ADC-ICTY Newsletter, Issue 9

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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 Tribunal for the Former Yugoslavia or the Association of Defence Counsel Practicing before the ICTY.

Prosecutor v. Đorđević (IT-05-87/1)

Vlastimir Đorđević

On 23 February 2011, the Trial Chamber found Vlastimir Djordjevic guilty of war crimes and sentenced him to 27 years imprisonment. Djordjevic, former Assistant Minister of the Serbian Ministry of Internal Affairs and Chief of Public Security Department, was found guilty of Deportation, Forcible Transfer, Murder (one being charged as a war crime and the other as a crime against humanity) and Persecutions against ethnic Albanians in Kosovo in 1999. Djordjevic was initially indicted for his alleged involvement in crimes committed by Serbian forces, especially by the army (VJ) and the police (the MUP).

Djordjevic was charged under Article 7(1) of the Statute of the Tribunal with planning, instigating, ordering, and otherwise aiding and abetting the alleged crimes. He was also charged under Article 7(1) with committing these five crimes by participating in a Joint Criminal Enterprise (JCE), the purpose of which was to change the ethnic balance in Kosovo. In the Indictment it was alleged that the Accused is liable, under Article 7(3) of the Statute, for failing to prevent the offences committed by police under his command, and for failing to ensure the offenders were punished for the offences they committed.

Djordjevic's trial began on 27 January 2009 and concluded on 14 July 2010. The Trial Chamber heard 140 witnesses and admitted into evidence 2,500 exhibits.

The Trial Chamber found that Djordjevic's participation in the JCE was crucial to its success. As Head of the RJB and Assistant Minster of Interior, Djordjevic had lawful and effective control over the police in Kosovo and "played a key role in coordinating the work of the MUP forces in Kosovo in 1998 and 1999".

The Trial Chamber dismissed the Defence argument that the flight of many Kosovo people was due to the state of war between the FRY and NATO, NATO bombings, fighting between the Kosovo Liberation Army (KLA) and Serbian forces, sanctions, war-time conditions, evacuations, deliberate population movements directed by the KLA and due to non-Albanians fleeing Kosovo at a comparable rate. The Trial Chamber discussed that while the above mentioned factors may had "caused some concerns in the minds of some Kosovo Albanians", the dominant reason Kosovo Albanian people left Kosovo was because they were ordered to do so by the Serbian forces, or by the conduct of Serbian forces.

The Đorđević Trial concerned itself with 13 municipalities:

Orahovac/Rahovec,

Prizren,

Srbica/Skenderaj,

Suva Reka/ Suhareke,

Pec/Peje,

Kosovska,

Mitrovica/Mitrovice,

Pristina/Prishtine,

Dakovica/Gjakove,

Gnjilan/Gjilan,

Urosevac/Ferizaj,

Kacanik,

Decanj/Decan

Vucitrn/Vushtrri

Moreover, the Trial Chamber found that Djordjevic played a leading role in efforts by the MUP to conceal the murders of Kosovo Albanians. Evidence and testimony heard at trial confirmed that trucks containing bodies of Kosovo Albanians, killed by Serbian forces in Kosovo, were transported and buried in mass graves. The Trial Chamber stated that "the transportation of bodies from Kosovo for clandestine burial in mass graves on MUP grounds was undertaken as part of a coordinated operation to remove evidence of crimes committed by Serbian forces against Kosovo Albanians in Kosovo during the Indictment period. This operation was conducted under the direction of the Accused, in consultation with Minister Stojiljković, pursuant to an order of the President of the FRY, Slobodan Milošević."
The full judgment can be found at:
http://www.icty.org/x/cases/djordjevic/tjugen/110223_djordjevic_judgt_en.pdf

Prosecutor v. Gotovina et al. (IT-06-90)

Ante Gotovina

On 14 February 2011, the Appeals Chamber of the ICTY handed down a landmark decision in the Gotovina et al case for all those working for Defence teams at the ICTY. This decision ruled that Defence Counsel and their teams enjoy functional immunity from investigation and prosecution.

