

Head of Office: Dominic Kennedy
Assistant: Jesse Huppenbauer
Contributors: Fabian Gems, Shokriya Majidi & Samuel Shnider
Design: Sabrina Sharma

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

ICTY CASES

Cases at Trial

Hadžić (IT-04-75)
Karadžić (IT-95-5/18-I)
Mladić (IT-09-92)
Prlić et al. (IT-04-74)
Šešelj (IT-03-67)
Stanišić & Simatović (IT-03-69)

Cases on Appeal

Đorđević (IT-05-87/1)
Popović et al. (IT-05-88)
Šainović et al. (IT-05-87)
Tolimir (IT-05-88/2)
Stanišić & Župljanin (IT-08-91)

Stanišić & Župljanin (IT-08-91)



1992 to August 1995.

During the war, Stanišić was Interior Minister of Bosnia's self-declared Serb entity, Republika Srpska. Župljanin was chief of the regional security services centre in the city of Banja Luka.

Župljanin, as the chief of police of the Autonomous Region of Krajina (ARK), was sentenced for acts of persecution and extermination as crimes against humanity, and murder and torture as war crimes committed in 8 municipalities of the ARK: Banja Luka, Bosanski Novi, Donji Vakuf, Ključ, Kotor Varoš, Prijedor, Sanski Most and Teslić.

Stanišić, was sentenced for persecution as a crime against humanity, and murder and torture as war crimes both in the ARK municipalities, and in 12 other municipalities in Bosnia and Herzegovina: Bijeljina, Bileća, Bosanski Šamac, Brčko, Doboj, Gacko, Ilijaš, Pale, Višegrad, Vlasenica, Vogošća and Zvornik. However, Stanišić was found not guilty of the crime of extermination.

Reading out a summary of the 1,466 page judgement, presiding Judge Burton Hall said that Stanišić was the "highest authority in Republika Srpska on matters of interior affairs" and that he had a "legal duty to protect

On 27 March 2013, Trial Chamber II, Judge Burton Hall presiding, sentenced Mićo Stanišić and Stojan Župljanin to 22 years each for war crimes and crimes against humanity committed from 1 April

ICTY NEWS

- [Stanišić & Župljanin: Judgement](#)
- [Karadžić: Defence continues](#)
- [Krstić: Contempt](#)

Also in this issue

News from other International Courts	7
Looking Back.....	9
News from the Region.....	9
Defence Rostrum.....	10
Blog Updates & Online Lectures.....	15
Publications & Articles ...	15
Upcoming Events	16
Opportunities	16

the entire civilian population – regardless of religion, ethnicity, race or political beliefs.”

Judge Hall said that Stanišić bolstered his police force with unqualified reserve officers and coordinated with the Bosnian Serb army in order to “effect ethnic division on the ground.” When Stanišić did issue orders for protection of the civilian population, particularly in July and August 1992, he was found guilty of failing to use the powers available to him under the law to ensure their implementation, despite being aware of the limited action taken after the orders were issued, especially regarding the treatment of detainees in camps such as Omarska, Keraterm and Trnopolje in the Prijedor municipality.

The judgement stated that Stanišić and Župljanin “both intended and significantly contributed to the plan to remove Bosnian Muslims and Bosnian Croats from the territory of the planned Serbian state” in Bosnia.

In an analysis covering about 850 pages, the judgement set forth the crimes committed in each of the municipalities, most of which occurred during forcible takeovers during the spring and summer of 1992, the factual findings to support each of the crimes, and the individual responsibility of each of the accused. In an appendix of about 600 pages, the Trial Chamber set forth the individual factual findings for each of 1,735 named victims in the indictment.

The Trial Chamber found that both Župljanin and Stanišić had actively participated in a Joint Criminal Enterprise (JCE) to permanently remove non-Serbs from areas of Bosnia and Herzegovina through a plan to commit several crimes, and that crimes that were not part of the plan – such as murder and torture – were foreseeable. The Trial Chamber found that this plan came about no later than 24 October 1991, in response to the Bosnian declaration of independence. The SDS and the Bosnian Serb Leadership issued the Variant A and B instructions, which the Trial Chamber found to be effective guidance for forcible takeovers through a plan of terror and violence. The Trial Chamber found that the Bosnian Serb Leadership continued to remain in charge of the events in the municipalities for the entire period of the war. The Trial Chamber found that the “goal of these actions was the establishment of a Serb state, as

ethnically “pure” as possible, through the permanent removal of the Bosnian Muslims and Bosnian Croats”.

In the case of Župljanin, his participation in the JCE, even though he was not a member of SDS, was clear to the Trial Chamber because of his duties as chief of police to protect the entire population, the orders he issued, and the units he formed and commanded. Župljanin created the Banja Luka Special Police Detachment, which he ordered to carry out several directives of the Bosnian Serb Leadership such as the disarmament of Croats and Muslims in the region. The Special Police then committed several crimes against the local population, including murder, rape and torture. Župljanin ordered his policemen on several occasions to observe the law, but the Trial Chamber found that these orders were ineffective, and Župljanin did not genuinely mean for them to be effectuated. Despite being well aware of crimes committed against non-Serbs, including ones carried out by his own subordinates, Župljanin “failed to investigate these crimes or to discipline the perpetrators” and in relation to at least two incidents, misled the judicial authorities as to punishment in order to protect the perpetrators.

In the case of Stanišić, the Trial Chamber found that he was directly involved in the formation of the SDS, as a “key member of the decision-making authorities” and “shared a close relationship” with Bosnian Serb President Radovan Karadžić. The Trial Chamber found that he was actively involved in the implementation of Karadžić’s policies. His participation in key meetings, as well as his acceptance of the position of Minister of Interior was a participation in the plan to create a separate Serb entity in Bosnia and Herzegovina.

While the Trial Chamber found that Stanišić did in fact issue order to protect civilians, he failed to make use of his powers to ensure these orders were implemented. According to the Trial Chamber – his effective control and ability to ensure order when desirable is borne out by an incident in which he severely pursued Serb officers for failing to prevent



Defence Counsel

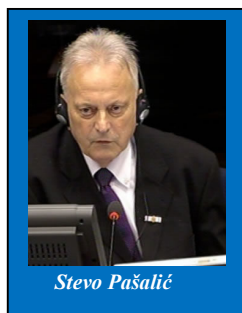
the theft of Golf vehicles from the TAS factory in Vogošća, and other actions he took against paramilitaries harassing Serb forces. Thus the Trial Chamber concluded that he was responsible as a commander for failing to prevent violence against non-Serb civilians within his protection.

