

STANIŠIĆ & ŽUPLJANIN

ISSUE 102

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ICTY News

Stanišić & Župljanin (IT-08-91)

On 25 May 2016, the tenth status conference occurred in the appeal case of Stanišić & Župljanin (IT-08-91). In March 2013, the accused were convicted of crimes against humanity and sentenced to 22 years in prison.

Presiding Judge Agius announced that the Appeals Chamber will deliver its judgement in late June 2016. The date has now been set for 30 June.

The routine questions regarding the physical and mental state of the accused were asked by Judge Agius. There were no concerns in regards to their health and conditions in the

Detention Unit. The Defence nor the Prosecution raised any issues. This was the last status conference of the case.

Prlić et al. (IT-04-74)

On 25 May 2016, a status conference occurred in the Prlić et al case. Five out of the six were present in the courtroom. Pušić was granted provisional release but was represented by his defence counsel via video link.

The accused stated they had no issues concerning their health and their condition in the Detention Unit. The defence voiced a

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concern regarding how far the judges have progressed in considering the appeals and the dates for the appellate hearing. Judge Agius stated that the Appeals

Prosecutor v. Mladić (IT-09-92)

On 19 May 2016, the Defence filed a motion on the issue of a fair trial and the presumption of innocence. Concerns about the ability of the Trial Chamber to respect the presumption of innocence and judicial impartiality arose when the Defence recently learned that some of the Chamber's staff who previously drafted the Karadžić judgement are now working in the Trial Chamber that will render a judgement against Mladić. The issue at hand is that individuals who will write the first draft of the Mladić judgement have already drawn conclusions convicting Mladić in the Karadžić case. The Karadžić Trial Judgement was rendered on 24 March 2016. In this extensive document Mladić was convicted for all intents and purposes. Not only did the Trial Chamber find that he was part of the overarching JCE, the Sarajevo JCE, the Srebrenica JCE and the JCE concerning hostage taking, but Mladić was also found to have shared the common purpose to permanently remove Bosnian Muslims and Bosnian Croats from Bosnian-Serb-claimed territory. Moreover, the Trial Chamber stated that Mladić intended to 'kill every able-bodied Bosnian Muslim male from Srebrenica while forcibly removing women, children and the elderly' and found that such intent amounted to the intent to destroy the Bosnian Muslims in Srebrenica. He was also found to have intended to take hostages and to possess the requisite intent for persecution. These are direct findings of

Chamber expects to schedule the judgement in late 2017. He mentioned that he has dedicated most of his time to the Prlić case but as soon as the final judgement of

Mladić's guilt were written by the very individuals who will be drafting the final judgement in the Mladić trial. The Defence finds it alarming to consider that in a case of this importance and magnitude, persons who have made such significant and negative findings prejudging Mladić are now called upon to help prepare his judgement.

Every Accused has the fundamental human right to be tried before an independent and impartial tribunal as this is considered to be an integral component of the fair trial guarantees. However, with this motion the Defence contends that the movement of lawyers from one Chamber to a related one could create a situation, or appearance of bias. As stated in article 21(3) of the ICTY Statute an Accused shall be presumed innocent until proven guilty. Moreover, Rule 15(A) of the Rules of Procedure and Evidence provide that 'a Judge may not sit on a trial or appeal in any case in which he or she has a personal interest or concerning which the Judge has or has had any association which might affect his impartiality'. The Appeals Chamber stated in the Furundžija case (IT-95-1711-A) that a Judge is not impartial if it is shown that 'actual bias exists or if there is an unacceptable appearance of bias'. An unacceptable appearance of bias could exist where the circumstances would lead a reasonable observer, properly informed, to reasonably apprehend bias'. The Defence submits that in this case there is an 'association which might affect impartiality'.

Stanišić and Župljanin case is delivered; Agius will be able to fully focus on the Prlić appeal.



RATKO MLADIĆ

The duties of Trial Chamber staff overlap with those of the Judges. Depending on their level of experience staff will "assist", act "on behalf of" and "provide legal support" to the Judges by being called upon to conduct legal research, analyse evidence and present findings. These are all significant tasks which ultimately the Judges will rely upon when making assessments, placing the staff in a position to influence any evidentiary analysis. As presented in the motion "there is a real danger that conclusions have been and will be drawn based on evidence that was not led" in the case of Mladić. Any staff members who have recently made findings in one case based on similar facts are unlikely to overturn their own prior writings and conclusions. The risk that legal staff may influence a judge's reasoning is not theoretical. A study in the US found that they can "develop private information that would allow them to steer decisions in a particular direction", which consequently could "introduce language or legal reasoning that is not entirely consistent with a judge's

position". While the ICTY jurisprudence has so far rejected the proposition that Rule 15 cannot be applied to Legal Officers, another international court found that a similar request raised an issue regarding the disqualification of the judges. Therefore, such bias is an area of concern in international justice.

