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Overview of Court Documents

I. Extraordinary Chambers in the Courts of Cambodia

Prosecutor *v*. Kaing Guek Eav alias "Duch", 001/18-07-2007/ECCC/TC, Decision on Request for Release, 15 June 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/ECCC/Duch_Decision_on_Request_for_Release.pdf)

II. International Court of Justice

Case Concerning Questions Relating to the Obligation to Prosecute or Extradite (Belgium *v*. Senegal), Request for the Indication of Provisional Measures, Order, 28 May 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/ICJ/Belgium Senegal_Order on provisional measures.pdf)

Summary

On 28 May 2009, the International Court of Justice (ICJ) in The Hague delivered its decision on the request for the indication of provisional measures submitted by Belgium in the case concerning Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal). The Court found by thirteen votes to one that "the circumstances, as they now present themselves to [it], are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures".

The case concerned proceedings brought before the Court by Belgium claiming that Senegal had breached its international obligations to punish crimes against international humanitarian law and under the 1948 United Nations Convention against Torture by failing to prosecute or extradite former Chad President, Hissène Habré. Habré is accused of committing war crimes and crimes against humanity during his 1982-1990 rule, with Belgium seeking provisional measures to prevent Habré from leaving Senegal pending the Court's final decision.

In delivering its decision the Court stated that its power to indicate provisional measures will only be exercised if there is urgency, "in the sense that there is a real and imminent risk that irreparable prejudice may be caused" before its final decision is given.

The ICJ referred to statements made by the Senegalese President, Mr. Abdoulaye Wade upon which Belgium based its request. In four separate interviews, Mr. Wade indicated that Senegal would not keep Habré under indefinite house arrest if the funding for the organisation of a trial for the Accused was not granted. Nevertheless, relying particularly on the solemn declaration made before it by the Co-Agent of Senegal, the ICJ observed

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that Senegal has asserted that the President's statements were taken out of context and that it will not allow Habré to leave the country while the case is pending. Furthermore, the Court noted the assertion by the Co-Agent of Belgium that such solemn declarations could render its request without object.

The ICJ therefore decided that the risk of irreparable prejudice to the rights claimed by Belgium was not apparent, and there existed no urgency to justify the indication of provisional measures. The Court emphasised that the decision neither affects the merits of the case, nor Belgium's right to submit future requests for the indication of provisional measures based on new facts.

CASE CONCERNING THE DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS (COSTA RICA *V.* NICARAGUA), JUDGMENT, 13 JULY 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/ICJ/Costa_Rica.c.Nicaragua_ Judgment_13-07-09_EN.pdf)

CASE CONCERNING THE DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS (COSTA RICA *V.* NICARAGUA), SEPARATE OPINION OF JUDGE SEPÚLVEDA-AMOR, 13 JULY 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/ICJ/Costa_Rica.c.Nicaragua_ Separate opinion of Judge_sepulveda_amor_13-07-09_EN_only.pdf)

CASE CONCERNING THE DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS (COSTA RICA *V.* NICARAGUA), SEPARATE OPINION OF JUDGE SKOTNIKOV, 13 JULY 2009

(http://www.haguejusticeportal.net/Docs/CourtDocuments/ICJ/Costa_Rica.c.Nicaragua_ Separate opinion of Judge Skotnikov_13-07-09_EN_only.pdf)

CASE CONCERNING THE DISPUTE REGARDING NAVIGATIONAL AND RELATED RIGHTS (COSTA RICA *V.* NICARAGUA), DECLARATION OF JUDGE *AD HOC* GUILLAUME (FRENCH VERSION ONLY), 13 JULY 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/ICJ/Costa_Rica.c.Nicaragua_ Declaration of Judge ad hoc Guillaume _13-07-09_FR_Only.pdf)

Summary

On 13 July 2009, the International Court of Justice (ICJ) delivered its Judgment in the case concerning the Dispute regarding Navigational and Related Rights (Costa Rica v. Nicaragua), on a section of the San Juan River regulated by the 1858 Treaty of Limits.

It was not contested that the section of the San Juan River belongs to Nicaragua, since the border lies on the Costa Rican bank, with Costa Rica possessing a right of free navigation. However, the parties differed as to the precise extent of those rights. In its Application, Costa Rica claimed that Nicaragua had violated no less than nine obligations, including

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the obligation to allow Costa Rican vessels and their passengers to navigate freely on the River, not to impose charges or fees, and other obligations concerning the non-imposition of impediments to these rights.

The ICJ found, *inter alia*, that Costa Rica has the right of free navigation on the San Juan River for purposes of commerce, including the transport of passengers and tourists. The Court also found that Nicaragua can impose regulations, such as the obligation for Costa Rican vessels to stop at the first and last Nicaraguan river post on their route, or the obligation for passengers of these vessels to carry a passport or an identity card.

The Court ruled that the 1858 Treaty of Limits between Costa Rica and Nicaragua "completely defines the rules applicable to the section of the San Juan river […] in respect of navigation". The treaty grants Costa Rica "a perpetual right of free navigation 'con objetos de comercio.'" While the parties did not agree on the meaning of this last expression, the Court gave way to the Costa Rican interpretation that "con objetos de comercio" means "for the purposes of commerce", and not only "with articles [for trade]" as Nicaragua had contended. Accordingly, the Court found that the right of free navigation applies to the transport of persons. However, the ICJ also ruled that official vessels, for example carrying out police functions, did not enjoy a right of free navigation.

