ADC-ICT News

ICTY Legacy Dialogues Conference - Sarajevo 2017

The final ICTY Legacy Conference took place in Sarajevo between 22 and 24 June 2017. The Conference brought together over 250 participants to discuss a variety of legacy related issues. There were panels on the Normative Legacy, Gender Justice Legacy, Non-Judicial Legacy, Operational Legacy, Defence and Fair Trials Legacy, Witness Legacy, Historical Legacy and Outreach Legacy.

The ADC-ICT was responsible for coordinating the Defence and Fair Trials Legacy, the panel was moderated by Marie O’Leary, Vice-President of the ADC-ICT.

Judge Schomburg opened the panel with a presentation on the rights of the accused and the need for a robust defence in international criminal trials. He highlighted that the role of defence counsel is indispensable in international criminal proceedings and that although the ICTY is not a party to the ICCPR and European Convention on Human Rights it had to uphold the highest standards of justice otherwise there would be a denial of justice. The convergence of the common and civil law systems was discussed and how in the common law
system a party aims to ‘win’ a case whereas the civil law system aims to come as close as possible to the truth. Judge Schomburg stated that there was a clash of these two “never mergeable” systems at the ICTY.

Judge Schomburg mentioned how the right to have defence counsel was fundamental for due process. He highlighted that the inception of the right to self-representation should have been handled differently at the ICTY. He suggested that a preferred way would have been for the accused to be able to actively participate in addition to their assigned counsel ensuring that qualified representation was present while also allowing a voice to the accused.

Judge Schomburg concluded by stating that there can be no justice without qualified defence counsel.

The next panelist was Jasmina Pjanić, Head of the Defence Section of the BiH Ministry of Justice (OKO). She explained the role and cooperation of OKO with the ICTY and assistance which is offered to defence counsel representing accused in war crimes cases in BiH. She explained that OKO is the only specialised section for defence matters in the region of the former Yugoslavia and that the office assisted with establishing a payment scheme for defence counsel, translation of documents and jurisprudence from the ICTY and training for defence counsel, especially in light of the recent changes to follow the adversarial system in the region. One major role of OKO is to maintain a list of qualified defence counsel and the provision of legal advice to counsel on international humanitarian and international criminal law. OKO is provided greater access to ICTY documents and can facilitate providing this to defence counsel in BiH. Pjanić concluded that OKO were able to provide assistance and support to defence counsel because it was independent and this was one of the key lessons learned, that defence offices or organizations must remain independent.

The next panellist was Vasvija Vidović, former ICTY defence counsel who spoke about her experience of defending a war crimes case under universal jurisdiction in Norway. The case was the first war crimes case which had been conducted in Norway after World War II. She explained that the defence had the widest possible rights and that equality of arms was respected to the highest level possible. As there were no lawyers qualified in war crimes cases the Norwegian courts permitted her to represent the Accused and the authorities ensured that all documents were translated into a language understood by the defence. There was cooperation between Norway and the ICTY to ensure access to documents needed and the authorities assisted the defence in finding witnesses. The obligations of disclosure to the defence were met and this was in stark contrast to the system which was in place in BiH. Vidović highlighted issues of disclosure which occurred in BiH and how this was one of the major problems facing defence counsel in the region of the former Yugoslavia and more should be done to address this issue. Overall Vidović felt that the experience in Norway was very positive when compared to the daily situation for defence counsel in war crimes cases in BiH.

The final panelist was Tomislav Višnjić, former ICTY defence counsel. He highlighted the difficulties which were faced by defence counsel in the region of the former Yugoslavia. For example, it was only in 2003 that rules were introduced on disclosure and even now there was a distinct lack of adherence by the Prosecution to their disclosure obligations. Another issue is that the interpretation of the ICTY jurisprudence is only done at the highest appellate level. Another problem faced by defence was the collection of evidence and investigation in the region, there is a distinct lack of funding for such work for the defence which ultimately diminishes an accused’s right to a fair trial. There needs to be a concerted effort to ensure that documents from the ICTY are available to all defence counsel. Višnjić stated that proceedings in the region left a bitter taste as there was an overall emphasis on finishing trials quickly which ultimately leads to a lack of fairness. He pointed out that unlike at the ICTY where the Association of Defence Counsel exists to assist all counsel and represent their interests, there is no such assistance in Serbia. This is something which he suggested needed to be implemented potentially with the assistance of the ADC-ICT.

