ADC ICTY TPIY

NEWSLETTER

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ICTY NEWS

Prosecutor v. Karadžić (IT-95-5/18-I)

On 29 August, both parties to the Karadžić case submitted their Final Briefs. The case is now reaching its final stages, as the Defence prepares for the closing arguments which are held from 29 September to 2 October and will be followed by the rebuttal and rejoinder arguments on 7 October, with an expected verdict in October 2015.

The crux of Radovan Karadžić's Defence case, in general terms, is that he never planned, instigated, ordered, committed or otherwise aided and abetted any of the crimes charged. He was never a member of any joint criminal enterprise nor was he responsible as a superior for the crimes charged in the indictment.

The Defence has asserted that the manipulation of historical records by the Prosecution, contending the initiation of separatist activities to have emanated from Franjo Tuđjman and Alija Izetbegović, who led the formulation and implementation of a criminal plan to create an ethnic entity on large portions of the Socialist Federal Republic of Yugoslavia (SFRY). Moreover, the only Joint Criminal Enterprise (JCE) which existed was the Party of Democratic Action (SDA), headed by a group of top Muslims which led to a legal response by the Serb Democratic Party (SDS) against the illegal activities of the SDA.

Regarding his charge as a member of a JCE, the Defence has taken the position that Radovan Karadžić did not possess the requisite intent to be found guilty. Conversations and communication between the alleged JCE members did not reveal any express or implied agreement of a particular crime to be committed, nor at

ICTY NEWS

Also in this issue

ICTY Statute

Article 7 (3)

Individual Criminal Responsibility

The fact that any of the acts referred to in articles 2 to 5 of the present Statute was committed by a subordinate does not relieve his superior of criminal responsibility if he knew or had reason to know that the subordinate was about to commit such acts or had done so and the superior failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

any point in time did there exist a criminal plan or design to this effect. In relation to the charges of superior command responsibility under Article 7(3) of the ICTY Statute, the Defence has taken the position that Radovan Karadžić did not possess the requisite knowledge regarding the commission of the crimes. In a situation of chaos, and particularly given the prevalence of paramilitary groups in particular areas of Bosnia and Herzegovina (BiH), no effective control was possible to direct the events in the field.

The Defence relied heavily upon a severe lack of communication which subsequently broke any chain of command and did not allow any Republican Authorities to control these events. This contention assumes the importance surrounding the charges in specific municipalities, as the geographical detachment renders communication to central authorities paramount in establishing such knowledge. However, in situations where crimes against non-Serbs were brought to the attention of the central authorities, all possible and appropriate measures, as well as preventive action, such as investigation, prosecution and punishment, were initiated against the perpetrators.

This same argument holds true for charges under individual criminal responsibility. It is the severe lack of information held by Radovan Karadžić at the time to which the Defence was held tight, coupled with the absence of any criminal intent, criminal group or common plan to undertake the commission of any of the eleven Counts found in the Prosecution's Indictment.

Decision on Accused's First Motion To Re-Open Defence Case

On 26 August, the Accused filed a motion, pursuant to Rule 70 of the Rules of Procedure and Evidence (Rules), seeking leave to re-open the Defence case in order to request the admission of one document from the bar table. The document, dated February 1993, is a cable from Brigadier Jones which states that the Bosnian Muslims were responsible for all United Nations Protection Force (UNPROFOR) casualties.

Radovan Karadžić

The Accused submitted that he had met all the requirements for re-opening his case, namely, that despite exercising "reasonable diligence" he was unable to obtain the document prior to the closure of his case-in-chief. The document was relevant and had probative value particularly to the Sarajevo component of the case. As admission is being sought through the bar table, there would be no delay in the proceedings and should the Chamber decide to call Brigadier Jones as a witness, his testimony would be brief so as not to significantly delay proceedings.

On 8 September, the Prosecution submitted its response to the motion providing arguments for its dismissal. The Prosecution disputed the probative value of the document, not warranting a cause for delay, the document did not indicate a timeframe or geographical location for the events discussed and without reliance upon other information the document lacks relevance to the Sarajevo component of the case. Due to particular obscurities regarding the authenticity of the document, Brigadier Jones would have to testify, thus causing delays in the proceedings at this very advanced stage of the case.

Though the Rules do not explicitly address the possibility of re-opening a case-in-chief for the admittance of additional evidence, the Trial Chamber relied upon Tribunal jurisprudence which allows for "fresh" evidence which was not in the possession of the moving party and which could not have been obtained before the conclusion of the case-in-chief.

The Chamber's primary consideration was whether, with reasonable diligence, the evidence could have been obtained and presented in the case-in-chief, and this burden of proof rested squarely on the Accused. Its subsequent consideration lies in the discretion of the Chamber in conducting a balancing exercise in order to ascertain whether the exclusion of the evidence and its probative value is substantially outweighed by the need to ensure a fair trial. In this case, the relevant factors taken into account were the advanced stage of the trial, the possible delay and suitability of an adjournment, and the probative value of the evidence presented.

The application of the above did indeed guide the Chamber in finding that the document was "fresh" evidence. However, its probative value, or rather lack of, was found to be the Accused's pitfall. Consisting of a short paragraph, the document did not refer to Sarajevo or any of the charged Sarajevo incidents, nor does it identify the author or provide a date. The accuracy of the conclusion was challenged, and thus it could not be admitted from the bar table, but rather it would be necessary to call Brigadier Jones as a witness to testify to its content and authenticity. Given the advanced stage of the trial, the Chamber went on to deny the motion as the probative value of the document was outweighed by the need to ensure a fair trial.

