

SPECIAL COURT FOR SIERRA LEONE OUTREACH AND PUBLIC AFFAIRS OFFICE



The Registrar and other Court officials with members of Harvard Black Law Students Association. For more photos, see today's *'Special Court Supplement'*

PRESS CLIPPINGS

**Enclosed are clippings of local and international press on the Special Court and related issues obtained by the Outreach and Public Affairs Office
as at:**

Thursday, 21 March 2013

Press clips are produced Monday through Friday.
Any omission, comment or suggestion, please contact
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The Exclusive
Thursday, 21 March 2013

Taylor Wants \$200,000 Pension

Lawyers for former president of Liberia and his wife say he is entitled to retirement benefits to support his family.

The former president of Liberia and convicted war criminal, Charles Taylor, and his wife, Victoria Addison-Taylor, claim they are owed a pension of more than \$200,000 (£128,000) earned during the 111 months since he stepped down from power.

The amount is equivalent to half of what the current president, Ellen Johnson Sirleaf, is paid, plus personal staff and facilities worth \$25,000 a year for the rest of Taylor's life.

Last May, UN-backed court sentenced him to 50 years' jail on 11 counts of war crimes in which he aided and abetted Sierra Leone's rebels during the 1991-2002 civil war.

"President Taylor who is in detention in The Hague has a huge family back

home and, by law, he is entitled to his retirement benefits to support his wife and family," said Sayma Srenius Cephus, a lawyer at Kemp & Associates in Monrovia who is representing the first African head of state to be convicted of crimes against humanity.

"At the moment, Mrs. Taylor is struggling with 12 little children in the home of the former Liberian president and life there is precarious and absolutely condescending and unsuitable for the family of a former constitutional president of our country," Cephus added.

Liberian law provides that former presidents and vice-presidents who are "honourably retired" and no longer employed by the government are entitled to special pension allowances. But Liberians are divided about whether Taylor should qualify.

"Everybody is talking about this. Opin-

ions are very divided," said Wade Williams, a journalist at the Liberian newspaper FrontPage Africa. "Some people are saying that Charles Taylor didn't give anyone benefits whilst he was president of Liberia, so he shouldn't expect benefits himself.

"But others are constitutionalists, and the constitution requires that as a former president, you get half of what the current president is earning, as well as security, diplomatic passports for your children and other benefits."

"Taylor is very popular still in Liberia," said Aaron Dixon, a resident in Monrovia. "If he were to run for election now, he would win. The opposition party is full of Taylor supporters, so this is a political issue." Liberia has a complicated history of unpopular former heads of state. The former president Samuel Doe, who seized power in Liberia in a bloody 1980 military coup and was tortured and killed by rebels a decade later, was awarded his retirement benefits, paid posthumously to his wife, Nancy Doe.

She gave a series of interviews in Liberia in which she told journalists that she was living in poverty. "My children did not go to school. I am sleeping in the dark, no security," she was reported as

saying before she received the payments.

Cephus said: "The widow of the late president Samuel Kanyon Doe, who did not retire but was rather assassinated, filed a petition for a writ of mandamus for the retirement benefits of her late husband and the government of Liberia paid her over \$400,000.

"What is good for the geese is also good for the ganders."

But the Liberian government denies it has any duty to provide the same benefits for Taylor.

"It was out of goodwill that Samuel Doe's wife received support," said a Liberian government adviser, who asked not to be named. "That does not mean that there is an obligation to provide the funds in Taylor's case."

The case is not the first time that Taylor has raised eyebrows with his demands since being arrested by the Sierra Leone special court in 2006 and detained in The Hague, where the court convened specially for his trial.

It has been reported that Taylor has converted to Judaism in detention - receiving regular visits from a rabbi. He has been allowed conjugal visits with his wife, whom he married in 2002, fathering at least one child while in custody.

