



STANIŠIĆ AND SIMATOVIĆ AND DEFENCE TEAMS



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# MICT News

## Prosecutor v. Stanišić and Simatović (MICT-15-96)

In the case of Prosecutor v. Stanišić and Simatović, summer recess began on 21 July 2017 and was extended until 21 August 2017. Upon resumption of the trial, a protected witness who had begun his testimony from 10 – 13 July 2017, continued with cross-examination by Mihajlo Bakrač, Defence Counsel for Simatović. The witness continued his testimony through video-link with protective measures, including image and voice distortion and much of the testimony was given in private session. During cross-examination, the witness was confronted about his many inconsistencies between his previous testimonies and his current statements. The witness was questioned about two police

Puchs crossing from BiH and Croatia to Knin carrying weapons and changing registration plates and his first meeting with Simatović. There were inconsistencies between the witness’s previous testimonies and his current testimony: an example was the number of routes between Bosansko Grahovo and Knin, previously he had stated that there was only one via Strmnica, however during his most recent testimony he stated that they could have chosen from a hundred different routes. When confronted with the transcript of his testimony from the previous trial, where he stated that he was introduced to Simatović at a different time, the witness

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stated that his previous recollection and statement were not true. He said that the event involving the Puch vehicles was 100 percent accurate and that was the first time he saw Simatović. This led to disagreements during cross-examination between the witness and Defence Counsel.

Another section of the cross-examination focused on the road blocks in Bosnia and Herzegovina (BiH) and Croatia manned by paramilitaries. When the witness was asked about the roadblocks in BiH and Croatia, the witness testified that at the time, "the newspaper, TV and radio all reported about this. There were roadblocks the whole route, not at the same intervals, not so numerous as ours in Krajina. The road was passable, but there were roadblocks along

the whole way and you never knew where they would be. We knew that they would put roadblocks at the separation line between Serb territory and Croat territory".

The issue of Simatović supplying Land Rovers came up in cross-examination and then the Prosecution attempted to clarify the link between the Land Rovers and Simatović in re-direct through the use of a specific document. However, the Prosecution's line of questioning was objected to by the Defence, in that the evidence being presented was not authored by the witness and to which the witness had no connection. The Trial Chamber accepted the Defence's objection, which came as part of a number of objections the Defence, directed at the Prosecution's line of

questioning and use of evidence in re-direct. This witness's testimony formed an important foundation in the Prosecution's case against Stanišić and Simatović. His testimony concluded on 24 August and trial continues with the next Prosecution witness on 29 August 2017.



MIHAJLO BAKRAČ

## News from other International Courts

### Extraordinary Chambers in the Courts of Cambodia

*Roxane Chambaud, Ao An Defence Team*

*The views expressed herein are those of the author alone and do not reflect the views of the ECCC.*

#### **Nuon Chea**

During July, the Nuon Chea Defence Team prepared amendments to their closing trial brief in Case 002/02 in light of revisions made to trial transcript content following a comprehensive, ongoing review by the Transcription Unit.

#### **Khieu Samphân**

In July 2017, the KHIEU Samphân Defence prepared and re-filed its public redacted

closing brief in accordance with the lifting of specified confidentiality restrictions. The Defence also started to prepare its amended closing brief following the transcript review process, to be filed on 30 September 2017.

#### **Meas Muth**

The Meas Muth Defence filed four submissions to the Co-Investigating Judges, each of which has been classified as

confidential. The Defence continues to review material on the Case File and to prepare submissions to protect Meas Muth's fair trial rights and interests.

#### **Im Chaem**

In July, the Defence welcomed the issuance by the Co-Investigating Judges of the full reasons of the Closing Order dismissing all charges against IM Chaem.



The Defence is currently preparing for the response to the appeal against the Closing Order filed by the International Co-Prosecutor as well as another response to a confidential appeal.

### **Ao An**

In July, the AO An Defence filed a Request for Clarification to the Office of the Co-Investigating Judges.

The Defence also continues to review all materials on the Case File and prepare other filings to safeguard AO An's fair trial rights.

### **Yim Tith Defence**

In July, the Yim Tith Defence continued to analyse the content of the Case File in order to participate in the investigation, prepare Yim Tith's defence and endeavour to protect his fair trial rights.



## International Criminal Court

*Xan Ingram & Mariana Gutierrez, Legal Interns, Office of Public Counsel for the Defence  
The views expressed herein are those of the author alone and do not reflect the views of the ICC.*

### Prosecutor v. Laurent Gbagbo and Blé Goudé (ICC-02/11-01/15)

On July 19 2017, the Appeals Chamber delivered its judgment regarding Laurent Gbagbo's appeal from the Trial Chamber's March 2017 decision to deny him interim release [ICC-02/11-01/15-992-Red]. The Appeals Chamber reversed the Trial Chamber's decision and remitted the matter to the Trial Chamber for a new review of the request from Gbagbo, who has remained in detention since 2011.