The Defence argues that 'the involvement of the Trial Chamber's legal officers in a case based on the same facts, but somewhat different evidence and witnesses, creates at best an appearance of bias-and at worst an unfair judgement based on the distorted

lens on which the Judges' assessments in the Trial Judgement will be based'. This motion submits therefore that the Accused's rights to a fair trial and presumption of innocence have been compromised by the incorporation of the Karadžić Trial Chamber staff into the Chamber that will judge Mladić'. The Defence states that 'while these impacts will be indirect, they will be real, and more insidious for their subtlety'.

Therefore, the Defence seeks with this motion confirmation that no individual who worked on the Karadžić trial judgment 'has worked on, is working on, or will work on

Mladić trial judgement' and confirmation that 'no individual who worked on that case has discussed case related matters with anyone working on the Mladić Trial Judgement'. Alternatively, the Defence seeks 'copies of any written undertakings that the relevant staff members have signed prior to taking up their duties and a detailed description of all efforts that Trial Chamber has undertaken to protect Mladić's fair trial and presumption of innocence rights in light of this situation'. The Defence submits 'that failing this, as all of three Judges may have already relied on the work of the impugned legal officers; the Accused respectfully requests a mistrial'.

MICT News

Prosecutor v. Hartmann (MICT-15-87)



FLORENCE HARTMANN

On 14 September 2009, Florence Hartmann was found guilty of contempt of the ICTY for having knowingly and wilfully interfered with the administration of justice by disclosing information in violation of an order of the Appeals Chamber. She was sentenced to pay a fine of €7,000.

On 25 May 2016, the Decision of the President on the Early Release of Hartmann was released. The outcome of the decision

was that Hartmann was ineligible for legal aid.

On 27 May 2016, counsel for Hartmann filed a motion to seek a review from the MICT President of the Registry's impugned decision that Hartmann was not eligible for financial aid. Counsel for Hartmann submits that the Registry's Decision is unreasonable, arbitrary, erroneous in law and fact and constitutes a violation of the most basic principles of justice and fairness based on four main reasons. First, the decision lacks proper legal foundation as the Registry does not identify a legal basis on which the decision is based, instead relying on an ICTY "policy" inapplicable to MICT proceedings. Second, the Registry's decision is unreasoned as during trial and on appeal, Hartmann was indigent and her financial situation has only deteriorated since then.

Third, the inordinate amount of time taken by the Registry to render its decision (two months) has deprived counsel of this most basic element of fairness. It is stated that a counsel appearing under at the MICT should not be expected to work under any apprehension that they will be remunerated fairly for the work performed. Lastly, the defence argues that this amounts to a violation of Hartmann's fundamental right to have counsel paid by the Tribunal where counsel will be put in a position to either work for free or indigent defendants will have to pay for their legal representation. Thus, the Registry's decision violates the most basic forms of fundamental justice as it is unreasonable, arbitrary as well as legally and factually erroneous.

Prosecutor v. Karadžić (MICT-13-55)

On 26 May 2016, defence counsel for Radovan Karadžić moved for the issuance of redacted versions of decisions issued by the ICTY Trial chamber in his case under ICTY Rule 75(H). The Prosecution contends that Trial Chamber's Decision on the Accused's Motion for Disclosure of Information on Variation of Protective Measures is *res judicata* precluding the Appeals Chamber from ordering redacted versions for rule 75(H) decisions.

The ICTR has held that as a general rule, applications must be filed as *inter partes*. Such a rule finds its expression in the general principle of *audi alteram partem*. The principle of *audi alteram partem* is a Latin term which embodies a concept of criminal law which states no person should be

condemned unheard. The literal meaning translates to "listen to the other side" or "let the other side be heard as well". It is the principle that no person should be judged without a fair hearing in which each party is given the opportunity to respond to the evidence against them. The only exception where *ex parte* proceedings should be allowed are when disclosure to the other party or parties would be likely to unfairly prejudice either the party making the application or some persons involved in or related to that application. On 27 May 2016, the Prosecution filed a response to Karadžić's motion for redacted versions of Rule 75(H) decisions. They contend that there is no impediment to the Appeal Chamber's consideration of the motion on its merits. They allege that since the



RADOVAN KARADŽIĆ

Decision was not final, Karadžić was not obliged to seek certification for an interlocutory appeal for every issue raised before the Trial Chamber. Also, they allege Karadžić had different arguments on a different issue and *res judicata* applies only to successive litigation of the same issue.

Stanišić & Simatović Status Conference (MICT-15-96)



JOVICA STANIŠIĆ

The Status Conference in the for Stanišić and Simatović case was held on 23 May 2016. The start date for the retrial remains uncertain. According to the court schedule, the Prosecution would have file the Pre-Trial Brief by 14 July 2016 with the start date for the trial being planned for December 2016. Prosecutor, Douglas Stringer, proposed a later deadline for submissions due to staff

shortages, Prosecution would therefore not be able to submit Pre-Trial Brief before mid-September 2016. Defence counsels, Wayne Jordash for Stanišić and Mihajlo Bakrac for Simatović requested the same amount of time for preparations due to staffing concerns with a proposed start date of April or May 2017. Defence Counsel stated that, "If the Prosecution needs nine months to prepare for trial, it's only logical that we will need the same amount of time". Defence Counsel for Stanišić asked for a closed session to discuss his mental and physical health problems and accommodation which needed to be made. This case is the only trial which is presently

scheduled to take place in the MICT. In the history of the ICTY there has been only one other partial re-trial in the case of *Haradinaj et al* which was completed in 2012. The retrial in the case of Stanišić and Simatović is a *de novo* trial meaning that it is technically a whole new trial.



