

# Forum for International Criminal Justice Newsletter: January 2017

Happy New Year and welcome to the IAP's Forum for International Criminal Justice (FICJ) January 2017 Newsletter which focuses on the prosecution of war crimes, crimes against humanity and genocide, including a roundup of video highlights, legal analysis, announcements, events, new publications and major news developments from the past month.

Domestic legal developments covered in this Newsletter include: a **Syrian** rebel is charged with war crimes in **Sweden**; **Bangladesh** war crimes tribunal sentences a fugitive to death; **France** upholds prison term for **Rwanda** genocide convict; the **Dutch** government backs new inquiry into colonial **Indonesia**; and **Serbia** starts trial of eight former Bosnian Serb policemen charged with taking part in the 1995 Srebrenica massacre.

**\*Please have a look at the [FICJ forum](#) page on the IAP website and feel free to contribute:** the Forum provides individual prosecutors with a password protected space to post news, announcements, etc. and to pose questions to fellow prosecutors from around the world. Your contributions will also be posted in this monthly newsletter. Passwords are provided to IAP members – if you do not have a password, check your membership status by contacting the IAP Office Manager, Evie Sardeman: [om@iap-association.org](mailto:om@iap-association.org).

*Danya Chaikel – FICJ Coordinator | email: [ficj@iap-association.org](mailto:ficj@iap-association.org)*



## Video Highlights



[Click here](#) to watch International Criminal Court Prosecutor Fatou Bensouda's opening statement at the start of the trial against Dominic Ongwen, who faces 70 counts of war crimes and crimes against humanity.



[Click here](#) to watch Serge Brammertz, Prosecutor of the International Criminal Tribunal for the Former Yugoslavia & the International Residual Mechanism for Criminal Tribunals, briefing the UN Security Council.

## 2016 in review

2016 saw many developments in core international crime investigations and prosecutions. Some highlights include:

### Hissène Habré convicted before the Extraordinary African Chambers



In May, former Chadian leader Hissène Habré was tried and convicted before the [EAC](#) – in the Senegalese court system – for crimes against humanity, war crimes, and torture, including sexual violence and having raped a woman himself. This landmark trial was the first in history in which a domestic court of one country prosecuted a former ruler of another for atrocity crimes. It was also the first universal jurisdiction trial of its kind in Africa.

### Creation of Kosovo Specialist Chambers & Specialist Prosecutor's Office

A new special court was established in The Hague in 2016 to try cases involving crimes committed during and in the immediate



**KOSOVO SPECIALIST CHAMBERS & SPECIALIST PROSECUTOR'S OFFICE**

aftermath of the Kosovo War from 1998-2000, by members of the Kosovo Liberation Army against ethnic minorities and political opponents. This is a sensitive issue in Kosovo – possible suspects might be viewed by sections of Kosovan society as freedom fighters, and witnesses may feel threatened in Kosovo. This is why the option of trying cases outside Kosovo was explored. The court will be staffed with international judges, prosecutors and staff, but it was established under Kosovan law, so it is not an international tribunal per se but rather a Kosovan national court that administers justice outside Kosovo. The new Kosovo court arguably marks the [first time](#) that a war crimes court has been set up with the express purpose to examine the crimes of the victors of a war.

### International Criminal Tribunal for the former Yugoslavia convicts most senior official



[Radovan Karadžić on trial at the ICTY](#)

The ICTY saw its most senior official convicted. Radovan Karadžić, former President of Republika Srpska and Supreme Commander of its armed forces, was [found guilty](#) of genocide, crimes against humanity and violations of the laws or customs of war, and sentenced to 40 years' imprisonment. The verdict was delivered 18 months after a five-year trial of Karadžić, who was accused of being one of the chief architects of atrocities during the 1992-95 Balkans war.



FICJ

Forum for International Criminal Justice

## Two landmark convictions at the International Criminal Court



Jean-Pierre Bemba Gombo on trial at the ICC

Judges also convicted the most senior official tried to date at the ICC. Former Congolese Vice-President **Jean-Pierre Bemba Gombo** was found [guilty](#) of crimes against humanity (murder and rape) and war crimes (murder, rape, and pillaging). In the historic trial, Bemba's 18-year sentence sent a strong message to leaders of armed groups – whether national or rebel forces – that failure to account for their troops' crimes will not be tolerated in situations of armed conflict under the principle of 'command responsibility'. The

March conviction also gave the ICC its first sexual and gender-based crimes conviction and highlighted the evolution of gender justice in the fight against impunity.

In a trial of firsts for the ICC and international crimes prosecutions, Malian Islamist rebel **Ahmad al-Faqi al-Mahdi** was also found [guilty](#) and sentenced to nine years in prison in October for the war crime of intentionally directing attacks against religious and historic buildings in UNESCO World Heritage city Timbuktu. The trial also involved the Court's first guilty plea and its quickest judgment and sentence to date.



