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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 Practising Before the ICTY.*

## ICTY CASES

### *Cases in Pre-trial*

Hadžić (IT-04-75)

### *Cases at Trial*

Haradinaj *et al.* (IT-04-84)

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)

Stanišić and Župljanin (IT-08-91)

Tolimir (IT-05-88/2)

### *Cases on Appeal*

Đorđević (IT-05-87/1)

Gotovina *et al.* (IT-06-90)

Lukić & Lukić (IT-98-32/1)

Perišić (IT-04-81)

Popović *et al.* (IT-05-88)

Šainović *et al.* (IT-05-87)

## Prosecutor v. Mladić (IT-09-92)



*Ratko Mladić*

On 9 July, the Prosecution called its first witness, Elvedin Pasić. He explained that before the war, Muslims, Croats and Serbs lived together in harmony but things changed once the conflict broke out. Pasić then

described events which occurred in 1992 in northern Bosnia as the war started.

The next witness to testify was David Harland, former chief of the civil affairs in the UN mission in Bosnia and Herzegovina from June 1993 to the end of the war. Harland met Mladić approximately 20 times and took notes as part of his duties as a UN political officer. He testified about events which occurred in Sarajevo throughout the war and the relationship between UN officials and the parties to the conflict. Proceedings were halted on 12 July 2012 as Mladić was taken to the hospital as a precautionary measure.

The trial is scheduled to continue with the testimony of Richard Dannatt, former Deputy Commander of NATO's force in Bosnia.

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

History was made on 28 June 2012, when the Trial Chamber in the case of *Prosecutor v. Karadžić* granted the motion to acquit Radovan Karadžić on Count One of the indictment, in which he was charged with genocide for crimes committed between March and December 1992 in several municipalities of Bosnia and Herzegovina. The Chamber

## ICTY NEWS

- Prosecution evidence commences in Mladić trial.
- [98bis Decision in Karadžić trial](#)
- Closing Arguments in Haradinaj *et al.* retrial
- [Šešelj Contempt Judgement](#)

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found that, although it had heard evidence of culpable acts directed toward Bosnian Croats and Bosnian Muslims in the municipalities, a reasonable trier of fact could not find that they had been committed with genocidal intent. This is the first time the ICTY has granted acquittal on a charge of genocide.

While Karadžić has been acquitted of one charge, the Chamber dismissed his motion for acquittal on the remaining ten charges included in the indictment – meaning that Karadžić will proceed to the defence phase of his trial, including the charge of genocide at the Srebrenica enclave in July 1995.



Radovan Karadžić

The Prosecution has presented four grounds of appeal on the acquittal of the charge of genocide.

### Prosecutor v. Haradinaj *et al.* (IT-04-84)



Haradinaj, Balaj and Brahimaj

Closing arguments in the case of *Prosecutor v. Haradinaj, et al.* were heard in the last week of June 2012. At the conclusion of the retrial of the three former Kosovo

Liberation Army officers, the Prosecution called for at least twenty years in prison for Ramush Haradinaj, Lahi Brahimaj and Idriz Balaj. The initial trial of the three concluded in April 2008, but they were retried on six counts pertaining to crimes committed at the KLA prison camp in Jablanica. The Prosecution closed its re-trial case in April 2012 and the Defence called no further witnesses. At closing, the Prosecution claimed to have proved beyond a reasonable doubt that a joint criminal enterprise existed, and that the officers mistreated, abused and killed prisoners in the camp.

Haradinaj's Defence Counsel, Ben Emmerson, argued that the Prosecution used "sleazy witnesses", and the Serbian State Security Service provided false evidence. While the

Prosecution claimed that Haradinaj, a former commander, supported crimes committed at Jablanica, the Defence contends that the necessary command responsibility was not present. Haradinaj had no *de facto* authority over the camp, and, in fact, treatment of the prisoners improved after he was appointed. As such, argued Emmerson, the former Prime Minister of Kosovo should be acquitted on all counts.

