ADC-ICTY Newsletter, Issue 21

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

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

On 12 October, in a significant decision for the defence, Trial Chamber II issued a reprimand under Rule 68bis to the lead lawyer for the Prosecution, Mr. Paul Rogers, for failure to disclose a set of documents pertaining to the Prosecution's involvement with a witness's asylum case in the undisclosed country where he is living. The revelation of these documents, including a letter from Mr. Rogers to Witness 75's immigration lawyer in support of his asylum application, came about following previous denials that there were any materials to be disclosed in relation to the relocation of witnesses. (Decision, paras. 4, 5 and 9). In its discussion, the Trial Chamber stated "Mr. Rogers' Letter was indeed a factor in the decision of the Undisclosed Country's appellate authority to reopen his asylum case. All of these facts are manifestly relevant to assessing Witness 75's credibility, namely whether he may feel obliged to return the favour by testifying favourably for the Prosecution" (Decision para. 46).

Ramush Haradinaj

Though Rule 68 relief has been granted in other cases from time to time, it is unusual for a Prosecution lawyer at the international tribunals to be publicly reprimanded. A common alternative remedy is to simply adjourn or postpone an affected witness's testimony until the Rule 68 disclosure issues are resolved.

The joint Defence submissions honed in on Mr. Rogers seeming inability to comprehend his duty to disclose information where there is any possibility that it could be relevant to the Accused's defence. (Defence Reply, 23 September 2011, para. 6). The Prosecutor admitted that it had erred in failing to disclose one of the documents at an early stage but stressed that the Defence had suffered no prejudice as the Trial Chamber had adjourned the witness's evidence until the matter was resolved. (Prosecution 19 September 2011, Response, paras. 22-25).

In its Decision on the Joint Defence Motion for Relief from Rule 68 Violations by the Prosecution and for Sanctions Pursuant to Rule 68bis, the Trial Chamber concluded: "the Chamber finds that the Prosecution has committed several serious violations of Rule 68 by failing to disclose, in a timely fashion, materials relevant to assessing Witness 75's credibility. The Prosecution had the duty to disclose to the Defence all the materials in its possession concerning Witness 75's asylum case because Witness 75 requested and, in

Rule 68

Disclosure of Exculpatory Material

The Prosecutor shall, as soon as practicable, disclose to the defence the existence of material known to the Prosecutor which in any way tends to suggest the innocence or mitigate the guilt of the accused or may affect the credibility of prosecution evidence.

fact, did receive a benefit from being a Prosecution witness." (Decision, para. 55)

The Decision continued: "Mr. Rogers should have readily conceded the obvious relevance of this evidence and acknowledged that he had committed several Rule 68 violations. Rather, Mr. Rogers has repeatedly insisted, unconvincingly, that such evidence is irrelevant to the testimony of Witness 75 and presumably to the testimony of any other witness as well. Rule 68bis stipulates that violations of Rule 68 are sanctionable. The Chamber considers that a reprimand is warranted· given Mr. Rogers' serious failure to abide by Rule 68 and his unwillingness to recognise his violations of the rule". (Decision, para. 64).

In addition to the reprimand, the Trial Chamber ordered that: the parties reach an agreement by 26 October 2011 regarding the passages of the hearing which are to be made public; the OTP file a disclosure report within seven days of the decision, and the OTP take steps to ensure that all staff working on this case are made fully aware of the Chamber's decision and reminded of Rule 68 obligations. Other Defence remedies were denied.

On the day that the disclosure request was due (19 October), the Prosecution requested an additional 9 days to fully comply with the Trial Chamber's order. Furthermore, the Prosecution has filed a 'Motion for Reconsideration of Relief Ordered Pursuant to Rule 68bis' signed by Serge Brammertz, which submits that "The Retrial Chamber should issue a Corrigendum to its Decision vacating the personal reprimand of the Senior Trial Attorney. To the extent deemed necessary, any reprimand issued under Rule 68bis should name the Prosecution or the Prosecutor as the relevant party to the proceedings". Decisions to both motions are still pending. The court is scheduled to continue hearing Prosecution witnesses on Monday 31 October.