Ahmad al-Faqi al-Mahdi on trial at the ICC

## Domestic Developments



Domestic war crimes investigations and prosecutions were impressively underway in as many as 30 countries in 2016, at times involving indispensable cooperation amongst prosecution services and also the emergence of new universal jurisdiction jurisprudence, including in: Afghanistan, Argentina, Austria, Bangladesh, Belgium, Bosnia, Brazil, Central African Republic, Croatia, Democratic Republic of the Congo, Guatemala, El Salvador, Finland, France, Germany, Ivory Coast, Lithuania, Nepal, Netherlands, Romania, Rwanda, Senegal, Sri Lanka, Sweden, Uganda, UK, Ukraine, among others.

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)





FICJ

Forum for International Criminal Justice

# Could Kurdish Tribunal Succeed Where International Law Has Failed?

By Benjamin Duerr, [International Peace Institute](#)



Kurdish youth in a camp for people displaced by ISIS violence. Iraqi Kurdistan, 12 December 2016. (Manu Brabo / Associated Press)

The Islamic State and other parties to the ongoing conflict in Iraq and its wider region are alleged to have committed serious crimes under international law, including massacres of ethnic minorities. The United Nations Security Council has, however, been unwilling to refer these matters to the International Criminal Court. In its absence, foreign diplomats and lawyers are known to be working with the Kurdistan Regional Government (KRG) to establish its own independent tribunal. Could this be a viable alternative for pursuing justice?

Since Iraq is not a member of the ICC, the court's prosecutors can't initiate investigations of the country *proprio motu* (on their own initiative). As long as the Iraqi government also refuses to formally allow the court to do so, the only possibility would be for the Security Council to refer the situation to The Hague or, as in cases involving the former Yugoslavia and Rwanda in the 1990s, establish an independent tribunal. Yet the council is deeply divided on issues related to ISIS and the battles still raging in Iraq and Syria, due to the conflicting foreign policy interests of its permanent members.

Even if the ICC were to prosecute crimes in Iraq, it would likely only focus on a few high-level perpetrators and have no mechanism for trying lower-ranking soldiers. In the absence of an international, or even national Iraqi solution, Kurdistan is pushing forward with the tribunal, which would operate under its own laws. The design is still in its very early stages, but once established the court would seek jurisdiction over the core international crimes, namely genocide, crimes against humanity, and war crimes.

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



# FICJ

Forum for International Criminal Justice

The new institution would be composed of international and Kurdish judges and have its seat in northern Iraq, according to Stephen Rapp, former United States Ambassador-at-Large for Global Criminal Justice, who is involved in the process. “It would be an internationalized mechanism in the Kurdish justice system,” Rapp told me.

The key to being able to establish such a court is Kurdistan’s status within Iraq. The region stretches from the borders of Turkey and Syria in the West to the Iranian border in the East and includes the major cities of Kirkuk and Erbil. It enjoys considerable independence under the Iraqi federal constitution, including exclusive rights in the judicial field and its own regional government that can pass laws and conclude agreements with foreign entities, including the UN.

According to Vanderbilt Law School Professor Michael Newton, there seems to be the necessary political will to establish the new tribunal. “Current planning and guidance from KRG officials is absolutely clear that they seek to create a truly internationalized tribunal that embodies the best practices drawn from other tribunals,” he told me. Newton is working with the Kurdish government on a draft law, but did not wish to comment on the details.

While there may be growing support among Kurdish politicians, establishing the jurisdiction of the court remains a contentious issue. For example, the Sinjar mountains, where ISIS began one of its worst massacres against the Yazidi community, do not formally belong to the Kurdistan region. Neither does the city of Mosul, where both Iraqi militias and government forces are said to have [committed grave crimes](#) in recent weeks.

Although Kurdish Peshmerga forces control a larger territory than that governed by the KRG, including the Sinjar region, Kurdish laws do not apply there. The Iraqi penal code does, however, include a provision that would permit the Iraqi Ministry of Interior to waive its own jurisdiction over crimes committed outside this territory through a simple administrative act.

A Kurdish tribunal would have an advantage over the Iraqi penal code in that the latter does not extend to those core international crimes of genocide, crimes against humanity, and war crimes. “The creation of a KRG tribunal is infinitely preferable to Baghdad taking the de fault approach of using their own domestic terrorism statutes [as a place holder],” Newton said.

*In the absence of an international, or even national Iraqi solution, Kurdistan is pushing forward with the tribunal, which would operate under its own laws. The design is still in its very early stages, but once established the court would seek jurisdiction over the core international crimes, namely genocide, crimes against humanity, and war crimes.*

While the legal foundation is being developed, investigators on the ground are already attempting to gather material that could serve as potential evidence in future trials within the tribunal. The International Commission on Missing Persons (ICMP) started to train and support local investigators and forensic specialists in Kurdistan earlier this year in securing evidence, recovering human remains and, most importantly, establishing a robust chain of custody to protect evidence.

