

Forum for International Criminal Justice Newsletter: March 2017

Welcome to the IAP's Forum for International Criminal Justice (FICJ) March 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.

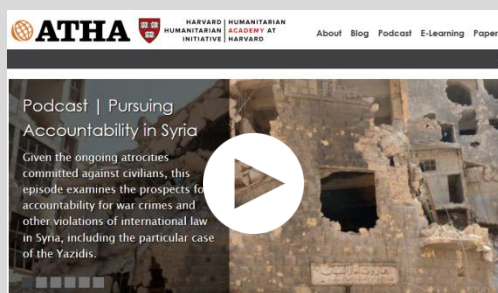
This Newsletter also includes special coverage of the ongoing conflict in **Syria** and the various domestic and international efforts to hold perpetrators of alleged atrocity crimes accountable through investigations and prosecutions.

***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.



Danya Chaikel – IAP FICJ Coordinator | email: ficj@iap-association.org

Video Highlights



[Click here](#) to listen to a Harvard University ATHA podcast examining the prospects for accountability for war crimes and other violations of international law in Syria, including the particular case of the Yazidis.



[Click here](#) to watch an informative interview by CNN Chief International Correspondent Christiane Amanpour on the investigations of war crimes in Syria with Ambassador Stephen Rapp, who says that "Assad war crimes proof 'better' than Nuremberg".



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Special Focus on Syria

There have been significant recent global developments relating to the investigation and prosecution of atrocity crimes committed in Syria, with cases arising in Spain, Sweden, Germany and elsewhere under the principle of universal jurisdiction. The UN General Assembly has also established an [international mechanism](#) to assist in trying atrocity crimes in Syria, with a new body currently being set up in Geneva for this purpose.

Separately, and adding to the amassed

evidence, Amnesty International released a report in February entitled [Human slaughterhouse: Mass hangings and extermination at Saydnaya prison, Syria](#). The report alleges that as many as 13,000 opponents of Bashar al-Assad were secretly hanged in one of Syria's most infamous prisons in the first five years of the country's civil war as part of an extermination policy ordered by the highest levels of the Syrian government, amounting to crimes against humanity. Below are updates on domestic universal jurisdiction cases in Europe, and also information on an international meeting to take place in The Hague on 9 March relating to the new UN Mechanism, which will collect, consolidate, preserve and analyse evidence of alleged Syrian crimes in order to facilitate national, regional or international criminal proceedings.



© Ameer Alhalbi, AFP | Syrian men carrying babies make their way through the rubble of destroyed buildings following a reported air strike on the rebel-held Salihin neighbourhood of the northern city of Aleppo, on 11 September 2016

Spain: A photo of her brother's corpse popped up on her phone. Now Syrian officials could be put on trial for war crimes.

By Adam Entous, [Washington Post](#), 2 February 2017

The first criminal case in a Western court against members of Syrian President Bashar al-Assad's government began with a WhatsApp message. Amal was alone in her hairdresser shop in a working-class neighbourhood of Madrid when she clicked on the link. The face of her long-lost brother, Abdul, popped up on her smartphone. Amal and her younger brother, Abdul, were inseparable growing up in an upper-class home in a village in Idlib province in northwestern Syria. Amal left Syria at the age of 19, following her fiancé, a medical student, to Spain and later she became a Spanish citizen.

Before the outbreak of the Syrian civil war in 2011, Amal would fly home to visit Abdul and her family at least once a year. They kept in touch on WhatsApp, and spoke on the phone about once every 10 days — until a January afternoon in 2013 when Abdul, at age 43, disappeared. Amal was not sure

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what had happened to her brother — until that moment in 2015 when she stared down at Abdul’s lifeless, dirt-covered face, half in shadow. There was a piece of white tape on his forehead with illegible markings on it. The picture had been found on the Facebook page of a human rights group and forwarded to Amal by a relative.



A woman reacts as she looks at a gruesome collection of images of dead bodies taken by a photographer, who has been identified by the code name “Caesar.” The photos were displayed at the United Nations headquarters in New York in 2015. (Lucas Jackson/Reuters)

Once Amal had recovered from the shock of seeing her dead brother, she sent a message to the Facebook page in which she provided Abdul’s full name, along with her contact information. She included a photo of Abdul from before his arrest by Syrian forces. Amal did not realize it at the time, but her response had opened a legal pathway which international war crimes investigators had long been waiting for. As a Spanish national, Amal could bring a case on her brother’s behalf.

In a complaint filed on Wednesday with the Spanish National Court in Madrid, she was identified as the “indirect victim” of the crimes which were allegedly committed against her brother. The 95-page complaint singled out nine Syrian individuals as those responsible for Abdul’s death. They ranged from senior officers at the intelligence branch, where he was tortured and killed in 2013, to the leaders of the Syrian intelligence and security services who oversaw his detention and thousands of others.

The complaint accuses the nine defendants of state-sponsored terrorism. Stephen Rapp, who led the US State Department’s Office of Global Criminal Justice until August 2015, said the grounds were similar to those brought in Cold War-era cases against Latin American leaders. The complaint was filed by a legal team led by Almudena Bernabeu, a San Francisco-based lawyer who brought a similar case in Madrid in November 2008 that resulted in a Spanish court order for the extradition of El Salvador’s former vice defence minister for alleged war crimes. Many of the details about the criminal complaint have not been made public, including the full names of the victim and his sister, to protect their family members still in Syria. Spanish prosecutors asked Amal’s legal team not to disclose the names of the nine defendants, in hope that they could be caught unawares outside of Syria and apprehended.

