ADC-ICTY Newsletter, Issue 23

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

ADC-ICTY Elects New President and Executive Committee

At the ADC-ICTY General Assembly a new Executive Committee was elected for the coming year. Jelena Nikolić was confirmed as the new President of the association. Ms. Nikolić has a wealth of experience and has been at the ICTY since 1998. The four Vice-Presidents of the Association are; Colleen Rohan, Suzanna Tomanović, Stéphane Bourgon and Novak Lukić. The ADC-ICTY would like to thank Slobodan Zečević for all his hard work and dedication to the association during his term as President over the last two years.

ADC-ICTY General Assembly

On Sunday 27 November the ADC-ICTY held its annual General Assembly. Reports were given from the committees and a number of items were discussed. A major topic which was covered was the legacy of defence at the ICTY and this is something which will be a key issue over the coming year. The General Assembly ended with elections for the new committees, to see all the election results please visit: http://adc-icty.org/adcgovernance.html

It is planned that the ADC-ICTY will hold a Legacy Conference in 2012. The Executive Committee would like to involve as many members of the association as possible in this event. The Executive Committee would like to request that members send their ideas on possible topics which could be covered, who the conference should be aimed at, where it should be held and whether you would be interested in participating.

ADC-ICTY Annual Training

Over the weekend of 26 and 27 November, the ADC-ICTY held its annual training seminar. The topic of the training was Oral Appellate Arguments before the ICTY. The training was conducted by Catherine Marchi-Uhel, Michael Karnavas and Stéphane Bourgon. The training finished with a mock court exercise with staff from the ICTY Appeals Chamber sitting as judges. Photos from the event can be found at: http://adc-icty.org/gallery.html

Prosecutor v. Karadžić (IT-95-5/18-I)

The Prosecution continued its case by calling a witness known only by the pseudonym KDZ-039. The Witness was a detainee in Potocari and Bratunca, before being sent to Orahovac, where he stated that he saw an execution on 14 July 1995. This Witness is being called to prove the Accused's alleged responsibility for the genocide in Srebrenica. The Witness has already testified in all the Srebrenica trials before the ICTY. The Accused challenged the Witness' testimony that Mladić attended the execution of detainees on 14 July 1995, pointing out that Mladić was at a meeting in Belgrade with Serbian President Milošević and a European envoy to the Balkans. In re-examination, the Prosecution referred to Mladić's diary, which stated that the meeting began at 21.15, presumably leaving him enough time to fly by helicopter to the meeting.

Peter Boering

The next three witnesses were all UN Dutchbat officers in Srebrenica during the relevant period. Johannes Rutten testified first, a Dutch lieutenant colonel and intelligence officer, who also testified in three other Srebrenica trials before the ICTY. His testimony before the other Srebrenica trials was admitted into evidence. The Witness maintained that he had taken photos of detainees and victims but "something went wrong" during the development of the photos and had been subsequently lost. In cross-examination, the Accused asserted that Srebrenica had never been fully demilitarized, with approximately 6,000 Bosnian Muslim soldiers being present in Srebrenica during July of 1995. He also pointed out that the Witness had only seen the bodies of nine male victims, without knowing anything about how they were killed. He also put it to the Witness that Bosnian civilians were purposefully throwing away their documents and belongings, so they would not "fall into Serbian hands". The Witness disagreed, stating that he personally saw soldiers force prisoners at gunpoint to throw away their documents and belongings.

The next Witness, Peter Boering was a liaison officer of the Dutch Blue Helmets with the army of Republika Srpska (VRS), Bosnian Army (BH), and the civilian authorities in Srebrenica. The Witness, along with his commander Colonel Karremans, attended three meetings organised by Mladić between 11 and 12 July 1995. The Witness admitted that whatever was agreed at this meeting was very much lost in translation. In fact, he testified that on their way back with Colonel Karremans, they realised that they did not clearly understand what had been agreed to. The Witness went back to get some clarification but was instead told that "it's clear what is going to happen". The Accused brought up the lost films referred to by the previous witness, Johannes Rutten, and a document from 18 August 1995 which is refers to a Dutch officer by the name of Bloeming telling Rutten that "films have more potential ramifications than expected", advising him "not to speak about it". The Witness replied that he knew nothing of this document, which prompted the Trial Chamber to deny admitting the document through him.

Colonel Thom Karremans

The next Dutchbat officer, Ever Rave, a field security adviser to Dutchbat Battalion commander Karremans during the relevant period, appeared before the Trial Chamber on 30 November 2011. He also testified about the meetings with Mladić and stated that Mladić had told the Dutch Blue Helmets to "ether all get out of here or all die". The Witness claimed that everything that happened in Srebrenica after the Serb forces entered was pre-planned, such as ordering buses and trucks at midnight on 11 July 1995 which arrived the next morning, and the "media show" put on by VRS cameramen which showed Mladić handing out candy to children. The Accused challenged this assertion in cross-examination, arguing that Mladić was responding to the calls of the Bosnian leadership, who had asked the UN to evacuate civilians from Srebrenica. The

Colonel Thom Karremans, born December 29, 1948, was the commander of Dutchbat troops in Srebrenica at the time of the Srebrenica genocide during Bosnian War. In 1994 Karremans was appointed as commander of Dutchbat III battalion that was sent to the Srebrenica enclave. On 11, 12 and 13 July the battalion dealt with the capture of the enclave by Serbian soldiers. After his return to The Netherlands, Karremans was promoted to full colonel.


Jose Pablo Baraybara

Witness responded by stating he was unaware of these calls by the Bosnian leadership. The Accused also asked the Witness about Bosnian Muslims setting up near Dutch positions to fire upon Serb forces. The Witness agreed that this did in fact occur on several occasions.

Two expert witnesses, Richard Wright and Jose Pablo Baraybara, testified on 1 December and 2 December 2011, respectively. Richard Wright is an Australian archaeologist who took part in the ICTY's investigation of Srebrenica, leading a team that located and exhumed mass graves. The Accused suggested to him that the bodies exhumed could have very well been of enemy combatants that died in the conflict, but the Witness denied this suggestion, pointing out that bullets were found in the pocket of only one exhumed body, out of hundreds, and this in itself could not prove that the person was in fact a combatant. Jose Pablo Baraybara is a forensic anthropologist from Peru, who testified about the procedure and methodology used to identify the number, sex, age and cause of death for the bodies exhumed from mass graves in Srebrenica.

On 1 December 2011, the Trial Chamber also issued a written decision on the Accused's Motion for Subpoena to Interview Christoph von Bezold. The motion arises after a decision by the Trial Chamber on 19 May 2010 to order Germany to provide the Accused with documents pertaining to the investigation of the German Parlamentarische Kontrollkommission of the alleged 27 March 1994 dispatch of ammunition to Bihać which was allegedly disguised as humanitarian aid and organised by Christoph von Bezold. Germany responded by claiming that it was not in possession of any of the requested documents. The Accused believed that Germany did in fact have the relevant documents, and thus asked Germany to make Christoph von Bezold available for an interview. Germany continued to refuse to make Bezold available, prompting the Trial Chamber to issue a subpoena for Bezold with this Decision. The Decision orders Germany to serve the subpoena on Christoph von Bezold, so he can be made available for an interview with the Accused regarding his alleged involvement in sending ammunition to Bihać disguised as humanitarian aid.

Prosecutor vs. Stanišić & Simatović (IT-03-69-T)

In the week beginning 5 December 2011, the Stanišić Defence recalled Prosecution Witness Manojlo Milovanović. The Defence believed it necessary to recall Milovanović in light of the Trial Chambers' decisions to admit selected excerpts of the so-called "Mladić diaries" and associated audio materials into evidence. These materials purport to record, contemporaneously or otherwise, many of the military events in Croatia and Bosnia Herzegovina.


Manojlo Milovanović

Milovanović testified before the Trial Chamber from 23 - 29 April 2010. During this testimony, Milovanović discussed the authenticity and contents of the excerpts. He was in a position to do so given his personal and professional relationship with Mladić, which began in 1991 and continued throughout the Stanišić Indictment period. Milovanović was an officer in the JNA and Chief of the Main Staff of VRS under the command of Mladić from 1992 until 1996.

As a consequence of the late discovery and disclosure of the Mladić Diaries, the Defence did not have an opportunity to review the material to allow effective cross-examination on their contents to take place. The Defence was able to demonstrate to the Trial Chamber that this constituted a 'good cause' both for not eliciting the evidence when the witness originally testified and for justifying further question-

Jovica Stanišić was born July 30, 1950 in Ratkovo village near Odžaci, Serbia. He is a former head of the State Security Service within the Serbian Ministry of the Interior. Stanišić was arrested by Serbian authorities in 2003 and handed over to the ICTY soon after. He pleaded not guilty to all charges. He has been charged with persecution, murder, deportation and inhumane acts. According to the indictment, special paramilitary units, including Arkan's Tigers, Red Berets and "Scorpions", were secretly established by or with the assistance of the Serbian State Security from no later than April 1991 and continued until 1995.

ing.

From the conspicuous absence of the Accused in the "Mladić materials," the Defence believes the documents are highly exculpatory. The Defence expects recalling the witness will serve to confirm this absence and to further undermine the alleged joint criminal enterprise of which Stanišić is said to be a part.