An important part of this work is the protection of graves of the victims of alleged crimes, and, in a secondary step, recovering surface materials such as human remains or clothing that could be used to identify the victims in criminal proceedings. According to Trefor Williams, the head of ICMP's Iraq program, there are 30 main burial sites in the Sinjar area alone. Some of these lie in territories where the fighting continues, though in the last few months ISIS has lost large parts of the area it once controlled, allowing increased access for local investigators.

About 100 ISIS fighters are currently in the custody of Kurdish authorities in Erbil and could be tried by the new tribunal. One of the high-level captives is Nasrin As'ad Ibrahim, the widow of Abu Sayyaf, a senior leader of the extremist group. She was taken and [transferred to Kurdish authorities](#) after Sayyaf was killed during a US military operation last year. Under the existing laws she can only be prosecuted for supporting a terrorist organization, which could be expanded under the new tribunal.

The overall outlook of those involved in establishing the new institution is best expressed by Newton. "A Kurdish tribunal would essentially represent the front line judicial fight on behalf of the entire civilized world," he said.

## An Insider's View: Consistency and Transparency While Preserving Prosecutorial Discretion

**Helen Brady, Senior Appeals Counsel and Head of the Appeals Section and Dr Fabricio Guariglia, Director of the Prosecutions Division, in the ICC's Office of the Prosecutor (OTP), offer their thoughts on the OTP's new Policy on Case Selection and Prioritisation in the [ABA-ICC Project's online roundtable Arguendo](#)**



Selectivity has been a difficult issue for all international criminal courts and tribunals: when presented with situations of mass victimisation, how should a prosecuting body determine which incidents and which individuals to single out for investigation and prosecution from the wide spectrum of incidents and persons potentially involved in the crimes? Should it focus only on the gravest incidents and aim fundamentally at macro-criminality, for instance the massive displacement of the civilian population or the massive destruction of groups of people? Or, should it delve into the microcosm of victimisation and zoom in so as to best capture the individual suffering of the victims?

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

Should it focus only on those holding leadership positions in the groups involved in the crimes? Or should it start “low” and move upwards in the chain of command once it has established a firm evidentiary base in its first cases? Other considerations also come into play: should the prosecution use its limited resources to try to cover as many cases as possible, even if it risks not being able to deliver at the desired level, or should it rather focus on putting together a few high-quality exemplary cases?

These and other decisions that any international prosecution office must take have a number of ramifications. For instance, focusing on those persons deemed “most responsible” will usually lead to cases that tell a wider narrative of the facts and may better contribute to forming an historical record; but this approach may fail to adequately reflect the real scope of victimisation or to explain how otherwise abstract concepts such as “ethnic cleansing” are effectively implemented and what they mean from the perspective of the affected communities and victims. These consequences should be acknowledged and factored into any analysis of which cases to select for investigation and prosecution.

Ultimately, every international prosecution office must make choices and define the type of investigations and prosecutions that it will conduct, and it is essential that those choices stem from informed and careful consideration. A noticeable development can be discerned in the area of defining criteria for the selection of international cases—going from a paucity of readily identifiable criteria in the Nuremberg and Tokyo trials, moving to the “small fish vs. big fish” debate in the early years of the ICTY and ICTR, through to a commitment to target “the most responsible” at the SCSL and ECCC, and to the initial practice of the ICC, where from the outset selectivity was acknowledged as key to the Court’s effective functioning and potential success.

In 2006, the ICC Office of the Prosecutor (OTP) produced a draft paper on the selection of situations and cases. This draft policy included features which guided the OTP’s approach to selecting cases in the following decade of its work, namely: the governing principles of independence, impartiality, and independence; the legal criteria of jurisdiction, admissibility, gravity, and interests of justice; the threshold standard of persons “most responsible”; the emphasis on gravity as an overarching consideration; and the notion of using a “representative sample” of crimes, victims, and perpetrators to form the basis of charges. Subsequently, in 2013 the OTP [published](#) its formal Policy Paper on Preliminary Examinations to guide the OTP in the conduct of preliminary examinations (in particular, its application of the factors of jurisdiction, admissibility, gravity, and interests of justice in Article 53(1)(a)-(c)) of the Rome Statute and thereby to decide whether to open an investigation into any given situation.

Against this background, this year the OTP [published](#) its Policy Paper on Case Selection and Prioritisation, an internal document that sets out a number of criteria to assist the Prosecutor in

exercising her discretion to select and prioritise cases for investigation and prosecution. In other words, the policy paper is intended to guide the Prosecutor on which incidents, persons, and conduct to investigate and prosecute. In this regard, the OTP has a Herculean task: from the large pool of situations presently open—currently ten, with the potential for many more once further situations are opened for investigation—there are literally hundreds of potential cases the OTP could conceivably bring, with the possibility of many more in the future. But the Office’s resources are limited and it must inevitably make tough choices as to how best to expend its efforts. With its new case selection policy, the OTP has articulated the fundamental considerations that guide its decisions to open cases in a consistent and transparent way aimed at promoting better accountability and understanding about its choices...