Decision on Motion to Strike Prosecution Final Brief

On 21 March, the Trial Chamber issued its *Order on Filing of Final Trial Briefs* requiring both parties to file their Final Trial Briefs conforming to a limit of no more than 300,000 words, which should include any appendices containing legal or factual arguments.

On 29 August, the Prosecution filed its Final Brief totalling 1,106 pages in length, whilst the Accused filed his Final Brief, totalling 876 pages in length. Subsequently, on 3 September, the Accused filed a motion to the Trial Chamber requesting that the Chamber strike the Prosecution's Final Brief from the record and order the Prosecution to re-file a brief that conforms to the word limit, or alternatively, to provide him with the opportunity supplements his final brief to equal the number of words contained in the Appendices.

According to the Accused, the issue at hand related to whether these appendices contained legal or factual arguments, arguing that they did. In particular, the Accused contends that Appendices G and H, which detail the evidence of proof of death and injury of victims, contain factual arguments and should therefore be included in the 300,000 Word Limit. In a similar vein, in Appendix E, the Prosecution reproduced evidentiary material instead of referring to it in the main text. This consequently places the Accused at an unfair advantage as he was forced to contest the assertions made there in the main part of his Defence Final Brief.

On 10 September, the Prosecution submitted its response to the motion, claiming that the Appendices were non-argumentative and in accordance with Practice Direction should therefore not be included in the word Limit. In relation to Appendix E the Prosecution argues that the charts were tendered through Prosecution expert witness Richard Butler and were thus not argumentative. Appendices G and H were contended to be a useful tool to assist the Chamber in making findings on the death and/or injury of individual victims and were also non-argumentative.

The Chamber relied upon Section (C)(6) of the Practice Direction in reaching its verdict, which allows the parties discretion as to what to include in their appendices, as long as it did not contain factual or legal argumentation. Noting that at the time of the Prosecution's Pre-Trial Brief, when similar charts were being used, the Accused did not object to this. Perhaps the more contested assertion by the Accused was the extra column in both Appendices G and H entitled "proof of death" and "proof of injury". However, the Tribunal's jurisprudence recognises that appendices will, by their nature, be affected by the tendering party's point of view and its interpretation of the evidence. The contents in this last column, according to the Chamber, contained references without any description or summaries of the evidence, and as such did not contain any legal or factual arguments. As a mere visual illustration of the Prosecution's arguments, the information found in the aforementioned Appendices was considered to be in compliance with the Practice Direction, accordingly leading the Chamber to deny the motion.

Prosecutor v. Mladić (IT-09-92)

On 8 September, the first hearing occurred in the absence of Judge Moloto, who was unable to sit for a period of short duration Judges Flügge and Orie decided to continue hearing the case pursuant to Rule 15 *bis*. Milosav Gagović, former 4th Corps Commander of the Yugoslav People's Army (JNA), was called by videolink and began his testimony by describing a "witch hunt" against Serbs in Sarajevo conducted by Muslim paramilitary forces. The witness also pointed out that media reports before and during the war gave a twisted image as to the number and distribution of artillery weapons in Sarajevo.

The media claimed that Serbs had ten times more artillery pieces than they actually did, and that the Muslim side had close to none, when in fact they deployed 34 artillery weapons in the city. During cross-examination, the witness recalled the decision to deny the number of shells said to have fallen on Sarajevo in May 1992. The Prosecution later displayed an intercepted conversation from 11 May 1992 between the witness, Mladić and Baros, where Mladić said that Muslims "will cease to exist" if JNA soldiers were hurt. Furthermore, a report from a meeting with the United Nations Protection Force (UNPROFOR) on 20 May 1992 stated that he threatened to destroy half of the capital if an attack occurred. The witness explained that it was relatively usual for Mladić to display such empty threats, as he did not have enough assets to destroy just one building, let alone half of Sarajevo. Regarding the attack launched on the densely populated neighbourhood of Velešići, Gagović explained that the purpose of the attack was to prevent the attacks from the capital.

Later that day, former Republika Srpska Prime Minister Vladimir Lukić began his testimony, which continued until 10 September. Before he became Prime Minister in 1992, he was Representative of the Republika Srpska at the UNPROFOR. During this time, Lukić observed that UNPROFOR members were relatively unresponsive to his reports about crimes committed against Serbs, and generally negatively disposed towards the Serbian side. For instance, he alleged that UNPROFOR forces would always assume that a shelling had been committed by the Serbs or that artillery had been fired at civilian targets. Once Prime Minister, the witness insisted that the Bosnian Serb leadership treated all citizens equally irrespective of their ethnic background, and that the police and army were equipped to protect the population. However, their ability to carry out this task was limited because the local authorities had such a degree of autonomy during the war that the Republika Srpska was in fact a "confederation of municipalities".

Vladimir Lukić

The Prosecution displayed a statement from Nikola Koljević, member of the Republika Srpska Presidency, suggesting on the contrary that it was part of the Serb leadership's goal to use violence to create a pure Serb entity. In particular, Koljević advocated the "homogenisation" of the Serb and Croatian territories in Bosnia-Herzegovina (BiH) and proposed to establish an "agency for the civilised exchange of the population". Lukić attested that he did not share Koljević's opinion and that he and Koljević never spoke about the homogenisation of parts of BiH. The witness affirmed that the government was unaware of allegations and reports of rapes of non-Serb women, as Serb, Muslim and Jewish women were being indistinctively targeted during the course of the war, and that those responsible for the rapes "did not care who was who". He stated that many Army of Republiks Srpska (VRS) soldiers used their position in the military to commit abuses, but that these should not be considered as acts related to the armed forces. Similarly, the witness was aware of allegations of mass rape in the areas of Bijeljina, Zvornik, Foča, Višegrad, Doboj, Prijedor, Kozarac and Modriča, and of the fact that Muslims and Croats were expelled from these areas. However, he stated that all three ethnic groups were expelling each other from the territories they controlled. Lukić believed that Bosnia was historically on Serb territory and that Serbs were entitled to 64 per cent of it, but that this should not be adhered to as other ethnicities must also be allowed to live there.

