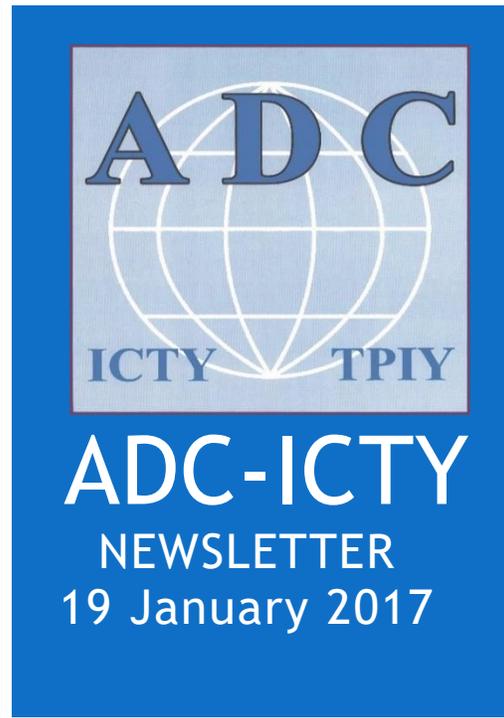




RATKO MLADIĆ



ISSUE 108

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# ICTY News

## Prosecutor v. Mladić (IT-09-92)

On 9 December, the closing arguments for the Defence began. The Defence argued that there is no evidence connecting Mladić to the crimes and that the case against him was systematically biased. As such, the unfortunate killings of Bosniaks in Srebrenica and other municipalities are argued to be acts of private revenge over which Mladić had no control. Defence Counsel, Branko Lukić, said that there was no evidence that Mladić had ordered the deaths with which he is charged. The Defence does not deny the fact that some persons were unlawfully killed, but rather

that this was the result of uncontrollable acts of individuals acting of their own accord or within paramilitary formations. In this sense, the Defence held that none of these killings were ordered by Mladić and that they cannot be attributed to him.

The Defence further argued that the Prosecution did not provide enough evidence for the charge of genocide. In other words, it has been argued that the evidence put forward by the Prosecution does not satisfy the required threshold of proof beyond reasonable doubt. The Defence argues that there is proof that Mladić repeatedly insisted that the Bosnian

- MICT News..... Page 3
- ADC-ICTY News..... Page 5
- News from International Courts... Page 7
- News from the Region..... Page 9
- Looking Back..... Page 10
- Articles and Blogs..... Page 12
- Events and Opportunities..... Page 13

Serb Forces abide by the Geneva Conventions and the laws and customs of war.

Lukić further stated that the Bosnian Serb forces were engaged in a defensive war against Islamic fundamentalism, as threatened by Bosniak wartime President Alija Izetbegović and his troops. It was claimed that this is the true reason for the military actions, not the pursuance of ethnic cleansing. The Defence presented two videos where Izetbegović welcomed a unit of Islamic Mujahideen fighters who came to support his wartime government against Bosnian Serb forces commanded by Mladić. The second video was a clip of the same unit of fighters beheading Serb soldiers.

According to Lukić, Mladić faced a biased trial where the Prosecution tried to hold him accountable merely due to his rank and for crimes over which he had no control. The Defence also raised the point that the impartiality of the judges was questionable due to statements they have made in previous trials regarding Mladić's guilt.

On 12 December, the closing arguments from the Defence continued. Defence Counsel Ivetic began by stating that the Prosecution had neither proven that there was a coordinated plan for the commission of genocide, nor that Mladić was responsible for persecution and ethnic cleansing. The crimes were argued to have been committed by Bosnian Serb police forces and local authorities over which Mladić did not exercise command. In this sense, Mladić cannot be held responsible for acts

committed by individuals acting outside of *his de jure* and *de facto* control. The Defence reiterated the absence of any direct orders from Mladić for any of the killings.

The Defence argued that the fact that the non-Serb population remained in various municipalities until the end of the conflict showcases a lack of intent to destroy Muslims and Croats as ethnic groups. Moreover, according to Ivetic, it would be illogical for 10% of the Bosnian Serb Forces to consist of Bosnian Muslims and Croats if such a generalised genocidal intent against groups existed. It was argued that Mladić did all he could to prevent the escalation of violence and that he neither approved nor desired the occurrence of the crimes.



