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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)

On 7 and 8 May, Janko Kecman, a retired Air Force Colonel, appeared for the Defence. Kecman served as a pilot in the Yugoslav National Army (JNA) 111th Airborne Brigade and later in the Serb Krajina Army (SKA). Kecman testified that at the Pleso Airport he sighted a plane containing weapons that had been ordered by the Republic of Croatia. The plane was owned by a Ugandan company. Croat and Muslim armed forces continued to smuggle arms both by foot and by helicopter to the JNA warehouse in Bihać. Kecman testified that Republic of Serb Krajina (RSK) forces shot down a Ukrainian aircraft which had been used to transport weapons. RSK forces also shot down a helicopter carrying Bosnia and Herzegovina (BiH) Foreign Minister, Irfan Ljubijankić. Kecman stated that Croatian and Muslim planes frequently flew over Krajina, transporting arms and military equipment to protected zones, including Bihać and Srebrenica. Kecman later noted that he had been impressed by General Mladić's professionalism in fighting against the Croatian National Guard (CNG).

On 11 and 12 May, Dragan Todorović testified for the Defence. He testified about his experiences in the Army of Republika Srpska (VRS) as a logistics officer in the Vlasenica Platoon of the 10th Commando Detachment in 1995 where he was in charge of supplying weapons to his unit.

During direct-examination, Todorović relayed details about the torching of Serb villages in the Kladanj municipality and the Serb refugees who fled from that area in 1992 and 1993. He also described his time under Commander Milorad Pelemiš in the 10th Sabotage De-

ICTY NEWS

- Mladić: Defence Case Continues
- Hadžić : Temporary Release

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tachment, where they were told to avoid, or at the least pacify any civilians when out in the field.

Todorović then went on to explain his involvement in Srebrenica and how his Detachment, under the order of Commander Pelemiš, had helped capture the town on 11 July 1995. Contrary to the allegations of Dražen Erdemović, Todorović claimed he never saw Erdemović in Srebrenica on 11 July 1995.

Todorović also described how, on 15 July 1995, Dragomir Pećanac, an intelligence officer from the Main Staff and Mladić's assistant, ordered the officers to gather soldiers from the 10th Command Unit for a "special task", allegedly relating to the execution of prisoners at the Branjevo farm. At the time none of the officers or soldiers knew what this "special task" was.

During cross-examination, the Prosecution played several videos from 1996 and 1997 to emphasise their position that Pećanac was closely tied to General Mladić. In re-direct examination, Todorović explained he did not know if Pećanac was Mladić's "man for special tasks," and that he was never present when Mladić gave orders to Pećanac.

On 12 May, Slavka Matić, a civilian who lived in Bjelovac in the municipality of Srebrenica with her husband and two daughters during the war, testified for the Defence. Matić described how her husband and two daughters were killed on 14 December 1992 in an attack on their village by Muslim forces. The witness had been a volunteer in the makeshift kitchen at the local school and was on her way to serve breakfast to the fighters there when the attack on the village commenced. Matić explained that when trying to make her way home she discovered her husband's dead body. The witness then described finding one of her daughters dead at the front doorstep of the family home and her other daughter dead in the bathroom.

Matić testified that 68 people were killed in the attack on the village, ten of whom were women. During cross-examination the Prosecution suggested that the VRS' Bratunac Brigade report showed that 55 fighters and seven civilians were killed in the attack, and that Matić's husband and two daughters had been listed as fighters who were killed in combat. Matić agreed that her husband was "probably" in the brigade ranks, but disagreed that her daughters had died in combat. She testified that neither of her daughters had "a stick in

their hand to defend themselves".

Slobodan Radulj is the current State Attorney in Republika Srpska and former State Attorney in Prijedor and Deputy Military Prosecutor in Banja Luka from October 1993 until the end of the conflict. He was called by the Defence of Mladić to appear on 12 and 13 May to testify in respect of the charges related to the persecution of non-Serbs. The witness detailed the transitional period when new Serb authorities and institutions were being created and the strengths and weaknesses of the system. He confirmed his 2002 statement to the investigators where he said that Serbian soldiers that committed crimes were prosecuted "quite efficiently" where possible under the prevailing circumstances.

