ADC NEWSLETTER
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ICTY CASES

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Mladić (IT-09-92)

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ICTY NEWS

Prosecutor v. Mladić (IT-09-92)

The trial for Ratko Mladić continued with the evidence of John Russell on 7 September. John Russell is a retired Canadian Major previously deployed to the former Yugoslavia during the war in Bosnia. He was among the United Nations Personnel that conducted a crater analysis in the aftermath of the shelling of the Markale market. He concluded in his investigation report that the information available at the scene was insufficient to establish with certainty which side had fired the deadly missile. In the personal diary he kept at that time he noted, however, his suspicion that the Army of Bosnia and Herzegovina (ABH) shot at themselves. When asked before the Tribunal he testified that he had reached this subjective opinion also partly because of one-sided international media coverage that blamed the Bosnian Serbs already within hours of the attack, long before the release of any official report. John Russell had already testified as a Defence witness in the *Karadžić case*.

Following the testimony of John Russell, witness Radoje Vojvodić testified on 8 September. The main topic of the testimony was the treatment of the United Nations (UN) personnel who were taken as prisoners of war in May and June 1995. Witness Vojvodić was personally in charge of the detainees. He testified that they were treated with respect and given appropriate accommodation, food and medical treatment. The detainees were also visited by the International Committee of the Red Cross (ICRC). The testimony shows that witness Vojvodić gave effort on both a professional and personal level to make the stay of the detainees as decent as the situation allowed.

The last witness of the week was Bruce Bursik, a former Office of the Prosecutor (OTP) investigator, who testi-

ICTY AND MICT NEWS

Also in this issue

fied before the Tribunal on 9 September. The Defence brought Bursik before the Court in order to corroborate the Defence theory that the claim of Momir Nikolić – that Mladić's hand gesture was an indication that Bosnian prisoners would be killed – was fabricated. Bursik was the first to find out about the non-verbal communication to Nikolić on the part of the Accused in late May 2003, and wrote a report on it on 23 June 2003. Defence Counsel Branko Lukić pointed out that a document titled Statement of Facts and Acceptance of Responsibility dated 6 May 2006 never actually made mention of the hand gesture. The witness confirmed that Nikolić had never mentioned the detail in connection to that statement. The Prosecution contended that the Statement and the 2003 report should be read in conjunction with each other.


Bruce Bursik

However, the Defence pointed out that throughout all of his interviews and statements, Nikolić had often amended his claims and presented questionable information. Notably, he had first confessed and then recanted that he had ordered the execution in Kravica. Nikolić has a plea arrangement which has resulted in his sentence being pushed down to 20 years while other high-ranking officers in the Army of the Republika Srpska (VRS) security service have been sentenced to between 35 years and life imprisonment. The witness agreed that this is something which must be contended with.

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

On 2 September, a Status Conference was held for *Prlić et al.* pursuant to Rule 65 *bis* (B) of the Rules of Procedure and Evidence of the Tribunal. According to this rule, a Status Conference should be convened within 120 days of the filing of a notice of appeal and thereafter within 120 days after the last Status Conference, to allow any person in custody pending appeal the opportunity to raise issues in relation thereto, including the mental and physical condition of that person. Besides that, a Status Conference provides the opportunity to update the appellants with respect to the status of their case.

The Status Conference was presided by Judge Theodor Meron. It was attended by Jadranko Prlić, Bruno Stojić, Slobodan Praljak, Milivoj Petković, and Valentin Ćorić, who are currently in custody at the United Nations Detention Unit in The Hague pending the resolution of the appeals filed against the Trial Judgement.

The other Accused in this case, Berislav Pušić, who is on preliminary release, filed his consent on 26 August 2015 to hold the conference in his absence. The Defence Counsel for Pušić participated in the conference from Sarajevo via video link.

With regard to their health situation, Prlić, Stojić, Praljak, and Ćorić did not raise any issue. Petković, however, did raise an issue, which was discussed in closed session. Additionally, the Defence Counsel for Pušić indicated that information about the health situation of Pušić is strictly confidential and that there was no need to raise any issue with regard to this.

After addressing the health situation of the Accused, Judge Meron turned to an update of the case. Judge Meron stated that the public redacted versions of the reply briefs were due on 9 September. Furthermore he stated that Petković and Pušić have not yet filed public redacted versions of their response briefs, even though their initially filed public response briefs were made confidential. Judge Meron indicated that Petković and Pušić could file motions to lift the confidential status of their briefs.


Judge Theodor Meron

The Defence Counsels for the Accused and the Prosecutor did not raise any other issues in the status conference.

MICT News

Prosecutor v. Kamuhanda (MICT-13-33)

Since 27 August, three MICT documents bearing upon the case *Prosecutor v. Kamuhanda* (MICT-13-33) have been submitted. Firstly, pursuant to leave granted by the Single Judge, Association des Avocats de la Défense, (ADAD) submitted its *amicus* brief on three issues identified by the Single Judge on 27 August:

Kamuhanda's Principal Request

(i) Does the conclusion of Kamuhanda's trial and appeal constitute a change of circumstances which warrants a reconsideration of the modalities for access for Kamuhanda's Counsel to interview Prosecution witnesses;

(ii) If so, should access to interview a Prosecution witness, apart from consent from the witness, be at the discretion of Kamuhanda's Counsel or should access require a justification in relation to the particular witness to be approved by a Judge; and

(iii) Should consultation of the witness as to the consent and the facilitation of the interview, if any, be conducted by the Prosecution or by the WISP?

In sum, the ADAD brief concludes that there are innocent persons who have been wrongfully convicted at the International Criminal Tribunal for Rwanda (ICTR). It suggests that it is in the interests of justice for the Mechanism to put in place conditions that strike a fair balance between the rights of those wrongfully convicted and those witnesses benefitting from protective measures. They maintain that removal of the barrier of judicial approval for each interview of a protected witness and insertion of the neutral Witness Support and Protection Unit (WISP) as the organ conveying the request for interview to the witness will ensure justice for all concerned.