Dragan Ivetic

As to the crimes committed in Prijedor in 1992, which the Prosecution described as an example of genocide, it was stated by the Defence that the Bosnian Serb Forces solely carried out legitimate actions aimed at disarming the paramilitary groups. The Defence further argued that the detention centres in which certain crimes were committed were not under the control or command of Mladić, but rather under the control of the local authorities that created

them. These detention centres were set up by the Bosnian Serb Interior Ministry and regional crisis committees. The Defence argues that Mladić never received reports on crimes against civilians but merely on legitimate actions against the paramilitaries.

On the final day of the closing arguments, 13 December, the Defence contested the charges that Mladić's troops terrorised the population of Sarajevo between 1992 and 1995 through a campaign of sniping and shelling. Ivetic argued that this claim was fabricated by the Bosniak authorities to win international sympathy. Ivetic quoted a report from the UN peacekeeping force, UNPROFOR, that stated that "the shelling has been significantly reduced but the authorities continue creating a myth that the city is bombed". The Defence also noted that in attacking Sarajevo, a clear military advantage was sought at all times and that collateral damage is inevitable in armed conflicts.

Ivetic continued by stating that the Army of BiH had an obligation to separate civilians from military forces but failed to do so and instead prohibited civilians from leaving the city. The Defence did not deny the fact that attacks were launched at Sarajevo, but rather that they were merely proportional responses to attacks by the BiH Army from within the confines of Sarajevo.

The Defence further claimed that the only surviving witness who testified during the trial and who was severely wounded by a grenade had not been injured by a grenade

from the army under Mladić's control. Conversely, it is alleged that he was injured by a grenade fired by the army of BiH. The Defence accused Izetbegović of being responsible for the outbreak of the war in Sarajevo and of using the presence of civilians in the capital for protection by ensuring that his troops were generally interspersed with civilians.

Ivetic concluded by saying that there was no joint criminal enterprise aimed at terrorising the city's population and that the Prosecution's allegation that Mladić deprived civilians in Sarajevo of

humanitarian aid, water, electricity, and gas was "a conspiracy theory".

On 15 December, both the Defence and Prosecution made their final comments. The Defence called on the judges to acquit Mladić on all 11 counts of genocide, war crimes and crimes against humanity as his guilt has not been proven by the Prosecution beyond reasonable doubt.

The verdict in this case is expected in November 2017.

## MICT News

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



Stanišić & Simatović

On 12 and 14 December 2016, a status conference was held. On the first day, proceedings were conducted in closed session as matters were related to Jovica Stanišić's health. On Wednesday 14 December, the Defence and Prosecution discussed the status of the proceedings. Presiding Judge Hall noted that there was

not yet agreement by the parties as to which testimonies given at the previous trial could be used in the retrial.

The Defence have objected to the inclusion in the indictment of new incidents such as the murder of civilians at Ovcar, near Vukovar in November 1991. The Prosecution claimed that there was a misunderstanding as the accused are not charged with these murders but are charged with equipping or training the perpetrators involved in the expulsion of non-Serbs from Vukovar.

The Defence requested that the incidents be drafted in a clearer and more precise manner so that the accused are 'charged in fact'.

The [Defence Pre-Trial Brief](#) was filed confidentially on 7 November 2016 and a publicly redacted version was filed on 12 December 2016. The next status conference will be held on 2 February 2017.

### Prosecutor v. Prlić et al (IT-04-74)

On 17 January a status conference was held, all accused stated that they had no health concerns.

The Prosecution requested that the list of questions from the Appeals Chamber be sent to the parties as soon as possible in order to prepare for the hearing. A number of defence counsel also supported the Prosecution's request that the questions be sent in the near future.

The date for the Appeals hearing has been scheduled to begin on 20 March 2017.

### Prosecutor v. Ngirabatware (MICT-12-29)

A hearing took place on 17 January 2017 regarding the continued detention of Judge Akay, a judge assigned to the case, by the Turkish authorities. Judge Akay was detained on or around 20 September 2016 by Turkey, which was invited to present its observations. The President of MICT, Judge Meron, has previously called for Judge Akay's immediate release before the UN Security Council.



