ADC-ICTY Newsletter, Issue 16

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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. Mladić (IT-09-92)

Ratko Mladić

On 4 July 2011, a further Initial Appearance was held in the case against General Ratko Mladić. One purpose of this hearing was to give the opportunity for Mladić to enter a plea to the eleven alleged charges against him. Mladić had not yet had Counsel of his choice assigned and therefore Duty Counsel, Alexsandar Aleksić, was present in court.

With regards to the legal representation, the Registrar applied for an extension of time for the assignment of Counsel. Mladić has had various meetings with the Registry since his first Initial Appearance and stated his preference for Mr. Milos Saljić and Dr. Alexander Meziaev as Counsel. It is hoped that permanent Counsel will be assigned in the near future.

Mladić stated that he was not in a position to offer a plea to the charges against him until he had counsel of his own choosing. Presiding Judge Orie stated that under the rules of the Tribunal the judges could enter pleas on his behalf. As the charges began to be read out to Mladić, he reiterated that he was not listening without his legal representation. At this point Judge Orie ordered that Mladić be removed from the courtroom. After a short adjournment each of the elevens charges were read to the court and the Chamber entered pleas of not guilty to each, on behalf of Mladić.

On 14 June 2011, the Prosecution asked about the scope of the disclosure obligations. The Chamber stated that the obligation covered the supporting material for the operative indictment and also to disclose lists of supporting material for previous versions of the indictment.

Judge Bakone Justice Moloto **Judge Alphons Orie** **Judge Christoph Flügge**

The Chamber will schedule a Status Conference in due course, pending further information from the Registry on the assignment of Counsel.

Article 29

Co-operation and judicial assistance

1. States shall co-operate with the International Tribunal in the investigation and prosecution of persons accused of committing serious violations of international humanitarian law.

2. States shall comply without undue delay with any request for assistance or an order issued by a Trial Chamber, including, but not limited to:

(a) the identification and location of persons;

(b) the taking of testimony and the production of evidence;

(c) the service of documents;

(d) the arrest or detention of persons;

(e) the surrender or the transfer of the accused to the International Tribunal.

Prosecutor v. Karadžić (IT-95-5/18-I)

On 27 June 2011 in response to a motion filed on 1 June 2011, the Trial Chamber ordered that 12 Appendix B Documents be admitted into evidence as source documents to Dorothea Hanson's expert report. The Court further requested the Registry to assign exhibit numbers to the above listed 12 Appendix B Documents. They also ordered that a note be included in e-court regarding each of them stating that they have been admitted as source documents for reference purposes only.

The forty-ninth motion for "Finding of Disclosure Violation and for Sanctions" was filed publicly with confidential annexes on 1 June 2011. The fiftieth motion for "Finding of Disclosure Violation and Motion for Seventh Suspension of Proceedings" was made orally on behalf of Karadžić on 3 June 2011. On 30 June 2011, the Court delivered their opinion, granting both motions in part, with Judge Kwon dissenting. They found that the prosecution violated Rule 68 with respect to the late disclosure of the Lizdek Interview, Vlačo Interview, First Morillon Memorandum, Second Morillon Memorandum, Second UN Interview and Čizmović Material. The Court ordered the Prosecution to file a disclosure report by 1 August 2011.

On 18 January 2011, Karadzic filed a "Motion for Binding Order: Saudi Arabia". On 30 June 2011, the Court rendered its decision denying the motion pursuant to Article 29 of the Statute, and Rule 54*bis*.

During the course of the Karadžić trial this past week, a protected witness and Milorad Davidović testified. Davidović is a former inspector in the Federal Yugoslav SUP. During the war, Davidović held various posts in the Republika Srpska. He testified that he participated in the movement of arms from Serbia to Bosnia Herzegovina with the help of the Yugoslav People's Army (JNA). Further, he stated that in the spring of 1992, he and a group of police officers were ordered to help form the Republika Srpska Ministry of Interior (RS MUP) and set up training courses for the special operations unit.

Davidović also began testifying about alleged crimes committed by members of paramilitary formations and "Bosnian Serb forces" against the Bosniak and Croat population in several municipalities. He said that Karadžić supported the arrival of paramilitary formations from Serbia to the Sarajevo area stating that: "In Lukavica I met with General Mladić. I told him about the robbery incidents. I said that they had to be prevented. Karadžić entered the room unannounced. We were then told that Arkan's guys had arrived and they were in front…When we continued our discussion later on, General Mladić was angry, because he was against paramilitary formations, and particularly 'Arkan's' men. Karadžić said: "Let it be. We have invited them. They should help in liberating Sarajevo".

At the beginning of cross-examination, Karadžić attempted to discredit the witness bringing out that he was prosecuted four times in Bijeljina for "embezzlement and fraud". The witness was previously cleared of the charges. Karadžić tried to show through cross examination that he ordered the witness to disarm and arrest members of the paramilitary formations in the areas of Bijeljina, Zvornik and Brcko. There was further testimony about the Yellow Wasps. Karadžić tried to bring out that the release of the Yellow Wasps after 30 days was "done in line with the law" because the only charge against them was "theft". Karadžić suggested that the witness failed to institute proceedings for war crimes against members of the unit and now wanted to shift the blame for his "failure" on others.

Davidović argued that the Prosecution in Bijeljina was "under pressure" from Karadžić and Krajisnik and that they reduced the initial charge, aggravated robbery. They thus made a legal basis for the release of members of the Yellow Wasps after a one-month detention. According to Davidović, it was only later that he learned that the Yellow Wasps had committed war crimes. He did agree with Karadžić that the proceedings against the Yellow Wasps had continued in Serbia, however, he insisted that this was "because of the public pressure".

Prosecutor v. Stanišić & Simatović (IT-03-69)

In the trial of Jovica Stanišić & Franko Simatović, Stanišić's Defence case started on 15 June 2011. Whilst the first Defence witnesses gave their testimonies in closed sessions, a legal issue has arisen as to the extent of the Defence's disclosure obligations.

On 1 April 2011, the Trial Chamber ordered the Defence to fulfil its disclosure obligations pursuant to Rule 67(A) and gave the Defence a deadline of 7 June 2011. On 21 June 2011, the Prosecution sought to extend this obligation to the statements of all Defence witnesses, including interview or proofing notes for witnesses where no statements were available. The Chamber ordered the Defence to immediately provide the Prosecution with all the statements of Defence witnesses. However, it declined to order the Defence to produce interview notes and invited the parties to make submissions on whether the Defence is required to do so under Rule 67(A), which provides that the Defence shall provide to the Prosecutor copies of the statements of all witnesses whom it intends to call to testify at trial.

Jovica Stanišić & Franko Simatović

On 27 June 2011, the Prosecution filed a submission in which it indicates its view that the Defence's disclosure obligation encompasses "interview notes, proofing notes, and other forms of recording an anticipated witness's testimony". The Prosecution advanced three arguments in support of its interpretation.

Firstly, the Prosecution argued that the obligation to disclose evidence is not limited to formal or signed statements and that interview notes could fall under it. As a matter of fact the Prosecution goes as far as to argue that witness statements referenced in this rule "include available records of any defence witness's account of the information to which he or she will testify, no matter what form these records may take". The Prosecution stressed that the Defence's disclosure obligation would be meaningless should it be given a more restrictive meaning, as it would allow the Defence to avoid its obligation by keeping witness statements in note form. The Prosecution relied on the jurisprudence that has developed at the ICTY with regard to the Prosecution's own disclosure obligation of Rule 66(A)(ii) and argued that rule 67(A)(ii) should be interpreted in an analogue manner, as the latter was adopted in February 2008 in light of a well-developed jurisprudence in the Đorđević and Milutinović cases at the ICTY, and the Niyitegeka case at the ICTR.

Secondly, the Prosecution indicated that Rule 70(A), which protects legal theory, strategies and investigations as privileged information not subjected to disclosure obligations, does not apply to proofing notes that are in fact witness statements. The Prosecution further suggested that the presence of such information in informal notes would not discharge the Defence of its obligation to disclose these documents, as such information could be redacted.

Finally, as to the Accused's right to a fair trial, the Prosecution relied on the Trial Chamber's general indication in the Prlić case that "Rule 67(A) is a rule of procedure, which in no way impinges on the rights of the Defence as guaranteed under (…) the Statute of the Tribunal".

Prosecutor v. Zdravko Tolimir, IT-05-88/2-T

On 26 May 2011, in the case of *Prosecutor v. Tolimir*, the Office of the Prosecutor (OTP) requested a Rule 98*bis* hearing be scheduled for 20-21 July 2011. This is the first request under Rule 98*bis* in ICTY history to be presented by the Prosecution side. The Defence challenged this request.

Rule 98*bis* states that at "the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction". However, according to the OTP 65*ter* list,

Rule 67

Additional Disclosure

(A) Within the time-limit prescribed by the Trial Chamber, at a time not prior to a ruling under Rule 98 *bis*, but not less than one week prior to the commencement of the Defence case, the Defence shall:

(ii) provide to the Prosecutor copies of statements, if any, of all witnesses whom the Defence intends to call to testify at trial, and copies of all written statements taken in accordance with Rule 92 *bis*, Rule 92 *ter*, or Rule 92 *quater*, which the Defence intends to present at trial. Copies of the statements, if any, of additional witnesses shall be made available to the Prosecutor prior to a decision being made to call those witnesses.

Rule 98 *bis*

Judgement of Acquittal

At the close of the Prosecutor's case, the Trial Chamber shall, by oral decision and after hearing the oral submissions of the parties, enter a judgement of acquittal on any count if there is no evidence capable of supporting a conviction.

up to 15 witnesses remain to be heard and an unspecified amount of evidence remains to be tendered. Moreover, to date neither the Defence nor the Prosecution have filed any request that would activate the application of Rule 98*bis*.

In the Defence's view, a Trial Chamber, when applying Rule 98*bis*, does not establish whether the guilt of the Accused has been proved beyond reasonable doubt, but rather whether there is evidence that could serve as the basis for conviction. This brings up the issue whether in the light of the evidence presented during the Prosecution case, there is reason to present Defence evidence relating to one or more counts of the indictment. However, as all evidence has not yet been tendered, these issues cannot be assessed.