The Defence for Balaj also pointed out the unreliability of the witnesses, calling them "proven liars". The case against the former commander of the special KLA unit known as the Black Eagles was based on the unit's bad reputation, not proven facts. Without sufficient evidence, the Defence demanded acquittal.

Closing arguments ended with the Defence of Brahimaj. According to the Prosecution, Brahimaj was the commander at Jablanica. However, the Defence contended that the actual commander at the camp was unknown, but because Haradinaj had removed Brahimaj from his post as deputy commander in the area, it could not have been him. Counsel asserted that Brahimaj should be acquitted and allowed to continue studying law in Pristina.

### Prosecutor v. Šešelj (IT-03-67) R

On 18 June, the third contempt of court trial was held against Vojislav Šešelj. The Trial Chamber brought this contempt case against Šešelj, accusing him of disobeying its orders to remove certain books and documents from his website. The trial lasted a mere 15 minutes.

Šešelj was due to be the only witness but refused to testify, stating that the ICTY was illegal and biased. He alleged that the Tribunal was continuing to drastically violate his basic procedural rights and that it should be marked on the record that he refused to give a defence because of this violation.

The judgement was rendered on 28 June 2012 with the Trial Chamber sentencing Šešelj to two years imprisonment. Judge Trechsel stated that "[n]on-compliance with such orders is a serious matter, which not only interferes with the administration of justice but risks undermining public confidence in the Tribunal and, thereby, the effectiveness of its judicial function, including its ability to grant effective protective measures where necessary".

Šešelj is awaiting judgment in his main trial, which concluded in March 2012.

## NEWS FROM OTHER INTERNATIONAL COURTS



### *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 Extraordinary Chambers in the Courts of Cambodia (ECCC).

## Case 002

### Progress of Proceedings

The ECCC was in session for eleven days during June, hearing the testimony of six witnesses and hosting 5,595 Cambodian visitors who traveled from around the country to attend the proceedings.

### Allegations of Political Interference

Case 002 continued to hear witness testimony this June in the shadow of allegations by the Nuon Chea Defence Team and international press of political interference. In response to a leak of the confidential Forwarding Order written by since-resigned International Co-Investigating Judge Kasper-Ansermet which named suspects under investigation for the delayed Case 003, the Office of the Co-Prosecutors delivered a public statement on 5 June that made clear it “respectfully declined to seize the Co-Investigating Judges of . . . alleged new facts” and instead seeks to “priorit[ize] the efficient completion of ongoing investigations and trial proceedings before the ECCC”.

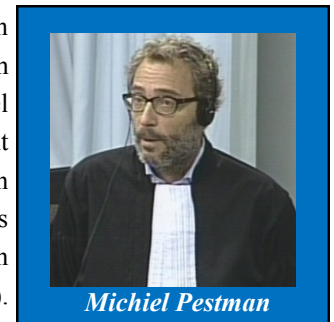
The Defence also presented its allegations of political interference with the ECCC in its 11 June appeal against the Trial Chamber’s decision on the Defence’s *Request for Summary Action Against Hun Sen*. The Defence initially filed this request when Hun Sen, the Prime Minister of Cambodia, made statements about Nuon Chea’s guilt, which the Defence argued had the potential to amount to political interference with the ECCC in contravention of Internal Rule 35. In the impugned decision, the Trial Chamber agreed that Hun Sen’s statements met the low threshold of “reasonable belief of interference” set out in Internal Rule 35(2), but decided not to press the issue and instead to “engage in a further inquiry”. The Defence argued in its appeal that the Trial Chamber’s reluctance to provide a remedy to the Accused or discipline the Prime Minister for the recognised breach was an example

of the national judges’ ties to the Cambodian government.

### Rules of Evidence and Procedure

The Nuon Chea Defence Team also continued to argue against the Trial Chamber’s rulings regarding the use of impeachment material. Trial Chamber President Nil Nonn has consistently treated impeachment material as “evidence” subject to ECCC Internal Rule 87, which requires that “evidence” be presented to the bench and the parties before it is used for the purposes of cross-examination. The Trial Chamber’s ruling has also prevented the introduction of impeachment material, even if it only becomes relevant the day of a witness’s testimony before the Chamber, unless the “evidence was not available before the opening of the trial”.

