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

ICTY CASES

Cases at Trial

Hadžić (IT-04-75)

Karadžić (IT-95-5/18-I)

Mladić (IT-09-92)

Šešelj (IT-03-67)

Cases on Appeal

Popović *et al.* (IT-05-88)

Prlić *et al.* (IT-04-74)

Stanišić & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

Prosecutor v. Tolimir (IT-05-88/2)

On 25 March a status conference in the case of *Zdravko Tolimir* was held at the ICTY. Status conferences serve the purpose of allowing the Defendant to express his concerns regarding the detention facilities, as well as providing the Accused with information on the status of the case and requesting information on the detainee's mental and physical condition.

During the status conference Pre-Appeal Judge Theodor Meron outlined the procedural background of the case. Tolimir filed a confidential version of his appeal brief in the reply on 7 November 2013, he was given an extension of time for filing amendments to his reply brief, which he had requested during the last status conference on 28 October 2013. Judge Meron had authorised Tolimir to file an amended version of his reply brief within ten days of the filing of the B/C/S translation of the Prosecution's response brief, which was filed on 12 February. After another request for an extension of the deadline, Judge Meron had ordered Tolimir to file his amended reply brief by 27 February.

At the time of the status conference all briefs had been filed confidentially. However, in line with Art. 21 (2) and Rules 78 and 107 Rules of Procedure and Evidence, Judge Meron ordered both parties to file public ver-

ICTY Rules of Procedure and Evidence Rule 78

All proceedings before a Trial Chamber, other than deliberations of the Chamber, shall be held in public, unless otherwise provided.

Rule 107

The rules of procedure and evidence that govern proceedings in the Trial Chambers shall apply *mutatis mutandis* to proceedings in the Appeals Chamber.

ICTY NEWS

- Tolimir: Status Conference

- Mladić: End of Prosecution Case and 98 bis Schedule

- Karadžić: Trial Adjourned

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sions of the briefs by 27 March. The Defence filed the *Public Redacted Version of the Consolidated Appeals Brief* on 28 February, the Prosecution filed its *Redacted Public Version of Prosecution Response* to Zdravko Tolimir's Appeal Brief on 10 March.

The meeting was adjourned after the Accused's re-

nunciation on facing any health issues and with no further concerns raised.

In an order dated 21 January, the current Presiding Judge Theodor Meron assigned Judge Patrick Robinson to replace Judge Liu Daqun on the bench seized of the Zdravko Tolimir's appeal case.

Prosecutor v. Mladić (IT-09-92)

On 24 February, the Trial Chamber officially announced the closure of the Prosecution case in the Mladić trial after it had indicated it would not have any further evidence to present. The Trial Chamber additionally ordered the following schedule for the remaining course of the trial:

The Rule 98 *bis* oral submissions will take place from 17 to 19 March. Rule 98 *bis* of the ICTY Rules of Procedure and Evidence stipulates that "at the close of the Prosecutor's case, the Trial Chamber shall, by oral

decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction."

The Chamber furthermore decided that the Defence should file its witness and exhibit lists by 28 April and that the Pre-Defence Conference will take place on 12 May followed by the start of the Defence case a day later on 13 May 2014.

Prosecutor v. Karadžić (IT-95-5/18-I)

After the two-week adjournment, the Karadžić trial resumed on 3 March for a 30-minute session in which no witness testified but instead a series of oral rulings were discussed. Amongst the matters addressed were: the admission of documents, issues concerning the final briefs, the Office of the Prosecu-

tor's (OTP) intended motions to reopen the case in part and to call rebuttal evidence.

After a quiet week, the Karadžić Trial stands adjourned pending the Chamber's ruling on the OTP motions to re-open their case and to call rebuttal evidence.

LOOKING BACK...

International Criminal Court

Five years ago...