On 10 September, Đjorđje Marjanović testified for the Defence as Mladić's personal security guard. He re-

called that in the immediate beginnings of the war, Muslims intensified security checks of citizens' identification cards in Sarajevo, which consequently caused Serbs to be segregated and limited their free movement. He attested that Mladić always treated prisoners of war and the non-Serb population in a humane and ethical manner. He further affirmed that he was on leave during the Srebrenica events of July 1995. For Marjanović, this proved that the operation had not been planned by Mladić, otherwise he would not have been sent on leave at that time.


Mihajlo Vujasin

On 16 September, witness Mihajlo Vujasin testified. The witness was serving at the air base in Rajlovac when the war broke out, and later became Deputy Commander of the Rajlovac Brigade. He recalled handing over control of the Sarajevo airport to the United Nations forces under an order from General Mladić who personally specified that no single bullet should be fired. He stated that people living around the airport responded negatively, because it created an enclave-like encirclement for them, preventing free economic trade with the rest of the region.

Vujasin further recalled that Serb civilians were forbidden to leave Sarajevo by the Army of Bosnia-Herzegovina, because the Muslim side had an interest in preserving the ethnic diversity of the capital in order to foster international sympathy. The witness indicated that his unit did not have snipers or any artillery pieces bigger than 82mm caliber. This allegation was challenged by the Prosecutor in cross-examination with a document indicating the Rajlovac Brigade had in fact requested 9,000 bullets for 7.9mm snipers and fifty 105mm shells. The witness admitted that the Brigade did have rifles with optical sights which used 7.9 mm bullets, but explained that the shells had been ordered for the units that had such artillery pieces. The witness affirmed that he did not know whether there were any trained professional snipers in the Brigade, but that if there were, training for such activity would have been delivered informally by specific individuals. The Prosecution asked the witness about the events that occurred in late May 1992, when the Rajlovac Brigade took part in an attack on the village of Ahatovići. The witness denied that the village was surrounded and that an ultimatum was set by the army to surrender. He did, however, confirm the attack of the village and the fact that hundreds of civilians, including women and children, were brought into the Rajlovac military barracks in an attempt to protect them from the Serb paramilitary groups. The witness later admits that in some cases the prisoners were abused, but insisted that these acts were not carried out by his soldiers but by members of irregular groups (such as the paramilitaries) that rejected the unity of command of the VRS. He also heard subsequently of people being taken away in a bus and killed in an ambush, such as described by an Agence France-Presse (AFP) news article, but was not aware of this at the time. Finally, the witness denied that the Rajlovac Brigade ever requested prisoners to perform physical labour on the front lines. On the morning of 17 September, Vujasin corrected his previous declaration by admitting he knew some prisoners were being used for forced labour, but that such requests were not channeled through the official chain of command of the Brigade so that he was unaware of any specific event. The Prosecution challenged this statement, and the witness later admitted that in one instance, at least, he agreed to sign such a request, showing that the command was indeed involved.


Stojan Džino

Later that day, witness Stojan Džino, Platoon and later Battalion Commander in the Rajlovac Brigade, testified about the events that occurred in Ahatovići in late May 1992. The witness confirmed that he had no knowledge of any professional snipers in his unit during the war. He stated that the Rajlovac municipality had a mixed population, but most Muslims lived in the village of Ahatovići. Regarding the events of May 1992, Džino insisted that it was a counter-attack of Serb forces on Ahatovići, after Muslim forces shelled the houses of Serbian civilians in another village in the area. He denied that the Serbs shelled back on Muslim civilian areas, but instead targeted only the places where the initial firing came from until the Muslims forces surrendered. The witness agreed that some 15 Green Berets were captured, but he was not aware at the time that some of them were beaten and killed. He also did not know that some of the Muslim civilians

put in the Rajlovac barracks were taken in a bus and ambushed, and learned about this incident only after it occurred. During cross-examination, he specified that what he heard was that the bus was attacked in an intermediary zone in between the Muslim and Serb positions, so that any side could have been responsible for the attack. Regarding an AFP article denouncing the fierceness of the Serb takeover of Ahatovići, the witness confirmed that the mosque was destroyed, but said he knew no more, and affirmed that there were self-constituted Serb paramilitaries units in the area that could have been involved. The witness confirmed that after the takeover, of the 200 Croat families and 1,066 Muslim families that were living in this municipality, only three Croat families and one Muslim family remained in the commune. During redirect, he alleged that some of the families simply left the area voluntarily. Džino also asserted that there were no snipers or professional sniper trainings in his Brigade, but that sniper rifles were sometimes given to soldiers. The Prosecution reminded that on the previous day, witness Vujasin did not exclude the possibility that specific individuals had provided sniper training to some members of the Brigade.

Prosecutor v. Hadžić (IT-04-75)


Vojislav Šešelj

Vojislav Šešelj, the leader of the the Serbian Radical Party who, according to the Prosecution, participated with Hadžić in a Joint Criminal Enterprise (JCE), began his testimony in the Defence case of Goran Hadžić on 9 September. Through direct-examination, Šešelj admitted that his political party, dealt with registering volunteers and sending them to Serbian Krajina starting in April 1991 until the end of August 1991 and that his paramilitary formations were in Eastern Slavonia and Western Srem. This situation only lasted until the end of August 1991. As of September, the Yugoslav Peoples' Army (JNA) became involved in armed activities and it was agreed that the sending of volunteers would be dealt with and processed exclusively through the JNA. Western Slavonia was, according to Šešelj, defended by the Territorial Defence that was under the authority of the Banja Luka Corps of the JNA. Šešelj claimed that this unit did nothing when the Croats launched an offensive, during which many Serbian civilians were killed. Šešelj also testified that Martić's police never encompassed all of the territories of the Republic of Serbian Krajina.