The Trial Chamber acquitted Stanišić of one count of extermination as a crime against humanity. Upon careful analysis of the evidence, the Trial Chamber found that Stanišić did not know, nor have reason to know that extermination, i.e. killings on a mass scale, would be part of the execution of the plan. The Trial Chamber made clear distinctions in this regard between Stanišić and Župljanin. With regard to the

the killing of 150 men on the cliffs at Korićanske Stijene in August 1992, an incident that was initially condemned by both Župljanin and Stanišić, the Trial Chamber found that while Župljanin knew that the follow-up investigation was a sham, and effectively lied to the media and to his superiors, Stanišić had done everything in his power to severely punish the perpetrators, and had no reason to know the investigation was false.

Defence teams for both Stanišić and Župljanin intend to appeal the judgement, and have filed a motion seeking an extension of time to file their respective notice of Appeal.

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



Stevo Pašalić

On 14 March, demographic expert, Stevo Pašalić testified for Karadžić that the movement of the non-Serb population from 20 Bosnian municipalities, mentioned in the indictment, “create an incorrect historical and demographic picture”, because no reliable sources for them existed. The findings by the Prosecution demographic experts were based on wrong samples and failed to consider the significant causes of changes in the movement of the population, he added.

On 19 March, Veljko Marić, a surgeon, testified that the town hospital provided help and shelter for all citizens’ regardless of nationality. Children were moved to the territory controlled by the BiH Army in order to “reunite them with their parents”, this was an initiative made by the hospital managers, he added. Marić stated in his cross-examination that he was not aware of the event presented by the prosecutor that Bosniak children who were in the hospital witnessed their families being expelled from the villages and killed.

On 20 March, Cvijetin Simić, the former president of the Bijeljina Municipal Assembly stated that a conflict in March 1992 in Bijeljina was a result of Bosniak paramilitaries who had started an “armed riot” against legal authorities. Media reported lies about Serbs being the first to attack the town and that thousands of Muslims were killed, he added.

The second witness to testify was Svetozar Mihajlović, the Bijeljina municipal government president as of 1994. Mihajlović testified that by putting numerous road blocks and positioning snipers on rooftops the SDA leadership blocked the entire town. Mihajlović called Zeljko Raznatović-Arkan a “great manipulator” and contends that Karadžić’s meeting with Arkan in the fall of 1995 was not planned. The witness corroborated that Dusko Malović’s special unit was a perpetrator as its unit was an outsider and unrecognized by the Bijeljina authorities. Mihajlović further corroborated that Vojkan Durković in cooperation with Arkan deported Muslims who volunteered to leave.

On 21 March three witnesses took the stand. Dr Mirko Šošić, former surgeon in the Sarajevo University Clinical Center, claimed that he was forced to leave Sarajevo in 1992 because he and his other Serb colleagues were subjected to insults and abuse. Some were detained, injured and some ‘were assassinated’, he said. Furthermore, Šošić stated that in March 1992 Muslim paramilitary forces ‘occupied’ the Kosevo Clinical Center.

Witnesses Živan Filipović and Dušan Spasojević stated that on 31 March 1992 Bijeljina was blocked by Muslim paramilitaries who had placed numerous roadblocks in the streets and snipers on rooftops. Spasojević, a police inspector from Bijeljina, stated that half of the victims were killed at roadblocks while “putting up resistance”. Filipović, former deputy

commander of the Bijeljina Territorial Defence testified that Arkan was a criminal and that not only Muslims but also Serbs were afraid of him. He denied Arkan was invited to Bijeljina by the local authorities but that it was done by the "Radical Party and its members". Filipović replied that Đurković was acquitted of persecution by the Court after Muslims testified that he "helped them cross over" to the Muslim territory, when asked about the persecution of hundreds of Muslims commanded by Vojkan Đurković.

On 22 March, Dusan Spasojević stated that during the war there were no prosecutions for the crimes against humanity because the Republika Srpska judiciary and military branch did not have much training. Spasojević took part in the Republika Srpska Srebrenica Commission investigations after the war. The witness stated that the information in the 2004 Commission report on the execution of thousands of Srebrenica Muslims in July 1995 was not correct, because the people killed in combat or before the Serbs entered Srebrenica were listed among the victims.



Dusan Spasojević

Second to testify that day was Dragomir Ljubojević, president of Bijeljina Municipal Assembly from 1996. He stated that Muslim civilians left Bijeljina voluntarily, not under duress. Ljubojević stated he was not aware of Vojkan Đurović persecuting Muslims and that the Red Cross reports on dislocation of 2,500 Muslims were incorrect.

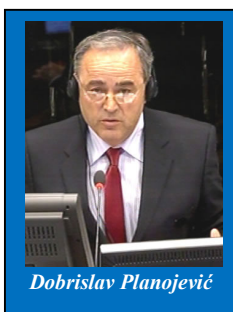
On 25 March, former Trebinje mayor Božidar Vučurević did not deny that the Muslim population left the municipality but insisted that the Muslim SDA leaders were responsible for the mass departures. Vučurević contended that Muslims left voluntarily and not because of the threats and abuse by the Serbs, as Muslims claimed.

Witness Vujadin Stević, former member of the Territorial defence (TO) in Bratunac in May 1992, testified that he took part in the attack on Glogova, but denied he ever received or gave an order to kill Bosniaks in that village. Stević claimed that the number of victims in Glogova was false. He further added that after

judge Goran Žekić was killed in Srebrenica, the aim of the operation was to disarm Bosniaks.

Witness Dragomir Obradović, former Chief of police in Sokolac, said that Bosniaks voluntarily left their homes after the attacks on the Serb villages in the summer of 1992. Obradović confirmed that 40 people were killed in the village of Novoseoce and that members of the military committed the crime, which he described as "heinous". Asked why the police did not investigate the crimes, Obradović said it was the job of the military police.

On 27 March, Dušan Mičić, former Bratunac Territorial Defence Military Police member, testified that he was ordered not to intervene when he saw unknown individuals wearing JNA uniforms, taking away people in Bratunac. Mičić also testified that he did not see men being separated from their families when he was present in Potocari. Mičić stated he subsequently heard about the mass murders of Bosniaks in Bratunac and Kravica villages on 13 July 1995.