The Appeals Chamber found that the Trial Chamber erred in: (1) finding that Gbagbo's age supported his continued detention when it should be considered, alongside issues of ill health, in favor of release; (2) finding that Gbagbo's continued plea of not guilty supported his continued detention; and (3) failing to consider Gbagbo's time already spent in detention as a factor supporting interim release.

The reasoning in the judgment, which has clarified some of the factors that chambers must take into account when considering

interim release, is summarized below. Analysis is further provided regarding its place within the overall framework of interim release jurisprudence at the ICC.

#### **The Appeals Chamber's Judgment on Laurent Gbagbo's interim release appeal**

Gbagbo argued that the Trial Chamber arrived at conclusions that were unsupported, failed to take into account relevant facts, and wrongly considered irrelevant facts. He submitted six grounds for appeal, which the Appeals Chamber reordered and addressed by topic. As this concerned a renewed request by Gbagbo for interim release, in order for him to succeed on appeal, he needed to demonstrate to the Appeals Chamber that there was a "clear error" that "materially affected" the Trial Chamber's finding that the circumstances justifying his detention had not changed.

Gbagbo's first and third grounds of appeal challenged the Trial Chamber's conclusion

that he had a network of pro-Gbagbo supporters. He argued that, in reaching this conclusion, the Trial Chamber relied on insufficient evidence and refused to consider certain Defence submissions. Gbagbo advanced specific arguments regarding changes in the composition of the pro-Gbagbo support network. However, because it was the existence of a viable support network, not its relative strength, which was determinative in the Trial Chamber's decision, the Appeals Chamber found that the Trial Chamber did not err. The Appeals Chamber also agreed that the Trial Chamber did not err in ruling that the support network's criminality did not have to be proven, but rather that it had to appear to be necessary to continue to detain him in order to prevent him from absconding or obstructing justice.

In his fourth ground of appeal, Gbagbo challenged the Trial Chamber's consideration of his age as a factor that would increase his desire to abscond. The

Trial Chamber had held that this supported a need for his continued detention. However, the Appeals Chamber, relying on other international jurisprudence, ruled that this was an error, and that Gbagbo's age should be considered as a factor mitigating the possibility that he would abscond. The Appeals Chamber also ruled that it was an error for the Trial Chamber to fail to consider whether there was a legitimate change in Gbagbo's health that could affect the necessity of his continued detention pursuant to Article 58(1)(b) of the Statute.

As his fifth ground of appeal, Gbagbo submitted that the Trial Chamber erred by considering the gravity of the charges against him and his denial of responsibility as factors supporting his continued detention. The Appeals Chamber agreed with the Trial Chamber that the gravity of the charges was a relevant factor supporting his continued detention. However, the Appeals Chamber called it "paradoxical" for the Trial Chamber to consider Gbagbo's denial of responsibility as a factor supporting his continued detention. The Appeals Chamber held that the Trial Chamber's ruling would require defendants to plead guilty in order to be eligible for interim release, would be an offense to the presumption of innocence, and would violate the right to remain silent without that being considered in the determination of guilt or innocence.

For his second ground of appeal, Gbagbo submitted that the Trial Chamber should have considered his time already spent in detention as a factor supporting release. The

Appeals Chamber agreed with Gbagbo to hold that the Trial Chamber erred by not considering his time spent in detention. The Appeals Chamber reasoned that considering how Gbagbo had been detained since November 2011, his trial did not start until January 2016, and the Prosecution was still presenting evidence, the reasonableness of his continued detention was a legitimate issue that deserved consideration by the Trial Chamber.

The Appeals Chamber did not consider that the conditional release issues raised in Gbagbo's fourth and sixth grounds of appeal were ripe for adjudication until the final decision on continued detention had been rendered.

Following this judgment, the issue of Gbagbo's renewed request for interim release has been remitted back to the Trial Chamber, which requested the parties to file new submissions by 23 August 2017 considering the factors addressed by the Appeals Chamber [ICC-02/11-01/15-993]. A decision on Gbagbo's interim release will then be expected in due course.

#### Interim release jurisprudence at the ICC

This judgment follows precedents from the *Bemba*, *Bemba et al.*, *Ongwen*, and *Lubanga* cases. Here, like in the *Bemba et al.* case [ICC-01/05-01/13-970], the Appeals Chamber considered detention for an unreasonable amount of time to be a factor supporting interim release. In both cases, the liberty interests involved in this analysis were balanced against risks under article 58(1)(b) (reasons to hold a defendant in detention).