On 4 March 2009, Pre-Trial Chamber I of the ICC issued a warrant for the arrest of Omar Hassan Ahmad Al Bashir, President of Sudan. He is suspected of being criminally responsible for intentionally directing attacks against an important part of the civilian population of Darfur. The warrant for his arrest lists seven counts on the basis of his individual criminal responsibility. Five counts of crimes against humanity and two counts of war crimes. The crime of genocide was not included in the warrant since the majority of the Chamber found that the material

failed to provide reasonable grounds to do so. The Arab League and the African Union condemned the warrant and Al-Bashir has since visited Egypt and Qatar. Both countries have refused to arrest and surrender him to the ICC.



Omar Al Bashir

Special Court for Sierra Leone

Ten years ago...

On 12 March 2004, the Registrars of the ICTY, the ICTR and the SCSL met on the occasion of the opening ceremony of the courthouse for the SCSL in order to select projects for co-operation between the three institutions. The selected projects for co-operation involving these institutions have been made possible through an allocation from the European Commission in October 2003. This co-operation was set to be furthered and structured through a network of Registrars of international jurisdictions.

International Criminal Tribunal for Rwanda

Fifteen years ago...

On 29 March 1999, Bernard Ntuyahaga, former Major in the Rwanda armed force, was released. The Registry of the ICTR released Ntuyahaga in accordance with the 18 March 1999 decision of Trial Chamber I. Shortly after the Trial Chamber's decision Ntuyahaga sent a written request to the Registry, seeking permission to remain temporarily in the Tribunal's detention facilities on his own free will, pending the completion of arrangements to implement the Court's decision.

Ntuyahaga requested to be set free in Tanzanian territory, specifically in Dar es Salaam. However, on the same day that the ICTR dropped its charges, Tanzani-

an authorities arrested Ntuyahaga for entering the country illegally. This was followed by a complicated couple of years that wrapped up with Ntuyahaga flying to Belgium and surrendering himself.

His case was referred to the Assize Court where the trial began on 19 April 2007 and came to an end on 4 July 2007, when he was found guilty of the murder of peacekeepers and an unknown number of Rwandan civilians and sentenced to 20 years imprisonment.



Bernard Ntuyahaga



NEWS FROM THE REGION

Bosnia and Herzegovina

Sulejman Mujagić Sentenced for Bosnian War Crimes

Sulejman Mujagić, tried in Bosnia, has been found guilty of war crimes committed against prisoners in 1995 in the area of Velika Kladusa. Mujagić had been accused of fatally shooting a Bosnian prisoner at point-blank range and torturing a second, both of whom had been captured by Mujagić and his soldiers.

According to Bosnian newspaper Oslobodenje, the Cantonal Court in Bihać sentenced Mujagić, the former Commander of the 3rd Platoon, 3rd Company, 2nd Battalion, 1st Brigade of the Army of the Autonomous Province of Western Bosnia, to eight and a half years in prison.

Mujagić was arrested in November 2012 at his South Street apartment in Utica. Federal agents, with the help of the Utica police, apprehended Mujagić in November 2012, after he had been evading capture in Utica for at least ten years.

BiH Must Become More Responsive to Citizens and ECtHR Rulings

On 18 February, Stefan Fule, the European Union Enlargement Commissioner, stated that Bosnia and Herzegovina's (BiH) politicians must become more responsive to citizens, including their demands for job opportunities and effective justice. Fule referred specifically to the failure to implement a 2009 judgement from the European Court of Human Rights.

After the recent protests throughout the country, Fule met with BiH leaders and citizens who are working in Tuzla and Sarajevo. In a statement, Fule requested the politicians of BiH not to "ignore the voices of the citizens." He further stated that citizens must feel free to engage without fear of repercussions, adding that any violence is "completely unacceptable."

Regarding party leaders' failure to implement the European Court of Human Rights judgement in the *Sejdić - Finci* case, Fule stated that it was "deeply disappointing." The 2009 ruling challenged parts of the country's constitution that allocate certain government posts based on ethnicity. Currently, senior governing positions are exclusively reserved for the three predominant ethnic groups: Bosniaks, Serbs and Croats. The country now receives penalties due to the failure to implement the verdict; the EU has withdrawn 45 million Euros of pre-accession assistance and has threatened further funding cuts if the state does not resolve the issue.