Additionally, the Court affirmed the right of Nicaragua to regulate navigation on this section of the River. In particular, the Court affirmed Nicaragua's sovereign right to know the identity of persons entering its territory, the power to require a passport, or the right to prohibit night time navigation. However, it denied Nicaragua's right to impose a visa requirement on those persons benefiting from Costa Rica's right of free navigation, or the payment of charges through "departure clearance certificates".

Costa Rica had filed an Application before the Court on 29 September 2005, claiming that Nicaragua imposed a number of restrictions on the navigation of Costa Rican boats and their passengers on the San Juan River in violation of the Treaty of Limits. In its counter-claims, Nicaragua argued that there had either been no breach of the provisions of the Treaty of Limits, or, where appropriate, that the obligations claimed to have been breached did not form obligations under the Treaty.

As a basis for the ICJ's jurisdiction, Costa Rica has invoked the declarations of acceptance of the Court's jurisdiction made by Costa Rica and Nicaragua, as well as the 2002 Tovar Caldera Agreement and the 1948 Pact of Bogotá. Nicaragua has not raised any objection against the jurisdiction of the Court.

After the Memorial of Costa Rica and the Counter-Memorial of Nicaragua were filed before the Court, as well as a subsequent Reply and Rejoinder, hearings in the case were held from 2 to 12 March 2009 at the Peace Palace in The Hague.

III. INTERNATIONAL CRIMINAL COURT

PROSECUTOR V. BAHR IDRISS ABU GARDA, ICC-02/05-02/09, DECISION ON THE PROSECUTOR'S APPLICATION UNDER ARTICLE 58, 7 MAY 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/ICC/DecisionontheProsecutorsapplication_7_May_2009.pdf)

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Summary

On 18 May 2009 Bahr Idriss Abu Garda appeared before Pre-Trial Chamber I at the International Criminal Court (ICC). Abu Garda is accused of war crimes in relation to the killing of 12 African Union peacekeepers in 2007 during an attack on the Haskanita Military Group site in North Darfur. He is the first accused to appear before the ICC concerning the situation in Darfur and the first accused to appear without an arrest warrant. Abu Garda was summonsed to appear before the Court, and voluntarily arrived in the Netherlands on Sunday afternoon on a commercial aircraft.

Abu Garda, a member of the Zaghawa tribe of Sudan, is the current Chairman and General Co-ordinator of Military Operations of the United Resistance Front, a rebel group fighting against the Sudanese Government in the west of Sudan. In 2007 he is alleged to have been in command of splinter forces of the Justice and Equality Movement (JEM) during an attack on the African Union Mission in Sudan (AMIS).

Pre-Trial Chamber I at the ICC found that there were reasonable grounds to believe that Abu Garda was responsible as a co-perpetrator for three war crimes under article 25(3)(a) of the Rome Statute: violence to life, in the form of murder (art. 8(2)(c)(i)); intentionally directing attacks against personnel, installations, material, units or vehicles involved in a peacekeeping mission (art. 8(2)(e)(iii)) and; pillaging, within the meaning of (art. 8(2)(e)(v)).

The appearance of Abu Garda before the Pre-Trial Chamber marks the first time that the ICC has issued a summons to appear before the Court instead of an arrest warrant. Under the ICC Statute, the Court may issue a summons where there are reasonable grounds to believe the accused committed a crime under its jurisdiction and that a summons is sufficient to secure his appearance before the court.

At his initial appearance, Judge Cuno Tarfusser, acting as single judge, informed Abu Garda of the crimes which he is alleged to have committed and of his rights. Abu Garda is free to leave the country after the initial hearing, but may be required to return to The Netherlands to attend a confirmation of charges hearing before the start of the trial.

Two other Sudanese rebels are also accused of crimes in relation to the Haskanita attack, but their names have not yet been released.

PROSECUTOR *V*. JEAN-PIERRE BEMBA GOMBO, ICC-01/05-01/08, DECISION PURSUANT TO ARTICLE 61(7)(A) AND (B) OF THE ROME STATUTE ON THE CHARGES OF THE PROSECUTOR AGAINST JEAN-PIERRE BEMBA GOMBO, 15 JUNE 2009

(http://www.icc-cpi.int/iccdocs/doc/doc699541.pdf)

On 15 June 2009, Pre-Trial Chamber II at the International Criminal Court (ICC) confirmed some of the charges against former vice-president of the Democratic Republic of the Congo (DRC) Jean-Pierre Bemba Gombo. The Pre-Trial Chamber found that there was sufficient evidence to proceed on five counts: murder and rape as crimes against humanity, and murder, rape and pillaging as war crimes. Jean-Pierre Bemba Gombo is alleged to be criminally responsible as a person acting as military commander within the meaning of article 28(a) of the ICC Statute for crimes committed by his forces, the *Mouvement de Libération du Congo* (MLC), during fighting in the Central African Republic from October 2002 to March 2003.

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While the Pre-Trial Chamber found sufficient evidence to proceed on five charges, it found that there was not sufficient evidence in relation to the other charges submitted in the Prosecution's Amended Document Containing the Charges. The Pre-Trial Chamber determined that there were not substantial grounds to believe that Bemba was individually criminally responsible as a co-perpetrator with Ange-Félix Patassé, since the Prosecutor had not shown sufficient evidence to demonstrate that Bemba had the necessary criminal intent within the meaning of article 30 of the ICC Statute. The Pre-Trial Chamber also declined to confirm the three following charges: torture as a crime against humanity; torture as a war crime, and outrages upon personal dignity constituting a war crime.