Dobrislav Planojević

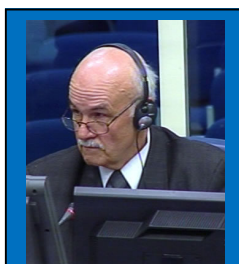
On 28 March, Dobrislav Planojević, former Republika Srpska Deputy Interior Minister, stated that he had never received any written reports on war crimes against non-Serbs. He stated that since 1991, 95% of armed reserve police officers were Bosniaks, some who were notorious criminals. Even in the Mosques weapons were hidden, he added. Furthermore, Planojević could not give a specific answer to the Prosecution regarding investigation into vehicle theft which was much more detailed than any investigation of war crimes against non-Serb civilian.

On 2 April, Trifko Komad, former Secretary to the Main and Executive Board of SDS, said that the Party tried to prevent war and conflicts. Komad stated that Serb crisis committees had the same goal, namely to protect, not deport non-Serbs. He added that the Committee was independent of the SDS leadership and that Karadžić was unable to shape the actions of the municipal party boards and crisis staffs. Amnesty was offered to Karadžić by Komad for the crimes committed during the war in the Serb-controlled territories in BH.

Second witness, Milovan Bjelica, former leader of the Serbian Democratic Party, stated that an offensive in 1992 happened as a consequence of Bosniaks refusing to be disarmed after the increase of number of Serb victims. There were victims on both sides as Bosniak forces offered resistance during the “demilitarisation” operation, he added. Bjelica confirmed that no Serb paramilitary formations, but “informal groups of young people” terrorised both Muslims and Serbs”.

During cross examination, Bjelica stated that the Muslims’ departure was a consequence of ‘a natural process’. Bjelica added that in Sokolac there were no detention facilities for civilians but only military prisons, that were used to detain Muslims who were charged with terrorism.

Gojko Čekić, former commander of the Batkovic prison camp, stated that the prisoners of war held in Batkovic collection centre were treated in accordance with the Geneva Conventions. He stated that prisoners were not abused or forced to perform hard labour during his term. When confronted by the Prosecutor that about 3,000 prisoners were held in inhumane conditions in Batkovic in 1992 and 1993, that some of them died, while many were forced to dig trenches on the frontlines, and that at least three prisoners were beaten to death, Čekić replied he was not in Batkovic at that time and was unaware of this all.



Slavko Kralj

On 4 April, Slavko Kralj, former officer with the Main Headquarters of the Republika Srpska Army, VRS, stated that Karadžić advocated for uninterrupted access of humanitarian convoys to Srebrenica. Kralj said he did not hear about Karadžić’s 1993

“directive number 7”, ordering the Army to create unbearable conditions for the local population in Srebrenica.

Radojica Mladenović was the second witness to testify. The former leader of Serb authorities in Foca, stated that no crime was ever ordered or approved by the authorities. The witness said that the crimes against Bosniaks were “individual, isolated cases” and that paramilitary formations were responsible for them.

On 5 April, Radojica stated during his cross-examination that for their own safety certain restrictions were imposed on the Muslim population. Serb municipal authorities were set up as a precaution since everything indicated there would be a bad situation and hostile relations, he added.

Karadžić Rule 98bis appeal hearing scheduled

On 28 June 2012, Trial Chamber III acquitted Karadžić of count 1 of the indictment, in which he was charged with genocide. Karadžić was acquitted under rule 98bis. The Prosecution appealed against this decision. The Appeals Chamber has announced that a hearing will be held on Wednesday, 17 April.

Rule 98bis

(A) An accused may file a motion for the entry of judgement of acquittal on one or more offences charged in the indictment within seven days after the close of the Prosecutor’s case and, in any event, prior to the presentation of evidence by the defence pursuant to Rule 85(A)(ii).

(B) The Trial Chamber shall order the entry of judgement of acquittal on motion of an accused or proprio motu if it finds that the evidence is insufficient to sustain a conviction on that or those charges.

Đorđević appeal hearing scheduled

In the case of Vlastimir Đorđević, both parties filed notices of appeal against the judgement. Đorđević, who was found guilty by the Trial Chamber on 23 February 2011, was formerly the Assistant Minister in the Serbian Ministry of Internal Affairs. He was found guilty of the crimes of deportation, murder, forcible transfer and persecutions, committed against the ethnic Albanian population of Kosovo, and sentenced to 27 years in prison.

The appeal hearing in the case will be held on 13 May.



Vlastimir Đorđević

Krstić pleaded not guilty for charges of contempt



Radislav Krstić

Radislav Krstić, former Commander of the Drina Corps of the Bosnian Serb Army, pleaded not guilty after being charged with contempt for refusing to testify in the case Radovan Karadžić.

In October 2012, the Trial Chamber ordered Krstić to appear and testify in the Karadžić case, in response to a motion by the Karadžić defence team. In the request, Karadžić said Krstić “is expected to testify that he never informed Karadžić that prisoners from Srebrenica would be, were being, or had been executed”. Krstić’s testimony was thus “directly relevant” to the genocide charge in the indictment, Karadžić contended.

Krstić declined to testify on medical grounds in an urgent motion, but on 7 February 2013 in response the Chamber ruled that Krstić’s mental and physical health was such that he was able to testify.

Following Krstić’s continued refusal to testify on 7 February, the Chamber ordered a more detailed report on Krstić’s physical and mental health. The medi-

cal report was submitted to judges on 8 March, and they found that there were “no medical reasons that would amount to good cause for the witness not to comply with the subpoena”. On 13 March, having reviewed the medical report, the Chamber found that there were no medical reasons which would amount to good cause for Krstić not to comply with the subpoena.

Following Krstić’s renewed refusal to testify on 22 March, the Trial Chamber issued an order in lieu of an indictment for contempt. In response Krstić again refused to testify.

Charged with contempt of court, he made an initial appearance in this case on 4 April. He said he had not given testimony for “exclusively” medical reasons. Presiding Judge Melville Baird said a date for the proceedings would be set in due course.

Rule 77

(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

(iii) without just excuse fails to comply with an order to attend before or produce documents before a Chamber;

NEWS FROM OTHER INTERNATIONAL COURTS



Mechanism for International Criminal Tribunals

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

Prosecutor v. Ngirabatware

In the Matter of Deogratias Sebureze and Maximilien Turinabo

MICT Statute

Article I (a) (a):

“The Mechanism shall have the power to prosecute” in accordance with the provisions of the present Statute, any person who knowingly and wilfully interferes or has interfered with the administration of justice by the Mechanism or the Tribunals, and to hold such person in contempt.”