Whilst in Sarajevo, Fule stated that "Bosnia and Herzegovina will remain, at least for the time being, in breach of its international commitments. It is a shame for politicians, through inaction, to fail, because the rest of the region is moving forward toward the European Union, and because citizens are calling politicians to be accountable."



Kosovo

New Party Formed by Former Ministers

Separating from Kosovo's Prime Minister, Hashim Thaçi, the Former Kosovo Liberation Army (KLA) Commander Fatmir Limaj and former KLA Secretary, Jakup Krasniqi, have founded a new political party to challenge the ruling Kosovo Democratic Party.

Limaj and Krasniqi, two former allies of Thaçi, have established their own party in preparation for the next elections, which are expected to be held between June and September this year. "Initiatives for Kosovo" was launched on 28 February at an inaugural ceremony held in Kosovo's capital. It is reported that more than 100 supporters attended the event. Addressing the crowd, the head of the new party, Limaj, stated that "Kosovo is not on the right path, its citizens are tired of illusion and demagoguery, of empty promises and endless expectation, and tired of uncertainty about their future."

The relationship between Limaj and Thaçi began to deteriorate in November 2012, when the EU Rule-of-Law Mission in Kosovo indicted Limaj for alleged organised crime and corruption. As reported in Newsletter Issue 62, Limaj has recently had a second indictment raised against him by Kosovo's European Union justice mission, charged with corruption and organised crime during his time as Minister for Transport and Telecommunication. Limaj has previously been cleared of charges of war crimes, including once by the ICTY.



"Initiatives for Kosovo"



Serbia

Serbia Seeks Assurances About Kosovo Army

The Serbian Prime Minister Ivica Dačić has stated that Kosovo's intentions to orchestrate its own armed forces by 2019 contravenes the Brussels Agreement on the Normalisation of Relations, which was signed in April 2013 by both Serbia and Kosovo.

Dačić stated that the Serbian government has sought guarantees from NATO and the International Peacekeeping Force in Kosovo (KFOR) that if such an army is ever formed, it should not be permitted to enter North Kosovo without KFOR's permission.

The Kosovo government announced that it intended to transform the current Kosovo Security Force into a regular armed force over the next five years. Once complete in 2019, the new force will comprise 5,000 active soldiers and 3,000 reservists. Kosovo's Security Forces Minister, Agim Çeku, stated that the function of the Kosovo Armed Forces would be "to protect the sovereignty and territorial integrity of Kosovo, its people and their property and protect the interests of the Kosovo Republic."

Serbian Volunteers Head to Crimea

On a mission to support the Russian side in the disputed Ukrainian region, a group of Serbian volunteers, independent members of the Četnik movement, have arrived in the Crimean port of Sevastopol.

One of the volunteers, Milutin Mališić, said: "Our aim is to support the Russian people in the name of the Serbian people." Mališić stated that the volunteers were there in response to a request from Russian fighters, to whom he claimed they felt indebted after Russia's support of Serbia during the Balkan wars. It is as yet unclear how many have headed to Crimea.

The Pro-Russian groups that have volunteered to fight in Crimea have been criticised by the Serbian government for their actions. Rasim Ljajić, a Deputy Prime Minister, stated that it could impact Serbia's diplomatic position and added that "the departure of our citizens for wars in other countries or to join foreign military forces should be sanctioned, and we should amend the criminal code to allow that."

NEWS FROM OTHER INTERNATIONAL COURTS



International Criminal Court

Judgement on the Appeal of Mr Bosco Ntaganda Against the Decision of Pre-Trial Chamber II of 18 November 2013 Entitled "Decision on the Defence's Application for Interim Release", 5 March 2014

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 (ICC).