Judgment Day For Remaining AFRC Thugs

Judgement in the appeals of three former AFRC members will be delivered on Thursday, 21 March 2013 at 9:30 a.m. (Freetown time) from The Hague, and will be streamed live to Courtroom 1 in Freetown by video link. Hassan Papa Bangura, Ibrahim Bazy Kamara and Santigie Borbor Kanu were each found guilty on 25 September 2012 on two counts of interfering with witnesses who had testified before the Special Court. Kamara was also found guilty on a third count, of knowingly violating a court order protecting the iden-

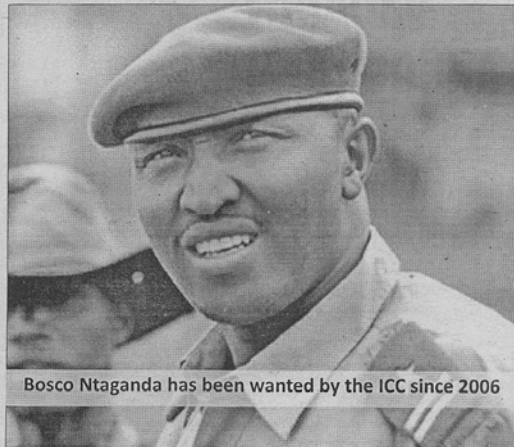
tity of a witness who had testified against him in the AFRC trial.

Bangura will take part in the proceedings in Freetown, while Kamara and Kanu will take part from Kigali, Rwanda.

On 11 October 2012, Kamara and Kanu were each sentenced to two years in prison, in addition to prison sentences they are currently serving on the convictions for war crimes and crimes against humanity. Bangura was given an 18-month sentence.

The proceedings are open to the public. The media is invited to attend.

ICC welcomes Bosco 'Terminator' Ntaganda's surrender



Bosco Ntaganda has been wanted by the ICC since 2006

The International Criminal Court (ICC) has welcomed Congolese rebel leader Bosco Ntaganda's surrender to stand trial on war crimes charges.

Known as "The Terminator", Gen Ntaganda surrendered on Monday to the US embassy in Rwanda after seven years on the run.

The ICC said it was in contact with the relevant authorities to

arrange for his immediate transfer to The Hague.

He denies committing atrocities during the long-running conflict in the Democratic Republic of Congo.

The DR Congo government says Gen Ntaganda crossed into Rwanda on Saturday.

'Most wanted'

"I think justice now has a chance to prevail, now that he has handed himself in," DR

Congo's ambassador to the UK, Kikaya Bin Karubi, told the BBC's Newsday programme.

"The most wanted criminal in eastern Democratic Republic of Congo has seen that he has no other option now, and the best option for him is to go and face the music."

Neither the US nor Rwanda recognise the ICC.

However, the US state department said on Monday that it was in contact with the ICC and the Rwandan government to arrange his transfer to The Hague.

"The ICC welcomes news of Bosco [Ntaganda's] surrender," the ICC chief prosecutor's office said, AFP news agency reports.

"This is great news for the people of the DR Congo who had to suffer from the crimes of an ICC fugitive for too long," it added.

The ICC issued an arrest warrant for Gen Ntaganda in 2006. He faces 10 counts of conscripting child soldiers, murder, terrorising communities and using rape as a weapon of war.

The charges - which he denies - relate to his time as the leader of a

militia in the north-eastern DR Congo between 2002 and 2003.

Since then Gen Ntaganda has fought for other rebel groups in the region, as well as the Congolese army.

Most recently he was believed to be one of the leaders of the M23 rebel group, which is fighting government troops in the east of the country.

The United Nations believes the M23 group is backed by the government of neighbouring Rwanda, though Rwanda denies this.

On Sunday, the DR Congo government said Gen Ntaganda, who comes from the Tutsi ethnic group, had fled to Rwanda after he and some of his followers were apparently defeated by a rival faction of the M23 group.

BBC East Africa correspondent Gabriel Gatehouse says that if Gen Ntaganda does reach the ICC, many will be hoping he can shed light on the accusations of Rwanda's involvement in the Congolese conflicts, including the backing of the M23 rebels.

Eastern DR Congo has been riven by conflict since 1994, when some of the ethnic Hutu

groups accused of carrying out the genocide in neighbouring Rwanda fled across the border.

Gen Ntaganda appears to have been throughout the long conflict, fighting for both rebels and government armies.

His military career started in 1990, at the age of 17, when he joined the Rwandan Patriotic Front (RPF) rebels, now the ruling party in Kigali.

In November 2008, international journalists filmed him commanding and ordering rebel troops in the village of Kiwanja, 90km (55 miles) north of Goma in DR Congo, where 150 people were massacred in a single day.

In 2009, he was integrated into the Congolese national army and made a general following a peace deal between the government and rebel troops he commanded.

However, he defected from the army last April, accusing the government of failing to meet its promises.

It is not clear why Gen Ntaganda chose this moment to surrender, but there are suggestions the split in the M23 movement has made him vulnerable.