Jean-Pierre Bemba Gombo was arrested by Belgian authorities in Belgium on 24 May 2008 and was transferred to the ICC in The Hague on 3 July 2008. A confirmation of charges hearing took place at the ICC from 12-15 January 2009. On 3 March 2009, the Pre-Trial Chamber decided to adjourn the confirmation of charges hearing, requesting the Prosecutor to file an amended document containing the charges. The Pre-trial Chamber indicated that the evidence submitted by the Prosecution may indicate a different mode of responsibility, namely criminal liability as a commander or superior under article 28 of the ICC Statute. On 30 March 2009, the Prosecutor submitted an Amended Document Containing the Charges, while the Defence responded on 24 April 2009. The case will now be referred to a Trial Chamber for trial.

PROSECUTOR *V.* OMAR HASSAN AHMAD AL BASHIR, ICC-02/05-01/09, DECISION ON THE PROSECUTOR'S APPLICATION FOR LEAVE TO APPEAL THE "DECISION ON THE PROSECUTOR'S APPLICATION FOR A WARRANT OF ARREST AGAINST OMAR HASSAN AHMAD AL BASHIR", 24 JUNE 2009

(http://www.haguejusticeportal.net/Docs/ICC/Bashir_Leave to Appeal.pdf)

PROSECUTOR *V.* OMAR HASSAN AHMAD AL BASHIR, ICC-02/05-01/09/OA, PROSECUTION DOCUMENT IN SUPPORT OF APPEAL AGAINST THE "DECISION ON THE PROSECUTOR'S APPLICATION FOR A WARRANT OF ARREST AGAINST OMAR HASSAN AHMAD AL BASHIR", 6 JULY 2009

(http://www.haguejusticeportal.net/Docs/ICC/Bashir_Prosecution Appeal_Genocide.pdf)

PROSECUTOR *V.* JEAN-PIERRE BEMBA GOMBO, DECISION ON THE INTERIM RELEASE OF JEAN-PIERRE BEMBA GOMBO, ICC-02/05-01/09, 14 AUGUST 2009.

(http://www.haguejusticeportal.net/Docs/ICC/Bemba_Interim_release_EN.pdf)

Summary

On 14 August 2009, Pre Trial Chamber II at the International Criminal Court (ICC) granted the request for interim release of Jean-Pierre Bemba Gombo. The Pre-Trial Chamber held that the continued detention of Bemba Gombo was not necessary to ensure his appearance at trial.

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On 14 April 2009, the Pre Trial Chamber ordered the continued detention of Bemba Gombo, rejecting Bemba Gombo's third application for interim release. However, the Pre-Trial Chamber reviewed this decision in conformity with article 60 (3) of the Rome Statute and rule 118 (3) of the Rules and Procedures of Evidence. According to the rules, the Chamber is to decide whether continued detention is necessary to ensure the accused's appearance at trial, to prevent obstruction of the proceedings or to prevent continued commission of crimes.

Sitting as a Single Judge, Judge Ekaterina Trendafilova noted that "continued detention or release is not of a discretionary nature and [is] mindful of the underlying principle that deprivation of liberty is the exception not the rule" ordering Bemba-Gombo's release, albeit with conditions.

The decision for interim release is deferred pending a decision of a state to which Bemba Gombo has requested to be released. These states have been invited to provide informative observations on the question of his interim release. It concerns the authorities of Belgium, France, Germany, Italy, the Netherlands, Portugal and South Africa.

Jean-Pierre Bemba Gombo is the only accused before the ICC in relation to the situation in Central African Republic, accused of committing crimes during a military intervention by the *Mouvement de Libération du Congo* (MLC). On 15 June 2009, the Pre-Trial Chamber decided that there was sufficient evidence to establish substantial grounds to believe that Bemba Gombo is criminally responsible as a military commander for two counts of crimes against humanity, and three counts of war crimes.

IV. International Criminal Tribunal for Rwanda

Prosecutor *v.* Callixte Kalimanzira, ICTR-2005-88-T, Judgement, 22 June 2009

(http://www.haguejusticeportal.net/Docs/ICTR/Kalimanzira_Judgement_EN.pdf)

Summary

On 22 June 2009, Trial Chamber III at the International Criminal Tribunal for Rwanda (ICTR) delivered its judgement in the case of Callixte Kalimanzira, sentencing the former Interior minister to 30 years' imprisonment. Kalimanzira was found guilty of genocide as well as direct and public incitement to commit genocide.

During the genocide 1994 in Rwanda, Kalimanzira was Chef de cabinet in the Ministry of the Interior in the Interim Government of Rwanda that took control after the death of President Habyarimana on April 6 1994. Kalimanzira was accused of planning, instigating, ordering, committing or otherwise aiding and abetting the planning and commission of crimes during the events of April to July in Rwanda. He was also accused of personally participating in the massacre of Tutsi civilians.

In its Judgement, the Trial Chamber held that on 23 April 1994, Kalimanzira went to Kabuye hill in Butare préfecture with soldiers and policemen, where thousands of Tutsi refugees were attacked and slaughtered. Kalimanzira encouraged thousands of Tutsi civilians to take refuge at Kabuye Hill in Ndora commune by promising them food and

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protection. However, they were subsequently killed by Hutu. The Trial Chamber found Kalimanzira guilty of direct and public incitement to commit genocide. The Chamber also found that the influence Kalimanzira derived from his prominent status in Butare society, and his status within the Ministry of the Interior, made it likely that others would follow his example, which served as a factor aggravating his crimes.