In its Judgement on the appeal of Bosco Ntaganda against the decision of Pre-Trial Chamber II of 18 November 2013 entitled "Decision on the Defence's Application for Interim Release", the Appeals Chamber upheld a decision by Single Judge Trendafilova of Pre-Trial Chamber II of 18 November 2013, which had rejected Bosco Ntaganda's application for interim release pending the confirmation of the charges against him. The Appeals Chamber found that the Defence had failed to establish a clear error in the

findings of the Pre-Trial Chamber which would warrant a reversal of the impugned decision. In greater detail, the Chamber rejected the Defence's claim that the extensive reliance on anonymous hearsay through UN reports, blog posts and news reports which were based on information obtained from undisclosed sources by the PTC had constituted a manifest error of fact. With regard to another ground of appeal, the Appeals Chamber rejected the Defence's contention that the Pre-Trial Chamber had committed a manifest error of fact by not taking or taking into account certain circumstances surrounding Ntaganda's surrender to the Court.

Judges Ušacka and Van den Wyngaert both appended a dissenting opinion in which they criticised the Chamber's reliance on anonymous hearsay evidence and cautioned against adopting a lenient standard of evidence. In particular, Judge Ušacka reminded the Chamber of its duty to interpret the provisions of the Statute in the light of internationally recognised human rights. She further recalled that expert reports by States, international organisations and NGOs are of a

generally different nature from the work of investigators of international criminal tribunals. More explicitly, Judge Van den Wyngaert observed that she was "not aware of any other system of criminal justice, be it national or international, where anonymous hearsay is given any serious probative value, if it is considered/admitted at all." She further stated that she could "think of no good reason why this Court should take a different approach, let alone what could justify basing judicial decisions pertaining to the freedom of individuals on evidence that is inherently fragile and against which the suspect has no meaningful opportunity to defend him or herself."

Bosco Ntaganda has been charged with thirteen counts of war crimes and five counts of crimes against humanity committed in the context of the conflict in Ituri, Northern Democratic Republic of Congo (DRC), and became the first suspect to voluntarily surrender to the ICC when he turned himself in at the US embassy on 22 March 2013. The confirmation of charges hearing in his case took place between 10 and 14 February 2014.

Jugement Rendu en Application de l'Article 74 du Statut, 7 March 2014

The ICC has rendered its third Trial Judgement (pursuant to Article 74) in the case of *Germain Katanga* in which it convicted him being an accessory to war crimes and crimes against humanity pursuant to Article 25(3)(d) of the Rome Statute. Judge Van den Wyngaert provided an extensive dissenting opin-

ion in which she found that the trial was unfair and that, in her view, Katanga's criminal responsibility as an accessory has not been proven beyond a reasonable doubt. The case will now enter the sentencing and appellate phases. Further details on the Judgement will be provided in the next ADC-ICTY Newsletter.



Special Tribunal for Lebanon

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

The Trial Chamber in the *Ayyash et al.* case held a status conference on 4 March to discuss, *inter alia*, the trial preparation of the Merhi Defence team, following the Trial Chamber's decision to join the Merhi case with the *Ayyash et al.* case.

In regard to the preparation for the resumption of trial, Mohamed Aouini, Counsel for Merhi, informed the Trial Chamber that the main problem for the Merhi Defence team is that the nature of the preparation at this stage is conflicting with the trial proceed-

ing stages. He stated that the preparation phase for the Merhi Defence team should be dedicated to the Defence case and not be focused on the trial, instead the two phases are now merged.

Not specifying a precise amount of time needed to prepare for trial, the Defence suggested another status conference in about five or six weeks, by which time the Defence hopes to be able to indicate the amount of time needed. The Trial Chamber in its decision of 21 February on *Trial Management and Rea-*

sons for *Decision on Joinder* set out that the Chamber does not intend to resume the full trial until early to mid-May, subject to submissions from the parties before a formal scheduling will be issued. The Chamber did, however, indicate the possibility of sitting before then to finish the first part of the Prosecution's case in relation to, among other things, victims, crime scene investigation and identification of artifacts and body parts. No decision was rendered during the status conference.

Furthermore, Presiding Judge David Re delivered an oral decision on the application filed on 19 February, by Counsel for Merhi, for leave to *Reconsider the Decision and/or to Certify it for Appeal*, concerning the deadline for the Merhi Defence team to file submissions regarding re-calling of witnesses or challenging evidence already admitted. On 12 February, the Trial Chamber ordered Counsel for Merhi to file, by 14 March any requests to re-call for cross-examination

any of the 15 witnesses who have so far testified in the trial, and to file any challenges to the documents and other material that are so far admitted into evidence. Presiding Judge Re granted leave to reconsider this decision.