Newstime Africa
Tuesday, 19 March 2013

Special Court for Sierra Leone – Appeal Judgement in Bangura, et. al.

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BBC

Thursday, 21 March 2013

Bosco Ntaganda: Kagame promises to help transfer to ICC



Bosco Ntaganda has been wanted by the ICC since 2006

Rwanda's President Paul Kagame has given his backing for the speedy transfer of Congolese war crimes suspect Bosco Ntaganda to the International Criminal Court (ICC).

Known as "The Terminator", he surrendered to the US embassy in Kigali on Monday.

Rwanda would help facilitate his transfer to The Hague "as fast as possible", Mr Kagame said.

Gen Ntaganda has been a key figure in the conflict in eastern DR Congo.

The ICC has charged him with 10 counts of war crimes and crimes against humanity, accusing him of using child soldiers, keeping women as sex slaves and participating in the murder of at least 800 people in 2002 and 2003.

Gen Ntaganda denies the charges.

Transfer 'within days'

He has fought for various rebel groups as well as the Congolese army in a country riven by ethnic divisions and a battle for control of its mineral resources.

Continue reading the main story

'The Terminator' at a glance

Born in 1973, grew up in Rwanda

Fled to DR Congo as a teenager after attacks on fellow ethnic Tutsis

At 17, he begins his fighting days - alternating between being a rebel and a soldier, in both Rwanda and DR Congo

In 2006, indicted by the ICC for allegedly recruiting child soldiers

He is in charge of troops that carry out the 2008 Kiwanji massacre

In 2009, he is integrated into the Congolese national army and made a general

In 2012, he defects from the army, sparking a new rebellion which forces 800,000 from their homes

In March 2013, hands himself in to US embassy in Kigali

Most recently, he was believed to be one of the leaders of the M23 rebel movement, which is fighting government troops in the east.

He has also fought for the army of Rwanda, which denies UN accusations that it backs the M23.

"We will work to make what the US embassy needs in relation to Bosco Ntaganda's case happen as fast as possible," Mr Kagame said in a statement.

His comments came a day after US assistant secretary of state for African affairs, Johnny Carson, said it was important that Gen Ntaganda's movement from the embassy to the airport was "in no way inhibited".

Mr Carson said he hoped that ICC officials, who were en route to Rwanda, would be allowed into the country.

Neither Rwanda nor the US recognise the ICC.

On Wednesday, the court's chief prosecutor, Fatou Bensouda, said she expected Gen Ntaganda to be handed over in "a couple of days".

The ICC issued an arrest warrant for Gen Ntaganda seven years ago.

The DR Congo government said Gen Ntaganda, who comes from the Tutsi ethnic group, crossed into Rwanda on Saturday after he and some of his followers were defeated by a rival faction of the M23 group.

Rwanda denies helping Gen Ntaganda to flee DR Congo, or arranging his surrender to the US embassy, which is near the defence ministry in Kigali.

Rwanda's government is also dominated by Tutsis and Gen Ntaganda fought with the former rebels who are now in power in Kigali.

The New York Times

Thursday, 21 March 2013

Team on the Way to Collect Congo War Crimes Suspect

By JEFFREY GETTLEMAN

NAIROBI, Kenya — American officials on Wednesday said that a team from the International Criminal Court was on its way to Rwanda to collect a war crimes suspect who had turned himself in to the American Embassy and that they were hoping Rwanda would cooperate.

[Enlarge This Image](#)

Lionel Healing/Agence France-Presse — Getty Images

Bosco Ntaganda has been accused of massacring villagers and recruiting child soldiers in the Democratic Republic of Congo.

Rwanda has indicated that it would not interfere with the transfer of the suspect, Bosco Ntaganda, a rebel commander nicknamed the Terminator, to the International Criminal Court at The Hague, where he has been charged with war crimes and crimes against humanity.

On Monday, Mr. Ntaganda, who has been accused of massacring villagers and recruiting child soldiers in the eastern Democratic Republic of Congo, showed up unexpectedly at the American Embassy in Rwanda and surrendered. On Wednesday, Assistant Secretary of State Johnnie Carson reiterated that the United States now needed Rwanda's cooperation to get Mr. Ntaganda to The Hague.

“We hope the Rwandan government will work with the U.S. government,” he said in a conference call from Washington. “We need cooperation so he can move freely from the American Embassy compound to the airport.”

