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## ICLS Newsletter I / 2008

- Update on Events at the ICTY
- Model International Criminal Court 2007
- Moldova
- Upcoming Events

Dear all,

Welcome to this first edition of the ICLS newsletter in 2008. Just like in the editions of last year, we would like to provide you with an update of interesting developments in international criminal law. We would like to encourage you to participate in the redaction of future updates to allow us to provide the most complete overview of developments possible. So please do not hesitate to contact us, should you come across an interesting topic that you would like to write about!

The **next meeting of ICLS** will take place in the restaurant "Honigmond", Tieckstrasse 12 (corner Borsigstrasse), 10115 Berlin, Germany, on Saturday, 05 April 2008 at 11 a.m. You are cordially invited to the meeting.

Nikola Gillhoff, Matthias Neuner, Susen Wahl  
-Executive Board-

### UPDATE ON EVENTS AT THE ICTY

***Trial Judgement in the Dragomir Milošević case rendered:*** On 12 December 2007 the Tribunal found Dragomir Milošević, a former Bosnian Serb Army general, guilty of a range of crimes committed against civilians during the final months of the 1992-1995 siege of Sarajevo. The Trial Chamber sentenced him to 33 years' imprisonment.

Milošević was found guilty of crimes against humanity and of a violation of the laws or customs of war. He was convicted on five counts of terror, murder and inhumane acts conducted during a campaign of sniping and shelling which resulted in the injury and death of a great number of civilians in the besieged Bosnian capital. Two counts of unlawful attacks against civilians were dismissed.

In the summary of its judgement, the Trial Chamber found that under the command of Dragomir Milošević, the Sarajevo-Romanija Corps (SRK) of the Bosnian Serb Army (VRS) encircled and entrapped the city of Sarajevo over a 15-month period up to the end of the conflict in November 1995. The Trial Chamber found that the SRK used several methods to affect its campaign, including snipers and mortars. It noted that many witnesses testified that *"...there was no safe place in Sarajevo; one could be killed or injured anywhere and anytime."*

In its summary of its judgement, the Trial Chamber found that it was under Milošević's command of the SRK that modified air bombs were deployed, noting that these were *"...inaccurate and served no military purpose."*

The use of mortars was found to have caused many deaths and injuries among the civilian population of Sarajevo. The Trial Chamber highlighted the Markele Market incident of 28 August 1995, which killed 34 civilians and wounded 78 civilians, as one of the most horrendous. The Trial Chamber found that the Markale Market was shelled by the SRK. It rejected the defence's argument that the shelling of the Markele Market was a staged event by the Army of Bosnia and Herzegovina (ABiH).

As commander of the SRK, Milošević *"...held a tight chain of command..."* ensuring that he was *"...kept abreast of the activities of his units."* The summary refers to one particular order issued by Milošević on 6 April 1995 in which he ordered the Ilidža Brigade to *"...immediately prepare a launcher with an aerial bomb and transport the bomb for launching. [...] The most profitable target must be selected in Hrasnica or Sokolović Kolonija, where the greatest casualties and material damage would be inflicted."*

The Trial Chamber found that Milošević *"...abused his position and that he, through his orders, planned and ordered gross and systematic violations of international humanitarian law. Moreover, the Accused made regular use of a highly inaccurate weapon with great explosive power: the modified air bomb."* The Trial Chamber considered the repeated use of this weapon to be an aggravating factor in reaching its judgement stating that by using modified air bombs, Milošević was playing with the lives of the civilians of Sarajevo.

Dragomir Milošević took over command of the SRK from Stanislav Galić in 1994. Galić stood trial at the ICTY for crimes committed during the siege of Sarajevo and was sentenced on appeal to life imprisonment in November 2006 for crimes against humanity and a violation of the laws or customs of war.

Dragomir Milošević surrendered on 3 December 2004. His trial began on 11 January 2007 with closing arguments taking place on 9 and 10 October 2007.