This balancing of articles 60 (setting out the a defendant's rights to release in the case of unreasonable delay by the Prosecutor) and 58 were affirmed in *Ongwen*, as well [ICC-02/05-01/15-349-Red]. Additionally, in analyzing whether there were changed circumstances in the present case, the Appeals Chamber utilized the definition of changed circumstances set forth in the *Bemba* case: "a change in some or all of the facts underlying a previous decision on detention, or a new fact satisfying a Chamber that a modification of its prior ruling is necessary." [ICC-01/05-01/08-1019] Finally, in the *Bemba* case as well as the *Lubanga* case [ICC-01/05-01/08-1088, ICC-01/04-01/06-824], the gravity of the charges was also considered to be a factor supporting continued detention.



BLÉ GOUDÉ & LAURENT GBAGBO

#### Prosecutor v. Bosco Ntaganda (ICC-01/04-02/06)

On 15 June 2017, the Appeals Chamber of the ICC affirmed Trial Chamber VI's conclusion that the Court has jurisdiction over the war crimes of rape and sexual slavery when committed against members of the same armed force or group.

Bosco Ntaganda has been charged with these crimes (Counts 6 and 9), but had opposed the Court's jurisdiction over them since his confirmation of charges hearing. In his submission, the relevant provisions of



**BOSCO NTAGANDA**

the Rome Statute imply that the only persons who can be victims of these crimes are "protected persons" within the meaning of the Geneva Conventions or "persons taking no active part in the hostilities" under Common Article 3. Given that members of an armed force are not "persons taking no active part in the hostilities", the Defence argued that they cannot be victims within the jurisdiction of the Court.

This article will summarise the reasons behind the Appeals Chamber's dismissal of Ntaganda's appeal, and also serves as an update to an earlier ADC article on the litigation, which reported on Trial Chamber VI's Impugned Decision on the issue (see issue No. 110).

### **The Appeals Chamber's judgment confirming jurisdiction in respect of Counts 6 and 9**

Trial Chamber VI had recognised that article 8, which sets out the ICC's jurisdiction over war crimes, could be divided into four categories of crimes: (i) grave breaches of the Geneva Convention (article 8(2)(a)); (ii) other serious violations of the laws and customs applicable in international armed conflict (article 8(2)(b)); (iii) serious violations of Common Article 3 (article 8(2)(c)); and (iv) other serious violations of the laws and customs applicable in armed conflicts not of an international character (article 8(2)(e)). Ntaganda had been charged with rape and sexual slavery, which are war crimes enumerated in article 8(2)(b)(xxii) for situations of international armed conflict, and article 8(2)(e)(vi) for non-international armed conflicts. The main issue that the Appeals Chamber had to determine was whether the Trial Chamber erred in law when it held that victims of rape and sexual slavery under article 8(2)(b) and (e) do not have to be "protected persons" in the sense of the Geneva Conventions of 1949 or "persons taking no active part in the hostilities" in the sense of Common Article 3 (so-called "Status Requirements").

In analysing that issue, the Appeals Chamber first referred to the ordinary meaning, context and drafting history of the provisions concerned. The Appeals Chamber agreed with the Trial Chamber's view that, contrary to the war crimes enumerated in articles 8(2)(a) and (c), the *chapeaux* of Articles 8(2)(b) and (e) do not expressly provide that the victims of rape or sexual slavery have to be "protected persons" within the meaning of the Geneva Conventions or "persons taking no active

part in the hostilities" in terms of Common Article 3. It found that the drafters of the Statute had the intention for the crimes of rape and sexual slavery under articles 8(2)(b)(xxii) and 8(2)(e)(vi) to be "distinct war crimes" to the crimes in articles 8(2)(a) and (c).

Furthermore, the Appeals Chamber acknowledged that both Articles 8(2)(b)(xxii) and (e)(vi) expressly refer to the Geneva Conventions, but agreed with the Trial Chamber's finding that, given the wording of the provision, this reference is only meant to set a gravity threshold in respect of the crime of "any other form of sexual violence", and therefore does not imply any Status Requirements to rape and sexual slavery. The Appeals Chamber found that this conclusion is supported by the Elements of the Crimes, which provide that "other form[s] of sexual violence" would only be criminal if they are of a gravity comparable to that of a grave breach of the Geneva Conventions or a serious violation of Common Article 3. The Appeals Chamber therefore found no error in the Trial Chamber's finding that, based on the ordinary meaning, context and drafting history of the provisions concerned, victims of rape and sexual slavery do not need to be "protected persons".