FRANKO SIMATOVIĆ

News from other International Courts



Special Tribunal for Lebanon

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

On 4 and 5 April, Gary Platt, an investigator with the Office of the Prosecutor (OTP) testified as to his qualifications and experience to enable the Trial Chamber to determine whether he was qualified as an expert under the Tribunal's Rules of Procedure and Evidence (RPE). Platt informed the court of his qualifications and his former employment positions in a chronological order. The Prosecution then asked the witness in a thematic manner on various topics in which it considered he was qualified including asking about the training courses that he had provided on those subjects. He also spoke about his time working in the OTP, since March 2010, and his role within the investigation unit.

Defence Counsel for Badreddine, Ayyash, Sabra and Merhi cross-examined the witness on his qualifications and expertise. Platt was asked about how he described himself in various reports and statements that he had produced during his time working for the OTP. He also discussed his resume, training courses and examinations he completed, and previous cases he had worked on in the United Kingdom.

On 6 April, the Trial Chamber decided, in an oral decision, that Platt fell within the legal definition of an expert and that his employment as an investigator with the OTP did not of itself disqualify him from being

classified as an expert. The Trial Chamber declared Platt qualified to give an expert opinion in two limited areas: (1) matters connected with the surveillance of criminal networks and; (2) the identification and organization of covert communications networks. Written reasons for this decision were later handed down by the Trial Chamber on 13 April 2016. Platt then commenced his substantive testimony, presenting analysis of the activity of four telephone networks (green, yellow, blue and red networks) implicated, according to the Prosecution, in the 14 February 2005 attack. The witness discussed the yellow network consisting of 13 individual phones, their use, financing, organization and their eventual shutdown.

On 14 and 15 April, Gary Platt resumed his testimony before the Trial Chamber.

The witness gave evidence on the green telephone network consisting of 18 individual phones with a 12-month subscription, the use of those phones, and their purchase with alleged false subscribers' details. He further testified about call sequence tables and maps that reflected the activities of those phones.

Additionally, Platt testified about the blue telephone network consisting of 15 pre-paid phones, allegedly operating as a network

between October 2004 and October 2005. He explained the setup of the network, its formation, the cessation of its activities, finances and maintenance.

He finally spoke about the red telephone network, which according to Platt, consisted of a group of eight pre-paid mobile phones purchased sometime between 24 December 2004 and 4 January 2005, and used by the Red Network between 14 January 2005 and 14 February 2005. On 18 and 19 April, protected witness PRH 707, a representative of Lebanese telecommunications provider Alfa Telecommunications (Alfa), testified before the Trial Chamber. The witness had been given permission to consult Alfa's business records and to seek advice from the relevant Alfa operational advisory teams in order to obtain information related to issues that arose during his initial testimony in January and February 2016. Throughout his testimony he identified to the Trial Chamber the source(s) for his information.

The witness gave a general explanation of the mobile network components, how a call is setup and transmission in a network. He also explained that the call data records (CDRs) contained numerous fields of information, such as registration information related to calls, times, routing and system connections.



GARY PLATT

Witness PRH 707 spoke about the Alfa subscribers' database that contains addresses, names, dates and type of subscriptions. Regarding pre-paid subscribers, he explained that current rules control the sale of such subscriptions, but that such a system did not exist in 2004-2005.

The witness informed the court that Alfa has no detailed records in its database of complaints made in 2004-2005. The company only started to register details of complaints in the past two to three years.

From 20 to 22 April, PRH 707 was cross-examined by Defence Counsel for Sabra.

Witness PRH 707 was questioned in depth about the methods and steps that Alfa teams used to respond to the OTP's requests for assistance in relation to Alfa's 2005 coverage maps. He confirmed that his predecessor provided the Alfa mapping information to the OTP and added that the information provided in the system took into consideration the cell sites that were active and operating in 2005.

Counsel asked witness PRH 707 about the cell sites that were in service in 2005 and those that were dismantled before or after the attack of 14 February that year. He then compared this to the document provided by Alfa. Counsel then focused on certain cell sites that were on air during the events of 14 February 2005 but were not included on the Alfa maps and about the consequences of not having all the cell sites on air on the shape files. PRH 707 explained that it's not a 100 per cent error.

He stated that in such case, the coverage of the neighboring cells partly might have not been correct, and there would be a certain margin of shortage in the coverage of the cells.

Witness PRH 707 identified the elements that create a margin of error in the mapping information of the cell sites. This included the accuracy of the map, the algorithm and mapping tools, the topography and human error. He added that Alfa estimated 60 to 70 per cent of accuracy of the prediction maps in the period of 2004 and 2005.