Rule 68 *bis*

Failure to Comply with Disclosure Obligations

The pre-trial Judge or the Trial Chamber may decide *proprio motu*, or at the request of either party, on sanctions to be imposed on a party which fails to perform its disclosure obligations pursuant to the Rules.

Prosecutor vs. Mladić (IT-09-92)

On 13 October, the Trial Chamber denied the Prosecution's request to sever the indictment against Ratko Mladić. The Trial Chamber did, however, decide to grant the Prosecution's motion to add charges related to crimes committed in the village of Bišina, eastern Bosnia and Herzegovina, to the indictment.

Ratko Mladić

The Prosecution requested that the indictment be severed into two parts, one pertaining to alleged crimes in Srebrenica in July 1995, and the second pertaining to Sarajevo and other municipalities in Bosnia and Herzegovina and hostage taking. The Prosecution argued that this would be in the interests of justice and efficiency of the trial.
The Chamber found that granting the Prosecution's request could prejudice the accused, render the trial less manageable and less efficient and risk unduly burdening witnesses. The Chamber went on to state *"Participating in the pre-trial preparations of one case while simultaneously participating in the judgment or appeal stage of the first trial could unfairly overburden the Accused and limit his ability to participate effectively in either."*

In granting the Prosecution's request to add the crimes committed in the village of Bišina to the indictment, the Chamber ordered that a third amended indictment be filed within seven days of the written decision.

In a separate decision issued on 13 October 2011, the Trial Chamber dismissed a motion filed by Defence that alleged defects in the form of the indictment. Specifically, the Defence objected to the form of the indictment on the basis of insufficient identification of victims, perpetrators, dates and locations. The Chamber found that it was unnecessary for the Prosecution to specify further details in the indictment. The Trial Chamber then added that if the Prosecution had such details they

should provide them to the Defence and instructed the Prosecution to file a list with identifying information of the victims in the case by 1 November 2011.

Prosecutor v. Stanišić and Simatović (IT-03-69-T)

In the week beginning 10 October the Jovica Stanišić Defence called two witnesses. The first of these was Milorad Leković , a former Head of the State Security Service (DB) for the City of Belgrade and Assistant Minister of the Interior of the Republic of Serbia. Leković testified via video link pursuant to Rule 81*bis*.

Owing to his senior position throughout most of the Indictment period, Leković was well informed of the political machinations at work within the DB and relevantly of the Accused's standing within that organisation. According to Leković, this standing was greatly diminished in 1991, wherein a Commission investigated the Accused for alleged leaks of classified DB information.

Established on 2 April 1991, this Commission was chaired by Leković and comprised of four other DB members. The Commission began its work on the same day, under the supervision of the then Head of the DB, Zoran Janacković . Janacković, who was instrumental in the formation of the Commission, then provided it with the analytical materials that would form the basis of the investigation. Janacković further instructed the Commission that their conclusion emphasise the role of the Accused in any confirmed leak.

Jovica Stanišić

That conclusion came on 21 May 1991, following the interview of the Minister of the Interior, Radmilo Bogdanović. After putting several questions to the Minister, it was the general consensus of the Commission that Stanišić did not have any case to answer. The following day, a report was compiled that exonerated the Accused.

Despite the report however, no formal resolution on the Commission's work or existence was reached. Leković testified that neither he nor his fellow members received any feedback on the investigation. The consequence of this was that a cloud of suspicion continued to linger around Stanišić until late in 1991. The establishment of a Commission of itself signified a quasi suspension of the Accused and the equivocal manner in which it ceased its investigation ensured that his rehabilitation back into the DB was a slow one. It was this treatment of Stanišić during the period of the Commission and afterwards that is of great significance to the Defence. The Prosecution alleges that during 1991 the Accused was in fact a very powerful figure within the DB and integral to its operations. Leković, to the contrary, testified that Stanišić was blocked from the performance of his duties. Although Stanišić 's appointment was not officially changed, his de facto position was that he could not make any substantive decisions and was not privy to any sensitive information.

