



# ADC NEWSLETTER

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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 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)

Šešelj (IT-03-67)

### *Cases on Appeal*

Prlić *et al.* (IT-04-74)

Stanišić & Simatović (IT-03-69)

Stanišić & Župljanin (IT-08-91)

## ICTY NEWS

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

After a ten-day recess, the case of Ratko Mladić continued at the Tribunal on 20 April with the testimony of three witnesses via video-link. The first of the witnesses to appear via video-link was Anđa Obradović. Her statement and testimony remain under seal. After Obradović's statement was admitted into evidence, Borislav Vasiljević from Kotor Varoš was called to testify. In his written statement, Vasiljević recounted how he was captured and tortured in May 1992 in the village of Večići. Vasiljević also testified about the sufferings of the ethnic Serbs and their fear that the genocide against them in World War II would be reprisal. The Prosecution did not have any questions for Obradović and Vasiljević.

On 20, 21 and 22 April, Branko Basara testified for the Defence via video link. Retired from the Yugoslav People's Army (JNA), Basara recommenced his military service in October 1991 to take command over the 6<sup>th</sup> Krajina Brigade.

Confirming his written statement, Basara said he always endeavored to prevent conflicts. He attended some meetings of the Crisis Staff whenever invited by the representatives of the Municipal Assembly but always maintained a neutral position and never took part in any votes. However, he tried to defuse the heated situation and to make sure that the decisions were "as normal as they could be" and that the rules of warfare were observed. Basara added he did not refer to any of the Crisis Staff decisions in his orders and was only carrying out the corps command orders. Furthermore, the witness affirmed he had no right to establish any camps or collection centres. He stated that his brigade

## ICTY NEWS

- Mladić: Defence Case Continues

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never took part in the establishment and running of the Krings and Betonirka prisons in Sanski Most. Additionally, he stated that his Brigade did have any role in the transport of people to anywhere or in the process of moving people out.

During cross-examination, Basara also explained that his brigade was involved in disarming various villages, such as Mahala and Hrustovo. Nevertheless, even though the 6<sup>th</sup> Brigade collected and exchanged information, it did not cooperate with the civilian police in any disarming operations in Sanski Most.



**Grujo Borić**

Grujo Borić testified on both 22 and 23 April. He was Chief of Staff of the 10<sup>th</sup> Krajina Corps and later a commander of the units of the 2<sup>nd</sup> Krajina Corps. During examination-in-chief, he described the zone of responsibility of the 2<sup>nd</sup> Krajina Corps. He explained that most of the Muslim population in the municipalities within the area of responsibility were already moved out and that the army had nothing to do with that because it was handled by the municipal authorities. Borić also described the ceasefire negotiations and its constant violation by the Muslim forces.

Borić testified that even though he attended some of the meetings of civilian structures, he was not aware, before the meetings, about the potential presence of the Crisis Staff. He also insisted that the Prisoners of War were treated in accordance with the Geneva Convention and that he was not aware of any contravening acts of his subordinate officers. Borić stated that until 13 July 1992, the unit from Ključ had not been fully subordinated to the 2<sup>nd</sup> Krajina Corps.

Svetozar Andrić appeared for the Defence on 28 and 29 of April in his second appearance at the Tribunal, having previously been a Defence witness for the *Karadžić* case. He has also testified in Belgrade in the trials of *Grujić* and *Pavlović*. Andrić is a professional military officer and was Commander of the Birač Brigade and Chief of Staff of the Drina Corps, having retired in 2002 from the post of Commander of the Army of Republika Srpska (VRS) 5<sup>th</sup> Corps.

He testified about the beginning of the war in the Birač area, the process and method of the formation of VRS units post the JNA and specifically about how

the brigades were organised eventually joining the Drina Corps. Much of his testimony related to the command, control, unity, internal structure and function of the VRS in its early days.

In examination-in-chief, Andrić delineated the extent of the crimes against the Serbs by the Muslim forces in the Birač area. As a personal participant in Srebrenica, he explained intelligence data about the Bosnian army failing to demilitarise the enclave as ordered in July 1995 and the subsequent combat operations. During cross-examination, he contextualised the decision to move Muslim residents out from the Birač Serbian Autonomous region, as stemming from the crimes committed by the Muslims against the Serbs in the area. He further explained that military age, able bodied men were kept as prisoners of war for purposes of exchanging prisoners and determining if they had been involved in criminal activities. As for the criminal activities and killings in the period of late May to early June 1992 in the Zvornik area, he clarified that responsibility lay with the paramilitary formation called the Yellow Wasp which did what they wanted.

Ratko Nikolić appeared next for the Defence on 30 April. During the war Ratko Nikolić worked as a security officer, and lived in the Serbian village of Opravdići, close to the centre, Kravica, where the ethnic composition was also predominantly Serbian. His testimony focused largely on his personal suffering and the brutal treatment he was subjected to as a prisoner of war when captured by the Bosnian army. He was expelled from his home and taken hostage during the 7 January 1993 attack on the Serbian village of Kravica by the Army of Bosnia and Herzegovina which took the lives of 48 people and where the witness was shot in the leg. As prisoner of war, he was beaten daily and witnessed the death of other prisoners of war. Among other humiliating acts, he was forced to pretend to be Ratko Mladić and greet everyone entering the room. He was eventually exchanged in February 1993. Nikolić predominantly explained his immense personal suffering as a result of this attack and suggested that the ensuing Serbian retaliation was to avenge this brutal attack by the Muslims.