At the end of the Conference a list of Recommendations and Conclusions were adopted. The Conclusions and Recommendations from the Defence panel, which were included in the official document, were:
Conclusions

- Access to defence is a key indicator of fair trial rights as basic human rights.
- The convergence of common law and civil law systems has posed challenges for disclosure practices.
- Each accused person should be entitled to qualified defence counsel with expertise in international humanitarian law and international criminal law.
- Training initiatives for defence counsel are fundamental to achieving fair trial standards.
- ICTY jurisprudence is a valuable tool for the development of national legislation in the area of international criminal law.
- ICTY experience has assisted national jurisdictions in enhancing the ability of States to exercise universal jurisdiction.

Recommendations:

- All international courts and tribunals should consider establishing associations of defence counsel to represent the interests of defence counsel and the rights of the accused and to ensure that professional standards are harmonised.
- Consideration should be given to how the ICTY’s disclosure systems could best serve other international courts and tribunals, as well as national jurisdictions.
- Regular training on the jurisprudence and practice of international courts and tribunals should be available to lawyers working on war crimes cases in national jurisdictions.
- The ICTY’s developed practices could assist national jurisdictions where war crimes cases are conducted on the basis of universal jurisdiction, including through cooperation.
- Information regarding ICTY’s jurisprudence and practices should be disseminated to national defence associations and offices where war crimes cases are conducted to ensure equal access to such information. The ICTY should also provide national defence associations and offices with access to its databases.

The ADC-ICT aims to produce a full list of their Conclusions and Recommendations and hope to be able to assist in implementing the recommendations.

The full videos of the Conference are available here.

**ADC-ICT Launches its Online Legal Training Portal**

This month, the ADC-ICT launched its online Legal Training Portal. The Portal includes previous training sessions which have been conducted by the ADC-ICT and aims to give access to a wider audience and preserve the legacy of the Association.

The training videos and accompanying presentations are available to purchase for a reasonable cost. Members of the ADC-ICT receive a discount on the training sessions.

In the future, the library of training sessions will be expanded and there will also be a series of shorter lectures available free to members of the ADC-ICT.

For more information and to access the Online Legal Training Portal visit the ADC-ICT website here.
MICT News

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

The second witness to take the stand, was Radoslav Maksić, a retired Yugoslav National Army Colonel (JNA), between 21 June to the 22 June 2017. Maksić had been ordered to the Serbian Autonomous Oblast of Krajina (SAO Krajina) in September 1991 to assist the Territorial Defence (TO), and served as the commander from November 1991 till December 1991. Maksić explained the crimes that were committed in the region in his time there as well as the politics between the TO, the Serbian Government and Milan Martić and how Stanišić and Simatović were there to train the SAO Krajina police. During cross-examination by Stanišić Defense Counsel, Wayne Jordash QC, discrepancies in the witness's statements that Stanišić and Simatović were sent to create the SAO Krajina police and undermine the functioning of the TO were highlighted. Maksić stated that he did not know the two men and only saw them on occasions together in the Krajina. During cross-examination by Mihajlo Bakrač, Defence Counsel for Simatović, Maksić stated he was not sure who had brought Captain Dragan Vasiljković to the Krajina and only assumed that it must have been the Serbian State Security Service (DB), because they were the only ones he could not contact.

