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ICLS Newsletter I / 2007

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Dear all,

Although the New Year is already a few weeks old, we would nevertheless like to take the opportunity and wish you health and good luck for the months to come. May this be a successful and happy year!

We, the ICLS board, have decided to provide you with a regular update on developments in the field of international justice. We intend to provide you with brief updates on core events at the ICTY, ICTR and ICC. Should you have interesting information on events in your respective countries, it would be great to share them.

We would therefore like to encourage you to participate in the redaction of future newsletters and to let us know if you can

provide information on a topic of general interest in the field of international criminal law.

The Annual ICLS Meeting in Berlin on 25 November 2006

The main issues discussed were the activities in 2006 and the planned activities in 2007.

On 3 and 4 March 2006 the seminar "The Republic of Moldova and the International Criminal Court" took place in Chisinau, Republic of Moldova. ICLS organized this international seminar with high ranking officials from Moldova and international experts to discuss ratification problems and the legal aspects in the implementation of the ICC Statute into domestic law. The participants of the

annual meeting decided to contact the ministries and the Constitutional Court in order to organize a follow up meeting in Chisinau in spring 2007.

In the winter term 2005/2006 members of ICLS offered the weekly seminar "Introduction into International Criminal Law" at the Free University of Berlin with discussions at the Ministry of Justice, at the Foreign Office and a study tour to the ICTY and ICC in The Hague. It has been emphasised that ICLS will continue its academic activities at the Free University, Berlin and hold a similar seminar in the summer term 2007.

Another regional seminar is envisaged. ICLS plans to organize a conference in 2008 with a special focus on the Caucasian region.

The next meeting of ICLS will take place in Berlin on *24 June 2007*, the annual meeting is planed to take place in Berlin on *24 November 2007*. You are cordially invited to both meetings.

Update on Events at the ICTY

To start with some updated key figures: 161 persons were indicted before the Tribunal. The Tribunal has concluded proceedings against 100 accused, with 48 accused having been sentenced, five acquitted, 11 referred to national

jurisdictions and 36 deceased or having had their indictments withdrawn.

Proceedings against 61 accused are ongoing, with 13 accused before the Appeals Chamber, 24 at trial, 17 at pre-trial stage, one awaiting his judgement and 6 accused at large.

Cases before the trial Chambers:

Six trials are running concurrently before the Trial Chambers: Mrksić et al. case, Prlić et al. case, Milutinović et al. case, Popović et al. case, Vojislav Šešelj case and the case against Dragomir Milošević which started only very recently on 11 January 2007. The case against Milan Martić was closed on 12 January 2007 and the Accused is awaiting his Judgement.

On 15 December 2006, the Appeals Chamber suspended all trial proceedings against Vojislav Šešelj until such time as he is fit enough to fully participate in the proceedings as a self-represented accused. The Appeals Chamber thereby overturned the Trial Chamber decision, which had directed the Registry to appoint Standby counsel given Mr. Šešelj's obstructionist behaviour.

The case against Mrksić et al. is rapidly drawing to a close and the Prosecution presented its evidence in rebuttal on 12 January 2007.

The Trial Chambers in the remaining four cases sit five days a week, with the exception of the Prlić et al. case, which is heard from Mondays to Thursdays only.

Completion strategy:

One of the greatest challenges the Tribunal is currently facing is the so-called completion strategy. The Security Council of the United Nations urged the ICTY and ICTR to complete all trials at first instance by the end of 2008 and all of its work in 2010 (Resolution 1503 (2003)). In order to achieve these target dates, the Security Council urged the Tribunals to try only high-level accused and to refer cases involving intermediate or low-ranking accused to national jurisdictions. Resolution 1534 (2004) further requested the Tribunals to each provide six months reports on the implementation of the completion strategy.

The ICTY submitted its latest report to the Security Council on 15 November 2006. It highlights the measures taken in view of meeting the target dates.

The ICTY stressed the importance of transferring cases involving intermediate and lower ranking accused to courts in the Former Yugoslavia pursuant to Rule 11 *bis* of its Rules of Procedure and Evidence. So far, the ICTY has granted six referrals involving 11 accused. Five of these cases were transferred to the State Court of

Bosnia and Herzegovina in Sarajevo. One case was transferred to Croatia.

