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## Prosecutor v. Radovan Karadžić (IT-95-5/18-1)

Momčilo Krajišnik, former Speaker of the Bosnia Herzegovina Assembly, gave evidence in the case against Karadžić over five days, beginning on 12 November. The Prosecution alleges in the indictment that the Assembly had been an instrument of the central government headed by Krajišnik and Karadžić, which implemented their policies at a local level. During his testimony for the Defence, Krajišnik claimed that himself and Karadžić were not authoritarian and they did not "hold the highest position in the decision-making process and control of the government" among the Bosnian Serbs, as the Prosecution alleges. Instead, the Assembly was based on democratic principles and proposals were passed only after extensive and well-documented discussions. Krajišnik disputed the Prosecution's claim that Karadžić and his associates wanted an 'ethnically pure' Republika Srpska. Rather, the expulsion of Muslim and Croat civilians by local Bosnian Serb civilian authorities was organised to comply with agreements concluded with international organisations including the Red Cross. Under such agreements, ethnic minorities were to be given assistance in seeking shelter in places they felt safe, as a temporary measure until they could safely return. Regarding the Srebrenica massacre, Krajišnik stated that in July 1995 the Republika Srpska Presidency did not know anything about crimes against Muslim prisoners.

*Momčilo Krajišnik*

## ICTY NEWS



## Also in this issue

During his cross-examination starting on 19 November, the Prosecution disputed Krajišnik's credibility, by reminding the Court that he was charged with crimes against Muslims and Croats in Serb-controlled territories. Krajišnik, sentenced to 20 years' imprisonement by the ICTY in 2009, was granted early release by President Theodor Meron in September after serving two-thirds of his 20-year sentence.

On 13 and 14 November, Slavko Puhalić, former member of the Republika Srpska Army and Officer at Trnpolje detention camp, testified about the events at the camp. Puhalić claimed that notwithstanding a few alleged beatings and murders occurring in June and July 1992, no crimes or mistreatment of the Muslim population happened: it was an open centre to which non-Serb civilians came voluntarily from combat activity zones for safety. He did not see non-Serbs brought in an organised manner by buses; rather he saw people coming to the camp by cars, trucks and tractors.

Vojislav Kuprešanin, former President of the Autonomous Region of Krajina Assembly (ARK) gave evidence on 14 and 15 November. Karadžić began his examination-in-chief by reading a summary of the witness' statement. He claimed the ARK bodies acted independently and municipal crisis staffs (also referred to as 'states within the state') were not controlled by central authorities. Kuprešanin stated that the military rather than civilian leadership should be blamed, as Karadžić did not have any control over Ratko Mladić. He described the relationship between Karadžić and Mladić as 'always tense'.

On 15 November, Nikola Poplašen, Karadžić's former War Commissioner in the Vogošća municipality in Sarajevo and now university lecturer, stated that people left their homes voluntarily, to flee the chaos of war. He denied the responsibility of municipal crisis staffs and war presidencies in the persecution of the population: Karadžić was in favour of "truth, justice and the rights of all citizens". In mid-1992 he and Karadžić parted ways politically because Karadžić rejected Poplašen's proposal that the Republika Srpska and the Republic of Serbian Krajina be fully reunified.

In his testimony on 18 November, former President of the Crisis Staff of the Autonomous Region of Krajina, Radoslav Brdjanin, also said that non-Serbs from Krajina departed voluntarily to safer areas, rather than being expelled. He stated that the crisis staff established a 'removals agency' to assist with such departures. In any case, he implied that the crimes in the field could only be attributed to low-ranking municipal leadership because Karadžić did not have any association with the Krajina authorities or with the regional and local crisis staff.

On 26 November, the case continued with the examination of three men from Banja Luka: Novak Kondić, Andjelko Grahovać and Nikola Erceg. Kondić, former member of the Banka Luka Crisis Staff, said in his statement that the ARK operated as a 'separate state' and that the crisis staff was created to 'normalise life'. He said there was no evidence that the goal of the Serbian Democratic Party in Bosnia (SDS) was to permanently eliminate 'Bosnian Croats and Muslims from the territories claimed by Serbs'. Grahovać, former member of the ARK Crisis Staff, claimed that Karadžić and Krajišnik never gave instructions to persecute the population and ethnically cleanse the area. He said the crimes committed were not ordered from the highest echelons of government but were the result of an "epidemic among the citizens". Erceg said in his statement that the ARK Crisis Staff did not have any authority over the police and army. He stated that Crisis staff meetings did cover discussions on prison camps in Omarska and Keraterm, but only with respect to providing 'logistic support'. He said the ARK was created because of the difficulties of communicating with the Pale administration, and that its policies "did not comprise violence or persecution of non-Serbs".

The Karadžić case continued on 2 December with the testimonies of Dragan Kijać, Marko Adamović, Mikan Davidović, Rajko Kalabić and Mile Dobrijević.

## Prosecutor v. Ratko Mladić (IT-09-92)

Richard Higgs, military expert for the Prosecution, continued his testimony in the trial of Ratko Mladić on 7 November. Higgs, testifying about shelling of Markale Market on 5 February 1994, was questioned on the reliability of conclusions drawn by United Nations Protection Force (UNPROFOR) and UN military observers, who have stated the origin of the mortar fire cannot be definitively determined.

Defence Counsel for Mladić, Branko Lukić, used stills and video recordings to prove that two stabilisers were found in Markele, instead of one, as the Prosecution had alleged. Higgs had stated that the stabilisers were marked with numbers, which the video showed to be labelled with numbers 12 and 13. When asked if it was usual for stabilisers to be moved around in Bosnia, Higgs stated that is was not. However, in conclusion, Higgs maintained his conviction that one stabiliser was based on the stills, contrary to the video recordings. In conclusion, Higgs maintained his conviction that one stabiliser was based on the stills, contrary to the video recordings.

*Richard Higgs*

Higgs was also questioned regarding the second Markele incident which took place on 28 August 1995. He explained the ideal terrain for placing a mortar is a level surface, approximately four metres square. The expert also noted that mortars may be placed on steeper ground, which takes more time as the mortar must be 'dug in'.

The trial continued on 11 November, with Sir General Richard Dannatt testifying in the case. General Dannatt is a retired British Army Officer and former Chief of the General Staff. His testimony mostly related to general military practices and structures. Dannatt also participated in the NATO presence in Bosnia during the initial aftermath of the Dayton Accords.

When questioned by the Defence, Dannatt stated his view that within the VRS, the orders "came from the top" and that the Army of the Republika Srpska had a centralised command and control structure. Dannatt gave evidence about a meeting between General Rupert Smith and Mladić on 15 July 1995, wherein the two agreed on issues regarding supply lines, rotation of UNPROFOR staff, and the freedom of movement within the Srebrenica enclave.

Dannatt was further questioned about a statement he made in his autobiography, where he communicated his view that Mladić was a 'monster'. When asked if he still held that opinion, Dannatt replied in the affirmative. Dannatt also confirmed that according to the laws of the JNA and VRS, the command would have passed from Mladić to Milovanović, during the time Mladić was outside of Bosnia (i.e. in July 1995 during the time of the alleged Srebrenica killings). However, the witness did not believe that Milovanović would do anything without seeking approval from Mladić.

On 13 November, the Prosecution notified the Chamber about its intention to tender evidence from the mass grave, which is currently being examined in Tomašica.