The OTP argued trial economy and said that the Chamber should allow a senior OTP team member whose departure is imminent to participate in the preparation and presentation of the arguments. The OTP further argued that such step did not affect the fairness of the trial but, on the contrary, allowed the Accused to acquaint himself with the entirety of the Prosecution's argument before the summer recess.

The Defence responded that the Prosecution team had several other team members who are competent to prepare for 98*bis* hearing, should one be requested. With a view to resolving the situation concerning the departure of the OTP team member and for the purposes of ensuring the fairness of the proceedings, the Defence suggested that it would be in the interests of justice to present any arguments under Rule 98*bis* in writing, which would enable the OTP to use the results of the whole team's work effectively.

The OTP responded that it was going to put forth only a limited number of witnesses, most of them testifying under the Rule 92*bis*. As such, the OTP is hopeful to close its case by the intended date of the 98*bis* hearing.

With the Trial Chamber's decision pending, witnesses continue to testify, several of them under protective measures. In June, the Court heard, among others, the Commander of a motorised protection regiment of the RS Army Milomir Savčić. Savčić testified about a document alleging Tolimir's responsibility for ordering transfer of detained Srebrenica Muslims into closed facilities to prevent their identification in July 1995. The Defence challenged the authenticity of the document and the witness appeared to support their argument on the basis of logic and rules of communication at VRS. The witness further testified about crimes committed by the Scorpions paramilitary group and use of chemical means and aerosol bombs during the takeover of the Žepa enclave.

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.

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

On 17 June 2011, the Defence for Ramush Haradinaj filed a motion for temporary provisional release during summer court recess, which starts on 22 July 2011 and ends on 14 August 2011. The Haradinaj Defence requested a provisional release for the period of 25 July to 12 August and suggests that it should be granted as it satisfies the requirements of Rule 65 (B) and as there is no "proper basis" for finding such a release undermining with regard to the integrity of the proceedings. Also, it stated that Haradinaj has been detained for almost one year, waiting for the start of his partial re-trial after he was acquitted of all charges in the original trial in 2008. Haradinaj hopes to spend the 19 days with his wife, children and newly born son at his residence in Prishtina.

Moreover, on 20 June 2011, the Prosecution served notice that it would file its amended Pre-Trial Brief and emphasised that there were no substantial changes made to it. The changes made include

the clarification of the confirmation that the Prosecution is not pursuing a conviction of Lahi Brahimaj in relation to Count 3 and 5 and the erasing of the references to Sefanie Schwandner-Sievers, as the Prosecution no longer intends to rely on her as an expert witness.

Furthermore, the Defence and the Prosecution have jointly submitted a motion to the Trial Chamber, requesting the admission of evidence pursuant to Rule 89 (B), (C) and (F) of the Rules of Procedure of Evidence. The specific evidence from the original trial which both parties have mutually decided should be admitted as evidence in the retrial, was attached to the motion as an annex. This contains several transcripts of testimony, witness statements and related exhibits from the Prosecution 65ter list. Moreover, it comprises further exhibits which are not on the Prosecution exhibit list that the Defence requested to be admitted and which the Prosecution does not object to. This list could be extended at a later stage, possibly to another joint motion.

The Defence, with the Prosecution's accordance, further requests that the videos of the specific witness testimonies be submitted in addition to the transcripts. This shall provide the Trial Chamber with a superior opportunity of assessing the content of the testimonies as well as the manner in which they were delivered.

Further exhibits for witnesses to whose admission the Defence has not agreed, are not included in the motion but the Prosecution and the Defence have stipulated that in case of the admission of any of these witnesses, further related exhibits will need to be admitted as well.

The Defence and Prosecution concurred that the witnesses should not be required to attend the retrial in person to testify again on relevant matters. The evidence presented in their previous testimonies and included in the motion shall be admitted to the retrial. Both parties maintain the right to modify this agreement with regard to new evidence. They furthermore point out it is conditional on the Trial Chamber's rulings on the admissibility of the proposed evidence.

Rule 89

General Provisions

(B) In cases not otherwise provided for in this Section, a Chamber shall apply rules of evidence which will best favour a fair determination of the matter before it and are consonant with the spirit of the Statute and the general principles of law.

(C) A Chamber may admit any relevant evidence which it deems to have probative value.

(F) A Chamber may receive the evidence of a witness orally or, where the interests of justice allow, in written form.

ADC Member as UN Special Rapporteur on Counter Terrorism and Human Rights

ADC member and Lead Counsel for the Defence of Ramush Haradinaj before the ICTY, Ben Emmerson QC (Matrix Chambers) has been appointed UN Special Rapporteur on Counter Terrorism and Human Rights. This is yet another example of the extraordinary talent possessed by ADC members and their impact in the field of International Law.

Emmerson will only be the second person to perform this role, the first being his predecessor Martin Scheinin, Professor of Public International Law at the European University Institute in Florence, who was appointed to the role in April 2005.

The Special Rapporteur's mandate includes putting forward concrete recommendations on the promotion and protection of human rights and fundamental freedoms while countering terrorism. He is expected to commence dialogue with national governments and work in close coordination with other relevant bodies and mechanisms of the United Nations, including the Counter-Terrorism Committee of the Security Council, its Executive Directorate, the Counter-Terrorism Implementation Task Force, the Office of the United Nations High Commissioner for Human Rights, the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime and treaty bodies, as well as non-governmental organisations and other regional or sub-regional international institutions. The Special Rapporteur will be expected to report regularly to the Human Rights Council and to the General Assembly and can also make urgent interventions in case of human rights violations.

Commenting on his new role, Emmerson who is also currently acting on behalf of the Equality and Human Rights Commission before the High Court, said "far too often international law and human rights standards are seen as incompatible with effective counter terrorism. The reverse is true. In order to be truly effective, counter-terrorist strategies must command the support of the international community and need to be implemented in a way that is compatible with internationally agreed minimum standards. There is a great deal for the UN to do in this field".

News from International Courts and Tribunals

International Criminal Tribunal for Rwanda

Judgment Rendered in the case of Pauline Nyiramasuhuko et al. aka the 'Butare case' (ICTR-97-21)

Paul Bradfield, Nizeyimana Defence team

On 24 June 2011, before a packed public gallery Trial Chamber II composed, of Judges William Sekule, Arlette Ramaoson and Solomy Balungi Bossa, delivered its judgment in the case of *Prosecutor v Pauline Nyiramasuhuko et al.,* involving Pauline Nyiramasuhuko, former Minister of Family and Women Affairs in the Interim Government; Arsène Shalom Ntahobali, former student and a leader of (MRND) militiamen, the *Interahamwe*; Alphonse Nteziryayo, former Commanding Officer of the Military Police, then *Préfet* of Butare; Sylvain Nsabimana, former *Préfet* of Butare; Elie Ndayambaje, former *Bourgmestre* of Muganza commune in Butare *préfecture*; Joseph Kanyabatshi, former *Bourgmestre* of Ngoma commune in Butare *préfecture*. The trial was one of the longest and most complex in the Tribunal's history, with the written judgment running to over 1,500 pages. The Chamber opined that the evidence presented by the survivors was "amongst the worst encountered" by the Trial Chamber, "painting a clear picture of unfathomable depravity and sadism".

The Prosecution charged each of the Accused with conspiracy to commit genocide; genocide; complicity in genocide; the crimes against humanity of extermination, murder, persecution, and other inhumane acts; and violence to life as a war crime. All except for Ntahobali were charged with direct and public incitement to commit genocide. Finally, the Prosecution also charged Pauline Nyiramasuhuko and her son Ntahobali with rape as a crime against humanity, and with outrages upon personal dignity as a war crime. In response, the Defence teams challenged the credibility of the Prosecution witnesses and raised Alibi defences as well as other procedural challenges.

Regarding the charge of conspiracy to commit genocide, the Chamber found that the evidence established that on 16 or 17 April 1994, Nyiramasuhuko agreed with the other members of the Interim Government to remove *Préfet* Habyalimana of Butare *préfecture*, who had posed an obstacle to the killing of Tutsis, and to replace him with Nsabimana. On 19 April, she attended the swearing-in ceremony of Nsabimana, lending further support to the Interim Government's decision. On 27 April, the Interim Government, including Nyiramasuhuko, issued a Directive encouraging the population to mount and man roadblocks, with the intention of encouraging the population to kill Tutsis.

In the opinion of the Chamber, as a member of the Interim Government, Nyiramasuhuko participated in many of the Cabinet meetings at which the massacre of Tutsis was discussed, and she took part in the decisions which triggered the onslaught of massacres in Butare *préfecture*. Considering the above, the Chamber found that only one reasonable conclusion could be reached: Nyiramasuhuko entered into an agreement with members of the Interim Government on or after 9 April 1994 to kill Tutsis within Butare *préfecture* with the intent to destroy in whole or in part the Tutsi ethnic group. It therefore found her guilty of conspiring with the Interim Government to commit genocide against the Tutsis of Butare *préfecture*.

Pauline Nyiramasuhuko

Sentencing by Trial Chamber II:

For convictions of Conspiracy to Commit Genocide, Genocide, Rape, Extermination and Persecutions as Crimes Against Humanity, violence to life and outrages on personal dignity as war crimes, the Chamber sentenced Pauline Nyiramasuhuko to life imprisonment. Her son Shalom was found guilty of the same crimes except for the conspiracy charge and was also convicted to life imprisonment.

(see next page)

The other Accused were alleged to have joined this conspiracy but the Chamber considered that the evidence of their alleged agreement was "equivocal" and therefore held that the Prosecution did not prove this allegation beyond a reasonable doubt with respect to the other Accused.

The Chamber recalled that on 19 April 1994 President Sindikubwabo delivered an infamous incendiary speech in Butare at which a number of the Accused were present. The following day, massive killings of the Tutsi ethnic group began throughout Butare *préfecture*, which the Chamber held amounted to genocide. It found that the Accused Ndayambaje aided and abetted a two day attack on Mugombwa Church where Tutsis had sought shelter, inciting a crowd to bombard the church with grenades and to attack the occupants for being 'accomplices' in the death of President Habyarimana. As a result "hundreds, if not thousands" had been killed. The Chamber also held Ndayambaje aided and abetted attacks at Kabuye hill where thousands of Tutsis were killed and also for instigating a massacre at the brick factory in Gasenyi.