On 10 September, the ADC-ICTY also submitted observations as *amicus curiae* pursuant to Rule 83 of the MICT Rules of Procedure and Evidence on the same three issues. It maintained that the WISP is the neutral interlocutor which can establish if a protected witness consents to be contacted by the opposing party in the proceedings. The ADC-ICTY agreed with Kamuhanda's assertion that "[t]he fact that contact with a witness is made by a neutral organ such as the Victims and Witnesses Support Section (VWSS) removes any influence or appearance of influence on the witness that exists when one party conveys the request for interview by the other party". The danger of influence or appearance of influence has been recognised by the Chambers of the International Criminal Court (ICC) in the *Blé Goudé* case where the Single Judge recalled "that the party calling the witness or relying on his or her statement 'is prohibited from trying to influence the witness's decision as to whether or not to agree to be interviewed' by counsel of another party". To avoid any such possibility of influence, the brief stated, would significantly advance the fairness of the proceedings while also promoting limited and appropriately conducted contacts with those witnesses the Mechanism maintains a duty to protect.

On 14 September, Jean de Dieu Kamuhanda replied to the *Prosecutor's Submissions on Motion for Contact with Persons Benefitting from Protective Measures* and the *Registrar's Rule 31(B) Submission following the Order for Submissions of 8 July 2015* and provided his comments on the observations of the *amici curae*. While elaborating upon a number of points in each of the two briefs, his reply agreed substantially with their conclusions, stating that the objections of the Registrar and the Prosecution to the proposed modification of protective measures are without merit. He respectfully requested that the protective measures decision in this case be modified so as to eliminate the requirement of judicial approval and to allow for the WISP to determine if persons benefitting from protective measures consent to be interviewed by the defence.

Prosecutor v. Popović *et al.* (MICT-15-85-ES.2)

An order by the President of the Mechanism for International Criminal Tribunals (MICT) was made public on 27 August 2015, designating Germany as the state where Vujadin Popović will serve his sentence.

Popović surrendered to the ICTY on 14 April 2005 after the initial indictment on 26 March 2002. On 10 June 2010 the Trial Chamber convicted Popović of genocide, conspiracy to commit genocide, crimes against humanity and violations of the laws or customs of war. He was sentenced to life imprisonment. This sentence was upheld by the Appeals Chamber on 30 January 2015. Popović was tried together with six other accused on the basis of their individual criminal responsibility.

Prosecutor v. Šainović *et al.* (MICT-14-67-ES.1)

On 27 August, an order by the MICT President, Judge Theodor Meron, was made public granting early release to Nikola Šainović. It was concluded that Šainović had served two thirds of his sentence and has demonstrated good signs of rehabilitation. His health situation was given as an additional factor. Šainović was the Deputy Prime Minister of the Federal Republic of Yugoslavia (Serbia and Montenegro) in the years 1994 to 2000. He surrendered to the ICTY in 2002 after the initial indictment in 1999.

He was sentenced to 22 years' imprisonment on the counts of crimes against humanity and violations of the laws or customs of war. The sentence was reduced to 18 years in the appeals judgement in 2014. Šainović served his sentence in Sweden.

LOOKING BACK...

International Criminal Court

Five years ago…

On 28 September 2010, the French authorities arrested Callixte Mbarushimana, who was facing charges at the International Criminal Court for war crimes and crimes against humanity allegedly committed in the Kivus, Democratic Republic of Congo. Mbarushimana, a Rwandan citizen, was the Executive Secretary of the Forces Démocratiques pour la Libération du Rwanda - Forces Combattantes Abacunguzi. His arrest warrant was issued in August 2010 and he was transferred to The Hague in January 2011. In December 2011, Pre-Trial Chamber I decided by Majority to decline the confirmation of the charges and he was released from custody on 23 December 2011 and transferred to French territory as requested. The Chamber found that there was not sufficient evidence to establish substantial grounds to believe that Mbarushimana could be held criminally liable for the crimes alleged in the indictment under Article 25(3)(d) of the Rome Statute.

International Criminal Tribunal for the Former Yugoslavia

Ten years ago…

Radovan Stanković

On 29 September 2005, for the first time in its history, an ICTY indictee was transferred to face trial in the courts of a national jurisdiction. In what was proclaimed to be a 'landmark event' for the Tribunal, the Referral Bench handed down the order requiring that Radovan Stanković be sent from the ICTY to Sarajevo to be tried by the War Crimes Chamber of the Court of Bosnia and Herzegovina.

The original indictment alleges that Stanković was individually criminally responsible under Article 7(1) of the Statute for his role in being in charge of a house used to detain at least nine Muslim women and girls, all of whom has been subjected to a sustained pattern of rape and sexual abuse. During this period, it was alleged that Stanković assigned specific women and girls to be raped and sexually assaulted by members of the Serb forces, and that he himself had raped at least two women, one of whom was repeatedly raped over a three month time span.

In accordance with the Tribunal's mandate of trying only the most senior perpetrators of genocide, crimes against humanity and war crimes, the Referral Bench granted the Prosecutor's request issued pursuant to Rule 11*bis* to refer the case to the courts of Bosnia and Herzegovina. The order was subsequently affirmed by the Appeals Chamber after an appeal was lodged by the Defence objecting to the referral of the case.

After a lengthy trial, the Court of Bosnia and Herzegovina sentenced Stanković in 2007 for crimes against humanity committed against Bosnian civilians in Foča in the second half of 1992. Shortly after being transferred to begin serving his sentence, however, Stanković carried out an assault on one of the prison guards supervising him on a hospital visit and was able to escape custody. Only after a period of five years on the run was Stanković recaptured by police and returned to prison.

International Criminal Tribunal for Rwanda

Fifteen years ago…

In October 2000, 22 of the 24 detainees in the International Criminal Tribunal for Rwanda's (ICTR) Detention Unit signed a letter in which they announced a two day strike to express solidarity with Jean-Bosco Barayagwiza, a fellow detainee who was Co-Accused in the "media case" before the Tribunal.

The letter to the then-President of the ICTR, Judge Navanethem Pillay, did not outline what the strike would entail.