The Trial Chamber was not necessarily convinced that the decision had resulted in an injustice or had caused any real prejudice to Merhi and his right to a fair trial. In the circumstances, however, since the Trial Chamber has adjourned to allow Counsel for Merhi sufficient time to prepare their defence at trial and to mount their investigations, it reconsidered the decision and extended the time for Counsel to file their submissions by another three weeks to 4 April.

The Trial Chamber indicated that another status conference will be held in the short-term on a yet to be determined date.



Extraordinary Chambers in the Courts of Cambodia

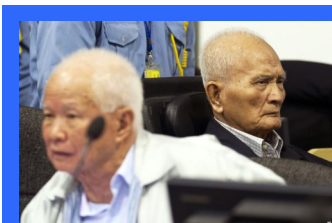
Sophie Pilcher, Defence Team Intern, Case 003

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).

The Nuon Chea Defence team is preparing for trial in Case 002/02 by analysing evidence and past decisions of the Trial Chamber.

The Khieu Samphan Defence team continues to prepare for Case 002/02 with the information it currently has about the likely scope of the trial, as the Trial Chamber has not yet issued a decision on that matter.

Both Case 002 Defence teams continue to follow the case management directions set by the Trial Chamber



Nuon Chea and Khieu Samphan

in the Trial Management Meeting ("TMM") on 11 February. Both teams have also been preparing for a hearing regarding Nuon Chea's and Khieu Samphan's fitness to

stand trial.

The Case 003 Defence filed eight submissions, classified as confidential by the Office of the Co-Investigating Judges ("OCIJ") and Pre-Trial Chamber, to protect the rights of the Suspect.

In Case 004, the Defence team for one of the Suspects filed two substantive motions to protect the fundamental rights of the Suspect.

The newly created Defence team for another Suspect in Case 004 is currently requesting access to the Case File from the Co-Investigating Judges and is reviewing publicly accessible documents in order to prepare its defence.

All Case 004 Defence teams continue to review publicly available material as they do not have access to the case file.

DEFENCE ROSTRUM

Legacies of the Closing International Tribunals Lecture

By Walleska Pareja Díaz

On 4 March, the ProDemos - House for Democracy and Rule of Law hosted one of the four lectures in the Roads to Justice 2014 Series, organised by the NIOD Institute for War, Holocaust and Genocide Studies.

The lecture was entitled “Legacies of the Closing International Tribunals” and featured speeches by Nena Tromp (University of Amsterdam), Jill Coster van Voorhout and Anja Mihr (The Hague Institute for Global Justice).

Nena Tromp’s intervention began with the screening of the documentary “Justice at Work” that showed the difficulties of gathering evidence in the Balkans and how “learning by doing” was not precisely the best manner to work when there was so much at stake. As a former member of the Leadership Research team at the Office of the Prosecutor on the Milošević Case at the ICTY, Tromp stated that if she could change something about her performance in the field, she would have probably chosen another path and worked as a politician, as many of the issues at stake were in essence political. Nevertheless, she recognised the invaluable importance of “establishing a record” of what happened in the Region and how the aim of retribution has been fulfilled. However, she said, there is a lot to be done when it comes to restoration and reconciliation objectives.

On the other hand, Jill Coster van Voorhout and Anja Mihr explained that the establishment of the Special Court for Sierra Leone (SCSL) after the Civil War in that country was well taken by the population and received in good faith. Even though it was not ideal and the expectations were unrealistic, it at least contributed to the Rule of Law and changed the mind-set of the people. During the lecture two clips from an International Center for Transitional Justice (ICTJ) project “Seeds of Justice: Sierra Leona” were shown, where an interesting question was raised: After the Special Court....what next?

The lectures explored familiar arguments in the longstanding debate about how best to deal with past or present atrocities. With judgments being the main outcome of judicial proceedings, which, most of the time offers a limited remedy to the victims, it seems difficult to expect too much from international criminal law.

