

COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW (CAHDI)



Developments concerning the International Criminal Court and
other international criminal tribunals

**Information document
Prepared by the Secretariat**

52nd meeting
Brussels (Belgium), 15-16 September 2016



Public International Law and Treaty Office Division
Directorate of Legal Advice and Public International Law, DLAPIL

DEVELOPMENTS CONCERNING THE INTERNATIONAL CRIMINAL COURT (ICC) AND OTHER INTERNATIONAL CRIMINAL TRIBUNALS

I. The International Criminal Court (ICC)

1. Regarding accessions to the Rome Statute of the International Criminal Court, on 3 March 2016 El Salvador deposited its instruments of accession, making it the 124th State Party to the Rome Statute.

2. Regarding the two amendments to the Rome Statute of the International Criminal Court adopted at the Review Conference of the Rome Statute held in Kampala (Uganda) on 31 May 2010 to 11 June 2010, the so called “Kampala amendments”¹, the following States have ratified:

- the amendment to Article 8: El Salvador (3 March 2016).
- the amendments on the crime of aggression: El Salvador (3 March 2016), Iceland (17 June 2016) and the State of Palestine (26 June 2016).

3. As regards the latest developments of the ICC:

- on 21 March 2016, Trial Chamber III delivered the judgment in the case of *The Prosecutor v. Jean-Pierre Bemba Gomba*² in the situation of the Central African Republic. In its judgment, Trial Chamber III unanimously found the defendant guilty beyond any reasonable doubt of two counts of crimes against humanity (murder and rape), and three counts of war crimes (murder, rape, pillaging) and sentenced him on 21 June 2016 to 18 year's imprisonment. The crimes in question were committed in Central African Republic from about 26 October 2002 to 15 March 2003, during which time the defendant had been acting as the military commander with effective authority and control over the forces that had committed the crimes. In May 2008, the defendant had been arrested by Belgian authorities and surrendered to the Court in June of the same year, where in June 2009 Pre-Trial Chamber II confirmed the charges against the defendant.
- on 23 March 2016, Pre-Trial Chamber II confirmed 70 charges against Mr. Dominic Ongwen in the case of *The Prosecutor v. Dominic Ongwen*³ in the situation of Uganda and committed the case to trial, which is scheduled for opening on 6 December 2016. Pre-Trial Chamber II concluded that there were substantial grounds to believe that the accused had been responsible for several war crimes and crimes against humanity allegedly committed during attacks against four internally displaced persons camps from 2003 to 2004, as well as sexual and gender-based crimes committed by the defendant and crimes of conscription and the use of children under the age of 15 in hostilities allegedly committed between 1 July 2002 and 31 December 2005. The defendant had been serving as the Commander in the Sinia Brigade of the Lord's Resistance Army, when the arrest warrant was issued in July 2005. The defendant was subsequently surrendered to the ICC on 16 January 2015 and transferred to ICC custody on 21 January 2015.
- on 24 March 2016, and following a confirmation of charges hearing which took place on 1 March 2016, Pre-Trial Chamber I confirmed the charges against Mr Ahmed Al Faqi Al Mahdi in the case of *The Prosecutor v. Ahmad Al Faqi Al Mahdi*⁴ in the situation of Mali. The confirmed charges concerned a crime allegedly committed in Timbuktu between 30

¹ See the United Nations Treaty Collection at the following [link](#).

² International Criminal Court, [The Prosecutor v. Jean-Pierre Bemba Gomba](#), case No. ICC-01/05-01/08.

³ International Criminal Court, [The Prosecutor v. Dominic Ongwen](#), case No. ICC-02/04-01/15.

⁴ International Criminal Court, [The Prosecutor v. Ahmad Al Faqi Al Mahdi](#), case No. ICC-01/12-01/15.

June 2012 and 11 July 2012 for the commission of a war crime regarding the intentional directing of attacks against several mausoleums, all protected as a significant part of the cultural heritage of Timbuktu and Mali and did not constitute military objectives. The trial in this case is opened on 22 August 2016.