Dr. Augustin Ngirabatware

# ADC-ICTY News

President Meron outlined the measures which had been taken to contact the Republic of Turkey including letters to the embassies in Tanzania and the Netherlands, emails and telephone calls. No response was received from Turkey.

Peter Robinson, Defence Counsel for Ngirabatware, stated that he had tried to contact the Turkish Embassy in The Hague, both by email and in person. Robinson was told by an embassy official that there were no comments on the issue of Judge Akay's detention. Robinson went on to explain that the evidence which has been found as a basis of the review is so strong that even the Prosecution has agreed that there should be a hearing on the motion for review. Nevertheless, Judge Akay's detention does not allow for this review hearing to take place. Robinson stated that if Judge Akay was replaced he would lose his diplomatic immunity and this would have future implications for all judges of the MICT.

Michelle Jarvis, representing the Prosecution, suggested that a review appeal bench should be appointed as soon as possible in the interests of justice. She suggested that it did not mean that Judge Akay would lose his status as he could be rotated to another MICT duty.

President Meron interrupted Jarvis and asked whether there was ever a case where a judge was removed from a case without the consent of the judge concerned. Jarvis was unable to confirm this and thus did not disprove President Meron's concerns that this would encroach upon the independence

of judges. The Prosecution suggested that moving Judge Akay by rotation to another case without having any gap in between would not result in any change in the diplomatic status of Judge Akay. Judge Meron highlighted that the practice was that no judge is assigned to a case without confirming the availability of the judge in question. He further pointed out the impossibility of contacting Judge Akay in this situation. The Prosecution stated that this situation was new and that a different practice could be adopted, but that this is a matter for President Meron. The Prosecution then highlighted Rule 19(c), which allows for a judge to be replaced should they have not been able to fulfil their duties for a period of time.



Judge Aydin Sefa Akay

The Defence responded that it would be a manipulation of the assignment system to appoint Judge Akay to another case as he is in detention and cannot currently work on any case. The only way to proceed was for Judge Akay to be released and join his colleagues in the Appeals Chamber.

Robinson strongly opposed the replacement of Judge Akay as this would obliterate the integrity and independence of judges, should they be subjected to State interference.

Robinson requested that Ngirabatware be provisionally released pending the release of Judge Akay. The Prosecution claimed that provisional release should not be permitted. They stated that it is not within the remit of the Pre-Review Judge's authority to order provisional release and that it must be the full bench which decides on release. The Prosecution claimed that the conditions for provisional release have not been met. They claimed that there is a flight risk of Ngirabatware and that there has been no guarantee from the State to which he requests to be released. If provisional release were to be granted, the Prosecution informed the court that they would be requesting a stay of proceedings. Meron informed the parties that Tanzania had sent a communication that it would not accept the release of Ngirabatware onto their territory.

Meron concluded that the fundamental principle of judicial independence is something which should not be taken lightly and that he would take into consideration all the points which had been raised.

A written decision will be issued as soon as possible.

## Annual Conference 2016

On 3 December 2016, the ADC-ICTY held its Annual Conference entitled '*Quo Vadis, International Criminal Law*'. The purpose of the conference was to bring together legal experts to discuss the current challenges to international humanitarian law and international criminal law. Presentations were given by judges, defence counsels and other legal professionals with a Q&A session following every discussion. The conference was comprised of four panels.



The first panel was 'Positive Complementarity – National Jurisdictions and Effective Sanctions'. The first speaker was Tamara Buruma, a lawyer who has been trying international criminal cases before national courts in the Netherlands. She firstly addressed the strengths and weaknesses of the Dutch judicial system and the challenges that national lawyers face with regards to prosecuting international crimes. She then continued by discussing the issue of double convictions that are prone to occur due to the lack of coordination between national and international courts. The second speaker, Novak Lukić, has been defence counsel at the ICTY for several years after having worked in Belgrade as a lawyer and as a

judge. In view of his background, Lukić addressed the issue of complementarity from the perspective of Serbia who underwent a change in its legal system from working with continental rules and procedures of criminal law to a more Anglo-Saxon approach. He also discussed the involvement of NGOs in cases of war crimes and how this system of participation has evolved in time. The third speaker was Jelena Vladislavljev who has been working as a liaison at MICT and the ICTY. She followed up on the points brought up by Lukić and highlighted the necessity of additional training for persons wishing to work on cases in which international crimes are prosecuted. She further discussed the cooperation between the EU and the ICTY and the need for a comprehensive system concerning the exchange of information. She concluded her presentation by stating that the key to a good legacy in international criminal law cases is, above all, transparency. The fourth and last speaker was Rod Rastan who works as a legal adviser at the ICC. He discussed the capacity of the ICC comparatively with the ICTY and explained how the principle of complementarity is understood in the jurisdiction of the ICC. He then elaborated on the close cooperation occurring between the ICC and national courts with regards to the sharing of relevant information.