The witness then discussed Alfa's drive tests that determine whether the site has the coverage it needs, and confirmed the difference which could exist between the predicted coverage of a cell site and the drive tests due to the lack of necessary measurements in 2004. The witness explained the process of drive testing, the analysis of the measurements and the types of predicted coverage that could be used for more accuracy.

He further noted that the results of these drive tests were not routinely kept on record by the company.

Witness PRH 707 was then asked about the state of Alfa's network and its coverage in 2004 and 2005 and the use of prediction packages in the planning tool, which accurately predicts the coverage. He confirmed that there are certain basic fundamental elements to a package, with four of the key ones being the propagation model, the clutter model, the terrain model, and the transmission parameters.

Finally, the witness gave evidence on the directed re-try feature of the Alfa network which gives a caller trying to make a call through a cell site when all its channels are busy, the opportunity to direct the call to another cell site. When asked by the Defence Counsel, the witness stated that the Prosecution software could not be relied upon to determine exactly the location of the caller.

The Trial Chamber then deferred the cross-examination of witness PRH707 by Defence Counsel for Badreddine. Thus, the witness continues his testimony during the first week of May 2016.



SALIM AYYASH

Akhbar Beirut S.A.L. and Ibrahim Mohamed Ali Al Amin (STL-14-06)



IBRAHIM MOHAMED ALI AL AMIN

On 7 April, the Defence Counsel started the presentation of its case. The first witness was Najib El-Kharrat, who testified via Video Teleconference (VTC). He was asked about his witness statement, specifically about the article published by *Al Akhbar* on 15 January 2013 that included his personal information. He confirmed that the publication of the article did not affect his personal or professional life. The *Amicus Curiae* then cross examined El-Kharrat in a private session.

The second witness was Mahmoud Assi, who was the manager of the Sidon branch of Capital Insurance and Reinsurance Company in 2002.

As per his witness statement, *Al Akhbar* newspaper published an article on 19 January 2013 in which Assi's name, photo and other personal information were published. The newspaper also cited him as one of the Prosecution witnesses before the STL. The witness confirmed his written statement of 8 March 2016 and informed the Trial Chamber that he was not subject to any threat or harassment following the publication of the article. The *Amicus Curiae* then asked the witness about his witness statement, his testimony in the Ayyash et al. case on 1 October 2015, and his relationship with Al Amin and *Al Akhbar* newspaper.

The witness was further questioned about articles he wrote for *Al Akhbar* about car accidents and traffic laws. He was also asked about a clarification that he requested *Al Akhbar* to publish after his photo and name appeared in the newspaper.

On 8 April, the last Defence witness, Elias Aoun, President of the Order of Lebanese Press Editors, testified as an expert before the contempt judge. The witness was asked about his experience and qualifications, and about the freedom of press and expression in Lebanon and the report he drafted covering the topic. He also spoke about the rules and obligations of journalists in Lebanon. The *Amicus Curiae* asked the witness about his report, about the media in Lebanon and the reactions to *Al Akhbar* articles.

The 'Death' of Mustafa Badreddine and the Case of Ayyash et al. before the STL

On 13 May 2016, international news media began reporting that Mustafa Badreddine had been killed by shelling near Damascus International Airport. Badreddine, one of the highest-ranking military commanders of Hezbollah, is one of five co-accused in the trial of *Ayyash et al.*, the first and most significant case before the Special Tribunal for Lebanon (STL).

The attack that killed Badreddine was precisely targeted, injuring only a few other Hezbollah affiliates in his company. Hezbollah has blamed the incident on 'takfiri' forces – that is, extremist Sunni militants – against whom Hezbollah is pitted

through its support for Syrian President Bashar al-Assad.

Hezbollah's claim is disputed by the Syrian Observatory for Human Rights and various media sources due to the location of the attack and local groups' known capabilities. Some suggest that Israel is responsible, but this could be a dangerous allegation, as it would effectively require Hezbollah to respond in kind to maintain its legitimacy.

No one has yet claimed responsibility for the attack.

Badreddine's funeral was held on the day of his death and his body interred in Lebanon. The only comment from the STL appeared on 13 May 2016, stating briefly that the Tribunal "takes note of the reports ... announcing the death of Mustafa Amine Badreddine" and that "pending a judicial determination, the STL is not in a position to



MUSTAFA BADREDDINE

make any comment on this announcement in the media”.

Badreddine, known by a number of aliases, has remained physically out of the STL’s reach since charges were laid alleging his involvement in a 2005 attack that killed Lebanese Prime Minister Rafiq Hariri and 21 others. Despite various measures being taken, Lebanese authorities have been unable to bring Badreddine for trial in person. As a result, in 2012 the Trial Chamber issued its decision to try Badreddine, along with his co-accused Ayyash, Oneissi and Sabra, in absentia. It is for that reason that Badreddine was able to be present in Damascus last month.