Franko Simatović

Vladimir Corbić was the next defence witness. In his testimony and accompanying 92*ter* statement, Corbić discussed the situation in Sandzak from 1991 to 1995. He stated that several sabotage and paramilitary groups existed within the area under the aegis of the Muslim National Council.

Corbić testified that the Serbian DB took steps towards quelling the unrest in Sandzak and that such measures were taken pursuant to RDB orders from the Accused. The Defence attempted to demonstrate that the Accused did everything he could to counter paramilitary activity. Where he was unable to do so, this also underlined the demarcation of the Accused's influence, contrary to Prosecution suggestions.

According to the Indictment, **Jovica Stanišić** was born on 30 July 1950 in Ratkovo in the Autonomous Province of Vojvodina, Republic of Serbia. He commenced work in the State Security Service ("DB") of the Ministry of Internal Affairs of the Republic of Serbia in 1975. He was formally appointed to the position of Head or Chief of the DB from 31 December 1991 to 27 October 1998. He was arrested 13 March 2003 by Serbian authorities, and transferred to the ICTY on 11 June 2003. His initial appearance took place on 13 June 2003, in which he pleaded not guilty to all charges.

Dragomir Pećanac, former Security and Intelligence Officer of the Main Staff of the Army of the Republika Srpska, is charged with contempt of the Tribunal for failing to comply with an order to testify in the case of Zdravko Tolimir. His initial appearance took place Tuesday 11 October in Courtroom I. A warrant for the arrest and order for surrender of the accused were also issued on 21 September 2011. Pećanac was then transferred to the custody of the United Nations Detention Unit.

Dragomir Pećanac (IT-05-88/2-R77.2)

On 21 September 2011, an order in lieu of an indictment against Mr. Dragomir Pećanac was issued confidentially by the Trial Chamber in the case of *Prosecutor v. Zdravko Tolimir*. The order was subsequently made public on 19 October 2011. Under the order, a motion was granted ordering the prosecution of Pećanac for Contempt of the Tribunal under Rule 77 of the Rules of Procedure and Evidence.

Dragomir Pećanac

The order stated that after being served with a subpoena, Pećanac failed to appear for testimony in the case of Prosecutor v. Zdravko Tolimir. The order then goes on to state that "on 2 September 2011 ... [Pećanac was informed] of the contents of the subpoena ... and of his obligation to appear before the Chamber" but he obstructed all attempts by the Tribunal to facilitate his safe transfer to The Hague, which resulted in his failure to appear before the Chamber, and he could not show "good cause" for failing to comply.

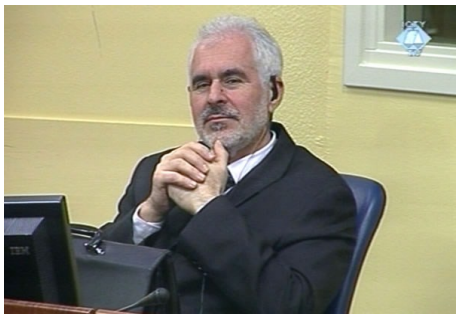
On 10 October 2011, Pećanac appeared in court for his initial appearance presided over by Judge Christoph Flügge. Pećanac was assigned Jens Dieckmann as his duty counsel. During the appearance Pećanac commented "never to date did I ever tell anyone that I did not wish or was not willing to appear as a witness in the proceedings against General Tolimir". Pećanac then indicated, "at this point I'm not prepared to testify in the case Prosecutor v. Tolimir, but probably I would be prepared to do so after consulting with my attorney".

Pećanac informed the court of his decision to postpone his plea for the next ten days and the court scheduled a further initial appearance for 19 October 2011.

Prosecutor v. Stanišić and Župljanin

After military expert and former JNA general Vidosav Kovacević testified for 10 days, the Župljanin defence called witness SZ-003 to the stand.

Due to the protected status of the witness, most of the witness' testimony was given in closed session. After a two-week break, the Župljanin defence continued the case by calling witness SZ-023 to the stand. As this is a protected witness as well, the court went into closed session for most of the time the witness was on stand.