Draško Vujić appeared before the Trial Chamber on 30 April and 4 May. As a former commander of the 43<sup>rd</sup> Prijedor Brigade, Vujić described how the Serbi-

an military took action to maintain peace in the area of Prijedor as tensions grew. To avoid violence, he testified, all Territorial Defence members were called upon to join a wartime unit under a single command or else hand over their military weapons. By this time, about 90% of members of the Serb Territorial Defence had already been assimilated into the wartime unit. A number of Muslims facilitated the hand-over of arms from Muslim individuals.

During cross-examination, Vujić stated he was aware that Serbs had taken over Prijedor on 29 April 1992 and that many people were killed or detained in the fierce fighting that followed. He explained that Keraterm was a detention unit where prisoners were held for assessment and that Trnopolje was a collection centre where many arrived on their own seeking refuge. He clarified that Omarska was a detention centre established by civilian police rather than the military. Relying on a news article of disputed veracity, the Prosecution alleged that the witness' soldiers openly sought to expel Muslims from the territory. Vujić rejected this characterisation, explaining that the intent was to expel enemy attackers, not the Muslim population at large.

Vujić further denied there was any connection between the VRS and Arkan's Tigers, but suggested it was possible that Arkan was in contact with the civilian authorities at the time.



**Nedeljko Trkulja**

Former VRS officer Nedeljko Trkulja testified for the Defence on 5 and 6 May. Trkulja testified that on the evening of 16 July 1995, Radivoje Miletić gave him an oral order to go to the Baljkovica sector with two other officers. There, the witness was to raise the vigilance of the fighters on the front line. The next morning, Bogdan Sladojević accompanied him first on the way to the Drina Corps command in Vlasenica, then to Srebrenica and where they then headed towards Zvornik and Črni Vrh. According to Trkulja, Dragan Obrenović, who was the Chief of Staff in the Zvornik Brigade, met them in Črni Vrh. From Obrenović's report on the situation on the front line, they understood that the situation was not as dramatic as the brigade Commander Vinko Pandurević, who was an Accused in the *Popović at al.* case, described it in his combat report of 15 July 1995.

The witness testified that Obrenović told him and Sladojević that they had been able to stop the Muslim column from making a breakthrough. Obrenović added that about 5,000 Muslims were penned up in a nearby ravine. Obrenović explained that he had made contact with the Muslims and agreed to allow them to pass through the Serb lines and continue towards Tuzla. Prisoners of war were not discussed at all and Trkulja testified that he did not even know there were any. Trkulja stated that on the morning of 18 July 1995 he personally saw the column pass through.

During cross-examination, the Prosecutor put to the witness that the triage mentioned in an intercept was in fact the execution of about 1,500 to 2,000 prisoners who were held in the Kula school and in the Pilica culture hall. The Prosecution claimed that on 16 July 1995, Trkulja relayed the order for their execution to Ljubiša Beara and the order was implemented that same day. Trkulja denied the allegation, saying that Sladojević's evidence was false. On 16 July 1995, the witness was in Crna Rijeka and did not see Ljubiša Beara. Beara was tried in the *Popović at al.* case.

On 6 and 7 May, Tihomir Stevanović testified for the Defence. Stevanović was Commander of a communications company at the Lukavica barracks when the war broke out, before being transferred as Commander of a garrison communications company responsible for the organisation and functioning of Communications at the Main Staff of the Army of Republika Srpska from March 1993 to 1995, and then as officer for cryptographic data protection at the communications section from March 1995.

In examination-in-chief, Stevanović testified about the situation in Sarajevo between March 1992 to 1993, recalling how the Army of Bosnia and Herzegovina opened fire on both the Kosovo and military hospitals. The witness also testified on matters relating to the system of communications operating in the Main Staff of the VRS.

Stevanović noted that no orders were sent by the Main Staff to subordinate units ordering the commission of crimes. Further, in both examination-in-chief and cross-examination, Stevanović maintained that two unsigned telegrams sent on 11 and 15 July 1995 could not have been sent by Mladić, despite his name being on the telegram next to the abbreviation "s.r" meaning in his own hand because Mladić was not in Crna Rijeka during this time.

## LOOKING BACK...

### Extraordinary Chambers in the Courts of Cambodia

Five years ago...

On 20 May 2010, the Extraordinary Chambers in the Courts of Cambodia (ECCC) handed down its landmark decision in the Case of *IENG Sary*, ruling that Joint Criminal Enterprise (JCE) III is not established as customary international law. This partially overturned an earlier order of the ECCC's Office of Co-Investigating Judges and is in contrast to the ICTY Appeals Chamber ruling that common plan liability is recognised as customary international law.

The ECCC did however recognise JCE I and JCE II as customary international law, and as such applicable to crimes within its jurisdiction.