The trial of *Ayyash et al.* is now in its third year. The Trial Chamber has sat for 221 days during this period, as well as issuing hundreds of written decisions and oral orders. One of these comprised the exclusion of evidence tendered for the accused Oneissi obtained from Wikileaks. The Trial Chamber cited a lack of reliability, insofar as evidence of their authenticity and accuracy could not be shown, and declined to certify the decision for interlocutory appeal. The Trial Chamber has also heard oral testimony in The Hague and via video link from Beirut from over 100 witnesses as part of the Prosecution case.

There has not yet been any public indication as to when the Prosecution case might close. Although, the Tribunal is presently scheduled to sit regularly until at least the end of July.

Badreddine’s interests remain represented by ADC-ICTY members Mylene Dimitri and Iain Edwards, with assistance from by Antoine Korkmaz.

As of 1 June, the STL Trial Chamber decided by majority that there is insufficient evidence to prove Badreddine’s death and therefore the trial will proceed pending confirmation by the Lebanese government.



Extraordinary Chambers in the Courts of Cambodia

Miriam Mallon, Legal Intern, Meas Muth Defence Team

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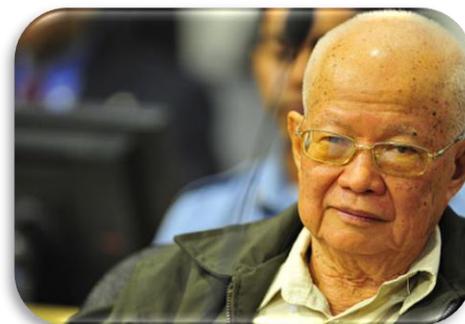
Nuon Chea Defence

In April 2016, the Nuon Chea Defence Team remained fully engaged in the Case 002/02 trial segment on Security Centres and Internal Purges. The team began the month by filing the second and third instalments of a series of witness requests for the segment. The Defence has thus far requested 25 additional witnesses, including already-requested witnesses to be expedited, new witnesses to be called and rejected witnesses to be reconsidered. The Defence argues that all of these witnesses can provide insight into a treasonous rebellion led by former CPK cadres and defectors to Vietnam, which goes directly to the heart of Nuon Chea’s case. The two requests made in April focus on witnesses who can testify about the rebellion’s leaders and/or current

top-ranking leaders in the Cambodian government, and witnesses who can testify as to the preparations for or attempts made at rebellion. At the time of writing, the Trial Chamber has yet to rule on these requests.

On 8 April 2016, the Defence Team filed a request to admit three letters, one video and one audio in relation to the late King Father Norodom Sihanouk. This request was triggered by a discussion the team had with expert witness Alexander Hinton, during his testimony in March 2016, concerning whether the use of the word “Yuon” by the Communist Party of Kampuchea (“CPK”) was racist and demonstrative of genocidal intent towards the Vietnamese population. The Defence argues that the

requested evidence reveals that the late King Father had used the term “Yuon” in a similar manner to the CPK and that this was an understandable political response to the real, existential threat Vietnam posed to Cambodia at the time, rather than evidence of genocidal intent. A decision on this evidence request is still pending.



KHIEU SAMPHÂN

Following the Khmer New Year break, the Nuon Chea Defence Team shifted their focus towards the examination of witnesses in respect of the next crime site: S-21 Security Centre, previously the focus of Case 001. The team also filed several additional motions. The first, filed on 18th April 2016, was a request to admit 8 documents in respect of S-21 witness, Nhem En.

The Trial Chamber ultimately admitted 7 of these documents. On 20 April 2016, the Defence Team filed a motion moving the Trial Chamber to allow the use of certain statements allegedly made by people detained in S-21 for which there is no real risk that they were obtained by torture. A decision on this motion is still pending.

Finally, on 28 April 2016, the Defence filed a request for the Trial Chamber to grant an adjournment of four weeks in order to permit it to properly prepare for the remaining S-21 witnesses in light of the amount of material to review in preparation for those witnesses as well as recent developments in the case, most notably including the disclosure, in early April, of an extensive new S-21 prisoner list, prepared by the Office of Co-Investigating Judges over a two-year period. The team argued that this adjournment was necessary in order to safeguard Nuon Chea's fair trial rights, in particular his right to adequate time to prepare, his right to examine witnesses, and his right to enjoy equality of arms. In early May, this Chamber partially granted the request, announcing a one-week adjournment.

Khieu Samphân Defence

In April 2016, the Khieu Samphân Defence Team remained fully engaged in preparing and attending the Trial Chamber hearings of Case 002/02, which moved on from the targeted groups segment of the trial, dealing with the treatment of the Cham population, to the internal purges and security centre segment. The hearings, in particular, focused on the Phnom Kraol Security Centre, in the North East Zone, and S-21.

On 20th April, following testimony from anthropologist expert witness Professor Alexander Hinton, the Defence filed a motion in order to support the Nuon Chea request seeking the admission of several documents related to the late King Sihanouk's speeches and letters delivered after the Vietnamese took over Phnom Penh in January 1979.