The next witness called by the Prosecution was demography expert, Ewa Tabeau. Tabeau has testified in numerous trials before the ICTY. In the latest update of her expert report for the Mladić trial, Tabeau states that the number of victims recovered so far is 8,047, of which 6,745 have been identified. Tabeau's cross-examination was postponed for a day, to allow for the testimony of Janusz Kalbarczyk, former UN peacekeeper, who spoke about being held hostage by Serb forces in May and June 1995.

Janusz testified on 14 November, about his time as a hostage of the VRS. He was arrested on 26 May 1993, along with around 200 other UN peacekeepers, a day after the first NATO air strikes against Serb positions. During his time with the VRS, Janusz and Patrick Rechner, a Canadian peacekeeper, were interviewed for Serbian television. Janusz spoke about how the continuous relocation as detainees, gave him the impression of being used as human shields. Janusz further testified about a visit by a Delegation on 2 or 3 July 1995, which included Mladić. Janusz stated he did not recognise him at first because he was wearing civilian clothes and only realised in hindsight, after seeing television footage, that Mladić had been part of the Delegation.

On 15 November, the Trial Chamber ordered a new medical examination for Mladić. On 22 October, the Appeals Chamber granted the Defence request for a four day trial week. The Defence had long sought a reduction in the number of trial days per week, due to the deteriorating health of the Accused. The Detention Unit doctor, along with two doctors from Belgrade, gave their opinion that the Accused was in danger of suffering a 'burnout' from exhaustion, or possibly another stroke. In their order of 15 November, the Trial Chamber asked that before the Defence begin their case in February or March 2014, an updated report on the health of the Accused must be presented to the Judges.

Ewa Tabeau continued her cross-examination on 18 November. Legal Consultant for the Accused, Dragan Ivetić, questioned Tabeau on her use of 'inappropriate' language in her expert report. The Defence contended that this was language more suitable for a media report as opposed to an expert demographic report, which is meant to steer clear of emotive language. Tabeau also briefly spoke of 'hacktivism' and its use as a tool for demographic investigators. Tabeau was confronted with the preliminary census results of the most recent Bosnia Herzegovina Census Commission, as well as allegations in the press that the 2013 census showed more registered voters than registered inhabitants for some cities. Despite this, Tabeau maintained her view that the voter lists were reliable.

Ewan Brown was the next Prosecution military expert witness called. Brown was a military analyst for the Office of the Prosecutor from 1998 to 2004. Brown's analysis of political and military documents led him to establish a link between the military operations and the 'six strategic goals' of the Bosnian Serbs.

Milenko Todorović, former Chief of Security and intelligence in the East Bosnia Corps, testified on 25 November. He gave evidence as to an order he received from the Main Staff in July 1995, after the fall of Srebrenica. He stated the order was probably received in a cable and contained instructions to prepare accommodation for approximately 1,000 to 1,200 prisoners in Batković. This was in anticipation of these prisoners being exchanged for captured VRS soldiers. Todorović stated the prisoners never arrived and when he asked Tolimir about the situation, Zdravko Tolimir (IT-05-88/2) told him the prisoners were not coming. Todorović later learned the prisoners who were supposed to arrive in Batković had been executed in Pilica.

On the 27 November, Prosecutor Dermot Groome announced his intention to re-open the case to introduce evidence regarding the mass grave at the Tomašica mine near Prijedor. Groome stated he would require approximately two weeks in March 2014 to adduce this evidence and that it is relevant for allegations in Count 1 of the Indictment.

The Defence have requested the same amount of time as the Prosecution to present their case and asked for six months to prepare.

The Defence also stated their intention to file a Rule 98 *bis* motion when the Prosecution case rests. The Defence believe the Prosecution have failed to sufficiently prove their case and intend to call for an acquittal on the counts in the indictment for which, in the view of the Defence, inadequate evidence has been presented. The motion will be filed before March 2014.

## Prosecutor v. Goran Hadžić (IT-04-75)

On 28 November, the Trial Chamber issued both its decision on the Prosecution's bar table motion and a scheduling order for Rule 98 *bis* proceedings. In its decision on the bar table motion, the Chamber denied 46 out of 237 documents for admission. Two additional documents were requested to be added to the Prosecution's 65 *ter* exhibit list. The Trial Chamber added one and rejected the admission of the second due to the lack of good cause.

On the same day, and pursuant to the Order on Close of the Prosecution Case-in-Chief, dated 18 July, the Chamber also issued the scheduling order, setting out the dates for the 98 *bis* submission. According to this order, the Defence team shall present its oral submission on 16 December, while the Prosecution may also have one sitting day for its response on 18 December. The Defence's preparation time for its case will start from the decision on the 98 *bis* submission.

## Prosecutor v. Đorđević (IT-05-87/1-A)

On 13 November, a status conference in the *Đorđević* case was convened pursuant to Rule 65 *bis* (B) of the Rules of Procedure and evidence. During this conference, Judge Agius notified the parties that the Judges are currently finalising the judgement. Subsequently, on 15 November, the scheduling order was issued, announcing that on 27 January 2014, the Appeal Judgment will be pronounced in public.

To recall, Đorđević filed a submission regarding the variation of the grounds of Appeal following the translation of the Trial Judgement into the B/C/S language on 29 November 2012. The Appeals of the parties were heard before the full bench on 13 May 2013.

*Vlastimir Đorđević*

## ADC-ICTY Annual Training

On 1 December, the ADC-ICTY held its annual training conference. The topics which were covered this year related to the role and work of Defence Counsel before the Mechanism of International Criminal Tribunals (MICT) that began its work in The Hague on 1 July 2013. Speakers included; Michael Karnavas, Dan Saxon, Jelena Gudurić and Esther Halm. The training was attended by around 30 Defence Counsel from the ICTY and proved to be a valuable experience. For photos from the event: http://tinyurl.com/o7r7zyw

*Michael Karnavas, Jelena Gudurić and Dan Saxon*

## ADC-ICTY General Assembly and Election of New President

On 1 December, the ADC-ICTY held its annual General Assembly. During the assembly many issues were discussed and elections for the 2013-2014 committees occurred. Colleen Rohan was elected as President and the Vice-Presidents are: Christopher Gosnell, Dragan Ivetić, Jelena Nikolić and Vladimir Petrović. The new committees look forward to working for all members of the ADC-ICTY during their tenure.

For a full list of ADC-ICTY committees: http://tinyurl.com/llotxqr

*Colleen Rohan*

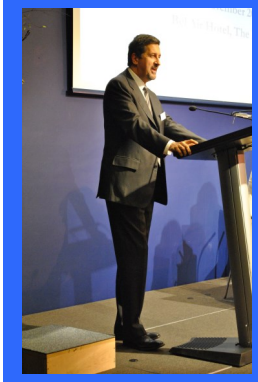
# ADC-ICTY LEGACY CONFERENCE

On 29 November 2013, the ADC-ICTY held its Legacy Conference at the Bel Air Hotel in The Hague. The conference was an outstanding success, with around 300 people attending. The programme of the conference was divided into four panel discussions with extensive audience participation, a keynote address and opening and closing remarks. The ADC-ICTY was honoured to be able to invite His Excellency President Theodor Meron, The Right Honourable Lord Iain Bonomy, Judge Bakone Justice Moloto and Judge Howard Morrison, as well as renowned Defence Counsel as speakers to the Conference.

## Opening Remarks

The ADC-ICTY Legacy Conference was opened by Novak Lukić, Then-President of the ADC-ICTY. As the first War crimes Court created by the United Nations, Lukić described the unprecedented contribution that the ICTY has made in developing procedural and substantive international criminal law over its 20 -year existence. He also recognised the significance of the Tribunal in the social, political and legal development of the States that formerly constituted Yugoslavia.