The second panel focused on the notion of transitional justice and on the process of implementing international criminal law and international humanitarian law in Ukraine.

Judge Christoph Flüggé opened the panel by providing a brief overview of the political background of Ukraine after its gained independence from the Soviet Union in 1992 and its entry into the Council of Europe in 1995. He continued by discussing the national criminal law route that Ukraine undertook after this change of regime and concluded that although improvements have been made, corruption unfortunately remains an obstacle. The second panellist, Dr. Anton Korynevych, is a Ukrainian lawyer with a PhD in international law who works as Associate Professor in international law. He set out to provide some insight on what happened in Ukraine in 2014, how the Ukrainian government responded to the crisis, and what the relationship is between Ukraine and other international criminal courts. After summarising the difficult relationship Ukraine has had with the ICC, he concluded that the national perspective on international law has changed after the events of 2014 and that the ICC is now seen as a serious and desirable forum for ensuring accountability. The last speaker, Wayne Jordash QC, discussed the mission of Global Rights Compliance, an NGO that has been involved in Ukraine since 2015 upon invitation to provide IHL expertise. Jordash subsequently elaborated upon the issues

and methodology of setting up a positive complementarity project in the context of transitional justice. He concluded by stating that although there is no 'one size fits all' solution, there are certain steps that can be undertaken to ensure that the positive complementarity project is successful, such as: promoting law and policy reform, implementing IHL during the conflict, identifying and investigating allegations of IHL violations, prosecuting said violations, and disseminating information regarding IHL principles to military forces and to the civil society.

The third panel set out to discuss the newly established Kosovo Specialist Chambers under the umbrella topic of relocated justice. The first panellist, Dr. Guido Acquaviva, discussed the history and genesis of these Chambers in his capacity as the Deputy Registrar at the Specialist Chambers for Kosovo. He further raised a contentious issue surrounding these Chambers, namely whether they are domestic or international in character. Although he concluded that they are domestic due to them being rooted in the Constitution of Kosovo, this position was contested by the second speaker, Töme Gashi. In other words, Gashi, a lawyer and judge from Kosovo, brought up the fact that the Chambers were only established after



outstanding international pressure and not at the will of the people of Kosovo. He then expressed his concerns about the Chambers' impartiality by stating that he believes it will be unavoidably discriminatory. He concluded by stating that the Specialist Chambers will be harmful to Kosovo and that it will not help the reconciliation of the Albanians, Serbs and other minorities in Kosovo. The third speaker, Martin Hackett, followed this discussion by addressing the practical realities of trying to prosecute war crimes. In view of this, he elaborated upon the EULEX mission in Kosovo and suggested that the Specialist Chambers should be built on this backdrop by leaning on what has already been achieved. Conversely, he underlined the need for these Chambers to prioritise the victims' perspective since the EULEX courts were lacking in this respect. The fourth and final panellist, Gregor Guy-Smith, returned the discussion to the domestic or international aspect of the Chambers. Specifically, he put forth the idea that it is difficult to envisage these Specialist Chambers as domestic since, in effect, all the personnel will be international and the government of Kosovo will have no audit power over the court. In turn, this raises the issue that local people will not have any faith in a system where they will not be allowed to participate. In this sense, it is not realistic to expect this court to resolve the conflict between the ethnic groups in Kosovo.

The fourth and last panel explored the suitability of non-judicial mechanisms as alternatives or complementary to international criminal proceedings.



Specifically, it focused on ascertaining what these mechanisms are and how they function, and when they are appropriate in the context of transitional justice.