***Appeals Chamber dismisses the Prosecution's Appeal against the acquittal of Sefer Halilović:***

The Appeals Chamber affirmed on 16 October 2006 the acquittal of Sefer Halilović, former Deputy Commander and Chief of Main Staff of the Army of the Republic of Bosnia and Herzegovina (ABiH). He had been found not guilty in November 2005 of all charges regarding his alleged command responsibility for murders committed by members of ABiH troops in the villages of Grabovica and Uzdol in the Jablanica and Prozor areas of Herzegovina in September 1993. The Prosecution had appealed the judgement, seeking the reversal of the acquittal with respect to the killings perpetrated in Grabovica.

In its summary of the appeals judgement, the Appeals Chamber dismissed the Prosecution's appeal, stating that "*the Prosecution failed to show that no reasonable trier of fact could have reached the conclusion that Sefer Halilović did not have the required degree of "effective control" over the perpetrators, as a commander of Operation Neretva, to establish his superior responsibility under Article 7(3) of the Statute .*" Having concluded that the Prosecution had failed to show that the Trial Chamber erred in

finding that a superior-subordinate relationship between Sefer Halilović and the offending troops had not been established, the Appeals Chamber declared that the Prosecution's remaining grounds of appeal became moot.

***Appeals Chamber upheld the Trial Chamber judgement in the case against former Kosovo Liberation Army (KLA) members:***

The Tribunal's Appeals Chamber on 27 September 2007 upheld the Trial Chamber judgement in the case against former Kosovo Liberation Army (KLA) members Fatmir Limaj, Isak Musliu and Haradin Bala. The three were indicted for the crimes committed against both Serb and Kosovo Albanian civilians in the KLA-run Llapushnik/Lapušnik prison camp between May and July 1998.

It dismissed all the appeals lodged by parties, confirming acquittals of Limaj and Musliu while affirming Bala's convictions for torture, cruel treatment and murder and his sentence of 13 years.

Haradin Bala, a guard at the Llapushnik/Lapušnik prison camp was sentenced to 13 years' imprisonment on 30 November 2005. The Trial Chamber convicted Haradin Bala for his personal role in the "maintenance and enforcement of the inhumane conditions" of the camp; aiding the torture of one prisoner; and participation in the murder of nine prisoners from the camp who were

marched to the Berishe/Beriša Mountains on 25 or 26 July 1998 and murdered.

In its decision, the Appeals Chamber rejected all five grounds of Bala's appeal including his claim of mistaken identity and alibi. The Appeals Chamber rejected the two grounds of Prosecution's appeal, including the argument that a systemic joint criminal enterprise existed in which "the prison camp was run by the KLA, the conditions in the camp amounted to a system of ill-treatment and the KLA soldiers in the camp intended to further this system of ill-treatment."

The Appeals Chamber found that "while the Trial Chamber's factual findings show that KLA soldiers systematically committed cruel treatment and torture in the camp, the Trial Chamber was not satisfied that these KLA soldiers were participants in a systemic joint criminal enterprise to commit these crimes. The Trial Chamber did not err in this respect, because it reasonably held that it could not be ruled out that rogue KLA soldiers or so-called outsiders to the camp for personal reasons, such as revenge, mistreated or killed civilian detainees, and not in furtherance of any common plan."

This finding was also applied in the Prosecution's appeals against Limaj's and Musliu's acquittals in relation to the alleged existence of a joint criminal enterprise.

In addition, the Appeals Chamber stated that "the Trial Chamber reasonably found that Fatmir Limaj does not incur criminal responsibility for any of the offences charged in the Indictment" in the context of command responsibility.

The Appeals Chamber was satisfied, Judge Schomburg dissenting, the Trial Chamber reasonably assessed the totality of the evidence when it found "that Isak Musliu was not present inside the prison camp and did not participate in the operation of the Lapušnik prison camp."

The Trial against Fatmir Limaj, Isak Musliu and Haradin Bala commenced on 15 November 2004 and it lasted for 88 days. The Prosecution called 30 witnesses and tendered 260 exhibits and the Defence called 16 witnesses and tendered 44 exhibits.