This raises serious questions: How can we, for example, tell a gang-raped teenager, rejected by her own community for what happened to her, that this piece of paper is giving her back a life and returning opportunities? After everything she has been through, no one is able to ensure her the same life she had before the brutality.

Further important question was: How do these lessons learned mean something for the International Criminal Court (ICC) and possible international tribunals to come?

Personally, I caution against too much optimism. Nevertheless, I consider that the objectives of the International Criminal Tribunals are valid. Proven war criminals are behind bars, a historical record for cultural heritage is developed and preserved, and the most important part, the victims are given a voice.

It seems vital to legitimise the role of international criminal law by avoiding political interference to prove that these procedures are not reprisals by the victorious against the losing party in different conflicts. And of course, we are still waiting for some countries to ratify the Rome Statute. Additionally, it is important to find a balance in the availability of resources to comply with the right to a fair trial, equality of arms and the presumption of innocence.

In conclusion, as the speakers indicated, there is an important legacy from the closing tribunals. However, we have to be vigilant in order to ensure that international criminal law fully contributes to the establishment of truth, peace, justice and democratisation.

Looking Back on the First Markale Market Massacre: Is the Legal Truth Enough?

By Dennis Levy Lazarus

On 5 February 1994, 20 years ago, a 120 mm mortar shell exploded on the Markale marketplace in downtown Sarajevo, killing over 60 persons and injuring over 140 others. The incident, known as the first Markale massacre, is one of the most disputed single incidents in the Bosnian war and one of the events that changed the global outlook on the conflict that was engulfing Bosnia and Herzegovina. The incident paved way for a deeper US and NATO involvement in the conflict and ultimately NATO air strikes.

So far, the incident has been addressed in only one judgement before the ICTY. In the *Galić* case, the Trial Chamber's majority concluded that "the mortar shell, which exploded at Markale market on 5 February 1994 was fired from Sarajevo Romanija Corps (SRK) -controlled territory." The Appeals Chamber did not overturn this finding, but concluded that the "Trial Chamber was incorrect to find that the shell was deliberately aimed at Markale market, but correct to find that it was deliberately aimed at civilians." Stanislav Galić, who was the Commander of the SRK at the time, was sentenced to life imprisonment on appeal.

The Appeals Judgement sealed the legal truth on the incident, but the separate and partly dissenting opinion of Judge Nieto-Navia shows that the legal truth may not always be a sufficient narrative to reach a common historical understanding of past events; arguably one of the key tasks of a trial. If even the trial bench was not unanimously convinced of the evidence beyond reasonable doubt, how could those who deserve to find out the historical truth be convinced?



Judge Nieto-Navia

While agreeing with the majority that the direction of the fire was north-northeast to the marketplace, Judge Nieto-Navia dissented from the majority's finding that "[he was] not satisfied that the evidence [showed] beyond a reasonable doubt that this projectile was fired from SRK-controlled territory." More specifically, Judge Nieto-Navia was not satisfied by the measurements of the two values that went into the majority's determination of the distance of fire: the angle of

descent and the depth of penetration. The main problem with the former was that the measurements invoked by the majority were "'not sufficiently accurate to be used as a basis for a finding' because the tail-fin of the shell which exploded in the market had been extracted from the ground before the angle of descent had been determined." With regard to the latter, he interpreted the evidence to suggest that "the speed on impact of the shell was lower than the reported depth of penetration of the tail-fin of 20 to 25 centimetres would imply." The combination of these two factors led him to conclude that "the evidence related to the angle of descent and speed on impact of the shell that exploded in Markale market [did] not allow to determine beyond a reasonable doubt whether the distance of fire of the projectile was more than 2,600 metres, in SRK-controlled territory."



Stanislav Galić

The dissenting opinion adds fuel to the controversy surrounding the establishment of the facts of the incident and casts some degree of doubt over the assignment of responsibility for it. More importantly, it shows that the legal truth, established beyond reasonable doubt, may not dispel doubts over the historical record of events, which in turn may prevent the reconciling parties from coming to a common understanding over past events.