- Read the full commentary on the [ABA-ICC Project website](#)

## A Criminal Court of Public Opinion

**By Thijs Bouwknecht, NIOD Institute for War, Holocaust and Genocides in the [Criminology and International Crimes Newsletter](#) discusses some of the more pressing challenges facing the ICC**

In recent months, South Africa, Burundi and the Gambia have terminated their membership of the International Criminal Court (ICC). Observers and academics alike have narrowly portrayed this walkout as an ‘African’ exodus and an ‘African’ problem. But what about Vladimir Putin’s ‘unsigning’ of the Rome Statute and Rodrigo Duterte’s pledge to follow suit? Maybe the slowdown is not stopping there. After Prosecutor Bensouda named and shamed US military personnel and CIA agents over alleged torture in Afghanistan, Poland, Lithuania and Romania in her latest preliminary examination report, Donald Trump’s upcoming administration may very well join the chorus and call the Rome Statute “really bad” or the “worst treaty ever signed by Bill Clinton.”

Besides the fact that Africa with its 54 nation states is not a country, there is nothing ‘African’ about the apparent crumbling support for the ICC, as many western human rights lobby groups make us believe. It is a much larger trend that signals a broader critique on the apparent cosmopolitan human rights fundamentalism. Besides, regardless South Africa, Russia or the Philippines’ diverging motives to rally against the enigma of global justice, their retreat unveils the ingrained flaws in the permanent international justice project.

Since its inception, the ICC has been fighting forces trying to undermine its being. And indeed, so far, the ICC’s magistrates have condemned more persons for obstructing its rendering of justice than for grave human rights violations. Although only future historians can tell whether the withdrawals heralded the death of the ICC dream towards universal justice and peace, these votes-of-no-confidence expose the permanent court’s principal weakness: its legitimacy and existence ebbs and

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



flows on political tides. And these days, human rights, justice and equality are no longer popular tropes among populists and their constituencies around the world.

Interesting is the selective uproar over South Africa's decision. It reflects the sentiment that it is bad to be against something that is seen to be fundamentally noble. Bringing the kingpins behind mass violence against innocent civilians to justice would seem to be an obvious good. But looks can be deceiving and reality unforgiving. From its conception in 1998, powerful states like the USA, Russia and China declined to join the court that is supposed to combat global impunity. Global justice never got the universal backing it needed in the first place.

Antagonism towards the ICC is nothing new. It is also not solely 'African', as the media sometimes reductively claim. It is hypocritical for western governments and human rights activists to only shame Africa for its criticism of the ICC. Lest not forget that post-apartheid South Africa was a prime protagonist in the negotiations of the Rome Statute that founded the ICC and that Senegal was the first to ratify the treaty. More recently Gabon, Mali and the Central African Republic have called in the assistance of the ICC Prosecutor.

Historically, African states have themselves prosecuted the most ex-head of states in the world through national or hybrid courts. However, some of the loudest current critics of the court lack their own legitimacy even as they denounce the ICC as "racist", "neo-colonial" and even "Caucasian." This rhetoric is led by a handful of African leaders who are also alleged human rights offenders themselves, such as Sudan's president Omar al-Bashir, Kenya's president Uhuru Kenyatta and Burundi's president Pierre Nkurunziza.

They follow in the wake of anti-ICC discourse spread by Muammar Gaddafi, Libya's late deposed dictator, and championed by Ugandan president Yoweri Museveni, who has been in power since 1986. Criticism of the ICC from these quarters comes across as self-serving to international audiences. However, it often plays well with the public in their home countries.

Potential atrocity suspects have little to gain from ICC membership. In this regard, Burundi's withdrawal is even logical. However, South Africa's choice is peculiar as its leaders do not stand accused of any crimes by the court. Arguably the decision was triggered by the controversy that erupted last year after Jacob Zuma's government gladly welcomed genocide suspect president Bashir of Sudan to South Africa instead of arresting him – an obligation that comes with membership in the court. As a "continental peace maker" – at least, this is how South Africa describes itself in its letter of withdrawal from the ICC to the UN – South Africa says it feels straitjacketed by the ICC, which fundamentally privileges justice over peace.

Less lofty considerations may be the real reason. Blaming a Western-style criminal court hosted in The Netherlands (a former coloniser and slave trader) with only black people on its docket for national problems has proven to be an effective populist political strategy.

This is not just rhetoric. The ICC's docket, since inception, has been dominated by prosecutions in Africa. Obviously, there are rock-solid reasons for the ICC to work in conflict-ridden countries on the continent and to offer at least a sense of a prospect of justice to myriad victims of gross human rights violations when nobody else can or wants to.

Evidently, the ICC itself is not 'targeting' Africans specifically, as its critics like to allege. It has real and genuine reasons to judge criminals against humanity. But the court has failed to convincingly, credibly and in a non-legalised manner explain to publics across the continent why the 20 suspects who appeared before its judges in the past decade all came from Africa and not from, say, Colombia.