Dragomir Pećanac Contempt Trial and Judgement

On 30 November 2011 the contempt of court trial of Dragomir Pećanac proceeded under unusual circumstances. Firstly, the former Security and Intelligence Officer of the Main Staff of the Army of the Republika Srpska was unable to attend the trial and remained at the United Nations Detention Centre due to illness. He signed a waiver of his right to attend the hearing. The trial also began without the opening statements, without the statements of witnesses and without the Prosecution, since it is not a party in the trial. The judges therefore appeared as both the prosecutors and judges.

Rule 77

Contempt of the Tribunal

(a) The Tribunal in the exercise of its inherent power may hold in contempt those who knowingly and wilfully interfere with its administration of justice, including any person who

(i) being a witness before a Chamber, contumaciously refuses or fails to answer a question

Dragomir Pećanac

Pećanac was charged with contempt of the Tribunal for failing to comply with, or to show good cause why he could not comply with, a subpoena in which he was ordered to testify in the case of Zdravko Tolimir. The indictment comes under Rule 77 of the Rules of Evidence and Procedure of the Tribunal. An order in *lieu* of an indictment for contempt was issued confidentially by the Trial Chamber on 21 September 2011. The order was made public on 19 October 2011. Pećanac's initial appearance took place on 10 October 2011, in which he chose not to enter a plea; and a further appearance took place on 19 October 2011 in which he pleaded not guilty.

The case shows irregularities with a regular case as, instead of the usual occurrence of an opening statement examination of witnesses and admission of documents into evidence, the presiding Judge presented a brief summary of the Pećanac case himself. The Trial Chamber then, acting as prosecutor, admitted four documents into evidence, including: the subpoena to testify, the decision on safe conduct, a memorandum from the relevant Serbian authorities and an internal memorandum from the Victims and Witnesses Unit. The Defence objected to the admission of the final document however this objection was rejected by the Trial Chamber. Pećanac's defence lawyer, Jens Dieckmann, then made an oral motion requesting that the judges release the accused at that point in trial, in accordance with Rule 98 *bis*. Dieckmann stated that the judges, acting as prosecution, had failed to present sufficient evidence leading to a conviction. This motion was dismissed by the judges. The Trial Chamber then admitted 31 defence exhibits into evidence.

On 9 December the Trial Chamber, by majority, found Pećanac guilty of contempt and sentenced him to 3 months imprisonment with credit being given for the 74 days he has already spent in custody. Judge Nyambe attached a separate dissenting opinion.

Prosecutor v. Florence Hartmann

Florence Hartmann, a French journalist convicted for contempt of court, has written to the UN Special Rapporteur for freedom of opinion and expression two weeks after the ICTY issued an international warrant for her arrest.

Hartmann's original order was for contempt of the Tribunal in connection with the case of Prosecutor vs. Slobodan Milošević. It was alleged that she disclosed confidential documents from the ICTY in her published book 'Peace and Punishment' and a subsequent magazine article entitled 'Vital Genocide Documents Concealed' for the Bosnian Institute published 21 January 2008. Both the book and article allegedly provided details of confidential court documents. Hartmann's order was in compliance with Rule 77(a)(ii) of the Rules of Procedure and Evidence. It was alleged that she knowingly and willingly disclosed this information in knowing violation of an order of a Chamber.

The arrest warrant was issued on 16 November 2011 after Hartmann's non-compliance with the ICTY's order to pay 7000 euros for contempt of the Tribunal.

Florence Hartmann, born 17 February 1963, is a French journalist, author and former employee of the ICTY. During the 1990s she was a correspondent in the Balkans for the French newspaper *Le Monde*. In 1999 she published her first book, *Milošević, la diagonale du fou*. From October 2000 until October 2006 she was official spokesperson and Balkan adviser to Carla Del Ponte, chief prosecutor of the ICTY. On 14 September 2009 she was convicted of contempt of court. She was fined 7,000 euros for disclosing the existence of two confidential appellate rulings of the Tribunal.

News from International Courts and Tribunals

Extraordinary Chambers in the Courts of Cambodia

Partial Victory for Fair Trial Rights at the ECCC with the Decision on the Statute of Limitations on Domestic Crimes

Tanya Pettay and Katherine Lampron*

* The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Extraordinary Chambers in the Courts of Cambodia.

At the Extraordinary Chambers in the Courts of Cambodia ("ECCC"), the Trial Chamber's recent "Decision on Defence Preliminary Objections (Statute of Limitations on Domestic Crimes)" ("Decision on Domestic Crimes") is a partial victory for fair trial rights. The Trial Chamber held that the Closing Order (i.e. the Indictment) failed to set out facts or modes of liability to support the charges of domestic crimes, and this resulted in its inability to try domestic crimes in Case 002. Insufficient pleadings directly relate to an Accused's right to know the case against him or her and the right to have adequate time to prepare a defence. The Trial Chamber upheld these fundamental fair trial rights despite conflicting ECCC Internal Rules that do not envision the Trial Chamber ruling on alleged errors in the Closing Order. The Trial Chamber also befittingly criticized the Co-Investigating Judges and the Pre-Trial Chamber for sending the Accused to trial for domestic crime charges when the Closing Order was obviously devoid of factual support in this regard. Unfortunately, the Trial Chamber did not seize the opportunity to address the Accused's objections that the ECCC does not have the jurisdiction to charge domestic crimes. The Accused have argued that the applicable statute of limitations has expired, thus charging domestic crimes would violate the principle of non-retroactivity. The failure of the Trial Chamber to make a decision on the merits of the objections is disconcerting because the ECCC can still charge suspects with domestic crimes even though all Accused, and some ECCC Judges, have submitted that this would be unlawful.

Please find the full article here: http://www.internationallawbureau.com/blog/wp-content/uploads/2011/11/A-Partial-Victory-for-Fair-Trial-Rights-at-the-ECCC-with-the-Decision-on-the-Statute-of-Limitations-on-Domestic-Crimes.pdf

Case 002 – Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thrith

Contributed by: Kirsty Sutherland, Legal Intern, Defence Support Section

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Ieng Thirith's Fitness to Stand Trial

On 17 November 2011, the Trial Chamber ruled that Ieng Thirith is not fit to stand trial. The Trial Chamber ordered the severance of the charges against her, declared a stay of proceedings against her, and ordered her unconditional release. The Trial Chamber cited the experts' unanimous assessments that Ieng Thirith suffers from a progressive and degenerative illness, most likely Alzheimer's disease. It also noted that all experts considered it unlikely that Ieng Thirith "could falsely present with dementia".

In making its decision, the Trial Chamber considered whether the degree of cognitive impairment identified by the experts, when measured against the criteria identified in Strugar, precludes the possibility of a fair trial. The Trial Chamber concluded that Ieng Thirith may retain some capacity to

Ieng Thirith graduated from the Lycée Sisowath in Phnom Penh then went to study in Paris, where she majored in Shakespeare studies at the Sorbonne. She became the first Cambodian to receive a degree in English Literature. Returning to Cambodia in 1957, she worked as a professor before founding a private English school in 1960. On 9 October 1975, at a meeting of the CPK Standing Committee, Ieng Thirith was allegedly appointed Minister of Social Affairs in Democratic Kampuchea. She allegedly remained with the Khmer Rouge until her husband Ieng Sary was granted a Royal amnesty and pardon in 1998.

enter a plea, to understand the charges against her, to understand the details of the evidence, and to testify. However, it reasoned that since the Accused's memory impairment is likely to affect her ability to recall accurately events relevant to the indictment, the Chamber would have to take this into account in assessing her evidence and credibility were she to testify. The Trial Chamber attributed paramount importance to the ability of the Accused to understand the course of the proceedings and ability to instruct counsel, stating that "in order to effectively exercise her fair trial rights, it is crucial that the Accused be able to follow the testimony sufficient to provide relevant information to counsel for the preparation of her defence". The Trial Chamber ruled that since Ieng Thirith is "unable to exercise these fundamental fair trial rights meaningfully, and in accordance with the international standards set forth in the Strugar decision, the Chamber has no alternative but to declare her unfit to stand trial".

Ieng Thrith

Though united in their decision that Ieng Thirith is unfit to stand trial, the judges were divided as to whether Ieng Thirith should be ordered to undergo medical treatment or be released without condition. The Cambodian judges were of the opinion that Ieng Thirith should be confined to hospital for treatment with a view to a reassessment of her competence to stand trial in six months. The international judges instead emphasised that Ieng Thirith's condition is unlikely to improve, and that since the stay of proceedings is therefore likely to be permanent, there is no legal justification for her continued detention or the application of other coercive measures against her. In the absence of a supermajority decision on the jurisdiction of the Trial Chamber to impose conditions on Ieng Thirith's release, the Trial Chamber deferred to the principle of in *dubio pro reo* and the presumptions of innocence and liberty in ordering her unconditional release.

The Co-Prosecutors appealed the decision to release Ieng Thirith unconditionally, requesting that the Supreme Court Chamber annul the Trial Chamber's decision insofar as it orders the unconditional release of Ieng Thirith and amend it by ordering the Accused to remain in detention and undergo treatment, subject to review in six months. The Ieng Thirith Defence Team submitted that there is no basis upon which to annul the decision of the Trial Chamber and that Ieng Thirith should therefore be released forthwith.

Requests for Disqualification of Judge Cartwright

In early November, the Nuon Chea and Ieng Sary Defence Teams requested information regarding *ex parte* meetings between Trial Chamber Judge Cartwright, the international Co-Prosecutor and the UNAKRT Coordinator. The Teams argued that *ex parte* communications between a judge and a prosecutor sitting on the same case violate applicable rules of professional conduct and "gives rise to an unacceptable appearance of bias". The Ieng Sary Defence Team requested a public hearing to decide the Request. The Nuon Chea Defence Team sought the immediate and permanent disqualification of Judge Cartwright from Case 002.

