision of 13 July 2012 the Majority recalled that although the reasoning was found that the Defence had failed to demonstrate how the reasoning was insufficient.

The Defence raised ten grounds for appeal, all of which were rejected by the Majority of the Appeals Chamber. The Defence contended that the Pre-Trial Chamber had erred in law and in fact in its determination that no 'changed circumstances' had occurred to warrant the conditional release of Gbagbo. Thus, the appeal principally related to the Pre-Trial Chamber's application of Articles 58(1)(a), specifying the criteria for arrest, and 60(3), allowing the modification of a detention ruling if "changed circumstances" require.

The Majority established that the adjournment of the confirmation of charges did not require the Pre-Trial Chamber to assess anew whether Gbagbo continued to meet the conditions under 58(1)(a) (whether there were still reasonable grounds to believe he had committed a crime within the jurisdiction of the court). As the Pre-Trial Chamber ordering the adjournment was of the same composition as the Pre-Trial Chamber finding the impugned decision, it was open to that Chamber to find that no changed circumstances existed 'thus obviating any requirement for a *de novo* review of Article 58(1)(a) factors'. The Majority further outlined that the standard of review for 'changed circumstances' under Article 60(3) does not require the examination of each item of evidence previously used to justify the detention. It was noted that under Article 60(3) 'it is first for the Pre-Trial Chamber to determine whether changed circumstances exist to warrant the disturbing of a previous ruling on detention, rather than addressing each factor underpinning detention in a *de novo* manner to "determine whether any of these had changed".

Several of the grounds for appeal related to the Pre-Trial Chamber's use of the "Final Report of the Group of Experts on Côte d'Ivoire pursuant to paragraph 16

of Security Council resolution 2045", which provided information on the activities and operational capacity of the pro-Gbagbo networks and identified the risks associated with Gbagbo's release. This was released to build upon the Mid-Term Report, which was submitted by the same group of experts and relied upon by the Pre-Trial Chamber in its earlier decisions. The Majority rejected the Defence arguments relating to the Report noting that the mere fact of the Final Report's publication could not support the existence of 'changed circumstances' and further that the raising of arguments to a Report does not alone amount to a 'changed circumstance' that would require the reconsideration of reliance on a given report. It was found that the Pre-Trial Chamber did not fail to analyse the probative value of the final report as they did so with reference to the appropriate standard. The Majority further rejected the Defence argument that the Pre-Trial Chamber refused to consider the links between the Prosecution and the Group of Experts. The Majority stated: "Mr Gbagbo fails to provide any concrete evidence establishing collusion between the Prosecutor and the Group of Experts [...] his allegations are speculative at best".

The Majority found that the Pre-Trial Chamber did not err in law by concluding that Gbagbo could have access to funds from pro-Gbagbo networks and supporters. Recalling that no *de novo* review was required, it was found that Gbagbo failed to advance any arguments pointing to the existence of changed circumstances, or to an error of law based on a lack of reasoning with regards to this matter. Furthermore, the Pre-Trial Chamber's reliance on the Final Report to support its conclusion as to the existence of pro-Gbagbo support groups was deemed reasonable. Defence submissions on this ground were found to rehearse many of the same arguments previously submitted, draw erroneous referrals to the sources on which the Pre-Trial Chamber based its decision and lack identification of a clear error.

It was acknowledged that the medical condition of a detained person may impact the risks under Article 58(1)(b), for instance by obviating the ability to abscond. However, in its decision of 12 November 2012 the Pre-Trial Chamber concluded that such was not the case. The Majority rejected the Defence's reference to Gbagbo's medical state, noting that the mere effluxion of time did not constitute a 'change in circumstances'. Again, it was found that Gbagbo failed to raise a 'new circumstance' and merely repeated previously raised (and rejected) submissions.

Finally, the Majority recalled that the Pre-Trial Chamber's finding on the risks associated with conditional release have remained unchanged since its Decision of 13 July 2012- a finding subsequently upheld on appeal. It was therefore concluded that it was not unreasonable for the Pre-Trial Chamber 'to have refrained from providing additional reasoning when reviewing its finding on conditional release, given that no changed circumstances were found'.