The panel was opened by Catherine Harwood who is currently doing her PhD on international commissions of inquiry and their interaction with international law. She proposed the idea that these non-judicial fact-finding bodies should be viewed as complementary to international criminal proceedings. Nevertheless, she warned that one of the principal problems with these bodies is that they are generally dependent on the existence of political will and on alignment with wider political priorities. The panel continued with Fleur Ravensbergen, the Co-Founder of the Dialogue Advisory Group, which is an NGO that facilitates political dialogue between parties to a conflict. She discussed the role of mediation as a possible alternative to judicial mechanisms and how creating a dialogue between the belligerent parties can help end a conflict. In discussing her past work in conflict zones such as the DRC and Northern Ireland, she highlighted the fact that there are several ways in which a party to the conflict can be persuaded to lay down arms without the involvement of judicial bodies.

The last speaker was Prof. Héctor Olásolo who discussed the lack of an international consensus regarding the normative framework of transitional justice and the lack of political will to address the underlying issues of reform. He raised the issue that simply working to ensure the rule of law and democracy is not sufficient, but that the existing structural injustices should be addressed since they are effectively the

roots of the conflict. Nevertheless, in Mr Olásolo's view, the problem is that transitional systems too often hinge on the existence or lack of resources, and on the political views of the people in power. In turn, this prevents these systems from addressing the true causes of the violence – the structural economic and social injustices.

The purpose of the ADC-ICTY Annual Conference is to provide a forum for legal experts from around the world to discuss current challenges to IHL and ICL. This year, the conference was attended by over 240 legal professionals, academics, media and students.

Photos of the event are available [here](#).

## News from other International Courts

### Extraordinary Chambers in the Courts of Cambodia

Joaquín Franciosi (Legal Intern Yim Tith Team)

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



Nuon Chea

#### Nuon Chea Defence

In November 2016, the Nuon Chea Defence Team continued to be engaged in court hearings regarding the segment on the role of the accused.

Further, on 17 November, the Defence requested to admit into evidence two articles published by the Documentation Centre of Cambodia (DC-CAM) containing

biographical accounts of two individuals and to summon them to testify as witnesses. The Defence submitted that these individuals' testimonies are relevant to the heart of Nuon Chea's case as they can testify to the

inner turmoil within the Communist Party of Kampuchea. They can also provide evidence as to the existence of different and equally strong factions seeking to advance treasonous rebellion intended to seize overall control from the Party and the country and further the interests of Vietnam.

The Defence believes these two individuals worked closely with Sao Phim, the former leader of the East Zone, who is believed to have been one of the instigators of the rebellion against the Central government.

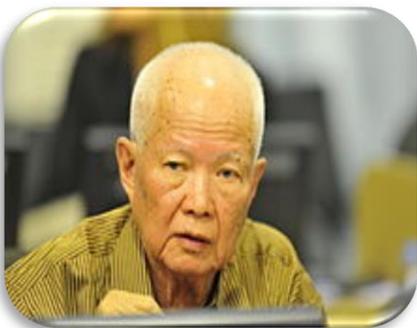
Apparently, they accompanied him to meetings with other key leaders, such as Ruos Nhim. Accordingly, their testimony

could shed light on the relationship between these last two.

Moreover, given that another witness, who was also allegedly related to Sao Phim, was expected to testify on the East Zone, the Defence wished to test the witness' evidence with the information contained in the documents sought into evidence. Therefore, the Defence requested the two documents to be admitted prior to the appearance of the witness called to testify on the East Zone.

The Defence submitted that the admission of these proposed documents and summons of the two proposed individuals as witnesses are paramount to ascertaining the truth and are in justice's best interest.

### Khieu Samphân Defence



Khieu Samphân

In November 2016, the Khieu Samphân Defence remained fully engaged in preparing and attending the hearings in Case 002/02. The trial alternatively focused on the role of the accused and the armed conflict.

In addition, the Defence filed several motions. On 4 November, the Defence responded to the Co-Prosecutor's request to admit a German document (E437/1/1).

On 21 November, the Defence filed a motion requesting the admission of excerpts from research documents provided by Henri Locard after his testimony which directly contradict statements he made in court (E447/1).

On 22 November, the Defence also filed a motion seeking clarification regarding audio recordings of Case 003 and 004 documents (E441/3).