*Building of the ECCC*

### International Criminal Tribunal for Rwanda

Ten years ago...



*Juvénal Kajelijeli*

In May 2005, the Appeals Chamber for the International Criminal Tribunal for Rwanda (ICTR) reduced the life sentence of Juvénal Kajelijeli to 45 years imprisonment. Kajelijeli, the former bourgmestre of Mukingo and leader of the Interhamwe militia, was sentenced in 2003 to two concurrent life terms for genocide and extermination as a crime against humanity, and 15 years imprisonment for direct and public incitement to commit genocide. The Appeals Chamber reduced this sentence to 45 years imprisonment after ruling that his rights were seriously violated during his arrest and detention in Benin and at the United Nations Detention Facility from June 1998 to April 1999.

### International Criminal Tribunal for the Former Yugoslavia

Fifteen years ago...

On 29 May 2000, Milan Simic, a member of the Bosnian Serb Crisis Staff and President of the Municipal Assembly of Bosanski Šamac in Bosnia and Herzegovina in 1992, was ordered to be provisionally released by Trial Chamber III, consisting of Judge Patrock Robinson, presiding, Judge David Hunt and Judge Mohamed Bennouna. He was originally charged with persecutions, beatings and torture and two counts of inhumane acts as crimes against humanity and two counts of cruel treatment as violation of the law or customs of war.

The decision was made that the Accused met the

“exceptional circumstances” outlined under *Rule 65 (B)*; namely, the Court was satisfied, before having heard the host country, that the Accused will appear for trial and that if released, Simić will not pose a danger to any victim, witness

or other person. This decision was made with consideration to the physical condition of the Accused and his guarantees and undertakings to the Trial Chamber, amongst other things.



*Milan Simic*

## NEWS FROM THE REGION



### *Bosnia and Herzegovina*

#### **EU funding for War Crimes Prosecutions Halted Over Judicial Reform Dispute**

A political dispute over the jurisdiction of a proposed state-level Appellate Court has led the European Union (EU) to halt needed funding for war crimes prosecutions.

As a result of the funding cuts, there is no funding left for investigations, assistants have lost their jobs and some prosecutors are working without pay. Concerns have been raised that work on the 1,200 open war crimes cases against known alleged and against unknown individuals could be compromised because of the dispute.

The EU suspended funding at the beginning of the year, citing reforms of the justice sector as a key condition to continued support. The Appeals Court is the sole outstanding issue. The Federal government is seeking a more centralised judiciary, while Serbia is pushing for a more judicial autonomy and objects to proposals that would allow the new court to take over cases entirely at its own discretion. Officials have stated that the Republika Sprska would approve the court and allow the reforms to move forward once that discretion has been removed.



### *Kosovo and Serbia*



#### **Kosovo Serbs say Serbian President Should Call for Return of Individuals Missing Since 1999**

Serbian President Tomislav Nikolić is set to release a new Kosovo platform in May, proposing greater autonomy for the province and demanding greater rights for the Serb minority in the region. However, Kosovo Serbs are demanding that the platform addresses the issue of persons who went missing during the 1999 war. The Association of Kidnapped and Missing Persons in Kosovo has called on Nikolić to request the return of Kosovo Serbs who went missing during and after the conflict. Calling it “the last hope” for the missing, the Association has pointed out that no Serbian President or Prime Minister has ever requested the return of over 1,000 missing Kosovo Serbs. Their families have been waiting over a decade and a half for answers.

Nikolić announced the new platform for Kosovo proposes wider autonomy for Serb-run municipalities, and demands greater rights for the Serb minority in general. It calls on the international community to help those expelled after the war to return home, and to facilitate the prosecution of Kosovo Liberation Army (KLA) commanders for crimes committed during the war.



### *Serbia*

#### **Former KLA Fighter Acquitted of War Crimes**

Former Kosovo Liberation Army (KLA) fighter Mark Kasnjeti has been found not guilty of the torture and inhumane treatment of two Serb civilians by a Belgrade court. The crimes were alleged to have taken place in Prizren, Kosovo in 1999.

Central to the Prosecution’s case was a photograph that the Prosecution claimed to show Kasnjeti and three other KLA members beating two civilians with the butts of their rifles. The Appeals Court stated there was doubt about whether it was in fact Kasnjeti in the photograph. In the absence of direct evidence that the Accused was in fact the perpetrator, the Court overturned his 2013 conviction. Kasnjeti had originally been sentenced to two years in 2012, but was retried after an appeal and sentenced again to two years in prison in 2013.



## NEWS FROM OTHER INTERNATIONAL COURTS



### *Extraordinary Chambers in the Courts of Cambodia*

Sarah Day, Legal Intern

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#### **Judicial Update**

In April, the Defence Teams for Nuon Chea and Khieu Samphan continued to attend and participate in the trial proceedings in the first segment of Case 002/02. In addition, the Nuon Chea Defence Team filed a motion pursuant to Internal Rule 87(4) requesting that 15 additional witnesses be heard by the Trial Chamber in relation to the Tram Kok Cooperatives and the Kraing Ta Chan Security Centre. The Trial Chamber granted the request in relation to two of the proposed witnesses, rejected three, and deferred the decision on the remaining witnesses to later stages of the trial. In addition, the Team presented 30 key documents at the document hearing for the first segment of the trial of Case 002/02. The Khieu Samphan Defence Team filed two motions: the first, a request for new documents to be added to the Case File, concerning the development of the military structure in the East Zone and Vietnamese archives; the second, a request for a confrontation between one witness and two civil parties who have testified in court to assess those testimonies, as one civil party gave different testimonies and has accused the other individuals of committing crimes at Kraing Ta Chan.