With regard to the Ovčara massacre, Šešelj noted that he had learned about it only several months or years after it had happened and that his volunteers had sworn to him that they had not participated in the killings. He accused the Chief of the Security Service of the JNA, Aleksandar Vasiljević, and officers of the Security Service for setting up and supervising the entire execution at Ovčara. Some members of the Guards Brigade and the Territorial Defence were in charge of direct execution. He explained that Dr. Vesna Bosanac, the head of the Vukovar Hospital together with JNA officers made a list of people from the Vukovar Hospital who were to be executed. Vasiljević and the Croatian government arranged to execute exactly 200 people. The JNA, led by Veselin Šljivančanin, at the time the Guards Brigade Security chief, entered the Vukovar Hospital, took some of the prisoners and transported them to Sremska Mitrovica. During the evacuation, they separated 207 prisoners from the group and transported them to Ovčara.


Vesna Bosanac

Šešelj explained that he had investigated the issue of the Ovčara massacre only after his testimony in the case against Slobodan Milošević, and that he had obtained more accurate information about the executions at Ovčara in The Hague. Šešelj told the court that Šljivančanin "admitted personally" that he had brought the buses with the prisoners to the hangar in Ovčara. With regard to the involvement of the Serbian Radical Party volunteers in the Ovčara massacre, Šešelj stated that he obtained the information about it from Milan Lančužanin, the Commander of the Volunteer Corps Leva Supoderica, also known as Kameni, and that this information was later confirmed by an investigation carried out in Belgrade.

Šešelj further stated he had no information that Interpol wanted Željko Ražnatović, known as Arkan, for war crimes and that he merely knew about his involvement in bank robberies in Sweden and several murders. He claimed that he had only received documentation about his involvement in war crimes when he came to The Hague. Šešelj noted that Arkan and Hadžić appeared in various places together, however, he claimed that Arkan was a dangerous man and that he appeared where he pleased, even at the government sessions of the Slavonia, Baranja and Western Srem (SBWS). Šešelj stated that Milošević's regime tried to prevent successful mobilisation for the JNA because he feared that the Generals would use the opportunity to topple himself and Tuđjman, and that this was why he supported Šešelj's volunteers joining JNA units.


Borivoje Milinković

On 11 September, the Defence brought another witness, Borivoje Milinković, the Minister of Culture and Religion in the government of the SBWS. During direct-examination Milinković talked about the objectives of the SBWS and their policies in relation to non-Serbs. He explained that the objective was cultural autonomy and that Serbs always wanted to remain in Yugoslavia. He also claimed that during his term in the government, the government did not discuss the policy of resettlement, expulsion, or the departure of Croats from their places of residence. According to him, the government made no distinction among the ethnicities and nobody was asked to declare themselves as Serb, Croat or Hungarian.

During cross-examination by the Prosecution on 16 September, the witness clarified that the meeting on 20 November 1991 in Velepromet was not an official government session, but it was just a meeting of some government members and some military officers. He denied that the SBWS government discussed and decided to keep the prisoners on this occasion and claimed that the prisoners remained within the control of the JNA. The witness also denied that discriminatory policies were in place in the SBWS and noted that there were many Croats among them and he himself had Croatian family members. Hadžić did not advocate discrimination against non-Serbs.


Milenko Dafinić

On 17 September, Milenko Dafinić testified, a policeman who provided security services for the government in Erdut. He was Hadžić's driver and bodyguard in 1996. Dafinić talked about the Danube crossing being controlled by the Serbian police. According to Dafinić, many Serbian women and children left Borovo Selo and went to Serbia across the Danube on ferry boats. According to the witness, a ferry line was organised after some time in order to allow for many people to cross the river at once. The Serbian refugees usually stayed at their relatives' homes or used this only link to Serbia to buy food. The Defence also asked the witness about the relationship between the residents of Borovo Selo and the Yugoslav Peoples' Army. According to the witness, people were angry as the Army deceived them several times. He stated that people would move towards Borovo Naselje supported by tanks, but as they would advance, the tanks would retreat leaving them unprotected. In addition, the Army would give false information to people with regard to where the attacks were taking place. As a result, around 250 or 260 people were wounded and 60 or 70 killed in a fighting that happened in Borovo Selo.

Dafinić stated he had met Hadžić for the first time after Hadžić was released from prison at Plitvice. He explained that the Serb population from Borovo Selo was upset after the arrest of two Serbian leaders: Hadžić and Boro Savić. After their arrest, barricades were erected in Borovo Selo, which were later removed and set up again several times. The witness also spoke about "Serbian National Security", noting there was no such "unit", only a group of five or six colleagues who knew each other and got together on an informal basis. The witness denied that this group of guards brought people over for detention and interrogation.

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

On 23 September, President and Pre-Appeal Judge Meron presided over a status conference in the case Prlić *et al.* (IT-04-74-A). All Appellants were present except Berislav Pušić, who had previously consented to absence from the hearing. After taking appearances and reviewing Rule 65 *bis* on the purpose and rules of status conferences, Judge Meron inquired into the health of the Appellants and conditions of detention. Jadranko Prlić and Bruno Stojić reported no issues "so far", Slobodan Praljak and Milivoj Petković reported no issues, and Valentin Ćorić indicated that he had some small issues, but none important enough to mention.