On 16 September 2008, Croatia was ordered by the Trial Chamber to intensify the search for Operation Storm documents. While Croatia began to do so, Gotovina issued several requests to the Trial Chamber for a restraining order against the Croatian authorities. He requested that Croatia cease all criminal investigations and prosecutions against Marin Ivanonic, an investigator for the Gotovina Defence team, and "any other person which emanate from acts related to the Defence fulfilment of its function" in their case. Gotovina's Defence, pursuant to Rule 73, requested the Trial Chamber to issue temporary and permanent restraining orders, after several other current and former members of the Gotovina Defence team were arrested and after the Croatian authorities conducted several searches and seizures of material and computers affiliated with the Gotovina Defence.

Subsequently on 12 March 2010, the Trial Chamber issued its *Decision on Requests for Permanent Restraining Orders Directed to the Republic of Croatia* (Impugned Decision), in which it denied the request for permanent restraining orders against Croatia from stopping all searches of records, computers, and from continuing their investigations and criminal proceedings against Gotovina's Defence team. The Trial Chamber established a procedure to review all seized documents in order to preserve Gotovina's rights under Rules 70(a) and 97. The Trial Chamber's *Impugned Decision* found that, while defence investigators should benefit from protection under Article 30(4) of the Statute, Article 30(4) did not provide for personal or functional immunity for members of the Defence. The Trial Chamber took into consideration an opinion by Larry Johnson, Assistant Secretary-General for the Office of Legal Affairs of the United Nations, which addressed Defence investigator immunity at the International Criminal Tribunal for Rwanda (ICTR). The Trial Chamber found that Johnson's Legal Opinion did not conclude that members of the Defence enjoyed functional immunity under Article 29(4) of the ICTR Statute, which mirrored Article 30(4) of the ICTY Statute. The Trial Chamber also noted that it was important that States be permitted to investigate and prosecute crimes committed in their territory.

Gotovina argued six grounds of appeal, including that the Trial Chamber erred in finding that members of the Defence did not enjoy functional immunity under Article 30(4) of the Statute.

ICTR Statute: Article 29 (4)

Other persons, including the accused, required at the seat or meeting place of the

International Tribunal for Rwanda shall be accorded such treatment as is necessary for the proper

functioning of the International Tribunal for Rwanda.

ICTY Statute: Article 30

1. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 shall apply to the International Tribunal, the judges, the Prosecutor and his staff, and the Registrar and his staff.

2. The judges, the Prosecutor and the Registrar shall enjoy the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.

3. The staff of the Prosecutor and of the Registrar shall enjoy the privileges and immunities accorded to officials of the United Nations under articles V and VII of the Convention referred to in paragraph 1 of this article.

4. Other persons, including the accused, required at the seat of the International Tribunal shall be accorded such treatment as is necessary for the proper functioning of the International Tribunal.

The Appeals Chamber found, that under Article 30(4) of the Statute, members of the Gotovina Defence, including investigators, were provided with functional immunity, thereby allowing them to "independently exercise their official functions, namely to assist the Accused in the preparation of his or her Defence." The Appeals Chamber further stated that "failure to accord functional immunity to Defence investigators could impact upon the independence of Defence investigations, as investigators may fear legal process for actions related to their official Tribunal functions." Furthermore, the Appeals Chamber stated Prosecution investigators are given functional immunity under Article 30(1) and 30(3) and they are not permitted to commit crimes with impunity, therefore the Defence should be afforded the same right. Functional immunity for members of Defence and Prosecution "is limited to the actions in fulfilment of their official functions before the Tribunal and in the interests of the United Nations. It does not allow them to violate domestic criminal laws with impunity."

The Appeals Chamber further opined that the Trial Chamber erred in relying on the Johnson Legal Opinion in its conclusion that members of Defence were not entitled to functional immunity under the Statute. The Appeals Chamber reasoned that immunity under Article 29(4) was strengthened by the ICTR Headquarters Agreement and was not the sole basis for finding functional immunity for Defence investigators.

