ADC NEWSLETTER
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Prosecutor v. Ratko Mladić (IT-09-92)

Patrick Treanor testified for the Prosecution in the case of Prosecutor v. Ratko Mladić, on 2 December. Treanor is the Prosecution's political expert and gave general testimony about the evolution of the Bosnian Serb political leadership from 1990 to 1995.

Patrick Treanor

Treanor testified about his research on evolution of the Serbian political bodies in Bosnia, detailing the establishment of the Bosnian Serb Assembly in October 1991 and how many government structures had already been set up at local level by the time the establishment of the Assembly took place. In January 1992, the Assembly adopted a declaration, described by Treanor as being the "final step in a gradual build-up of a separate state entity in Bosnia and Herzegovina".

According to Treanor's research, the Bosnian Serbs wanted to seize territory which they regarded as historically theirs. Treanor stated that the Bosnian Serbs took steps "unilaterally" to create their own state and that they were clear about their intentions in doing so.

Treanor testified that Mladić was appointed Commander of the Main Staff at the same session of the Assembly wherein the Bosnian Serb strategic goals were formulated.

Treanor finished his direct examination by stating the Bosnian Serbs were successful in partitioning Bosnia and Herzegovina and establishing their own institu-

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Also in this issue

tions, such as the Assembly. He stated that this was extremely important as it drew international attention to "the position of the Bosnian Serbs within Bosnia". Treanor elaborated in stating that the Assembly sent letters to the European Union and international negotiators and bodies, raising awareness of the 'desire' of the Bosnian Serbs to remain within Yugoslavia but have their own institutions.

"The international community basically paid heed to that and negotiations in 1992 and later proceeded on the basis of having a separate Bosnian Serb entity within Bosnia-Herzegovina which was something that many people had said was impossible. You can't partition Bosnia, and they in fact managed to do so and get the international community to recognise that".

Treanor's cross-examination was conducted for the Defence by Counsel Miodrag Stojanović. Stojanović began by asking Treanor if he also examined the structures of the political bodies representing Bosnian Croats and Bosnian Muslims. Treanor replied in the affirmative, although he admitted his area of focus was Bosnian Serbs. Treanor stated that the "three leaderships: Serbian, Muslim and Croatian", all had different aspirations and all "fed off each other" and this is where the problem lays. The rest of Stojanović's cross-examination focused on the analysis of the 1972 Constitution of the Socialist Federal Republic of Yugoslavia (SFRY) and its relevance to the subsequent breakup of the Federation when the various entities seceded.

In concluding his cross-examination the following day, Stojanović questioned Treanor on the Territorial Defence, who had command over the same and how from 15 April to 12 May 1992, the command was in the hands of General Bogdan Subotić.

The final witness to be called in the Prosecution case was Reynaud Theunens, the Prosecution's military and intelligence expert. Due to the Prosecution exceeding its estimated time of 200 hours to present its case, Prosecutor Dermot Groome was required to make an application pursuant to Rule 73 (f) to be granted the time necessary to lead Theunens in his direct examination. This is Theunens ninth appearance before the Tribunal, who worked in the Office of the Prosecutor until 2009. Theunens presented testimony in tandem with his September 2012 expert report on Mladić. Theunens found Mladić to be an 'active commander' who was a strong adherent to the chain of command and liked to be kept in informed about events.

Reynaud Theunens

Theunens continued his testimony on 5 December and spoke about the military and strategic goals of the Bosnian Serbs. Theunens stated the separation of the ethnic groups was a priority goal, along with defining the boundaries of a Serb state. Theunens described Mladić as a 'charismatic' leader, whose visits to forward command posts and wish to shorten the lines of communication motivated his subordinates.

In beginning his cross-examination, Dragan Ivetić, Legal Consultant for the Accused, questioned Theunens suitability as an expert witness, as his background was not one of Staff Commander, but of company leader. Theunens felt his experience coupled with his education was sufficient for him to evaluate Mladić's role as Commander. Theunens had previously concluded that Mladić had directly commanded combat operations, for example, the Drina Corps during the Srebrenica operation. This is strongly denied by the Defence. Theunens agreed he had seen no documents specifying such, but did allude to a report drafted by a Special Police Commander, which indicated Mladić personally commanded the Srebrenica operation. However, this report was not introduced as part of Theunens' evidence. In the course of his testimony, Theunens confirmed that the in the aftermath of the Vance Plan, the initial orders of Mladić showed a disposition and good intentions supporting the peace efforts, but that a different course was shown in later documents.

On his last day before the Trial Chamber, Theunens was questioned thoroughly by the Defence, Prosecution and the Judges, regarding Arkan and his paramilitary unit. The Defence asked Theunens of his knowledge of Mladić's stance against the paramilitaries, including Arkan's men and his appeal to the presidency and the Ministry of Internal Affairs of Republika Srpska in September 1995 to withdraw the groups and investigate them for crimes. Theunens

stated it was unclear from his research whom the Arkan Tigers were subordinated to. When questioned by the Defence about details included in his expert report for the *Stanišić and Simatović* case and confronted with his previous conclusion that Arkan's unit was subordinated to the Serbian State Security Police, Theunens conceded this was the correct conclusion.

Theunens was the 146th and last witness to be called by the Prosecution, who have taken approximately 200 hours to present their case since July 2012. The Trial Chamber is adjourned *sine die*, with a status conference scheduled to take place mid-February.