The Chamber held that the Accused Kanyabashi bore superior responsibility for an attack on Tutsis refugees at Kabakobwa Hill, where civilians and police officers from Ngoma commune killed "hundreds, if not thousands of Tutsis". The Prosecution also alleged that Kanyabashi ordered soldiers to open fire on Tutsi refugees sheltering at Matyazo Clinic, but the Chamber considered the Prosecution made a "serious omission" by charging him as a superior only.

In the words of the Trial Chamber the Accused Ntahobali manned "one of the most terrifying roadblocks in Butare", located at Hotel Ihuliro. The Chamber found that Ntahobali personally raped and murdered a Tutsi girl there and also aided and abetted the killing of the Rwanukaya family near the end of April 1994. However, it held that there was insufficient evidence to hold Nyiramasuhuko responsible as a superior for this crime.

With respect to the rape charges against Nyiramasuhuko and her son Ntahobali, the Chamber concluded that the Indictment was defective in failing to plead rape as genocide, holding that "this defect was not cured by the Prosecution". While the Chamber noted that the evidence established that rape was utilised as a form of genocide, it concluded that "it would be prejudicial to the Accused to hold them responsible for a charge of which they had insufficient notice" and therefore did not enter a conviction of genocide on the basis of rape.

Rape was however charged as a Crime Against Humanity and outrages upon personal dignity as a war crime. Again, the Chamber criticised the Prosecution for making another "serious omission" by only charging Nyiramasuhuko with superior responsibility rapes for rapes committed by Interhamwe at the Butare prefecture office, when the evidence clearly established she had directly ordered rapes in addition to her superior responsibility over the perpetrators. The Chamber further held that *Préfet* Nsabimana knew of the genocidal attacks being committed at the *Préfecture* Office and had a legal duty to act under the Rwandan Penal Code and the Geneva Conventions to protect civilians. The Chamber held that he failed to properly discharge his duty in this regard and therefore convicted him for aiding and abetting, by omission, the crimes committed at Butare *Préfecture* Office.

The Chamber further found Ntahobali guilty of aiding and abetting killings of Tutsi refugees at the *École Évangeliste du Rwanda*. In the Chamber's opinion, the evidence also established that in late May and June 1994, the Accused Kanyabashi drove through Butare and using a megaphone, incited the population to search out and kill Tutsis. It similarly found that in the case of Nteziryayo, he too was guilty of three instances of inciting genocide, on one occasion he referred to Tutsis as "lice" whose "eggs" needed to be destroyed.

Finally, the Chamber held that while both Kanyabashi and Nteziryayo played a role in training civil defence forces and distributing weapons to them in May and June 1994, these events occurred at the same time as the RPF advance towards Butare, meaning that "a reasonable inference remained" that it could have been done to "forestall the RPF incursion". It therefore did not hold them criminally responsible for these actions.

Sentencing by Trial Chamber II (continued):

Nsabimana was found guilty of Genocide, Extermination, Persecution and violence to life as a war crime and was sentenced to 25 years imprisonment. Nteziryayo was sentenced to 30 years for direct and public incitement to commit genocide, while Kanyabashi and Ndayambaje were both convicted of Genocide, direct and public incitement to commit genocide, Extermination, Persecution and violence to life as a war crime. They were given sentences of 35 years and life imprisonment respectively, with all of the Accused receiving credit for time served to date.

First Appearance of Bernard Munyagishari (ICTR-97-26 & ICTR-05-89)

Paul Bradfield, Nizeyimana Defence team

Bernard Munyagishari was arrested in the Democratic Republic of Congo (DRC) on 25 May 2011 and was transferred to the UN Detention Facility in Arusha on 14 June 2011. He was represented in court by Duty Counsel Nelson Merinyo (Tanzania).

On 20 June 2011, Bernard Munyagishari, former President of the Interahamwe for Gisenyi, made his initial appearance before Judge Dennis C. M. Byron and pleaded not guilty to five counts charging him with conspiracy to commit genocide, genocide, complicity in genocide and crimes against humanity for murder and rape.

The Prosecution alleges that Munyagishari recruited, trained and led *Interahamwe* militiamen in mass killings and rapes of Tutsi women in Gisenyi prefecture and beyond between April and July 1994.

The indictment states that, during the relevant period, the Accused, among others, accompanied by large numbers of *Interhamwe* drove around Gisenyi and pointed out to his group of militia the homes of Tutsis marked for elimination and other places where Tutsis sought refuge, such as the Catholic Church, Saint Fidèle College, the Convent in Nyundo Parish and other public buildings. They allegedly later attacked these buildings and killed many Tutsis.

The indictment adds that in some cases, Munyagishari and his *Interahamwe* abducted the Tutsis from their hiding places and took them to the "Commune Rouge" where they killed them.

Furthermore, the Accused is alleged to have created a special corps of young *Interahamwe* called the "*Ntarumikwa*", to rape and kill Tutsi women. He is said to have ordered and instigated these young *Interahamwe* to rape Tutsi women and girls before killing them.

When the Indictment was read to the Accused he was asked to stand by Judge Byron at which point he was asked to make a plea to each charge. Responding in French, Munyagishari pleaded Not Guilty to all charges. Judge Byron then adjourned the proceedings until further notice, while preparations for the trial get underway.

Judge Dennis C.M. Byron

Rule 11 *bis*

Referral of the Indictment to another Court

(A) If an indictment has been confirmed, whether or not the accused is in the custody of the Tribunal, the President may designate a Trial Chamber which shall determine whether the case should be referred to the authorities of a State: (see next page)

The Prosecutor v. Jean Uwinkindi (ICTR-01-75)

Fatou Ndour, Former Legal Assistant, Defence

On 28 June 2011, the International Criminal Tribunal for Rwanda (ICTR) referred the case of Jean Uwinkindi to the Republic of Rwanda to be tried by a national jurisdiction under Rule 11*bis*.

The Accused was arrested in Uganda on 30 June 2010 and transferred to the United Nations Detention Facility in Arusha / Tanzania on 2 July 2010. As a former Pastor of the Pentecostal Church of Kayenzi, he is facing charges of genocide, conspiracy to commit genocide and crime against humanity.

Pursuant to Rule 11*bis* of the Rules of Procedures and Evidence (RPE), there are three requirements that must be met before a Chamber can order referral: **(1)** the referral State must have jurisdiction and be willing and adequately prepared to accept a case; **(2)** the Chamber must be satisfied that the accused will receive a fair trial in the courts of the referral State; and **(3)** the Chamber must be satisfied that the death penalty will not be imposed or carried out.

Upon assessment of the submissions of the Defence and *Amici Curiae*, the ICTR Referral Chamber has decided that it was satisfied with the government of Rwanda's preparation to receive its first referral from the ICTR. In addition, the government of Rwanda has expressed its willingness and readiness to prosecute the Accused in accordance with requisite trial guarantees and established international standards.

In the past, ICTR Trial Chambers have denied all requests for referral made by the Prosecution on the ground that Rwanda did not provide sufficient guarantee that Accused transferred to its territory would receive a fair trial. In 2007, the Government of Rwanda (its Parliament) passed a law concerning the transfer of cases to the Republic of Rwanda from the ICTR. The Transfer Law (TL) provides a legal framework to implement ICTR transfers and extraditions.

In the case of Jean Uwinkindi, the Defence did not challenge the personal and temporal jurisdiction of Rwandan Courts. In its decision, the Referral Chamber recalled as in the Kanyarukiga Rule 11*bis* Decision that "from articles 1 and 7 of the ICTR Statute, the Tribunal only has jurisdiction to prosecute acts committed between 1 January and 31 December 1994". This has been formulated in the Rwandan Transfer Law (TL), which indicates that the Accused will not be prosecuted for acts committed before or after this period. Also, the TL states that Rwandan Courts are entitled to try "crimes falling within the jurisdiction of the ICTR".

With regard to ICTR indictments, the issue has been clarified by the TL and its Article 4, which provides that the Rwandan Prosecutor General Office shall adapt the ICTR indictments "in order to make them compliant with provisions of the Rwandan Code of Criminal Procedure".

Jean Uwinkindi

In lights of the parties' submissions, there is no dispute that the death penalty was abolished in Rwanda pursuant to the Organic Law of 25 July 2007 or that the penalty of life imprisonment with special conditions is no longer a potential penalty in transfer cases.

The Referral Chamber (RC) explicitly considered the Hategekimana Rule 11*bis* Decision, in which the Appeals Chamber (AC) noted that the Rwandan Parliament had passed a new law that modified the Abolition of Death Penalty Law, and that in accordance with Article 1 of this law, life imprisonment with special provisions, which includes solitary confinement, shall not apply to cases transferred from the Tribunal to Rwanda under the TL.

Eventually, the RC observed that Article 21 of the Transfer Law on penalties is consistent with rule 101 of the ICTR, which allows for a maximum penalty of life imprisonment. The Chamber thus considered that the current penalty structure is consistent as required by the jurisprudence of the Tribunal.

The RC has further considered protection available in the Rwandan law. Article 19 of the Constitution of Rwanda guarantees the presumption of innocence, which is reiterated in Article 13 (2) of the TL. Hence, the RC concludes that the presumption of innocence is clearly incorporated in the Rwandan Statutory Law despite objections raised by the Defence. According to the Defence "the reality does not reflect the formal texts".

With regard to witness' availability, the Defence submitted that Article 59 of the Rwandan Code of Criminal Procedure could prevent the Accused from exercising his fair trial rights. This article indicates that persons against whom the Prosecutor has evidence that they were involved in the commission of an offence cannot be heard as witnesses. The RC found this provision problematic to the extent that this provision would allow the exclusion of a witness' evidence on the suspicion of the Prosecutor rather than a legal ground. The RC observed that this provision could be applied in an arbitrary manner.

(i) in whose territory the crime was committed; or

(ii) in which the accused was arrested; or

(iii) having jurisdiction and being willing and adequately prepared to accept such a case, so that those authorities should forthwith refer the case to the appropriate court for trial within that State.