Stojan Župljanin

On 10 October, the defence called Milos Janković (SZ-005), who was head of the communications department and encryption at the Prijedor SJB. Janković spoke about the communications with and within the various camps and the communication from SJB outside to CSB. He also went into detail about the relationship of Stojan Župljanin and Simo Drljaca. The defence, then, continued with witness SZ-009: Goran Sajinović , a former member of the the CSB Banja Luka.

On 30 September 2011, the Župljanin defence filed a motion confidentially in which it sought to change the mode of testimony of Nikola Vracar from viva voce to admission in written form (pursuant to Rule 92). The defence also requested to add the transcript of the witness' testimony in the Brdjanin case to their Rule 65ter exhibit list.

On 21 October the Trial Chamber granted the motion and admits Nikola Vracar's prior testimony, along with two other documents.

The Župljanin defence will continue presenting evidence after a two-week break.

Launch of ADC-ICTY Manual on International Criminal Defence

During the past year a group of defence counsel and support staff have written the "Manual on International Defence, ADC-ICTY Developed Practices". It brought to a completion the final stage of the War Crimes Justice Project which has been implemented by UNICRI and the OSCE Office for Democratic Institutions and Human Rights. The goal of the manual is to enhance the capacity of legal professionals in the field of international criminal law and especially in the region of the Former Yugoslavia.

Colleen Rohan, Vice-President of the ADC-ICTY at the launch in Pristina.

Slobodan Zečević, President of the ADC-ICTY at the launch in Belgrade

The Manual provides an overview of some of the most effective and innovative practices developed by defence counsels representing war crimes suspects before the ICTY. The manual is intended to be a reference tool for counsel defending cases of war crimes, crimes against humanity and genocide.

There have been official launch events in Sarajevo, Pristina and Belgrade, and it is envisaged that a launch will take place in The Hague in the near future.

To see further photos from the launch in Belgrade click: http://iloapp.adc-icty.org/gallery/gallery?Home

The ADC recommends that Plenary urge the Appeals Chamber to reverse itself on requiring "sufficiently compelling humanitarian reasons" be shown for provisional release at a late stage of proceedings

"Adopting the 'sufficiently compelling humanitarian reasons' criterion in the Rules is no less unconscionable a violation of the presumption of innocence than the sign that hangs in the Tribunal's lobby proclaiming the Tribunal's apparent raison d'être: "bringing war criminals to justice, bringing justice to the victims." The Rules are the expression of the underlying values and interests articulated by the Statute, inclusive of the accused's fair trial rights which are based on universal principles dating from the medieval writ of habeas corpus to the twentieth century international human rights settlement codified in the Universal Declaration of Human Rights and ICCPR."

On 14 October 2011, ADC member Michael G. Karnavas submitted a memorandum to the ICTY Rules Committee expressing his personal views concerning proposals to amend to Rule 65(B). When Judge Agius, Chairman of the ICTY Rules Committee, refused to accept the memorandum because "while the ADC has *locus standi* in the Rules Committee, individual members of the ADC do not," the ADC formally presented it to the ICTY Rules Committee itself.

The memorandum argues that Rule 65(B) should not be amended because the requirement of "sufficiently compelling humanitarian reasons" for provisional release at a late stage of the proceedings is *ultra vires*, inconsistent with an accused's fair trial rights, and is predicated on a misunderstanding of the significance of dismissal of a Rule 98bis motion. Amending Rule 65(B) as suggested would amount to using the rule amendment procedure to legitimize a new criterion that is inconsistent with the spirit of the Statute, that manifestly transgresses the fair trial rights of the accused (in particular the presumption of innocence), that denies individuals their right to bail apart from in the most exceptional circumstances, and that sends the message that provisional detention is a form of punishment. The memorandum recommends that the Appeals Chamber be urged by the Plenary to reconsider and depart from its previous decisions given that cogent reasons

Rule 65

Provisional Release

(B) Release may be ordered by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for trial and, if released, will not pose a danger to any victim, witness or other person.