The Defence Team for Meas Muth in Case 003 filed

two submissions in April, which were both classified as confidential. The Team continues to review evidence from the Case File and to prepare filings to protect Meas Muth's rights and interests.

In Case 004, the Defence Team for Im Chaem continued to assess the evidence in the Case File. The Team has also made confidential arguments to protect their client's fair trial and procedural rights.

The Defence Team for Ao An in Case 004, following the granting of access to the Case File, has been reviewing these materials to further prepare its client's defence. In addition, the Team has been working on a number of confidential submissions to protect its client's fundamental fair trial rights and to ensure that all relevant lines of investigation are pursued.

The final Defence Team for a named suspect in Case 004 continues to follow the trial proceedings in Case 002/02 closely. The Team maintains that the use of Case 004 documents in Case 002/02 trial proceedings violates its client's rights. The Team continues to research relevant substantive legal issues and otherwise seek to protect its client's fundamental fair trial rights using publicly available sources.



### *Special Tribunal for Lebanon*

STL Public Information and Communications Sections.

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#### ***The Prosecutor v. Ayyash et al. (STL-11-01)***

On 9 and 10 April 2015, Mustafa Nasser testified before the Trial Chamber in person. Nasser was a journalist by profession before becoming an advisor to former Lebanese Prime Minister (PM) Rafiq Hariri in 1992. Nasser remained Hariri's advisor from 1992 until the time of Hariri's death on 14 February 2005. Nasser testified about his role as an advisor and an

intermediary between various Hezbollah members and Hariri, and the content of certain meetings between August to September 2004 and mid-February 2005 that were held between Hariri and Hezbollah's Secretary-General, Hassan Nasrallah. During his testimony, Nasser also described how he coordinated and organised meetings with Hajj Hussein El-Khalil,

Nasrallah's political assistance. According to the witness, those meetings focused on a possible electoral alliances between Hariri and Hezbollah, the arms of the party and the implementation of United Nations Security Council (UNSC) Resolution 1559.

On 9 April, Nasser was cross-examined by the Defence Counsel for Oneissi, who focused on the role that the witness played as a political advisor to Hariri and on Hezbollah and its role in Lebanon. Then, the Badreddine Defence questioned Nasser on the frequency, organisation and content of the meetings between Hariri and Nasrallah.

On 13 April and 14 April, Ali Hamade appeared before the Trial Chamber. Hamade is the brother of MP Marwan Hamade, who testified before the STL in November and December 2014. Ali Hamade has been a journalist throughout the entirety of his professional career.

During his examination by the Prosecution Counsel, Hamade spoke about the circumstances in which he hosted a political television show on Future TV in July 2014 to oppose the extension of the mandate of the former Lebanese President Emile Lahoud. Moreover, Hamade told the Court about his role as an unofficial envoy between Hariri and the Syrian regime in November and December 2004. Hamade's testimony also included a description of Hariri's relationship with Gebran Tueini, a Lebanese politician and the former editor and publisher of the Lebanese daily An-Nahar who died in an attack on 12 December 2005. In addition, the witness spoke about a meeting he had held with senior Syrian intelligence security official General Mohamed Nasif during which Hariri and his relations with Saudi Arabia, Egypt and France were discussed.

Hamade was cross-examined by Counsel for Badreddine on 13 April. The Defence's questioning revolved around the meetings in which Hamade participated in the presence of Syrian security officials, those allegedly responsible for the rocket attack against Future TV's Headquarters in June 2003. Ali Hamade was also cross-examined on certain talks in Paris in January 2004 in which he participated, where the former Lebanese PM Najib Mikati is believed to have said that Syrian President Bashar Al-Assad would be amenable to forming a new government headed by Hariri.

On 14 April, Counsel for Sabra's cross-examination focused on the rocket attack on Future TV and those who could be behind it.

On 15 April, Nasser's cross-examination was concluded via videoconference by the Defence Counsel for Badreddine, Sabra and Merhi. The Defence teams' cross-examination focused mainly on the content of the meetings that Hariri held with various Hezbollah members in late 2004 and early 2005, as well as the Hariri/Hezbollah "rapprochement" of the time. Nasser also recalled liaising with Iran's former President Khatami concerning Lebanese issues in general. The cross-examination was followed by a brief re-examination by the Prosecution. The main focus of the cross-examination was the relationship between Hariri and Syria.