Rwanda — and the United States, for that matter — are not members of the International Criminal Court, and Rwanda's foreign minister, Louise Mushikiwabo, said this week, according to the SAPA news agency, “The I.C.C. is a political court, and we have never believed in its jurisdiction.” But she pledged to work with the United States and in other interviews, including one published by Bloomberg, Ms. Mushikiwabo reinforced the position, saying “The U.S. is a partner state, and we commit to give them any support they want.”

Mr. Carson said the critical issue now was getting Mr. Ntaganda from the American Embassy in Kigali, Rwanda's capital, to the airport about five miles away. He said that the Rwandans had given “appropriate assurances that they will not interfere,” but he did not elaborate.

Rwanda has faced broad international pressure because it is widely suspected of covertly supporting Mr. Ntaganda in the past and fomenting rebellions in eastern Congo that have killed countless people. It also has had a touchy relationship with international justice, condemning cases tried in France and Spain that accuse Rwandan government officials of assassinations and other crimes.

Several analysts have said that Rwanda may be worried that Mr. Ntaganda, once he leaves the country, might spill secrets that could further damage Rwanda's reputation.

The Cambodia Daily

Thursday, 21 March 2013

Victims Call For Ieng Sary's Assets to Be Seized

Civil parties who suffered under the Khmer Rouge called on the government Tuesday to try to take back the riches illegitimately amassed by the regime's former foreign minister Ieng Sary.

Ieng Sary died last week aged 88, before a verdict could be reached in his trial, in which he was accused of war crimes for his senior role in the regime that oversaw the deaths of almost 2 million people.

As well as houses in Phnom Penh and his former base of Ma-lai in Banteay Meanchey province, Ieng Sary is thought to have had access to a Hong Kong bank account through which the Chinese funded the ultra-Maoist movement both when it was in and out of power. According to the testimony of former cadre, the account at one point contained \$20 million.

Ieng Sary, who is survived by decedents holding government posts and with business interests, also oversaw the lucrative extraction of gemstones and timber from the northwest after the Khmer Rouge was unseated from power in 1979.

"If there are assets, the assets should be given to the victims," said Soum Rith, 62, a civil party in Case 002, who was imprisoned in Siem Reap province between 1977 and 1979 and lost three brothers during the regime.

Mr. Rith said the government should find a way to redistribute any money or property Ieng Sary had. "If the government is willing enough, they can do it," he said.

The Khmer Rouge tribunal in 2010 rejected a request from civil parties to investigate the assets of the defendants in the current Case 002 with a view to providing reparations. The court's Pre-Trial Chamber ruled that such a move could only take place after a guilty verdict.

With his death, the court has dropped its case against Ieng Sary—by far the wealthiest of Pol Pot's inner circle—ending any hope of the tribunal attempting to retrieve any of his wealth.

With Ieng Sary now dead and his wife Ieng Thirith having been declared unfit for trial, Nuon Chea and Khieu Samphan are the only two defendants left on trial.

But complainants in the case said the government should take action to claw back the ill-gotten gains of Ieng Sary.

Sem Hoern, 52, another civil party, said it was particularly galling that leaders of the Khmer Rouge—who abolished money and confiscated all private property and land—should be allowed to get away with large sums of cash.

"It is only right that the government should confiscate all his property to give to the victims, since at the time of the Khmer Rouge, you could not have any belongings but your clothes," said Ms. Hoern, who is seeking justice for her four brothers and her father, who died under the Khmer Rouge.

Thirty-seven-year-old Hav So-phaea, who lost her father and 26 other relatives to the regime, said that while she would like to see Ieng Sary's assets confiscated, she did not believe the government would act.

“I’m hopeless now,” she said.

Council of Ministers spokes-man Phay Siphon declined to comment in detail, but said reparations were a matter for the court.

“The government has nothing to do with that one,” he said.

Political analyst Lao Mong Hay said there was precedent in the region for going after the ill-gotten wealth of deposed leaders held in bank accounts overseas.

The Philippines has, through court cases in Switzerland and the U.S., managed to recover millions of dollars that were amassed by dictator Ferdinand Marcos during his two-decade rule.

Investigators have also tried to recover the millions of dollars believed to have been amassed by Liberia’s former president, Charles Taylor, who was found guilty of war crimes at The Hague last year.

Another potential route is the World Bank and U.N. Office on Drugs and Crime’s Stolen Asset Recovery Initiative, which provides assistance for countries on request.

The initiative, known as StAR, “works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets,” according to the organization’s website.

“It’s possible [in Cambodia], but whether the government want to, that I do not know,” Mr. Mong Hay said.