Describing the importance of the ADC-ICTY in this context, Lukić stated that the ADC-ICTY tasked itself with the responsibility of showing that a fair trial depends on the recognition of defence functions, and that what we have learned must remain a reality. What we went through must be shared with others: the international community and those that find themselves 'in our shoes'. Lukić expressed particular thanks to all those involved in the ADC-ICTY over the past two decades including young lawyers, judges, investigators, defence experts and Defence Counsel. He stated that around 220 Defence Counsel have appeared before the ICTY, from more than 20 countries, which constitutes a proud number.



*Novak Lukić*

On behalf of the ADC-ICTY, Lukić extended his sincere gratitude to the Law Faculty of the Erasmus University Rotterdam, who sponsored this important Conference.

## Keynote Speech

His Excellency President Theodor Meron delivered the keynote speech during the ADC-ICTY Legacy Conference. Being the current President of both the ICTY and The Mechanism for International Criminal Tribunals, President Meron shed a unique insight on the challenges that the ICTY has faced over the past 20 years. Reflecting on this history, he was able to highlight that in spite of obstacles, the Tribunal has achieved a number of great victories.

Speaking specifically about the ICTY's role in administering justice at the international level, President Meron showcased how the ICTY has demonstrated that it is possible to hold individuals accountable for some of humanity's most heinous crimes. Furthermore, he identified how the ICTY has established important international legal precedence and clarified the scope of International Humanitarian Law and International Criminal Law. These precedents have not only been applied in the ICTY itself, but have also been utilised by other international tribunals and judicial authorities in domestic jurisdictions. Through the deep respect for human rights, the principles of due process and rule of law have been enshrined in the functioning of the ICTY. President Meron proudly reflected that rights such as the presumption of innocence and the right to a public hearing form part of the great legacy the ICTY will leave behind. He further stressed that fair trial rights are a fundamental concern for the Tribunal and as such their recognition is an important development in International Criminal Law.

Through the dedicated and tireless efforts of both the

*H.E President Theodor Meron*

Office of the Prosecutor and the Defence, the ICTY has also been seen to create an academic endowment to the future generations of jurists. Through the creation and maintenance of detailed records, there is now a large quantum of evidence that can be analysed and studied. This result, while only tangentially related to the original purpose of the ICTY, allows the work and achievements of this institution to live on and gain a sense of legal immortality.

In concluding his distinguished address, President Meron addressed the role of Defence Counsel and how it forms part of the ICTY Legacy. He stressed the positive impact that the common law adversarial system has had on the Tribunal and its proceedings, and applauded the vigorous advocacy that the Defence Counsel of the ICTY have demonstrated over the years.

## Panel I—Rights of the Accused

The first panel discussion of the ADC-ICTY Legacy Conference focused on the Rights of the Accused. The panel consisted of ADC-ICTY members Mira Tapušković and Christopher Gosnell, and The Right Honourable Lord Iain Bonomy. The first panel was moderated by Michael G. Karnavas.

### Equality of Arms

Mira Tapušković, former Vice-President of the ADC-ICTY and member of the ADC-ICTY Disciplinary Council and Amicus Committee, commenced with a discussion concerning equality of arms. Tapušković introduced the topic by stating that the basic principle was that the Prosecution and the Defence must have procedural equality and share a strong commitment to human rights and the same perception of fairness. In the ICTY, this right flows from Article 21 of the ICTY Statute. Tapušković then discussed her experience about how the Rights of the Accused are implemented and how they function within the ICTY. She said although the idea of a fair trial encompasses the idea that every party must have the opportunity to present its case sufficiently, in practice, the Defence is still substantially disadvantaged.

Tapušković noted that one of the basic tenets of this right is equal access to the Court. However, ICTY jurisprudence shows a divergence between theory and practice, as different Chambers apply different standards to similar situations. Equality would require that the same time would be given to both sides, which is seldom the case.

*Mira Tapušković*

While some have applied the test of substantial disadvantage, which in itself is a nebulous concept and difficult to satisfy; others have applied a test of proportional equality. Tapušković continued with providing examples of ICTY jurisprudence in relation to the number of witnesses and allocation of time. In one of the cases, the Trial Chamber allocated the Defence 25 per cent of the time awarded to the Prosecution, and this was held to be a substantial disadvantage. While in the Karadžič trial, equal time has been given to both sides, this is generally still a rarity.

Tapušković further emphasised that the rights of the Accused should not be considered narrowly and should encompass the situation outside the Tribunal as well. She stated that the Prosecution is at a substantial advantage due to the larger amount of resources available. Unlike the Defence, the Prosecution has access to investigators, people in the field and other resources needed to perform their duties. To elucidate this point, Tapušković mentioned that in the 2004-2005 budget of the Tribunal, the budget allocated for the Defence was just under $30 million while the budget of the prosecution was $100 million. Further, she stated that the Prosecution is able to

cooperate with other authorities, which is not possible for the Defence.

Tapušković concluded with stating that such differences in the equality of arms undermine the legitimacy of the Tribunal and should not be ignored.

**Right to Confrontation at Trial**

The discussion continued with The Right Honourable Lord Iain Bonomy, permanent Judge at the ICTY between 2004 and 2009 and member of the Trial Chamber in the Milošević case, discussing the Right of Confrontation at Trial.

*The Right Hon Lord Iain Bonomy*

Lord Bonomy stated that statistically speaking, the majority of Accused are convicted in any legal system. Thus, the Defence automatically starts with a disadvantage, and most interlocutory decisions are awarded to the Prosecution if they have a decent case and preparation. This places an enormous burden on the Defence, particularly at the ICTY, as the Defence does not set the agenda but can only respond to it. Therefore, challenge and confrontation are important arms of the Defence, but they do not need to be employed aggressively. Lord Bonomy stated that productive confrontation requires skill and guile to achieve a favourable decision, and requires one to not lose sight of the objective. These skills are not only required for cross-examination but also for general advocacy. Lord Bonomy argued that confrontation also includes confrontation with the judges.

Lord Bonomy presented obstacles in exercising this right effectively, including the problem of adjudicated facts, the volume of disclosed evidence, rule changes, delayed evidence and more. He said that he recognised the difficulty arising due to the sheer length of cases as there was never enough time to argue everything one would like to argue properly. Accordingly, it is essential to focus on what really matters and not waste time challenging incontrovertible facts and trifling issues. Further, Lord Bonomy felt that the Defence can help the Chambers in avoiding some of these obstacles by drafting detailed procedural rules in order to allocate more time for cross-examination and to avoid rule changes. He also pointed out that one should not be too circumspect about preparation and sometimes last minute documents produced by the Prosecution may work in favour of the Defence.

Lord Bonomys stated that the Right to Confrontation is but one element in a fair and expeditious trial, and that fairness and expeditiousness run hand in hand. Therefore, a great deal can be achieved by cooperation on both sides, which would be welcomed by the Chamber. Lord Bonomy concluded by pronouncing that the role of the Defence was to apply the Right of Confrontation properly in order to make the adversarial trial effective.

**Right to Appeal**

The third panellist, Defence Counsel Christopher Gosnell, ADC-ICTY Vice-President, who has also served as a member of the Amicus Committee, discussed the Right to Appeal. He commenced with a comparative analysis of appeal rates across various jurisdictions. On the one hand, in the last 14 Defence cases of Appeal before the ICTY Appeals Chamber, the convictions and sentences in six cases were confirmed, in two cases the sentences were increased by an average of 7.5 years and in six cases the sentence was reduced by an average of 23 years. In contrast, the rate of reversals in domestic cases was substantially lower with only 0.5 per cent in China, 11 per cent in the United Kingdom and 20 per cent in United States federal cases. At the ICTY, half of the cases are remanded and half are disposed.