From 27 June until 5 July, General John Wilson, a retired Australian Army Brigadier-General took the stand. General Wilson provided evidence from his service and experiences in the Former Yugoslavia from January 1992 to the end of 1993 where he served as a Senior Military Liaison for the UN mission and then the Chief of the UN Military Observers. He was called to provide evidence to the widespread crimes and ethnic cleansing in areas of Croatia and Bosnia-Herzegovina. During cross-examination by the Stanišić Defence, General Wilson's knowledge of President Slobodan Milošević's authority over the removal of Milan Babić was called into question, and he stated he could only be sure of the complexity of the situation. The witness highlighted that control of Knin by Belgrade fluctuated: in 1993, there was no trend between co-operation and independence of operations in Knin with regard to the exercise of authority from Belgrade. During cross-examination by Vladimir Petrović, Co-Counsel for Simatović, General Wilson elucidated discrepancies between the witness's 2009 and 2016 statement over the location and knowledge of the White Eagles and the Red Berets, where the witness now states he had detailed knowledge of the Red Berets in Knin, that he in his past statement had not specified. Under re-cross-examination the General Wilson's sighting and in-depth knowledge of the Red Berets was called into question, specifically the identification of a unit he identified as the Red Berets through the help of experts, but not personal knowledge.

The next witness testified with protective measures, including image and voice distortion, with sections of the testimony in private session from 5 July till 6 July. The Witness provided evidence of the attack on Saborsko and Martić’s Police. During cross-examination by Iain Edwards, Co-Counsel for Stanišić, the witness explained that in his statement where it said they did not encounter any Croatian resistance in Saborsko, he in fact meant that he did not, and he could not speak for the rest of Serbian forces. The witness stated that he could only assume the JNA and TO members were setting fire to the hamlets he was too far away to identify them. During cross-examination by the Simatović Defence, the Witness stated that he only heard about a few men committing crimes in Saborsko out of the 500-700 men involved in the attack.

Vlado Vuković took the stand on 6 July, his examination totaled 30 minutes, he was a Police Officer in Saborsko. He spoke about his treatment by Martić’s police and about the aftermath of fighting in Saborsko. The witness also stated he did not know Milan Martić was a minister within the Republic of Serbian Krajina and that it would be normal for police officers to call themselves Martić’s men because he was the Minister of Interior for the region.

The last witness who testified from 10 July until 13 July will return after the summer recess starting the week of 21 August,
because his testimony could not be concluded. The witness testified through video-link with protective measures, including image and voice distortion, much of the testimony was given in private session. The witness provided evidence of Martić’s role in setting up barricades and the distribution of weapons to the Serbs in Krajina in 1990. He also testified about the role of Stanišić and Simatović in funding and supplying weapons to SAO Krajina and the establishment of the SAO police and DB and the Golubic and other training camps in SAO Krajina. His testimony also covered the role of Frenki’s Men and the Red Berets and the "plan" to remove Croat civilians from the population of SAO Krajina. He testified to the control Stanišić and Simatović had over the events in the region during this period from late 1990 till 1995. In cross-examination, discrepancies between the witness statement and testimony over the number of weapons and shipments the accused were allegedly bringing into the Krajina. The witness stated in his statement that police officers from Krajina were moved to Belgrade but that the corridor through Bosnia to Serbia was completely cut off, which in cross-examination the witness contradicted by stating that it was not cut off entirely. After being asked if he hallucinated by Jordash QC, as to discrepancies between his past statements and current statement relating to facts that were not corroborated in media reports, or in fact in any other report, as to the number of Krajina police flown into Belgrade, the witness stated he was very emotionally upset about being called a liar.

News from other International Courts

Extraordinary Chambers in the Courts of Cambodia

Jacob Granger, MEAS Muth Defence Team
The views expressed herein are those of the author alone and do not reflect the views of the ECCC.

The Nuon Chea Defence prepared Nuon Chea’s closing statements, which took place between 12 and 23 June. The Defence presented Nuon Chea’s case, putting the events of 1975-1979 in the proper context of the existential threat of Vietnam. It argued that the policies regarding security centers, worksites and cooperatives, the treatment of certain groups, and the regulation of marriage, were legitimate and lawful. Furthermore, the Defence highlighted the lack of credible evidence to find the charged crimes occurred beyond a reasonable doubt, accordingly seeking Nuon Chea’s acquittal.