President Meron

Judge Meron next reviewed recent procedural updates since the last status conference in May. Since then, the English translation of the Judgment was released and the Defence teams that had not previously filed Notice of Appeal (Prlić, Stojić, Petković and Ćorić) did so in early August. He then reviewed the submission of motions for extension of time and word limit by all six Appellants and the Prosecutor, granted in part (15 days extension and 15,000 words for all seven parties), and the motions by all seven parties for reconsideration of the partial grant, also granted in part, but only to the extent that an extension was granted for the Prosecution's request regarding the Respondent's Brief.

On 15 September, the Defence for Prlić submitted a motion to refer the issue of extensions to the full Appeals Chamber – previous motions were considered only by Judge Meron, the case's Pre-Appeal Judge – which was granted by Judge Meron. He indicated that the Appeals Chamber is currently seized of the matter and will render a decision "in due course". However, the Appeals Briefs for all seven Accused are due in early November, so there is little time to spare, given the magnitude and the volume of the case. All teams will have to continue to prepare their briefs as though no referral or extension request has been successful, in order to be prepared on time if the Tribunal once again denies the request of all parties for an extension of time in the interests of justice.

Judge Meron then gave leave to the parties to raise any additional issues. Counsel for Prlić raised concerns about the failure of the Registry to officially categorise the appeal in this case as a complexity level 3 case, or indeed to issue a decision on the complexity level at all. Counsel highlighted that this is a large case requiring a large team – particularly in the absence of adequate extensions of time – who need to be paid. Further, team members have an ethical and professional obligation not to buckle under the "Herculean task" that is preparing the Appeals Briefs in the time allowed. The designation of a complexity level is the predicate for assigning a budget to the teams on appeal, allowing them to pay their staff, hire translators and investigators, and fund other elements of their appeals case. Thus, Counsel requested the Court to ask the Registry to issue a decision on this. Judge Meron indicated that the Registry is working on this "expeditiously".

Bruno Stojić and Jadranko Prlić

Finally, Counsel for Stojić, highlighting similar concerns about working towards a tight deadline, requested further information about the publication of the Bosnian/Croatian/Serbian (B/C/S) translation of the Trial Judgment, previously promised in September of this year, as Stojić, and presumably the other Appellants, would like to participate in and contribute to their appeal. Judge Meron indicated that the B/C/S translation is still expected in September. Counsel pressed for more specifics, noting that though September is almost over, with so little time before the briefs are due, "every day matters". However, Judge Meron was not able to offer any more specific date for the release of the translation. With no other issues raised, the conference was adjourned.

LOOKING BACK...

International Criminal Court

Five years ago…

On 18 September 2009, Trial Chamber III of the ICC was constituted by the decision of the ICC Presidency. Judges Elizabet Odio Benito, Joyce Aluoch and Adrian Fulford composed the Chamber and the case of Jean-Pierre Bemba Gombo was the first case referred to this newly established Chamber.

Bemba is accused of "being criminally responsible, for having effectively acted as a military commander, for war crimes (murder, rape and pillaging) and crimes against humanity (murder and rape)". These crimes were allegedly committed during an armed conflict in the Central African Republic from 26 October 2002 until 15 March 2003. The Movement for the Liberation of Congo (MLC) was allegedly controlled by Bemba and it is accused of targeting civilians in various regions. It s suggested that the MLC "directed a widespread and systematic attack against the civilian population in particular, in Bangui, Boy-Rabé, Point Kilomètre 12 (PK 12), Point Kilomètre 22 (PK 22) and Mongoumba, that targeted a significant number of civilian victims".

Bemba was transferred to the ICC on 3 July 2008 after his arrest on 24 May 2008, pursuant to a warrant issued by the Pre-Trial Chamber. The trial commenced on 22 November 2010. On 24 September 2014, the ICC Prosecutor stated that her office is opening a new investigation into alleged crimes committed in the Central African Republic since 2012.

International Criminal Tribunal for Rwanda

Ten years ago…

On 26 April 2004, the ICTR's completion strategy was updated. The initial completion strategy of the ICTR was submitted in July 2003 and updated in September after a request made by the ICTR to "increase the number of *ad litem* judges from four to nine".

The update in 2004 took into account Security Council Resolution 1503, which was adopted in August 2003 and urged the ICTR and the ICTY to "complete all investigations by 2004, all trials by 2008, and all appeals by 2010". In addition to the provisional schedule another element of the Resolution was the establishment of a "separate Prosecutor" for the ICTR. According to Security Council resolution 1534 (2004), the ICTR and the ICTY Presidents and Prosecutors shall provide assessments every six months of the progress made towards the implementation of the two Tribunals' Completion Strategies.

With regard to previous updates to the Completion Strategy, the ICTR was meant to conclude new investigations by the end of 2004 in order to "to concentrate on the prosecution of those persons who bear the greatest responsibility for the tragic events which occurred in Rwanda". Since 1 January 2014 the ICTR's Completion Strategy is focused on the transition of judicial responsibilities to the Residual Mechanism (MICT), which started its work at the Arusha branch on 1 July 2012.

International Criminal Tribunal for the Former Yugoslavia

Fifteen Years…

On 3 September 1999, ICTY Trial Chamber II and III reversed a decision made by the Registrar. On August of the same year the Registrar had decided to withdraw Legal Counsel for the cases *Kupreskić et al.* and *Kordić and Čerkez*, due to the alleged "lack of indigency" by the Accused.