(B) The Trial Chamber may order such referral *proprio motu* or at the request of the Prosecutor, after having given to the Prosecutor and, where the accused is in the custody of the Tribunal, the accused, the opportunity to be heard.

(C) In determining whether to refer the case in accordance with paragraph (A), the Trial Chamber shall satisfy itself that the accused will receive a fair trial in the courts of the State concerned and that the death penalty will not be imposed or carried out. (see next page)

(D) Where an order is issued pursuant to this Rule:

(i) the accused, if in the custody of the Tribunal, shall be handed over to the authorities of the State concerned;

(ii) the Trial Chamber may order that protective measures for certain witnesses or victims remain in force;

(iii) the Prosecutor shall provide to the authorities of the State concerned all of the information relating to the case which the Prosecutor considers appropriate and, in particular, the material supporting the indictment;

(iv) the Prosecutor may send observers to monitor the proceedings in the courts of the State concerned on his or her behalf.

(E) The Trial Chamber may issue a warrant for the arrest of the accused, which shall specify the State to which he is to be transferred for trial.

Nonetheless it recalled the existence of Article 13(9) of the Transfer Law, which guarantees the right of the Accused to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him". The principle of equality of arms between the Prosecutor and accused in a criminal trial goes to the heart of the fair trial guarantee and "at a minimum, obligates a judicial body to ensure that neither party is put at a disadvantage when presenting its case certainly in terms of procedural equity".

The Chamber noted that where conflicts of laws occur between the TL and any other law, the provisions of the TL would prevail. Thus, the RC satisfied itself that Article 59 of the RCCP will not be applied in any transferred case.

The AC's decisions on Rule 11*bis* found that witnesses residing outside Rwanda may be unwilling to travel to Rwanda to testify, and that some Defence witnesses may be prevented from returning to Rwanda to testify (Hategekimana Decision).

With respect to witness protection the RC noted that Article 13 of the TL has been amended in order to include immunity for anything said or done in the course of a trial. Furthermore, guarantees can be provided for witnesses who travel from abroad to Rwanda that they shall have immunity from search, seizure, arrest or detention during their testimonies in the trial of transferred cases.

With respect to Rwanda's ability to compel witnesses to testify, the jurisprudence of the AC provides some guidelines. In its findings in Munyakazi and Kanyarukiga the AC stated that Rwanda has several mutual assistance agreements with states in the region and elsewhere in Africa, and that agreements have been negotiated with other states as part of Rwanda's cooperation with the Tribunal and in the conduct of its domestic trials. Further, the AC reiterates that United Nations Security Council Resolution 1503, calling on all States to assist national jurisdictions where cases have been referred, provides a clear basis for requesting and obtaining cooperation.

The RC noted that Article 14 of the TL has also been amended so as to provide that the testimony of witnesses residing abroad can be taken by deposition in Rwanda or in a foreign jurisdiction, or by video-link. It added that the Office of the Prosecutor General is running a witness protection programme to secure the attendance or evidence of witnesses from abroad, besides. Rwanda has established a witness protection unit within the Supreme Court and High Court.

The RC concluded that the Rwandan judiciary is equipped to handle any witness complaints. Furthermore, the High Court and Supreme Court have the mandate to initiate investigations into any incidents and ensure witness protection. In case they fail the Rule 11*bis* monitoring and revocation procedures are available to the parties.

The RC considered that the Tribunal shall rely on the African Commission on Human and People's Rights (ACHPR) to monitor and report promptly any violations which would constitute an impediment to the fair trial rights of the Accused tried in Rwanda.

The RC also considered that Rwanda has introduced new legislation that would allow the participation of experienced foreign judges in transfer cases. The RC addresses other issues such as pre-trial investigation and disclosure, the functioning of the legal aid service, as well as the integrity of the witness protection service, which is under the control of the Office of the Prosecutor.

International Criminal Court

The Prosecutor v. Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus (ICC-02/05-03/09)

Decision on the re-interviews of six witnesses by the prosecution

Seth Engel, Intern, Office of Public Counsel for the Defence, ICC-CPI*

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

What happens when, in response to Defence opposition of a prosecutorial practice, the Office of the Prosecutor (OTP) asks the Court to place faith in the ethical conduct of Counsel? This may seem like an unlikely scenario, but it is in effect what occurred in the case at hand.

During a status conference the Defence raised issues about the OTP's intention to re-interview six witnesses. It was suggested that this practice should be disallowed or, in the alternative, safeguard measures should be instituted during the re-interviews.

The OTP responded by asking to dismiss the Defence's concerns. According to the Prosecutor, there were no concerns about witness proofing. The OTP further sought to distinguish between the manner in which an interview takes place, which could lead to witness proofing if conducted as a "rehearsal" for trial and the time at which an interview takes place, which the OTP claims is perfectly justified during the post-confirmation phase.

Furthermore, the OTP argues that Article 54 of the Rome Statute obligates a thorough investigation that includes the exploration of new lines of inquiry in order to establish "the truth", as it is so delicately put in the Statute. These contentions then refer to jurisprudence that had previously permitted re-interviews before trial regardless of the confirmation status.

It is here that the Prosecution argues that no safeguards are necessary during the re-interviews. Why? The OTP proffers that "counsel for each party are aware of their ethical and legal obligations". Therefore, Defence Counsel and the Chamber should turn a blind eye and content themselves with the subsequent disclosure of witness statements and the possibility of cross at trial. It is then argued that the Chamber would then be able to take into account any alleged witness proofing at testimony. In essence, it is simultaneously claimed that Counsel would adhere stringently to its ethical obligations not to rehearse witnesses, while allowing for the Chamber to consider the possibility that rehearsals did indeed take place.

Abdallah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus

The Defence's "Reply to the Prosecution's Response to the Defence's Oral Application of 18 April 2011" seeks mainly to clarify the issues. As the Court states, the response focuses on the definition and scope of witness proofing, the circumstances in which re-interviews have occurred in other circumstances before the Court and what rights the OTP possesses to continue investigations post-confirmation.

The Defence states that re-interviews do have the "very real potential" of becoming witness proofing and/or evidence checking, especially since the OTP had already had a chance to submit and "test" its evidence in the *Prosecutor v. Bahar Idriss Abu Garda* confirmation hearings. Furthermore, the Defence submits that there should be a "realistic expectation" that the case should be subject only to incremental change post-confirmation hearing unless a new issue or exceptional circumstance arises. Here, the argument refers to Appeals Chamber jurisprudence from the Lubanga trial, where it was stated that the Prosecution's investigation should be "reasonably complete" by the confirmation hearing. It is therefore pro-

Article 54

Duties and powers of the Prosecutor with respect to investigations

1. The Prosecutor shall:

(a) In order to establish the truth, extend the investigation to cover all facts and evidence relevant to an assessment of whether there is criminal responsibility under this Statute, and, in doing so, investigate incriminating and exonerating circumstances equally;

(b) Take appropriate measures to ensure the effective investigation and prosecution of crimes within the jurisdiction of the Court, and in doing so, respect the interests and personal circumstances of victims and witnesses, including age, gender as defined in article 7, paragraph 3, and health, and take into account the nature of the crime, in particular where it involves sexual violence, gender violence or violence against children; and

(c) Fully respect the rights of persons arising under this Statute.

Article 64

Functions and powers of the Trial Chamber

2. The Trial Chamber shall ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses.

Rule 77

Inspection of material in possession or control of the Prosecutor

The Prosecutor shall, subject to the restrictions on disclosure as provided for in the Statute and in rules 81 and 82, permit the defence to inspect any books, documents, photographs and other tangible objects in the possession or control of the Prosecutor, which are material to the preparation of the defence or are intended for use by the Prosecutor as evidence for the purposes of the confirmation hearing or at trial, as the case may be, or were obtained from or belonged to the person.

posed that an interview should only take place if due investigative diligence could not have reasonably addressed a specific issue during the initial interview. In the alternative, the Defence argues, the Chamber should impose safeguards such as limiting the scope of the interview, mandating the Defence's presence, requiring full and immediate disclosure, or audio and/or video recording of the interview.

Finally, the Defence takes issue with the OTP's characterisation of witness proofing in an effort to expand the term's scope beyond the "familiarization stage". It is moreover submitted that jurisprudence on the issue is ambiguous, although the Trial Chamber has previously required prior authorisation for re-interviews and in some cases imposed safeguards.

To inform its decision, the Court looks to Article 54 of the Statute, which mandates an "effective investigation" by the OTP "in order to establish the truth" and Article 64(2), which enrolls the Trial Chamber as the guardian of a "fair and expeditious trial".

Applying these articles and incorporating prior practice, the Chamber holds that re-interviews of witnesses after confirmation are acceptable and are in fact standard practice. Although it is "desirable" for investigation "to be completed as soon as possible", notably by the time of the confirmation hearing, this is not a requirement of the Rome Statute. The Chamber allows the re-interviews without permission from either the Pre-Trial Chamber or Trial Chamber.

The term "witness proofing" is then defined with only a small dose of circularity and ambiguity. Drawing upon prior decisions and proffers of the OTP, the Chamber defines witness proofing as "the rehearsal of the witness's evidence in preparation for his or her testimony before the Court". The Chamber essentially concurs with the OTP in stating that it is the *content* of the re-interview that matters, not its *timing*.

It is also held, however, that the Defence was right in suggesting safeguards, especially in light of the fact that the OTP's evidence had already been "tested". The Chamber then instructs the re-interviews to take place under audio and/or video recording in order to guarantee that a permanent record is available "should an issue arise in relation to what occurred" during the interviews. Full and immediate full disclosure is also mandated.

Despite allowing the re-interviews to take place, the Court tempers its faith in the OTP with the order for recording and disclosure – a precarious balancing act between the OTP's Article 54 powers to investigate and the Chamber's Article 64(2) requirements to maintain fair trial.

The Prosecutor v. Thomas Lubanga Dyilo ICC-01/04-01/06

Trial Chamber I's "Order on the implementation of decision ICC-01-04-01/06-2586"

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

Thomas Lubanga Dyilo

This order follows the Chamber decision on the disclosure of information from victims' applications forms for the preparation of the Defence issued in a public version in February 2011.