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

On 18 February 2011, the Trial Chamber suspended the contempt proceedings against Berko Zečević, following his agreement to testify as a Prosecution witness in the trial of Radovan Karadžić. Professor Zečević, who had been charged with contempt and arrested for failing to comply with a subpoena ordering him to appear as an expert witness, took to the stand on 22 February 2011. He gave most of his testimony standing up, due to the serious back problems, which partly explained his initial refusal to testify.

Zečević is an associate professor and the head of the defence technology department at the mechanical engineering faculty of the University of Sarajevo. His testimony focused on the type, calibre and direction of the projectile that caused the first Markale Market incident in Sarajevo on 5 February 1994. Zečević headed an expert commission which in 1994 identified six locations from which the shell may have been fired. One of these locations was in the territory controlled by the BH Army. In a later analysis, Zečević reduced this to three possible locations, all of which were under VRS control.

During his six hour cross-examination of the witness, Karadžić asked the witness why it took him a number of years to reach the new conclusion. Karadžić, who was informed in the courtroom by Defence ballistics expert Dr. Zorica Subotic, also queried why Zečević claimed that it was "possible" to determine the direction of the projectile that hit Markale market in February 1994, when both UNPROFOR and the Sarajevo police in 1994 admitted that they were unable to establish it.

Furthermore, legal advisor to the Accused, Peter Robinson, challenged the witness's objectivity, arguing that Zečević was partial since he had worked for the BH Army defence industry in 1992 and 1993.

After Professor Zečević completed his evidence, Ramiz Mujkic, a former prisoner in the Rajlovac prison camp, returned to the witness stand. The trial continues this week with the testimony of protected witness KDZ 20.

Ramiz Mujkic

Mladić's notebooks were confiscated on 23 February 2010 in the apartment of Mladić's wife.

On 11 May 2010, the confiscated material, consisting of notebooks, approximately 120 audio and video cassettes, medical documents and a memory card was sent to the ICTY in The Hague.

The notebooks are said to include valuable evidence for the following trials:

Perišić (IT-04-81)

Prlić et al. (IT-04-74)

Radovan Karadžić (IT-95-5/18-I)

Šešelj (IT-03-67)

Stanišić & Simatović (IT-03-69)

Tolimir (IT-05-88/2)

Župljanin and Stanišić (IT-08-91)

Prosecutor v. Šešelj (IT-03-67)

Vojislav Šešelj

On 28 February 2011, following up on the submission of the expert report regarding the Mladić notebooks, the Trial Chambers ordered the expert Dorijan Keržan to disclose reference materials used in preparation of the report. Upon the Trial Chamber's order, the Registry had commissioned a report by an expert on document and handwriting analysis to attest to the authenticity of the Mladić notebooks, in order to allow for a decision on admission of the latter into evidence. Keržan was to provide an annex to the report, comprising of a full list of documents used to draft the expert report, within four days of receipt of the order.

As ordered by the Trial Chambers, the Rule *98bis* hearing commenced on 7 March 2011. Furthermore, the contempt-of-the-court proceedings commenced and were suspended on 22 February 2011. They will remain pending until the matters related to the funding of the Accused's Defence are resolved.

Prosecutor v. Tolimir (IT-05-88/2)

After the January adjournment to allow the Accused to review Mladić's note, the trial of Gen. Zdravko Tolimir continued in February and March 2011, with testimonies of Prosecution witnesses on events in Srebrenica and Žepa in summer 1995. These included former members of the Republika Srpska Army, eye witnesses from Srebrenica, demography expert Helge Brunborg, OTP investigator Dean Manning and the former UNPROFOR civil affairs officer in Žepa Edward Joseph.

On 17 February 2011, the Trial Chambers stressed, in relation to the limited time accorded to the Accused for the cross-examination of Mirsada Malagić (based on information by Prosecution on the availability of the witness) that the trial was to be fair and expeditious. Moreover, the Trial Chamber noted that the trial is to fully respect the rights of the Accused and the Prosecution's position that the Accused had to show proof of what he needs to cross-examine the witness about would not be accepted.