Kalimanzira voluntarily surrendered to the tribunal on 8 November 2005 and pleaded not guilty. The trial began on 5 May 2008 and was completed on 20 April 2009.

PROSECUTOR *V*. LÉONIDAS NSHOGOZA, ICTR-2007-91-T, CONTEMPT JUDGEMENT, 2 JULY 2009

Summary

On 2 July 2009, Trial Chamber III at the International Criminal Tribunal for Rwanda (ICTR) found former Defence investigator, Léonidas Nshogoza guilty of contempt. Nshogoza was sentenced to 10 months' imprisonment but the Chamber ordered his immediate release after giving him credit for time already served in custody.

The Trial Chamber found Nshogoza guilty of one count of contempt for knowingly violating or showing reckless indifference to protective measures ordered by the Tribunal through meetings with and disclosing the information of two protected witnesses. The Accused had been charged with two counts of contempt and two counts of attempting to commit acts punishable as contempt, but the Chamber found that the Prosecution had failed to prove the remaining three charges beyond a reasonable doubt. The conviction relates to Nshogoza's time working as an investigator during the initial trial proceedings against former Minister in the Interim Government of Rwanda, Jean de Dieu Kamuhanda. Kamuhanda was later found guilty of genocide and sentenced to life imprisonment.

Prior to the conviction of Nshogoza, a protected witness known only as 'GAA' had pleaded guilty to one count of contempt and was sentenced to nine months' imprisonment. GAA was a witness in the case against Kamuhanda and admitted to giving false testimony under solemn declaration on 18 May 2005. According to the Indictment against GAA, he received and accepted inducements from Léonidas Nshogoza, but the Prosecution in Nshogoza's case failed to prove this charge. It was however proven that Nshogoza met with GAA as well as another witness, 'A7/GEX'.

The trial began on 9 February 2009 after Nshogoza voluntarily surrendered to the Tribunal in February 2008

PROSECUTOR *V*. THARCISSE RENZAHO, ICTR-97-31-T, JUDGEMENT AND SENTENCE, 14 JULY 2009

(http://www.haguejusticeportal.net/Docs/ICTR/Renzaho_Judgement_EN.pdf)

Summary

On 14 July 2009, Trial Chamber I of the International Criminal Tribunal for Rwanda (ICTR) found Tharcisse Renzaho guilty of genocide, as well as murder and rape as crimes

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against humanity and serious violations of Article 3 common to the Geneva Conventions. He was however acquitted of complicity to commit genocide. Renzaho will now serve a sentence of life imprisonment, subject to appeals.

During the Genocide, Tharcisse Renzaho was a senior public official who held the positions of préfet and Chairman of the Civil Defence Committee of Kigali-ville, as well as the rank of Colonel in the *Forces Armées Rwandaises* (FAR). In this capacity, he had *de jure* and *de facto* control over armed forces, militias, bourgmestres, gendarmes and armed civilians. According to the Trial Chamber, Renzaho is guilty of participating in an attack on the Saint Famille church in which more than 100 Tutsis were killed, arming Interahamwe militias, as well as failing to intervene when army tanks fired upon Tutsi houses causing multiple deaths. The Chamber also found that Renzaho had ordered soldiers, police and militias to erect roadblocks to identify Tutsi civilians to be executed, and made remarks encouraging the sexual abuse of women. He was thus found criminally liable for the rapes that followed.

Throughout the trial Tharcisse Renzaho maintained his innocence, asserting that he had no association with the Interahamwe militia. According to his lawyer, Renzaho's prosecution was the result of political interference by the Rwandan Government. Mr. François Cantier claimed that Renzaho had resisted attacks by the Rwandan Patriotic Front (RPF) – currently in power in Rwanda – and had therefore been designated as an enemy of Kigali, resulting in his prosecution and consequent difficulties with obtaining Defence witnesses.

Trial proceedings against Renzaho began in January 2007. Renzaho was arrested in the Democratic Republic of Congo (DRC) in 2002 following two previous failed attempts to capture him in Kenya and Zambia. The proceedings were completed on 15 February 2009 after 51 trial days and testimony from over 50 witnesses.

V. INTERNATIONAL CRIMINAL TRIBUNAL FOR THE FORMER YUGOSLAVIA

PROSECUTOR *V*. MILE MRKSIĆ AND VESELIN ŠLJIVANČANIN, IT-95-13/1-A, APPEALS JUDGEMENT, 5 MAY 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/ICTY/Mrksic Appeals Judgement_EN.pdf)

Summary

On 5 May 2009 the Appeals Chamber at the International Criminal Tribunal for the former Yugoslavia (ICTY) handed down its appeal judgement in the case of Veselin Šljivančanin and Mile Mrkšić ('Vukovar Hospital'), upholding Mrkšić's 20-year sentence and increasing Šljivančanin's sentence from 5 to 17 year's imprisonment.

Veselin Šljivančanin, a former senior officer of the Yugoslav People's Army (JNA), was found guilty of aiding and abetting the murder of Croat and other non-Serb prisoners of

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war after the fall of the Croatian town of Vukovar in 1991. Mile Mrkšić, a colonel in the JNA, was found guilty of having aided and abetted the murders, torturing prisoners, as well as the inhumane conditions of detention at the hangar at Ovčara near Vukovar.

The Trial Chamber had handed down its verdict on 27 September 2007, convicting the two men and acquitting a third, Miroslav Radić, of all the charges.