In the *Galić* case, the Trial Chamber relied heavily on expert opinions to determine the truth behind this incident. Scientific data, reports on aerodynamics, forensic expertise and mathematical calculations have found their way into the Court room in several attempts to discover the firing origin of the shell, or rather determine if it is possible to even identify its origin. Much study has gone into the tail-fin of the mortar shell which in this case had been removed from the shell by a Frebat (UNPFOROR) team that arrived at the scene an hour after the explosion. For reasons unexplained in the UN report on the incident, the Frebat did not measure the angle before extracting the tail-fin. Subsequent investigators therefore

either did not measure the angle, or relied on other less precise methods, such as replacing the tail-fin with a stick, or attempting to determine the angle from photographs where the tail-fin was still intact.

The tail-fin serves a very important function in establishing the distance at which a mortar shell has been fired and the path that the shell has followed as it travels towards its target. Most of the times, if studied without additional meddling, the tail-fin can give very precise data as to the exact location where the mortar was fired. In particular, any increases in the angle of descent at the moment of impact affect the determination of the distance of fire.

Judge Nieto-Navia illustrates this in his opinion: "For example, a 120 millimetre mortar shell which lands on its target at a speed of 235 metres per second and an angle of 55.6 degrees will have been fired from a distance of 6,464 metres; the same projectile landing on a target at approximately the same speed but at a steeper angle of 86.2 degrees will have been fired from a distance of only 1,168 metres." In other words, even a small difference in the descent angle can lead to substantially different conclusions.

These seemingly minuscule details bear great importance because the confrontation lines and the territories occupied by the warring parties surrounding Sarajevo were so close to each other that a difference of a few metres would shift the blame for firing the shell from one of the belligerents to the other.

More than a handful of experts have gone through the data available about this attack and their conflicting findings, together with the imprecise measurements taken at the scene of the incident, cast a serious shadow of uncertainty on whether it can be established beyond reasonable doubt that the SRK indeed fired the shell.

In April 2013, the former UN Special Envoy for the

former Yugoslavia during the conflict, Yasushi Akashi, testified at Radovan Karadžić's trial and stated that it was impossible to prove that Bosnian Serb forces were responsible for the market massacre in Sarajevo. There have also been claims by authors and politicians, the calibre of David Owen, affirming that "NATO powers knew all along that it had been a Muslim bomb." More testimonies and statements by well-respected neutral observers include President Mitterrand of France back in 1995: "A few days ago Mr Boutros Ghali informed me that the projectile which hit the Markale marketplace in Sarajevo was an act of (Bosnian) Muslim provocation." Whether or not such allegations are true, the uncertainty of the available data continues to cast a doubt on the truth behind the incident.

During the war in Bosnia, investigations into shelling incidents in Sarajevo were often hampered by the warring parties and by the lack of appropriate equipment, such as trajectory radars, needed to reliably determine the direction of fire. More generally, Sarajevo was an urban area where civilians, military personnel and peacekeepers were intangibly mixed, sometimes intentionally, around shelling sites. For example, the Galić Appeals Chamber confirmed the Trial Chamber's finding that Army of the Republic of Bosnia and Herzegovina mortar fire originating from the Koševo hospital ground or its vicinity may have provoked SRK counter-fire.

Hundreds of people gathered in the Bosnian capital on 5 February to commemorate the civilian victims of the Markale market attack, in which the fate of the conflict was skewed if not sealed. As doubts over the accuracy of the legal truth remain, those victims may unfortunately never find out what really happened. One may only hope that the involved parties can find a way, beyond trials restricted by the legal narrative, to reach common historical ground.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Michael G. Karnavas, **Red Lines and Game Changers — The Legality of Unilateral or Collective Use of Force in Syria**, (published in parts) on 10 March 2014, available at: <http://tinyurl.com/pgawpgw>.

Elli Goetz, **Bangladesh: ICT seeking explanation of articles published on Bangladesh War Crimes Blog**, 7 March 2014, available at: <http://tinyurl.com/mhrbpsq>.