Country code 34

The Spanish case emerged from a grim trove of more than 50,000 post-mortem photographs which were taken at Syrian military hospitals between 2011 and mid-2013 and then smuggled out of Syria by a military-police photographer later code-named Caesar. From the 50,000 photos, 6,700 individual corpses were identified. Activists working with Caesar started to post many of the images on a Facebook page in March 2015, in hopes that family members in Syria and around the world would come forward to provide information about their loved ones. The goal was to identify the victims and create a database that could be used to bring war crimes charges against members of the Assad government.

The photos posted on the Facebook page were cropped to show just faces and exclude gruesome details about how the victims were tortured and starved. Soon after the photos were posted on Facebook, Abdul's eldest son spotted his father's face on the website. He showed the image to his mother, who was not convinced that it was him. Abdul's family in Syria sent the picture to a niece in Egypt, who, in turn, sent the link to Amal.

The three-seat hairdresser shop, located in the Chapinero neighbourhood, was empty when Amal saw the image. It was lunchtime, and she had no customers. She said her body started to shake. The Facebook page was managed by a group called the Syrian Association for Missing and Conscience Detainees, which had an office in Istanbul and took the lead in analysing the Caesar photos. The FBI had reviewed the trove and concluded that they were authentic.

On April 28, Rapp visited the group's Istanbul office and was given a printout listing the names, phone numbers and email addresses of victims' families willing to cooperate in any future legal proceedings. One of the numbers on the list jumped out at Rapp. It started with the country code "34" — the one for Spain. Eureka, Rapp said he thought. The printout also listed a "hotmail.es" email address for Amal. Rapp knew that Spanish prosecutors had a tradition of going after high-level international actors. Spanish law would allow the first prosecution targeting members of the Assad regime in the West — but only if the family member in question was a Spanish national.

"Exciting possibility in Spain," Rapp wrote on May 5 to Bernabeu and Zakariya Sallan, of the Syrian Association for Missing and Conscience Detainees. On May 6, Sallan wrote to Rapp and Bernabeu after talking to Amal by phone. "She has important information," Sallan told them. Not only was she a Spanish national, he said, but "she is the victim's sister and ready to work with [Bernabeu]." "This is great news!" Rapp said in response. Bernabeu met with Amal at her hairdresser shop in July. Amal asked to see a full-body photograph of her brother's corpse.

Bernabeu pulled out her laptop and brought up one of the photos. It showed Abdul's emaciated body strewn on a dirt floor. His hands were clenched and covered in dust. He wore brown-coloured

underwear and nothing else. Burn marks were visible on his neck and body. Markings on and next to his body identified him as a detainee and indicated which intelligence branch was holding him.

Amal told Bernabeu that her brother was the one who everybody in her large family admired the most. He dropped out of school at the end of the ninth grade. He went from driving a bus to having his own taxi. Later, he got a van and became a delivery driver. He drove a 60-mile daily route resupplying small shops that sold sodas, snacks and other supplies. Investigators think government forces may have thought he was providing supplies to besieged areas. Amal said he was not politically active. “Nobody understands how and why he was picked up,” she said in an interview.

Amal provided Bernabeu’s legal team with pictures of Abdul from before his abduction. One showed him wearing a loose-fitting, short-sleeve, V-neck shirt and sitting on his living-room couch. He looked healthy and happy. The “before” shot was labelled as exhibit #9 and submitted to the Spanish National Court on Wednesday along with 3,600 pages of evidence.

Sweden: Mass execution in Syria assessed to be a serious crime against the law of nations and results in life imprisonment

[Stockholm Crown Court](#) press release, 16 February 2017

The Stockholm District Court has sentenced a 46-year-old Syrian citizen for participation in a mass execution of seven people that took place in the Idlib province in Northwestern Syria in



STOCKHOLMS TINGSRÄTT
SVERIGES DOMSTOLAR

May 2012. The Defendant was a member of the Islamist armed group the Suleiman Company (Firqat Suleiman el-Muqatila) and he shot a person with an assault rifle. The Defendant’s objection, that the execution was carried out by order and related to the enforcement of an adjudicated death sentence by a legitimate court following a fair trial, was not accepted. The District Court held that his actions violated international humanitarian law, constituting a serious crime against the law of nations. The Defendant was sentenced to life imprisonment.

In the ongoing non-international armed conflict in Syria, the Defendant joined the Islamist armed group the Suleiman Company in the beginning of May 2012. Shortly thereafter he participated in an attack where seven soldiers from the Syrian regime were captured. Less than two days later, the soldiers were shot to death in a mass execution. It has not been possible to identify the victims. The Defendant participated in the execution and shot one of the captured soldiers with an assault rifle. The event was recorded on video. The *New York Times* published the video on their website in 2013. The Defendant had then made his way to Sweden where he later received a permanent residence permit and refugee status.

The Defendant objected to the charges, stating that he was ordered to enforce an adjudicated death sentence by a legitimate court following a fair trial. Due to the objection, the District Court examined a point of law within international humanitarian law that has never before been examined by a court.

“A big question in the judicial process has been whether a non-governmental actor can establish their own courts to maintain law and order within the framework of a non-international armed conflict,” said the presiding judge Tomas Zander. The Court concluded that this may be possible during certain given circumstances. However, in the present case it was proven that less than two days passed between the capturing of the soldiers and the execution. This is one of the reasons why the District Court excluded the assertion that the execution was preceded by a fair trial where a legitimate court sentenced the soldiers to death by execution.