In its African situations, the ICC has failed to argue convincingly for its own legitimacy in the court of public opinion, even amongst the victims it proclaims to be serving. It comes as no surprise that this practical reality has been nurturing the illusion of double standards. It allowed leaders uncomfortable with the court's premise and reach to promote the narrative that the ICC's record shows that the law is not above everyone, only above Africans.

There are also structural issues with the institution that curtail its ability to be truly global in reach, and reinforce the idea that international justice is a two tiered system. African states themselves can, in theory, refer non-African situations to the court or to the UN Security Council to challenge impunity elsewhere.

The reality is that the world's hottest conflict zones such as Syria, Iraq and North Korea, or controversial western leaders implicated in those situations, will not appear before the international community's judges. Under the so-called "Rome Statute system", powerful non-ICC members such as the USA, Russia and China can veto the ICC's access to these situations or persons, rendering them effectively immune from prosecution.

After apartheid, the Bosnian war and the Rwandan genocide, the court was created to enforce the international principle that there can be no impunity for mass criminality. But its creators made the ICC a toothless institution by not providing it with global political support, universal jurisdiction and a police force to enforce its laws. What they created was a phantom court to serve the popular demands of civil society on the global market of compassion, a political illusion that international criminal law is above all.

When push came to shove, however, the governments that agreed to set up the court in the 1990s made ICC membership voluntary and included an unsanctioned opt-out. South Africa's late Nelson Mandela strove for it, current president Jacob Zuma cancelled it but the next president may simply join the ICC again. The consequences of decisions made about how to set up the court are now coming to the fore. South Africa's withdrawal clearly shows that the ICC's existence and legitimacy depends on the whims of social, economic and political climate rather than on global principles. And currently it is ebb.



FICJ

Forum for International Criminal Justice

# ICTY prosecutors argue that Bosnian Serb commander Mladic was central to Srebrenica genocide

**By Stephanie van den Berg, Reuters**

Former Bosnian Serb military commander Ratko Mladic was a central figure in the 1995 massacre of thousands of Muslims from Srebrenica, prosecutors told judges at his genocide trial in December. Prosecutors were making their closing arguments in Mladic's trial, the last major war crimes case at the International Criminal Tribunal for the Former Yugoslavia (ICTY), which is winding down after more than 20 years prosecuting the ethnic warfare that accompanied the 1990s collapse of Yugoslavia.



Former Bosnian Serb army commander Ratko Mladic attends his trial at the ICTY in The Hague.  
REUTERS/Toussaint Kluiters

Prosecutor Alan Tieger told judges at the Tribunal that rather than the "marginalised figure" his defence attorney made him out to be, Mladic helped orchestrate the killings, "Mladic walked into Srebrenica and vowed that the time had come to take revenge on the Turks," Tieger said of the massacre, in which 8,000 Muslim men and boys, some as young as 12, were "systematically slaughtered".

Mladic, 74, faces up to life imprisonment on two counts of genocide and nine counts of crimes against humanity and war crimes. Hearings are due to conclude on December 15 and a judgement is likely in 2017. "The cleansing campaign tore apart non-Serb families and communities and left behind destroyed mosques and Catholic churches, the burned-out and empty shells of Bosnian Muslim villages and mass graves," added prosecutor Arthur Traldi.

Mladic, frail from a series of strokes when he was arrested in 2011, was alert, listening intently and occasionally wiping his brow with a handkerchief as prosecutors spoke.

"If Mladic hadn't come to Srebrenica my son Nermin, whose birthday it is today, would still be alive," said Munira Subasic, one of a group of grieving relatives gathered outside the court in The Hague.

Mladic was charged alongside former Bosnian Serb political leader Radovan Karadzic, who was sentenced to 40 years in prison in March. Prosecutors say they masterminded a conspiracy to carve an 'ethnically pure' Serbian state out of Bosnia. Tieger quoted Mladic as telling the Bosnian Serb

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)

assembly in 1994 they had an historic opportunity to create "not any kind of state, but an all-Serb state with as few enemies as possible".

Karadzic and Mladic were indicted shortly before the end of Bosnia's war, which claimed up to 100,000 lives, but spent more than a decade on the run in Serbia before their arrest.

**Established in 1993, the tribunal has indicted 161 individuals from all sides of the conflict and 83 have been convicted.**

## Upcoming: The World in Crisis Conference - International Bar Association

**4 February 2017, The Peace Palace, The Hague, the Netherlands. A conference presented by the IBA War Crimes Committee and supported by the IBA European Regional Forum**

**Topics will include:**


- Introductory remarks and Keynote – The World in Crisis: a review of significant events and cases of 2016 relating to war crimes
- The Refugee Crisis – Refugees as victims of slavery and other crimes
- The Funding of War - the sale of antiquities, trafficking and money laundering
- Peace vs. Justice – the Jus Post Bellum dilemma (Colombia, Yemen, Syria, Sri Lanka, Nepal)
- Immunities and Universal Jurisdiction: current national practice in relation to immunity *ratione materiae* and *ratione personae* and special mission immunity



the global voice of  
the legal profession

Click [here](#) for more information

## News December 2016

 Click on the hyperlinked headlines to see the full articles of international criminal justice news from the previous month.