On 30 August 1999, the President of the ICTY, Judge Gabrielle Kirk McDonald, referred the case to the Trial Chambers following the requests sent by the seven Accused: Vladimir Santić, Mario Čerkez, Zoran Kupreskić, Mirjan Kupreskić, Drago Josipović, Vlatko Kupreskić and Dragan Papić.

Both Trial Chambers concluded that the "burden proof in determining whether or not the accused were indigent lay with the Registrar". The Trial Chambers concluded that the evidence presented to the Registrar was not sufficient to withdraw the Legal Counsel.

NEWS FROM THE REGION

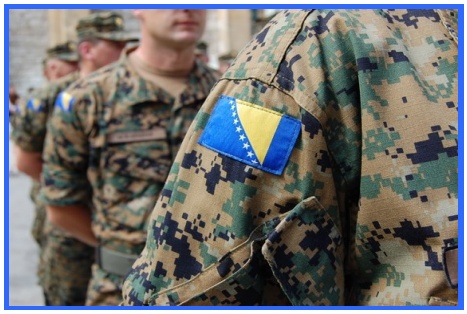
Bosnia and Herzegovina

Bosnian Army Soldiers Indicted for War Crimes and Čoloman Trial Begins

The Bosnian State Prosecution has indicted five Bosnian Army (ABiH) soldiers – Enes Ćurić, Ibrahim Demirović, Samir Kreso, Habiba Čopelj, and Mehmed Kaminić – for War Crimes stemming from the alleged unlawful detention and abuse of more than 100 Croat civilians in Potoci, a village in Mostar in 1993.

In August, the Court rejected the Prosecution's request for remand to custody for Ćurić, Demirović and Kreso, but did agree to some provisional measures, such as a prohibition on meeting or contacting the other suspects or case witnesses. A review of these conditions is to be done every two months, and a breach could result in remand to custody. The indictment has been forwarded to the Bosnian Court for confirmation of charges.

The trial of another former ABiH serviceman, Jasmin Čoloman, accused for the deaths of three Croats at a community centre in the village of Počulica, near Vitez, in 1993, has just commenced in Sarajevo. The Prosecution's opening witness, Nedžad Sivro, testified that he saw a villager speaking with an unidentified soldier a few minutes before the alleged crimes. Although he gave evidence about hearing gunfire and later seeing wounded people, Sivro was unable to specifically identify the soldier he saw, and confirmed his earlier statement that no one from Počulica or the surrounding villages was responsible for the murders.



Čoloman's Defence does not dispute the existence of a conflict or the occurrence of crimes, but rather intends to prove that Čoloman was not involved in the killings at the community centre.

Ivo Crepulja Trial Begins and Ljubomir Tasić Trial Ends

Trial commenced against Ivo Crepulja, a former Croatian Defence Council (HVO) member, for allegedly shooting a teenage Bosniak in the village of Ratanj, near Kakanj, on 16 October 1993. The Defence for Crepulja maintains that he was not in the area of Ratanj at the time and that he did not join the HVO until 18 October 1993, two days after the alleged shooting. The Defence has also raised the question of whether there is any connection between the accusations and the execution, just 50 metres away from witnesses' homes, of Crepulja's parents and another relative. The trial, which began on 17 September, will continue on 14 October.

While the trial of Crepulja is gearing up, the trial of Ljubomir Tasić is coming to an end. Tasić was accused and tried for crimes against humanity near Višegrad alleged to have occurred in 1992. The Defence has argued in closing before the Sarajevo Court that the Prosecution has failed to prove beyond reasonable doubt that the crimes were part of a widespread or systematic attack or that Tasić knowingly participated in any such attack. Further, they argued that there was insufficient evidence of forced relocation of the Bosniak population, but that, instead, the chaos in Višegrad resulted in local fear of paramilitaries and Red Cross-organised convoys to provide safe passage to those feeling insecure. Finally, the Defence argued that no witnesses saw Tasić detain anyone, and, because he was simply an ordinary member of the Bosnian Serb Army, he could not have commanded or ordered the alleged persecution. The verdict is scheduled to be issued on 14 October.

Croatia

Gojko Eror Charges Dismissed

Charges against Gojko Eror, a former Commander of a Serb Territorial Defence Unit (TO) in Berak, were cleared for lack of evidence in a Croatian County Court on 16 September. Eror was indicted by the Vukovar County Prosecutor in 2006 along with several others for supporting the occupation of Berak, a Croat village, through personal participation in crimes against humanity, torture, abduction, and unlawful confinement of non-Serbs in Berak from 1991 to 1993, and thereby forcing the Croat population out of the territory. Eror was arrested in Malta where he had been living for eleven years, pursuant to a European Arrest Warrant and extradited to Croatia in March.

Territorial Defence Forces

The Court in Osijek has dismissed the charges of command responsibility for expulsion of the non-Serb civilian population in Berak, which resulted in several deaths, disappearances, and other abuses. The dismissal came from lack of evidence after two witnesses specifically stated that they had no recollection of Eror committing any crimes in Berak, and a third witness statement (read into evidence) did not mention Eror at all. As a result, the above charges were cleared and the indictment modified to allege a criminal act of armed rebellion.

NEWS FROM OTHER INTERNATIONAL COURTS

International Criminal Court

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

Prosecutor v. Laurent Gbagbo (ICC-02/11-01/11)

Trial Chamber I Reconstituted

On 17 September, the Presidency of the International Criminal Court (ICC) re-constituted Trial Chamber I for the case of *The Prosecutor v. Laurent Gbagbo*. The confirmation of charges decision was issued by Pre-Trial Chamber I on 12 June 2014, after the hearings had taken place between 19 and 28 February of the same year. Judge van den Wyngaert appended an elaborate dissenting opinion, highlighting the insufficient evidence collected by the Prosecutor to commit Gbagbo to a trial. Gbagbo's Defence requested to appeal the confirmation of charges decision on 29 July, but the Pre-Trial Chamber rejected the Defence's request on 11 September.