In the last issue of the Newsletter, we reported on the contempt proceedings against Maximilien Turinabo and Deogratias Sebureze, two members of the Ngirabatware defence team.

On 27 February, Sebureze was “provisionally suspended” by the Registrar, later President Theodor Meron revoked in this mat-

ter of Sebureze and Turinabo this decision according to Article 21(B) of the Mechanism’s Directive on the Assignment of Defence Counsel.

On 27 February, the Defence for Sebureze and Turinabo filed two Motions to attack the validity of the Indictment and an appeal. The indictment for contempt before the MICT was filed by ICTR Judges, however the Defence claimed that the MICT should give no legal effect to the purported decision of ICTR Trial Chamber II to charge the accused with contempt as the temporal jurisdiction to do so had ended on 1 July 2012 in accordance with the

transitional arrangements for the MICT, as ICTR Judges do not have the Jurisdiction to initiate contempt proceedings before the MICT.

On 19 March, President Theodor Meron quashed the decision of suspension and re-instated Sebureze.

On 20 March, MICT Judge Vagn Joensen, rendered a decision regarding the Registry's Decision, stating that the MICT alone has jurisdiction to prosecute allegations of contempt. However, the decision leaves door open for the Single Judge of the MICT to reinstate contempt proceedings if he decides there is sufficient evidence.

Transitional Arrangements annexed to Security Council Resolution 1966

Article 4 (2) :

"The Mechanism shall have competence to conduct and complete all proceedings for contempt of court and false testimony for which the indictment is confirmed on or after the commencement date of the respective branch of the Mechanism."



International Criminal Court

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

Kenyatta and Ruto Sworn In



William Ruto

On 9 April, Kenya and Ruto were sworn in. The Statute of the International Criminal Court applies to all

persons equally without any distinction based on official capacity. When it comes to serious violations of international law such as genocide, crimes against

humanity and war crimes, no-one is exempted from prosecution.

Uhuru Kenyatta and William Ruto are both charged with crimes against humanity committed during the 2007/2008 post-election violence in Kenya before the ICC. However, Kenyatta and Ruto stood on different sides during the 2007 elections. While Kenyatta had then supported Mwai Kibaki's Party for National Union, Ruto had instead backed Raila Odinga's Orange Democratic Movement.

Their trials are set to start in May and July 2013 respectively. During the 4 March, 2013 elections, they were elected President and Deputy President respectively. Kenya's Supreme Court concluded at the end of March that the elections had been conducted in a fair manner.

On 18 March, Kenyatta's lawyers argued that the ICC should dismiss charges for crimes against humanity. Three witnesses withdraw from the Kenyatta Case. The withdrawal was reported already two days before by Kenya's Capital FM. "Three of the 12 prosecution witnesses relied upon at confirmation retracted their willingness to testify after the confirmation hearing;

witnesses two, nine and 10," ICC Prosecutor Fatou Bensouda said.

Another of the 12, witness four, had already withdrawn his testimony under allegations of bribery and intimidation, leading the court to drop charges against Kenyatta's co-accused, former Head of Civil Service Francis Muthaura. The prosecution had lined up a total of about 30 witnesses to testify against Kenyatta and Muthaura, but 12 have dropped out.

The Office of the Prosecutor stated, "Witness protection remains one of our highest priorities. The Office will therefore not be drawn into any public speculation on the status of witnesses. The courage and integrity of witnesses

are essential to the Court's determination of the truth, which is at the heart of justice. It is in the interest of all concerned to allow justice to take its course."

Article 27

Irrelevance of official capacity

1. This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence.

2. Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.

Special Tribunal for Lebanon

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

On 8 April the names of witnesses at the Special Tribunal for Lebanon (STL) were leaked. The website of the Al-Mustaqbal newspaper was hacked with its front page replaced with a list of names under the title “secret witnesses in the Special Tribunal for Lebanon” from a website called “Journalists for The Truth”. It names 167 people and includes their photographs, professions and addresses. The website also lists a series of “instructions to STL witnesses”.

A spokesman of the STL soon announced that the witness list was inaccurate. The Tribunal further stated, that it will not comment on the Prosecution's witness list as submitted in the Pre-Trial Brief as it is currently confidential by a judicial order. In a press release, the STL condemned attempts to interfere with judicial process. In addition the Tribunal stated that those responsible are in grave breach of journalistic ethics and employ questionable methods such as internet hacking.

In the press release, the STL further stresses, that any attempt to knowingly and willfully interfere with the judicial process, including disclosure of confidential material or threatening, intimidating, or otherwise interfering with potential witnesses, is taken very seriously.

The STL was set up by the United Nations at Lebanon's request. It seeks to try four members of the powerful Shiite movement, Hezbollah, for the attack that killed Prime Minister Hariri and 22 others on 14 February, 2005, in Beirut. Hezbollah accuses the court of being part of an “Israeli-US” plot, the four accused remain At-large

The Tribunal has requested the assistance of Lebanese authorities and others in this matter so that appropriate measures may be taken if necessary.



The Extraordinary Chambers in the Courts of Cambodia

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

by Astrid Morlat, a former Intern on the Ieng Sary Defence team

March was marked by very few hearing days due to a strike by Cambodian staff and the declining health and eventual death of the accused Ieng Sary. Ieng Sary was admitted to the hospital on 4 March 2013 for stomach, heart, and back problems and died on 14 March 2013 at 89 years old. In accordance with a request filed by the Ieng Sary Defence team prior to his death, no autopsy was conducted on Ieng Sary's body, and his family was permitted to take his body to Malai District for cremation. The funeral was attended by mourners including members of the Defence team, the Governor of Pailin, and Ieng Sary's wife, Co-Accused Ieng Thirith, who was released from ECCC custody after she was found unfit to stand trial.

On 25 March 2013 a hearing about Nuon Chea's fitness to stand trial was held. After examining Nuon Chea, expert doctors declared him mentally and physically fit to stand trial, but noted his advanced age. The Nuon Chea Defence suggested that the accused receive further treatment at a hospital before partici-

pating in the proceedings. On 29 March 2013 the Court decided that Nuon Chea was fit to stand trial.