*Christopher Gosnell*

Gosnell argued that these figures did not mean that the Appeals Chambers were highly interventionist, though it has created controversy. There was a need to look at the bigger picture as there could be a number of intervening factors that contribute to these figures. First, international criminal law remains unsettled and many issues have not yet been adjudicated. This leads to a high likelihood of change at the appeals stage. Secondly, the indictments in these cas-

es have broad statements of fact and charge various modes of liability. Years of events are covered by these trials and therefore trial briefs are often completely different between the two sides as there is a wide range of potential approaches to the case. Finally, trial judgments can, despite their lengthiness, be half-baked since the trial is often completed without a full clash of opinions between the Defence and Prosecution, as in adversarial cases.

Gosnell argued that Appeals Chambers pronounce themselves deferential on the facts to the Trial Chambers, but fail to be deferential on issues of law. Rather, Appeals Chambers stress the manner in which most issues are formulated, while there are often issues of both fact and law. There is thus a number of in-between categories that have been created where the threshold is much lower for interference by the Appeals Chambers. An example of such a category is the *de novo* assessment of evidence based on previously unannounced legal standards. Another example is the approach standard, which is much closer to the error of law standard though it is not the same as an error of law.

Gosnell thus concluded by stating that it cannot be deduced that the Defence was at a disadvantage by an interventionist Appeals Chamber, but that there is a lot of unpredictability which often results in a second trial. This impacts the effectiveness of trial, though not necessarily the fairness.

## Panel II: Transparent Justice: The Defence Experience

The second panel discussion elaborated on the topic of Transparent Justice from the viewpoint of the Defence. The panel included speeches by Defence Counsel Suzana Tomanović, Gregor Guy-Smith and Steven Kay QC. The session was moderated by former ADC-ICTY President Slobodan Žečević.


*Slobodan Žečević*

Introducing the topic, Žečević stated that while transparent justice is of great concern in national law, it is even more important in international law. Nevertheless, many difficulties arise in transferring this principle to the international legal realm, particularly due to 'transparency' being difficult to define, and due to complex rules of procedure differing at national and international levels.

### Witness protection measures

Suzana Tomanović, former Vice-President of the ADC-ICTY and former Chairperson of the Membership Committee and Disciplinary Council, was introduced as the first speaker, elaborating on witness protection measures. Due to Tomanović's absence, her speech was presented by Michael G. Karnavas.

Karnavas began the presentation by stating that in the field of international law, witnesses are more likely to be forced to testify and there is less room for confabulation. The remaining question is: How and to what extent should there be witness protection measures?

From the Defence point of view, the question appears *prima facie* answered. In the statute of the ICTY, the relevant provisions concerning that matter are Articles 21 and 22: Rights of the Accused and Protection of Victims and Witnesses, respectively. In order to answer the question of witness protection measure in an optimal way, a balance has to be struck between those two provisions. According to Tomanović, the ICTY has not always achieved such a balance.

A familiar measure on the Defence side is the guarantee for a safe passage. However, as witnesses testify about factual evidence against the Prosecution, there is a fear of prosecution if their testimonials conflict with the Prosecution's truth.

In Tomanović's view, there are three essential elements of witness protection: the level of protection should be justified, it should be proportionate, and it should be respected.


*Michael G. Karnavas*

Noticing that 50 per cent of hearings are in closed session, the question of transparency is of great concern. The question of fairness in trials also arises

in relation to testimonies from secret sources. In order to evaluate those situations, two general principles have to be taken into consideration: the accused has a right to confrontation, and convictions cannot be based solely on witness testimonies.
Another issue arises regarding the disclosure of the identity of anonymous witnesses pre-trial and the consequences on the administration of justice. In the ICTY Statue, Article 66 relates to disclosure and Article 69 to witness protection.

The presentation ended with a thought for the professionalism of the Victims and Witnesses Section and the support they give to witnesses for both Defence and Prosecution.

**Rule 70**

The panel continued with a speech by Steven Kay, who was appointed Queen's Counsel in 1997, and has been Defence Counsel on various cases before the ICTY. In his speech, Kay QC elaborated on Rule 70 of the ICTY Statue.


*Steven Kay QC*

In the early existence of the ICTY, Rule 70 was not included in the Statue. In 1996, the necessity for the Prosecution, Defence and victims to know exactly what had to be disclosed, led to an elaboration of Rule 70. This Rule allows parties to present their case in their preferred way, by outlinig certain matters not subject to disclosure. The rule recognises that the Defence can be, from time to time, in possession of information that it does not want to disclose. According to Kay QC, information can be cloaked and obscured under Rule 70. An example of this is when General Wesley Clark gave his testimony in the Milošević case.

Kay QC concluded by raising the following questions: Is there a selective nature by which evidence is used? How does this relate to transparency? Does politics influence the outcome of a case?

**The Ethics of Talking to the Media**

The third speech was delivered by Gregor Guy Smith, founding member of the International Criminal Law Bureau and former Vice-President of the ADC-ICTY. Guy-Smith elaborated on the ethics of talking to the media in his presentation.

He proposed that lawyers conduct themselves with loyalty and integrity. They must adhere to these standards both inside and outside the courtroom. Guy-Smith stated that this rule does not solely concern Defence attorneys: it also applies to Judges and the Prosecution. Guy-Smith highlighted the recent decision of the ICTY Disciplinary Board, in which it appears that there is a positive obligation for Defence Counsel to protect the reputation of the Tribunal. Looking at the contempt case against Toma Fila, Guy-Smith noted that this positive obligation seems to apply to Counsel making statements in the media. He questioned such a decision because of the importance of free discussion and criticism of international courts and tribunals.


*Gregor Guy-Smith*

Guy-Smith concluded with a powerful message: we must not remain silent when it comes to criticising the state of the law. Lawyers have to maintain their convictions continue asking questions about the state of law and that of the ICTY. The Defence Counsel must not lose their heart and courage when pursuing their convictions.

## Panel III: Role of the ADC—ICTY

The third panel discussion examined the role of the ADC-ICTY. The panel consisted of Judge Bakone Justice Moloto and ADC members Eugene O'Sullivan and Stéphane Bourgon. The panel was moderated by former Head of Office, Dominic Kennedy.

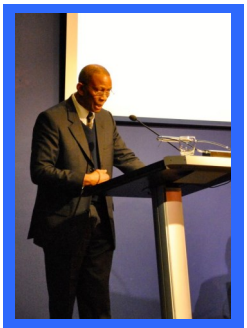

*Dominic Kennedy*

**Importance of the Defence Function**

The panel began with Judge Bakone Justice Moloto elaborating on the importance of the Defence function. Practising law since 1976, Judge Moloto served as a Judge in numerous Courts and has been a member of the ICTY since 2005. Currently, he is member of the Trial Chamber in the case of Ratko Mladić.

Among the most important principles of justice is

the Right to a Fair Trial, based on the notion that all individuals have a right to a proper defence. According to Article 20(1) of the ICTY Statute: "The Trial Chambers shall ensure that a trial is fair and expeditious and that proceedings are conducted in accordance with the rules of procedure and evidence, with full respect of the rights of the accused (…)", while Article 21(1) reads that "All persons shall be equal before the International Tribunal".