Haradin Bala is to remain in the ICTY's Detention Unit pending his transfer to the country in which he will serve his sentence, he will be given credit for his time served in the tribunal's custody.

*(text comprised of official press releases of the ICTY)*

## **MODEL INTERNATIONAL CRIMINAL COURT 2007**

'Can the crime of enslavement be committed through forced labour?' or 'Is superior responsibility not precisely

defined as a mode of liability?`. These were the kind of questions the seven student teams had to deal with who participated in the third Model International Criminal Court (MICC) which took place in Krzyzowa/Poland from November 7 - 11, 2007.

Some 33 students had to deal with a fictitious case in the mock trial at the International Criminal Court. The case played in the fantasy Republic of Richland. It related to detention of some 300 persons in working camps.

The Prosecution claimed the detainees were used over a period of 6 months to complete a pipeline project and that this amounted to enslavement as a crime against humanity. Further, the Prosecution argued that the living and working conditions amounted to cruel treatment, a war crime. The Defence counsels claimed that the persons concerned performed their work detail on a voluntary basis and that neither the living nor the working conditions were so harsh as to amount to cruel treatment. The Prosecutor's further argued that the accused persons were superiors who had the mental state required to be held liable under the doctrine of superior responsibility. The Defence opposed this. At the end of the mock trial the judges convicted a CEO of the pipeline building company and a general whose troops had

guarded the main detention camp, the works at the pipeline and had secured the transport detainees. The judges found that acts of slavery and of cruel treatment had occurred. Further the judges held that both men were superiors and had the required *mens rea* with regard to the criminal conduct of their subordinates. The judges held that both, the civilian and the military, superior had *knowledge* of the crimes of their subordinates and failed to prevent or punish them. Following a reasoned verdict both accused were convicted for a crime against humanity (enslavement) and a war crime (cruel treatment) to 17 years detention each.

Since 2006 MICC University aims at contributing to the promotion of humanitarian law in theory and practice among interested students in Europe. The rationale behind the MICC University is to familiarise university students with the work of the International Criminal Court and the values it promotes. The cases simulated are designed to encourage young people to make first hand experience with judicial mechanisms and to understand the challenge and difficulties faced when pursuing perpetrators of international crimes.

The mock procedure was divided in a Pre-trial and a trial hearing. The students of the 2007 MICC University formed seven teams –a bench consisting of judges

acting in the Pre-Trial and Trial phases of the mock proceedings. Four Defence teams and two Prosecution teams had been constituted to plead, depending on the role, in favour or against the two accused. The organisers also formed an additional press team which reported about the court proceedings.

The participants came from eight different universities: Kyiv International/Ukraine, University of Sarajevo/Serbia and Montenegro, National Aviation University/Ukraine, Vilnius University/Lithuania, University of Cologne/Germany, University of Bucharest/Romania, Martin-Luther-University Halle-Wittenberg/Germany as well as from the University of Bydgoszcz/Poland.

The organiser had provided certain materials, jurisprudence of the International Tribunals and literature on international criminal law for the students to study. The teams had been selected in summer 2007 on the basis of submitted position papers which related to the case. Students intending to participate in the mock trial were offered the opportunity to attend sessions of legal and rhetorical training for two days in Krzyzowa. The pre trial proceedings took place on the third day followed by trial proceedings on day four. The students demonstrated their ability to plead their respective case -

divided into several concrete issues - with the relevant arguments.

In the accompanying social program the organisers showed the movie 'Some days in April' covering the events in Rwanda in 1994 and proceedings before the International Criminal Tribunal for Rwanda. Also a guided tour through Krzyzowa was offered and a farewell party following the announcement of the judgements.

The MICC University is organized by the Kreisau Initiative Berlin e.V. in cooperation with the Krzyzowa Foundation for Mutual Understanding and is further supported by the Foundation 'Remembrance, Responsibility and Future'.