- on 5 April 2016, Trial Chamber V(A) decided to terminate the case of *The Prosecutor v. William Samoei Ruto and Joshua Arap Sang*⁵ in the situation of Kenya after concluding that the prosecution had not presented sufficient evidence in support of the accused. The decision may be subject to appeal and does not preclude a new prosecution in the future either at the ICC or in a national jurisdiction. The trial of the defendants was opened on 10 September 2013, both defendants having been accused of crimes against humanity in the context of the 2007 and 2008 post-election violence in Kenya.
- on 7 April 2016, the Presidency of the ICC approved the prosecution of Mr Germain Katanga by the Democratic Republic of the Congo (DRC) following a request of the DRC to prosecute the defendant for offences allegedly committed in the DRC between 2002 and 2006 and unrelated to those for which Mr Katanga had been prosecuted at the ICC. The decision constituted the first time that the ICC had been called upon to interpret and apply article 108 (limitation on the prosecution or punishment of other offences) of the Rome Statute and the Presidency considered, inter alia, that the key relevant principle of *ne bis in idem*, as specified in article 20(2), was not undermined. In the case of *The Prosecutor v. Germain Katanga*⁶, Mr Katanga had been sentenced on 23 May 2014 to a total of 12 years' imprisonment for crimes committed on 24 February 2003 during the attack on Bogoro, Democratic Republic of the Congo. Since the time spent in detention had been deducted from the sentence, Mr Katanga had by September 2015 already served the statutory two-thirds of the sentence. In November 2015, the Panel of three Judges of the Appeals Chamber of the ICC had considered the factors in favour of reducing Mr Katanga's sentence and had concluded that a reduction was appropriate.
- on 11 July 2016, Pre-Trial Chamber II decided that the Republics of Uganda and Djibouti had failed to comply with the request for arrest and surrender to the ICC of Mr Omar Al Bashir while he was present on their territories and referred the matter to the Assembly of States Parties to the Rome Statute and the United Nations Security Council. The situation in Darfur (Sudan) had been referred to the ICC by the United Nations Security Council in its Resolution 1593 of 31 March 2005, after which the prosecutor had opened an investigation in June 2005 and issued two arrest warrants for the accused for five counts of crimes against humanity, two counts of war crimes and three counts of genocide allegedly committed against three ethnic groups in Darfur between 2003 and 2008.

II. Other international criminal tribunals

4. The following are the recent developments concerning the functioning of other international criminal tribunals.

5. As regards the latest developments of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the United Nations Mechanism for International Criminal Tribunals (MICT):

- on 24 March 2016, Trial Chamber III of the ICTY delivered its judgment in the case of *The Prosecutor v. Radovan Karadžić*⁷, convicting the defendant, the former President of

⁵ International Criminal Court, [The Prosecutor v. William Samoei Ruto and Joshua Arap Sang](#), case No. ICC-01/09-01/11.

⁶ International Criminal Court, [The Prosecutor v. Germain Katanga](#), case No. ICC-01/04-01/07.

⁷ International Criminal Tribunal for the former Yugoslavia, [The Prosecutor v. Radovan Karadžić](#), case no. IT-

Republika Srpska and Supreme Commander of its armed forces, of genocide, crimes against humanity and violations of the laws or customs of war committed by Serb forces during the armed conflict in Bosnia and Herzegovina from 1992 until 1995. Mr Karadžić was sentenced to 40 years' imprisonment. Mr Karadžić had been arrested on 21 July 2008 and transferred to the ICTY on 30 July 2008 on two counts of genocide, five counts of crimes against humanity and four counts of violations of the laws or customs of war for his involvement in a joint-criminal-enterprise to permanently remove Bosnian Muslims and Bosnian Croats from Bosnia-Serb claimed territory in Bosnia and Herzegovina from at least October 1991 to 30 November 1995. Mr Karadžić is one of the highest ranking officials to ever be tried in the ICTY/MICT.