*Judge Bakone Justice Moloto*

Herein resides the importance of the Defence function: to ensure and protect the Rights of the Accused. Judge Moloto provided a range of rights, all of which are founded on the presumption of innocence, according to which the Accused is innocent until proven guilty. Accordingly, the main right of the Accused is the right to be present in Court, to hear, to be informed on and thus, to know his accusations. Therefore, Defence Counsel has a right of being present, in order to ensure that the Accused is able to confront the witnesses and their testimony in its entirety. In this scope, the Accused enjoys the right not to incriminate him or herself, therefore bringing and presenting all relevant information as evidence, supporting his or her case. The Accused has the right to lead the evidence strategically and according to the theory of the case, as well as the right to have sufficient time or alternatively the time reasonably required to control and present the evidence in a proper way. For example, the Defence may select witnesses, the testimony of whom may be supportive and exculpatory for the Accused, while cross-examination by the Prosecution should be done in a respectful way and within the theory of the case. Within this context, the Accused is entitled to a fair and expeditious trial, both of which are ensured by the publicity of the proceedings. As Judge Moloto said, "justice must be seen to be done" and "justice delayed is justice denied". Therefore, the Accused must be tried within reasonable time.

All in all, a fair and impartial trial is vital to the credibility and integrity of a Court in the eyes of the international community, the media and the public. To ensure the legitimacy and integrity of the systems of international criminal courts and tribunals, Defence Counsel and Prosecution should have equality of arms. More specifically, Article 21 of the ICTY Statute stipulates that the Tribunal must inform a Defendant of the nature and cause of a charge promptly and in detail in the Defendant's native language; provide the Defendant access to Counsel and adequate time and facilities for the preparation of his or her defence; allow the Defendant equal opportunity to examine witnesses; and provide the Defendant with free assistance of an interpreter if required. Consequently, an adequate defence is imperative to contribute to the development of the law and jurisprudence and to ensure fair trials.

## Role of the ADC-ICTY

The panel continued with Eugene O'Sullivan, elaborating on the role of the ADC-ICTY. Eugene O'Sullivan has acted as a Defence Counsel in various cases and has been a member of the ADC-ICTY since 2004.

Due to the rapid development of international criminal law over the past decade and the emphasis on ending impunity, the international community has too often overlooked the right to a fair trial. Numerous inequalities exist between Prosecution and Defence in every functioning international criminal court or tribunal. Within the system of the ICTY, the ADC-ICTY was established in 2002 in order to ensure high quality defence and to make collective representations to the organs of the Tribunal on behalf of Defence Counsel. As O'Sullivan stated at the conference, the ADC-ICTY, although officially recognised by the ICTY as the association of Defence Counsel before the Tribunal, has never been an organ of the ICTY.

*Eugene O'Sullivan*

Within this context, the objectives of the ADC-ICTY are to support the work, independence and efficiency of the Defence Counsel, to encourage participation in Tribunal activities, to establish its recognition outside the field of the Tribunal, to advise the Tribunal regarding procedural changes, and to oversee Defence Counsel's performance.

In theory, Prosecution and Defence at the ICTY have an equal opportunity to make their best arguments. In practice, however, this is not the case. Challenges

which the Defence Counsel continues to face include the need for better funding, better facilities and resources, improved access to witnesses, improved translation services and access to court databases. This results in disproportionate and unequal footing in comparison to the Prosecution.

The ADC-ICTY has taken a leadership role in addressing both the interests of Defence Counsel and the rights of the Accused they represent. An example given by O'Sullivan was the outstanding ADC-ICTY internship programme which has operated successfully over the past years.

**Future of Defence Organisations in International Criminal Institutions**

The panel was concluded by Stéphane Bourgon, discussing the topic of the future of defence organisations in international criminal institutions. Stéphane-Bourgon has been practicing before the ICTY for 14 years, and is a member of the ADC-ICTY since 2002. Bourgon was elected President of the ADC-ICTY bothin 2003 and 2004 and Vice-President in 2011.

*Stéphane Bourgon*

Stéphane Bourgon spoke about the role and the future of defence organisations in international criminal institutions, drawing a balance between the protection of Defence Counsel and the protection of the integrity of international criminal law. According to Bourgon, a proper protection of Defence Counsel and the function of the Defence includes equal and proper working conditions for the Defence, proper training, quality and discipline, as well as a seat at the table with the other organs, therefore, having the ability to effectively represent the Accused and his or her rights.

However, Bourgon highlighted the weakness of defence associations within international criminal tribunals. For example, at the ICTR, there is no recognised Association of Defence Counsel, membership is optional and the relationship between the Association and the other organs of the Tribunal is of a challenging nature. At the SCSL, the Defence Association falls under the oversight of the Registrar. At the ICC, the Office for Public Counsel for the Defence, which is part of the Registry, similarly lacks the structure and standing that the ADC-ICTY has.

Bourgon gave the example of the current case against Jean-Pierre Bemba Gombo at the ICC, where on 20 November 2013, Judge Tarfusser issued a warrant of arrest for Bemba, his lead Defence Counsel Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo (case manager), Fidèle Babala Wandu (member of the DRC Parliament and Deputy Secretary General of the Mouvement pour la Libération du Congo) and Narcisse Arido (Defence witness). These five are accused of corruptly influencing witnesses before the ICC and presenting evidence that they knew to be false or forged. The suspects, it is alleged, were part of a network for the purposes of presenting false or forged documents and bribing certain persons to give false testimony in the case against Bemba.

From a Defence point of view, it seems that if they are presumed innocent, the Court has deprived Bemba of his right under Article 55(2)(c) of the Rome Statute to have "legal assistance of his choosing" and crippled his defence in the middle of trial. He questioned what implications this could have for Bemba's due process rights and how a substitute Counsel could take over the case in a presumably short time. Bourgon emphasised that the Lead Counsel plays a critical role on a Defence Team, and in many ways a case manager plays an even more important role. He stated that until now the best model of a defence association is the one in the Special Tribunal for Lebanon, where the defence office is an organ of the Tribunal. In this context, he concluded by suggesting a model of an International Criminal Bar, as a future possibility of having one type of organisation doing everything within a Tribunal.

## Panel IV: ICTY Legacy

The last panel, dedicated to the legacy of the ICTY, involved ADC-ICTY members Colleen Rohan and Edina Rešidović, as well as Judge Howard Morrison as speakers. The moderator, Richard Harvey, launched Panel IV in a dynamic manner by directly addressing the many interns in attendance and highlighting their contribution, albeit unpaid, to the work and legacy of the ADC-ICTY and all institutions with which they are involved.

### Expectations v. Reality

Colleen Rohan was the first speaker of the last panel. She is a founding member of the International Criminal Law Bureau, former Vice-President of the ADC-ICTY, former Chairperson of the ADC-ICTY Disciplinary Council and current ADC-ICTY representative to the ICTY Disciplinary Board.


*Colleen Rohan*

Rohan's topic of discussion was "Expectations v Reality", and during her presentation she explored the public's expectation of Tribunals, and specifically their perception that they should function as non-governmental organisations instead of legal bodies. She noted that the reality is that while the Tribunals were created to try the crimes that offend humanity, the Accused in the dock is still entitled to the presumption of innocence. Thus, the trial procedure cannot become a partisan exercise to placate the international communities' perception of justice. The ICTY has proven that complex cases can be tried internationally, but it is important to recognise the reality of the costs associated with international justice. Also, despite the strides forward of the Defence, they continue to be excluded from significant ICTY activities and a lack of understanding of the Defence function remains.