The Defence intends to move *via* 98*bis* and call for an acquittal on counts, which, in the view of the Defence, the Prosecution has failed to present sufficient evidence to prove.

The Prosecution is planning to re-open its case in March 2014, to introduce the Tomašica mass grave evidence. The Defence is currently due to begin presentation of their case in May 2014.

Prosecutor v. Radovan Karadžić (IT-05-95-T/18-I)

Radovan Karadžić's trial continued on 3 December with the Head of the State Security Service of Republika Srpska, Dragan Kijać. Kijać stated in his witness statement to the Defence that he was in Montenegro from 14 to 18 July 1995, when the Srebrenica massacre occurred and was unaware of it at the time. He met Karadžić on 19 July 1995, and said Karadžić did not give any indication that he knew about the massacre. He insisted that if Karadžić had known, he would have tried to prevent the mass killings and punish those responsible.

Boro Tadić, Republika Srpska Army officer in the area of Sanski Most, testified on 3 and 4 December. The Prosecution alleges in its indictment that ethnic cleansing reached the scale of genocide in seven municipalities in Bosnia and Herzegovina, including Sanski Most and Ključ. In his statement, Tadić stated that his brigade was sent to Sanski Most in April 1992 and protected "all citizens regardless of their ethnic background", but instead Croat and Muslim paramilitary units attacked them. He testified that he did not know if Karadžić ever purported to instil fear among Serbs that Muslims or Croats wanted to commit 'new genocide' against them.

On 4 and 5 December , Karadžić called two Defence witnesses - Marko Adamović, Municipal Official in Ključ, and Mikan Davidović, Municipal Official in Sanski Most – who denied that Serb forces deported Bosniak and Croat populations from the Ključ and Sanski Most municipalities. Adamović claimed they left on their own volition due to harsh living conditions. He said the murders of over 100 Bosniaks in Prhovo and Velagići in June 1992 occurred after 'extremists' attacked military convoys.


Radovan Karadžić

Member of the Crisis Staff in Ključ, Rajko Kalabić, claimed in his testimony on 5 December, that Karadžić "didn't have any influence on the formation of government in Ključ and on the election of local officials before or after the war". While he admitted that Karadžić did, however, order the establishment of the War Presidency in Ključ, Kalabić maintained that the Accused "never ordered, committed or aided and abetted the war-crimes against non-Serbs in BH".

On 5 and 6 December, Mile Dobrijević, police inspector in Sanski Most, said the arrested Muslims in detention units in Sanski Most were justifiably detained for possession of illegal weapons and participating in armed attacks. He questioned the authenticity of a report by the Police Station in Sanski Most where he worked, which alleged that there was a substantial number of civilian victims and destruction of villages while operations by Serb forces were undertaken.

On 9 December, former Head of the Agency for the Movement of People and Exchange of Property in the Republika Srpska (RS), Miloš Bojinović, testified. He said that his Agency was tasked with helping people to arrange transport from the RS, establish contacts to buy and sell property, and other 'humanitarian work'.

After Bojinović's testimony, Karadžić called protected

witness KW 012 to the stand. The witness, who testified with voice and image distortion, is a former Bosnia Herzegovina Army soldier. The witness told the Court that he offered to testify for over 20 years but "Sarajevo and the Mothers of Srebrenica have prevented me from standing here before the International Tribunal". He argued that until 1995, Muslims attacked Serb villages from the Srebrenica protected zone and that the number of people executed in Kravica, near Srebrenica, was about 100-150, rather than 1000-1500 as the Prosecution alleges. During his testimony the witness also claimed that dozens of people who were on the Srebrenica missing persons list were still alive in the Bosnia Herzegovina Federation or abroad, that their families are still receiving their pensions, and that they were easily contactable.

Karadžić then called Vladimir Matović to give evidence. Matović was Home Affairs Advisor to President Dobrica Ćosić and later to the Yugoslav Republic. He stated to have went to Pale in July 1995 to meet with Karadžić and warn him that United States (US) and German 'hawks' in NATO planned mass casualties to justify air strikes against Bosnian Serb troops. At this time, he was to hear from Karadžić about the events in Srebrenica, but said that the US television channel CNN was Karadžić's main source of information on the issue.

Miloš Milincić, former President of the Srbac municipality, former President of the Serbian Democratic Party (SDS) and former Crisis Staff President, testified on 11 December. He described Karadžić's speech on 31 August 1990 at the SDS inauguration assembly in Srbac as a 'textbook lesson in democracy'. Milinicić denied confirming in Krajišnik's Trial that Vojislav Kuprešanin's explanation of the war as being necessary due to the increase in the number of Muslims in Bosnia Herzegovina was tantamount to a public admission of mass expulsions.

Also on 11 December, the Trial Chamber granted Karadžić's motion to subpoena Ratko Mladić, former Commander of the Republika Srpska Main Staff, to testify in Karadžić's defence. Mladić had previously refused to testify in Karadžić's trial, purportedly because of the risk of self-incrimination as they are charged with virtually the same crimes. Mladić can refuse to give evidence under the subpoena. However, in doing so, he could face contempt of Court charges.

On 12 December, Vidoje Blagojević, former Commander of the Bratunac Brigade, who was sentenced by the ICTY to 15 years for his role in the Srebrenica massacre, claimed in his testimony that he `knew nothing´ about the July 1995 executions and had no contact with Karadžić at this time.