Standard Digital

Thursday, 21 March 2013

<http://www.standardmedia.co.ke/?articleID=2000079827&story>

ICC judge resigns after being elected president

By Standard Digital Reporter

A judge at the International Criminal Court has resigned after he was elected president in his home country.

Judge Anthony T. Carmona resigned from the ICC after he was elected the fifth president of Trinidad and Tobago.

Judge Carmona was elected president by the Electoral College of Trinidad and Tobago's Parliament.

Judge Carmona was elected as ICC Judge for a term of nine years in December 2011 and was assigned to the Trial Division.

However he had not yet been called to full-time duty at the Court.

From 2001 to 2004, he was the Appeals Counsel in the Office of the Prosecutor at the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR).

In this capacity, he successfully prosecuted appeals of persons convicted of crimes within the jurisdiction of the Tribunals, namely generals, camp commanders, soldiers and politicians.

While resigning, President Carmona stated that he stands "ready, subject to all the protocols, to assist in advocating the universal jurisdiction of the ICC".

The President of the Assembly of States Parties Ms Tiina Intelmann congratulated Judge Carmona on his election as President of Trinidad and Tobago, highlighted the important role Trinidad and Tobago has played in the creation of the Court.

ICC President Judge Sang-Hyun Song congratulated saying Trinidad and Tobago has always been one of the staunchest supporters of the ICC.

The Assembly of States Parties will have to elect a judge to fill the vacancy left by Judge Carmona's resignation.

Institute for War and Peace Reporting

Wednesday, 20 March 2013

Do Overturned Convictions Undermine Hague Tribunal?

Two recent appeals hearings ended with senior figures from Serbia and Croatia being fully exonerated. Worryingly, their acquittals were hailed at home as vindication of their respective sides' wartime actions.

By Rachel Irwin - International Justice – ICTY



Both Momcilo Perisic and Ante Gotovina were released on appeal. (Photo: ICTY)

When appeals judges at the Hague tribunal quashed the conviction of Momcilo Perisic for crimes committed during the 1990s war in Bosnia, it was the second time they had overturned a trial verdict in four months.

In September 2011, Perisic, who was chief of staff of the Yugoslav army during the Bosnian war, was convicted of aiding and abetting crimes committed against civilians during the 44-month sniping and shelling campaign directed against Sarajevo, which left thousands dead, as well as the 1995 Srebrenica massacre in which over 7,000 Bosniak men and boys were murdered. He was sentenced to 27 years in prison.

On February 28, appeals judges ordered his immediate release after dismissing the conviction. (See Yugoslav Army Chief Acquitted on Appeal .)

In November 2012, Croatian generals Ante Gotovina and Mladen Markac were released after the appeals bench fully reversed their convictions and dropped their prison sentences. (Croatian General Acquitted on Appeal)

Gotovina was found guilty in April 2011 of ordering unlawful and indiscriminate attacks on Serb civilians during an operation to recapture the Krajina region of Croatia in August 1995. He was also found to be responsible for the deportation of at least 20,000 Serb civilians from Krajina; the murder, persecution and cruel treatment of Serb civilians; and counts of plunder and wanton destruction.

Like Gotovina, special police commander General Mladen Markac was convicted of eight out of the nine counts in the joint indictment. A third co-defendant in the case, Knin garrison commander General Ivan Cermak, was acquitted of all charges.

Gotovina was sentenced to 24 years' imprisonment, and Markac to 18 years, with credit for time already served.

When the appeals chamber quashed those sentences last November 16, both men left The Hague for a rapturous reception in Croatia.

While other defendants at the tribunal have had their sentences reduced or increased on appeal, the Perisic and Gotovina/Markac cases are the starkest examples of what can happen during the appeals process.

The cases raise numerous questions about how a complete reversal is even possible when Hague trials are supposed to not only establish a factual account of the wars in the former Yugoslavia, but also further truth, reconciliation and peace in the region. If a trial judgement of more than 1,000 pages, as in Gotovina's case, can be abruptly reversed in a 50-page appeals verdict, what does that say about the tribunal's overall credibility?

As Christian Axboe Nielsen, a historian at Aarhus University in Denmark, put it, "It's extremely problematic for the legacy of the tribunal that we essentially have two verdicts – which involve by tribunal standards relatively long prison sentences –not only reduced but also overturned completely, with the formerly convicted out as free men."

Nielsen has testified as an expert witness for the tribunal in several trials at the tribunal.