The strike aimed to support Barayagwize in his claim that he was not awarded a fair trial by the ICTR. The Accused refused to attend hearings and instructed his Tribunal-appointed lawyers not to attend hearings but otherwise to continue to represent him. The Trial Chamber noted that the lawyers would not be excused from the hearings, which resulted in the lawyers wishing to withdraw from the case completely. In a decision a few weeks later, the Chamber found that Counsel must continue to represent Barayagwiza diligently as doing otherwise wold "obstruct judicial proceedings".

NEWS FROM THE REGION

Bosnia and Herzegovina

Bosnian Army Commander Naser Orić Indicted at the State-Level Court

Former Bosnian Army commander Naser Orić was indicted for war crimes committed in the Srebrenica region at the state-level Court. The indictment includes the charges of killing three Bosnian Serb prisoners of war in Zalazje, Lolići and Kunjerac in 1992. By the request of the Serbian prosecution, Orić was arrested on the French-Swiss border this June and was eventually extradited to Bosnia. Orić has been acquitted of war crimes by the International Criminal Tribunal for the Former Yugoslavia (ICTY), which ruled that he was not in control of the Bosnian Army while the crimes were being committed. Orić's lawyer states that they will be filing objections through the Mechanism for International Criminal Tribunals (MICT) in The Hague and under the local criminal code.

Naser Orić

Orić's indictment has been criticised by both Bosnians and Serbs for different reasons. It has been purported that the indictment is a politically-motivated reply to the referendum testing the powers of the state-level judiciary in Republika Srpska. Moreover, some Bosnian Serb groups have expressed their dissatisfaction with the indictment, claiming that Orić is responsible for more than three deaths of prisoners of war in the 1990s. While Orić's lawyer argues that his acquittal at The Hague Tribunal should prevent him from being indicted again, President of a Bosnian Serb victims' group, Mladen Grujičić, blamed the Tribunal's Judgement for the lenient indictment. Legally Orić cannot be tried for the same crimes he was acquitted of at the Tribunal, but he might be in the position to stand trial for crimes committed in the same area that were not components in the ICTY case.

Kosovo

War Court Talks Between Kosovo and the Netherlands Delayed

A Court meant to try fighters from the Kosovo Liberation Army (KLA) for war crimes is waiting to be negotiated by the Kosovar and Dutch governments. The government in Kosovo is waiting for Kosovo's Constitutional Court to give its opinion on the legality of the new Court. Once the Constitutional Court advises the government about the Court's establishment, they will begin talks with the Netherlands for the Special Court. Opposition groups claim the new Court would undermine the struggle of the KLA against the Serbs and will threaten the sovereignty of the country. The Dutch government states that there have been no decisions made about hosting the Court and that it cannot provide any additional information. The Court will primarily deal with allegations that the KLA members engaged in unlawful killings, abductions, illegal detentions and prosecution of Serbs and Roma. In addition, allegations of crimes such as kidnapping, torture and organ harvesting will be addressed upon the establishment of the Special Court.

Serbia

Eight Ex-Policemen Charged in Serbia for Srebrenica Killings

Last week eight former members of a Police Special Brigade were indicted in Serbia for crimes committed against civilians in an agricultural warehouse in the village of Kravica near Srebrenica on 14 July 1995.

The eight Accused, Nedeljko Milidragović, Aleksa Golijanin, Milivoje Batinica, Aleksandar Dačević, Bora Miletić, Jovan Petrović, Dragomir Parović and Vidosav Vasić are indicted on charges of organising and participating in the shooting of 100 civilians in the warehouse. The men were initially arrested in March this year due to a 2013 cooperation agreement on war crime matters between Bosnia and Serbia.

Two of the men were already indicted in Bosnia before the signed agreement, but could not be arrested because they had been living in Serbia. Thanks to the agreement, evidence from Bosnia was transferred to Belgrade, resulting in joint work on war crime prosecution. This case was the first case to be prosecuted on Serbia related to the 1995 killings.

NEWS FROM OTHER INTERNATIONAL COURTS

Extraordinary Chambers in the Courts of Cambodia

Amélie Landriault, Legal Intern, Defence Team

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

Judicial Update

From July to August, the Nuon Chea and Khieu Samphân Defence Teams participated in the daily hearings of Case 002/02 and submitted various motions regarding both their appeals against the Case 002/01 judgement and the ongoing Case 002/02 trial.

The Extraordinary Chambers in the Courts of Cambodia

In July 2015, the Defence submitted several filings. First, the Nuon Chea Defence team responded to the Supreme Court Chamber (SCC)'s questions regarding the investigation into a film footage possessed by Rob Lemkin and Thet Sambath, submitting that Lemkin's notes should be admitted into evidence and that both film-makers should be called to testify in the Appeal of the Trial Judgement in Case 002/01. Shortly after, the Khieu Samphân Defence team filed its submissions on the matter, concurring with Nuon Chea's submissions. Second, the Nuon Chea Defence team replied to the Prosecution's response to the team's aforementioned submissions, requesting that the Supreme Court Chambers (SCC) dismiss the Prosecution's arguments and grant the relief sought in the team's submissions. Third, the Nuon Chea team filed a response to the Trial Chamber (TC)'s question as to how Lemkin's testimony can prove the facts it purports to prove. In addition, the Nuon Chea team also filed a response to the TC identifying the relevant portions of a compilation of 21 biographies which Nuon Chea requested to be admitted into evidence in Case 002/02. These biographies were produced by the German Democratic Republic Ministry of State Security. Finally, the Defence teams jointly requested that the TC order the Victims Support Section not to give witnesses and experts copies of their previous statements (e.g. Written Record of Interview) prior to their testimony. The teams also asked that the TC request the Parties to refrain from asking leading questions, and from reading parts of previous statements to the witnesses for the purpose of confirming the content of the excerpt.