Khieu Samphan

The Khieu Samphan Defence was fully engaged in preparing and attending the closing statements in Case 002/02. During these final hearings, the Defence responded to the Prosecution, while presenting the main arguments raised in its final brief, notably several issues regarding the saisine of the Trial Chamber and the violations of the principle of legality by the Supreme Court Chamber concerning the definitions of murder and Joint Criminal Enterprise I. Conversely, neither during its closing statement nor in its reply did the Prosecution respond to the arguments raised, either in writing or orally, by the Defence. Last to take the floor, Khieu Samphan made a final statement in which he responded to the questions asked by the civil parties during the trial and denied being a criminal.

The Meas Muth Defence filed three submissions to the Co-Investigating Judges, each of which has been classified as confidential. The Defence also filed a reply to the Pre-Trial Chamber concerning its appeal against a decision that a state or organization’s own military can be considered a “civilian population” for purposes of crimes against humanity. 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

The Im Chaem Defence is currently preparing for a potential response to an
ICC Judges confirm South Africa government violated ICC Treaty Obligations

On 6 July 2017, ICC judges confirmed that the government of South Africa failed to comply with its obligations under the Rome Statute by not arresting Sudanese President Omar al-Bashir, during a visit to the country in 2015.

The judges rejected South Africa’s argument that Bashir was immune from arrest as a Head of State leading his country’s delegation to the meeting in South Africa.

The judges said that there should have been no doubt about Bashir’s immunity, because South African diplomats consulted the ICC before he arrived and were told that their country was obliged, as a member state, to arrest and hand over Bashir.

The judges declined to formally refer the matter to the United Nations Security Council because, they said, doing so had borne no results in the past.

In a separate opinion, Judge Perrin de Brichambaut, raised an argument that that South Africa and Sudan were both obliged to arrest Bashir because they had both signed the United Nations Genocide Convention.

Bashir is accused of genocide involving three tribes in the Darfur region of western Sudan. The charges cover violence that occurred in 2003 when Bashir ordered a counterinsurgency in the conflict between his Arab-dominated government and non-Arab rebel groups.

The incident played a role in South Africa’s decision in October 2016 withdraw from the ICC. South Africa is however still a member state as the decision to pull out was blocked by the country’s High Court as “unconstitutional and invalid” because Parliament did not approve it; the government has said it will seek that approval.
ICL News Round-up

Slobodan Milosevic ‘Accepted Bosnia Peace Plan’, Balkan Transitional Justice

Former Serbian State Security official Franko Simatovic’s lawyer argued that Slobodan Milosevic could not have been the leader of a Serb criminal enterprise in Bosnia and Croatia because he accepted an international peace plan. Serbian President Slobodan Milosevic tried to compel the authorities in Bosnia’s Serb-led Republika Srpska region to accept an international peace plan in the spring of 1993 although it meant that Serbs would have to return a third of the territories they had occupied, Franko Simatovic’s defence lawyer Vladimir Petrovic told the Mechanism for International Tribunals in The Hague on Thursday... Read more.

Kosovo War Court Rules Finally Approved, Balkan Transitional Justice

The Specialist Chamber of Kosovo’s Constitutional Court approved the revised rules of procedure and evidence for the new special court that will try Kosovo wartime fighters. After several months’ delay, the Specialist Chamber of Kosovo’s Constitutional Court delivered a ruling on Wednesday approving the revised rules of procedure and evidence for the new Specialist Court, allowing it to issue its first indictments of former Kosovo Liberation Army fighters soon... Read more.