- on 31 March 2016, Trial Chamber III of the ICTY delivered its judgment in the case of *The Prosecutor v. Vojislav Šešelj*⁸, acquitting the defendant, the President of the Serbian Radical Party and a former member of the Assembly of the Republic of Serbia, of all charges. Prior to that, The defendant had been indicted on 14 February 2003 and was surrendered to the ICTY on 23 February 2003 for three counts of crimes against humanity and six counts of violations of the laws or customs of war from approximately August 1991 until September 1993 against the non-Serb population of Croatia, Bosnia and Herzegovina and the province of Vojvodina in the Republic of Serbia. On 3 November 2005, a not guilty plea had been entered on his behalf and the trial had commenced on 7 November 2007 and closing arguments delivered in March 2012. In its judgment of 31 March 2016, the majority found that the prosecution had failed to prove the existence of a criminal purpose, a legal requirement for the joint criminal enterprise. The majority also found that the recruitment of volunteers through which the defendant had been deemed to participate in the joint criminal enterprise, had been a legal activity regulated by the Yugoslav constitution and other relevant laws at the time.
- on 30 June 2016, the Appeals Chamber delivered its judgment in the case of *The Prosecutor v. Stanišić & Župljanin*⁹, confirming their convictions and affirming that the defendants were criminally responsible for war crimes and crimes against humanity committed in Bosnia and Herzegovina in 1992, in 20 and 8 municipalities respectively. The Appeals Chamber further affirmed the defendants' sentences of 22 years' imprisonment. The defendants, Mr Stanišić, former Minister of the Interior of Republika Srpska (BiH), and Mr Župljanin, former Chief of the Regional Security Services Centre of Banja Luka (BiH), had been indicted by the ICTY in 2005 and 19991 respectively. Mr Stanišić had been transferred to the ICTY's custody in March 2005 and Mr Župljanin had been arrested and brought to the ICTY by Serbian authorities in June 2008. The indictment alleged that the defendants had participated in a joint criminal enterprise, from October 1991 to December 1995, with the objective of permanently removing Bosnian Muslims, Bosnia Croats and other non-Serbs from the territory of a planned Serbian state. To this end, the defendants were indicted for seven counts of crimes against humanity and three counts of violations of the laws or customs of war.
- on 22 July 2016, the Trial Chamber terminated the proceedings against Mr Hadžić (Croatia) in the case of *The Prosecutor v. Goran Hadžić*¹⁰ following Mr Hadžić's death on 12 July 2016. Mr Hadžić, the former President of the self-proclaimed Republic of Serbian Krajina in Croatia, had been on trial for crimes against humanity, war crimes and the participation in a joint criminal enterprise with the purpose of permanently removing a

95-5/18.

⁸ International Criminal Tribunal for the former Yugoslavia, [The Prosecutor v. Vojislav Šešelj](#), case no. IT-03-67.

⁹ International Criminal Tribunal for the former Yugoslavia, [The Prosecutor v. Stanišić & Župljanin](#), case no. IT-08-91.

¹⁰ International Criminal Tribunal for the former Yugoslavia, [The Prosecutor v. Goran Hadžić](#), case no. IT-04-75.

majority of the Croat and other non-Serb population from a large part of the Republic of Croatia in order to make it part of a new Serb-dominated state. The defendant was indicted in May 2004 and arrested and transferred to the ICTY in July 2011 with the trial commencing in October 2012, where the defendant pleaded not guilty to all the charges (8 counts of crimes against humanity and six counts of violations of the laws or customs of war).