Also on 25 March 2013, the Supreme Court Chamber rejected an appeal filed by the Nuon Chea Defence requesting investigation of former International Co-Investigating Judge Laurent Kasper-Ansermet's assertion that the government of Cambodia was interfering with the ECCC's work.

On 29 March 2013, the Khieu Samphan Defence filed a motion for the immediate release from custody of the accused. The motion argues that the right of the accused to a speedy trial has been violated: although he is presumed innocent, at 82 years old he has already been in prison 5 years and 4 months, unjustifiably, with no prediction as to when he will be judged. Releasing the accused under judicial supervision would serve the same purpose as detaining him, and would guarantee his presence for trial. The motion requests a public hearing on the issue.

LOOKING BACK...

International Criminal Tribunal for the former Yugoslavia

Ten years ago...

Arrest and Transfer of Naser Orić

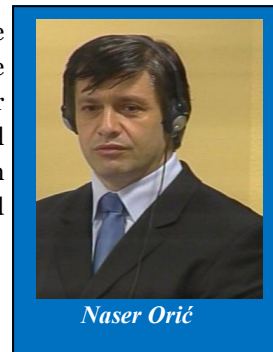
Naser Orić, Commander of the forces of the Army of Bosnia and Herzegovina (ABiH) in the Srebrenica area in Eastern Bosnia and Herzegovina was arrested on Thursday 10 April 2003. The accused was transferred to the Detention Unit of the International Criminal Tribunal for the former Yugoslavia the following day. The Indictment against Naser Orić was confirmed on 28 March 2003. The Indictment alleges that, between 24 September 1992 and 20 March 1993, members of the Military Police under the command and control of Naser Orić detained several Serb individuals in the Srebrenica Police Station and in the building behind the Srebrenica Municipal Building.

The first instance Trial Chamber found Orić guilty and sentenced him to two years' imprisonment on 30

June 2006. His immediate release was ordered since he was entitled to credit for time served since 10 April 2003. Both the Prosecution and the Defence appealed the judgment.

None of the Prosecution's grounds of appeal were allowed.

The Appeals Chamber found that the Trial Chamber failed to make all of the findings necessary to convict a person for command responsibility. The ICTY Appeal Chamber acquitted Orić of all charges.



Naser Orić

NEWS FROM THE REGION



Serbia

Serbia Charges Soldier with 18 Murders in Bihac

In early April, the Serbian war crimes Prosecutor indicted Djuro Tadić, known by the nickname 'Mrdja' – a Bosnian Serb serviceman - with the murders of civilians in the village of Duljaci in the Bihac municipality on 23 September 1992.

The Prosecutor alleges that Tadić killed 18 villagers together with other members of the Bosnian Serb army – Zoran Tadić, Jovica Tadić, Zoran Berg, Zeljko Babic, Slobodan Djuric and Gojko Djuric – who have been either sentenced by the Bosnian court for the same crime or died during their trial.

According to the indictment, men in military and police uniforms, wearing caps and stockings on their heads, came to a field where Bosniak civilians were doing forced labour and started shooting at them. When they saw that some of the civilians were running and hiding in the nearby barn, they threw a bomb at them. The bodies of those killed were later gathered and burned.

The indictment comes after the signing of a protocol on war crimes between Bosnia and Serbia in January this year aimed at improving cooperation over prosecutions. It has so far resulted in two indictments against Serbian citizens on the basis of arrest warrants and indictments from Bosnia, including the one against Tadić.

Serbia Sends Kosovo Guerrilla For Retrial

Serbia's appeals court overturned the guilty verdict against Marko Kasnjeti, a former Kosovo Liberation Army fighter jailed for war crimes against Serb civilians in 1999. The appeals court in Belgrade sent the case against Kasnjeti for retrial, ruling that the original trial last year established the facts incorrectly.

In November 2012, Belgrade's special court sentenced Kasnjeti to two years in prison for the torture and inhumane treatment of two Serb civilians in the Kosovo town of Prizren on 14 June 1999. Both prosecution and

defence appealed against the verdict.

The appeals court ruled that the verdict did not clearly define what kind of conflict took place on 14 June 1999, because five days before, on 9 June, representatives of Serbia and Kosovo signed a peace agreement in the town of Kumanovo, which ended the 1998-99 Kosovo conflict.

The court also prolonged custody for Kasneti. The prosecution based the case against Kasneti on a photograph, which was given to the war crimes prosecutor's office by the victims. The photo depicts Kasneti and three other KLA members beating two people, who had their hands tied behind their backs, with the butts of their rifles.

Serbian police captured Kasneti at the Merdare border crossing, in the south of the country, on 14 April 2012. The arrest was criticised in Kosovo because it was perceived to be politically motivated.

Following the arrest last year, the Council for Human Rights and Freedom from Prizren said the international community should react immediately because there was no evidence that Kasneti was a member of the KLA, or that he committed any war crimes.



Bosnia and Herzegovina

Former Paramilitary Commander sentenced for War Crimes

On 29 March 2013, a court in Bosnia convicted a former paramilitary commander of multiple counts of murder, torture, rape and looting during Bosnia's 1992-95 war, and sentenced him to 45 years in prison, the longest sentence ever issued in the country.

The man, Veselin Vlahovic, was found guilty of killing 31 people, raping a number of Bosniak and Croat women and torturing and robbing non-Serb residents of a Sarajevo suburb while fighting for the Bosnian Serbs, said Judge Zoran Bozic.

Vlahovic fled to neighbouring Serbia and Montenegro after the war. He was later jailed in Montenegro for armed robbery but escaped from prison. He was captured in Spain in 2010 and extradited to Bosnia.

DEFENCE ROSTRUM

Intern Education Trip to the Special Tribunal for Lebanon

By Jesse Huppenbauer

On Monday 25 March, a group of interns from the ADC-ICTY visited the Special Tribunal for Lebanon. The Tribunal was set up as a reaction to the events in February 2005 when former Lebanese Prime Minister Rafiq Hariri was killed.

The 25 March was originally the date when the trial was scheduled in the case of the Prosecutor v. Ayyash et al. However, the trial has been postponed after a request by the defence the trial date was vacated due to non-disclosure of evidence by the prosecution.

Instead of a trial start, a group of enthusiastic interns from the ADC-ICTY received a tour through the court-

room and had briefings with representatives from Chambers, Prosecution, Defence and the Registry. Alice Yang an intern on the defence team representing Radovan Karadžić, was amazed by the courtroom stating "I was impressed by the facilities at the STL and the fact that there is an independent defence office".