Meas Muth Defence

In April 2016, the Meas Muth Defence filed two letters and a motion, which have been classified as confidential, to the Co-Investigating Judges. The Defence also sent a letter to the Public Affairs Section requesting the correction of inaccurate information on the ECCC website that made it appear as if certain allegations concerning Mr. Meas Muth had already been proven, when they are in fact under judicial investigation. The Defence continues to review material on the Case File and file submissions, where necessary, to protect Meas Muth's fair trial rights.

Ao An Defence

In April 2016, the Defence Team for Ao An submitted two applications to the Office of the Co-Investigating Judges to seize the Pre-Trial Chamber regarding the annulment of investigations concerning certain crime sites pursuant to Rules 21, 48 and 76(2) of the Internal Rules of the ECCC. Further, the team continued to review all the evidence on the Case File and prepare submissions to safeguard Ao An's fair trial rights.

Yim Tith Defence

Throughout April 2016, the Yim Tith Defence Team continued to analyse the contents of the Case File in order to participate in the judicial investigation, prepare Yim Tith's defence and protect his fair trial rights. Further, the Defence has been preparing a response to the International Co-Investigating Judge's call for amicus curiae submissions on the scope of 'crimes against humanity' in international customary law between 1975 and 1979.

Im Chaem Defence

It was with great sadness that the Defence team for Im Chaem officially notified the Co-Investigating Judges of the passing of Im Chaem's International Co-Lawyer, John R.W.D Jones QC, on 28 April 2016. The Defence continues to review the evidence in the Case File in order to prepare Im Chaem's defence and endeavor to safeguard the client's fair trial rights in the remaining proceedings of the pre-trial stage of Case 004/01.

News from the Region



Serbia

Vojislav Šešelj elected as Presidential Nominee by the Serbian Radical Party

On 16 May 2016, the nationalist Serbian Radical Party (SRS) announced that its leader, Vojislav Šešelj, will run in the Presidential Elections in 2017.

On 31 March 2016, Šešelj was acquitted by the ICTY of nine charges of war crimes and crimes against humanity. Šešelj was temporarily released from the UN Detention Unit by the ICTY and returned to Belgrade, Serbia in November 2014 due to health reasons.

The SRS, once one of the largest political parties in Serbia, lost all of its seats in the 2012 parliamentary elections. Since Šešelj's return in 2014, he has reinvigorated the ultranationalist support for the SRS and their recent return to Parliament. Šešelj has publicly advocated for an alliance with Russia, the abandonment of Serbia's bid to join the European Union and an end to cooperation with the North Atlantic Treaty Organisation (NATO).

On 2 May 2016, the MICT filed a Notice Appeal against the acquittal on the grounds that the Trial Chamber erred in law by failing to deliver a reasoned judgement and erred in fact by acquitting Šešelj. The relevant Judges of the MICT will decide on the appeal, with President Theodor Meron as Presiding Judge.



VOJISLAV ŠEŠELJ

Acquittal of Persons Alleged to have Assisted Ratko Mladić Evade Capture

A Serbian court has acquitted ten accused persons, who allegedly assisted Ratko Mladić evade capture during 2002 to 2006 despite the ICTY issuing an arrest warrant. The spokesperson for the First Basic Court in Belgrade announced that the statute of limitations regarding the criminal prosecution had expired. The prosecution has the right to appeal this decision.



Kosovo

Impending End to EULEX, while Kosovo Court Faces Trouble Before It Begins

Sejdi Thaçi, listed as a missing person by the International Red Cross and Humanitarian Law Centre on 6 January 1999, reappeared in his hometown of Klina, Kosovo on 17 April 2016. Thaçi explained that he left Kosovo willingly and lived in Belgrade for 17 years, apparently homeless. Thaçi's relatives suspected his disappearance was linked to the murders of five Serbian teenagers, who were killed by unknown perpetrators in a café around the time of Thaçi's disappearance.

There are still 1,666 persons who remain missing from the war in Kosovo.



SEJDI THAČI



Croatia

Council of Europe's Commissioner for Human Rights criticises Croatian Government

The Commissioner for Human Rights of the Council of Europe, Nils Mužnieks, visited Croatia for five days in April 2016. The Commissioner appealed to the Croatian Government to combat what he perceived as growing violence, discrimination and ethnic intolerance against minority groups, primarily the Serbian, Jewish and Roma communities. Although, Croatia has a legislative and institutional framework to protect minority rights, the Commissioner believes this protection is threatened by an 11 percent decrease in funding for associations of national minorities.

The Commissioner also expressed concern about recent physical attacks, death threats and intimidation of journalists and the Government's lack of response. There have also been reports of sudden dismissals in management and editorial positions in the public media.

The Commissioner touched upon the need to address: unresolved cases of serious human rights violations and war crimes from the 1990s; compensation for all victims of war; the outstanding number of people still missing from the war and conditions for refugees including recognising citizenship for the approximate 2,800 people who are at risk of deportation.

The Commissioner urged the Croatian government to work towards enhancing a tolerant and inclusive society.



NILS MUŽNIEKS

Looking Back...