Hague Tribunal President: ‘We Offered Truth, Not Reconciliation’, Balkan Transitional Justice

Carmel Agius, the president of the International Criminal Tribunal for the Former Yugoslavia, which is shutting down at the end of the year, said during a visit to Sarajevo on Wednesday that he was proud that the UN court had assembled a comprehensive set of proven facts about the 1990s wars. “We are closing the door, but we are giving you a large collection of determined facts. We are giving you the truth about what happened,” Agius said. However, he cautioned: “We are not offering reconciliation, because it has not been the mandate of this court to do it.”... Read more.

ICC at 15: International criminal justice is working and needs strong support, Coalition for the ICC

This summer, the International Criminal Court – ICC – will be commemorating 15 years of operations, brought about by the entry into force of the Court’s founding treaty, the Rome Statute, on 1 July 2002. The required high number of ratifications was swiftly attained four years after the adoption of the treaty in Rome on 17 July 1998, an extremely short time for an instrument of such importance and technical complexity. This demonstrated that the Court was indeed “an idea whose time had come”... Read more.

Dutch court rules Netherlands partially responsible for deaths of 300 Muslim men during Bosnian War, Jurist

[JURIST] The Hague Appeals Court [official website, in Dutch] on Tuesday upheld [judgment, in Dutch] a lower court's decision that Dutch peacekeepers were 30 percent responsible for the deaths of 300 Muslim males who were turned away from a Dutch UN base in 1995 when the area surrounding the base was overrun with Bosnian Serb troops. In the ruling, Presiding Judge Gepke Dulek-Schermers said dutch soldiers "knew or should have known that the men were not only being screened ... but were in real danger of being subjected to torture or execution."... Read more.

Former Cambodia Head of State denies committing genocide, Jurist

[JURIST] Cambodia's former head of state on Friday rejected charges of crimes against humanity in his UN-assisted tribunal. The 85-year-old Khieu Samphan, who was head of the Khmer Rouge regime in Cambodia, said [AP report] the allegations were concocted by neighboring country Vietnam. Samphan denied knowing about the forced marriages, executions, and starvations that occurred during the regime and asserted that he only found about the suffering after the rule ended... Read more.

UN rights chief calls for independent investigation in DRC's Kasai province, Jurist

[JURIST] UN High Commissioner for Human Rights Zeid Ra'ad Al Hussein[official profile] called[statement] Tuesday for an independent investigation into the human
rights situation in Kasai. Kasai province is located in the Democratic Republic of the Congo (DRC) and has been the subject of UN scrutiny for three months. The High Commissioner condemned the establishment of an armed militia supported by the authorities and allegedly accompanied by state security forces and police. Zeid stated that serious abuses have been committed, including summary executions and rape. He said that mass graves have been discovered across the province. The UN believes these mass graves were being investigated by two UN experts who were found murdered in March...

Read more.

**French bank BNP accused of “complicity” in Rwanda genocide, Justice info.net**

Three non-governmental organizations on Thursday filed a lawsuit against French bank BNP Paribas for “complicity in genocide, crimes against humanity and war crimes”, they announced. Anti-corruption group Sherpa, the Collective of Civil Parties for Rwanda (CPCR) and Ibuka France accuse BNP Paribas of having knowingly enabled the former Rwandan government to buy arms in the midst of the genocide and in violation of a United Nations arms embargo. According to their press release, the three NGOs accuse the French bank of transferring “1.3 million dollars held by its client the National Bank of Rwanda (BNR) to the Swiss account of a South African arms dealer”, Willem Tertius Ehlers, in June 1994...

Read more.

**UN court to review genocide conviction against a former Rwandan minister, Justice info.net**

A UN tribunal has agreed to review its appeals judgement against a former Rwandan minister found guilty of genocide crimes, a case blocked for months by the detention of one of the court's top judges. In a statement released Monday the UN's Mechanism for International Criminal Tribunals said in a rare legal move it would review its ruling convicting Augustin Ngirabatware for his role in Rwanda's 1994 genocide in which an estimated 800,000 people were killed. Ngirabatware, planning minister at the time of the genocide, was found guilty of inciting, aiding and encouraging militiamen in his home district of Nyamyumba in northwestern Rwanda to kill their Tutsi neighbours. He was sentenced in 2012 to 35 years in jail, but this was cut to 30 years on appeal in 2014...