Ms. Vonimbolana Rasoazanany was born on 13 November 1950 in Antananarivo, the capital-city of Madagascar, where she graduated in 1975 from the *Institut d'Etudes Judiciaires.*
One year later she began her career within her country's judiciary: she successively held the positions of *Substitut du Procureur de la République* (1976-1978) and *Juge et juge d'instruction* (1978-1981 at the Tribunal of Ambositra, 1981-1985 at the First Instance Tribunal of Antsirabe). In 1985, she joined the *Cour d'appel* of Antananarivo, first as *conseiller* and later as *Président de la Cour criminelle ordinaire.*
In 1991, she was elected to the *Cour Suprême* where she was *Président de Chambre* until her appointment, in June 2002, as

have been shown which demonstrate the "sufficiently compelling humanitarian reasons" requirement's lack of legal basis and inconsistency with international human rights principles.

"The Rules themselves do not describe objective truth, they reflect subjective intentions. Amending Rule 65 (B) in a way that effectively guarantees that an accused - who continues to enjoy the presumption of innocence – is warehoused for excessive and unnecessary periods of time, would demonstrate a subjective intention by the ICTY judges to trample over the fair trial rights of the accused. The law created by the Appeals Chamber... is not immutable like the laws of nature. The wiser course of action is not to legitimize the ultra vires actions of the Appeals Chamber by amending Rule 65(B), but to call for the Appeals Chamber to reconsider its position."

The ADC Rules Committee memorandum prepared by Michael G. Karnavas is available here: http://adc-icty.org/Documents/Michael_Karnavas_Proposed_Rule_65(B)_Amendment.pdf

Final Amendment to Rule 65(B)

On 20 October, the Judges held a Plenary Session at which the final amendment was adopted as follows:

Release may be ordered at any stage of the trial proceedings prior to the rendering of the final judgement by a Trial Chamber only after giving the host country and the State to which the accused seeks to be released the opportunity to be heard and only if it is satisfied that the accused will appear for the trial and, if released, will not pose a danger to any victim, witness or other person. The existence of sufficiently compelling humanitarian grounds may be considered in granting such release.

Plenary of Judges Elect New President and Vice-President

At a special plenary session held on 19 October, the judges of the ICTY elected, by acclamation, Judge Theodor Meron as President of the Tribunal and Judge Carmel Agius as Vice-President, for two-year terms starting 17 November 2011.

Judge Theodor Meron

Judge Carmel Agius

New Judge Appointed

On 19 October Judge Vonimbolana Rasoazanany from Madagascar was sworn in as a judge at the ICTY. Judge Rasoazanany has extensive experience in international law and has previously been an ad litem Judge at the ICTY.

News from International Courts and Tribunals

Extraordinary Chambers in the Courts of Cambodia

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

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

Severance

The Trial Chamber ordered the severance of proceedings in Case 002 on 22 September 2011. On 3 October 2011, the Office of the Co-Prosecutors requested a reconsideration of the terms of the Severance Order. The Ieng Sary Defence Team supported the request for reconsideration and an oral hearing, further requesting that all parties be given sufficient time to respond to the Co-Prosecutors' recommendations should such a hearing be granted.

Ieng Thirith

The Nuon Chea Defence Team responded to the Co-Prosecutors' Request for Reconsideration on 11 October. The Team urged the Trial Chamber to stand by the terms of its Order, stating that it was, "without a doubt, the most sensible decision to emerge from the ECCC and one that should have been taken by the OCIJ in 2007 when confronted with the Co-Prosecutors' unmanageable Introductory Submission". The filing continued with a reminder to the parties that "the ECCC should be in the business of trying cases rather than attempting to write history". The Team argued for a swift decision from the Trial Chamber, noting their eagerness for a final indictment in view of Nuon Chea's right to an expeditious trial.

On 18 October 2011, the Trial Chamber rejected the Co-Prosecutors' Request for Reconsideration and denied the request for an oral hearing on the matter. The Trial Chamber did however indicate that it does not exclude the 'possibility of adding additional charges and counts to the first trial in Case 002 where circumstances permit'.