The Appeals Chamber's second enquiry concerned the wording in the *chapeaux* of article 8(2)(b) and (e) that other serious violations must be "within the established framework of international law". The Appeals Chamber was not persuaded by the Prosecution's argument that this expression



should only permit the Court to refer to that framework of law for interpretation purposes, without allowing the introduction of additional elements not expressly provided in the definition of the crimes. To the contrary, the Appeals Chamber stated that such a reference permits the introduction of additional elements drawn from and consistent with the set of legal rules of international humanitarian law. It stated:

If customary or conventional international law stipulates in respect of a given war crime set out in article 8 (2) (b) or (e) of the Statute an additional element of that crime, the Court cannot be precluded from applying it to ensure consistency of the provision with international humanitarian law, irrespective of whether this requires ascribing to a term in the provision a particular interpretation or reading an additional element into it.

Consequently, the Appeals Chamber examined the scope of application of the Geneva Conventions and particularly of Common Article 3 to identify any such

additional elements. It concluded, however, that international humanitarian law does not contain a general rule that categorically excludes members of an armed group from protection against crimes committed by members of the same armed group.

Therefore, the Appeals Chamber rejected the existence of Status Requirements specifically for victims of rape and sexual slavery within the framework of international humanitarian law, and agreed with the Trial Chamber that “there is never a justification to engage in sexual violence against any person; irrespective of whether or not this person may be liable to be targeted and killed under international humanitarian law”.

#### **Notable finding regarding the principle of legality**

It should be noted that one of the pillars of criminal law, the principle of legality (recognised in Articles 22 and 23 of the Statute) was also addressed in the judgment. The Appeals Chamber rejected

the Prosecution’s contention that introducing additional requirements on the crimes prescribed under Articles 8(2)(b)(xxii) and (2)(e)(vi) would be inconsistent with the principle of legality.

It follows that, in doing so, the Appeals Chamber underlined that such a principle is meant to protect accused persons “against broad interpretation of the elements of the crimes or their extension by analogy”. Therefore, in the Appeals Chamber’s view, it does not preclude the Court from imposing additional elements when doing so will be in conformity with conventional and customary international humanitarian law.

#### **Bosco Ntaganda to resume testifying on 28 August**

On 14 June 2017, Bosco Ntaganda began testifying before the Court. The Prosecution is scheduled to resume its cross-examination of Ntaganda following the recess. This is set for 28 August.



*The views expressed herein are those of the author alone and do not reflect the views of the STL.*

### **Special Tribunal for Lebanon**

#### **Next stage of proceedings**

The Legal Representatives of Victims (LRV), were authorized by the Trial Chamber in a decision dated 31 July 2017 (F3260) to present their case in the week of 28 August 2017.

The LRV estimates that its presentation of evidence, would take approximately two

weeks of court time. This presentation will be interposed before the formal close of the Prosecution case.

In a filing dated 3 May 2017 (F3116), and a related filing on 10 May 2017 (F3132), the LRV is authorised to call seven participating victims and one victimologist to testify as viva voce witnesses. In addition, it intends to

present the evidence of 23 witnesses in written form.

The seven participating victims will testify about the material, mental and physical harm they suffered due to the attack of 14 February 2005.

A non-victim witness, victimologist Dr. Rianne Letschert, has conducted interviews

with the majority of the participating victims and will testify about the profile of the victims, their needs, and the ways in which access to justice can fulfil those needs.

The Trial Chamber in its decision of 31 July 2017, deferred whether Dr Souaid may testify pending receipt of his witness statement or report, granted the LRV's application to add four witnesses to their witness list, as submitted on 10 May, and ordered the LRV to submit for admission into evidence the documents supporting the proposed agreed facts according to directions set out in the decision. These include medical records and reports of participating victims, death certificates of deceased persons related to them, documents relating to financial expenses incurred by participating victims, photographs of the crime scene, and investigative reports.

The LRV filed its proposed witness and exhibit lists, along with a Public Notice highlighting the main points of the case, on 13 December 2012 (F0597). The filings were amended on 29 August 2013 (F1083), 26 February 2014 (F1428), 1 October 2014 (F1682), 3 and 10 May 2017.

### **Witness summary**

On 3 July, Andrew Donaldson resumed his testimony. He continued testifying about the PowerPoint presentation he prepared in relation to Merhi and the means of attribution of the mobiles allegedly used by the Accused.

He spoke about documents and phone calls which support a sequence of events

involving Merhi, the use of Purple 231 and mobile 091, the phone predominantly used by Merhi's wife.

The witness also testified about Green 071 and gave an overview of the means of attribution, which is featured in his PowerPoint presentation. Donaldson explained the significance of the relevant dates for establishing attribution such as the first data, first non-service call, profile change, and deactivation. The witness testified that Green 071 shared a similar geographic profile with Purple 231, demonstrating that both phones were used in the same places.