For example, on 11 June Nuon Chea Defence Team International Co-Lawyer Michiel Pestman attempted to confront witness Khoem Ngorn with statements he made in a previous interview by the Documentation Centre of Cambodia (DC-Cam). When asked by the President whether the document had been submitted to the Chamber in accordance with Rule 87, Pestman stated that he was unaware whether the document had been submitted to the Chamber but asserted that “the use of the document is vital for ascertaining the truth” through impeachment of the witness. The President replied: “The importance is not about the contents of the document”.



*Michiel Pestman*

### International Members of NUON Chea Defence Team to be Reported to National Bar Associations for Misconduct

On the last day before summer recess, Trial Chamber President Nil Nonn closed the final session by stating that he

would report international members of Nuon Chea's Defence team to their bar associations for misconduct. This statement immediately followed a warning by Judge Silvia Cartwright that there is no need for the Defence team to "reiterate its regular objections" to the Chamber's ruling on the use of impeachment material, and that it has been "directed to comply with the ruling" by supplying a comprehensive list of documents to be used for cross-examination. After concluding that he was barred from effective cross-examination, International Co-Lawyer Michiel Pestman ceded the floor to the other Defence teams who decided not to question the witness. Without further action by the Defence, Trial Chamber President Nil Nonn closed the hearing with a final statement. The President indicated his intention to report members of the Defence team to their national bar associations for "willful violations of the Chamber's orders, unauthorized disclosure to the press of confidential or strictly confidential material, and statements in Court which are disrespectful of the Court or which otherwise do not accord with the recognized standards and ethics of the legal profession".

Following this warning, the Trial Chamber rendered its *Decision on NUON Chea Defence Counsel Misconduct*. The decision primarily concerned International Co-Lawyers Michiel Pestman of Amsterdam and Andrew Ianuzzi of New York, but the Chamber stated that International Co-Lawyer Victor Koppe and National Co-Lawyer Son Arun—also members of Nuon Chea's Defence—were implicated by their signatures on written submissions. The Chamber explained which acts by the Defence it considered amounting to misconduct: unauthorized disclosure of confidential information; offensive, disrespectful, or otherwise unethical behavior; offensive or disrespectful remarks in written motions; and misrepresentations made before the Trial Chamber.

The eight page decision is available [here](#).

### **Nuon Chea**

On 20 June 2012, Nuon Chea attempted to make a statement in court for the first time since April 2012. His statement concerned the 17 April 1975 evacuation of Phnom Penh in response to witness testimony heard that week on the subject. The Accused, however, only read three lines of his statement before being interrupted by Trial Chamber President Nil Nonn

who blocked the Accused from speaking further because his statement was "far and further from the proceedings before us" and not within the relevant knowledge of the witness currently giving testimony. Nuon Chea then requested and was given permission to leave the court room in protest.

### **Ieng Sary**

Throughout June 2012, the Accused Ieng Sary, former Khmer Rouge Minister of Foreign Affairs, continued to be absent from the courtroom due to health problems but was permitted to participate in the proceedings by audio-visual means.

The Ieng Sary Defence Team has also been involved in opposing the Co-Prosecutors' requests of the Trial Chamber to provide assurances to witnesses purportedly guaranteeing their immunity from prosecution. The Co-Prosecutors argue that this measure is necessary to ensure the participation of skeptical witnesses. The Defence Team argues that there are adequate measures already in place to guarantee that witnesses participate truthfully, such as a mandatory oath and criminal penalties for perjury, and that the assurances are misleading. In addition, the Defence argues that the assurances are equivalent to a judge-issued pardon in violation of the King's exclusive constitutional power to issue pardons. The Trial Chamber ruled mostly in favour of the Co-Prosecutors' position, but stated that the assurances would not apply to purely national Cambodian courts.