Departing from the Majority's reasoning on one ground, Judge Erkki Kourula provided a separate opinion. Judge Kourula considered the Pre-Trial Chamber's reasoning to be insufficient in regards to the risk that Gbagbo would obstruct or endanger the investigation or the court proceedings, or that he would commit any crimes related to his indictment. "I believe that in the absence of sufficient reasoning in the Decision of 13 July 2012, an assessment of "changed circumstances" in the current review of detention is problematic". Instead Judge Kourula proposed that Gbagbo's detention would be justified under Article 58(1)(b)(i) alone rather than 58(1)(b)(ii) or (iii).

In a dissenting opinion Judge Anita Ušacka considered that the Adjournment decision constituted changed circumstances that would have required the Pre-Trial Chamber to consider anew the basis of Gbagbo's detention. Judge Ušacka pointed to time extension of the adjournment (at least ten months) which she highlights as an 'extraordinary measure'. She suggested that in adjourning the confirmation charges the Pre-Trial Chamber "must, at the very least, examine the concomitant impact that such an adjournment has upon the rights of the detained person". The dissenting opinion referred to the rights of a detained person both under Article 67(1)(c) of the Rome Statute and also the wider set of internationally recognised human rights such as the jurisprudence of the European Court of Human Rights (ECtHR) relating to reasonable time frames. With such a reference Judge Ušacka argued that circumstances changed for Gbagbo when the Adjournment decision was rendered. In prolonging Gbagbo's pre-trial detention, according to Judge Ušacka, a change in circumstanc-

es occurred: "... where a decision pursuant to Article 67(7)(c)(i) of the Statue leads to an adjournment of the confirmation hearing in respect of all charges, the Pre-Trial Chamber ought to recognise this as "changed circumstances" in reviewing the detention of the accused". Judge Ušacka prescribed that such change warrants the assessment of the factors underpinning Article 58(1)(b) *de novo*: "The Pre-Trial Chamber ought to recognise this as "changed circumstances" in reviewing the detention of the Accused, and advert specifically to the factors underpinning the detention in a *de novo* manner. "On this basis Judge Ušacka would have reversed the Impugned Decision and remanded the matter for fresh consideration (*de novo* review).

Pre-Trial Chamber I, Situation in Libya

In the Case of

The Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi

Decision on the Admissibility of the Case Against Abdullah Al-Senussi

ICC-01/11-01/11-466-Red, 11 October 2013

Philipp C. P. Müller,
Intern, Office of the Public Counsel for the Defence, International Criminal Court

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

On 11 October 2013, Pre-Trial Chamber I of the International Criminal Court issued its "Decision on the admissibility of the case against Abdullah Al-Senussi", in which it declared the case inadmissible in the sense of Article 17 (1) (a) of the Rome Statute because the Defendant was currently subject to domestic proceedings in Libya, a State with jurisdiction over the case neither unwilling nor unable to genuinely carry out the proceedings. Judge Van den Wyngaert attached a declaration.

The warrant of arrest against Al-Senussi, former Colonel in the Libyan Armed Forces and Head of the Military Intelligence under the regime of Muammar Gaddafi, had been issued on 27 June 2011 for the alleged commission of the crimes against humanity of murder and persecution in Benghazi, Libya, between 15 and 20 February 2011. Subsequently, Libya had challenged the admissibility of the case against Al-Senussi on 2 April 2013 in accordance with Articles 17 (1) (a) and 19 (2) (b) of the Rome Statute. The admissibility challenge was supported by the Office of the Prosecutor, and opposed by the Defence for Al-Senussi and the Office of Public Counsel for Victims (OPCV).

In line with the Court's previous jurisprudence on admissibility, the Pre-Trial Chamber based its findings on a two-step test: firstly, the Chamber evaluated whether, at the time of the admissibility challenge, the State was carrying out concrete and progressive investigative steps to ascertain the responsibility of the Accused; if this question was to be answered in the affirmative, the Chamber had to further ensure that Libya was neither unwilling nor unable to genuinely carry out such investigation or prosecution. In order to assess the first limb of the test, the Chamber used the same person – same conduct test firmly established in the Court's jurisprudence; accordingly, Libya had to provide evidence that its investigations covered the same individual, and the same conduct as those conducted by the ICC.