Khieu Samphan

These requests were reiterated in open court at the start of the substantive hearings on 21 November.

On 2 December 2011, the Trial Chamber found that the Nuon Chea and Ieng Sary Defence Teams' requests for information were adequately addressed by an email from the Deputy Director of Administration in which it was explained that the meetings were informally modelled upon examples from the ICTR, ICTY and ICC, "as adapted to the specific ECCC context". The Trial Chamber further considered that Judge Cartwright's participation in the meetings would not cre-

ate a reasonable apprehension of bias by an informed person with knowledge of all relevant circumstances. All Defence requests were denied.

Ieng Sary

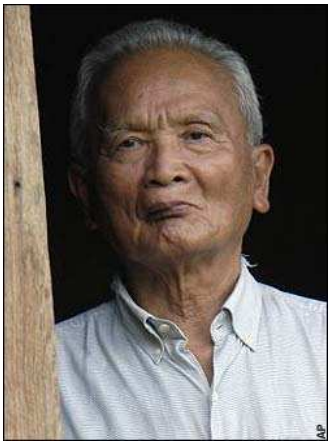
Substantive Hearings in Case 002

Opening Statements for Case 002 proceeded on 21 November 2011. National Co-Prosecutor Chea Leang portrayed Democratic Kampuchea as a slave state responsible for the deaths of almost a quarter of the population of Cambodia. International Co-Prosecutor Andrew Cayley concentrated on the biographies of the Accused to support the Prosecution's argument that they were integral members of the Democratic Kampuchea regime. Mr Cayley sought to demonstrate that due to the hierarchical structure of the regime and its meticulous reporting system, the Accused cannot credibly claim not to have known about or had control over the events in Cambodia.

Ieng Sary's application to waive his right to be present in the court room and instead participate in the proceedings from his holding cell was denied.

Nuon Chea responded to the Co-Prosecutors' opening statement with the observation that the trial is inherently unfair and will record only a very limited account of history. His statement contained three main arguments: that Vietnam's expansionist tendencies threatened Cambodia and necessitated a response; that the U.S. airstrikes in the early 1970s had engendered a humanitarian crisis; and that the infiltration of traitors and spies within the Communist Party of Kampuchea needed to be addressed.

Subsequently, international Co-Lawyer for Nuon Chea, Mr Michiel Pestman, argued that he and his national colleague, Mr Son Arun, required the opportunity to receive instructions from their client in order to respond to parts of the Co-Prosecutors' Opening Statements. He reminded the court that the Scheduling Order had indicated that they would begin their responses the day after the completion of the Co-Prosecutors' statements. The Trial Chamber inferred that Mr Pestman did not wish to deliver his statement and prevented him from making any further submissions. The Nuon Chea Co-Lawyers later filed their Responses to the Opening Statement by the Prosecutor in written form. Mr Pestman's response addressed what he termed "the elephants in the room": that due to the severance of the trial into smaller parts, it will be far from the 'historic' trial envisaged by the Prosecution; that the trial will record only a partial account of the Khmer Rouge, ignoring entirely the role of, for example, Henry Kissinger and the U.S. bombing campaign; that the court is blighted by political interference and has a structural lack of independence due to the majority of Cambodian judges, all of whom are or were members of the leading political party; and that the alleged safe-guard, the international judges, are too timid and "their silence constitutes the biggest threat to justice". Mr Son Arun's response elaborated on the factual context within which the evacuation of Phnom Penh and subsequent population transfer have to be examined to be seen as lawful.



Nuon Chea

Ieng Sary stated that, despite his disagreement with the Trial Chamber's decision that it has jurisdiction to disregard his Royal Pardon and Amnesty, he respects the court's authority to render the decision and will continue to participate in the proceedings.

Khieu Samphan challenged the Co-Prosecutors' heavy reliance on anonymous witnesses, newspaper articles and books, stating, "Historians, journalists, chroniclers and novelists are not judges". He too urged the court not to ignore the historical context of the Democratic Kampuchea regime. Khieu Samphan contended that there is no evidence that he had any real authority within the regime. Mr Kong Sam Onn, Khieu Samphan's Cambodian Co-Counsel, largely echoed the submissions

Ieng Sary was born October 24, 1924 and was a powerful figure in the Khmer Rouge. He was the Deputy Prime Minister and Foreign Minister of Democratic Kampuchea from 1975 to 1979 and held several senior positions in the Khmer Rouge until his defection to the government in 1996. Ieng Sary was born in Chau Thanh, Tra Vinh province, southern Vietnam. He is the brother-in-law by marriage, of the Khmer Rouge leader Pol Pot. Sary was arrested on November 12, 2007 in Phnom Penh on an arrest warrant from the ECCC for war crimes and crimes against humanity. On 16 December 2009, the tribunal officially charged him with genocide for his involvement with the alleged subjugation and execution of Vietnamese and Muslim minorities in Cambodia.

of his client. International Co-Counsel for the Accused, Mr Jacques Verges, declared the Prosecution depiction of Democratic Kampuchea "fantastical".

Co-Prosecutor Chea Leang

Evidentiary hearings commenced on 5 December 2011 with the testimony and examination of Nuon Chea.

Crimes Against Humanity - Armed Conflict Nexus Requirement

On 25 November 2011, the Ieng Sary Defence Team filed its appeal against the Trial Chamber's decision to exclude the armed conflict nexus requirement from the definition of crimes against humanity. The Ieng Sary Team argued that the Trial Chamber had erred in finding and declaring that the definition of crimes against humanity that prevailed in customary international law between 1975 and 1979 did not require proof of a nexus between the underlying criminal acts and an armed conflict.

Ieng Sary's Amnesty and Pardon

On 5 December 2011, the Ieng Sary Defence Team appealed the Trial Chamber's dismissal of Ieng Sary's Preliminary Objections Concerning Amnesty/Pardon and Ne Bis in Idem.

Khieu Samphan, born on 27 July 1931, was the president of the state presidium of Democratic Kampuchea (Cambodia) from 1976 until 1979. He served as Cambodia's head of state and was one of the most powerful officials in the Khmer Rouge movement. He was arrested on November 19 2007. Proceedings before the Chamber began in 2011. Khieu Samphan has been indicted and sent to trial for Crimes against Humanity, Grave Breaches of the Geneva Conventions of 1949 and Genocide. He is alleged to be responsible, through his acts or omissions (committed via a joint criminal enterprise), for having planned, instigated, ordered, or aided and abetted, or being responsible by virtue of superior responsibility, for crimes committed between 17 April 1975 and 6 January 1979

International Criminal Court

Trial Chamber II, Situation in the Democratic Republic of the Congo, In the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07)

« Décision relative à la « Requête urgente de l'Accusation aux fins de prohibition des contacts entre les accusés Mathieu Ngudjolo et Germain Katanga et avec leur équipe de Défense pendant la durée de leur témoignage sous serment », 23 September 2011, ICC-01/04-01/07-3171

Géraldine Danhoui, Legal Assistant, Office of Public Counsel for the Defence, ICC*

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

On 20 September 2011, the Prosecutor requested that the Chamber prohibit any contact between the co-accused Mathieu Ngudjolo Chui and Germain Katanga during their testimony under oath justifying this request by the fact that a risk of contamination of the testimony between the co-accused could exist. Secondly, he requested to prohibit any contact of each accused with their Defence team during their testimony and particularly during the cross-examination. He considered that this prohibition would not affect the integrity and the equity of the trial.

On 23 September 2011, the Chamber rejected the request of the Prosecutor considering firstly, that the conditions of detention of the accused were already severe enough since the 31 May 2011, following the arrival of three witnesses in the detention centre.

Mathieu Ngudjolo

The Chamber decided to protect the wellness and the human dignity of the Accused by considering that this measure would be disproportionate in comparison with its result. The Chamber considered that the usual reminder done to each witness, prohibiting communication about their testimony with anyone, will be enough to preserve any incident. However, the Chamber warned that, if the rule would be breached in the detention centre, the Registry would report the incident to the Chamber.

Concerning the request on the prohibition of contact be-

tween the Accused and their Defence teams, the Chamber reminded the right of the accused to be assisted by his counsel and the extension of this right to the proceeding in its whole without any limitation to the testimony under oath.

The Chamber recognized that the Counsel cannot assist his client when the latter testifies under oath. Nevertheless, the Chamber considered that it was not necessary to control the contacts existing between the accused and his Defence team. The Chamber presumed that the Code of Professional Conduct for Counsel will be respected by Counsel and considered that the Prosecutor will have the opportunity to cross examine the accused and to detect if there is any problem concerning the preparation. Thus, the Chamber did not suspend privileged communication nor any contact between the accused and their Defence teams.

Mathieu Ngudjolo Chui, born 8 October 1970, was a colonel in the Congolese army and a former senior commander of the National Integrationist Front (FNI) and the Patriotic Resistance Force in Ituri (FRPI). On 6 July 2007, a Pre-Trial Chamber of the ICC found that there were reasonable grounds to believe that Ngudjolo bore individual criminal responsibility for war crimes and crimes against humanity committed during the Bogoro attack, and issued a sealed warrant for his arrest. On 6 February 2008, the Congolese authorities arrested him and surrendered him to the ICC. The following day, he was taken to the ICC's detention centre in The Hague.