The Chamber previously authorised the redactions of identities in the victims' application forms to ensure the protection of the individuals referred to in the forms, but stressed that the emerging evidence had led to a reevaluation of the relevance of a number of issues in the trial. The Chamber, therefore, decided that some information which was previously considered irrelevant must be disclosed in accordance to Rule 77 of the Rules of Procedures and Evidence (RPE) and Article 67-2 of the Rome Statute. Consequently, the Chamber ordered

the Registry to provide to the parties lesser redacted version of the victims applications forms and to contact some of the individuals affected by the redactions in these forms to provide in order to obtain their views on disclosure of their identities to the Defence.

On 24 May 2011, the Registry informed the Chamber that the identities of four individuals remained redacted in the forms, as it had not been possible to obtain their views as to the disclosure of their identities.

The Chamber considered the potential risk of disclosure of their identities for the individuals and for the fundamental guarantee of a fair trial for the Accused. Following the Defence's imperative need of the four names of the individuals for the purpose of its preparation, the Chamber held that identities of victims should be disclosed to the Defence, even if victims or individuals assisting the victims do not consent or cannot be contacted. Thus, the Chamber ordered the Registry to provide to the parties a lesser redacted version of the forms with disclosure of the four names. However, the Chamber recalled the security measures which should be provided to these individuals and ordered to the parties not to disclose the names of the four individuals to anyone outside their teams without prior authorisation of the Chamber.

The Prosecutor v. Callixte Mbarushimana (ICC-01/04-01/10)

Decision on the "Defence Request for the Review of the Scope of Legal Assistance", n° ICC-01/04-01/10-142.

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

Judge Sanji Mmasenono Monageng

The Single Judge Sanji Mmasenono Monageng of the Pre-Trial Chamber was empowered by the Regulation 83(4) of the Court, to determine the scope of legal assistance, first, in its starting point and payment schedule and second, its reimbursement limitations for travel expenses.

On the first issue, the Defence asked the Chamber to review the decision of the Registrar dated 15 February 2011. The Defence wanted legal assistance be paid, on its current terms and conditions, from the date of Mbarushimana's arrest pursuant to the arrest warrant of the Court. In the aforementioned decision the Registrar had decided to retain 26 January 2011, the date the financial information form for legal assistance has been executed by the suspect.

To grant the payment of legal assistance from the date of the arrest, the Single Judge began by emphasising that the statutory framework of the Court explicitly provides for the appointment of Counsel to represent a suspect before their surrender to the Court. From this, she notes first that from the time of Mbarushimana's arrest, the Counsel for the Defence was providing an effective and efficient defence, within the meaning of regulation 83(1) of the Regulations. Secondly, due to the circumstances in which Registrar has dealt with the situation, the suspect has effectively been deprived of his right to make an application for, and to receive if found to be indigent, legal assistance paid by the Court from the time of his arrest to his surrender to the Court. The Single Judge also rejected the argumentation of the Registrar because, in her view, the Registar's decision of the entitlement to legal assistance is merely declaratory and does not preclude the retroactive payment of legal assistance to a time before an application for legal assistance was made.

The part of the Defence's request that claims that such assistance should be payable under its current terms and conditions was rejected. The Single Judge states that legal assistance during the first phase of proceedings, namely from investigation to the first appearance before the Chamber, is pay-

Regulation 83

General scope of legal assistance paid by the Court

1. Legal assistance paid by the Court shall cover all costs reasonably necessary as determined by the Registrar for an effective and efficient defence, including the remuneration of counsel, his or her assistants as referred to in regulation 68 and staff, expenditure in relation to the gathering of evidence, administrative costs, translation and interpretation costs, travel costs and daily subsistence allowances.

4. Decisions by the Registrar on the scope of legal assistance paid by the Court as defined in this regulation may be reviewed by the relevant Chamber on application by the person receiving legal assistance.

able at a lower rate than that applicable during the second phase of proceedings (from the initial appearance of the suspect to the first status conference before the Trial Chamber).

On the second issue, the Defence called for the review of the decision taken by the Registrar concerning the reimbursement of travel expenses under legal assistance. The Defence claimed that legal assistance covers travel expenses of the Defence teams legal assistants. The Defence team wanted the Court to order reimbursement of travel costs incurred by legal assistants during biannual visits to family. The Single Judge rejected this request. She recalled that payment of personal travel expenses must be linked with an effective and efficient Defence. The fund has been established for the provision of legal representation to indigent suspects, accused persons and victims. However, she found no link between payment of travel expenses for such trips, noting moreover that legal assistants have sufficient remuneration to cover such costs.

Rule 89

Preliminary Objections

1. A preliminary objection concerning:

a) the jurisdiction of the Chamber,

b) any issue which requires the termination of prosecution;

c) nullity of procedural acts made after the indictment is filed shall be raised no later than 30 (thirty) days after the Closing Order becomes final, failing which it shall be inadmissible.

2. The Chamber shall afford the other parties the opportunity to respond to the application.

3. The Chamber shall, as appropriate, issue its reasoned decision either immediately or at the same time as the judgment on the merits. The proceedings shall continue unless the Chamber issues immediately a decision which has the effect of terminating the proceedings.

Extraordinary Chambers in the Courts of Cambodia

Christopher Ford, Legal Intern, Defence Support Section

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

On 25 May 2011, the Defence for Nuon Chea filed a motion in support of Ieng Sary's motion to add new trial topics to the trial schedule that address issues from pre-1976 and post-1979. Specifically, they wish to introduce pre-1976 evidence explaining attitudes in the Democratic Kampuchea towards Buddhism, the ethnic Cham minority, the Vietnamese, and the history of Cambodia from pre-colonialism up to 1975. The Defence also wishes to address post-1979 topics, including the continuing UN recognition of Democratic Kampuchea, the nature of government in the People's Republic of Kampuchea, and the historiography of Democratic Kampuchea.

On 27 May 2011, the Defence team for Ieng Sary filed a supplement to his ECCC Internal Rule 89 preliminary objection. The Defence argued that the Cambodian Code of Criminal Procedure (CPC) prevents the further prosecution of Ieng Sary because he was previously tried in 1979 and further prosecution is thus barred under *res judicata*. The Defence rejected the conclusion that ne *bis in idem* only protects the defendant from further prosecution when the defendant is acquitted. The Defence also asserted that the International Covenant on Civil and Political Rights bars Ieng Sary's subsequent prosecution.

The Defence team for Ieng Sary further asserted that the Pre-Trial Chamber erred in dismissing Ieng Sary's Royal Pardon. The Defence argued that the Pre-Trial Chamber had incorrectly translated the original document providing for a pardon and rejected the assertion that the Pardon only applied to Ieng Sary's 1979 conviction under the People's Revolutionary Tribunal.

On 3 June 2011, the Trial Chamber released a directive limiting the scope of the initial hearing to four trial segments which will be the first issues discussed at trial, namely: **1.** the structure of Democratic Kampuchea (DK), **2.** the roles of each Accused prior to the establishment of DK, **3.** the role each of the Accused in the DK government, and finally **4.** the policies of DK on the issues raised in the indictment. The Trial Chamber also rejected Nuon Chea and Ieng Sary's request to add pre-1975 and post-1979 topics to the list of issues that will be heard at trial.

Also on 3 June 2011, the Supreme Court Chamber issued a decision on Ieng Thirith's application to disqualify Judge Som Sereyvuth from the Supreme Court Chamber for lack of independence. The Supreme Court Chamber denied Ieng Thirith's request for a public hearing on the matter, but agreed to reclassify all related documents as "public" in order to promote transparency of the proceedings.

Judge Som Sereyvuth

Ieng Thirith had requested Judge Sereyvuth's disqualification because of his participation in a case that resulted in the conviction of a journalist for defamation charges against Prime Minister Hun Sen. The Court rejected Thirith's application on the basis that the Defence cannot prove that Judge Sereyvuth acted with bias on a related case.

Furthermore, on 3 June 2011, the Supreme Court Chamber issued a decision denying Nuon Chea, Ieng Thirith, and Khieu Samphan's Urgent Application for Immediate Release. The Defence for Ieng Thirith argued that the Trial Chamber had not issued a sufficiently reasoned decision because it had not addressed her main arguments. The Supreme Court Chamber held that the Trial Chamber had maintained international standards in its previous decision, and that any procedural errors which may have been present were not sufficient to justify immediate release. In Khieu Samphan's case, Judge Noguchi concurred with the decision but partially dissented due to his belief that ECCC Internal Rule 63(3) should not apply to the Accused's continuous detention at the trial stage.

In their Application for Immediate Release, the Nuon Chea Defence team argued that the Trial Chamber had engaged in a balancing of interests, which they asserted was not permitted under ECCC Internal Rule 68, which provides only immediate release as a remedy for illegal detention. The Nuon Chea Defence team also submitted that the Trial Chamber had submitted a decision without reasoning only to delay Nuon Chea's automatic release, in violation of the principle of *ultimum remedium*. The Supreme Court Chamber held that the Trial Chamber did not err by utilizing its discretion to continue Nuon Chea's detention.

On 7 June 2011, the Trial Chamber issued a decision in response to Ieng Sary's request for clarification on the length of opening statements allotted to Defence teams and whether Defence teams would be permitted to contact potential witnesses. The Trial Chamber advised that opening statements will not be part of the initial hearing, and that because the Defence team had not provided a list of desired witnesses before the deadline elapsed, it would not be permitted to contact any witnesses.

On 14 June 2011, the Trial Chamber released the Agenda for the Initial Hearing, scheduling an announcement of tentative witness lists and oral arguments on preliminary objections. Judge Nil Nonn, President of the Trial Chamber on 17 June 2011 formally summoned the four defendants Nuon Chea, Ieng Sary, Ieng Thirith, and Khieu Samphan to the main courtroom for the commencement of the hearing.

Judge Catherine Marchi -Uhel

On 24 June 2011, the Pre-Trial Chamber released its Decision on Appeals Against Order of the Co-Investigating Judges on the Admissibility of Civil Party Applications. The Pre-Trial Chamber granted appeals submitted from 98% of the civil party applicants (a total of 1,728 parties) in Case 002 and granted them status as civil parties in the case. The appellants' applications to become civil parties had previously been rejected as inadmissible by the Co-Investigating Judges. In its decision, a super-majority of the Pre-Trial Chamber, with Judge Catherine Marchi-Uhel dissenting in part, found inter alia that an incorrect interpretation of the necessary casual link between crimes being investigated and the injury suffered by the civil party applicants had been applied when the applications were previously rejected as inadmissible.