In this regard, the OTP disagreed with Libya on the meaning of the term "conduct". The latter had postulated that an investigating State should be accorded a margin of appreciation as concerns the contours, as well as focus and formulation of the case; therefore, the domestic proceedings would merely have to cover "substantially the same course of conduct". In contrast, the Prosecutor was of the opinion that the State had to investigate "substantially the same *incidents*," and that the facts mentioned in the Chamber's Decision on the arrest warrant (*Article 58 Decision*), for

instance specific acts of violence and arrest by Security Forces against protesters, would have to be covered by Libya's investigation in order for the ICC case to be inadmissible.

In any event, the Chamber considered that every case before the Court was necessarily composed of one or more "incidents"; however, those may merely have been identified in the *Article 58 Decision* because they overlap with the alleged conduct, or they serve to exemplify the charges brought. Conversely, the arrest warrant itself was clearly defined in terms of space, time, and subject matter, and was therefore not confined to the specific incidents mentioned in the *Article 58 Decision*, not all of which would have to be covered by the domestic investigation. Nonetheless, it emphasised that the presence or absence of important incidents in the national proceedings could be taken as an indicator whether, in fact, the same conduct was being prosecuted. As a consequence, the Chamber found that Libya had demonstrated that investigative steps had been taken in relation to determining Al-Senussi's criminal responsibility, and that these investigations covered the same case as those before the ICC.

Concerning allegations of unwillingness or inability on the part of Libya to genuinely prosecute Al-Senussi, the Defence and OPCV raised a multitude of issues to substantiate their admissibility challenge. Notably, the Chamber reaffirmed the Court's previous jurisprudence that a violation of the Accused's procedural rights can only lead to inadmissibility of the case where it is linked to one of the aspects of unwillingness or inability mentioned in Article 17 (2) or (3), notably that the proceedings are not conducted independently or impartially, and inconsistently with an intent to bring the person concerned to justice. This can be exemplified by Al-Senussi's lack of access to a lawyer: while the mere denial of the fundamental right to legal assistance cannot, *per se*, render the case inadmissible, the Chamber noted that Libyan law prohibits a trial where the Accused is denied access to representation. Still, the Court stressed that admissibility is to be determined in the light of the circumstances existing at the time of the admissibility proceedings. It was therefore not considered decisive that the present lack of access to a lawyer "holds the potential to become a fatal obstacle to the case" as long as the present circumstances did not present a concrete obstacle to the future appointment of Counsel. Since at the moment of the challenge, no lawyer was required for the case to proceed, the Chamber concluded that, at the moment, the lack of legal representation did not render the case inadmissible.

Extraordinary Chambers in the Courts of Cambodia

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

On 18 February, ADC-ICTY Member Suzana Tomanović, previously an Expert Consultant for the Ieng Sary Defence at the ECCC, was assigned by the Defence Support Section of the ECCC as Co-Lawyer to represent a Suspect in Case 004. Case 004 concerns one of the two Introductory Submissions filed by the international Co-Prosecutor on 7 September 2009, which requested the Co-Investigating Judges to initiate investigations into five additional suspects.

Suzana Tomanović

Tomanović is a lawyer from Bosnia and Herzegovina who has been actively engaged in cases before the ICTY and is considered an expert in international criminal defence. In the framework of Case 004, she will work alongside So Mosseny. Mosseny is a Cambodian Co-Lawyer, who was assigned in December 2013 and was previously Case Manager on the Ieng Sary Defence Team.

International Criminal Tribunal for Rwanda

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

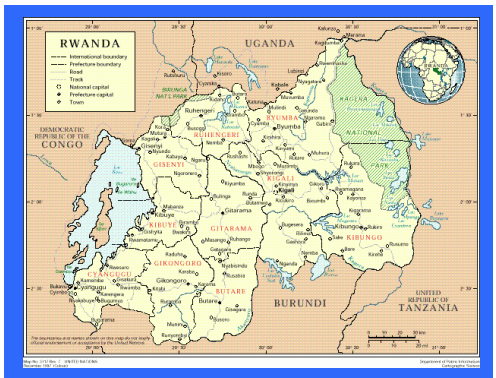
On 11 February, the Appeals Chamber (AC) of the ICTR delivered its judgements on the appeals lodged by the Prosecution and the Defence for Augustin Ndindiliyimana, François-Xavier Nzuwonemeye and Innocent Sagahutu. The AC reversed the convictions of Ndindiliyimana and Nzuwonemeye entirely and revised several convictions of Sagahutu, therewith rejecting in part the appeal of the Prosecution.