The District Court found a connection between the mass execution and the non-international armed conflict in Syria, and held that this was a serious violation of international humanitarian law. Seven people were executed under particularly cruel circumstances where the victims were forced to kneel, several with their hands tied behind their backs. The victims had substantial injuries after having been subjected to grievous bodily harm and entirely lacked the ability to defend themselves. The Defendant was therefore sentenced to life imprisonment for these serious crimes against the law of nations. The Defendant will also be deported from Sweden and prohibited from returning.

- Copies of the ruling or documents in the case can be ordered for a fee via e-mail stockholms.tingsratt.avdelning4@dom.se
- For more information contact: Tomas Zander Rådman, +46(0)8-561 653 61, tomas.zander@dom.se

Germany arrests Syria war crimes suspect

[BBC](#), 2 March 2017

A Syrian national has been arrested in Germany accused of war crimes involving the murder of dozens of civil servants. The man named as Abdalfatah HA is suspected of being part of a unit with an al-Qaeda-linked group formerly known as al-Nusra Front, which killed 36 Syrian government employees in 2013. The federal prosecutors’ office said the man, arrested in Duesseldorf, had carried out death sentences. A second suspected al-Nusra fighter was arrested in the town of Giessen. Abdulrahman AA is accused of breaking international weapons laws.

Both are thought to have been part of the same combat unit for al-Nusra, which was al-Qaeda's affiliate in Syria at the time. The group formally severed its ties to the global jihadist network last year, renaming itself Jabhat Fateh al-Sham. In January, JFS merged with four smaller groups to form Hayat Tahrir al-Sham.

German prosecutors allege Abdulrahman AA, 26, and Abdalfatah HA, 35, took part in an armed battle against Syrian government troops including taking over a big arms depot near Mahin, central Syria, in November 2013, eight months after the murders of the government employees. Some local reports have claimed one of the men was an asylum seeker, but a spokeswoman for the prosecutors' office refused to confirm this.

Arrest Warrant against ISIS militant in Germany recognises crimes committed against Yazidis as genocide

By Amal Clooney, [Doughty Street International](#), 20 February 2017

In December 2016, the Supreme Court of Germany authorised the issuance of an arrest warrant against an ISIS commander who is allegedly responsible for genocide, war crimes and crimes against humanity perpetrated against the Yazidi minority in Syria and Iraq. The ISIS commander – whose name will not be disclosed for the time being – was identified for prosecution by the German Federal Prosecutor's Office. He is said to be high-ranking and responsible for the abduction and sexual enslavement of Yazidi women.



In August 2014, ISIS attacked the Sinjar region in Northern Iraq, homeland to the Yazidis, a peaceful minority targeted by ISIS because of their ancient religion. Thousands of men and older women were executed on the spot, while girls were captured to become “sex slaves” and young boys kidnapped and trained to be child soldiers. Over 360,000 Yazidis were displaced in a matter of days.

Over two and a half years later, more than 3,000 Yazidis remain in ISIS captivity. The United Nations has recognised that the crimes committed by ISIS against the Yazidis amount to genocide. But to date, no member of ISIS has been indicted or tried anywhere in the world for these atrocities.

This arrest warrant is an opportunity to change that. Amal Clooney, counsel to Yazda, Nadia Murad and other Yazidi ISIS survivors, congratulates the German Federal Prosecutor Christian Ritscher and his team for this achievement. It is hoped that the perpetrator can now be arrested and brought to trial. And that prosecutors in other countries show a similar commitment to holding members of ISIS accountable through their courts, where there is jurisdiction to do so.

International meeting on Syria planned in The Hague on 9 March

[Government of the Netherlands](#) Press Release, 27 February 2017

On 9 March the Netherlands and the Office of the United Nations High Commissioner for Human Rights (OHCHR) will be hosting an international meeting on the establishment of a UN database to document evidence of crimes committed in Syria.



In December 2016 the UN General Assembly agreed to set up a panel to gather evidence on war crimes in Syria

Bert Koenders, Dutch Minister of Foreign Affairs, announced the meeting in a speech to the UN Human Rights Council in Geneva last month. The meeting will take place at the Ministry of Foreign Affairs in The Hague. Participants will include experts from the Netherlands and abroad, along with representatives from organisations collecting evidence in Syria and from courts and tribunals based in The Hague.

‘There must be no impunity for the atrocities committed in Syria,’ said Mr Koenders. ‘And there can be no lasting peace in Syria without justice. That’s why the perpetrators must be held accountable. The evidence database will help those investigating the gravest crimes committed in Syria and will facilitate the prosecution of the perpetrators.’

Over the past five years there have been many reports of torture, executions, disappearances and the use of chemical weapons and barrel bombs in Syria. Some evidence of the crimes committed in Syria has already been collected, but the evidence-gathering activities remain fragmented. The aim is for all information to be stored centrally in the database so that it can be used in criminal proceedings.

Late last year the UN General Assembly passed a resolution on the establishment of an evidence database for Syria, at the initiative of Qatar and Liechtenstein. The Netherlands also pushed for adoption of the resolution and immediately made a financial contribution to the database. The Netherlands is hosting the 9 March meeting to help ensure that the evidence database, which will be based in Geneva, can be up and running as quickly as possible.