Rule 63

Provisional Detention

3. The Co-Investigating Judges may order the Provisional Detention of the Charged Person only where the following conditions are met:

a) There is well founded reason to believe that the person may have committed the crimeor crimes specified in the Introductory or Supplementary Submission; and

b) The Co-Investigating Judges consider Provisional Detention to be a necessary measureto:

i) prevent the Charged Person from exerting pressure on any witnesses or Victims, or prevent any collusion between the Charged Person and accomplices of crimes falling within the jurisdiction of the ECCC;

ii) preserve evidence or prevent the destruction of any evidence;

iii) ensure the presence of the Charged Person during the proceedings;

iv) protect the security of the Charged Person; or

v) preserve public order.

Judge Catherine Marchi-Uhel dissented in part on the basis that a *de novo* review of each of the applicants, as directed by the Pre-Trial Chamber, was not necessary. Judge Marchi-Uhel stated that in order to be admissible as a civil party, all applicants must have suffered harm from one of the crimes that the Accused in Case 002 are charged with. To do otherwise, the Judge opined, would undermine the validity of the civil party system.

On 27 June 2011 the Trial Chamber opened the trial in Case 002 with an Initial Hearing. The Hearing featured discussions on a selection of parties' preliminary objections, notably the status of Ieng Sary's 1979 conviction and subsequent Royal Pardon and Amnesty and the applicability of various statutes of limitation to the proceedings. Tentative witness lists for the first four phases of trial, Civil Party reparation requests, and rules regarding the presence of the Accused in the court room were also discussed. On the latter question, the President of the Trial Chamber announced on 28 June that it was within Nuon Chea's right as an Accused to object to being present in the hearings. On the previous day, Nuon Chea's international Co-Counsel expressed his frustration at the fact that preliminary objections and witnesses proposed by their team were not scheduled for debate at the Initial Hearing.

On 7 September 2009, the international Co-Prosecutor filed two Introductory Submissions, requesting the Co - Investigating Judges to initiate investigation of five additional suspected persons. These two submissions have been divided into Case files 003 and 004. On 29 April 2011, the Co-Investigating Judges had issued a statement declaring the conclusions of their investigations with regard to case 003. According to the Co-Investigating Judges, more than 2000 pieces of evidence which comprise more than 48000 pages have been added to the case file. The suspects of Case 003 have not yet been named.

Case 003

On 25 May 2011, the International Co-Prosecutor Cayley filed an appeal against the "Order on International Co-Prosecutor's Public Statement Regarding Case File 003". The Co-Prosecutor argued that the retraction order was not supported by any provision of ECCC law, and that the Co-Prosecutor's actions in releasing the public statement were consistent with his obligations under the Law and the Internal Rules. The Co-Prosecutor further argued that it was unreasonable to order him to retract information that was already in the public domain and which the Co-Investigating Judges themselves re-stated.

On 13 June 2011 the Pre-Trial Chamber issued an order suspending the enforcement of the "Order on the International Co-Prosecutor's Public Statement Regarding Case File 003" until a decision could be reached on the International Co-Prosecutor's Appeal.

On 26 May 2011 the Office of the Co-Investigating Judges released a press statement responding to the article "Cambodia's troubled tribunal" published in the 25 May 2011 edition of the International Justice Tribune. In their statement, the Co-Investigating Judges said that they had never threatened the International Co-Prosecutor with contempt of court as the article described, and that this allegation was a malicious rumour. The Co-Investigating Judges also refuted the statement that the Tribunal is "heading for an irreparable crash" by describing the continued functioning of the Court despite the large workload placed on it in relation to Cases 001 and 002.

On 9 June 2011, following an alleged leak of the Second Introductory Submission concerning Case 003 and subsequent publication of segments from that document online, the Co-Investigating Judges issued the following press statement: "As the Co-Investigating Judges have credible information that the content of the Second Introductory Submission which is classified as confidential, has been divulged by a disloyal staff member of the ECCC, warning is hereby given that anyone publishing information from this confidential document is liable to be subjected to proceedings for Interference with the Administration of Justice pursuant to Internal Rule 35".

Co-Prosecutors Andrew Cayley and Chea Leang

On 16 June 2011, the Office of the UN Secretary General issued a Press Statement categorically rejecting media speculation that the UN has instructed the Co-Investigating Judges to dismiss Case 003.

Defence Rostrum

SYRIA v. LIBYA

Pre-Trial Chamber I of the International Criminal Court (ICC) issued, on 27 June 2011, three warrants of arrest respectively for Muammar Mohammed Abu Minyar Gaddafi (Commander of the Armed Forces of the Libyan Arab Jamahiriya and holding the title of Leader of the Revolution, and as such, acting as the Libyan Head of State), Saif Al-Islam Gaddafi (Honorary chairman of the Gaddafi International Charity and Development Foundation and acting as the Libyan de facto Prime Minister) and Abdullah Al-Senussi (Colonel in the Libyan Armed Forces and current head of the Military Intelligence) for crimes against humanity (murder and persecution) allegedly committed across Libya from 15 February 2011 until at least 28 February 2011, through the State apparatus and security forces.

The situation in Libya has been referred to the ICC by the UN Security Council (UNSC) in February, in the context of the ongoing violent clashes between the government forces and opposition, later led by the National Transitional Council formed in the city of Benghazi. Formulated at the UN World Summit in 2005, only two situations have so far been explicitly referred to the ICC by the UN , namely Darfur and Libya. The possibility of referral provides for an international collective action "to protect [a state's] population from genocide, war crimes, ethnic cleansing and crimes against humanity", if that state is unable or unwilling to protect its citizens or if it is responsible for such acts. In the case of Libya, the UN SC has emphasised the doctrine of responsibility to protect by additionally imposing financial sanctions, an arms embargo, travel bans against Gaddafi, his family members and senior regime officials and by enforcing a no-fly zone with the help of a coalition of various NATO member states and other countries.

However, the Libyan conflict inscribes into a series of uprisings and protests sweeping the Arab world since summer 2010 and the overthrow of the Tunisian president Ben Ali. Human rights have since then been arguably violated in several other countries, including unlawful killings. Syria has lately become one of the most noted cases. How come that President Bashar al-Asad and his regime are not being referred to the ICC as well?

Protests in Syria began in March 2011 and the government decided to crack down on the protesters in mid April, after lifting the state of emergency, which had been in force for decades. By mid-June, the alleged casualties have reached up to 1400, with more than 10 000 people reported missing or in custody and triggered a substantial flow of internally displaced persons (IDPs) and refugees along the border with Turkey.

In May, the United States imposed sanctions on Syria's top military and political officials, followed shortly by the European Union. Great Britain and France have jointly sponsored a Security Council resolution that would criticise Syria but not include military action or sanctions, like those in the resolution on Libya. It noted that the "widespread and systematic attacks currently taking place in Syria by the authorities against its people may amount to crimes against humanity" under international law. The draft was resolutely turned down on 9 June, with opposition by Russia, China as well as several non-permanent members, who expressed reservations, arguing that NATO's intervention in Libya, under a United Nations mandate to protect civilians, had gone too far and risked becoming a protracted stalemate.

In June, the US administration reportedly admitted that it was examining whether there were "grounds for charges related to war crimes, and whether referrals on that [were] appropriate" against Assad, his government and/or Syria's police forces and military. However, it is worth recalling that the US is not a state party to the Rome Statute and as such cannot refer a situation to the ICC.

What are the parallels and implications of the two situations for international law? Some commentators see a hidden agenda behind the action in Libya, to motivate a change of regime. If Gaddafi does not fall, further action would be justified. At the same time, should international law have the authority to regulate actions inherent to internal policies of a recognised nation state? China, Russia and other countries have held a categorically negative stance in the past. Even in Libya's case, the two permanent UN SC members only enabled the adoption of the resolution by abstaining from voting. Does this suggest that the process of decision-making is flawed and that an approval or rejection of proposals to intervene is based upon the balance of interests and alliances within the Security Council and not upon interests of justice?

While the population of Syria is almost four times bigger than the one of Libya, its GDP is drastically lower. Foreign investment in Syria surpasses that in Libya by almost 50%. Syrian armed forces are reported to be more substantial than Libyan ones and Syria has benefited from the support of and/or good relations with major regional players Iran and Turkey, while Libya cannot claim a firm support from the League of the Arab States. Syria is also in the immediate proximity of the Israeli-Palestinian hotspot. Is that maybe a reason for the disinterest of the international community in the departure of Bashar al-Assad?

The above situation does little to dissipate the fears of some observers of an emerging two-tiered system of international justice. Does international justice really serve political purposes and have vested interests played a role in the Syrian/Libyan case? Over twenty countries, including important EU members such as Germany, France and Great Britain, have to date recognised the National Transitional Council as the sole legitimate government of Libya, or (like the US) the sole legitimate negotiator, reminiscing the chaotic situation in Yugoslavia in early 1990s. One should hope that will be the only Yugoslav analogy.

The Bin Laden and Mladić Saga: A clash of civilisations?

"Why does Mladić who was allegedly a part of a state command that caused the death of 8,000 people in Srebrenica, deserve due process? And why was Bin Laden denied that same right having killed 2817 American citizens? The answer may lie in Edward Said's concept of orientalism.

On the 26th May 2011, former Bosnian-Serb military leader, Ratko Mladić was arrested after a 16 year man hunt; on the 29th April 2011, the founder of Al-Qaeda was killed in a covert operation ordered by President Obama after a 10 year pursuit. Both men are said to have been responsible for killing thousands of innocent civilians. Mladić is being accused of orchestrating the 1995 Srebrenica Massacre. Many have marked this massacre as the worst mass killing in Europe since World War WII. Bin Laden had admitted to masterminding 9/11 where 2819 people were killed. 9/11 wasn't the only time he had targeted the US. Prior to 2001, the Word Trade Centre bombings in 1993 killed 7 people whilst the 1998 Embassy bombings killed 212 people, not to mention the USS Cole and attacks on other Non-American targets. Both men were also on the Worlds Most Wanted lists; Mladić was the Most Wanted Man in Europe, whilst Bin Laden was the Most Wanted in the World.