Ndindiliyimana was initially convicted by the Trial Chamber I (TC I) for genocide, crimes against humanity and related crimes. The AC reversed his earlier convictions, which were based on his superior responsibility over a group of gendarmes, as the AC found errors in the assessment of evidence by the TC and the conclusions that Ndindiliyimana exercised effective control over the group of gendarmes.

Nzuwonemeye, who was earlier convicted by the TC for murder as a crime against humanity and as a serious violation of Article 3 of the Geneva Conventions, was also acquitted by the AC on all counts in the indictment. Furthermore, the AC stated that he could not be held responsible as a superior, contrary to what the TC concluded previously. The AC found that the TC committed errors of law and fact.

The latter conclusion was also drawn in the case of Sagahutu. But the AC affirmed the criminal responsibility of Sagahutu in aiding and abetting, as a superior, the killing of two Belgian peacekeepers. On this matter, the AC reversed the TC's finding that he had ordered these killings. His sentence was reduced from 20 to 15 years.

With this Judgement, the number of Appeals Judgements rendered by the ICTR reached the overall number of 40.



Map of Rwanda

DEFENCE ROSTRUM

ADC-ICTY Field Trip to the Special Tribunal for Lebanon

By Kristina Belić

On 14 February, the ADC-ICTY hosted a field trip to the Special Tribunal for Lebanon (STL). The trip consisted of briefing with Chambers, the Office of the Prosecutor, the Defence Office and the Registry.

The primary mandate of the Tribunal is to hold trials for people accused of carrying out the attack on 14 February 2005 in which 22 people were killed, including former Prime Minister of Lebanon, Rafiq Hariri.

The STL's headquarters, which are located in Leidschendam (The Hague), opened up on 1 March 2009. There is also an office in Beirut, Lebanon.

One thing that sets the STL apart from many other tribunals is that it holds trials *in absentia*. This is new to the world of contemporary and international courts. These types of trials occur when the Accused is not present or able to participate in the hearings. According to Lebanese law and the law of other states that have a civil law tradition, "the STL Statute and the rules of Procedure and Evidence allow trials *in absentia* under strict conditions: if the Accused has waived his right to be present; if the Accused has not been handed over to the Tribunal by the State authorities concerned; if he has fled or cannot be found". The logic behind a trial *in absentia* is to forward the

idea that justice will not be stopped by the Accused refusing to come forward or by the states which keep the Accused in hiding.

While many think that trials of this type are a waste of time, money, and resources, many will argue that there is a legitimate purpose behind them. One of the answers provided is that it is a way to collect evidence from victims and witnesses while it is all fresh in their memories. The closer to the actual event you begin investigating, the more you are apt to find in terms of evidence and little details that people remember. This is a legitimate argument, but if this is the case, would it not just be better to collect the evidence and hold off on trial?

It is a bit difficult to even grasp the point of a trial *in absentia* because even if the outcome is a conviction, there is no one to convict. Also, even if the alleged perpetrators ever do get found, they have a right to a retrial, meaning that all the efforts and resources expended for the initial trial were inconsequential. This just seems like a terribly large waste. It is a way to comfort victims and to make them feel like something is being done in their name. The Tribunal, however, cannot even offer compensation to the victims. The most that the STL can do for them is to give them a certified copy of the conviction, if and when one is obtained, "so that they may use it in order to seek compensation through national courts or other competent bodies". The STL can basically tell the victim that the Accused has been found guilty, should this be the case, and that is about it. That piece of paper probably will not bring a great deal of comfort to someone who has already suffered, knowing that the person responsible is still out there.

We also learned that on 11 February, the STL decided to join the *Ayyash et al.* and *Merhi* cases. This action is questionable due to an inevitable and potentially long adjournment, while simultaneously having to pay for the elaborate staffing and resources of the Tribunal. This could be interpreted as a money making scheme, where at the end of the day, no real justice is being served.

The current deadline in place as of now for the Tribunal to complete its work is 28 February 2015. Being that this is less than a year away, it is hard to conceive that this will be possible, and it appears that the STL might have bitten off a bit more than it can chew. After the visit to the Tribunal and looking into the details of the STL, I am personally not convinced by the Tribunal's mission and the realisation of such. It may be considered whether the money being allocated to this Tribunal to allow for its effective functioning, would be better spent giving direct aid to victims, an action that would actually have an impact in their lives.