On behalf of Chambers, Kirraley Bowles gave a short presentation on the structure of the Tribunal and the history of the events. Trials in absentia were part of the discussion as well as the interesting mandate set up of the tribunal. Pauline Wilson, an intern on the defence team representing Radovan Karadžić said "the STL provided us with insight into how interna-

tional criminal tribunals are evolving and interestingly trials 'in absentia'".

David Kingsley Abbott, a Senior Prosecutor, gave a lively presentation on the events which led to the creation of the Tribunal and had himself travelled to Beirut twice. Due to his previous experience with the Extraordinary Chambers in the Courts of Cambodia, he gave a great insight into the work of international tribunals. He further elaborated on the rules of disclosure of the court and the problems the STL is facing, including the issues surrounding the protection of witnesses.

However, the group, understandably, had a great interest in a discussion with a representative of the defence. The Defence is an independent organ at the STL, separate from the Registry. Katherine Iliopoulos, a lawyer with ICTY experience, magnificently presented the major differences of the work as a defence counsel in the two tribunals briefly and succinctly to the group before entering a very informative debate.

For example, she pointed out, that the defence at the STL is able to play a more active role when it comes to amendments of the rules of the Tribunal. In the debate the question was raised, whether an incident with a rather little amount of fatalities needs an international tribunal. Iliopoulos replied, "The tribunal is not the only answer to the attack; it's one of many answers. It's not about the number of victim's or accused, it's a symbol of resistance".

Fabian Gems an intern with the Karadžić Standby defence team, was satisfied with the debate and said afterwards: "Risks, factual and law-related barriers from within and outside were as well discussed as the pros and cons of the trial in absentia with its peculiarities as defined in the Statute. Altogether, the insight into the working structure of the STL was highly appreciated by the participants".

The ADC-ICTY intends to provide more educational trips for interns

ADC-ICTY writes Submission for UN General Assembly Debate



Vuk Jeremić

The ADC-ICTY sent a written submission to the President of the UN General Assembly, Vuk Jeremić for the thematic debate entitled the "Role of international criminal justice in reconciliation". The debate took place on 10 April, at the UN Headquarters in New York.

The full text of the ADC-ICTY submission is available here: http://adc-icty.org/Documents/ADC-ICTY_Submission_UNGA_10_Apr_2013.pdf

Vuk Jeremić, opened the debate by stating that international criminal tribunals must not just play a role in looking back on past atrocities but also in bringing former foes together to build a better and more inclusive tomorrow. He stated that "the paramount question is how international criminal justice can help reconcile former adversaries in post-conflict, transitioning societies". Highlighting the theme of reconciliation, Mr. Jeremić, said: "Reconciliation will come about when all the parties to a conflict are ready to speak the truth to each other. Honouring all the vic-

tims is at the heart of this endeavour. That is why it is so critically important to ensure atrocities are neither denied, nor bizarrely celebrated as national triumphs". He affirmed that there should be no forbidden topics that cannot be discussed in the UN General Assembly, a reference to the criticism which has been made of the organising of the debate.

UN Secretary General, Ban Ki-moon, stated that "Impunity for war crimes, crimes against humanity, genocide and other serious international crimes is no longer acceptable, nor is it tolerated," noting that the system has also given voice to victims and witnesses. "Where once they might have gone unheard, left to suffer in silence, today they have a platform". He added that supporting international tribunals and courts means respecting, and not calling into question, their independence, impartiality and integrity. "It means implementing their decisions. And it means safeguarding them from those who seek to undermine them for reasons that may have more to do with politics than justice".



Ban Ki-moon

The President of Bosnia and Herzegovina, Nebojša Radmanović, was first representative of a member state to speak. He reiterated the importance of the ICTY in prosecuting individuals from all countries in the former Yugoslavia and that the Tribunal is not meant to find collective guilt of nations or ethnicities. He expressed the different views that are in existence regarding the ICTY in Bosnia and Herzegovina but largely most people are dissatisfied with the work of the ICTY. He stated that reconciliation cannot be achieved by courts alone and that there is a need for an open and constructive multi-ethnic dialogue.



The Serbian President, Tomislav Nikolić expressed the view that the ICTY, has done nothing to help but has rather only hindered the process of reconciliation in the former Yugoslavia. "Serbia and I are not ready to wait for 70 more years to reconcile with the neighbours that we used to live with together in the same state or with those, I mean to say Kosovo-Metohija, with whom we live in the same country today. I am deeply convinced that the Hague Tribunal has only done harm to this process and that it has probably caused an unnecessary delay that will be carried over to the next generation. The process has certainly and to a large extent been slowed down and made more difficult," said Nikolić. He stated that the Prosecutor has must better resources than the defendants and that defence counsel are paid by the Tribunal and therefore it brings into question their impartiality or independence.

Nikolić said that "it is not true that in this war that destroyed us all only one side was getting killed and the other side was doing the killings". Nikolić concluded that "the purpose of the punishments should not be retaliation. Enlightened nations have long ceased to think of punishment as a means of revenge... But, one of the purposes of punishment is resocialisation of defendants. Not forgiveness, but rather, as far as possible, their return to normal life. Making one serve a sentence of imprisonment in a foreign country, away from one's family, in an unfamiliar neighborhood and lacking the knowledge of the local language, can hardly contribute to the goals noted." If Serbs

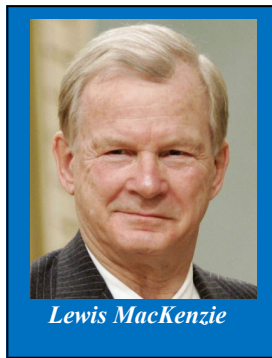
who were convicted before the ICTY are allowed to serve their prison sentences in Serbia, Serbia can guarantee that these persons will receive no preferential treatment and that Serbia is willing to accept international supervision.

Anko Vilović, on behalf of Croatia, said that a breakthrough came with the 1993 creation of the ICTY and the ICTR, however, they were temporary and their preventive roles limited. The 1998 establishment of the International Criminal Court ranked among the most important achievements of the last century. Croatia supported the creation of the ICTY and, having been a victim of aggression, realised that international engagement offered the best chance to pursue justice and punish perpetrators. He went on to say that, while not always pleased with the rulings, Croatia had always cooperated with the Tribunal and respected its decisions. "Too often we have seen that neither justice without peace, nor peace without justice is sustainable," he stated, noting that the impact of the Tribunals on the ground was what really mattered. Reconciliation could not be carried out by international tribunals alone. Societies must question whether their actions were right. In that vein, he regretted that "many elements" in the preparation of the debate — including non-transparency, as well as the selection of panelists, some of them with questionable ethical and professional profiles — led him to conclude that truth, justice and reconciliation were not the values by which the debate had been organised.