"The intensely problematic thing is explaining to the diverse populations of the former Yugoslavia how this makes any sense at all," he told IWPR.

Lawyers and academics who have analysed the two cases say that while unusual, total reversals are possible, as the appeals court has an enormous amount of discretion in how it reviews the facts and legal standards of cases.

Mark Ellis, executive director of the International Bar Association, told IWPR that the purpose of the appeals process is to examine "the way the trial chamber applied the law and whether or not evidence was there to support the trial chamber's decision".

However, as Ellis acknowledges, this explanation "doesn't help victims, it doesn't help the perception of the court, because [people ask] 'How could you get this so wrong? How could you go from one spectrum to another?' That's what is so frustrating about it."

Timothy Waters, an associate professor of law at the University of Indiana, said that while the appeals chamber's job is to arrive at judgements on the legal standards applied in individual cases, that is not how most people understand it.

"They either read a very short answer – guilty or not guilty – or they are looking for these grand narratives," he said. "The judicial process is right in the middle of that, telling a very complicated legal story that may have nothing to do with what happened in the broader sense."

In terms of how appeals decisions affect perceptions of the court, David Ohlin, an associate professor at Cornell University Law School in New York, said they can be interpreted in different ways.

"In one sense, you look at this and say, 'I have less confidence in the system because if the trial chamber can get things this wrong, then why should I believe anything a trial chamber says?'" he said.

"On the other hand, you can look at this and say, 'The appellate process isn't just a rubber stamp. It's a meaningful judicial review. It shows us that the process is legitimate.'"

Marko Attila Hoare, a British historian at Kingston University in London, agreed, noting that "if the appeals chamber always [followed] the trial chamber, that would raise questions about the whole process of impartiality and justice. This does show that the tribunal represents a range of judicial opinions and that judges do disagree with each other."

GOTOVINA ACQUITTAL RESTS ON HOW SHELL IMPACTS WERE MEASURED

In the Gotovina case, the appeals judgement hinged on the distance between shell impacts and legitimate military targets during the Operation Storm offensive in 1995.

Reading out the verdict, tribunal president Judge Theodor Meron noted that the original trial chamber had concluded that both Gotovina and Markac were part of a joint criminal enterprise, JCE, with other members of the Croatian political and military leadership. The aim of this JCE was the “permanent removal of the Serb civilian population from the Krajina by force or threat or force”.

The appeals verdict stated that the trial chamber used the distance between artillery shell impact sites and the nearest identified artillery targets “as the cornerstone and organising principle” for determining whether projectiles were aimed at lawful military targets. It found that the trial chamber had erred in finding that all impacts located more than 200 metres away from a legitimate target “served as evidence of an unlawful artillery attack”.

The appeals bench found that the trial judgement contained no indication that any of the evidence “suggested a 200-metre margin of error”. The judgement, Judge Meron said, was “devoid of any specific reasoning as to how the trial chamber derived this margin of error”. As a result, the trial chamber’s shell impact analysis could not be sustained.

The other findings in the original verdict – including the existence of a JCE – fell apart as a result.

Ohlin believes it was a “mistake” for the original trial chamber to “go to such a level of specificity” with the 200-metre standard – which they constructed themselves – because it opened them up to criticism from the appeals chamber.

“A large part of the appeals chamber judgement was devoted to the fact that this standard seemed arbitrary,” he said.

Ohlin argues that the original trial judges could have reached the same conclusions from the other evidence available and did not need to devise the impact-to-target distance as a standard.

The final decision – to acquit Gotovina of all counts in the indictment – was controversial precisely because it stemmed from such a specific issue.

“The controversy seems to be, once you admit the [metre standard] is kind of weird and invented, do you throw everything out? This is what the appeals chamber did,” Waters said, noting that two dissenting judges on the appeals bench did not believe the rest of the original judgement should have been discounted because of it.

Those two judges delivered scathing opinions of the view taken by their three colleagues in the majority.

“At every turn, rather than looking at the totality of the evidence and findings, the majority takes an overly compartmentalised and narrow view,” wrote Judge Carmel Agius.

Judge Fausto Pocar said the entire appeals judgement “contradicts any sense of justice”.

PERISIC: NO PROOF OF “SPECIFIC DIRECTION” TO COMMIT CRIMES

In the September 2011 judgement against Perisic, judges found that in his role as Yugoslav army chief, he “repeatedly exercised his authority to provide logistic and personnel assistance that made it possible for the [Bosnian Serb army] to wage a war that he knew encompassed systematic crimes against Muslim civilians”.