"This operation was not a capture operation, it was meant to kill him"

Many questions have been raised with Bin Laden's case; Should Bin Laden have been put on trial? Or could he have been? The ICC and International Tribunals have been established to end the impunity witnessed in global atrocities; this one is still on going.

This operation saw an unequal dialogue as far as the truth goes; only a select number of people are fully aware of events of that night. Although it is hard to comment on the legalities of Bin Laden's killing when the US refuses to disclose important details of the operation, some former intelligence officers have theorised however that there was little prospect Bin Laden could be captured. Michael Scheuer (CIA) reiterated this in his interview with the BBC, stating, "This operation was not a capture operation, it was meant to kill him". Further inconsistencies emerge in the US government's pronouncements, which do not inspire much confidence. A military operation to apprehend the World's Most Wanted man isn't a cakewalk. In order for Bin Laden to be have been taken alive, US Officials have stated that there would have been difficulties in doing so. A further admission by John Brennan supports this. With Two top-level insiders stating that Bin Laden's capture wasn't realistically possible, it makes it seem as though that wasn't ever the plan.

The Importance of the rule of law

The Rule of law is a powerful legal maxim, but is far too often overlooked. Courtenay Griffiths highlighted this in his closing statement during the case of Charles Taylor "whether you are princess or prostitute, whether you are the President of the United States or the President of Liberia, the law is above you. That should be the guiding principle. This is the essence… of the rule of law". Unfortunately, there are bigger authorities on the rule of law. The killing of Bin Laden and the comparative lack of urgency in finding Mladić, highlight the view that political motivations outweigh due process.

Why? Mladić is not being accused of killing Americans but 8,000 Bosnian Muslims. Why is there this discrepancy in due process? Is one ethnic group more eligible for justice than another? Why are we following the laws of our international criminal legal system in one instance and disregarding them in their entirety in another? What makes Mladić eligible for due process

and therefore his rights as an individual, for having orchestrated the Srebrenica massacre killing 8,000 people, but not Bin Laden, for having killed 2819? As Bin Laden's death was orchestrated by the world's superpower no one questioned it. This is a perfect example of American exceptionalism. America uploads its morality arguments of ending impunity and bringing the perpetrators of those crimes to justice when it suits them showcasing a benevolent façade. They refuse to sign up to the Rome Treaty, designed to try individuals of party states who have been indicted for most heinous crimes, but insist on putting OTHERS on trial who have orchestrated other atrocities. The principles of International humanitarian law were being sidestepped in order to seek revenge, not justice. Therefore, their rhetoric in the promotion and imposition of the rule of law and due process in other war crimes tribunals are at odds with their own actions. Justice for America and justice for the rest of the world are very different things.

Human rights

Irrespective of our views of these two men, it is important that we analyse what rights they are entitled to. First and foremost, Osama Bin Laden and Ratko Mladić are humans, and to that end, are entitled to the same rights as we are. The Universal declaration of Human Rights states certain inalienable rights to all, including life, recognition before the law, and to a fair hearing. Regardless of what President Obama has said, in order to serve and achieve justice, one cannot legally be involved in a targeted killing. UN Conventions on Terrorism and UN Security Council resolutions (direct reference made to Al-Qaeda in Res. 1267 of 1999 to Res. 1974 of 2011) do not authorise states to engage in operations on foreign soil, their arrest or even their killing of terrorists. As Kai Ambos highlights in Die Spiegel, "these resolutions can, at best, be read, in line with the various Terrorism Conventions, as allowing the extradition or prosecution (*aut dedere aut iudicare*) of terrorism suspects". The Appeals Chamber in the Tadic Case at the ICTY stated that an armed conflict exists whenever there is a resort to armed force between states or protracted armed violence between governmental authorities and organized armed groups or between such groups within a state". However, within the framework of International Humanitarian Law, Al-Qaeda do not meet the criteria for an opposing faction against which a legitimate war can be waged, lacking most importantly as Ambos suggests "a centralized and hierarchical military command structure and the control of a defined territory". The 1977 Protocol II to the Geneva Conventions stated, "non-state groups engaged in armed violence against a state [need to]… Satisfy certain (strict) criteria of organization: they need to be "organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to curry out sustained and concerted military operations and to implement this Protocol". Contrary to their actions, Al-Qaeda is a terrorist network that is decentralised and dispersed.

Orientalism

The crux of this issue lies in the concept of 'Orientalism'. Said argued that there is a "Eurocentric prejudice against Arabo-Islamic peoples and their culture". Western values and culture are placed upon a pedestal. Today we are even desensitised to the deaths of those residing within the Orient. There is limited public mourning when innocent civilians are killed 'there'. Over a 22-day Operation Cast Lead 1417 Palestinians were killed. The 2003 Iraq War, which was an illegal war, caused the deaths of approximately 100,000 civilians and displaced many more. This clash of civilisation as Samuel Huntington points out, has created a greater divide between the Muslim world and the west. The desensitisation to the deaths of innocent civilians in conflict, that our press and governments allow us to feel, has led to the dehumanisation of those who aren't perceived as innocent. Bin Laden had been dehumanised to the point where his rights were not even questioned, let alone accounted for. In fact, many of world leaders congratulated Obama on the operation that killed Bin Laden.

As Huntington further states, "People use politics not just to advance their interests, but also to define their identity". Our identity defines the morals and principles, which we all agree to abide by. Misrepresentations and generalisations by western media and governments allows for the subordination of the principles, morals and cultures of an entire civilisation. These misjudgements have been enhanced to portray just and righteous images of the West whilst on many occasions misrepresenting Islam and most of the Islamic world, perceiving it as being a menace. The book titled 'The Arab Mind' by Raphael Patai, depicts Arabs as just this and has been termed a "bible for neo-colonialists" whilst being said to be "probably the single most popular and widely read book on the Arabs in the US military" by a US Scholar. It has also been used at the JFK special warfare school in Fort Bragg as a textbook for officers. The indoctrination of these views showcases this division and also reiterates this notion of superiority and our willingness to allow many of the atrocities that we have witnessed and are continuing to witness. This is one of the many reasons why Blair and Bush have not been indicted for their war crimes following the Iraq invasion.

It seems that due process is only given depending on whom your nemesis is.

Published on 9th June 2011 in The Independent. Edited and reproduced—Fatima Kanji, Defence Intern for Jovica Stanišić

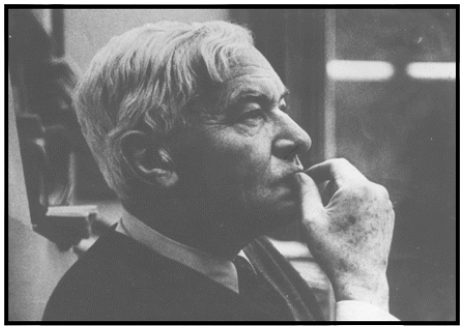
The Second Peace Palace Library Lecture on International Criminal Law

Originally disenchanted with the idea of taking on a "dull" area of the law, Bert Röling's ideas and conceptions of international law changed when he was appointed to be a judge for the International Military Tribunal for the Far East (IMTFE, Tokyo Trials), the trials that took place for the Japanese for crimes committed during World War II. Educated as a Dutch lawyer, he took a special interest in the then fledgling notions of international criminal law, contributing to it over the years with various lectures, articles, and books. Since he was born right before World War I and died during the Cold War, the topic of "war" had an incredible influence on Röling's writings. On 22 June 2011, The Peace Palace Library held its second lecture series on international criminal law on the topic of "When Röling Waves Advanced Towards the Shores of International Law".

The first speaker of the evening was Röling's son, Matthjis Röling, a Dutch artist, who shared notes from his father's journal and letters sent to others about his experience at the. Despite expressing a disinterest in international law originally, it became clear that Röling was committed to getting what he could right. One of Röling's letters to his wife was requesting more books about international law since he had been spending vast amounts of time poring over matieral and his room was becoming like a library. Röling expressed his opinion on a burgeoning section of the law. He said it harkened to how law was centuries ago, where law and facts were intertwined and each decision was arguably a new law or, at the very least, a new interpretation.

Early on Röling grappled with questions such as whether the Tribunal will decide what is a crime or if they should accept what the Charter says and whether the Charter confines what must be accepted as facts or how the Tribunal should render its decision. To a certain extent the Tribunal was an extension of the Nuremberg Trials and the issues that arose during it. As such Röling and other judges took issue with how to deal with the definition and application of certain crimes, such as the crime of aggression. Some letters discussed Röling's disappointment with his fellow judges who accepted the charter that created the Tribunal without questioning the significance and the consequences of such an action.

The second speaker described how many judges at the IMTFE disliked Röling's idea and reinforced that it was their duty as judges to simply apply the law as indicated by the Charter that created the Tribunal. At the beginning only Radhabinod Pal from British India supported Röling, while later on most judges dissented from the majority opinion, given their problems with the manner of creation of the Tribunal, the application of the law and the uncertainty with carrying forward what they believed to be "victor's justice". There was pressure on these dissenting judges to give up these ideals and not to have any dissenting or separate opinions. When Röling returned to the Netherlands, his actions weren't received well and he was seen as a polarising figure.



Bert Röling

Nico Schrijver, who studied under Röling's supervision and the final speaker for the evening, spoke about Röling's legacy and his contribution to international law, particularly to the topics of arms control and the use of force. Röling saw nuclear weapons as "unusable, but indispensable" and did not believe in unilateral disarmament. He thought atomic war would be a disaster in comparison to what other scholars during his time thought about the arms race. Röling did not believe in use of force to defend vital non-military interests, but thought it was permissible for deterrence and defence purposes. Despite these theories, Röling believed peace was the suprioer valve in the development of international law with human rights to be respected first and foremost. However, as described in his use of force and nuclear weapon theories, Röling believed that peace had and still has a price.

