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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 fourteenth 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) from 1 April 2003 up to and including 13 October 2003. It is the eighth volume in the series containing decisions of the ICTY, which indicates the abundant production of that institution.

Fully engaged in its Completion Strategy, the ICTY is highly productive in the period covered by this volume. From 1 April 2003 until 14 October 2003, a relatively short period, the ICTY issued a variety of decisions, including three judgements.

The present volume is in its approach and structure similar to the previous thirteen 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 as issued by the ICTY Press and Information Office and which bears the signatures 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 and previous volumes, we have discovered inconsistencies between the written original version of the decision and the internet version, if the latter is available at all. 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. Still, we wanted the reader to be able to identify the page number of the original text, which is throughout the text put in brackets []. 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 at any stage of the procedure that 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 way similar or identical to a decision that has already been selected.

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

Part 1 deals with preliminary matters and contains a variety of legal issues that preferably need to be resolved before the commencement of the trial.

Under heading 1, we have put decisions on motions challenging jurisdiction. These decisions distinguish themselves from the 'traditional' jurisdictional challenges, in that they are not based on procedural grounds, but on arguments related to the scope of substantive international criminal law, notably the mode of responsibilities of joint criminal enterprise and command responsibility.

Heading 2, in turn, deals with a jurisdictional challenge on procedural grounds, the complex question of *male captus bene detentus*. The Appeals Chamber decision here is the most recent and authoritative (ICTY) pronouncement on this matter.

Commonly litigated issues of provisional release and (the form of) the indictment are the object of headings 3 and 4 respectively. The law of the ICTY is still not fully settled on these matters, justifying inclusion of these decisions.

Part 2 is entitled procedural matters and deals with a variety of procedural issues that generally arise during trial or appellate proceedings.

Heading 5 collects decisions that address a variety of aspects of the effective preparation and conduct of the defence. In the absence of other mechanisms, particularly a strong and credible bar association, the regulation of 'defence matters' is an area of international criminal proceedings that still leaves much to be desired. As a result, many issues are litigated – for the first time – and continue to be so in the future.

The issues of the right to an impartial tribunal and cooperation with the ICTY (headings 6 and 7 respectively) are not new in this series. The decisions collected here build on previous case law. In the area of cooperation, the Appeals Chamber has – for now – settled the relationship between the professional interests of (war) correspondents and the interests of international criminal justice.

Heading 8 puts together a number of decisions on the broad issues of admissibility of evidence and disclosure. Heading 9 is more specific, dealing with particular problems pertaining to testimonial evidence and the accused's right to cross-examination.

Part 3, contains judgements and covers by far the largest part of this volume. The fact that these three voluminous judgements were handed down shortly after one another explains why this volume covers a relatively short period only. As mentioned above, judgements are by definition included in this series, because of their importance, both from a factual and legal perspective.

Under heading 10, the reader finds a fully-fledged Trial Chamber judgement in the case of Stakić and an Appeal Chamber judgement in the Krnojelac case. Heading 11 contains one sentencing judgement in the cases of Mucić/Delić/Landžo. This Judgement on appeal marks the end of a lengthy case (the first Trial Chamber judgement dated from November 1998). Interestingly, in this same volume, one finds a decision ordering the early release – in the same short period – of one of the eventually sentenced persons (Mucić).

Part 4 is relatively new in this series, but will remain of vital importance, and deals with post-conviction or acquittal issues. Under heading 11, the reader finds the most typical example of such issues: two decisions on applications for early release.

We owe acknowledgements to many persons without whom we could not have completed this fourteenth volume. These include our publisher Intersentia, in particular Hans Kluwer and Isabelle van Dongen, our student assistants Thom Dieben (Maastricht) and Hadassa Noorda (Amsterdam), 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, April 2008