In November 1991, after Serb forces occupied the city of Vukovar, hundreds of people sought refuge in the Vukovar Hospital. Forces from the JNA and Serb paramilitaries removed around 260 non-Serbs from the hospital and had them transported to a farm building in Ovčara, where they were beaten, tortured and eventually murdered.

Veselin Šljivančanin was a major in the JNA and a security officer of the 1st Guards Motorised Brigade and Southern Operational Unit, and was appointed to evacuate the Vukovar Hospital. The Appeals Chamber found that the Trial Chamber had erred in acquitting Šljivančanin of aiding and abetting the murder of 194 people at Ovčara farm, saying that he was aware that paramilitaries were likely to kill prisoners of war if he failed to act. Šljivančanin was therefore found guilty on appeal of aiding and abetting torture for failing to secure adequate JNA guards at Ovčara or ensuring that JNA guards under his authority acted to prevent the Serb forces from beating the prisoners. In sentencing him to 17 years' imprisonment, the Appeals Chamber reviewed Šljivančanin's original sentence, taking into account the gravity of the crimes as well as the impact of torture on the victims and their families.

Mrkšić was convicted under Articles 3 and 7(1) of the Statute for murder, aiding and abetting the murder of 194 individuals, torture, and cruel treatment as violations of the laws or customs of war as well as for having aided and abetted the maintenance of inhumane conditions of detention. The Appeals Chamber upheld the Trial Chamber's sentence of 20 years' imprisonment.

The Appeals Chamber upheld one of the Prosecution's four grounds of appeal. All eleven counts of appeal filed by Mrkšić and eleven filed by Šljivančanin were dismissed.

Contempt Proceedings Against Dragan Jokić, IT-05-88-R77.1-A, Appeals Judgement on Allegations of Contempt, 25 June 2009

(http://www.haguejusticeportal.net/Docs/ICTY/Jokic_Contempt_Appeal_Decision_EN.pdf

Summary

On 17 March 2009, Trial Chamber III of the International Criminal Tribunal for the former Yugoslavia (ICTY) rendered a guilty verdict against Dragan Jokić for contempt of court, stating that he persistently refuses to testify in the case *Prosecutor v. Vujadin Popović* et al. without reasonable excuse and willfully and knowingly impeding the due administration of justice. The Chamber therefore sentenced Jokić to 4 months' imprisonment consecutive to the nine-year sentence he is currently serving.

Dragan Jokić was called to testify in the case *Popović et al*. as a Prosecution witness. On 31 October and 1 November 2007, he refused to testify before the Tribunal. A confidential submission of 31 October 2007 by Counsel for Jokić detailed the reasons for his refusal to testify.

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Consequently, the Trial Chamber considered that there were sufficient grounds to proceed against the accused for contempt and issued an order in lieu of an indictment, declaring that it would prosecute the matter against Dragan Jokić itself.

On 1 November 2007, the Trial Chamber issued an order initiating contempt proceedings pursuant to Rule 77 of the Rules of Procedure and Evidence. In accordance with Rule 77 of its Rules, the Tribunal can conduct proceedings for contempt of the Tribunal since it possesses the inherent power to deal with conduct interfering with the administration of justice. Under Rule 77 (C) (iii) of the Tribunal's Rules a Trial Chamber may initiate contempt proceedings on its own behalf. Those who knowingly and willfully interfere with the Tribunal's administration of justice in such a way may, therefore, be held in contempt of the Tribunal.

PROSECUTOR *V*. RADOVAN KARADŽIĆ, IT-95-5/18-PT, DECISION ON THE ACCUSED'S HOLBROOKE AGREEMENT MOTION, 8 JULY 2009

(http://www.haguejusticeportal.net/Docs/ICTY/Karadzic_Immunity_Decision.pdf)

PROSECUTOR *V*. MILAN LUKIĆ AND SREDOJE LUKIĆ, IT-98-32-1-T, JUDGEMENT, 20 JULY 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/ICTY/Lukic_Trial_Judgement_EN.pdf)

Summary

On 20 July 2009, Trial Chamber III at the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted Milan Lukić and Sredoje Lukić of war crimes and crimes against humanity. Milan Lukić was sentenced to life imprisonment, while his cousin, Sredoje Lukić received a sentence of 30 years' imprisonment.

In delivering the judgement, presiding Judge Robinson said that "the perpetration by Milan Lukić and Sredoje Lukić of crimes in this case is characterised by a callous and vicious disregard for human life". The two accused were members of a paramilitary group known as the "White Eagles" or "Avengers" which targeted Bosnian Muslims and other non-Serbs during the 1992-1995 war.

In the Second Amended Indictment dated 27 February 2006, Milan Lukić was charged with 21 counts of war crimes and crimes against humanity, while Sredoje Lukić was charged with 13 counts. In the judgement of 20 July, Milan Lukić was found guilty of each count, while Sredoje Lukić was found guilty of 7 of the 13 counts.

According to the Trial Chamber, Milan Lukić was responsible for persecutions, murder, extermination, cruel treatment, and inhumane acts as crimes against humanity, as well as war crimes in relation to six separate incidents in the eastern Bosnian municipality of Višegrad. The Trial Chamber found that Milan Lukić personally killed 132 Muslim persons. Sredoje Lukić was found guilty of committing or aiding and abetting the commission of persecutions, murder, extermination, cruel treatment and inhumane acts, as well as war crimes related to three of these incidents.