On 29 November, the Defence filed another motion seeking clarification regarding a Trial

Chamber decision admitting written statements in lieu of oral testimony based on their relevance to the acts and conduct of the accused (E319/52/4/1).

On 23 November 2016, 23 months after appeals were filed by the Defence, the Supreme Court Chamber delivered its appeal judgement in Case 002/01. Two Case 002/02 trial days were cancelled in order for the parties to read the 520-pages judgement and identify its impact on the current trial. As a consequence, on 28 November 2016, the Trial Chamber resumed the hearings regarding the role of the accused.

### Meas Muth Defence

In November, the Meas Muth Defence filed three Requests to the Office of the Co-Investigating Judges, which have been classified as confidential. The Co-Lawyers also responded to a Request filed by the International Co-Prosecutor and filed a Reply to the International Co-Prosecutor's Response to an Appeal that the Defence filed in September. The Defence also filed a request to intervene in Case 002/02 to address a particular legal issue. The Defence continues to review material on the Case File and to prepare submissions to protect its client's fair trial rights and interests.

### Ao An Defence

In November, the Ao An Defence Team filed an Appeal Against the Decision on Ao An's Sixth Request for Investigative Action. In addition, it filed a Request to Identify and

Place Certain Document on the Case File. The Defence continued to review all materials on the Case File in order to participate in the investigation, and prepare other filings to safeguard Ao An's fair trial rights.

### Yim Tith Defence

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

### Im Chaem Defence

In November, the Im Chaem Defence team responded to the International Co-Prosecutor's Final Submission and filed two confidential requests related to the final submissions and the Defence's response. Throughout the remaining proceedings of the pre-trial stage of Case 004/01, the Defence endeavours to safeguard Ms. Im Chaem's fair trial rights and interests.



Im Chaem

# News from the Region



## Bosnia and Herzegovina

### State Court in Sarajevo Sentences Former Croatian Defence Council Military Policemen

The State Court in Sarajevo sentenced two former Croatian Defence Council Military Policemen to imprisonment for the rape. Mato Baotić was sentenced to ten years imprisonment for the raping of three women and mistreating a detainee in the Orasje area in 1992. Baotić was a former commander of the Second Section with the Croatian Defence Council Military Police and was accused of raping women and mistreating a prisoner who was detained in a school building in the Orasje municipality. The court found that Baotić raped one of his victims with a pistol and hit the detainees with a metal dog chain. He

was also ordered to pay the rape victims compensation for their pain and suffering.

The second conviction was another former Croatian Defence Council fighter, Marijan Brnjić. He was sentenced to six years of imprisonment for raping a female civilian in the Odzak area in June 1992. Brnjić was a former member of the 102<sup>nd</sup> Brigade of the Croatian Defence Council.

Both verdicts can be appealed.



## Serbia

### First Serbian Srebrenica Trial Delayed

The trial of eight former Bosnian Serb police officers accused of involvement in killings in Srebrenica in July 1995, was delayed by a legal challenge. The trial was due to begin on 12 December before Belgrade's Special Court but the Defence requested the removal of the judges alleging that they had violated their clients' right to a fair trial. Specifically, the Defence requested the postponement of the hearing because the accused and their lawyers were not given the identities of the protected witnesses who were expected to testify at the trial. The judges had refused to disclose this information.

The question of whether the trial will be continued or be postponed was dealt with the next day. The Court decided that the Defence would be informed of the identities of the protected witnesses by the end of

December and that the trial will be rescheduled for the beginning of February. The motion to remove the three-judge panel was rejected.



Defence Counsel

## Haradinaj Arrested on Serbia Arrest Warrant

On 4 January 2017, Ramush Haradinaj, former Prime Minister of Kosovo, was arrested in France under a warrant issued by Serbia for alleged war crimes. Haradinaj was acquitted of all charges during a trial and subsequent partial retrial at the ICTY of all charges. Serbia said that they would be requesting his extradition to stand trial for crimes

Liberation Army against ethnic Serbs, which were not included in the trial before the ICTY.

Haradinaj appeared in a French court, which released him, but the judge in Colmar put conditions that Haradinaj must not leave France.