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

The appeals hearing took place between 2 and 6 December, commencing with Vujadin Popović's Defence. Popović, former Security Chief of the the Army of the Republika Srpska Drina Corps, was found guilty of genocide and sentenced to life imprisonment in 2010.

Vujadin Popović

Popović argued for acquittal and noted that the evidence on trial should be reviewed *de novo*. According to his Counsel, the Trial Chamber erred in relying on some witnesses, especially those who previously entered plea-agreements with the Prosecution. It was argued that in particular the evidence given by Momir Nikolić, the former Bratunac Brigade Security Chief, should not be given as much weight. The Defence raised other evidentiary issues which should be re-assessed, including the conclusion that the plan to murder occurred already on 14 July 1995. The Prosecution, on the other hand, denied any errors in the Trial Judgement and noted that the Defence aims for nothing more than just to repeat its Defence case arguments before the Appeals Chamber.

The next Accused addressing the Chamber was Ljubiša Beara. He was convicted of genocide and sentenced to life imprisonment. The Defence's main argument circled around the inadequate assessment of the criteria for the crime of genocide. The Defence noted that in order to convict someone of this crime, a sufficient number of victims is needed. Therefore, the Defence stated that by acquitting the Accused of forcible transfer of women and due to the inability to find convincing evidence beyond reasonable doubt, the Chamber

erred in finding him guilty of genocide. The Defence also noted that the consideration of the witness' testimony and the Chamber's reliance on such was erroneous. The Prosecution, on the other side, recalled that according to their theory, Beara was one of the most responsible persons in that area for the killing operations.

The third Accused, Drago Nikolić, followed to address the Chamber. He was convicted and sentenced to 35 years imprisonment. The Defence noted that Nikolić was not playing any significant role in the commission of the crimes and therefore should not be found guilty of aiding and abetting the commission of genocide. He was not participating, or in charge of the reburial operations, and had no role, for example, in Branjevo and Pilica. Nikolić denied that he was close to the other Co-Accused, in particular Beara and Popović. Contrary, the Prosecution claimed that Nikolić was there to ensure the success of the operation and that his role was essential.

Vinko Pandurević

Vinko Pandurević was sentenced to 13 years imprisonment. The former Commander of the Zvornik Brigade was found guilty of aiding and abetting murder, persecution and forcible transfer after the fall of Srebrenica in July 1995. During the appeals hearing, his Defence Counsel claimed that Pandurević had no control or power during the indictment period. Pandurević maintained that he could not prevent or stop the situation of what happened in the region. Pandurević relied on the Perišić case, noting that he was not in the proximity of the crimes, nor did he specifically order the crimes to happen. The Prosecutor noted that Pandurević should have prevented the crimes, as he was the Commander of the Brigade. The Prosecution asked for the severance of the sentence, while the Defence, noted that it intends to ask for an early release – as Pandurević already served 2/3 of his sentence.

Radivoje Miletić was the last Accused to address the Chamber, which he did through his Counsel, waiving his right to be present. Miletić was found guilty of murder, persecution, inhumane acts consisting of forcible transfer, and was sentenced to 19 years imprisonment. Counsel claimed that the Trial Chamber erred in assessing the evidence, in particular the circumstances around Directive 7, and criticised the reliance on one of the witnesses.

The Prosecution lodged an Appeal against each one of the Accused. Regarding Popović and Beara, the Prosecution believed that they should be convicted for both genocide and conspiracy to commit genocide. Beara contra-argued and claimed no such evidence exists. Popović noted the unfairness of cumulative conviction and also argued that it was not for the Appeals Chamber to enter a conviction at the Appeal stage. For Nikolić, the Prosecution claimed that he – as a military man – shared the intent of that crime. A large part of the Prosecution's Appeal focused on Pandurević's responsibility. The Prosecution claimed that he had a responsibility to prevent and command his unit, and that the Chamber failed to assess this responsibility. The Prosecution stated that his sentence was inappropriate, considering Pandurević's knowledge. In relation to Miletić the Prosecution did not call for an increased sentence, but noted that the Chamber should have found him guilty of violations of laws and customs of war for the murder of prisoners.

The appeals hearing ended with statements from the Accused who wished to express their views and address the Chamber directly. All Accused, except Beara, expressed their concerns and hope for a fair and unbiased judgement. Most of them thanked their Defence Teams and the Prosecution for their work, as well as shared their condolences and regrets for what happened in the former Yugoslavia.

Popović et al. Appeals Hearing

Prosecutor v. Šešelj (IT-03-67)

On 13 December, Trial Chamber III unanimously ordered that the proceedings in the case of Vojislav Šešelj would resume from the point after the closing arguments. This decision was made despite Šešelj's objection to the decision to appoint a new judge after the disqualification of Judge Harhoff.


Vojislav Šešelj

In his motion of 20 November, Šešelj argued that the appointment of a new judge would be "legally impossible", as Judge Niang had not participated in the proceedings. Among the reasons mentioned were that Judge Niang had not been there to observe or question witnesses and that there would not be enough time for Judge Niang to familiarise himself with the trial transcript before resuming the trial. According to Šešelj, the only way for Judge Niang to take a legitimate part in the trial would be in the event of a retrial.