He explained that several of the standard techniques that are used to attribute a phone to an individual were not of assistance in the case of Green 071 because it was a post-paid phone, investigations into the payment methods did not result in attribution evidence, the subscriber document that was used for the phone was fraudulent, and the IMEI was never used again after the relevant period. The witness further spoke about the phone activity involving Green 071, its contact and geographic profile, calls and SMSs.

On 4 July, Donaldson discussed the cell dump analysis he prepared in relation to travel of Purple 231 and Green 071 between two cell sectors, ANQOUN<sup>2</sup> and NAAMEH<sup>1</sup> on 25 September 2004. The witness also spoke about the conclusions drawn in his PowerPoint presentation for Merhi, including the co-location analysis for Green 071 and Green 023, and the occasions where mobile 091 was provided for Merhi and his

children. Concerning the attribution of Purple 231 and Green 071 to Merhi, the witness explained that the cell sector closest to Merhi's residence was BRAJNE<sup>2</sup>, the same cell sector that was most frequently used by Purple 231 on Sundays and evenings. Additionally, the witness testified that this along with the contact profile for Purple 231 demonstrate that Merhi was the user of Purple 231. The witness further explained that whenever Green 071 was being used, Purple 231 was also used close in time.

The witness then testified about the PowerPoint presentation he prepared regarding the named co-conspirator Badreddine. He informed the Chamber that his PowerPoint contains information about direct attribution of PMP 354 to Badreddine, documents and testimony around his identity and multiple identities including university records, information about known addresses, his contacts, attribution of PMP 663 and SMP 944, and finally the use of Green 023.

Donaldson spoke about the analysis of PMP 354 including its attribution, contact profile, and SMS content. According to the witness this number saw contact with Samino insiders and employees (three jewelry stores allegedly owned by Sami Issa who according to the Prosecution's case is Badreddine), Hezbollah officials or MPs, family members, friends at university, and girlfriends of Badreddine.

On 5 July, Donaldson continued his testimony in relation to the attribution of

telephone numbers to Badreddine. He spoke about the geographic profile of PMP 354, and the top ten cells towers it activated.

The witness then spoke about the subsection on identity covered in his PowerPoint, including pictures and documents relating to Badreddine. He spoke in particular about five pictures of Badreddine displayed on one of his PowerPoint slides and stated that pictures of the former Accused were rare to the investigation and to the public. He also spoke about their relevance to the identification of the users of telephone numbers (PMP 354 and PMP 663) which according to the Prosecution's case are attributed to Badreddine.

The witness also discussed the birth certificate of Badreddine and the absence of his official records, which in his opinion is indicative of somebody who sought to keep their identity covert. He then spoke about the corroboration of identity between Badreddine and Sami Issa including their common birthdays, leg-related health problems, common university course, and absence of records of Sami Issa. Donaldson also referred to student and medical files and SMSs where Badreddine used the alias Safi Bader.

The witness also testified about the geographic profiling of addresses and locations relevant to Badreddine and noted that no primary residence has ever been identified. He also spoke about Special Tribunal witnesses' attribution of 663 to Sami Issa and the contact and geographic profile of the phone.

On 6 July, Donaldson continued his testimony regarding the attribution of phone numbers to Badreddine.

Donaldson spoke about his analysis of the details of over a thousand days of common use of phones PMP 354 and PMP 663. The witness explained that the aim of looking into the common use is to provide a measurement of the proximity of the cell tower used by PMPs 663 and 354 when they were used within ten minutes of each other. The witness testified that in his opinion, PMP 663 and PMP 354 were used by the same person because Badreddine was known to carry multiple phones, the phones shared a geographic profile, and the SMS that were sent addressed the same name.

Donaldson further testified about SMP 944 and looked into its contact and geographic profile and days of common use with telephones 354 and 663. The witness explained that PMP 354 and PMP 663 had overlapping periods of approximately four years and PMP 944 during its year of use also overlapped with PMP 354 and PMP 663, meaning that the three phones overlapped for approximately a year.

On 17 July, Donaldson testified about Green 023, the last of four phones attributed to Badreddine according to the Prosecution's case. He discussed attribution evidence related to Green 023 (purchased using a false identity, however unlike other instances where someone used fraudulent identity documents, here someone had a government document created even though the government denied issuing it), its distinctive split in geographic profile

between predominant use in southern suburbs of Beirut and in the Jounieh area, and its contact profile. The witness explained that this type of split was used in identifying candidate phones for co-location, and that SMP 944 was analyzed against it.

Donaldson spoke about his analysis of the 57 days of common use between Green 023, SMP 944, PMP 663, and PMP 354 and noted no negative co-location indicators (meaning no indication that the phones were *not* together at the relevant times), and also discussed co-location samples between the mobiles.

The witness explained how Green 023 was used for 57 days and there were 129 swaps (use of both phones in quick succession) within 10 minutes from one of the group of three phones (PMP 354, PMP 663, SMP 944) with no observed inconsistencies.