### **Ieng Thirith**

A hearing has been scheduled to decide whether Ieng Thirith, the former Khmer Rouge Minister of Social Affairs, is fit to stand trial. The Trial Chamber in November 2011 ruled that Ieng Thirith was unfit to stand trial due to her diminished capacity that, according to experts, is most likely caused by Alzheimer's disease. The Trial Chamber also ordered her unconditional and immediate release from detention. The Office of the Co-Prosecutors appealed the decision to the Supreme Court Chamber, which overturned the Trial Chamber's order of immediate release and instead ordered a drug and occupational therapy program "which may help improve her mental health such that she become fit to stand trial". Another session has been scheduled for 30 and 31 August 2012 to hear expert testimony regarding the efficacy of the therapy program.

**New Judge***Pretrial Chamber**Judge Steven Bwana*

On 7 June 2012, Judge Steven J. Bwana was appointed by HM King Norodom Sihamoni as a new International Reserve Judge in the Pretrial Chamber following nomination by U.N. Secretary General Ban Ki-moon. Bwana, a Tanzanian national, replaced Kathinka Lahuis of the Netherlands. Bwana previously served as an Appeals Justice in the Court of Appeal of Tanzania.

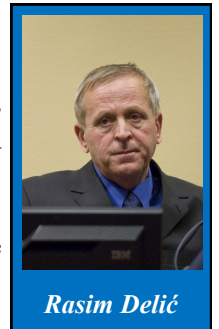
**Office of the Co-Investigating Judges**

It has been widely reported in the media that two International Co-Investigating Judges have been approved by Cambodian authorities. Reports state that Mark Harmon, a former prosecutor at ICTY, has been endorsed by the Supreme Council of Magistracy to fill the post of International Co-Investigating Judge left empty when Reserve International Co-Investigating Judge Kasper-Ansermet resigned this May. Caroline Charpentier, a French national who served at the Ministry of Justice for the European Security Development Programme in Kosovo, has reportedly been approved to assume the role of Reserve Co-Investigating Judge. The ECCC has not issued a formal statement on the matter. If the Supreme Council of Magistracy has indeed indicated its approval, both nominees still await final appointment by HM King Norodom Sihamoni.

**LOOKING BACK...****International Criminal Tribunal for the Former Yugoslavia****5 years ago...**

On 9 July 2007, the trial of Rasim Delić, former Commander of the Army of Bosnia and Herzegovina began. Delić was charged with failing to take necessary and reasonable measures to prevent or punish the crimes committed by his subordinates in Livade and the Kamenica Camp located near Zavidovici in central Bosnia and Herzegovina in July and August 1995.

On 15 September 2008, Delić was sentenced to three years imprisonment. He died on 16 April 2010 while his case was on appeal. The Trial Chamber judgement was considered to be final.

*Rasim Delić**Ignace Bagilishema***International Criminal Tribunal for Rwanda****10 years ago...**

On 3 July 2002, the Appeals Chamber of the ICTR unanimously confirmed the acquittal of Ignace Bagilishema, former bourgmestre of Mabanza, near Kibuye. The Prosecutor had appealed the acquittal at trial stating that the Trial Chamber had made errors of fact and law. The Appeals Chamber rejected all grounds put forth by the Prosecution and order Bagilishema's immediate release from custody.

## BLOG UPDATES

- Kathryn Hovington, **ICC sentences Thomas Lubanga Dyilo to 14 years of imprisonment**, 10 July 2012, available at: <http://www.internationallawbureau.com/blog/?p=5385>
- Kevin Jon Heller, **A Thought Experiment about ICC-State Cooperation**, 2 July 2012, available at: <http://opiniojuris.org/2012/07/02/a-thought-experiment-about-icc-state-cooperation/>
- Christian Nielsen, **An Office of the Historian for International Criminal Courts**, 9 July 2012, available at: <http://ilawyerblog.com/an-office-of-the-historian-for-international-criminal-courts/>
- Shannon Torrens, **ICC Staff Detained in Libya, released and back in The Hague**, 5 July 2012, available at: <http://shannontorrens.blogspot.nl/2012/07/detained-icc-staff-released-and-in.html>
- IntLawGrrls, **How Serious Are International Crimes?**, 19 June 2012, available at: <http://www.intlawgrrls.com/2012/06/how-serious-are-international-crimes.html>
- Julien Maton, **New Bosnian State Strategy for Victims**, 23 June 2012, available at: <http://ilawyerblog.com/new-bosnian-state-strategy-for-victims/>
- Raphael Girard, **The Perception of “Victor’s Justice” in the International Criminal Tribunals for the Former Yugoslavia and Rwanda**, 12 March 2012, available at: <http://www.legalfrontiers.ca/2012/03/the-perception-of-%E2%80%9Cvictor%E2%80%99s-justice%E2%80%9D-in-the-international-criminal-tribunals-for-the-former-yugoslavia-and-rwanda/>