### 30 December

[Are we heading towards a 'post human rights world'?](#)

(BBC opinion by Imogen Foulkes)

With an increasing number of states seemingly reluctant to honour human rights treaties, is there a future for this type of international agreement?...

### 29 December

[Syrian rebel charged in Sweden on suspicion of war crimes](#)

(Reuters)

A former Syrian opposition fighter has been charged with breaching international law over the execution in 2012 of seven soldiers loyal to President Bashar al-Assad, the Swedish prosecutor's office said on Thursday. The 46-year-old man, who was arrested in March, appears in a video showing the killings, the prosecutor's office said...

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)





# FICJ

Forum for International Criminal Justice

## [How a Top International Judge Was Trampled by Turkey's Purge](#)

(Wall Street Journal)

...In September, Mr. Akay, 66 years old, a judge and internationally known defence attorney, was taken from his three-story island home to Block C of Turkey's maximum-security Sincan Prison outside Ankara, where he is held as a terror suspect... More than 3,000 judges, prosecutors and court staff have been dismissed or arrested since summer, crippling work at court houses around the country, Turkish criminal and civil lawyers said... In 2015, he took up his judicial duties at the appellate tribunal based at The Hague and formed by the U.N. to hear cases related to Rwanda and former Yugoslavia war crimes tribunals...

## [Rising nationalism leaves international criminal court at risk](#)

(The Guardian)

Six months after the international criminal court's new Dutch palace of justice was formally opened on windswept sand dunes beside the North Sea, a tide of nationalist sentiment is threatening to undermine the project. Three African states have begun withdrawing from its jurisdiction, raising fears that a succession of others will follow suit. Russia has removed its signature from the founding statute, the Philippines and Kenya are openly contemplating departure and key member nations – including the UK – have limited its funding...

## **23 December**

### [Investigating French Officials' Role In Rwanda Genocide](#)

(Jurist)

On November 29th the Prosecutor General of Rwanda released a statement announcing the start of a formal criminal investigation of 20 French government agents/officials in the 1994 genocide against the Tutsi in Rwanda. Although this statement did not give the names of the officials under investigation, the fact that it came following the release by the Rwanda National Commission for the Fight against the Genocide (CNLG) of a list of 22 French military and diplomatic officials for their involvement "as direct perpetrators or as accomplices" in the genocide indicates the link between these two announcements...

## **22 December**

### [The UN General Assembly's Historic Resolution on Accountability for Syria: What It Means and What Are Its Limits](#)

(Just Security)

The United Nations General Assembly voted yesterday to establish "the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011" ("the Mechanism")... This step is significant for three reasons. First, it sidesteps the Security Council which has been unable to refer the ongoing atrocity crimes in Syria to the ICC or to establish an ad-hoc international or hybrid tribunal to prosecute them, principally because of Russian and Chinese resistance (and maybe now U.S. resistance as well)...

## **20 December**

### [Amnesty: Myanmar military committing crimes against humanity against Rohingya minority](#)

(Jurist)

The Myanmar military's "campaign of violence" against Rohingya people constitutes crimes against humanity, according to an Amnesty International (AI) report on Monday. According to AI, the Myanmar military is responsible for unlawful killings, multiple rapes, and burning down houses as well as entire villages...

## **19 December**

### [Macedonian War Crimes Convict Enters Parliament](#)

(Balkan Transitional Justice)

Johan Tarculovski, the only Macedonian convicted by the Hague war crimes tribunal, was elected as MP from the main ruling VMRO DPMNE party at last week's parliamentary elections...

### [Saudi military announces end of cluster bomb use in Yemen](#)

(UPI)

The Saudi government announced Monday it would end the "limited" use of British-made cluster bombs against rebels in Yemen after weeks of denying their use. The rebels are fighting a coalition of Arab countries led by Saudi Arabia.

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



# FICJ

Forum for International Criminal Justice

Britain is involved in training Saudi troops, and sources told The Guardian the British government has been aware of the British-made cluster bombs for over a month...

## 16 December

### Why So Few Resisted Hitler

(The Wall Street Journal)

Peter Fritzsche has taken the title of his study of popular opinion under the heel of Hitler's Reich from an inscription on the Stalingrad war memorial dedicated to Soviet soldiers, who indeed faced an iron wind as German forces swept across the steppe. It is an apt metaphor for the terrible storm of suffering that the European war unleashed. A few brave civilians leaned into the wind; most turned their backs or scuttled for shelter. Few understood well where the wind had come from, or when it would abate, or why it uprooted so much around them. They waited, Mr. Fritzsche claims, in the hope of better weather...