A number of statements were made by other representatives including; Rwanda, the European Union, Russia and China. The United States of America had declined to participate in the debate.

During the afternoon, the Assembly held two panel discussions, the first of which focused on the topic "Justice". Moderated by Matthew Parish, Partner at Holman Fenwick Willan, Geneva, it featured four panelists: Charles Jalloh, Professor at the University of Pittsburgh School of Law; Lewis MacKenzie, Major-General (retired), First Commander of Sector Sarajevo; John Ciorciari, Professor at the University of Michigan; and Savo Strbac, of the Information and Documentation Centre of "Veritas", Belgrade.

Mr Parish noted that the area of international criminal law had not existed some 25 years ago, he raised a



Lewis MacKenzie

number of relevant questions: Why had the area of international criminal law grown so extensive in so little time, when, in years prior, it had been a small field? What had triggered its growth and why did the international community feel it “could not live without it now”? In addition, what was the relationship between international and domestic criminal law? He also remarked that the language of international law was often dressed in terms of intense moral outrage. He also asked why were the budgets of those tribunals so high, when their caseloads were so relatively low? He inquired about the impacts of international criminal law on the victims of the conflict, and if, in fact, it contributed to reconciliation.

Mr. Jalloh, discussed the African Union’s proposal to establish a criminal justice chamber within the African Court of Justice and Human Rights. Offering arguments in favour of the proposal, he urged all Member States to engage in the debate over the creation of the chamber, even though “we are all in favour of the ICC”.

General Mackenzie said that during his tenure leading the Sarajevo Sector of UNPROFOR, he had pointed out the inadequacies of the UN system. He had long dealt with United Nations “naïveté” and was sympathetic with the United States’ reluctance to join the Rome Statute. He himself had been accused of war crimes, including the rape of Muslim women in the former Yugoslavia. While it had been proven that those accusations were “over the top” and ludicrous he had been in Canada during the time those crimes had allegedly been committed the story had gone viral, and was “still out there” today. He also said that he personally had a problem with the ICTY stating that fairness in justice was important, adding that if it did not appear to be fair, justice was counterproductive to reconciliation.

The representative from Cuba asked why NATO had to use force in Kosovo and Mackenzie replied that the bombing campaign against Kosovo had emerged from a number of confluent circumstances and that NATO needed to prove its existence after the

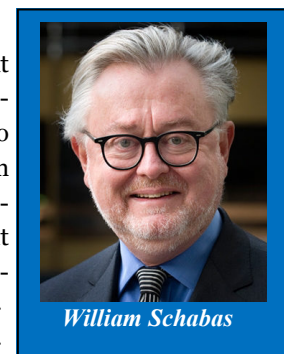
end of the Cold War.

Mr. Štrbac, stated that from the Serbian side, civilian victims had been portrayed as military ones and that forced migrations of population had been seen in all areas. He mentioned that 68 per cent of the accused at the ICTY were Serbs. He said that the Serbs had been fiercely opposed to the establishment of the ICTY, fearing that the Tribunal would see Serbs as criminals and oppressors. Unlike most Serbs, he had wished to cooperate with the Tribunal, meeting with the delegation of the prosecution for the first time in 1994. However, in the 20 years of judgments brought, he admitted with great bitterness that his fellow citizens had been “quite right” in that the Tribunal would be guided by selective, politicised justice. The Tribunal did not fulfil any of the goals for which it was founded. It had not contributed to conciliation. He warned that no further international tribunals should be established.

Mr. Parish stated: “Isn’t international criminal justice a terrible mess?”, pointing out that it had been a mess everywhere it had been tried. The Tribunals and the International Criminal Court were biased, with the latter “only indicting black people”. He again posed several questions, asking if those innately politicised institutions were destined, ultimately, for the garbage, or, if, in fact, they could be saved?

The second panel, focusing on the topic “Reconciliation”, was moderated by John Schindler, National Security Affairs, United States Naval War College, and Senior Fellow at Boston University. The four panellists were William Schabas, Professor at the Middlesex University School of Law, London; Čedomir Antić, of the Institute for Balkan Studies, Belgrade; Janine Clark, of the University of Sheffield School of Politics; and John Laughland, Director of Studies at the Institute of Democracy and Cooperation, Paris.

Mr. Schabas, remarked that many of the comments during the debate had been “too extreme and too harsh” in their assessment of the Tribunals. It was easy to sit and talk about the shortcoming of those institutions, he said, quoting Win-



William Schabas

ston Churchill that “democracy was the worst system, except for all the others”. He said that reconciliation was only one of the pieces of the Tribunal’s objectives. In his view, the objectives of international criminal justice mechanisms were peace, deterrence, justice for victims and reconciliation. There was relative peace in the former Yugoslavia; however, it could neither be proven nor disproven that the ICTY had had a role in establishing that peace. He said it was “too soon to know the answer” as to whether reconciliation had been accomplished which can take generations. However, to suggest that the Tribunals had failed because they hadn’t achieved some perfect reconciliation was not accurate.

Mr. Antić stated that over 70 per cent of the citizens of Serbia had a negative perception of the Tribunal. That negative attitude was the firm foundation of his strong belief that the Tribunal had not advanced reconciliation in the region. In the case of the ICTY, he went on to say, it



Čedomir Antić

seemed that the Tribunal saw war crimes by others as individual incidents, while such crimes by Serbs were seen as institutional events caused by “Serbian evil”. A whole people had been taken to account, he said in that regard, adding that it was obvious that the Tribunal supported and enlarged the feud between the former republics of the former Yugoslavia. After the recent sentences and historians’ opinions that Serbs were “some kind of criminals”, there was a significant amount of self-hatred in Serbian society.