Read more.

**ICC Finds South Africa Did Not Fulfil Its Obligation to Arrest Sudan’s President but Declines to Refer Matter to Security Council, International Justice Monitor**

The International Criminal Court (ICC) has ruled South Africa failed to fulfill its obligations as member of the court when the government did not act on the ICC arrest warrants for Sudan’s president when he visited South Africa in 2015. The three judges comprising Pre-Trial Chamber II unanimously decided on Thursday, July 6, not to refer the matter to either the United Nations Security Council or the ICC’s membership. Article 87 of the ICC’s founding law, the Rome Statute, provides for the court to refer a member state to the wider membership or the Security Council for not cooperating with the court...

Read more.

**Thousands Commemorate Anniversary of Srebrenica Killings, Balkan Transitional Justice**

Huge crowds of mourners gathered on Tuesday at the Srebrenica memorial site for the commemoration of the 22nd anniversary of the mass killings of Bosniaks by Bosnian Serb forces, with relatives shedding tears as 71 more victims were finally laid to rest...

Read more.

**UN adopts historic nuclear disarmament treaty, Jurist**

[JURIST] UN member states voted 122-1 Friday to adopt [UN News Centre report] the first ever multilateral legally binding treaty on nuclear disarmaments. The one vote against the adoption of the Treaty on the Prohibition of Nuclear Weapons [text, WORD] came from the Netherlands, while Singapore was absent at the conference. Among other things, the treaty prohibits 1) the developing, testing, production, manufacture, acquisition, possession, stockpiling, or transfer or receipt of nuclear weapons; 2) the use or threat to use nuclear weapons directly or indirectly...

Read more.
Blog Updates and Online Lectures

Blog Updates

“The ICC Appeals Chamber Was Not Wrong (But Could Have Been More Right) in Ntaganda”, by Luigi Prosperi. Blog available here.


Online Lectures and Videos


Publications and Articles

Books


Articles


Calls for Papers

The Asian Yearbook of Human Rights and Humanitarian Law and Brill Nyhoff Publishers have issued a call for papers on “A Wide Variety of Human Rights and Humanitarian Issues”. Deadline: 30 September 2017, for more information, click here.

The International Review of the Red Cross has issued a call for papers on “Protracted Armed Conflict”. Deadline: 31 November 2017, for more information, click here.
Events

ADC-ICT Persuasion by Paper - Written Legal Advocacy
Date: 29 July 2017
Location: ICTY, The Hague
For more information, click here.

Netflix Screening: The Tokyo Trial
Date: 8 September 2017
Location: The Hague Institute for Global Justice, The Hague
For more information, click here.

UN World Humanitarian Day 2017
Date: 16 August 2017
Location: Baker McKenzie, Sydney
For more information, click here.

How to create understanding in times of conflict?
Date: 21 September 2017
Location: Peace Palace, The Hague
For more information, click here.

Netflix Screening: The Tokyo Trial
Date: 8 September 2017
Location: The Hague Institute for Global Justice, The Hague
For more information, click here.

How to create understanding in times of conflict?
Date: 21 September 2017
Location: Peace Palace, The Hague
For more information, click here.

Opportunities

JPO-UNRWA Associate Protection Advocacy Officer (P-2)
Democratic Governance, Beirut
Deadline: 23 July 2017
For more information, click here.

Legal Expert (P-2)
UPU Legal Affairs Directorate, Berne
Deadline: 2 August 2017
For more information, click here.

Trainee - Mixed Migration Officer
Danish Refugee Council, Abidjan
Deadline: 23 July 2017
For more information, click here.

Legal Officer (P-3)
Office of Human Resources Management, Nairobi
Deadline: 20 August 2017
For more information, click here.

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