On 4 February 2011, the Trial Chambers issued a revised order, concerting guidelines on presentation of evidence and conduct of parties during trial. The lists of witnesses called by a party are to be provided to the Trial Chambers, the cross-examining party and the Registry, by 4.00 p.m. on the Thursday preceding the week in which the witnesses are to testify, instead of Friday. The cross-examining party has now 24 hours to provide its time estimates for cross-examination. Under the previous order, the list was to be submitted one week in advance of the week when the witnesses would be called and the cross-examining party had until Monday of the following week to respond.

Zdravko Tolimir

At the moment, the Chamber considers a 22 February Prosecution *Motion* to convert seven viva voce witnesses to Rule *92ter* witnesses.

Rule 74

Amicus Curiae

(Adopted 11 Feb 1994)

A Chamber may, if it considers it desirable for the proper determination of the case, invite or grant leave to a State, organization or person to appear before it and make submissions on any issue specified by the Chamber.

ADC-ICTY Amicus


Jovica Stanišić and Franko Simatović

On 21 February 2011, the Association of Defence Counsel practicing before the International Criminal Tribunal for the former Yugoslavia (ADC-ICTY) applied, pursuant to Rule 74, to appear as amicus curiae in connection with the *Urgent Stanišić Motion for Equality of Arms and Immediate Suspension of the Trial (Other than the Examination of Remaining Prosecution Witnesses) with Annexes A-K.*

The ADC-ICTY argued that "the issue raised in the *Motion* presents a direct threat to the ability of Defence Counsel and team members to adequately defend accused persons at the ICTY." As such, the right to a fair and expeditious trial, as well as the right to equality of arms are affected, rights which are "essential to the credible fulfilment of the mandate of this Tribunal."

In Šainović, the Appeals Chamber held that "the primary criterion for granting leave to file an amicus brief is whether the proposed submission would assist the Chamber in its consideration of the questions at issue." Because the issues in the *Motion* concern all cases pending at the Tribunal, the ADC-ICTY is "in a unique position to assist the Trial Chamber." The ADC-ICTY proposed to assist the Trial Chamber by demonstrating how "the recent interpretation and implementation of the Trial Payment Policy by OLAD is detrimental to the accused's ability to prepare and present a defence and ultimately the rights of the accused to fair and expeditious trials."

The ADC-ICTY further argued that the Trial Chamber's decision on the *Motion* will "set a precedent "that could affect more than just the Stanišić Defence team."

Miroslav Radic spent **195 days** in detention between the final submissions and delivery of acquittal judgment; Milan Milutinovic **183 days**; Ramush Haradinaj **93 days**; Fatmir Limaj and Isak Musliu **91 days**; and Ljube Boskoski **63 days**.

Proposed Amendment to Rule 65

The Rules Committee of the ADC-ICTY, headed by Defence Counsel Peter Robinson, has proposed an amendment to Rule 65(A):

Once detained, an accused may not be released except upon an order of a Chamber. Such an order may be made upon motion of a party or by a Chamber proprio motu.

The additional language is intended (1) to make clear that a Chamber has the power to release an Accused on its own motion; and (2) to address situations where an Accused is unnecessarily deprived of his or her liberty during the time that a Chamber is drafting its written judgment. When a person is acquitted, the loss of liberty for those days in which he or she was detained can never be recovered and amounts to an injustice.

The adoption of this provision will demonstrate the Tribunal's concern for unnecessary deprivation of liberty and exemplary fairness in its proceedings. It will serve as a model for the Residual Mechanism and other Tribunals to follow in the future.

The ADC-ICTY Rules Committee



Peter Robinson | Gregor Guy-Smith | Eugene O'Sullivan

News from International Courts and Tribunals

Extraordinary Chambers in the Courts of Cambodia

David Fagan, 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.