Donaldson concluded that PMP 354 and 663 are attributable to Badreddine. He added that Sami Issa and Badreddine were the same person, and that Green 023 was the user of PMPs 354, 663 and SMP 944.

On 18 July, Donaldson started testifying about his PowerPoint presentation and additional co-location slides pertaining to the Accused Ayyash.

The witness gave an overview of the 11 phones attributed to Ayyash and their attribution period. He explained that they are presented in five layers to identify who carried the mission phone Red 741. He spoke about the family tree of Ayyash to assist in



the analysis of the contacts for each of the mobile phones and his residences. The witness explained that he started his analysis with the three PMPs (165, 935, 091) which were used in sequence, and the two residential landlines, then looked at PMP 170 and subsequently the network phones.

He spoke about the analysis of PMP 165 including its means of attribution, contact and geographic profile and links to the Yellow network. The witness explained that there were multiple IMEI connections, shared handsets between PMP 165 and the Yellow network, in addition to over a hundred calls. Donaldson further explained that this demonstrated that the user of PMP 165 had a relationship with the Yellow Network. The witness testified that the means of attribution included documents with the name of the Accused or members of family, witness statements, and consistent contact and geographic profiles. The witness further testified that the PMP 165 was one of the phones (the other was PMP 935) used in a handset which was integrated into a BMW vehicle owned by Ayyash at the relevant time.

Donaldson looked into contact and geographic profile of Yellow 669, and top

ten contacts of Yellow 669 were all contacts of at least one PMP (165, 170, 935, 091). He further elaborated that during 97 days of common use PMP 165 and Yellow 669 were never in contact between each other.

The witness then began his presentation in relation to PMP 935 and examined documents related to its attribution.

On 19 and 20 July, Donaldson continued discussing the documents supporting the attribution of PMP 935 to Ayyash, including bills and records of services, the period of attribution, and the contact and geographic profile. The witness sought to demonstrate in his analysis that there was a transfer in contact in the period 2002-2003 between PMP 165 and PMP 935, noting that six contacts of the phone's contact profile were family members of Ayyash. Donaldson explained that looking at the six contacts assists in the attribution of PMP 935 because the contact profile suggests that the user was Ayyash. Donaldson further explained that the next step was to test the geographic profile, request records pertaining to PMP 935 and Ayyash then corroborating this with the contact profile.

Prosecution counsel Marc Desalliers then questioned the witness on his presentation in relation to Yellow 294, the means of its attribution to Ayyash, and its contact and geographic profile. The witness explained that looking at the contact profile of the phone in isolation did not give him an immediate clue as to who the user was as the majority of the contacts were part of a semi-covert network.

The witness said that over 137 days, Yellow 294 and PMP 935 were used closely in time 163 times, however never contacted each other. Donaldson determined that the user of Yellow 294 from the user of PMP 935, who is Ayyash.

Prosecution counsel asked the witness to speak about the attribution point of Yellow 294, which the Prosecution alleges is an incident on 20 November 2004, where Ayyash crashed his BMW. This was followed by a series of phone calls involving PMP 935, the insurance agent, accident experts, and a tow truck driver. The witness sought to demonstrate by looking into calls placed and cell sectors activated that Ayyash used both PMP 935 and Yellow 294. Donaldson will continue his testimony on 22 August.



# ICL News Round-up

## UN: Afghanistan Village Attacks 'May Amount to War Crimes', *Jurist*

[JURIST] The [UN Assistance Mission in Afghanistan](#) (UNAMA) [official website] released a [special report](#) [text] on Sunday detailing the human rights violations committed during attacks on the Mirza Olang village earlier this month. During the three-day event, Taliban and local Islamic State (IS) fighters [reportedly killed](#) [press release] at least 36 people in the predominantly Shi'ite Muslim village. Those killed included both civilians and members of a pro-government militia who were unarmed prior to execution. While UNAMA verified the killings and the separation of women and children, it could not verify other claims of beheadings, abductions of women, or sexual assault... [Read more](#).

## ICC Orders Reparations for Destruction of Timbuktu Shrines, *Jurist*

[JURIST] The [International Criminal Court](#) (ICC) [official website] on Thursday [found](#)[order, PDF] that a Malian jihadist is liable for individual and collective reparations for overseeing the destruction of Muslim shrines in Timbuktu. [Ahmad Al Faqi](#) [case information, PDF] was found liable for 2.7 million euros in expenses... [Read more](#).