On 15 April, the Trial Chamber issued an oral decision, ruling that the identity of witnesses PRH 277, PRH 041, PRH 459 and PRH 148 must remain confidential; those witnesses must only be referred to by their pseudonyms in the Tribunal's public hearings and published documents; information relating to those witnesses must be redacted from public documents which identify them as witnesses at the trial; when testifying before the Chamber, the publicly-broadcasted images and voices of those witnesses must be distorted and unrecognisable; and no person including members of the media and third parties who become aware of their identity and their involvement in these proceedings may disclose information protected by this order.

On 28 April, Atef Majdalani testified before the Trial Chamber. Majdalani began working with Hariri in 1996 and became one of his close political allies. In 2000, he was elected in the Lebanese Parliament.

Majdalani described the degree to which Syria influenced the internal politics and governance in Lebanon. More specifically, he elaborated the evolution (1991-2004) of the hostility of the Syrian regime towards Hariri's policies, which supported increasing the role of the Lebanese Army in southern Lebanon. He also described the political relations between Hariri and Hezbollah, and those between the Lebanese Army and Hezbollah.

Majdalani testified that he received personal threats during the last week of August 2004 in relation to the extension of President Lahoud's term. Syrian Intelligence Brigadier General Mohamad Khallouf invited Majdalani to a meeting and conveyed the decision of the Syrian leadership to extend President Lahoud's term and asked Majdalani to approve the extension

or “bear the consequences” for voting against it.

In early February 2005, Hariri excluded three pro-Syrian candidates from the electoral lists of the Future Movement to which Majdalani also belonged. On the day Hariri announced this decision, the witness arranged a meeting between one of the three discontented pro-Syrian candidates and Hariri.

On 13 February 2005, Majdalani met Bassel Fuleihan (the then Minister of economy and trade) and Ghattas Khoury at the Quraitem Palace before a meeting with Hariri. Following the meeting, Fuleihan warned Majdalani about a forthcoming “wave” of political assassinations. Fuleihan did not elaborate the source of that information or who would be targeted. Majdalani’s examination continued on 29 April. The Lebanese PM told the court about the assassination attempt against Marwan Hamade on 1 October 2004 and its impact on Hariri’s security personnel. The witness testified about Hariri’s relations with major States in the re-

gion and throughout the world, and his reputation as leader of the Sunni community in Lebanon and abroad. According to Majdalani, the expected victory in the 2005 legislative elections was as a possible cause for Hariri’s assassination by the Syrians.

The Oneissi Defence’s cross-examination of Majdalani began on 29 April and continued the next day. On 30 April and 1 May, the Defence teams for Merhi and Sabra questioned Majdalani. Majdalani related about false allegations of corruption levelled against Hariri’s political allies in the years and months before Hariri’s assassination. He also described how, in November 2004, in his capacity as member of the Lebanese Human Rights Commission, he visited a detention facility under the control of the Lebanese-Syrian Military Intelligence apparatus in Beirut. According to the witness, one of the four inmates he met at the detention facility resembled Abu Adass, who the Prosecution alleges was involved in the false claim of responsibility for Hariri’s assassination.

### **Contempt Case against *AL JADEED [CO.] S.A.L./NEW T.V.S.A.L (N.T.V.) and Karma Mohamed Tahsin Al Khayat (STL-14-05)***

On 16 April, the contempt case against *Al Jadeed [CO.] S.A.L./NEW T.V. S.A.L. (N.T.V) (Al Jadeed S.A.L.) and Karma Mohamed Tahsin Al Khayat* opened before the Contempt Judge, Judge Nicola Lettieri. Opening statements were made by the *Amicus Curiae* Prosecutor, Defence Counsel and the Accused.



*Judge Nicola Lettieri*

John Allen Comeau was the first *Amicus* witness to appear before the Contempt Judge. Comeau worked with the United Nations International Independent Investigation Commission (UNIIIC) from June 2008 until February 2009 before having been employed by the STL’s Office of the Prosecutor (OTP) in the period March 2009 to December 2013. Comeau worked as Coordinator for the UNIIIC’s Witness Protection Programme, and was the STL OTP’s Human Source Coordinator, dealing with Prosecution witnesses.

Comeau gave part of his testimony in private session. The witness also testified that the OTP monitored the

publications by Al Jadeed and the duration of the availability of the material on their website.

During the Defence’ cross-examination the same day, Counsel focused on the witness’s exchanges with Stéphane Bourgon, who was formerly appointed by the Deputy Registrar as the *Amicus Curiae* to investigate three incidents (one of which relates to Al Jadeed S.A.L.’s broadcasts). It later appeared that Comeau had interactions with members of the *Amicus Curiae* team in the days before his testimony.

On 17 April, the Defence continued cross-examining Comeau. The witness was asked questions mainly on instances where alleged confidential information was made public in foreign media outlets such as Canada’s CBC in 2010, Germany’s Der Spiegel Online in 2009, and France’s Le Figaro in 2006.

On 17 April, Veronique Bernard, former Head of Field Security in the STL’s Beirut Office, testified on her service of STL envelopes to Al Jadeed S.A.L. on 8 August 2012. The four envelopes contained a notice instructing the TV station to cease and desist from publishing programmes containing confidential infor-



mation. The witness testified about her subsequent unsuccessful attempts to deliver an Order by the STL's Pre-Trial Judge (PTJ) to the Al Jadeed on 11 August 2012. Defence Counsel for the Accused questioned the witness on the particular circumstances of the delivery of the STL documents to Al Jadeed S.A.L. on those two occasions.