The Appeals Chamber, Situation in the Central African Republic, In the case of The Prosecutor v. Jean-Pierre Bemba Gombo (ICC-01/05-01/08)

"Judgment on the appeal of Mr Jean-Pierre Bemba Gombo against the decision of Trial Chamber III of 27 June 2011 entitled "Decisions on Applications for Provisional Release", 19 August 2011, n° ICC-01/05-01/08 OA 7.

Fabrice Bousquet, Intern, Office of Public Counsel for the Defence, ICC

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The Judges of the Appeals Chamber directed Trial Chamber III ("the Trial Chamber"), by majority, to partially reconsider its "Decision on Applications of Provisional Release" rendered on 27 June 2011. The Appeals Chamber held that the Trial Chamber both misappreciated the guarantees given by the potentially receiving State on conditional release, and failed to show changed circumstances to enter an additional legal basis for Jean-Pierre Bemba Gombo's detention.

Jean-Pierre Bemba Gombo

During May and June 2011, Bemba filed three requests for interim release. In the First Request, he sought to be granted interim release to the territory of Belgium. In the Second Request, he asked for interim release both during the judicial recess and for periods of time in which the Chamber would not sit for three consecutive days to the territory of another State ("the State") which preferred to remain anonymous. In the Third Request, he applied for permission to leave the United Nations Detention Centre to travel to the Democratic Republic of the Congo ("the DRC") to register for the upcoming election.

The Trial Chamber rejected all three requests. Regarding the Second Request, the Trial Chamber decided to base the necessity of Bemba's continued detention on two grounds, namely to ensure his appearance at trial under Article 58(1)(b)(i) of the Rome Statute ("the Statute") and to ensure that he did not interfere with witnesses under Article 58(1)(b)(ii) of the Statute. In relation to the first ground, the Trial Chamber examined conditional release but concluded that the State's submissions were not sufficient to guarantee Bemba's appearance at trial for three reasons. Firstly, the State conveyed only a general willingness to accept the Accused into its territory; secondly, it did not specifically guarantee his return to the Court; and thirdly, it did not specify which of the conditions of Rule 119(1) of the Rules of Procedure and Evidence ("the Rules") it would be able to implement. Dealing with the Third Request, the Trial Chamber dismissed it finding no legal or factual basis to the request.

Jean-Pierre Bemba Gombo appealed the Trial Chamber's Decision with respect to the Second and Third Requests. Concerning the Second Request, he impugned the Trial Chamber's assessment arguing its misapprehension of the State's letter and observations and its failure to justify continued detention under Article 58(1)(b)(ii) of the Statute. Bemba also submitted that the Trial Chamber

erred in dismissing the Third Request without seeking observations from the DRC on the basis of the Rule 119(3) of the Rules and in concluding that there was no legal basis for the request.

Regarding the first ground of detention relating to the Second Request, the Appeals Chamber found that the Trial Chamber committed a clear error leading to a misappreciation of the extent to which the State's letter and observations provided sufficient guarantees to enforce conditions of release and to ensure Bemba's appearance at trial.

In the Appeals Chamber's view, the State's letter and observations should have been read together with Mr Bemba's letter to the State. In doing so, it was clear for the Appeals Chamber that the State agreed to impose specific conditions if release was ordered including ensuring his return to appear before the Court and his transfer into the custody of the Dutch authorities.

Rule 119

Conditional release

3. Before imposing or amending any conditions restricting liberty, the Pre-Trial Chamber shall seek the views of the Prosecutor, the person concerned, any relevant State and victims that have communicated with the Court in that case and whom the Chamber considers could be at risk as a result of a release or conditions imposed.

Aimé Kilolo Musamba

Jean-Pierre Bemba's counsel at the ICC

The Appeals Chamber also considered that the Trial Chamber erred when it dismissed the State's observations for lack of explicit assurances as to which conditions it would implement. The Appeals Chamber recalled that under Rule 119(1) of the Rules it is for the Chamber, and not for the receiving State, to impose and specify the appropriate conditions of release. The Appeals Chamber added that the Chamber has the discretion to consider and to order conditional release. However, if the Chamber is considering conditional release and a State has indicated its general willingness and ability to accept a detained person and enforce conditions, the Chamber must seek observations from this State as to its ability to enforce specific conditions identified by the Chamber. Given the circumstances, the Appeals Chamber concluded that if the Trial Chamber considered the State's submissions to be insufficient to enable it to make an informed decision, the Trial Chamber should have sought further information from the State regarding its capacity to enforce any appropriate conditions.

Concerning the second ground of detention relating to the Second Request, the Appeals Chamber held that the Trial Chamber erred by entering an additional legal basis for Bemba's detention under Article 58(1)(b)(ii) without showing changed circumstances as required by Article 60(3) of the Statute. The Appeals Chamber first noticed that the current basis for Bemba's detention was only Article 58(1)(b)(i) of the Statute according to the operative decision of 17 December 2010 for the review of his detention. Then, the Appeals Chamber stated that in order for the Trial Chamber to add another legal basis for detention, it should have demonstrated a new fact or a change in the circumstances founding the Decision of 17 December 2010. Finally, the Appeals Chamber found that the Trial Chamber did not explain any change in the circumstances.

On the contrary, the Appeals Chamber did not see any error in the Trial Chamber's approach concerning the Third Request. On the one hand, the Appeals Chamber held that since conditions of release were not being considered, the Trial Chamber was not obliged to seek views of the DRC. To support its findings, the Appeals Chamber reminded that the Rule 119(3) of the Rules only apply to a situation where a Chamber is considering the conditional release of detained person or the amendment of conditions already imposed. In the present case, the Appeals Chamber noted that the Trial Chamber declined to consider Bemba's conditional release to the DRC after having balancing the risk that he may abscond against his desire to participate in the elections. On the other hand, the Appeals Chamber found that, although the Trial Chamber stated that there was no express provision in the Court's legal instruments to support the Third Request, the Trial Chamber nevertheless considered and rejected the request with regard for previous jurisprudence relative to exceptional humanitarian circumstance and for Article 60(3) of the Statute.

Trial Chamber IV, Situation Sudan Darfur, Case of Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, (ICC-02/05-03/09-227)

"Decision Public on the Joint Submission regarding facts the contested issues and the agreed" 28 September 2011.

Géraldine Danhoui, Legal Assistant, Office of Public Counsel for the Defence, ICC*

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

On 19 October 2010, the Parties (Prosecutor and Defence) informed the Pre-Trial Chamber that the "Defence would not contest any material facts alleged in the document containing the charges for the purpose of confirmation and that the Pre-trial Chamber may therefore consider such alleged facts to be proven for the purposes of the confirmation of charges in accordance with Rule 69 of RPP".

Abdallah Banda Abakaer Nourain

On 16 May 2010, the same Parties filed a joint filing to the Pre-trial Chamber in which they addressed contested issues in the trial and submitted an agreement as to evidence pursuant to Rule 69 of the RPP. The Parties considered that the Agreement narrowed the issues in dispute between the Parties and that it would facilitate the fair and expeditious conduct of the proceedings.

The Parties also stated that if the Chamber determines the three contested issues, the accused persons will plead guilty to the charges against them without prejudice to their right to appeal the Chamber's decision on the contested issues. They considered also that apart from evidence on the contested issues, they will not call additional evidence or make additional submissions regarding the guilt or innocence of the accused persons unless the Chamber would decide differently.

Finally, the Parties invited the Chamber to adopt such procedures which are necessary to facilitate the fair and expeditious conduct of the proceeding supporting the three contested issues. In relation to these requests, the Chamber considered firstly, that according the wording of the Rule 69, it is not mandatory for it to decide, at this stage, whether the uncontested facts "which are contained in the Charges, the contents of a document, the expected testimony of a witness or the other evidence" are considered to be proven or not.

The Chamber recognized that the agreement reached by the Parties covers a significant part of the factual allegations contained in the charges. It considered also that the agreement had the procedural effect of narrowing the scope of the issues to be addressed by the Parties at trial. However, the Chamber pointed out that within its discretion, it could request additional evidence and/or submissions on the alleged facts if required in the interest of justice. The Chamber noted also that the suggested procedures would expedite the proceedings because the evidence and submissions to be advanced at trial would be confined to the contested issues. Thus, the Chamber agreed that the procedure proposed in the joint submission will additionally shorten the length of the trial preparation as for example the issue of translation and the number of witness statement disclosure.

Saleh Mohammed Jerbo Jamus

The Chamber rejected requests of the two groups of anonymous victims in which they contested the joint submission and the agreement, criticizing the chronological order of the presentation of the contested issues; the fact that the restrictions could cause prejudice to the victim's participation right in that they fail to reflect charges and factual evidence; the extensive redactions which do not permit the victims to have a view on certain facts; the consideration of the fact that their client could assist the Chamber in finding the truth given that they were present in the camp; as well as that three ad-

Rule 69

Agreements as to evidence

The Prosecutor and the defence may agree that an alleged fact, which is contained in the charges, the contents of a document, the expected testimony of a witness or other evidence is not contested and, accordingly, a Chamber may consider such alleged fact as being proven, unless the Chamber is of the opinion that a more complete presentation of the alleged facts is required in the interests of justice, in particular the interests of the victims

ditional victim applicants may have pertinent evidence to offer.

In its conclusion, the Chamber considered that the procedures proposed in the Joint Submission will facilitate the fair and expeditious conduct of proceedings. The Chamber agreed also that at this stage, a more complete presentation of the alleged facts in the case is not required in the interest of the justice. Thus, it decided that the trial would proceed only on the basis of the contested issues and the parties shall not present evidence or make submission other that on three issues that are contested.