Members of the International Criminal Law Society had prepared the case for this year's MICC University and were, along others, participating in the jury.

## **MOLDOVA**

On 11 February 2008, Parliament of Moldova, the target state of ICLS last conference, announced the submission of the ratification bill by President Vladimir Voronin.

## UPCOMING EVENTS

### ***Fighting Impunity in a Fragmented World***

**23 Mar 2008 - 24 Mar 2008**

The event will be organized around four thematic panels, covering a broad number of issues in a comprehensive manner to focus discussions on specific aspects of the questions. Numerous papers will be presented on the ICC including one relating to ICC and NGOs by Sara Dezalay of the EUI. The main working language of the Conference is English, but basic understanding of French is recommended. Attendance to the Conference is free of charge. If you wish to attend the conference, please send an email providing a short description of your institutional origin and your interest for the event by 1 March 2008.

**Location:** *Villa Schifanoia, European University Institute in Florence*

**Contact Information:** For more information, contact Dov Jacobs (dov.jacobs@eui.eu), Noora Arajarvi ([noora.arajarvi@eui.eu](mailto:noora.arajarvi@eui.eu))

### ***First International Law in domestic Courts Colloquium***

**27 Mar 2008 - 28 Mar 2008**

The Colloquium aims to discuss and increase the understanding of the contribution of national courts to the

application and development of international law. It will analyze the manner in which international law is applied in three sample jurisdictions on which little information is available: Brazil, India and Russia. In addition, it will examine two topics that affect the foundations of public international law: the International Rule of Law and Hierarchy in International Law in the practice of domestic courts. These topics will be preceded by a general introduction to the theme of the colloquium by Judge Rosalyn Higgins, President of the ICJ. Following the panel discussions, Dutch Minister of State and former Judge at the ICJ, Peter Kooijmans, will provide concluding reflections. The Colloquium is organized as part of the International Law in Domestic Courts (the ILDC) project.

**Location:** *The Hague, The Netherlands*

#### **Contact Information:**

<http://www.jur.uva.nl/aciluk/events.cfm/07A58B82-1321-B0BE-68A6653CB4CFC855>

For more information please send an email to [acil-fdr@uva.nl](mailto:acil-fdr@uva.nl)

### ***The ICC and Ad Hoc Tribunals: Experiments in International Criminal Law***

**03 Apr 2008**

As part of the ABA Section of International Law's 2008 Spring meeting in New York,

there will be a program to discuss the use of the International Criminal Court and Ad Hoc Tribunals in combating international war crimes. It will also discuss the networking and cooperation among the tribunals. Sponsoring Committee: International Criminal Law Committee

**Program Co-Chairs:**

John Washburn (Moderator), American NGO Coalition for the ICC, New York, NY  
Bruce Zagaris, Berliner Corcoran & Rowe LLP, Washington, DC

**Speakers:**

Michael Scharf, Case Western University School of Law, Cleveland, OH  
David Scheffer, Northwestern University School of Law, Chicago, IL  
Thomas C. Viles, Berliner Corcoran & Rowe LLP, Washington, DC  
Ruth Wedgwood, School of Advanced International Studies, Washington, DC

**Location:** 4:00 pm - 5:30 PM; *The Grand Hyatt, New York, NY*

**Contact Information:** For more information, see <http://www.abanet.org/intlaw/spring08/>

***Prosecuting Sexual and Gender-Based Crimes in the ICC: Translating Promises into Reality***  
**08 Apr 2008**

Prior to the passage of the Rome Statute in 1998, women's human rights activists

engaged in a campaign to demand prosecution of gender-based crimes in the proposed International Criminal Court. Because of this campaign, the International Criminal Court is the first international criminal justice mechanism that explicitly takes into account gender concerns in both its administrative structure and its general subject matter jurisdiction. The International Criminal Court serves as a symbol of a legal system that takes the concerns and needs of women seriously. Join leading experts and practitioners for a full day exploration of a deceptively simple question: Has the ICC's symbolic potential as an institution committed to holding accountable perpetrators of mass sexual and gender-based crimes translated into reality?