Mr Koenders stressed in his speech that efforts to gather evidence and ensure justice are needed to bring about peace not just in Syria, but also in Yemen. The conflict in Yemen is putting human rights under great strain. In September last year the Netherlands led the European Union’s negotiating team on efforts to ensure that human rights violations and war crimes in Yemen would be investigated. A Human Rights Council resolution was passed in which it was agreed that additional

international human rights experts would be made available to the OHCHR to enable independent investigations to be carried out. Mr Koenders stressed that the investigation team must be given full access.

The IAP congratulates Hassan Bubacar Jallow on his appointment as The Gambia's Chief Justice

Esteemed IAP member Hassan Bubacar Jallow was sworn in as the Chief Justice of The Gambia on 15 February 2017, after his appointment by the newly elected President of The Gambia, Adama Barrow. Chief Justice Jallow is the former Chief Prosecutor of the International Criminal Tribunal for Rwanda (ICTR) (2013-2015), the former Prosecutor of the UN Mechanism for International Criminal Tribunals (MICT) and Under Secretary-General of the UN (2012-2016).



Hassan Bubacar Jallow, newly appointed Chief Justice of The Gambia

“At the judiciary, we shall do our utmost to ensure that the justice system meets the expectation of the community and of the required international standards,” Chief Justice Jallow said after taking his oath. His expertise will be called on as President Barrow sets up a truth and reconciliation commission to hear alleged crimes committed during the previous administration under former leader Yahya Jammeh, as well as in decisions about any future prosecutions of regime figures. The UN and rights groups have accused The Gambia's security services of extrajudicial killings, torture, and arbitrary detention.

Chief Justice Jallow studied law in Tanzania, Nigeria and Great Britain and previously worked as Attorney General and Minister of Justice in The Gambia (1984-1994) and as Justice of the Gambian Supreme Court (1998-2002), Judge of the Appeals Chamber, UN Special Court for Sierra Leone (2002), Judge Ad Litem of the International Criminal Tribunal for the former Yugoslavia (2001), and Judge of the Commonwealth Arbitral Tribunal. He has served the UN, the Organisation of African Unity, the African Union and Commonwealth as a Legal Consultant on various matters, including governance, human rights, public law, international law and international criminal justice. He was made Commander of the National Order of the Republic of The Gambia (CRG) in 1985.

Chief Justice Jallow is a member of the Gambian and the Nigerian Bar Associations, as well as being a member of the Africa Group for Justice and Accountability and the Chartered Institute of Arbitrators (MCIARB). He is Co-Chair of the World Justice Project, a member of the Advisory Council for a Convention on Crimes against Humanity and a member of the Commonwealth Judges and Magistrates Association.

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South Africa and The Gambia to remain in the International Criminal Court

On 22 February 2017, the [South African High Court declared](#) the South African Presidential decision to withdraw from the ICC's Rome Statute unconstitutional, finding it to be in breach of section 231 of South Africa's Constitution, which pertains to international agreements. The High Court found that the South Africa executive decided to withdraw



from the ICC in October 2016 in haste without any parliamentary approval, which was procedurally irrational, unconstitutional, and therefore invalid. President Zuma together with the Ministers of Justice and Correctional Services and International Relations and Cooperation were ordered to revoke the notice of withdrawal. The International Bar Association's Human Rights Institute [welcomed](#) the ruling with Co-Chair Ambassador (ret.) Hans Corell stating: *'It is heartening to see South Africa's judiciary exercise its function as a check on the powers of the executive and in defence of the rule of law. It is now for the nation's government to respect the High Court's interpretation of the Constitution of the Republic of South Africa that the Government requires approval from the National Assembly for, not only the formation of international agreements, but also their dissolution.'*

This move follows the [confirmation](#) on 16 February 2017 by the UN Secretary General that The Gambia, under the newly elected President Adama Barrow, decided to reverse its withdrawal from the ICC's Rome Statute and to consider itself as a State Party. Under the previous Presidency, in November 2016, The Gambia decided to withdraw from the Statute, in accordance with Article 127 of the Rome Statute. The withdrawal only takes effect one year after the date of receipt of the notification by the UN Secretary General. During that time, the decision to withdraw can be reversed without having to go through the entire ratification process again.

The Gambian and South African decisions also call into question the purported African withdrawal from the ICC. Botswana, Burkina Faso, Ivory Coast, Democratic Republic of Congo, Ghana, Lesotho, Mali, Malawi, Nigeria, Senegal, Sierra Leone, Tanzania, Tunisia and Zambia are among those that have reaffirmed their support for the ICC. Many of these countries also pushed back against the adoption of a so-called 'ICC withdrawal strategy' at the last African Union summit in January 2017.

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Prevent and punish in South Sudan

By *Stephen Rapp, David Scheffer and Clint Williamson, [The Hill](#), 1 February 2017

The atrocities consuming South Sudan tell a horrid and intolerable story. Many tens of thousands of innocent civilians have perished. Armed groups, including government soldiers, murder, loot, and rape as tactics of war. Trapped in a conflict where all sides have engaged in scorched earth warfare, men, women, and children have seen their villages attacked and means of survival destroyed. Those civilians unable to flee have been burned alive in their homes or chased into swamps to starve. Rape has been used to instil terror, punish populations, and as a form of payment for soldiers. Women and girls who survive gang rape are shot or burned to death. Boys are tied together and their throats slashed.