Perisic was also found guilty, as a military commander, of failing to punish members of Serb forces in Croatia for launching rocket attacks on the capital Zagreb in May 1995.

When they reversed all these findings on February 28, appeals judges found that the original trial chamber “declined to consider whether Mr Perisic specifically directed aid” towards crimes committed by Bosnian Serb forces. Instead, they said, the original judges found that Perisic “made a substantial contribution to these crimes,

knew that his aid assisted the crimes in Sarajevo and Srebrenica, and was aware of the general nature of the crimes”.

That, however, was not enough to establish aiding and abetting, especially since the accused – based in Belgrade throughout the war – was “remote” from the crimes on the ground, the appeals bench concluded.

“The appeals chamber... reaffirms that no conviction for aiding and abetting a crime may be entered if specific direction has not been proved beyond a reasonable doubt,” said Judge Meron, who presided over the appeals bench for the Perisic case as well as for Gotovina/Markac.

As with the Gotovina appeal judgement, the Perisic verdict was not unanimous, but there was only one dissenting opinion. Judge Liu Daqun of China would have upheld the aiding and abetting convictions for Sarajevo and Srebrenica.

Setting out his reasons for dissenting, Liu essentially concurred with the findings of the original judgement. He argued that “specific direction” was not required to prove aiding and abetting; that Perisic knew of criminal acts being committed by the Bosnian Serb army; and that the assistance provided to that force was crucial to its “very existence”.

“Perisic’s acts, which facilitated the large-scale crimes of the VRS [Bosnian Serb army] through the provision of considerable and comprehensive aid, constitute a prime example of conduct to which aiding and abetting liability should attach,” Judge Liu wrote.

Observers point out that the legal standard now set for “aiding and abetting” has never been used at the tribunal before. Others say that the evidence was so circumstantial that it could have gone either way on appeal, and note that the original trial judgement was not unanimous, either.

Most agree that the requirement to show “specific direction” –in this case linking the aid given by Perisic and the Yugoslav army directly to crimes on the ground in Bosnia – is probably impossible to meet.

“We don’t even have that order for the Holocaust. So it’s not going to work that way,” Waters said.

“One of the reasons why people want a stricter standard is because there are wars all the time, people are constantly involved in them, and where do we draw the line?” he asked. “The concern is that now we’ll never be able to prove anything. But the reason not to worry about that is because what these cases mostly show is that courts and judges are prepared to push aside the standards when they want to reach a conclusion.”

Other observers argue that both the Gotovina and Perisic appeal verdicts reflect a more cautious approach by appeals judges as the Hague tribunal moves towards the end of its work.

“The [appeals chamber] is afraid that some of the trial chamber rulings created new law that expands the range of potential enforcement, and they don’t want to let that happen,” said Eric Gordy, a senior lecturer in South East European Politics at University College London. “It’s this new legal conservatism that’s creeping in. They want to control the effects of what they established before.”

DECISIONS REVERBERATE ACROSS REGION

Neither of these appeals judgements overturn the basic facts that have already been established about the wartime events in question, like, for instance, that Sarajevo was placed under siege, that a massacre occurred at Srebrenica, and that crimes were committed against ethnic Serbs during Operation Storm in Croatia.

But they do change the overall narrative of the Bosnian and Croatian conflicts, and especially perceptions on the ground.

“When you get an appeal being the exact opposite of the trial judgement, it makes it twice as impossible to imagine that these courts are telling stories that have authoritative narrative power,” Waters said.

For example, many people were closely monitoring the outcome of the Perisic appeal because he was the first Serbian state official to be convicted of crimes that occurred in neighbouring Bosnia. His trial conviction was seen by some as formal proof that Belgrade was involved in that war, since former Serbian president Slobodan Milosevic died before a judgement could be rendered.

Now, however, the assistance that Perisic gave to Bosnian Serb forces has been classified not as aiding and abetting crimes, but instead as a contribution to their overall war effort. This will have a profound impact on perceptions of Serbian state involvement.

With Perisic's acquittal, Waters said, "what happens in Belgrade is that it's treated like a general proof of collective innocence. That's a very different thing from what a conviction does in terms of narrative, if it does anything."

The Perisic case is not the final opportunity to demonstrate Serbian state involvement in Bosnia and Croatia. There is still one remaining Hague case in which high-level Serbian state officials are charged with wartime crimes in those two states. Judgement is pending in the trial of security service officials Jovica Stanisic and Franko Simatovic.