Organized by Women and International Law Program and the War Crimes Research Office of American University

**Location:** *Washington DC, United States*

**Contact Information:** For more information on the program, a detailed agenda and for registration fees visit: [http://www.wcl.american.edu/wcl\\_events/event\\_detail.cfm?event\\_id=18388](http://www.wcl.american.edu/wcl_events/event_detail.cfm?event_id=18388) or via email at [secl@wcl.american.edu](mailto:secl@wcl.american.edu)

**HILAC Law and Armed Conflict**  
**Lecture: 'Does International Criminal Justice Work?' by Judge Theodor Meron, ICTY**  
**22 Apr 2008**

The HILAC Law and Armed Conflict Lecture Series is an occasional evening lecture series on the subject of law and armed conflict. It is hosted by the Hague Initiative on Law and Armed Conflict (HILAC), consisting of the TMC Asser Institute, the Netherlands Red Cross and the Amsterdam Center for International Law.

Attendance is free.

**Location:** 19h30 - T.M.C. Asser Instituut, R.J. Schimmelpennincklaan 20-22, The Hague, The Netherlands

**Contact Information:**  
<http://www.hilac.org/>

**IV International Meeting on Justice and Law 2008**  
**21 May 2008 - 23 May 2008**

IV International Meeting on Justice and Law 2008 (includes a module on the ICC) organized by the Tribunal Supremo Popular de la República de Cuba.

**Location:** Havana, Cuba

**Contact Information:** For further information, contact Ortelio Juiz Prieto at [dinfotsp@ceniai.inf.cu](mailto:dinfotsp@ceniai.inf.cu) or visit

<http://www.loseventos.cu/justiciayderecho2008>

**The Grotius Centre for International Legal Studies at Leiden University**  
**Summer School on International Criminal Law 2008**  
**23 June 2008 - 04 July 2008**

The summer school is meant for students who want to deepen their knowledge on international criminal law in a brief period of time. Professionals from various international courts and tribunals, such as the International Criminal Court (ICC), the International Criminal Tribunal for the former Yugoslavia (ICTY) and influential scholars contribute to this course.

Lectures will be held in French or English and simultaneous translation will be provided throughout the summer school. The registration deadline is 25 April, 2008.

**Location:** The Hague, The Netherlands

**Contact Information:** contact Ms. Mette Léons, LL.M. from Grotius Centre for International Legal Studies Campus The Hague, Leiden University  
<http://www.grotiuscentre.org/com/doc.asp?DocID=276>

**"Codifying the Criminal Law: Modern Initiatives"**  
**11 July 2008 - 15 July 2008**

This is the International Society for the Reform of Criminal Law's 22nd

international conference. The Honorable Chief Justice John L. Murray of Ireland will serve as Conference Chair at this 5 day conference featuring a number of plenaries including one titled "An International Criminal Code: The Rome Statute, the International Criminal Court and the Ad Hoc Tribunals." At this time, the Organizing Committee is seeking expressions of interest from those wishing to contribute by either presenting papers or participating in workshops at [secretariat@isrcl.org](mailto:secretariat@isrcl.org).

**Location:** *Dublin Castle, Dublin Ireland*

**Contact Information:** Please contact Clare Kilmartin at [clare@conferencepartners.ie](mailto:clare@conferencepartners.ie) with accommodation and registration queries.

***Academic Program in International Criminal Law at the Salzburg Law School***

***03 Aug 2008 - 15 Aug 2008***

The Salzburg Law School on International Criminal Law, Humanitarian Law and Human Rights Law announces its tenth summer session titled "Celebrating the 10th Anniversary of the Salzburg Law School on International Criminal Law, Humanitarian Law and Human Rights Law - and the Statute." The academic programme will be available closer to February/March 2008, and the dead-line for applications is 30 April 2008.

**Location:** *Salzburg Law School on International Criminal Law, Humanitarian Law and Human Rights Law, Kapitelgasse 5-7*

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