The Documentation Center of Cambodia (**DC-Cam**) was founded as a field office in Phom Penh in 1995, by Yale University's Cambodian Genocide Program (CGP), funded by the Office of Cambodian Genocide Investigations in the U.S. State Department.

In 1997, DC-Cam became an independent Cambodian research institute that receives funding from a wide range of international sources, both private and governmental. The Center is now operated entirely by Cambodians, with support from experts and scholars in Europe, Asia and the USA.

Case 002 - Nuon Chea, Ieng Sary, Khieu Samphan and Ieng Thirith

On 24 February 2011, the Defence team for Ieng Sary filed a *Motion* requesting that the Trial Chamber refrain from relying on any material on the Case File that was collected by the Documentation Center of Cambodia (DC-Cam). The Defence noted that DC-Cam was established as a result of the United States Cambodian Genocide Justice Act of 1994, with a mandate to verify that genocide occurred in Cambodia. The Defence questioned the procedures employed by DC-Cam to verify the authenticity of the material they collected and argued that the mandate of the organisation made it inherently biased.

Also on 24 February 2011, the Nuon Chea Defence team filed an urgent application for disqualification of the Trial Chamber judges on the same grounds as a *Motion* previously submitted by the Ieng Thirith team. It argued that the previous factual findings of the Trial Chamber in Case 001 would result in bias or the appearance of bias against their client.

On 25 February 2011, the Nuon Chea and Ieng Sary Defence teams filed consolidated *preliminary objections* in anticipation of the trial in Case 002. The Nuon Chea team requested relief under each of the available grounds for *preliminary objections*. It argued that the ECCC does not have jurisdiction to try its client due to the principle of legality as recognised in Cambodia's 1956 Penal Code. It further argued that the international crimes with which Nuon Chea is charged were not recognised or applicable in Cambodia at the time they were allegedly committed. The team also requested the termination or stay of proceedings due to alleged government interference preventing the collection of key evidence and an allegedly biased and otherwise flawed investigation. Finally, the team requested that the ECCC Internal Rules be declared null and void or, in the alternative, requested an indication as to the grounds for each departure in the Internal Rules from existing Cambodian criminal procedure. It argued that the adoption and amendment of the Internal Rules had been *ultra vires*.

The Ieng Sary Defence team filed consolidated *preliminary objections*, referencing previous *Motions,* wherein it was argued that the ECCC does not have jurisdiction or has limited jurisdiction to try its client. The team objected to a direction from the Senior Legal Officer to file all *preliminary objections* in one consolidated outline, arguing that this violated the right of their client to be heard and to prepare a Defence. The team provided notice that it did not intend to comply with future informal memoranda which would infringe upon the rights of their client. The team also recalled the challenges faced as a result of an initially unreasoned decision from the Pre-Trial Chamber, which simultaneously dismissed appeals against the Closing Order, seized the Trial Chamber of the Case File, and commenced the time limit for the filing of *preliminary objections*.

ECCC Courtroom

Plenary

The Ninth Session of the ECCC Plenary met from Monday, 21 February to Wednesday, 23 February 2011. The Plenary considered proposals to amend the ECCC Internal Rules in order to promote efficient trial management and more expeditious trial proceedings.

Five amendments to the Internal Rules were adopted, a number of which related to the Trial Chamber. These included an amendment adapting the rule on the admissibility of an application on the disqualification of a Trial Chamber Judge. Another provision states that where, due to health reasons or other serious concerns, the Accused cannot attend in person before the Chamber but is otherwise physically and mentally fit to participate, the Chamber may either continue the proceedings in the Accused's absence with his or her consent or, where the Accused's absence reaches a level that causes substantial delay and, where the interests of justice so require, order that the Accused's participation before the Chamber shall be by appropriate audio-visual means.

A new provision was adopted, allowing the Trial Chamber, when required in the interests of justice, to order the separation of proceedings and the separation of charges, in relation to one or more Accused.

The Plenary also adopted an amendment allowing the Office of Administration to designate a lawyer where both Civil Party Lead Co-Lawyers are temporarily unable to carry out their functions.