## UN aid chief warns of signs of genocide in Central African Republic, *Justiceinfo.net*

United Nations aid chief Stephen O'Brien told the Security Council Tuesday there are

plagued Central African Republic, according to diplomats. O'Brien made his remarks in a closed-door meeting -- which was not on the official council agenda and was called for by France -- following his recent visit to the country, one of the diplomats told AFP. The aid chief's warning echoed what he said earlier this month, when he told a UN meeting "the early warning signs of genocide are there" and urged more troops and police to bolster the UN peacekeeping mission in the strife-torn country... [Read more](#).

## Rwanda: Politically Closed Elections. A Chronology of Violations, *HRW*

(Nairobi) – Presidential elections in [Rwanda](#) on August 4, 2017, took place in a context of very limited free speech or open political space, Human Rights Watch said today, as President Paul Kagame is sworn in for a seven-year term. Human Rights Watch released a chronology of violations of the right to freedom of expression, association, and assembly in Rwanda between the country's December 2015 referendum – allowing the president to run for a third term – and the election, which Kagame won with a reported 98.79 percent of the vote... [Read more](#).

## US Denies Holbrooke Promised No Recognition of Kosovo, *Balkan Transitional Justice*

The US State Department has dismissed Serbian claims that the late US diplomat Richard Holbrooke wrote to Milosevic,

recognise Kosovo's independence. The US State Department has denied Serbian claims that the late diplomat Richard Holbrooke's letter wrote to the late Serbian leader Slobodan Milosevic in 1998/9, pledging that the United States would "never recognise Kosovo". "This is simply not true. There is no such letter," the US State Department wrote in an email to BIRN... [Read more](#).

## Bosnia War Victims Condemn Acquittal of Mladic's Helper, *Balkan Transitional Justice*

Legal experts and Bosnian war victims have slated the Serbian Appeal Court, after it acquitted ten people charged with helping to conceal the former Bosnian Serb commander, Ratko Mladic. [The Serbian Appeals Court on Tuesday](#) acquitted ten people of charges of helping to conceal former Bosnian Serb commander Ratko Mladic in his flight from justice. One defendant, retired Bosnian Serb Army, VRS, general, Marko Lugonja, was given a conditional jail sentence of six months. Milica Kostic, from the Humanitarian Law Centre from Belgrade, said the verdict was unsurprising. The sentence against Lugonja was "shamefully short", she added... [Read more](#).

## Bosnian Serb General Found Guilty of Hiding Mladic, *Balkan Transitional Justice*

Belgrade court found on Tuesday the retired Bosnian Serb general Marko Lugonja guilty of hiding the fugitive Ratko Mladic in his apartment in 2002. Belgrade Appellate Court has found Marko Lugonja, a retired

Bosnian Serb army general, guilty of hiding fugitive Bosnian Serb general Ratko Mladic. It sentenced him to a six-month parole sentence. The Court established that Lugonja had hidden Mladic in his apartment in Belgrade in September 2002... [Read more.](#)

**Salvadorean war crimes suspect one step from extradition, *BBC News***

A judge in the United States has cleared the way for a suspect in the killing of six Jesuit priests in El Salvador in 1989 to be extradited to Spain to stand trial. The judge said a lower court had been correct in ruling that Col Inocente Orlando Montano should be extradited. Col Montano can appeal against the decision at a federal court; his lawyer has not yet said if he will do so.... [Read more.](#)

**ICC Lifts Restrictions on Lubanga's Communications and Visits, *International Justice Monitor***

International Criminal Court (ICC) judges have withdrawn the restrictions they had imposed on war crimes convict Thomas Lubanga's communications and visits. The judges found that Lubanga currently presents little risk of interfering with witnesses in the trial of fellow Congolese national Bosco Ntaganda. Lubanga, who is serving what remains of his 14-year sentence from a jail in his home country of the Democratic Republic of Congo, had restrictions placed upon him in June 2015 after he was implicated in interfering with witnesses in Ntaganda's trial. Lubanga and Ntaganda served in the armed group known as the Union of Congolese Patriots (UPC) as

a commander-in-chief and a deputy chief, respectively... [Read more.](#)

**Georgia: National justice must complement ICC investigation, *Coalition for the ICC***

Today, on August 8, nine years have passed since the start of Russia-Georgia war. 2008 August War resulted in hundreds of human casualties. Tens of thousands of people were forced to leave their homes in the conflict zone. The crimes against humanity and war crimes were committed during the war, including the destruction of villages inhabited by Ethnic Georgians and their forceful displacement. The crimes committed during the August War are currently investigated by the International Criminal Court (ICC). The investigation faces many challenges. The member organizations of Georgian Coalition for ICC have recently published open letter drawing attention to the issues surrounding the investigation, including urgent need of outreach and awareness-raising to the victims and affected communities... [Read more.](#)