## Kosovo

### Kosovo Mayor Files Complaint to Kosovo's Supreme Court

Sami Lushtaku who is the Mayor of Skenderaj and former guerilla commander, has filed a complaint to Kosovo's Supreme Court against his conviction for war crimes. Lushtaku's lawyer, Arianit Koci, said **that he filed an appeal to the** Supreme Court after Lushtaku was convicted of war crimes at Kosovo's Appeals Court in the beginning of November and was sentenced to 7 years imprisonment. Lushtaku was convicted of command responsibility for the abuse of ethnic Albanian civilians as he was a Kosovo Liberation Army commander in the Drenica area during the conflict. In the original trial, Lushtaku was acquitted of these charges.

Koci stated that the decision of the Appeal Court to convict him for

seven years imprisonment on the charges for which he was first acquitted, was only based on one witness's testimony. According to Koci, the witness testimony did not prove beyond reasonable doubt that Lushtaku possessed effective control over the Likovc detention centre. According to Koci, this verdict could therefore not be based on this alone



Sami Lushtaku

## Looking Back...

### International Criminal Court (ICC)

#### Five years ago...

On 23 January 2012, the Pre-Trial Chamber of the ICC held a public hearing on the determination of whether the Prosecutor had sufficient evidence to bring two cases against Ruto, Sang and Kosgey on the one hand, and Muthaura, Kenyatta and Ali on the other. The charges, which alleged that the accused committed crimes against humanity in Kenya, were confirmed for four of the suspects.

In the initial appearance hearings, the Chamber received more than 200 applications for victims to participate. The Defence teams and the

Prosecutor disclosed around 30.000 pages of evidence. The Pre-Trial Chamber had to determine whether the Prosecution had presented enough evidence for the Chamber to confirm the charges.

In the first case, the Chamber confirmed that the Prosecution had established substantial grounds for Ruto and Sang to be tried before the Court for the alleged crimes against humanity of murder, deportation, forcible transfer and persecution. However, the Chamber

determined that for Kosgey, the Prosecution failed to satisfy the threshold.

In the second case, the Chamber held that the Prosecution had presented enough evidence for Muthaura and Kenyatta to be tried before the Court for the alleged crimes against humanity of deportation or forcible transfer, rape and other forms of sexual violence, other inhumane acts and persecution. As for Ali, the Chamber held that the Prosecution did not present substantial grounds to prosecute him.

The charges against Muthaura and Kenyatta were eventually withdrawn by the Prosecution in March 2013 and March 2015, due to lack of sufficient evidence. For the accused Ruto and Sang, the charges were dismissed in April 2016 as the Chamber found no case to answer.



Uhuru Kenyatta

## International Criminal Tribunal for Rwanda (ICTR)

### Ten years ago...



Emmanuel Ndingabahizi

On 16 January 2007, the Appeals Chamber of the ICTR confirmed the sentence of Emmanuel Ndingabahizi of life imprisonment.

Ndingabahizi was the former Minister of Finance of the Interim Government in Rwanda. He was

convicted for one count of genocide and two counts of extermination as a crime against humanity for his participation in the events of Gitwa Hill in April 1994 where thousands of Tutsi's lost their lives.

Ndingabahizi was acquitted for a single killing of a victim at the Gaseke roadblock however, the judges held that this did not diminish the gravity of Ndingabahizi's criminal conduct in its entirety. He is currently serving his sentence in the Republic of Benin.

## International Criminal Tribunal for the former Yugoslavia (ICTY)

### Fifteen years ago...

On 31 January 2002, Dušan Fuštar voluntarily surrendered and was transferred to the UN Detention Unit.

The indictment against Fuštar contained allegations of individual criminal responsibility and superior responsibility with crimes against humanity and violations of the laws or customs of war. At the time of the indictment, Fuštar was the shift commander of the Keraterm camp where detainees were crowded together in various rooms of the camp with little room to sit or lie down. The indictment also stated that killings, sexual assault and other forms of physical and psychological abuse were also happening in the camp. Hundreds of detainees whose identities are known and unknown, did not survive.

In May 2006, the ICTY transferred the case to the State Court in Sarajevo after he admitted guilt and expressed regret. He was sentenced to nine years imprisonment for having failed to exercise his authority to prevent the crimes.