Justice Sebutinde's note:

"This is to notify you that in view of the recent developments in the Trial Chamber, and consistent with my earlier views and opinion on this matter, both in Chamber and on the Bench wherein I dissented from the directive to lead counsel, I will on principle, not attend Friday's hearing."

Justice Sebutinde had argued that the judges should have accepted the 547-page Defence document.

Special Court for Sierra Leone

The Prosecutor vs. Charles Ghankay Taylor

Michael Herz and Logan Hambrick, Charles Taylor Defence Team

The views expressed herein are those of the author(s) alone and do not necessarily reflect the views of the Special Court for Sierra Leone.

The Charles Taylor Trial took yet another unexpected turn on 25 February 2011, as Justice Julia Sebutinde refused to attend the disciplinary hearing of Courtenay Griffiths, Q.C., citing reasons of recent developments in the Trial Chamber and her earlier dissent on this matter. The remaining judges then appeared to exclude the alternate Judge, Justice El Hadji Malick Sow, from stepping in to constitute a proper Bench. As a result, the Presiding Judge adjourned the disciplinary proceedings indefinitely.

Justice Julia Sebutinde

Griffiths, Lead Counsel for Taylor, had earlier been directed by two of the judges (Justice Sebutinde dissenting) to appear before the court on 11 February 2011 and apologise for walking out of court on the day of the Prosecution closing oral arguments. Considering the seriousness of the matter for which Griffiths had been directed to apologise, co-counsel Terry Munyard successfully argued for an adjournment of two weeks so that representation could be found for him.

Peter Robinson, Legal Advisor to Radovan Karadžić, was brought in as representation. Robinson and Griffiths duly appeared for the hearing on 25 February 2011. However, the Presiding Judge, Justice Doherty, began the proceedings by reading out a note by Justice Sebutinde, who was not present. (see box on the side)

In response to this development, Robinson invited the alternate Judge, Justice Sow, to participate so that the Bench could be constituted of three judges, as is required by Article 12(1) of the Statute of the SCSL. Justice Sow indicated a willingness to participate. He stated: "This Bench is regularly composed with three judges sitting, as it shows…I'm not here for decoration. I am a judge. This

Statute of the SCSL: Article 12

1. The Chambers shall be composed of not less than eight (8) or more than eleven (11) independent judges, who shall serve as follows:

a. Three judges shall serve in the Trial Chamber, of whom one shall be a judge appointed by the Government of Sierra Leone, and two judges appointed by the Secretary-General of the United Nations (hereinafter "the Secretary-General").

b. Five judges shall serve in the Appeals Chamber, of whom two shall be judges appointed by the Government of Sierra Leone, and three judges appointed by the Secretary-General.

Bench is regularly composed, as everybody can see…We are three judges sitting."

An alternate Judge was appointed on the recommendation of Professor Antonio Cassese before the start of the Taylor trial so that he or she could "step in to replace a Judge if, for any reason, the Judge cannot continue sitting." Article 12(4) of the Statute of the SCSL had provided for such a scenario: "the presiding judge of a Trial Chamber…shall designate such an alternate judge to be present at each stage of the trial and to replace a judge if that judge is unable to continue sitting." This is further borne out in Rule 16 of the SCSL Rules of Procedure and Evidence. Rule 16(B) allows for the designation of an alternate Judge so that proceedings can continue when a judge is, "for any reason, unable to sit in a proceeding".

However, the Presiding Judge on this day took the view that the Trial Chamber was not properly constituted and considered that there was "no alternative but to adjourn". Without giving reasons, she stated that Rule 16 did not apply to the instant situation and made no mention of the Article 12(4) obligation. Within seven minutes of commencing, the matter was adjourned for a date to be fixed. Nothing further has been heard from the Trial Chamber since.