6. As regards the latest developments of the Extraordinary Chambers in the Courts of Cambodia (ECCC):

- on 2 March 2016, the Trial Chamber began its evidence hearing on the fourth trial topic (security centres and internal purges) in *Case 002/02*¹¹ against Mr Khieu Samphan and Mr Nuon Chea including, *inter alia*, charges of genocide against the Cham and Vietnamese people and crimes committed against Buddhists and former Khmer Republic officials. The evidence hearing at this stage concerned the destruction by the Communist Party of Kampuchea (CPK) of Cambodia's legal and judicial structures and the their replacement with a network of security centres and execution sites in order to detain and re-educate or kill those suspected of having engaged in hostile activities. To this end, the Trial Chamber heard evidence on three security centres at this stage. The evidentiary hearings are estimated to conclude this year and a judgment to be delivered in 2017.
- on 14 March 2016, the International Co-Investigating Judge in *Case 004*¹² charged Mr Ao An with genocide of the Cham and crimes against humanity including, *inter alia*, the persecution against the so-called "17 April people", former Lon Nol soldiers, people from the East Zone and other "internal enemies". Mr An was also further charged with premeditated homicide stemming from the 1956 Cambodian Penal Code. The charges included new and previous charges.

7. As regards the latest developments of the Special Tribunal for Lebanon (STL):

- on 8 March 2016, the Appeals Panel judgment in the contempt case *STL-14-05*¹³ was rendered, reversing the conviction of Ms Al Khayat, under count 2 for knowingly and wilfully interfering with the administration of justice by failing to remove from Al Jadeed TV's website and Al Jadeed TV's YouTube channel information on purported confidential witnesses in the *Ayyash et al.* case, and setting her sentence of a fine of 10,000 euros aside. The Appeals Panel also affirmed the accused's acquittal under count 1 and Al Jadeed's acquittal under both counts. The case concerned the broadcast of five episodes, regarding purported confidential Tribunal witnesses, by Al Jadeed TV in Lebanon in August 2012, and their online availability in violation of an Order issued by the Pre-trial Judge on 10 August 2012. The accused, Al Jadeed and Ms Al Khayat, at the time Al Jadeed TV's Deputy Head of News and Political Programs, were each charged with two counts of contempt of Court, under Rule 60 *bis* of the Tribunal's Rules of Procedure and Evidence, for knowingly and wilfully interfering with the administration of justice. On 18 September 2015, Contempt Judge Nicola Lettieri issued his judgment acquitting Al Jadeed on both counts, acquitting Ms Al Khayat on Count 1, and finding her guilty on Count 2. Consequently, on 28 September 2015, the Contempt Judge sentenced Ms Al Khayat to a fine of 10,000 Euros. The Appeals Panel in this matter was seized of appeals against the judgment rendered by the Contempt Judge on 18 September 2015 and the subsequent sentence imposed by the Contempt Judge on 28 September 2015.

¹¹ Extraordinary Chambers in the Courts of Cambodia, [Case 002/02](#).

¹² Extraordinary Chambers in the Courts of Cambodia, [Case 004](#).

¹³ Special Tribunal for Lebanon, [Case against Al Jadeed S.A.L & Ms Khayat](#), STL-14-05.

- On 15 July 2016, the Contempt Judge delivered his judgment in the case of *STL-14-06*¹⁴, in which both accused, Akhbar Beirut S.A.L. and Mr Ibrahim al Amin, were found guilty of one count for knowingly and wilfully interfering with the administration of justice by publishing information on purported confidential witnesses in the *Ayyash et al.* case, thereby undermining public confidence in the Tribunal's ability to protect the confidentiality of information about, or provided by, witnesses or potential witnesses. The trial in *STL-14-06* had opened before the Contempt Judge on 24 February 2016, with opening statements by the *Amicus Curiae* Prosecutor and the defence. The Amicus had presented his case in chief from 24 to 26 February and on 29 February and 1 March 2016. The defence had presented their own case from 7 to 8 April. Both parties had presented their closing arguments on 13 May 2016.

¹⁴ Special Tribunal for Lebanon, [*Case against Akhbar Beirut S.A.L. & Ibrahim Mohamed Al Amin*](#), STL-14-06.