In August 2015, the KHIEU Samphân Defence team partially opposed the Co-Prosecutors' motion to admit testimony from Case 002/01 appeal evidentiary hearings as evidence in Case 002/02, by requesting the TC to reject the deposition of one individual (SAM Sithy). The team also filed its conclusions concerning the Co-Prosecutors' obligation to disclose and asked the TC to supply a list of all the witnesses it intends to

summon, and to remind the Prosecution only to disclose exculpatory evidence and previous statements of witnesses summoned to appear in front of the Chamber. As it stated in its conclusions, the team continues to believe that the Case 002/02 trial should be suspended until the end of the investigations in Cases 003 and 004. On its part, the Nuon Chea Defence team filed a Rule 87 (4) request before the TC for the admission of six statements as well as one annex into evidence in Case 002/02. The team had requested the SCC to admit all these statements and the annex as additional evidence in the Appeal of the Trial Judgement in Case 002/01. In addition, the Defence teams prepared for the key documents hearing for Segment B of the trial of Case 002/02. However, due to disagreement with the TC on what type of documents may be presented at the key documents hearing and the uncertainty caused by the inconsistency between the TC's interpretation and the practice so far in this regard, the Nuon Chea Defence withdrew from presenting its documentary evidence at this key document hearing.

In Case 003, the Defence requested the Pre-Trial Chamber to allow it to file three submissions in English with the Khmer translations to follow, because the Interpretation and Translation Unit was unable to provide translations by the filing deadlines. The Defence also filed one reply to the Co-Investigating Judges and one Reply to the Pre-Trial Chamber. These Replies have been classified as confidential. The Defence also prepared a number of submissions to protect MEAS Muth's rights and interests that have not yet been filed. The Defence continues to review material on the Case File and to prepare filings as necessary and reasonable to protect MEAS Muth's rights and interests.

In Case 004, the Defence team for Ao An continues to review the evidence in the Case File to work on submissions to further prepare its client's defence and safeguard Ao An's fair trial rights. Further, the team continues to participate in Case 004's investigation through an investigative request and filed an application to the Pre-Trial Chamber with a view to annulment of the investigation.

Similarly, the Defence team for Im Chaem continues to assess evidence in the Case File and submit confidential arguments to protect its client's fair trial and procedural rights.

Finally, the Defence team for a Named Suspect in Case 004 continues to closely follow the trial proceedings in Case 002/02. The team maintains that the use of Case 004 documents in the Case 002/02 trial proceedings violates its client's rights. The team continues to research relevant substantive legal issues and otherwise seek to protect its client's fundamental fair trial rights using publicly available sources.

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.

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

On 18 August, in the first hearing after the summer judicial recess, John Edward Philips gave his testimony before the Trial Chamber. Philips is an expert witness on telecommunications and cell site analysis, and is currently an independent cell site analyst in the United Kingdom (UK) and analyses data generated by the Global System for Mobiles (GSM). He has previous experience in mobile radio communications and worked on a large number of judicial cases, for both the Prosecution and the Defence, concerning "serious" and organised crimes in the UK. He produced a report for the Prosecution at the Special Tribunal for Lebanon (STL) in September 2012 on the application of Cell Site Analysis (CSA) to GSM networks.

During the Prosecution examination from 18 to 21 August, Philips divided his testimony into two parts. The first part focused on the general concept of CSA, how to make a telephone call over a GSM mobile phone network, and how the call data generated from that network is examined.

On 19 August, Philips continued with his evidence before the Trial Chamber. The witness demonstrated Call Sequence Table (CST)s that showed the activity of particular telephones in specific areas that are relevant to the Prosecution's case. Moreover, he testified about the possibility of locating a mobile phone from the Call Data Records (CDR)s. Philips said it is a prerequisite for a mobile phone to be within the coverage

area of cell sites for it to be reflected in CDRs. He also explained to the court what a cell site is and the different types there are.

On 20 August, Philips continued to give an overview of the best server coverage of the cells which feature on the Lebanese service providers Alfa and MTC Touch networks. He explained that the network supplies a series of cell sites across the country are configured to provide capacity and coverage.

In the second part of his presentation, Philips examined CSA in a practical context, including the methods and purposes for which call data records can be used. He discussed location and movement of mobile phones, as well as phone attribution. The witness emphasised that CSA does not identify the exact location of the mobile; rather, it reflects the vicinity in which the mobile was located when it was in use.

On 21 August, Philips moved on to give practical examples of the CSA. He demonstrated the location and overall movement of a single mobile phone, and the common movement of two mobile phones and multiple mobile phones. The Prosecution alleges that the telephones featured in the examples are attributable to Salim Jamil Ayyash and Mustafa Amine Badreddine, who are accused in the present case. The witness showed a sequence of seven successive calls to illustrate the movement and the corresponding cell sites, their azimuth and the best coverage plots.

Philips then spoke about phone attribution, which he explained as different techniques that help identify the user of a phone at an appropriate time through a variety of means, described as basic and advanced methods. Examples of basic methods were given, such as a mobile phone's photos and phone book, or the Short Message Service (SMS) content. Additionally, he spoke about advanced methods, such as co-location analysis, which consists of looking at the locations of two or more mobile phones to see if they could be together over a period of time and also at the call patterns to confirm that they are consistent with the phones being used by the same person.

At the end of examination-in-chief, Philips spoke about the general concept of a criminal using multiple mobile phones for different purposes and the types of contact patterns while using the different phones. The witness gave an outline of the behaviour of "criminal phones" and went on to identify a special type of criminal phone called "mission" phones - very covert phones that are used in a closed network, for the execution and/or planning of a particular crime. The purposes of such phones is to disassociate or insulate their use in the crime from the identity of their users as much as possible, and therefore operate under very high anonymity, and are to be used only for contact between members of a given group.

The Defence Counsel cross-examined Philips 24 to 26 August. On 24 and 25 August, counsel for Oneissi questioned Philips. On the first day, the Counsel started by asking the witness how he was approached by the Office of the Prosecutor (OTP) to be contracted to work with them, what he worked on, specifically the areas that he was asked to cover in the CSA, as well as the reports he produced.

The witness was further asked about the various factors that play a role in constructing a new network and the propagation models or tools used by network operators in Lebanon to predict the required capacity prior to setting up networks by Alfa and MTC Touch. Philips was then questioned about the predictive maps that he worked on, and whether he received information from the telephone companies in Lebanon about the methodology, software, and data on how they built their predictive coverage map. Additionally, he was asked how telephone companies check the quality of this predictive coverage, whether by physical measurements in situ or through field surveys. The witness was then shown an extract of a witness statement given to the OTP by an Alfa employee on 27 July 2010 regarding the company's mapping information for 2005 and was asked whether he was familiar with it.