Abdallah Banda Abakaer Nourain, was the Commander-in-Chief of the Justice and Equality Movement (JEM) Collective-Leadership, one of the components of the United Resistance Front. He was born in or around 1963 in Wai, Dar Kobe, North Darfur and is a member of the Zaghawa tribe. He is indicted with **Saleh Jerbo**, for three counts of war crimes allegedly committed during the Haskanita raids against Afric an Union peacekeepers within the context of the Darfur conflict in Sudan. The ICC's Pre-Trial Chamber I considers that there are substantial grounds to believe that they both are criminally responsible as co-perpetrators under article 25 (3)(a) of the Rome Statute:

Trial Chamber II, Situation in the Democratic Republic of the Congo, In the case of The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui (ICC-01/04-01/07)

"Decision on the request of the Defence for Mathieu Ngudjolo to obtain assurances with respect to self-incrimination for the accused" 13 September 2011

Mariam SY, Intern, Office of Public Counsel for the Defence, ICC*

* The views expressed herein are those of the author alone and do not reflect the views of the ICC

On 19 July 2011, the Defence for Mathieu Ndudjolo submitted a motion requesting the Chamber to secure incriminating testimonies of Defence's witnesses and the Accused by virtue of Article 93(2) of the Rome Statute ("the Statute") and Rules 74 and 191 from the Rule of Procedure and Evidence. In its submission, the Defence asked the Chamber to provide its witnesses and the Accused assurances that they would not be prosecuted, detained or subjected to any restrictions of freedoms for any act or omission prior to their departure from the Democratic Republic of the Congo ("the DRC"), also that incriminating statements shall not be rendered public.

On 11 August 2011, the Prosecution challenged the Defence motion. In its response the Prosecution stated that the Court's provisions against self-incrimination mentioned in Defence's motion facilitated witnesses' attendance at trial and permitted the Court to compel witnesses to testify but could under no circumstances be applied to the Accused. Thus, the Prosecution underlined the volunteering position of the Accused when submitting statements for his own defence and concluded that all evidence given by the Accused when testifying could be publicized, also used against him in on going or further investigations.

In light of the parties' submissions, Trial Chamber II clarified the jurisprudence regarding witnesses and Accused towards compromising statements, while responding to the specific situation of the Accused.

First, Trial Chamber II referred to the "Directions for the conduct of the proceedings and testimony in accordance with Rule 140 " and précised that the standard stipulating that "rules applicable to witness shall apply to an accused consenting to give evidence" could not prevail "when a suspect testifies at his own trial".

Germain Katanga

Indeed, the Chamber made a clear distinction with the rights of the witnesses to be called, and those of the Accused, whose appearance was secured by others provisions.

In this regard, the Chamber pointed out the means of assurances provided to the Accused according to Article 67(1)(g)(h) of the Statute. Under this Article, the Accused has the right to the following guarantees: "not to be compelled to testify or to confess guilt and to remain silent without such silence being a consideration in the determination of guilt or innocence; to make unsworn oral or written statement in his defence".

Similarly to Prosecution's position, Trial Chamber II underlined that the Accused had knowingly chosen to testify under oath and therefore, must answer to all relevant questions, including

"compromising ones" during cross-examination.

Trial Chamber II responded then to Defense's concerns when underlining that questions of the cross -examining party must be strictly related to charges and not merely be aimed at incriminating the Accused for facts or circumstances outside the scope of the trial.

Moreover, with regard to the risk of self-incrimination in respect of other proceedings before the Court or other jurisdictions, the Chamber recalled the principle of *ne bis ne idem* enshrined in Article 20 of the Statute.

Accordingly, the Trial Chamber rejected the Defence's request and ordered the Defence to file a public redacted version of documents ICC-04-01/07-3076-Conf, to ensure the public nature of the proceeding.

Article 67

Rights of the accused

1. In the determination of any charge, the accused shall be entitled to a public hearing, having regard to the provisions of this Statute, to a fair hearing conducted impartially, and to the following minimum guarantees, in full equality:

(g) Not to be compelled to testify or to confess guilt and to remain silent, without such

silence being a consideration in the determination of guilt or innocence;

(h) To make an unsworn oral or written statement in his or her defence

Trial Chamber I, In the case of The Prosecutor v. Thomas Lubanga Dyilo

(ICC-01/04-01/06)

"Decision reviewing the Registry's decision on the legal assistance for Mr Thomas Lubanga Dyilo pursuant to Regulation 135 of the Regulations of the Registry" 30 August 2011

Mariam SY, Intern, Office of Public Counsel for the Defence, ICC*

* The views expressed herein are those of the author alone and do not reflect the views of the ICC

On 22 July 2011, the Registry issued a decision related to the legal aid provided to Thomas Lubanga Dyilo following the closing submissions of the parties and pending a decision of the Chamber on the guilt or innocence of the Accused. Referring to "Annex 2 of the Report to the Assembly of States parties on the options for securing adequate defence counsel for accused persons" and to "the Report on the operation of the Court's legal aid system and proposals for its amendment", the Registrar informed the Defence of Lubanga that it will cease all the payments as respect to legal assistance except the cost of the intervention of a leading counsel.

Thomas Lubanga Dyilo

In response, the Defence for Lubanga submitted a request before the Chamber in order to review the Registry's Decision. By virtue of Article 67(1), the Defence submitted that the decision was violating the rights of the accused to obtain the adequate time and facilities for the preparation of his defence and to be tried without undue delay. Consequently, the Defence requested the Chamber to enable the Defence team to remain as such, with the exception of the case manager.

The Chamber considered principles and rules of international law and the Court's provisions while rendering its decision.

With respect to the right of the Accused to an effective defence, the Chamber raised the fundamental human rights of the accused enshrined in Article 67(1) and held that any decisions concerning legal assistance should be funded pursuant to this article.

The Chamber recalled next, the different stages of trial from the assignment of a case to a Trial Chamber up to additional hearings and decisions for sentencing and reparation as set out in the Part IV of the Rome Statute, and emphasized the Accused's right to an effective defence throughout the entirety of the proceedings.

Regarding the documents submitted by the Registrar to justify her decision, the Chamber observed

Article 74

Requirements for the decision

1. All the judges of the Trial Chamber shall be present at each stage of the trial and throughout their deliberations. The Presidency may, on a case-by-case basis, designate, as available, one or more alternate judges to be present at each stage of the trial and to replace a member of the Trial Chamber if that member is unable to continue attending.

2. The Trial Chamber's decision shall be based on its evaluation of the evidence and the entire proceedings. The decision shall not exceed the facts and circumstances described in the charges and any amendments to the charges. The Court may base its decision only on evidence submitted and discussed before it at the trial.

that they did not include any consideration for the sentencing and reparation phases of trial, also that they could not prevail on the Court's legal tools and international legal provisions. Noting the Registrar's duty to ensure that the Court's funds were not squandered, the Chamber considered, however, that the Registrar was undermining the rights of the accused to a fair trial.

The Chamber concluded that decisions on legal assistance shall be rendered with respect to the specificity of each case.

The Chamber recalled that it was likely to render the Article 74 Decision in a short period of time. It also underlined that an appeal could be lodged by each party within 30 days following the issuance of this decision. The Chamber considered therefore, that the dissolution of the defence team could cause disruption in the proceedings, and that it would be a considerable disadvantage for the Defence in comparison with the Prosecution's means.

In general, the Chamber advised the Registrar to consult with the Chamber prior issuing any decision as regards to legal aid so that an approximate schedule could be determined pending Article 74 Decision. The Chamber recommended that the Registrar takes into account the following elements: (i) that a team of sufficient size remains in place to deal with any outstanding work during this period; (ii) if the defence team is reduced, the leading counsel is given sufficient warning of the approximate date of the Article 74 Decision so that additional members of the team can at least be recruited in advance; iii) in any event, the Defence must not be placed in the position of having to prepare submissions on sentence, reparations or for an appeal brief within an unreasonably short period of time with an inadequate legal team. Emphasizing on the multiple tasks that the Defence would have to undertake prior to Article 74 Decision, the Chamber held that it was necessary to grant the Defence with appropriate means as proposed by the lead Counsel of Lubanga.

Lead Counsel Catherine Mabille

Accordingly and pursuant to Regulation 83(4) of the Court, the Chamber reversed the Registrar decision and ordered the Registry (i) to retain the defence team consisting of one lead counsel, an associate counsel and two legal assistants for the subsequent trial phases; (ii) to provide Defence with appropriate means as regards to offices, electronic access, and access to the accused on a privileged basis.

Finally, the Chamber deprecated the language used by the Registrar in her submission and advised that futures submissions shall be restrained and to the point.

Trial Chamber I, In the case of The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus (ICC-01/05-03/09)

"Reasons for the Order on translation of witness statements (ICC-02/05-03/09-199) and additional instructions on translation" 12 September 2011.

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* The views expressed herein are those of the author alone and do not reflect the views of the ICC

On the 8 August 2011, the Prosecution informed the Chamber of its difficulties relative to the translation of incriminatory evidence in Zaghawa. Recalling the Pre-Trial proceedings, the Prosecution requested that the Rule 76 of the RPE should be one more time interpreted pragmatically and realistically in order to shorten trial proceedings.

Responding to the Prosecution's motion, the Defence submitted that the disclosure of witnesses' statements into summary forms would impede the Accused's right to a fair trial. By virtue of Article 67(1) of the Rome Statute and Rule 76(3) of the Rules of Procedure and Evidence ("the RPE"), the Defence argued that it was compulsory for the Prosecution to provide the Defence with fair, organ-

ised and accurate translations of witnesses' statements.