One particular incident attracting specific condemnation from the Trial Chamber concerned the murder of 59 Muslim women, children and elderly men in a house on

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Pionirska Street in Višegrad. According to Judge Robinson, this incident, together with a similar incident at a house in the Bikavac settlement of Višegrad for which Sredoje Lukić was found not guilty, stood out for its viciousness and for the "the sheer callousness and brutality of herding, trapping and locking the victims in the two houses, thereby rendering them helpless in the ensuing inferno, and for the degree of pain and suffering inflicted on the victims as they were burnt alive." Milan Lukić was found to have not only placed the explosives at these incidents, but also to have shot at people attempting to escape.

In the original Indictment Lukić and Lukić were charged with acting in concert with Mitar Vasiljević and other uncharged individuals. The case of Mitar Vasiljevic was severed from those of Lukić and Lukić when the latter two were still at large. Vasiljevic was convicted for his involvement in the crimes and sentenced to 15 years' imprisonment, on appeal, on 6 July 2004.

PROSECUTOR *V*. ASTRIT HARAQIJA AND BARUSH MORINA, IT-04-84-R77.4-A, APPEALS JUDGEMENT, 23 JULY 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/ICTY/Haraqija and Morina_Appeals_Judgement_EN.pdf)

Summary

The Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) has overturned the conviction of Astrit Haraqija for contempt of the Tribunal, while upholding the conviction and sentence of Bajrush Morina. The two were convicted in 2008 for intimidating protected witnesses in the trial of the former Kosovo Albanian military leader Ramush Hardinaj and others in 2007.

Astrit Haraqija, former Kosovo Minister for Culture, Youth and Sport was sentenced to five month's imprisonment, while Morina, former political adviser to Kosovo's Deputy Minister in the Ministry of Culture, Youth and Sports, was sentenced to three month's imprisonment.

The Appeals Chamber accepted Haraqija's second ground of appeal challenging the sufficiency of the evidence underpinning his conviction. It found that the Trial Chamber gave too much weight to untested evidence, most of it based on "double or even triple hearsay", when it concluded that Haraqija had influence over Morina and instructed him to pressure a protected witness. It held that the Trial Chamber erred in giving "decisive weight" to untested evidence that came from Haraqija's co-accused, Morina in the absence of corroborating evidence. The Appeals Chamber dismissed all of Morina and the Prosecution's grounds of appeal.

PROSECUTOR *V*. VOJISLAV ŠEŠELJ, IT-03-67-R77.2, JUDGEMENT ON ALLEGATIONS OF CONTEMPT, 24 JULY 2009

(http://www.icty.org/x/cases/contempt_seselj/tjug/en/090724_contempt_judgement_summary.pdf (Judgement Summary)

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Summary

On 24 July 2009, Trial Chamber III at the International Criminal Tribunal for the former Yugoslavia (ICTY) found Vojislav Šešelj guilty of Contempt of the Tribunal under Rule 77(A)(ii) of the Rules of Procedure and Evidence. Šešelj was given a sentence of 15 months' imprisonment by the Chamber, which cited the gravity of the offence and the need for deterrence as factors in its decision.

Šešelj becomes the first accused to be charged with and convicted of contempt while also on trial for war crimes.

Under the Order in lieu of an Indictment of 21 January 2009, Šešelj was charged with knowingly and wilfully interfering with the administration of justice, through the disclosure of confidential information in violation of orders by the Tribunal granting protective measures. The charge relates to a book authored by Šešelj containing information regarding the names and personal information of three protected witnesses and their testimonies from his war crimes trial.

In delivering its verdict, the Trial Chamber noted the deliberate way in which Šešelj had defied the protected measures granted to the witnesses and considered his actions a serious interference with the administration of justice. The Chamber also asserted the need to discourage and prevent such behavior, given its potential adverse impact upon the confidence of protected witnesses in the Tribunal. Šešelj was ordered to remove the book from his website by 7 August.

Vojislav Šešelj is the former president of the Serbian Radical Party (SRS) and was a prominent political figure in the Federal Republic of Yugoslavia (FRY). He is charged on the basis of his individual criminal responsibility with eight counts of crimes against humanity and six counts of violations of the laws or customs of war. The Indictment alleges that Šešelj participated in a Joint Criminal Enterprise (JCE) aimed at the forcible removal, through the commission of crimes, of the Croat, Muslim and other non-Serb populations in Serbia, Montenegro, Macedonia, as well as in Croatia and Bosnia and Herzegovina.

VI. Permanent Court of Arbitration

The Government of Sudan *and* The Sudan People's Liberation Movement/Army, In the Matter of an Arbitration Before a Tribunal Constituted in Accordance with Article 5 of the Arbitration Agreement Between the Government of Sudan and the Sudan People's Liberation Movement/ Army on Delimiting Abyei Area, Final Award, 22 July 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/PCA/Abyei_Final_Award_EN.pdf)

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The Government of Sudan and The Sudan People's Liberation Movement/Army, In the Matter of an Arbitration Before a Tribunal Constituted in Accordance with Article 5 of the Arbitration Agreement Between the Government of Sudan and the Sudan People's Liberation Movement/ Army on Delimiting Abyei Area, Dissenting Opinion of Judge Awn Shawkat Al-Khasawneh, 22 July 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/PCA/Abyei_Dissenting_Opinion_EN.pdf)

Summary

On 22 July 2009 the Arbitral Tribunal deciding on the borders of the oil-rich Abyei region in southern Sudan, delivered its Final Award at the Permanent Court of Arbitration, in The Hague. The five-member Tribunal issued an Award delimiting the boundaries of the region, which will be part of the referendum on independence of South Sudan in 2011 under the 2005 Comprehensive Peace Agreement.

