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INTERNATIONAL CRIMINAL TRIBUNALS**

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**André KLIP and Göran SLUITER (eds.)**

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## PREFACE

This is the seventh volume in the series “Annotated Leading Cases of International Criminal Tribunals” and contains the most important decisions of the International Criminal Tribunal for the former Yugoslavia (ICTY) over the period from 23 February 2001 to 31 August 2001. It is the fifth volume in the series containing decisions of the ICTY, which illustrates the abundant output of that institution. The present volume appears in a year in which the ICTY is – again – highly productive, but in which the Tribunal also encounters some difficult moments. One of them is certainly the departure from the Tribunal of Judge May in Spring 2004 and his untimely death on 1 July 2004. He will be remembered as one of the key judges of the ICTY, who not only made essential contributions to the ICTY jurisprudence but also served as the Chair of the Tribunal’s Rules Committee.

The Tribunal is furthermore undoubtedly troubled by the trial of its most prominent accused in custody, Slobodan Milošević. At the time of writing, the accused’s fragile health makes for pessimistic prospects concerning the trial’s completion. It remains to be seen whether ‘a radical review of the future conduct of the trial’ (Order of 6 July 2004) can turn this trial, which commenced in February 2002, into a success.

Finally, the ICTY, especially the Prosecutor, will deplore the fact that, well into the ICTY’s exit-strategy, two prominent accused, Mladić and Karadžić, are still at large. Although the Prosecutor announced the arrest of the aforementioned individuals by the end of June, at the time of writing this preface, mid-July, this has not taken place yet.

In the period covered by this volume, the ICTY has issued a variety of decisions, including four judgements, two ‘complete’ Trial Chamber judgements, one Trial Chamber judgement on sentencing and one judgement from the Appeals Chamber. The level of productivity is illustrated by the fact that this volume covers a period of only 6 months.

The present volume is in its approach and structure similar to the previous six volumes. Thus, the book contains the full text of all the decisions and judgements, including separate, concurring and dissenting opinions, as well as annexes to the decisions. As in the previous volumes, the editors have ensured that the decisions are fully identical to the *written* original text issued by the ICTY Press and Information Office and which bears the signature of the Judges. We are aware that more and more decisions are available on the internet. However, only the written decisions bearing the signatures of the Judges can be considered authoritative versions. In the course of our editorial work on this volume and the previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version. Much of our editorial efforts consist in making the texts in this series identical to the written original version.

We could only include the full text of the decisions in this volume by reducing their original format. Nevertheless, we want the reader to be able to identify the page number of the original text, which is put in brackets [ ] throughout the text. We are again very happy that a number of scholars in the field of international criminal law were prepared to write interesting and stimulating commentaries to the decisions.

A few words regarding the selection of decisions may give the user insight into our working method. In principle we select all final judgements. In addition, we publish decisions taken in any stage of the procedure which are important for other reasons: because they deal with a specific legal question, because they are representative of a specific type of decision or because they enter new legal waters. Of course we cannot publish all decisions. As a result we may not publish decisions in which issues have been decided in a similar or identical way to a decision that has already been selected.

The decisions are presented over different parts and under different headings.

Part 1 deals with preliminary matters, arising prior to the commencement of the trial. As in previous volumes, this part contains a number of decisions on the jurisdiction of the Tribunal, decisions relating to the form of the indictment and decisions relating to writs of habeas corpus. All those matters can be considered “usual” pre-trial matters.

Although to a certain degree those pre-trial matters are relatively routine, the decisions included clearly mark the present stage of the ICTY’s development. For example, the Tribunal’s policy has altered considerably in the area of provisional release.

Part 2 is entitled procedural matters and deals with a variety of issues. Under the heading “evidentiary issues” we have included two groups, each of four decisions. The first group deals with the reception and admission of testimonial evidence, while the second mainly deals with recent efforts to streamline procedures at appeal and thus limit the presentation of evidence as much as possible. The importance of this matter for the current stage of the Tribunal’s work and the number of decisions justify two commentaries on this section.

Under the next heading, “right to counsel and contempt of the tribunal”, we have grouped two contempt judgements (both involving the conduct of counsel) and the order inviting *amici curiae* in the Milošević case. The latter order touches upon the question as to the extent to which an accused is entitled to defend him or herself in person.

The final heading of part 2 contains two decisions on the co-operation dispute between NATO and the ICTY in the Todorović case.

Part 3, containing a number of judgements, covers by far the largest part of this volume. As mentioned above, judgements are by definition included in this series because of their importance, both from a factual and legal perspective.

Under heading 7 we have incorporated judgements from the Trial Chamber in the Kordić and Čerkez case and in the Krstić case. Furthermore, a judgement handed down by the Appeals Chamber in the Jelisić case has been included. These judgements all raise important issues of substantive international criminal law. The Jelisić and Krstić judgements are of special importance for the ICTY, because they deal with the crime of genocide.

Under heading 8 we have included the sentencing judgement in the Todorović case, issued after a plea arrangement.

The productivity of the *ad hoc* Tribunals makes it difficult to keep up with them, in terms of publication of their most important decisions. This volume will therefore soon be followed by volume eight, which is in the printing phase. We are currently working simultaneously on publication of volumes nine and ten. While volume nine will again contain decisions of one of the *ad hoc* Tribunals, hopefully volume ten will contain decisions issued by either the Special Court for Sierra Leone or the Special Panels of East Timor. The editors have rendered fruitful visits to both those ‘tribunals’.

Volumes nine and ten will be published in 2005.

We owe acknowledgements to many persons without whom we could not have completed this seventh volume. These include our publisher Intersentia, in particular Hans Kluwer and Isabelle van Dongen, our student assistant Marloes Kleijn Hesselink, who assisted with the corrections of the text and the Netherlands School of Human Rights Research, which greatly facilitated our work. Christian Chartier and his staff from the ICTY Press and Information Office have helped us in obtaining all the hard copies of decisions. Steven Freeland from the University of Western Sydney, Australia, offered tremendous help

by correcting our English. Last but not least, we wish to thank the distinguished authors for their commentaries to the decisions.

We hope that this volume will contribute to the further dissemination of the important work of the ICTY and that it will provide access to its decisions to practitioners, academics and students.

André Klip and Göran Sluiter  
Maastricht/ Amsterdam, July 2004