All of this should not be happening. South Sudan came into being with high hopes and great support from the U.S. and the international community in 2011. But a conflict between two leaders erupted in December 2013, characterized by atrocities directed against innocent civilians of their respective ethnic groups – the Nuer and Dinka. An August 2015 peace agreement promised power-sharing and justice for the victims of the atrocities in an African Union-run “hybrid court,” with investigators, prosecutors, and judges from

As former U.S. Ambassadors-at-Large for War Crimes Issues in the Bill Clinton, George W. Bush and Barack Obama administrations, we believe this is the critical moment to follow through on both atrocity prevention and justice.

South Sudan and its African neighbours. But power was not shared, and with no progress on justice, violence against the innocent once again escalated after the two sides battled in Juba in July 2016.

Genocide is imminent as ethnically-charged atrocities spread to Equatoria in the previously peaceful southern part of the country. More than a million people have fled South Sudan since 2013, with 600,000 refugees camped in Uganda and nearly 340,000 others taking refuge in Ethiopia. These refugees often cite the total lack of accountability and the ensuing impunity among war criminals as key drivers in forcing them out of South Sudan at enormous cost to neighbouring states and the international community.

As former U.S. Ambassadors-at-Large for War Crimes Issues in the Bill Clinton, George W. Bush and Barack Obama administrations, we believe this is the critical moment to follow through on both atrocity prevention and justice. Two of us joined State Department officials on a mission into South Sudan’s capital, Juba, on Jan. 3 and 4 to meet with senior government ministers, the First Vice President, and key civil society groups.

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The leaders who have the power to end the atrocities demonstrate an appalling failure of political will, making it even more difficult to prevent crimes against civilians. They are ambivalent about the importance of ending such assaults, with government ministers frequently downplaying or worse denying the widespread incidence of rape in the country. One official, offended by American-led efforts in the UN Security Council to impose an arms embargo and sanctions on the warring parties, dismissed the urgency of doing anything constructive. Our reminders that leaders can avoid prosecution if they take steps to prevent atrocities by their soldiers and punish those who commit such crimes seemed to fall on deaf ears.

In contrast, from civil society we heard pleas for immediate action. Activists are deeply concerned about the revival of tribalism and how revenge among tribes is taking hold. One civil society member said, “The problem here is a failure of governance. There is no revenue and no law. We have not built a single school. Our hearts are broken. We no longer have the dream of democracy.”

Preventing civil war and atrocities in South Sudan from spiralling completely out of control will require far more pressure from major powers and regional neighbours as well as sustained UN and African Union (AU) engagement. Fresh ideas about a UN or AU trusteeship merit serious review,

...government ministers fearful for their own fates before a criminal tribunal advocate “peace before justice” but this has not worked; the absence of accountability has not stemmed the violence but fuelled its continuation.

while proposals that accountability mechanisms take a backseat to a “National Dialogue,” touted by President Salva Kiir, remain surreal as ethnic cleansing and rapes continue.

Likewise, government ministers fearful for their own fates before a criminal tribunal advocate “peace before justice” but this has not worked; the absence of accountability has not stemmed the violence but fuelled its continuation. The only viable course forward is to implement the 2015 peace agreement between

the warring parties and allow the AU to create a hybrid court. This must come with real reforms that combat corruption, create a functioning judiciary that renders credible justice, and engender confidence in a government that cares for all ethnic groups. Otherwise, atrocity crimes will continue unabated and graduate, perhaps tomorrow, to full-scale genocide.

While we were encouraged after our meetings in Juba with the Minister of Justice’s call for the AU to present the government with a draft statute for the hybrid court and to negotiate its text, a promised AU mission to Juba for that purpose was cancelled shortly thereafter. The AU summit taking place later this month, however, affords another opportunity to get the hybrid court speedily established. We urge the AU Commission and Member States to press for this and to prioritize justice as an integral part of a lasting peace.

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The AU, which has complained about the International Criminal Court's docket of African cases and argued that Africa can address such atrocities, has an opportunity to demonstrate its capability of achieving international justice on its own terms. If the hybrid court for South Sudan is not created soon, the credibility of the AU's commitment to the rule of law will be shattered. No one then should be surprised if calls intensify for a UN Security Council referral of South Sudan to the Hague court.

Some South Sudanese leaders seem to be clinging to the hope that arrival of the Trump administration will allow them to continue to escape acting responsibly. President Trump and the Congress should send a powerful signal that atrocities must end and that justice will prevail in South Sudan.

**Stephen Rapp, an American diplomat and prosecutor, is Distinguished Fellow at The Hague Institute for Global Justice and at the Simon-Skjodt Center for the Prevention of Genocide, U.S. Holocaust Museum. David Scheffer is the Mayer Brown/Robert A. Helman Professor of Law at Northwestern University Pritzker School of Law. Clint Williamson is Senior Director for Global Rule of Law, Governance and Security at the McCain Institute and Distinguished Professor of Practice at Arizona State University's O'Connor College of Law. The views expressed in this essay are solely those of the co-authors and not necessarily of any institution to which they are affiliated.*

ICC told Australia's detention regime could be a crime against humanity

[The Guardian](#), 13 February 2017

Australia's offshore immigration detention regime could constitute a crime against humanity, a petition before the International Criminal Court from a coalition of legal experts has alleged. In February, a 108-page legal submission from the Global Legal Action Network (Glan) and the Stanford International Human Rights Clinic was submitted to the court, detailing what the network describes as the "harrowing practices of the Australian state and corporations towards asylum seekers". The petition submits the office of the prosecutor of the ICC should open an investigation into possible "crimes against humanity committed by individuals and corporate actors".