On the same day, Akram Rahal, a Chief Warrant Officer with the Judicial Police in Lebanon, appeared before the Contempt Judge. Rahal delivered an order by the STL's Pre-Trial Judge (PTJ) to Al Jadeed S.A.L. following the instructions of the Lebanese Prosecutor-General after Bernard's unsuccessful attempts on 11 August 2012. The Defence cross-examined Rahal on the procedures in place in Lebanon for serving judicial documents to parties and the particular circumstances of delivering the STL documents to Al Jadeed S.A.L.

On 20 April, Anthony Lodge, Head of the STL Registry in the Beirut Office, testified before the Contempt Judge. Lodge's testimony focused on the Registry attempts to deliver the cease and desist notice to Al Jadeed S.A.L. and the PTJ's Order of 10 August 2012 to Al Jadeed S.A.L. Lodge testified that he received Khayat's email address from a former staff member at the STL Press Office in Leidschendam and sent her a copy of the PTJ's Order by email. After a failed attempt to deliver PTJ Order to Al Jadeed S.A.L., Lodge convened with the former Registrar in Leidschendam on delivering the documents to the Lebanese authorities for service.

The witness was then cross-examined by the Defence. The cross-examination focused on whether Marten

Youssef, former STL Spokesperson, or the witness verified if Khayat received the order. The cross-examination also addressed the manner in which the documents were delivered by the STL.

On 22 April, the *Amicus* called Anne-Marie De Brouwer, an Associate Professor in the Department of Criminal Law at Tilburg University, as an expert witness. Her testimony focused on the impact that disclosures of witness or alleged witness information can have on the lives of witnesses, alleged witnesses and the public and the administration of justice. The cross-examination of De Brouwer on the same day focused on her *Curriculum Vitae*, her publications and her expert report. Defence Counsel challenged the credibility of the witness and her ability to testify as an expert.

In the afternoon session on 22 April, the Contempt Judge admitted into evidence the suspect interview of Khayat. The *Amicus* then read summaries of interview with former or current Al Jadeed S.A.L. staff members that had previously been admitted into evidence.

Some of the testimony and documentary evidence presented by the *Amicus* in the period 16 to 22 April was heard in closed session. The STL Judges may decide to go into closed sessions if confidential matters need to be discussed or protected witnesses need to be heard.

The Contempt Judge adjourned the hearings in the *Case STL-14-05* until 12 May. The Defence for Al Jadeed S.A.L. and Khayat is scheduled to present its case from 12 until 15 May 2015.

## DEFENCE ROSTRUM

### ADC-ICTY Advocacy Training with Colleen Rohan

*By Sarah Tua*

On 25 April, the President of the Association of Defence Counsel practicing before the International Criminal Tribunal for the Former Yugoslavia (ADC-ICTY) Colleen Rohan delivered a full day Advocacy Training session on "Drafting Trial Motions, Final Briefs, and Appeals" at the ICTY. The event was one of a series of advocacy trainings symposiums currently being organised by the ADC-ICTY. The outstanding turnout drew in professionals, staff mem-

bers and interns from various international criminal institutions and organisations around The Hague, including the ICTY, the International Criminal Court (ICC) and the Special Tribunal for Lebanon (STL) amongst others.

Colleen Rohan has over 30 years of experience as a practicing criminal defence attorney, specialising in serious felony and death penalty cases in the United

States, her domestic jurisdiction. She has worked in the international court system since 2006, having served *inter alia* as Counsel at the ICTY in *Popović et al.* (Srebrenica) and in the *Haradinaj et al.* case (Kosovo). She was legal consultant to the Standby Counsel in the case *Prosecution v. Karadžić* and previously legal consultant in *Prosecution v. Perišić*.



Colleen Rohan

The training session provided the audience with the fundamental tools and skills needed to engage in good legal writing practices and oral arguments before the international criminal tribunals and in domestic jurisdictions. The training was divided into two parts, the first part of the event consisted of an informative and detailed session on good legal writing practices and structuring legal arguments; whereas the second part consisted of practical exercises on legal drafting and oral arguments.

Drawing from her experience, Rohan commenced the session by outlining a “do/ don'ts” legal writing list. Throughout this part of the lecture, she emphasised that authors must know their audience and must constantly be aware of their writing goals, retaining consistency, clarity and concision, avoiding frivolous issues and clutter. The re-iteration of the need to know one's audience, coupled with the clarity requirement was further highlighted within the context of international courts, where one's audience is likely to come from a different judicial system than that of the author. She explained that the latter scenario requires the drafter to be particularly clear in laying down his writing goals.

Rohan outlined the manner in which to structure a legal argument. Whilst experienced attorneys develop their own drafting style over time, Rohan recom-

mended the “IRAC” method for structuring legal arguments. In a nutshell, this comprises in a) laying out the Issue, b) identifying the Rule, c) carrying out an Analysis of the legal argument and d) doing a Conclusion which should include relief sought. She furthermore delved into the content and importance of using appropriate headings and sub-headings as an underlying component of the IRAC method.