Noting that the parties raised issues on the scope of obligation of disclosure pursuant to Rule 76 of the RPE, the Chamber considered these issues in turn.

As regards to the witnesses' statements, the Chamber recalled Rules 76 and 111 of the RPE. Pursuant to Rule 76, the Prosecution has the obligation to disclose to the Defence with all witnesses' statements it intends to call at trial. By virtue of Rule 111, a record shall include formal statements of the questioned person, also the signature of all the persons who attended to the testimony. The Chamber held that Rules 76 and 111 shall be read in conjunction. Furthermore, the Chamber invoked the Court's jurisprudence considering the advantage of the disclosure of witnesses' statement in a narrative form and regarding the Prosecution obligation of disclosure of witnesses signed statements. The Chamber ordered, therefore, the Prosecution to grant the Defence with organised and comprehensive signed witnesses' statement in a narrative form, and based on all the available material relating to the new witnesses it intended to rely on.

The Chamber addressed next, the issue of translation of witnesses' statements. Noting that the Defence has exhibited a high degree of cooperation in order to reduce the amount of materials that needed to be translated both before and after the confirmation of charges, the Chamber underlined that the Defence could not be expected to suffer a limitation of the Accused's statutory rights at that stage of proceedings. In this regard, the Chamber recalled the Appeals Chamber jurisprudence which stipulated that "the language requested by an accused should be granted unless there are indisputable indications that the person fully understand and speaks one of the working language of the Court". Moreover, the Chamber emphasized the right of the Accused to be informed promptly, and in detail of the nature of cause and content of the charges in a fully understood and spoken language and to be provided with translations when necessary in virtue of Article 67(1)(a)(f) and Rule 76(3) of the RPE. As a result, the Chamber ordered the Prosecution to provide the Defence with translated witnesses' statements.

The Chamber analysed also the part of the Defence motion which claimed that for each new page of the English version of the witness statement that was translated on audio tape, the page number must be read aloud in the relevant point. The Chamber considered that the measures requested were pertinent and could facilitate Defence preparation.

With respect to the defence application for the translation of the decision of confirmation of charges, the Chamber ordered to the registry to provide Defence with an audio translation of the decision.

Finally, the Chamber requested to the Defence to inform the Prosecution on the relevant sections of the Document of Confirmation of Charges, so that the Prosecution could provide the corresponding translations.

Rule 76
Pre-trial disclosure relating to prosecution witnesses

3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.

Situation in the Democratic Republic of Congo, In the case of The Prosecutor v. Callixte Mbarushimana (ICC – 01/04-01/10)

Decision on the Defence Challenge to the Jurisdiction of the Court, pursuant to Article 19 of the Rome Statute, 26 October 2011, n. ICC-01/04/01/10

Eliana Teresa Cusato, Intern, Office of Public Counsel for the Defence, ICC*

*The views expressed herein are those of the author alone and do not reflect the views of the International Criminal Court

On 26 October 2011, the Pre-Trial Chamber I ("the Chamber") decided on the Defence challenge to the Jurisdiction of the Court submitted on 19 July 2011.

Before analysing the challenge brought pursuant to Article 19 of the Rome Statute, the Chamber stated on a preliminary issue raised by the Defence concerning the standard of proof. The Defence asserted that the jurisdiction, as an essential element of the Prosecutor's case, "should be proved by the Prosecution beyond any reasonable doubt", whereas the Defence should only be required to satisfy a standard of proof which is "not higher than a balance of probabilities". On the other hand, the

Article 19

Challenges to the jurisdiction of the Court or the admissibility of a case

1. The Court shall satisfy itself that it has jurisdiction in any case brought before it. The Court may, on its own motion, determine the admissibility of a case in accordance with article 17.

2. Challenges to the admissibility of a case on the grounds referred to in article 17 or challenges to the jurisdiction of the Court may be made by:

(a) An accused or a person for whom a warrant of arrest or a summons to appear has been issued under article 58;

(b) A State which has jurisdiction over a case, on the ground that it is investigating or prosecuting the case or has investigated or prosecuted; or

(c) A State from which acceptance of jurisdiction is required under article 12.

Prosecutor observed that "as with admissibility, the party challenging jurisdiction pursuant to Article 19 bears the burden to demonstrate that a case does not fall within the jurisdiction of the Court". The Chamber stated that, pursuant to Article 58(1) of the Rules, "a request or application made under Article 19 shall contain the basis for it". It is therefore the *onus* of the Defence to set out the basis for its jurisdictional challenge. Moreover, it is also a widely accepted legal principle that the party raising a motion before a Court should provide the proof upon which his motion is based.

In its challenge, the Defence argued that the Court does not have jurisdiction to entertain the case against Callixte Mbarushimana.

The following were the arguments submitted by the Defence:

Callixte Mbarushimana

The situation of crisis that triggered the jurisdiction of the Court only included events unfolding in the Ituri region of the Democratic Republic of Congo ("DRC") at the time of the Referral and not also the events in the North and South Kivus.

Even if the crisis situation triggering the jurisdiction of the Court envisaged events in the Kivus, the Prosecutor did not show that the Forces Democratiques de Liberation du Rwanda ("FDLR") committed atrocity crimes prior to the date of the Referral, 3 March 2004.

Finally, there exists no sufficient nexus between the charges against Mbarushimana and the scope of the situation.

The Prosecutor replied firstly that the government of the DRC did not geographically or temporally limit the scope of the situation; secondly, that the DRC Government did not subsequently contest the temporal and geographic scope of the current investigations relating to events occurred during 2009 in Kivus; and thirdly, that the crimes allegedly committed by Mbarushimana are an integral part of the situation in DRC and fall within the jurisdiction of the Court.

The main issue to be solved by the Chamber was hence to determine whether the facts underlying the charges brought by the Prosecutor against Mbarushimana exceeded or not the territorial, temporal and personal parameters defining the situation under investigation. As already clarified by the Chamber, such situation can include not only crimes that had already been or were being committed at the time of the Referral, but also crimes committed after that time, "in so far they are sufficiently linked to the situation of crisis which was ongoing at the time of the referral". The mentioned link is necessary in order to avoid that a State abdicates its responsibility for exercising jurisdiction over the most serious crimes for eternity, which would be in contrast with the principle of complementarity.

The Chamber observed that, even if it is uncontested that all the events referred to in the charges against Mbarushimana occurred after the date of the Referral and in North Kivu and South Kivu, it is important to determine whether these facts are sufficiently linked to the fact which led the DRC to refer the situation to the Court.

After having analysed the relevant documents and facts (a particular emphasis was given, *inter alia*, to the UN Security Council Resolutions which contain references to both the Kivus province and the Ituri district), and having addressed the arguments submitted by the parties, the Chamber was satisfied that the case against Mbarushimana is sufficiently linked to the situation of crisis existing in the DRC at the time of and underlying the Referral.

Moreover, the Chamber recalled that, pursuant to Article 13 and 14 of the Statute, a State Party may only refer to the Prosecutor an entire situation in which one or more crimes within the jurisdiction of the Court appear to have been committed. A referral can not limit the Prosecutor to investigate only certain crimes: as long as crimes are committed within the context of the situation of crisis, the investigation and prosecutions can be initiated.

In addition, the link required for an event to be encompassed in the scope of a situation can stretch over a number of years. Accordingly, it cannot be required that the person targeted by the Prosecutors investigation be active for the whole duration of the relevant time-frame.

For all the above mentioned reasons, the Chamber rejected the Defence challenge to the Jurisdiction of the Court.

Regulation 24 *bis.*

Submissions by the Registrar

1. The Registrar, when necessary for the proper discharge of his or her functions, in so far as they relate to any proceedings, may make oral or written submissions to a Chamber with notification to the participants.

2. The Registrar may file a document ex parte "Registrar only" if knowledge by the participants of the content of the document filed would defeat its purpose. The Chamber shall decide whether notice of the existence of the filing is to be provided to the participants.

3. Nothing in this regulation shall be taken to restrict other types of communication between Chambers and the Registrar.

4. This regulation shall apply mutatis mutandis to proceedings before the Presidency

Situation in the Democratic Republic of the Congo "Decision on the 'Registrar's Submissions under Regulation 24 *bis* of the Regulations of the Court In Relation to Trial Chamber I's Decision ICC-01/04-01/06-2800' of 5 October 2011"

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*The views expressed herein are those of the author alone and do not reflect the views of the International Criminal Court

On 21 November 2011 the Appeals Chamber rendered a decision establishing a limitation to the Registrar's power to request the reversal of the decision rendered by Trial Chamber I on legal assistance for the accused, on the basis of the exhaustive nature of Articles 81 and 82 of the Rome Statute and the inability of the Registrar to start what would amount to new proceedings before a Chamber.

After Trial Chamber I reversed the decision in which the Registrar reduced the allocated amount of legal aid for the defence of Thomas Lubanga Dyilo upon completion of final oral submissions, the Registrar filed her submissions before the Appeals Chamber along with a request for the impugned decision to be reversed, on the basis of Regulation 24 *bis* (1) of the Regulations of the Court.

According to the interpretation of Regulation 24 *bis* (1) adopted by the Registrar, she would be able to make oral or written submissions to a Chamber, including the Appeals Chamber, even in the event of presenting submissions that are not connected to any pending appellate proceedings. In support of her argument, the Registrar recalled the interpretations of other international criminal tribunals such as the ICTY, ICTR and SCSL to argue that the aforementioned do allow the Registrar to appeal decisions of Trial Chambers when they affect the discharge of the Registrar's functions. According to the Registrar, given the similarities between the Rules of Procedure and Evidence of those tribunals and regulation 24 *bis* (1), this line of case-law should be used by the Appeals Chamber as a guiding tool to interpret the regulation in question.