However, in its decision of 13 December the Trial Chamber agreed that a new judge is able to assess witness testimonies given in his absence through, for example, video recordings. Therefore, the Trial Chamber concluded that Judge Niang would be able to evaluate the credibility of witnesses heard during the proceedings in the Šešelj case, and to familiarise himself with the record of the proceedings to a satisfactory degree. This decision of the Trial Chamber is in line with the arguments made by the Prosecution. In its motion of 2 December, the Prosecution stated that a precedent for introducing a replacement judge at a late stage of the proceedings was already existent. Concluding that in the case against Milosević, Judge Iain Bonomy replaced Judge Richard May after the close of the Prosecution's case.

The proceedings in the case against Šešelj will move into the deliberations face after Judge Niang has familiarised himself with the case file. The Trial Chamber will issue a decision when this has been completed. This development is the latest in a series of events that have led to a significant delay in the case against Šešelj, including a hunger strike and the disqualification of Judge Harhoff on 28 August.

First Meeting of International Defence Offices

On 4 and 5 December, a ground-breaking event took place at the *Maison des Avocats* in Paris; the First Meeting of International Defence Offices. The meeting was organised by the Defence Office at the Special Tribunal for Lebanon, headed by François Roux and the Paris Bar. Roux and Madame la Bâtonnier Christiane Féral-Schuhl of the Paris Bar opened the meeting by welcoming the participants and describing the purpose of the conference: to examine the different roles and objectives of existing defence structures at the international courts and to discuss ways in which to maintain, promote and strengthen an effective defence bar in the international courts.

The meeting was attended by members of defence offices and the Registries from the various international courts including Susan Stuart, Head of the Office for Legal Aid and Detention, and Jelena Gudurić, Registry, ICTY; Esteban Peralta-Losilla, Head of the Counsel Support Section, and Xavier-Jean Keïta, Head of the Office of Public Counsel for the Defence, Registry at the ICC; Isaac Endeley, Chief of the Defence Support Section at the Extraordinary Chambers in the Courts of Cambodia; and Pascal Besnier, Registrar at the ICTR. ADC-ICTY President Colleen Rohan and former ADC-ICTY President Gregor Guy-Smith were among the participants asked to address the meeting on issues concerning Defence Counsel and the defence function, including discussion of the many challenges Defence Counsel face working day-to-day in the international criminal courts.

The two day conference included significant debate and a robust exchange of ideas between those attending the conference either as participants or observers on a range of topics such as the difficulty the defence has had thus far in gaining recognition as one of the indispensable pillars of a credible and equitable international criminal justice system, the need for independent defence offices similar to that at the STL, the necessity to provide sufficient resources to defence

offices and Defence Counsel, the view that defence offices must be headed by a lawyer with experience in criminal defence practice and ethical issues, and numerous concerns over on-going procedural issues which effect the fair trial rights of the accused including continuing problems obtaining timely disclosure from prosecutors and the increasing use of closed and private sessions in lieu of public trial.

The participants ended the conference with the publication of a Final Conclusion which recognised the need to organise a similar defence office conference in 2014 "to pursue this work and the successful cornerstone it has laid", and to create an association of defence lawyers practicing before all the international courts and tribunals "by taking inspiration from the Association of Defence Counsel Practicing Before the International Criminal Tribunal for the Former Yugoslavia [. . .] ".

LOOKING BACK...

Extraordinary Chambers in the Courts of Cambodia

Five years ago...

On 17 December 2008, the ECCC published the Rules Governing the Detention of Persons Awaiting Trial or Appeal before the Extraordinary Chambers in the Court of Cambodia (Detention Facility Rules). These rules govern the administration of the detention of Accused awaiting Trial or Appeal before the ECCC or other detainees, and give wide discretion to the ECCC Co-Investigating Judges or the ECCC Chambers to vary the application of the rules to individual cases.

ECCC Detention Facility

The preamble of these rules recognises the need to ensure respect for human rights and fundamental freedoms and refers to the International Covenant on Civil and Political Rights, the United Nations Standard Minimum Rules for the Treatment of Detainees and the United Nations Basic Principles for the Treatment of Prisoners as guidelines.

These rules are very detailed and provide for not only the procedure for admittance of detainees but also the administration of the detention unit, as well as the living conditions of the detainees. This includes but not limited to the facilities in the detention cell, the food provided to the detainees, religious support and their property and visitations. The rules expressly provide for the manner in which detainees may be disciplined, including the activities he or she may be disciplined for, thereby making them not only aware of activities that may lead to disciplinary action but also reducing the opportunity of mistreatment of detainees by individual guards.

International Criminal Tribunal for the Former Yugoslavia

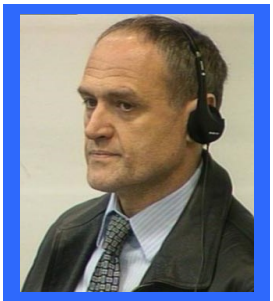
Ten years ago...

On 19 December 2003, Miroslav Kvoćka was provisionally released from the ICTY Detention Unit pending the hearing of his Appeal. In the decision dated 17 December 2003 by the Appeals Chamber, comprising of Judge Mohamed Shahabuddeen (Presiding), Judge Fausto Pocar, Judge Mehmet Güney, Judge Wolfgang Schomburg and Judge Inés Mónica Weinberg De Roca, the Chamber ordered that Kvoćka be provisionally released pending the hearing of his Appeal against the conviction and the seven year sentence pronounced against him on 2 November 2001 by Trial Chamber. The Appeals Chamber looked at a number of factors while granting Kvoćka's request for provisional release, including the time already spent in detention, his family's situation and the guarantee by Republika Srpska.