Rohan engaged with the question of whether or not the Tribunal is "a settled system of law", concluding that it is not. This led to the proposition that it could benefit from a third level of appellate review to address this. A well-informed and well-funded Defence is integral to the process of justice.

She ended succinctly by stating that, "justice, like beauty, is in the eye of the beholder". This observation succeeded in uniting the work of those within the ADC-ICTY, despite their diverse backgrounds, and commended them on the high standard sought, and achieved, in providing fair trials and justice.

### Perceptions from Countries of the Former Yugoslavia

Edina Rešidović was the next speaker on the topic of perceptions from countries of the former Yugoslavia. Rešidović is Co-Founder of the ADC-ICTY, who aided in developing and drafting the ADC-ICTY Statute and was a member of the ADC-ICTY Training Committee, Rules Committee, Disciplinary Panel and the Advisory Panel of the ICTY.

Rešidović spoke about the principle of equality and how this is conceived in the former Yugoslavia. She addressed the inequalities of access to justice in the region regarding the State Court of Bosnia and Herzegovina. While domestic prosecutors have full access to search the evidence archives of ICTY cases, Defence Counsel do not have access to the same and rather only the Criminal Defence Section of the Bosnia Herzegovina (BiH) Court has the ability to perform searches, albeit with some limitations. She spoke of situations where the Criminal Defence Section of the BiH Court may search for evidence and will only be able to access redacted statements. Ergo, the Defence teams know what witnesses have said but do not have access to the witnesses themselves.


*Edina Rešidović*

While the former-Yugoslavia Criminal Code did not expressly provide for crimes against humanity, Serbia, Croatia and Bosnia and Herzegovina apply different standards of law regarding crimes against humanity. It is noteworthy that in BiH, the death penalty was only abolished after the war. The recent Simšić decision of the European Court of Human Rights ruled that the Court of BiH must apply the substantive law which was in force at time the crime occurred, and not the new law, as this would offend the law on non-retroactivity.

Rešidović returned to the topic of equality before the law, speaking about access to evidence. She considered how the laws on access to confidential materials are being used to dissuade requests for information. The presentation was concluded with Rešidovic offering her own opinion on the legacy of the ICTY. She remarked that in the region of the former Yugoslavia this still remains to be seen.

**Future Challenges for Rights of Defence in International Criminal Law**

The last speaker on the panel was Judge Howard Morrison. Judge Morrison served as a Defence Counsel at the ICTY and ICTR from 1998 to 2004 and became a member of the ADC-ICTY. He has been a Judge at the ICTY since 2009 and is currently a Judge at the Trial Chamber for Radovan Karadzić.

*Judge Howard Morrison*

Judge Morrison engaged with the topical issue of the future challenges for rights of Defence in international criminal law. He drew parallels between future challenges and those faced when the institution first began, suggesting that the same issues were still the subject of contention. He noted that at present the key challenge is austerity, with his discussion lending itself to the conclusion that this is unlikely to be resolved and will only be exacerbated in the future. Cooperation with States has been a sustained issue from the Court's creation, yet there is still no 'magic wand' to resolve this. The challenge for the Defence will be the lack of cooperation of States, including refusals to provide the Defence with evidence. Judge Morrison further stressed the importance of the Defence maintaining their ethical standards to fulfil their role as Defence advocates.

He speculated that the work load in international criminal law will grow, as he foresees more conflicts in the near future and corresponding issues of international humanitarian law. For him this raised the possibility of 'resource wars' for water, food and space occurring, which will need different legal approaches.

Judge Morrison mused over the possibility that international law will begin to be applied domestically more frequently as more countries rely on it as a mechanism to ensure justice for crimes committed. By way of example of the growing relevance of international law, he stated "the age of the ad-hoc tribunal" is not yet over, specifically citing Syria as a testament to this assertion.

On the topic of international institutions, Judge Morrison spoke wryly about how the 'honeymoon stage' of the ICC has ended and that it had entered the more difficult 'marriage phase'. The tension between the ICC and the African Union has entered a new phase in his opinion, even though it was universally acknowledged that there would always be tension between the two.

He observed that individual rights are now 'unpopular' with governments, citing the decision of the Government of the United Kingdom to consider a withdrawal from the European Court of Human Rights. A move from individual rights to 'community rights' was predicted, yet it was noted that the delineation between the two will present the new challenges for future international lawyers as well as the fields of environmental crimes and trans-national corporate crimes. It is these fields that he encouraged young lawyers to explore for future opportunities and to not limit themselves to international courts. His advice to the aspiring lawyers in the audience was positive, as he urged them to just keep going and not to give up. His closing remark was in earnest: "you're going to make a difference, because you're going to have to".

## Closing Remarks

At the end of a successful day, Novak Lukić concluded the event by highlighting that the purpose of the conference was to share the ADC-ICTY's experiences with others. Special thanks was given to all speakers and moderators, honourable guests and the various ADC-ICTY Committees involved in the organisation of this event.

*ADC-ICTY Legacy Conference*

The ADC-ICTY expresses its gratitude to the Erasmus School of Law, Rotterdam, as Official Sponsor of the ADC-ICTY Legacy Conference. The ADC-ICTY would also like to express its gratitude to the numerous organisers, volunteers and members of the various ADC-ICTY Legacy Conference Committees for their invaluable contribution and outstanding support in organising this important Conference.

It is envisaged that the speeches of the conference will be published and a recording will be made available soon. For further information on the ADC-ICTY's legacy work please contact the Head of Office at **iduesterhoeft@icty.org**.

For photos from the conference: http://tinyurl.com/px24foe

For further information regarding the conference: http://adc-icty.org/

Follow the ADC-ICTY Legacy Conference on Twitter @ADCICTYLegacy / #ADCLegacyConf

On 29 November the ADC-ICTY Annual Party also took place with many staff from the Tribunal and conference participants attending. For photos from this event: http://tinyurl.com/phtzz63

# LOOKING BACK...

## International Criminal Tribunal for Former Yugoslavia

**Five years ago...**

On 20 November 2008, Judge Christoph Flügge (Germany) was sworn in as a permanent Judge of the Tribunal. Judge Flügge replaced Judge Wolfgang Schomburg who resigned from the ICTY, effective 18 November 2008.

This appointment was made by the Secretary-General in accordance with article 13 *bis*, paragraph 2 of the ICTY Statute, which reads:

*Judge Christoph Flügge*

"In the event of a vacancy in the Chambers amongst the permanent judges elected or appointed in accordance with this article, after consultation with the Presidents of the Security Council and of the General Assembly, the Secretary-General shall appoint a person meeting the qualifications of Article 13 of the Statute, for the remainder of the term of office concerned".

## Extraordinary Chambers in the Courts of Cambodia

**Five years ago...**

On 4 December 2008, the Defence of Khieu Samphan filed an urgent application for release before the Pre-Trial Chamber of the ECCC. This application followed a Defence Appeal against the 18 November 2008 Order on Extension of Provisional Detention, which ordered the Accused to remain in the custody for a period not exceeding one year before the commencement of the Trial.

*Khieu Samphan*

The application was filed against the background that the Accused was being held arbitrarily and based on a non-existent judicial act. The Defence further stated there was a clear violation of the Right of the Accused, particularly his right to defend himself and the right of being tried within a reasonable amount of time. In its application, The Defence requested the President of the Pre-Trial Chamber to order a suitable measure for Samphan.

The President of the Pre-Trial Chamber declared the application inadmissible, citing that the President has no jurisdiction to decide on the application. The President stated that at other international courts and tribunals, including the ICC, ICTY and ICTR, the decision on provisional release must come from the Pre-Trial Chamber as a whole, rather than as a single-handed act of a President.