"As recent leaks reveal, these privatised facilities entail long-term detention in inhumane conditions, often including physical and sexual abuse of adults and children," Glan said in a statement.

"The conditions and resulting hopelessness have caused what experts describe as 'epidemic levels' of self-harm among those held on these islands. Based on original research, the communication is the most comprehensive submission on crimes against humanity perpetrated outside of context of war."

Heads of government and other state officials are not immune from prosecution by the ICC, but the prosecution of an Australian government official – either sitting or retired – would be unprecedented. The prosecutor would need to be convinced Australia’s crimes constituted “a widespread or systematic attack directed against any civilian population, with knowledge of the attack”. The operation of the International Criminal Court is governed by the Rome Statute, to which Australia, which controls the offshore detention regimes on Nauru and Manus, is a party...

- Read the full article on [the Guardian’s website](#)

First Serbian Srebrenica Trial Opens in Belgrade

In the first trial of its kind in Serbia, eight former Bosnian Serb police officers appeared in court charged with involvement in the massacre of Bosniaks from Srebrenica in July 1995.

[BIRN](#), 6 February 2017

The first case to be prosecuted in Serbia related to the 1995 Srebrenica massacres began at Belgrade’s Special Court on Monday after the judges rejected another postponement to the proceedings. Eight former members of a Bosnian Serb special police unit went on trial accused of organising and participating in the shooting of more than 1,300 Bosniak civilians in an agricultural warehouse in the village of Kravica near Srebrenica in July 1995.



A police officer guards the court entrance during the hearing. Photo: AP Photo/Darko Vojinovic.

Nedeljko Milidragovic, Aleksa Golijanin, Milivoje Batinica, Aleksandar Dacevic, Bora Miletic, Jovan Petrovic, Dragomir Parovic and Vidosav Vasic are accused of committing a war crime by killing Bosniak prisoners captured after Srebrenica fell to Bosnian Serb forces.

The trial was supposed to start in December but was postponed after defence lawyers launched a challenge, causing Srebrenica victims’ groups to threaten protests if it did not go ahead soon.

On Monday, one of the men’s lawyers asked for another postponement, alleging that protected witnesses did not have their lawyers present while giving statements, making their evidence unlawful. “It is clear to anyone that the value of such evidence is misplaced and cannot be accepted by the court,” said defence lawyer Miroslav Petkovic, according to an Associated Press report.

The killings in the warehouse in Kravica were among several massacres by Bosnian Serb forces after the fall of Srebrenica in July 1995 that left some 7,000 Bosniak men and boys dead. So far more than

1,300 civilians who were massacred in Kravica have been identified. Their bodies were found in several mass graves in Bosnia and Herzegovina.

The Bosnian prosecution previously launched genocide [indictments against Milidragovic and Golijanin](#), but couldn't arrest them because they have been living in Serbia since the war in Bosnia ended in 1995. After Serbia and Bosnia signed a protocol on cooperation in war crimes in 2013, evidence from the Bosnian prosecution was transferred to Belgrade.


According to the charges filed by the Bosnian prosecution, Milidragovic, a former commander of a squad from the Bosnian Serb police special brigade's Jahorina Training Centre, and Golijanin, a former deputy commander of a Jahorina Training Centre squad, committed genocide against Bosniaks from Srebrenica between July 10 and July 19, 1995. However, the Serbian prosecution said it couldn't prove the genocide charges laid by the Bosnian prosecutors and instead charged the men with committing a war crime.

Cambodia genocide tribunal dismisses charges against former Khmer Rouge member

The [Extraordinary Chambers in the Courts of Cambodia](#) (ECCC) has [dismissed](#) charges against Im Chaem, a Buddhist nun suspected of playing a role in the Khmer Rouge regime. The judges in the case said they lacked jurisdiction to decide Im Chaem's case as she was "neither a senior leader nor ... one of the ... officials of the Khmer Rouge regime." The full reasons for dismissal will be filed at a later date.

Im Chaem was alleged to have run a forced labour camp during the between 1975 and 1979 when the Khmer Rouge [killed](#) approximately 20 percent of the Cambodian population. Cambodia has struggled, at great expense, to bring former Khmer Rouge officials to justice. Last November the ECCC [upheld](#) the life sentences of two key Khmer Rouge officials. However, the ECCC has been [criticised](#) for only convicting three Khmer Rouge officials—at a cost of USD \$260 million—during its 10-year existence.

News February 2017

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

28 February

[Colombia grants first amnesties to FARC troops under amnesty law](#)

(telesur)

...The Prosecutor's Office of Colombia granted amnesty to four former members of the Revolutionary Armed Forces of Colombia, or FARC, on Monday as part of an amnesty law included in



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the historic peace deal between the FARC and the Colombian government... The amnesty law was approved in December and allows the pardon of former FARC guerrillas for political crimes, but will not cover FARC members who have committed serious crimes under the Rome Statute, including crimes against humanity, war crimes, sexual abuse or recruiting minors...

24 February

[UN rights experts urge international community to refer North Korea to ICC](#)

(Jurist)

The UN Special Rapporteur for North Korean human rights, Tomas Ojea Quintana, is urging the UN Human Rights Council (UNHRC) and the UN member states to bring human rights violations committed by North Korea before the ICC and address "the grave human rights situation" in the country. In a detailed [report](#) prepared with the help of legal experts Sonja Biserko of Serbia and Sara Hossain of Bangladesh, Quintana made references to North Korea's repeated nuclear and missile tests, political prison camps, abductions and lack of reliable information on the same for concerned relatives, enforced disappearances, violations of international labour standards with respect to overseas workers in the country, and a general lack of access to information as particular concerns that needed immediate attention...