International Criminal Court (ICC)

Five years ago...

On 27 June 2011, ICC Pre-Trial Chamber I issued warrants of arrest for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. They were accused of using the Security Forces and the State apparatus to committed murder and persecution in



ABDULLAH AL-SENUSSI

Libya from 15 to 28 February 2011. On 26 February 2011, the UN Security Council decided to refer their trial to the ICC with the unanimously adopted resolution 1970.

The Office of the

Prosecutor (OTP) stressed that even if Libya was not a State Party of the Rome Statute, it was nevertheless a member of the United Nations, and therefore it had to implement the Resolution 1970 which specifically requested to the country to "cooperate fully with and provide any necessary assistance to the Court and the Prosecutor".

The OTP continued to collect evidence of crimes committed, primarily rape until 15 February 2011.

International Criminal Tribunal for Rwanda (ICTR)

Ten Years Ago ...

On 2 June 2006, Joseph Serugendo was sentenced to six years' imprisonment by the ICTR. He was both a member of the governing board of the Radio Television Libre des Mille Collines and member of the National Committee Interahamwe za MRND. Through those public mediums, he encouraged to commit genocide and persecution.

He pled guilty of having provided technical assistance and moral support to the Radio Television Libre des Mille Collines by disseminating anti-Tutsi messages before and during the commission

of the genocide. He acted pursuing the aim of destroying the Tutsi ethnic group and for this reason, he influenced the National Committee Interahamwe za MRND by inciting to kill members of the Tutsi population.

In order to determine the length of the sentence, the Chamber took into consideration the gravity of the crimes committed and the sincere remorse expressed by the Accused together with his decision to plead guilty.

International Criminal Tribunal for the former Yugoslavia (ICTY)

Fifteen years ago...

On 29 June 2001, Slobodan Milošević, the former President of Serbia, was transferred to the UN Detention Unit in Scheveningen from his cell in Belgrade's central prison and flown by helicopter to an US-run air base in Tuzla and after he was put on a NATO plane to The Hague.

Milošević was surrendered to the ICTY investigators in Belgrade after a crisis meeting of the reformist Serbian Government. The decision of

the transfer was not welcome by, Vojislav Koštunica, the former Yugoslav President, who labelled it as unconstitutional and illegal. On the other hand, Judge Claude Jorda, former President of the ICTY, pointed out the importance of the trial in the fight against impunity.

The trial against Milošević was the first trial of a former Head of State. Proceedings were terminated after the death of Milošević in 2006.

International Court of Justice (ICJ)

Thirty years ago...

On 27 June 1986, the ICJ issued its judgement in the case of *Nicaragua v. United States*. The ICJ ruled in favor of Nicaragua and against the U.S and awarded reparations to Nicaragua. The ICJ held that the U.S. had violated international law by supporting the Contras in their rebellion against the Nicaraguan government and by mining Nicaragua's harbors. The US refused to participate in the proceedings after the Court rejected its argument that the ICJ lacked jurisdiction to hear the case. The US later blocked enforcement of the judgment by the UN Security Council and

thereby prevented Nicaragua from obtaining any compensation. The Nicaraguan government withdrew the complaint from the Court in September 1992. The Court found in its verdict that the US was "in breach of its obligations under customary international law not to use force against another State", "not to intervene in its affairs", "not to violate its sovereignty", "not to interrupt peaceful maritime commerce", and "in breach of its obligations under Article XIX of the Treaty of Friendship, Commerce and Navigation between the Parties signed at Managua on 21 January 1956".

Defence Rostrum

Panel Discussion: Coming to a close; Trials and Tribulations of the Yugoslavia War-Crimes Tribunal

On 31 May 2016, the Institute for War, Holocaust and Genocide Studies (NIOD) in cooperation with the International Justice Tribune organised a panel discussion on "Coming to a close. Trials and tribulations of the Yugoslavia war-crimes Tribunal." This event was held at the Amsterdam Public Library.

The panel consisted of four participants: Julian Borger, a journalist on the former Yugoslavia for the Guardian and BBC, Vladimir Petrović, senior researcher at the Institute for Contemporary History in Belgrade, Iva Vukusić, PhD candidate at Utrecht University, and Stephanie van den Berg, former Associated Foreign Press correspondent in The Hague and Belgrade.

Van den Berg moderated the event and she began with a brief introduction on which fugitives the Tribunal had apprehended over the last two decades. She shed some light on the finding of Milosević, Mladić and Karadžić. She acknowledged that she never had expected that the Tribunal would be able to find Karadžić. Moreover, she stated that from her perspective, the Tribunal had only one significant achievement; they were able to put on trial the majority of the indicted.

In addition, Borger made some comments on his latest book: "The Butcher's Trial" that was recently released.

He argued that on the one hand, the Tribunal is a historical achievement, and at the same time it is a poorly functioning transitional justice institution. For instance, Borger referred to Serge Brammertz's statement that the Tribunal established a significant database over time, including an archive of hundreds of important documents. However, he mentioned the failing of the Tribunal, such as the extensive resources and military operations that were organised in order to find Karadžić over many years.