Field Trip to the STL

ICTY Intern Career Development Committee Hosts Panel Discussion

By Nelleke Hoffs

The ICTY Intern Career Development Committee hosted a panel discussion for all ICTY interns on 13 February. The purpose of the discussion was to create an interactive environment in which interns had the opportunity to ask questions on prospective international jobs and all related concerns. There was a high turnout for this event, showing the topic of international jobs is very popular within all branches of the ICTY.

Trial Attorney and Internship Programme Coordinator April L. Carter represented the Office of The Prosecutor on the panel. Dragan Ivetić, Legal Counsel and Consultant represented the Defence, and Associate Legal Officer Sun Kim represented Chambers. The Panelists first introduced themselves briefly, outlining their career path leading up to their current positions at the ICTY and adding three pieces of advice. All three were American trained lawyers prior to engaging in careers at the ICTY. The importance of being persistent in applications was emphasised by all three. Furthermore, panelists gave examples of how they lost track of the amount of applications handed in and their predicaments with the UN's applications

system: Inspira. Related was Dragan Ivetić's advice of staying positive in the job-seeking process. He stated: "sometimes it can be wiser to accept a job that does not meet all of your criteria in order to get ahead, build a network of connections and contacts while remaining on the lookout for something else". April Carter put forward the advice to reflect on what drives one as a person before responding to vacancies, as the latter might discover that the expectations donot correspond to the job applied for. Furthermore, Dragan Ivetić highlighted the importance of being well-prepared, both in applications, interviews and whilst carrying out legal work. He noted that at present a large number of applicants can boast similar degrees, CVs and internship experiences, so that one must demonstrate its unique capabilities to stand out from the rest of the crowd. Sun Kim talked about timing the applications, since the turn around time for applications in the UN is approximately 6-8 months on average. Often that requires an early application for positions, while still in the midst of current job duties. She also stressed the importance of using the resources, not only to be informed for potential positions to apply for, but to get feedback on what positions one would best be suited for.

Questions raised by the audience concerned the workings of Inspira, something April Carter is very familiar with. She explained the 'six month rule', which entails that after the termination of a UN internship, no individual is allowed to apply for another position within the next six months. It was stressed that this rule was not applicable to those in Defence internships, and the rule was waived for internal positions at the ICTY, due to the attrition and departure of staff with the impending closure of the ICTY. Moreover, the importance of getting work experience in one's jurisdiction was emphasised by all three panelists. International (criminal) law is not only practiced in UN institutions, but also in domestic courts. Seeking for jobs within the home country could be a more accessible way to build up work experience.

Sun Kim addressed the topic of doing field work, as these positions should not be ignored, even though the number of such positions is usually limited. April Carter also stressed that every candidate needs to be aware of long term planning, as within the UN system one cannot progress beyond a P5 position, unless a minimum amount of time on field missions have been spent. Both agreed that completing such field missions early in one's career could serve as an advantage over other applicants.

Moderator and OTP intern Andrew Ozanian asked the last question, namely what the worst mistakes were the panelists encountered when dealing with cover letters and CVs. All three panelists agreed that the CVs and the motivation letters should be as clear and concise as possible. Due to the number of applicants being reviewed, only a few moments are spent with any one given submission, so that any lack of clarity or mistakes generally will lead to a quick rejection. April Carter and Dragan Ivetić also commented that prior research of the institution and the position should be conducted in order to avoid any irrelevant and unhelpful information. Ms. Carter recalled an applicant who had focused on the expertise of Space law and had applied for a position practicing that field of law at the ICTY, which did not exist at the Prosecution or Chambers. Mr. Ivetić only added that the Defence also did not have such space law program either. All three panelists also pointed out the importance of the social media and how it reflects the decision of the employer. Moreover, it was also stressed that certain social media, such as LinkedIn can be viewed as more professional in nature over other social media websites.

Last but not least, it was also discussed that even those with limited or no prior legal experience could also apply for jobs within the Registry, Tech Support, and administrative positions at various international organisations and courts.

After the panel discussion all three panelists remained to answer questions and make suggestions to individual members of the audience. Everyone present at the discussion was also encouraged to email the panelists with any questions or concerns that they may have relating to job searches.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Michael G. Karnavas, **Judicial Ethics in International Tribunals, presented in seven installments**, 25 February 2014, available at: http://tinyurl.com/npz8eq2.