23 February

[US Options for Responding to ICC Scrutiny in Afghanistan](#)

(Lawfare)

For the first time, the ICC is poised to open an investigation that explicitly includes alleged crimes by U.S. personnel, setting up a possible confrontation between the United States and the court. Specifically, the ICC prosecutor is preparing to launch a full investigation in Afghanistan that will scrutinize U.S. detention practices in that country, but perhaps also at alleged "black sites" in Poland, Lithuania, and Romania. In November, the prosecutor said a decision on whether to open the Afghanistan investigation was "imminent," and an announcement is expected soon...

21 February

[Gaddafi son's trial unfair, should be sent to ICC: U.N.](#)

(Reuters)

The trial of Saif al-Islam Gaddafi, a son of the ousted Libyan leader sentenced to death in absentia, did not meet international standards and he should face murder charges at the ICC, the United Nations said on Tuesday...The U.N. report on the trial of 37 defendants including Saif cited serious violations of due process, such as prolonged incommunicado detention without access to families or lawyers, and allegations of torture that were not properly investigated...

[Challenges of the new Special Court for the CAR](#)

(JusticeInfo.net)

A Special Criminal Court to deal with war crimes in the Central African Republic (CAR) is now being set up. On February 14, President Faustin-Archange Touadéra appointed as Prosecutor of this Special Court Toussaint Muntazini Mukimapa, a military prosecutor in the Democratic Republic of Congo. In the coming weeks, national and international judges for the court are also expected to be appointed, and will then need to get down to work to make operational this semi-international tribunal, whose mandate is to try suspected perpetrators of the most serious crimes committed in the CAR since 2003. The ICC, which has also been asked to investigate, will have priority to try war criminals, should the two courts find themselves in competition. This is different from the usual way the ICC operates...

18 February

[Bosnia to challenge ruling clearing Serbia of genocide](#)

(BBC)

Bosnia will next week ask the UN's top court to review its ruling which cleared Serbia of genocide in the 1990s, Bosnia's Muslim leader has said. Bakir Izetbegovic, a member of Bosnia's tripartite presidency, said the appeal would be launched before a 10-year deadline expired on 26 February. Bosnian Serb officials warned the move would trigger a new political crisis. In 2007, the International Court of Justice (ICJ) cleared Serbia of direct responsibility for genocide...



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16 February

[Swedish Appeals Court upholds Berinkindi life jail term](#)

(The New Times)

...The Court of Appeal ruled that Berinkindi acted as an informal commander during the Rwandan genocide, and that he, along with others, took part in assassination, attempted murder and the kidnapping of a very large number of Tutsis, according to Jeune Afrique. The 61-year old had been naturalised Swedish in 2012, ten years after his arrival in the country...

13 February

[Dictators Can Run, But They Can't Hide](#)

(Huffington Politics)

African states prepare for a mass withdrawal from the ICC. They claim that the world's first permanent Court has punished only African leaders, while letting crimes committed by Western powers around the world go unpunished. While it is true that so far the ICC has only ever charged African criminals, the withdrawal plan has more to do with the global landscape shifting under dictators' feet. African autocrats are increasingly facing arrest, extradition, prosecution and a shrinking space for safe exile...

[America's Hidden Bosnian War Criminals Face Determined Foe](#)

(Balkan Transitional Justice)

Michael MacQueen, who tracks down Bosnian war crimes suspects in the US, looks back on years of bringing human rights violators to justice in the face of complex court procedures and delays...

10 February

[Court rules soldiers can, sometimes, be 'civilians'](#)

(The Phnom Penh Post)

The international co-investigating judge at the Khmer Rouge tribunal ruled on Tuesday that an attack by a government on its own soldiers can be considered an attack on a civilian population, and therefore can constitute a crime against humanity...The judge, Michael Bohlander, made the decision after extensive input from the defence teams, the prosecutor's office and other legal experts. "Civilians should be defined as those who cannot be lawfully or legitimately targeted in an armed conflict ... which would include those

members of the armed forces who are ... not acting adversely to their own governments," Bohlander wrote in a statement published on Wednesday...

[Dutch prosecutors demand 20 years for alleged gun runner](#)

(Associated Press)

Prosecutors have demanded a 20-year sentence for a Dutch businessman accused of illegally funneling arms to former Liberian warlord Charles Taylor and involvement in war crimes during Liberia's brutal civil conflict...

8 February

[Sri Lanka to Ask UN for More Time to Probe War Crimes](#)

(VOA news)

Sri Lanka says it needs more time to fulfill promises given to the U.N. human rights body to investigate war crime allegations from the nation's long civil war, which ended nearly eight years ago... It had promised the U.N., among other things, a truth-seeking mechanism, a judicial mechanism to prosecute those who are accused of human rights abuses and a new constitution that takes into account the island nation's varied ethnicities and religions. However, little progress has been made...

7 February

[EU Appoints 19 Judges for New Kosovo Court](#)

(Balkan Transitional Justice)

The European Union approved 19 judges who will serve at the new Hague-based Kosovo Specialist Chambers, set up to try former Kosovo Liberation Army members for 1990s wartime crimes... The 'host state agreement' between the Netherlands and Kosovo, which provides the legal basis for the Specialist Chambers to conduct proceedings in the Netherlands, also entered into force at the start of this month. Senior Kosovo Liberation Army figures are expected to be charged with alleged crimes committed during and after the war with Serbian forces, although the first indictments are still pending...