The Tribunal has made tremendous efforts to liaise closely with local judiciaries in the region. Tribunal staff participated in a wide range of outreach and training programmes to strengthen local capacity. In the report, the President of the ICTY, Judge Fausto Pocar, urges the Security Council and the international community to support the capacity of domestic jurisdictions in the former Yugoslavia.

The report also underlines the importance of effective pre-trial management in order to ensure the smooth running of trials. Recent practice has shown a stronger involvement of the Pre-trial Judge in planning and laying out the roadmap for trial.

There is also a new trend towards multi-accused trials. The cases Prlić et al., Milutinović et al. and Popović et al., which all started off in 2006, involve six accused or more each. It is hoped that joining indictments, which involve similar facts, will allow for a more efficient presentation of evidence and prevent having to present and evaluate the same evidence more than once.

The report also mentions that the Trial Chambers establish strict timetables for the presentation of evidence. Some Trial Chambers have allocated a precise number of hours for the presentation of

the Prosecution case and have placed restrictions on the time permitted for each accused to conduct cross-examination.

In addition to these measures, the Judges of the ICTY have adopted several rule changes to permit the speeding up of trials. The report mentions the adoption of Rules 92 *ter* and *quarter*, which both allow for the admission of written witness statements in lieu of oral testimony even where the evidence goes to acts and conduct of an accused. An amendment to Rule 73 *bis* authorizes Trial Chambers to either invite or direct the Prosecution to reduce the scope of the indictment. This Rule has so far been applied to two cases, the case of Vojislav Šešelj and the case Milutinović et al..

Notwithstanding these efforts, the report underlines the impact of external factors on the implementation of the completion strategy. One of the most pressing issues is the failure of the Republic of Serbia and the Republika Srpska within Bosnia and Herzegovina to secure the arrest and transfer of the remaining six high-level fugitives, especially Ratko Mladić and Radovan Karadžić. The Judges of the Tribunal are adamant that the Tribunal must not close its doors without the arrest and trial of these fugitives.

Russia and the ICC

Russia, a member of OSCE and Council of Europe, signed the Statute of the International Criminal Court on 13 September 2000, but has not yet ratified it.

The arguments in favor of the ICC are recognised by members of the State Duma, members of the ministries and parts of the civil society. The position of the Russian Ministry of Foreign Affairs is that Russia's participation is in accordance with the strategic interests of the country.

What prevents Russia from ratifying the Statute? There are both objective and subjective obstacles to Russia's ratification of the Statute.

A comparative study of the national legislation and provisions of the Statute has been conducted. The objective obstacles to Russia's ratification are of specific constitutional character.

Problems discussed deal with:

- Persons, whose immunity is provided for by the Russian Constitution,
- Surrender of Russian citizen by Russia to the ICC,
- Pardons and amnesties and
- Jury proceedings.

No amendments to the Russian Constitution are intended at present. The

Criminal Code must be adapted to the Statute and parts of the Criminal Procedural Code must be reviewed.

Subjective obstacles to Russia's ratification include the war in Chechnya and the not always positive experience with the ICTY. The fact, that the Statute does not include a definition of aggression, and the financial obligations are also considered in discussions about a possible ratification of the Statute in Russia.

The current official position of Russia is to acknowledge the importance of the ICC as the first permanent institution of international criminal jurisdiction but also to wait for the first results of the ICC 's practical work to reach a final position.

In 2006, 2007 Pro NGO! organizes a project which aims to support the implementation of the EU Common Position on the ICC by focusing on promoting the universality of the Rome Statute, implementing the principle of complementarity and enhancing public perception and awareness in Russia, Turkey, Kazakhstan, Kyrgyzstan, Turkmenistan and Uzbekistan.

For further information:

www.ngo-at-work.org/icc2006

Upcoming Event

"The International Criminal Court . Status Quo and Future Challenges"

29/30 March 2007

Trier, ERA Congress Centre

The seminar will focus on the principles of international criminal law, jurisprudence of ad hoc Tribunals and jurisdiction and proceedings of the ICC. Representatives of the ICC and of the ad hoc Tribunals, defence lawyers with experience in the field of international criminal law and leading academics will discuss these matters and debate the key legal issues facing the ICC, including universal jurisdiction and immunities.

The seminar will also touch upon the imminent end of the mandate for the ad hoc Tribunals and their difficulties in dealing with issues of international criminal law with no useful precedent to guide them in their work.

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