On 14 May, Prijedor ambulance driver Goran Dragojević testified for the Defence. On 30 May 1992, Dragojević was shot 32 times when his ambulance came under fire from a group of Muslim and Croat citizens. The attack against Prijedor was launched by the "Green Berets" and led by Slavko Ećimović. As far as the witness knows, nobody was charged for this attack, in which fourteen people were killed and five were wounded. During cross-examination, the Prosecutor queried what had happened to non-Serb medical staff at Prijedor Hospital. Dragojević stated that he had no personal knowledge in relation to this as he was receiving medical treatment out of the area at the time. Dragojević acknowledged that he later heard that a number of doctors had been killed, but had no knowledge of activities at Keraterm.

On 18 and 19 May, General Savo Sokanović, former head of the Moral and Religious Affairs Department in the Republika Srpska Main Staff, appeared for the Defence. Sokanović testified in relation to the frequency of reporting, importance of military secrets and treatment of foreign journalists. Sokanović stated that the Main Staff had established procedures in relation to arson, retaliation and actions targeting civilians, and warned soldiers that there would be consequences for any involvement in such acts. He also stated that while his section issued warnings in relation to consequences for wrongful acts, it was not responsible for investigating or pressing charges in relation to such acts. That responsibility was delegated to other bodies. Sokanović emphasised that his section also issued warnings in relation to the proper treatment of prisoners of war and facilitated ICRC

prison visits. Sokanović said that he was not aware of Republika Srpska's strategic goals; however, his understanding was that they were to protect the population and establish peace.

On 19 and 20 May, Velo Pajić testified for the Defence about the communication lines between various VRS commands. Pajić served as officer in the 67th Communications Regiment of the VRS Main Staff from May 1992 for the duration of the war.

Pajić spent most of his direct-examination explaining the locations and workings of the different communication facilities and routes of the Main Staff. This evidence supported the Defence's proposition that Mladić was communicating from Belgrade and not from the Main Staff facility in Crna Rikeka on 16 July 1995.

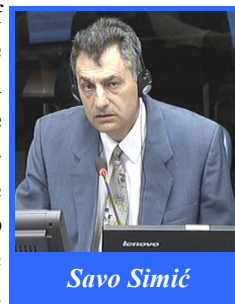


Velo Pajić

During cross-examination, the Prosecution relied on intercepts from the time of the war, including one between Mladić and Miloš Kostić. The Prosecution claimed that Mladić returned to Crna Rijeka from Belgrade in the afternoon of 16 July 1995. Pajić agreed it would have been impossible for the Army of Bosnia Herzegovina to intercept the conversation between these men if Mladić had been in Belgrade. In re-direct examination, Pajić explained that given that Mladić was inaudible in that intercept, the interceptor would have had to be on the Serbian side.

Savo Simić testified for the Defence on 21 and 22 May. Simić had given a witness statement for the *Karadžić* case. Simić pursued a career in the mili-

tary and retired at the rank of Colonel, having held multiple positions in the VRS. In his oral and written statements he spoke in detail about the incidents within the JNA units, the voluntary decision by non-Serb officers to leave and at a more technical level, the types and number of artillery weapons that were in the possession of his unit and the circumstances of their deployment. He drew on his knowledge of the functioning of the Armed Forces of Bosnia and Herzegovina (BiHA) to discuss the firing positions of the BiHA and their skilful deployment. He further discusses the United Nations Protection Force (UNPROFOR) presence and their recording of every target that was fired upon, as well as that the BiHA had deliberately concealed military targets in civilian areas. He proceeded to speak specifically of the Markale incidents of February 1994 and August 1995, which the Defence maintains were not the result of VRS attacks but were staged, as its expert witnesses a ballistics analysis will soon testify. Simić reiterated that the projectiles in the Markale incident could not have been fired from the Bosnian Serb side. During cross-examination the Prosecutor maintained that no restrictions on humanitarian aid had been imposed by the VRS and neither was there ever massive or pointless use of artillery. Simić maintained his position despite being pressed by the Prosecutor on the Markale incident and the targeting of civilian areas both of which he categorically denied were ever ordered.



Savo Simić

From 25 May to 19 June, the Court took a break in the proceedings as the Defence needed to prepare for the reopening of the Prosecutions case.

Prosecutor v. Hadžić (IT-04-75)

On 21 May, the Trial Chamber granted Goran Hadžić's motion for provisional release. The Trial Chamber ordered that Hadžić be released upon the filing of a State guarantee and also ordered that he returns to The Hague no less than three days prior to the date of his further medical examinations. This decision follows an earlier period of provisional release granted by the Appeals Chamber on 13 April.