The second and practical part of the lecture provided an opportunity for attendees to practice their skills in legal writing and oral arguments. They were divided into two group categories, representing the Prosecution and the Defence, respectively. Using the case study material provided to them, each group was further provided with a copy of the ICTY Rules of Procedure and Evidence (RPE), and assigned a Motion heading. The individual groups were requested to draft legal arguments in favour of their assigned Motion subject and to prepare oral arguments in support of the same, using creativity, together with the information and practical tips provided to them throughout the lecture. A simulated criminal tribunal was set up, wherein the groups had to present their oral arguments before the panel of judges, which included Colleen Rohan. Feedback on the practical exercise was provided by the judges at the end of the session.

Colleen Rohan's session was very informative and useful, covering many practical aspects and tips on good legal writing practices. Additionally structuring legal arguments, which her audience could definitely benefit from.



Advocacy Training

## Dutch Court Will Not Prosecute Dutchbats

By Daynelis Vargas

In 2010, the relatives of Rizo Mustafić, Muhamed Nuhanović and Ibro Nuhanović, who were killed in the 1995 massacre in Srebrenica, brought a case to the Military Court in Arnhem against three Dutch soldiers, Commander Thom Karremans, his Deputy Rob Franken and Personnel

Officer Berend Oosterveen. The charges alleged that the soldier should be held responsible for failing to protect the three civilians. The case was presented at the Military Court in Arnhem, Netherlands by the relatives of the victims who sought the prosecution of the three Dutch soldiers. During the conflict in the

territories of the Former Yugoslavia in 1990s, Dutch soldier were sent to Bosnia and Herzegovina as United Nations (UN) peacekeepers. This case is one of many that have been brought against the Dutch government in Dutch courts by survivors and relatives of survivors of the 1995 massacre. This case should not be confused with other cases which also concern the events that took place in July 1995 in Srebrenica. This particular case dealt only with the killing of the three Bosniak men who for different reasons were not allowed to remain in the Dutch controlled designated peace compound in Potočari. The three men were killed by Bosnian Serb forces in July 1995.

The relatives who brought the case claim that the Dutch peacekeepers should be held responsible for the death of the three Bosniak men because they, were responsible for protecting civilians in the compound. Furthermore, they claim that the Dutch soldiers turned these men away from the compound and knowingly to their deaths. When the case was first presented in 2013, Prosecutors said that they would not charge the peacekeepers for the three deaths, but relatives of the victims appealed the case.

On 29 April, the Appeals Court upheld the 2013 decision. The Arnhem-Leeuwarden Military Chamber's Appeals Court stated that it had dismissed the Appeal on the grounds that Dutch commanders were not obligated to know that "there was a strong chance that they would be murdered" if the three men had left the compound.

Some of the other cases that have presented in Dutch courts have resulted in repercussions for the Dutch. In the 2014 case *Mothers of Srebrenica v. the Netherlands* the Court ruled that the Dutch state was liable for failing to protect 300 Bosniaks who had tried to seek refuge in the Dutch controlled Potočari compound on July 1995. The Dutch government paid compensation to the families of the 300 Bosniaks who were killed.

Cases such as the *Mothers of Srebrenica v. the Netherlands* might affect the willingness of states to provide troops for peacekeeping missions in the future. The Dutch soldiers are cited as being "lightly armed," as peacekeepers often are, when the camp was overrun by Bosnian Serb forces in 1995. This article has interchangeably used the term "Dutch soldier" and "peacekeeper" because once the Dutch government provides the UN soldiers they are UN peacekeeper and thus under the command of the UN and not their national government. However, the UN has immunity and can thus not be prosecuted. This raises the question on how to better prepare soldiers to be peacekeepers. Cases of this nature might deteriorate the willingness of states to provide soldiers in future conflicts. The Dutch state is just one of many that provide peacekeepers to the UN. The laws on who has the legal responsibility of the actions of peacekeepers remain unclear and are heightened by the cases that have been brought against the Dutch government and Dutch soldiers, as peacekeepers.

## ADC-ICTY Intern Field Trip to the Permanent Court of Arbitration

By Sarah Mercer

On 7 May, a group of seven ADC-ICTY interns visited the Permanent Court of Arbitration (PCA) in the Peace Palace for a seminar with Sarah Grimmer, Senior Legal Counsel in the International Bureau of the PCA.

The PCA has its origins in the 1899 Convention for the Pacific Settlement of International Disputes at the conclusion of the 1st Hague Peace Conference. Article 20 of the PCA establishes that it is a global mechanism for the settlement of disputes and has 117 signatory states. The PCA's operations are supported by its secretariat, the International Bureau, which employs

administration staff, legal counsel and case managers.

The seminar was held in the "Japanese Room" where the PCA Administrative Council sits annually and provides general guidance, policy direction and supervises its administration, budget and expenditure in consultation with



ADC Interns at the Peace Palace

the Secretary-General. The Administrative Council is chaired by the Netherlands Minister of Foreign Affairs and its membership is comprised of PCA Member States' diplomatic representatives. Grimmer highlighted that arbitration offers relative autonomy in the dispute resolution process which is essential given that it operates in the context of settling disputes involving sovereign states. She explained this point through case examples and emphasised arbitration's role in peaceful resolution of conflicts.