Röling's ideas continue to influence the current development of international law. Though much has changed since Röling's death, the dilemmas he wrestled with continue to come up in modern jurisprudence, from how international courts are created (as seen in early chartered tribunal jurisprudence) to what the crime of aggression should consist of, recently decided upon at the Kampala Review Conference for the International Criminal Court in 2010.

The third Peace Palace Library lecture on International Criminal Law is planned in October.

Lecture on The European Union As A Polity in International Law

Is the European Union (EU) a convoy of autonomous states? Is it a federal institution? Is it merely an economic regulatory forum? Or is the European Union closer to something like the United States of Europe? Is the European Union confined to the parameters of international law or is it operating within its subset, able to create laws as appropriate to the institution? These are a few of the questions that were addressed at the Peace Palace's "European Union as a Polity in International Law" lecture. Each speaker considered the EU's situation differently and emphasised that there are no easy answers to these questions.

The first speaker, Laurens Jan Brinkhorst, narrowed down the possibilities for what the EU could be by referencing Immanuel Kant's *Perpetual Peace*. Kant describes that for there to be peace, a state may either merge into one state or form a federation of free states in order to avoid war. After 1945, Brinkhorst argued, Europe had to either merge or form a federation. As such, this dilemma laid the building blocks for the current formation of the EU. Though the EU appears to be under scrutiny right now, Brinkhorst said the question is whether the EU has achieved enough identity to withstand attacks from its member states. He did not necessarily think that Kant's two options were the only options available either. In the very least, however, he thought the EU could serve as some transitory model for how to interact with an increasingly globalised world.

Judge Bruno Simma spoke about whether the European Union had achieved enough legal autonomy to be able to operate within its own sphere without having to take broader international law implications into account. Judge Simma used Armin von Bogdandy's "The Emancipation of European Community and Union Law from International Law" thesis from his European Community and Union Law and International Law article as a starting point for his discussion. The article argued that although the European Union might believe itself to be emancipated from the rest of international law, it is treated the same as most international law. Though the EU may have created its own legal regime, Simma expressed that the links to international law were still present and visible, as seen in aspects like treaty, amendment, withdrawal, new members, and dissolution, all of which incorporate international law concepts into their definitions.

Simma agreed with an article by Professor Hartley, who said that law does not exist in a vacuum. However, a recent decision by the German Constitutional Court indicates that the states do not want to lose all of their sovereign abilities to another entity. Instead, the German Constitutional Court asserted that the core of sovereignty was left with the member state. Simma believes that these notions of sovereignty may be outdated and that the international community simply views the EU as another international organisation, albeit one with a few idiosyncrasies to set it apart from the others. The United Nation's Draft Articles on Responsibilities of International Organisations includes the EU as an international organisation, much to their chagrin. This view by the international community was further supported by the recent renewal of the EU's observer status in the United Nations. Though the EU would like to consider itself free from international law, Judge Simma argued, that they are still very much attached and a part of the system as opposed to a self-contained regime.

The next speaker, Michael Burgess, argued that a federal Europe is inevitable and that there have been incremental steps throughout history in which this end is being reached. In terms of European supranational organisations, the process started in 1949 with the Council of Europe and continued with the creation of the European Communities and its successor, the European Union. In other terms, Burgess believes that both the Treaty of Paris and the Schuman Declaration set the grounds for the developments that followed. The EU has its own history since it is now greater than the sum of its parts, with European identity equating to both internal and external evolution that is based on the state dynamic. Though states are still important, they have shifted the center of gravity in how power works in the European system. As a result, a bi-natural relationship of European integration has evolved. John Monnet, regarded as one of the chief architects behind the creation of the European Union, had a vision of a federal Europ , with economic means as a focus for supporting the enduring process of federalisation. Monnet achieved his vision in a piecemeal fashion since he had no other choice. Federal aspects of the EU include consent, autonomy, and power-sharing, though human association is also central to federalism.

Christian Timmermans, the final speaker, looked at what limits there are within the EU. As in international law, he considered the text of treaties to see the contours of the EU's power, including the Schuman Declaration, the Treaty of Amsterdam, the Treaty of Nice, the Constitution of Europe and the Treaty of Lisbon. He noted how each particular treaty constrained its terms of what supremacy was, ending with the Lisbon concepts of what is supranational and intergovernmental and how it operates within the EU. The Lisbon Treaty established that member states' identities must be respected by all the constituent states. Timmermans argued that whatever the end goal might be, it cannot be of a federal nature since the Union must respect individual states and protect national security. He sees the courts as the mediators to solve this tension between the burgeoning federal structure and individual states' desire to keep as much power as possible.

By presenting different points of view, the lecture showcased the various dilemmas the EU will have moving forward, though a dialogue about where to go will be very important for the process. One thing is for certain: without a clear vision or concessions there can be no progress for shaping the EU's future.

Blog Updates

- International Justice Desk, **Security Council extend terms of judges at ICTY**, 30 June 2011, available at: http://www.rnw.nl/international-justice/article/security-council-extend-terms-judges-icty
- HRW, **Thailand: Make Human Rights a Priority**, 30 June 2011, available at: http://www.hrw.org/en/news/2011/06/30/thailand-make-human-rights-priority
- Dapo Akande, **France Admits to Arming Libyan Rebels – Was this Lawful?**, 1 July 2011, available at: http://www.ejiltalk.org/france-admits-to-arming-libyan-rebels-was-this-lawful/
- Deirdre Montogermy, **STL submits Indictment and Arrest Warrants to Lebanese Authorities**, 1 July 2011, available at: http://www.internationallawbureau.com/blog/?m=20110701
- Elli Goetz, **Hezbollah Leader Rejects Hariri Indictment**, 3 July 2011, available at: http://www.internationallawbureau.com/blog/?p=2977
- Eerke Steller, **Netherlands accountable for Srebrenica**, 5 July 2011, available at: http://www.rnw.nl/international-justice/article/netherlands-accountable-srebrenica
- Diane Marie Amann, **Mladić follows the playbook**, 5 July 2011, available at: http://intlawgrrls.blogspot.com/

Johan Tarčulovski, Escort Inspector in the President's Security Unit in the Ministry of the Interior of the Former Yugoslav Republic of Macedonia, was sentenced to 12 years imprisonment in 2008, for offences against ethnic Albanians in Ljuboten during a police operation on 12 August 2001, a decision which was appealed by Defence Counsel. In May 2010 however, the Appeals Chamber upheld the findings of the Trial Chamber and did not reduce the sentence. On 24 June 2011, ICTY President Robinson issued a decision denying the early release of Tarčulovski who remains in the UN Detention Unit, despite evidence of his rehabilitation.

Publications

Books

Elli Louka, 2011. *Nuclear Weapons, Justice And The Law*. Cheltenham: Edward Elgar Publishing

Constantine Antonopoulos, 2011. *Counterclaims before the International Court of Justice*. Den Haag: T.M.C. Asser Press / Springer

M. Cherif Bassiouni, 2011. *Crimes Against Humanity—Historical Evolution and Contemporary Application*. Cambridge: Cambridge University Press

Rowan Cruft, Matthew H. Kramer and Mark R. Reiff (eds.), 2011. *Crime, Punishment, and Responsibility The Jurisprudence of Antony Duff*. Oxford: Oxford University Press

Theodor Meron, 2011. *The Making of International Criminal Justice A View from the Bench: Selected Speeches*. Oxford: Oxford University Press

Articles

JHHW, 2011. 60 Years since the First European Community – Reflections on Political Messianism. *European Journal of International Law,* 22(2), pp.303-311.

Steven R. Ratner, 2011. Law Promotion Beyond Law Talk: The Red Cross, Persuasion, and the Laws of War. *European Journal of International Law*, 22(2), pp.459-506.

Judith Schönsteiner, Alma Beltrán y Puga and Domingo A. Lovera, 2011. Reflections on the Human Rights Challenges of Consolidating Democracies: Recent Developments in the Inter-American System of Human Rights. European Journal of International Law, 22(2), pp.362-389.

Paul Roberts, 2011. Does Article 6 of the European Convention on Human Rights Require Reasoned Verdicts in Criminal Trials? *Human Rights Law Review*, 11(2), pp.213-235.

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WE'RE ON THE WEB!

WWW.ADCICTY.ORG

The ADC-ICTY would like to say a huge thank you and goodbye to Isabel Düsterhöft who has been working in the Head Office for the past 6 months. Her hard work and dedication has been an asset to the Association and she will be missed by all. We wish her all the best for the future.

We would also like to thank Tatiana Jančárková who has been a long standing member of the newsletter team who is leaving the ADC-ICTY this week. We wish her every success in the future.

Upcoming Events

International Criminal Justice Day 2011
Date: 17 July 2011
Venue: The Hague and all around the world!
International Criminal Justice Day is a day of celebration, reflection and action. It commemorates 17 July 1998, when the Rome Statute was adopted, the legal basis for establishing the permanent International Criminal Court (www.icc-cpi.int);

2011 ILSA International Conference: Public Liability of Private Corporations
Date: 4-6 August 2011
Venue: Utrecht University, Utrecht
Organiser: The International Law Students Association, Washington University in St. Louis, Queen's University Belfast, Catholic University of Portugal, Utrecht University and University of Trento

Summer Programme on Countering Terrorism in the Post-9/11 World
Date: 22 August 2011 - 26 August 2011
Venue: T.M.C. Asser Instituut, The Hague
Organiser: ICCT - The Hague and the T.M.C. Asser Instituut

Second Annual Summer Programme on Disarmament and Non-Proliferation of Weapons of Mass Destruction in a Changing World
Date: 29 August 2011 - 03 September 2011
Venue: T.M.C. Asser Instituut, The Hague
Organiser: T.M.C. Asser Instituut and the Organisation for the Prohibition of Chemical Weapons

Opportunities

Special Adviser to the Registrar on External Relations and Cooperation, The Hague (P-5)
International Criminal Court (ICC), Immediate Office of the Registrar
Closing Date: Sunday, 10 July 2011

Assistant/Associate Legal Officer, Leidschendam (P-1/P-2)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Assistant/Associate Case Manager, Leidschendam (P-1/P-2)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Investigator, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011

Legal Officer, Leidschendam, Netherlands (P-3)
Special Tribunal for Lebanon (STL)
Closing Date: Saturday, 31 December 2011