Fitness to Stand Trial

A further hearing on Ieng Thirith's Fitness to Stand Trial commenced on 19 October 2011. Previously, geriatrician Professor A. John Campbell reported and testified that Ieng Thirith suffers cognitive impairment compromising her ability to participate fully in her trial and to exercise her fair trial rights. The Trial Chamber appointed four psychiatric experts to assess Ieng Thirith further. These experts unanimously concluded that she is suffering from dementia, most likely Alzheimer's disease. The two experts testifying at the hearing stated that Ieng Thirith has moderate to severe cognitive impairment, in keeping with the early stages of dementia. They explained that the panel ruled out treatable or arrestable causes of dementia such as a brain tumour or thyroid problem. Their prognosis is an insidious decline in mental capacity, the speed of which is impossible to predict.

Nuon Chea

Ieng Thirith's Defence Team's examination of the experts sought to establish that Ieng Thirith's cognitive impairment precludes rational understanding such that it is impossible for

Ieng Thirith graduated from the Lycée Sisowath in Phnom Penh then went to study in Paris, where she majored in Shakespeare studies at the Sorbonne. She became the first Cambodian to receive a degree in English Literature. Returning to Cambodia in 1957, she worked as a professor before founding a private English school in 1960. On 9 October 1975, at a meeting of the CPK Standing Committee, Ieng Thirith was allegedly appointed Minister of Social Affairs in Democratic Kampuchea. She allegedly remained with the Khmer Rouge until her husband Ieng Sary was granted a Royal amnesty and pardon in 1998. Thereafter, they lived together in Phnom Penh until being placed in pre-trial detention by the ECCC in November 2007.

her to exercise her fair trial rights. The experts concluded that Ieng Thirith particularly lacks the capacity to understand the course of proceedings due to her inability to retain, reason, and weigh up the information presented in court. The experts confirmed that the significant problems with both her long- and short-term memory, and notably her inability to recall events from the period relevant to the charges she faces, mean that Ieng Thirith would have considerable difficulty in assisting with the preparation of her defence. Ieng Thirith has also demonstrated temporal and local disorientation, and the experts cited studies which have shown an extremely strong correlation between deficiencies in memory, disorientation and competency.

In their submissions, counsel for Ieng Thirith argued that the evidence that Ieng Thirith is unfit to stand trial is unequivocal and that the proceedings against her should therefore be terminated. Counsel submitted that the capacities identified in *Strugar* are fundamental rights afforded to an accused and that therefore the absence of any one of these must lead to a finding of unfitness to stand trial. It was further noted that Ieng Thirith has been unable to assist her lawyers with the preparation of her defence, meaning that they have been unable to do more than identify what is contrary to her interests.

Ieng Thirith's Defence Team argued finally that, as a last resort, Ieng Thirith must at the very least be severed from the main proceedings so that her Co-Accused are not inconvenienced by the particular problems she is facing.

A decision on Nuon Chea's fitness to stand trial remains pending. Nuon Chea's Defence Team requested that if the Trial Chamber is minded to sever Ieng Thirith from the main trial, that it similarly sever Nuon Chea. Nuon Chea's counsel noted that his health is deteriorating and fluctuating and that his removal from the main proceedings would be in the interests of the rights of Ieng Sary and Khieu Samphan to an expeditious trial.

Nuon Chea studied law at Bangkok's prestigious Thammasat University, where he became a member of the Thai Communist Party. Appointed Deputy Secretary of the CPK in 1960, he retained this position and his membership in the CPK's Standing Committee throughout the period of Democratic Kampuchea. He remained with the Khmer Rouge until reaching a deal with the Cambodian government in December 1998 that allowed him to live near the Thai border.

Criminal Complaint filed against senior officials in the Royal Government of Cambodia

On 24 October 2011, Michiel Pestman and Andrew Ianuzzi, Defence counsel at the ECCC, filed a criminal complaint with the Office of the Royal Prosecutor attached to the Phnom Penh Municipal Court. Their complaint alleges that Prime Minister Hun Sen and a number of other senior officials of the Royal Government of Cambodia, both individually and through their participation in a common criminal plan, are guilty of interfering with justice and the rights of the defendants at the ECCC to a fair trial.