In its decision, the Chamber considered that during the previous period of provisional release Hadžić complied with all conditions imposed by the Appeals Chamber and returned to The Hague when ordered to do so. The Chamber was also satisfied that Hadžić did not pose a flight risk and if released would not pose a danger to any victim, witness, or other person.



Goran Hadžić

The Trial Chamber, noting hearings were unlikely to resume until a determination of Hadžić's fitness to stand trial is made, found that Hadžić's presence in The Hague was not required pending determination of this issue. The Trial Chamber accordingly ordered

that, following his return to The Hague for medical examination, Hadžić be again provisionally released until further order.

The Trial Chamber previously ordered the appointment of an independent neuro-psychologist and an independent neuro-oncologist who will assist in determining Hadžić's fitness to stand trial.

LOOKING BACK...

International Criminal Court

Five years ago...

On 11 June 2010, the definition of the Crime of Aggression was adopted by consensus by the International Criminal Court (ICC) Review Conference of the Rome Statute, in Kampala, Uganda. According to the Article 8 *bis* "Crime of Aggression" means the planning, preparation, initiation or execution of an act of using armed force by a State against the sovereignty, territorial integrity or political independence of another State. The amendment also es-

tablished the unique conditions under which the jurisdiction of the Court may be triggered: by a state referral or Security Council referral.

The importance of this amendment is that it creates an international mechanism for enforcement of the Article 2 (4) of the United Nations Charter which prohibits the use of force against the territorial integrity or political independence of any state.

International Criminal Tribunal for the Former Yugoslavia

Ten years ago...

On 6 June 2005, Ramush Haradinaj was granted provisional release by the International Criminal Tribunal for the Former Yugoslavia (ICTY) Trial Chamber II until the commencement of the trial phase of the proceedings. Haradinaj is a former officer and leader of the Kosovo Liberation Army (KLA) and served briefly as Prime Minister of Republic of Kosovo. He voluntarily surrendered himself to the ICTY in 2005, after being charged with participating in a Joint Criminal Enterprise (JCE) aimed at exercising full control in the KLA operational zone of Dukagjin.

The Trial Chamber rejected the Prosecution's motion to arrest and return Haradinaj if the need arise. Therefore, the United Nations Mission in Kosovo would not be able to arrest and return Haradinaj should the need arise, noting that the evidence

showed that there was no risk he would not appear for trial, nor did the evidence show that he would pose any danger to victims, witnesses or other persons.



Ramush Haradinaj

Haradinaj was indicted together with Idriz Balaj and Lahi Brahimaj and charged with 18 counts of crimes against humanity and 19 counts of violations of the laws or customs of war. On 3 April 2008, he was acquitted of all charges by the ICTY Trial Chamber. An Appeals Judgment was rendered on 21 July 2010 and quashed the acquittal of Haradinaj and ordered a re-trial. In which Haradinaj was acquitted on 29 November 2012.

International Criminal Tribunal for Rwanda

Fifteen years ago...

On 8 June 2000, Trial Chambers I and III of the International Criminal Tribunal for Rwanda (ICTR) ordered the release of a report produced by Michael Hourigan, a former investigative member of the Office of the Prosecution, regarding the circumstances surrounding the plane crash which killed the Presidents of Rwanda and Burundi. President Juvenal Habyarimana of Rwanda and President Cyprien Ntaryamira of Burundi were traveling together when their plane was allegedly shot down on the evening of 6 April 1994, an event which is often cited as the

catalyst for the Rwandan Genocide.

Defence Counsel in the case of *Bagilishema* (Trial Chamber I) and the joined case of *Kabiligi* and *Ntabakuze* (Trial Chamber III) requested the release of the report which had been placed under seal by order of the President of the Tribunal. Counsel submitted their clients' indictments referred directly to the plane crash and therefore it was in the interests of justice to have access to the report. In three separate judgments the Trial Chambers allowed the report to be released to the parties.

NEWS FROM THE REGION



Bosnia and Herzegovina

Nasar Orić Wrongfully Arrested

On 17 June Nasar Orić, was wrongfully arrested in Geneva, Switzerland, based on an international arrest warrant by Serbia for the participation in the former Yugoslav war in the 1990s.

The Bosnian authorities were surprised about the recent arrest of Orić as no official information by Serbia was received and Orić's name was taken long ago from Interpol's wanted list. Bosnian authorities urged the Serbian government to observe the provisions of a bilateral agreement from 2013, which states that procedures should be conducted in the suspects homeland— here in Bosnia and Herzegovina.