On 25 August, Counsel for Oneissi continued to cross-examine Philips. He was questioned on the impact of the damage from the July 2006 Israeli attacks on Lebanon and how the "best server" coverage plot was affected. Questions on the positioning and maintenance of cell tower masts in the region of Beirut were then put before the witness. Philips was then asked about the phenomenon of fading, which he explained may result in a change in the predicted best coverage cells at points where signals are of similar level.

On 26 August, Counsel for Sabra cross-examined Philips. The cross-examination started by questions about congestion issues (referred to also as "call anomalies" or "directed retries"). The witness explained that during congestion, calls are directed to the next best cell in terms of coverage when the ordinarily "best server" cell is overloaded. Philips was then asked about the possibility of phones being con-

gested as a result of overloading immediately after the occurrence of the crime on 14 February 2005, as well as about the potential consequences of failed cells, overlapping coverage by the cell sites, and co-channel interference.

Philips was then asked about the possible manipulation of the CDRs, a topic the witness was asked to deal with in his 2012 OTP report. The witness referred to a briefing paper by a former OTP employee, in which the witness was asked to carry out specific work in terms of possible manipulation of the CDRs. This document was previously not disclosed to the Defence. As a result, the Trial Chamber deferred the Defence cross-examination on the issue of possible manipulation of CDRs to later stages.

On 27 August, the Prosecution read onto the record a total of 14 witness statements admitted under Rule 155 of the STL's Rules of Procedure and Evidence (RPEs). The witness statements mainly deal with the telephone applications and identification documents used in connection with the purchase of the handsets and telephone networks the Prosecution claims were used in the conspiracy to assassinate the former Lebanese Prime Minister (PM) Hariri. In addition, the witness statement provides evidence about the importation and sale of the handsets that the Prosecution alleges were used with the red network telephones.

On 31 August, Saadeddine El-Ajouz appeared before the Trial Chamber via video link. El-Ajouz is an engineer and the owner of Power Group, a wholesale company that has distributed Alfa (formerly Cellis) telecommunications products in Lebanon since 1994. He has been managing Power Group since 2004-2005. The company sells scratch cards, sells pre-paid and post-paid mobile lines (SIM cards), and handsets.

The testimony of El-Ajouz focused on the company's distribution practices and records kept with respect to sales and purchases, including some specific business records relevant to the Prosecution's case. In particular, he was asked about business records for the sale of the SIM cards for phones that the Prosecution has categorised as Red Network, Green Network, and the phone lines allegedly used by the accused Ayyash and Badreddine as part of the telephone networks implicated in the conspiracy to assassinate the former Lebanese PM Hariri.

DEFENCE ROSTRUM

Press Release: Waleed Abu Al-Khair

By Hannah McMillen

On 1 September, the Consul General of Saudi Arabia in Houston, Texas, Sultan Al Angari, accepted a petition signed by 12,653 people calling for the release of imprisoned human rights lawyer Waleed Abu Al-Khair. The petition was hosted on Change.org, a public advocacy website. Elizabeth King, a Houston attorney who is working with New York-based international defence lawyer Daniel N. Arshack on behalf of Abu Al-Khair, delivered the petition by hand and was informed that the Consul General would give the petition to Saudi King Salman Bin Abdulaziz, who visited with President Obama in Washington, D.C. on September 4.

Human rights attorney Waleed Abu Al-Khair angered the Monarchy of Saudi Arabia by founding the Monitor of Human Rights in Saudi Arabia (MHRSA) in 2012. He represented fellow activists who themselves were charged with crimes against the Kingdom related to their calls for reform of the brutal monarchy. Abu Al-Khair was arrested while representing the political dissident Raif Badawi, who was sentenced to ten years in prison and 1,000 lashes for establishing a website that was critical of the regime and allowed for open discourse regarding religion. Abu Al-Khair is married to and has a daughter with Saudi women's rights advocate Samar Badawi (Raif Badawi's sister), who was herself jailed and now is subject to a travel ban for advocating for women under the repressive Saudi regime.

Abu Al-Khair and Badawi

In 2014, with the appeal of Badawi's case underway, Abu Al-Khair was detained under the anti-terrorism law and convicted of crimes against the state including "inflaming public opinion", "disparaging and insulting judicial authority", "making international organisations hostile to the Kingdom" and violating

Saudi Arabia's anti-cyber crime law. In fact, all of these advocacy activities occurred before the Saudi anti-terrorism law, under which he was inexplicably prosecuted, was even enacted. Abu Al-Khair was summarily sentenced to 15 years in prison in January 2015. He was also fined, subject to a long-term travel ban and ordered to shut down all of his online accounts.

Human Rights Watch has decried Abu Al-Khair's imprisonment as evidence of "how far Saudi Arabia will go to silence those with the courage to speak out for human rights and political reform".

Daniel N. Arshack, an American attorney based in New York City, has represented Abu Al-Khair since February 2015. Due to the obvious risk posed to Saudi Arabian lawyers who might be willing to represent him, Abu Al-Khair sought United States Counsel to advocate on his behalf and signed a power of attorney to enlist the services of Arshack. After meeting with U.S. Department of State representatives, Arshack received a letter written by the Department of State addressed to the Saudi Ambassador which "directly requests that the Embassy issue Arshack a visa". The meeting would have been the first between the imprisoned Abu Al-Khair and his lawyer, but the regime has further limited Abu Al-Khair's access to justice by denying the visa application.

Abu Al-Khair was nominated for the Nobel Peace Prize in February 2015 and was recently recognised with Europe's most prestigious human rights award, the 20th Lodovic-Trarieux Human Rights International Prize, first given to Nelson Mandela in 1985. As neither Abu Al-Khair nor his wife can attend the awards ceremony in Geneva, his attorney Arshack will accept the award on his behalf.

Abu Al-Khair, a previously vocal human rights advocate, is ill and suffering from increasingly severe symptoms of diabetes, a condition for which he has not received necessary medical treatment while in prison. He has been subjected to multiple beatings and has been denied basic medical care while incarcerated. Recently, in an obvious effort to demoralise Abu Al-Khair, the Monarchy moved him to a location over 500 miles away from his wife and daughter.