Father Norodom Sihanouk

It is alleged that these persons have actively interfered with the administration of justice at the court by preventing the delivery of letters inviting the King Father Norodom Sihanouk to testify at the ECCC in Case 002, publicly opposing the testifying of certain Case 002 witnesses, flouting summonses to appear as witnesses in Case 002 without valid reason and publicly opposing further investigation and proceedings in Cases 003 and 004.

Pestman and Ianuzzi argue that this executive obstruction in the work of what ought to be an independent judicial body contravenes the principle of the separation of powers, as enshrined in the Cambodian Constitution, compromises the integrity of the proceedings in Case 002 and any future cases, and amounts to criminal activity under the Cambodian Penal Code.

The Belated demise of JCE III: The ECCC debunks the myth created by the ICTY in Tadić that JCE III exists in customary international law

Contributed by: Tanya Pettay and Helen Sullivan

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

On 12 September 2011, the form of liability known as the "extended form" of joint criminal enterprise ("JCE"), or "JCE III," was finally put to rest by the Trial Chamber of the Extraordinary Chambers in the Courts of Cambodia ("ECCC") in Case 002, when it concluded that JCE III was neither part of customary international law, nor was it a general principle of law in 1975-1979. In other words, the ECCC Trial Chamber and the Pre-Trial Chamber have shown that JCE III does not now exist, and has never existed, as a mode of criminal liability as expressed by the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), Tadić Appeals Chamber and its progeny. Since there have been no major developments in customary international law between 1974 and 1991, as admitted by the Office of Co-Prosecutors at the ECCC ("OCP"), and since there are no international instruments that post-date 1991 that establish the existence of JCE III, the finding that JCE III was not part of customary law from 1975-1979 conclusively demonstrates that the Tadić Appeals Chamber erred in 1999 when it created JCE III. It further demonstrates that all subsequent Chambers of the *ad hoc* Tribunals and the Special Court for Sierra Leone ("SCSL") have erred by continuing to convict Accused persons under this mode of liability without doing a thorough, independent analysis of the authority relied upon by the Tadić Appeals Chamber. The Trial Chamber's Decision (in conjunction with the Pre-Trial Chamber's Decision) is significant in that it calls into question the legality of all convictions, including plea agreements, predicated on JCE III.

Duško Tadić

This article outlines the issues raised before the ECCC and briefly sets out the grounds for the Pre-Trial Chamber's and Trial Chamber's holdings that JCE III is inapplicable as a mode of liability before the ECCC. The authors suggest that these Decisions are equally applicable before the *ad hoc* Tribunals, the SCSL and the Special Tribunal for Lebanon ("STL") and necessitate reconsideration of all convictions entered on the basis of JCE III.

Find the full article here: http://adc-icty.org/Documents/THE_BELATED_DEMISE_OF_JCE_III_Final.pdf

Judge Antonio Cassese Dies

Judge Antonio Cassese, has died after a long fight with cancer. He passed away peacefully at home in Florence on Saturday 22 October 2011. He was 74. Judge Cassese was one of the most distinguished figures in international justice. He was the first President of both the ICTY and the Special Tribunal for Lebabnon and was often described as the chief architect of modern international criminal justice.

The STL has created a dedicated tribute page which you can access here: http://www.stl-tsl.org/en/about-the-stl/key-characters/judges-of-the-special-tribunal-for-lebanon/tributes-to-judge-antonio-cassese

Antonio Cassese at his desk in his President's office at the ICTY

Duško Tadić was born on 1 October 1955 in Kozarac. He was the first convicted war criminal from the Bosnian War. The ICTY sentenced the Bosnian Serb on 14 July 1997 to 20 years imprisonment for crimes including actions taken at camp Omarska, camp Trnopolje and the town of Kozarac. He was convicted of wilful killing; torture; inhumane treatment; wilfully causing great suffering or serious injury to body or health; and murder. The trial commenced on 7 May 1996. The closing arguments took place on 25 and 26 November 1996 for The Prosecution, and 26 to 28 November 1996 for the Defence. The trial took place before Trial Chamber II (Judge Gabrielle Kirk McDonald (presiding), Judge Ninian Stephen, and Judge Lal Chand Vohrah). The sentence was confirmed on appeal on January 26, 2000.