Orić was on trial at the ICTY in 2006 for not doing enough to prevent crimes committed against Serbs during the conflict. He was sentenced to imprisonment for two years. On 3 July 2008, the Appeals Chamber acquitted Orić of all crimes committed, pointing to a lack of evidence.



Kosovo

Delays in Establishing the Special Court

On 26 May, the United Nations envoy Farid Zarif urged the Kosovo government to move more quickly to establish a Special Court to investigate war crimes allegedly committed by Kosovo Liberation Army rebels during the 1998-99 war. The suspected crimes include the killing of approximately 400 (mainly Serb) civilians, including some allegedly killed to harvest organs for sale on the black market. The European Union-backed Court was approved in 2014 but required legislative and constitutional steps have not yet been taken. Opposition parties Vetevendosje, Alliance for the Future of Kosovo (AAK) and Nisma oppose the Draft Law on the Special Court because they believe the law fails to take the interests of Kosovo into account. The opposition parties are considering protest actions to prevent its passage. The Ambassador of the Netherlands to Kosovo, Robert Bosch, has stated that if the Court is not established, it could be created as a UN Court. The EU Special Representative in Kosovo, Samuel Zbogar, stated that the EU has ways to penalise Kosovo for delaying the Special Court, adding that Kosovo would suffer from the delay.



Serbia

Vojislav Šešelj's Health Situation

After reports of dramatically deteriorating health in early June, Vojislav Šešelj was expected to undergo a second round of chemotherapy once he was well enough to receive the treatment. The medical team confirmed that Šešelj was being monitored around the clock for extremely high fever and heart arrhythmia, and was receiving an IV and regular blood transfusions. Šešelj had been released from detention in The Hague in November because of his terminal cancer. Serbian government representative Saša Obradović called on the Security Council to conclude Šešelj's trial as soon as possible, given the Accused's failing health and the extended duration of the trial, which has been going on for over twelve years.



Vojislav Šešelj

NEWS FROM OTHER INTERNATIONAL COURTS



Special Tribunal for Lebanon

STL Public Information and Communications Sections.

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

On 30 April and 1 May, the Lebanese Member of Parliament (MP) Atef Majdalani continued his testimony with the cross-examination by the Defence Counsel for Badreddine, Merhi and Sabra. The Defence questioning focused mainly on the content of Majdalani's examination in chief by the Prosecution and statements he gave to the United Nations International Independent Investigation Commission (UNIIC) in August 2006 and September 2008.

From 4 to 7 May, another Lebanese MP, Walid Jumblatt, testified before the Trial Chamber. Jumblatt has been a figure of considerable significance and prominence in Lebanese politics for many decades. He was a friend, confidant and a close ally of the former Lebanese Prime Minister (PM), Rafiq Hariri. Jumblatt is the leader of the Progressive Socialist Party (PSP) in Lebanon.

Jumblatt's evidence focused on the background leading up to the events of late August and early September 2004, including his relationship with the Syrian regime from 1977 until 1991, as well as from 1991 onwards. He testified about the circumstances that led to the amendment of the Lebanese constitution, which permitted the extension of the mandate of the former Lebanese President, Emile Lahoud, in September 2004; the adoption of United Nations Security

Council (UNSC) Resolution 1559 in the same month; and Jumblatt's withdrawal of support for the government during that time.

On 6 May, the Legal Representative of Victims examined Jumblatt on the effect that the killing of Walid Jumblatt's father and founder of the PSP, Kamal Jumblatt, in 1977 had on the Lebanese society in general by drawing parallels between that event and the assassination of Hariri.

On 6 and 7 May, Jumblatt was cross-examined by Defence Counsel for Badreddine, Merhi and Oneissi. The cross-examination of the witness focused on the content of his statements to the UNIIC in 2005; the Taif Agreement of 1991; the UNSC Resolution 1559; and Jumblatt's relationship with the Syrian regime and Syrian officials.

On 19, 20 and 21 May, the former media advisor of Rafiq Hariri, Hani Hammoud, appeared before the Trial Chamber. Hammoud met Hariri most days for years and accompanied him on most of his travels abroad. The witness testified about major events occurring after Hariri's assassination such as the 8 March and 14 March 2005 protests in Lebanon, as well as other events reported in the media.