Dušan Fuštar

# Blog Updates and Online Lectures

## Blog Updates

**South Africa's Withdrawal: A Lesson Learned?** By Niko Pavlopoulos. Blog is available [here](#)

**Contextualizing the Debate on First Strikes** By Charles Kels. Blog is available [here](#)

**The Relationship between Russia and the ICC and the US precedent: Do 'great' states act alike?** By Giulia Pecorella. Blog is available [here](#)

## Online Lectures and Videos

**The ICC, The African Court, and Libya: The Case of Saif Al-Islam Gaddafi.** A lecture by Sir Geoffrey Nice QC, Dr. Mishana Hosseinioun, Aidan Ellis and Haydee Dijkstal. For more information, click [here](#)

**The Rise of Individual Criminal Responsibility under International Law.** A lecture by Dr. Roger O'Keefe, Senior lecturer in Law. For more information, click [here](#)

**A Tale of Two Genocides: Scorched Earth Operations as Genocidal Practices in El Salvador and Guatemala.** A Lecture by Paula Cuellar Cuellar. For more information, click [here](#)

# Publications and Articles

## Books

Dr. Krit Zeegers (2016), **International Criminal Tribunals and Human Rights Law - Adherence and Contextualization - International Criminal Justice Series**, Asser Press

Andrea Bianchi (2016), **International Law Theories - An Inquiry into Different Ways of Thinking**, Oxford University Press

Hannah Quirk (2016), **The Rise and Fall of the Right of Silence**, Routledge

Philippe Couvreur (2016), **The International Court of Justice and the Effectiveness of International Law**, Brill

## Articles

Michael G. Karnavas, "Defence Counsel Ethics, the ICC Code of Conduct and Establishing a Bar Association for ICC List Counsel", (2016) *International Criminal Law Review*, Volume 16, Issue 6. pp. 1048-1116

Nicole Roughan, "Mind the Gaps: Authority and Legality in International Law", (2016) *European Journal of International Law*, Volume 27(2), pp. 329-351

Robert Araujo, "Sovereignty, Human Rights, and Self-Determination: The Meaning of International Law" *Fordham International Law Journal*, Volume 24, Issue 5

# Calls for Papers

**The University of Portsmouth** has issued a call for papers on the topic, "Human Dignity and the Constitutional Crisis in Europe". The deadline is 28 February 2017. For more information, click [here](#)

**The Centre for International Law Research and Policy** has issued a call for papers on the topic, "Philosophical Foundations of International Criminal Law". The deadline is 21 March 2017. For more information, click [here](#)

## Events

### ICDL Defence Counsel at the International Tribunals

Date: 28 January 2017

Location: Intercontinental Hotel, Berlin

For more information, click [here](#)

### International Crimes: Fact-Finding and A Rule of Law Culture

Date: 30 January 2017

Location: New Babylon Meeting Center

For more information, click [here](#)

### Dispute Resolution Works-in-Progress Conference

Date: 2 February 2017

Location: University of Missouri School of Law, Colombia

For more information, click [here](#)

### The World in Crisis Conference

Date: 4 February 2017

Location: Peace Palace, The Hague

For more information, click [here](#)

### The International Law of Peacetime Cyber Operations

Date: 13 February 2017

Location: Spaansche Hof, The Hague

For more information, click [here](#)

### Round Table 'Strategic Human Rights Litigation'

Date: 17 February 2017

Location: University of Amsterdam

For more information, click [here](#)

## Opportunities

### Crime Prevention and Criminal Justice Officer (P-3), Dakar

United Nations Office on Drugs and Crime

Deadline: 26 January 2017

For more information, click [here](#)

### Legal Specialist (P-3), Washington

World Health Organisation

Deadline: 27 January 2017

For more information, click [here](#)

### Human Rights Officer (P-3), Geneva

Office of the High Commissioner for Human Rights

Deadline: 29 January 2017

For more information, click [here](#)

### Legal Officer (P-3), New York

Office of Administration of Justice

Deadline: 12 February 2017

For more information, click [here](#)

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### GOODBYE AND THANK YOU!

The ADC-ICTY would like to thank Emily Ghadimi, Assistant to the Head Office, for all her dedication and hard work towards assisting with the operation of the Association and the Newsletter. She also gave considerable time to assist with the Annual Conference. We wish Emily all the best for the future – she will be missed at the ADC Office!