### Difficult Days Ahead for the Int'l Criminal Court

(Just Security opinion)

As the ICC closes out a tumultuous year, it faces hard times ahead. Diminishing support for the Court specifically, and international disengagement generally, mean that the Court will have difficulty in these next years advancing its core mission of pursuing accountability for the international crimes of genocide, crimes against humanity and war crimes. After an intense period of development and growth in the field of international criminal law from 1993 to 2016, we may be now entering into something of an Ice Age for the ICC and international criminal law generally. The good news is that even in this difficult period, there is much that the ICC can do to strengthen itself, and there is virtually no chance that the ICC will disappear. It will be poised to continue its work when the world returns to international engagement, as it inevitably will...

## 13 December

### 600 Wartime Detention Sites Identified in Bosnia

(Balkan Transitional Justice)

New research launched on Tuesday in Sarajevo by the Coalition for RECOM, which advocates setting up a regional truth-seeking commission,

documents 600 wartime places of detention in Bosnia and Herzegovina.

The Coalition for RECOM said that about 160,000 people had been detained at these sites..

### Aleppo's people are being slaughtered. Did we learn nothing from Srebrenica?

(Guardian opinion by Nedžad Avdić, genocide survivor)

...In 2005, the European parliament released a statement, condemning the Srebrenica genocide and promising it would "never happen again". It gave me hope, that what we went through had not been in vain and we had learned from the horrors of the past. In future, I thought, the international community would protect civilians in times of conflict. That seems a long time ago now...

## 12 December

### Serbia starts trial over Srebrenica massacre, court adjourns

(Reuters)

A Serbian court adjourned the long-awaited trial on Monday of eight former Bosnian Serb policemen charged with taking part in the 1995 Srebrenica massacre, after defence lawyers demanded the replacement of a three-judge panel, the Tanjug news agency said. The eight men were arrested in Serbia last year, the first such case involving people alleged to have directly taken part in the 1995 killing of more than 8,000 Muslim men and boys in the then UN-protected enclave of Srebrenica, Europe's worst atrocity since World War Two...

### Ratko Mladic Defence: 1992 Genocide 'Not Proved'

(Balkan Transitional Justice)

Mladic's defence lawyer Dejan Ivetic told the International Criminal Tribunal for the Former Yugoslavia in The Hague on Monday that the prosecutors had not proved that there was a coordinated plan for the commission of genocide in the six municipalities or that the Bosnian Serb Army commander was responsible for persecution and ethnic cleansing there...

## 9 December

### Bringing Ugandan Rebels to Justice

(New York Times Editorial Board)

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



# FICJ

Forum for International Criminal Justice

The United Nations estimates that between 1987 and 2012, the Lord's Resistance Army, the Uganda rebel group, killed more than 100,000 people, kidnapped between 60,000 and 100,000 children and forced more than 2.5 million people to flee their homes in Uganda, Sudan, the Democratic Republic of Congo and the Central African Republic. Now there's a chance for justice in the International Criminal Court for some of the crimes the group has committed. Unfortunately, the court is facing defections at a time when its role is more vital than ever...

### [Some thoughts on a better use for the ICC budget](#)

(Dov Jacobs, blog)

... Of course, this does raise another question, more tricky perhaps: how efficiently is the ICC budget used? Indeed, it's one thing to consider that the ICC's budget is too small, and that is arguably true, but it should not be a reason to put under the rug any obligation of self-reflection by the institution itself on how that budget is used.

### **7 December**

#### [Living up to its Reputation – Complementing Justice and Achieving Accountability in Nigeria](#)

(Justice in Conflict opinion)

Nigeria was an early member of the ICC, joining in September 2001. On paper at least, its commitment to international criminal justice has never been seriously questioned. It has, moreover, been one of the largest contributors of troops for African peace operations. The Economic Community of West African States, for example, has received most of its military resources from Nigeria. In other words, despite its declining military prowess, Nigeria has over the years been a bulwark of stability in a troubled region. This is why, in many ways, it was a foregone conclusion that Nigeria would join the ICC and throw its weight behind the burgeoning movement for increased accountability in Africa. But now that both the ICC and the world have placed alleged crimes committed in Nigeria under scrutiny, this rock-ribbed commitment has, lo and behold, shown signs of softening...

#### [‘They Are Slaughtering Us Like Animals’](#)

(New York Times)

Inside President Rodrigo Duterte's brutal antidrug campaign in the Philippines, our photojournalist documented 57 homicide victims over 35 days...

### [Balkan War Crime Suspects Maintain Political Influence](#)

(Balkan Transitional Justice)

Years after the Balkan conflicts, voters in former Yugoslav countries are still electing people who have been convicted of or charged with war crimes, showing how nationalism still distorts the political environment...