On 20 and 21 May, Hammoud was cross-examined by

Defence Counsel for Oneissi, Sabra and Badreddine. The cross-examination focused on Hariri's relationship at the material time with the Syrian regime and officials; as well as with Hezbollah and Hassan Nasrallah; the now-bankrupt Al-Madina Bank in Lebanon and his knowledge of certain Islamist groups. The Defence also questioned the witness on his knowledge of certain individuals, the so-called "false witnesses" in the case of the assassination of the former PM; Hariri's electoral alliances prior to the 14 February 2005 attack and an unsuccessful bombing attempt against the Italian Embassy in Beirut in September 2004.

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

On 12 May, Rana Sabbagh was the first witness to appear for the Defence for *Al Jadeed* S.A.L. and Khayat before the Contempt Judge, Judge Nicola Lettieri. Sabbagh is the Executive Director of the Arab Reporters for Investigative Journalism (ARIJ), an Amman-based organisation that seeks to promote a "culture of media excellence and accountability journalism in the Arab world".

Sabbagh testified that ARIJ provided a training course to the staff of *Al Jadeed*, including Khayat in April/May 2012, as part of a project to assist promising media houses in the Arab States to establish their own investigative units. During her testimony, the witness discussed the standards and modalities of investigative journalism in corruption or leak-related matters, and the necessity for legal advice prior to the release of potentially controversial media products.

On the same day, Sabbagh was cross-examined by the *Amicus Curiae* Prosecutor (*Amicus*). The *Amicus* questioned the witness about her relationship with the Accused in the case, Khayat, on the ethical and professional standards of investigative journalism, including on the justifications of non-compliance with such standards and, if any, the circumstances in which journalists may violate the law.

On 13 May, Adbel-Hadi Mahfouz, the President of the National Audio-Visual Media Council (NAMC) in Lebanon, appeared before the Contempt Judge. Mahfouz testified about the mandate and role of the NAMC, as well as the control that the NAMC has over items published on TV stations. The witness testified that the NAMC received a letter from the then Prime

Minister Najib Mikati on 8 August 2012, requesting the NAMC to take appropriate action against *Al Jadeed* S.A.L. in accordance with the relevant laws. Mahfouz spoke about a meeting he held with representatives of *Al Jadeed* S.A.L. on the same day and the response of the NAMC to Mikati's letter dated 11 August.

Mahfouz was then cross-examined by the *Amicus*. The cross-examination focused mainly on the NAMC's relationship with the Lebanese Government, its relationship with the Prosecutor General, the measures that the NAMC undertook after it received the former PM Najib Mikati's letter on 8 August 2012, the STL Registrar's notice of the cease-and-desist order of 7 August 2012 and Lebanese Prosecutor General's 6 September 2012 letter.

On 13 May, Judge Charbel Bou Samra, an assistant to the Prosecutor General at the Lebanese Court of Cassation, testified before Judge Lettieri. Bou Samra was assigned by the Lebanese Prosecutor General to start an investigation in a case of forgery lodged by Mariam Al-Bassam, Head of News and Political Programmes at *Al Jadeed* S.A.L.. The lawsuit was related to a report by the Lebanese Judicial Police pertaining to the confirmation of the receipt of STL documents in August 2012, bearing the signature of Al-Bassam. Prior to a hearing scheduled in October 2013 between the witness, Al-Bassam and her lawyer, Maya Habli, Al-Bassam withdrew her complaint after she was surprised that she recognised her signature on the document. According to the witness, Al-Bassam may have thought that her signature had been forged.

On 14 May, Afif Chouaib testified before the Contempt Judge via videoconference. Chouaib is currently the Head of the inspection and investigation bureau at the Directorate General of the Civil Defence in Lebanon. The witness testified that he previously met STL investigators in relation to the *Ayyash et al.* case. Then the Defence examined the witness on his contacts with *Al Jadeed* reporter, Firas Hatoum, when he approached him at his workplace for the August 2012 broadcasts. Chouaib stated that he was later “surprised” when he discovered that *Al Jadeed* journalist had a hidden camera and a recorder when he came into his office. The witness added that STL officials contacted him a few days after the broadcasts, where he expressed his concerns about the leaked

information. He said that he “endured psychological and emotional consequences” as a result of the public’s perception of him as a witness.

Counsel for the *Amicus* cross-examined the witness about his statement to the Defence to *Al Jadeed* S.A.L, the effects that the publication of the *Al Jadeed* had on his life and the public’s perception of persons being known as witnesses at the STL.