Arshack stated, "Waleed's summary conviction was unjust. His conduct was non-violent and as a son of Saudi Arabia, his only desire was to participate in building a sustainable, fair and just society in which he could raise his daughter free from intimidation and thought control. The conditions of his incarceration are barbaric. The Monarchy should focus its wrath on violent Islamists who do indeed threaten the stability of the country and not on those, like Abu Al-Khair and Badawi, who seek to contribute to the future of Saudi Arabia through peaceful and respectful discourse and legal advocacy. These peaceful advocates of human rights should be pardoned and released from prison immediately".

ADC-ICTY Advocacy Training with Dragan Ivetić

By Kirsten Storey

On 22 August, the ADC-ICTY hosted an Advocacy Training session on expert witnesses presented by Dragan Ivetić, Legal Consultant for the Defence team in the case of the *Prosecutor v Ratko Mladić*. The session was interesting and interactive, and had a distinctly (and refreshingly) practical approach to the subject matter. Participants learned how to identify what an expert witness is and in what circumstances one may be required, as well as how to effectively attack one. They also investigated the limitations and inherent restrictions of certain kinds of expert evidence.

The lecturer, Dragan Ivetić, has a wealth of expertise in procuring, examining and cross-examining expert witnesses both at the domestic and international level. Apart from his current position as Legal Consultant in the *Mladić case*, Ivetić was Co-Counsel for the defence in the cases of *Prosecutor v Mejakić et al, Prosecutor v Milutinović et al* and *Prosecutor v Milan Lukić* and *Sredoje Lukić* at the ICTY. He also has several years' domestic experience as an attorney based in Chicago. His skills and know-how ensured that the training session was informative, interactive and fun.

Although the definition differs according to jurisdiction, an "expert witness" is generally regarded as an individual with specialised knowledge or skills in a recognised area of expertise. Put simply, "an expert is a man who has made all the mistakes that can be made, in a very narrow field" (Neils Bohr). These kinds of witnesses are needed to furnish factual data and explain scientific principles to the Court and law-

yers both before and during a trial; to clarify the meaning of real evidence and to provide expert opinion testimony based on facts and data. Opinion evidence is not usually admissible in a court of law, except where that opinion is admitted through an expert who has the knowledge, experience or skill to give an authoritative opinion on a fact in issue.

Our first activity of the day was to analyse a fictional scenario involving a theft and a car accident and to identify which expert witnesses we would need to testify to prove our case. We came to the conclusion that we would need at least 17 experts, ranging from ophthalmologists to ballistics experts to IT consultants, in order to establish the elements of the case. This activity demonstrated the importance of turning one's mind to experts at the earliest possible moment and showed the potential breadth of areas of expertise for which an expert may be able to provide evidence. Ivetić reminded the participants to "have an open mind".


Dragan Ivetić

In criminal trials, one of the more common forms of evidence for which an expert may be called upon is fingerprint analysis. Fingerprint evidence has a reputation for being irrefutable, solid science; there is a belief that once fingerprints have been established the case is essentially closed. Not so, argued Ivetić. Fingerprints, it was surprising to learn, are analysed not by a computer, but by the human eye. These fingerprint experts compare the fingerprints in question side by side, and search for matching characteristics between them. There is no standard form which dictates how many matching characteristics there must be to determine a "match". One example of this mistaken belief in the conclusiveness of fingerprint analysis is the story of Brandon Mayfield. Mayfield is a US citizen who was erroneously linked to the train bombing in Madrid in 2004 based on a partial fingerprint found at the scene of the crime. The Federal Bureau of Investigation (FBI) claimed his fingerprint was a "100% verified" match despite Mayfield's protestations that he had nothing to do with the attack and, furthermore, he had not left America in over ten years. Mayfield's fingerprint was analysed by a number of experts, including an independent expert he retained personally, all of whom concluded the two prints were a match. Mayfield was arrested and detained for several weeks until the Spanish National Police announced they had identified the bomber as Algerian national, Ouhnane Daoud. Daoud's fingerprints also matched the partial print and he was caught on CCTV footage entering the train station with a backpack around the time of the bombing. The FBI had no option but to drop the charges against Mayfield and he was released. This cautionary tale highlights the fallibility of any expert, and also emphasises the importance of seeking independent advice or a second (or third) opinion.

After successfully identifying which kinds of experts will be required in a case, one then faces the practical complications of actually locating one. Ivetić divided the group into pairs and directed each pair to find an expert and an authoritative article in a particular area of (obscure) expertise. One team was for example searching for an expert in the field of "forensic review of questioned documents", or as it is more commonly understood, "forgery". With the internet at their fingertips finding a forensic document examiner was not as difficult as one might have thought, despite the vagueness of the term. The issues arise, however, when one has to determine whether the expert is authoritative and respected in the field. A *curriculum vitae* is a useful first step to determine the qualifications and membership of a candidate. They may demonstrate their authority in the field, for example, by having presented at a number of industry conferences, holding membership in major industry bodies and publishing articles in respected journals. The problem, of course, is once one identifies a suitable candidate who is sufficiently respected and authoritative on the subject one must convince that expert to provide their services. Ivetić highlighted the difficulties in securing strong expert witnesses particularly when the expert is a busy working professional, or when there are limited funds available.


Advocacy Training

After identifying, locating and retaining an expert witness there are still a number of issues to be considered, particularly: the other side's expert. Frankly, the aim is to convince the Court and/or the jury that your expert witness is better than the other side's expert witness. This can be established through a mixture of expertly conducted examination in chief and carefully considered cross-examination. Ivetić outlined the two widely recognised methods of cross-examination:

constructive and destructive. Before destroying the expert's evidence, it is important first to extract any evidence that is constructive to your case. As the attorney it is usually more appropriate to leave the questions of the expert's opinion to be fought by your own expert witness, and to focus your cross-examination on everything else, for example: any bias or prejudice, the things both experts agreed upon, and things the expert did not do. The group viewed a clip of the Defence advocate in the Casey Anthony murder trial attempting to effectively cross-examine an expert witness, the coroner. Although the advocate succeeded in highlighting that the coroner had listed the death as a "death by indeterminate means", he erred in allowing the witness to repeat her opinion that the death was a homicide several times. The more the jury hears one version of events, the more likely that they will believe that version and this is why it can be perilous to allow a witness to repeat their version more than once. Ivetić then played a clip demonstrating the more successful cross-examination tactics used in the OJ Simpson trial. In that trial a barrage of pointed questions elicited just enough information from the expert to be constructive to the Defence case, but limited the expert from giving explanations that might detract from the usefulness of his answers. The advocate recognised that it was imperative not to give the witness the chance to explain. Such skilfully directed cross-examination is rightly referred to as art.