Following these events, the Defence filed a motion on 28 February 2011 (signed by both Robinson and Griffiths), seeking termination of the disciplinary hearing and/or leave to appeal the decision to adjourn the hearing without making use of the alternate Judge. The Defence submitted that given the Trial Chamber's inability to properly constitute itself in light of Justice Sebutinde's unlikely participation in any related disciplinary hearing and the remaining Judges' refusal to accept Justice Sow as an alternate, it is clear that the Court is unable to adjudicate this matter.

International Criminal Court

Decision on the Prosecution's renunciation of the testimony of witness P-159

Danhoui Géraldine, Legal Assistant - Office of Public Counsel for the Defence, ICC

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

Rome Statute: Article 70 (4)

(a) Each State Party shall extend its criminal laws penalizing offences against the integrity of its own investigative or judicial process to offences against the administration of justice referred to in this article, committed on its territory, or by one of its nationals;

On 24 February 2011, Trial Chamber III issued its decision on the Prosecution's renunciation of testimony of witness P-159. The witness, after having testified under solemn declaration, lied several times about his presence during the attack on Bogoro. His testimony was contradicted by his sister and father. In this decision, the Chamber ruled on two issues: the renunciation of evidence by the Prosecution and the request by the Defence team of Mathieu Ngudjolo to prosecute this witness for perjury.

Mathieu Ngudjolo

Concerning the first issue, the Chamber noted the existence of an agreement between the parties concerning serious questions about the credibility of P-159's testimony, and that it would expedite the proceeding if the Chamber put on the record that it would not rely on P-159's testimony for making any findings against the Accused. The Chamber noted that there are no legal provisions in the Statute, Rules or Regulations of the Court which provide for the procedure for dealing with this situation. The Chamber also noted that the party who called this witness wishes to renounce this

Rome Statute: Article 70 (4)

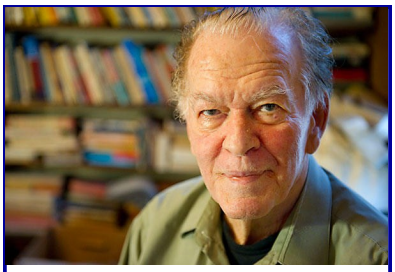
(b) Upon request by the Court, whenever it deems it proper, the State Party shall submit the case to its competent authorities for the purpose of prosecution. Those authorities shall treat such cases with diligence and devote sufficient resources to enable them to be conducted effectively.

witness, and that the parties agree on the fact that the testimony of P-159 lacks credibility (which is reinforced by the contradicting statement of P-159's father and sister). Thus, the Chamber decided in the name of the fairness and expeditiousness of the proceeding not to give any evidentiary weight to P-159's testimony in its deliberations on the question of the guilt of the Accused. This also applies to exhibits that were admitted during P159's testimony. The Chamber held that Defence has the possibility to rely on this testimony for exculpatory purposes. However, it noted that the lack of credibility of this witness affect all of his factual assertions. The Chamber also considered that it is not necessary to delete the transcript of P-159's testimony or any exhibit admitted during testimony. The Chamber instructed the Registry to add annotation to reflect this decision.

Concerning request for prosecution for perjury submitted by the Defence for Ngudjolo, the Chamber considered that the Prosecutor took no position in relation to alleged perjury of P-159. Thus, according to Article 70, it is upon the Prosecutor to initiate a proceeding and if this is not the case, the Court may still decide to request the Democratic Republic of the Congo to submit the case to its competent authorities in accordance with Article 70(4) and Rule 162(4). The Chamber therefore remained seized of the issue.

Blog Updates

- Ruaridh Arrow, **Gene Sharp—Author of the nonviolent revolution rulebook,** 21 February 2011, available at: http://www.bbc.co.uk/news/world-middle-east-12522848
- Michelle Bachelet, **UN Women Launch**, 24 February 2011, available at: http://www.unwomen.org/2011/2/un-women-launch-remarks-by-usg-michelle-bachelet/
- International Justice Desk (RNW), **UK Court agrees Assange extradition to Sweden,** 24 February 2011, available at: http://www.rnw.nl/international-justice/article/uk-court-agrees-assange-extradition-sweden
- International Justice Desk (RNW), **Lebanon Tribunal Judge passes away**, 25 February 2011, available at: http://www.rnw.nl/international-justice/article/lebanon-tribunal-judge-passes-away
- Steven Kay QC, **Libya—UN Security Council Resolution 1970**, 28 February 2011, available at: http://www.internationallawbureau.com/blog/?p=2540
- Gentian Zyberi (RNW), **OTP/ICC issues statement on Libya**, 28 February 2011, available at: http://www.internationallawobserver.eu/2011/02/28/otp-icc-statement-on-libya/