The Contempt Judge scheduled the filing of final briefs for 8 June and the presentation of closing arguments in the case STL-14-05 for 18 June. Any rebuttal or rejoinder arguments by the parties will be presented on 19 June.

DEFENCE ROSTRUM

ADC-ICTY Advocacy Training with Christopher Gosnell

By Sarah Mercer

On 16 May, ADC-ICTY Vice-President Christopher Gosnell held an Advocacy Training session on ‘Preparing Oral Arguments’. This training was part of the Advocacy Training Series organised by the ADC-ICTY.



Advocacy Training

and interns from across many of the local legal research centres, international criminal tribunals and the ICC.

The day long training session involved a half day seminar on advocacy in the trial and appellate contexts for both defense and prosecution counsel. The discussion drew on examples of good closing and opening statements from past cases in the ICTY and other tribunals. Gosnell outlined what aspects of the delivery, content and presentation made for compelling oral advocacy and illustrated this further with examples from his own experience as both prosecution and defense counsel.

He stressed the importance of presenting an appear-

ance of impartiality, as if you are presenting clear facts and that it is imperative to first firmly establish the narrative of your case theory or point before introducing the use of emotive adjectives and even then use them sparingly for the best impact.

The group was then broken up into pairs over the lunch break to prepare for the afternoon practical exercise segment of the session involving application of the concepts and strategies discussed earlier. The teams were presented with a pre-prepared fact problem and assigned one of three accused to prosecute or defend by presenting either an opening or closing statement. The teams all performed well, with the most successful pairs forming a compelling narrative and coordinating with their teammate in their delivery.

At the conclusion of each segment of the 'trial', Mr. Gosnell gave each speaker individual feedback after their presentation and expanded on general comments for the group of young professionals for their future development. The participants really valued the constructive criticisms and where he pointed out strengths to work with and effective strategies, at the conclusion of the trial and comments, he then closed the session at the end of the day.

The event was a great success and we would like to thank Christopher Gosnell for his time and effort to present this topic.

ADC-ICTY Advocacy Training with Marie O'Leary

By Ivana Zečević

On 6 June, former ADC-ICTY Head of Office, Marie O'Leary, provided an advocacy training on witness proofing as part of the ADC-ICTY's Advocacy Training series in 2015. O'Leary is currently working at the International Criminal Court (ICC) as a Consultant for the Office of Public Counsel for the Defence. She has previously worked for several Defence teams at the International Criminal Tribunal for the former Yugoslavia (ICTY) and was the Head of Office of the ADC-ICTY between 2006 and 2007. During the seven hour training, O'Leary explained what witness proofing is, why it is done, how it should be done, and how it has developed.

Witness proofing or witness preparation is a meeting between the calling party and their witness, to prepare the witness for court, and to review the witness' prior statements in order to identify any changes based on the witness' memory of the events if necessary. Witness familiarisation is also part of witness preparation, which this is the process of making the witness familiar with the court proceedings, the role of the various participants in the courtroom, and the witness is shown the court room.

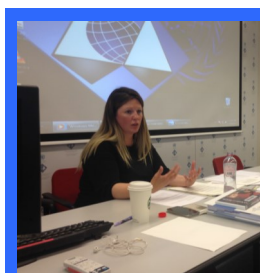
The main reason why witness proofing was introduced in court is because the large amount of time that it takes between the time period when a witness gives a statement and when they are actually brought to court to testify. In international criminal trials the time period between a statement being given and a witness testifying can be as long as ten years. Thus, new information provided by the witness needs to be verified before the witness presents their testimony. Furthermore, witness statements might not be wholly accurate because of translation issues for instance. Thus, witness proofing is frequently viewed as a tool to recollect the memory of the witness and to identify any errors.

Witness preparation has been practiced in many domestic jurisdictions and it was later adopted by international criminal courts and tribunals. At the ICTY, witness proofing was first challenged by the Defence in *Limaj et al.* (2005). The Chamber, however, argued that witness proofing has been in place and accepted since the establishment of the Tribunal. Nevertheless, during In the case of *Lubanga* (2006) at the ICC, wit-

ness proofing was prohibited. The Chamber's main concern was that witness proofing is very close to rehearsing. Thus, the Chamber argued that only witness familiarisation is allowed.

As a result of the *Lubanga* decision, witness proofing was also challenged at the ICTY again by the Defence in *Milutinović* (2006). However, the Chamber ruled against the Defence, stating that the *ad hoc* tribunals are distinguished from the ICC, since they rely more on domestic law and deal with many witnesses at the same time. Thus, witness proofing remains permitted in *ad hoc* tribunals.