While the Gotovina appeals verdict rested on technicalities, it was interpreted in Croatia as a full exoneration of Gotovina himself – who is revered as a war hero there – and moreover of the country's actions during Operation Storm.

According to historian Nielsen, the major Croatian newspaper Jutarnji List plastered its website with the headline "Croatia is Innocent" right after the acquittal was announced.

"This is a completely ridiculous and frankly unhelpful assertion that demonstrates a complete misunderstanding of the entire point of the [tribunal]," Nielsen said, adding that the Croatian state "was never convicted in the first place".

"I understand the frustration of Serbs who say: 'We are not going to get anybody convicted for what happened in Croatia in 1995,'" he continued. "My answer to that would be, those types of convictions are going to have to happen in Croatia and Serbia, and I really hope for the sake of the region that they do happen."

As Dov Jacobs, an assistant professor at the University of Leiden in The Netherlands, points out, the appeals verdict "doesn't mean that no crimes were committed. That's not what the judgement says".

TRIBUNAL'S CREDIBILITY AS SOURCE OF HISTORICAL TRUTH

Many experts have long argued that war crime tribunals exist to deliver justice, not to determine the truth about any conflict, so expecting them to do the latter creates unrealistic expectations.

"Everybody put their eggs in one basket, [as if] the tribunal is going to come up with findings and this is going to resolve all of the disputes," said Gordy, the sociologist at UCL. "Probably if you think about it, no court could ever really do that."

Waters pointed out that with some exceptions, "the people who were outraged at Gotovina's conviction were overjoyed at his acquittal on appeal. We could do the same exercise with Perisic. This is an ethnic census."

In light of that, many wonder how these appeal judgements square with the tribunal's professed goal of not only establishing a factual record but also contributing to the lasting peace in the region.

Refik Hodzic, director of communications at the International Centre for Transitional Justice and a former tribunal spokesman, says people in the former Yugoslavia still have unanswered questions about why such radical reversals are possible on appeal.

"I'm talking specifically about the Gotovina judgement," he said. "People are saying, 'You have dismissed this 200-metre standard, so what is the new legal standard you are establishing? If this is not the correct criteria, then what is it? On what basis are you establishing that this is or isn't the right criteria?'"

“The importance of these judgements for people in the region goes far beyond the relationship between the accused and the court,” Hodzic said.

Hague decisions are “seismic in their impact,” and not just in the region, he added, recalling how a state prosecutor from Brazil who is leading the effort to prosecute past human rights abuses told him that he looked to precedents at the tribunal for challenging amnesty laws that would shield perpetrators.

“I was stunned to hear that,” Hodzic said. “But it does carry enormous weight. It’s an international UN court whose decisions have shaped international humanitarian law. To have that jurisprudence shifted dramatically without proper reasoning or explanation goes against what the tribunal’s record has been.”

In the future, he predicted, “the conduct of military commanders will be determined by these [Gotovina and Perisic] judgements and you will have people looking to them as the legal basis for their actions”.

However, Waters, the law professor at the University of Indiana, does not believe that these appeal findings will necessarily set a new standard of proof for future cases. It is likely, he says, that judges will continue to sweep aside existing standards when it suits the circumstances of a case.

“That’s not a happy conclusion to say that we have no standards, but it does suggest that this is not a precedent that will stand and determine the future. I don’t think the [Perisic verdict] will tell us what will happen the next time we have a military intervener in a conflict,” he said.

However, other defendants at the tribunal are already trying to use the two recent judgements in their favour.

Last week, during the appeal hearing for four Serbian officials convicted of crimes against Albanian civilians in Kosovo, lawyers for Yugoslav army General Vladimir Lazarevic argued that his conviction for deportation should not stand because there was no proof that he gave “specific direction” for the commission of crimes.

According to the SENSE news agency, the prosecution asked the appeal bench in this case not to apply the “specific direction” standard as it would run “contrary to the interest of justice”.

Despite all the controversy, observers say that the Gotovina/Markac and Perisic appeal verdicts should not detract from the many solid cases of lower-level defendants tried at the tribunal.

“In a way, the [two recent cases] say much more about our need for an overly simplistic understanding of the conflict in the former Yugoslavia, which translates into a lingering desire for symbolic convictions of the ‘big guys’,” historian Nielsen said.

Rachel Irwin is IWPR’s Senior Reporter in The Hague.

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