To follow up on this, the panelists discussed the systemic failures of the collaborating state's intelligence services and their coordination of special forces. There was a general sentiment among the stationed troops that of ignorance of the Tribunal's arrests warrants. Most notably, the Europol Liaison Officer in charge of the operation to find Karadžić was living directly across the corridor from him for a significant amount of time.

Van den Berg and Borger were both quite skeptical about the Tribunal's achievements. The lack of regional acceptance and success of the Tribunal can contribute to the questioning of its accomplishments. However, the ICTY is a significant historical institution because it has definitely set a precedent for international criminal justice.

As stated by the panelists, it is now expected for post-conflict regions to hold someone accountable, whether it be in a domestic or international court.

As the panelists discussed, anybody and everybody can criticise the work of the Tribunal, but it is hard to measure and determine the levels of success for such institutions, because the concept is relatively in its early stages. If you compare the ICTY with the Nuremberg Trials, it can be suggested that some achievements were made. For instance, the notion of holding high officials, such as Heads of State and Military Officers accountable. In addition, the cooperation between the regional and continental security forces increased overtime and made it possible to extradite fugitives.

Hence, Iva Vukusić mentioned people should look at the long term and try to stay optimistic. The ICTY contributed to international criminal justice. Nonetheless, there is still room for improvement, but they created a constructive path in which the International Criminal Court can continue to expand on ICTY's foundation for justice.

Blog Updates and Online Lectures

Blog Updates

"Historical Aspects of the standard of proof beyond a reasonable doubt & the principle of in Dubio Pro Reo", by Michael Karnavas. Blog available [here](#).

"Peace & Security Salon on Biological and Chemical Weapons", by H. Huisman. Blog available [here](#).

"An International Legal Agreement between the FARC Guerrilla and the Colombian Government", by Nicolás Carrillo-Santarelli. Blog available [here](#).

Online Lectures and Videos

"Completing the Mandate: The Legal Challenges Facing the International Criminal Tribunal for the former Yugoslavia", Judge Fausto Pocar. Lecture available [here](#).

"The Chemical Weapons Convention: an Overview", Santiago Oñate Laborde. Lecture available [here](#).

"Making (responsive) rule of law", by Veronica Taylor. Lecture available [here](#).

Publications and Articles

Books

Petrovic, Jadranka (2016). **Accountability for Violations of International Humanitarian Law**, Routledge, Taylor & Francis Group.

Viebig, Petra (2016). **Illicitly Obtained Evidence at the International Criminal Court**, Asser Press.

Završnik, Aleš (2016). **Drones and Unmanned Aerial Systems: Legal and Social Implications for Security and Surveillance**, Springer.

Articles

Corrie, Karen (2016). "Could the International Criminal Court Strategically Prosecute Modern Day Slavery?", *Journal of International Criminal Justice*, Volume 14, Issue 2.

Mahony, Chris (2015). "The Justice Pivot: U.S. International Criminal Law Influence from Outside the Rome Statute", *Georgetown Journal of International Law*, Volume 46, P. 1071-1134.

Andresen, Joshua (2016). "Due Process of War in the Age of Drone", *Yale Journal of International Law*, Volume 41, P.155-188

Calls for Papers

The **European Society of International Law** has issued a call for papers on "How International Law Works in Times of Crisis". Deadline: 1 July 2016, for more information click [here](#)

The **Akron Law Review and Akron Law's Center for Constitutional Law** have issued a call for papers on "Justice Scalia on Criminal Law and Procedure: Friend of Foe?" Deadline: 1 July 2016, for more information click [here](#).

Events

SCL Lecture: Lessons from Hybrid Courts

Date: 8 June 2016

Location: Asser Institute, The Hague

For more information please click [here](#).

Trials in Absentia in International Criminal Justice

Date: 8 June 2016

Location: The Hague Institute for Global Justice, The Hague

For more information click [here](#).

ADC-ICTY Mock Trial

Date: 13-18 June 2016

Location: ICTY, The Hague

For more information click [here](#).

Aiding and Assisting: Challenges in Armed Conflict and Counterterrorism

Date: 27 June 2016

Location: Chatham House, London

For more information click [here](#).

Opportunities

Associate Legal Officer (P2)

The Extraordinary Chambers in the Courts of Cambodia
Department of Economic and Social Affairs-Phnom-Pehn

Deadline: 12 June 2016

For more information click [here](#).

Legal Officer (P3)

International Criminal Court

Registry-The Hague

Deadline: 13 June 2016

For more information click [here](#).

Legal Officer (P3)

International Criminal Tribunal for the former Yugoslavia
Chambers- The Hague

Deadline: 17 June 2016

For more information click [here](#).

Legal Officer (P3)

UN Headquarters New York

Office of Legal Affairs- New York

Deadline: 17 July 2016

For more information click [here](#).

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GOODBYE AND THANK YOU!

The ADC-ICTY would like to express its sincere appreciation Karolina Sibirzeff for her contributions to the Newsletter, we wish her all the best for the future!