In *Bemba* (2010) at the ICC, the majority denied the Defence's request to allow witness proofing. Judge Ozaki dissented, and her dissenting opinion carried on into *Kenyatta* (2013), where witness proofing was approved again. Following the Kenya cases, a witness preparation protocol was adopted at the ICC in 2013 that identifies the guidelines for witness proofing. The witness preparation protocol discusses the general principles, the location, timing, record-keeping, and disclosure of witness proofing. It also mentions required, permissible, and prohibited conduct.



Marie O'Leary

The evolution of witness proofing shows that witness proofing has both proponents and opponents. Proponents primarily argue that witness proofing is a method to help the witness to tell the truth, to organise the facts, and to set the witness at ease. However, op-

ponents argue that witness proofing restrains the spontaneity of the witness' testimony. Another main argument used against witness proofing constitutes that witness proofing can directly or indirectly influence the witness' testimony. The movie *Anatomy of a Murder* (1959) is often used as an example of how an attorney can influence a witness' testimony.

Another issue that arises from witness proofing is the fact that the scope of witness proofing varies from nation to nation. In the United States, attorneys have little restrictions on witness proofing. The attorneys

are allowed to tell the client what truthful evidence would be favourable to their client. Moreover, attorneys can be held responsible if they do not proof their witness. In Lebanon, to the contrary, witness proofing is not allowed at all. This makes it especially challenging for attorneys who deal with multiple codes of conduct or jurisdictions. O'Leary told the participants that it is important to ask your bar at home whether you are allowed to do proofing and to what extent.

Towards the end of the training, the participants en-

gaged in a witness proofing exercise and were tested on their newly obtained witness proofing skills. The participants took their parts as attorneys and witnesses very serious. Afterwards, O'Leary provided useful feedback and answered any additional questions. The training was a great preparation for anyone who seeks a career in international criminal law.

We would like to thank Marie O'Leary for taking the time to present at this successful day.

ICC-Acquitted Defendant Mathieu Ngudjolo Chui Deported Back to the Democratic Republic of Congo

By Carlos Correa

Ex-militia leader Mathieu Ngudjolo Chui became the first ever defendant to be acquitted by the International Criminal Court (ICC). He was accused of six counts of war crimes and three counts of crimes against humanity with regard to the situation in the Democratic Republic of Congo (DRC).

On 18 December 2012, the Trial Chamber acquitted him of all charges. Following his acquittal, Ngudjolo immediately applied for asylum in The Netherlands. He stated that due to his testimony against the Congolese Chief of State and other high ranking officials in the DRC and Africa, incriminating them in the Ituri conflict, he believes that he cannot be safe in any of these countries while these authorities are still in power.



Mathieu Ngudjolo

The highest Dutch Administrative Court rejected Ngudjolo's asylum claim. The Court found that there were serious reasons for considering that Ngudjolo had committed a crime against peace, a war crime, a crime against humanity or that he had committed a serious non-political crime outside of the Netherlands prior to his admission to that country as a refugee. This means that Ngudjolo falls outside the scope of the 1951 Refugee Convention, pursuant to Article 1(F)(a)-(b). The Court also held that Ngudjolo failed to prove that he would face persecution from DRC authorities if he was returned. The Dutch Authorities placed him in a detention centre, then subsequently in a hotel paid for by the ICC, until his appeal

was decided.

On 27 February 2015, the Appeals Chamber of the ICC confirmed the decision of the Trial Chamber acquitting Ngudjolo. Consequently, Dutch authorities quickly arrested him and transferred him to Schiphol airport. The Dutch authorities intended to immediately deport Ngudjolo back to the DRC and he was placed on an aircraft due to leave the Netherlands. His lawyer, Jean-Pierre Kilenda, filed a new asylum claim at the last minute; as a result, Ngudjolo was escorted off the aircraft.

However, his second asylum claim was also rejected. The Dutch Court held that Ngudjolo failed to provide additional evidence that he would face persecution if deported back to the DRC. Media has confirmed that he was deported back to the DRC on 11 May 2015 and was escorted by five European police officers to Kinshasa airport.