[UK arms to Saudi Arabia: Amnesty making submission in landmark legal case](#)

(Amnesty International press release)

...In a landmark judicial review case on 7, 8 and 10 February, the UK High Court will determine the



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legality of the UK government's arms transfers to Saudi Arabia amid the current armed conflict in Yemen. Amnesty International, Human Rights Watch, Rights Watch (UK) and Oxfam will make submissions to the court, in a legal challenge brought by Campaign Against the Arms Trade...

6 February

[Switzerland: Attorney general investigates Gambian case](#)

(swissinfo.ch)

Switzerland's Office of the Attorney General has taken over the case involving a former Gambian interior minister suspected of crimes against humanity. Until now, the Bernese cantonal authorities had been handling the case as the man's asylum proceedings were Bern-based. Last week, Bern's chief public prosecutor asked the federal authorities to accept jurisdiction of the case. Now the Office of the Attorney General (OAG) will handle the criminal investigation of Ousman Sonko, who served under Gambian dictator Yahya Jammeh...

[Violence in Myanmar's Rakhine state could amount to crimes against humanity – UN special adviser](#)

(UN News Centre)

The scale of violence against the Rohingya community in Myanmar's Rakhine state documented in a recent United Nations human rights report is a level of dehumanization and cruelty that is "revolting and unacceptable," the UN Special Adviser on the [Prevention of Genocide](#) said today, underlining the Government's responsibility to ensure that populations are protected...

[The Human Rights Agenda and the Struggle Against Impunity](#)

(Lawfare)

From at least the early 1990s, however, the human rights movement underwent a "criminal turn," increasingly directing its resources towards the promotion of criminal prosecution as an indispensable requirement for securing justice, peace and truth in the aftermath of mass atrocity situations. Under the banner of "ending impunity," the primary tactic became the promotion of criminal accountability before domestic and

international courts; the principal target was the individual. Now, almost two decades into the twenty-first century, the correspondence between criminal prosecution and human rights has become so entrenched that to be anti-criminal prosecution is increasingly viewed as anti-human rights...

4 February

[Colombian Companies Charged for Crimes Against Humanity](#)

(telesur)

...Around 200 local and international companies are facing charges for crimes against humanity for allegedly financing paramilitary death squads in northern Colombia, local media reported. The Prosecutor General's Office announced that for the first time private companies were charged with crimes against humanity as part of the justice system put in place as Colombia makes its transition to peace after more than 50 years of war between the government and Revolutionary Armed Forces of Colombia, or FARC...

3 February

[UN condemns 'devastating' Rohingya abuse in Myanmar](#)

(BBC)

The UN has accused security forces in Myanmar of committing serious human rights abuses, including gang-rape, savage beatings and child killing. It made the allegations in a damning report compiled after interviews with more than 200 Rohingya refugees who fled from Myanmar to Bangladesh... UN High Commissioner for Human Rights Zeid Raad Al Hussein said: "The cruelty to which these Rohingya children have been subjected is unbearable - what kind of hatred could make a man stab a baby crying out for his mother's milk?..."

2 February

[US said to warn Palestinians of 'severe' steps if Israel taken to ICC: report](#)

(i24 news)

Palestinian leaders have reportedly been warned that suing Israel in international courts would lead Washington to take 'severe' steps, including closing the offices of the Palestine Liberation Organization (PLO) in the US capital and suspending aid to the Palestinian Authority...

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[UK human rights lawyer struck off for Iraq War allegations](#)

(Jurist)

Phil Shiner, a disgraced human rights lawyer, is no longer allowed to practice law after being struck off Thursday after having 12 charges of misconduct proved against him. Shiner raised a myriad of allegations that British troops tortured and killed Iraqis during the Iraq War..

1 February

[AU's strategy on ICC 'went through with many reservations'](#)

(news24)

African heads of state have adopted a strategy for mass withdrawal from the International Criminal Court (ICC) at the just ended African Union (AU) summit – but with many reservations...It is understood that there were some questions about the legality of such a move, seeing that countries joined individually and have to enact legislation on withdrawal domestically...

[Nigeria Reiterates Stand Not to Withdraw From ICC](#)

(allAfrica)

The Ministry of Foreign Affairs has stated the Federal Government's resolve to remain with the ICC... The African Union had in January during

plenary at the 28th AU Summit in Addis Ababa called for collective withdrawal of its members from the Court...[however] "Nigeria is not the only voice agitating against it; in fact, Senegal is speaking very strongly against it. Cape Verde and other countries are also against it."...

[Amnesty: Philippine police 'planned' drug war killings](#)

(BBC)

Amnesty International has accused the Philippine police of "systematically planning" extrajudicial killings in the controversial war against drugs. The rights group also said in a report that the killings may constitute "crimes against humanity". More than 7,000 have been killed since President Rodrigo Duterte launched his "war" on the drug trade in July...

[Q&A: Lawyers Nushin Sarkarati and Daniel McLaughlin on the Khmer Rouge Tribunal](#)

(VOA news)

The Center for Justice and Accountability is an international human rights organization based in San Francisco, CA. CJA has conducted litigation for victims of the Khmer Rouge for years. VOA Khmer reporter Sok Khemara recently interviewed two of its attorneys, Nushin Sarkarati and Daniel McLaughlin...

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](#)

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