The training session with Ivetić was a great success. The group was given the tools with which to identify the need for expert witnesses, shown how to practically locate them, analysed how to question them and also learned that there is still space for the unknown. The most important tips we took away were that it is always better to have too many expert witnesses than too few, to always retain your own witness, learn as much about the subject-matter as you can and cross-examine cleverly.

ECCC: Ieng Thirith, "First Lady" of Cambodia's Khmer Rouge, Dies at 83

By Hannah McMillen

The Extraordinary Chambers in the Courts of Cambodia (ECCC) confirmed on 22 August that Ieng Thirith, alleged Minister of Health and Social Affairs and the only woman to hold a senior cabinet position in the government of Democratic Kampuchea, died the same day in her home province of Pailin, Cambodia. She was 83.

She was known as the "First Lady" of the Khmer Rouge, wife of Ieng Sary, its alleged Minister of Foreign Affairs and Deputy Prime Minister, and sister-in-law of Pol Pot. She was alleged to have held power from 1975-1979, the period of the Cambodian genocide, and was later indicted on charges related to the regime's purported part in it.

Born Khieu Thirith on March 12, 1932, Ieng Thirith was one of the first young women to graduate from the prestigious Lycée Sisowath in Phnom Penh. She later attended the Sorbonne in Paris together with her older sister, Khieu Ponnary, where she took a degree in English Literature and became a Shakespeare scholar. During their university years, the sisters became involved in a Marxist-Leninist study circle, revolutionary young members of which would later form the core leadership of the Khmer Rouge. Khieu Thirith and Khieu Ponnary married fellow members Ieng Sary and Saloth Sar (later known as Pol Pot) respectively, and upon return to Cambodia, Ieng Thirith worked as a professor and established a school. The Khmer Rouge movement took power in April 1975.

Ieng Thirith

In the newly-declared Democratic Kampuchea, Ieng Thirith was allegedly appointed Minister of Health and Social Affairs, and due to her sister's deteriorating mental health (Khieu Ponnary was schizophrenic, and had been declared insane) often undertook the duties of the regime's "first lady", including greeting foreign envoys on their visits. As minister, she would have been responsible for supervising hospitals and distributing medicines and supplies. Though during these years the northwest of the country suffered mass starvation and many thousands died of illness and lack of medical care, Ieng Thirith allegedly attributed the conditions to foreign agents working against the regime, rather than regime policy itself.

Democratic Kampuchea fell to Vietnamese forces on January 7, 1979, but Ieng Thirith remained with the Khmer Rouge until her husband struck an amnesty deal and was granted a royal pardon in 1996. They

lived together in Phnom Penh until their arrest in 2007, following the establishment of the UN-backed ECCC. On 15 September 2010, the ECCC Co-Investigating Judges indicted Ieng Thirith in Case 002 on charges of crimes against humanity, genocide and Grave Breaches of the Geneva Conventions of 1949 for her role in the Khmer Rouge's regime.

She was found unfit to stand trial in 2011, having undergone assessments to evaluate her progressive dementia and Alzheimer's disease, but the ruling was later overturned. Following further health and psychological assessments, she was again found unfit to stand trial on 13 September 2012, and proceedings against her were stayed indefinitely. She was released from provisional detention three days later, and remained under judicial supervision until her death. The charges against Nuon Chea and Khieu Samphân, the co-accused in Case 002, have since been divided into Case 002/01 and Case 002/02, the latter of which is still ongoing.

International Law Panel on Sexual and Gender-Based Crimes

By Hannah McMillen

On 4 September, ADC-ICTY interns attended a panel discussion entitled "Accountability for Sexual and Gender-Based Crimes: Achievements, Prospects and Challenges Ahead", held by the Hague Academy of International Law and the Grotius Centre for International Legal Studies at the Academy and Library building of the Peace Palace in The Hague. The three featured panellists were Prof. William Schabas, Leiden University; Michelle Jarvis, Deputy to the Prosecutor and Head of Appeals, ICTY; and Brigid Inder, ICC Special Adviser on Gender, with Prof. Dr. Carsten Stahn, Leiden University moderating.

Each of the panellists drew from their own field of expertise to discuss the changing manner in which sexual and gender-based crimes (SGBC) have been addressed in international criminal law courts and tribunals in recent decades, with a particular focus on grassroots efforts in the Democratic Republic of the Congo (Inder), gender considerations in the Sierra Leone Truth and Reconciliation Commission (Schabas) and the legacy of and precedent set by the efforts of the ICTY (Jarvis).

Questions of gender-inclusive and gender-neutral language in international law, forced recruitment or mass killings of men and boys as SGBC, the relevance of current displacement trends and issues of reporting were raised by the panellists themselves and by members of the audience during a Q & A session and reception. Overall, the panel both challenged prevalent assumptions about the prosecution of sexual and gender-based crimes, and highlighted significant advances in both national and international understanding and approaches.

ADC-ICTY Conference on the Situation of Defence Counsel at International Criminal Courts and Tribunals

Date: 5 December 2015

Time: 9:00 - 17:30

Location: Bel Air Hotel, The Hague

Registration: adcicty.events@gmail.com

Fee: 35 Euros *(including coffee breaks)*

(20 Euros for ADC-ICTY members, students and unpaid interns)

Lunch: 15 Euros per person *(upon reservation)*

This one-day conference will focus on the situation of Defence Counsel at International Criminal Courts and Tribunals and will feature four distinguished panels on various topics in relation to the role and importance of the Defence.

The Opening and Closing Remarks will be delivered by ADC-ICTY President, Colleen M. Rohan. Panelists include renowned Defence Counsel, Judges and representatives from various international criminal courts and tribunals.