The Appeals Chamber Decision set out a number of terms and conditions to be complied with during Kvočka's provisional release, including surrendering

his passport to the police station of his residence and reporting to them once a month. The Accused also had to return to the Tribunal at such time and date as the Appeals Chamber may order.

In addition, since Republika Srpska gave the necessary guarantees on behalf of Kvočka, certain responsibilities were imposed on Republika Srpska, including responsibility for the personal safety of Kvočka and immediately detaining Kvočka if he breached any of the conditions of his provisional release.



Miroslav Kvočka

Miroslav Kvočka was one of the five individuals found guilty and sentenced for his involvement in the crimes committed at the Omarska, Keraterm and Trnopolje camps. His sentence of seven years imprisonment was affirmed by the Appeals Chamber decision of 28 February 2005 and he was released early on 30 March 2005.

NEWS FROM THE REGION

Bosnia and Herzegovina

Lodging of Testimonies of Dead Witnesses in Bosnian War-Crime Trials

Nearly 20 years have passed since the end of the 1992-1995 war in Bosnia, which results in an increasing number of witnesses passing away. Hence more and more testimonies of deceased witnesses are read out at war-crime trials before the Court in Bosnia and Herzegovina. These testimonies pose a dilemma for the different parties involved as to whether any value should be attributed to a testimony of a deceased witness.

The Criminal Code of the Federation of Bosnia and Herzegovina does in fact allow for the testimonies of deceased witnesses to be read out in Court, in case they have previously been given to a Prosecutor or investigation authorities, as war crimes have no expiry date.

Judge Dalida Burzić of the Cantonal Court in Sarajevo explains that those testimonies will be considered together with other evidence, as a single item of evidence has no predetermined legal value to him as a Judge. Each proof will be considered according to ´the principle of free evaluation of evidence´; individually and in relation to others, all depending on the specific situation. Those testimonies will hence not be excluded merely on the basis of the fact that the witness who gave the testimony has deceased. Witnesses are extremely important in war-crime trials since verdicts are based on their statements and testimonies, Burzić explains.

Lawyer Radivoje Lazarević states on the other hand that the lodging of testimonies of deceased witnesses creates a problem for the fair and honest organisation of the Defence, as Defence Attorneys cannot examine dead witnesses. During the Trial of Veselin Vlahović the Defence objected to the filing of 16 testimonies of deceased witnesses by the Prosecutor, citing its inability to cross-examine them.

Victim groups meanwhile state that lessons should be learned from the practice of punishing World War II criminals. They refer to the fact that some of these perpetrators have been punished when they were 90 years of age, despite the fact that at that time few witnesses to these crimes were still alive at the Trial, but there was still enough evidence in the file, previously taken from the deceased witnesses, to punish the perpetrators for their acts.

It is clear that this matter creates an issue for the parties involved. Judge Burzić hence states that when most witnesses to Bosnia war crimes have died, the law will have to offer a solution.

Serbia

EU Accession Negotiations Facing Difficulties

The intergovernmental conference which marks the start of Serbia's EU accession talks that was originally planned on 20 December might be delayed until at least January 2014. Even though Ružić, Serbian Minister in charge of European Integration, stated there was great support amongst Member States for the conference, it seems that Germany and the United Kingdom are purposely delaying the negotiations.

One reason for this delay is the inconsistent implementation of the Brussels agreement in Serbia's judicial branch and the lack of improvement in media freedom and discrimination. Regarding the judiciary, Serbian Prime Minister Dačić claims: "It's not our fault, because Pristina is stalling and new courts have not been formed since September. Pristina also disagrees that the main court should be in northern Mitrovica, while Serbia is constantly offering compromises". A draft resolution recently adopted by the Serbian Parliament underscores the importance of Serbia's full EU membership in as short of a time as possible, with the accession negotiations taking into account national interests.

Another obstacle to Serbia's accession negotiations is the undecided role of Kosovo. Two possible negotiation frameworks have been proposed in Brussels. One scenario would include Kosovo as a part of 'other issues' in Chapter 35; the second prioritises Belgrade-Pristina relations and requests both parties to not obstruct each other in the accession negotiations. Furthermore it prescribes that Serbian laws adopted in line with EU accession do not apply to Kosovo. This opposes the current situation wherein Serbian domestic laws consider Kosovo as part of Serbia.

Serbia's President and European Commission President (28 February 2012)

Serbia commends the first framework, whilst Germany and the United Kingdom are clearly favouring the latter. The European Commission has outlined that a sustainable improvement of relations with Kosovo is a requirement for a successful accession of Serbia. Dačić remains positive Germany's new coalition will not pose a threat to the EU enlargement in the Balkans.

NEWS FROM OTHER INTERNATIONAL COURTS

Special Court for Sierra Leone

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Special Court for Sierra Leone (SCSL).

Charles Taylor has been moved from The Hague to the Frankland prison in the United Kingdom to serve his sentence. Sentenced to a 50-year imprisonment for war crimes and crimes against humanity, Taylor had been held in The Hague since the start of his trial in 2007. The former President was convicted for aiding and abetting the Sierra Leonean rebels, who committed a parade of crimes during the country's Civil War.

In 2006, the British government agreed to jail Taylor on its territory in the case that he was convicted by the SCSL. In 2012, the Trial Chamber found Taylor guilty of eleven counts of aiding and abetting war crimes and crimes against humanity, and the verdict was unanimously upheld on appeal earlier this year.