Additionally, the Registrar insists on the existing budgetary constraints and the effect that the reversal of her decision would have on other programmes of the Registry as a result of the reallocation of resources, which will prevent the Registry from carrying out other necessary functions.

In response to these arguments Lubanga filed his observations, which were based on the inadmissibility of the aforementioned submission. According to him, the Registrar's power to submit observations is limited to the Chamber that is seized with a case or situation. As the case is not presently before the Appeals Chamber, the Trial Chamber would have exclusive competence to receive the Registrar's observations based on Regulation 24 *bis* (1). Lubanga makes an additional reference to the fact that Regulation 24 *bis* (1) does not grant an additional ground to appeal outside of articles 81 and 82 of the Rome Statute, provisions which contain the decisions that are subject to appeal before the Court.

The Appeals Chamber recognized that the Registrar is not entitled to a "blanket authority" to enable her to initiate new proceedings before the Appeals Chamber. In previous decisions, the Appeals Chamber has found that an appeal is a separate and distinct stage of proceedings from that of the trial and therefore these submissions would initiate new proceedings on appeal, a power that is not granted to the Registrar under Regulation 24 *bis* (1).

As to the subject-matter of the submissions, the Appeals Chamber has previously declared that in connection with legal aid, only decisions of the Registrar on the scope of the payment of legal assistance are subject to review by the Chamber dealing with the case on the application of a legally aided person, as established under Regulation 83(4). In the present case, it is the Trial Chamber that is

dealing with the case and a further review by the Appeals Chamber would be inadmissible if not exercised on the basis and in respect of Articles 81 and 82 of the Rome Statute.

Even in the event of the Registrar's submissions being admissible, her request was not limited to the presentation of submissions but included a request for reversal of the impugned decision. The Chamber is of the opinion that Regulation 24 bis (1) does not entitle the Registrar to do so, considering the exhaustively defined jurisdiction of the Appeals Chamber, found under Articles 81 and 82 of the Rome Statute and the Rules of Procedure and Evidence. For the above reasons, an attempt to appeal based on Regulation 24 bis (1) must be rejected.

Finally, although the Appeals Chamber recognizes the concern that the decision may affect the discharge of the Registrar's functions, this fact does not allow the Appeals Chamber to evade the limits on its jurisdiction. The Chamber adds that the Registrar had the opportunity to inform the Trial Chamber of the effects its decision would have on the Registry and it did, in fact, submit its views, which were apparently taken into account by the Trial Chamber.

Laurent Koudou Gbagbo, born on 31 May 1945, served as the fourth President of Côte d'Ivoire from 2000 until his arrest in April 2011. He was surrendered to the ICC on 29 November 2011 by the national authorities of Côte d´Ivoire following a warrant of arrest issued under seal by the judges of the Pre-Trial Chamber III on 23 November 2011. Gbagbo allegedly bears individual criminal responsibility, as indirect co-perpetrator, for four counts of crimes against humanity, namely murder, rape and other forms of sexual violence, persecution and other inhuman acts, allegedly committed in the territory of Côte d'Ivoire between 16 December 2010 and 12 April 2011.

Situation in the Republic of Côte d'Ivoire "Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire"- ICC-02/11-14 03/10/2011

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*The views expressed herein are those of the author alone and do not reflect the views of the International Criminal Court

On Monday 03 October 2011 Pre-Trial Chamber III ("the Chamber") took a decision regarding the Prosecutor's "Request for authorisation of an investigation pursuant to Article 15" ("the Request") filed on 23 June 2011, in which he requested authorisation from the Chamber to commence an investigation into the situation in the Republic of Côte d'Ivoire ("RCI") in relation to post-election violence in the period following 28 November 2010.

Laurent Gbagbo

The Prosecutor contended that there was a reasonable basis to believe that the pro-Gbagbo forces ("PGF") were responsible for the following crimes against humanity under the terms of Article 7(1) of the Statute: murder, rape and other forms of sexual violence, imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law and the enforced disappearance of persons. Furthermore, he contended that there was a reasonable basis to believe that these same forces were responsible for the following war crimes under Article 8(2) of the Statute: murder, attacking civilians, attacking personnel or objects involved in a humanitarian assistance or peacekeeping mission and attacking protected objects.

On the other hand, the Prosecutor stated that there was also a reasonable basis to believe that pro-Outarra forces ("POF") were responsible for the following war crimes of murder, attacking civilians and rape. Nonetheless, the Prosecutor affirmed that other possible crimes within the jurisdiction of the Court might be identified during an investigation.

Regarding the charges of crimes against humanity allegedly committed by PGF, the Chamber determined that there was a reasonable basis to believe that an attack against a civilian population had been carried out according to a State policy and that the attack had a widespread or systematic nature. Furthermore, analysing the underlying acts that constitute a crime against humanity, the Chamber decided that there was a reasonable basis to believe that PGF had committed the crimes of

murder, rape, imprisonment or other severe deprivation of physical liberty and enforced disappearances. In addition to these acts that had been mentioned in the Request, the Chamber also found that there was a reasonable basis to believe that PGF were also responsible for torture and other inhumane acts under the terms of Article 7(1) of the Statute.

Although the Prosecutor did not mention any crimes against humanity committed by POF in his Request, the Chamber, nevertheless, found that there was a reasonable basis to believe that certain acts had been committed by these forces that could constitute a crime against humanity, namely murder, rape and imprisonment or other severe deprivation of physical liberty.

Pertaining to the allegations of war crimes, in his Request, the Prosecutor contended that war crimes were committed in the context of an armed conflict not of an international character between 25 February 2011 and 6 May 2011. The Chamber, after careful deliberation, was ultimately satisfied that a reasonable basis exists to believe that an armed conflict not of an international character had taken place in the RCI between PGF and POF between 25 February 2011 and 6 May 2011.

While analysing the underlying acts that constitute war crimes, the Chamber agreed with the Prosecutor and determined that there was a reasonable basis to believe that the PGF committed the war crimes of murder, intentionally directing attacks against the civilian population, attacks intentionally directed against personnel or objects involved in humanitarian or peacekeeping mission and intentionally directing attacks against protected objects. In addition, the Chamber, in its own analysis of the materials presented by the Prosecutor, thus going beyond his request, determined that there was also a reasonable basis to believe that the PGF also committed the acts of rape and sexual violence under the terms of Article 8(2) of the Statute.

In its analysis of the war crimes allegedly committed by the POF, the Chamber decided that there was a reasonable basis to believe that the acts of murder, intentionally directing attacks against the civilian population, rape, pillage, torture and cruel treatment were committed by these forces. Of these acts, the acts of pillage, torture and cruel treatment had not been mentioned in the Prosecutor's request.

Ultimately, the Chamber decided that there was a reasonable basis to believe that most, if not all, of the underlying acts of crimes against humanity and war crimes had taken place in the RCI since 28 November 2010 and that these acts fall within the International Criminal Court's ("ICC") jurisdiction *ratione materiae*.

In considering the ICC's jurisdiction *ratione temporis*, the Chamber took into consideration the period of investigation requested by the Prosecutor in his Request. He proposed that the investigations cover the period after 28 November 2010 instead of opening an investigation that would investigate crimes that may have happened during the entire period of the ICC's jurisdiction within the RCI. However, the Prosecutor also suggested that once the Chamber had had the opportunity to review the supporting material, it might conclude that the temporal scope of the investigation should be broadened to encompass events that occurred between 19 September 2002 and the date of the filing of the Request, 23 June 2011.

ICC Chief Prosecutor Luis Moreno Ocampo

In its deliberation of the temporal scope of a potential investigation, the Chamber concluded that it would be wrong to authorise an investigation into crimes committed after the filing date of the Request. Nevertheless, it also concluded that due to the volatile environment in the RCI it is necessary that any potential grant of authorisation covers an investigation into "continuing crimes". Therefore crimes that may be committed after the filing date of the Prosecutor's Request should be covered by any authorisation insofar that the contextual elements of the continuing crimes are the

Article 7

Crimes against humanity

1. or the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

(a) Murder;

(b) Extermination;

(c) Enslavement;

(d) Deportation or forcible transfer of population;

(e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;

(f) Torture;

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Article 7 (1) continued...

(g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;

(h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;

(i) Enforced disappearance of persons;

(j) The crime of apartheid;

(k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

same as for those committed prior to 23 June 2011. They must, at least in a broad sense, involve the same actors and have been committed within the context of either the same attacks, for example crimes against humanity, or the same conflict, for example war crimes.

The Chamber also considered that a similar analysis should apply to any crimes that may have been committed before the commencement date requested by the Prosecutor for the authorisation, provided they are part of the same situation. Nevertheless, in analysing the material presented by the Prosecutor, the Chamber was unable to find any mention of crimes that were committed prior to 28 November 2010. Due to the lack of information the Chamber was unable to determine whether the reasonable basis threshold had been met with regard to any specific crime during this period. The Chamber concluded that the Prosecutor had not provided sufficient supporting material pertaining to the contextual elements and underlying acts of the crimes within the jurisdiction of the ICC allegedly committed during that period of time and that there was no reasonable basis to warrant an investigation during such a period. In light of this, the Chamber requested that the Prosecutor revert to the Chamber within one month with any additional information that is available to him on potentially relevant crimes committed between 2002 and 2010.