Dapo Akande, **The Peace Palace Heats Up Again: But Is Inter-State Arbitration Overtaking the ICJ?,** 17 February 2014, available at: http://tinyurl.com/mcxl5rl.

Kevin Jon Keller, **The Reprieve Drone Strike Communication I– Jurisdiction,** 24 February 2014, available at: http://tinyurl.com/nxhugca.

Marysia Radziejowska, **"Maidan" v Yanukovych et al.: Ukraine and the ICC**, 25 February 2014, available at: http://tinyurl.com/q8ehokv.

Online Lectures and Videos

"The Child in International Refugee Law" by Jason Pobjoy published on 5 February 2014, available at: http://tinyurl.com/lhzp46h.

"Clip of the Week: Professor Martti Koskenniemi on Politics and International Law" by Dominik Zimmermann, published on 16 February 2014, available at: http://tinyurl.com/l4bayn6.

"An Introduction to the Foreign Intelligence Surveillance Act and Court" by Judge James Carr, published on 24 February 2014, available at: http://tinyurl.com/mhuh48a.

"*Peaceful Settlement of Disputes"* by Judge Joan E. Donoghue, available at: http://tinyurl.com/kdmmc9a.

PUBLICATIONS AND ARTICLES

Books

Leila Nadya Sadat (2014), *Forging a Convention for Crimes against Humanity,* Cambridge University Press.

Philippe Leroux-Martin (2014), *Diplomatic Counterinsurgency – Lessons from Bosnia and Herzegovina*, Cambridge University Press.

Liora Israël Dealing and Guillaume Mouralis (2014), *Dealing with Wars and Dictatorship – Legal Concepts and Categories in Action,* T.M.C. Asser Press.

Charles Anthony Smith (2014), *The Rise and Fall of War Crimes Trials – From Charles I to Bush II*, Cambridge University Press.

Articles

Vivianne E. Dittrich (2014), "Legacies of the International Criminal Court under Construction", *Security and Peace Journal,* Issue 4.

Mary Neal (2014), "Respect for Human Dignity as a Substantive Basic Norm", *International Journal of Law in Context,* Volume 10, Issue I.

Emma Irving (2014), "The Relationship Between the International Criminal Court and its Host State: The Impact on Human Rights", *Leiden Journal of International Law,* Volume 27, Issue I.

Elizabeth B. Crawford and Janeen M. Carruthers (2014), "Connection and Coherence Between and Among European Instruments in the Private International Law of Obligations", *International and Comparative Law Quarterly*, Volume 63, Issue I.

CALL FOR PAPERS

The **Australian and New Zealand Society of International Law** has issued a call for papers for its 22nd Annual Conference.

Deadline: 7 March 2014 More info: http://tinyurl.com/mr72on3.

The **Centre For Criminal Justice and Human Rights (CCJHR) at University College Cork** is inviting submissions for papers for its 8th Annual Graduate Conference.

Deadline: 30 March 2014 More Info: http://tinyurl.com/pd3gwor.

HEAD OFFICE

ADC-ICTY

ADC-ICTY
Churchillplein 1
2517 JW The Hague
Room 085.087

Phone: +31-70-512-5418
Fax: +31-70-512-5718

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

WWW.ADCICTY.ORG

The ADC-ICTY would like to express its appreciation and thanks to Emily Elliott for her hard work and dedication to the Newsletter. We wish her all the best in her future endeavours.

EVENTS

CBA Conference on International Criminal Law

Date: 8 March 2014

Location: Inner Temple, London

More info: http://tinyurl.com/nuv6cdp.

TEDxHagueAcademySalon

Date: 19 March 2014

Location: The Hague University of Applied Sciences, The Hague

More info: http://tinyurl.com/n6rxl6p.

Robert Gordon University Law school SLSA Conference

Date: 9-11 April 2014

Location: Aberdeen Business School, Aberdeen

More info: http://tinyurl.com/nqmszf8.

OPPORTUNITIES

Associate Analyst (P-2), The Hague

International Criminal Court (ICC) - Registry

Closing Date: 20 March 2014

Legal Adviser/ Counsel (P-4), The Hague

International Criminal Court (ICC) - Office of the Public Counsel for the Defence

Closing Date: 20 March 2014

Legal Officer (P-3), The Hague

International Criminal Tribunal for the Former Yugoslavia (ICTY) - Registry

Closing Date: 26 March 2014