The Extraordinary Chambers in the Courts of Cambodia

By Katie O'Riordan, Intern on Case 004 Defence Team

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 Defence Teams in Case 002 spent November preparing for the trial management meeting scheduled for 11 December. The parties will make submissions on scheduling and the scope of the charges to be heard in Case 002/02. The Supreme Court Chamber has previously ordered that hearings in Case 002/02 shall commence as soon as possible after the closing statements in Case 002/01, with the scope of charges to include, at a minimum, genocide and the charges related to S-21, a worksite and a collective.

The Case 003 Defence filed a notice with the The Office of Co-Investigating Judges (OCIJ) stating that their client intends to exercise his right to remain silent, and further requested that any contact be made through his chosen Co-Lawyers. The Case 003 Defence also filed an appeal against Co-Investigating Judge Harmon's constructive denial of 14 motions filed by the Defence between August and October 2013. The Pre-Trial Chamber has previously held, in Case 002, that constructive denial occurs when the OCIJ fails to rule on requests "as soon as possible, in circumstances where a delay in making a decision deprives the Charged Person of the possibility of obtaining the benefit he seeks". Finally, the Case 003 Defence filed a Request for reconsideration to the OCIJ concerning the OCIJ's jurisdiction to decide on a pending matter. Co-Investigating Judge Harmon accepted the filing of this Request and ordered the OCP to respond within five working days. The Case 003 Defence continues to review publicly available material concerning Case 003, as it does not yet have access to the Case File.

The Case 004 Defence requested the appointment of a judge to hear two administrative matters. This request has been granted in both instances. The Defence considers the two disputes to be a continuance of the failure to grant their client the full fair trial rights which should be afforded to a suspect. The Defence also reiterated their client's decision to exercise his right to remain silent as well as the team's request that any contact to be made with their client be made through his Co-Lawyers.

Courtroom at the ECCC

DEFENCE ROSTRUM

The Eleventh Defence Symposium

By Ivan Kochovski

On 12 December, Stéphane Bourgon held the eleventh Defence Symposium for ICTY staff and interns speaking about "Military Organisation, Rank Structure and Operations - Everything You Ever Wanted to Know about the Military". Stéphane Bourgon is a former Officer and a Military Legal Advisor in the Canadian Armed Forces. He has been working at the ICTY for almost 15 years. Initially joining the Office of the Prosecutor and later on Chambers, Bourgon has been the Defence Counsel in numerous cases since 2001 and has represented, among others, Enver Hadžihasanović, Rasim Delić, Veselin Šljivančanin, Drago Nikolić, Momčilo Perisić and Mićo Stanišić.

Stéphane Bourgon

Bourgon started by saying that all armed forces have the same organisational structure. All around the world the units of an army are structured in a particular way: there is a similar framework of subordination and chain of command, the soldiers are trained in the same manner and there are basic doctrines and principles that militaries share. Therefore, Bourgon's explanation of the organisational and rank structure of the military was not specific to any army, but a general outline that applies to most military forces.

The military rank structure serves as an indicator of an officer's position in the hierarchical framework of the army. One of the main characteristics of rank structures around the world is the distinction between commissioned and non-commissioned officers (NCO's). The main difference between NCO's and commissioned officers is their commission and military education. NCO's have not attended a military academy and rely on a particular trade or expertise, as well as experience, to progress through the non-commissioned ranks. An NCO's trade is usually a skill that an officer has specialised in, such as radio communications, radar operation or experience as an infantry or tank soldier. Commissioned officers, on the other hand, aside from experience, rely on military education to progress through the commissioned ranks. Commissioned officers serve under a commission, or an approval by the sovereign to serve in the military. These officers are on constant duty and are supposed to assume a command role, as opposed to the NCO's that usually have an operational role. The NCO ranks are subordinate to the commissioned ranks. This means that in a formal sense, a Chief Warrant Officer, who usually has 30 years of military experience, is subordinate to an Officer Cadet, who has just started to serve in the military or is still attending military academy. However, in practice, it is common that low-ranking commissioned officers respect and see senior non-commissioned officers as superiors.

Aside from the hierarchy of ranks, another key feature of the military is the command structure which corresponds with the unit organisation. In order to increase efficiency, flexibility and reliability of the forces, soldiers and officers are grouped in units that are headed by command officers or commanders. For instance, the smallest unit is usually a detachment or a fire team that consists of two soldiers and allows high manoeuvrability and effectiveness. A corps, on the other hand, usually consists of two to three divisions and is a large unit that has an extensive area of responsibility and operation.

The commanders of these divisions are subordinate to the corps commander, who in turn is subordinate to the army commander. In order to ensure the efficiency of operations and orders, armies generally adopt a structure where a commander will not have more than nine direct subordinates at one time. A well founded command and unit structure is key to ensuring effectiveness and reliability of operations, because it allows an army to cope with constantly changing circumstances of the battlefield.

Bourgon pointed to two general types of command structure. During its existence, the Warsaw pact adopted a more rigid approach where commanders had to extensively rely on their superiors and did not have much room for initiative. The NATO forces, on the other hand, have a more flexible command structure where commanders communicate among each other more often, allowing a higher degree of flexibility and resourcefulness.

Furthermore, besides the command officers, military units also have staff officers. While the commanders issue orders and bear responsibility for their unit and the area of operations, staff officers take up a support role and assist the unit commander.