Blog Updates

- Marie O'Leary, **ECCC Co-Investigative Judge Resigns Citing Improper Governmental Influence,** 15 October 2011, available at: http://www.internationallawbureau.com/blog/?p=3364
- Diane Marie Amann, **Obama, Uganda & the ICC,** 15 October 2011, available at: http://intlawgrrls.blogspot.com/2011/10/obama-uganda-icc.html
- Valerie Epps , **Civilians & the collateral damage rule,** 18 October 2011, available at: http://intlawgrrls.blogspot.com/2011/10/civilians-collateral-damage-rule.html
- Gentian Zyberi, **The Lebanon Tribunal Elects a New President,** 13 October 2011, available at: http://internationallawobserver.eu/2011/10/13/lebanon-tribunal-elects-new-president/
- John Prendergast, **Time to Act on Atrocities in Sudan,** 14 October 2011, available at: http://www.enoughproject.org/blogs/time-act-atrocities-sudan
- Robert Mackey, **Human Rights Group Welcomes Obama's Decision to Send Troops to Uganda,** 17 October 2011, available at: http://ijcentral.org/blog/human_rights_group_welcomes_obamas_decision_to_send_troops_to_uganda/

EU court jails ex-KLA fighter

Sali Rexhepi, a former ethnic Albanian guerrilla, has been found guilty of war crimes committed against civilians during the 1999 war in Kosovo. The former KLA soldier was sentenced to five years in prison, by a EULEX court, for torturing a Kosovo-Albanian civilian detained in a KLA detention centre in Cahan in Albania. Rexhepi was acquitted of two other counts of war crimes by a mixed panel of one Kosovo and two EULEX judges.

Publications

Books

A. Cassese, G. Acquaviva, M. De Ming Fan, A. Whiting, 2011. International criminal law: Cases and commentary, Oxford University Press

A. Bianchi and Y. Naqvi, 2011. International humanitarian law and terrorism, Studies in international law series, Hart Publishing

F. Patterson (ed) 2011. Judicial review: Law and practice, Jordan Publishing Ltd

Articles

Eszter Kirs, 2011, '*Limits of the Impact of the International Criminal Tribunal for the Former Yugoslavia on the Domestic Legal System of Bosnia Herzegovina*,',Goettingen Journal of International Law, 3: 1, pp. 397- 416.

Cliff Farhang, 2010, '*Point of No Return: Joint Criminal Enterprise in Brdanin,*' Leiden Journal of International Law, 23, pp. 137-164.

Jeremy Sarkin and Carly Fowler, 2010, '*The Responsibility to Protect and the Duty to Prevent Genocide: Lessons to be Learned from the International Community and the Media During the Rwandan Genocide and the Conflict in the Former Yugoslavia,*' Suffolk Transnational Law Review, 33:1, pp. 35-86.

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

Upcoming Events

Conference on current matters of interest in international criminal law

Date: 19 November 2011
Time: from 9 am

Organiser: 9 Bedford Row International

Venue: BPP Law school, 68-70 Red Lion Street, London, WC1R 4NY

To attend: julian.bradley@9bedfordrow.co.uk

Peace Diplomacy, Global Justice and International Agency: Rethinking Human Security and Ethics in the Spirit of Dag Hammarskjöld

Date: 09 November 2011 - 10 November 2011
Time: 09:00 - 18:00

Venue: Peace Palace, Carnegieplein 2, 2517 KJ, The Hague

The Hague Forum for Judicial Expertise: 5-Day course on International Law

Date: 14 November 2011 - 18 November 2011

Organiser: The Hague Forum for Judicial Expertise

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

More info: http://www.haguejusticeportal.net/smartsite.html?id=12930

Opportunities

Legal Adviser, ICC Trust Fund for Victims, The Hague

International Criminal Court

Closing Date: Tuesday 15 November 2011

Senior Trial Counsel, Leidschendam

Special Tribunal for Lebanon

Closing Date: Friday 4 November 2011

Assistant/Associate Legal Officer (P-1/P-2) Roster

Special Tribunal for Lebanon

Closing Date: 31 December 2011