## PUBLICATIONS AND ARTICLES

### Books

- Melanie Jacques (2012) *Armed Conflict and Displacement, The Protection of Refugees and Displaced Persons under International Humanitarian Law*, Cambridge University Press.
- William H. Boothby (2012) *The Law of Targeting*, Oxford University Press.
- Sandesh Sivakumaran (2012) *The Law of Non-International Armed Conflict*, Oxford University Press.
- Francesca Lessa, Leigh A. Payne (2012) *Amnesty in the Age of Human Rights Accountability, Comparative and International Perspectives*, Cambridge University Press.
- Benjamin Gregg (2012) *Human Rights as Social Construction*, Cambridge University Press.

### Articles

- Mark D. Kielsgard (2012) “The Legality Principle in Sentencing at the ECCC: Making Up Law as it Goes Along?”, *Asian Journal of International Law* 2(1), pp. 119-136.
- Rotem M. Giladi (2012) “Reflections on Proportionality, Military Necessity and the Clausewitzian War”, *Israel Law Review* 45(2), pp.291-321.
- Kathleen McVay (2012) “Self-determination in New Contexts: The Self-determination of Refugees and Forced Migrants in International Law”, *Merkourios Utrecht Journal of International and European Law* 28(75), pp.36-52.
- Wesley G. Jennings (2012) “Cross-Cultural and International Investigations of the Victim-Offender Overlap”, *International Criminal Justice Review* 22(2), pp. 105-109.

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**WE'RE ON THE WEB!**

**WWW.ADCICTY.ORG**

GOODBYE

The ADC-ICTY would like to express its appreciation and thanks to Kirsten Schlewitz and Diego Naranjo for their hard work and dedication to the newsletter. They have been contributors to the newsletter for the past 6 months. We wish them all the best for the future.

**EVENTS****Summer Programme: 'Countering Terrorism in the Post 9/11 World' - ICCT**

*Dates:* 27-31 August 2012

*Venue:* T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague

*More info:* <http://www.icct.nl/activities/upcoming-events/summer-programme-countering-terrorism-in-the-post-9/11-world->

**Third Annual Summer Programme on WMD Disarmement & Non-Proliferation**

*Dates:* 2-7 September 2012

*Venue:* T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague

*More info:* <http://www.asser.nl/events.aspx?id=282>

**Revolution in the Air - 9 Bedford Row International, Middlesex University and BLC Burton Copeland**

*Date:* 2 November 2012

*Venue:* Chatham House London, 10 St James's Square, London

*More info:* <http://www.internationallawbureau.com/blog/?p=5407>

**OPPORTUNITIES****Associate Legal Officer, The Hague (P-2)**

International Criminal Tribunal for the Former Yugoslavia (ICTY)

*Closing date:* 19 July 2012

**Associate Administrative Officer (Re-circulation), Leidschendam**

Special Tribunal for Lebanon (STL)

*Closing date:* 4 August 2012

**Associate Public Information Officer, The Hague (P-2)**

International Criminal Tribunal for the Former Yugoslavia (ICTY)

*Closing date:* 9 August 2012

**Legal Officer, The Hague (P-3)**

International Criminal Tribunal for the Former Yugoslavia (ICTY)

*Closing date:* 11 August 2012