The Zvornik Brigade of the Drina Corps of the Army of the Republika Srpska, for instance, had four key support officers, namely a deputy commander and three assistant commanders, for security, logistics and moral affairs. These officers did not have a command role or the authority to issue orders, but were responsible for different aspects of the command operations. The Deputy Commander, who at the same time was the Chief of Staff, was responsible for the Command. The Command is the main support group for a given unit responsible for planning the operations, drafting the orders issued by the commander and ensuring the sufficiency of equipment and finances for fulfilling the orders. While the Command was subordinate to the Deputy Commander, the Assistant Commanders directly advised and assisted the Brigade Commander on specific issues such as morale, security of the command and the units, and the location and operational logistics.

An issue related to the staff and support officers is the technical chain of command. The regular chain of command concerns the unit commanders, where, for instance, the corps commander issues orders to the division commander who in turn commands the brigade commanders and so on. The technical chain of command links the support officers across units where, for instance, the Brigade Assistant Commander for Moral Affairs would consult with the Division Assistant Commander for Moral Affairs on matters related to the morale of the soldiers. However, the Division Assistant Commander cannot issue orders to the Brigade Assistant Commanders but can only coordinate and advise how an issue within their expertise or responsibility should be dealt with.

A characteristic of the military that is important for the work and proceedings before the ICTY is weapons. The type of the weapons used is a crucial factor that needs to be considered when obtaining evidence. Some of the key features that should be taken into account are the range, the precision and the kill radius of the weapon, as well as the position or distance of the weapon from the target. In particular, the interaction between these features is crucial. For instance, by increasing the distance of the weapon from the target the precision of the weapon proportionally decreases while the killing radius increases. Knowing these features of a particular weapon can provide evidence not only of the target itself but also of the aim and intent of the mission and the commanding officers.

Besides the structural and organisation characteristics almost every army has a doctrine or a set of principles. Bourgon pointed to the three main principles that almost all armed forces share, namely effective selection and maintenance of an aim, economy of effort and meaningful use of resources, and maintenance of morale. These principles are not only general guidelines but are policies applied in daily operations by soldiers and commanders. By looking at the doctrine of an army and the principles it prioritises, one can more clearly analyse the structure and modus operandi of its units.

Bourgon concluded by stating that that due to the complex structure of military units, the extensive chains of command, and the need for technical knowledge when discussing military equipment, the Chambers and the Defence Counsel should also have Military Assistants that will be able to provide an insight into the some of the more complex issues of the military.

International Criminal Law and the Legal Framework for Peace In Colombia

By Carlos Fonseca Sanchéz

On 3 December the Supranational Criminal Law Lecture Series, organised by the Asser Institute, continued with a lecture on “International Criminal Law and the Legal Framework for Peace in Colombia”, held by Héctor Olásolo, Chair in International Law (El Rosario University, Colombia) and Chairman of the Ibero-American Institute of The Hague, and ICC Judge Silvia H. Steiner.

Olásolo opened the lecture by introducing his book ‘Tratado de autoría y participación en derecho penal internacional’ (2013). The book is a treatise on the modes of liability developed in international criminal law and is the first of its kind in the Spanish language. Judge Steiner presented the content of the book which is, as Judge Steiner assured, a result of the author’s close observation and participation in the work

of the international tribunals.

The introduction of the book was followed by the lecture on the Legal Framework for Peace in Colombia and the perspective of international criminal law.

The lecture began with a short video introducing the history of the non-international armed conflict in Colombia. The conflict has lasted over 50 years. During that time almost 220,000 people have been killed, 11,751 have been victims of massacre, 25,007 victims of enforced disappearance, 1,754 victims of sexual violence, 5,712,506 victims of forced displacement and 27,023 people have been kidnapped.

The conflict involves the government forces (the national armed forces and the police), the rebel armed groups (which are divided into the guerrilla movements FARC and ELN) and paramilitary groups.

As a State Party to the Rome Statute, the ICC has jurisdiction over the crimes committed in the territory or by the nationals of Colombia since 1 November 2002, with the transitional provision for war crimes which enabled the jurisdiction of the ICC until 1 November 2009. Since June 2004, Colombia has been under preliminary examination before the ICC.

The Office of the Prosecutor of the ICC has been monitoring the development of the negotiations during the ongoing peace process between the Colombian government and the guerrilla movement FARC. The negotiations started in Oslo in October 2012, subsequently moving to Havana. The Government and the FARC have reached agreements on the first two of the six items on the agenda: 'Rural Development and Agrarian Reform' and 'Political Participation'. Remaining items to be agreed upon are: 'Disarmament and Demobilization', 'Drug Trafficking', 'Victims (Human Rights and Right to the Truth)' and finally, 'Implementation and Verification Mechanisms'.

In June 2012, the Colombian Congress approved the Legal Framework for Peace, a bill reforming the Constitution and introducing a transitional justice strategy to reach peace. The bill sets the framework for a prioritisation of cases against those most responsible for crimes against humanity or war crimes, the possible dropping of the non-priority cases and the suspension of selected sentences. The Colombian Congress now has to legislate in order to implement such rule.

The position of the ICC Prosecutor is clear - as a State Party, Colombia has to abide by the Rome Statute, and the results of the negotiations in Havana have to be compatible with those obligations. Furthermore, the Congress has to legislate accordingly with the obligations assumed in the Rome Statute, in order to avoid the issues of admissibility contained in Article 17 of the Rome Statute. In the interim report of 2012 the Office of the Prosecutor recognised that Colombian judicial authorities have prosecuted and sentenced some of the main actors of the conflict, responsible for the commission of crimes within the jurisdiction of The Court.