**Ghana: Adopt ICC Bill | Moroccans protest Bashir visit | Halting human trafficking, *Coalition for the ICC***

Civil society is urging Ghana to adopt a pending Bill for the Rome Statute of the International Criminal Court (ICC) to ensure national courts can try perpetrators of genocide, crimes against humanity and war crimes. Ghana accepted a United Nations Human Rights Council recommendation in 2012 to domesticate the Rome Statute by

November 2017. Africa Centre for International Law and Accountability (ACILA) Executive Director William Nyarko [commended](#) Ghana's original commitment to international justice as the [second African state](#) to ratify the ICC founding treaty, but pushed for the government to take the next step: giving the Statute effect under domestic law... [Read more.](#)

**South Africa must reassert commitment to human rights as it prepares to lead SADC, *Amnesty International***

South Africa must take a strong lead in addressing ongoing threats to basic human rights across the Southern African Development Community (SADC) region, Amnesty International said ahead of the 37<sup>th</sup> Heads of State Summit in Pretoria. The country takes over from Swaziland as chair of the regional bloc at a time when several member states – including Angola, the Democratic Republic of Congo (DRC), Zambia and Zimbabwe – face major political instability linked to elections that has put freedom of expression, peaceful assembly and association in jeopardy... [Read more.](#)

**Central African Republic government urged to hold rebel commanders accountable for war crimes, *Deutsche Welle***

The government of the Central Africa Republic plans to hold further peace talks with rebel factions. But rights group, Human Rights Watch, wants rebel leaders to be held accountable for war crimes. Fresh deadly clashes hit several areas of the Central African Republic this week... [Read more.](#)

# Blog Updates and Online Lectures

## Blog Updates

**"Never Again, Again: The Yazidi Genocide"**, by Sareta Ashraph. Blog available [here](#).

**"And So it Begins... Social Media Evidence in an ICC Arrest Warrant"**, Emma Irving. Blog available [here](#).

**"This is Why People Think the ICC is Unfairly Targeting Africa"**, Kevin Jon Heller. Blog available [here](#).

## Online Lectures and Videos

**"The Era of International Tribunals"**, by Judge A. A. Cançado Trindade. Lecture available [here](#).

**"The Notion of Cultural Heritage in International Law"**, by Judge Abdulqawi A. Yusuf. Lecture available [here](#).

**"The Role of International Law in National Law"**, by Judge Kenneth Keith. Lecture available [here](#).

# Publications and Articles

## Books

Martti Koskeniemi. (2017). **The Law of International Lawyers**, Cambridge University Press.

Paul Behrens, Olaf Jensen and Nicholas Terry. (2017). **Holocaust and Genocide Denial**, Routledge, Taylor & Francis Group.

Res Schuerch. (2017). **The International Criminal Court at the Mercy of Powerful States - An Assessment of the Neo-colonialism Claim Made By African Stakeholders**, T.M.C. Asser Press.

## Articles

Ana Leticia Magini. (2017). **"Collapsing Legitimacy: How the Crime of Aggression Could Affect the ICC's Legitimacy"**, International Criminal Law Review, Volume. 17, Issue 3, pp. 517-542.

Kristin C. Doughty. (2017). **"Language and International Criminal Justice in Africa: Interpretation at the ICTR"**, Volume. 11, Issue 2, pp. 239-256.

Henry K. Kopel (2016). **"The Case for Sanctioning State Sponsors of Genocide Incitement"**, Cornell International Law Journal, Volume 49, Issue 2, pp. 415-468.

# Calls for Papers

The German Section of the International Association for the Philosophy of Law and Social Philosophy has issued a call for papers on "Hans Kelsen's Pure Theory of Law: Conceptions and Misconceptions".

Deadline: 20 October 2017, for more information click [here](#).

The Irish Yearbook of International Law has issued a call for papers on "All Areas of International Law".

Deadline: 31 October 2017, for more information click [here](#).

# Events

## Internally Displaced People: The World's Most Pressing Humanitarian Crisis?

Date: 5 September 2017

Location: Chatham House, London

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

## Night of Dictatorships: How to remain human during times of inhumanity?

Date: 8 September 2017

Location: Humanity House, The Hague

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

## ADC-ICT Advocacy Training on Building a Case: Strategy and Theory

Date: 9 September 2017

Location: ICTY, The Hague

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

## Launch of the book Victim Participation in International Criminal Justice – Practitioners' Guide

Date: 12 September 2017

Location: T.M.C. Asser Institute, The Hague

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

# Opportunities

## Legal Analyst (P-2)

UN Women, New York

Deadline: 29 August 2017

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

## ICLA Assistant

Norwegian Refugee Council, Aden

Deadline: 30 August 2017

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

## Assistant Appeals Counsel (P-3)

International Residual Mechanism for Criminal Tribunals, The Hague

Deadline: 21 September 2017

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

## Executive Officer

Amnesty International, Brussels

Deadline: 7 September 2017

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

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