It is possible to obtain credits for continuing legal education purposes.

Join us for the **ADC-ICTY's Annual Drinks and Christmas Party** at Hudson's Bar & Kitchen in The Hague on 5 December 2015 from 8 PM onwards.

For further information please contact the ADC-ICTY Head Office at: adcicty.events@gmail.com and visit http://adc-icty.org/home/opportunities/annual%20conference.html.

ADC-ICTY Conference Programme

5 December 2015 - Bel Air Hotel, The Hague

09:00 - 09:15 Opening Remarks – Colleen Rohan

09:15 - 10:45 Panel 1 - ***The Role of Defence Counsel at International Criminal Courts and Tribunals***

Moderator: Christopher Gosnell

Panelists: Slobodan Zečević
Judge Alphons Orie
Judge Janet Nosworthy

11:15 - 12:45 Panel 2 - ***The Necessity of a Defence Office from the International and National Perspective***

Moderator: Jens Dieckmann

Panelists: Héleyn Unac
Xavier-Jean Keïta
Nina Kisić

13:45 - 15:15 Panel 3 - ***The Importance of a Bar Association for International Criminal Courts and Tribunals***

Moderator: Slobodan Zečević

Panelists: Colleen Rohan
Fiana Reinhardt
Michael Karnavas

15:45 - 17:15 Panel 4 - ***The Future of Defence Counsel on the International and National Level***

Moderator: Dragan Ivetić

Panelists: Gregor Guy-Smith
Judge Howard Morrison
Novak Lukić

17:15 - 17:30 Closing Remarks – Colleen Rohan

For further information and to register for this conference, please visit: http://adc-icty.org/home/opportunities/annual%20conference.html or send an email to adcicty.events@gmail.com

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Alex Fielding, "**Recent attacks show that Boko Haram remains far from broken, and is drawing closer to ISIS"**, 10 August 2015, available at: http://tinyurl.com/p7owwpw .com/ns8pmaq

Jennifer Trahan, **"A Complementarity Challenge Gone Awry– The ICC and the Libya Warrants"**, 4 September 2015, available at: http://tinyurl.com/nlt78ts

Alexandre Skander Galand, **"Is the International Criminal Court in Need of Support to Clarify the Status of Heads of States' Immunities?"**, 11 September 2015, available at: http://tinyurl.com/pwa346y

Online Lectures and Videos

"The New Terrain of International Law: Courts, Politics, Rights", by Karen Alter and Kalypso Nicolaidis, 11 June 2014, available at: http://tinyurl.com/phrzh54

"The Crime of Aggression", by Don Ferencz, 5 May 2015, available at: http://tinyurl.com/odga7pv

"How can the category of 'climate refugee' be considered within international law in the 21st century?", 18 June 2015, available at: http://tinyurl.com/nw8t9wc

"Special Seminar: Individual and Collective in the Response to Mass Atrocity", 15 July 2015, available at: http://tinyurl.com/ppa2ext

PUBLICATIONS AND ARTICLES

Books

Klaus Bachmann, Aleksandar Fatic (2015), **The UN International Criminal Tribunals: Transition without Justice?**, Routledge.

John Hagan, Joshua Kaiser, Anna Hanson (2015), **Iraq and the Crimes of Aggressive War, The Legal Cynicism of Criminal Militarism**, Cambridge University Press.

Mark D. Kielsgard (2015), **Responding to Modern Genocide: at the confluence of law and politics**, Routledge.

Serena K. Sharma, Jennifer M. Welsh (2015), **The Responsibility to Prevent- Overcoming the Challenges of Atrocity Prevention**, Oxford University Press.

Articles

Peter Hilpold (2015). **"Ukraine, Crimea and New International Law: Balancing International Law with Arguments Drawn from History"**, Chinese Journal of International Law, Volume 14, Issue 2.

Katrien Meuwissen (2015). **"NHRIs and the State: New and Independent Actors in the Multi-layered Human Rights System?"**, Human Rights Law Review, Volume 15, Issue 3.

Hemi Mistry (2015). **"The Paradox of Dissent: Judicial Dissent and the Projects of International Criminal Justice"**, Journal of International Criminal Justice, Volume 13, Issue 3.

CALLS FOR PAPERS

The Yearbook for International Humanitarian Law has issued a call for paper in the topic Contemporary Armed Conflicts and their Implications for International Humanitarian Law.

Deadline: 1 October 2015 More Info: http://tinyurl.com/psa66qs

Die Friedens-Warte, Journal for International Peace and Justice has issued a call for paper for its upcoming journal issue on the topic the "Islamic State".

Deadline: 18 October 2015 More Info: http://tinyurl.com/a92yhy

The NLIU e-Journal of International Law has issued a call for paper for the next biannual issue on the topic of International Public Law. Submissions may be in form of articles, essays or judgement analyses.

Deadline: 1 November 2015 More Info: http://tinyurl.com/par4n6z

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For more info visit:

http://adc-icty.org/home/membership/index.html

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EVENTS

Course on Crime and Criminology in the Balkans
Date: 5 October to 9 October 2015
Location: Dubrovnik, Croatia
More Info: http://tinyurl.com/nr4qosq

Jason Institute Conference on "Hybrid Warfare, Hybrid Responses"
Date: 8 October 2015
Location: Peace Palace, The Hague
More Info: http://tinyurl.com/oqsc3c8

Gent University Doctoral School, International Order and Justice Lecture Series
Dates: 12 October 2015 to 2 May 2016
Location: various locations
More Info: http://tinyurl.com/q47m8mo

OPPORTUNITIES

Assistant Evidence Reviewer (P-1)
Special Tribunal for Lebanon, Office of the Prosecutor
Closing Date: 22 September 2015

Associate Legal Officer, Geneva
United Nations High Commissioner for Refugees
Closing Date: 4 October 2015

Legal Officer (P-3)
International Court of Justice
Department of Legal Matters
Closing Date: 17 October 2015

Research Assistant
NATO Parliamentary Assembly
Closing Date: 23 October 2015

The ADC-ICTY would like to express its sincere appreciation and gratitude to Kirsten Storey for her contribution to the Newsletter, we wish her all the best for the future!