Laurent Gbagbo

Gbagbo, former President of the Côte d'Ivoire, is charged with four counts of crimes against humanity, for crimes allegedly committed in Abidjan, Côte d'Ivoire, between 16 and 19 December 2010. He is charged with having committed these crimes along with members of his inner circle and through members of the pro-Gbagbo forces, pursuant to Article 25 (3) (a) of the Rome Statute (RS). In the alternative to having committed these crimes, he is charged with inducing the commission of these crimes and contributing in any other way according to Articles 25 (3) (b) and (d) RS respectively.

Trial Chamber I is now composed of Judge Cuno Tarfusser, Judge Olga Herrera-Carbuccia and Judge Geoffrey Henderson, Presiding.

DEFENCE ROSTRUM

The Islamic State in Iraq and Syria: The Role and Future of Extremists Groups in the Region

By Fábio Kanagaratnam

On 15 September, the International Centre for Counter-Terrorism (ICCT) organised a discussion panel on "The Islamic State in Iraq and Syria: The Role and Future of Extremist Groups in the Region". The panel was composed of three experts that offered their insights into the expansion of radicalism in the Middle East.

Mark Singleton, the director of the ICCT, introduced the theme by highlighting the recent developments in the Middle East. The first speaker of the evening was Fidaa Itani an expert on Al-Qaeda and its expansion in Syria, Iraq and Lebanon. Currently working on a book about the Revolution in Syria, Itani travels frequently to Syria and initiated his speech with an account of his experiences, describing his involvement with the Syrian society, "I have lived as other Syrians lived and escaped from an oppressive regime…". The Lebanese researcher described what he called "Syrian life today", stating "I have been arrested by the Islamic State (IS) for one day, beaten by Turkish military and crossed Syrian borders illegally".

Itani offered an account on how IS built up its movement, mentioning several factors such as the western support during the Syrian revolution, the crisis between Sunnis and Iraqis and the lingering idea of illusion and misperception of ideals within the region. Itani emphasised the idea that the Syrian situation is much more complex than what is happening in Iraq, particularly due to the growing number of Jihadist groups and their political influence in Syria.

The Lebanese expert described three possible scenarios that could influence IS behaviour, none of them a concrete solution to the problem. However he stated that relying on air strikes is a mistake, instead part of the solution lies in the reinforcement of secular powers and supporting local groups in the combating IS. Itani concluded his intervention indicating that western military action will antagonise the locals, leading to a reviving of the IS resistance. He further added that "strikes with no political certainty, will provoke IS in expanding to weaker areas such as Lebanon or even attack Israel to gather militants…".

The next speaker was Dr. Mariwan Kanie an Assistant Professor and Researcher at the University of Amsterdam. Kanie emphasised three major concepts, which are in his opinion very critical issues in the Middle East: the non-existent idea of nation state, the lack of political consensus, and the metamorphosis of religion. He stated: "After ISIS [sic] we cannot talk about Islam the same way, religion is a very strong instrument in fragmenting Middle Eastern societies".

Kanie also touched upon how the role of the Islam as a religion has changed, affirming "we have to stop the claim that it is a peaceful religion". His opinion was based on the fact that Islam's peaceful narrative does not work anymore. Consequently IS offers a revolutionary ideology, empowering individuals in establishing their own fate.

Munir Zamir, a counter-extremism expert has worked internationally with several agencies and specialises in the creation and dissemination of online counter-extremism. Zamir began his speech by offering a human context to the discussion. The expert claimed that counter-terrorism should be converted into counter-radicalisation. Whilst counter-terrorism focuses on security, safety and combating, counter-radicalisation focuses on the vulnerabilities, narratives and resilience building. Zamir specifically emphasised the need to build resilience to avoid young Muslims adhesion to the movement. The expert brought attention to the cynicism within the media saying that it took three beheadings to bring attention to the human damage occurring in the region. Zamir did not believe that military intervention is the only solution. For him, it is more important to correct the infrastructures in place to fight the lack of trust in democratic processes and to foster an identity for Muslim society.

The majority of the panellists believed that a militarised solution, would only be short-term and that it is essential that a proper infrastructure within the political system is put in place. Indeed, after all the military interventions executed in the Middle East, radicalism has resurfaced constantly, seemingly more expansive and effective. A military solution would

solve the aggressive part of the problem. However, its ideological undertones are the issue that needs to be ultimately addressed in the future. A resilient societal infrastructure established with the coordination of both national and international powers could be part of a solution. Ultimately a militarised campaign, with no political infrastructure planned would further the expansion of radicalism groups, contributing for a cycle built on uncertain solutions for complex problems.

ADC-ICTY Field Trip to the Special Tribunal for Lebanon

By Kartini Saddington

On 23 September, the ICTY Defence Interns took part in a tour of the Special Tribunal for Lebanon organised by the ADC-ICTY.

The interns were first taken on a tour of the building, with a particular emphasis on the primary courtroom. Located in the former headquarters of the Algemene Inlichtingen en Veiligheidsdienst (AIVD), or the General Intelligence and Security Service of the Netherlands, the building was host to a number of remarkable security features impressing upon the interns the gravity of the work done there. The courtroom, situated in the former AIVD basketball court, is one of the most technologically advanced within the international institutions of The Hague. The importance of victim participation in the Tribunal proceedings was particularly evident within the courtroom, with the provision of a confidential victim observation room and the provision of space for their Counsel.