Khieu Samphan is former Head of State of Democratic Kampuchea. He is charged with crimes against humanity, genocide and grave breaches of Geneva Conventions of 1949. His Trial is currently still on-going.

# NEWS FROM THE REGION

## *Bosnia Herzegovina*

### Former Policemen Acquitted of Charges

Four Bosnian Serb former policemen were acquitted by the Appellate Division of the War Crimes Chamber of Court of Bosnia Herzegovina (BiH). Milan Perić, Spasoje Doder, Predrag Terzić and Aleksandar Cerovina were accused of arresting Bosnian Muslims with discriminatory intent. The arrested Muslims were subsequently executed in Kalinovik in 1992. The Court ruled that the Accused had too low of a rank to know that the orders were illegal.

The Appeals Chamber, Judge Senadin Begtašević presiding, explained that "the Prosecution's evidence could not persuade the Chamber that defendants had discriminatory intent, or the will or intention to participate in the expulsion through illegal imprisonment of Muslim civilians". He added that even though there was a broad and systematic attack on Bosnian Muslim civilians by Bosnian Serb army and police, as well as paramilitary formations in the summer of 1992 in the territory of Kalinovik, the Prosecution did not present enough evidence that the defendants were aware of this.

Judge Begtašević stated that, "the evidence does not indicate that the defendants knew about intentions of their superiors, but that they thought their assignment was only to guard a group of civilians". The men were also acquitted of having participated in an attack on the villages of Jelešca and Vihovici and illegally arresting civilians. The former policemen were originally cleared of those charges in March 2012, but the Appeals Chamber had quashed the verdict and ordered a retrial. This final verdict cannot be appealed.

### Bosnian State Court Orders Release Due to Misuse of Criminal Code During Trial

The Bosnian State Court has ordered a release of ten men, after the European Court for Human Rights ruled that the 2003 Bosnian Criminal Code had been wrongly used to try crimes that happened before it was introduced. A Bosnian Criminal Code from 2003 was used during the trials instead of the former Yugoslavia's Criminal Code from 1976. The older Code tended to be more lenient, and therefore the Court has ordered an immediate release of the men that were tried using the 2003 version of the Code. The ten convicts that are currently awaiting a re-trial include: Slobodan Jakovljević, Aleksandar Radovanović, Branislav Medan, Brane Džinić, Milenko Trifunović and Petar Mitrović. The Accused were originally sentenced to a total of 181 years in prison.

*Bosnian State Court*

Mirko 'Špiro' Pekez, Mirko 'Mile' Pekez and Milorad Savić were also released, after being convicted of war crimes against civilians in Jajće. Nikola Andrun, jailed for 18 years for war crimes in Capljina was similarly released. In addition there are more than twenty war crimes verdicts that potentially could be nullified because the wrong Criminal Code was used.

# NEWS FROM OTHER INTERNATIONAL COURTS

## *The International Criminal Court*

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

On 24 November, authorities in the Netherlands, France, Belgium and the Democratic Republic of the Congo (DRC) arrested four people suspected of offences against the administration of justice in relation to the war crimes trial of Jean-Pierre Bemba Gombo, the former Congolease Vice-President.

ICC Pre-Trial judge Cuno Tarfusser issued a warrant of arrest on 20 November 2013 for Bemba as well as two members of his legal team, Lead Counsel Aimé Kilolo Musamba and Case Manager, Jean-Jacques Mangenda Kabongo.

In addition, warrants were issued against Fidèle Babala Wandu, who is a member of the DRC Parliament and deputy secretary general of the Mouvement pour la Libération du Congo, and a Defence witness, Narcisse Arido.

The five have been accused of corruptly influencing witnesses by bribing or coaching them to give false testimony before the ICC as well as presenting false or forged evidence. It has been further alleged that the five suspects were part of a network, which worked for the purpose of presenting false or forged documents and bribing people to give false testimony in the case against Bemba.

On 27 November, Bemba made a first appearance along with Musamba and Wandu in relation to these charges of offences against the administration of justice and denied the charges. Further, the Defence lawyers for the Accused argued that the new charges had harmed the Defence case of Bemba in his ongoing trial. Questions were raised about the timing of the case and why the allegations of forged evidence could not have been dealt with during the ongoing trial itself.

## *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*

On 2 December 16 judges of the Residual Special Court were sworn-in at the Special Court complex in Freetown. The Courthouse and the Court Complex will then be formally handed over to the Government of Sierra Leone.

On 14 August 2000, the UN Security Council voted the resolution 1315 which gave a mandate to the Secretary General of the UN to create a Court of mixed jurisdiction, the SCSL. The agreement was signed in January 2002 between the United Nations and the government of Sierra Leone and was ratified by the Parliament of Sierra Leone in March of the same year. The Court was officially established in July 2002. Judges took oath on 2 December and the first indictments were confirmed in March 2003.

The SCSL was intended to judge the "most responsible for crimes against humanity, war crimes and certain crimes under Sierra Leonean law committed since 30 November 1996 ", the date of Abidjan agreements, which attempted to stem the crisis.

The SCSL differs from other tribunals created by the Security Council because it is not an ad hoc international criminal tribunal. While the ICTY and ICTR have their headquarters in The Hague and Arusha, respectively, the SCSL headquarters is in the country where the crimes were committed. The Court is part of the Sierra Leonean judicial system, even if it receives significant international support. It is a hybrid Court, combining international law and Sierra Leonean national law.

# DEFENCE ROSTRUM

## The Tenth Defence Symposium

*By Philippa White*

The tenth Defense symposium was held on 15 November, with interns and staff across the Tribunal attending to hear ICTY Defence Counsel Gregor Guy-Smith speak about "The Importance of a Sense of the Absurd - the New Weird in an Old World".

The symposium lived up to its title, with Guy-Smith beginning and ending the lecture with an analogy to used car sales and the element of faith required when making such a purchase.

Guy-Smith discussed a lecture he had recently attended, given by Rob Wainwright of Europol, in which Wainwright had discussed balancing the right to privacy against the need to fight crime and terrorism. Discussion then turned to the publicised comments about acquittals at the Tribunal by ICTY Judge Harhoff, who was subsequently disqualified from the Šešelj trial on the grounds of unacceptable appearance of bias against the Accused.

Attendees were then asked a question: What is the purpose of a criminal trial, and in particular, the work of the international criminal tribunals and courts? Answers from the floor included the preservation of justice and the search for the truth, and to ascertain whether the individual Accused is guilty of the crimes with which they are charged.

In response, Guy-Smith then read aloud and considered extracts from the decision of the ICC not to confirm charges against Mbarushimana. The Pre-Trial Chamber rejected the Prosecution proposition that, at the stage of confirmation, the Chamber did not need to assess the credibility of Prosecution evidence unless the evidence was "incredible on its face" or "incapable of belief." The Chamber in Mbarushimana emphatically denied these propositions and also expressed concern at techniques used by Prosecution investigators in questioning witnesses as "hardly reconcilable with a professional and impartial technique of witness questioning." Guy-Smith reiterated the right of the Accused to challenge and confront the testimony before him; something the Prosecution in Mbarushimana may have lost sight of when advocating that, at least as far as confirmation of charges was concerned, the Chamber should accept Prosecution evidence as reliable unless its credence was incapable of belief.