On 7 July 2008 the Government of Sudan and the Sudan People's Liberation Movement /Army (SPLM/A) signed an Arbitration Agreement in order to settle the issue of Abyei. The dispute focused on whether a commission of experts known as the Abyei Boundaries Commission (ABC Experts) exceeded their mandate in determining the region's borders. According to the Agreement, if the ABC Experts were found to have exceeded their mandate with respect to the delimitation, the Tribunal was to establish its own delimitation.

The parties had publicly agreed to abide by the Tribunal's ruling in the lead up to the announcement, amid prevailing fears that the dispute could see the country slide back into the conditions of the 21-year civil war, which ended after the peace agreement was signed. Under the 2005 deal, the borders of the Abyei region were not clearly established, with the ABC Experts tasked with this job.

The Tribunal first examined whether the ABC Experts had exceeded their mandate with respect to interpreting their own competence. The Tribunal found that the ABC Experts had adopted a "tribal" interpretation of their mandate, requiring them to delimit and demarcate the area of the nine Ngok Dinka Chiefdoms as of 1905. The Government of Sudan had advocated a "territorial" interpretation of the experts' mandate, which included determining a defined area of land that was administratively transferred by the Anglo-Egyptian Condominium in 1905. The Tribunal found that the "tribal" interpretation was not unreasonable, and therefore that the ABC Experts did not exceed their mandate.

The Tribunal did find, however, that the ABC Experts exceeded their mandate by failing to give sufficient reasons for some of their conclusions. The ABC Experts were found to have failed to give adequate reasoning with respect to the Northern shared boundary and the Eastern and Western boundaries.

The Tribunal then turned to the issue of defining the boundaries, based on scholarly, documentary, cartographic and oral evidence submitted by the parties. The new borders reduce the size of the region as established by the ABC Experts and give greater territorial control to the Government of Sudan to areas containing oil fields. The Tribunal also emphasised that the Award does not prejudice the traditional grazing rights of the people in the Abyei region.

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Judge Awn Shawkat Al-Khasawneh issued a dissenting opinion on the Award. In his dissent, he claims the logic of the Tribunal to be "unpersuasive (let alone convincing), self-contradicting, result-oriented, in many respects cavalier, insufficiently critical and unsupported by evidence, and indeed flying in the face of overwhelming contrary evidence."

ERITREA ETHIOPIA CLAIMS COMMISSION, ERITREA'S DAMAGES CLAIMS, BETWEEN THE STATE OF ERITREA AND THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, 17 AUGUST 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/ER Final Damages_Award_complete.pdf)

ERITREA ETHIOPIA CLAIMS COMMISSION, ETHIOPIA'S DAMAGES CLAIMS, BETWEEN THE STATE OF ERITREA AND THE FEDERAL DEMOCRATIC REPUBLIC OF ETHIOPIA, 17 AUGUST 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/PCA/ET_Final_Damages_Award_complete.pdf)

Summary

On 17 August 2009, the Eritrea-Ethiopia Claims Commission (EECC), based in The Hague, rendered its Final Award on Damages relating to the 1998-2000 war between Ethiopia and Eritrea. The Eritrea-Ethiopia Claims Commission was established pursuant to Article 5 of the Peace Agreement signed in Algiers on December 12, 2000 between the Governments of the State of Eritrea and the Federal Democratic Republic of Ethiopia. It was mandated to "decide through binding arbitration all claims for loss, damage or injury by one Government against the other" that "result from violations of international humanitarian law, including the 1949 Geneva Conventions, or other violations of international law".

The two Awards, published on 18 August, award compensation in respect of claims by both Eritrea and Ethiopia. All claims awarded were based on violations previously found in the EECC's fifteen Partial and Final Awards on liability, rendered between July 1, 2003 and December 19, 2005. At the beginning of its Order the Commission declared these findings final and binding (as res judicata). It was not allowed at this stage, as Parties tried, to re-litigate claims or to present new ones.

Eritrea was awarded over US $161 million (and another US $2 for individual Eritrean claimants) for Ethiopia's violations of jus in bello; Ethiopia is to receive a total amount of over US $174 million. Apart from compensation for Eritrea's violations of jus in bello, this amount also includes US $87 for compensation for what was perhaps the most controversial previous finding: Eritrea's violation of the jus ad bellum. The Commission re-stated that it considered Eritrea responsible for a violation of Article 2, para. 4 of the UN Charter prohibiting the use of armed force. However, it identified this breach as limited as to place and time. Although Eritrea was held to have started the war, the EECC did not consider its illegal attack part of a wider, pre-planned assault (or even of

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an aggressive war, as Ethiopia had claimed). As a consequence, having assessed facts, it did not consider Eritrea as the sole legal responsible for all that happened throughout the two years of war.

To determine the extent of Eritrea's liability for events a 'sufficient causal connection' had to be established. In establishing this connection, the EECC found that there was, broadly speaking, adequate evidence for Eritrea's liability for events on all war fronts. To determine next, the amount of compensation awarded to Ethiopia for Eritrea's violation of the jus ad bellum, the Commission could find only limited guidance in past jurisprudence and State practice. In its innovative and important decision, the EECC stated that while the compensation awarded to each Party is substantial, it is probably much less than each Party believes it is due: "The difficult economic conditions found in the affected areas of Ethiopia and Eritrea must be taken into account in assessing compensation here."