Mike Corder, **International Court Convicts Congo Rebel Leader**, 7 March 2014, available at: <http://tinyurl.com/osmzlya>.

Paul Bradfield, **France vs the Rest of the World—Who is Right?**, 3 March 2014, available at: <http://tinyurl.com/qdz5g2c>.

Online Lectures and Videos

“*Low of Armed Conflict*”, by Judge Fausto Pocar, available at: <http://tinyurl.com/kunwcmh>.

“*LENS Conference 2014: LAW Shaping in National Security*”, by Lindsay L. Rodman and James R. Silkenet published on 28 February 2014, available at: <http://tinyurl.com/lc7nrx2>.

“*The Role of History in Constitutional Law*”, by Stanford Constitutional Law Center, published on 28 February 2014, available at <http://tinyurl.com/obetjsv>.

“*ICRC Lecture on 'Challenges to the Application of International Humanitarian Law'*”, by Jamie Allan Williamson, published on 20 November 2013, available at: <http://tinyurl.com/ldk2oko>.

PUBLICATIONS AND ARTICLES

Books

Sergey Sayapin (2014), *The Crime of Aggression in International Criminal Law - Historical Development, Comparative Analysis and Present State*, T.M.C. Asser Press.

David Ormerod (2014), *Blackstone's Criminal Practice*, Oxford University Press.

Howard Davis (2014), *Beginning Human Rights Law (Beginning the Law)*, Routledge.

Adrian Keane and Paul McKeown (2014), *The Modern Law of Evidence*, Oxford University Press.

Articles

Lydia A. Nkansah (2014), “Justice within the Arrangement of the Special Court for Sierra Leone versus Local Perception of Justice: A Contradiction or Harmonious?”, *African Journal of International and Comparative Law*, Vol. 22, No. 1.

Carsten Stahn and Eric de Brabandere (2014), “The Future of International Legal Scholarship: Some Thoughts on ‘Practice’, ‘Growth’, and ‘Dissemination’”, *Leiden Journal of International Law*, Vol. 27, No. 1.

Justine Nolan (2014), “Refining the Rules of the Game: The Corporate Responsibility to Respect Human Rights”, *Utrecht Journal of International and European Law*, Vol. 30, No. 78.

CALL FOR PAPERS

The **3rd Annual International Conference on Law, Regulations and Public Policy** is inviting a call for papers on issues related to Law, Regulations and Public Policy

Deadline: 21 March 2014

More info: <http://tinyurl.com/nseujaw>.

The **Centre For Criminal Justice and Human Rights (CCJHR) at University College Cork** has issued a call for papers for its 8th Annual Graduate Conference.

Deadline: 30 March 2014

More Info: <http://tinyurl.com/pd3gwor>.

HEAD OFFICE



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Any contributions for the newsletter
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EVENTS

Uncertainty and Disputed Values: The role of Non-State Actors in Global Nuclear Security

Date: 20 March 2014

Location: The Hague Institute for Global Justice, The Hague

More info: <http://tinyurl.com/qap2q9q>.

The ICC and the Yugoslav Tribunal: Upholding International Criminal Law

Date: 2 April 2014

Location: Chatham House, London

More info: <http://tinyurl.com/lfmqg8>.

Human Rights in Post-Revolution States and Human Rights at Sea, 9 Bedford Row International Annual Conference

Date: 3 April 2014

Location: HMS President, Victoria Embankment, EC4Y 0HJ London, London

More info: <http://tinyurl.com/kqkjfk4>.

Newsletter Team 2014



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Kristina Belić, Laura Burmeister, Walleska
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OPPORTUNITIES

Associate Analyst (P2), The Hague

International Criminal Court (ICC) - Registry

Closing date: 20 March 2014

Associate Accounts Officer (P2), The Hague

International Criminal Court (ICC) - Registry

Closing date: 25 March 2014

Legal Officer (P3), The Hague

International Criminal Tribunal for the Former Yugoslavia (ICTY)
- Office of the Prosecutor

Closing Date: 5 April 2014