Ms. Clark said that there was no doubt that, in societies that had suffered from war crimes, courts had an important role to play. She asserted that while the normative value of the courts was not in doubt, their effects on the ground could be questioned. Several problems existed, including major gaps in knowledge about the actual role of reconciliation. Prominent



Janine Clark

figures within the ICTY had consistently argued that reconciliation was linked to the maintenance of peace. “This is not what a court is about,” she said, asking whether the courts should even be expected to contribute to reconciliation. She called the nexus between justice and reconciliation “problematic”,

saying that there was large dissatisfaction on the part of victims on all sides with the ICTY. “People are happy that it exists, but they are dissatisfied with the way it is working,” she observed. “It is a no-win situation,” she said. If there was no clear prosecution strategy, it was inevitably going to invite allegations of bias, and if a court was not seen as fair, it could certainly not contribute to reconciliation. Courts could harden “ethnic narratives” of what had happened during the conflict and polarize communities, instead of reconciling them. If courts were going to help reconciliation, they had to be understood by communities on the ground, she stated, noting that, 20 years after the ICTY’s creation, it was still not very well understood.

Mr. Laughland, said that “the project of international criminal justice is doomed to failure”. First, the international Tribunals had been illegally created, as criminal tribunals set up by a political organ were not legitimate. The Court’s decision to indict citizens of non-States parties was unconstitutional. However, the most important obstacle was that the legal right to prosecute and punish criminals was one of the definitive characteristics of Statehood. That was known as the “social contract”, and it was systematically broken by international criminal tribunals.

The full video from the debate is available at: <http://webtv.un.org/watch/role-of-international-criminal-justice-in-reconciliation-general-assembly-thematic-debate/2291683187001/>

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

Raphaelle Rafin, **Boycotts at UNGA Debate on Role of International Criminal Justice in Reconciliation**, available at: <http://ilawyerblog.com/boycotts-at-unga-debate-on-role-of-international-criminal-justice-in-reconciliation/>

Chiara Giorgetti, **Why are there so few women arbitrators?**, available at: <http://ilg2.org/2013/04/09/why-are-there-so-few-women-arbitrators/>

Jens David Ohlin, **Where to Find Liberal Principles of Criminal Law**, available at: http://www.liebercode.org/2013/04/where-to-find-liberal-principles-of_10.html

Benedict Moran, **Where is Syrian humanitarian aid money going?**, available at: <http://blogs.aljazeera.com/blog/middle-east/where-syrian-humanitarian-aid-money-going>

Online Lectures

Fatou Bensouda, *The International Criminal Court: A New Approach to International Relations*, 21 September 2012, published by the Council on Foreign Relations:

http://www.youtube.com/watch?v=zq4oMkLx0Vc&list=FLqyewM4jOvL9_nqfq6pupMw

International Criminal Proceedings, 4 March 2013, published by Special Tribunal of Lebanon:

http://www.youtube.com/watch?v=2Mm29x9Gr1U&list=FLqyewM4jOvL9_nqfq6pupMw

Adama Dieng, *Interview with Special Adviser on the Prevention of Genocide*, 5 April 2013, published by United Nations:

<http://www.youtube.com/watch?v=PjXBpBbGyxA>

PUBLICATIONS AND ARTICLES

Books

Sara Sharratt (2013), *Sexual violence as an international crime: interdisciplinary approaches*, Intersentia

Robert Nalbandov (2013), *Foreign Interventions in Ethnic Conflicts (Global Security in a Changing World)*, Ashgate

Karen Da Costa (2013), *The Extraterritorial Application of Selected Human Rights Treaties*, Martinus Nijhoff

James Crawford and Martti Koskeniemi (2013), *The Cambridge Companion to International Law*, Cambridge University Press

Andrea Ribeiro Hoffmann (2013), *Closing or Widening the Gap? (Non-State Actors in International Law, Politics and Governance Series)*, Ashgate

James Turner Johnson (2013), *Ethics and the Use of Force (Justice, International Law and Global Security)*, Ashgate

Christopher K. Lamont (2013), *International Criminal Justice and the Politics of Compliance*, Ashgate

Noha Shawki and Michaelene Cox (2013), *Negotiating Sovereignty and Human Rights*, Ashgate

Articles

Michelle J. Jarvis and Elena Martín Salgado (2013), "Future Challenges to Prosecuting Sexual Violence under International Law: Insights from ICTY Practice", *Sexual violence as an international crime: Interdisciplinary Approaches*, Intersentia, 101-122

Yuval Shany (2013), "Seeking Domestic Help : the Role of Domestic Criminal Law in Legitimizing the Work of International Criminal Tribunals", *Journal of International Criminal Justice*, Volume 11, Issue 1

Kirsten Campbell (2013), "The Making of Global Legal Culture and International Criminal Law", *Leiden journal of international law*, Volume 26, Issue 1

Helen Durham (2012), "Women and International Criminal Law: Steps forward or Dancing backwards", *International Criminal Justice : Legitimacy and Coherence*, 254-268

Masahiko Asada (2012), "Criteria for Attributing Acts of Non-state Actors to a State : an Attempt to reconcile the Views of the ICJ and the ICTY", *Journal of International Law and Diplomacy*, Volume 111, Issue 2

HEAD OFFICE



ADC-ICTY

ADC-ICTY
Churchillplein 1
2517 JW The Hague
Room 085.0870
Phone: +31-70-512-5418
Fax: +31-70-512-5718

Any contributions for the newsletter
should be sent to Dominic Kennedy at
dkennedy@icty.org

WE'RE ON THE WEB!

WWW.ADCICTY.ORG

EVENTS

Conflict Prevention: Challenges and Opportunities

Date: 18 April 2013

Location: Humanity House, The Hague

More info: <http://www.humanityhouse.org/en/museum-agenda/meeting-with-abodiun-williams>

Quality Control in International Fact-Finding Outside Criminal Justice for Core International Crimes

Date: 20 May 2013

Location: Florence

More info:
http://www.fichl.org/fileadmin/fichl/ac-tivities/130326ter_LI_Haopei_2013_Seminar_concept_and_programme.pdf

International Conference on Cyber Conflict (CyCon)

Date: 4-7 June 2013

Location: Estonian Drama Theatre, Tallinn, Estonia

More info: <http://ccdcoe.org/cycon/>

OPPORTUNITIES

Legal Officer

International Residual Mechanism for Criminal Tribunals
Closing date: 19 April 2013

Investigator

International Criminal Court
Closing date: 21 April 2013

Assistant Professor in Global Justice

Leiden University
Closing date: 15 April 2013

Chief of Office

Office of the Coordinator of Humanitarian Affairs
Closing date: 26 May 2013