At the end of the two lengthy and detailed Awards the Commission reiterates its confidence 'that the Parties will ensure that the compensation awarded will be paid promptly, and that funds received in respect of their claims will be used to provide relief to their civilian populations injured in the war.'

VII. SPECIAL TRIBUNAL FOR LEBANON

SUBMISSION OF THE PROSECUTOR TO THE PRE-TRIAL JUDGE UNDER RULE 17 OF THE RULES OF PROCEDURE AND EVIDENCE, NO.: CH/PTJ/2009/004, 27 APRIL 2009

(http://www.haguejusticeportal.net/Docs/Court Documents/STL/STL_Reasoned submission as filed_270409.pdf)

MEMORANDUM OF UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF LEBANON AND THE OFFICE OF THE PROSECUTOR OF THE SPECIAL TRIBUNAL FOR LEBANON REGARDING THE MODALITIES OF COOPERATION BETWEEN THEM, 5 JUNE 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/STL/Memorandum%20of%20Understanding%20Between%20Lebanon%20and%20STL.pdf)

ORDER REGARDING THE DETENTION OF PERSONS DETAINED IN LEBANON IN CONNECTION WITH THE CASE OF THE ATTACK AGAINST PRIME MINISTER RAFIQ HARIRI AND OTHERS, NO.: CH/PTJ/2009/006, 29 APRIL 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/STL/Order-Regarding-the-Detention-of-Persons-Detained-in-Lebanon.pdf)

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Summary

On 29 April 2009 the Special Tribunal for Lebanon (STL) ordered the release of four generals who have been held in Lebanon in relation to the assassination of former Lebanese Prime Minister, Rafiq Hariri. The Order is the Tribunal's first significant decision since it began operations in March 2009.

On 27 April, Prosecutor Daniel Bellemare presented his reasoned submission to the Pre-Trial Judge, Daniel Fransen, stating that he did not seek the continued detention in Lebanon of the four generals, who have been detained under Lebanese custody since August 2005, six months after Hariri and 22 others were killed in a suicide bombing. The four being held are former General Security chief Maj. Gen. Jamil Sayyed; Maj. Gen. Ali Hajj, the ex-Internal Security Forces director general; Brig. Gen. Raymond Azar, the former military intelligence chief; and the then Presidential Guards commander Brig. Gen. Mustafa Hamdan.

On 15 April 2009, the Pre-Trial Judge requested the Prosecutor to file written submissions on whether he sought the continued detention of the four suspects by 27 April, under Rule 17 (B) of the Tribunal's Rules of Procedure and Evidence. The submission did not concern a fifth individual, Zuhair Mohamad Said Saddik, whose name had also been on the list transmitted by the Lebanese judicial authorities to the Pre-Trial Judge, since he was not physically detained in Lebanon. Based on the material before him, the Prosecutor said that the evidence was insufficient to warrant filing of indictments against the four detainees. The Prosecutor said that he therefore "does not oppose their release nor does he seek that their release be made subject to any conditions in accordance with Rule 102."

Despite the releases, the Prosecutor emphasised that the investigation is continuing and that it is much wider than that of the four generals. The decision of 29 April does not mean that the generals, who were never charged, cannot be detained in the future if an indictment for them is issued.

RULES OF PROCEDURE AND EVIDENCE, STL/BD/2009/01/REV. 1, 10 JUNE 2009

(http://www.haguejusticeportal.net/Docs/Court%20Documents/STL/STL_Rules_of_Procedure_and_Evidence-En.pdf)

VIII. SUPREME COURT OF THE NETHERLANDS

FRANS VAN ANRAAT, APPEALS JUDGEMENT, 30 JUNE 2009 (IN DUTCH)

(http://www.haguejusticeportal.net/Docs/NLP/Netherlands/Van Anraat Supreme Court Judgment_30-06-09_NL.pdf)

Summary

On Tuesday 30 June 2009, the Supreme Court of the Netherlands rendered its judgement in the case of Frans van Anraat, a Dutch businessman, upholding the 2005 conviction for complicity to war crimes. The Dutch highest court declared that "The suspect knew

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[...] the TDG he was delivering was being used for mustard gas", and "knew that the poison gas would be used in the (Iran-Iraq) war". However, the Court rejected the claims for damages brought by 16 victims as being too complicated, especially where Iraqi or Iranian law would be applicable. Additionally, the Court reduced Van Anraat's sentence by six months due to the length of the proceedings.

On 23 December 2005, the District Court of The Hague found Van Anraat guilty of complicity in violations of the laws and customs of war, but acquitted him of complicity to genocide. He was sentenced to 15 years' imprisonment. On 9 May 2007, the Court of Appeals of The Hague confirmed the finding of guilt and increased the sentence by two years.

Judge Leo van Dorst of the Supreme Court of the Netherlands insisted that during the 1980s, Frans van Anraat was the only supplier of a gas called TDG. As such, Van Anraat's involvement in supplying chemicals to Iraq was an essential contribution to the chemical weapons programme of Saddam Hussein's regime. With the chemicals supplied by Van Anraat, the regime was capable of carrying out a large number of attacks with mustard gas on the civilian population, both in Iran and Iraq.

The District Court found that the chemical attacks in Kurdistan during the1980s, notably on the city of Halabja in March 1988, were committed with the intent to destroy the Kurdish people in Iraq and that this action therefore amounted to genocide by the regime. The Supreme Court did not rule on the question of whether or not Saddam Hussein's regime committed genocide, although the Court of Appeals had found that there were strong indications that the leaders of the Iraqi regime had genocidal intent.