The strategy behind the overthrow of the Egyptian government is attributed to Gene Sharp, the world's foremost expert on non-violent revolution. His book "From Dictatorship to Democracy", originally written for the Burmese democratic movement in 1993, outlines the key steps on the path to revolution, including a list of 198 non-violent weapons. It is said that during the Green uprising in Iran in 2009, protesters used more than 100 methods mentioned in Sharp's book. (source: BBC)

Publications

Books

Nöelle Quénivet, Shilan Shah-Davis, 2010. *International Law and Armed Conflict*. The Hague, T.M.C. Asser Press

Gene Sharp, 2010. *From Dictatorship to Democracy*. (4th ed.). Boston: The Albert Einstein Institution Online copy available at: http://www.aeinstein.org/organizations/org/FDTD.pdf

Russell Heaton, Claire de Than, 2011. *Criminal Law*. (3rd ed.). Oxford: Oxford University Press

Elizabeth Stubbins Bates, 2011. *Terrorism and International Law: Accountability, Remedies, and Reform: A Report of the IBA Task Force on Terrorism*. Oxford: Oxford University

Articles

Rebecca Young, January 2011. Internationally Recognized Human Rights Before the International Criminal Court. *International and Comparative Law Quarterly,* 60 (1), pp. 189-208

Stefano Manacorda, Chantal Meloni, March 2011. Indirect Perpetration versus Joint Criminal Enterprise: Concurring Approaches in the Practice of International Criminal Law? *Journal of International Criminal Justice,* 9 (1), pp.159-178

Sabine Swoboda, March 2011. Paying the Debts—Late Nazi Trials before German Courts: The Case of Heinrich Boere. *Journal of International Criminal Justice,* 9 (1), pp.243-269

Opportunities

Legal Officer, Defence, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Friday, 11 March 2011

Juriste, Bureau de la Defense, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Friday, 11 March 2011

Special Assistant to the Deputy Director-General, The Hague (P-5)
Organisation for the Prohibition of Chemical Weapons (OPCW)
Office of the DDG
Office of the Deputy Director-General
Closing Date: Thursday, 31 March 2011

Legal Officer, Registry, The Hague (P-4)
International Criminal Tribunal for Rwanda
Closing Date: Friday, 11 March 2011

Upcoming Events

'Is the EU a Human Rights Organisation?'
Date: 17 March 2011
Time: 17:00 - 19;30
Venue: TMC Asser Instituut
Organiser: TMC Asser Instituut and the Embassy of Finland in The Hague

Fifth Defence Symposium at the ICTY
'Judicial Ethics at the ICTY and ECCC: A Defence Lawyer's Perspective'
Date: 15 March 2011
Time: 15:30 - 16:30
Venue: Press Briefing Room, ICTY
Organiser: ADC-ICTY

Expert Meeting entitled ' The Use of Diplomatic Assurances in Terrorism-Related Extradition Cases'
Date: 22 March 2011
Time: 13:30 - 18:00
Venue: TMC Asser Instituut
Organiser: ICCT

Course on 'Inside International Justice'
'From Nuremberg to The Hague: reporting on International Justice'
Date: 23-27 May 2011
Venue: The Hague
Organiser: TMC Asser Instituut and RNTC

HEAD OF OFFICE

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

Happy Six Months Anniversary ADC-ICTY Newsletter!

Special thanks to everyone who contributed, the ICC, ECCC, SCSL, STL and the ADC-ICTY newsletter team:

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