According to the interim report the issue that remains under preliminary examination is the complementarity requirement. If the Congress or the Government agree to concede the investigation of the crimes committed by the FARC, or to suspend the execution of the sentences for the most responsible in order to succeed in the peace process, such a resignation might be considered an example of unwillingness, according to the Article 17 (2) of the Rome Statute.

This is because those most responsible for crimes under the jurisdiction of the ICC cannot be shielded through the mechanism of the total suspension of the execution of a sentence, included in the Legal Framework for Peace. At first it seems that the Colombian Congress has to choose between the path of transitional justice on one side, or international criminal law on the other.

According to Olásolo, in this case both paths are mutually exclusive and the Office of the Prosecutor is waiting for the results of the negotiations in Havana as well as the implementation of the Legal Framework for Peace in Colombia.

Colombia has prior experience of a legislated peace process: the demobilisation of paramilitary armed groups was achieved through the Justice and Peace Law. The results in terms of reduction of crime and knowledge of the truth are valuable but the reparation of victims and inclusion in society of former paramilitary members is still under question. One can only hope that this experience will prevent a replication of the same mistakes.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Christopher Kuner, **Extraterritoriality and the Fundamental Right to Data Protection**, 16 December 2013, available at: http://tinyurl.com/q7khedj.

Kevin Jon Heller, **The Final Nail in the ICTY's Coffin**, 16 December 2013, available at: http://tinyurl.com/pyrmyy7.

Michael G. Karnavas, **Response to observations on Article 27 of the ICC Statute**, 14 December 2013, available at: http://tinyurl.com/oqpbun9.

Manuel Eynard, **Le refus saoudien de la qualité de membre non-permanent de Conseil de sécurité**, 6 December 2013, available at:http://tinyurl.com/mwp5jdw

Online Lectures and Videos

"UN Watch Human Rights Conference: Abdine Merzough of Mauritania", 16 December 2013, published by UN Watch, available at: http://tinyurl.com/kwvgv9v.

"Swearing-in Ceremony for New ICC Judge", 12 December 2013, published by the International Criminal Court, available at: http://tinyurl.com/mqlbarv.

"Statement of the Prosecutor of the ICC on the Occasion of Human Right Day", 10 December 2013, International Criminal Court, available at http://tinyurl.com/kao5bsz.

"Is EU Criminal Law a Threat to British Justice?", 3 December 2013, published by the Cambridge University available at: http://tinyurl.com/mpzc4md.

PUBLICATIONS AND ARTICLES

Books

Christian J. Tams, James Sloan (2013), *The Development of International Law by the International Court of Justice*, Oxford University Press.

V.M. Lebedev, T. Ia. Khabrieva, W.E. Butler (2013), *Justice in the Modern World,* Eleven International Publishing.

Sarah Joseph (2013), *Blame it on the WTO? Human Rights Critique,* Oxford University Press.

Laurence Boisson de Chazournes (2013), *Fresh Water in International Law,* Oxford University Press.

Articles

Michael D. Ward, Nils W. Metternich, Cassy L. Dorff, *et al.* (2013), "Learning from the Past and Stepping into the Future: Toward a New Generation of Conflict Prediction", *International Studies Review,* Vol. 15, No. 4.

Janine Natalya Clark (2013), "Normalisation through (re) integration: returnees and settlers in post-conflict Croatia", *International Journal of Human Rights,* Vol. 17, No. 7-8.

Fulvio Maria Palombino (2013), "Italy's Compliance with ICJ Decisions vs. Constitutional Guarantees: Does the "Counter-Limits" Doctrine Matter?", *Italian Yearbook of International Law,* Vol. 22.

The ADC-ICTY would like to express its appreciation and thanks to Emma Boland, Aoife Maguire and Julie Malingreau for their hard work and dedication to the Newsletter. We wish them all the best in the future.

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WE'RE ON THE WEB!

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Season's Greetings

On behalf of the ADC-ICTY and the Newsletter Team, we wish you a safe and happy holiday season and hope for a prosperous year in 2014.

EVENTS

Distinguished Speaker Series—Joschka Fischer

Date: 15 January 2014

Location: The Hague Institute for Global Justice, Sophialaan 10, The Hague.

More Info: http://tinyurl.com/o67nc57

Complementarity in the Line of Fire: The Catalysing Effect of the International Criminal Court in Uganda and Sudan

Date: 23 January 2014

Location: Faculty of Law, University of Amsterdam, Oudemanhuispoort 4-6, Amsterdam.

More Info: http://tinyurl.com/kuy88hw

International Criminal Defence Lawyers Meeting (ICDL)

Date: 25 January 2014

Location: Hotel InterContinental, Berlin, Germany.

More Info: http://tinyurl.com/pm3m7bq

OPPORTUNITIES

Legal Officer, The Hague

Special Tribunal for Lebanon (STL)

Closing date: 23 December 2013

Chef de Cabinet, The Hague

United Nations Mechanism for International Criminal Tribunals

Closing date: 28 December 2013

Associate Public Information Officer

United Nations Mechanism For International Criminal Tribunals

Closing date: 03 January 2014

Secretary to Judge, The Hague

International Court of Justice (ICJ)

Closing date: 20 January 2014