Guy-Smith asked attendees to consider that the work of the Tribunal and other international criminal law mechanisms develops international law and affects the international community. He advocated intelligent discussion of differing views on points of law, highlighting that international criminal law has emerged from legal systems which, whilst equally achieving justice, may approach it with different standards and gave the examples of the different American concept of "reasonable doubt" and the French concept of "conviction in time". It was suggested that, through intelligent discussion, current and future generations can ensure that international criminal law develops whilst maintaining procedural standards essential to securing the integrity of prosecutions. Although a self-described anarchist, Gregor-Smith emphasised the importance of the Tribunal and international criminal law mechanisms, provided they comply with those standards.

A question and answer session then followed, with topics discussed including the ethics of the use of drones, both as a weapon of war and as a newly proposed method of policing crime, and the consequent dehumanization of individuals killed by drones as 'collateral damage'. The question and answer session also discussed the "noble corruption" that can arise in the pursuit of prosecution of crime, and a question on how to balance the need to secure essential standards with budgetary constraints on international criminal law mechanisms, developing the themes elicited in Gregor Guy-Smith's lecture.

The next Defence symposium entitled "Military Organisation, Rank Structure and Operation - Everything You Ever Wanted to Know About the Military" will be presented by Stéphane Bourgon on 13 December .

## The Launch of International Criminal Database

On 12 November, a long-planned and expected International Crimes Database (ICD) website was launched. The event took place at the T.M.C Asser Institute in The Hague, and was attended and hosted by both the Dutch Ministry of Security and Justice, and the International Centre for Counter-Terrorism. The keynote-speaker of the night was Judge Fausto Pocar from the ICTY.

*Roel Van Rossum*

The launch consisted of the introductory speeches, which brought the audience closer to the understanding of the idea behind the ICD, and also the hard-work needed to manage a database like this. The founding father, Roel Van Rossum, explained that he envisaged a comprehensive research tool which would be accessible to not only legal scholars, but to diplomats, students, and researchers. According to his words, this kind of database could ensure that people are aware of the international crimes and know their basic concepts. In this way, we – as a community – are able to distinguish between the policies which are allowed, and recognise the borderlines within our actions. Judge Fausto Pocar seconded this idea, congratulating the working team on their success. Special attention was paid also to the Dutch Ministry of Security and Justice, which not only supported this database, but financially backed this idea.

The ICD has been promoted as comprehensive database on international crimes adjudicated by national, international as well as internationalized courts. The easily reachable website offers sections on crimes, courts, cases, commentaries and resources. For the purposes of expanding the wide-range knowledge, it covers crimes of genocide, crimes against humanity, war crimes, piracy, terrorism and crime of aggression. Further, it introduces the individual to different types of courts. Last but not least, the ICD offers commentaries and other resource sections, where useful guides are listed.

In general, cases are searchable, at this moment, either by name or category. Each and every case summarized on the database offers links to the original source of the decision/judgement, summary of the case, procedural history, relevant developments, legally relevant facts, core legal questions, specific legal rules and provisions, and court's holding and analysis. Normally, the case will include additional links relevant to the cases, or instruments used within the case. If applicable, social media links will be attached and made available. The structure of this search-engine is similar to the Westlaw-type of functioning. It is both easily accessible, and well-structured.

There are several international institutions which supported the idea of crimes database. The ICTY has been one of the supporters of the DomCLIC, the predecessor of the ICD. Due to this wide-range support, the database will update its sources on a continuous basis. As can be seen from the main page, the news updates section is already filled with many interesting rulings. In addition, and adding great value, the database aims to function with the help of others. Comments, feedback and suggestions are always welcome, and encouraged.

The ICD will keep on improving daily. The enthusiasm, organisational skills, and motivation of people who prepared this database have been obvious not only from the final outcome, but also during the launch itself. This launch has been a great step forward for the international community to understand the basic concepts, find the sources needed, and eventually be involved in the policy-makings discussions, which not only influence the events within her or his own state, but within the broader community as such.

# BLOG UPDATES AND ONLINE LECTURES

## Blog Updates

Kevin Jon Heller, **'Operation: Last Chance' Dilemmas of Justice and Lessons for International Criminal Tribunals,** 6 December 2013, available at: http://tinyurl.com/qzoz2fd.

Michael G. Karnavas, **The ADC-ICTY Legacy Conference: Lawyers for the Damned Ruminate and Reminisce,** 4 December 2013, available at: http://tinyurl.com/ogfwyyr.

Michael G. Karnavas, **A Draft Constitution for the Bar of List Counsel: Let the Discussions Begin!** 18 November 2013, available at: http://tinyurl.com/nvrvgg4.

Jens Iverson, **The Drone Reports: Can Members of Armed Groups Be Targeted?**, 6 November 2013, http://tinyurl.com/nvpcwho.

## Online Lectures

*The International Impact of U.S Presidential Election, 6 November 2013, published by the Duke Law available at: http://tinyurl.com/q6npc6z.*

*Ronald Rychlak: The International Criminal Court: An Obstacle to Peace?", 2 December 2013, published by the Duke Law, available at: http://tinyurl.com/nu28qbg.*

*The UN pays Tribute to Nelson Mandela, 5 December 2013, published by the United Nations, available at: http://tinyurl.com/oe77zkq.*

*Why is the UN biased?, 8 December 2013, published by United Nations Watch, available at http://tinyurl.com/qbfg6km.*

# PUBLICATIONS AND ARTICLES

## Books

Thomas Buergenthal, Sean D. Murphy (2013) "*Public International Law in a Nutshell (West Nutshell)*", West Group.

Kate Seaman (2013), *Un-tied Nations: The United Nations, Peacekeeping and Global Governance*, Ashgate Pub Co.

Karen Alten (2013), *The New Terrain of International Law: Courts, Politics, Rights,* Princeton University Press.

Robert Beck, Robert J. Beck (2013), *Law and Disciplinarity: Thinking beyond Borders (International Law, Crime, and Politics),* Palgrave Macmillan.

## Articles

Darryl Robinson (2013), "Will the ICC Be Able to Prosecute Crimes Against Humanity?", *Social Science Research Network.*

Martin Kuijer (2013), "The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings", *Human rights Law Review,* Volume 13, No 4.

Theodore J. Boutrous, Jr. (2013), "Ten lessons from the Chevron litigation: the defense perspective", *Stanford Journal of Complex Litigation,* Volume 1, No. 2.

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

*The ADC-ICTY would like to express its appreciation and thanks to Kathryn Heslop, Kyriaki Karnezi and Phillippa White for their hard work and dedication to the Newsletter. We wish them all the best in the future.*


# EVENTS

**The Joint International Humanitarian Law Forum**

Date: 16 December 2013

Location: Petach-Tiqwa, Israel

More info: http://tinyurl.com/nehqa9h

**Al Qaeda's Resurgence in North Africa?**

Date: 17 December 2013

Location: International Press Centre Nieuwspoort, Lange Poten 10, 2511 CL The Hague

More Info: http://tinyurl.com/q9a25xx

**Trials in absentia and international criminal justice**

Date: 18 December 2013

Location: Asser Institute, R.J. Schimmelpenningcklaan 20-22, The Hague

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

# OPPORTUNITIES

**Field Assistant, Nairobi**

International Criminal Court

Closing date: 22 December 2013

**Legal Officer, The Hague**

Special Tribunal for Lebanon (STL)

Closing date: 23 December 2013

**Chef de Cabinet, The Hague**

International Residual Mechanism for Criminal Tribunals (RMT)

Closing date: 28 December 2013

**Secretary to Judge, The Hague**

International Court of Justice (ICJ)

Closing date: 20 January 2014