### **6 December**

#### [Bangladesh war crimes tribunal sentences fugitive to death](#)

(Jurist)

The International Crimes Tribunal Bangladesh (ICTB) on Monday sentenced fugitive Idris Ali Sardar to death for war crimes during the 1971 Bangladesh Liberation War. The ICTB held the trial *in absentia*, listing Sardar as "absconded" in the court documents. Sardar worked as a leader of the Islami Chhatra Sangha during the war, allying himself with the occupying Pakistan army. Found guilty of genocide, abduction, confinement, torture, rape and other inhumane acts, Sardar was sentenced to be hanged...

### **5 December**

#### [The Gambia's new president: 'We will not leave the ICC'](#)

(Deutsche Welle)

In an interview with DW, The Gambia's President-elect Adama Barrow says his country will remain part of the International Criminal Court. He also promises investigations into human rights abuses...

### [Radovan Karadzic Appeals His Conviction](#)

(iLawyer)

Today, Radovan Karadzic has filed an appeal to the UN's Mechanism for International Criminal Tribunals against his conviction by the ICTY in March this year...

### [The Complex Reality Beyond the Trial of Dominic Ongwen](#)

(ICTJ)

...Ongwen is the first person facing trial at the ICC for crimes which include those of which he was

Join the FICJ community: [WWW.IAP-ASSOCIATION.ORG/FICJ/HOME](http://WWW.IAP-ASSOCIATION.ORG/FICJ/HOME)

Follow us on twitter: [@iaprosecutors](https://twitter.com/iaprosecutors)



# FICJ

Forum for International Criminal Justice

also a victim: forced conscription and enlisting of children under 15 into armed forces... the public debate regarding his dual identity as both victim and perpetrator will continue long after his trial has concluded. For those of us supporting justice globally, there is a need to broaden the discussion beyond simple dichotomies if we want to help bring a sense of justice to the many victims of the conflict in Northern Uganda...

## 4 December

### [France upholds prison term for Rwanda genocide convict](#)

(AFP)

A French court on Saturday upheld a 25 year prison sentence handed to a former Rwandan intelligence agent jailed in France's first trial over the African country's 1994 genocide. Pascal Simbikangwa was found guilty of genocide and complicity in crimes against humanity in a landmark 2014 trial that marked a turning point in France's approach to genocide suspects living on its soil...

### [Chile court rejects war crimes suit against Israel justices](#)

(Jurist)

A court in Chile on Saturday rejected a war crimes lawsuit filed against three justices on the Israeli Supreme Court who authorized the construction of a security wall for the Israeli settlements in the West bank. The lawsuit was filed in Chile under universal jurisdiction principles because the impacted landowners lived in Chile. However the court rejected the lawsuit in part due to the fact that Israel is not a party to the Rome Statute and as a result is not subjected to the jurisdiction of the ICC...

## 3 December

### [The Rules of War Need a Major Overhaul](#)

(Pass Blue)

Evidence is piling up: the global security framework that emerged from the ashes of World War II is no longer capable of pursuing international peace. The arrangement, conceived by the major powers that won the war, has expanded into a grab bag of rules and institutions that the crises of our own era have gradually outgrown...

## 2 December

### [Dutch government backs new inquiry into colonial Indonesia](#)

The Dutch government on Friday backed a multi-year inquiry into the end of its colonial period in Indonesia in the 1940s, when troops from the Netherlands are accused of massacres in Southeast Asia's largest nation. [According to] Prime Minister Mark Rutte, "The Netherlands places a high value on protecting and promoting human rights, international law and the rule of law. Gaining more insight into our own past plays an important role."...

## 1 December

### [South Sudan conflict: UN warns of 'ethnic cleansing'](#)

(BBC)

Ethnic cleansing is taking place in war-torn South Sudan, the country's UN human rights commission has warned. It says it has observed starvation, the burning of villages and rape being used as weapons of war across the country. The three-member commission, which was established earlier this year, has just completed a 10-day visit to South Sudan, which has been blighted by conflict for more than three years...

### [Namibia will stay in ICC - if United States joins, says president](#)

(Reuters)

Namibia would remain a member of the International Criminal Court (ICC) if the United States joined, Namibia's president Hage Geingob told Reuters in London on Thursday. Namibia said in March that it would withdraw from the ICC, which sits in The Hague and has the jurisdiction to prosecute individuals for genocide, crimes against humanity, and war crimes. The court has come under criticism from African nations. ...



## Quick links

The following are some useful research links:

- FICJ [Resource Library](#): research tools, best practice reports, commentaries and more
- FICJ [Global Legal Developments](#): specialised units, legislation, international & national cases
- International Criminal Court Legal Tools Database: an electronic library on international criminal law and justice with over 41,000 documents: [browse](#) | [search](#) | [annotated Rome Statute](#) | [annotated Rules of Procedure and Evidence](#) | [National Implementing Legislation Database](#)
- International Criminal Tribunal for the Former Yugoslavia [Legal Library](#)
- International Criminal Tribunal for Rwanda [Documents](#)

---

**This newsletter is published by the Forum for International Criminal Justice (FICJ) part of the International Association of Prosecutors - Hartogstraat 13, The Hague, The Netherlands**

---