Ngudjolo's lawyer also wrote an open letter to the Assembly of State Parties (ASP) seeking assistance for his client. The letter reaffirms the threat of persecution if his client is returned to the DRC. The letter also requested that a state party allow him to reside within its territory, where he would not fear for his safety. To date, no state party has entered into an agreement to grant asylum to Ngudjolo. After his acquittal, Ngudjolo is no longer under the responsibility of the ICC; therefore, the Court has no legal obligation to monitor his situation. The Ngudjolo case emphasises that as the ICC continues to develop it will face more procedural and ethical issues. Along with the ASP, the Court must address these issues in order for the Court to remain fair and provide justice.

BLOG UPDATES AND ONLINE LECTURES

Blog Updates

James Nyawo, “**Individual Criminal Responsibility for Illegal Use of Force under International Law**”, 7 June 2015, available at: <http://tinyurl.com/of9wa4x>

Julien Maton, “**Letpadaung Convictions Taint the Legal System in Myanmar**”, 26 May 2015, available at: <http://tinyurl.com/oqyld8y>

Michael G. Karnavas, “**The Use of Torture - Tainted Evidence at the ECCC**”, 26 May 2015, available at: <http://tinyurl.com/p92m26s>

Online Lectures and Videos

“**The Crime of Aggression**”, by Don Ferencz, 5 May 2015, available at: <http://tinyurl.com/odga7pv>

“**International Crimes in Historical Perspective**”, by Willem De Haan, 11 December 2014, available at: <http://tinyurl.com/poadfrc>

“**Is Universal State Participation in the ICC System Desirable and, if so, how could that be Achieved?**”, by Helen Stacy, 5 March 2014, available at: <http://tinyurl.com/p5hondj>

PUBLICATIONS AND ARTICLES

Books

Dinstein, Y. (2015), **The Conduct of Hostilities under the Law of International Armed Conflict**, Cambridge University Press.

Funk, M. (2015), **Victims' Rights and Advocacy at the International Criminal Court**, Oxford University Press.

Kastner, P. (2015), **Legal Normativity in the Resolution of Internal Armed Conflicts**, Cambridge University Press.

Gruszczynski, L; Werner, W. (2014), **Defence in International Court and Tribunals. Standard of Review and Margin of Appreciation**, Oxford University Press.

Articles

El Boudouhi, S. (2015). “**The National Judge as an Ordinary Judge of International Law? Invocability of Treaty Law in National Courts**”, *Leiden Journal of International Law*, Volume 28, Issue, 2.

Hill-Cawthorne, L. (2015). “**Humanitarian Law, Human Rights Law and the Bifurcation of Armed Conflict**”, *International Comparative Law Quarterly*, Volume 64, Issue 2.

Loevy, K. (2015). “**The Legal Politics of Jurisdiction: Understanding ASEAN’s Role in Myanmar’s Disaster, Cyclone Nargis (2008)**”, *Asian Journal of International Law*, Volume 5, Issue 10.

CALL FOR PAPERS

The UCD Sutherland School of Law welcomes paper proposals for its eighteenth Iris European Law Forum on “Europe’s Shared Burden: Collective Responsibility for Migrants at Sea”.

Deadline: 26 June 2015

More Info: <http://tinyurl.com/p9tmnf3>

The University of Oslo and the Centre for Global Public Law has issued a call for paper in the topic “The European Court of Human Rights: Promoter or Predator of Democratic Transitions?”.

Deadline: 1 August 2015

More Info: <http://tinyurl.com/p29kfov>

The Utrecht Journal of International and European Law has issued a call for paper for its upcoming special issue on “Intellectual Property in International and European Law”.

Deadline: 15 October 2015

More Info: <http://tinyurl.com/n9sgf2y>

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EVENTS

Managing Migration Flows in the Mediterranean? A Critical Appraisal

Date: 25 June 2015

Location: British Institute of International and Comparative Law, London

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

Public Panel: International Decision Making and the Srebrenica Genocide

Date: 1 July 2015

Location: The Hague

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

The Judicialization of International Law - A Mixed Blessing?

Date: 10-12 September 2015

Location: Oslo

More Info: <http://tinyurl.com/lgj2hya>

OPPORTUNITIES

Legal Officer, Chambers (P-4) The Hague

Special Tribunal for Lebanon

Closing Date: 30 June 2015

Outreach Officer, Registry (P-3) The Hague

Special Tribunal for Lebanon

Closing Date: 8 July 2015

Legal Officer, Assistant Prosecutor (P-3) Phnom Penh

Department of Economic and Social Affairs

Closing Date: 16 July 2015

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GOODBYE