Alassane Dramane Ouattara

After confirming the jurisdiction of the ICC *ratione materiae* and *ratione temporis*, the Chamber then confirmed its jurisdiction *ratione loci* due to the fact that the alleged crimes had occurred in the territory of the RCI. Since this requirement was fulfilled, the Chamber did not need to examine its jurisdiction *ratione personae*.

The Chamber also confirmed that the "case" was admissible before the ICC since the complementarity aspect of the ICC's jurisdiction and the element of "gravity" mentioned in Article 17(1)(d) had been satisfied. The Chamber also found that there was no reason to believe that an investigation into these allegations would not serve the interests of justice

In conclusion, the Chamber authorised an investigation into the alleged crimes against humanity and war crimes committed by the PGF and POF in the RCI since 28 November 2010 and into continuing crimes that may be committed in the future.

"Judge Fernández de Gurmendi's separate and partially dissenting opinion to the Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Côte d'Ivoire"- ICC-02/11-15 03/10/2011

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Judge Fernández de Gurmendi partially dissented from the decision taken by the Majority, particularly pertaining to the Chamber's analysis of the ICC's jurisdiction *ratione materiae* and *ratione temporis*.

Regarding the Chamber's analysis of the ICC's jurisdiction *rationae materiae*, the judge concurs with the view of the Majority that, in order to authorise an investigation, the Pre-Trial Chamber ("the PTC") has to examine the material available to it in order to assess whether the requirements of Article 53(1) of the Statute are met. However, she states that the examination to be undertaken by the Chamber, in exercising its supervisory role, is solely a review of the request and material presented by the Prosecutor. She points out that the PTC has no investigative powers of its own, nor is it responsible for directing the investigation of the Prosecutor. The examination to be conducted by the Chamber is of a limited nature, namely to ascertain the accuracy of the statement of facts and reasons of law advanced by the Prosecutor with regard to crimes and incidents identified in his own request and determine, on this basis, whether the requirements of Article 53 of the Statute are met.

The Judge affirms that the PTC exceeded its own competency during its assessment of the material

presented by the Prosecutor. In fact, the Chamber singled out elements from the supporting material in order to establish facts, additional acts, and draw further conclusions on criminal responsibility.

The Judge contends that such findings, based on a fragmentary approach to the supporting material and victims' representations, cannot be considered to be sufficiently substantiated. Furthermore, this conduct was unnecessary due to the fact that the incidents already identified in the Prosecutor's request were sufficient to satisfy the Chamber that the requirements of Article 53 of the Statute had been met.

Judge Fernández de Gurmendi

Judge Fernández de Gurmendi also does not agree with the "non-restrictive manner" in which the Majority decided to consider victims' submissions and used them to single out specific submissions and use them as a source to identify alleged criminal acts and suspects. This practice can be particularly worrisome since paragraph 20 of the Decision of the Majority states that "(...) Chamber also notes that many of the victims did not provided sufficient information to enable the Chamber to determine whether the contextual or other elements of the underlying acts relating to the crimes have been fulfilled". In fact, some of the submissions were vague and incomplete and thus should not be used to identify alleged criminal acts or suspects.

The Judge also disagrees with the temporal scope of the investigation. To her, there was no reason for the Chamber not to authorise an investigation of alleged crimes that may have occurred during 2002 and 2010 and it need not have requested that the Prosecutor revert to the Chamber with further evidence of crimes that may have been committed during this period. As for the end date of the investigation, she contends that Chamber should not have used the term "continuing crimes" to limit the scope of the investigation into future crimes. By using this term the Chamber might leave out of the investigation underlying acts of war crimes and crimes against humanity that could not be considered "continuing crimes, even if they were part of the same attack or same armed conflict.

The Judge feels that the Chamber should have adopted the position of Pre-Trial Chamber I in ICC-01/04-01/10. In doing so, the Chamber would have established that the investigation could focus on crimes that have already been committed or were being committed at the time of the referral, as well as crimes committed after that time, insofar as those crimes are sufficiently linked to the situation of crisis in the RCI.

Article 53

Initiation of an investigation

The Prosecutor shall, having evaluated the information made available to him or her, initiate an investigation unless he or she determines that there is no reasonable basis to proceed under this Statute. In deciding whether to initiate an investigation, the Prosecutor shall consider whether:

(a) The information available to the Prosecutor provides a reasonable basis to believe that a crime within the jurisdiction of the Court has been or is being committed;

(b) The case is or would be admissible under article 17; and

(c) Taking into account the gravity of the crime and the interests of victims, there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice

Blog Updates

- Gentian Zyberi, **ICTY Global Legacy Conference,** 29 November 2011, available at:: http://internationallawobserver.eu/2011/11/29/icty-global-legacy-conference/
- Naomi Roht-Arriaza, **Prospects for justice in Libya**, 23 November 2011, available at: http://intlawgrrls.blogspot.com/2011/11/prospects-for-justice-in-libya.html
- Diane Marie Amann, **Where in the world: Saif, Senussi,** 3 November 201, available at:: http://intlawgrrls.blogspot.com/2011/11/where-in-world-saif-senussi.html
- Elli Goetz, **ICC: Decision To Terminate The Case Against Muammar Gaddafi**, 24 November 2011, available at:: http://www.internationallawbureau.com/blog/?p=3539
- Steven Kay QC, **First Bangladesh War Crimes Trial – The Judge who is part of the evidence**, 21 November 2011, available at: http://www.internationallawbureau.com/blog/?p=3532
- Marie O'Leary, **Femi Falana v African Union – The African Court on Human and Peoples' Rights,** 1 December 2011, available at:: http://www.internationallawbureau.com/blog/?p=3615
- Fair Trials International, **New Study to Map Fairness of EU Criminal Justice Systems**, 30 November 2011, available at:: http://www.fairtrials.net/press/article/new_study_to_map_fairness_of_eu_criminal_justice_systems?utm_medium=email&utm_campaign=Fair+Trials+International+Newsletter+November+2011&utm_content=Fair+Trials+International+Newsletter+November+2011+CID_d698e43e1a66f20cfb719dac01f897e0&utm_source=Email+newsletter&utm_term=For+more+information+on+the+project+see+our+press+release

Extradition of Manuel Noriega

On 23 November 2011, a French court ruled that former Panamanian dictator Manuel Noriega will be extradited back to Panama, to serve time there for his past crimes. The verdict comes more than 20 years after being arrested, which have been spent in prison in Florida on drugs charges, and France for money laundering. Panama wants Noriega returned to serve prison terms handed down after he was convicted in absentia for embezzlement, corruption and murder. Noriega will most likely return to Panama before Christmas 2011.

Publications

Books

Adam Branch (2011) *Displacing Human Rights: War and Intervention in Northern Uganda*, Oxford University Press

Louise Doswald-Beck (2011) *Human Rights in Times of Conflict and Terrorism,* Oxford University Press

Rafael Domingo (2011) *The New Global Law*, Cambridge University Press

Bardo Fassbender (2011) *Securing Human Rights?: Achievements and Challenges of the UN Security Council,* Oxford University Press

Yoram Dinstein, (2011) *War, Aggression and Self-Defence*, Cambridge University Press

Articles

Thomas Wayde Pittman, (2011) 'The Road to the Establishment of the International Residual Mechanism for Criminal Tribunals: From Completion to Continuation' J Int Criminal Justice, 9(4): 797-817

Robert Charles Clarke, (2011) 'Return to Borkum Island: Extended Joint Criminal Enterprise Responsibility in the Wake of World War II' J Int Criminal Justice 9(4): 839-861

Guido Acquaviva, (2011) 'At the Origins of Crimes Against Humanity: Clues to a Proper Understanding of the Nullum Crimen Principle in the Nuremberg Judgment' J Int Criminal Justice, 9(4): 881-903

Philip Murray, (2011) 'Judicial Review of the Upper Tribunal: Appeal, Review, and the Will of Parliament', The Cambridge Law Journal, 70 : pp 487-489

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

Call for Legacy Stories

The ADC-ICTY would like to encourage all current and former defence staff to write short stories about their time at the ICTY. It can be related to any aspect of your time at the Tribunal. This project will form part of the legacy of the ADC and it is hoped that the stories will be published next year.

Please send any submissions to: dkennedy@icty.org

Upcoming Events

ICCT – The Hague Seminar: Terrorists on Trial: The Case of Zarema Muzhakhtoyeva

Date: 13 December 2011

Organiser: ICCT—The Hague

Venue: Campus The Hague Location Stichthage 13th Floor

Legal Pluralism: enslaved Africans and their system of dispute resolution in the Caribbean area (18-19th Century)

Date: 19 December 2011

Organiser: Bynkershoek Institute

Venue: Bynkershoek Institute, Groot Hertoginnelaan 3, The Hague, 2517 EA

Legal Transplant: Introducing the Dutch Civil code in the Caribbean (19th Century)

Date: 23 January 2012

Organiser: Bynkershoek Institute

Venue: Bynkershoek Institute, Groot Hertoginnelaan 3, The Hague, 2517 EA

Opportunities

Senior Researcher in Law and/or Criminology, Amsterdam, The Netherlands

VU Amsterdam

Closing date: 19 December 2011

Chief, Victims and Witnesses Unit (P-5), Leidschendam, Netherlands

Special Tribunal for Lebanon

Closing date: 24 December 2011

Legal Officer, The Hague, The Netherlands

The Permanent Bureau of the Hague Conference on Private International Law (HCCH)

Closing date: 4 January 2011