Following the tour of the building, the interns were treated to a series of four lectures from Chambers and the Offices of the Prosecution, Defence and Registry.

Chambers was represented by a Legal Officer from the Office of the President, who presented the interns with a thorough and lively overview of the history and workings of the Special Tribunal for Lebanon. Of particular interest was the interplay between the Tribunal and the Security Council and the potential for the expansion of their mandate beyond the February 2005 bombings. For those of us from a common law system, her explanation of trials *in absentia* was of particular interest; by contextualising the trials with their wide acceptance within the Lebanese system, the interns gained a greater appreciation of the links between the Tribunal and the Lebanese domestic legal system.

A senior evidence officer of the Office of the Prosecution then provided the interns with a thorough overview of the Prosecution case against the five primary accused. Through the use of a PowerPoint presentation the officer illustrated the way in which communication networks had been used by the United Nations Independent Investigation Commission (UNIIC) and Tribunal investigators to identify the five accused. The visitors were amazed by the complexity of the case before the Tribunal. The reliance on new technologies was particularly interesting to the interns given the nature of the evidence we deal with everyday before the ICTY.

The representative from Defence was naturally a highlight. Through his candid overview of the various challenges inherent in an *in absentia* trial, the interns were granted a unique insight into legal process. Many of the elements of a trial which we take for granted are denied to the Defence at the STL. Not only are the lawyers acting for clients whom they have never met, every presumption in the trial must be fought in the absence of advice from the client to the contrary. This inability to communicate with one's client stands in stark contrast with the high level of contact between ICTY Defence teams and their clients.

Finally, the Registry gave a short presentation for the interns, providing a glimpse of the running the Tribunal. Most interesting was the manner of funding of the Tribunal, with 49% coming directly from Lebanon. The Registry also highlighted the issues faced by the Tribunal and its outreach program in light of the ongoing political turmoil in Lebanon.

The ICTY interns would like to thank the Special Tribunal for Lebanon for the informative lectures and their generosity with their time.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Max du Plessis, **The Future of International Criminal Law is Domestic,** 17 September, available at: http://tinyurl.com/msh9b4v.

Michael Karnavas, **ICC Registrar Supports establishment of an Association for List Counsel,** 20 September 2014, available at: http://tinyurl.com/q6amv7k.

Julien Maton, **Crimes Against Humanity Trial in Romania,** 24 September 2014, available at: http://tinyurl.com/nho9ye2.

Michael Karnavas, **Karanavas critiques DeFalco article on "most responsible" at the ECCC,** 25 September 2014, available at: http://tinyurl.com/npz8eq2.

Online Lectures and Videos

"The Regions International Human and Civil Rights Panel Discussion", by Regions Financial, 15 September 2014, available at: http://tinyurl.com/o7wre99.

"International Human Rights and Australian Law", by University of Melbourne, 18 September 2014, available at: http://tinyurl.com/qd8m27c.

"The Psychology of Criminal Justice", by University of Queensland, 21 October 2014, available at: http://tinyurl.com/lebdemr.

PUBLICATIONS AND ARTICLES

Books

Ryan Goss (2014), *Criminal Fair Trial Rights*, Hart Publishing.

Jorg Kammerhofer and Jean D'Aspremont (2014), *International Legal Positivism in a Post-Modern World*, Cambridge University Press.

Prabhakar Singh (2014), *Critical International Law*, Oxford University Press.

Elies van Sliedregt and Sergey Vasiliev (2014), *Pluralism in International Criminal Law*, Oxford University Press.

Articles

Chris Thornhill (2014), "Rights and Constituent Power in the Global Constitution", *International Journal of Law in Context*, Vol.10, No.3.

Graham Melling (2014), "The Inherent Right of Self-Defence in International Law", *Use of Force and International Law,* Vol.1, No.1.

Chelsea O'Donnell (2014), "The Development of the Responsibility to Protect: An Examination of the Debate over the Legality of Humanitarian Intervention", *Duke Journal of Comparitive & International Law*, Vol.24, No.3

CALL FOR PAPERS

The **International Journal of Law and Policy Review** has issued a call for papers for their next issue:

Deadline: 30 October 2014 More Info: http://tinyurl.com/mf6jj45.

The **Working Group of Young Scholars in Public International Law** has issued a call for papers for the topic "*The Transnational in International Law*":

Deadline: 31 October 2014 More Info: http://tinyurl.com/n6eauz5.

The **Journal of Law, Technology and Public Policy** has issued a call for papers for their next issue:

Deadline: 14 November 2014 More Info: http://tinyurl.com/pucx46d.

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NEW WEBSITE

The ADC-ICTY would like to express its appreciation and thanks to Adam Harnischfeger for all of his hard work and dedication to the Newsletter. We wish him the best in his future endeavours.

EVENTS

'The Role of Education in Conflict Prevention'
Date: 1 October 2014
Location: The Hague Institute for Global Justice
More Info: http://tinyurl.com/qap36um.

'Evidence on Trial'
Date: 2 October 2014
Location: The Hague Institute for Global Justice
More Info: http://tinyurl.com/nabb52k.

'Dr. Jennifer Welsh on the Responsibility to Protect'
Date: 23 October 2014
Location: The Hague Institute for Global Justice
More Info: http://tinyurl.com/q2zzg28.

OPPORTUNITIES

Associate Legal Officer, (P-2), The Hague
Secretariat for the Assembly of States Parties, The International Criminal Court
Closing Date: 12 October 2014

Legal Officer (P-3), Nairobi
The Office of Administration of Justice, United Nations
Closing Date: 12 October 2014

Associate Legal Officer, (P-2), Vienna
International Trade Law Division, United Nations
Closing Date: 17 October 2014

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Affiliate Membership

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