### **ADC-ICTY ADVOCACY TRAINING**

**This all day training will focus on WITNESS PROOFING.**

**By Marie O'Leary**

**Date:** Saturday 6 June 2015

**Location:**

**Time:** 9:30 to 17:00

**ICTY Pressroom**

**Churchillplein 1**

**2517 JW The Hague**

Contact [adcicty.headoffice@gmail.com](mailto:adcicty.headoffice@gmail.com) for further information and registration.

Only limited space available!

The registration fees are 15 Euros for ADC-ICTY interns, staff & members and 25 Euros for external participants. For further information on ADC-ICTY membership please visit: <http://adc-icty.org/home/membership/index.html>.

Certificates will be distributed after the training. Coffee, tea and biscuits will be provided, lunch is excluded.

For more information for the Advocacy Training please visit:

<http://adc-icty.org/home/opportunities/advocacy%20training.html>

## BLOG UPDATES AND ONLINE LECTURES

### Blog Updates

Vera Padberg, “**ICC Deputy Prosecutor Explains Role of the ICC in Colombia**”, 18 May 2015, available at: <http://tinyurl.com/nc486ur>

Michael G. Karnavas, “**Musing on the ICCBA Draft Constitution**”, 6 May 2015, available at: <http://tinyurl.com/npd7lto>

Charles C. Jalloh, “**Reflections on the Residual Special Court of Sierra Leone**”, 15 March 2015, available: <http://tinyurl.com/ns8pmaq>

### Online Lectures and Videos

“*BITs, BATs, and Buts: Reflections on International Dispute Resolution*”, by Gary Born, 14 April 2015, available at: <http://tinyurl.com/qqqzerh>

“*Rules, Choices, and International Law*”, by Rosalyn Higgins, 4 December 2015, available at: <http://tinyurl.com/pnntzny>

“*Justice*”, by Harvard University Online learning, 2014, available at: <http://tinyurl.com/ob39k38>

## PUBLICATIONS AND ARTICLES

### Books

Chiwins, Christopher S. (2015), **The French War on Al Qa'ida in Africa**, Cambridge University Press.

Evans, Malcolm; Pethoff, Peter; Rivers, Julian (2015), **Changing Nature of religious Rights under International Law**, Oxford University Press.

Voetelink, Joop (2015), **Status of Forces - Criminal Jurisdiction Over Military Personnel Abroad**, Asser Press.

Jeffery, Renee; Kim, Hun Joon (2014), **Transitional Justice in the Asia-Pacific**, Cambridge Press.

### Articles

Chesterman, Simon (2015). “**The International Court of Justice in Asia: Interpreting the Temple of Preah Vihear Case**”, Asian Journal of International Law, Volume 5, Issue 1.

Holterman, Jakob; Madson, Mikeal Rash (2015). “**European New Legal Realism and International Law: How to make International Law Intelligible**”, Leiden Journal of International Law, Volume 28, Issue 2.

Lyons, Beth (2015). “**Litigating Human Rights: Fair Trial and International Criminal Justice, The Appellate Acquittals of Major F.X. Nzuwonemeye in the Ndindiliyimana ("Military II") Case at the ICTR**”, African Law Today, Issue 2.

## CALL FOR PAPERS

**The Journal of Law and Criminal Justice** has issued a Call for Papers for Volume 3, Issue 1 on various topics.

Deadline: 20 May 2015

More Info: <http://tinyurl.com/lpjg63k>

**The American Society of International Law** calls for submissions of scholarly paper proposals for the ASIL Research Forum to be held in Washington, DC.

Deadline: 22 June 2015

More Info: <http://tinyurl.com/qyrdre2>

The Editors of the **Melbourne Journal of International Law** (MJIL) invite submissions on areas of interest in international law for Volume 16, Issue 2.

Deadline: 01 July 2015

More Info: <http://tinyurl.com/q29hjlq>



## HEAD OFFICE



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should be sent to Isabel Düsterhöft at  
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## EVENTS

### The Freedom Lecture: Emin Milli

Date: 22 May 2015

Location: Humanity House, Den Haag

More Info: <http://tinyurl.com/pb9vcz4>

### Advocacy Training, Witness Proofing

Date: 6 June 2015

Location: ICTY

More Info: <http://tinyurl.com/ltrg4zr>

## OPPORTUNITIES

### Legal Officer (P-3), Geneva

United Nations Environment Programme

Closing Date: 31 May 2015

### Chief of Unit, Public Information (P-3), New York

United Nations Department of Public Information

Closing Date: 8 June 2015

### Associate Programme Management Officer (P-2), Paris

United Nations Environment Programme

Closing Date: 16 June

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GOODBYE

*The ADC-ICTY would like to express its sincere appreciation and gratitude to Natasha Jolly, Nina Koedam, Eleanor Pahlow, Karin Schmidová, Sarah Tua and Mirna Vujovic for their contribution to the Newsletter, we wish them all the best for the future!*

## The 2015 Newsletter Team

